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 FIVE: REPLY OF GUYANA,

9 December 2024, Vols I and II (of two)

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GUYANA v. VENEZUELA. Arbitral Award of 3 October 1899

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GUYANA v. VENEZUELA.
Arbitral Award of 3 October 1899
International Court of Justice, Case 171

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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REPLY OF GUYANA

VOLUMEN I

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CASE CONCERNING

ARBITRAL AWARD OF 3 OCTOBER 1899

CO-OPERATIVE REPUBLIC OF GUYANA

v.

BOLIVARIAN REPUBLIC OF VENEZUELA

GUYANA'S REPLY ON THE MERITS

Volume I

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9 December 2024

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CHAPTER 1

INTRODUCTION

1.1. This Reply responds to the arguments made by Venezuela in its Counter-Memorial. Those arguments are short on substance and long on rhetoric, confusion and contradiction. To the extent that it actually addresses Guyana's case contained in its Memorial on the Merits, nothing in Venezuela's Counter-Memorial undermines the correctness and cogency of that case. On the contrary, the Counter-Memorial — and the evidence filed with it — confirm that Venezuela's repudiation of the 1899 Arbitral Award, and the boundary which it established, is manifestly lacking in legal and factual merit.

I. The Jurisdiction of the Court and Venezuela's Ongoing Challenge to It

1.2. Guyana welcomes Venezuela's decision to file a Counter-Memorial. It is striking, however, that its principal focus is not the merits of Guyana's case on the validity of the 1899 Arbitral Award and the boundary which it established, but rather an attempt to re-argue and re-litigate the Court's jurisdiction over these matters.

1.3. The Court's jurisdiction was finally confirmed by its Judgment of 18 December 2020, in which the Court unequivocally found:

> "that *it has jurisdiction* to entertain the Application filed by the Co-operative Republic of Guyana on 29 March 2018 *in so far as it concerns the validity of the Arbitral Award of 3 October 1899 and the related question of the definitive settlement of the land boundary*

dispute between the Co-operative Republic of Guyana and the Bolivarian Republic of Venezuela".[1]

1.4. In its Judgment of 6 April 2023 — in which the Court rejected Venezuela's objections to the admissibility of Guyana's claims — the Court confirmed that "it can adjudicate upon the merits of the claims of the Co-operative Republic of Guyana" insofar as they fall within the scope of the paragraph of its 2020 Judgment quoted above[2].

1.5. Venezuela, nevertheless, persists in its effort to avoid an adjudication by the Court, devoting many pages of its Counter-Memorial to its contention that "there is no basis on which to establish, even *prima facie*, the jurisdiction of the Court to hear Guyana's unilateral claim"[3], and asserting that the Court "erroneously attributed jurisdiction to itself in violation of the Geneva Agreement and international law"[4]. It describes the Court's 2020 Judgment as "questionable"[5] and refers to "[t]he falsification of an alleged consent of Venezuela artificially extracted by the Court"[6]. It criticizes the Court for having "violated" Venezuela's "right not to be subjected to a trial without a legal or legally rational basis"[7] and of "strip[ping] Venezuela of its sovereignty"[8].

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[1] *Arbitral Award of 3 October 1899 (Guyana* v. *Venezuela)*, *Jurisdiction of the Court*, *Judgment*, *I.C.J. Reports 2020*, p. 493, para. 138 (1) (emphasis added).

[2] *Arbitral Award of 3 October 1899 (Guyana* v. *Venezuela)*, *Preliminary Objection*, *Judgment*, *I.C.J. Reports 2023*, p. 292, para. 108 (3).

[3] VCM, p. 3, para. 11.

[4] *Ibid.*, p. 334, para. 2.

[5] *Ibid.*, p. 3, para. 12.

[6] *Ibid.*, p. 334, para. 2.

[7] *Ibid.*, p. 3, para. 13.

[8] *Ibid.*, p. 334, para. 2.

1.6. These unjustified attacks on the validity of the Court's Judgments are without merit, and do not call for a detailed response from Guyana. The same is true of Venezuela's related contention that the Geneva Agreement, from which the Court's jurisdiction derives, "was never related to the validity or invalidity of the Award"[9] and "does not, at any point, provide that answering the question of the validity of the Award is a pre-condition for"[10] the resolution of the controversy between the Parties.

1.7. This argument is indeed pure fantasy. It is obvious that resolving the controversy over the validity of the 1899 Award is the very purpose of the Geneva Agreement. As the Court explained in its 2020 Judgment, "the 'controversy' that the parties agreed to settle through the mechanism established under the Geneva Agreement *concerns the question of the validity of the 1899 Award*, as well as its legal implications for the boundary line between Guyana and Venezuela"[11] and "it would not be possible to resolve definitively the boundary dispute between the Parties without first deciding on the validity of the 1899 Award about the frontier between British Guiana and Venezuela"[12]. Indeed, at the time of the Agreement's conclusion, Venezuela had expressly "confirm[ed] that the parties to the Geneva Agreement understood that *the question of the validity of the 1899 Award was central to the controversy that needed to be resolved* under … the Geneva Agreement in order to reach a definitive settlement of the land boundary between Guyana and Venezuela"[13].

---

[9] VCM, para. 3.3.

[10] *Ibid.*, para. 2.9 (first bullet-point).

[11] *Arbitral Award of 3 October 1899 (Guyana* v. *Venezuela)*, *Jurisdiction of the Court*, *Judgment*, *I.C.J. Reports 2020*, p. 474, para. 66 (emphasis added).

[12] *Ibid.*, p. 490, para. 130.

[13] *Ibid.*, p. 492, para. 134 (emphasis added).

II. Venezuela's Lack of Credible Arguments Against the Validity of the 1899 Award

1.8. Venezuela's resort to arguments such as these reveals its lack of a credible answer to the substance of Guyana's claims regarding the validity of the 1899 Award and the location of the Parties' land boundary. Rather than focusing on the merits of Guyana's claims, Venezuela engages in a pointless attempt to override (or simply ignore) the Court's *res judicata* determination that it has jurisdiction over — and shall proceed to determine the merits of — those claims. Venezuela's recycling of failed arguments on jurisdiction and admissibility makes clear that it has no case on the merits.

1.9. Indeed, as Guyana demonstrated in its Memorial on the Merits (and further shows in this Reply), Venezuela's attacks on the validity of the 1899 Award are entirely groundless and have no credible basis in fact or law. Contrary to the portrayal in its Counter-Memorial, Venezuela had long urged Great Britain to submit the dispute regarding the boundary between Venezuela and British Guiana to binding arbitration. Great Britain, however, refused to do so. At Venezuela's urging, the United States interceded and, through a combination of diplomatic pressure, the creation of a Presidential Commission to assess the territorial entitlements of both States, and the threat of military force ultimately persuaded the British to accede to Venezuela's demand for arbitration. The terms of the Washington Treaty were then negotiated with Venezuela's active involvement, knowledge, authority and approval. In February 1897, Venezuela signed and ratified the Treaty — which formally gave effect to its long-held desire for the boundary dispute to be resolved through arbitration — in full knowledge of its terms, which were neither concealed from nor prejudicial to Venezuela. Venezuela's contention that the 1899 Award is the product of a fraudulent and invalid Treaty is entirely without merit.

1.10. Venezuela's attacks on the validity of the Award are similarly devoid of legal or factual substance. Its criticisms based on the absence of reasons in the Award are unsustainable in the light of the terms of the Washington Treaty, which did not require a statement of reasons, and the absence of any contemporaneous requirement for such a statement under international law. Its criticisms of the conduct of the Arbitrators, and the process by which the outcome of the Award was determined, are without evidentiary support and legally untenable. Venezuela's allegations of fraud and corruption are equally unsupported by credible evidence. So too are its complaints based on alleged excess of jurisdiction or failures to apply the rules contained in the Washington Treaty. Venezuela's own evidence, submitted with its Counter-Memorial, confirms that its attacks on the validity of the Award are factually and legally groundless.

1.11. The hollowness of Venezuela's case is confirmed by the fact that for more than six decades following the issuance of the 1899 Award, Venezuela repeatedly, consistently and overtly affirmed the validity of the Award and the boundary which it established. It was only in 1962 — some 63 years after the Award was delivered — that Venezuela repudiated an Award which it had long welcomed, recognised, affirmed and implemented. Venezuela's Counter-Memorial ignores its decades-long recognition and endorsement of the validity of the Award, and the implications of that conduct for the merits of Guyana's case before the Court.

III. Venezuela's Disregard of the Court's Order on Provisional Measures

1.12. Regrettably, Venezuela has shown as little deference to the Court's Judgments and Orders as it has shown to the 1899 Arbitral Award in the years since its repudiation of that Award in 1962. In addition to disputing the Court's Judgments of 18 December 2020 and 6 April 2023 establishing its jurisdiction in

this case, Venezuela has defied the Order on Provisional Measures of 1 December 2023. In manifest violation of the Court's provisional measures requiring Venezuela to refrain from taking any action to modify the current situation whereby Guyana administers and exercises control over the disputed territory, Venezuela has done exactly that.

1.13. On 3 April 2024, for example, Venezuela promulgated an "Organic Law for the Defense of Guayana Esequiba", which created the new Venezuelan state of "Guayana Esequiba" comprised entirely of the disputed territory[14]; ordered that every map of Venezuela must depict the territory of the new "Guayana Esequiba" state as an integral part of Venezuela[15]; vested Venezuela with executive, legislative and judicial prerogatives over the new state, and its population[16]; and authorised the exploitation of the territory's natural resources by Venezuela's state-owned oil and mining companies[17].

1.14. In enacting these measures, and subsequently, Venezuela has conducted military activities, including construction of new military facilities and infrastructure, in close proximity to the disputed territory and in direct threat to Guyana's peace and security[18]. These and other measures violate the Court's Order

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[14] Organic Law for the Defense of Guayana Esequiba (3 April 2024) (Vol. III, Annex 1) ("Organic Law"), Article 9 ("The state of Guayana Esequiba is hereby created within the territorial and political organization of the Bolivarian Republic of Venezuela. The state of Guyana Esequiba is a politically autonomous entity, with legal personality full and own and independent assets."; translation of the Spanish original: "*Se crea el estado Guayana Esequiba dentro de la organización político territorial de la República Bolivariana de Venezuela. El estado Guayana Esequiba es una entidad autónoma en lo político, con personalidad jurídica plena y patrimonio propio e independiente.*").

[15] *Ibid.*, Article 23.

[16] *Ibid.*, Articles 11-13, First and Second Transitory Articles.

[17] *Ibid.*, Article 29.

[18] Video embedded in "Sixth Corp of Engineers of the Bolivarian Army Building the Homeland", @6TOCING_EJB, *X* (19 January 2024), available at https://x.com/6TOCING_EJB/status/

that both Parties refrain from aggravating or extending the dispute or making it more difficult to resolve.

1.15. Venezuela's disregard for its obligations underscores the importance and urgency of a comprehensive, authoritative and conclusive determination by the Court of the validity of the 1899 Award and the boundary which it established.

IV. Procedural History

1.16. On 29 March 2018, Guyana submitted its Application in this case. This followed the decision of the Secretary-General of the United Nations on 30 January 2018, pursuant to his authority under Article IV of the Geneva Agreement, that the controversy between Guyana and Venezuela over the validity of the 1899 Arbitral Award should be resolved by the Court. Guyana filed its Memorial addressing the jurisdiction of the Court on 19 November 2018. On

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1748465769992630783 (last accessed on 27 November 2024) (Venezuela's military informing the construction of a tank park in Ankoko and a bridge to that island. The video shows construction materials, APCs, and heavy river ferry along with this tweet: "The @6TOCING_EJB Complying with instructions from the @CEOFANBVE from Isla de Ankoko, edo Bolívar; continue engineering works on the banks of the Cuyuní river, where the Mabey Compact 200 bridge is being built along with the construction of the tank farm in the jungle."[Added]) (Guyana's translation of the Spanish original: "El @6TOCING_EJB Cumpliendo instrucciones del @CEOFANBVE desde la Isla de Ankoko, edo Bolívar; continúan los trabajos de Ingeniería a orillas del río Cuyuní, donde se construye el puente Mabey Compact 200 y la construcción del tancodromo en selva."); Video embedded in "Bolivarian Army", @somos_ejército, #Enterate || GJ Domingo Hernández Lárez, Strategic Operational Commander of the FANB, reviewed the Ankoko Island in #Bolívar state in order to inspect the construction of the tankodrome (tank farm), promoted by the 11 Armoured Brigade together with the @6TOCING_EJB, improving the FANB's response system in this important border area with the state of Guayana Esequiba and repelling any eventuality that attempts against the Republic" (Guyana's translation), *X* (25 January 2024), available at https://x.com/somos_ejercito/status/1750548445130019157 (last accessed on 27 November 2024); Pictures and video embedded in GJ. Domingo Hernández Lárez, @dhernandezlarez, *X* (25 January 2024), available at https://x.com/dhernandezlarez/status/1750501357075706075 (last accessed on 27 November 2024) (posting three pictures and one video of Venezuela's military activities in Ankoko island, and asserting that the army "is firm and willing to comply with its mission to defend the national sovereignty and support with the effort of the development of the country" (Guyana's translation)).

28 November 2019 (more than seven months after the deadline specified in the Court's Order of 19 June 2018), Venezuela submitted a "Memorandum" in response to Guyana's submissions.

1.17. On 30 June 2020, the Court held an oral hearing on the question of its jurisdiction over Guyana's Application. By Judgment dated 18 December 2020, the Court determined that it has jurisdiction to hear Guyana's Application "in so far as it concerns the validity of the Arbitral Award of 3 October 1899 and the related question of the definitive settlement of the land boundary dispute between the Co-operative Republic of Guyana and the Bolivarian Republic of Venezuela"[19].

1.18. In accordance with the Court's Order dated 8 March 2021, on 8 March 2022 Guyana filed its Memorial on the Merits.

1.19. Venezuela then submitted Preliminary Objections on the admissibility of the case on 7 June 2022. Guyana submitted Written Observations in response on 15 July 2022. The Court duly held oral hearings on Venezuela's Preliminary Objections between 17 and 22 November 2022. By Judgment dated 6 April 2023, the Court rejected Venezuela's Preliminary Objections in their entirety[20].

1.20. On 30 October 2023, Guyana filed a request for the indication of provisional measures by the Court. Guyana's request was prompted by Venezuela's announcement of its intention to hold a national referendum, which posed questions that sought to obtain a popular mandate to reject the 1899 Arbitral Award and the

[19] *Arbitral Award of 3 October 1899 (Guyana* v. *Venezuela), Jurisdiction of the Court, Judgment, I.C.J. Reports 2020*, p. 493, para. 138 (1).

[20] *Arbitral Award of 3 October 1899 (Guyana* v. *Venezuela), Preliminary Objection, Judgment, I.C.J. Reports 2023*, p. 292.

boundary with Guyana that it established; to reject the Court's jurisdiction over these proceedings; and to unlawfully seize and annex "Guayana Esequiba" (i.e. the territory awarded to Guyana (then British Guiana) by the 1899 Award) by formally incorporating it into Venezuela as a new Venezuelan State[21].

1.21. Following oral hearings on Guyana's request on 14 and 15 November 2023, the Court issued an Order on 1 December 2023. The Court's Order on Provisional Measures unanimously ordered that:

> "Pending a final decision in the case, the Bolivarian Republic of Venezuela shall refrain from taking any action which would modify the situation that currently prevails in the territory in dispute, whereby the Co-operative Republic of Guyana administers and exercises control over that area;
>
> .....
>
> Both Parties shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve."[22]

1.22. As described above, Venezuela has acted in defiance of that Order.

1.23. On 8 April 2024, Venezuela submitted its Counter-Memorial. On 14 June 2024, the Court authorised a second round of written pleadings and specified deadlines for the submission of those pleadings, fixing 9 December 2024 for Guyana's Reply. Guyana submits this Reply in accordance with that Order.

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[21] Guyana's Request for Provisional Measures, 27 October 2023, paras. 2-5.

[22] *Arbitral Award of 3 October 1899 (Guyana* v. *Venezuela)*, *Provisional Measures*, Order of 1 December 2023, para. 45.

V. Structure of the Reply

1.24. This Reply comprises three volumes. Volume I sets out the main text of the Reply. Volume II contains Maps and Figures for illustrative purposes and Volume III, Guyana's Annexes, all of which are cited in Volume I.

1.25. Volume I comprises five chapters, followed by Guyana's Submissions and a short Appendix. Following this Introduction, **Chapter 2** addresses the validity of the 1897 Treaty of Washington. It rebuts Venezuela's attempts to impugn the validity of 1899 Award by challenging the validity of the Treaty containing the arbitral *compromis*. The Chapter begins by demonstrating how the contemporaneous evidence — including the evidence put forward by Venezuela in its Counter-Memorial — comprehensively defeats Venezuela's claim that its consent to the Treaty was vitiated by error or fraud either in the negotiation of the Treaty or in its terms. Contrary to Venezuela's allegations, nothing was included in the Treaty without Venezuela's knowledge or contrary to its interests. The chapter then explains how the contemporaneous evidence — including that relied on by Venezuela — provides no support for Venezuela's claim that it was forced to enter the Treaty against its will. The evidence shows that Venezuela freely entered the Treaty, which was and is valid and binding upon the parties.

1.26. **Chapter 3** addresses the validity of the 1899 Award. It addresses each of the grounds (in addition to the alleged invalidity of the Washington Treaty) on which Venezuela argues that the 1899 Award is invalid. The chapter begins by demonstrating that neither the Washington Treaty nor international law more generally contained any requirement for the Award to include a statement of reasons. The absence of any such duty under international law at the time of the 1899 Award is put beyond question by the **Appendix** at the end of Volume I of this

Reply, which collates numerous examples of arbitral awards rendered by jurists in the nineteenth and early twentieth centuries which contained no statement of reasons. Accordingly, Venezuela's attempt to assail the validity of the Award by reference to the lack of reasons is entirely without merit. The chapter then addresses and refutes Venezuela's contentions that the Award is invalid because the Tribunal failed to comply with the rules contained in Article IV of the Treaty, exceeded its powers under the Treaty, and reached a decision based on a compromise rather than law. Finally, it shows that Venezuela's claim that the Award was vitiated by fraud and corruption during the arbitration is also entirely without merit.

1.27. In **Chapter 4**, Guyana addresses the legal consequences that arise from Venezuela's decades-long recognition, acceptance, affirmation and implementation of the 1899 Award. It demonstrates that all the matters which form the basis for Venezuela's contention of nullity were known to Venezuela at the time the Award was delivered in October 1899. Despite that knowledge, Venezuela positively recognised and affirmed the validity of the Award, and the boundary which it established, over a period of more than six decades. The chapter refutes Venezuela's claim that "structural coercion" prevented it from challenging the validity of the Award until many years after it was issued and its equally spurious contention that the publication of the Mallet-Prevost Memorandum in 1949 "changed everything"[23]. The chapter concludes by showing that Venezuela's claim that Guyana is barred from relying on Venezuela's decades-long affirmation, acceptance and acquiescence in the 1899 Award is legally and factually baseless.

1.28. **Chapter 5** addresses Venezuela's defiance of the Court's Order on Provisional Measures and the legal consequences thereof. It explains that by adopting measures to *de facto* and *de jure* annex, administer and control the

[23] VCM, para. 7.25.

disputed territory, Venezuela has violated both its obligation to refrain from taking any action to modify the situation that currently prevails in the disputed territory and its obligation to refrain from doing anything which might aggravate or extend the dispute or render it more difficult to resolve. The chapter concludes by setting out the legal consequences which arise from those breaches of the Court's Order.

1.29. Volume I concludes with Guyana's Submissions, and the Appendix described in paragraph 1.26 above.

CHAPTER 2

THE VALIDITY OF THE 1897 WASHINGTON TREATY

2.1. In its Memorial on the Merits, Guyana described at length the situation which led to the conclusion of the Treaty between Great Britain and the United States of Venezuela Respecting the Boundary between the Colony of British Guiana and the United States of Venezuela, signed in Washington on 2 February 1897 (the Washington Treaty)[24]. Guyana demonstrated that the Treaty — the special agreement for the resolution of the border dispute between what was then British Guiana and Venezuela — had been validly concluded[25].

2.2. Deliberately ignoring the points made by Guyana in its Memorial, Venezuela addresses in its Counter-Memorial various factual aspects of the negotiations and the conclusion of the Washington Treaty. It argues that the Treaty was invalid due to alleged error by concealment, fraud and coercion.

2.3. Although Venezuela mixes up the various grounds for nullity provided by the 1969 Vienna Convention on the Law of Treaties (VCLT), its arguments may be summarised in two points:

(a) First, Venezuela alleges that its consent to the Washington Treaty is invalid based on VCLT Article 48 because it was procured through "error *by concealment*" of "the calculation of the period of prescription provided under Article IV of the 1897 Treaty"[26], and based on VCLT Article 49 because its alleged exclusion from the negotiation of the Washington Treaty

[24] See MMG, paras. 7.1-7.80.

[25] *Ibid.*

[26] VCM, para. 6.44 (emphasis added).

and non-access to confidential communications between the United States and the British negotiators constitutes fraud[27]; and

(b) Second, Venezuela contends that it was *coerced* by the United States and Great Britain to sign the Washington Treaty in contradiction of VCLT Article 52[28].

2.4. To support its arguments of error by concealment and fraud, Venezuela alleges that it played no role in the negotiation of the Washington Treaty, that it was not informed of the content of the negotiations — especially concerning the period of prescription for the vesting of title to the disputed territory by occupation — and that, as a result, the Treaty "was a text that was patently prejudicial to the interests and dignity of Venezuela in respect to crucial issues"[29]. As for the alleged coercion, Venezuela argues that because of "the threat it was confronting [in 1897], Venezuela had no other option but to accept a treaty which was clearly prejudicial to its rights"[30].

2.5. In the present Chapter, Guyana shows that neither the negotiations which led to the conclusion of the Washington Treaty (**I**), nor the consent given by Venezuela to the Treaty (**II**), were tainted by any concealment, fraud or coercion, and there is therefore no basis for impugning the validity of the Treaty.

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[27] VCM, paras. 6.52-6.58.

[28] *Ibid.*, para. 5.76.

[29] *Ibid.*, para. 5.7.

[30] *Ibid.*, para. 5.76.

I. There Was No Error by Concealment or Fraud in the Negotiations that Led to the Conclusion of the Washington Treaty

2.6. In its Counter-Memorial, Venezuela claims that due to an error by concealment and/or fraud, the consent it gave in signing and ratifying the Washington Treaty is invalid[31]. It alleges that "the fraud was a determining factor in coercing Venezuela to accept the Treaty (causing the error)"[32]. On this basis, it argues that the Treaty is invalid because its consent was given in violation of conditions detailed in Articles 48 and 49 of the VCLT[33].

2.7. Guyana accepts that Articles 48 and 49 of the 1969 Convention reflect, in large part, the rules applicable at the time the Washington Treaty was signed and ratified (**A**). However, Venezuela's claims of error and fraud are contradicted and defeated by the evidence of record in this case, including in particular the evidence put forward by Venezuela in its Counter-Memorial and the Annexes thereto. As shown below, this evidence fully refutes Venezuela's arguments that its consent to the Treaty was marred by error or fraud in the negotiation of the Treaty (**B**) or in its content (**C**).

A. The Applicable Rules: Error and Fraud as Grounds for the Invalidity of Consent to a Treaty at the End of the 19th Century

2.8. According to Venezuela, "[a]s recognised by Guyana, the conditions for determining the invalidity of a treaty as a consequence of error or fraud are set forth

[31] VCM, para. 6.26.

[32] *Ibid.*, p. 95, para. 46.

[33] *Ibid.*, paras. 6.43-6.58.

in, respectively, Articles 48 and 49 the 1969 Vienna Convention on the Law of Treaties"[34].

2.9. The Parties are not significantly divided on this point, although Venezuela's characterization of Guyana's position is imprecise. To clarify, Guyana does not dispute that, at the end of the 19th century, error and fraud were recognised as grounds justifying the invalidity of a treaty[35]. Its Memorial on the Merits states:

> "Articles 48, 49 and 50 of the 1969 Vienna Convention on the Law of Treaties are respectively devoted to error, fraud and corruption as defects in the consent of a State, which may result in the invalidity of a treaty to which the State is a party. It is appropriate to take those provisions of the VCLT as a *starting point*, even if the customary rules pertaining to the invalidity of treaties more than a century and a half ago were assuredly *less developed than today*."[36]

2.10. In regard to error as a ground for invalidating consent, Venezuela explains that the error must concern the assessment of a given factual situation and be significant enough to have influenced its consent when it signed and ratified the Treaty[37]. Relying on Article 48 of the VCLT, Venezuela acknowledges that error will not invalidate a treaty "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"[38]. This is consistent with Guyana's understanding of error as a ground for invalidating consent, as reflected in its Memorial on the Merits. However, Venezuela fails to point out that the error must de demonstrated by

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[34] VCM, para. 6.26, citing to note 563 ("GM, p. 175, para. 7.5").

[35] MMG, paras. 7.6-7.16.

[36] *Ibid.*, para. 7.5 (emphasis added).

[37] VCM, para. 6.49.

[38] *Ibid.*, para. 6.51.

"*convincing* evidence"[39] and that the ILC has noted that the cases in which "errors of substance have been invoked … have not been frequent"[40].

2.11. In respect to fraud, Venezuela considers this a ground for the invalidity of consent when: (i) it emanates from a party to the treaty; (ii) it constitutes a decisive element in obtaining the consent of the State; and (iii) the State victim of the fraud is unaware of it[41]. Venezuela acknowledges that proving fraud requires proof of the *fraudulent intent* of the person who committed it[42]. Guyana agrees with this definition of fraud as it existed at the end of the 19th century[43].

2.12. With these clarifications, it may be said that the Parties are in substantial agreement on the rules for determining whether consent to a treaty at the end of the 19th century can be invalidated on the basis of error or fraud. Where the Parties fundamentally disagree is on the facts and the evidence. In Guyana's view, the facts of this case — as supplied by Venezuela itself — fail to support its contention that its consent to the Washington Treaty resulted from error or fraud, or that as a result of these alleged infirmities, it accepted a Treaty whose contents were prejudicial to it. Rather, they show the opposite: that there was no error or fraud, and nothing prejudicial to Venezuela in the Treaty to which it freely consented.

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[39] *Sovereignty over Certain Frontier Land (Belgium/Netherlands)*, *Judgment*, *I.C.J. Reports 1959*, p. 222 (emphasis added); MMG, para. 7.12.

[40] Draft Articles on the Law of Treaties with commentaries, *ILC Yearbook*, 1966, vol. II, (hereinafter "Draft Articles on the Law of Treaties with commentaries"), Article 45, p. 243, para. 1 of the commentary; MMG, para. 7.12.

[41] VCM, para. 6.58.

[42] *Ibid.*, p. 81, para. 13 (emphasis added).

[43] MMG, paras. 7.13-7.16.

B. THE FACTS: NOTHING WAS CONCEALED FROM VENEZUELA, NOR WAS IT DEFRAUDED BY THE UNITED STATES, IN THE NEGOTIATION OF THE WASHINGTON TREATY

2.13. Venezuela asserts without any factual basis that the Treaty "stemmed from a criminal fraud in which even United States government officials of the time participated, namely, the collusion between Mr. Olney (United States Secretary of State in 1897), Mr. Salisbury (United Kingdom Foreign Secretary) and the United Kingdom's Ambassador of the time, Julian Pauncefote, as well as the active cooperation of Joseph Chamberlain, former Minister of the Colonial Office"[44].

2.14. Venezuela fails to offer proof of fraud, and its own evidence supports the opposite contention to that which it argues. Its Annexes show that: **(1)** Venezuela repeatedly, and over more than a decade between 1883 and 1896, beseeched the United States to intercede with the British to persuade them to agree to arbitration of the territorial dispute; and the United States responded positively and pressed Great Britain to accept arbitration with Venezuela — even threatening to go to war if the British refused — and ultimately succeeded in compelling them to accede to the arbitration that Venezuela had long desired but had been unable to procure on its own; and **(2)** in negotiating the arbitration agreement itself, the United States consulted closely with Venezuela, kept it fully informed of the proposals and counter-proposals, and succeeded in obtaining terms which Venezuela found agreeable and worthy of acceptance.

[44] VCM, p. 79, para. 7.

1. Venezuela Directly Appealed to the United States to Help It Obtain an Arbitration Agreement to Settle Its Territorial Dispute with Great Britain

2.15. Venezuela acknowledges that "recourse to arbitration was a long-standing aspiration," that it "had repeatedly proposed to Great Britain to settle the territorial dispute by arbitration," and that "Great Britain had systematically refused such solution, or had subjected recourse to arbitration to unacceptable conditions"[45]. In frustration, Venezuela eventually turned to the United States, urging it to intercede with the British on its behalf to obtain their agreement to arbitrate the territorial dispute. As Venezuela admits:

> "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."[46]

2.16. The evidence shows that Venezuela first approached the United States in 1883, when Venezuela's Foreign Minister, Simón Camacho, wrote to his United States counterpart, Secretary of State Frederick Frelinghuysen, to request that the United States intercede with the British to persuade them to accept arbitration of the territorial dispute:

> "To carry this controversy to a practical ground and possible termination, there is, in the opinion of the President of Venezuela, only one and at the same time very simple way – arbitration.

[45] VCM, para. 5.9, note 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).").

[46] *Ibid.*, para. 5.10.

> And for arbitration, there is only one Government who could propose it with real effect and decide the question of boundaries to the satisfaction of Venezuela – the United States of America."[47]

2.17. Mr. Frelinghuysen sent his response through the United States Minister in 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."[48]

2.18. This exchange occurred after the British had repeatedly rebuffed Venezuela's own proposals for submission of the dispute to arbitration, even as they continued to expand their presence in and control over the disputed territory[49]. Feeling vulnerable in the face of Great Britain's superior military power and diplomatic stalemate, Venezuela urged the United States to apply the "Monroe Doctrine" by which the United States had pledged to prevent the expansion of European colonial settlement in the Americas[50].

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[47] Letter from the Venezuelan Foreign Minister, Mr. Simón Camacho, to United States Secretary of State, Mr. Frederic Frelinghuysen (15 January 1883) (Vol. III, Annex 2).

[48] Letter from Mr. Olney to Mr. Bayard (20 July 1895), in United States Department of State, *Papers Relating to the Foreign Relations of the United States, with the Annual Message of the President, Transmitted to Congress December 2, 1895*, Part 1 (1896), Document 527, available at https://history.state.gov/historicaldocuments/frus1895p1/d527.

[49] See, e.g., VCM, p. 84, para. 20; *ibid.*, paras. 4.142 and 4.151-4.152.

[50] See *White Paper of the Venezuelan Council on Foreign Relations (COVRI) regarding the Pending Case* Arbitral Award of 3 October 1899 (Guyana *v.* Venezuela) (9 December 2020), p. 30, para. 52, available at https://covri.com.ve/wp-content/uploads/2020/12/White-Paper-COVRI-3.pdf (last accessed on 27 November 2024) ("Relying on the *Monroe Doctrine*, Venezuela called on the United States of America for its good offices").

2.19. In December 1886, in response to Venezuela's further overtures, the United States approached the British directly to obtain their agreement to arbitrate the territorial dispute, even offering itself as an impartial arbitrator. Secretary of State Thomas Bayard instructed the United States Minister in London to deliver the following message to the British:

> "[T]he 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."[51]

2.20. The offer received the same negative reaction from the British as had Venezuela's own proposals. In February 1887, Venezuela, alarmed by the ongoing westward expansion of British settlement into what it claimed was its own territory, broke relations with Great Britain. A year later, in February 1888, the United States, again responding to Venezuela's request, complained to the British about their ongoing expansion into the disputed territory and renewed its demand for arbitration of the dispute. United States Secretary of State Bayard instructed the United States Minister in London to advise the British:

> "The claim now stated to have been put forth by the authorities of British Guiana necessarily gives rise to grave disquietude, and

[51] Letter from Mr. Olney to Mr. Bayard (20 July 1895), in United States Department of State, *Papers Relating to the Foreign Relations of the United States, with the Annual Message of the President, Transmitted to Congress December 2, 1895*, Part 1 (1896), Document 527, available at https://history.state.gov/historicaldocuments/frus1895p1/d527.

> creates an apprehension that the territorial claim does not follow historical traditions or evidence, but is apparently indefinite.
>
> .....
>
> It may be well for you to express anew to Lord Salisbury [the British Foreign Minister] 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 to that end."[52]

2.21. Venezuela expressed its gratitude to the United States, and especially to President Grover Cleveland, for its support. In September 1888, the Venezuelan chargé d'affaires in Washington, Father Antonio Silva wrote:

> "To the President of the United States, Grover Cleveland, my country is largely indebted for his sympathy and the notion taken by him toward the Government of Great Britain, in showing that Government that the United States was not indifferent to the unwarranted acts of encroachment by Great Britain on the territory of the Republic of Venezuela.
>
> The timely interference on the part of President Cleveland has for the present stopped the English Government in her attempted acts of spoliation, encroachment, and appropriation to herself of very nearly one-third of our whole republic … My Government and people feel that in President Cleveland they have a friend and protector."[53]

2.22. The British remained opposed to arbitration. At Venezuela's urging, the United States made another overture. In February 1890, the Venezuelan Minister in Washington, Bolet Peraza wrote to United States Secretary of State James Blaine

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[52] *Ibid.*

[53] Letter from Venezuelan Chargé d'Affaires in the United States of America, Fr. Antonio Silva, to Diplomatic Agent of Venezuela in New York, Col. George Gibbons (18 September 1888), available at http://www.guyananews.org/Western/1888-1891.pdf (last accessed on 27 November 2024), p. 910.

"once more" requesting "the United States Government to use its good offices (which will be strengthened by its powerful influence) in order to bring about a settlement of the dispute between Venezuela and Great Britain and by the means which international law and the spirit of modern civilization have provided for such cases"[54]. In response, Secretary Blaine sent instructions to the United States Minister in London:

> "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 towards the settlement of the boundary dispute by arbitration."[55]

2.23. Between 1890 and 1893, Venezuela attempted, through its agent in London and with United States' support, to reach agreement with the British to arbitrate the territorial dispute and reestablish diplomatic relations[56]. As before, its attempts were rebuffed. In response, Venezuela again turned to the United States, urging it to use its influence to pressure the British to accept arbitration. This is reflected in correspondence dated 19 December 1894 from José Andrade, Venezuela's Minister in Washington, to W. Q. Gresham, Secretary of State of the United States:

> "As Your Excellency will understand, the dispute already has a phase that we could call threatening, given that the Colonial Authorities are preparing to expand their jurisdiction even further … and to thus enter into regions where the Republic has established

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[54] Letter from Mr. Peraza to Mr. Blaine (17 February 1890), in United States Department of State, *Papers Relating to the Foreign Relations of the United States, with the Annual Address of the President, December 1, 1890* (1891), Document 496, available at https://history.state.gov/historicaldocuments/frus1890/d496. See also, reiterating the same request, Letter from Mr. Peraza to Mr. Blaine (24 April 1890), in *ibid.*, Document 497, available at https://history.state.gov/historicaldocuments/frus1890/d497.

[55] Letter from Mr. Olney to Mr. Bayard (20 July 1895), in United States Department of State, *Papers Relating to the Foreign Relations of the United States, with the Annual Message of the President, Transmitted to Congress December 2, 1895*, Part 1 (1896), Document 527, available at https://history.state.gov/historicaldocuments/frus1895p1/d527.

[56] *Ibid.*

> regular centers. In view of this, and as the Venezuelan Government always endeavors to exhaust all lawful means to reach an amicable settlement, it wishes to inform the Embassy of the new danger posed by this matter, and thus reiterate to the United States Government its request for effective and direct intervention, which our Minister Plenipotentiary presented to the Department of State in Washington some time ago and has continually ratified."[57]

2.24. Once again, the United States responded favourably to Venezuela's request. As described by United States Secretary of State Richard Olney:

> "Since the close of the negotiations initiated by Señor Michelena [Venezuela's agent in London] in 1893, Venezuela has repeatedly brought the controversy to the notice of the United States, has insisted upon its importance to the United States as well as to Venezuela, has represented it to have reached an acute stage — making definite action by the United States imperative — and has not ceased to solicit the services and support of the United States in aid of its final adjustment. These appeals have not been received with indifference and our Ambassador to Great Britain has been uniformly instructed to exert all his influence in the direction of the re-establishment of diplomatic relations between Great Britain and Venezuela and in favor of arbitration of the boundary controversy."[58]

2.25. The United States' concern about British colonial expansion and support for Venezuela continued to grow. By the end of 1894, Venezuela's cause was fully embraced at the highest level of the United States Government. President Cleveland, in his address to the United States Congress in December 1894, pledged:

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[57] Letter from Mr. Andrade to Mr. Gresham (19 December 1894) (MMG, Vol. III, Annex 29).

[58] Letter from Mr. Olney to Mr. Bayard (20 July 1895), in United States Department of State, *Papers Relating to the Foreign Relations of the United States, with the Annual Message of the President, Transmitted to Congress December 2, 1895*, Part 1 (1896), Document 527, available at https://history.state.gov/historicaldocuments/frus1895p1/d527.

> "I shall renew the efforts heretofore made to bring about a restoration of diplomatic relations between the disputants and to induce a reference to arbitration, a resort which Great Britain so conspicuously favors in principle and respects in practice and which is earnestly sought by her weaker adversary."[59]

2.26. The United States Congress responded in February 1895 with a Joint Resolution endorsing the President's determination "that Great Britain and Venezuela refer their dispute as to boundaries to friendly arbitration"[60].

2.27. Thereafter, the United States increased its pressure on the British. In July 1895, Secretary of State Olney instructed the United States Minister in London to deliver a strong message to Lord Salisbury, accusing Great Britain of "aggression upon Venezuelan territory" which impacts the United States in such a manner that the United States "can not regard with indifference":

> "By the frequent interposition of its good offices at the instance of Venezuela, by constantly urging and promoting the restoration of diplomatic relations between the two countries, by pressing for arbitration of the disputed boundary, by offering to act as arbitrator, by expressing its grave concern whenever new alleged instances of British aggression upon Venezuelan territory have been brought to its notice, the Government of the United States has made it clear to Great Britain and to the world that the controversy is one in which

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[59] Speech of President Grover Cleveland of 3 December 1894, available at https://millercenter.org/the-presidency/presidential-speeches/december-3-1894-second-annual-message-second-term (last accessed on 27 November 2024); see also Letter from Mr. Olney to Mr. Bayard (20 July 1895), in United States Department of State, *Papers Relating to the Foreign Relations of the United States, with the Annual Message of the President, Transmitted to Congress December 2, 1895*, Part 1 (1896), Document 527, available at https://history.state.gov/historicaldocuments/frus1895p1/d527 (quoting the same statement).

[60] United States Congress, 53rd Session, *Joint Resolution*, H. Res. 252 (10 January 1895) (MMG, Vol. IV, Annex 81). See also Letter from Mr. Olney to Mr. Bayard (20 July 1895), in United States Department of State, *Papers Relating to the Foreign Relations of the United States, with the Annual Message of the President, Transmitted to Congress December 2, 1895*, Part 1 (1896), Document 527, available at https://history.state.gov/historicaldocuments/frus1895p1/d527 (quoting the same resolution of the United States Congress).

> both its honor and its interests are involved and the continuance of which it can not regard with indifference."[61]

2.28. Venezuela admits in its Counter-Memorial that it is "a fact that [it] 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 also recognises that "[i]t was clear that the possibility of submitting the dispute to arbitration could have materialised only with the support of the United States … when, in 1895, the United States intervened in the dispute, Venezuela accepted, and even encouraged, its mediation"[62].

2.29. Venezuela's contrary assertion that the United States somehow colluded with Great Britain against Venezuela's interests runs contrary to its own admissions, and the clear evidence of consistent United States' support for Venezuela in its struggle with Great Britain — support which reached its zenith in 1895 and 1896. The United States Secretary of State's July 1895 message to the British fully embraced Venezuela's position, employing what was, at the time, especially pointed diplomatic language:

> "[T]he 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 [by arbitration, only if you first agree to abandon to me such other portion] as I may designate.' It is not perceived how such an attitude can be defended nor how it is

[61] Letter from Mr. Olney to Mr. Bayard (20 July 1895), in United States Department of State, *Papers Relating to the Foreign Relations of the United States, with the Annual Message of the President, Transmitted to Congress December 2, 1895*, Part 1 (1896), Document 527, available at https://history.state.gov/historicaldocuments/frus1895p1/d527.

[62] VCM, para. 5.10.

> 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 of British Guiana, it should not be regarded as amounting, in substance, to an invasion and conquest of Venezuelan territory."[63]

2.30. The United States thus made it perfectly clear to the British that it saw its own interests as aligned with those of Venezuela. Throughout the 19th century, pursuant to its so-called "Monroe Doctrine", the United States had vociferously opposed any expansion of European colonialism in the Western Hemisphere, including that of Great Britain, and it viewed British territorial claims against Venezuela through this prism. It was in these circumstances that United States Secretary Olney warned Britain that its attitude not only "deprives Venezuela of her free agency and puts her under duress," but also offends "the interests of the people of the United States" on a matter "with which the honor and welfare of this country are closely involved":

> "[T]he duty of the President appears to him unmistakable and imperative. Great Britain's assertion of title to the disputed territory combined with her refusal to have that title investigated being a substantial appropriation of the territory to her own use, not to protest and give warning that the transaction will be regarded as injurious to the interests of the people of the United States as well as oppressive in itself would be to ignore an established policy with which the honor and welfare of this country are closely identified."[64]

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[63] VCM, para. 7.18, quoting "M. Baker, *The Anglo-Venezuelan Boundary Dispute 1849-1903*, Washington, 1990 (available at https://archive.org/details/cu31924021109529)".

[64] Letter from Mr. Olney to Mr. Bayard (20 July 1895), in United States Department of State, *Papers Relating to the Foreign Relations of the United States, with the Annual Message of the*

2.31. This warning was followed by President Cleveland's message to the United States Congress in December 1895. Expressly invoking the Monroe Doctrine against Great Britain, the President declared that: "its enforcement is important to our peace and safety as a nation and is essential to the integrity of our free institutions and the tranquil maintenance of our distinctive form of government"[65].

2.32. The British interpreted the speech as a threat to go to war on behalf of Venezuela. As expressed by the Secretary of State for the Colonies, Joseph Chamberlain, in a letter to his Under-Secretary, Lord Selbourne:

> "I regard the situation created by the President's Message with grave concern. I do not think it is due entirely to electioneering motives; but I am sorry to say that I am afraid that a large number, and probably a majority, of Americans would look forward without horror to a war with this country. … They are jealous of this country, and suspect us always of an assumption of superiority of which we are not conscious ourselves, but they are convinced nevertheless that we look down upon them, [and] they would not be sorry to prove that they are bigger & stronger & better than we are. …
>
> Cleveland is a coarse-grained man, with, I think, a good deal of the bully in his composition. He has yielded to the Jingoes, but not altogether without sympathy for their views."[66]

2.33. Far from any "collusion" or "conspiracy" against Venezuela by the United States and Great Britain — as falsely alleged in its Counter-Memorial — the contemporaneous documentary evidence shows that the two States were close to

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President, Transmitted to Congress December 2, 1895, Part 1 (1896), Document 527, available at https://history.state.gov/historicaldocuments/frus1895p1/d527.

[65] Speech of Grover Cleveland, "Message Regarding Venezuelan-British Dispute" (17 December 1895), available at https://millercenter.org/the-presidency/presidential-speeches/december-17-1895-message-regarding-venezuelan-british-dispute (last accessed on 27 November 2024).

[66] Letter of Mr. Joseph Chamberlain to Mr. Selborne (20 December 1895) (Vol. III, Annex 3).

war over the territorial dispute between Britain and Venezuela, with the United States unequivocally committed to the Venezuelan side.

2.34. To further this commitment, President Cleveland announced his intention to create a "commission" to investigate and determine the "true" boundary between Venezuela and British Guiana:

> "[T]he dispute has reached such a stage as to make it now incumbent upon the United States to take measures to determine with sufficient certainty for its justification what is the true divisional line between the Republic of Venezuela and British Guiana. …
>
> When [the commission's] report is made and accepted it will, in my opinion, be the duty of the United States to resist by every means in its power, as a willful aggression upon its rights and interests, the appropriation by Great Britain of any lands or the exercise of governmental jurisdiction over any territory which after investigation we have determined of right belongs to Venezuela."[67]

2.35. In February 1896, the United States Congress appropriated the funds and President Cleveland's commission was established as the "United States Venezuela Border Commission". As Chairman, President Cleveland appointed Supreme Court Justice David Brewer (who would later be appointed as an arbitrator under the Washington Treaty). Venezuela applauded the commission. Its Foreign Minister, Pedro Ezequiel Rojas, communicated his government's approval to Secretary of State Olney, promising to cooperate with the commission and transmit all pertinent archival records[68].

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[67] Speech of Grover Cleveland, "Message Regarding Venezuelan-British Dispute" (17 December 1895), available at https://millercenter.org/the-presidency/presidential-speeches/december-17-1895-message-regarding-venezuelan-british-dispute (last accessed on 27 November 2024).

[68] Letter from P. Ezequiel Rojas to Richard Olney (28 March 1896) (MMG, Vol. IV, Annex 64).

2.36. The establishment of President Cleveland's commission proved to be the decisive element in compelling the British, finally, to reverse course and agree to Venezuela's demand for arbitration. Venezuela itself acknowledges this in its Counter-Memorial:

> "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."[69]

> "Great Britain accepted arbitration only because of the pressure put on it by the United States."[70]

2.37. Venezuela's *Libro Amarillo* (Yellow Book) of 1896, the official annual report of the Ministry of Foreign Affairs presented to the National Congress, stated that:

> "The good offices thus exercised by the Government of Washington were entirely aligned with Venezuela's request. Venezuela turned to the Great Republic in search of a dignified resolution to its conflict with Great Britain, and its request was heeded. Although at the time the British Cabinet insisted upon an exclusion that had long been openly rejected by the Republic, the path outlined by the United States was the most appropriate to achieving without further delay a positive harmony of opinions on the issue of arbitration.
>
> .....
>
> The manner in which the Legislative and Executive Branches of the United States began to undertake it could *could not have corresponded better to our wishes*. The means subsequently employed by the Department of State, as evidenced in the

[69] VCM, para. 5.1.

[70] *Ibid.*, para. 5.12.

correspondence published in July, were no less consonant with our purpose. *The creation of an arbitral tribunal to settle the controversy from its inception would fulfil all of Venezuela's hopes.*"[71]

2.38. Venezuela thus expressly acknowledges that, in compelling the British to accede to its demands for arbitration, the United States obtained for Venezuela that which it had long desired but was unable to obtain for itself. The contemporaneous documentation confirms that the United States did, in fact, take sides in this controversy, but the side it took was that of Venezuela, not that of Great Britain, even to the extent of threatening military intervention against Great Britain on Venezuela's behalf.

2.39. For decades this has been acknowledged by Venezuela. It is only very recently, in the context of these proceedings before the Court, that it first accused the United States of collusion with the British, conspiracy and fraud. The evidence shows that this is simply not the case. Whatever may be the relations between the United States and Venezuela in the 21st century, they were allies in the struggle against British imperialism in the late 19th and early 20th centuries. There is no evidence before the Court to support Venezuela's assertion that the United States acted against its interests in obtaining British agreement to its longstanding demand

[71] *El Libro Amarillo de los Estados Unidos de Venezuela*, 1896, pp. xxvii and xxix (emphasis added) (Vol. III, Annex 4) (translation of the Spanish original: "*Los buenos oficios así ejercidos por el Gobierno de Washington* se conformaban del todo a la solicitud de Venezuela. *Ella acudió a la Gran República en pos de una solución decorosa de su conflicto con la Gran Bretaña, y su petición fue atendida. Aun cuando por el momento el Gabinete inglés insistiera en una exclusión abiertamente rechazada de antiguo por la República,* el camino trazado por los Estados Unidos era el más apropiado *para llegar sin mayor tardanza a una positiva armonía de opiniones en punto de arbitramento. ... El modo como empezaron a prestarla los Poderes Legislativo y Ejecutivo de los Estados Unidos,* no podía corresponder mejor a nuestros deseos. *El medio de que siguió valiéndose para ello el Departamento de Estado, según aparece de la correspondencia publicada en julio, no era menos cónsono con nuestro propósito.* La creación de un tribunal arbitral que dirimiese la controversia desde su principio, venía a dejar realizadas todas las esperanzas de Venezuela").

for arbitration of the territorial dispute. Venezuela's claim that it was the victim of fraud has no support.

2. The United States Negotiated the Arbitration in Close Collaboration with Venezuela

2.40. Venezuela now claims that it "was left out of the treaty negotiations"[72] and that the United States negotiated the terms of the Treaty "behind Venezuela's back"[73] in a manner "designed to harm Venezuela"[74].

2.41. The evidence undermines that claim. Notably, Venezuela has not submitted any contemporaneous evidence — not a single document — reflecting any dissatisfaction on its part with the way in which the United States conducted the negotiations with Great Britain over the terms of arbitration agreement. There were no complaints that Venezuela was "left out" of these negotiations, or that they were conducted in a manner likely "to harm Venezuela".

2.42. Rather, the documentary evidence shows a close collaboration between the United States and Venezuela throughout the negotiations. The chief points of contact were Secretary of State Olney for the United States and, for Venezuela, José Andrade and James Storrow — respectively Venezuela's Minister in Washington and its United States counsel, who served as legal advisor to Venezuela during the negotiations and previously acted as Venezuela's counsel before the United States Venezuela Boundary Commission.

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[72] VCM, p. 90, para. 27.

[73] *Ibid.*, para. 5.13.

[74] *Ibid.*, para. 2.18.

2.43. In November 1896, the United States Secretary of State wrote to Justice Brewer (in his capacity as Chairman of United States Venezuela Boundary Commission) that:

> "The treaty is so eminently just and fair as respects both parties – so thoroughly protects the rights and claims of Venezuela – that I cannot conceive of its not being approved by Venezuelan President and Congress. It is thoroughly approved by the counsel of Venezuela here and by the Venezuelan Minister at this capital."[75]

2.44. Minister Andrade reported to his Foreign Minister on 20 July 1896 on the "decision, firmness and cleverness with which he [Olney] is defending the rights of Venezuela. I do not believe she could have her cause in more apt, resolute and disinterested hands"[76].

2.45. To be sure, the negotiations had not yet concluded and there was hard bargaining ahead on certain issues. The documentary record during this period shows that the United States kept Venezuela fully informed of the progress of the negotiations, exchanged views with Venezuela on the various proposals and counterproposals, sought to have Venezuela's views reflected in the treaty text, and succeeded in doing so to the best of its ability.

2.46. Two issues proved to be difficult for the United States and Great Britain to resolve: the extent of the territory claimed both by the British and Venezuela that would be subject to arbitration, and the number of years of effective occupation that

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[75] Letter from Mr. Olney to Mr. Brewer (10 November 1896) (Vol. III, Annex 5). See also United States, 55th Congress, 1st Session, *Report from the Secretary of State regarding the Work of the Special Commission Appointed to Reexamine and Report upon the True Line between Venezuela and British Guiana*, Transmitted to the United States Senate Committee on Foreign Relations, Document 106 (25 May 1897), p. 13 (MMG, Vol. IV, Annex 65).

[76] Reproduced in Sir Geoffrey Meade, *Report on the Exposition presented by the Venezuelan Experts* (3 August 1965), para. 9 (MMG, Vol. IV, Annex 75).

would be sufficient to bestow title. The evidentiary record shows that the United States consulted closely with Venezuela on both issues, bargained hard on Venezuela's behalf, and obtained results that Venezuela welcomed and considered to be acceptable.

2.47. On the former issue, the British insisted that title to only part of the disputed territory be subject to arbitration, specifically, the territory west — that is, on the Venezuelan side — of the Schomburgk line with all territory east of the line accepted as British[77]. Venezuela and the United States vigorously opposed this, insisting that the arbitration cover all the disputed territory on both sides of Schomburgk line. As United States Secretary of State Olney wrote in June 1896: "[W]hatever this Government might be willing to agree in the way of a general arbitration plane, no arbitral convention for the settlement of the Venezuelan boundary could be entered into which did not make the award a finality as respect *the entire controversy*"[78]. Venezuela's counsel, Mr. Storrow, corresponded with Secretary Olney about this issue, expressing astonishment at Great Britain's audacity: "Does England simply want to secure to itself, free from the risks of arbitration, the territory which comes within Lord Salisbury's description of Jan. 10, 1880 (Blue b.295)?"[79] Ultimately the United States and Venezuela

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[77] VCM, para. 4.132; Letter from Chamberlain to Olney (9 September 1896) (VCM, Vol. III, Annex 167).

[78] Letter from Mr. Olney to Mr. White (30 June 1896) (emphasis added) (Vol. III, Annex 6). See also Letter from Mr. Olney to Mr. Bayard (20 July 1895), in United States Department of State, *Papers Relating to the Foreign Relations of the United States, with the Annual Message of the President, Transmitted to Congress December 2, 1895*, Part 1 (1896), Document 527, available at https://history.state.gov/historicaldocuments/frus1895p1/d527 ("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 of British Guiana, it should not be regarded as amounting, in substance, to an invasion and conquest of Venezuelan territory").

[79] Letter from Mr. Storrow to Mr. Olney (29 August 1896) (Vol. III, Annex 7).

prevailed; the Treaty provided for arbitration in respect of all disputed territory, on both sides of Schomburgk line, exactly as Venezuela wanted[80].

2.48. The other major disagreement between the British on one side, and the United States and Venezuela on the other, concerned the length of time required for effective occupation of any disputed territory to vest into title. In their discussions, the Parties referred to this as the period of "prescription". The British, who were expanding the area under their control, wanted a shorter period of prescription, proposing that title would vest after 30 years of continuous occupation[81]. Assuming ratification of the Treaty in 1897 (which is what occurred), this would have resulted in British title to any disputed territory first occupied by British settlers at any time up to 1867. Venezuela opposed this proposal on the ground that it would have nullified an agreement it had reached with Great Britain prohibiting any new occupation after 1850[82]. Accordingly, the United States insisted (with Venezuela's concurrence) that the period of prescription should be no less than 50 years prior to the Washington Treaty[83]. This prevented Great Britain from claiming title to any

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[80] See, e.g., Washington Treaty, Article III (confirming that the Tribunal's jurisdiction is not restricted to a limited area of the disputed territory and covered 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"). See also Speech of President Grover Cleveland of 7 December 1896, available at https://millercenter.org/the-presidency/presidential-speeches/december-7-1896-fourth-annual-message-second-term (last accessed on 27 November 2024) (informing that "[t]he Venezuelan boundary question has ceased to be a matter of difference between Great Britain and the United States, their respective Governments having agreed upon the substantial provisions of a treaty between Great Britain and Venezuela submitting the *whole controversy to arbitration*"; emphasis added).

[81] See Letter from Chamberlain to Olney (9 September 1896) (VCM, Vol. III, Annex 167) ("All territory which has been in the actual use and occupation of British subjects or citizens of Venezuela respectively, or over which the Governments of the Colony of British Guiana or of Venezuela have exercised unrestricted political control for a continuous period of the last 30 years prior to the date of this Convention should be held to be and to form part of British Guiana or Venezuela respectively as the case may be.").

[82] Letter from Pauncefote to Salisbury (29 October 1896) (VCM, Vol. III, Annex 169).

[83] *Ibid.*

territory first occupied after 1847, preserving the effectiveness of the 1850 agreement. On this issue, too, the United States prevailed, and a 50-year period of prescription was incorporated into the treaty.

2.49. The evidence before the Court is reflected in contemporary correspondence on this key issue. It demonstrates the close coordination that took place between the United States and Venezuela during the treaty negotiations and contradicts Venezuela's new contention that the United States negotiated with Great Britain "behind Venezuela's back"[84]. For example, on 12 September 1896, Secretary Olney sent Venezuela's counsel (Mr. Storrow) a letter enclosing a British "draft of the proposed clause for the projected arbitration agreement respecting the Venezuela boundary", with a 40-year prescription period[85]. Mr. Storrow responded on 17 September:

> "Our views agreed the other day so that I thought it enough to answer to your telegram 'no change.'
>
> Settlements by British subjects, living under British rule, in territory administered solely by British rule, if long continued will certainly (I think) give title. Sixty years is the classic period; I would agree to less as a rule rather than lose an arbitration.
>
> Political occupation & administration, continuous & exclusive will give, I think political title. I would agree to the same period."[86]

2.50. On 26 October 1896, Mr. Storrow sent Secretary Olney a handwritten note continuing their discussion, and further illustrating their close collaboration on the

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[84] VCM, para. 5.13.

[85] Letter from Mr. Olney to Mr. Storrow (12 September 1896) (Vol. III, Annex 8).

[86] Letter from Mr. Storrow to Mr. Olney (17 September 1896) (Vol. III, Annex 9) (emphasis in original).

prescription period during the negotiations, which had then reached a climactic stage:

> "Filling the blanks with 60 [years], I see no objection to the actual occupation part.
>
> I don't now see any actual objection to the second part. But I think it is unnecessary as applied to the facts. I will try to write a couple of sentences more [illegible word] explaining what I think is needed & send them to your home this afternoon."[87]

2.51. Two days later, on 28 October 1896, Mr. Storrow sent Secretary Olney another handwritten note, further evidencing Venezuela's intimate collaboration with the Secretary during the final stage of the negotiations:

> "Mr. Andrade [Venezuela Minister in Washington] and I will come to your house at 8:15 tonight unless we hear to the contrary"[88].

2.52. The timing is significant because, as noted below, Secretary Olney was at that time considering the latest text proposed by the British and preparing his response, which he sent the next day, following his meeting with Merrsr. Storrow and Andrade the night before[89]. In that response, the Secretary refused to agree to a prescription period of less than fifty years, precisely in order to preserve the 1850 agreement that was so important to Venezuela: "If a shorter term be stipulated it is certain to be urged, and with great force, that the Agreement of 1850 is thereby waived at least pro tanto."[90] Faced with Secretary Olney's adamance on this point, the British agreed to a 50-year prescription period, the effect of which was that no

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[87] Letter from Mr. Storrow to Mr. Olney (26 October 1896) (Vol. III, Annex 10).

[88] Letter from Mr. Storrow to Mr. Olney (28 October 1896) (Vol. III, Annex 11).

[89] Letter from Mr. Olney to Sir Julian Pauncefote (29 October 1896) (Vol. III, Annex 12).

[90] *Ibid.*

occupation commenced after 1847 would be recognized and the Agreement of 1850 was preserved.

2.53. Venezuela apparently reviewed Secretary Olney's collected papers — stored at the Library of Congress in Washington — during the preparation of its Counter-Memorial. This is evident from its submission of some of those papers as Annexes 55, 56, 58, 60, 167, 169 and 176. However, it failed to annex or cite any of the Olney papers quoted above, even though they are included in the same collection. The reason is obvious: it did not wish to put evidence before the Court that contradicted its claim that the United States failed to consult Venezuela, or failed to faithfully represent its interests, on this or any other issues during the treaty negotiations.

2.54. Venezuela's selective use of the Olney papers is regrettable. It is accompanied by its selective quotation from the documents it has chosen to submit, in particular the speech of its then President, Joaquín Sinforio de Jesús Crespo, to the Venezuelan Congress on 20 February 1897, upon submitting the Washington Treaty for ratification. In respect of the role played by the United States in negotiating the treaty, President Crespo declared (in the part excised by Venezuela):

> "It is eminently just to acknowledge that the Great Republic endeavoured persistently to direct the matter by the most favourable route, and that the outcome achieved represents an effort of intelligence and will, worthy of praise and gratitude from those of us who are familiar with the intricate details of this very complicated matter."[91]

[91] *Presidencia de la República, Mensajes Presidenciales*, Tomo III, 1971, pp. 188-189 (Vol. III, Annex 13) (translation of the Spanich original: "Es de alta justicia reconocer que la Gran República ha procurado empeñadamente encaminar el asunto por la vía más favorable, y que el resultado obtenido representa un esfuerzo de inteligencia y de voluntad, digno de loa y agradecimiento por los que estamos al cabo de las íntimas peripecias de este complicadísimo asunto. »

2.55. As the Venezuelan President's words demonstrate, Venezuela expressed its gratitude for the role played by the United States in compelling the British to agree to arbitration, and in negotiating the terms of the arbitration agreement. To accuse the United States now, 127 years after the fact, of collusion and conspiracy to defraud Venezuela is entirely unsupported by the evidence. Venezuela has offered no evidence of concealment by the United States, much less evidence of an intent on the part of the United States to defraud Venezuela. Thus, Venezuela's argument that its consent to the Washington Treaty was tainted by error and fraud is baseless.

C. The Facts: Nothing Was Included in the Treaty Without Venezuela's Knowledge or Contrary to its Interests

2.56. In its Counter-Memorial, Venezuela complains that it was "fraudulent and unjust … to … include, among rules applicable by the Tribunal, the recognition that fifty years' occupation constituted a valid title"[92]. Venezuela also says that "[t]his rule was clearly prejudicial to … Venezuela [which] had persistently opposed to recognize effective occupation, of whatever antiquity, as a valid title to the disputed territory"[93]. Notably, Venezuela cites no sources or evidence for either of these assertions.

2.57. Venezuela also complains that it was prejudiced by the agreement the United States reached with Great Britain in Article II of the Treaty, on the appointment of arbitrators, which did not provide for the appointment of any arbitrators of Venezuelan nationality. The Counter-Memorial asserts — again without reference to any evidence — that "it was already a given that Olney had agreed with the British, that Venezuela would not be given any chance to benefit

[92] VCM, para. 5.33.

[93] *Ibid.*, para. 5.34.

from the treaty, let alone to appoint arbitrators, which in itself should suffice to invalidate the treaty and the arbitration"[94].

2.58. The evidence before the Court, however, shows beyond any doubt that Venezuela obtained exactly what it wanted in the 50-year prescription rule, and that the United States bargained hard to get it (**1**); and that, although it initially desired Venezuelan arbitrators, when faced with the fact that the British refused to agree, Venezuela came to accept and eventually applaud the appointment of two United States Supreme Court Justices (**2**). Neither the prescription rule nor the appointment of arbitrators was prejudicial to Venezuela; nor did either provision constitute grounds for invalidating the Washington Treaty.

1. The 50-Year Prescription Rule Was Not Fraudulent and Did Not Prejudice Venezuela

2.59. As indicated, the Counter-Memorial does not cite any evidence in support of Venezuela's assertion that it was "fraudulent and unjust" to include the 50-year prescription rule in the Washington Treaty[95]. There is a good reason for this: the contemporaneous documents show that this was *not* Venezuela's position during negotiation of the Treaty. In fact, the evidence confirms the *opposite*: that Venezuela *favoured* inclusion of a rule providing that effective occupation for a prescribed period would constitute valid title to the disputed territory, and that it was aware of, and endorsed, the proposal made by the United States that occupation for a prescription period of fifty years would be sufficient to establish title.

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[94] VCM, p. 91, para. 31.

[95] *Ibid.*, para. 5.33.

2.60. As described above, this was a subject about which Venezuela's representatives and Secretary of State Olney consulted closely during the critical stage of the treaty negotiations in September and October 1896; and Mr. Storrow, on behalf of Venezuela, advised the Secretary of State that Venezuela favoured inclusion of a provision that title would result from effective occupation for a prescribed period. It bears repeating that Mr. Storrow made this clear in his letter to the Secretary of 17 September 1896, suggesting that a 60-year prescription period would be appropriate, while stating that he "would agree to less":

> "Settlements by British subjects, living under British rule, in territory administered solely by British rule, if long continued will certainly (I think) give title. Sixty years is the classic period; I would agree to less as a rule rather than lose an arbitration."[96]

2.61. There is no evidence that Venezuela ever communicated a different view to Secretary Olney, or to any other representative of the United States associated with the treaty negotiations, on acquisition of title by effective occupation. The British, too, favoured acquisition of title by effective occupation, but proposed a shorter prescription period of thirty years, as reflected in the handwritten letter of 9 September 1896 from Joseph Chamberlain, Minister for the Colonies, to Secretary Olney[97].

2.62. Reflecting Venezuela's views, Secretary Olney wrote to Sir Julian Pauncefote, the British Secretary of State in Washington, on 29 October 1896 — after meeting with Mr. Storrow and Minister Andrade the prior evening — insisting

[96] Letter from Mr. Storrow to Mr. Olney (17 September 1896) (Vol. III, Annex 9) (emphasis in original).

[97] Letter from Mr. Chamberlain to Mr. Olney (9 September 1896) (VCM, Vol. III, Annex 167), p. 546.

that he would not agree to a prescription period less than 50 years[98]. This would preclude the British from claiming title based on their occupation of any part of the disputed territory that commenced after 1847. As noted above at paragraph 2.52, Secretary Olney explained in his letter to Pauncefote that any prescription period less than 50 years would effectively "waive" the Agreement of 1850 between Venezuela and Great Britain, which Venezuela would not accept, and the United States would not endorse. The British acceded, and the 50-year prescription period was included in the proposed treaty that the Secretary sent to Venezuela for its consideration in November 1896[99].

2.63. In Caracas, this provision was carefully scrutinised and debated before it was ultimately approved. This is described in the letter from Mr. Storrow to Secretary Olney of 29 November 1896[100]. As reported by Mr. Storrow, he was greeted in Caracas by President Crespo, to whom he delivered a letter from President Cleveland along with the draft treaty commending it and urging its acceptance by Venezuela:

> "Mr. Andrade [Venezuela's Minister in Washington] afterwards had a long talk with him [President Crespo], and afterward with the Minister of Foreign Affairs and Dr. Bruynal Arra … Minister of the Treasury, the strongest man in the Cabinet. They were all satisfied with the Treaty and said that there should not be a moment's hesitation about adopting it. I have myself seen Dr. Bruynal and Dr. Rojas (Minister of Foreign Relations), the latter quite frequently, and they are entirely clear on the subject."[101]

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[98] Letter from Sir Julian Pauncefote to Mr. Salisbury (29 October 1896) (VCM, Vol. III, Annex 169); Letter from Mr. Olney to Sir Julian Pauncefote (29 October 1896) (Vol. III, Annex 12).

[99] Letter from Mr. Olney to Mr. Storrow (18 November 1896) (Vol. III, Annex 14) (informing that Olney is enclosing a "type-written copy of the proposed treaty between Great Britain and Venezuela" for Storrow to take to President Crespo in Caracas).

[100] Letter from Mr. Storrow to Mr. Olney (29 November 1896) (Vol. III, Annex 15).

[101] *Ibid.*, p. 2.

2.64. The draft treaty was then submitted to a commission of experts, with whom Mr. Storrow and Minister Andrade met and discussed, *inter alia*, the provision on acquisition of title by effective occupation. The discussion on this subject, which lasted "for several hours," is described in detail in Mr. Storrow's letter to Secretary Olney[102]. Mr. Storrow and Minister Andrade explained that they thought the provision was favourable to Venezuela:

> "[W]e said, it was not a concession. Prescription was, I thought, our strongest ground, and I wanted G.B. [Great Britain] to agree to it; and of all possible terms, 50 years was the best for us. To get England to assent to a rule we wanted was not giving away our case."[103]

2.65. One member of the commission, Dr. Raphael Seijas, a former Foreign Minister, argued against the provision, explaining that for Venezuela to agree to the principle of acquisition of title by effective occupation might violate the Venezuelan Constitution. However, he ultimately agreed "that he had no doubt prescription applied, and that the arbitrators would apply it …"[104].

2.66. Venezuela responds to this documentary evidence by impugning Mr. Storrow's loyalty to his client. According to the Counter-Memorial, "he was appointed as Venezuela's representative because of his strong connection to Olney," but "acted constantly under the instructions of the U.S. Secretary of State, [Olney] and not that of the Government of Venezuela"[105]. Again, this is pure assertion: there is no evidence to support this disparaging characterisation of Mr. Storrow, which was not Venezuela's view of him at the relevant time. He had served

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[102] Letter from Mr. Storrow to Mr. Olney (29 November 1896) (Vol. III, Annex 15), pp. 3-5.

[103] *Ibid.*, p. 4 (emphasis in original).

[104] *Ibid.*, p. 4.

[105] VCM, para. 5.24.

Venezuela with distinction as its co-counsel before the United States Venezuela Boundary Commission[106], before accepting the role of Venezuela's liaison with Secretary Olney during the treaty negotiations. Venezuela's sudden disassociation from him is a recent invention to explain away his contemporaneous correspondence with Secretary Olney, which completely eviscerates the contention that the United States negotiated the treaty with Great Britain without consulting Venezuela's representatives or accommodating their concerns.

2.67. Mr. Storrow was not the only Venezuelan counsel who favoured the 50-year prescription rule. Former United States President Benjamin Harrison, Venezuela's lead counsel in the arbitration, regarded the rule as an important part of Venezuela's case against British claims to the disputed territory based on occupation by British settlers: "In view of the fifty years rule … adopted by the present treaty, the expansion of British occupation subsequent to 1847 can have no effect upon the determination of the boundary line."[107]

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[106] See, e.g., *El Libro Amarillo de los Estados Unidos de Venezuela*, 1898, p. x (Vol. III, Annex 16) (Venezuela praising Mr. Storrow on the occasion of his sudden death in 1897: "In April [1897], Mr. James J. Storrow, lead counsel for the Republic before the Investigative Commission in Washington, passed away suddenly and unexpectedly. We would have counted on him for the work required to present our titles and even to support our right before the Tribunal itself. *His death caused, in addition to the natural sentiment, a very great annoyance to the Executive Branch. The work written by him for the purpose of demonstrating the validity of our demand to the Commission appointed on 1 January 1896, by President Cleveland to ascertain the true dividing line of Guayana was an advanced guarantee of his skill and competence.* [The Governement was] *[d]eprived in an unexpected and painful way of that skillful collaboration …*". (emphasis added). Translation of the Spanish original: "En abril [de 1897] se había visto fallecer, casi súbitamente, al señor Doctor James J. Storrow, abogado principal de la República ante la Comisión Investigadora de Washington. Con él se hubiera contado para el trabajo que requería la exposición de nuestros títulos y aun para apoyar nuestro derecho ante el propio Tribunal. Su muerte causó, además del natural sentimiento, una contrariedad muy gran al Poder Ejecutivo. De su habilidad y competencia era prenda anticipada la obra por él escrita con el objeto de demostrar la validez de nuestra demanda al Cuerpo nombra el 1ro de enero de 1896 por el Presidente Cleveland para averiguar la verdadera línea divisoria de la Guayana. [E]l Gobierno [fue privado] de modo … imprevisto y doloroso de esa hábil colaboración …").

[107] *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*, New York, 1898, p. 179 (Vol. III, Annex 17).

2.68. The issue now raised by Venezuela is not whether the provision on "Adverse holding or prescription" — in Article IV (A) of the treaty — was opposed by Venezuela (it was not, as the contemporaneous statements of Mr. Storrow and President Harrison make clear). Rather, it is whether Venezuela can reasonably claim to have been defrauded by its inclusion, either because the United States concealed it from Venezuela during the negotiations, or acted in bad faith in agreeing to it, or misled Venezuela as to its meaning. There is no proof of any of these alleged deceptions. The evidence all points the other way. It shows that the United States consulted closely with Venezuela's representatives during its negotiations with the British, including about this very provision, and that those representatives understood and endorsed it. The evidence further shows that, when the draft treaty was sent to Caracas in November 1896, the Venezuelan government carefully considered and debated the merits of the provision — as well as all others — before approving, signing and ratifying the Treaty. There is no support whatsoever for Venezuela's argument that the Treaty should be invalidated because of its inclusion.

2.69. The Venezuelan Foreign Ministry's *Libro Amarillo* for 1896 flatly contradicts the Counter-Memorial's reinterpretation of historical events. Far from criticizing the United States for concealing things from Venezuela or negotiating against its interests with the British, the contemporaneous official report stated: "when the work regarding the definition of our rights had reached the level of importance noted at the outset of the present address, the Department of State in Washington consulted the Government, through the Venezuelan Legation, concerning a matter closely tied to the arbitration agreement, which was still being negotiated to bring an end to the dispute"[108].

[108] Pedro Ezequiel Rojas, Minister of Foreign Affairs, Informs the Venezuelan Legislature (Senators and Deputies) in its annual address, *El Libro Amarillo de los Estados Unidos de Venezuela*, 1896, pp. xxviii-xxxi (Vol. III, Annex 4).

2.70. In the same year (1896), President Crespo made the following statement about the role played by the United States in the negotiation of the Treaty:

> "[H]aving been considered by the President of the Republic in the Council of Ministers, the nature of this publication — *expertly and wisely defended by the Department of State in Washington, and setting out the principles and doctrines to which Venezuela adheres in order to uphold its rights and dignity in one of the gravest issues recorded in its political annals* — has led to the decision to produce a special edition in Spanish of all the notes comprising the above-mentioned correspondence. This edition is to be circulated not only within the country but also throughout all sister Republics, as both *a pledge of recognition to the Government of the United States* and a welcome contribution to the promotion of principles so gallantly supported by the Great People of the North in support of common security and international peace."[109]

2.71. Venezuela's argument that the treaty is invalid because of the absence of a provision expressly mentioning the 1850 agreement is equally without merit. According to the Counter-Memorial: "Venezuela insisted that the arbitration Treaty should include an explicit reference to that agreement."[110] There is no evidence that

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[109] *Correspondencia entre los Estados Unidos y la Gran Bretaña*, Caracas, 1896, pp. 3-4 (Vol. III, Annex 18) (emphasis added) (translation of the Spanish original: "*Simultáneamente acaba de salir a luz en Washington y en Londres la correspondencia diplomática cruzada entre el Gobierno de los Estados Unidos y el de la Gran Bretaña con motivo de un proyecto de Arbitraje Internacional aplicable a la cuestión de límites pendiente entre Venezuela y la Colonia de Demerara; correspondencia que pone una vez más de manifiesto la acción saludable de la Gran República del Norte ... Y, considerada por el Señor Presidente de la República en Consejo de Ministros la naturaleza de esa publicación, donde aparecen* defendidos experta y sabiamente, por parte del Departamento de Estado de Washington, principios y doctrinas á que viene acogiéndose Venezuela para sacar ilesos sus derechos y su dignidad *en la más grave de las cuestiones que registran sus anales políticos, ha dispuesto que se lleve á cabo una edición especial en idioma castellano de todas las notas que constituyen la mencionada correspondencia, y hacerla circular no sólo en el País sino en todas las demás Repúblicas hermanas,* como prenda de reconocimiento al Gobierno de los Estados Unidos, al par que como grata contribución a la propaganda de ideas tan gallardamente sustentadas por el Gran Pueblo del Norte en pro de la seguridad común y en favor de la paz internacional." (emphasis added)).

[110] VCM, para. 5.64.

this alleged "insistence" was ever communicated to the United States during the treaty negotiations. The only source that the Counter-Memorial cites is a letter from Foreign Minister Rojas to Minister Andrade, that is, from one Venezuelan to another[111]. Moreover, it is dated 9 December 1896, a month after the negotiations between the United States and Great Britain ended and the draft treaty was sent to Caracas. Two days earlier, on 7 December 1896, Minister Andrade had telegrammed Secretary Olney that the draft treaty had been accepted by Venezuela:

> "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 provision filling vacancies in case of death or disability …"[112]

2.72. Venezuela did communicate its views on the 1850 agreement to Secretary Olney during the negotiations, but it did not ask for a reference to it in the Treaty. In his letter to the Secretary of 17 September 1896, Mr. Storrow wrote only: "I do not think that the truce of 1850 could be waived or impaired or that it ought to be."[113] As indicated above, at paragraph 2.52 above, Secretary Olney took pains to ensure that the 1850 agreement was not "waived or impaired". He explained in his letter to Sir Julian Pauncefote that his refusal to accept a prescription period less than 50 years was precisely to avoid having that agreement "waived pro tanto"[114].

2.73. Subsequently, in a letter to former United States President Harrison at the time he was serving as Venezuela's lead counsel in the arbitration, Secretary Olney wrote:

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[111] *Ibid.* See also Letter from Ezequiel Rojas to José Andrade (9 December 1896) (VCM, Vol. II, Annex 59).

[112] Telegram of Minister Andrade to Mr. Olney (7 December 1896) (Vol. III, Annex 19).

[113] Letter of Mr. Storrow to Mr. Olney (17 September 1896) (Vol. III, Annex 9).

[114] Letter of Mr. Olney to Sir Julian Pauncefote (29 October 1896) (Vol. III, Annex 12) (emphasis added).

> "I may add that both Mr. Storrow and myself considered it legally impossible that there could be any adverse holding or prescription as against the agreement of 1850 – a position to which we deemed the British Government to have committed itself in the most public and emphatic manner."[115]

2.74. Secretary Olney did not consider it necessary or advisable to refer expressly to the 1850 agreement in the Treaty, provided its force was preserved. As he explained to Sir Julian Pauncefote:

> "[A]n attempt to define its scope and meaning … will involve us in protracted debate and indefinitely postpone the attainment of the object we now have in view. The Agreement will come, and should come, before the arbitral Tribunal in the natural course of things and will be interpreted by the Tribunal with the aid of facts, documents and considerations of which we cannot know now anything."[116]

2.75. This was not a betrayal of Venezuela by Secretary Olney, as Venezuela now argues. It was entirely consistent with Venezuela's contemporaneous position, as conveyed to him by Mr. Storrow. It was also sensible in light of the agreement's manifest ambiguity. Attention was called to this by William Lindsay Scruggs, the other attorney who, alongside Mr. Storrow, represented Venezuela before the United States Venezuela Boundary Commission. In his treatise supporting Venezuela's territorial claims, Mr. Scruggs described the 1850 agreement as follows:

> "[By the terms of that Agreement], each party was obligated 'not to occupy any part of the unoccupied territory in dispute' till the question of boundaries should be finally settled."[117]

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[115] Letter from Mr. Olney to Mr. Harrison (29 July 1898) (Vol. III, Annex 20).

[116] Letter from Mr. Olney to Sir Julian Pauncefote (29 October 1896) (Vol. III, Annex 12).

[117] W. L. Scruggs, *British Aggression in Venezuela, or the Monroe Doctrine on Trial*, Atlanta, 1895, p. 18.

Unfortunately, however, this "unoccupied territory in dispute" was not explicitly described; and "some years later, under change of government, each party accused the other of trespass, and of thus violating the Agreement of 1850"[118].

2.76. The Counter-Memorial accuses Secretary Olney of keeping "some crucial decisions strictly confidential" and not sharing them with Venezuela[119]. There is no evidence of any "decisions" by the United States, or in which it participated, that were withheld from Venezuela. Venezuela cites a letter from Secretary Olney advising his British counterparts that certain of their correspondence would be considered private, and therefore excluded from the Department of State's official files[120]. The only such "confidential correspondence"[121] (Venezuela's words) in the record appears to be the Secretary's letter to Sir Julian Pauncefote of 29 October 1896, described and quoted above at paragraphs 2.52 and 2.62[122]. However, it is most unlikely that the contents were not known by Venezuela's representatives — Mr. Storrow and Minister Andrade — who met with the Secretary at his home the previous evening to discuss the subject matter. In any event, this is the letter, supplied by Venezuela in Annex 150 to its Counter-Memorial, in which the Secretary insisted on a prescription period of no less than 50 years in order to preserve the force of the 1850 agreement, precisely as Venezuela wished. There is thus no evidence of any "confidential decisions" or "secret correspondence" by the United States, let alone any that were contrary to Venezuela's interests.

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[118] *Ibid.*

[119] VCM, para. 6.31.

[120] *Ibid.*, paras. 5.44-5.47.

[121] *Ibid.*

[122] See, e.g., *ibid.*, paras. 5.55 and 5.65.

2.77. That the "secret correspondence" was not prejudicial to Venezuela is confirmed by the fact that Venezuela's own counsel introduced it along with other "confidential" documents in the arbitral proceedings:

> "General Harrison. – [C]ertain notes were submitted for our consideration not before known to us. When they were presented we at once said to the Counsel for Great Britain 'Let them be put in evidence without objection because they bear on this question.'
>
> They were marked, one of them 'strictly personal' and others 'confidential'. Perhaps Venezuela might have raised some question as to whether they could be used in construing the Treaty, but we have raised no such question, and while Venezuela does not now, in view of these personal and confidential notes *which we have admitted into the case*, expect to pursue or to renew the argument she has made, she does not withdraw it, but submits it to the Tribunal for its consideration upon these notes …"[123]

2.78. Thus, even if, *quod non,* Venezuela had suffered injury by virtue of the so-called "secret correspondence" or "confidential" documents, it could not on this basis challenge the validity of the Treaty because (i) it cannot invoke an alleged error in which it participated; (ii) it could have avoided the error (if it was an error) by not introducing these items into evidence before the arbitral tribunal; and (iii) the circumstances were such as to bring the alleged error to the attention of the party (Venezuela) invoking it[124].

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[123] *British Guiana-Venezuelan Boundary: arbitration between the governments of her Britannic Majesty and the United States of Venezuela: proceedings*, Vol. VII, 28-35 days, Paris, 1899, p. 1753 (emphasis added).

[124] See VCLT, Article 48 (2). See also MMG, para. 7.9, note 385, citing to *Temple of Preah Vihear (Cambodia* v. *Thailand), Judgment, I.C.J. Reports 1962,* pp. 26-27; *Korea - Measures affecting Government Procurement*, Report of the Panel, WT/DS163/R (1 May 2000), paras. 7.120-7.126; *Legal Status of Eastern Greenland, Judgment, 1933, P.C.I.J., Series A/B, No. 53*, p. 71 and *Legal Status of Eastern Greenland, Judgment, Dissenting Opinion of Judge Anzilotti, 1933, P.C.I.J., Series A/B, No. 53*, pp. 92-93.

2. The Treaty Provision on Appointment of Arbitrators Was Not Fraudulent and Did Not Prejudice Venezuela

2.79. The contemporaneous evidence shows that the British were firmly opposed to the appointment of Venezuelan nationals to the arbitral tribunal. Sir Julian Pauncefote's private letter to Lord Salisbury, the Foreign Minister, stated (as quoted by Venezuela):

> "[W]e 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."[125]

2.80. This was not, however, the position of the United States. In fact, the very letter quoted above, which was dated 8 December 1896, expresses this concern on Pauncefote's part: "I am a little uneasy as to whether the U.S. judges may not be urged by him [Secretary of State Olney] to appoint a Venezuelan as Arbitrator."[126] At the time, Venezuela was pressing for a modification to the draft treaty negotiated by the United States and Great Britain to allow it a role in the appointment of arbitrators. Article II of the *draft* treaty provided no such role:

> "The tribunal shall consist of two members nominated by the judges of the Supreme Court of the United States and two members nominated by the judges of the British supreme court of justice and of a fifth juror selected by the four persons so nominated … ."[127]

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[125] 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 (VCM, Vol. III, Annex 150).

[126] *Ibid.*

[127] Heads of proposed treaty between Venezuela and Great Britain for settlement of Venezuela boundary question as agreed upon between Great Britain and the United States dated 12 November 1896, Article II, reproduced in H. La Fontaine, *Pasicrisie Internationale 1794-1900, Histoire documentaire des arbitrages internationaux*, 1902, p. 557-558.

2.81. Venezuela engaged directly with Secretary Olney and Pauncefote to seek a modification of this provision. Its efforts were described in Minister Andrade's communication to Foreign Minister Rojas of 9 January 1897:

> "On the 28th [of December] in the morning I had my first conversation with Mr. Olney, and in the afternoon with Sir Julian Pauncefote, concerning the proposed modification of the basic article II of the Arbitration Treaty on the question of Guiana.
>
> The same day, the British Ambassador [Pauncefote] transmitted the Venezuelan proposal to Lord Salisbury [the Foreign Minister] by telegram."[128]

2.82. After several weeks of negotiation, Venezuela succeeded in persuading the British to agree that the draft treaty would be modified to empower Venezuela to appoint as one of the arbitrators a Justice of the United States Supreme Court. As described by Minister Andrade, the agreement he reached with the British would:

> "attribut[e] to Venezuela the appointment of only one of the arbiters on her side, and the other to the United States, it being noted that the Venezuelan appointee would be a judge from the Supreme Court of this country"[129].

2.83. Mr. Andrade explained that having two United States Supreme Court Justices on the arbitral tribunal, rather than one, would be advantageous to Venezuela:

> "The more I think of it, the more I think that Venezuela, far from wishing to restrict the participation of the United States in the composition of the Tribunal, should seek to augment it so that she (the U.S.A.) may have greater moral responsibility with regard to

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[128] Letter from Minister Andrade to Minister Ezequiel Rojas (9 January 1897) (Vol. III, Annex 21).

[129] *Ibid.*

> the result of the arbitration, and that more effective her concern during the judgment."[130]

2.84. Prior to its acceptance by the British, the Venezuelan proposal was sent in a letter from President Crespo to President Cleveland, which was delivered to the latter (as well as Secretary Olney) by Mr. Storrow (Venezuela's counsel). Mr. Storrow described the favourable United States reaction, and Great Britain's ultimate acceptance, to Foreign Minister Rojas in a letter dated 27 January 1897:

> "Both the President and Mr. Olney declared that the desire of Venezuela about the appointment was entirely reasonable, and said that they would gladly do what they properly could to further it. In fact, the Secretary of State had already, in consequence of my cable messages, spoken to the British Ambassador on the subject and at once saw him again, pointing out to him that a change of the nature desired would be a graceful act of courtesy between nations now friendly. Sir Julian Pauncefote received the suggestion in the same spirit, and you know the result which Mr. Andrade and Sir Julian reached in their subsequent conferences.
>
> We knew the desire of the Government of Venezuela that the tribunal should be composed not only of Jurists, but of Jurists holding the highest judicial stations. The duties, and the very heavy press of work on the Justices of the Supreme Court of the United States, together with the serious illness of some of their number, made it difficult for them to spare two members. But they finally concluded that if on the part of England, two high judicial officers should be appointed, two Justices of the court here would also serve, and the Chief Justice would accept the appointment from General Crespo."[131]

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[130] *Ibid.*

[131] Letter from James J. Storrow to Dr P. Ezequiel Rojas, Venezuelan Minister of Foreign Relation (26 January 1897) (MMG, Vol. III, Annex 31).

2.85. Mr. Storrow reminded Foreign Minister Rojas that this was consistent with Venezuela's expressed desires:

> "Thus, I think you have got what you desired – a clear and formal recognition of the appointing power of Venezuela on the face of the treaty; precisely the same two Jurists [Chief Justice Fuller and Justice Brewer] whom, at Caracas, you told me you preferred; and in addition to that, you will have (if the plan is carried out) two of the highest judicial officers, on the part of Great Britain. This you owe to the tact of Mr. Andrade, to the kindly help of President Cleveland and Mr. Olney, and in considerable part to the disposition of England to make the arrangements agreeable to Venezuela."[132]

2.86. The Counter-Memorial has misconstrued the facts. The contemporaneous documents, which Venezuela now completely ignores, show that: (i) Venezuela sought to modify the draft treaty negotiated by the United States and Great Britain to ensure that two United States Supreme Court Justices, including the Chief Justice, would be appointed and to empower the President of Venezuela to make at least one of those appointments directly; (ii) the United States supported Venezuela's proposal and interceded with the British to obtain their acceptance of it; (iii) the British agreed to the proposal; and (iv) Article II of the treaty was modified to incorporate Venezuela's proposal. The final version of Article II thus provided (in relevant part):

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[132] Letter from James J. Storrow to Dr P. Ezequiel Rojas, Venezuelan Minister of Foreign Relation (26 January 1897) (MMG, Vol. III, Annex 31). Venezuela's gratification at the appointment of the two United States Supreme Court Justices was reflected in the letter sent by the President of Venezuela to Chief Justice Fuller on 17 February 1897: "The designation that I had the honor to make, in your person, to constitute with the Magistrate chosen by the Court over which you preside, a part of the Tribunal of five Jurists who are to take cognizance of the matter of the boundary between Venezuela and the British Colony of Guyana, satisfies most fully my own desire, and was received in the country with signal marks of approval. … Your participation in the delicate tasks of this respected Arbitral Tribunal … is of special importance for Venezuela, because, besides the title to our respect and esteem with which your personal qualifications inspire us, your aptitude for the duties which belong to the highest administration of justice, and which you have shown in the conspicuous office of Chief Justice, constitute one assurance more that the Arbitral Tribunal will reach a correct result in its delicate deliberations." (Vol. III, Annex 22).

> "The Tribunal shall consist of five jurists ... *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 ... ."[133]

2.87. The modification of Article II to Venezuela's satisfaction led to its acceptance of the Treaty. This was clearly stated by President Crespo himself, in his address to the Venezuelan Congress, on 20 February 1897:

> "The Government of course deemed it indispensable to introduce into the Treaty a modification aimed at ensuring the appointment of the arbitral tribunal with the effective participation of the Venezuelan Authorities. This proposal was promptly submitted, and the alteration was accepted. The involvement of the United States had produced a result whose subsequent effects were unavoidably tied, from a moral standpoint to the effective and authoritative prestige of that great mediating nation."[134]

2.88. It is therefore apparent that Venezuela ratified the Treaty of Washington on 2 February 1897 in full knowledge of the composition of the Tribunal. As summarized by the Venezuelan *Libro Amarillo* of 1897, published by the Venezuelan Foreign Ministry:

> "The proposed articles provided for the creation of the Arbitral Body with two members appointed by the judges of the Supreme Court of the United States and two appointed by the judges of the British Supreme Court, in addition to a fifth jurist chosen by the other four, or by His Majesty the King of Sweden and Norway, in the event of

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[133] Treaty Between Great Britain and the United States of Venezuela Respecting the Settlement of the Boundary Between the Colony of British Guiana and the United States of Venezuela (2 February 1897), Article II (Application, Annex 1) (emphasis added).

[134] *Presidencia de la República, Mensajes Presidenciales*, Tomo III, 1971, pp. 188-189 (Vol. III, Annex 13).

a failure to agree on such a choice. *The honourable impartiality of such a constituted Tribunal was sufficiently guaranteed.*"[135]

2.89. Had Venezuela still wanted to challenge the composition of the Tribunal, it could and should have done so when the hearings opened[136]. However, at the beginning of the hearings, Venezuela expressed again its satisfaction, affirming that it was composed of "[a]rbitrators whose distinguished records and whose high reputation give us the assurance that the questions involved will be decided in justice and equity"[137].

2.90. The evidence thus fully refutes Venezuela's contention that it was defrauded, deceived or betrayed by the United States or Great Britain in regard to the Treaty provision concerning appointment of arbitrators. On the contrary, it demonstrates that Venezuela "got what [it] desired"[138], in the words of its then legal counsel, and that neither the manner in which this provision was negotiated nor the final outcome provide any basis for alleging that the Treaty is invalid.

2.91. In conclusion, there is no evidence that Venezuela's consent to the Washington Treaty was either tainted by error or secured by fraud. Furthermore, Venezuela was not forced to conclude this Treaty, as shown below.

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[135] *El libro amarillo de los Estados Unidos de Venezuela*, 1897, pp. xxxiii-xxxiv (Vol. III, Annex 23). Translation of the original in Spanish: "*Los artículos propuestos harían formar el Cuerpo Arbitral con dos miembros nombrados por los jueces de la Suprema Corte de los Estados Unidos y dos nombrados por los jueces de la Suprema Corte Británica de Justicia, además de un quinto jurista elegido por los cuatro, o por Su Majestad el Rey de Suecia y Noruega en caso de no haber acuerdo para tal elección.* La honrada imparcialidad de un Tribunal así compuesto estaba suficientemente garantizada." (emphasis added).

[136] MMG, paras. 7.51-7.52.

[137] *Ibid.*, para. 7.49; Boundary between the Colony of British Guiana and the United States of Venezuela, First Day's Proceedings (25 January 1899), p. 4 (MMG, Vol. IV, Annex 96).

[138] *Ibid.*, para. 3.32; Letter from James J. Storrow to Dr P. Ezequiel Rojas, Venezuelan Minister of Foreign Relation (26 January 1897) (MMG, Vol. III, Annex 31).

II. Venezuela Freely Signed the Washington Treaty

2.92. Venezuela asserts that "[it] 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"[139]. Venezuela alleges that "[i]t would therefore be justified to consider the 1897 Treaty to be invalid because of coercion"[140].

2.93. Venezuela's claim ignores both the facts and the law. As to the facts, Venezuela's characterisation is contradicted by the evidence on record, which shows that Venezuela was free to accept or reject the ratification of the Washington Treaty and that it entered the Treaty of its own free will (**A**). As to the law, Venezuela's argument in any event ignores international law as it existed at the end of the 19th century, when coercion was not considered a factor capable of vitiating a State's consent to a treaty (**B**). Venezuela's attempts to impugn the validity of the Treaty on the basis of "coercion" are therefore without merit.

A. The Evidence Refutes Venezuela's Argument that it Signed and Ratified the Washington Treaty under Coercion

2.94. In support of its argument that it was coerced into signing and ratifying the Treaty, Venezuela relies on a letter dated 9 December 1896 in which the Venezuelan Minister of Foreign Affairs, Pedro Ezequiel Rojas, informed the Venezuelan Minister in Washington, José Andrade, of his Government's decision to accept the draft treaty. In this letter, Minister Rojas stated that "the Government, taking into consideration, on the one hand, what it owes to the United States of

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[139] VCM, para. 5.68.

[140] *Ibid.*, para. 5.76.

America, and on the other, the dangerous consequences of the abandonment in which the refusal would place Venezuela, has decided to accept" the Treaty[141].

2.95. Venezuela thus seeks to equate the prospects of unspecified "dangerous consequences" with coercion by another State, which could only have been Great Britain or the United States. It states in its Counter-Memorial: "In case of refusal [of the Treaty], 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."[142] On this basis, Venezuela argues: "It would therefore be justified to consider the 1897 Treaty to be invalid because of coercion."[143]

2.96. Venezuela offers no evidence to support its argument. There is no evidence that any Venezuelan official contemporaneously indicated, suggested or even inferred that the Government was forced to sign or ratify the Treaty. By its new claim that it was subject to coercion 127 years ago, Venezuela has turned history on its head, reversing cause and effect. It is undisputed that the threat of military action by Great Britain is what caused Venezuela to seek arbitration of the territorial dispute, and to press the United States to use its influence with the British to get them to agree to arbitrate[144]. If anyone was forced to accept arbitration, it was the British, who were threatened with war by the United States[145]. In the words of Secretary of State Olney: "[I]f this matter were allowed to run on till open rupture came between England and Venezuela, [the United States] should be involved in the war. … Should war have begun … the American people would become aroused

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[141] VCM, para. 5.72, quoting "Letter from Ezequiel Rojas to José Andrade, 9 December 1896 (Annex 59)."

[142] *Ibid.*, para. 5.68.

[143] *Ibid.*, para. 5.76.

[144] See paras. 2.15-2.18 above.

[145] See paras. 2.31-2.33 above.

and force our Government to side with Venezuela."[146] Venezuela itself admits: "If the British finally accepted to enter into an arbitration process, it was under the U.S. pressure."[147]

2.97. By agreeing to the Washington Treaty, Venezuela accomplished its objective of removing the threat of British military activity that caused it to seek arbitration in the first place. How can it credibly claim to have been coerced into accepting an arbitration agreement with Great Britain that it had been aggressively, even desperately, seeking, as a means of relieving the pressure it was facing, for more a dozen years between 1883 and 1897?

2.98. Venezuela accuses the United States, as well as Great Britain, of coercing it to accept the Washington Treaty, both by direct pressure from Secretary of State Olney, who allegedly "persevered in forcing Venezuela to sign the Treaty"[148]. This allegation is thoroughly refuted by the contemporaneous documents which, as indicated above[149], show that Venezuela favourably received the draft treaty in November 1896. Mr. Storrow reported, in his letter to Secretary Olney of 29 November, that he had met in Caracas with President Crespo, Foreign Minister Rojas and the Minister of Finance who "were all satisfied with the Treaty and said that there should not be a moment's hesitation about adopting it"[150].

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[146] H. James, *Richard Olney and his public service*, Boston/New York, 1923, p. 138, mentioning Speeches in Stirring Times, R. H. Dana (Houghton Mifflin Company, 1910), p. 138 (Vol. III, Annex 24).

[147] VCM, para. 5.1. See also *ibid.*., para. 5.12.

[148] *Ibid.*, p. 94, para. 42.

[149] See paras. 2.43, 2.62-2.63 above.

[150] Letter from Mr. Storrow to Mr. Olney (29 November 1896) (Vol. III, Annex 15). Storrow's letter also reported that: "A newspaper this morning had a very neat little article. The U.S., it said, had been asked by Venezuela to help. It had negotiated a settlement, which most people thought a good one. But Venezuela was at liberty to accept or reject it. It was, however, the best that the U.S. could do." (*ibid.*, p. 7).

2.99. Venezuela's decision to sign the Treaty, in November 1896, preceded its successful efforts to make the terms even more favourable by modifying the provision on appointment of arbitrators, as described above[151]. To be sure, the Treaty, even as modified, was not perfect from Venezuela's point of view. It was, after all, the product of negotiation with Venezuela's then-adversary, Great Britain. However, as President Crespo explained, the Treaty was the "most favourable" that could be obtained in the circumstances[152]. The alternative for Venezuela was to forego arbitration of the territorial dispute, which had long been its central objective, and once again expose itself to conflict with Great Britain. If these were the "dangerous consequences" referred to by Foreign Minister Rojas, they were a reflection of the geopolitical reality, not evidence of "coercion" by Great Britain or the United States.

2.100. Venezuela clearly understood this at the relevant time. Far from accusing anyone of forcing Venezuela to sign an unjust treaty, President Crespo declared that:

> "The settlement plan was presented to Venezuela for its consideration, with no coercive intent and in full respect of the sovereignty and independence of the Republic ..."[153]

2.101. The evidence thus entirely refutes the Counter-Memorial's unsupported assertion that Venezuela signed the Washington Treaty under coercion, just as it refutes the equally unsupported assertion that Venezuela signed it as a result of concealment or fraud.

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[151] See paras. 2.79-2.88 above.

[152] *Presidencia de la República, Mensajes Presidenciales*, Tomo III, 1971, pp. 188-189 (Vol. III, Annex 13).

[153] *Ibid.*, p. 188.

B. INTERNATIONAL LAW DID NOT INVALIDATE CONSENT GIVEN UNDER COERCION AT THE END OF THE 19TH CENTURY

2.102. In any event, even if — *quod non* — Venezuela had signed the Treaty under coercion, this would not invalidate its consent to the Treaty under international law as it existed at the time of that act.

2.103. In support of its claim that its consent to the Treaty was invalid, Venezuela invokes Article 52 of the VCLT of 1969, which entered into force on 27 January 1980 and provides that: "[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."[154]

2.104. This argument leads to two observations: (i) The 1969 Vienna Convention was adopted 72 years after the 1897 Washington Treaty was ratified by Venezuela; and (ii) the Convention formally refers to the principles embodied in the Charter of the United Nations, adopted 48 years after the ratification of the 1897 Washington Treaty.

2.105. In its Memorial, Guyana demonstrated that Article 52 VCLT does not apply retroactively and cannot render invalid the Washington Treaty of 1897[155]. The commentary on Article 52 could not be clearer:

> "The question of the time element in the application of the article was raised in the comments of Governments from two points of view: (a) the undesirability of allowing the rule contained in the article to operate retroactively upon treaties concluded prior to the establishment of the modern law regarding recourse to the threat or

[154] VCM, para. 5.76.

[155] *Ibid.*, paras. 7.57-7.63.

use of force; and (b) the date from which that law should be considered as having been in operation. The Commission considered that there is no question of the article having retroactive effects on the validity of treaties concluded prior to the establishment of the modern law. … 'A juridical fact must be appreciated in the light of the law contemporary with it.' … The present article concerns the conditions for the valid conclusion of a treaty – the conditions, that is, for the creation of a legal relation by treaty. An evolution of the law governing the conditions for the carrying out of a legal act does not operate to deprive of validity a legal act already accomplished in conformity with the law previously in force. The rule codified in the present article cannot therefore be properly understood as depriving of validity *ab initio* a peace treaty or other treaty procured by coercion prior to the establishment of the modern law regarding the threat or use of force."[156]

2.106. The Court itself, when Article 52 was invoked before it, was careful to stress that it reflected "contemporary international law" as international law existed in 1973[157].

2.107. Nevertheless, Venezuela states that "[i]t would … 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"[158].

2.108. In its Memorial, Guyana cited various authors who, contemporaneously with the ratification of the Washington Treaty, wrote that coercion of a State in

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[156] MMG, para. 7.58, note 440: "Draft Articles on the Law of Treaties with commentaries, Art. 49, p. 247, para. 7".

[157] *Fisheries Jurisdiction (United Kingdom* v. *Iceland), Jurisdiction of the Court, Judgment, I.C.J. Reports 1973*, p. 14, para. 24; *Fisheries Jurisdiction (Federal Republic of Germany* v. *Iceland), Jurisdiction of the Court, Judgment, I.C.J. Reports 1973*, p. 59, para. 24.

[158] VCM, para. 5.76.

order to obtain its consent would not lead to the invalidity of the consent given[159]. Furthermore, the same source cited by Venezuela in support of its argument[160], P.B. Potter, wrote in 1930 that:

> "the objection to treaties …, based on the argument that such treaties are often imposed by force, is swept away by … decisive considerations. International law has not hitherto prohibited, either in practice or in principle, the use of coercion against a nation as a means of obtaining concessions by treaty"[161].

2.109. Similarly, as late as 1917, the Cuban author Sánchez de Bustamante y Sirvén also observed, albeit disapprovingly, that international law was also "not immune to principles or institutions that prioritize the supreme effectiveness of force"[162]. And with good reason: it was not until 1919, with the adoption of the Covenant of the League of Nations, that, save in very exceptional circumstances[163] — not relevant in the present case — conventional limitations on the use of armed force gradually acquired customary status, culminating in Article 2, paragraph 4, of the United Nations Charter prohibiting much more generally "the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."

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[159] MMG, paras. 7.59-7.60.

[160] VCM, note 477 citing "Collected Courses of the Hague Academy of International Law, Vol. 32, 1930-II".

[161] P. B. Potter, "L'intervention en droit international moderne", in *Collected Courses of the Hague Academy of International Law*, Vol. 32, 1930-II, p. 660 (Guyana's translation of the French original: "*l'objection faite aux traités … fondée sur l'argument que ces traités sont souvent imposés par la force est balayée par [des] considérations décisives …. Le droit international n'a pas interdit, jusqu'ici, en pratique ni en principe, l'emploi de la contrainte exercée contre une nation en tant que nation comme moyen d'obtenir des concessions par voie de traité.*")

[162] A. Sanchez de Bustamante y Sirvén, *Los conflictos internacionales y el panamericanismo: conferencia escrita en 1916 y leída en la velada de honor de la Universidad de la paz*, 4 August 1917, p. 15, available at https://gallica.bnf.fr/ark:/12148/bpt6k95772t/f20.item (Guyana's translation of the Spanish original: "*El Derecho Internacional tampoco está al cubierto de principios o instituciones que entrenan la suprema eficacia de la fuerza*").

[163] See The Hague Convention II of 18 October 1907, Convention respecting the limitation of the employment of force for the recovery of contract debts ("Drago-Porter Convention").

2.110. Consequently, even if Venezuela had been coerced into entering the 1897 Treaty — which it plainly was not — this would not invalidate its consent. On any view, therefore, Venezuela's consent to the Treaty was and remains valid.

CHAPTER 3

THE VALIDITY OF THE 1899 ARBITRAL AWARD

3.1. The Counter-Memorial puts forward six grounds on which the 1899 Arbitral Award is alleged to be invalid. According to Venezuela:

(a) There was no agreement to arbitrate because the Washington Treaty was invalid;

(b) The Award did not provide the reasons on which it was based;

(c) The Award was based on compromise rather than law;

(d) The Tribunal failed to follow the rules governing the arbitration, as set out in Article IV of the Treaty;

(e) The Tribunal exceeded its powers under the Treaty; and

(f) The arbitration was fraudulent and corrupt.

3.2. Guyana anticipated and refuted every one of these arguments in Chapter 8 of its Memorial on the Merits. They are, in fact, the same empty complaints Venezuela started to make in 1962, some 63 years following the issuance of the Award (in which period Venezuela accepted and repeatedly confirmed its validity). In the Counter-Memorial, Venezuela attempts to put a new gloss on them. Guyana has already addressed Venezuela's refashioning of the first argument, on the validity of the Washington Treaty, in the previous Chapter of this Reply. In this Chapter, it responds to the Counter-Memorial's efforts to breathe life into the other five moribund arguments; in so doing, Guyana refers to its Memorial on the Merits, as appropriate, to avoid burdening the Court with excessive repetition.

I. The Absence of Reasons in the Award

3.3. The Award of 1899 states that the Arbitrators:

> "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".

3.4. It was on this basis that the Arbitrators answered "the questions submitted to us by the said Treaty of Arbitration" and determined "the boundary-line between the Colony of British Guiana and the United States of Venezuela …". The Award provides no further explanation as to how the "boundary-line" was determined.

3.5. As shown later in this Chapter at paragraphs 3.12 to 3.16[164], international law did not require arbitrators to include a statement of reasons in their awards at the time this Award was issued. Nor did the Washington Treaty include such a requirement. The detailed rules for the conduct of this arbitration, set forth in Articles III, IV, V, VI, IX, XI, and especially Article X of the Treaty, notably did not require that the Tribunal provide a statement of reasons. Hence, the absence of such a statement cannot invalidate the Award.

3.6. The Counter-Memorial helpfully explains why, in this arbitration, the Tribunal considered it neither necessary nor helpful to provide a detailed statement of the reasons upon which the Award was based. At paragraph 6.74, Venezuela quotes the submission made by the Tribunal's President, Professor Martens, to the 1899 Hague Peace Conference, during the time period when he was presiding over

[164] See also MMG, paras. 8.27-8.35.

the arbitration between Great Britain and Venezuela, some three months before the Award was delivered:

> "[A]rbitrators are not only judges; they are also representatives of their Governments. To require them to state their 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 …"

3.7. Professor Martens' views might not reflect the norm today. But 125 years ago — before any rule requiring tribunals to explain the bases for their awards had emerged — they reflected an honest desire to ensure that the arbitrators would decide matters according to their "judicial consciences," free of concerns about possible reactions in their home States that might otherwise influence them. Venezuela has offered no evidence that any of the other arbitrators disagreed with Professor Martens or contended that the Award should have included a statement of reasons. Nor, significantly, is there any evidence that, following issuance of the Award, Venezuela itself complained that no such statement was included. To the contrary, in the only contemporaneous Venezuelan statement on the subject that has been produced thus far in these proceedings, the Legal Advisor to the Foreign Ministry (himself a former Foreign Minister) expressly rejected the argument that Venezuela advances now:

> "As the treaty which set up the arbitral tribunal did not stipulate any requirement to give reasons for its decision, omission of the grounds for it does not permit any complaint on this score."[165]

[165] Report of Counsellor Dr. Rafael Seijas (4 May 1900), p. 189 (MMG, Vol. IV, Annex 66), quoted also in MMG, para. 8.30.

3.8. This remained Venezuela's position for at least the next six decades, even when it raised its claim of nullity for the first time, Venezuela did not explicitly impugn the Award for its lack of reasons, but stated more generally that "[t]he frontier was demarcated arbitrarily"[166]. Indeed, Dr. Marcos Falcón Briceño, Venezuela's Minister of Foreign Affairs, who first presented the claim of nullity of the Award before the United Nations in 1962[167], acknowledged that, in 1899, there was no duty to state reasons, and that the Washington Treaty did not change that, because it did not require the Award to provide reasons. Referring to the 1900 report of the Legal Advisor to Venezuela's Foreign Ministry quoted above, Dr. Falcón Briceño stated:

> "*At that time* [in 1899], *there was no obligation to provide statement of reasons for an arbitral decision unless it had been explicitly agreed upon in the arbitral treaty* — in other words, in the document establishing the bases that the judges were to follow. *That was not done in this case*. To the best of my recollection, I have read in the Foreign Ministry's files the report by Mr. Rafael Seijas, an eminent Venezuelan jurist, in which he made this observation."[168]

In its Memorial on the Merits, Guyana presented the opinion of Dr. Seijas referenced by Dr. Briceño[169]. Venezuela did not respond in its Counter-Memorial.

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[166] See Statement made on 14 February 1962 to the Secretary General by Venezuela's Permanent Representative (VCM, Vol. III, Annex 140, p. 288).

[167] See, e.g., VCM, Vol. III, Annex 143.

[168] Dr. Marcos Falcón Briceño, "Orígenes de la Actual Reclamación de la Guyana Esequiba" (1981), p. 56 (Vol. III, Annex 25) (Translation of the original Spanish: "*En esa época no habla la obligatoriedad de la motivación de la sentencia, salvo que se la hubiera pactado en el tratado arbitral, es decir, en el documento en el cual se establecían las bases por las cuales se iban a seguir los jueces. Eso no se hizo, de manera que yo recuerdo hater leído en los papeles de la Cancillería el Informe del Dr. Rafael Seijas, eminente jurista venezolano, en el cual hace esta observación. Menciono este particular porque se ha hablado de la falta de motivación del Laudo*").

[169] MMG, para. 8.30, citing to Report of Counsellor Dr. Rafael Seijas (4 May 1900), p. 189 (MMG, Vol. IV, Annex 66).

3.9. Venezuela does not dispute that the text of the Washington Treaty did not require the Tribunal to state reasons for its Award. However, it contends that by failing to state reasons, "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."[170] Venezuela is wrong on both counts.

3.10. *First*, no obligation to state reasons can be inferred from the terms of the Washington Treaty as it is entirely silent in that regard. Guyana showed in its Memorial on the Merits why the terms of the Treaty do not lend themselves to the inference that Venezuela strains to draw from them[171]. Guyana will not burden the Court with a repetition of what is already stated in its Memorial; it notes only that none of Venezuela's brief arguments about Articles III, IV and X of the Washington Treaty[172] properly respond to Guyana's straightforward reading of these terms. Instead of reading these provisions for what they are, and contrasting them with the Treaty's silence on reasons, Venezuela purports to derive an alleged intention of the parties to the Treaty to require reasons from these totally different requirements. Venezuela's "inferred obligation" to state reasons is nothing more than a *petitio principii*.

3.11. Venezuela also contends that an alleged obligation to state reasons can be inferred from the composition of the Tribunal, i.e., the fact that it was made up of five jurists: "[t]here is no need for highly qualified jurists if the objective is to have an award in the form of an oracle"[173]. As explained below, throughout lengthy hearings, the arbitrators duly engaged in legal analysis of the facts in light of the

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[170] VCM, para. 6.71.

[171] MMG, para. 8.28.

[172] VCM, para. 6.67.

[173] *Ibid.*, para. 6.65.

applicable rules, so that the Award, far from being an "oracle" as Venezuela disparagingly describes it, was properly based on law[174]. Venezuela is of course correct to recall that the Tribunal was composed of five highly qualified jurists. However, it is — to say the least — quite telling that *none* of these seasoned judges read in the Washington Treaty any inferred obligation to state reasons that Venezuela finds today. Thus, instead of supporting Venezuela's contention, the highly qualified character of the jurists comprising the Tribunal entirely undermines it. Referring to the then-ongoing proceedings of the Tribunal, Professor Martens stated at the Hague Conference that it "has not admitted the obligation"[175] to provide reasons for its eventual Award. This suggests that the highly qualified jurists making up the Tribunal discussed the matter and decided that the Tribunal was not required to state reasons.

3.12. *Second*, Venezuela is also wrong in arguing that the requirement to state reasons existed in 1899 as a matter of general international law. Venezuela contends that that validity of the Arbitral Award must be determined according to the law existing on "the date on which such invalidity is invoked"[176], meaning the law as it existed in 1962, not 1899. Guyana demonstrated in its Memorial on the Merits that this is obviously incorrect: it is an undisputed principle of intertemporal law that the validity of a legal act must be appreciated in the light of the law contemporary with it[177]. This means that Venezuela bears the burden of proving the invalidity of

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[174] See Section II below.

[175] J. B. Scott, *The Proceedings of the Hague Peace Conference*, 1920, p. 615.

[176] See Hermann González Oropeza, S.J. & Pablo Ojer, *Informe que los expertos venezolanos parala cuestión de límites con Guayana Británica presentan al Gobierno Nacional [Report submitted by the Venezuelan Experts to the National Government on the Issue of the Boundaries with British Guiana]* (18 March 1965), para. 17 (MMG, Vol. IV, Annex 74). See also Memorandum of the Bolivarian Republic of Venezuela on the Application filed before the International Court of Justice by the Co-Operative Republic of Guyana on March 29th, 2019 (28 November 2019), para. 17.

[177] MMG, paras. 6.43-6.45. See also Chapter 2, para. 2.105 above, and the development concerning the non-retroactivity of the principle enshrined in Article 52 VCLT.

the Award in light of the law as it stood in 1899. References to instruments adopted in the second half of the 20th century are thus entirely inapposite. Writing in 1981, Professor Verhoeven stressed that it is only "*aujourd'hui*" ("today") that the lack of reasons is a ground for invalidating arbitral awards[178].

3.13. Indeed, as also explained by Guyana, the law contemporary with the 1899 Award did not mandate the statement of reasons[179]. Not only was it contested that arbitral award had to be reasoned, but even when an obligation to state reasons was advocated, the violation of such obligation was not considered as a ground of nullity. The 1875 Resolution adopted by the *Institut de droit international* is particularly illuminating in that regard and it is telling that Venezuela relies on its Article 23 (duty to state reasons)[180] while ignoring its Article 27 (grounds of invalidity, among which the lack of reasons was not listed). Likewise, as Professor Martens' statement during the 1899 Hague Peace Conference indicates[181], there was no positive duty to state the reasons for an award under international law at that time[182]. Moreover, while the 1899 Hague Convention finally included a requirement according to which "[l]*a sentence arbitrale ... est motivée*"[183] it did not include grounds for nullity and did not identify the failure to state reasons as such a ground. The same resulted from the 1907 Hague Convention, following the Second Hague Peace Conference, despite calls to regulate the validity of awards[184].

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[178] J. Verhoeven, *Les nullités du droit des gens*, Paris, 1981, p. 36.

[179] MMG, paras. 6.46-6.49 and 8.31-8.34.

[180] VCM, para. 6.60.

[181] See para. 3.6 above.

[182] See the declaration of Mr. Holls commenting on Article 54: "as I have already said, our duty in this Conference is ... to uphold an ideal, to declare to the world that which the representatives of all the civilized nations consider desirable and practically attainable." (J. B. Scott, *The Proceedings of the Hague Peace Conference*, 1920, p. 622).

[183] Hague Convention for the pacific settlement of international disputes (1899), Article 52.

[184] See MMG, paras. 6.47-6.48.

3.14. Venezuela contends that it is only when arbitral awards were delivered by heads of state that the duty to state reasons did not apply in the early interstate arbitration practice[185]. Venezuela is wrong to draw such a distinction. Indeed, amongst the numerous unreasoned awards delivered during the same era by arbitral tribunals composed of qualified jurists, there is the 1895 Award of the Venezuela-United States Commission[186]. One of the Venezuelans who signed the 1897 Washington Treaty, Minister José Andrade, was Venezuela's Commissioner in that case. Thus, Venezuela was familiar with the practice of arbitral tribunals not issuing reasoned awards at the time it signed the 1897 Treaty. Had it desired a reasoned award in this matter, it could have advocated for one during negotiation of the Treaty. There is no evidence that it did, and the Counter-Memorial makes no such assertion.

3.15. Guyana has carefully surveyed the arbitration practice of the 19th and early 20th centuries and found numerous unreasoned awards delivered by tribunals composed of qualified jurists as arbitrators[187]. In order not to burden the Court, that research is included as an Appendix to this Reply, at the end of this Volume. It is worth noting that the leading compendium and commentary of arbitral case law of

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[185] VCM, para. 6.64.

[186] H. La Fontaine, *Pasicrisie Internationale 1794-1900, Histoire documentaire des arbitrages internationaux*, 1902, p. 422.

[187] See Appendix, pp. 177-191 below, describing the awards rendered by jurists, containing no statement of reasons, in the following nine cases; *River Saint Croix (UK/US)* (25 October 1798); *Decision under Article IV of the Treaty of Ghent (US/UK)* (24 November 1817); *Halifax Fisheries Commission (US/UK)* (23 November 1877); *Award of Chief Justice Melius de Villiers, as to the boundary question between Great Britain and the South African Republic (Transvaal) in the Cape Colony* (5 August 1885); *Bering Sea Fisheries (US/UK)* (15 August 1893); *Award by the Venezuela-US Mixed Commission at Washington* (26 March 1895); *Award relating to the demarcation of the Puna de Atacama boundary between Argentine Republic and Chile (Chile v. Argentina)* (24 March 1899); *The Alaska Boundary Case (UK/US)* (20 October 1903); *San Domingo Improvement Company Claim (US v. Dominican Republic)* (14 July 1904).

the 19th Century[188], authored by Belgian Professor Henri La Fontaine (Nobel Peace Prize winner in 1913), noted that *both* the 1897 Washington Treaty *and* the 1899 Award were "absolutely normal" and did not "call for any commentary." In his own words, the Award concerned:

> "*[u]ne des contestations multiples auxquelles donnèrent lieu les frontières incertaines des diverses Guyanes. Bien que la question souleva de vives discussions dans la presse, le compromis qui institua l'arbitrage et la sentence intervenue ont un caractère* absolument normal *et* n'appellent aucun commentaire."[189]

3.16. The 1960 judgment of the Court in the *King of Spain Award of 1906* is of no assistance to Venezuela. The lack of reasons was not an issue in that case. Rather, Nicaragua asserted that the Award's reasons were insufficient or incoherent. As Honduras invited it to do[190], the Court responded to Nicaragua's allegation from a purely factual point of view. It found that the Award "deal[t] in logical order and in some detail with all relevant considerations and that it contain[ed] ample reasoning and explanations in support of the conclusions arrived at by the arbitrator"[191]. On that basis, the Court concluded that "this ground [of invalidity] is without foundation"[192]. Thus, the Court was not called upon to decide whether there was a

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[188] *UNRIAA*, Vol. I, p. 4 (considering La Fontaine's treatise as the first "collection" of a "truly … general character"); H. La Fontaine, *Pasicrisie Internationale 1794-1900, Histoire documentaire des arbitrages internationaux*, 1902, p. xx ("*l'ouvrage que nous offrons à nos contemporains … le premier … recueil d'une Jurisprudence Internationale.*").

[189] H. La Fontaine, *Pasicrisie Internationale 1794-1900, Histoire documentaire des arbitrages internationaux*, 1902, p. 554 (emphasis added). Another proof that reasonings were rare at the time is that Professor La Fontaine would highlight reasoned awards. See, e.g., *ibid.*, pp. 301 and 385 (commenting on the *Award of the referee in the matter of the claim of Charles Adrian Van Bokkelen, given in Washington, December 4, 1888* (US/Haiti) and *the Award of 1881 rendered by the Emperor of Austro-Hungarian Empire, in a dispute between UK and Nicaragua*).

[190] *I.C.J. Pleadings, Arbitral Award made by the King of Spain on 23 December 1906 (Honduras v. Nicaragua)*, p. 501 (see also https://www.icj-cij.org/sites/default/files/case-related/39/9176.pdf).

[191] *Arbitral Award made by the King of Spain on 23 December 1906, Judgment, I.C.J. Reports 1960*, p. 216.

[192] *Ibid.*

requirement to state reasons as a ground of invalidity in 1906. Contrary to Venezuela's assertion, no legal "assumption"[193] can be drawn from that case about the lack of reasons as a ground of nullity at the beginning of the 20th century.

II. An Award Allegedly Not Based on Law

3.17. Venezuela complains that the Arbitral Award was based on "political expediency, crude give-and-take, diplomacy and pressure — replacing legal considerations as the benchmark of decision-making"[194], and that this was its "most fundamental defect".[195] In Guyana's view, it is Venezuela's argument rather than the 1899 Award that is fundamentally defective. This is demonstrated *inter alia* by Venezuela's own evidence.

3.18. That evidence shows that the five arbitrators arrived at their respective conclusions on where to draw the boundary between British Guiana and Venezuela by dutiful application of the prevailing legal rules, including the rules specified in Article IV of the Washington Treaty[196]. The initial result, as reflected in the arbitrators' own contemporary correspondence and public statements, was five different boundary lines[197]. A 3-2 majority then coalesced around a line that was more favourable to the British than the one that was ultimately adopted[198]. To obtain

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[193] VCM, para. 6.62.

[194] *Ibid.*, para. 6.184.

[195] *Ibid.*, para. 6.159.

[196] See MMG, paras. 8.36-8.45.

[197] "Judge Brewer's Opinion, Venezuela's Arbitrator Tells How the Verdict Was Reached", *The New York Times* (5 October 1899) ("Until the last moment I believed a decision would be quite impossible, and it was *by the greatest conciliation and mutual concessions that a compromise was arrived at.* If any of us had been asked to give an award, each would have given one differing in extent and character. The consequence of this was that *we had to adjust our different views, and finally draw a line running between what each thought right.*" (emphasis added)).

[198] On the opinion held by the majority, see MMG, para. 8.64 (explaining that Professor Martens initially shared the opinion of Lord Russell and Lord Justice Collins that the Treaties of Münster

unanimity — which Professor Martens, as President, strove to achieve — two adjustments to the line, both of which gave more territory to Venezuela, were made, and the minority then signed on to the Award[199].

3.19. Contrary to Venezuela's depiction of what occurred, this was not a case of "either/or", i.e., either the arbitrators issued an Award based on law or one based on compromise. They did both; they reached their individual conclusions by applying the law to the facts, then achieved a majority and finally unanimity by consensus and compromise. Far from "defective", the decision-making process was entirely appropriate and legal. No one needs to explain to the Court that consensus-building is a common practice enabling judicial bodies to produce a majority, in order to render a decision. The fact that, to reach such a consensus, some arbitrators or judges might agree to an outcome that does not fully conform to their own legal opinions does not deprive the ruling of its legal character, much less render it invalid. Nor is it uncommon or inappropriate for such compromises to be made to achieve a unanimous award or judgment, especially when the tribunal considers that unanimity is desirable to avoid ambiguity or ensure compliance by both parties.

(1648) and Utrecht (1714), coupled with the subsequent actions of Spain and the Netherlands, meant that Spain had not acquired such title), citing to Letter from Lord Russell to Lord Salisbury (7 October 1899), in *Papers of 3rd Marquess of Salisbury*, Vol. A/94, Doc. No. 2, p. 126 (MMG, Vol. III, Annex 36). See also *ibid.*, p. 127 (noting that Professor Martens "expressed his opinion on the governing principle in favour of the British contention").

On the subsequent compromise secured by Professor Martens to achieve an unanimous decision, instead of a vote by majority, and citing to *Private Diary Entries of Prof Fyodor Fyodorovich Martens* (4 June 1899-3 October 1899), pp. 9, 11, and 21 (MMG, Vol. III, Annex 33), see MMG, paras. 8.69-8.73.

[199] See MMG, para. 8.69, citing to *Private Diary Entries of Prof Fyodor Fyodorovich Martens* (4 June 1899-3 October 1899), p. 21 (MMG, Vol. III, Annex 33): the British arbitrators accepted an adjustment in the south that ceded (i) "a significant area to the Venezuelans"; and (ii) in the north they accepted that "the borderline should start from the coast of the sea halfway between Cap Mocotomo and Palaya" rather than at Point Barima at the mouth of the Orinoco).

3.20. The legal character of the arbitral proceedings between Great Britain and Venezuela is reflected in its three rounds of written pleadings, consisting of thousands of pages of arguments and annexes submitted by each party, and 54 oral sessions that generated more than 3,200 pages of verbatim transcript. At the conclusion, Venezuela's lead counsel, former United States President Benjamin Harrison, declared that Venezuela had presented "a full and complete discussion of every question of law and fact that we thought was in the case"[200]. The Counter-Memorial itself confirms this by twice referring to Sir Hersh Lauterpacht's evaluation of the proceedings 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"[201].

3.21. The Counter-Memorial also quotes from the contemporaneous correspondence of Lord Russell, one of the British arbitrators, addressed to Lord Salisbury, the Foreign Minister, four days after the issuance of the Award[202]. However, Venezuela fails to quote the most pertinent part, in which Lord Russell described the deliberations leading to the Award:

> "As to the course of the discussion: – 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 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

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[200] *Boundary between the Colony of British Guiana and the United States of Venezuela*, Fiftieth Day's Proceedings (19 September 1899), pp. 2984-2985 (Harrison) (MMG, Vol. IV, Annex 111).

[201] VCM, paras. 5.81 and 6.172, note 479, citing to H. Lauterpacht, "The Function of Law in the International Community", *British Contributions to International Law*, 1933, p. 157. Venezuela neglects to mention that H. Lauterpacht considered the *British Guiana/Venezuela* arbitration equal to the *Alabama* arbitration as an "instructive instance" of his thesis that the "history of international arbitration in the last hundred and thirty years does not substantiate the view that important issues are unsuitable for judicial settlement" (*ibid.*, p. 145).

[202] VCM, paras. 5.102 and 6.103; Letter from Lord Russell to Lord Salisbury (7 October 1899) (VCM, Vol. II, Annex 67).

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. [who had been appointed by Venezuela] 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 [also appointed by Venezuela] 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."[203]

3.22. Lord Russell's account leaves little doubt that the Tribunal's deliberations, and the position of the majority, were based on law, and the application of the law to the facts. The legal basis of the Award was further confirmed by Venezuela's lead counsel, former United States President Harrison, in correspondence coincidentally bearing the same date as Lord Russell's (7 October 1899):

"The case turned upon the question whether Spain had acquired by discovery and her early settlements a prior title to the disputed territory and tho[ugh] both Great Britain and the Dutch, in the Manhattan controversy, were at the very time describing the validity of the Discovery title and the effectiveness of a few small

[203] Letter from Lord Russell to Lord Salisbury (7 October 1899) (VCM, Vol. II, Annex 67) (emphasis original).

> settlements to perfect the title to vast unoccupied tracts – it was hard to make a tribunal apply the old rule …"[204]

3.23. Venezuela concedes that if the dispute had been decided by majority vote, the Award would have been more favourable to Great Britain than the one the Tribunal adopted unanimously. The Counter-Memorial quotes former President Harrison to this effect:

> "[I]f the arbitrators were unanimous, it must have been because their failure to agree would have confirmed Britain in the possession of still more territory."[205]

3.24. The Counter-Memorial also cites to Venezuela's Agent in the arbitration proceedings, Mr. José Rojas. In a communication of 4 October 1899 to his Foreign Minister, which is attached to the Counter-Memorial as Annex 65, Mr. Rojas wrote:

> "Things happened this way. The English arbitrators claimed the Schomburg [*sic*] line. Mr. de Martens, against all hope, expressed he was ready to adhere to 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."[206]

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[204] Letter from Mr. Harrison to Mr. Miller (7 October 1899) (Vol. III, Annex 26).

[205] VCM, paras. 5.126 and 7.12.

[206] Letter from Rojas to the Foreign Office Minister of Venezuela (4 October 1899) (VCM, Vol. II, Annex 65).

3.25. Lord Russell's correspondence to Lord Salisbury attributes to Professor Martens, as President of the Tribunal, a sense of duty to produce a unanimous Award rather than one decided by a 3-2 majority:

> "[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."[207]

3.26. This was not a matter of "political expediency" or "crude give-and-take" as Venezuela derisively suggests[208]. Professor Martens' motivation to seek a unanimous award was reflected in his diary, in which he wrote of his "moral duty to carry out such negotiations to ensure full unanimity between the arbitrators and to achieve the greatest objective – a unanimous arbitral award"[209]. There is no evidence to contradict Professor Martens' statement of his motives.

3.27. Nor is there evidence that the compromise that Professor Martens negotiated deprived the Award of its legal basis. In a public statement the day after the issuance of the Award, Professor Martens declared that "the boundary line which is laid down by the judges is a line based on justice and law …"[210]. For Lord Russell, the Award, even as adjusted to secure unanimous support, followed the law: "I think the Award gives Her Majesty no territory or advantage to which she is not justly entitled and I think it does give her substantially all to which she is entitled."[211]

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[207] Letter from Lord Russell to Lord Salisbury (7 October 1899) (MMG, Vol. III, Annex 36) (emphasis in original).

[208] VCM, para. 6.184.

[209] *Private Diary Entries of Prof Fyodor Fyodorovich Martens* (4 June 1899-3 October 1899), p. 11 (MMG, Vol. III, Annex 33) (emphasis in original).

[210] "M. De Marten's Opinion", *The New York Times* (4 October 1899).

[211] Letter from Lord Russell to Lord Salisbury (7 October 1899) (MMG, Vol. III, Annex 36).

Venezuela, likewise, is in no position to complain about the compromise, which, as indicated above, was to its benefit, attributing to it more territory than would have been the case if the arbitrators decided the matter by majority vote. The compromise, in fact, came as no surprise to Venezuela. On the eve of the Award's issuance, former President Harrison wrote: "We have had a long and severe tussle here and I do not know how we are to come out of it. We will probably have some sort of compromise line"[212].

3.28. There is, accordingly, no merit to Venezuela's argument that the compromise achieved to obtain unanimity among the arbitrators deprives their Award of its legal basis, such that, on this ground, it should be declared invalid.

III. An Alleged Failure to Follow the Rules

3.29. The Counter-Memorial contends that the Arbitral Tribunal failed to follow the rules governing the arbitration set out in Articles III and IV of the Washington Treaty. The contention is not sustainable. Article III provided that, in deciding the matters submitted,

> "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."

[212] Letter from Benjamin Harrison to the Hon. Henry White (3 October 1899), p. 2 (MMG, Vol. III, Annex 35).

3.30. This is precisely what the Arbitrators did. As indicated at paragraph 3.3 above, they stated explicitly in the Award that, in determining the boundary-line, they:

> "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".

3.31. Venezuela does not disagree. Instead, it complains that Article III required the Tribunal to make — and spell out — two separate determinations in its Award: first, the extent of the territories belonging to the Netherlands and Spain at the time Great Britain acquired the Dutch possession in 1814; and second, the boundary-line between British Guiana and Venezuela. For Venezuela, these are two "separate … questions"[213], which the Tribunal was obligated to answer separately[214] and the Tribunal failed to provide an answer to the "first question".

3.32. There is no evidence that Venezuela interpreted Article III in this manner at the time it agreed to the Washington Treaty, or during the arbitration proceedings, or after the Award was issued, or at any time prior to the submission of its Counter-Memorial on 8 April 2024. There is a reason this newly-minted construction of Article III was not raised previously: it is plainly at odds with the text.

3.33. Article III expressly required the Tribunal to make only one determination: it "shall *determine* the boundary-line between the Colony of British Guiana and the United States of Venezuela." In contrast, the Tribunal was directed only to "*investigate and ascertain*" the extent of the territories belonging to or that might

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[213] VCM, paras. 6.99 and 6.100.

[214] *Ibid.*, para. 6.100.

lawfully be claimed by the Netherlands and Spain in 1814, *as a step toward determining* the boundary between British Guiana and Venezuela in 1899. There was no need for a separate *determination* of the situation in 1814, because, as Article IV (discussed below) made clear, events subsequent to 1814 had to be taken into account by the Tribunal in determining the boundary-line. In particular, Article IV (a) provided that "[a]dverse holding or prescription during a period of fifty years shall make a good title", and that 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". This meant that the 50-year prescription period during which title could vest extended beyond 1814.

3.34. Further, Article IV (c) provided that: "In *determining* the boundary-line, if the 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 principle of international law, and the equities of the case shall, in the opinion of the Tribunal, require." Thus, the situation in 1814 could be overridden by subsequent events up to 1897, including the occupation by the subjects or citizens of one Party of what the Tribunal decided was the territory of the other Party in 1814. It is only logical, therefore, that rather than *determine* the situation in 1814, Article III required the Tribunal only to *investigate and ascertain* it, as a starting point for its *determination* of the boundary as of 1897.

3.35. And that is exactly what the Tribunal did, as stated in the Award itself, and as verified in the contemporary correspondence of Lord Russell and former President Harrison, cited at paragraphs 3.22 and 3.23, respectively. This confirms that the Tribunal investigated and ascertained the extent of the territory belonging to each of the Netherlands and Spain in 1814 prior to determining the boundary-

line between British Guiana and Venezuela. There was no failure to comply with the obligation set forth in Article III.

3.36. Nor was there a failure to follow the rules prescribed in Article IV. The Counter-Memorial is notably vague on what this alleged failure was. Its central contention is: "As is apparent from the text of the Award, the Tribunal completely ignored the Rules stipulated in Article IV ..."[215]. Apparent to whom? Venezuela does not identify which of these Rules was "ignored" or in what way.

3.37. What is clear from the Award itself is that the boundary line determined by the Tribunal largely followed the original Schomburgk line of 1844. As Lord Russell explained in his description of the Award to Lord Salisbury: "The result is a signal vindication of Schomburg's [*sic*] ability and fairness. In two points only is there any departure from his line."[216] Schomburgk's line divided the disputed territory between Great Britain and Venezuela based on which Party occupied and controlled it as of the time of his expedition some 25 years after the British acquired the colony from the Dutch[217]. By adopting that line, the Tribunal complied with its obligation to apply the rules set out in Article IV, including the provisions in Rule IV (a) that it should give effect to occupation and adverse holding based on the 50-year prescription period, and in Rule IV (b) that it "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 applicable to the case, and which are not in contravention of the

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[215] VCM, para. 6.129.

[216] *Ibid.*, para. 5.102; Letter from Lord Russell to Lord Salisbury (7 October 1899) (MMG, Vol. III, Annex 36). See also Letter from Mr. Schomburgk to Governor Light (1 July 1839) (Inclosure in Letter from the Colonial Office to the Foreign Office (6 March 1840) (MMG, Vol. III, Annex 16); Letter of Mr. Schomburgk to Governor Light (30 November 1841) enclosing Memorandum by Mr. Schomburgk (MMG, Vol. III, Annex 21).

[217] MMG, para. 3.3.

foregoing rule". As shown in paragraphs 3.17 to 3.28 above, the contemporaneous evidence shows that all members of the Tribunal reached their conclusions about the location of the boundary-line based on international law, before coming to a result that all could support.

3.38. Venezuela also argues that Article IV established a hierarchy among its three Rules, with IV (a) occupying the highest rung, followed by IV (b) and then IV (c)[218]. Yet the plain reading of Article IV does not support such an interpretation. Article IV provides that the Arbitrators "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". There is nothing in the language of Article IV to suggest any order of precedence amongst those Rules or any prescribed sequence in which they must be addressed. Venezuela does not identify any basis for the interpretation it advances; nor does it present any evidence that the Tribunal applied any of these Rules out of their supposed order.

3.39. Finally, the Counter-Memorial criticizes the Arbitrators for not explaining *how* they applied the Rules[219]. This, of course, is an unavoidable consequence of there being no statement of reasons in the Award, a subject addressed above at paragraphs 3.3-3.16. As shown therein, the absence of such a statement does not constitute a basis for invalidating the Award.

3.40. Accordingly, the Counter-Memorial fails in its attempt to prove that the Award is invalid because the Tribunal failed to follow the Rules that governed the arbitration.

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[218] VCM, para. 6.125.

[219] *Ibid.*, para. 6.130.

IV. An Alleged Excess of Power

3.41. The Counter-Memorial alleges that the Arbitral Tribunal exceeded the powers vested in it by the Washington Treaty in two ways: *first*, the boundary-line it adopted gave British Guiana territory that was also claimed by Brazil, in violation of that State's rights[220]; and *second*, the arbitrators went beyond their mandate to determine the boundary between British Guiana and Venezuela by establishing a navigation regime for two rivers in the border area, the Amakuru and the Barima[221].

3.42. Venezuela had not previously challenged the validity of the 1899 Award based on the alleged transgression of rights belonging to Brazil or any other third State. For this reason, the claim was not anticipated by or addressed in Guyana's Memorial on the Merits. Because the challenge is patently untenable, it requires only a brief discussion here.

3.43. In relation to Brazil, the Counter-Memorial focuses on the portion of the Award describing the boundary line in the extreme south:

> "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"[222].

3.44. It is true, as Venezuela asserts, that some of the territory falling on British Guiana's side of the boundary-line was also claimed by Brazil. At the time, the boundary between British Guiana and Brazil was disputed. However, both in law[223]

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[220] VCM, para. 6.139.

[221] *Ibid.*, paras. 6.136-139.

[222] *Ibid.*, para. 6.139.

[223] See below, paras. 4.58-4.63.

and in fact, the Award had no impact on that boundary or any territorial rights claimed by Brazil.

3.45. *First*, under well-established principles of international law, the 1899 Award was *res inter alios acta* for Brazil and could not be invoked against it; the arbitrators made this explicit in the Award, as Venezuela itself concedes:

> "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"[224].

3.46. *Second*, in fact, this line had no effect on Brazil. In 1901, Great Britain and Brazil agreed to submit their boundary dispute to arbitration, with King Victor Emmanuel II of Italy as sole arbitrator. As Venezuela concedes[225], the King determined that the 1899 Award:

> "cannot be cited against Brazil, which was unaffected by that Judgment"[226].

3.47. Plainly, Venezuela's complaint fails to constitute a basis for nullifying the Award.

3.48. The same is true for Venezuela's other argument that the Arbitral Tribunal exceeded its powers: the establishment of a navigation regime for the Amakuru and Barima Rivers. This part of the 1899 Award provided:

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[224] VCM, para. 6.140.

[225] *Ibid.*, para. 7.69.

[226] *The Guiana Boundary Case (Brazil* v. *Great Britain)* (6 June 1904), *UNRIAA*, Vol. XI, p. 11.

> "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."

3.49. Each of the two rivers followed or crossed the boundary line determined by the Tribunal, and thus traversed both British and Venezuelan territory. There was undisputed evidence that British settlers lived on both sides of these rivers, including in what was determined to be Venezuelan territory, and that they regularly navigated these watercourses to reach the great Orinoco River (entirely in Venezuelan territory to the east) and ultimately the Atlantic Ocean[227].

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[227] See e.g., *British Guiana Boundary, Arbitration with the United States of Venezuela, The Case on Behalf of the Government of Her Britannic Majesty*, London, 1898, Volume I (Vol. III, Annex 27), p. 57 (citing to *British Case*, Volume V, p. 76); p. 62 (noting that "[e]arly in 1797 the Spaniards received information that the English had apportioned all the lands which stretch from Essequibo to Barima", citing to *British Case*, Volume V, pp. 164-165; noting further that "[i]n 1801, the British Commandant … [reported that] the extent of the [British] Colony … shows the boundary commencing at Barima and includes the territories claimed by the Dutch in their Remonstrances", citing to the *British Atlas*, p. 37); p. 65 (noting that in 1838, British "planting, boat-building, and wood-cutting were actively prosecuted in the Pomeroon district, giving employment to a large number of Indians from all the rivers as far as the Amakuru", citing to *British Case*, Volume VI, pp. 84, 104, 132); p. 78, point 2 (noting that "[d]uring the [whole of the 17th and 18th centuries] the Dutch had the control of all the rivers flowing into the Atlantic from the Corentin to the Amakuru"); p. 78, point 5 (noting that "the Dutch occupied various points in the interior on the Rivers Essequibo, Massaruni, Cuyuni, Moruka, Pomeroon, Waini, Barima, and Amakuru and their tributary streams"); and p. 78, point 6 (noting that "[t]he Spaniards recognized the Amakuru or the Barima as being the effective frontier of their possessions").

3.50. The Counter-Memorial asserts that there is nothing explicit in the Washington Treaty that empowered the Arbitral Tribunal to adopt a navigation regime for these rivers, and that the Tribunal's "excursion" into this subject matter was thus "unauthorised by the *compromis* and not covered by the parties' consent, amounting to a plain excess of power"[228]. This argument cannot be reconciled, however, with Venezuela's understanding of the Tribunal's powers during the arbitral proceedings, as well as its view of this part of the Award at the time it was issued — a view it held for the following 60+ years.

3.51. In its written Argument to the Tribunal, submitted on 15 March 1898, Venezuela addressed the consequences if territory found by the Tribunal to belong to one of the Parties was, at the time of the Treaty, actually occupied by settlers from the other Party[229]. In such circumstances, Venezuela explained, the Tribunal would have broad discretion to decide how "with the greatest fairness to the State in whose territory such settlers were found and to the settlers themselves, an adjustment should be made *of the relations between the two* ..."[230]. The "relations between the two" naturally extended beyond the question of which State had title to the particular territory. The Tribunal's authority in such circumstances, according to Venezuela, was "provided in the Treaty"[231]. Specifically, under Article IV (c):

> "[T]he Tribunal should itself finally adjust these relations, upon considerations of reason, justice, the principles of international law and the equities of the particular case.
>
> It is not stated by the Treaty what form of adjustment, if any, is to be adopted by the Arbitrators in carrying out the provisions of

[228] VCM, para. 6.148.

[229] MMG, para. 8.52.

[230] *Boundary between the Colony of British Guiana and the United States of Venezuela*, The Printed Argument on behalf of the United States of Venezuela (1898), Vol. I, p. 56, (MMG, Vol. IV, Annex 134) (emphasis added).

[231] *Ibid.*

> Rule (c). The whole matter is left to their judgment and discretion. It is clearly contemplated by the Rule that some provision shall be made to settle the relations of both parties … "[232].

3.52. This part of Venezuela's Argument to the Tribunal was highlighted in Guyana's Memorial on the Merits, at paragraph 8.52. The Counter-Memorial provides no response. It remains entirely mute, choosing to ignore the point. It does not explain why, in light of Venezuela's contemporaneous understanding of the Rules governing the Arbitration, the Tribunal could not have considered itself authorized, in territory occupied by British settlers but awarded to Venezuela, to make an "adjustment of the relations between the two" by providing for freedom of riverine navigation — which was vital not only for commerce but for survival in this remote and undeveloped geographic region.

3.53. The Counter-Memorial similarly passes in silence on Venezuela's approval of this regime at the time the Award was issued, which was described in Guyana's Memorial[233]. Guyana quoted there from the correspondence of José Andrade who served as Venezuela's Minister in Washington during the negotiation of the Treaty and signed it on Venezuela's behalf. In a letter to his Foreign Minister dated 7 October 1899, Minister Andrade wrote:

> "I will say nothing concerning the final clause which declares open to free navigation by merchant ships of all nations, the Rivers Barima and Amacuro in their English section as in the Venezuelan. Therein is seen as application of a theory of international law which wherever it has been put in practice has greatly contributed to the prosperity of States. Venezuela herself has at times applied it to the navigation of the Orinoco."[234]

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[232] *Ibid.*, pp. 56-57 (MMG, Vol. IV, Annex 34).

[233] MMG, para. 8.53.

[234] Letter from the Venezuelan Ambassador to the United Kingdom to the Venezuelan Minister of Foreign Affairs (7 October 1899), p. 2 (MG, Vol. II, Annex 3, quoted at MMG, para. 8.49).

3.54. It is unclear precisely when Venezuela changed its view and decided that this aspect of the Award was no longer an "application of a theory of international law" but an "excess of power." There is no evidence of such a reversal for at least the next six decades. In any event, the Tribunal's establishment of a river navigation regime as a complement to its determination of the boundary-line between British Guiana and Venezuela is entirely justifiable under Article IV (c) of the Treaty and therefore does not constitute an excess of power or a basis for invalidating the Award in whole or in part.

V. Alleged Fraud and Corruption

3.55. The Counter-Memorial alleges that the entire arbitration, from the 1897 Washington Treaty to the 1899 Award, was "fraudulent"[235]. It was, according to Venezuela, a "fraud":

> "characterised by simulations, undue and extortive pressure, prevarication, deceit, abuse of power and falsehoods of all kinds"[236].

3.56. Rhetoric is one thing, proof is another. Venezuela supplies the former in abundance, the latter not at all. Allegedly, the malefaction consists of three fatal transgressions: first, the use of doctored maps by the British, which deceived the Tribunal about the territorial extent of British claims and occupation; second, improper communications between British counsel and the British arbitrators; and third, collusion between the Russian President of the Tribunal and the British arbitrators to produce an Award favourable to Great Britain in exchange for British concessions to Russia in other parts of the world. None of these allegations are supported by even the thinnest strand of evidence.

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[235] VCM, para. 6.4.

[236] *Ibid.*

3.57. Guyana anticipated and addressed the first and third of these accusations in its Memorial on the Merits, at paragraphs 8.54 to 8.61 and 8.77 to 8.92, respectively. For this reason, and to avoid unnecessary repetition, it will simply summarize here the evidence and conclusions regarding those accusations, adding only some additional information, worthy of the Court's attention, obtained by further historical research. In respect of the second accusation, this is a new allegation which was made for the first time after Guyana submitted its Memorial on the Merits. Guyana therefore provides its response to that new accusation below.

3.58. On the issue of maps, Guyana showed in its Memorial on the Merits that neither Venezuela nor the Arbitral Tribunal were deceived by any of the maps submitted by the British:

- The inaccuracies in the British maps were well known by Venezuela by 1896, at least two years before the arbitral proceedings began, when Venezuela brought them to the attention of President Cleveland's Venezuela Boundary Commission and they were identified in the Commission's Report[237].

- The same inaccuracies were brought to the Arbitral Tribunal's attention during both the written and oral stages of the proceedings; Venezuela's counsel repeatedly challenged the reliability of Great Britain's maps, calling them "misleading" and "untrustworthy"[238].

- British counsel acknowledged these inaccuracies to the Tribunal, prompting Venezuela's lead counsel, former United States President Harrison, to

[237] MMG, paras. 8.56-8.58.

[238] *Ibid.*, para. 8.59.

express gratitude to his British counterpart for "very candidly" accepting that the erroneous maps would not have "probative effect"[239].

3.59. The Counter-Memorial fails to respond to any of these points.

3.60. The issue of improper communications between counsel and arbitrators was first raised by Venezuela in these proceedings in 2022, during the oral hearings on Venezuela's preliminary objection to the admissibility of Guyana's claims. As "evidence," Venezuela relied on two letters from the lead British counsel, Sir Richard Webster, one to Lord Salisbury and one to Colonial Secretary Chamberlain, both dated 19 July 1899. These have been submitted to the Court, again, as Annexes 63 and 64 to the Counter-Memorial.

3.61. In neither letter is there any mention of an actual communication with the British arbitrators. To Lord Salisbury, Sir Richard Webster wrote, in relation to the British claim to Point Barima: "*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."[240] A similar statement about possible future action was made to Mr. Chamberlain:

> "*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."[241]

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[239] MMG, para. 8.60.

[240] Letter from Sir Richard Webster to Lord Salisbury, 19 July 1899 (VCM, Vol. II, Annex 63) (emphasis added).

[241] Letter from Sir Richard Webster to Joseph Chamberlain, 19 July 1899 (VCM, Vol. II, Annex 64) (emphasis added).

3.62. At the oral hearings on Venezuela's preliminary objections, held on 18 November 2022, Guyana refuted Venezuela's pretension that these letters, which constituted Venezuela's entire body of evidence on the issue, demonstrated that there were any communications between British counsel and the British arbitrators, let alone improper ones[242]. Guyana showed that, to the contrary, they proved the *absence* of such communications, and no more than the possibility that they *might* occur under certain conditions that might materialize in the *future*[243].Venezuela offered no evidence that they *did* occur.

3.63. Nor has Venezuela done so in its Counter-Memorial, in which it does no more than cite the same two letters from Mr. Webster, at paragraphs 5.106 and 5.107, but nothing else to establish the existence of any communications of any kind (outside the formal hearings) between any of the British counsel and the British arbitrators. Venezuela does not even *allege* that the possible future communications mentioned by Mr. Webster ever took place. There is no evidence that they did.

3.64. But Venezuela *does* provide evidence of extraordinary communications by *its own counsel* with the arbitrators — specifically, with the *American arbitrators* who Venezuela appointed. Venezuela admits "the fact that the U.S. Arbitrators sought advice on how to cast their vote …"[244].

3.65. Venezuela's source is Mr. Severo Mallet-Prevost, one of the lawyers who served as its counsel during the arbitration. According to Mr. Mallet-Prevost, he was invited by the two American arbitrators to meet with them on the eve of the

[242] CR 2022/22, 18 November 2022, pp. 45-46, para. 12 (Sands).

[243] *Ibid.*

[244] VCM, para. 5.111.

Award, before a final decision on the boundary-line was made[245]. At the meeting, Justice Brewer advised him of the status of the Tribunal's deliberations:

> "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."[246]

3.66. According to Mr. Mallet-Prevost, Justice Brewer and Chief Justice Fuller then asked for their "advice" on whether to agree to Professor Martens' proposal or maintain their minority position and suffer a 3-2 decision resulting in British control at the mouth of the Orinoco River. Venezuela's counsel responded by advising the two arbitrators to accept Professor Martens' proposal in order to secure Venezuelan control of the Orinoco, and that is what they did[247].

3.67. Venezuela is thus in no position to complain about alleged communications between counsel and the arbitrators, or to challenge the validity of the Award on such basis. The only evidence before the Court that such contacts occurred implicates Venezuela, not Great Britain or its counsel. Proper or improper, the extrajudicial contacts between Venezuela's counsel and the American arbitrators advanced Venezuela's interests, by offering it a choice between a unanimous Award in which it secured control of the Orinoco and its mouth (at the cost of some

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[245] Otto Schoenrich, "The Venezuela-British Guiana Boundary Dispute", *American Journal of International Law*, Vol. 43, No. 3 (July 1949), p. 529 (MMG, Vol. III, Annex 1).

[246] *Ibid.*

[247] *Ibid.*, pp. 529-530 (Mallet-Prevost writes that, after the consultation made by the two American arbitrators, Mr. Harrison opined that "if it should ever be known that we had it in our power to save for Venezuela the mouth of the Orinoco and failed to do so we should never be forgiven. What Martens proposes is iniquitous but I see nothing for Fuller and Brewer to do but to agree" and that he "concurred with General Harrison and so advised Chief Justice Fuller and Justice Brewer.").

territory farther south and east), or a 3-2 decision in which the two-member minority defended Venezuela's position in the arbitration but the majority vote gave to Great Britain the territory from which it could exercise control over the river.

3.68. Venezuela considered securing its control over the Orinoco a great victory. As expressed by Minister Andrade in his communication to the Foreign Minister of 7 October 1899, submitted as Annex 68 to the Counter-Memorial:

> "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 the arbitration."[248]

Venezuela thus has no cause to challenge the validity of the Award based on extrajudicial communications between counsel and the arbitrators.

3.69. Nor can it contest the validity of the Award based on its far-fetched allegation of collusion between Professor Martens and the British arbitrators, or between Great Britain and Russia, to produce a boundary favourable to British interests. Venezuela first raised this fanciful claim in 1962, more than 62 years after the Award was issued. It rested then and still rests, according to the Counter-Memorial, entirely on speculation by Mr. Mallet-Prevost in a memorandum written just before he died in 1944, which was not made public until 1949[249]. As indicated above, this issue was fully addressed by Guyana in its Memorial on the Merits. To summarize:

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[248] See also Letter from Minister Andrade to the Venezuelan Minister of Foreign Affairs (7 October 1899) (MG, Vol. II, Annex 3).

[249] See VCM, para 7.78. See also *ibid.*, paras. 6.177, 6.179, 7.3, 7.25, 7.73, notes 695 and 705.

– There is no documentary or testimonial evidence that supports the assertions made by Mr. Mallet-Prevost in his 1944 memorandum. An independent study of the British Foreign Office's papers relating to the arbitration, as well as the correspondence between London and St. Petersburg during this period, revealed not a single document that suggested, even remotely, the existence of "political deal" between Great Britain and Russia, or even the slightest inclination by any arbitrator to foster better relations between the two States[250].

– A study of the archival materials in the Russian Ministry of Foreign Affairs likewise produced nothing to suggest a "deal" between Great Britain and Russia regarding the arbitration, or any attempt by the Russian government to influence Professor Martens, or any communication between that government and Professor Martens about the arbitration; and an examination of Professor Martens' diaries likewise turned up nothing to indicate that he had been in contact with Russian authorities about the arbitration, or took Russian interests into account in conducting the proceedings or producing the Award[251].

– Mr. Mallet-Prevost's allegation that the "deal" was made between Professor Martens and the two British arbitrators in London during an August 1899 recess in the oral hearings is implausible, because only Lord Russell went to London during the recess; the 1944 memorandum offered no proof that Professor Martens or Lord Collins travelled to London during the recess, and Professor Martens' diary records that he spent the time in Paris[252].

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[250] MMG, para. 8.78.

[251] *Ibid.*, para. 8.79.

[252] See MMG, paras. 8.87-8.88; *Private Diary Entries of Prof Fyodor Fyodorovich Martens* (4 June 1899–3 October 1899), pp. 5-8 (with entries from 2, 15, 17, 27 and 29 August 1899). None of these entries mentions that Professor Martens was in London, that he visited London or that he

– The other basis offered by Mr. Mallet-Prevost for his allegation — a "noticeable" change in Lord Collins' demeanour after the recess — is equally unsupportable; apart from the fact that he was not in London at the time the purported "deal" was made there, an independent review of the verbatim record of the oral hearings before and after the recess reveals no change in his demeanour or attitude, or in the nature or frequency of his interventions, or any other basis for concluding that he changed his views during the recess[253].

3.70. Notably, the Counter-Memorial makes no attempt to respond to any of these points, or to any of the other points raised by Guyana in its Memorial on the Merits to refute Mr. Mallet-Prevost's unfounded allegations. There are only three paragraphs in the Counter-Memorial that refer to the supposed "deal" between Great Britain and Russia, in which Venezuela quotes Mr. Mallet-Prevost as saying only that "the Russian Arbitrator was *probably* induced to take the stand which he took by considerations entirely foreign to the question"[254]. Conspicuously, the Counter-Memorial offers no direct quotes from the 1944 memorandum. The impression given is that Venezuela now recognizes the memorandum's manifest lack of credibility and is unwilling to further discredit its case by continued reliance upon it.

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even intended to visit London, while, for instance the entry of 29 August 1899 mentions that Professor Martens was "heading to the Hague to sign all the acts of the [First Hague Peace] conference." The entry of 15 August 1899 confirms that Professor Martens was in France and had been there for the past couple of days, as does the entry of 29 August 1899 (MMG, Vol. III, Annex 33).

[253] MMG, paras. 8.87-8.88.

[254] VCM, para. 5.129 (emphasis added), and its footnote 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") (VCM, Vol. III, Annex 150).

3.71. Mr. Mallet-Prevost himself was far from a neutral or unbiased observer. As the Counter-Memorial acknowledges, United States Secretary of State Olney, after dining with him, wrote to President Cleveland of Mr. Mallet-Prevost's "intense wrath and bitterness of soul at the course and decision of the arbitral tribunal"[255]. Secretary Olney reported in the same communication that Mr. Mallet-Prevost had told him 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"[256]. The Counter-Memorial leaves out the rest of what Secretary Olney wrote to President Cleveland about Mr. Mallet-Prevost:

> "I see that Mr. Mallet-Prevost has been talking with you and giving you his account of the way in which the Venezuelan boundary award was made. He told me, I suppose, practically the same tale. I found, however, in talking with Chief Justice Fuller last Fall that he did not fully concur in Mr. Mallet-Prevost's views."[257]

3.72. This was written in 1901. There is no evidence that Mr. Mallet-Prevost's "wrath and bitterness of soul" subsided, or that he became less partisan and more objective on the subject of the 1899 Award between then and 1944.

3.73. It is therefore plain that there is no evidence — none — that the arbitral proceedings were tainted by fraud or corruption and Venezuela's challenge to the Arbitral Award on this basis must fail. There is thus no need for the Court to decide if these grounds of nullity existed in 1899.

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[255] VCM, para. 5.130, and its foonote 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") (VCM, Vol. III, Annex 150).

[256] *Ibid.*

[257] Letter from Mr. Olney to Mr. Cleveland (6 March 1901) (Vol. III, Annex 28).

CHAPTER 4

VENEZUELA'S POST-AWARD CONDUCT

4.1. In Chapter 4 of its Memorial, Guyana describes Venezuela's conduct in relation to the 1899 Award. Following its publication on 3 October 1899, Venezuela immediately heralded the Award. Thereafter, for more than half a century, it repeatedly and unreservedly accepted and affirmed its validity and the boundary which it established.

4.2. Venezuela's decades-long acceptance and affirmation included its participation in a careful and thorough joint demarcation of that boundary, which culminated in the signing of the 1905 Boundary Agreement between Venezuela and Great Britain[258]. On the basis of the Award, Venezuela also delimited and demarcated its boundary with Brazil, and repeatedly refused to countenance any departure or modification of the boundary with British Guiana established by the 1899 Award[259]. Over a period of many years, the Venezuelan Government made numerous public statements which affirmed the validity of the 1899 Award and the boundary which it established. Venezuela stressed it had long "accepted"[260] the Award. It published official Venezuelan maps which depicted Venezuela's boundary with British Guiana following the line established by the 1899 Award[261]. Consistently with the terms of the Treaty of Washington, which provided that the parties shall treat the Award "as a full, perfect, and final settlement of all the

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[258] MMG, paras. 4.10-4.22.

[259] *Ibid.*, paras. 4.23-4.45.

[260] As noted at MMG, para. 4.49, in 1944, the Venezuelan Ambassador to the United States made a statement to the Pan-American Society in Washington in which he stressed that: "*We have accepted the verdict of the arbitration* for which we have so persistently asked" (Speech by the Venezuelan Ambassador to the United States, to the Pan-American Society of the United States (1944), p. 2 (MG, Vol. II, Annex 9) (emphasis added)).

[261] MMG, paras. 4.46-4.53.

questions referred to the Arbitrators"[262], Venezuela characterised the boundary as a "*chose jugée*"[263].

4.3. Venezuela's Counter-Memorial studiously and conspicuously ignores most of its post-Award conduct. To the extent it does address Venezuela's acts and omissions in the years following 1899, Venezuela's response comprises a mixture of bald and unevidenced claims, reliance on statements deliberately taken out of context, and assertions which are demonstrably contradicted by the factual record.

4.4. In Chapter 9 of its Memorial, Guyana identifies the important legal consequences that arise from Venezuela's decades-long recognition, acceptance, affirmation and implementation of the 1899 Award. Venezuela's Counter-Memorial largely does not take issue with the legal conclusions identified by Guyana, or contest or even address most of the factual and legal considerations on which they are based.

4.5. Instead, Venezuela's response to the legal arguments based on its post-1899 conduct consists principally of claims that for many years it was unaware of the matters which it now contends render the 1899 Award a nullity, and that it was unable to challenge the validity of the Award due to "structural coercion" from Great Britain. Venezuela argues that the 1905 Agreement was merely a "technical" instrument whose legal effects are wholly contingent upon the validity of the 1899 Award. It further contends that Guyana is barred both by the Geneva Agreement

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[262] Treaty of Washington (1897), Article XIII.

[263] As noted at MMG, para. 4.47, in 1941 Venezuela's Foreign Minister, Dr. Esteban Gil Borges, stated that the view of the Venezuelan Government was "*definitively* that matter was *chose jugée*" (Letter from the Venezuelan Foreign Minister, E. Gil Borges, to British Ambassador to Venezuela, D. Gainer (15 April 1941) (MMG, Vol. III, Annex 56)).

and by Guyana's own conduct from placing any reliance upon Venezuela's decades-long acquiescence in the Award and the boundary which it established.

4.6. Guyana demonstrates in this Chapter that each of Venezuela's arguments is devoid of merit. This Chapter begins by explaining why Venezuela is wrong to argue that its immediate response to the 1899 Award was not one of general and strong satisfaction (**I**). It then demonstrates how almost all the matters which form the basis for Venezuela's contention of nullity were known to Venezuela as soon as the Award was delivered in October 1899 (**II**). Third, it explains why Venezuela's assertion that "structural coercion" rendered it impossible for Venezuela to challenge the validity of the 1899 Award for many years is without substance and contradicted by the factual record, on which Venezuela passes in complete silence (**III**).

4.7. Guyana then addresses the legal implications of Venezuela's participation in the joint demarcation of the boundary established by the Award and its entry into the 1905 Boundary Agreement, which formally affirmed and codified that demarcated boundary (**IV**). It also addresses the many other official acts by Venezuela between 1899 and the 1960s which positively recognised and affirmed the validity of the 1899 Award and the boundary which it established (**V**).

4.8. This Chapter then responds to Venezuela's spurious contention that the publication of the Mallet-Prevost Memorandum in 1949 "changed everything" (**VI**), and Venezuela's false claim that it contested the validity of the 1899 Award following the publication of that Memorandum (**VII**). The Chapter concludes by demonstrating that Venezuela's argument that Guyana is barred from relying on Venezuela's decades-long affirmation, acceptance and acquiescence in the 1899 Award is groundless, as a matter of law and evidence (**VIII**).

I. Venezuela's Immediate Reaction to the 1899 Award

4.9. Venezuela asserts that it is "historically erroneous" and "wholly inaccurate to state … that Venezuela welcomed the Arbitral Award of 1899 with satisfaction"[264]. Rather, Venezuela argues, the record shows that it "was immediately seen as a disastrous award" for Venezuela[265].

4.10. These assertions are manifestly contradicted by the evidence before the Court. This shows a multitude of explicit and unequivocal declarations by Venezuela in support of the 1899 Award for several decades. As noted in Guyana's Memorial[266], the evidence includes statements expressing gratification at the overall outcome of the 1899 Award which were made immediately following the delivery of the Award by senior Venezuelan officials and representatives in October 1899, including:

– Venezuela's President, who affirmed that the "award was a source of satisfaction for the country, as international justice had returned a part of its territory that had been usurped and vindicated its right"[267].

– Venezuela's Agent before the Arbitral Tribunal, who explained that, in the "Sentence of Tribunal: England gives up Point Barima and the coast until Point Playa from thence the line goes until Schomburgk's (line) which it follows until the junction of the Cuyuni and Wenamu. This gives us five

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[264] VCM, paras. 7.1 and 7.6.

[265] *Ibid.*, para. 7.9.

[266] MMG, para. 9.8.

[267] See "Nouvelles de l'Étranger : Venezuela", *Le Temps* (11 October 1899), quoting from Venezuelan President Ignacio Andrade (Guyana's translation of the French original: "*l'arrêt était un motif de satisfaction pour le pays, car la justice internationale lui avait restitué une partie de son territoire usurpé et donnait raison à son bon droit.*").

thousand square miles east of the Schomburgk line. Arbiters and Counsel for Venezuela were brilliant."[268]

– Mr. Mallet-Prevost and former United States President Harrison, Venezuela's counsel in the Arbitration, who affirmed that "[n]o portion of the entire territory possessed more strategic value than this, both from a commercial and a military standpoint, and its possession by Great Britain was most jealously guarded. This point had been awarded to Venezuela and along with it a strip of coast about 50 miles in length, both giving to Venezuela the entire control of the Orinoco River."[269]

– Venezuela's Ambassador to Great Britain, who acknowledged that, 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"[270].

4.11. Aside from a bald, general and manifestly wrong assertion that Guyana's reliance on these statements is "made out of context"[271], in its Counter-Memorial

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[268] Letter from the Venezuelan Ambassador to the United Kingdom to the Venezuelan Minister of Foreign Affairs (7 October 1899) (MG, Vol. II, Annex 3).

[269] "Declarations from Mallet-Prevost and General Harrison, Venezuelan's Agents before the 1899 Tribunal", *The Times* (4 October 1899).

[270] Letter from the Venezuelan Ambassador to the United Kingdom to the Venezuelan Minister of Foreign Affairs (7 October 1899) (MG, Vol. II, Annex 3). Venezuela's Ambassador added that "for them (Britain)" the Award "has been to a certain extent a costly defeat"; that the Award "proves that Venezuela did well in forcing England to submit the question to arbitration in 1897"; and that in view of the outcome of the Award, "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."

[271] VCM, para. 7.6.

Venezuela completely ignores these statements of its own highest officials, and many others like them.

II. Venezuela's Contemporaneous Knowledge of the Matters which it Now Claims Render the 1899 Award a Nullity

4.12. Venezuela claims that it was unaware for many decades of the matters which it now alleges render that Award a nullity[272]. This claim is manifestly untrue and is contradicted by the contents of Venezuela's own written pleadings. The factual record and Venezuela's Counter-Memorial demonstrate that as soon as the 1899 Award was delivered, Venezuela was fully aware of almost all the matters which now form the basis of its contention of nullity. Indeed, most of the grounds on which Venezuela attacks the validity of the 1899 Award are based on the text of the Award itself — which was known to Venezuela from the very moment of its delivery, on 3 October 1899.

4.13. In Chapters 2 and 3, Guyana showed that none of these grounds are legally or factually sufficient to support Venezuela's contention that the 1899 Award should be declared invalid[273]. Here, Guyana demonstrates that Venezuela's excuse for not invoking any of these grounds for more than 60 years after the Award was issued — that it had no knowledge of them until 1962 — is equally unsupportable. This is important because it demonstrates that Venezuela's decades-long recognition, approval and affirmation of the Award was done in full knowledge of the matters which it now claims invalidate that Award.

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[272] See, e.g., VCM, para. 5.136.

[273] See above, paras. 2.5-2.110, and 3.2-3.73.

A. VENEZUELA'S ALLEGED UNAWARENESS OF THE GROUNDS FOR INVALIDITY OF THE 1897 TREATY

4.14. As explained in Chapter 2 above, Venezuela contends that the 1897 Treaty was invalid on four grounds:

- *First*, Venezuela claims that the Treaty was the result of a "criminal fraud" perpetrated by the United States, which negotiated the terms of the agreement in collusion with Great Britain, "behind Venezuela's back" and contrary to Venezuela's interests.

- *Second*, Venezuela contends that the Treaty prejudiced Venezuela because it disregarded the agreement concluded between Venezuela and Great Britain in 1850 which prohibited the occupation of "disputed territory" after that date, and because it provided that title to such territory could be obtained by effective occupation for a period of 50 years.

- *Third*, Venezuela contends that the Treaty prejudiced Venezuela because it did not provide for the appointment of any Venezuelan arbitrators.

- *Fourth*, Venezuela contends that it was coerced into signing the Treaty and did not consent to it.

4.15. It is self-evident that the purported basis for the second and third grounds — which both concern the terms of the Washington Treaty — were known to Venezuela not only before the 1899 Award was issued, but even before the Treaty was entered by Venezuela two years earlier. Having signed the Treaty in 1897, it is nonsensical for Venezuela to suggest that it was unaware for many years thereafter of the terms of Article IV (a) of that Treaty (which contained the supposedly prejudicial rule that fifty years of adverse holding shall constitute a good title) and

Article II (which provided for the appointment and nationality of the Arbitrators[274]). It would be equally untenable for Venezuela to contend that it was unaware of the *effects* of those terms until years after the Arbitration. Indeed, Venezuela's Counter-Memorial contends that the alleged injustice of those treaty provisions was evident on their face. Venezuela states, for example, that the 1897 Treaty "was *patently* prejudicial to its interests"[275] and that Article IV (a) of the Treaty "was clearly prejudicial to Venezuelan interests"[276]. Venezuela further states that:

> "Although the 1897 Treaty was signed by José Andrade, Venezuela's representative to the United State[s], 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."[277]

4.16. In other words, Venezuela expressly recognises that the basis for its second and third grounds of challenge to the validity of the Washington Treaty were well known to Venezuela — including its Head of State and the senior representative who formally signed the Treaty on Venezuela's behalf — before Venezuela entered that Treaty.

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[274] As Venezuela observes at para. 5.25 of its Counter-Memorial, the terms of Article II of the 1897 Treaty stipulated that the Arbitrators would comprise two American jurists and two British jurists, and did not provide for the appointment of a Venezuelan arbitrator in the event of the death or incapacity of any of those British or American Arbitrators ("Not only did Article II of the 1897 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.").

[275] VCM, para. 5.4 (emphasis original).

[276] *Ibid.*, para. 5.34. See to similar effect paras. 5.75 and 5.76, where Venezuela states that the 1897 Treaty was "so evidently adverse to Venezuela's interests" and "clearly prejudicial to its rights."

[277] VCM, para. 6.30.

4.17. The same is true of Venezuela's fourth ground of alleged invalidity, which concerns the circumstances in which Venezuela signed the Washington Treaty. As explained in Chapter 2 above, the suggestion that Venezuela was coerced into entering the Treaty is plainly false[278]. But even if (*quod non*) it were true, then Venezuela must have been aware of this at the time when it entered the Treaty; Venezuela could not possibly have been both coerced and at the same ignorant of that coercion.

4.18. It follows that Venezuela cannot seriously hope to sustain an argument that it was unaware of the matters which form the basis for its second, third and fourth grounds of challenge until after the 1899 Award was issued.

4.19. As to Venezuela's first ground of challenge — *viz.* its claim that the terms of the Washington Treaty were deliberately negotiated "behind its back" and contrary to its interests — this allegation is manifestly contradicted by the factual record, as explained in detail in Chapter 2. As the evidence summarised in that chapter makes clear, Venezuela's allegation that it was unjustly excluded from the negotiations of the Treaty, and that the United States negotiated the terms of the Treaty with Great Britain in a manner which was directly prejudicial to Venezuela's interests, is notably belied by the fact that throughout the negotiating process the United States Secretary of State, Mr. Olney, consulted closely with both Venezuela's Minister in Washington, Mr. Andrade, and its legal counsel, Mr. Storrow, regarding the negotiations. Mr. Andrade and Mr. Storrow instructed Mr. Olney regarding what terms would (and would not) be acceptable to Venezuela. Mr. Olney duly acted in accordance with those instructions, and kept his

[278] See paras. 2.94-2.101.

Venezuelan counterparts closely informed of the content and progress of the negotiations[279].

4.20. Furthermore, the record of the arbitration establishes that documents which Venezuela contends constitute evidence of the alleged conspiracy and perfidy of the United States and Great Britain in respect of the Washington Treaty were known to Venezuela during the course arbitration in 1898 and 1899. Venezuela's argument is that during the negotiation of the Treaty there were improper informal exchanges and decisions taken by Mr. Olney and Sir Julian Pauncefote (Great Britain's Ambassador to the United States) in 1896 regarding the terms, interpretation and effect of Article IV of the Treaty, and that Venezuela was deliberately not informed about this[280]. Yet, as explained in Chapter 2[281], the correspondence between Mr. Olney and Lord Pauncefote that included those exchanges was formally admitted into the record during the arbitration and was expressly discussed by Venezuela's counsel, ex-President Harrison, during the course of the hearings before the Tribunal. The existence and content of communications between the United States and Great Britain which Venezuela claims constitute evidence of a secret conspiracy against it have been known to Venezuela for more than 125 years.

4.21. Accordingly, each of Venezuela's four grounds for contesting the validity of the Washington Treaty are based on treaty text or actions of which Venezuela was fully aware of *before* the 1899 Award was issued.

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[279] See paras. 2.42-2.55. See in particular Letter from Mr. Olney to Mr. Brewer (10 November 1896) (Vol. III, Annex 5); Letter from Mr. Storrow to Mr. Olney (29 August 1896) (Vol. III, Annex 7); Letter from Mr. Olney to Mr. Storrow (12 September 1896) (Vol. III, Annex 8); Letter from Mr. Storrow to Mr. Olney (17 September 1896) (Vol. III, Annex 9); Letter from Mr. Storrow to Mr. Olney (26 October 1896) (Vol. III, Annex 10); Letter from Mr. Storrow to Mr. Olney (28 October 1896) (Vol. III, Annex 11); Letter from Mr. Olney to Mr. Storrow (18 November 1896) (Vol. III, Annex 14); Letter from Mr. Storrow to Mr. Olney (29 November 1896) (Vol. III, Annex 15).

[280] See, e.g., VCM, para. 5.7.

[281] See para. 2.77 above.

B. VENEZUELA'S AWARENESS OF THE ABSENCE OF REASONS IN THE 1899 AWARD AT THE TIME IT WAS DELIVERED

4.22. The fact that the 1899 Award did not contain reasons for the Tribunal's decision was self-evident on the face of the Award. This allegedly fatal defect in the Award was therefore known to Venezuela as soon the Award was handed down by the Tribunal, some 125 years ago.

4.23. It is telling that when Venezuela first advanced its contention that the 1899 Award was null and void, it specifically contended that the invalidity of the Award was apparent on the face of the Award. In November 1962, Venezuela's Foreign Minister told the United Nations that:

> "In Venezuela and the United States the arbitral award was carefully noted. *The first conclusion came from a cursory reading is that there is no justification or reason for it. There was no explanation as to why the boundaries were set as they were. It was impossible, historically, to do this. Venezuela was clearly a victim and had been despoiled.* For us this arbitral award has no validity. No one can give validity to something which never existed."[282]

C. VENEZUELA'S AWARENESS UPON READING THE AWARD OF THE GROUNDS ON WHICH IT NOW CLAIMS THAT THE TRIBUNAL EXCEEDED ITS JURISDICTION AND FAILED TO FULFIL ITS MANDATE UNDER THE 1897 WASHINGTON TREATY

4.24. Venezuela's contention that the Tribunal exceeded its jurisdiction and failed to fulfil the mandate conferred under the Washington Treaty is also grounded explicitly on the text of the 1899 Award. For example, in these proceedings Venezuela's Counter-Memorial states:

[282] VCM, Vol. III, Annex 143, p. 15 (emphasis added).

– "The Tribunal's excesses of power … *are plain from the text of the Award.*"[283]

– "*The brevity of the Award evidences* the Tribunal's deliberate disregard for these prescriptions. *Its text … demonstrates* that the Tribunal did not evaluate 'the substance of [its] mandate', let alone do so 'with the utmost care.'"[284]

– "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 … *reflected in objective features of the Award.*"[285]

– "[T]he Tribunal's actions are invalid from the moment of the pronouncement of its decision when it *manifestly* exceeded its powers"[286].

– "*The Tribunal established under the Washington Treaty … 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' 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'."[287]

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[283] VCM, para. 6.188 (emphasis added).

[284] *Ibid.*, para. 6.95 (emphasis added).

[285] *Ibid.*, para. 6.159 (emphasis added).

[286] *Ibid.*, p. 98, para. 57 (emphasis added).

[287] *Ibid.*, para. 6.117 (footnotes omitted, emphasis added).

– "The Award of 3 October 1899 is invalid. It is invalid because the Tribunal, in rendering it, *manifestly* exceeded its power … More specifically, in rendering the 1899 Award, *the arbitral Tribunal … failed to respond to one of the questions put to it in Article III.*"[288]

– "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 … *The Tribunal addressed this question in a short sentence … 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.*"[289]

– "*Th[e] 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 … 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

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[288] VCM, para. 6.86 (footnotes omitted, emphasis added).

[289] *Ibid.*, paras. 6.109-6.111 (emphasis added).

investigate the 'substance of [its] mandate' or that it would have to 'conform to the terms by which the Parties have defined this task'."[290]

– "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*."[291]

4.25. As noted in Chapter 3 above, in support of its contention of nullity, Venezuela argues (amongst other things) that the 1899 Award was manifestly invalid because "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"[292]. Yet Venezuela's own Counter-Memorial in this case makes clear that these alleged grounds of nullity were apparent on the face of the Award, known immediately to Venezuela, and were the subject of public commentary shortly after the Award was delivered in 1899:

– "the Tribunal went beyond the limits of its competence in two ways. First, *the Award allocated territories to British Guiana that, at the time, were disputed between the United Kingdom and Brazil* … This 'overreach' clearly could not be based on the *compromis* … That the Award had interfered with Brazil's territorial interests *was a standard feature of early discussions of the decision … it was undeniable that the tribunal had gone beyond its mandate* … leading commentators like Ernest Nys remained

[290] VCM, para. 6.131 (emphasis added).

[291] *Ibid.*, para. 6.132 (emphasis added).

[292] *Ibid.*, para. 6.137 (emphasis original).

highly critical of the Award, describing the transgression of Brazil's interests as 'une grossière erreur'."[293]

– "[T]he Tribunal went beyond its powers in another … 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 … As is clear from the wording of this passage [of the Award]*, 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 … *By setting out a regime for the Amakura and Barima rivers, the Tribunal clearly went beyond the task entrusted to it by the compromis* … [T]he 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' … 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.*"[294]

In other words, 125 years after the 1899 Award, Venezuela invokes what it knew and accepted and acted upon in October 1899 and subsequently, to claim that the Award is a nullity.

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[293] VCM, paras. 6.138-6.141 (emphasis added) (citing commentaries published in 1901 and 1910).

[294] *Ibid.*, paras. 6.143-6.148 (emphasis added).

D. VENEZUELA'S AWARENESS OF THE GROUNDS FOR ITS CURRENT ALLEGATIONS THAT THE TRIBUNAL FAILED TO APPLY INTERNATIONAL LAW OR THE "RULES" CONTAINED IN THE WASHINGTON TREATY

4.26. Venezuela's related contention that the Award is void because the Tribunal failed to apply international law and the "Rules" set out in the 1897 Treaty is also expressly founded on the text of the 1899 Award. In its Counter-Memorial, Venezuela states for example that:

– "*[T]here is ... 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."[295]

– "*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.*"[296]

– "*As is apparent from the text of the Award,* the Tribunal completely ignored the Rules stipulated in Article IV, it completely ignored the parties'

[295] VCM, para. 6.171 (emphasis added).

[296] *Ibid.*, para. 5.114 (emphasis added).

extensive arguments and 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*."[297]

– "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'*."[298]

E. VENEZUELA'S AWARENESS OF THE ALLEGEDLY "POLITICAL" RATHER THAN LEGAL NATURE OF THE 1899 AWARD AND THE FACT THE BOUNDARY WAS THE RESULT OF A COMPROMISE BETWEEN THE ARBITRATORS

4.27. Venezuela's contention that the 1899 Award was not based on legal considerations is explicitly based upon the text of the Award. In its Counter-Memorial, for example, Venezuela states that:

– "*None of this 'lengthy legal contest' is reflected in the Award ... The text of the Award reveals nothing approaching a legal process*: not the length of

[297] VCM, para. 6.129 (emphasis added).

[298] *Ibid.*, para. 6.111 (emphasis added).

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. … *On its face, nothing in this Award* gives the reader the impression that the decision was based on legal considerations."[299]

– "*From the text of the Award … it is clear* that the Tribunal failed to render a decision based in law. … *[T]he Award contains not a trace of legal reasoning*."[300]

– "*[O]n its face, the 1899 Award appeared as an arbitrary and purely political* ratification of the British unfounded claims."[301]

– "*[O]n the face of it, the 1899 Award appeared to be* an arbitrary and purely political ratification of unfounded British claims."[302]

4.28. More generally, Venezuela's contention that the Tribunal was biased against Venezuela, and that this bias infected the Tribunal's determination of the boundary, is founded upon nothing more than the composition of the Tribunal and the outcome of the Award. Once again these are both matters which Venezuela was obviously aware of in 1899[303].

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[299] VCM, para. 6.173 (emphasis added).

[300] *Ibid.*, paras. 6.167-6.168 (emphasis added).

[301] *Ibid.*, para. 7.2 (emphasis added).

[302] *Ibid.*, para. 7.58 (emphasis added).

[303] In its Counter-Memorial Venezuela states, for example, that "the arbitration panel leaned excessively towards British interests, with *the absence of any Venezuelan nationals among the arbitrators highlighting a glaring procedural anomaly*" (VCM, para. 2.17) (emphasis added) and that "[t]he 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*." (VCM, p. 94, para. 40) (emphasis added).

4.29. Furthermore, the fact that the boundary established by the 1899 Award was partly the result of a compromise between the arbitrators was obvious from the outcome of the Award and was openly acknowledged and reported at the time. The day after the Award was issued, Justice Brewer, one of the arbitrators appointed on behalf of Venezuela, gave an interview to the *New York Times* in which he explained that:

> "it was by the greatest conciliation and *mutual concessions that a compromise was arrived at*. If any of us had been asked to give an award, each would have given one differing in extent and character. The consequence of this was that *we had to adjust our different views, and finally to draw a line running between what each thought right*."[304]

F. STATEMENTS BY VENEZUELA REFLECTING ITS CONTEMPORANEOUS KNOWLEDGE OF THE MATTERS WHICH IT NOW CONTENDS RENDER THE 1899 AWARD A NULLITY

4.30. It follows that insofar as Venezuela seeks to impugn the validity of the 1899 Award on the basis of the grounds and arguments summarised above, these are all matters which Venezuela knew of and could have raised from the moment it first read the Award some 125 years ago. This point is reinforced by statements made by representatives of the Venezuelan Government in the period immediately following the 1899 Award, which expressly alluded to several of those alleged defects in the Award — including the claim that the outcome was the result of a compromise brokered by the President of the Tribunal.

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[304] "Judge Brewer's Opinion, Venezuela's Arbitrator Tells How the Verdict Was Reached", *The New York Times* (5 October 1899) (emphasis added) (see also MMG, para. 8.74, and VCM, Vol. III, Annex 171). On the same date, the *Advocate of Peace* published an article which reported that: "The decision of the tribunal *is considered a compromise*. It was made unanimously, the British and American members voting together. Though *appearing to bear the marks of compromise*, the judgment rendered is probably much nearer the right than if it had sustained entirely the contention of either party." ("The Venezuela Boundary Award", *The Advocate of Peace* (1894-1920), Vol. LXI, No. 10 (November 1899), pp. 227-228) (emphasis added).

4.31. For example, as noted in Chapter 3, on 4 October 1899 — the day after the Award was delivered — Venezuela's Agent at the Arbitration, Mr. Rojas, sent a letter to the Foreign Minister of Venezuela which described Mr. Rojas' knowledge of exactly how the alleged compromise had arisen within the Tribunal[305]. Indeed, as explained at paragraphs 3.65 to 3.66 above, Venezuela learned of the compromise described in its Agent's letter to his Foreign Minister even before the Award was issued when the two American arbitrators appointed by Venezuela met with its counsel — Mr. Mallet-Prevost and former President Harrison — and told them about the deliberations that were then taking place. They explained that, in the circumstances, they were inclined to agree with the Tribunal president's proposal rather than maintain their position on the boundary and suffer a majority Award that would be more favourable to Great Britain, and Venezuela's counsel agreed[306].

4.32. Subsequent statements by senior Venezuelan officials offer further proof of Venezuela's knowledge of the arbitrators' compromise. For example, on 22 October 1900, Venezuela's Minister of Foreign Affairs told Venezuela's Commissioner on the Joint Boundary Commission, Sr. Felipe Aguerrevere, that the 1899 Award was "more the result of a compromise than of an essentially judicial examination", and that the boundary established by the Award was "a line de facto, determined without any support or reason"[307].

4.33. It follows that there is no doubt that in the period immediately after the 1899 Award was delivered Venezuela knew of the matters — including the various

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[305] See para. 3.24 above, quoting from the Letter from Mr. Rojas to the Foreign Office Minister of Venezuela (4 October 1899) (VCM, Vol. II, Annex 65).

[306] See paras. 3.65-3.66 and Otto Schoenrich, "The Venezuela-British Guiana Boundary Dispute", *American Journal of International Law*, Vol. 43, No. 3 (July 1949), pp. 529-530 (MMG, Vol. III, Annex 1).

[307] Report on the Boundary Question with British Guiana submitted to the National Government by the Venezuelan Experts, 1967, p. 21, para. 28 (VCM, Vol. III, Annex 150).

alleged excesses of the Tribunal's jurisdiction and the role that the president of the Tribunal, Professor Martens, allegedly played in procuring the unanimous decision of the Tribunal — which it now contends render the Award a nullity. Yet despite that knowledge, for more than 60 years after 1899 Venezuela made no protest or challenge to the effectiveness of the Award. To the contrary, on the basis of the Award it engaged in numerous official acts which affirmed both the validity of the Award and the boundary which it established[308].

III. Venezuela's Claim that it was Unable to Challenge the Validity of the 1899 Award due to "Structural Coercion"

4.34. Venezuela has not put into the record any evidence that it questioned or contested the validity of the Award for several decades after it was delivered. This is not in dispute.

4.35. Venezuela attempts to explain away the absence of any such challenge by claiming that it was "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, [as a result of which] Venezuela was not in a position to challenge the 1899 Arbitral Award"[309]. It claims that "in the years immediately following [the 1899 Award] … Venezuela was systematically threatened from the outside by the then powerful and bullying British Empire" and that "[t]hreats to Venezuela by Britain, and also by other empires and powers of the time, are very numerous and prove the situation of structural coercion"[310]. It adds that "as soon as the circumstances allowed, Venezuela made its challenge to the Award known to

[308] See paras. 4.44-4.71 below.

[309] VCM, para. 7.2.

[310] *Ibid.*, paras. 7.21-7.22.

the whole world"[311]. Since Venezuela did not challenge the Award until 1962, the necessary implication of its argument is that the state of alleged "structural coercion" which made it impossible for Venezuela to challenge the Award endured for more than half a century, until 1962.

4.36. Like its claim that it was "coerced" into entering the 1897 Treaty, Venezuela's claim that "structural coercion" rendered it powerless to challenge (or even publicly question) the validity of the 1899 Award is hopeless: it is not substantiated, and it is extensively contradicted by the factual record.

4.37. *First*, it is telling that Venezuela cites no source or evidence in support of any of these assertions. It has not adduced a single document to corroborate its claim that "structural coercion" made it impossible for Venezuela to dispute or even openly doubt the validity of the 1899 Award. It is equally revealing that Venezuela has not adduced any evidence of any private expressions of doubt by Venezuelan officials as to the validity of the 1899 Award during the years-long period when it claims that "structural coercion" prevented it from publicly challenging the validity of the 1899 Award. Had such evidence existed, Venezuela would doubtless have adduced it.

4.38. *Second*, Venezuela's claim that "structural coercion" prevented it from raising any objection or concerns regarding the validity of the 1899 Award is impossible to reconcile with the assertive and sometimes threatening nature of Venezuela's communications to Great Britain regarding the disputed boundary in the period immediately preceding the issuance of the Award. In the words of Venezuela's Counter-Memorial, during that period "Venezuela … never ceased to

[311] VCM, para. 2.19.

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"[312]. The Counter-Memorial adds that "Venezuela continued to protest every act that were [*sic*] an attack on its sovereignty"[313].

4.39. *Third*, Venezuela's claim that it was intimidated into remaining silent about the purported invalidity of the 1899 Award is contradicted by its bellicose actions — including its use of force against British assets and British subjects — in the period immediately after the Award was delivered. For example:

- In January 1901 — just 15 months after the Award was delivered — Venezuelan gunboats landed a force of 20 Venezuelan soldiers on the island of Patos, which was then part of the British colony of Trinidad and Tobago. Venezuelan forces seized several British boats and detained and kidnapped a number of British subjects from that British territory[314].

- In February 1901, another Venezuelan military vessel landed on the island of Patos; its crew proceeded to attack British subjects on the island and seize their boats and other property[315].

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[312] VCM, para. 4.178.

[313] *Ibid.*, para. 4.176.

[314] See Letter from the Governor, Sir A. Moloney, to Mr. Chamberlain and enclosures (24 February 1901) (Vol. III, Annex 29).

[315] See Letter from Mr. Grant Duff to the Marquess of Lansdowne (17 April 1901) (Vol. III, Annex 30).

– In December 1901, Venezuelan forces seized a British-owned and British-registered vessel in the Barima River (which the 1899 Award had determined was open to free navigation) and detained its entire crew[316].

– In May 1902, a British vessel was attacked and destroyed by a Venezuelan gunboat in the Venezuelan harbour of Pedernales[317]. The following month a British vessel was seized by a Venezuelan gunboat in the high seas; the vessel and its crew were forcibly taken to the Venezuelan port of Porlamar, where the vessel was confiscated[318]. By the end of the summer of 1902, Venezuela had seized or destroyed no fewer than seven British ships[319].

4.40. Venezuela's willingness and ability to resort to force against British-owned assets and British subjects belies its claim that it somehow felt so intimidated and enfeebled by British imperial domination that it was incapable of expressing any challenge to the validity of the 1899 Award. This is reinforced by the fact that during the course of diplomatic exchanges between Great Britain and Venezuela regarding some of the incidents described above, Venezuelan officials had no hesitation in disputing British title to the island of Patos and expressly asserting Venezuelan sovereignty over the territory[320]. The Venezuelan Government was

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[316] See Letters from Acting medical officer, northwestern district, to Government secretary (21 and 27 December 1901) (Vol. III, Annex 31).

[317] See Memorandum on existing causes of complaint against Venezuela (20 July 1902), at pp. 611-612 (Vol. III, Annex 32). See also Letter from Mr. Haggard to the Marquess of Lansdowne (30 June 1902) (Vol. III, Annex 33).

[318] See *ibid.*, pp. 612-613.

[319] See *ibid.*, pp. 608-613 (*Augusto* (seized in January 1901); *Sea Horse* (seized on 26 February 1901); *María Teresa* (seized in January 1901); *Pastor* (seized and attacked on 30 August 1901); *Indiana* (seized and detained in January 1902); *In Time* (destroyed on or about 1 May 1902); *Queen* (seized in June 1902)). See also Letter from Mr. Haggard to the Marquess of Lansdowne (30 June 1902) (Vol. III, Annex 33).

[320] See, e.g., Letter from Mr. Eduardo Blanco to Mr. Grant Duff (27 March 1901) (Vol. III, Annex 34) ("As Venezuela holds that the island of Patos lawfully belongs to her, the Government will have to consider the incident as it is affected by that circumstance."); Letter from General

equally forthright in lodging forceful official protests against the British Government in respect of other matters relating to the two States' bilateral affairs[321]. Venezuela's diplomatic exchanges with Great Britain throughout this period were consistently frank and uninhibited.

4.41. *Fourth*, the "naval blockade" to which Venezuela refers lasted just three months and ended in February 1903. Accordingly, even if, *quod non*, the blockade had somehow made it impossible for Venezuela to question the 1899 Award, this would only explain the absence of a challenge to the Award during that brief period; it can provide no justification for the absence of any challenge to the Award for more than half a century after it ended.

Pachano to Mr. Haggard (20 December 1901) (Vol. III, Annex 35) ("if, as appears from the facts transmitted to your excellency, the event occurred in waters of the island of Patos or within its boundaries, it must be considered in connection with the notorious circumstance that Venezuela considers the island in question as its legitimate possession.").

[321] For example, in 1901 and 1902 the Governments of Venezuela and Great Britain engaged in protracted diplomatic correspondence regarding a ship which Venezuela had declared to be a pirate vessel. In a letter from Venezuela's Minister of Foreign Affairs, General Jacinto Regino Pachano, to the British Government on 24 March 1902, General Pachano stated: "*Venezuela protested at the time to the honorable legation* against the acts of hostility committed against the Government by the said vessel on the coast of the Republic … *Later, it protested against the attitude of indifference or toleration assumed by the governor of Trinidad* [a British colony] in the presence of revolutionary movements openly prepared in the territory of the island against the constitutionally established authorities in the Estados del Oriente. Herewith, in conformity with a special charge from the constitutional President of the Republic, *I present in this note, with all the energy demanded by the case, a new protest* against the unusual act of the colonial authorities, who, after the proceedings had before this respectable legation, harbored said steamer without taking into consideration, to judge from the development of affairs, the aforesaid proceedings." (Letter from Venezuela's Minister of Foreign Affairs, General Jacinto Regino Pachano, to the British Minister Resident, Mr. William Henry Doveton Haggard (24 March 1902) (Vol. III, Annex 36) (emphasis added)). See also Letter from Mr. R. Lopez Baralt to Mr. Haggard (16 July 1902) (Vol. III, Annex 37) ("The vice-president charged with the executive power has taken note of the full assurances which the Government of His Majesty has given with reference to that ship, but these do not alter for the Government of Venezuela the point of view from which it has, from the beginning, regarded that ship, and which now compels it *to protest solemnly against her being recognized by Great Britain as one which is not to be considered as outside international law*." (emphasis added)).

4.42. *Fifth*, it is notable that in the *Venezuelan Preferential Case* before the Permanent Court of Arbitration (an arbitration in 1903 between Venezuela and Great Britain, Germany, Italy, United States, Belgium, France, Mexico, the Netherlands, Spain, Sweden and Norway), Venezuela *did* promptly lodge a formal protest against an aspect of the award rendered by that arbitral tribunal. On 15 March 1904 (just three weeks after the tribunal's final award was delivered) Mr. Herbert W. Bowen, Venezuela's Agent, submitted a formal written protest against a passage of the award which Venezuela considered "absolutely erroneous". The letter asserted that Venezuela had "positive proof that the said conclusion of the arbitration is erroneous" and therefore requested that the award be revised accordingly[322]. This demonstrates that in the early 1900s Venezuela was willing and able to protest openly and forcefully against an arbitral award which it considered wrong. In relation to the 1899 Award, it did not do so.

4.43. *Sixth*, Venezuela's argument that the absence of any challenge to the validity of the 1899 Award was the result of British coercion is also contradicted by statements made by Venezuela when it first advanced its contention of nullity in 1962. On 12 November 1962, Venezuela's Foreign Minister, Dr. Marcos Falcón Briceño, told the United Nations that as soon as the 1899 Award was delivered Venezuela "certainly … knew that we had been robbed" but that the absence of any protest against the Award at the time was the result of Venezuela's internal political instability. He acknowledged that "this is our fault, not the fault of Great Britain"[323].

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[322] See Protest of Mr. Herbert W. Bowen, Agent for Venezuela, Against the Award submitted to the Secretary-General of the International Tribunal at The Hague (15 March 1904) (Vol. III, Annex 38).

[323] See VCM, Vol. III, Annex 143, p. 23. Venezuela's representative told the United Nations that: "While the arbitral award was being handed down in Venezuela on 3 October, in Venezuela a revolution was taking place which was very near Caracas, the capital of our country. At these moments – in 1899, I think I can say this is an historical fact – *Venezuela was virtually without a Government. Naturally, this is our fault, not the fault of Great Britain*" (emphasis added).

IV. The Effect of the Joint Demarcation of the Boundary Established by the 1899 Award and the 1905 Boundary Agreement

4.44. As well as the absence of any Venezuelan protest or challenge to the validity of the 1899 Award, Venezuela's affirmation of the Award is clearly demonstrated by its full and active participation — without any reservation of its rights — in a joint demarcation of the border established by the Award. Similarly, Venezuela formally marked the entry into force of the 1905 Agreement with Great Britain and did so unreservedly.

4.45. On 29 March 1900, Venezuela's Minister of Foreign Affairs, Mr. Andueza Palacio, sent a letter to the British Government which described demarcation of the boundary between Venezuela and British Guiana as "a matter of such importance". He explained that it was the position of the Government of Venezuela that "it is mutually beneficial to proceed in all that concerns the sentence of October 1899, by concerted and simultaneous action"[324].

4.46. As explained in Guyana's Memorial[325], consistent with that attitude, between 1900 and 1905 Venezuela and Great Britain embarked upon a thorough demarcation of the entire border established by the 1899 Award. This was a joint exercise, done without reservation. At the conclusion of that joint demarcation exercise, the two States entered a treaty — the 1905 Agreement — which formally confirmed the demarcated boundary as the official boundary between Venezuela and British Guiana. The treaty was entered into without reservation.

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[324] Letter from Mr. Andueza Palacio to British Foreign Office, 29 March 1900 (Vol. III, Annex 39).

[325] See MMG, paras. 4.10-4.22.

4.47. Venezuela does not allege in its Counter-Memorial — how could it? — that "structural coercion" was the cause of either its participation in the joint demarcation of the boundary or its entry into the 1905 Agreement. Venezuela therefore accepts that these official acts were exercises of its own independent sovereign free will.

4.48. However, it seeks to downplay the significance of the 1905 Agreement by arguing that "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"[326]. But the 1905 Agreement was not "merely a technical exercise": it is a treaty which is binding under international law. Indeed, the 1905 Agreement was recorded in the official record of the Ministry of Foreign Affairs of Venezuela under "Public treaties and international agreements of Venezuela"[327]. Moreover, as the statements set out at paragraph 4.56 below demonstrate, Venezuela's attempt to diminish the significance of the 1905 Agreement is belied by its steadfast refusal to countenance any modification of the demarcated boundary.

4.49. Venezuela further contends 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."[328] No legal justification is given for this argument.

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[326] VCM, para. 7.63.

[327] See Ministerio de Relaciones Exteriores, *Tratados Públicos y Acuerdos internacionales de Venezuela: Volumen 3 (1920-1925)* [1927], p. 604 (Vol. III, Annex 40).

[328] VCM, para. 7.64.

4.50. And that argument is wrong in any event. *First*, the 1905 Agreement was a binding treaty entered between two sovereign States, whose purpose was to formally recognise an official "General Map of the Boundary" in order to ensure that both States "possess authentic documents of like tenure *which set forth their respective rights in the territory which has been demarcated*"[329]. The Agreement expressly provided that Venezuela and Great Britain "regard this Agreement as having a perfectly official character with respect to the acts *and rights of both Governments in the territory demarcated*" and that the Governments of the two States "accept the points mentioned below [i.e. the coordinates of their boundary] as correct"[330]. The Agreement therefore confirmed and codified substantive territorial rights.

4.51. *Second*, as set out above, when Venezuela entered the 1905 Agreement — without any reservation — it was aware of the matters which now form the basis for its contention that the 1899 Award was a nullity. Venezuela chose to enter the 1905 Agreement notwithstanding that knowledge. By so doing, Venezuela cannot escape the consequences of its comportment: it unambiguously and without reservation cured any belatedly alleged defect which, *quod non*, might have afflicted the Award. Venezuela's entry into the 1905 Agreement therefore abrogated any possible basis for challenging the boundary demarcated therein.

4.52. As Guyana explained in its Memorial, the 1899 Award and the 1905 Agreement are legally separate juridical acts[331]. One is a judicial decision; the other is a treaty which was freely negotiated, entered and ratified by Venezuela some six years later. These are distinct legal acts with different legal foundations. As the

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[329] Agreement between the British and Venezuelan Boundary Commissioners with regard to the Map of the Boundary (10 January 1905), third article (Application, Annex 3) (emphasis added).

[330] *Ibid.*, fourth article (emphasis added).

[331] See MMG, paras. 9.19-9.20.

international tribunal in the *Laguna del Desierto* case explained: "A decision on a boundary issue and the demarcation … *are two distinct acts, each of which has its own legal force*."[332]

4.53. While the 1905 Agreement may not have come into being without the Award, this does not mean that the validity of the Agreement is contingent upon the validity of the Award. As an international treaty, it is axiomatic that the validity of the 1905 Agreement depends upon the conditions which govern the validity of treaties. Venezuela has never argued (nor could it credibly argue) that the 1905 Agreement is void, or voidable, or that it has been or could be terminated under any of the grounds recognised under international law[333]. It follows that even if, *quod non*, the 1899 Award was void, the 1905 Agreement remains a valid treaty which is binding on Venezuela. And the boundary which is expressly recognised and enshrined in that treaty is the valid and binding boundary between Venezuela and Guyana.

V. Venezuela's Prolonged Acceptance of the 1899 Award and Its Recognition and Acquiescence in the Boundary which It Established

4.54. Venezuela accepted the Award upon publication, and it accepted the demarcation of the boundary determined by the 1899 Award upon its entry into the 1905 Agreement. Furthermore, for decades after 1899, Venezuela engaged in a wide range of other official acts which expressly affirmed the Award and which

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[332] *Case concerning a boundary dispute between Argentina and Chile concerning the delimitation of the frontier line between boundary post 62 and Mount Fitzroy ("Laguna del Desierto")*, Decision of 21 October 1994, *UNRIAA*, Vol. XXII, p. 24, para. 67 (emphasis added).

[333] At para. 9.20 of its Memorial on the Merits, Guyana observed that pursuant to the principle reflected in Article 45 of the Vienna Convention on the Law of Treaties, by 1962 Venezuela had lost the right to invoke any ground for invalidating the 1905 Agreement because of its prolonged acceptance not only of the Award but also of the Agreement itself. Venezuela's Counter-Memorial does not dispute this argument.

were manifestly incompatible with any suggestion that it was a nullity. These acts included: (*A*) numerous public statements, decrees and reports promulgated by the Venezuelan Government which positively affirmed and followed that border; (*B*) Venezuela's demarcation of its border with Brazil in strict conformity with the terms of the 1899 Award; and (*C*) Venezuela's publication of numerous official maps depicting its border following the line established by the 1899 Award and demarcated in the 1905 Agreement.

A. Official Statements, Decrees and Reports by Venezuela which Reflected its Acceptance and Recognition of the Boundary Established by the 1899 Award

4.55. In the decades after 1899, the Venezuelan Government issued many formal public statements, decrees and reports which reflected its acceptance of the 1899 Award and the boundary which it established. Examples of those documents are cited and summarised in Guyana's Memorial[334]. They include statements stressing to Great Britain that the demarcation of the Venezuela-British Guiana boundary must "be of a permanent character calculated to avoid any uncertainty in the future or doubt as to the real frontier between either territory"[335] and emphasising that Venezuela's ratification of the work of the Joint Boundary Commission was "entirely restricted *to that part which is in conformity with the Paris award*"[336]. Recognising how unhelpful these documents are to its case, Venezuela has adopted the only strategy available to it in the Counter-Memorial: it has completely ignored them.

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[334] MMG, paras. 4.46-4.53.

[335] Letter from Alejandro Ybarra to P.C. Wyndham (19 June 1905) (MMG, Vol. III, Annex 43).

[336] Letter from J. de J. Paúl to Sir Vincent Corbett (12 March 1908) (Inclosure in Letter from Sir Vincent Corbett to Sir E. Grey (16 March 1908) (MMG, Vol. III, Annex 51)) (emphasis added).

4.56. In addition to the examples cited in Guyana's Memorial, the statements, decrees and reports by the Government of Venezuela also included the following:

– On 23 May 1905, the Foreign Minister of Venezuela delivered his annual address to the Congress of Venezuela, in which he stated:

> "It gives me particular satisfaction to inform you that the Commission charged with representing Venezuela in the boundary delimitation with British Guiana, pursuant to the Arbitral Award rendered in Paris on October 3, 1899, has successfully completed its mandate. *This effectively resolves the significant territorial dispute that Venezuela maintained with Great Britain for approximately three-quarters of a century.*"[337]

– On 23 May 1907, the Foreign Minister of Venezuela informed the Venezuelan Congress that, pursuant to a legal opinion received from legal counsel to Venezuela, a British proposal to replace the straight line from Wenamu to Roraima established by the 1899 Award with a line which follows the mountain ranges which divide waters flowing to Orinoco and Caroní for Venezuela, and Essequibo and Mazaruni for British Guyana, was denied[338].

– On 3 January 1911, the Venezuelan President issued a Presidential Decree which "divi[ded] the border between the State of Bolívar and the Federal Territory of Delta-Amacuro with British Guiana into two National Border

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[337] *El Libro Amarillo de los Estados Unidos de Venezuela*, 1905, p. xii (Vol. III, Annex 41) (emphasis added).

[338] Department of Foreign Affairs of Venezuela, *The Yellow Book: Presented to the National Congress in its 1907 Sessions*, p. xxxiv (MMG, Vol. IV, Annex 70). See MMG, paras. 4.24-4.26 for a summary of the relevant background to this proposal and Venezuela's insistence in response that the boundary fixed by the 1899 Award and the 1905 Agreement was immutable.

Offices under the Ministry of Home Affairs" in conformity with the boundary established by the 1899 Award and the 1905 Agreement[339].

– On 22 February 1922, the Venezuelan Ministry of Home Affairs entered an agreement which established the limits of the Caroní religious mission in accordance with the boundary which was established by the 1899 Award and enshrined in the 1905 Agreement[340].

4.57. These additional examples offer further evidence of Venezuela's unqualified endorsement of the Award and the resulting boundary. Venezuela does not allege that it was forced to engage in acts such as those described above as a result of "structural coercion". Venezuela's silence in the Counter-Memorial confirms that these official acts were all done in the exercise of its sovereign free will, and reflected Venezuela's acceptance of the 1899 Award and the resulting boundary.

B. Demarcation of Venezuela's Boundary with Brazil in Conformity with the 1899 Award and 1905 Agreement

4.58. As explained in Chapter 4, Section IV of Guyana's Memorial, between 1926 and 1928 Venezuela and Great Britain entered agreements with Brazil regarding the location of their respective boundaries and in 1932 the three States concluded a tripartite agreement on the location of the tri-junction point. Those agreements all placed the tri-junction point on the summit of Mount Roraima — the location which the 1899 Award had identified as the border between British Guiana and Venezuela.

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[339] Presidential Decree concerning the division of the border between the State of Bolívar and the Federal Territory of Delta-Amacuro with British Guiana into two National Border Offices under the Ministry of Home Affairs (3 January 1911) (Vol. III, Annex 42).

[340] Convenio de la Misión del Caroní (22 February 1922) (Vol. III, Annex 43).

4.59. Throughout the process of fixing the tri-junction point, Venezuela insisted on strict adherence to the terms of the 1899 Award. For example, during the demarcation process it emerged that the boundary-marker installed on Mount Roraima by the Venezuela-British Guiana Boundary Commission in 1904 had inadvertently been placed on one of the edges of Mount Roraima, rather than its summit, and that the geographical coordinates in the 1905 Agreement were therefore inaccurate. As stated by Venezuela in an internal Memorandum of 16 December 1931:

> "In accordance with the Paris Award of 3 October 1899, the boundary line between Venezuela and British Guiana terminates in a straight line connecting the sources of the Venamo River with Mount Roraima summit. This latter point is, moreover, the terminus of the boundary between British Guiana and Brazil.
>
> In 1904, the commissioners charged with demarcating the Award line between Venezuela and British Guiana placed a marker at what they hastily judged should be its terminal point; however, subsequent surveys have confirmed that this marker is not situated on Mount Roraima's summit but rather on one of the edges of the great plateau on which said mountain terminates.
>
> Venezuela's desire is precisely ... to adjust the 1904 marker to its proper position on Mount Roraima ... . This solution is the only one that enables the boundary line to meet the condition of being a straight line between the Venamo sources and Mount Roraima, as required by the terms of the aforementioned Award."[341]

4.60. In response to a British proposal that the official boundary be modified to correspond with the actual location of the boundary-marker, Venezuela's Foreign Minister was emphatic that the boundary described in the 1899 Award was "the frontier *de droit* between Venezuela and British Guiana" and that this could not be

[341] *El Libro Amarillo de los Estados Unidos de Venezuela*, 1933, p. 189 (Vol. III, Annex 44).

modified by agreement since "the frontier *de droit* … is the result of a public treaty ratified by the Venezuelan legislature" and therefore the "Venezuelan government regret that for constitutional reasons they are *unable to depart from the letter of the award*"[342].

4.61. Venezuela completely ignores these matters in its Counter-Memorial. Instead, it puts forward confused arguments regarding the delimitation of Venezuela's boundary with Brazil. None of those arguments can provide any support for Venezuela's case.

4.62. *First*, Venezuela contends that the 1899 Award erroneously awarded to Great Britain certain territory which was later determined, in the context of a 1904 arbitration between Great Britain and Brazil, to belong to Brazil. On this basis, Venezuela contends that "the border affairs with Brazil … confirm the nullity of the 1899 Award"[343]. This argument is wrong, as shown in Chapter 3[344]. To summarize, Venezuela ignores that the 1899 Award expressly stipulated that it was subject and without prejudice to any existing or future question regarding the location of Brazil's boundaries with Venezuela and British Guiana[345]. It follows that the outcome of the 1904 arbitration between Brazil and Venezuela cannot be relied upon to call into question the validity of the 1899 Award.

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[342] Letter from the Venezuelan Minister for Foreign Affairs, P. Itriago Chacín, to W. O'Reilly (31 October 1931) (MMG, Vol. III, Annex 53), and Telegram from P. Itriago Chacín to W. O'Reilly (23 November 1931) (*ibid.*, Annex 54) (emphasis added).

[343] VCM, para. 7.72.

[344] See paras. 3.43-3.47 above.

[345] The eighth paragraph of the 1899 Award stated: "Provided always that the line of determination fixed by this Award shall be subject and without prejudice to any questions now existing, or which may arise, to be determined between the Government of Her Britannic Majesty and the Republic of Brazil, or between the latter Republic and the United States of Venezuela."

4.63. *Second*, Venezuela states that "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"[346]. However, Guyana makes no such suggestion in its Memorial. Rather, Guyana accurately and explicitly explains that the 1928 demarcation Agreement between Venezuela and Brazil stipulated that: "the frontier between the two countries should be clearly defined, from the island of Sao Jose to a point *on Mount Roraima where the frontiers of Brazil, Venezuela and British Guiana meet*"[347]. The Venezuela/Brazil Agreement therefore expressly proceeded on the basis that the borders of Venezuela, British Guiana and Brazil met at precisely the location where the 1899 Award had determined the borders of British Guiana and Venezuela met. The Venezuela/Brazil Agreement thus clearly reflects Venezuela's acceptance (as well as Brazil's) of the validity of the boundary established by the 1899 Award.

C. Venezuela's Publication of Official Maps Depicting its Border with British Guiana Following the Line Established by the 1899 Award

4.64. As set out in Guyana's Memorial[348], Venezuela has published many official maps that depict its border with British Guiana on the basis of the 1899 Award and the 1905 Agreement. It has done so over more than five decades: in 1911[349], 1928[350],

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[346] VCM, para. 7.66.

[347] See MMG, para. 4.35, quoting from the Protocol between Brazil and Venezuela respecting the Demarcation of the Frontier (24 July 1928), in *British and Foreign State Papers*, Vol. CXXX, Part I (1929), p. 448 (emphasis added), also available at https://babel.hathitrust.org/cgi/pt?id=mdp.39015035801896&seq=546 (last accessed on 27 November 2024).

[348] See MMG, paras. 4.31, 4.43-4.45, 4.50-4.51, 4.53, and 4.58.

[349] See Department of Internal Affairs of Venezuela, "Mapa Físico y Político de los E.E.U.U. de Venezuela, 1: 1,000,000" (1a ed., 1911) (MMG, Vol. II, Figure 4.6).

[350] See Department of Internal Affairs of Venezuela, "Mapa Físico y Políticó de los Estados Unidos de Venezuela, Escala 1:1,00,000" (1a ed., 1928) (MMG, Vol. II, Figure 4.8).

1937[351], 1940[352], 1945[353], 1947[354], 1950[355], 1956[356], 1960[357], and 1962[358]. Although Venezuela's Counter-Memorial addresses and exhibits a total of 40 maps from the sixteenth century to the second half of the twentieth century, it has nothing to say about all the maps it commissioned, approved and published between 1905 and 1962, all of which show its boundary with British Guiana to follow the line fixed by the 1899 Award and the 1905 Agreement.

4.65. In addition to the maps shown in Guyana's Memorial, the Government of Venezuela published several other official maps between 1908 and 1950 which depicted precisely the same boundary line between Venezuela and British Guiana, none of which were mentioned in Venezuela's Counter-Memorial.

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[351] See Mapa Físico y Político de los Estados Unidos de Venezuela" (1937), *reprint of* "Mapa Físico y Político de los Estados Unidos de Venezuela (1928) (with territorial modifications) (MMG, Vol. II, Figure 4.9).

[352] See United States of Venezuela, Ministry of Public Works, National Cartography Directorate, Division of Map and Atlas, "Map de los EE.UU. de Venezuela" (1939, published in 1940) (MMG, Vol. II, Figure 4.10).

[353] "States Represented at the United Nations Conference on International Organisation", San Francisco (April-June 1945) (MMG, Vol. II, Figure 4.12).

[354] United States of Venezuela, Department of National Cartography, Ministry of Public Works, Carta Aeronáutica de Venezuela, Escala: 1:1,000,000 (5 sheets) (1947) (MMG, Vol. II, Figure 4.13).

[355] United States of Venezuela, Department of National Cartography, Ministry of Public Works, Mapa Físico y Político de los Estados Unidos de Venezuela (1950) (MMG, Vol. II, Figure 4.14).

[356] See United States of Venezuela, Department of National Cartography, Ministry of Public Works, Mapa de la República de Venezuela (1956) (MMG, Vol. II, Figure 4.16). See also Republic of Venezuela, Department of National Cartography, Ministry of Public Works, Mapa Físico y Político de la República de Venezuela (1955) (MMG, Vol. II, Figure 4.15).

[357] See United States of Venezuela, Department of National Cartography, Ministry of Public Works, Mapa de la República de Venezuela (1960) (MMG, Vol. II, Figure 4.17).

[358] See United States of Venezuela, Department of National Cartography, Ministry of Public Works, Mapa de la República de Venezuela (1962) (MMG, Vol. II, Figure 4.18).

4.66. In November 1939, the Venezuelan Ministry of Promotion published a map of the Venezuelan state of Bolivar, which borders Guyana. It is reproduced as **Figure 4.1** below[359].

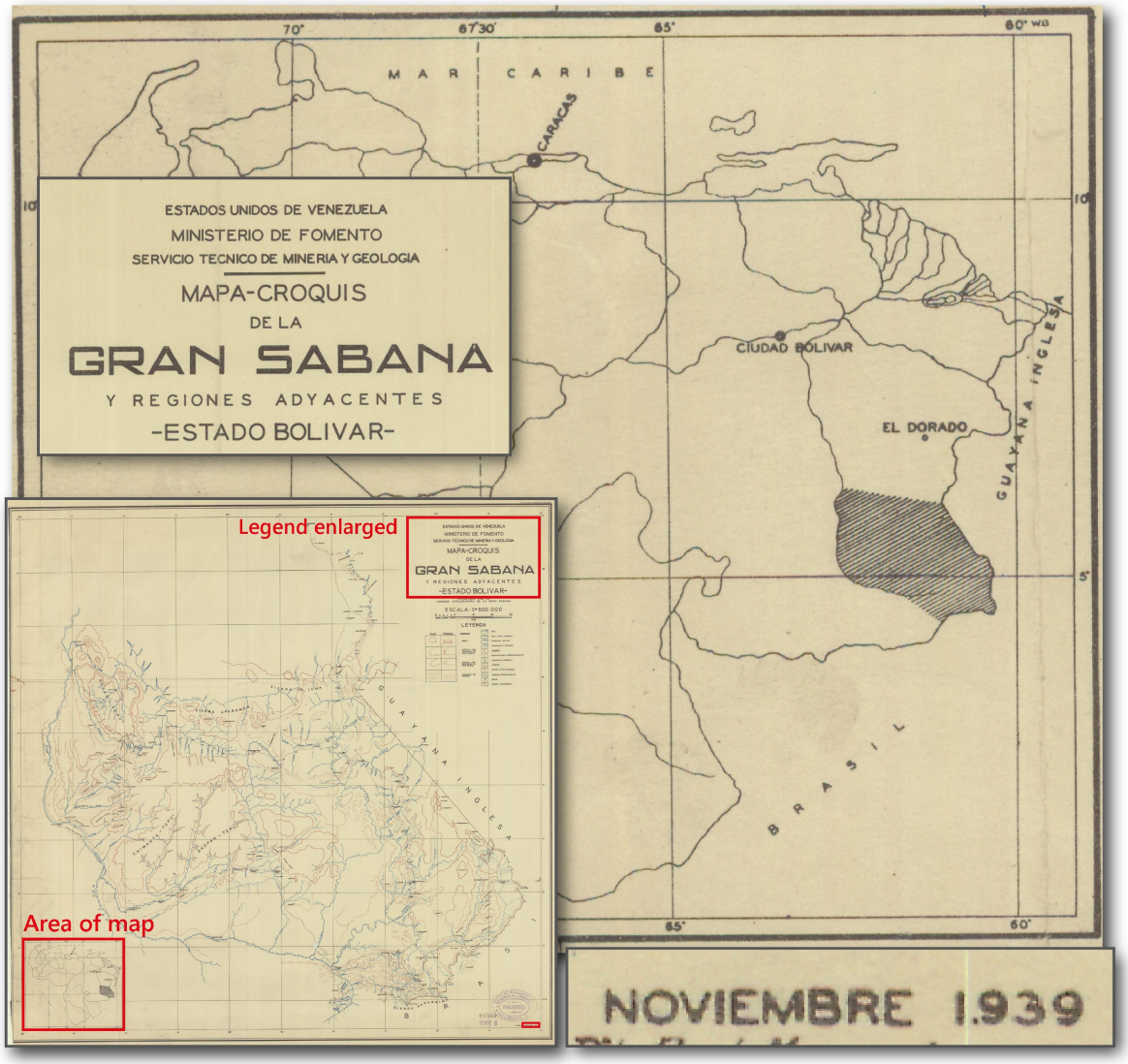

Figure 4.1. United States of Venezuela, Ministry of Promotion, Sketch map of the Grand Sabana and adjacent regions – State of Bolivar (November 1939)

[359] See also Vol. II, Figure 4.1, pp. 1 and 2.

4.67. In 1947, the Venezuelan Ministry of Public Works published a map of Venezuela, reproduced as **Figure 4.2** below[360], which showed the boundary with British Guiana following the line established by the 1899 Award.

Figure 4.2. United States of Venezuela, Ministry of Public Works, Index Map of Venezuela's Landing Sites (1947)

[360] See also Vol. II, Figure 4.2, pp. 3 and 4.

4.68. In March 1950, the Venezuelan Ministry of Promotion published a geological map of Venezuela, reproduced as **Figure 4.3** below[361], which depicted the same boundary as the maps shown above.

Figure 4.3. United States of Venezuela, Ministry of Promotion, Geological Map of Venezuela (March 1950)

[361] See also Vol. II, Figure 4.3, pp. 5 and 6.

4.69. In May 1950, Venezuela's Ministry of Mining and Hydrocarbons published a map of the western region of Venezuela which once again depicted Venezuela's border with British Guiana following the line established by the 1899 Award. That map is reproduced as **Figure 4.4** below[362].

Figure 4.4. United States of Venezuela, Ministry of Mining and Hydrocarbons, Map of Eastern Natural Resources of Venezuela (May 1950)

[362] See also Vol. II, Figure 4.4, pp. 7 and 8.

4.70. In 1950, the Venezuelan Ministry of Mining and Hydrocarbons published a geological and mining map of the Venezuelan state of Bolivar which (like the 1939 map of Bolivar shown in Figure 4.1 above) depicted the border with British Guiana following the line established by the 1899 Award. A copy of that map is reproduced as **Figure 4.5** below[363].

Figure 4.5. United States of Venezuela, Ministry of Mining and Hydrocarbons, Geology Directory, Mining and Geological Map of the State of Bolivar (1950)

[363] See also Vol. II, Figure 4.5, pp. 9 and 10.

4.71. Once again, Venezuela does not suggest that it was coerced — structurally or otherwise — in relation to any of the official maps it commissioned and published, as set out above or in Guyana's Memorial. Venezuela is bound to accept that throughout that period it respected the boundary as determined by the 1899 Award, and that it published those maps on the basis of its belief that they accurately depicted the location of Venezuela's boundaries.

VI. Venezuela's Claim that the Publication of the Mallet-Prevost Memorandum in 1949 "Changed Everything"

4.72. In an attempt to avoid the consequences of its decades-long acquiescence in the 1899 Award, Venezuela alleges that it was the publication of the Mallet-Prevost Memorandum in July 1949 that "changed everything", and that, "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"[364]. These arguments are false.

4.73. *First*, Venezuela claims that "until the 1950's, Venezuela was not cognisant of the circumstances under which the 1899 Award was granted"[365]. This is wrong and not supported by any evidence. As demonstrated in Section II above, the matters on which Venezuela's contention of nullity is based were fully known to Venezuela at the time of the 1899 Award. Indeed, it is notable that when Venezuela first made its contention of nullity in February 1962, it stated that the Mallet-Prevost Memorandum "confirmed" the information which had been "gathered by the Agent of Venezuela" in 1899[366] — in other words, the contention was not premised upon

[364] VCM, para. 7.25.

[365] *Ibid.*, para. 7.75.

[366] Letter from the Permanent Representative of Venezuela to the Secretary-General of the United Nations (14 February 1962), para. 15 (VCM, Vol. III, Annex 140).

information newly revealed by the Memorandum — and stated that the "strange circumstances in which the Paris decision had been arrived at *began to unfold from the very day of the decision*"[367].

4.74. In other words, the publication of the Mallet-Prevost Memorandum in 1949 did not "chang[e] everything", as Venezuela now claims. It did no more than reiterate what Venezuela has said it already knew and believed from the time the Award was issued, and at all times thereafter.

4.75. *Second*, the suggestion that the Mallet-Prevost "changed everything" ignores the fact that, as Guyana explained in Chapter 8 of its Memorial[368] (and as it further explains above in Chapter 3) even if the Memorandum were authentic (of which there is no independent documentary evidence) it contains a substantial number of obvious and significant errors which make clear that it cannot be treated as an accurate or reliable account of the events which it purports to describe[369]. A document replete with such manifest inaccuracies cannot be said to have fundamentally changed Venezuela's understanding of the true circumstances surrounding the 1899 Award.

4.76. *Third*, Venezuela's claim is further belied by the fact that for at least thirteen years after the publication of the Mallet-Prevost Memorandum, Venezuela continued to engage in official acts which were inconsistent with the alleged nullity of the Award. For example, as noted above[370], the Government of Venezuela published several official maps between 1950 (i.e., the year after the publication of

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[367] Statement made by the Representative of Venezuela at the 1302nd Meeting of the Fourth Committee (2 February 1962), para. 34 (VCM, Vol. III, Annex 141) (emphasis added).

[368] See MMG, paras. 8.16-8.22 and 8.77-8.92.

[369] See paras. 3.69-3.73 above.

[370] See paras. 4.68-4.70 above.

the Mallet-Prevost Memorandum) and 1962 which depicted its boundary with British Guiana following the line established by the 1899 Award. Such acts are wholly inconsistent with the claim that publication of the Memorandum was a pivotal moment. It was not.

VII. Venezuela's Claim that it Challenged the Validity of the 1899 Award Very Shortly After the Mallet-Prevost Memorandum was Published

4.77. Venezuela claims that it "first brought its claim before the OAS in 1951 and 1954, very shortly after the Mallet-Prevost Memorandum had come to light"[371]. This is not correct.

4.78. A careful review of the statements made by Venezuela in 1951 and 1954 confirms that neither claimed or asserted that the 1899 Award was a nullity, or that the boundary between Venezuela and British Guiana did not follow the line established by that Award. Nor did either statement repeat or call attention to any of the criticisms of the Award made in the Memorandum:

- The 1951 "Declaration" merely expressed the "opinion of the Government of Venezuela" that, "in view of the special circumstances prevailing when the frontier line with the British Guiana was defined", no change in the status of British Guiana would prevent Venezuela "from pressing its just demand that the injury suffered by the Nation on that occasion should be redressed by an equitable rectification of the frontier."

- The 1954 "Declaration" similarly stated that: "Government of Venezuela declares that no change of status which may occur in [British Guiana] can prevent the National Government from pressing its just demand that the

[371] VCM, para. 7.26.

injury suffered by the Nation when its frontier 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."[372]

4.79. It is clear that neither of these "Declarations" contained any statement impugning the validity of the 1899 Award or the boundary which it established[373]. On the contrary, both "Declarations" assumed the existence of an established and legally binding "frontier" (i.e., the boundary which was "defined" by the 1899 Award and subsequently "demarcated" by the Joint Boundary Commission) which Venezuela desired should be the subject of a future "equitable rectification".

4.80. It is notable that when Venezuela first raised the alleged invalidity of the 1899 Award before the United Nations in 1962, its representative to the United Nations referred to Venezuela having filed "reservation[s]" in 1951 and 1954. Venezuela's representative did not suggest that those "reservation[s]" challenged the validity of the 1899 Award or the boundary which the Award established. The absence of any such challenge is entirely consistent with the representative's observation, in 1962, that: "Between 1950 and 1958, we in Venezuela were ruled by a dictatorial Government, *which was not sensitive about this problem nor unduly concerned about it*."[374]

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[372] See Statement made by the Representative of Venezuela at the 1302nd meeting of the Fourth Committee (22 February 1962), para. 52 (MG, Vol. II, Annex 19).

[373] Venezuela acknowledges at para. 7.77 of its Counter-Memorial that the statements in 1951 and 1954 did "not expressly speak[] of nullity of the 1899 Award".

[374] VCM, Vol. III, Annex 143, p. 23 (emphasis added).

VIII. Venezuela's Arguments that Guyana is Barred from Relying on Venezuela's Prolonged Acquiescence and Acceptance of the Award

4.81. In its Counter-Memorial, Venezuela argues that Guyana is prohibited from relying on Venezuela's prolonged acquiescence and acceptance of the 1899 Award. Venezuela makes two arguments in support of that proposition: *first*, it contends that Guyana's reliance on Venezuela's acquiescence and acceptance is contrary to the object and purpose of the Geneva Agreement[375]; *second*, it argues that Guyana is estopped from relying on that acquiescence and acceptance[376]. Both arguments are entirely without merit.

A. The Geneva Agreement Does Not Prevent Guyana from Relying on Venezuela's Prolonged Acceptance and Acquiescence

4.82. Venezuela contends that Guyana's argument based on Venezuela's prolonged acceptance of the 1899 Award "is in direct contradiction with the object and purpose of the Geneva Agreement [which] fully validates – indeed, as premise and its very *reason d'être* … Venezuela's right to contend that the Award of 1899 is null and void"[377]. This contention is directly contradicted by numerous other statements in Venezuela's Counter-Memorial, which repeatedly assert that the Geneva Agreement had nothing to do with the validity of the 1899 Award[378].

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[375] See VCM, paras. 7.47-7.48.

[376] See *ibid.*, paras. 7.49-7.57.

[377] *Ibid.*, para. 7.48.

[378] See, e.g., VCM, para. 2.9 ("Guyana has falsely represented that the Geneva Agreement was meant to resolve a dispute over the validity or invalidity of the Arbitral Award. In reality, *the Agreement was entered into in order to leave behind that particular dispute*"); para. 3.3 ("*The subject matter of the Agreement was never related to the validity or invalidity of the Award*"); para. 3.118 ("*The object of the Agreement was never related to the validity or invalidity of the Award*"); p. 78, para. 1 ("*The determination of the invalidity of the 1899 Arbitral Award was therefore buried with the signing of the Geneva Agreement.*"); para. 3.51 ("the parties specifically agreed that their controversy should be 'amicably resolved in a manner acceptable to both parties' (preamble), in seeking 'satisfactory solutions for the practical settlement' of their territorial

4.83. Venezuela contends that the Geneva Agreement creates "binding obligations of the Parties to find a mutually satisfactory solution to a territorial dispute" and therefore "no question of prolonged acquiescence or acceptance may be opposed to Venezuela"[379]. This is wrong. Nothing in the text or object of the Geneva Agreement supports Venezuela's argument that the treaty somehow bars Guyana from relying on Venezuela's decades-long acceptance of the 1899 Award in support of Guyana's case that the 1899 Award is valid.

4.84. The text of the Geneva Agreement makes clear that it is concerned with the resolution 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"[380]. It is not concerned with anything else. In its Judgment of 18 December 2020, the Court explained that "the object and purpose of the Geneva Agreement … was to ensure a definitive resolution of the dispute between Venezuela and the United Kingdom"[381] which "originated from their opposing views as to the validity of the 1899 Award"[382].

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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."); para. 2.10 ("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.*") (all emphasis added). Venezuela's argument is also in notable contrast to the argument advanced by Venezuela in its Memorandum submitted to the Court on 28 November 2019, which stated that: "The validity or nullity of the Award *is not the core of the dispute*." (para. 105) (emphasis added).

[379] VCM, para. 7.79.

[380] Geneva Agreement (1966), Article I.

[381] *Arbitral Award of 3 October 1899 (Guyana* v. *Venezuela), Jurisdiction of the Court, Judgment, I.C.J. Reports 2020*, p. 490, para. 130.

[382] *Ibid.*, p. 473, para. 65. See also Chapter 2 above.

4.85. The Geneva Agreement therefore recognises that a dispute had arisen between the parties *as a result of* Venezuela's contention that the 1899 Award was void, and is intended to establish a binding framework for resolving that dispute. To be sure, the Agreement recognises the existence of a dispute which is *caused by* Venezuela's contention of nullity; however, nothing in the Agreement "validates" or "confirm[s]" that Venezuela was *entitled to advance* that contention.

4.86. Indeed, the only constraint imposed by the Geneva Agreement on the arguments which Guyana may deploy in support of its case before the Court is contained in Article V (2), which restricts the Parties' ability to rely on acts taking place *after* the Agreement was signed to support or undermine a claim to territorial sovereignty[383]. Nothing in the Agreement fetters Guyana's ability to rely on acts by Venezuela which took place *before* the Geneva Agreement was signed.

4.87. Moreover, Venezuela's argument is based upon a fundamental misunderstanding of the nature of Guyana's position. As Guyana expressly stated in its Memorial, "as in the *King of Spain* case, the preclusion of Venezuela's nullity claim is not procedural but substantive and it operates to cure any defect that might have otherwise constituted a ground for the invalidity of the Award"[384]. Contrary to Venezuela's argument in the Counter-Memorial, Guyana does not contend that Venezuela is prohibited by its past conduct from advancing a contention of nullity in these proceedings. Rather, it contends that Venezuela's past conduct cures any

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[383] Article V (2) provides: "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 right of sovereignty in those territories, except in so far 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. 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."

[384] MMG, para. 9.16.

flaw which might otherwise have formed the basis for invalidating the Award. There is absolutely nothing in the Geneva Agreement which prevents Guyana from making this argument against Venezuela.

B. GUYANA IS NOT ESTOPPED FROM RELYING ON VENEZUELA'S PROLONGED ACQUIESCENCE AND ACCEPTANCE OF THE AWARD

4.88. Venezuela asserts that before Guyana filed its Application with the Court, "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"[385] challenge the Arbitral Award. It claims that: "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"[386]. Venezuela goes even further, arguing that: "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."[387] On the basis of these claims, Venezuela contends that "the rule of estoppel clearly precludes Guyana from trying to oppose to Venezuela an alleged prolonged acceptance"[388].

4.89. Venezuela's argument that Guyana is estopped from relying on Venezuela's prolonged acceptance and acquiescence is both factually and legally baseless.

4.90. *First*, Venezuela has publicly recognised that its contention of nullity is bound to fail before the Court precisely because of its prolonged acquiescence in

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[385] VCM, para. 7.49.

[386] *Ibid.*, para. 7.51.

[387] *Ibid.*, para. 7.53.

[388] *Ibid.*, para. 7.55.

the 1899 Award. Mr. Falcón Briceño was the Foreign Minister of Venezuela who presented Venezuela's contention of nullity before the United Nations Special Committee in 1962. In 1983, he delivered a speech (the transcript of which Venezuela cites repeatedly in its Counter-Memorial[389]) in which he discussed the Court's decision in the *King of Spain* case[390] before going on to explain that, in light of that case law, Venezuela's contention of nullity would be bound to fail before the Court:

> "If mandatory jurisdiction existed in the International Court of Justice, we could of course not appear there, *purely and simply because it would not be convenient for us in that way*. The case would have to proceed on an ex aequo et bono basis — that is, by addressing the bottom line of the matter. *This is because there is already jurisprudence in the Court that would oppose a situation of this kind*."[391]

4.91. *Second*, Venezuela is wrong to suggest that the United Kingdom never referred to Venezuela's prolonged acquiescence in response to Venezuela's contention of nullity. In the same year that Venezuela first made its contention of nullity before the United Nations, the United Kingdom explained in the Seventeenth Session of the Special Political Committee that Venezuela had long accepted the validity of the 1899 Award and consequently it could not seek to reopen the questions determined by that Award. In a statement of 13 November 1962, the United Kingdom representative explained that:

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[389] See VCM, footnotes 590, 674, 693, 700.

[390] *Arbitral Award made by the King of Spain on 23 December 1906 (Honduras* v. *Nicaragua), Judgment, I.C.J. Reports 1960*, p. 192.

[391] Dr. Marcos Falcón Briceño, "Orígenes de la Actual Reclamación de la Guyana Esequiba" (1981), p. 58 (Vol. III, Annex 25) (translation of the original Spanish: "*Si existiera, por supuesto la jurisdicción obligatoria de la Corte International de Justicia, nosotros no podríamos presentarnos allí pura y simplemente, porque no nos convendría en esa forma, tendría que ser sobre la base exequo et bono, es decir yendo al fondo del asunto. Porque ya hay jurisprudencia en la Corte que se opondría a una circunstancia de este tipo …*") (emphasis added).

> "history itself has shown, *the award was in fact accepted by both Governments* and a boundary commission was appointed with the agreement of both Governments to implement the provisions of the award. *My Government cannot therefore agree that there can be any dispute over the question settled by the award.* Those are the essential points on which the position of my Government is based."[392]

4.92. He continued:

> "*History records no protest at this time on the part of the Venezuelan Government. … For some forty years very little was heard of the arbitration award. It appeared to have been accepted by all concerned.* Indeed, in 1941 the Venezuelan Minister for Foreign Affairs himself *told His Majesty's Minister in Caracas that his Government were definitely of the opinion that the boundary question was a* chose jugée*; that the Venezuela/British Guiana frontier was final and well defined* and that the author of articles which had appeared in the Venezuelan press about that time questioning the 1899 award 'had obviously never had access to the archives of his Ministry'."[393]

4.93. The United Kingdom was clear that, as a result of its decades-long acceptance of the 1899 Award, Venezuela could not seek to impugn the validity of the Award:

> "At the time of the [1897] agreement, at the time of the award, at the time of the demarcation, *neither party expressed itself as dissatisfied or considered itself otherwise than bound by the provisions of the agreement. This state of affairs continued for forty-four years … But a further thirteen years elapsed before any official approach was made by the one party to the other claiming that the award was unjust and required revision. I ask members of this Committee to*

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[392] Statement made by the Representative of the United Kingdom at the 349th meeting of the Special Political Committee (13 November 1962), p. 2 (MG, Vol. II, Annex 24) (emphasis added).

[393] *Ibid.*, pp. 9-10 (emphasis added).

> *consider most seriously the implications if, after fifty-seven years from the date on which a frontier settlement is put into effect, it is allowed to be re-opened*, particularly when there is no new evidence which has to be taken into account. It seems to my Government that there will be no frontier agreement in any part of the world which cannot be questioned on such a basis and no international agreement which cannot be brought into doubt."[394]

4.94. *Third*, the Government of Guyana also made numerous statements which referred to Venezuela's prolonged recognition and acceptance of the 1899 Award and the boundary line described therein, and which explained that in light of this unqualified acquiescence Venezuela could not seek to impugn the validity of the Award. For example, in April 1981, the President of Guyana, Forbes Burnham, made a public statement in response to Venezuela's recent announcement that it was unwilling to extend the Port-of-Spain Protocol. President Burnham explained that Guyana's position was that the 1899 Award was valid, but that:

> "Even if the Award was invalid, the boundary laid down pursuant to the Award *has acquired full validity as a result of Venezuelan recognition, acquiescence and other conduct relating thereto*."[395]

4.95. Later that year, Guyana submitted a Memorandum to the United Nations which explained that Venezuela's claim of nullity "completely disregards the fact" that the boundary established by the 1899 Award "was fully respected and observed by both sides and by the international community for upwards of sixty years"[396]. In a section headed "Acceptance of the Award", Guyana stressed that:

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[394] *Ibid.*, pp. 15-16 (emphasis added).

[395] Guyana, Ministry of Foreign Affairs, Memorandum on the Guyana/Venezuela Boundary, 1980 (enclosed with Letter from the Permanent Representative of Guyana to the United Nations addressed to the Secretary-General (2 November 1981) (VCM, Vol. III, Annex 148), p. 14) (emphasis added).

[396] *Ibid.*, p. 2 (emphasis added).

> "For over six decades successive generations of British, Guyanese and Venezuelans and, indeed, the rest of the international community accepted as settled and final the boundary as laid down by the Arbitral Tribunal and as demarcated by the Venezuela/British Mixed Boundary Commission."[397]

4.96. The Memorandum went on to state that Venezuela's challenge to the validity of the Award was "without merit" because "the material on which challenge is sought to be brought to these alleged grounds was always within the full knowledge of Venezuela which nevertheless positively affirmed the validity of the boundary for six decades"[398]. The correctness of that proposition is demonstrated by the matters summarised at paragraphs 4.13 to 4.33 above.

4.97. In April 2014, Guyana sent a Note Verbale to Venezuela emphasising that Guyana "does not accept that there is a dispute regarding the Essequibo" because "the Government of Venezuela accepted and acted upon the said Award for some sixty years including by joining the demarcation of the bilateral land boundary"[399]. In August 2014, Guyana sent a further Note Verbale to Venezuela which stated that: "The fact that Venezuela has challenged the validity of the Arbitral Award, *after accepting it for several decades, does not give it the right to assert or to claim sovereignty ... over any part of the territory that was awarded to Guyana.*"[400]

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[397] *Ibid.*, p. 5 (emphasis added).

[398] *Ibid.*, p. 6 (emphasis added).

[399] Note Verbale from the Ministry of Foreign Affairs of the Republic of Guyana to the Ministry of Foreign Affairs of the Bolivarian Republic of Venezuela, No. DG/07/04/2014 (14 April 2014) (MG, Vol. III, Annex 81) (emphasis added)

[400] Note Verbale from the Ministry of Foreign Affairs of the Republic of Guyana to the Ministry of Foreign Affairs of the Bolivarian Republic of Venezuela, No. 976/2014 (25 August 2014) (Vol. III, Annex 45) (emphasis added).

4.98. *Fourth*, the fact that Venezuela's acquiescence in the 1899 Award (and the legal consequences of that acquiescence) had been raised against Venezuela was expressly noted by other States shortly after Venezuela first made its contention of nullity. For example, in September 1965 the Office of the Legal Adviser at the United States State Department produced a memorandum on the dispute between Venezuela and British Guiana which explained that "the response to these allegations [by Venezuela] has been largely confined to insisting that there is no truth to them and that, in any case, revived claims are barred by the Treaty of Arbitration, which states that the Award shall be regarded by the parties 'as a full, perfect, and final settlement,' *and by the legal concept of 'estoppel'*, i.e., *the lack of protest against the Award for many years*"[401].

4.99. *Fifth*, and in any event, even if Venezuela were correct (which it plainly is not) that the United Kingdom and Guyana had not previously made any statement contending acquiescence by Venezuela, Guyana would not be estopped from making such an argument before the Court. The mere absence of a positive statement regarding the effects of Venezuela's acquiescence would not constitute "a statement or representation made by one party to another" regarding Venezuela's entitlement to contend that the 1899 Award is a nullity; still less would Venezuela be capable of establishing any "reliance upon it by [Venezuela] to [its] detriment or to the advantage of the party making it"[402].

4.100. Ignoring all of this evidence, Venezuela now blithely claims that "the United Kingdom before Guyana's independence, and then Guyana since its independence,

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[401] Memorandum by Mr. Jerome Henry Silber, Office of the Legal Adviser, to Mr. John Calvin Hill, Director, Office of Colombian-Venezuelan Affairs (7 September 1965), p. 9 (Vol. III, Annex 46) (emphasis added).

[402] See *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras), Application to Intervene, Judgment, I.C.J. Reports 1990*, p. 118, para. 63.

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*"[403]. Where, how and by whom was this made "fully clear"? Venezuela does not tell the Court: it provides no citations to the evidentiary record to support this fanciful allegation. As the Court has recognized, the "contention [of nullity] by Venezuela *was consistently opposed by the United Kingdom* in the period from 1962 until the adoption of the Geneva Agreement on 17 February 1966, *and subsequently by Guyana* after it became a party to the Geneva Agreement upon its independence"[404]. Given their consistent and emphatic opposition to Venezuela's attempt to reopen the matters determined by the Award, the suggestion that the United Kingdom and Guyana somehow represented to Venezuela that its decades-long acceptance and acquiescence in the Award would "not be opposed" to it is nonsense.

IX. Conclusion

4.101. The result of Venezuela's decades long acceptance, implementation and affirmation of the 1899 Award and the boundary which it established could not be clearer. As Venezuela's former Foreign Minister correctly noted more than 40 years ago, the Court's case law makes clear that its challenge to the validity of the Award — first made more than 60 years after its issuance — will fail on long-established principles of law recognised by the Court[405].

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[403] VCM, para. 7.57.

[404] *Arbitral Award of 3 October 1899 (Guyana* v. *Venezuela), Jurisdiction of the Court, Judgment, I.C.J. Reports 2020*, p. 473, para. 64.

[405] Dr. Marcos Falcón Briceño, "Orígenes de la Actual Reclamación de la Guyana Esequiba" (1981), p. 58 (Vol. III, Annex 25).

4.102. As well as being firmly rooted in the applicable law and facts, this outcome gives effect to the Court's longstanding recognition that "when two countries establish a frontier between them, one of the primary objects is to achieve stability and finality"[406]. As the Court explained in *Territorial Dispute (Libyan Arab Jamahiriya* v. *Chad)*: "Once agreed, the boundary stands, for any other approach would vitiate the fundamental principle of the stability of boundaries, the importance of which has been repeatedly emphasized by the Court."[407] Indeed, as the arbitral tribunal observed in the *Bay of Bengal Maritime Boundary Delimitation*, both land and maritime delimitations "must be stable and definitive to ensure a peaceful relationship between the States concerned in the long term"[408]. By declaring that the 1899 Award and the boundary which it established are valid and binding upon the Parties, the Court will help to secure the stability and finality which are indispensable to peaceful relations between Venezuela and Guyana based on international law. Any other approach will have the effect of undermining the certitude and stability of the legal order.

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[406] *Temple of Preah Vihear (Cambodia* v. *Thailand)*, *Merits*, *Judgment*, *I.C.J. Reports 1962*, p. 34.

[407] *Territorial Dispute (Libyan Arab Jamahiriya/Chad)*, *Judgment*, *I.C.J. Reports 1994*, p. 37, para. 72.

[408] *Bay of Bengal Maritime Boundary Arbitration (Bangladesh v. India)*, *Award*, 7 July 2014, *UNRIAA*, Vol. XXXII, p. 63, para. 216.

CHAPTER 5

VENEZUELA'S VIOLATIONS OF THE PROVISIONAL MEASURES ORDERED BY THE COURT AND APPROPRIATE REMEDIES

I. Venezuela's Violations of the Provisional Measures

5.1. On 1 December 2023, the Court unanimously indicated the following Provisional Measures:

(a) Venezuela "shall refrain from taking any action which would modify the situation that currently prevails in the territory in dispute, whereby the Co-operative Republic of Guyana administers and exercises control over that area";

(b) Both Parties "shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve"[409].

5.2. Two days later, on 3 December 2023, Venezuela conducted a "consultative referendum" on the following questions, among others:

> "Do you agree with Venezuela's historic position of not recognizing the Jurisdiction of the International Court of Justice to resolve the territorial dispute over Guayana Esequiba?
>
> .....
>
> Do you agree with the creation of the Guayana Esequiba State and that an accelerated and comprehensive plan be developed for the present and future population of that territory, including, *inter alia*, the granting of Venezuelan citizenship and identity cards, in accordance with the Geneva Agreement and International Law,

[409] *Arbitral Award of 3 October 1899 (Guyana* v. *Venezuela), Provisional Measures*, Order of 1 December 2023, para. 45 (1)-(2).

consequently incorporating that State into the map of Venezuelan territory?"[410]

5.3. Two days after that, on 5 December 2023, having received the answers to these questions that it expected, Venezuela announced that it would:

> "1. Creat[e] [a] High Commission for the Defense of Guayana Esequiba … .
>
> 2. Activate a debate in the National Assembly on the Organic Law for the Defense of Guayana Esequiba. This legal instrument, after discussion and approval, will allow the creation of [the Venezuelan state of] Guayana Esequiba and the enforcement of the decisions approved by the people in the consultative referendum.
>
> 3. Creat[e] the Comprehensive Defense Zone of Guayana Esequiba. It will be integrated by three Areas of Integral Development and 28 Sectors of Integral Development, dependent militarily and administratively on the Region for the Integral Defense of Guayana.
>
> 4. Provisionally designat[e], pending approval of the Organic Law for the Defense of Guayana Esequiba, Alexis Rodríguez Cabello as the Sole Authority of the Guayana Esequiba. Its political-administrative seat will be in Temeremo.
>
> 5. Authoriz[e] Petróleos de Venezuela and the Venezuelan Corporation of Guayana to create the divisions of PDVSA Esequibo and CVG Esequibo. Likewise, president Nicolás Maduro will gran[t] licenses for the exploration and exploitation of oil, gas and minerals.
>
> 6. The new map of Venezuela must be published and distributed in all schools, high schools and universities in the country. In this sense, community councils, Local Committees of Sourcing and

[410] Republic of Venezuela, National Electoral Council, Resolution on Referendum to be held on 3 December 2023 (20 Oct. 2023) (Request for Provisional Measures, Annex 1). The text of the Resolution is set out in the Court's Order on Provisional Measures (*Arbitral Award of 3 October 1899 (Guyana* v. *Venezuela), Provisional Measures*, Order of 1 December 2023, para. 15).

> Production and the Venezuelan Army are called upon to join the distribution of the new Map of Venezuela in the communities.
>
> 7. Activate a Social Care Plan for the population of Guayana Esequiba, and carry out a census and grant identity card[s] to its inhabitants. To this end, an office of the Administrative Service of Identification, Migration and Foreign Affairs (Saime) will be established in Temeremo.
>
> 8. Establish a rule that prohibits contracting with companies that operate or collaborate in the unilateral concessions given by Guyana in the sea to be delimited.
>
> 9. Approve a Special Law that creates environmental protection areas and new national parks in Guayana Esequiba."[411]

5.4. In response to Venezuela's announcement of these measures, which individually and collectively disregarded and contradicted the Court's Order on Provisional Measures, the Secretary General of the Organization of American States issued the following statement:

> "[T]he aggressive stance of … Venezuela towards … Guyana … has escalated to a point of significant concern for regional security and constitutes a matter that threatens the stability and territorial sovereignty within our hemisphere.
>
> .....
>
> The recent actions taken by … Venezuela not only jeopardize the development and stability of Guyana, but also pose a broader risk to

[411] Ministry of Popular Power for Ecosocialism, Announcements for the Protection and Defence of the Guayana Esequiba, available at http://www.minec.gob.ve/anuncios-para-la-proteccion-y-defensa-de-la-guayana-esequiba/ (Guyana's translation; emphasis added) (last accessed on 27 November 2024); National Assembly of Venezuela, NA will debate this Wednesday Organic Law for the Defense of the Guayana Esequiba (5 December 2023), available at https://www.asambleanacional.gob.ve/noticias/an-debatira-este-miercoles-ley-organica-para-la-defensa-de-la-guayana-esequiba (last accessed on 27 November 2024); Ministry of Popular Power for Science and Technology, President Maduro announces action plan for the defence of the Esequibo territory, available at https://mincyt.gob.ve/presidente-maduro-anuncia-plan-accion-defensa-territorio-esequibo/ (last accessed on 27 November 2024).

the security of Latin America and the Caribbean — a situation that has been repeatedly condemned by the Caribbean Community (CARICOM)."[412]

5.5. Venezuela's measures also prompted condemnations from the Bahamas[413], Belize[414], Canada[415], France[416], the United Kingdom[417], the United States[418],

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[412] Organization of American States, Statement from the OAS General Secretariat Regarding Recent Actions from the Regime in Venezuela towards Guyana (7 December 2023), available at https://www.oas.org/en/media_center/press_release.asp?sCodigo=E-082/23 (emphasis added).

[413] Office of the Prime Minister of the Commonwealth of the Bahamas, Statement From Prime Minister Davis On Venezuela's Territorial Claims On Guyana (7 December 2023), available at https://opm.gov.bs/statement-from-prime-minister-davis-on-venezuelas-territorial-claims-on-guyana/ ("I am disheartened that after all that CARICOM has done to protect the sovereignty and territorial integrity of the Bolivarian Republic of Venezuela …that [country] should now seek to annex territory in a CARICOM state. The Bahamas demands that Venezuela respect the settled borders and abide by the 1 December 2023 ruling of the International Court of Justice").

[414] Government of Belize, Statement by Belize on the Guyana Venezuela Border Situation (8 December 2023), available at https://www.pressoffice.gov.bz/wp-content/uploads/2019/12/Dec-8-PR276-Statement-by-Belize-on-the-Guyana-Venezuela-Border-Situation-1.pdf (Belize "is deeply concerned about recently announced decisions by the Government of … Venezuela by which it purports to exercise rights of administrative sovereignty over the Essequibo region, an integral part of the territory of the Cooperative Republic of Guyana. The decisions and plans announced by Venezuela challenge directly the sovereignty and territorial integrity of Guyana and heighten tensions between the two countries. Furthermore, Venezuela's actions and decisions violate … the binding provisional measures ordered by the International Court of Justice …").

[415] Canada, @CanadaFP, *X* (9 December 2023), available at https://x.com/canadafp/status/1733580488403517720 ("Canada has been monitoring developments following the Venezuelan consultative referendum over the Essequibo and is deeply concerned by growing tensions. Canada reiterates its support for a peaceful and diplomatic solution.").

[416] Ministère de l'Europe et des Affaires Étrangères, Guyana – Conversation between Mme Colonna and the President of Guyana (12 December 2023), available at https://www.diplomatie.gouv.fr/en/country-files/guyana/news/article/guyana-conversation-between-mme-colonna-and-the-president-of-guyana-12-dec-2023 ("The Minister reiterated the importance of Guyana's sovereignty and territorial integrity being respected in line with the principles of the United Nations Charter. France calls on Venezuela to refrain from any unilateral action." The Minister "recalled that France calls on the parties to fully implement the ICJ's decisions, particularly its order of 1 December 2023.").

[417] Foreign, Commonwealth & Development Office, @FCDOGovUK, *X* (7 December 2023), available at https://x.com/fcdogovuk/status/1732773292128281072 ("The UK is concerned by the recent steps taken by Venezuela, with respect to the Essequibo region of Guyana. We believe this is unjustified and should cease. We are clear that the border was settled in 1899 through international arbitration.").

[418] United States Department of State, Secretary Blinken's Call with Guyanese President Ali (6 December 2023), available at https://www.state.gov/secretary-blinkens-call-with-guyanese-president-ali/ (following Venezuela's announcements of 5 December 2023, "Secretary of State

the Caribbean Community[419], and the Commonwealth Ministerial Group on Guyana[420].

5.6. Ignoring these protests, Venezuela promptly took steps to implement and apply these measures. On 8 December 2023, President Maduro signed six presidential decrees, *inter alia*, (i) creating a new "Comprehensive Defense Zone" in the disputed territory ("*ZODI-Guayana Esequiba*"); (ii) designating Mr. Alexis Rodríguez Cabello as the "only" authority in this territory; (iii) authorizing the state-owned companies PDVSA and CVG to grant concessions for the exploitation of oil and minerals, respectively, in that territory; (iv) ordering the incorporation of the territory in Venezuela's official maps; (v) declaring environmentally protected areas and national parks in the territory; and (vi) establishing the High Commission for the Defense and Recovery of the Guayana Esequiba[421].

Antony J. Blinken spoke with Guyanese President Dr. Mohamed Irfaan Ali to reaffirm the United States' unwavering support for Guyana's sovereignty.").

[419] CARICOM, Caribbean Community, @CARICOMorg, *X* (8 December 2023), available at https://x.com/caricomorg/status/1733305723273044327 ("CARICOM Heads of Government met in caucus on Friday December 8 to discuss the situation with regard to the Venezuela Guyana border controversy and agreed to issue the following statement: CARICOM firmly supports Guyana in pursuance of the resolution of its border controversy with Venezuela through the process of the ICJ. Further, CARICOM urges Venezuela to respect the conservatory measures determined by the ICJ in its recent ruling until a final resolution.").

[420] The Commonwealth, Commonwealth ministerial group urges peaceful resolution between Guyana and Venezuela (11 December 2023), available at https://thecommonwealth.org/news/commonwealth-ministerial-group-urges-peaceful-resolution-between-guyana-venezuela ("The Group reiterated its firm and steadfast support for the ICJ process underway as the appropriate and lawful means to address the matter under international law, the maintenance and preservation of the sovereignty and territorial integrity of Guyana, its right to self-defence and the unobstructed exercise of its rights to develop the entirety of its territory for the benefit of its people.").

[421] See Presidential Press, Six decrees for the protection and defense of the Guayana Esequiba (8 December 2023), available at https://prensapresidencialvenezuela.gob.ve/index.php/2023/12/08/en-claves-seis-decretos-para-la-proteccion-y-defensa-de-la-guayana-esequiba/ (last accessed on 27 November 2024); Delcy Rodríguez, @delcyrodríguezv, *X* (9 December 2023) (available at https://x.com/delcyrodriguezv/status/1733312835453603868) ("Today the President @NicolasMaduro signed a series of decrees in the framework of the Action Plan for the defence and protection of Venezuela's new state, our Essequiba Guiana"; Guyana's translation of the original Spanich: "Hoy el Pdte. @NicolasMaduro firmó una serie de decretos en el marco del Plan de Acción para la defensa y protección del nuevo estado de Venezuela, nuestra Guayana Esequiba");

5.7. In response to the tensions created by Venezuela's actions, CARICOM, the Community of Latin American and Caribbean States (CELAC), the Secretary-General of the United Nations, the President of Brazil and the Prime Ministers of Dominica and St. Vincent and the Grenadines invited the Presidents of Guyana and Venezuela to meet at Argyle, in St. Vincent and the Grenadines. On 14 December 2023, they issued the "Argyle Declaration," in which President Ali of Guyana and President Maduro of Venezuela pledged that their countries would not "threaten or use force against one another" or "escalat[e] any conflict or disagreement"[422].

5.8. Venezuela promptly violated the commitments it had undertaken. Just eight days after that Joint Declaration, on 22 December 2023 Venezuela transgressed Guyana's airspace with a military helicopter[423]. Later that month, it deployed a naval force to the waters adjacent to the disputed territory to "expel" a British ship conducting a friendly mission to Guyana[424]. On 15 January 2024, Venezuela announced the construction of a military base for tanks, a 3.8 km military airstrip,

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Venezuela's Ministry of the Popular Power for Science and Technology (8 December 2023), available at https://mincyt.gob.ve/presidente-nicolas-maduro-firma-decretos-plan-defensa-guayana-esequiba/ (last accessed on 27 November 2024) ("President Nicolás Maduro signs decrees of the Action Plan in defence of Essequiba Guiana"; Guyana's Translation of the Spanish original: "Presidente Nicolás Maduro firma decretos del Plan de Acción en defensa de la Guayana Esequiba").

[422] The Joint Declaration of Argyle for Dialogue and Peace Between Guyana and Venezuela (14 December 2024), available at https://www.minfor.gov.gy/sites/default/files/2024-02/FINAL - Joint Declaration of Argyle for Dialogue and Peace between Guyana and Venezuela - December 14, 2023.pdf, points 1 and 6.

[423] Headquarters Intelligence Corps Base Camp Ayanganna, Thomas Lands, Georgetown, *Venezuela Military Helicopter Flew Over Guayana's Airspace* (22 December 2023) (Vol. III, Annex 47).

[424] Venezuela's National Assembly, Annual Address of Citizen Nicolás Maduro Moros (15 January 2024), available at https://www.asambleanacional.gob.ve/storage/documentos/botones/mensaje-anual-a-cargo-del-ciudadano-nicolas-maduro-moros-20240118234823.pdf (last accessed on 27 November 2024), p. 32.

and a bridge to nearby Ankoko Island[425], an insular feature in the Cuyuni River attributed in part to Guyana and in part to Venezuela by the 1899 Award, and seized in its entirety by Venezuela in 1966[426]. **Figure 5.1** below[427] shows where the boundary resulting from the Award divides Ankoko between Venezuela and Guyana. Publicly available satellite images from January 2024 confirm the recent expansion of Venezuela's military facilities on the island[428]. These ongoing activities have added a military dimension to the dispute, further aggravating it.

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[425] See video embedded in gnb_tachira, ("Guardia Nacional Bolivariana" or "GNB"), *Instagram* (15 January 2024), available at https://www.instagram.com/reel/C2IEp1cLW1X/?igsh=MXZteXprYWo0NXJ2eg (last accessed on 27 November 2024) (the video posted by an account linked to the GNB shows construction materials in Ankoko island; three armoured vehicles and amphibious armoured personnel carriers ("APCs")). See also Video "Sixth Corps of Engineers of the Bolivarian Army Building the Homeland", embedded in *X* (19 January 2024), available at https://x.com/6TOCING_EJB/status/1748465769992630783 (last accessed on 27 November 2024) (informing the construction of a tank park in Ankoko and a bridge to that island. The video shows construction materials, APCs, and heavy river ferry, along with this tweet: "The @6TOCING_EJB Complying with instructions from the @CEOFANBVE from Isla de Ankoko, edo Bolívar; continue engineering works on the banks of the Cuyuní river, where the Mabey Compact 200 bridge is being built along with the construction of the tank farm in the jungle." (Guyana's translation of the Spanish original: "El @6TOCING_EJB Cumpliendo instrucciones del @CEOFANBVE desde la Isla de Ankoko, edo Bolívar; continúan los trabajos de Ingeniería a orillas del río Cuyuní, donde se construye el puente Mabey Compact 200 y la construcción del tancodromo en selva."). See also video embedded in Bolivarian Army, @somos_ejército, along with tweet: "#Enterate || GJ Domingo Hernández Lárez, Strategic Operational Commander of the FANB, reviewed the Ankoko Island in #Bolívar state in order to inspect the construction of the tankodrome (tank farm), promoted by the 11 Armoured Brigade together with the @6TOCING_EJB, improving the FANB's response system in this important border area with the state of Guayana Esequiba and repelling any eventuality that attempts against the Republic" (Guyana's translation), *X* (25 January 2024), available at https://x.com/somos_ejercito/status/1750548445130019157 (last accessed on 27 November 2024); pictures and video embedded in GJ. Domingo Hernández Lárez, @dhernandezlarez, *X* (25 January 2024), available at https://x.com/dhernandezlarez/status/1750501357075706075 (last accessed on 27 November 2024) (posting three pictures and one video of Venezuela's military activities in Ankoko island, and asserting that the army "is firm and willing to comply with its mission to defend the national sovereignty and support with the effort of the development of the country"; Guyana's translation); G. J. Domingo Hernández Lárez, @dhernandezlarez, "Llegó la torre de control de Anacoco", *X* (27 March 2024), available at https://x.com/dhernandezlarez/status/1773165663302861238 (last accessed on 27 November 2024) (informing and showing that the "tower of control of Ankoko" has arrived).

[426] See Application, para. 51; MG, para. 2.52.

[427] See also Vol. II, Figure 5.1, p. 11.

[428] See Christopher Hernandez-Roy, Henry Ziemer, Rubi Bledsoe, Joseph S. Bermudez Jr., and Jennifer Jun, "Miscalculation and Escalation over the Essequibo: New Insights into the Risks of Venezuela's Compellence Strategy", *Center for Strategic & International Studies*

Figure 5.1. Venezuela's Occupation of Ankoko Island

5.9. On 21 March 2024, the Venezuelan National Assembly approved the Organic Law for the Defense of Guayana Essequiba proposed by President Maduro on 5 December 2023[429]. This Law came into force on 3 April 2024[430]. It:

- converted the territory in dispute into a new state of Venezuela[431];
- established the executive and legislative branches of the new state[432], and the office of comptroller[433];
- vested the Venezuelan courts with jurisdiction over the territory[434];
- required the President of Venezuela to "implement a special plan for the protection and development of the present and future population" of the territory[435];

(9 February 2024), available at https://www.csis.org/analysis/miscalculation-and-escalation-over-essequibo-new-insights-risks-venezuelas-compellence (last accessed on 27 November 2024).

[429] Asamblea Nacional Poder Legislativo, República Bolivariana de Venezuela, Poder Legislativo sanciona Ley Orgánica para la Defensa del Esequibo, available at https://www.asambleanacional.gob.ve/noticias/poder-legislativo-sanciona-ley-organica-para-la-defensa-del-esequibo (last accessed on 27 November 2024); Asamblea Nacional, @Asamblea_Ven, "#21Mar || Queda aprobado por Unanimidad el Proyecto de Ley Orgánica para la Defensa de la Guayana Esequiba.", *X* (21 March 2024), available at https://x.com/asamblea_ven/status/1770880327424106558 (last accessed on 27 November 2024).

[430] See Organic Law (Vol. III, Annex 1), First Transitory Article. See also Nicolás Maduro, @NicolasMaduro, "Con mucho orgullo, amor y compromiso firmé y promulgué esta Ley Orgánica vinculante y obligante que ha aprobado la Asamblea Nacional, ha valido la pena rescatar el sueño de las libertadoras y los libertadores, de luchar por nuestra tierra y nuestros derechos. Más temprano que tarde, recuperaremos los derechos de Venezuela sobre la Guayana Esequiba. ¡Así lo juro y así será!", *X* (4 April 2024), available at https://x.com/nicolasmaduro/status/1775686454863176164 (last accessed on 27 November 2024) (Guyana's translation: "With great pride, love and commitment, I signed and promulgated this binding and mandatory Organic Law approved by the National Assembly, it has been worth rescuing the dream of the liberators, of fighting for our land and our rights. Sooner rather than later, we will recover Venezuela's rights to Guayana Esequiba. So I swear and so it will be!").

[431] Organic Law, Article 8 (Vol. III, Annex 1).

[432] *Ibid.*, Articles 11, 12, First and Second Transitory Articles.

[433] *Ibid.*, Article 13.

[434] *Ibid.*, Article 16.

[435] *Ibid.*, Article 29.

- mandated that every map of Venezuela include the territory as an integral part of Venezuela and prohibited the publication of maps failing to meet this requirement[436];

- authorized the President to "adopt the necessary reciprocal measures, in accordance with international law, to guarantee the rights of [Venezuela] over the territory"[437]; and

- established the "duty" of all Venezuelans "to safeguard, protect and vindicate [Venezuela's] sovereignty over the territory of the Guayana Esequiba"[438].

5.10. In response to the Judgments and Orders of the Court, the Organic Law also required that every "[p]ublic officials, authorities and representatives of Public Powers, as well as citizens, shall refrain from executing, causing to be executed, or assisting in the execution of ... judgments ... or any other decision ... issued by any tribunal or Court whose jurisdiction has not been recognised by the Republic ..."[439].

5.11. The Caribbean Community characterized Venezuela's adoption of the Organic Law as:

> "an unacceptable escalation of tensions between that country and the Cooperative Republic of Guyana [which] has threatened to undermine peace and security in Latin America and the Caribbean"[440].

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[436] *Ibid.*, Article 23.

[437] *Ibid.*, Article 27.

[438] *Ibid.*, Article 8.

[439] *Ibid.*, Article 6.

[440] Caribbean Community, Statement On The Unacceptable Escalation Of Tensions And Threats To Regional Peace And Security Occasioned By The Adoption Of "The Organic Law For The Defence Of Guyana Essequiba" On April 3, 2024, By The Bolivarian Republic Of Venezuela

5.12. The Secretary General of the Commonwealth stated that "Venezuela's latest actions", including the Organic Law, "appear to directly contravene the ICJ Order and also the spirit of the" Argyle Declaration. He "urged … Venezuela to abide by the principles of international law and to manage the dispute in ways that guarantee the peace and stability of the Caribbean region"[441].

5.13. On 15 April 2024, the United Nations Security Council expressed its "concern about the possible escalation of tensions between Venezuela and Guyana", and reminded the parties of "their obligations to comply with the [Court's] Order of Provisional Measures"[442].

5.14. Undeterred, Venezuela responded that it is "carrying out a process of affirmation of sovereignty over the disputed territory"[443].

5.15. There can be no doubt that Venezuela's actions violate the Court's Order of 1 December 2023 in that they both: (i) purport to "modify the situation that currently prevails in the territory in dispute, whereby the Co-operative Republic of Guyana administers and exercises control over that area" by integrating the area into Venezuela and subjecting it to Venezuelan control; and (ii) constitute actions

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(8 April 2024), available at https://caricom.org/statement-on-the-unacceptable-escalation-of-tensions-and-threats-to-regional-peace-and-security-occasioned-by-the-adoption-of-the-organic-law-for-the-defence-of-guyana-essequiba-on-a/.

[441] The Commonwealth, Statement by the Commonwealth Secretary-General in support of Guyana after Venezuela's recent legislation on the April 3rd Organic Law on Essequibo (6 April 2024), available at https://thecommonwealth.org/Statement-by-the-Commonwealth-Secretary-General-in-support-of-Guyana.

[442] United Nations, Security Council, Press Statement on Guyana–Venezuela Situation, SC/15665 (15 April 2024), available at https://press.un.org/en/2024/sc15665.doc.htm.

[443] Presidential Elections 2024: Nicolás Maduro won, the defender of the historical rights over Guayana Essequiba (2 August 2024), available at https://comisionesequibo.gob.ve/?p=8023 &lang=en (last accessed on 27 November 2024).

"which might aggravate or extend the dispute before the Court or make it more difficult to resolve"[444].

5.16. Nor is there any doubt that the Provisional Measures ordered by the Court are binding upon the parties to which they are addressed[445]. Indeed, in the *Nicaragua* case, the Court established that when it "finds that the situation requires that measures of this kind should be taken, it is incumbent on each party to take the Court's indications seriously into account, and not to direct its conduct solely by reference to what it believes to be its rights"[446]. Further, having decided that it has jurisdiction over the present dispute[447], the Court "also has jurisdiction to deal with

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[444] *Arbitral Award of 3 October 1899 (Guyana* v. *Venezuela)*, *Provisional Measures*, Order of 1 December 2023, para. 45 (1)-(2).

[445] Arbitral Award of 3 October 1899 (Guyana v. Venezuela), *Provisional Measures*, Order of 1 December 2023, para. 44; *LaGrand (Germany* v. *United States of America)*, *Judgment*, *I.C.J. Reports 2001*, p. 506, para. 109; *Application of the International Convention on the Elimination of all Forms of Racial Discrimination (Armenia* v. *Azerbaijan)*, *Provisional Measures*, *Order of 7 December 2021*, *I.C.J Reports 2021*, p. 392, para. 96; *Allegations of Genocide Under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, *Provisional Measures*, *Order of 16 March 2022*, *I.C.J. Reports 2022*, p. 230, para. 84; *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar* v. *United Arab Emirates)*, *Provisional Measures*, *Order of 23 July 2018, I.C.J. Reports 2018*, p. 433, para. 77. See also *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro)*, *Judgment*, *I.C.J. Reports 2007*, p. 223, para. 435 (noting that "the FRY was bound by very specific obligations by virtue of the two Orders indicating provisional measures delivered by the Court in 1993" and thus acknowledging that provisional measures constitute international obligations).

[446] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America)*, *Merits*, *Judgment*, *I.C.J. Reports 1986*, p. 144, para. 289.

[447] *Arbitral Award of 3 October 1899 (Guyana* v. *Venezuela)*, *Jurisdiction of the Court*, *Judgment*, *I.C.J. Reports 2020*, p. 493, para. 138 (1).

submissions requesting it to determine that an order indicating measures … has not been complied with"[448], and to order remedies[449].

II. Appropriate Remedies

5.17. As Guyana has shown in the preceding Chapters of this Reply, the evidence and applicable law confirm the validity of the 1899 Arbitral Award and the land boundary that was delimited by the Award and demarcated by the Parties in their 1905 Agreement. Guyana therefore seeks a Judgment on the Merits to these effects, as set out in its Submissions, which follow this Chapter. However, Guyana submits that, in light of Venezuela's conduct described above — including its violation of the Order on Provisional Measures and enactment of the Organic Law requiring rejection of all the Court's Orders and Judgments — further action by the Court will be required if it is to achieve a "definitive settlement of the land boundary dispute between Guyana and Venezuela"[450].

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[448] *LaGrand (Germany* v. *United States of America)*, *Judgment*, *I.C.J. Reports 2001*, p. 484, para. 46. ICSID tribunals have followed the same approach: see, e.g., *Victor Rey Casado and President Allende Foundation v. Republic of Chile*, ICSID Case No. ARB/98/2, Decision on Provisional Measures, 25 September 2001, paras. 17, 20; *City Oriente Limited v. Republic of Ecuador and Empresa Estatal Petroleos del Ecuador (Petroecuador)*, ICSID Case No. ARB/06/21, Decision on Provisional Measures, 19 November 2007, para. 92; *Perenco Ecuador Limited v. Republic of Ecuador*, ICSID Case No. ARB/08/6, Decision on Provisional Measures, 8 May 2009, paras. 75-76; and *Tethyan Copper Company Pty Limited v. Islamic Republic of Pakistan*, ICSID Case No. ARB/12/1, Decision on Provisional Measures, 13 December 2012, para. 120.

[449] See *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro)*, *Judgment*, *I.C.J. Reports 2007*, pp. 236, 238, paras. 469, 471 (7) (ordering satisfaction as reparation for the violations to the provisional measures committed by Serbia and Montenegro); *LaGrand (Germany* v. *United States of America)*, *Judgment*, *I.C.J. Reports 2001*, p. 508, para. 116 (implying that its jurisdiction would have extended to remedies "had Germany's submission included a claim for indemnification.").

[450] *Arbitral Award of 3 October 1899 (Guyana* v. *Venezuela)*, *Jurisdiction of the Court*, *Judgment*, *I.C.J. Reports 2020*, pp. 492-493, paras. 135, 137, and 138 (1). See also *Arbitral Award of 3 October 1899 (Guyana* v. *Venezuela)*, *Preliminary Objection*, *Judgment*, *I.C.J. Reports 2023*, pp. 270, 282, paras. 11, 68 (1).

5.18. Put simply, Venezuela's conduct does not augur well for its compliance with the Judgment of the Court, should it confirm the validity of the 1899 Award and the boundary established under it. Indeed, if Venezuela is to be taken at its word, as expressed in its newly enacted Organic Law, it can be expected to evade compliance with such a Judgment. In these circumstances, Guyana submits that it is appropriate for the Court to fashion remedies both to address Venezuela's violations of the provisional measures, and to ensure that its Judgment is respected, including by specifying the actions required of Venezuela to put itself into compliance with that Judgment.

5.19. To this end, Guyana submits that, if the Judgment on the Merits should uphold the validity of the 1899 Award and the boundary established thereunder, the Court should order Venezuela: (i) to withdraw from any part of Guyana's territory as defined under the Award, including the part of Ankoko Island that the Award attributed to Guyana; (ii) refrain from asserting or purporting to exercise sovereignty over any part of Guyana's territory; (iii) repeal all measures that purport to annex, administer or control any part of Guyana's territory; (iv) refrain from taking any actions that violate Guyana's territorial integrity or sovereignty; and (v) provide satisfaction.

5.20. There is ample precedent for such remedies. *First*, States have been ordered to withdraw from areas that, according to the Judgments of the Court, fall within the territory of another State[451]. In the *Temple of Preah Vihear* case, for example, the Court ruled that the Temple was "situated in territory under the sovereignty of

[451] *Temple of Preah Vihear (Cambodia* v. *Thailand), Merits, Judgment, I.C.J. Reports 1962*, p. 6; *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria: Equatorial Guinea intervening), Judgment, I.C.J. Reports 2002*, pp. 451-452, and 457, paras. 314-315, and 325 (V) (A) and (B); *Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica* v. *Nicaragua)* and *Land Boundary in the Northern Part of Isla Portillos (Costa Rica* v. *Nicaragua), Judgment, I.C.J. Reports 2018*, pp. 170, 226, paras. 77-78, 205 (3) (A)-(B).

Cambodia"[452] and that, "in consequence", Thailand was "under an obligation to withdraw any military or police forces, or other guards or keepers, stationed … at the Temple, or in its vicinity on Cambodian territory"[453].

5.21. Similarly, in *Land and Maritime Boundary between Cameroon and Nigeria*, after determining the areas where each State enjoyed sovereignty, the Court ruled that each of them was under an obligation to withdraw its administration and its military and police forces from the territories which fell within the sovereignty of the other[454]. The Court added that they should carry out this obligation "expeditiously and without condition"[455].

5.22. In the joined cases of *Maritime Delimitation in the Caribbean Sea and Pacific Ocean* and *Land Boundary in the Northern Part of Isla Portillos*, the Court found that Nicaragua had "violated Costa Rica's … sovereignty … by establishing and maintaining a military camp" at Isla Portillos and ordered "Nicaragua to remove [the] camp"[456].

5.23. These cases indicate that, if the 1899 Award and the resulting boundary are upheld by the Court, Venezuela should be ordered to withdraw from the part of Ankoko Island that falls on Guyana's side of the boundary[457]. The area under

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[452] *Temple of Preah Vihear (Cambodia* v. *Thailand), Merits, Judgment, I.C.J. Reports 1962*, p. 36.

[453] *Ibid*, p. 37.

[454] *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria: Equatorial Guinea intervening), Judgment, I.C.J. Reports 2002*, pp. 451-452, and 457, paras. 314-315, and 325 (V) (A) and (B).

[455] *Ibid.*

[456] *Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica* v. *Nicaragua)* and *Land Boundary in the Northern Part of Isla Portillos (Costa Rica* v. *Nicaragua), Judgment, I.C.J. Reports 2018*, pp. 170, 226, paras. 77-78, 205 (3) (A)-(B).

[457] See MG, para. 2.52. Also, the Map signed by the Commissionaires of Venezuela and the United Kingdom that demarcated the boundary between Venezuela and British Guiana in 1905, in

Venezuelan occupation is shown on the illustrative map *supra*[458]. As mentioned above, Venezuela has occupied this area since 1966[459], despite Guyana's protests[460], and, in clear violation of the Court's Order of 1 December 2023, has been enhancing its military facilities there since January 2024[461].

5.24. *Second*, there is also precedent for requiring States to repeal domestic measures that encroach on another State's territory or on that State's powers over it[462]. In the *Alleged Violations* case between Nicaragua and Colombia, the Court

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accordance with the 1899 Award showed that the eastern area of Ankoko now occupied by Venezuela, corresponded to Guyana. See *Guyana/Venezuela Boundary, The Ankoko Affair*, 1981, Appendix II (Vol. III, Annex 48).

[458] See Figure 5.1, p. 163.

[459] See para. 5.8, and e.g., Guyana, Ministry of Foreign Affairs, Memorandum on the Guyana/Venezuela Boundary, 1980 (enclosed with Letter from the Permanent Representative of Guyana to the United Nations addressed to the Secretary-General (2 November 1981) (VCM, Vol. III, Annex 148, p. 8).

[460] See Cable from Primer Minister and Minister of Foreign Affairs of Guyana, Mr. F.S. Burnham, to Minister of Foreign Affairs of Venezuela, Dr. Ignacio Iribarren Borges, concerning the Ankoko Island (14 October 1966) (Vol. III, Annex 49); Note Verbale from the Prime Minister and Minister of External Affairs of Guyana to the Minister of Foreign Relations of Venezuela, No. CP(66)603 (21 October 1966) (MG, Vol. II, Annex 40); Letter from the Vice President and Minister of Foreign Affairs of the Cooperative Republic of Guyana to the Secretary-General of the United Nations (3 June 2016), referring to the "continued illegal occupation of Guyana's half of Ankoko island by the Venezuelan military" (MG, Vol. IV, Annex 105). See further United Nations, General Assembly, 37th Session, Agenda item 9, United Nations Doc. A/37/PV.16 (4 October 1982), paras. 279 and 282 (MG, Vol. III, Annex 57); Ministry of the Popular Power for the Social Process of Labor, Our Esequibo and the spoliation of Exxon Mobil (with respect to the 50th Anniversary of the Geneva Agreement) (17 February 2016), available at https://www.mpppst.gob.ve/mpppstweb/index.php/2016/02/17/nuestro-esequibo-y-la-expoliacion-de-exxon-mobil-a-proposito-del-50-aniversario-del-acuerdo-de-ginebra/ (noting that, of the "disputed territory", "the eastern part of the river island of Anacoco in the river Cuyuni is under the sovereignty of Venezuela, but has been protested by Guyana" (Guyana's translation)).

[461] See para. 5.8, and Christopher Hernandez-Roy, Henry Ziemer, Rubi Bledsoe, Joseph S. Bermudez Jr., and Jennifer Jun, "Miscalculation and Escalation over the Essequibo: New Insights into the Risks of Venezuela's Compellence Strategy", *Center for Strategic & International Studies* (9 February 2024), available at https://www.csis.org/analysis/miscalculation-and-escalation-over-essequibo-new-insights-risks-venezuelas-compellence.

[462] *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia), Judgment, I.C.J. Reports 2022*, p. 341, para. 199; *Legal Status of Eastern Greenland, Judgment, 1933, P.C.I.J., Series A/B, No. 53*, p. 75 (finding that a Norwegian legislative measure that purported to occupy a territory that belonged to Denmark, was unlawful, as well as any steps

found that a Colombian Presidential Decree extended that State's contiguous zone into Nicaragua's exclusive economic zone, and attributed to Colombia rights that belonged exclusively to Nicaragua[463]. On this basis, it ordered Colombia to bring the Presidential Decree into conformity with international law, by means of its own choosing[464].

5.25. The same approach should be applied to Venezuela's Presidential Decrees of 5 December 2023 and to the Organic Law which entered into force on 3 April 2024. Specifically, Venezuela should be required, by means of its own choosing, to:

– Withdraw all decrees and measures by which Venezuela purports to exercise sovereignty, administration or control over Guyana's territory;

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taken in respect of that purported occupation). The Court has ordered States to repeal different types of domestic measures that contravene international law. See, e.g., *Free Zones of Upper Savoy and the District of Gex, Judgment, 1932, P.C.I.J., Series A/B, No. 46*, p. 172 (ordering France to withdraw a custom line in the District of Gex, a customs-free zone); *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo* v. *Belgium), Judgment, I.C.J. Reports 2002*, p. 32, para. 78 (3) (ordering Belgium to, by means of its own choosing, cancel an arrest warrant unlawfully issued against the Congo's Ministry of Foreign Affairs); *Avena and Other Mexican Nationals (Mexico* v. *United States of America), Judgment, I.C.J. Reports 2004*, p. 70, para. 152 (ordering the review and reconsideration of United States judicial measures rendered against several Mexican nationals in violation of United States obligations under the Vienna Convention on Consular Relations); *Jurisdictional Immunities of the State (Germany* v. *Italy: Greece intervening), Judgment, I.C.J. Reports 2012*, p. 155, para. 139 (4) (ordering Italy to ensure that judicial decisions that violated Germany's sovereign immunity cease to have effect); *Whaling in the Antarctic (Australia* v. *Japan: New Zealand intervening), Judgment, I.C.J. Reports 2014*, p. 298, para. 245 (ordering Japan to revoke authorizations under an unlawful domestic programme for whaling, and to refrain from granting any further whaling permits in pursuance of that programme); *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran* v. *United States of America), Provisional Measures, Order of 3 October 2018, I.C.J. Reports 2018*, p. 623 (ordering the USA to remove impediments to free exportation of specific products to Iran).

[463] *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua* v. *Colombia), Judgment, I.C.J. Reports* 2022, pp. 338, 340, and 367, paras. 187, 194, and 261 (5).

[464] *Ibid.*, paras. 194, 261 (6).

- Revoke any powers granted to Venezuela's President, National Assembly, courts, or to any other State authority, institution or individual officer in regard to Guyana's territory;

- Dissolve any entity to which Venezuela has attributed powers over Guyana's territory, such as the High Commission for the Defense of Guayana Esequiba, as well as all other executive, legislative and administrative agencies created to exercise such powers;

- Terminate the "Social Care Plan for the population of Guayana Esequiba", and any ongoing census of the population of Guyana's territory, as well as all military activities conducted in furtherance of Venezuela's attempt to exercise sovereignty over, annex, administer or control Guyana's territory; and

- Withdraw from schools, public offices and other places, any map depicting Guyana's territory as being part of Venezuela.

5.26. In the *Whaling* case, the Court ruled that "measures that go beyond declaratory relief are warranted"[465] because Japan's whaling program, JARPA II, which it found to be unlawful, was ongoing. In addition to ordering Japan to revoke any extant authorization, permit or licence to kill, take or treat whales in relation to JARPA II, the Court ordered Japan to "refrain from granting any further permits … in pursuance of that programme"[466].

[465] *Whaling in the Antarctic (Australia* v. *Japan: New Zealand intervening), Judgment, I.C.J. Reports 2014*, p. 298, para. 245.

[466] *Ibid.*

5.27. Venezuela's measures adopted in defiance of the Court's Order are unlawful and ongoing. Venezuela has described them as part of a "process of affirmation of sovereignty" over the disputed territory, and stated that "Venezuela is carrying out the process of affirmation of sovereignty over the disputed territory"[467] Indeed, Venezuela has insisted that it "will recover the Esequibo"[468] and will not "recognize the decision that could be adopted" by the Court[469]. For these reasons, Guyana submits that the Court should restrain Venezuela from engaging in any future measure that furthers the objective of exercising sovereignty, administration or control over Guyana's territory.

5.28. Finally, Guyana submits that the Court should include a declaration of Venezuela's breaches of the Order on Provisional Measures in the operative part of its Judgment on the Merits, as a means of satisfaction.

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[467] Presidential Elections 2024: Nicolás Maduro won, the defender of the historical rights over Guayana Essequiba (2 August 2024), available at https://comisionesequibo.gob.ve/?p=8023&lang=en (last accessed on 27 November 2024).

[468] See the title of Communiqué embedded in Delcy Rodríguuez, delcyrodirguezv, "The truth of Venezuela will prevail in the face of the territorial dispossession committed through a fraudulent and criminal award. Venezuela as a whole, in national union, will recover the Guayana Esequiba by means of the Geneva Agreement. The moment of truth has arrived!", *threads* (8 April 2024), available at https://www.threads.net/@delcyrodriguezv/post/C5gIN2xOFo1 (last accessed on 27 November 2024); Nicolás Maduro, @NicolasMaduro, "Con mucho orgullo, amor y compromiso firmé y promulgué esta Ley Orgánica vinculante y obligante que ha aprobado la Asamblea Nacional, ha valido la pena rescatar el sueño de las libertadoras y los libertadores, de luchar por nuestra tierra y nuestros derechos. Más temprano que tarde, recuperaremos los derechos de Venezuela sobre la Guayana Esequiba. ¡Así lo juro y así será!", *X* (4 April 2024), available at https://x.com/nicolasmaduro/status/1775686454863176164 (last accessed on 27 November 2024) (Guyana's translation: "With great pride, love and commitment, I signed and promulgated this binding and mandatory Organic Law approved by the National Assembly, it has been worth rescuing the dream of the liberators, of fighting for our land and our rights. Sooner rather than later, we will recover Venezuela's rights to Guayana Esequiba. So I swear and so it will be!").

[469] Statement imbedded in Delcy Rodríguez, @delcyrodriguezv, "Venezuela reafirma ante la #CIJ sus derechos históricos sobre la Guayana Esequiba. El Acuerdo de Ginebra de 1966 es el único instrumento válido para dirimir, por la vía del diálogo, esta controversia territorial. ¡El Sol de Venezuela nace en el Esequibo!", *X* (11 June 2024), available at https://x.com/delcyrodriguezv/status/1800571795898274303/photo/1 (last accessed on 27 November 2024) (Guyana's translation: Venezuela reaffirms before the #CIJ its historical rights over the Esequiba Guiana. The Geneva Agreement of 1966 is the only valid instrument to settle, through dialogue, this territorial dispute. The Venezuelan sun is born in the Essequibo!]?

SUBMISSIONS

For the reasons given in this Reply, and reserving the right to supplement, amplify or amend the present Submissions, the Co-operative Republic of Guyana respectfully requests the International Court of Justice:

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;

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;

3. As a consequence, Venezuela must:

   (a) withdraw from any part of Guyana's territory as defined under the Award, including the part of Ankoko Island that the Award attributed to Guyana;

   (b) refrain from asserting or purporting to exercise sovereignty over any part of Guyana's territory and from taking any actions that violate Guyana's sovereignty or territorial integrity as defined in the Award;

   (c) repeal by means of its own choosing all decrees and measures that purport to annex, administer or control any part of Guyana's territory, and in particular:

(i) dissolve any entity to which Venezuela has attributed powers over Guyana's territory, such as the High Commission for the Defense of Guayana Esequiba, as well as all other executive, legislative and administrative agencies created to exercise such powers;

(ii) terminate the "Social Care Plan for the population of Guayana Esequiba", and any ongoing census of the population of Guyana's territory, as well as all military activities conducted in furtherance of Venezuela's attempt to exercise sovereignty over, annex, administer or control any part of Guyana's territory;

(d) refrain from publicly claiming or teaching its people that the Award is a nullity or the outcome of a fraudulent process, or that Venezuela was wrongly deprived of the Essequibo region, and withdraw from schools, public offices and other places, any map depicting any part of Guyana's territory as defined by the Award as part of Venezuela;

4. Venezuela has failed to comply with the obligations set out in the Order of 1 December 2023.

9 December 2024

Hon. Carl B. Greenidge
Co-operative Republic of Guyana
Agent

APPENDIX

ARBITRAL AWARDS RENDERED IN THE 19TH AND EARLY 20TH CENTURIES WITHOUT STATEMENTS OF REASONS

1. This Appendix identifies arbitral awards rendered by jurists during the 19th and early 20th centuries that do not include a statement of reasons for the decision taken. It disproves Venezuela's assertions that "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", and that "[t]he importance attached to the legal expertise and background of the five selected arbitrators [in the 1898-1899 arbitration] shows that the parties expected a decision explaining in legal terms the reasons behind the territorial delimitation."[1]

2. As shown below, there are multiple awards rendered by "jurists" and non-sovereigns during the relevant time period that did not state any reasons. In fact, amongst these unreasoned awards, there is the 1895 Award of the Venezuela-United States Commission[2]. The Venezuelan jurist who signed the Washington Treaty of 1897 on behalf of Venezuela, Dr. José Andrade, was Venezuela's Commissioner in that case. It is notable that the same Venezuelan jurist who signed the Washington Treaty had very recently rendered an unreasoned award.

3. There are awards without a statement of reasons, rendered by "jurists" and non-sovereigns, throughout the late 18th, 19th and early 20th centuries. This was the case in the *Treaty of Ghent* award of 1817 — as well as the *St. Croix River* award

[1] VCM, paras. 6.64-6.65.

[2] H. La Fontaine, *Pasicrisie Internationale 1794-1900, Histoire Documentaire des Arbitrages Internationaux*, 1902, p. 422.

of 1798 — both between the United States and the United Kingdom. This practice was followed particularly in frontier disputes, including the *Puna de Atacama* award between Chile and Argentina rendered on 24 March 1899, only few months before the 1899 Award.

4. A leading compendium and commentary of arbitral case law of this period[3], authored by Belgian Professor Henri La Fontaine, noted that both the Washington Treaty and the 1899 Award were "absolutely normal and do not call for any commentary"[4].

5. Jurists continued to omit statements of reasons in arbitral awards issued after 1899. The 1903 *Alaska Boundary* award in the arbitration between the United States and the United Kingdom, and the 1904 *San Domingo Company* award between the United States and the Dominican Republic are two such examples.

6. The following Section describes nine unreasoned awards rendered by jurists and other non-sovereigns during the relevant period[5].

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[3] *UNRIAA*, Vol. I, p. 4 (considering La Fontaine's treatise as the first "collection" of a "truly … general character"); H. La Fontaine, *Pasicrisie Internationale 1794-1900, Histoire Documentaire des Arbitrages Internationaux*, 1902, p. xvi (describing the treatise as "*le premier et modeste recueil d'une jurisprudence Internationale*").

[4] H. La Fontaine, *Pasicrisie Internationale 1794-1900, Histoire Documentaire des Arbitrages Internationaux*, 1902, p. 556 (Original in French: "*Bien que la question souleva de vives discussions dans la presse, le compromis qui institua l'arbitrage et la sentence intervenue ont un caractère absolument normal et n'appellent aucun commentaire.*").

[5] Principal sources include: the treatise by Belgian Professor Henri La Fontaine, *Pasicrisie Internationale 1794-1900*, already mentioned; the treatise by French Professor Albert de Geouffre de La Pradelle de Leyrat, *Recueil des Arbitrages Internationaux (1856-1872)*; and Volumes XXVIII and XXIX of the *UNRIAA*, covering cases from the 18th and early 19th centuries.

I. *River Saint Croix (United Kingdom/United States)* (25 October 1798)

7. This award concerned one of multiple disputes regarding the boundary between Maine (United States) and New Brunswick (then British North America, now Canada). Article II of the 1783 Treaty of Paris between the United States and the United Kingdom vaguely established that this boundary should follow "the source of St. Croix River"[6], but it did not specify which was the St. Croix River.

8. In 1794, the United States and the United Kingdom concluded the Treaty of Amity, Commerce and Navigation between the United States and the United Kingdom (the "Jay Treaty"). Article V of that Treaty established that the "question" as to "what river was truly intended under the name of the river St. Croix … shall be referred to the final decision of commissioners …"[7]. That same Article required the declaration of the Commission to "contain a description of the said river," and to "particularize the latitude and longitude of its mouth, and of its source".[8]

9. The second paragraph of Article V established the mechanism for appointment of commissioners[9], It did not require the commissioners to be "jurists", like the Washington Treaty, but both the United States and the United Kingdom appointed jurists:

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[6] The Definitive Treaty of Peace Between the Kingdom of Great Britain and the United States of America signed in Paris on 3 September 1783, Article 2, available at https://avalon.law.yale.edu/18th_century/paris.asp.

[7] H. La Fontaine, *Pasicrisie Internationale 1794-1900, Histoire Documentaire des Arbitrages Internationaux*, 1902, pp. 1-2.

[8] *Ibid.*

[9] *Ibid.*, p. 2 ("One commissioner shall be named by His Majesty and one by the President of the United States, by and with the advice and consent of the senate thereof, and the said two commissioners shall agree on the choice of a third; or if they cannot so agree, they shall each propose one person, and of the two names so proposed, one shall be drawn by lot in the presence of the two original commissioners.").

– The United Kingdom appointed Thomas Barclay, who studied law under John Jay and joined the British army in 1776[10].

– The United States appointed David Howell. He was professor of law, mathematics and natural philosophy at Brown University, Attorney General of Rhode Island in 1789, and a justice of the United States Supreme Court at the time of his appointment[11].

– The third commissioner was Egbert Benson of New York, who was the first Attorney General of the State of New York and a justice of the United States Supreme Court at the time he was appointed to the Commission[12].

10. The Commission had to "be sworn impartially to examine and decide the said question according to such evidence as shall respectively be laid before them …"[13]. This formula was common in agreements to arbitrate disputes in the 19th century.

11. Finally, the Parties agreed to "consider such decision as final and conclusive, so as that the same shall never thereafter be called into question, or made the subject of dispute or difference between them"[14].

12. The Commission did not include a statement of reasons for its decision in its 1798 award. It simply noted that it was sworn to "impartially … examine and decide the said question, according to such evidence as [was] respectively … laid

[10] Henry S. Burrage, *The St. Croix Commission, 1796-98*, 1898, p. 3.

[11] *Ibid.*, pp. 3-4.

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

[13] H. La Fontaine, *Pasicrisie Internationale 1794-1900, Histoire Documentaire des Arbitrages Internationaux*, 1902, p. 2.

[14] *Ibid.*

before" it, and that "having heard the evidence" it had decided the coordinates of the River St. Croix[15].

II. *Decision under Article IV of the Treaty of Ghent (United States/United Kingdom)* (24 November 1817)

13. In 1814, the United States and the United Kingdom signed the Treaty of Ghent. This Treaty ended the war between both nations that began in 1812. Article IV of the Treaty established that the claim of the United States that "several Islands in the Bay of Passamaquoddy" and "the Island of Grand Menan in the said Bay of Fundy" were comprehended between its boundaries, "shall be referred to two commissioners ..."[16].

14. Both States appointed jurists as commissioners, although the Treaty of Ghent did not require them to do so:

- The United Kingdom appointed once again Thomas Barclay, the same jurist who was appointed in the *St. Croix River* case[17].

- The United States appointed John Holmes, Esq., a Senator from the State of Maine.

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[15] *Declaration under Article V of the Treaty of 1794 between the United States and Great Britain, respecting the true River Saint Croix*, 25 October 1798, *UNRIAA*, Vol. XXVIII, pp. 3-4.

[16] Treaty of Peace and Amity Between His Britannic Majesty and the United States of America, signed in Ghent on 24 December 1814, available at https://www.loc.gov/resource/llsalvol.llsal_008/?sp=234&st=image. See also H. La Fontaine, *Pasicrisie Internationale 1794-1900, Histoire Documentaire des Arbitrages Internationaux*, 1902, p. 7.

[17] Henry S. Burrage, *The St. Croix Commission, 1796-1798*, 1898, p. 3.

15. The commissioners were tasked by Article IV of the Treaty to "impartially … examine and decide upon the said claims according to such evidence as shall be laid before them," and to "decide to which of the two contracting parties the several Islands" mentioned by Article IV, "do respectively belong, in conformity with the true intent of the" Treaty of Peace of 1783[18].

16. Article IV of the Treaty required the commissioners to state reasons *only in case they did not reach an agreement*. The Treaty explained that such statements would assist a "friendly sovereign or state"[19] to settle the matter undecided by the commissioners.

17. Since the commissioners agreed on a decision, they did not include a statement of reasons. They simply stated that they had "been duly sworn impartially to examine and decide upon" the claims submitted, and "decided" that the islands of the Bay of Fundy belonged to the United States, and that "all the other islands in the Bay of Passamaquoddy" and other islands belonged to the United Kingdom[20].

III. *Halifax Fisheries Commission (United States/United Kingdom)* (23 November 1877)

18. The Commission was established under Articles XXII and XXIII of the Treaty of Washington of 8 May 1871 (the "1871 Treaty"). This Treaty between the

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[18] Treaty of Peace and Amity Between His Britannic Majesty and the United States of America, signed in Ghent on 24 December 1814, available at https://www.loc.gov/resource/llsalvol.llsal_008/?sp=234&st=image. See also H. La Fontaine, *Pasicrisie Internationale 1794-1900, Histoire Documentaire des Arbitrages Internationaux*, 1902, pp. 7-8.

[19] *Ibid.*, Article IV. See also H. La Fontaine, *Pasicrisie Internationale 1794-1900, Histoire Documentaire des Arbitrages Internationaux*, 1902, p. 8.

[20] *Decision under Article IV of the Treaty of Ghent of 1814, between the United Kingdom and the United States relating to the Islands in the Bay of Fundy*, Decision of 24 November 1817, *UNRIAA*, Vol. XXVIII, p. 8.

United States and the United Kingdom sought to settle multiple pending matters, including claims arising from the American Civil War (1861-1865), boundaries, and fisheries. The award in question concerned fishing privileges in waters off Newfoundland (Canada). Pursuant to Article XXII of the 1871 Treaty, the Commission had to determine the amount of compensation, if any, owed by the United States for those privileges.

19. The 1871 Treaty did not establish that the commissioners should be "jurists." However, all its members were:

- The United Kingdom appointed Sir Alexander Tilloch Galt, lawyer from Montreal, Quebec, who became one of the founders of the Canadian Confederation.

- The United States appointed Ensign Hosmer Kellogg, a lawyer and politician from Massachusetts.

- The Austro-Hungarian Ambassador to the United Kingdom appointed the third commissioner, Maurice Delfosse, a Belgian lawyer and politician. He was the Minister of Justice of Belgium from 1908 to 1912.

20. The award contains no statement of reasons. It provides only that the United States should pay US$5.5 million to the United Kingdom[21].

[21] H. La Fontaine, *Pasicrisie Internationale 1794-1900, Histoire Documentaire des Arbitrages Internationaux*, 1902, p. 149.

IV. *Award of Chief Justice Melius de Villiers, as to the boundary question between Great Britain and the South African Republic (Transvaal) in the Cape Colony* (5 August 1885)

21. This award was rendered pursuant to the 1884 Convention for the Settlement of the Transvaal Territory (the "London Convention"). This Convention superseded the earlier 1881 Pretoria Convention that ended the First Boer War (1880-1881). The dispute concerned the southwest boundary of the United Kingdom with the South African Republic. Article II of the London Convention provided that "the President of the Orange Free State shall be requested to appoint a referee to whom" the two arbitrators named by the United Kingdom and South Africa "shall refer any questions on which they may disagree ..."[22].

22. The President of the Orange Free State appointed Chief Justice Melius de Villiers of that State as referee. The party-appointed arbitrators disagreed, and, following referral, the Chief Justice issued his award on 5 August 1885. The award described the boundary and provided the relevant coordinates. It did not include a statement of reasons[23].

V. *Bering Sea Fisheries (United States/United Kingdom)* (15 August 1893)

23. This was another dispute between the United States and the United Kingdom. It concerned the "jurisdictional rights of the United States in the waters of Behring's Sea", the "preservation of the fur-seal in or habitually resorting to the

[22] H. La Fontaine, *Pasicrisie Internationale 1794-1900, Histoire Documentaire des Arbitrages Internationaux*, 1902, p. 244.

[23] *Ibid.*

said sea," and "the rights of the citizens and subjects of either country as regards the taking of fur-seals in or habitually resorting to the said waters …"[24].

24. An award was rendered pursuant to the Washington Treaty of 29 February 1892 (the "1892 Treaty")[25].

25. Article I of the 1892 Treaty stipulated that the tribunal was to be composed by seven "jurists of distinguished reputation in their respective Countries"[26]. The United States would appoint two arbitrators; the United Kingdom another two. The last three arbitrators were to be appointed by the President of France, the King of Italy and the King of Sweden and Norway:

- The United States appointed John M. Harlan, Justice of the United States Supreme Court, and John T. Morgan, Senator of the United States, both jurists by profession.

- The United Kingdom appointed Lord Hannen, British barrister and judge, and Sir John Thompson, Minister of Justice and Attorney General of Canada.

- The President of the French Republic named the Baron de Courcel, Senator and Ambassador of France[27].

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[24] *Traité fixant les bases d'un arbitrage pour examiner le litige relatif aux pêcheries dans la mer de Behring* of 28 February 1982, Article I, in H. La Fontaine, *Pasicrisie Internationale 1794-1900, Histoire Documentaire des Arbitrages Internationaux*, 1902, p. 423.

[25] *Award between the United States and the United Kingdom relating to the rights of jurisdiction of United States in the Bering's sea and the preservation of fur seals*, Decision of 15 August 1893, *UNRIAA*, Vol. XXVIII, pp. 263-276.

[26] *Ibid.*, p. 267. See also H. La Fontaine, *Pasicrisie Internationale 1794-1900, Histoire Documentaire des Arbitrages Internationaux*, 1902, p. 423.

[27] The Baron de Courcel was not an attorney by profession, although the Treaty established that the members of the Tribunal had to be "jurists". He was the only non-lawyer member, although he had extensive experience in international legal matters under his role as diplomat.

– The King of Italy named Marquis Emilio Visconti Venosta, Italian lawyer, and former Minister of Foreign Affairs and Senator of the Kingdom of Italy.

– The King of Sweden and Norway named Mr. Gregers Gram, jurist, arbitrator, and Minister of State.

26. Five specific legal questions were presented to the Tribunal. The award of 15 August 1893 provided its answers to each of the five questions. It did not provide a statement of reasons for those answers[28].

27. Article VIII of the 1892 Treaty allowed the Parties to "submit to the Arbitrators any question of fact involved" and to "ask for a finding thereon …"[29]. Based on this provision, the United Kingdom submitted a statement of facts. The Tribunal "unanimously f[ou]nd the facts as set forth in the said statement to be true"[30]. However, it did not provide any statement of reasons for this finding.

VI. *Award by the Venezuela-United States Mixed Commission at Washington* (26 March 1895)

28. The award was rendered pursuant to the Convention between the United States of America and the United States of Venezuela of 19 January 1892 (the "1892 Convention"), ratified on 28 July 1894.

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[28] *Award between the United States and the United Kingdom relating to the rights of jurisdiction of United States in the Bering's sea and the preservation of fur seals*, Decision of 15 August 1893, *UNRIAA*, Vol. XXVIII, pp. 263-276.

[29] *Traité fixant les bases d'un arbitrage pour examiner le litige relatif aux pêcheries dans la mer de Behring* of 29 February 1982, Article VIII, available at H. La Fontaine, *Pasicrisie Internationale 1794-1900, Histoire Documentaire des Arbitrages Internationaux*, 1902, p. 424.

[30] *Award between the United States and the United Kingdom relating to the rights of jurisdiction of United States in the Bering's sea and the preservation of fur seals*, Decision of 15 August 1893, *UNRIAA*, Vol. XXVIII, p. 276.

29. This award is especially pertinent because, as mentioned, Venezuela's Minister in Washington, Dr. José Andrade, who subsequently negotiated and signed the 1897 Washington Treaty on behalf of Venezuela, was one of the three commissioners, and the Commission did not provide a statement of reasons for its award.

30. In the 1892 Convention, the Parties agreed to "submit the claim of the [United States company] 'Venezuela Steam Transportation Company' against the Government of Venezuela to the arbitration of a board of three commissioners, one to be appointed by the President of the United States of America, one by the President of the United States of Venezuela, and the third to be chosen by the two appointed ..."[31].

- The United States appointed General Noah L. Jeffries, attorney and member of the United States army.

- Venezuela appointed Don José Andrade, a Venezuelan jurist who studied law at Columbia College, and served as Venezuelan Minister at Washington, in which capacity he signed the Washington Treaty on behalf of Venezuela.

- They appointed Mr. Johan August Wilhelm Grip, Envoy Extraordinary and Minister Plenipotentiary of His Majesty the King of Sweden and Norway at Washington, as third commissioner[32]. He had studied law in Uppsala University in Sweden.

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[31] H. La Fontaine, *Pasicrisie Internationale 1794-1900, Histoire Documentaire des Arbitrages Internationaux*, p. 422.

[32] *Ibid.*

31. The award stated no reasons. It noted Venezuela's objection to jurisdiction and, without providing reasons, it rejected the objection. Then, by a majority, the Commission awarded US$141,500 to the United States in gold and unanimously disallowed another claim from the United States[33].

VII. *Award relating to the demarcation of the Puna de Atacama boundary between Argentine Republic and Chile (Chile* v. *Argentina)* (24 March 1899)

32. This dispute concerned the delimitation of the boundary between Chile and Argentina in the *Puna de Atacama*, a high plateau located 4,500 meters above sea level in proximity to the current borders of Argentina, Chile and Bolivia.

33. The Tribunal was established pursuant to an Agreement of 2 November 1898 between Chile and Argentina. In Article 1, Chile and Argentina agreed to:

> "Designate an Argentinean delegate and another Chilean and the current Minister of the United States of America in Argentina so that, in their capacity as demarcators and in view of the documents and facts of the matter, proceed by majority to draw definitely the boundary line ...."[34]

34. Pursuant to this provision:

– Argentina appointed Dr. José E. Uriburu, lawyer and former president of Argentina.

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[33] H. La Fontaine, *Pasicrisie Internationale 1794-1900, Histoire Documentaire des Arbitrages Internationaux*, p. 422.

[34] *Ibid.*, p. 586 (Guyana's translation of the Spanish original: "*Designar á un delegado argentino y á otro chileno y al ministro actual de los Estados Unidos de Norte América acreditado en República Argentina para que, en calidad de demarcadores y en vista de los documentos y antecedentes de la cuestión, procedan par mayoría á trazar de una manera definitiva la línea divisoria á que se refiere la base primera del acuerdo de diez y siete de abril de mil ochocientos noventa y seis.*").

– Chile appointed Don Enrique Mac-Iver, a Chilean lawyer, politician, and diplomat. He held several government posts in Chile, including Ministry of the Interior, Minister of Treasury, Congressman and Senator.

– The final member of the Commission was Mr. William I. Buchanan, Minister Plenipotentiary of the United States in Argentina. Although he was not a jurist, he was United States delegate in the 1907 Second Hague Peace Conference and was also the United States agent in the *Orinoco Steamship Company* arbitration between the United States and Venezuela[35].

35. Article IV of the 1898 Agreement provided that there should be a statement of reasons only for a dissenting opinion[36]. Therefore, the award did not include a statement of reasons.

VIII. *The Alaska Boundary Case (United Kingdom/United States)* (20 October 1903)

36. This arbitration concerned a longstanding dispute between Russia and the United Kingdom, which then controlled Canada's foreign relations, over the border with Alaska. The United States inherited this dispute when it purchased Alaska from Russia in 1867.

[35] "William Insco Buchanan", Editorial Comment, *American Journal of International Law*, Vol. 4, 1910, No. 1, pp. 161-162.

[36] H. La Fontaine, *Pasicrisie Internationale 1794-1900, Histoire Documentaire des Arbitrages Internationaux*, 1902, p. 586 ("Fourth — If there is dissent regarding the solution adopted, the dissident member may record its dissent by signing as such, but may not determine the grounds that motivates it."(Guyana's translation of the Spanish original: "Cuarto—*Si hubiere disidencia en cuanto á la solución adoptada, el miembro disidente podrá hacerla constar firmando como tal, pero no podrá determinar los fundamentos que la motivan.*")).

37. The United Kingdom and the United States concluded the Convention between Great Britain and the United States of America for the Adjustment of the Boundary Between the Dominion of Canada and the Territory of Alaska of 24 January 1903 (the "1903 Convention") to settle this dispute. Article I of the 1903 Convention established that a Tribunal of "six impartial jurists of repute ... shall consider judicially the questions submitted to them ..."[37].

- The United States appointed Elihu Root, attorney and Secretary of War, Henry Cabot Lodge, attorney and Senator from Massachusetts, and George Turner, jurist and Senator from the State of Washington.

- The United Kingdom appointed Sir Allen Bristol Aylesworth, Canadian jurist and later Minister of Justice of Canada, Sir Louis-Amable Jetté, Canadian jurist and Lieutenant-Gouverneur du Québec, and Lord Alverstone, Lord Chief Justice of England.

38. Article IV of the 1903 Convention presented seven questions to the Tribunal. Pursuant to Article III, the Tribunal had to "consider ... the Treaties respectively concluded between His Britannic Majesty and the Emperor of All the Russias ... and between the [United States]" as well as "any action of the several Governments ... so far as the same tends to show the original and effective understanding of the Parties in respect to the limits of their several territorial jurisdictions ..."[38].

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[37] *Convention Between Great Britain and the United States of America for the Adjustment of the Boundary Between the Dominion of Canada and the Territory of Alaska*, 24 January 1903, Article I, *UNRIAA*, Vol. XV, p. 485.

[38] *Convention Between Great Britain and the United States of America for the Adjustment of the Boundary Between the Dominion of Canada and the Territory of Alaska of 24 January 1903*, Article III, *UNRIAA*, Vol. XV, p. 487.

39. In the award, the Tribunal provided the answer to each question and how it was voted (unanimously or by majority)[39]. No statement of reasons was required and none was provided.

IX. *San Domingo Improvement Company Claim (United States* v. *Dominican Republic)* (14 July 1904)

40. This award was rendered pursuant to the Protocol and Agreement to Naming of Arbitrators Signed at Santo Domingo on 31 January 1903 (the "1903 Protocol"). Under this Agreement, a tribunal was established to decide the terms on which the Dominican Republic should pay US$4.5 million for the seizure of property from an American company, San Domingo Improvement Company, and related American companies, that were constructing a railroad in the Dominican Republic.

41. Three arbitrators composed the Tribunal:

- The United States elected John G. Carlisle, lawyer, Congressman and Senator.

- The Dominican Republic elected Don Manuel de Jesús Galván, lawyer and diplomat from the Dominican Republic.

- The third arbitrator was George Gray, lawyer and judge from the United States.

42. The decision of the Tribunal consisted of seven articles, establishing the time of delivery of properties (Article 1); the rate of interest (Article 2); the amount

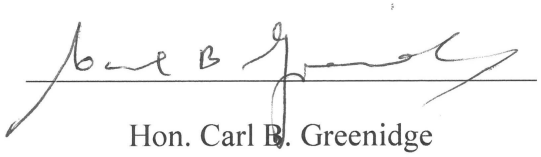
[39] *The Alaska Boundary Case (Great Britain, United States of America), Award of the Alaska Boundary Tribunal*, 20 October 1903, *UNRIAA*, Vol. XV, pp. 492-493.

of monthly instalments (Article 3); security and mode of collection (Article 4); and other miscellaneous provisions (Articles 5-7). It did not state reasons for any of its decisions.

Certification

I certify that the annexes are true copies of the documents reproduced therein and that the translations into English are accurate translations of the documents annexed.

9 December 2024



Hon. Carl B. Greenidge
Co-operative Republic of Guyana
Agent

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Annex 43. Convenio de la Misión del Caroní (22 February 1922), in República de Venezuela, Ministerio de Justicia, Comisión Indigenista, Fuero Indígena Venezolano, Parte II: Periodo de la República (1811 a 1954), Texto No. 89

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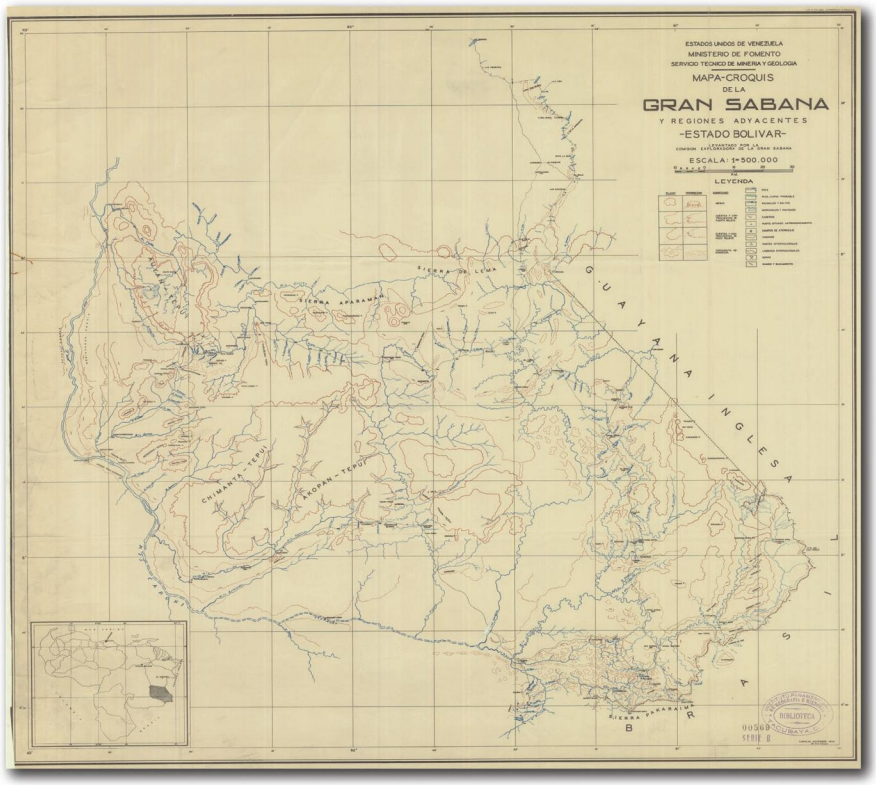

Source:
Ministry of Promotion, Technical Service of Mining and Geology, Venezuela,
Mapa Croquis de la Gran Sabana y Regiones Adyacentes, Estado Bolivar, Issued
by the Exploring Commission of the Gran Sabana, 1:500,000 (November 1939)

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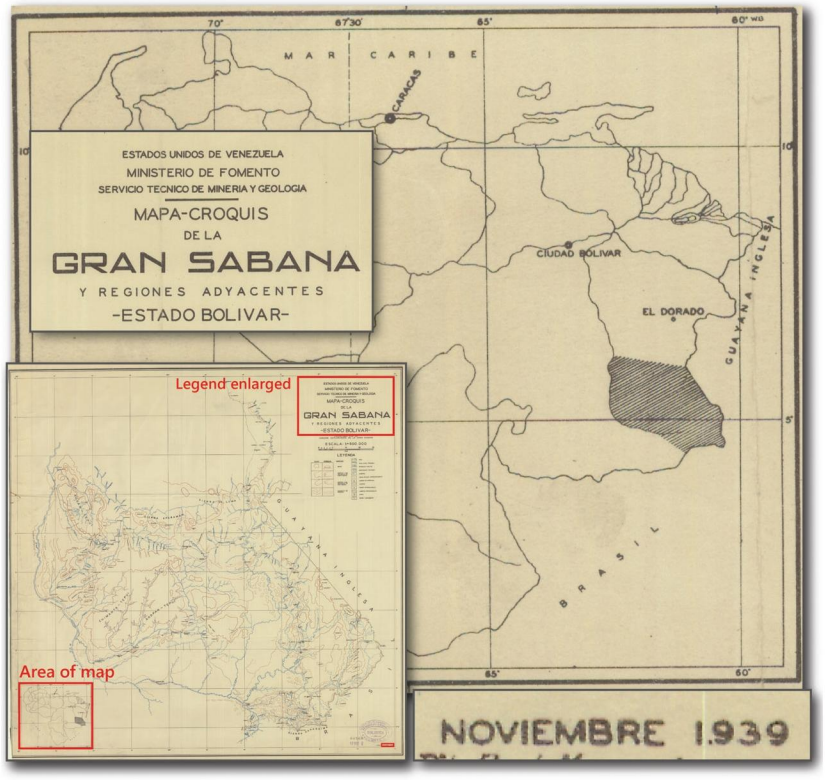

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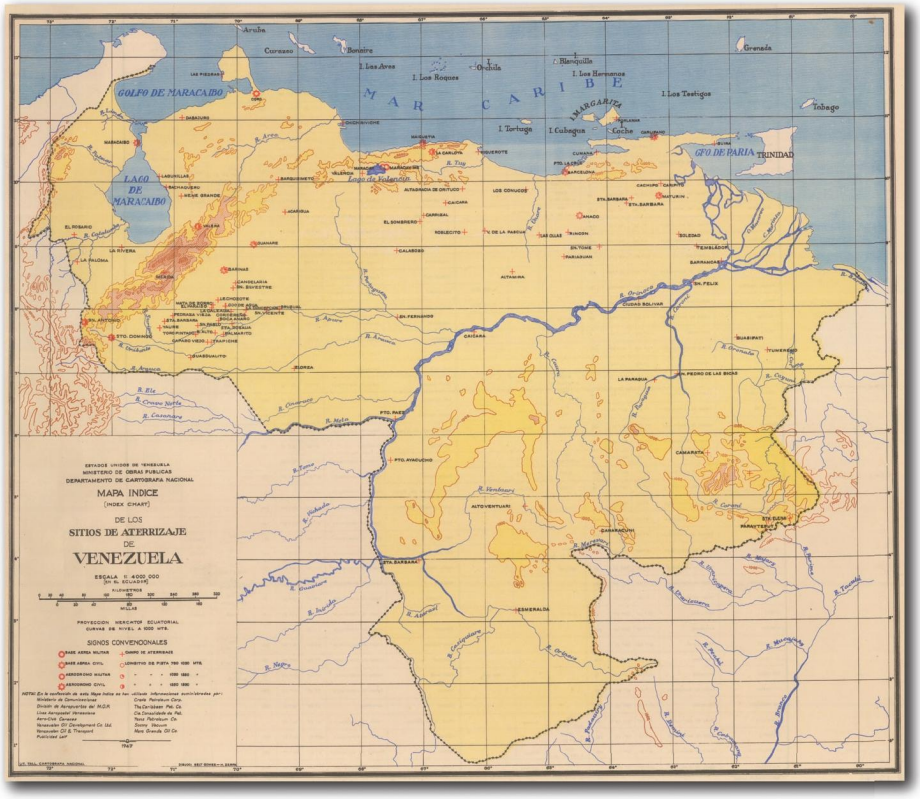

Source:
Ministry of Public Works, Department of National Cartography, *Venezuela, Mapa Indice (Index Chart) de los Sitios de Aterrizaje de Venezuela*, 1:4,000,000 (1947)

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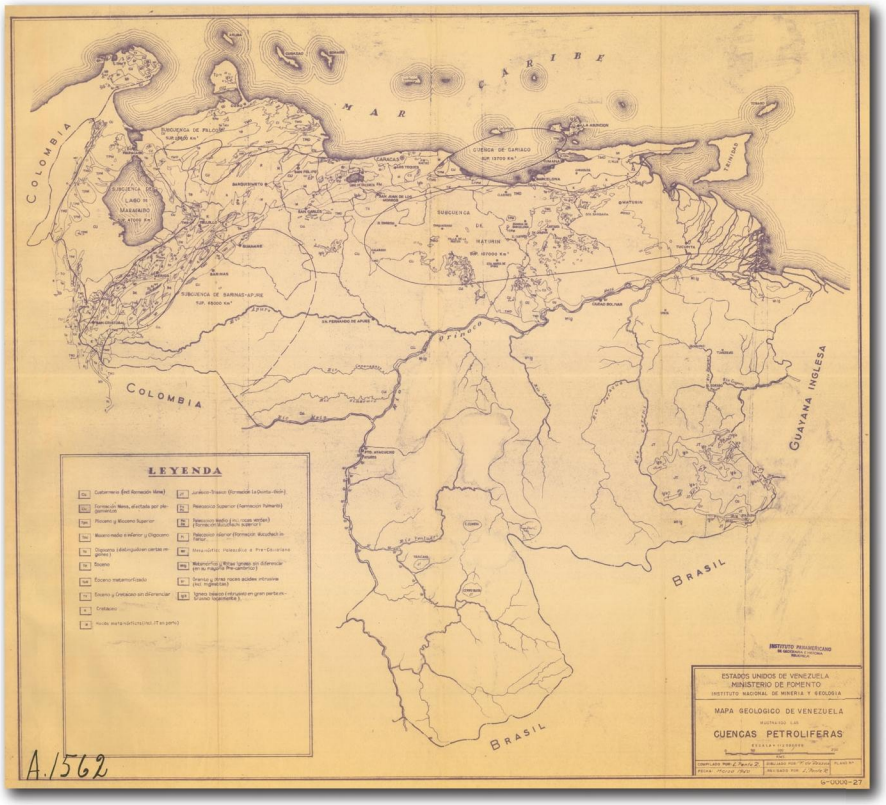

Source:
Ministry of Promotion, National Institute of Mining and Geology, Venezuela,
Mapa Geológico de Venezuela Mostrando las Cuencuas Petrolíferas, 1:2,000,000
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Source:
Ministry of Mining and Hydrocarbons, Technical Directory of Geology, Venezuela, *Mapa de Recursos Naturales del Oriente de Venezuela en Relación con la Industria del Hierro*, 1:2,000,000 (24 May 1950)

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Source:
Ministry of Mining and Hydrocarbos, Geology Directory, Venezuela,
Mapa Geogólico-Minero del Estado de Bolivar, 1:1,000,000 (1950)

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Annex 1

Organic Law for the Defense of Guayana Esequiba (3 April 2024)

Official Gazette of the Bolivarian Republic of Venezuela, Extraordinary No. 6.798 (3 April 2024), available at http://spgoin.imprentanacional.gob.ve/cgi-win/be_alex.cgi?Documento=T028700045985/0&CodAsocDoc=3557&t04=1&t05=png (last accessed on 27 November 2024)

TRANSLATION

VU NE VARIETUR
Traduction conforme à
l'original en langue esp
N° 3495

EXPERT TRADUCTEUR PRÈS LA COUR D'APPEL DE PARIS
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OFFICIAL GAZETTE

OF THE BOLIVARIAN REPUBLIC OF VENEZUELA

YEAR CLI - MONTH VI Caracas, Wednesday 3 April 2024 No. 6.798
Extraordinary

SUMMARY

NATIONAL ASSEMBLY

Organic Law for the Defence of the Guayana Esequiba

NATIONAL ASSEMBLY

THE NATIONAL ASSEMBLY OF THE BOLIVARIAN REPUBLIC OF VENEZUELA

HEREBY ENACTS:

The following:

ORGANIC LAW FOR THE DEFENCE OF GUAYANA ESEQUIBA

CHAPTER I
FUNDAMENTAL PROVISIONS

Object

Article 1. This Law aims to establish the means and mechanisms oriented towards the defence of the territory of the Guayana Esequiba, currently usurped by the Cooperative Republic of Guyana, as a result of the null Arbitral Award of 1899, with the purpose of ensuring the sovereignty and territorial integrity of the Bolivarian Republic of Venezuela.

Purpose

Article 2. This Law aims to:

1. Preserve independence, liberty, sovereignty, immunity, territorial integrity, and national self-determination as inalienable rights of the Nation.
2. Ratify the validity of the Geneva Agreement of 1966 as the only valid legal instrument for a practical and mutually acceptable solution to the dispute over the Guayana Esequiba.
3. Grant to Guayana Esequiba the status of a federal entity within the territorial division of the Bolivarian Republic of Venezuela and establish the regime for the functioning of Public Powers in the area as a federal entity.
4. Protect the current and future population of the territory of Guayana Esequiba and guarantee their rights, as set forth in the Constitution of the Bolivarian Republic of Venezuela.
5. Establish the necessary guidelines for the exploration, identification, recording, preservation, systematization, and dissemination of information pertinent to defending the rights of the Bolivarian Republic of Venezuela over Guayana Esequiba, thereby supporting the formulation of public policies and strategic actions for judicial and extra-judicial defence, as well as the dissemination of historical information and related judicial documentation.

Principles

Article 3. This Law is based on the principles of territorial integrity, independence, liberty, sovereignty, immunity, national self-determination, cooperation, equality among States, non-intervention in domestic affairs, peaceful settlement of international disputes, respect for human rights, solidarity, awareness, and accountability.

Null Character of the Arbitral Award of 1899

Article 4. This Law hereby reaffirms the nullity of the Award rendered by the Arbitral Tribunal in Paris on 3rd October 1899, which purported to dispossess Venezuela of the territory of Guayana Esequiba—a territory that has historically belonged to Venezuela since the establishment of the Captaincy General of Venezuela in 1777, subject to modifications resulting from treaties and arbitral awards not vitiated by nullity.

Geneva Agreement of 1966

Article 5. For the purposes of this Law, the Agreement to Resolve the Controversy between Venezuela and the United Kingdom of Great Britain and Northern Ireland over the Border between Venezuela and British Guiana, known as the Geneva Agreement of 1966, constitutes the only valid legal instrument to reach a practical solution mutually acceptable for the Bolivarian Republic of Venezuela and the Cooperative Republic of Guyana in relation to the dispute over the territory of the Guayana Esequiba.

Non-submission to Dispute Settlement Mechanisms

Article 6. The Bolivarian Republic of Venezuela shall not submit to third-party dispute settlement mechanisms, including arbitration or the jurisdiction of the International Court of Justice, any matters pertaining to its independence and territorial integrity.

The Executive Branch shall express, in every international treaty that provides conflict resolution mechanisms through third parties, its reservation of the application of such mechanisms in matters related to its vital interests, such as independence and territorial integrity.

The Bolivarian Republic of Venezuela shall use all available means to reject any binding decision by a Court, including arbitration tribunals and the International Court of Justice recognizing compulsory jurisdiction to resolve matters concerning its independence and territorial integrity.

Public officials, authorities and representatives of Public Powers, as well as citizens, shall refrain from executing, causing to be executed, or assisting in the execution of awards, judgments, orders or any other decision, whether interlocutory or final, issued by any tribunal or Court whose jurisdiction has not been recognised by the Republic, except where such decisions constitute a declination of jurisdiction or recognition of lack of jurisdiction by said tribunals or courts to hear or determine matters relating to its independence and territorial integrity.

Cooperation

Article 7. All bodies of Public Power, in exercising their competencies, shall cooperate in accordance with the purposes of this Law, in the application of the provisions of Article 136 of the Constitution of the Bolivarian Republic of Venezuela, taking into account that sovereignty is indivisible, which guarantees the integrity, sovereignty, and self-determination of the Nation.

Duty to Protect Sovereignty over the Guayana Esequiba

Article 8. All Venezuelans have the duty to safeguard, protect and vindicate the Bolivarian Republic of Venezuela's sovereignty over the territory of the Guayana Esequiba, as well as territorial integrity, national self-determination, and the interests of the Nation, in accordance with the provisions of the Constitution of the Bolivarian Republic of Venezuela.

CHAPTER II
OF THE STATE OF GUAYANA ESEQUIBA

Creation of the State

Article 9. The state of Guayana Esequiba is hereby created within the territorial and political organization of the Bolivarian Republic of Venezuela. The state of Guayana Esequiba is a politically autonomous entity, with full legal personality and own and independent assets.

Territory of the State of Guayana Esequiba

Article 10. The state of Guayana Esequiba comprises the entire area of the territory of Guayana Esequiba, bordered by the following limits: Northern Border: Atlantic Ocean; Southern Border: Federative Republic of Brazil; Eastern Border: Cooperative Republic of Guyana; Western Border: Delta Amacuro State and Bolivar State.

Government and Administration

Article 11. The government and administration of the state of Guayana Esequiba shall be vested in a Governor. To be eligible as Governor, the candidate must be a Venezuelan national by birth, without any other nationality, over the age of twenty-five, and of secular status.

The Governor shall be elected for a term of four years by the majority of those who vote. The Governor may be re-elected, in accordance with the provisions of the Constitution of the Bolivarian Republic of Venezuela.

The Governor shall exercise the functions conferred upon them by the Constitution of the Bolivarian Republic of Venezuela and by Law.

Legislative Power of the State

Article 12. The Legislative Power of the state of Guayana Esequiba shall be exercised by a Legislative Council composed of seven members, who shall be proportionately representative of the population of the state and the municipalities that comprise it.

The Legislative Council shall exercise the powers granted by the Constitution of the Bolivarian Republic of Venezuela and by Law.

State Comptroller's Office

Article 13. The state of Guayana Esequiba shall have a State Comptroller's Office enjoying organic and functional autonomy. The State Comptroller's Office shall be responsible, in accordance with the Constitution and the Law, for controlling, monitoring, and auditing the revenue, expenditure, and assets of the state, without prejudice to the functions of the General Comptroller's Office of the Republic.

Representation in the National Assembly

Article 14. The state of Guayana Esequiba shall have proportional parliamentary representation in the National Assembly, which shall be exercised by its inhabitants as a federal entity, in accordance with the provisions of the Constitution of the Bolivarian Republic of Venezuela, this Law, and the rules of procedure and debate of the National Assembly.

Financial Administration of the Public Sector

Article 15. The National Executive shall incorporate the organisational and functional structure of the state of Guayana Esequiba into the system of financial administration of the public sector, in accordance with the Law that regulates the matter.

Justice System Agencies

Article 16. The agencies that make up the Justice System shall create the corresponding structures, with jurisdiction in the territory of the state of Guayana Esequiba, in order to ensure access to justice and the protection of the judicial rights of the inhabitants of that federal entity.

CHAPTER III

OF THE HIGH COMMISSION FOR THE DEFENCE OF THE GUAYANA ESEQUIBA

High Commission

Article 17. The High Commission for the Defence of the Guayana Esequiba is hereby established, with the purpose of advising and making recommendations on public policies and specific measures for the recovery, defence, and development of the Guayana Esequiba.

Powers

Article 18. The High Commission for the Defence of the Guayana Esequiba shall have the following powers:

1. Recommend urgent actions, effective and necessary, to improve the conditions for the recovery, defence, and development of Guayana Esequiba.
2. Coordinate activities of the agencies that make up the state in the performance of their duties, for the recovery, defence, and development of Guayana Esequiba.
3. Establish principles and criteria for coordination and guidance of state policy, in relation to the recovery, defence, and development of Guayana Esequiba.
4. Draft reports and opinions in relation to the subject.
5. Request, compile, reproduce, copy, and store information about Guayana Esequiba referred to in this Law, as well as how to manage and maintain the database that results from such work.
6. Initiate, pursue, and carry out administrative procedures to forcefully reclaim and obtain favourable actions for the Nation, as well as sanctioning procedures in the event of the commission of administrative infringements as envisaged in this Law.
7. Issue the necessary acts for the fulfilment of its powers.
8. Inform the President of the Republic on the recommendations related to actions on the recovery and defence of Guayana Esequiba.
9. Approve its internal regulations.
10. Other powers established by this Law or assigned by the President of the Republic.

Composition

Article 19. The High Commission for the Defence of the Guayana Esequiba shall be composed of:

1. The Vice-President of the Republic, who shall preside over it.
2. The President of the National Assembly.
3. The President of the Supreme Court of Justice.
4. The President of the Republican Moral Council.
5. The Minister of Popular Power for Defence.

6. The Minister of Popular Power for Internal Relations, Justice, and Peace.
7. The Minister of Popular Power for External Relations.
8. The Minister of Popular Power for Penitentiary Affairs.
9. The Attorney General of the Republic.
10. The Governor of the state of Bolivar.
11. The Governor of the Delta Amacuro state.
12. The Governor of the state of Bolivar or the Head of Government of the Guayana Esequiba.
13. The Mayor of the Sifontes Municipality of the state of Bolivar.
14. The Mayor of the Gran Sabana Municipality of the state of Bolivar.
15. The Mayor of the Antonio Diaz Municipality of the Delta Amacuro state.
16. Five (5) spokespersons from social sectors, chosen by the High Commission.

The High Commission for the Defence of the Guayana Esequiba may invite or summon other officials, citizens, or organisations to participate in the meetings and discussions of the sessions as advisory members, whenever deemed convenient, taking into account their expertise and discipline in the area of knowledge.

Executive Secretariat

Article 20. The High Commission for the Defence of the Guayana Esequiba shall have an Executive Secretariat, which shall be its operational body, and shall be headed by an Executive Secretary, who shall be appointed by the President of the High Commission.

The Executive Secretariat shall have its own working units and the necessary personnel to carry out its functions. The internal regulations of the High Commission shall establish the structure and functions of the Executive Secretariat.

Collaboration

Article 21. The bodies and entities of the State shall collaborate with the High Commission for the Defence of the Guayana Esequiba in a priority manner, especially regarding the provision of the information required to fulfil its functions.

Operating Expenses

Article 22. The operating expenses of the High Commission for the Defence of the Guayana Esequiba shall be covered by the budget of the Vice-Presidency of the Republic.

CHAPTER IV
PROTECTION OF THE GUAYANA ESEQUIBA

Political Map

Article 23. Every political map of the Bolivarian Republic of Venezuela distributed, reproduced, published, or disseminated in the territory of the Republic shall include the territory of the state Guayana Esequiba as part of the national territory. This map shall be mandatory for all state bodies and Public Power entities.

The publication of the political map of the Bolivarian Republic of Venezuela shall include the incorporation of the territory of the state of the Guayana Esequiba.

Official Map

Article 24. The only official map of the Bolivarian Republic of Venezuela shall be that formally adopted through Decree issued by the President of the Republic, published in the Official Gazette of the Bolivarian Republic of Venezuela.

Prohibition on Access to Public Office

Article 25. Those who, at any time before the election or access to public office, have adopted conduct contrary to the interests and position of the Bolivarian Republic of Venezuela regarding the claims of the Cooperative Republic of Guyana over the territory of Guayana Esequiba, thereby failing in their duty provided in Article 130 of the Constitution of the Bolivarian Republic of Venezuela and infringing on the principles of independence and territorial integrity, may not apply for or hold elected public offices established in the Constitution.

Challenges to Candidacies

Article 26. The challenge to the nomination of any candidate on grounds of ineligibility as set out in the previous article shall be filed before the Constitutional Chamber of the Supreme Court of Justice, which shall decide within the legal deadline and guarantee the defence of the challenged candidate.

Prohibition of Contracting

Article 27. The President of the Republic shall prohibit the conclusion of contracts or agreements with individuals or entities that operate or collaborate in the exploitation of the territory belonging to the Guayana Esequiba, or in waters pending delimitation between the Bolivarian Republic of Venezuela and the Cooperative Republic of Guyana, based on concessions, authorisations, or permits unilaterally granted by Guyana in violation of the Geneva Agreement and international law.

Additionally, the President of the Republic may adopt the necessary reciprocal measures, in accordance with international law, to guarantee the rights of the Bolivarian Republic of Venezuela over the territory of the Guayana Esequiba and the waters pending delimitation with the Cooperative Republic of Guyana.

Environmental Protection

Article 28. The National Executive shall adopt the necessary measures to protect the environment and the biological diversity of the territory of the Guayana Esequiba, in accordance with the provisions of the Organic Law of the Plan for the Nation and the legislation regulating land use in the territory.

Development and Protection

Article 29. The National Executive shall design and implement a special plan for the protection and development of the current and future population of the territory of the Guayana Esequiba, in line with the guidelines established in the Organic Law of the Plan for the Nation.

It shall also promote the creation of administrative units specialised in matters relating to land, mining, and industrial policy, with the objective of harnessing the potential of the territory of the Guayana Esequibo and contributing to the development of the national economy.

CHAPTER V
ACCESS AND DISPOSITION OF INFORMATION ON THE GUAYANA ESEQUIBA

Declaration of Public Use

Article 30. It is hereby declared to be of public use and general interest the information relevant to the design and implementation of public policies, activities of judicial and extrajudicial defence, or the dissemination of historical facts and legal grounds supporting the Bolivarian Republic of Venezuela in its claim and defence of its rights over the territory of the Guayana Esequiba. This is with the aim of designing, developing, administering, managing, and maintaining a documentary database on this matter, which is of paramount importance to national life.

The provisions of this Law shall not impede the fulfilment of the regulations on organisation, description, conservation, custody, systematisation, and safeguarding of documents and historical records established in the National Archives Law, when applicable.

Regulated Information

Article 31. For the purposes of interpretation and application of this Chapter, "information" shall be understood as any idea, criterion, concept, consideration, opinion, conclusion, data, or set of data, processed or not; of a scientific, literary, technical, legal, professional, or personal nature; including consultations, opinions, conferences, speeches, studies, analyses, reports, reports, compilations, comparative studies, translations, theses, legal acts or businesses, and judicial or administrative records, whether contained in books, magazines, brochures, diaries, administrative and judicial records, maps, charts, geographical letters, manuscripts, images, documents, and, in general, in any class of document of oral, written, visual, audiovisual, or photographic content, supported by technological means of any kind, which has a direct or indirect relationship with the territory of the Guayana Esequiba or with situations of interest for the determination of the rights of the Bolivarian Republic of Venezuela over that territory, the reconstruction of historical antecedents and the exercise of the defence of Venezuela's rights over said territory before any jurisdiction.

Where in this Law the term "information" is used without specific reference, it shall mean the information defined in this Article.

Declaration of Historical Document of the Nation

Article 32. The information referred to in this Law is declared a historical document of the Nation and a fundamental resource of superior interest for the State, given its indicated historical precedent, strategic character, impact, and significance for territorial integrity, history, and the socio-economic system of the Nation.

If there is a request for the inclusion of the information referred to in this Law as a historical document or archive in the Nation's cultural heritage, the declaration to that effect shall be issued by the Cultural Heritage Institute, following the opinion of the General Archive of the Nation.

Duty to Provide Information

Article 33. All natural and legal persons of public or private law, whether nationals or foreigners, entities or bodies of the National, State, or Municipal Public Administration that hold, manage, or possess, by any title, the information referred to in this Law must make it available to the High Commission for the Defence of the Guayana Esequiba, except where it is certain that the information consists of documents or information already available to the public.

In order to facilitate compliance with this obligation, the High Commission for the Defence of the Guayana Esequiba shall establish general telematic mechanisms for public use that allow the obligated parties, in accordance with the provisions of this Chapter, to inform the High Commission of any given information made available.

The High Commission for the Defence of the Guayana Esequiba shall regulate the mechanisms mentioned in this Article, as well as the related procedures for requesting, receiving, reproducing, copying, and storing information.

Forced Access to Information

Article 34. Where the person responsible for information unjustifiably refuses to provide it to the High Commission, or if it is impossible to determine the responsible authority, and the High Commission has reasonable grounds to presume that the information is subject to actions or measures aimed at concealing, hiding, or obstructing its dissemination, forced access to the information may be initiated.

In such cases, the acting official shall order that the information required be immediately obtained by review, reproduction, copying, transcription, or digitisation, according to the nature of the information and the supports in which it is found, ensuring proper custody of the evidence to guarantee the integrity of the information. Additionally, the functioning or acting authority shall take the necessary steps to hold the person responsible for the information or the technological supports containing it accountable for any loss or damage before the integrity of the information and the supports.

Administrative acts issued by the High Commission for the Defence of the Guayana Esequiba concerning the forced retrieval of information, as well as decisions to reproduce, copy, or store the information in its database, both in the administrative and judicial sphere, are subject to appeal before the Courts of Contentious Administrative Jurisdiction.

CHAPTER VI
SANCTIONS

Sanction for Improper Publication

Article 35. Any person who drafts, publishes, or distributes maps, plans, or letters, total or partial, of the Bolivarian Republic of Venezuela or any other form that includes their representation, that omit the territory of the state of the Guayana Esequiba shall be sanctioned with a fine in bolivars equivalent to between one thousand (1,000) and one hundred thousand (100,000) times the official exchange rate of the currency with the highest value published by the Central Bank of Venezuela.

Sanction for Refusal to Provide Information

Article 36. All natural or legal persons, without exception, subject to the terms established by the High Commission for the Defence of the Guayana Esequiba, who refuse to provide the information referred to in this Law, shall be sanctioned with a fine of no less than two hundred (200) and up to two thousand (2,000) times the official exchange rate of the currency with the highest value, published by the Central Bank of Venezuela, depending on the volume of information, its significance, and the magnitude of the effort required for obtaining information by different means.

If the refusal to provide the information persists, successive fines for double the amount of the first fine may be imposed, up to a total of ten thousand (10,000) times the official exchange rate of the currency with the highest value published by the Central Bank of Venezuela.

Procedure for Imposing Administrative Sanctions

Article 37. To impose the administrative sanctions provided for in this Law, the corresponding administrative procedure must be initiated and the procedure established in the Organic Law on Administrative Procedures must be followed.

The procedure for imposing the fine for improper publication shall be substantiated by the Simón Bolívar Venezuelan Geographic Institute. In the case of a sanction for refusal to provide information, the procedure shall be substantiated by the Executive Secretariat of the High Commission for the Defence of the Guayana Esequiba.

The fine must be paid to the bank account of the National Treasury within thirty (30) working days following the day the fine is imposed, failing which the appropriate enforcement action shall be taken. The administrative body imposing the corresponding fine shall attach a payment plan for settling the amount due.

Preventive Measures

Article 38. At the time of initiating the administrative procedure for imposing the sanctions provided for in this Law and during the substantiation of the same, the acting administrative body may adopt preventive measures deemed necessary to protect the interests of the parties involved.

Legal Recourse

Article 39. Against the decision that imposes administrative sanctions, the affected party may file an appeal before the National Courts of the Contentious Administrative Jurisdiction, within a period of thirty (30) days, counted from the date of notification of the contested administrative action.

TRANSITIONAL PROVISIONS

First. Until elections are held in the state of Guayana Esequiba, in accordance with the Geneva Agreement and international law, the government and administration of this federal state entity shall be exercised by the President of the Republic through a Head of Government appointed by the President of the Bolivarian Republic of Venezuela.

Second. Until elections are held in the state of Guayana Esequiba, in accordance with the Geneva Agreement and international law, the Legislative Power of this federal state entity shall be exercised by the National Assembly.

Third. Until a practical and mutually acceptable solution to the dispute is reached in accordance with the Geneva Agreement, the Executive and Legislative Powers of Guayana Esequiba shall reside in the Governor, Mayor, and Municipal Councils of the state of Bolivar.

Fourth. Until elections are held in the state of Guayana Esequiba, in accordance with the Geneva Agreement and international law, the parliamentary representation before the National Assembly will be selected in a national circumscription, in accordance with the rules established by the National Electoral Council.

Fifth. Until the Constitution of the state of Guayana Esequiba is enacted:

1. The representation of the rights and patrimonial interests of said federal entity shall correspond to the Attorney General of the Republic.
2. The organisation and functioning of the bodies and entities of the state Executive shall be regulated by the National Executive, under the terms established by the Organic Kaw of Public Administration and the related legal framework.
3. The revenue and exempt income for this federal entity shall be subject to the regime of public sector financial administration established in the Organic Law of Financial Administration and the regulations developed in the national legal framework.

FINAL PROVISIONS

First. This Law shall come into effect as of the date of its publication in the Official Gazette of the Bolivarian Republic of Venezuela.

Second. All provisions contrary to this Law are repealed. Given, signed, and sealed at the Federal Legislative Palace, seat of the National Assembly, in Caracas, on the twenty-fifth day of March of the year two thousand twenty-four. 213th year of Independence, 165th year of the Federation, and 25th year of the Bolivarian Revolution.

(seal and signature)
JORGE ROGRÍGUEZ GÓMEZ
Speaker of the National Assembly

(Signature)
PEDRO INFANTE APARICIO
First Deputy Speaker of the National Assembly

(Signature)
AMÉRICA PÉREZ DÁVILA
Second Vice President of the National Assembly

(Signature)
MARÍA ALEJANDRA HERNÁNDEZ ALDANA
Clerk of the National Assembly

(Signature)
JOSE OMAR MOLINA
Deputy Clerk of the National Assembly

Promulgated by the **Organic Law for the Defence of the Guayana Esequiba**, in Caracas, on the third day of April, two thousand twenty-four. 213th year of Independence, 165th year of the Federation, and 25th year of the Bolivarian Revolution.

Given in Caracas, on the third day of April of the year two thousand twenty-four. Year 213 of Independence, 165th of the Federation, and 25th of the Bolivarian Revolution.
To be implemented,
(L.S.)

(Signature)
NICOLÁS MADURO MOROS
President of the Bolivarian Republic of Venezuela
(Seal)

Countersigned
La Vicepresidenta Ejecutiva de la República Bolivariana de Venezuela y Primera Vicepresidenta del Consejo de Ministros (Executive Vice President of the Bolivarian Republic of Venezuela and First Vice President of the Council of Ministers)
(L.S.)

(Signature)
DELCY ELOÍNA RODRÍGUEZ GÓMEZ

Countersigned
El Ministro del Poder Popular del Despacho de la Presidencia y Seguimiento de la Gestión de Gobierno (Minister of the Office of the Presidency and Government Management Oversight)
(L.S.)

(Signature)
JORGE ELIÉSER MÁRQUEZ MONSALVE

Countersigned
El Ministro del Poder Popular para Relaciones Exteriores (Minister for Foreign Affairs)
(L.S.)

(Signature)
YVÁN EDUARDO GIL PINTO

Countersigned
El Ministro del Poder Popular para Relaciones Interiores, Justicia y Paz, y Vicepresidente Sectorial para la Seguridad Ciudadana y la Paz (Secretary of State for Home Affairs, Justice, and Peace, and Deputy Prime Minister for Citizen Security and Peace)
(L.S.)

(Signature)
REMIGIO CEBALLOS ICHASO

Countersigned
El Ministro del Poder Popular para la Defensa y Vicepresidente Sectorial de Soberanía Política, Seguridad y Paz (Minister of Defence and Deputy Vice President for Political Sovereignty, Security, and Peace)
(L.S.)

(Signature)
VLADIMIR PADRINO LÓPEZ

Countersigned
El Ministro del Poder Popular para la Comunicación e Información y Vicepresidente Sectorial de Comunicación y Cultura (Secretary of State for Communication and Information, and Deputy Minister for Communication and Culture)
(L.S.)

(Signature)
FREDDY ALFRED NAZARET ÑÁÑEZ CONTRERAS

Countersigned
La Ministra del Poder Popular de Economía, Finanzas y Comercio Exterior (Secretary of State for Economy, Finance, and Foreign Trade)
(L.S.)

(Signature)
DELCY ELOÍNA RODRÍGUEZ GÓMEZ

Countersigned
El Ministro del Poder Popular de Industrias y Producción Nacional (Minister of Industry and National Production)
(L.S.)

(Signature)
JOSÉ FÉLIX RIVAS ALVARADO

Countersigned
El Ministro del Poder Popular de Comercio Nacional (Minister for National Commerce)
(L.S.)

(Signature)
LUIS ANTONIO VILLEGAS RAMÍREZ

Countersigned
El Ministro del Poder Popular para el Turismo (Minister of Tourism)
(L.S.)

(Signature)
ALÍ ERNESTO PADRÓN PAREDES

Countersigned
El Ministro del Poder Popular para la Agricultura Productiva y Tierras (Secretary of State for Productive Agriculture and Lands)
(L.S.)

(Signature)
WILMAR ALFREDO CASTRO SOTELDO

Countersigned
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(L.S.)

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(Signature)
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Countersigned
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Countersigned
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(L.S.)

(Signature)
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El Ministro del Poder Popular de Planificación y Vicepresidente Sectorial de Planificación (Minister for Planning and Deputy Minister for Sectoral Planning)
(L.S.)

(Signature)
RICARDO JOSÉ MENÉNDEZ PRIETO

Countersigned
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(L.S.)

(Signature)
MAGALY GUTIÉRREZ VIÑA

Countersigned
La Ministra del Poder Popular para los Pueblos Indígenas (Secretary of State for Indigenous Affairs)
(L.S.)

(Signature)
CLARA JOSEFINA VIDAL VENTRESCA

Countersigned
La Ministra del Poder Popular para la Mujer y la Igualdad de Género (Secretary of State for Women and Gender Equality)
(L.S.)

(Signature)
DHELIZ ADRIANA ÁLVAREZ MÁRQUEZ

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(L.S.)

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OFFICIAL GAZETTE
OF THE BOLIVARIAN REPUBLIC
OF VENEZUELA

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ACT ON OFFICIAL PUBLICATIONS

(Extraordinary Official Gazette No. 6.688 dated Friday, 25 February 2022)

Object

Article 1. This Act aims to regulate official State publications, to guarantee legal certainty, transparency in public action, and free access to content therein, within the framework of the Democratic and Social Rule of Act and Justice.

Official Gazette of the Bolivarian Republic of Venezuela

Article 4. The "Official Gazette," created by Executive Decree of 11 October 1872, shall continue with the name "Official Gazette of the Bolivarian Republic of Venezuela."

Effects of Publication

Article 8. The publication of legal acts of the State in the Official Gazette of the Bolivarian Republic of Venezuela gives them public character and force of public document.

To be legally binding, acts of Electoral Power, Judicial Power, and other official State acts must be published in the Official Gazette of the Bolivarian Republic of Venezuela, in accordance with the applicable regulations.

Physical and Digital Publication

Article 9. The publication of the Official Gazette of the Bolivarian Republic of Venezuela shall use a mixed system comprising a digital and automated format, as well as a physical one. The digital publication must contain all content published in the physical version, and the automated version shall generate the same effects established in this Act, including the public and public document character. Violations of this provision shall result in civil, administrative, and criminal liability, as applicable.

The Executive Vice-Presidency or the Executive Vice-President shall establish the rules and guidelines for the development, management, and functioning of the digital and physical publications of the Official Gazette of the Bolivarian Republic of Venezuela, including the information system for digital publications.

Official Publications

Article 15. The National Printing Office and Official Gazette Service may make official digital and physical publications of legal acts published in the Official Gazette of the Bolivarian Republic of Venezuela. For this purpose, it shall issue an act that indicates the essential characteristics of these publications.

Likewise, the National Printing Office and Official Gazette Service shall dictate an act establishing the printed publication prices of the Official Gazette, its certifications, and associated subscription and dissemination services, as well as any other services related to its functions.

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CAPÍTULO I
DISPOSICIONES FUNDAMENTALES

Objeto

Artículo 1º. Esta Ley tiene por objeto establecer los medios y mecanismos orientados a la defensa del territorio de la Guayana Esequiba, actualmente usurpado por la República Cooperativa de Guyana, como resultado del írrito Laudo Arbitral de 1899, con el propósito de asegurar la soberanía e integridad territorial de la República Bolivariana de Venezuela.

Finalidad

Artículo 2º. Esta Ley tiene como finalidad:

1. Preservar la independencia, la libertad, la soberanía, la inmunidad, la integridad territorial y la autodeterminación nacional como derechos irrenunciables de la Nación.
2. Ratificar la vigencia del Acuerdo de Ginebra de 1966 como único instrumento jurídico valido para una solución práctica y mutuamente aceptable de la controversia sobre la Guayana Esequiba.
3. Otorgar a la Guayana Esequiba la categoría de estado dentro de la división político territorial de la República Bolivariana de Venezuela y establecer el régimen de funcionamiento de los Poderes Públicos en torno a esa entidad federal.
4. Proteger a la población actual y futura del territorio de la Guayana Esequiba y garantizar sus derechos humanos, de conformidad con lo establecido en la Constitución de la República Bolivariana de Venezuela.
5. Establecer las normas básicas para la exploración, ubicación, recopilación, aseguramiento, sistematización y disposición de información relevante respecto de la defensa de los derechos de la República Bolivariana de Venezuela sobre el territorio de la Guayana Esequiba, con el objeto de contribuir con la formulación de políticas públicas y las actividades de defensa judicial y extrajudicial, así como la divulgación de los hechos históricos y fundamentos jurídicos relacionados con tales derechos.

Principios

Artículo 3º. Esta Ley se rige por los principios de integridad territorial, independencia, libertad, soberanía, inmunidad, autodeterminación nacional, cooperación, igualdad entre los Estados, no intervención en asuntos internos, solución pacífica de los conflictos internacionales, respeto a los derechos humanos, solidaridad, concurrencia y corresponsabilidad.

Carácter írrito del Laudo Arbitral de 1899

Artículo 4º. Se ratifica el carácter írrito el Laudo emitido por el Tribunal Arbitral reunido en París el 3 de octubre 1899, mediante el cual se pretende despojar a Venezuela del territorio de la Guayana Esequiba, que históricamente le pertenece desde la creación de la Capitanía General de Venezuela en 1777, con las modificaciones resultantes de los tratados y laudos arbitrales no viciados de nulidad.

Acuerdo de Ginebra de 1966

Artículo 5º. A los fines de esta Ley, el Acuerdo para Resolver la Controversia entre Venezuela y el Reino Unido de Gran Bretaña e Irlanda del Norte sobre la Frontera entre Venezuela y Guayana Británica, conocido como Acuerdo de Ginebra de 1966, constituye el único instrumento jurídico válido para alcanzar una solución práctica y mutuamente aceptable para la República Bolivariana de Venezuela y la República Cooperativa de Guyana en relación con la controversia sobre el territorio de la Guayana Esequiba.

No sometimiento a mecanismos de resolución de controversias

Artículo 6º. La República Bolivariana de Venezuela no someterá a mecanismos de resolución de controversias por parte de terceros, incluyendo arbitrajes y la jurisdicción de la Corte Internacional de Justicia, los asuntos relacionados con su independencia e integridad territorial.

El Ejecutivo Nacional hará reserva expresa en todo tratado internacional que prevea mecanismos de resolución de controversias por parte de terceros, excluyendo de la aplicación de tales mecanismos todos los asuntos relacionados con sus intereses vitales, tales como la independencia e integridad territorial.

La República Bolivariana de Venezuela hará uso de los medios procesales disponibles para rechazar las pretensiones de cualquier tribunal o Corte, incluidos los tribunales arbitrales y la Corte Internacional de Justicia, de atribuirse jurisdicción para conocer o resolver asuntos relacionados con su independencia e integridad territorial.

Las funcionarias y los funcionarios públicos, autoridades y representantes de los Poderes Públicos, así como los ciudadanos y ciudadanas, se abstendrán de ejecutar, hacer ejecutar o colaborar en la ejecución de laudos, sentencias, órdenes o cualquier tipo de decisión, interlocutoria o definitiva, emanada de algún tribunal o Corte cuya jurisdicción no fuere reconocida por la República, salvo que dichas decisiones consistan en el rechazo de la jurisdicción o el reconocimiento de la falta de jurisdicción, de los mencionados tribunales o cortes, para conocer o resolver asuntos relacionados con su independencia e integridad territorial.

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Cooperación

Artículo 7º. Todos los órganos del Poder Público, en ejercicio de sus competencias, colaborarán activamente en la consecución de los fines de esta Ley, en aplicación de lo dispuesto en el artículo 136 de la Constitución de la República Bolivariana de Venezuela, tomando en cuenta su estrecha vinculación con la garantía de la integridad territorial, soberanía y autodeterminación de la Nación.

Deber de proteger la soberanía sobre la Guayana Esequiba

Artículo 8º. Todas las venezolanas y venezolanos tienen el deber de resguardar, proteger y reivindicar la soberanía de la República Bolivariana de Venezuela sobre el territorio de la Guayana Esequiba, así como, la integridad territorial, la autodeterminación y los intereses de la Nación, de conformidad con lo establecido en la Constitución de la República Bolivariana de Venezuela.

CAPÍTULO II
DEL ESTADO GUAYANA ESEQUIBA

Creación del Estado

Artículo 9º. Se crea el estado Guayana Esequiba dentro de la organización político territorial de la República Bolivariana de Venezuela. El estado Guayana Esequiba es una entidad autónoma en lo político, con personalidad jurídica plena y patrimonio propio e independiente.

Superficie del Estado Guayana Esequiba

Artículo 10. El estado Guayana Esequiba tendrá la superficie del actual territorio de la Guayana Esequiba, comprendida dentro de los siguientes límites: Norte: Océano Atlántico; Sur: República Federativa de Brasil; Este: República Cooperativa de Guyana y por el Oeste: estados Delta Amacuro y Bolívar.

Gobierno y administración

Artículo 11. El gobierno y administración del estado Guayana Esequiba corresponde a una Gobernadora o Gobernador. Para ser Gobernadora o Gobernador se requiere ser venezolana o venezolano por nacimiento y sin otra nacionalidad, mayor de veinticinco años y de estado seglar.

La Gobernadora o Gobernador será elegida o elegido por un período de cuatro años por mayoría de las personas que voten. La Gobernadora o Gobernador podrá ser reelegida o reelegido, de acuerdo a lo previsto en la Constitución de la República Bolivariana de Venezuela.

La Gobernadora o Gobernador ejercerá las funciones que le otorga la Constitución de la República Bolivariana de Venezuela y la ley.

Poder Legislativo Estadal

Artículo 12. El Poder Legislativo del estado Guayana Esequiba será ejercido por un Consejo Legislativo conformado por siete integrantes, quienes proporcionalmente representarán a la población del estado y a los municipios que lo conformen.

El Consejo Legislativo ejercerá las funciones que le otorga la Constitución de la República Bolivariana de Venezuela y la ley.

Contraloría Estadal

Artículo 13. El estado Guayana Esequiba tendrá una Contraloría que gozará de autonomía orgánica y funcional. La Contraloría del estado ejercerá, conforme a la Constitución y la ley, el control, la vigilancia y la fiscalización de los ingresos, gastos y bienes estadales, sin menoscabo del alcance de las funciones de la Contraloría General de la República.

Representación a la Asamblea Nacional

Artículo 14. El estado Guayana Esequiba tendrá una representación proporcional parlamentaria a la Asamblea Nacional que será elegida por los habitantes de esa entidad federal, de conformidad con lo establecido en la Constitución de la República Bolivariana de Venezuela, la ley, y las normas que dicte el Consejo Nacional Electoral.

Administración financiera del sector público

Artículo 15. El Ejecutivo Nacional deberá incorporar la estructura orgánica y funcional del estado Guayana Esequiba en el sistema de administración financiera del sector público, de conformidad con la ley que regula la materia.

Órganos del sistema de justicia

Artículo 16. Los órganos que conforman el Sistema de Justicia crearán las estructuras correspondientes, con competencia en el territorio del estado Guayana Esequiba, a los fines de garantizar el acceso a la justicia y la protección judicial de los habitantes de esa entidad federal.

CAPÍTULO III
DE LA ALTA COMISIÓN PARA LA DEFENSA DE LA GUAYANA ESEQUIBA

Alta Comisión

Artículo 17. Se crea la Alta Comisión para la Defensa de la Guayana Esequiba con el objeto de asesorar y generar recomendaciones en cuanto a políticas públicas y medidas específicas para la recuperación, defensa y desarrollo de la Guayana Esequiba.

Atribuciones

Artículo 18. La Alta Comisión para la Defensa de la Guayana Esequiba tiene las siguientes atribuciones:

1. Recomendar las acciones urgentes, efectivas y necesarias a adoptarse en lo concerniente a la recuperación, defensa y desarrollo de la Guayana Esequiba.
2. Coordinar las actividades de los órganos competentes de la defensa del territorio, y su enfoque en la recuperación y defensa de la Guayana Esequiba.
3. Establecer principios y criterios de coordinación y orientación de la política del Estado, en lo atinente a la recuperación, defensa y desarrollo de la Guayana Esequiba.
4. Elaborar dictámenes e informes en el marco de su objeto.
5. Requerir, recibir, reproducir, copiar y almacenar la información sobre la Guayana Esequiba a la que hace referencia esta Ley, así como administrar y gestionar la base de datos que se elabore a tal efecto.
6. Iniciar, sustanciar y ejecutar los procedimientos administrativos para el requerimiento forzoso u obtención forzosa de la información, así como el procedimiento sancionatorio ante la presunción de la comisión de infracciones administrativas previstas en esta Ley.
7. Dictar los actos necesarios para el cumplimiento de sus atribuciones.
8. Informar a la Presidenta o Presidente de la República en cuanto a las recomendaciones vinculadas con los asuntos relacionados con la recuperación y defensa de la Guayana Esequiba.
9. Aprobar su reglamento interno.
10. Las demás que establezca la ley o le asigne la Presidenta o Presidente de la República.

Composición

Artículo 19. La Alta Comisión para la Defensa de la Guayana Esequiba estará integrada por:

1. La Vicepresidenta o Vicepresidente Ejecutivo de la República, quien la presidirá.
2. La Presidenta o Presidente de la Asamblea Nacional.
3. La Presidenta o Presidente del Tribunal Supremo de Justicia.
4. La Presidenta o Presidente del Consejo Moral Republicano.
5. La Ministra o Ministro del Poder Popular para la Defensa.

6. La Ministra o Ministro del Poder Popular para Relaciones Interiores, Justicia y Paz.
7. La Ministra o Ministro del Poder Popular para Relaciones Exteriores.
8. La Ministra o Ministro del Poder Popular de Planificación.
9. La Procuradora o Procurador General de la República.
10. La Gobernadora o Gobernador del estado Bolívar.
11. La Gobernadora o Gobernador del estado Delta Amacuro.
12. La Gobernadora o Gobernador o Jefa o Jefe de Gobierno del estado Guayana Esequiba.
13. La Alcaldesa o Alcalde del municipio Sifontes del estado Bolívar.
14. La Alcaldesa o Alcalde del municipio Gran Sabana del estado Bolívar.
15. La Alcaldesa o Alcalde del municipio Antonio Díaz del estado Delta Amacuro.
16. Cinco (5) voceras o voceros de los sectores sociales, escogidos por la Alta Comisión.

La Alta Comisión para la Defensa de la Guayana Esequiba podrá invitar o convocar a otras u otros funcionarios, ciudadanas o ciudadanos a participar en las reuniones y discusiones de las sesiones en calidad de asesores, cuando se estime conveniente, atendiendo a la especialidad y disciplina de conocimiento que posean.

Secretaría Ejecutiva

Artículo 20. La Alta Comisión para la Defensa de la Guayana Esequiba contará con una Secretaría Ejecutiva que será la instancia operativa y estará a cargo de una Secretaria o Secretario Ejecutivo, quien será designado por la Presidenta o Presidente de la Alta Comisión.

La Secretaría Ejecutiva contará con las unidades o áreas de trabajo y el personal necesario para el cumplimiento de sus funciones. El Reglamento Interno de la Alta Comisión establecerá la estructura y funciones de la Secretaría Ejecutiva.

Colaboración

Artículo 21. Los órganos y entes del Estado colaborarán de forma prioritaria con la Alta Comisión para la Defensa de la Guayana Esequiba, especialmente mediante el suministro de la información que les sea requerida para el cumplimiento de sus atribuciones.

Gastos de funcionamiento

Artículo 22. Los gastos de funcionamiento de la Alta Comisión para la Defensa de la Guayana Esequiba serán provistos con cargo al presupuesto de la Vicepresidencia de la República.

CAPÍTULO IV
DE LA PROTECCIÓN DE LA GUAYANA ESEQUIBA

Mapa Político

Artículo 23. Todo mapa político de la República Bolivariana de Venezuela distribuido, reproducido, publicado o divulgado en el territorio de la República deberá incluir el territorio del estado Guayana Esequiba como parte integrante del territorio nacional. Este mapa será de uso obligatorio por parte de todos los órganos y entes del Poder Público.

Se prohíbe la publicación del mapa político de la República Bolivariana de Venezuela sin la incorporación del territorio del estado Guayana Esequiba.

Mapa Oficial

Artículo 24. El único mapa oficial de la República Bolivariana de Venezuela será el que reciba tal caracterización mediante Decreto dictado por la Presidenta o Presidente de la República, debidamente publicado en Gaceta Oficial de la República Bolivariana de Venezuela.

Prohibición de acceso a cargos públicos

Artículo 25. No podrán optar a los cargos de elección popular previstos en la Constitución de la República Bolivariana de Venezuela y en la ley, ni ejercer cargos públicos, las personas que, en cualquier momento antes de la elección o el acceso al cargo público, hayan adoptado conductas que directa o indirectamente favorezcan o respalden la posición de la República Cooperativa de Guyana respecto de las reclamaciones de la República Bolivariana de Venezuela sobre el territorio de la Guayana Esequiba, incumpliendo el deber previsto en el artículo 130 de la Constitución de la República Bolivariana de Venezuela y lesionando los principios de independencia e integridad territorial.

Impugnación de candidaturas

Artículo 26. La impugnación de la postulación de una candidata o candidato por razones de inelegibilidad con base en el supuesto previsto en esta Ley, se interpondrá directamente ante la Sala Constitucional del Tribunal Supremo de Justicia, la cual resolverá con garantía plena del debido proceso y del derecho a la defensa de la candidata o candidato impugnado.

Prohibición de contratación

Artículo 27. La Presidenta o Presidente de la República podrá prohibir la celebración de contratos o acuerdos con personas jurídicas que se encuentren operando o colaboren con la operación en el territorio terrestre de la Guayana Esequiba o en las aguas pendientes por delimitar entre la República Bolivariana de Venezuela y la República Cooperativa de Guyana, con base en concesiones, autorizaciones o permisos otorgados unilateralmente por Guyana en violación del Acuerdo de Ginebra y el derecho internacional.

Asimismo, la Presidenta o Presidente de la República podrá adoptar las medidas recíprocas necesarias, conforme al derecho internacional, para asegurar los derechos de la República Bolivariana de Venezuela sobre el territorio terrestre de la Guayana Esequiba y las aguas pendientes por delimitar con la República Cooperativa de Guyana.

Protección ambiental

Artículo 28. El Ejecutivo Nacional dictará las medidas necesarias a los fines de proteger el ambiente y la diversidad biológica del territorio de la Guayana Esequiba, de conformidad con lo previsto en la Ley Constituyente del Plan de la Patria y la legislación que regula la ordenación del territorio.

Desarrollo y protección

Artículo 29. El Ejecutivo Nacional deberá diseñar e implementar un plan especial para la protección y el desarrollo de la población actual y futura del territorio de la Guayana Esequiba, en consonancia con los lineamientos contenidos en la Ley Constituyente del Plan de la Patria.

Asimismo, dispondrá la creación de unidades administrativas especializadas dentro de los órganos y entes con competencia en materia petrolera, minera e industrial, con el objeto de abordar las potencialidades del territorio de la Guayana Esequiba y su contribución al desarrollo de la economía nacional.

CAPÍTULO V
DEL ACCESO Y DISPOSICIÓN DE INFORMACIÓN SOBRE LA GUAYANA ESEQUIBA

Declaratoria de utilidad pública

Artículo 30. Se declara de utilidad pública e interés general la información relevante a los efectos del diseño e implementación de políticas públicas, actividades de defensa judicial y extrajudicial o la divulgación de los hechos históricos y fundamentos jurídicos que asisten a la República Bolivariana de Venezuela en el reclamo y defensa de sus derechos sobre el territorio de la Guayana Esequiba, con miras al diseño, elaboración, administración, gestión y mantenimiento de una base de datos documental sobre este asunto, de trascendental importancia para la vida nacional.

Las disposiciones de esta Ley no impiden, ni obstan, el cumplimiento de las regulaciones sobre la organización, descripción, conservación, custodia, sistematización y resguardo de los documentos y archivos históricos contentivos de la información establecida en la Ley de Archivos Nacionales, cuando resulten aplicables.

Información regulada

Artículo 31. Se entenderá por "información", a los fines de la interpretación y aplicación de este Capítulo, toda idea, criterio, concepto, consideración, opinión, conclusión, dato, o conjunto de éstos, procesados o no; de carácter científico, literario, técnico, legal, fiscal, profesional o personal; consista ésta en consultas, opiniones, conferencias, alocuciones, estudios, modelos, análisis, reportes, informes, recopilaciones, estudios comparativos, traducciones, tesis, actos jurídicos estatales o negocios jurídicos de cualquier clase; esté contenida en libros, revistas, folletos, diarios, expedientes administrativos y judiciales, planos, mapas, cartas geográficas, dibujos, ilustraciones, manuscritos, imágenes, documentales, y, en general, en cualquier clase de documento de contenido oral, escrito, visual, audiovisual o fonográfico, soportado en medios materiales o tecnológicos de cualquier tipo; que guarde relación directa o indirecta, con el territorio de la Guayana Esequiba o con hechos o situaciones de interés para la determinación de los derechos de la República Bolivariana de Venezuela sobre dicho territorio, la reconstrucción de sus antecedentes históricos o la defensa de los derechos de la República sobre dicho territorio ante cualquier jurisdicción.

Cuando en esta Ley, se haga uso del término "información" será con referencia particular a la información caracterizada en este artículo.

Declaratoria de documento histórico de la Nación

Artículo 32. Se declara documento histórico de la Nación y recurso fundamental de interés superior para el Estado, la información indicada en el artículo precedente, por su carácter estratégico, impacto y repercusión en la integridad territorial, la historia y el sistema socioeconómico de la Nación.
Si con ocasión del acceso y disposición de la información a que se refiere esta Ley, fuere pertinente declarar el interés histórico de documentos o archivos, o su inclusión en el patrimonio cultural de la Nación, se requerirá tal declaratoria o la orden de inclusión, por parte del Instituto de Patrimonio Cultural, oída la opinión del Archivo General de la Nación.

Deber de aportar la información

Artículo 33. Las personas naturales o jurídicas de derecho público o privado, nacionales o extranjeras, órganos o entes de la Administración Pública Nacional, Estadal o Municipal, que posean, administren o gestionen, por cualquier título, la información a que se refiere esta Ley deben ponerla a disposición de la República Bolivariana de Venezuela, ante el órgano de la Alta Comisión para la Defensa de la Guayana Esequiba, salvo que tuvieren certeza de que dicha información consistiere en documentos o información disponibles al público.

A efectos de facilitar la obligación a que se contrae este artículo, la Alta Comisión para la Defensa de la Guayana Esequiba pondrá a disposición del público general mecanismos telemáticos de fácil utilización que permitan a los sujetos obligados, conforme lo dispuesto en este Capítulo, informar a dicha Comisión que disponen de determinada información.

La Alta Comisión para la Defensa de la Guayana Esequiba regulará los mecanismos a que refiere este artículo, así como los procedimientos mediante los cuales se podrá requerir, recibir, reproducir, copiar y almacenar la información.

Del acceso forzoso a la información

Artículo 34. Cuando el responsable de la información se negare infundadamente a aportarla a la Alta Comisión, fuere imposible determinar o ubicar a dicho responsable, o la Alta Comisión tuviere razones fundadas para presumir que la información será objeto de acciones o medidas para su desaparición, ocultamiento u obstaculización de su disponibilidad, se podrá proceder al acceso forzoso a la información.

En estos casos, la funcionaria o funcionario actuante ordenará la inmediata obtención de la información mediante su revisión, reproducción, copia, transcripción o digitalización, según la naturaleza de la información y los soportes en los que se encuentra, procurando recurrir al medio que genere una mayor garantía de integridad de la información. Obtenida la información, la funcionaria o funcionario actuante tomará las previsiones necesarias para restituir al responsable de la información los soportes materiales o tecnológicos que la contienen, o los medios o locaciones de acceso a ella, verificando antes la integridad de la información y de los soportes.

Los actos administrativos emanados de la Alta Comisión para la Defensa de la Guayana Esequiba relativos al requerimiento forzoso de información, así como las órdenes emitidas de reproducir, copiar o almacenar la información en su base de datos, agotan la vía administrativa y serán objeto de impugnación ante los Juzgados Nacionales de la Jurisdicción Contencioso Administrativa.

CAPÍTULO VI
SANCIONES

Sanción por publicación indebida

Artículo 35. Quien elabore, publique o distribuya mapas, planos o cartas totales o parciales de la República Bolivariana de Venezuela o cualesquiera otras formas que incluyan su representación, que omitan el territorio del estado Guayana Esequiba será sancionado con un monto en bolívares equivalente entre mil (1.000) y cien mil (100.000) veces el tipo de cambio oficial de la moneda de mayor valor publicado por el Banco Central de Venezuela.

Sanción por negativa a suministrar información

Artículo 36. Las personas naturales o jurídicas, no exceptuadas en los términos establecidos por la Alta Comisión para la Defensa de la Guayana Esequiba, que se negaren a suministrar la información a que se refiere esta Ley cuando les sea requerida serán sancionadas con multa por un monto en bolívares equivalente entre doscientos (200) y dos mil (2000) veces el tipo de cambio oficial de la moneda de mayor valor, publicado por el Banco Central de Venezuela, en función del volumen de la información, su importancia y la magnitud del esfuerzo que requeriría obtener la información por medios distintos.

Si la negativa a aportar la información es reiterada, se impondrán multas sucesivas por el doble del monto de la primera multa impuesta, hasta un máximo total de diez mil (10.000) veces el tipo de cambio oficial de la moneda de mayor valor publicado por el Banco Central de Venezuela.

Procedimiento para la imposición de sanciones administrativas

Artículo 37. Para la imposición de las sanciones administrativas previstas en esta Ley se deberá instruir un expediente administrativo de conformidad con el procedimiento breve establecido en la Ley Orgánica de Procedimientos Administrativos.

El procedimiento para la imposición de la multa por publicación indebida será sustanciado por el Instituto Geográfico de Venezuela Simón Bolívar. En el caso de la sanción por la negativa a suministrar la información el procedimiento será sustanciado por la Secretaría Ejecutiva de la Alta Comisión para la Defensa de la Guayana Esequiba.

La multa se pagará ante cualquier entidad bancaria receptora de fondos públicos nacionales, dentro de los treinta (30) días siguientes a que la decisión que la impone haya quedado definitivamente firme. El acto administrativo que imponga la multa correspondiente deberá acompañarse con la planilla de pago para la liquidación de la misma.

Medidas Preventivas

Artículo 38. En el acto de inicio del procedimiento para la imposición de las sanciones administrativas previstas en esta Ley o durante la sustanciación del mismo, la administración podrá dictar medidas preventivas que resulten necesarias para proteger los intereses tutelados.

Recurso Judicial

Artículo 39. Contra la decisión que imponga sanciones administrativas podrá interponerse demanda de nulidad ante los Juzgados Nacionales de la Jurisdicción Contencioso Administrativa, dentro del lapso de treinta (30) días continuos, contado a partir de la fecha de notificación del acto contentivo de la sanción.

DISPOSICIONES TRANSITORIAS

Primera. Hasta tanto se celebren las elecciones en el estado Guayana Esequiba, de conformidad con el Acuerdo de Ginebra y el derecho internacional, el gobierno y administración de esa entidad federal será ejercida por una Jefa o Jefe de Gobierno designado por la Presidenta o Presidente de la República Bolivariana de Venezuela.

Segunda. Hasta tanto se celebren las elecciones en el estado Guayana Esequiba para el Consejo Legislativo, de conformidad con el Acuerdo de Ginebra y el derecho internacional, el Poder Legislativo de esa entidad federal será ejercido por la Asamblea Nacional.

Tercera. Hasta tanto se alcance una solución práctica y mutuamente aceptable con la República Cooperativa de Guyana en torno a la controversia territorial, el asiento de los Poderes Públicos del estado Guayana Esequiba será la ciudad de Tumeremo, municipio Sifontes del estado Bolívar.

Cuarta. Hasta tanto se celebren las elecciones en el estado Guayana Esequiba, de conformidad con el Acuerdo de Ginebra y el derecho internacional, la representación parlamentaria a la Asamblea Nacional será escogida en una circunscripción nacional, de conformidad con las normas que dicte el Consejo Nacional Electoral.

Quinta. Hasta tanto se dicte la Constitución del estado Guayana Esequiba:

1. La representación de los derechos e intereses patrimoniales de dicha entidad federal corresponderá a la Procuraduría General de la República.
2. La organización y funcionamiento de los órganos y entes del Ejecutivo estadal será regulada por el Ejecutivo Nacional, en los términos establecidos en la Ley Orgánica de la Administración Pública y el ordenamiento jurídico relacionado.
3. Se aplicará a los ingresos y egresos imputables a esa entidad federal el régimen de la administración financiera del sector público, establecido en la Ley Orgánica respectiva y las normas desarrolladas en el ordenamiento jurídico nacional.

DISPOSICIONES FINALES

Primera. Esta Ley entrará en vigencia a partir de la fecha de su publicación en la Gaceta Oficial de la República Bolivariana de Venezuela.

Segunda. Quedan derogadas todas las disposiciones contrarias a esta Ley.

Dado, firmado y sellado en el Palacio Federal Legislativo, sede de la Asamblea Nacional, en Caracas, a los veintiún días del mes de marzo de dos mil veinticuatro. Años 213° de la Independencia, 165° de la Federación y 25° de la Revolución Bolivariana.

JORGE RODRÍGUEZ GÓMEZ
Presidente de la Asamblea Nacional

PEDRO INFANTE APARICIO
Primer Vicepresidente
de la Asamblea Nacional

AMÉRICA PÉREZ DÁVILA
Segunda Vicepresidenta
de la Asamblea Nacional

MARÍA ALEJANDRA HERNÁNDEZ ALDANA
Secretaria
de la Asamblea Nacional

JOSÉ OMAR MOLINA
Subsecretario
de la Asamblea Nacional

Promulgación de la **Ley Orgánica para la Defensa de la Guayana Esequiba**, de conformidad con lo previsto en el artículo 213 de la Constitución de la República Bolivariana de Venezuela.

Dado en Caracas, a los tres días del mes de abril de dos mil veinticuatro. Años 213° de la Independencia, 165° de la Federación y 25° de la Revolución Bolivariana.

Cúmplase,
(L.S.)

NICOLÁS MADURO MOROS
Presidente de la República
Bolivariana de Venezuela

Refrendado
La Vicepresidenta Ejecutiva de la República Bolivariana de Venezuela y Primera Vicepresidenta del Consejo de Ministros
(L.S.)

DELCY ELOÍNA RODRÍGUEZ GÓMEZ

Refrendado
El Ministro del Poder Popular del Despacho de la Presidencia y Seguimiento de la Gestión de Gobierno
(L.S.)

JORGE ELIESER MÁRQUEZ MONSALVE

Refrendado
El Ministro del Poder Popular para Relaciones Exteriores
(L.S.)

YVÁN EDUARDO GIL PINTO

Refrendado
El Ministro del Poder Popular para Relaciones Interiores, Justicia y Paz, y Vicepresidente Sectorial para la Seguridad Ciudadana y la Paz
(L.S.)

REMIGIO CEBALLOS ICHASO

Refrendado
El Ministro del Poder Popular para la Defensa y Vicepresidente Sectorial de Soberanía Política, Seguridad y Paz
(L.S.)

VLADIMIR PADRINO LÓPEZ

Refrendado
El Ministro del Poder Popular para la Comunicación e Información y Vicepresidente Sectorial de Comunicación y Cultura
(L.S.)

FREDDY ALFRED NAZARET ÑAÑEZ CONTRERAS

Refrendado
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(L.S.)

DELCY ELOÍNA RODRÍGUEZ GÓMEZ

Refrendado
El Ministro del Poder Popular de Industrias y Producción Nacional
(L.S.)

JOSÉ FÉLIX RIVAS ALVARADO

Refrendado
El Ministro del Poder Popular de Comercio Nacional
(L.S.)

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Refrendado
El Ministro del Poder Popular para el Turismo
(L.S.)

ALÍ ERNESTO PADRÓN PAREDES

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El Ministro del Poder Popular para la Agricultura Productiva y Tierras
(L.S.)

WILMAR ALFREDO CASTRO SOTELDO

Refrendado
La Ministra del Poder Popular de Agricultura Urbana
(L.S.)

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Refrendado
El Ministro del Poder Popular de Pesca y Acuicultura
(L.S.)

JUAN CARLOS LOYO HERNÁNDEZ

Refrendado
El Ministro del Poder Popular para
la Alimentación
(L.S.)

CARLOS AUGUSTO LEAL TELLERÍA

Refrendado
El Ministro del Poder Popular
de Petróleo
(L.S.)

PEDRO RAFAEL TELLECHEA RUIZ

Refrendado
El Ministro del Poder Popular de
Desarrollo Minero Ecológico
(L.S.)

WILLIAM MIGUEL SERANTES PINTO

Refrendado
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de Planificación y Vicepresidente Sectorial de Planificación
(L.S.)

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Refrendado
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la Salud
(L.S.)

MAGALY GUTIERREZ VIÑA

Refrendado
La Ministra del Poder Popular
para los Pueblos Indígenas
(L.S.)

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Refrendado
La Ministra del Poder Popular
para la Mujer y la Igualdad de Género
(L.S.)

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Refrendado
El Ministro del Poder Popular
de Atención de las Aguas
(L.S.)

RODOLFO CLEMENTE MARCO TORRES

Refrendado
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la Juventud y el Deporte y Vicepresidente Sectorial del
Socialismo Social y Territorial
(L.S.)

MERVIN ENRIQUE MALDONADO URDANETA

Refrendado
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para el Servicio Penitenciario
(L.S.)

CELSA SIRLEY BAUTISTA ONTIVEROS

Refrendado
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el Proceso Social de Trabajo
(L.S.)

ALEXIS JOSÉ CORREDOR PÉREZ

Refrendado
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la Cultura
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ERNESTO EMILIO VILLEGAS POLJAK

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la Educación
(L.S.)

YELITZE DE JESUS SANTAELLA HERNÁNDEZ

Refrendado
La Ministra del Poder Popular
para la Ciencia y Tecnología y Vicepresidenta Sectorial
de Ciencia, Tecnología, Educación y Salud
(L.S.)

GABRIELA SERVILIA JIMÉNEZ RAMÍREZ

Refrendado
La Ministra del Poder Popular para
la Educación Universitaria
(L.S.)

SANDRA OBLITAS RUZZA

Refrendado
El Ministro del Poder Popular
para el Ecosocialismo
(L.S.)

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Vivienda
(L.S.)

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Obras Públicas
(L.S.)

RAÚL ALFONZO PAREDES

Refrendado
El Ministro del Poder Popular
para la Energía Eléctrica y
Vicepresidente Sectorial de Obras Públicas
(L.S.)

NÉSTOR LUIS REVEROL TORRES

GACETA OFICIAL
DE LA REPÚBLICA BOLIVARIANA DE VENEZUELA

DEPÓSITO LEGAL: ppo 187207DF1

AÑO CLI - MES VI N° 6.798 Extraordinario

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LEY DE PUBLICACIONES OFICIALES

(Gaceta Oficial Extraordinaria N° 6.688 de fecha viernes 25 de febrero de 2022)

Objeto

Artículo 1. Esta Ley tiene por objeto regular las publicaciones oficiales de los actos jurídicos del Estado a los fines de garantizar la seguridad jurídica, la transparencia de la actuación pública y el libre acceso del Pueblo al contenido de los mismos, en el marco del Estado Democrático y Social de Derecho y de Justicia.

Gaceta Oficial de la República Bolivariana de Venezuela

Artículo 4. La "Gaceta Oficial", creada por Decreto Ejecutivo de 11 de octubre de 1872, continuará con la denominación "Gaceta Oficial de la República Bolivariana de Venezuela".

Efectos de la publicación

Artículo 8. La publicación de los actos jurídicos del Estado en la Gaceta Oficial de la República Bolivariana de Venezuela le otorga carácter público y con fuerza de documento público.

Para que los actos jurídicos del Poder Electoral, Poder Judicial y otras publicaciones oficiales surtan efectos deben ser publicados en la Gaceta Oficial de la República Bolivariana de Venezuela, de conformidad con el Reglamento que rige la materia.

Publicación física y digital

Artículo 9. La publicación de la Gaceta Oficial de la República Bolivariana de Venezuela acoge el sistema mixto que comprenderá uno digital y automatizado, y otro físico. La publicación física deberá contener todo el contenido publicado en la versión digital y automatizada y generará los mismos efectos establecidos en esta Ley, incluyendo su carácter público y de documento público. La contravención de esta disposición generará responsabilidad civil, administrativa y penal, según corresponda.

La Vicepresidenta Ejecutiva o Vicepresidente Ejecutivo establecerá las normas y directrices para el desarrollo, manejo y funcionamiento de las publicaciones digitales y físicas de la Gaceta Oficial de la República Bolivariana de Venezuela, incluyendo el sistema informático de las publicaciones digitales.

Publicaciones oficiales

Artículo 15. El Servicio Autónomo Imprenta Nacional y Gaceta Oficial podrá dar carácter oficial a las publicaciones y ediciones físicas y digitales de los actos jurídicos publicados en la Gaceta Oficial de la República Bolivariana de Venezuela. A tal efecto, deberá dictar un acto que indique las características esenciales de estas publicaciones.

Así mismo, el Servicio Autónomo Imprenta Nacional y Gaceta Oficial dictará un acto en el cual establezca los precios de las publicaciones impresas de la Gaceta Oficial, su certificación y los servicios digitales de divulgación y suscripción, así como cualquier otro servicio asociados a sus funciones.

VU NE VARIETUR
Traduction conforme à
l'original en langue esp
N° 3425

EXPERT TRADUCTEUR PRÈS LA COUR D'APPEL DE PARIS
Jimena MARTINEZ ROJAS
36 rue Saint Didier
75116 PARIS
01 71 73 64 36

Annex 2

Letter from Venezuela's Foreign Minister, Mr. Simón Camacho, to United States Secretary of State, Mr. Frederic Frelinghuysen (15 January 1883)

Correspondence in Relation to the Boundary Controversy between Great Britain and Venezuela, Washington, 1896, pp. 40-41

considerable, whilst aught less than that would fail to secure to British Guiana the dominion of the entrances and outlets of its internal communication by water.

11. The indicated internal boundary is such that the aboriginal Indians and others would understand it well. All would promptly know that the boundary ran by the Cuyuni from its source to its junction with the Acarabisi, and from that point by the Acarabisi to its source, and from thence by the high lands which extend from there to the sea in a northern direction. A line so well marked would prevent many complications, and it is hoped that upon this ground and the others above expounded it will recommend itself to the acceptance of the Government of Venezuela.

[Inclosure 7 in No. 565.]

Mr. Baker to Mr. Seijas.

LEGATION OF THE UNITED STATES,
Caracas, October 20, 1882.

SIR: Your excellency's note of date July 15, 1882, respecting the disputed boundary between Venezuelan and British Guiana, together with accompanying documents marked A, B, C, D, and E, was received on the 20th of the same month—your said note and the documents marked D and E having been first received on the 17th, and the documents marked A and B having been first received on the 19th of the same month, and informally returned to your excellency for ratification.

I have given the matter of your said note and accompanying documents careful, assiduous, and laborious attention; and the same will be brought, in a proper and friendly manner, to the knowledge and attention of my Government by the next going steamer for the United States, which leaves on the 23d instant.

I avail myself of the occasion to renew to your excellency the assurances of my high consideration.

JEHU BAKER.

His Excellency Señor RAFAEL SEIJAS,
Minister of Exterior Relations.

No. 10.

Mr. Camacho to Mr. Frelinghuysen.

[Translation.]

WASHINGTON, *January 15, 1883.* (Received January 15.)

SIR: I beg to call your attention to the following facts in reference to the question of the boundary between Venezuela and the British colony of Guiana, which virtually amounts to the actual possession of the Orinoco River and the dominion of the whole interior of Venezuela and a part of Colombia and Ecuador.

On the 21st day of December, 1880, I had the honor to represent to your Department that the English authorities in Guiana were taking steps to continue their encroachment upon the Venezuelan territory, with the ultimate view of establishing the power of Great Britain on the principal mouth of the Orinoco River to control its navigation, a fact tantamount at least to the exclusive commerce of that mighty river, whose tributaries extend over the whole northern part of South America, and even to Brazil towards the south.

A mere inspection of the map will convince any casual observer that the Orinoco, by its geographical position, its length, the abundance of its waters, and its numberless tributaries, is, as I have before now had the honor to say to your excellency, more important to South America than is the Mississippi River to the United States.

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Mr. Evarts informed me (January 31, 1881) 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, his Government could not look with indifference upon the possible acquisition of any such territory by England.

And at the close of his incumbency of the office he wrote (February 28, 1881), "I have to advert to the interest with which the Government of the United States can not 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."

I can assure your Excellency that the Government of Venezuela was fully satisfied with the determined attitude of the United States to oppose any forcible occupation of our country, and also that they considered the two above-quoted notes from your Department as a valuable pledge, not only for Venezuela, but for the American world.

It is quite unnecessary for me to say that Venezuela, whilst trying to protect her actual rights over that portion of her territory, is not only defending her independence, but likewise the future of that section of South America which is clearly reserved, as by a providential dispensation, to be the emporium of that other America, to which the Spanish discoverers applied the name of El Dorado, in contemplation of its natural greatness and inexhaustible resources, and your Excellency is aware, no matter how sad it is for me to say it, that my country can never afford the means to stop Great Britain in her progressive encroachments toward that land of the future which is wholly controlled by the Orinoco from the English island of Trinidad and from the English establishment of Guiana.

That such mission exclusively belongs to the diplomatic action of the United States, is evident; in the present juxtaposition of the nations of the world, I could not name any other who could effectually intervene to settle this question, notwithstanding its universal importance. Even France, the once mighty rival of Albion, will disregard the action of the latter, moved, as she is, by the interests created for her in our Atlantic shores by the Panama canal scheme, for the progress of which she could find no better basis of operations than some of our magnificent ports. A similarity of interest would produce similar action.

To carry this controversy to a practical ground and possible termination, there is, in the opinion of the President of Venezuela, only one and at the same time very simple way—arbitration.

And for arbitration there is only one Government who could propose it with real effect and decide the question of boundaries to the satisfaction of Venezuela—the United States of America.

And if I may be allowed to add, there is, in the estimation of my Government, no man better qualified than your excellency for the fulfillment of so highly important a mission.

I deem it an honor to propose it to your excellency, and I entertain the hope of receiving an early favorable answer to transmit to Venezuela.

Please accept, etc. SIMON CAMACHO.

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Annex 3

Letter of Mr. Joseph Chamberlain to Mr. Selborne (20 December 1895)

University of Birmingham, *Joseph Chamberlain Collection*, *Correspondence relating to the Venezuelan boundary dispute – 1896-1899*, JC7/5/1B/1-81

Dictated

Copy

JC 4/5/18/4

Highbury, Moor Green,
Birmingham.
Dec^r 20 1895.

Private

My dear Selborne,

I regard the situation created by the President's Message with grave concern. I do not think it is due entirely to electioneering motives; but I am sorry to say that I am afraid that a large number, and probably a majority, of Americans would look forward without horror to a war with this country. This is so different from the feeling prevailing here that it needs explanation, & the explanation is difficult to find. At bottom, I believe it is due to the extreme sensitiveness and vanity of the Americans as a nation. They are jealous of this country, and suspect us always of an assumption of superiority of which we are not conscious ourselves ~~eager to manifest~~, but they are convinced nevertheless that we look

down upon them, I they would not be sorry to prove that they are bigger & stronger & better than we are. The feeling, of course, is much strengthened by the existence ~~in~~ of large numbers of such hostile elements as the Irish Party, and there never has been a time in recent years when "twisting the British lion's tail" was not a profitable amusement for the agitators & professional politicians who govern the country.

I have very little confidence in the Senate as it is constituted at present. The majority are not received even in Washington Society. They are local lawyers, speculators & professional politicians. There are exceptions, but even these are apt to be carried away by the mass.

Cleveland is a coarse-grained man, with, I think, a good deal of the bully in his composition. He has

yielded to the Jingoes, but not altogether without sympathy with their views.

The danger lies, as you say, in the position which is naturally created by the delivery of an ultimatum. Neither State could give way without dishonour. I do not know that we can take any further steps at this moment, but our main object should be to put in a popular form that "can be understanded of the people" the monstrosity of the President's demands.

The Americans believe in the Monroe Doctrine as some people believe in the Bible — without knowing much of its contents, but accepting it as of divine inspiration.

The President has made one mistake.

He has given away the Monroe Doctrine by admitting that, if we had bought Venezuela, the United States would have nothing to say. This is rank heresy, because the object of the Monroe Doctrine is to prevent an extension of European control and influence over States at present independent; and, whether this extension is gained by peaceable or warlike means, it is equally to the injury of the United States, and contrary to the Monroe Doctrine.

If we have to send any further despatches, I think we ought, as far as possible, to express our sympathy with the main idea of President Monroe. It is not to our interest, any more than to America's, that European Powers should come into America where they are at present

at present not represented. So far, we might heartily support the American contention, although, as a matter of technical argument, the doctrine is not accepted in international law. It is, however, against the unnatural & altogether unprecedented extension of the doctrine that we have chiefly to protest.

The Monroe Doctrine knows nothing of arbitration. It says in effect to European Powers "Where you have not already established yourselves on the American continent you shall not come". But it has nothing to say to disputes either of boundary or of anything else which may arise between existing States, whether those States are independent, or colonies of an European Power.

Our strong point is that we have been

in practical undisputed possession of the territory which we claim as our minimum for 100 years. This is independent altogether of our historical claim to the possession of a much larger area. Our settlements are extended to the Schomburgk line. We can no more arbitrate about this than we can about the Isle of Wight. Would America consent to leave the title to Maine open to discussion before a tribunal presided over say by a Belgian, a Swiss or a Roumanian lawyer? Would they agree to submit to a similar tribunal their claim to the States forcibly taken from Mexico? Would they listen to arguments based upon the original possession of the soil by the Red Indians whose reserves they are continually disturbing?

would they arbitrate with us for any considerable portion of the territory of Alaska? If not, the principle of arbitration is clearly limited by the particular character of the case to be submitted; and never before, I think, has it been contended that a nation should arbitrate on a claim by a semi-civilised State to take possession of territory which is, and has been for a generation, in the occupation of its own subjects.

I notice in the "Times" today a suggestion which I think it might be worthy ~~which~~ of further consideration. It is in a letter signed "J. Wrigley", and urges that we should offer to the United States to refer to arbitration the question whether the demands in Mr. Olney's despatch are, or are not, in

accordance with international law.

I think that an offer of this kind, although not necessarily in these terms, would put the President in a difficulty. He has appealed to arbitration. It would be inconsistent of him to decline; and yet he knows beforehand that the jurists of every civilised country are against him. If he accepted, we might, I think, safely go to arbitration. If he declined, it would mean delay and would prejudice his case in the eyes of many of his own people. Our great object should be to gain time and to prevent the war feeling from rising. Any offer would show our anxiety for peace or a friendly solution. My fear is lest the Americans should be persuaded that we are

as

as arbitrary as they have shown themselves to be, and that their bumptiousness should thereupon assert itself & make a settlement impossible.

There is one other argument in favour of the suggestion, and that is that it affords to the President an escape from the position in which he has deliberately placed himself. I do not see how otherwise he could retreat without becoming the laughing-stock of the world.

Referring to your postscript as to possible difficulties on the British Guiana frontier, I have already communicated with the office on the subject.

I have made a suggestion which may have nothing in it but shall be communicated to you in due course. Meanwhile I am

doubtful whether we ought to make any movement of troops which would exasperate feeling in the United States. I would be prepared for all contingencies but postpone actual movement for a short space.

Dear Sir,

Yours very truly.

J. Chamberlain

Annex 4

El Libro Amarillo de los Estados Unidos de Venezuela, 1896 (extracts)

TRANSLATION

VU NE VARIETUR
Traduction conforme à
l'original en langue.....es.....
N°.....3425.....

TH

YELLOW BOOK

OF THE

UNITED STATES OF VENEZUELA

PRESENTED TO THE NATIONAL CONGRESS DURING ITS SESSIONS IN 1898

BY THE CITIZEN

MINISTER OF FOREIGN AFFAIRS

CARACAS
IMPRENTA BOLIVAR
1896

[…]

For the Memorial that was to be drafted in Caracas, the Government benefited from the enlightened and patriotic collaboration of four citizens appointed in January 1896 to form the Classification Commission for documents concerning the Guiana boundaries. They were tasked with writing the refutation of the first Blue Book, drawing upon evidence previously submitted to the United States and following principles Venezuela had consistently maintained in all recent documents on the matter. It would have been impossible to entrust this task to more expert hands. These were individuals steeped in rigorous scholarly habits, with special competence for the purpose, and presided over in their work by the respected dean of our diplomacy, a man versed in such matters and as learned as any in public law.

[…]

The preparation of the Report in the United States, following established legal practice there, was to be entrusted to a jurist of proven experience in previous disputes and high standing in the Courts of the Great Republic. The Venezuelan Government promptly identified such a person who, upon arriving in this capital before assuming the task, received from my Department preliminary information, was briefed on the key aspects of the controversy, and familiarised himself with the Executive's position on several crucial points at issue. Upon his return to Boston, his place of residence where the work was to commence, he established correspondence with this Ministry both directly and through the Legation in Washington, which was responsible for informing him, as it promptly did, of all material accumulated for Venezuela's defence before the United States Commission. There, the newly appointed counsel joined our Special Agent in all matters concerning the safeguarding and presentation of the Republic's rights. His work, which was sent gradually to this Office for review and approval […]

[…]

Page XXVII

The good offices thus exercised by the Government of Washington were entirely aligned with Venezuela's request. Venezuela turned to the Great Republic in search of a dignified resolution to its conflict with Great Britain, and its request was heeded. Although at the time the British Cabinet insisted upon an exclusion that had long been openly rejected by the Republic, the path outlined by the United States was the most appropriate to achieving without further delay a positive harmony of opinions on the issue of arbitration.

[…]

Pages XXIX-XXX

Attempts to deal directly with the British Government had been unsuccessful. […] Only the effective intercession of the Great Nation of the North remained was missing, and in securing it, the Government applied every effort of its will. The manner in which the Legislative and Executive Branches of the United States began to undertake it could not have could not have corresponded better to our wishes. The means subsequently employed by the Department of State, as evidenced in the correspondence published in July, were no less consonant with our purpose. The creation of an arbitral tribunal to settle the controversy from its inception would fulfil all of Venezuela's hopes.

At this juncture, and when the work regarding the definition of our rights had reached the level of importance noted at the outset of the present address, the Department of State in Washington consulted the Government, through the Venezuelan Legation, concerning a matter closely tied to the arbitration agreement, which was still being negotiated to bring an end to the dispute. This matter, referred to this Ministry by the Representative of the Republic in the United States, was immediately taken up for study, and with an extensive report, contrary to the reasoning that had motivated the initial consultation, was submitted for the consideration of the President of the Republic in a full meeting of the Council of Ministers, where a decision was reached in accordance with the recommendation issued by the Ministry of Foreign Affairs. Timely and detailed notice of this outcome was sent to the Diplomatic Agent of Venezuela.

[…]

Page XXXI

By resorting to arbitration and persistently urging the United States to obtain Great Britain's acquiescence thereof, [...] the Venezuelan Government always sought a manner by which Great Britain would accept arbitration, free from hindrances and conditions, so as to enable the arbitrators to discern freely the weight or value of each piece of evidence, regardless of its nature. Following this approach, the aforementioned request was duly addressed.

VU NE VARIETUR
Traduction conforme à
l'original en langue esp
N° 3405

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01 71 73 64 36

VU NE VARIETUR
Traduction conforme à
l'original en langue.....es.....
N°.....3435.....

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36 rue Saint Didier
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350.01
MRE
1896

EL

LIBRO AMARILLO

DE LOS

ESTADOS UNIDOS DE VENEZUELA

PRESENTADO AL CONGRESO NACIONAL EN SUS SESIONES DE 1896

POR EL CIUDADANO

MINISTRO DE RELACIONES EXTERIORES

CARACAS
IMPRENTA BOLIVAR
1896

entendimiento se vale para demostrarla, y en la atemperación de ellos á los efectos de tiempo y de lugar que en cada acto de la existencia se hacen sentir con irresistible influjo, estriba no pocas veces la eficacia de un argumento ó la consistencia y poder de una opinión convencedora. De ahí que con ser uno mismo el propósito final, sean distintos entre sí los trámites observados por los países cultos para la aplicación de la ley en el ramo de la Justicia; y de ahí también que se diversifique día por día entre los pueblos la manera de defender ciertos puntos de derecho, aun cuando en su naturaleza esencial se ofrezcan del mismo modo á los ojos de cuantos sesudamente los consideran y examinan.

Para el Alegato que se debía redactar en Caracas, contaba el Gobierno con la colaboración ilustrada y patriótica de los cuatro ciudadanos constituidos desde el mes de enero de 1896 en Comisión clasificadora de los documentos relativos á los límites de Guayana. Á ellos se cometió desde luego la tarea de escribir la refutación del primer Libro Azul, con razones deducidas, en parte, de las pruebas ya enviadas á los Estados Unidos, y en conformidad con los principios sostenidos por Venezuela en todos los documentos dados á luz en los años últimos con referencia á la materia. Imposible era confiar el encargo á manos más expertas. Se trataba de personas encanecidas en los severos hábitos del estudio, de competencia especial para el objeto, y presididas en sus labores por el respetable decano de nuestra diplomacia, varón amaestrado en asuntos de ese linaje y docto como el que más en la ciencia del derecho público. Á medida que este Ministerio

recibía y aprobaba las partes concluídas del trabajo, las hacía verter cuidadosamente al inglés, con lo cual pudo, una vez terminada la obra, enviarla en el idioma de la Comisión investigadora al Representante Diplomático del Gobierno en Washington, para que vigilase la edición de ella y la hiciese presentar lo antes posible por el Agente especial de Venezuela.

El Informe que convenía escribir en los Estados Unidos con sujeción á las prácticas allí consagradas para tales casos de derecho, debía encomendarse á un jurisconsulto ya probado en anteriores litis y de bien asentada reputación en el Foro de la Gran República. Hallólo pronto el Gobierno de Venezuela; y en esta misma capital, adonde vino antes de tomar á su cargo el asunto, recibió en el Departamento de mi dependencia los primeros datos, oyó las principales noticias acerca de la controversia, y se penetró de las ideas profesadas por el Poder Ejecutivo en lo tocante á varios de los puntos más señalados de la cuestión. Al retornar á Boston, lugar de su domicilio y donde debía poner mano á la obra, abrió correspondencia con este Ministerio, ya directamente, ya por medio de la Legación en Washington, á la cual correspondía enterarle, como le enteró muy luego, de todo lo acumulado para la defensa de Venezuela ante la Comisión de los Estados Unidos. El nuevo abogado se asoció allí desde entonces á nuestro agente especial, para todo lo referente á la guarda y exposición de los derechos de la República. Su trabajo, que fué enviado paulatinamente á este Despacho para los efectos de examen y aprobación, no ha llegado á circular todavía sino en parte, á causa de los sucesivos cambios y amplificaciones que ha habido necesidad de introducir en él con el objeto de impug-

venían de Venezuela sino de la otra parte, y agregó que si había algunos engañados por las seguridades de su Gobierno, era asunto que de ningún modo podía atañer á la Nación Venezolana. Dijo, además, que la República no debía ser despojada de sus posesiones legítimas porque el Gobierno británico hubiese alentado erróneamente á los súbditos de Su Majestad en la suposición de que eran de la Corona los territorios ocupados por ellos; y antes de concluir su respuesta añadió que la Comisión investigadora indicada por la Gran Bretaña, "debía tener fa-"cultad de informar sobre todos los hechos nece-"sarios para la decisión de la controversia de frontera, "inclusive los pertinentes á la ocupación del territorio "en disputa por súbditos británicos."

Los buenos oficios así ejercidos por el Gobierno de Washington se conformaban del todo á la solicitud de Venezuela. Ella acudió á la Gran República en pos de una solución decorosa de su conflicto con la Gran Bretaña, y su petición fué atendida. Aun cuando por el momento el Gabinete inglés insistiera en una exclusión abiertamente rechazada de antiguo por la República, el camino trazado por los Estados Unidos era el más á propósito para llegar sin mayor tardanza á una positiva armonía de opiniones en punto de arbitramento. Considerada de ese modo la correspondencia, tenía para Venezuela importancia singular, como se participó al Departamento de Estado por medio de nuestro Representante en Washington aun antes de haberse procedido á la edición en español que de ella se hizo circular profusamente en lo interior del País y en todas las demás Repúblicas hermanas de Venezuela. El homenaje de gratitud debido en tan solemne ocasión al Excelen-

tísimo Señor Cleveland y á su muy digno Secretario de Estado, Señor Olney, fué aceptado por ellos con las mayores muestras de aprecio, como lo había sido la manifestación vuestra del 9 de marzo, en loor del Cuerpo Representativo de aquella República y del mismo Alto Magistrado que preside su Administración.

*
* *

Negociaciones sobre arbitraje.

En asuntos de política, dice un gran filósofo, "es más difícil olvidar lo sabido que aprender algo por primera vez." Enfrente de una grave dificultad no es posible, por tanto, á ningún Gobierno que solicita el bien de todos los asociados, desdeñar enseñanzas anteriores, máxime cuando éstas proceden de hechos radicados amargamente en la memoria de los que hacen suyo el infortunio de la Patria. La cuestión con la Gran Bretaña ofrece en su enojosísimo proceso accidentes y mutaciones que cuestan á la República días de suprema ansiedad, reagravada por el esfuerzo á que se ve constreñida el alma en los momentos en que halla supeditado un principio que considera justo, por otra acción más poderosa ó de mayor eficiencia material. Poner término honroso á una situación tan ocasionada á peligros para Venezuela fué, como ya lo sabéis, pensamiento constante del Gobierno inaugurado en octubre de 1892, é idea igualmente firme de la Administración que vino á ser su corolario legal. Sin exponer á la Nación á nuevos conflictos no era posible aplazar más el término de la ingrata disputa, ni fiar á hechos futuros su sesgo favorable. Libertar á Venezuela de tan ponderosa carga lo consideró el Gobierno del General Crespo deber patriótico; y para lograr tal objeto había que insistir en el medio del arbitraje,

único capaz de conciliar desde el punto de vista moral todos los intereses y de avenir en el orden político todas las aspiraciones.

Las tentativas para llegar directamente á ese punto con el Gobierno Británico habían resultado infructuosas. Las nobles solicitudes de las Repúblicas hermanas, aunque cortésmente oídas, habían sido realmente desechadas. Restaba sólo la interposición efectiva de la Gran Nación del Norte, y en alcanzarla puso el Gobierno todo el empeño de su voluntad. El modo como empezaron á prestarla los Poderes Legislativo y Ejecutivo de los Estados Unidos, no podía corresponder mejor á nuestros deseos. El medio de que siguió valiéndose para ello el Departamento de Estado, según aparece de la correspondencia publicada en julio, no era menos cónsono con nuestro propósito. La creación de un tribunal arbitral que dirimiese la controversia desde su principio, venía á dejar realizadas todas las esperanzas de Venezuela.

En este punto las cosas, y cuando los trabajos relativos á la definición de nuestros derechos alcanzaban el grado de importancia que habéis visto al comienzo de este relato, consultó al Gobierno, por medio de la Legación de Venezuela, el Departamento de Washington, respecto de una materia íntimamente ligada con el pacto de arbitramento que seguía concertándose para dar fin á la disputa. Remitido el asunto á este Ministerio por el Representante de la República en los Estados Unidos, se puso inmediatamente en estudio, y con un extenso informe, contrario al criterio que había motivado la consulta, fué sometido á la consideración del Presidente de la República en pleno Consejo de Ministros, de

donde salió definido conforme al dictamen del Despacho de Relaciones Exteriores. De este resultado se dió oportuno y explicativo aviso al Agente Diplomático de Venezuela.

Militan hoy en las cuestiones de posible decisión por virtud del arbitraje, circunstancias muy distintas de las que concurrían en otras épocas del mundo cuando se buscaba el término pacífico de una diferencia internacional. El salvador recurso se empleó por los primitivos Estados políticos, más como medio de descanso en las luchas guerreras que como expediente encaminado á establecer un derecho sin posibilidad de apelación. En la edad helénica se acató la práctica del arbitraje bajo la influencia religiosa, y en la edad romana tuvo cabida como nuevo elemento de seguridad para el prestigio de las armas. En los tiempos modernos, y sobre todo en la época coetánea, sus caracteres son más amplios y sus resultados más beneficiosos. Eliminado casi, en todo el Orbe, el derecho de conquista, la doctrina del arbitramento mira ya sólo á consolidar la paz, y reconoce por fundamento la máxima antigua de que todo el que hace justicia á sus compatriotas y la niega al extranjero, vulnera la ley primigenia de la sociedad humana.

Si el derecho consiste en "la armonía de las relaciones obligatorias de los hombres entre sí," imposible parece que la práctica del arbitramento deje de reemplazar á la guerra, para el arreglo de las dificultades que se suscitan inopinadamente entre las Naciones. Ella no busca hoy, como buscaba en lo antiguo, afianzar las victorias bélicas con la reducción del vencido á una especie de servidumbre moral, sino establecer sobre bases perdurables el dominio de la justicia en el trato recíproco de los pueblos civilizados.

VU NE VARIETUR
Traduction conforme à
l'original en langue ES
N° 3425
EXPERT TRADUCTEUR PRÈS LA COUR D'APPEL DE PARIS
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El tribunal arbitral no solicita ya la condición de las partes sino la calidad de los títulos que se exhiben en su defensa. El veredicto puede caer tanto sobre el débil como sobre el fuerte: reconocer derechos á un Estado incipiente y negarlos á uno de existencia milenaria: *legitimar* las aspiraciones del vencido en lucha desigual, y condenar las del que ha triunfado por la sola eficacia de la fuerza. El principio del arbitraje, si no se desvirtúa en sus efectos, constituye la mejor conquista de la moderna civilización.

Al acogerse á él Venezuela y pedir con creciente instancia á los Estados Unidos que recabasen su aceptación de la Gran Bretaña, lo hizo con la seguridad de que todo el Orbe culto interpretaría dignamente su celo por atender á la guarda de sus fueros territoriales mediante el uso de un recurso tan preconizado y admitido. Mas, por lo mismo que éste es en su esencia y en sus efectos fruto de los esfuerzos del hombre por subordinar de una vez á la acción del derecho toda cuestión internacional, buscó siempre el Gobierno la manera de que la Gran Bretaña lo aceptase exento de trabas y condiciones, á fin de dejar á los jueces en capacidad de discernir libremente el peso ó valor de cada prueba, cualquiera que fuese su carácter. Conforme á este criterio fué evacuada la consulta á que acabo de referirme.

Después de ella nada más se supo acerca de las negociaciones hasta el 7 del mes de noviembre, día en que nuestro Ministro pidió licencia para trasladarse á Caracas é instruir personalmente al Gobierno de lo conseguido por el Gabinete de Washington y comunicado á él en aquellos momentos. Con el Representante Diplomático del Gobierno vino el Abogado de la República.

* * *

Annex 5

Letter from Mr. Olney to Mr. Brewer (10 November 1896)

Richard Olney's Papers, Library of Congress, Reel 23

COPY

STRICTLY CONFIDENTIAL

November 10, 1896.

My dear Judge:-

You will see by the morning papers that that has happened which at our last interview I said was likely to happen within three or four days.

The United States and Great Britain are in entire accord as to the provisions of a proposed treaty between Great Britain and Venezuela. The treaty is so eminently just and fair as respects both parties -- so thoroughly protects the rights and claims of Venezuela -- that I cannot conceive of its not being approved by the Venezuelan President and Congress. It is thoroughly approved by the counsel of Venezuela here and by the Venezuelan Minister at this Capital.

In view of this situation, it is extremely improbable that the Commission of which you are President, will be called upon to make a report. In the view of the President and myself it is also desirable that the deliberations of the Commission should be suspended -- for reasons which I stated to you at our last interview and which I need not repeat -- until further notice. There need be no ostentation about the suspension nor any special publicity given to it. But I wish to be in a position to assure all parties concerned that such is the fact.

Please treat this as strictly confidential.

Very truly yours,

Richard Olney.

Hon David J. Brewer,
President Venezuela Boundary Commission,
Sun Building, Washington, D.C.

11623

Annex 6

Letter from Mr. Olney to Mr. White (30 June 1896)

Richard Olney's Papers, Library of Congress, Reel 20

COPY

Strictly Personal

DEPARTMENT OF STATE,

Washington, June 30, 1896.

My dear Mr. White:

I have your two favors of the 16th and 17th instant, and am much indebted to you for them. They show most significantly how this Government has been handicapped by having in England a diplomatic agent who has not sympathized with its policy, and who through sentiment, self-conceit, physical infirmity and otherwise, has been practically disabled from rendering the services rightfully expected of him.

The exact situation is this. The Venezuela boundary question and the general arbitration scheme are progressing quite independently of each other -- the Foreign Office having been distinctly notified that, whatever this Government might be willing to agree to in the way of a general arbitration plan, no arbitral convention for the settlement of the Venezuela boundary dispute could be entered into which did not make the award a finality as respects the entire controversy.

As regards the boundary dispute, the matter stands thus. Lord Salisbury has proposed a Commission of four to fix the facts, to be followed by an arbitral tribunal of three to determine the conclusions from those facts -- with the express proviso, however, that no territory bona fide occupied by British subjects January 1, 1887, shall be affected. This Government has replied, objecting to the Commissior on the facts because it might stand two and two and thus be not only abortive but mischievous, and objecting to the arbitral tribunal because what are called settled districts are excluded from its jurisdiction.

The general arbitration plan, as proposed by Lord Salisbury, deals with two classes of subjects. No topic belonging to either class is arbitral if either nation concerned conceives and declares it to affect the national honor or integrity. Subject to that qualification, the first class of claims is apparently intended to include all except claims to territory, and, if not excluded from arbitration because the national honor or integrity is implicated, any award made respecting such a claim is to be final. The second class of claims, as above stated, comprises claims to territory. A Power deeming itself aggrieved by the arbitral tribunal on such a claim may protest it even if the arbitrators are unanimous. Upon such a protest being made, Lord Salisbury suggested first,- an appellate tribunal consisting of six judges, three from the Supreme Court of each nation, who by a vote of five to one may sustain the award, which, however, failing such a vote in its favor, is to be null and void; 2nd,- a tribunal consisting of five judges of the Supreme Court of the protesting country who by a majority vote may set aside the award.

This Government, while not assenting to either of the propositions just stated, and pointing out the objections to each of them, has not positively declined to accede to any of them -- deeming it to be possible that it may ultimately conclude to acquiesce in some one of them as being better than nothing -- as being a step in advance on the road to a satisfactory general arbitration scheme. The last suggestion made by it in this connection is that the award of the original arbitral tribunal shall stand unless the tribunal of review (composed of six judges, as above stated) shall set it aside by a majority vote.

You thus perceive that there is almost a dead-lock as respects both the Venezuela boundary dispute and the general arbitration scheme -- it perhaps being more pronounced in the former case than in the latter.

I note that you will sail for this country some time between the 15th and 20th of next month. I regret it because there are soon to be developments which may make important changes in the situation. I should have been glad to hear from you whether they did or not, and what was their real significance. In the first place, the correspondence both as respects the boundary dispute and as respects the general arbitration scheme will soon be made public by being laid before Parliament. In the second place, an introduction to and summary of the Venezuela brief on the boundary question is ready to be published, and, if it is deemed expedient to do so, will be published within a few days. This brief, as I think I may have informed you, is being prepared by Mr. Storrow of Boston, one of the most eminent lawyers in the country. It is very able, and I think will give the English people some idea of the strength of the case against the British claim. It is in the nature of a reply to the British Blue Book, which so far has had the field to itself, and I suppose has been considered by the British public generally as unanswerable. The inclination of my judgment is that the brief should be published, although I perceive that there are two sides to the question of what its effect may be. Instead of decreasing the chances of arbitration upon the boundary dispute, it may, by showing the defects in the British case, disincline the Government to resort to arbitration.

This letter is already too long -- although there are many things in your interesting note upon which I should like to comment. I observe that you are to be at Newport this summer, and I count very much upon the opportunity of seeing you and having a full talk upon the situation in all its aspects. Of course everything that you have written me or choose to write me will be regarded as communicated in the strictest confidence. You will also, of course, regard what I now write you or may hereafter write you in the same light.

Trusting that Mrs. White will soon recover her usual condition of good health, and with the sincerest regards, I am,

Very truly yours,

Richard Olney.

To

Hon. Henry White,

9 Grosvenor Crescent,

London, England.

Annex 7

Letter from Mr. Storrow to Mr. Olney (29 August 1896)

Richard Olney's Papers, Library of Congress, Reel 22

Petersham, Mass.

Aug.29, 1896.

My dear Olney:

I have looked over the settled districts question again. There is only one real question about it.

Does England simply want to secure to itself, free from the risks of arbitration, the territory which comes within Lord Salisbury's description of Jan. 10, 1880 (Blue b.295)?

Or does it, under guise of the equity which he states, expect to obtain a concession of the gold diggings which are six to twelve days journey beyond any settlements then existing, and which first attracted population after the armed invasion and forcible possession taken of the disputed territory beginning with the McTurk incident at Barima Point in October, 1884, (Blue b.319 et seq; 359 et seq)?

The attempt to frame a sentence defining what is to be withdrawn from arbitration without a distinct understanding on this question would be simply an attempt by one party to trick the other by cuning phrases of a double meaning.

The true way, if a date is to be resorted to for defination, is to take that which the history of the affair has fixed as the beginning of a forcible possession which cannot create a right, much less raise an equity.

January 1, 1887, is not a suitable date, for it might operate to create a title which had nothing but such forcible taking of possession to rest on. The gold diggers' camps, populated by laborers who leave their homes on the coast for three or four months only, are not, it seems to me, permanent settlements, nor even settlements within the meaning of Lord Salisbury's observation, nor in any sense which can create title. Yet the settlement is, in one sense, continuous until the washings give out and the camp is moved, and it is quite probable that a few men stay over from year to year. Moreover in the North West district, the garrisons of the British Armed forces, particularly at Morawhanna, have attracted some Venezuelans, and some colored men, East Indians, and perhaps a few portuguese from British Guiana to come there, and clear land for gardens. In 1890 there were about 60 such persons. Some may have begun before 1887.

Now, of course, it is not expected that Venezuela will make any arrangement which can possibly be construed as a concession, yielding the Barima pass, upon any such claim as such an occupation of such a date can give, or disable it from contending before an arbitration that such acts at such a date, and under such circumstances, can give no title.

You understand of course that I have no authority to represent Venezuela on this subject; I do not know what its views are.

Truly yours,

James J. Storrow

I shall send you a few British official maps which will help to make this clear, if you have occasion to.

Hon. Richard Olney,

Secretary of State,

Washington, D.C.

743

Annex 8

Letter from Mr. Olney to Mr. Storrow (12 September 1896)

Richard Olney's Papers, Library of Congress, Reel 22

Sept. 12, 96

James J. Storrow, Esq.,

417 Beacon St.

My dear Storrow:-

I send you draft of the proposed clause for the projected arbitration agreement respecting the Venezuelan boundary.

I may think of something better between this and Tuesday morning.

I now expect to see our friend Wednesday.

I may be at your house Tuesday by nine o'clock, possibly not till ten.

Very truly yours,

Richard Olney

10855

Copy given Mr. James 6/26/22

COPY

(Draft sent J.J.Storrow in letter Sept 12 '96)

All territory which has been in the actual use and occupation of the subjects or citizens of one of the parties hereto and under the dominion and control of the government of such party for a period of forty years prior to the date of this convention, and all territory which, not having been used and occupied as aforesaid, shall, without adverse claim on the part of the other party hereto, have been under the actual, exclusive, and continuous dominion and control of the government of one of said parties for said period of forty years prior to the date of this convention, shall be held to be and form part of the territory of such party.

10858

Annex 9

Letter from Mr. Storrow to Mr. Olney (17 September 1896)

Richard Olney's Papers, Library of Congress, Reel 22

J.J.Storrow,
40 State Street,Boston.

Sept. 17, 1896.

Dear Olney

Our views agreed the other day so that I thought it enough to answer to your telegram "no change".

Settlements by British subjects, living under British rule, in territory administered solely by British rule, if long continued will certainly (I think) give title. Sixty years is the classic period; I would agree to less as a rule rather than lose an arbitration.

Political occupation & administration, continuous & exclusive. will give, I think political title. I would agree to the same period. The conditions you annex to it, of no protest or counter-claim would be highly acceptable to me; and I should be disposed to agree to less stringent ones, because I have no great faith in mere paper protests. But that would not reach the case of the truce of 1850 and perhaps not the case of a mere bullying, like the present armed occupation.

I do not think that the truce of 1850 could be waived or impaired or that it ought to be.

If there should be a general consensus of opinion on these points it would not be difficult to find the necessary words.

It must also, I think, be made clear that territory not within either category is to be judged by the proper rules of law, unaffected by the stipulation.

The enclosed sheets, particularly the sheets of "proof" will give you an idea of the nature of the facts. The rough proof

10960

alone is sufficient.

I enclose the Italian newspaper I spoke of.

Yours truly,

J. J. Storrow.

Hon Richard Olney,

Falmouth, Mass.

J. J. STORROW,
40 STATE STREET, BOSTON.

Copy given Mr James 6/25/22

Sept. 17, 1896

Dear Olney

Our views agreed this other day so that I thought it enough to answer to your telegram "no change"

Settlements by British subjects, living under British rule, in territory administered only by British rule, of long continued will certainly (I think) give title. Sixty years is the classic period; I would agree to 60 as a rule rather than lose an arbitration.

Political occupation & administration continuous & exclusive will give, I think political title. I would agree to the same period. The conditions you annex to it, of no protest or counter claim would be highly acceptable

10957

J. J. STORROW,
40 STATE STREET, BOSTON.

to me; and I should be disposed to agree to any stringent ones, because I have no great faith in mere paper protests. But that would not reach the case of the truce of 1950 and perhaps not the case of a more bullying, like the present armed occupation. I do not think that the truce of 1950 could be waived or impaired or that it ought to be.

If there should be a general consensus of opinion on these points it would not be difficult to find the necessary words.

It must also, I think, be made clear that territory not within either category is to be judged by the proper rules of law, unaffected by the stipulation.

1958

J. J. STORROW,
40 STATE STREET, BOSTON.

The enclosed sheets, particularly the sheets of "proof" will give you an idea of the nature of the facts. The rough proof above is sufficient

Enclose the Italian newspaper I spoke of

yours truly
J. J. Storrow

Hon Richard Olney
Falmouth Mass.

10959

Annex 10

Letter from Mr. Storrow to Mr. Olney (26 October 1896)

Richard Olney's Papers, Library of Congress, Reel 23

J. J. STORROW,
40 STATE STREET, BOSTON.

Oct. 26 / 96

Dear Olney

Filling the blanks with 60, I see no objection to the actual occupation part

I don't now see any actual objection to the second part: but I think it is unmeaning as applied to the facts. I will try to write a couple of sentences more nearly expressing what I think is needed & send them to your house this afternoon.

~~This is the two days~~

Your enclosure, with I return, is the language of the paper you showed me - or a paper

very truly yours.
J. J. Storrow

11347

All territory which has been in the actual use and occupation of British subjects and under the dominion and control of the government of British Guiana for the period of years prior to the date of this convention shall be held to be and form part of the territory of British Guiana; all territory which has been in the actual use and occupation of Venezuelan citizens and under the dominion and control of the government of Venezuela for the period of years prior to the date of this convention shall be held to be and to form part of the territory of Venezuela; and all territory not so used and occupied as aforesaid but which, for said period of years prior to the date hereof has been under the actual, exclusive, and continuous dominion and control of the government of British Guiana on the one hand or of the government of Venezuela on the other and has not been openly and continuously claimed by the one government as against the other, shall be held to be and form part of British Guiana or of Venezuela respectively.

11348

Enclosed in: 1896, Oct. 26. Storrow, J. J. to Olney.

Oct. 26, 1896.

The arbitrators shall adjudge a title by prescription or ~~adverse occupation to be~~ adverse occupation to be a good title; and shall consider ~~six years as the period~~ a sufficient period to establish a title by prescription, ~~or adverse occupation~~ and but the arbitrators may and shall apply all other rules, principles, and conclusions of law and of fact appropriate to this case, so far as they do not contravene the foregoing provision.

11349

Annex 11

Letter from Mr. Storrow to Mr. Olney (28 October 1896)

Richard Olney's Papers, Library of Congress, Reel 23

Oct. 28. 1876

Dear Olney

Mr. Andrade and I will come to your house at 8.15 Tonight unless we hear to the contrary

yours truly

J. J. Storrow

Hon. Richard Olney

Annex 12

Letter from Mr. Olney to Sir Julian Pauncefote (29 October 1896)

Richard Olney's Papers, Library of Congress, Reel 23

DEPARTMENT OF STATE,
WASHINGTON.

(Strictly Personal)

October 29, 1896.

My dear Sir Julian:-

I duly received copy of suggestions for Convention respecting the Venezuelan Boundary question forwarded to you by the British Foreign Office.

After careful consideration, I offer the enclosed draft as a substitute for reasons which seem to me conclusive and the chief of which are briefly these.

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. An attempt to construe it will involve us in protracted debate and indefinitely postpone the attainment of the object we now have in view. The Agreement will come, and should come, before the arbitral Tribunal in the

1469

natural course of things and will be interpreted by that Tribunal by the aid of facts, documents and considerations of which we cannot now know anything. For a like reason, I cannot recede from my original suggestion as to a conventional term of prescription further than to consent to fifty years being substituted for sixty. If a shorter term be stipulated it is certain to be urged, and with great force, that the Agreement of 1850 is thereby waived at least pro tanto.

Trusting these explanations will be found satisfactory, I remain,

Very truly yours,

The Right Honorable

Sir Julian Pauncefote, G.C.B., G.C.M.G.,

etc., etc., etc.

Annex 13

Presidencia de la República, Mensajes Presidenciales,
Tomo III, 1971 (extracts)

VU NE VARIETUR
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l'original en langue esp
N° 3425

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PRESIDENCY OF THE REPUBLIC

PRESIDENTIAL ADDRESSES

VOLUME III

1891-1909

[Venezuela's Coat of Arms]

CARACAS, 1971

PRESIDENTIAL ADDRESSES/III

PRESIDENCY OF THE REPUBLIC

PRESIDENTIAL ADDRESSES

COMPLINATION, NOTES AND PRELIMINARY ANALYSIS
PREPARED BY THE DOCTOR
ANTONIO ARELLANO MORENO

VOLUME III

CARACAS, 1971

DONE IN VENEZUELA ITALGRAFICA S.R.L. - CARACAS

[...]

Pages 184-189

The Ministry of Foreign Affairs, without neglecting its customary meticulous attention to the various and complex matters that constitute its delicate administrative work, devoted singular care during the year to the issue of the boundary dispute with British Guiana. This matter had been the subject of constant anticipation since the Honourable President Cleveland's message to the world announced how the United States was prepared to exercise the intercession requested by Venezuela. As a result, the dispute took on an extremely favourable turn. A commission composed of citizens experienced in the austere practices of justice, constituted in the manner of an investigative body, was to discern the truth of the facts through the study of the historical and political circumstances upon which the titles of each contending party rested, and to establish the boundary line that would result from such a study as a genuine consequence of firmly defined rights.

Thus directed towards a probable and dignified resolution, the grave matter required the Republic to dedicate itself earnestly to demonstrating before the Investigative Body the legitimacy of the titles it had upheld since the inception of the controversy, in order to preserve the integrity of its ownership of the territory of Guayana, even amidst the new occupations recently undertaken by the Government of Her Majesty the Queen of Great Britain. The compilation of documents constituting Venezuela's claims was reviewed and organised in close coordination with the collaboration of four reputable citizens of recognised competence, who were designated as part of an auxiliary body within the Ministry of Foreign Affairs. At the same time, agents were sent to every point in the Americas and Europe to gather new corroborative evidence. To the Netherlands, in particular—given its special status as a predecessor of Great Britain—a Diplomatic Representative was sent, who secured all necessary facilities for studying the most valuable and ancient records within its Archives.

The Annual Report of the Ministry will provide detailed information on all matters relating to this issue. Evidence of Spanish origin, along with other materials of British and Dutch provenance, was sent by Venezuela to the Washington Commission, in considerable quantity. These materials culminated in the preparation of the first proofs printed in the national language of the United States, which were later collected in multiple volumes. This was followed by the preparation of an extensive Memorial based on those same proofs and written by the Venezuelan Commission with a wealth of legal argumentation to refute the statements that Great Britain had already made to defend its alleged rights.

The Government resolved that, in addition to the oversight action entrusted to the Diplomatic Representative in Washington, a Special Agent should be appointed to the Commission, tasked with presenting the evidence submitted by Venezuela and clarifying, with reports, background information, and explanations, any matters that might require further elaboration. This was preceded by a courteous suggestion from the President of the same investigative Commission, also made to Great Britain.

The Agent, Mr Scrugg, a distinguished lawyer, not only fulfilled this mandate but also contributed significantly to strengthening our defence with several highly valuable pamphlets.

Subsequently, due to the importance of the matter, another legal counsel—well-versed in the forensic practices of the United States and enjoying a well-earned and distinguished reputation—was brought on board. He prepared a report in which he masterfully critiqued and

presented the various historical, geographical, and legal aspects of the issue, based on an exhaustive examination of all the political precedents from Spain, the Netherlands, and Great Britain, along with countless maps and a detailed review of the British Blue Books. The work of the distinguished jurist, who the Government called to its service for that purpose, despite having circulated so far only in part, has greatly contributed to clarifying certain incidental points of the dispute, with evident discredit to the evidence presented by the opposing party.

While the Venezuelan Government, through the constant and patriotic efforts of its Chancellery, elucidated by so many effective resources the rights of the Republic before the Commission tasked with verifying the true frontier line, the State Department of Washington was laudably striving to obtain British Cabinet acceptance of arbitration, in order to settle the long-standing and bitter dispute more easily and successfully. The first official acknowledgement that the Executive Branch had of the reasons employed by the United States to induce our powerful opponent to accept the principle of arbitration, without exclusions or conditions—as Venezuela had consistently requested—came from the publication of the correspondence exchanged between the two Administrations, those of Washington and London, from February to June of the preceding year. This correspondence, deemed highly satisfactory for the Republic, was ordered to be translated and printed in Spanish with great approval and applause.

Subsequently, through its Legation in the United States, a matter relating to the arbitration negotiations was raised. The response from the Ministry of Foreign Affairs of Venezuela, based on criteria contrary to what appeared to have inspired the inquiry, reached Washington at a time when replies were expected from Great Britain concerning certain particulars of the arbitration request. As matters stood, the Government was informed that, on the 12th of November [of 1896], a Protocol had been signed in Washington by the Honourable Mr. Olney, Secretary of State of the United States, and Sir Julian Pauncefote, Ambassador of Her Majesty the Queen of Great Britain, establishing the essential bases for a Treaty between Venezuela and Great Britain. This Treaty was intended to put an end, through arbitration, to the long-standing differences between the two nations. These bases were, of course, submitted by the Washington Administration to the consideration of the Venezuelan Administration through a recommendation letter addressed to it by the Honourable President Cleveland, who, with the noble desire of seeing the pact accepted, considered it both just and beneficial.

The responsibilities of those of us who hold in our hands the delicate threads of public administration, entrusted by the honoured suffrage of the people, grow in weight especially when it involves safeguarding interests intimately linked with national life. A struggle then arises in the spirit of the Magistrate, who is devoted to the well-being of the Republic, between the ideas of the present moment and those born from the foresight of the future. To study the scope of both sets of ideas; to measure the advantages and risks of each; to attend to the various manifestations of the present era without disregarding the premonitions of conscience and reason—such are the duties, certainly arduous, of the official who is entrusted with the direction of a matter which, like the issue of the boundaries of Guiana, has been aggravated for years by an unrelenting contention, full of regrettable incidents for the weaker side in terms of material defence.

Public opinion, to which the ruler must always lend an attentive ear —especially when matters of territorial integrity are being debated— was initially divided in its assessment of proposals presented to Venezuela, to such an extent that even the most expert observer would have struggled to condense, after a serious study of such various manifestations, a determinative principle of general sentiment.

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The concept formed by the Government had to naturally take into account the conditions under which the Protocol was signed and presented. One of the signatories was the Secretary of State of the United States, to whom, as a result of persistent requests, we had seen fit to appeal for decisive and generous mediation in the dispute, seeking a settlement that would uphold the principles of decorum and continental integrity. Arbitration was offered there, albeit not in the broad form desired by the Republic, but in a manner more in line with other expressed wishes. The Government of course deemed it indispensable to introduce into the Treaty a modification aimed at ensuring the appointment of the arbitral tribunal with the effective participation of the Venezuelan Authorities. This proposal was promptly submitted, and the alteration was accepted. The involvement of the United States had produced a result whose subsequent effects were unavoidably tied, from a moral standpoint to the effective and authoritative prestige of that great mediating nation. The settlement plan was presented to Venezuela for its consideration, with no coercive intent and in full respect of the sovereignty and independence of the Republic; yet, as the negotiations proceeded under the sole criterion of the United States, the final acceptance of the bases would always involve for them a kind of friendly responsibility, which would, in any case, guarantee future harmony between the two nations represented by the Arbitral Tribunal.

It is eminently just to acknowledge that the Great Republic endeavoured persistently to direct the matter by the most favourable route, and that the outcome achieved represents an effort of intelligence and will, worthy of praise and gratitude from those of us who are familiar with the intricate details of this very complicated matter.

It is now your duty, under the Constitutional Law of the Republic, to examine the treaty signed by the Plenipotentiary Minister of Venezuela in accordance with the referred bases and with the modification proposed by the Executive Branch regarding the establishment of the Arbitral Tribunal. And since this matter is of paramount importance, for it involves such sacred interests, I implore that you defer all other matters until this one is resolved.

The Government under my administration has been working tirelessly since the last months of 1892, seeking to reduce to an appropriate formula the arrangement of the most pressing needs of the Republic regarding the most significant of our international affairs. Efforts for this patriotic ideal have covered an immense scope, where the trace of work, persistently directed, must be visible on every occasion, freeing Venezuela from serious conflicts in the present and from greater complications in the future. No one, I say without hesitation, will ever be able to deny that in our boundary matters, the present Administration has acted with all the interest advised by true patriotism, with all the constancy and zeal required for the national welfare, and with full awareness of its high duties.

[…]

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V.3

PRESIDENCIA DE LA REPUBLICA

MENSAJES PRESIDENCIALES

TOMO III

1891-1909

CARACAS, 1971

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PRESIDENCIA DE LA REPUBLICA

Venezuela. Presidente.

MENSAJES PRESIDENCIALES

RECOPILACION, NOTAS Y ESTUDIO PRELIMINAR
PREPARADOS POR EL DOCTOR
ANTONIO ARELLANO MORENO

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CARACAS, 1971

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a manera de pequeños mausoleos, donde serán depositados los restos de los Generales Donato Rodríguez Silva, Zoilo Medrano y José de Jesús González, conocido generalmente con el nombre de Jesús Agachado, próceres eminentes de la Federación Venezolana, quienes fueron la primera base militar y el primer elemento político de la magna empresa por la cual derramaron los pueblos su sangre generosa para el establecimiento de las instituciones democráticas bajo el régimen federativo. A los festejos de tan celebrado día se añadió un motivo más de congratulación para con el pueblo, con el Decreto que ordena erigir una estatua en el Panteón Nacional al General José Gregorio Monagas, Ilustre Prócer de la Independencia, Libertador de los esclavos y servidor muy distinguido de la Causa Liberal. Coronáronse estas manifestaciones del amor patrio con el Decreto que en 10 de julio se dictó, disponiendo que al Ilustre Prócer de la Independencia, General José Antonio Anzoátegui, se le erigiese en la ciudad de Barcelona, cuna del Héroe, una estatua en bronce, con la traslación al Panteón Nacional de sus preciados restos, que aún se hallan en Colombia. Para dar debido cumplimiento a los Decretos referidos en las fechas en que cada uno de ellos lo previene, se han dictado por el Ejecutivo Nacional las medidas de su correspondiente ejecución.

A la justicia de la historia le ha tocado gran parte de la atención que el Gobierno ha podido dedicar en el presente año a tan gratas exigencias del sentimiento nacional. Además de los nombrados, se ha dispuesto, y en parte ejecutado también, la traslación al Panteón Nacional de otros Próceres y de algunos Ciudadanos Eminentes a quienes ya había decretado esos honores el Senado de la República.

En la Memoria de este mismo Departamento hallaréis publicadas las varias manifestaciones con que muchos cuerpos oficiales y el pueblo venezolano dieron público testimonio de gratitud al Gobierno de los Estados Unidos por la actitud que asumió en nuestra cuestión de límites con la Inglaterra; aplauso justo y reconocimiento merecido que harán siempre honor a las nobles virtudes de nuestro pueblo, tan altivo como agradecido.

RELACIONES EXTERIORES

El Departamento de Relaciones Exteriores, sin dejar de atender con el esmero de siempre a los varios y complejos ramos que constituyen su delicada labor de Administración, dedicó en el año, singular

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cuidado el asunto de los límites con la Guayana Inglesa, objeto de constante expectativa desde que el Mensaje del Excelentísimo señor Cleveland anunció al mundo la manera como se disponían los Estados Unidos a ejercer la interposición solicitada por Venezuela. El litigio cobró con esto un aspecto por extremo favorable. Una comisión compuesta de ciudadanos experimentados en las austeras prácticas de la justicia, y constituida a la manera de cuerpo investigador, iba a discernir la verdad de los hechos con el estudio de las circunstancias históricas y políticas en que descansan los títulos de cada parte contendora, y a fijar la línea divisoria que del mismo estudio hubiera de resultar como genuina consecuencia de derechos inflexiblemente definidos.

Encaminado así el grave asunto a una probable y decorosa inteligencia, tocaba a la República darse con ahinco a comprobar ante el Cuerpo inquiridor la legitimidad de los títulos con que viene escudándose desde el principio de la controversia, para conservar ilesos los fueros de su propiedad en el territorio de Guayana, aun en medio de las nuevas ocupaciones llevadas a cabo en tiempos recientes por el Gobierno de Su Majestad Británica. El acopio hecho para entonces de documentos constitutivos de los derechos de Venezuela, fue revisto y coordinado convenientemente con la colaboración de cuatro ciudadanos de reconocida idoneidad, organizados, para tal, en Cuerpo auxiliar del Ministerio de Relaciones Exteriores. Al mismo tiempo se enviaron Agentes a todos los puntos de América y de Europa de donde pudieran sacarse nuevos elementos de comprobación. A Holanda, por la condición especial de ser causante de la Gran Bretaña, se envió un Representante Diplomático que obtuviese todas las facilidades requeridas para el estudio de los expedientes de mayor valimiento y antigüedad de sus Archivos.

La Memoria del ramo os informará de todo lo hecho en este respecto. Pruebas de origen español, unidas a otras de procedencia británica y neerlandesa, envió Venezuela a la Comisión de Washington, en tan crecido número, que al resolverse dar a la estampa las primeras en el idioma nacional de los Estados Unidos, hubo de hacerse la impresión en varios volúmenes, a los cuales siguió un extenso Alegato, basado parte en ellas mismas y escrito por la Comisión Venezolana con amplitud de argumentación jurídica para refutar la exposición que de sus pretensos derechos había presentado ya la Gran Bretaña.

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Resolvió el Gobierno que, además de la acción viligadora encomendada al Representante Diplomático en Washington, hubiese ante la Comisión un Agente especial, a quien desde luego se confirió el encargo de presentar las pruebas remitidas por Venezuela y de ilustrar el criterio de los comisionados con informes, antecedentes y aclaraciones respecto de algunas de ellas que pudiesen requerirlo. A esto había precedido una cortés insinuación del Presidente de la misma Comisión investigadora, hecha también a la Gran Bretaña.

El Agente, señor Scrugg, que es distinguido abogado, no sólo ha cumplido dicho encargo, sino también contribuido a fortalecer nuestra defensa con varios folletos muy apreciables.

Se le agregó posteriormente, por la importancia del asunto, otro jurisconsulto, conocedor como él de las prácticas forenses de los Estados Unidos, y que gozando de grande y merecida fama, ha preparado un informe, en que con crítica maestra ha presentado las diversas fases de la cuestión, histórica, geográfica y jurídicamente, como resultado del más minucioso examen de todos los antecedentes políticos de España, Holanda y la Gran Bretaña, infinitos mapas y el escrutinio de los Libros Azules ingleses. El trabajo del distinguido jurisprudente a quien el Gobierno llamó con tal objeto a su servicio, a pesar de no haber circulado hasta ahora sino en parte, ha contribuido en gran manera a definir ciertos puntos incidentales de la contienda, con evidente desmedro de las pruebas aducidas por la parte contraria.

Mientras el Gobierno Venezolano, merced a la constante y patriótica labor de su Cancillería, elucidaba por tan varios y eficaces resortes los derechos d la República ante la Comisión encargada de verificar la verdadera línea fronteriza, la Secretaría de Estado de Washington se esforzaba laudablemente por conseguir del Gabinete británico la aceptación del arbitraje, a fin de dirimir con mayor facilidad y éxito la ingrata disputa casi secular. El primer conocimiento oficial que el Poder Ejecutivo tuvo de las razones empleadas por los Estados Unidos para inducir a nuestra poderosa contendora a la aceptación del principio arbitral, sin exclusiones ni cortapisas, como lo venía solicitando Venezuela, fue derivado de la publicación de la correspondencia seguida por los dos Gobiernos, el de Washington y el de Londres, de febrero a junio del pasado año, y que, como tan satisfactoria para esta República, se mandó aquí verter e imprimir en castellano con general aplauso.

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Posteriormente se consultó, por medio de su Legación en los Estados Unidos, un punto relativo a esas negociaciones sobre arbitraje. La respuesta del Ministerio de Relaciones Exteriores de Venezuela, inspirada en un criterio opuesto al que pareció sugerir la consulta, llegó a Washington en momentos en que se esperaban contestaciones de la Gran Bretaña tocante a determinados particulares del solicitado arbitramento. Así las cosas fue instruido el Gobierno de que el 12 de noviembre se había suscrito en Washington por el Excelentísimo Señor Olney, Secretario de Estado de los Estados Unidos, y Sir Julián Pauncefote, Embajador de Su Majestad Británica, un Protocolo con las bases esenciales para el Tratado entre Venezuela y la Gran Bretaña, que habría de poner término, por medio del arbitraje, a la antigua diferencia de las dos naciones. Las bases fueron desde luego sometidas por el mismo Gobierno de Washington a la consideración del Gobierno de la República, mediante una carta recomendatoria dirigida a mí por el Excelentísimo Señor Cleveland, con el noble deseo de ver aceptado un pacto que, en su elevado sentir, era justo y provechoso.

Las responsabilidades de los que tenemos en la mano por el honroso sufragio de los pueblos los hilos de la administración pública, acrecen y cobran mayor peso cuando se trata de salvar intereses ligados íntimamente con la vida nacional. Trábase entonces en el espíritu del Magistrado que se desvela por el bien de la República una lucha entre las ideas del momento y las que nacen de la previsión de lo futuro. Estudiar el alcance de aquéllas y de éstas; medir las ventajas y los riesgos de las unas y de las otras; atender a las varias manifestaciones de la época presente, sin desoír los presentimientos de la conciencia y de la razón; tales son los deberes, bien arduos por cierto, del mandatario a quien toca en suerte el encaminamiento de un asunto que, como el de los límites de Guayana, venía agravándose de antiguo por una contención sin tregua, llena de lamentables incidencias para la parte débil en medios de defensa material.

La opinión pública, a que debe poner siempre oído el gobernante, señaladamente si se ventilan puntos relacionados con la integridad territorial, se mostró al principio de tal suerte dividida en la apreciación de las bases propuestas a Venezuela, que en vano se hubiera esforzado el observador más experto por condensar tras el serio estudio de tan diversas manifestaciones, un principio determinativo del sentimiento general.

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El concepto formado por el Gobierno debía participar, naturalmente, de las condiciones en que fue suscrito y presentado el Protocolo. Uno de los firmantes era el Secretario de Estado de la Nación a quien, a poder de encarecidas solicitudes, habíamos visto mediar resuelta y generosamente en la disputa, en busca de un arreglo que salvase a un tiempo las leyes del decoro y la integridad continental. El recurso del arbitramento se ofrecía allí, aunque no en la forma amplia anhelada por la República, en un sentido más cónsono que cualquier otro con los deseos manifestados. El Gobierno juzgó desde luego indispensable introducir en el Tratado una variante encaminada a conseguir el nombramiento del tribunal arbitral con participación efectiva de los Poderes de Venezuela. Propuesto inmediatamente el cambio se logró su aceptación. La acción de los Estados Unidos había ofrecido un resultado cuyos efectos ulteriores quedaban indispensablemente sujetos, desde el punto de vista moral, al efectivo y poderoso prestigio de la misma nación mediadora. El plan de arreglo se presentó a la consideración de Venezuela sin ningún propósito coactivo, contrario a la soberanía e independencia de la República; mas, como en las negociaciones procedieron los Estados Unidos por su solo criterio, la definitiva aceptación de las bases envolverá siempre para ellos una especie de amistosa responsabilidad, que vendrá a ser, en todo caso, garantía de futura concordia entre las dos naciones representadas por el Tribunal dirimente.

Es de alta justicia reconocer que la Gran República ha procurado empeñadamente encaminar el asunto por la vía más favorable, y que el resultado obtenido representa un esfuerzo de inteligencia y de voluntad, digno de loa y agradecimiento por los que estamos al cabo de las íntimas peripecias de este complicadísimo asunto.

Toca ahora a vosotros, según el Derecho Constitucional de la República, examinar el tratado que suscribió el Ministro Plenipotenciario de Venezuela en conformidad con las bases referidas y con la modificación propuesta por el Poder Ejecutivo en cuanto a la manera de constituir el Tribunal Arbitral. Y como el punto reviste importancia capital, por vincular en sí tan sagrados intereses, os suplico desde ahora que al seros presentado pospongáis a él toda otra materia hasta dejarlo resuelto.

En labor incesante viene el Gobierno que presido procurando, desde los últimos meses de 1892, reducir a una fórmula conveniente para las grandes necesidades de la República el arreglo de la más

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trascendental de nuestras cuestiones internacionales. Los esfuerzos por esa patriótica idea han abarcado un radio infinito, donde habrá de verse en toda ocasión la huella del trabajo, persistentemente dirigido, a libertad a Venezuela de serios conflictos en lo presente y de grandes complicaciones en lo porvenir. Nadie, lo digo sin reparo, podrá desconocer jamás que en nuestros asuntos de límites ha obrado la presente Administración con todo el interés aconsejado por el verdadero patriotismo, con toda la constancia y celo requeridos por el bien nacional, y con plena conciencia de sus altos deberes.

Acerca de límites versa también, en cierto modo, el tratado que suscribió en Bogotá el 21 de noviembre último nuestro Ministro en Colombia para establecer sobre bases mutuamente provechosas el comercio fronterizo y de tránsito y la navegación fluvial con la vecina República. En vuestra reunión extraordinaria de 1894 y en vuestra segunda reunión constitucional, pudisteis ver el curso de las negociaciones iniciadas por aquel respecto, cuyo resultado, aunque ofreció caracteres aparentemente negativos, no fue parte a que Venezuela desistiese de su empeño por llegar con su hermana Colombia a un acuerdo formal y estable, en cuanto a determinados intereses y necesidades dependientes de su posición de naciones fronterizas.

Las ventajas ofrecidas con el libre paso por nuestras principales arterias fluviales y la reglamentación provechosa del comercio de tránsito, movieron a Colombia, como sabéis, a convenir en que se modificase de modo algún tanto favorable a Venezuela la línea fronteriza señalada por el laudo arbitral de 1891. Cuál hubiera de ser la naturaleza del cambio, fue la idea esencial desde el principio de los tratos. Reanudados éstos recientemente, no se ha conseguido ninguna variación en la línea propuesta por Colombia desde 1894; bien que sí se ha logrado la aceptación de la mayor parte de los requisitos que Venezuela incorporó entonces en su contraproyecto como base de seguridad futura en lo tocante a ciertos puntos de naturaleza fiscal.

Motivo de serios debates fue dicho Tratado en el Senado de Colombia por consecuencia de la alteración que supone en la línea divisoria establecida por el Laudo de España. Venezuela consideró siempre, aun en la posibilidad de que se aceptase en los límites la modificación indicada en el contraproyecto de 1894, que las concesiones emanadas de ella por virtud del Tratado mismo representaban ventajas superiores a las que pudieran originarse de la rectificación

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Annex 14

Letter from Mr. Olney to Mr. Storrow (18 November 1896)

Richard Olney's Papers, Library of Congress, Reel 24

DEPARTMENT OF STATE,

WASHINGTON.

(Confidential) November 18, 1896.

James J. Storrow, Esq.,

Caracas, Venezuela.

My dear Storrow:-

I send you herewith type-written copy of the proposed treaty between Great Britain and Venezuela -- that if you want to communicate respecting the same by wire you may be able to do so by referring to page, section, line etc.

Trusting you had a comfortable voyage and find yourself improved in general health and strength, I am,

Very sincerely yours,

11739

Annex 15

Letter from Mr. Storrow to Mr. Olney (29 November 1896)

Richard Olney's Papers, Library of Congress, Reel 24

(Copy)

J.J. Storrow,
40 State Street, Boston.

Caracas, Nov. 29, 1896.

My dear Olney,

We reached here Saturday afternoon. The President and the Minister of Foreign Relations sent us telegrams of welcome to La Guayra, the port, and the Governor, Collector and Mayor called on us at the Collector's office. The Minister met us at the station. Several of the Cabinet called at once on both of us here, and we have been provided with seats in the official box at the opera. Tonight we have the entire box to invite our friends. All that part of the affair has been attended to with the greatest punctilio.

When we arrived, the Ministry was about to resign and did resign in a body the next morning, that being the fashion here, though it was understood that all except two or three would be reappointed. Sunday morning we saw the President, to whom I presented the President's letter, which he seemed very much to appreciate. I added some remarks about the interest the President had taken in the matter, and he replied in suitably warm terms of gratitude and gratification. It is understood that the letter and General Crespo's reply will be published in the papers with the memorandum of treaty.

11888

Mr. Andrade afterwards had a long talk with him, and afterward with the Minister of Foreign Affairs and Dr. Bruynal Arra, Minister of the Treasury, the strongest man in the Cabinet. They were all satisfied with the treaty and said that there should not be a moment's hesitation about adopting it. I have myself seen Dr. Bruynal and Dr. Rojas (Minister of Foreign Relations), the latter quite frequently, and they are entirely clear on the subject.

It was Wednesday afternoon before the new Cabinet was organized, and the matter could not be taken up before Friday.

There exists here a commission on the Guayana controversy. Dr. Seijas, legal adviser of the Foreign Relations Office, himself formerly Minister of Foreign Affairs and the writer of a good many despatches and some articles about Guayana is the President of it, and joined with them are three other gentlemen, two of whom are lawyers and have also been Ministers of Foreign Relations. One of them, Dr. Viso, gave his name to one of the proposed lines, which appear on the maps. One of the four is a young chap of 50 or 55; the others are of more mature years. Dr. Seijas is about 74.

It seems that the treaty was referred to them for an opinion, and on Thursday Dr. Rojas (Minister of Foreign Relations) who joined the Thanksgiving dinner

at Gen'l Thomas', said to me that he thought their conclusion would be facilitated if Mr. Andrade and I would meet them; and he had directed them to assemble for that purpose. So we have spent all day Friday and all day Saturday in discussions with them. At first they were bitterly opposed to it. Dr. Viso (lawyers here are "Dr.") said that the inability of Venezuela to name an arbitrator was an unheard of feature and vitiated the whole thing; and they all agreed that they never would approve a treaty with that feature. Indeed he got very hot about it, and so did one of the others, till finally he became conscious of his heat, and said some pleasant things to me half in apology, and we raised a laugh. We met him partly by argument partly by reference to the Alabama treaty whose foreign powers named more arbitrators than the U.S. did, and partly by explaining that it was begun as a treaty betwee U.S. and G.B. and then twisted into its present more advantageous form. At length that trouble subsided, and that difficulty is laid. The next day Dr. Viso spoke of the great advantage of our coming here, saying that he began with "a mouth of fire", but that the explanation had extinguished the flame, and it would not be relighted.

Then we got onto the prescription question. We talked of that for several hours on Friday and Saturday

years was the best for us. To get England to assent t

forenoon. Dr. Seijas was the most obstinate, and I think the others were all fairly beaten, and will agree with us unless he can possibly make them stick with them. Dr. Viso, at the close of his hottest speech, said that he spoke as a legal adviser, and that if he were Minister he might be inclined to sign the treaty as the best thing on the whole.

Dr. Seijas finally admitted that he had no doubt prescription applied, and that the arbitrators would apply it; but that to admit it in terms of the treaty would be to violate the rule of the Constitution against cessions of territory. We propounded to him this conundrum: Suppose at the oral argument the tribunal should ask counsel whether such and such was not the rule of law; and the counsel, being well aware that it was, should say so ; Would that violate the constitution ? Why not therefore say so in the treaty ?

But, we said, it was <u>not</u> a concession. Prescription was, I thought, <u>our</u> strongest ground, and I wanted G.B. to agree to it; and of all possible terms, 50 years was the best for us. To get England to assent to a rule we wanted was not giving away our case. Then Dr. Seijas -- heaven be praised for putting the suggestion into his mind -- said that in this reference to Spain of the boundary dispute with Columbia, they expected to hold certain towns by prescription; which

1891

right however the arbitrator did not recognize. We jumped at that, and rubbed into him the advantage to Venezuela of putting a prescription clause into its references, and pointed out that it would not have been a violation of the constitution to have had it there. Mr. Andrade pointed out that in a recent reference of claims, he had been able to get rid of a large amount by means of the rule of prescription.

In these and other ways, and more especially by Mr. Andrade's very happy tact and good-humored readiness, we got the better of all the adversaries except Dr. Seijas. The real trouble with him is that for 25 years he has been denying and making Venezuela deny that 200 years occupation could give England any rights; and he said, frankly, that Venezuela could not stultify itself by admitting the contrary. I was tempted to tell him that the stultification had been in the past and not now; but it was more prudent to hold my tongue on that topic.

To-morrow morning I expect to tackle Dr. Seijas alone. He and I are rather good friends, in spite of our radical differences of opinion, and I have considerable hope that I may induce him to offer no objections even if he will not approve.

But the objections of the whole commission will not stop the treaty. Yesterday Dr. Rojas took part in our discussions for an hour or two. He agreed with

right however the arbitrator did not recognize. We jumped at that, and rubbed into him the advantage to Venezuela of putting a prescription clause into its references, and pointed out that it would not have been a violation of the constitution to have had it there. Mr. Andrade pointed out that in a recent reference of claims, he had been able to get rid of a large amount by means of the rule of prescription.

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But the objections of the whole commission will not stop the treaty. Yesterday Dr. Rojas took part in our discussions for an hour or two. He agreed with

Mr. Andrade and myself, made light of the objections, and said, in almost so many words, that the Government wanted the Commission to study the treaty very carefully, but that it would sign the treaty at all events, and he only hoped that the commission would agree with the Cabinet.

General Crespo has directed that the moment the papers are ready, a Cabinet is to be called instantly, be it day or night.

The commission talked a good deal about an article calling for the immediate opening of diplomatic relations; but we satisfied them that this was needless. They also wanted a clause for a modus vivendi; but finally agreed that this was not needed, and would be difficult to frame. I told them that I felt sure you could have an understanding with Great Britain, sufficient to prevent further aggressive conduct.

It is distinctly understood that the matter must be definitely settled here in time for the President's Message to Congress.

The principal newspapers have had some very miserable articles on the subject. There is some grumbling that Venezuela does not have a Venezuelan on the Board, and that it gives up territory under the 50 year rule, and that the U.S. is coercing it; this, of course,

is by the opposition to Gen'l Crespo, and it is not strong. A newspaper this morning had a very neat little article. The U.S., it said, had been asked by Venezuela to help. It had negotiated a settlement, which most people thought a good one. But Venezuela was at liberty to accept it or to reject it. It was, however, the best that the U.S. could do.

In reply to inquiries, we explained the condition of the matter; that the memorandum was signed to signify that the U.S. thought it a fair settlement, and that Venezuela could not expect more and ought to accept it; that the rest was, so far, a mere draft, put together in Washington in order to have something definite to work on; and I showed them Lord Salisbury's telegram about it. They all thought it proper, with his modifications putting the allowances of time 6 mos., 4 mos., 4 mos., with liberty to the Tribunal to give a month's grace.

Dr. Viso then inquired whether another article could not be added to that part, not inconsistent with the signed memorandum. I told him that at least it could be proposed, and we would cable it. Probably we can extinguish it here. We have no notion what it is.

The whole matter will be settled before you get

this letter, but it may serve to explain to you the progress of affairs. We cannot leave before Dec. 10.

It is fortunate we came down. I find that I have more credit here, especially with the commission, than I had last spring. Yesterday afternoon, after we had talked emptyings for an hour or two, Dr. Viso said that the English were able, but the Americans more able, and it was safer for Venezuela to rely on our judgment as to what was for its interest.

Very truly yours,

J.J. STORROW.

Annex 16

El Libro Amarillo de los Estados Unidos de Venezuela, 1898 (extracts)

TRANSLATION

VU NE VARIETUR
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N°.....3405.....

THE

YELLOW BOOK

OF THE

UNITED STATES OF VENEZUELA

PRESENTED TO THE NATIONAL CONGRESS DURING ITS SESSIONS IN 1898

BY THE CITIZEN

MINISTER OF FOREIGN AFFAIRS

CARACAS
TIPOGRAFIA UNIVERSAL
1898

THE

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MINISTER OF FOREIGN AFFAIRS

CARACAS
TIPOGRAFIA UNIVERSAL
1898

22 APRIL 1935

PRELIMINARY STATEMENT

Honorable Senators:

Honorable Deputies:

It is singularly honourable for me to address the new Representatives of National Sovereignty, with the purpose of respectfully reporting on the matters that have comprised the work of the Ministry of Foreign Affairs during the last year of the Administration, which now concludes by virtue of the Law. The trust bestowed upon me by the Head of Government of the Republic grants me the opportunity to appear for the fifth time before the foremost of the Powers of the Nation as the direct Representative of the President in managing Venezuela's foreign affairs.

As I stand today before those newly anointed by popular vote, I request, as I did with your honourable predecessors, the indulgent goodwill and benevolent spirit that are not foreign to the grandeur of the attributes bound up or contained within your exalted representation.

In the realm of political life, situations arise or circumstances occur that prompt a preference for certain rules or forms of procedure, even when these may not at first appear to be the most natural or logical, when considered in their extrinsic relation to the issue or subject matter at hand. The interests of the Nation, which are the stakeholders in this arbitration, can inspire only a single purpose in those entrusted with its oversight: that of its security and honourable preservation. To achieve this goal, every effort must be directed toward anything that yields an immediate benefit to its prepared defence or contributes directly to its greater speed and efficiency.

Thus, as part of this effort, the entire collection of documents, citations, reports, and official acts capable of reinforcing our claims before the learned Judges was translated into English, and published in the same language as our own arguments. It was therefore deemed essential to entrust primarily to jurists trained in that language—or who had completed their studies in it—the oral part of the defence, which is among the most crucial. The Treaty grants each of the two Governments the ability to orally support, through their counsel, the principles and ideas submitted in writing to the Tribunal and confers upon the Arbitrators the authority to request further action from the same defender to clarify any point before the expiration of the evidentiary period. This alone would suffice, without considering other specific circumstances of the arbitral process, to discern the advisability of having counsel speak fluent English and possess expertise in certain branches of International Law.

The Government deliberated at length before making its choice among

jurists of highest repute in the United States. The first individual to whom the position was offered was Mr. Grover Cleveland, former President of the US. His mediation in the boundary matter had earned him high regard among the Venezuelan people, giving him a unique opportunity to study the controversy and become familiar with its nature and details. The authority of his name and his well-deserved reputation as a legislator provided ample justification for the proposal. However, he declined what he termed a flattering offer, giving reasons that the Government immediately deemed entirely acceptable.

The Ministry then promptly sought, with the assistance of the Legation in the United States, another person who possessed all the necessary qualifications for Venezuela's oral defence. In April, Mr. James J. Storrow, lead counsel for the Republic before the Investigative Commission in Washington, passed away suddenly and unexpectedly. We would have counted on him for the work required to present our titles and even to support our right before the Tribunal itself. His death caused, in addition to the natural sentiment, a very great annoyance to the Executive Branch. The work written by him for the purpose of demonstrating the validity of our demand to the Commission appointed on 1 January 1896, by President Cleveland to ascertain the true dividing line of Guiana was an advanced guarantee of his skill and competence. Deprived in an unexpected and painful way of that skillful collaboration, the Government had to act swiftly to address this new need while exercising the necessary prudence to ensure the

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36 rue Saint Didier
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the successful outcome of the defence. Among the notable personalities in the United States, Mr. Benjamin Harrison, former President of that Republic before Mr. Cleveland's last term, was chosen for this role. It was satisfactory for the Government to know that this distinguished statesman accepted the responsibility and was prepared to lend the prestige of his name and scientific expertise to Venezuela.

The Executive Power always intended to keep Mr. Rafael Seijas, in his capacity as consulting counsel, at the service of the Ministry of Foreign Affairs for the duration of the arbitral process. Mr. Seijas had dignifiedly presided over the Venezuelan Commission since its establishment until its conclusion in January 1896, coordinating the primary elements of our claims, which formed the basis of the Memorial submitted by the Republic to the Investigative Body concerning the boundaries of Guiana. It was also considered to associate another competent member of our Bar Association with the Republic's defence, someone already well informed by this Ministry of the origin, development, and conditions of the boundary issue.

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EL LIBRO AMARILLO

Dec 12

DE LOS 23

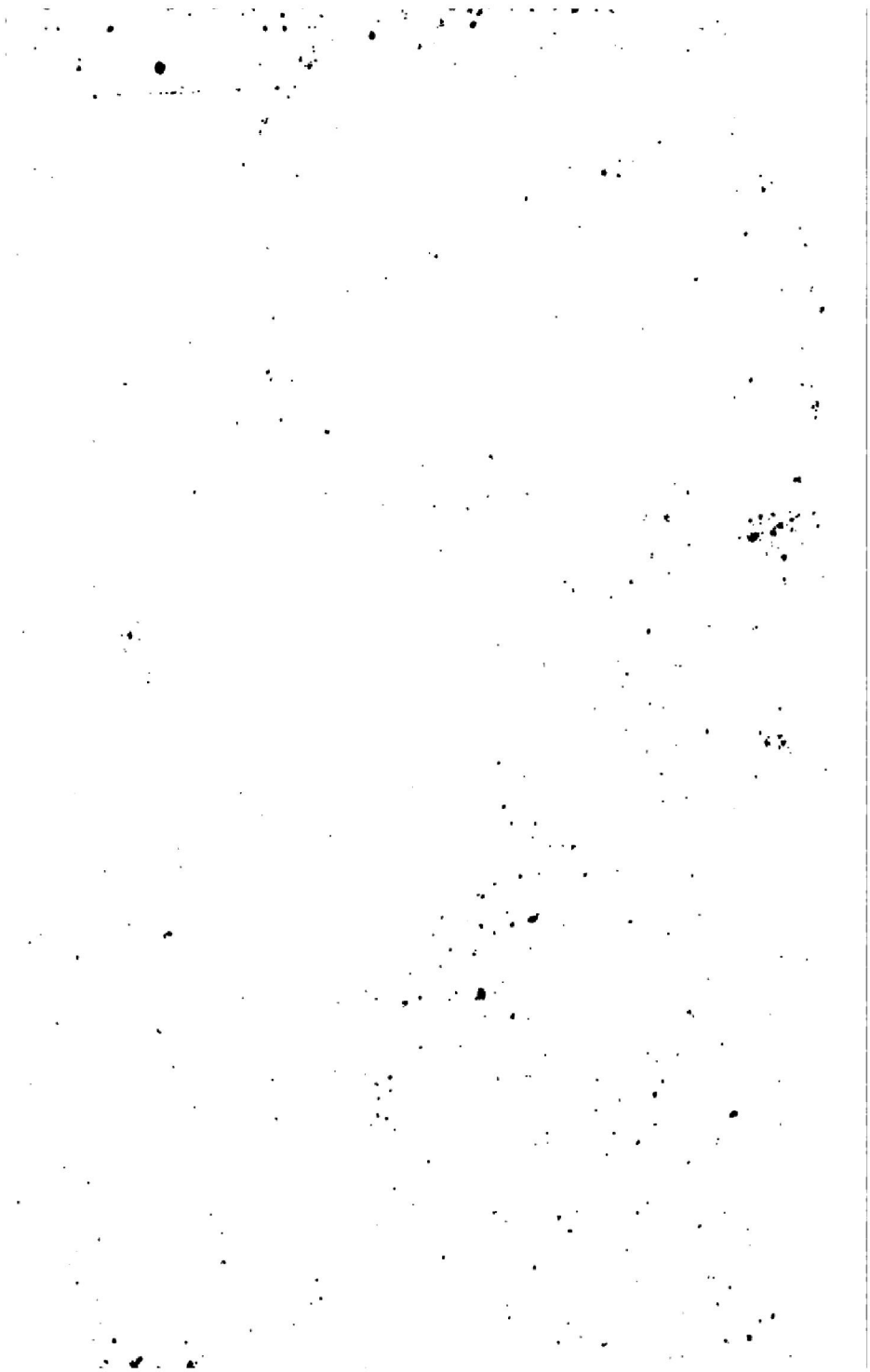
ESTADOS UNIDOS DE VENEZUELA

PRESENTADO AL CONGRESO NACIONAL EN SUS SESIONES DE 1898

POR EL CIUDADANO

MINISTRO DE RELACIONES EXTERIORES

CARACAS
TIPOGRAFÍA UNIVERSAL
1898



EL

LIBRO AMARILLO

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TIPOGRAFÍA UNIVERSAL
1898

APR 22 1935

EXPOSICIÓN PRELIMINAR

Ciudadanos Senadores:

Ciudadanos Diputados:

Singularmente honroso es para mí dirigirme á los nuevos Representantes de la Soberanía Nacional, con el objeto de rendirles respetuosa cuenta de los asuntos que han constituido la labor del Ministerio de Relaciones Exteriores en el último año de la Administración que ahora termina por virtud de la Ley. La confianza con que me ha venido favoreciendo el Jefe del Gobierno de la República, me da ocasión de comparecer por quinta vez ante el primero de los Poderes de la Patria como Agente inmediato de aquel Magistrado en la dirección de los Negocios Extranjeros de Venezuela. Al presentarme hoy á los ungidos recientemente por el voto popular, pido, como lo hice siempre con vuestros honorables predecesores, la indulgente voluntad y el benévolo espíritu que no son extraños á la grandeza de los atributos vinculados ó contenidos en vuestra excelsa representación.

En el orden de la vida politica surgen situaciones ó sobrevienen circunstancias que mueven á dar preferencia á ciertas reglas ó formas de procedimiento, aun cuando éstas no resulten á primera vista las más naturales y lógicas, consideradas en su relación extrínseca con el punto ó materia de que se trata. Los intereses de la Patria, que son los comprometidos en este arbitraje, no pueden inspirar sino un solo propósito á los encargados de su vigilancia: el de su seguridad y honroso salvamento. Para el logro de ese objeto hay que dar de mano á todo lo que no ceda en inmediato beneficio de la defensa dispuesta, ó no contribuya de modo directo á su mayor rapidez y eficacia. Así, de la propia suerte que se había vertido al inglés toda la serie de documentos, citas, relaciones y actos oficiales capaces de reforzar nuestros títulos ante los sabios Jueces, é impreso en la misma lengua la propia argumentación nuestra, tenía que encomendarse principalmente á jurisperitos amaestrados en ella, ó que en ella hubiesen hecho sus estudios, la parte oral de la defensa, que es de las más importantes. El Tratado concede á cada uno de los dos Gobiernos la facultad de apoyar de palabra, por medio de su abogado, los fundamentos é ideas expuestos por escrito respectivamente al Tribunal, y confiere á los Árbitros la potestad de requerir la acción del mismo defensor para el esclarecimiento de cualquier punto antes de expirar el término probatorio. Bastaría esto sólo, sin concretarse á otras circunstancias especiales del trámite arbitral, para discernir la conveniencia de que el abogado hable sueltamente el idioma inglés y sea especialista en ciertos ramos del Derecho Internacional.

Mucho meditó el Gobierno antes de efectuar la

elección entre los jurisprudentes de más alta fama en los Estados Unidos. Èl primero á quien se propuso el cargo fué el señor Grover Cleveland, ex-Presidente de aquella República. Su mediación en el asunto de los límites le había conquistado altos títulos á la estima del pueblo venezolano y dádole además ocasión especial de estudiar la controversia y ponerse al tanto de su naturaleza y pormenores. La autoridad de su nombre y su bien merecida fama de legista, constituían otras tantas causas justificativas de la proposición. Él, empero, adujo para excusar la que llamó lisonjera oferta, razones que el Gobierno encontró desde luego muy aceptables.

Dióse al punto este Ministerio á solicitar, con el concurso de la Legación en los Estados Unidos, otra persona que reuniese todas las condiciones apetecibles para la defensa oral de Venezuela. En abril se había visto fallecer, casi subitáneamente, al señor Doctor James J. Storrow, abogado principal de la República ante la Comisión Investigadora de Washington. Con él se hubiera contado para el trabajo que requería la exposición de nuestros títulos y aun para apoyar nuestro derecho ante el propio Tribunal. Su muerte causó, además del natural sentimiento, una contrariedad muy grande al Poder Ejecutivo. De su habilidad y competencia era prenda anticipada la obra por él escrita con el objeto de demostrar la validez de nuestra demanda al Cuerpo nombrado el 1º de enero de 1896 por el Presidente Cleveland para averiguar la verdadera línea divisoria de la Guayana. Privado el Gobierno de modo tan imprevisto y doloroso de esa hábil colaboración, hubo de acudir á la nueva necesidad con toda premura, al mismo tiempo que con la prudencia necesaria para asegurar el

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EXPERT

buen éxito de la defensa. Entre las personalidades de nota en los Estados Unidos se escogió para el caso al señor Benjamín Harrison, Presidente de aquella República en el período anterior al último del señor Cleveland. Satisfactorio fué para el Gobierno saber que el distinguido patricio aceptaba el encargo y se hallaba dispuesto á poner del lado de Venezuela el prestigio de su nombre y su práctica científica.

En el propósito del Poder Ejecutivo estuvo siempre mantener al servicio del Ministerio de Relaciones Exteriores, en calidad de abogado consultor y en tanto durase el proceso arbitral, al señor Doctor Rafael Seijas, que presidió dignamente desde su instalación hasta su término la Comisión Venezolana nombrada en enero de 1896 para coordinar los principales elementos de nuestro derecho y á la cual se debió el Alegato presentado por la República al Cuerpo Investigador de los límites de Guayana. Asimismo se pensó asociar á la defensa de la República otro idóneo miembro de nuestro Colegio de Abogados, á quien este Ministerio ha instruido ya suficientemente del origen, desarrollo y condiciones del asunto de los límites.

Entre los demás puntos que urgía resolver era de la mayor preferencia por el estrecho enlace que guarda con la ordinaria tramitación del asunto, el nombramiento del Agente Venezolano, á quien había de investirse de las atribuciones representativas de que habla el artículo V del Tratado de 1897. Este empleo, considerado en su naturaleza moral, bajo el concepto de las responsabilidades que entráña, y supuesta la constante é íntima relación que pide con el Gobierno cuya personería representa, no debía en-

Annex 17

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, New York, 1898 (extract)

VENEZUELA-BRITISH GUIANA BOUNDARY ARBITRATION

THE CASE

OF THE

UNITED STATES OF VENEZUELA

BEFORE THE

TRIBUNAL OF ARBITRATION

To Convene at Paris

UNDER THE

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

VOLUME 1

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

TRIBUNAL OF ARBITRATION

His Excellency F. DE MARTENS, President

The Honorable MELVILLE WESTON FULLER

The Right Honorable BARON HERSCHELL, G. C. B.

The Honorable SIR RICHARD HENN COLLINS, Kt.

The Honorable DAVID JOSIAH BREWER

J. M. DE ROJAS
Agent of Venezuela

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XIV.—HISTORY OF BRITISH OCCUPATION. 1850-1896.

Fifty year clause

In view of the fifty year rule [Art. IV, Rule (a)] adopted by the present treaty, the expansion of British occupation subsequent to *1847* can have no effect upon the determination of the boundary line. Rule (c), however, is as follows:

"(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."

Beginning of British occupation, 1880 and 1884.

In order that the tribunal may be able to apply this rule, it becomes necessary to place it in possession of the facts connected with the recent occupation of a part of the disputed territory, by Great Britain. The beginning of that occupation dates, on the coast, only from 1884 (twelve years prior to the signing of the treaty), and, in the interior, only from 1880, or later, (not more than sixteen years prior to the present treaty).

Recent settlements made in face of warnings.

Prior to those dates, British settlement was still what it had been in 1850. Since those dates, all persons who have ventured into the disputed territory have gone there in the face of distinct warnings from both governments. They have, with open eyes, assumed all the risks involved; and, so far as the Venezuelan Government is concerned, it does not consider that they are entitled to any consideration.

Gold industry.

The history of recent British occupation is so intimately connected with the history of the gold industry,

Annex 18

Correspondencia entre los Estados Unidos y la Gran Bretaña,
Caracas, 1896 (extracts)

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VENEZUELAN BORDER – GENERAL ARBITRATION

CORRESPONDENCE

BETWEEN THE

UNITED STATES AND GREAT BRITAIN

TRANSLATION PUBLISHED BY THE MINISTRY OF FOREIGN AFFAIRS
OF VENEZUELA

CARACAS
IMPRENTA BOLIVAR
1896

UNITED STATES OF VENEZUELA

--

The Ministry of Foreign Affairs – Office of Public International Law.

Caracas: 14 August 1896.

RESOLVED:

Simultaneously, diplomatic correspondence exchanged between the Government of the United States and that of Great Britain regarding an International Arbitration proposal applicable to the pending boundary dispute between Venezuela and the Colony of Demerara has come to light in Washington and London. This correspondence once again highlights the positive role of the Great Republic of the North in an issue of paramount interest for the entire hemisphere, due to its close connection with the integrity of the territories constituted as free and sovereign Nations. Furthermore, having been considered by the President of the Republic in the Council of Ministers, the nature—

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of this publication — expertly and wisely defended by the Department of State in Washington, and setting out the principles and doctrines to which Venezuela adheres in order to uphold its rights and dignity in one of the gravest issues recorded in its political annals — has led to the decision to produce a special edition in Spanish of all the notes comprising the above-mentioned correspondence. This edition is to be circulated not only within the country but also throughout all sister Republics, as both a pledge of recognition to the Government of the United States and a welcome contribution to the promotion of principles so gallantly supported by the Great People of the North in support of common security and international peace.

For the National Executive Branch,

P. Ezequiel Rojas.

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FRONTERA VENEZOLANA – ARBITRAJE GENERAL

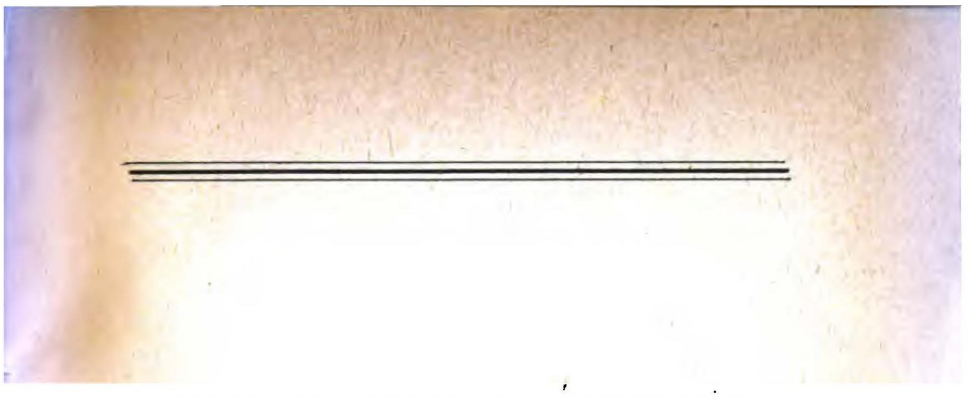
CORRESPONDENCIA

ENTRE LOS

ESTADOS UNIDOS Y LA GRAN BRETAÑA

TRADUCCIÓN PUBLICADA POR EL MINISTERIO DE RELACIONES EXTERIORES DE VENEZUELA

CARACAS
IMPRENTA BOLIVAR
1896



ESTADOS UNIDOS DE VENEZUELA

—

Ministerio de Relaciones Exteriores.—Dirección de Derecho Público Exterior.

Caracas: 14 de agosto de 1896.

RESUELTO:

Simultáneamente acaba de salir á luz en Washington y en Londres la correspondencia diplomática cruzada entre el Gobierno de los Estados Unidos y el de la Gran Bretaña con motivo de un proyecto de Arbitraje Internacional aplicable á la cuestión de límites pendiente entre Venezuela y la Colonia de Demerara; correspondencia que pone una vez más de manifiesto la acción saludable de la Gran República del Norte en un asunto de interés primordial para todo el hemisferio, por la relación íntima que guarda con la integridad de sus territorios constituidos en Naciones libres y soberanas. Y, considerada por el Señor Presidente de la República en Consejo de Ministros la natura-

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leza de esa publicación, donde aparecen defendidos experta y sabiamente, por parte del Departamento de Estado de Washington, principios y doctrinas á que viene acogiéndose Venezuela para sacar ilesos sus derechos y su dignidad en la más grave de las cuestiones que registran sus anales políticos, ha dispuesto que se lleve á cabo una edición especial en idioma castellano de todas las notas que constituyen la mencionada correspondencia, y hacerla circular no sólo en el País sino en todas las demás Repúblicas hermanas, como prenda de reconocimiento al Gobierno de los Estados Unidos, al par que como grata contribución á la propaganda de ideas tan gallardamente sustentadas por el Gran Pueblo del Norte en pro de la seguridad común y en favor de la paz internacional.

Por el Ejecutivo Nacional,

P. Ezequiel Rojas.

Annex 19

Telegram of Minister Andrade to Mr. Olney (7 December 1896)

Richard Olney's Papers, Reel 24

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.

Annex 20

Letter from Mr. Olney to Mr. Harrison (29 July 1898)

Benjamin Harrison Papers, Reel 42, Series 1,
available at https://www.loc.gov/resource/mss25064.mss25064-041_0018_1232/?sp=818&st=image (Images 817-818)

RICHARD OLNEY,
23 Court Street.

BOSTON, 29 July, 1898

My dear Mr. Harrison,

I have your favor of the 20th July and note contents.

Since receiving it, I have made a partial examination of my files, principally with the view of verifying the suggestion in my letter of the 8th inst. to the effect that Mr. Storrow considered the fifty year prescription period as of particular importance to Venezuela. As bearing on that point, I enclose copy of extract from a letter of Mr. Storrow's of October 26, 1896 -- with copy of the enclosure therein referred to; also copy of extract from a letter from Mr. Storrow to me of November 29, 1896 -- written from Caracas where Mr. Storrow had gone, with the Venezuelan Minister, to explain the heads of an arbitration treaty as agreed upon between the United States and Great Britain.

I will make further search and send you anything connected with the Venezuela case, or the particular point we are now corresponding about, that strikes me as pertinent or interesting.

Trusting you will not forget to send me, as suggested, that portion of your argument that relates to the point in question,

I remain

Sincerely yours, Richard Olney

Hon. Benj. Harrison

RICHARD OLNEY,
23 Court Street.

BOSTON, 189

Hon.B.H.....2.....

P.S. I may add that both Mr. Storrow and myself considered it legally impossible that there could be any adverse holding or prescription as against the agreement of 1850 -- a position to which we deemed the British Government to have committed itself most in the public and emphatic manner.

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Annex 21

Letter from Minister Andrade to Minister Ezequiel Rojas (9 January 1897)

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Confidential

LEZALITION
OF THE UNITED STATE OF VENEZUELA

Washington, 9 January 1897

Mr. Minister,

On the 28th ultimo in the morning I had my first conversation with Mr. Olney, and in the afternoon with Sir Julian Pauncefote, concerning the proposed modification of the basic article II in the Arbitration Treaty on the question of Guiana.

The same day the British Ambassador transmitted the Venezuelan proposal to Lord Salisbury by telegram.

Twelve days have passed, including to-day, but the reply has not yet come.

Mr.
Don F. Ezequiel Rojas, Minister of Foreign Affairs
Caracas

Number 6

Such a delay on the part of a government as diligent as the English one makes me worried.

I return to the State Department in order to ask Mr. Olney whether he knew anything regarding the cause of the delay and he was unable to satisfy me.

Speaking once more about the proposal to modify that basic article which my confidential despatch of the 7th, No. 5 referred to, I have agreed that the Ambassador and I should refer it at the same time to our respective governments; but attributing to Venezuela the appointment of only one of the arbiters on her side, and the other to the United States, it being noted that the Venezuelan appointee would be a judge of the Supreme Court of this country.

The more I think of it, the more I am convinced that Venezuela, far from wishing to restrict the participation of the United States in the composition of the Tribunal, should seek to augment it so that she (the U.S.A.) may have greater moral responsibility with regard to the result of the arbitration, and that more effective her concern during the judgment.

I am your most attentive servant,

José Andrade

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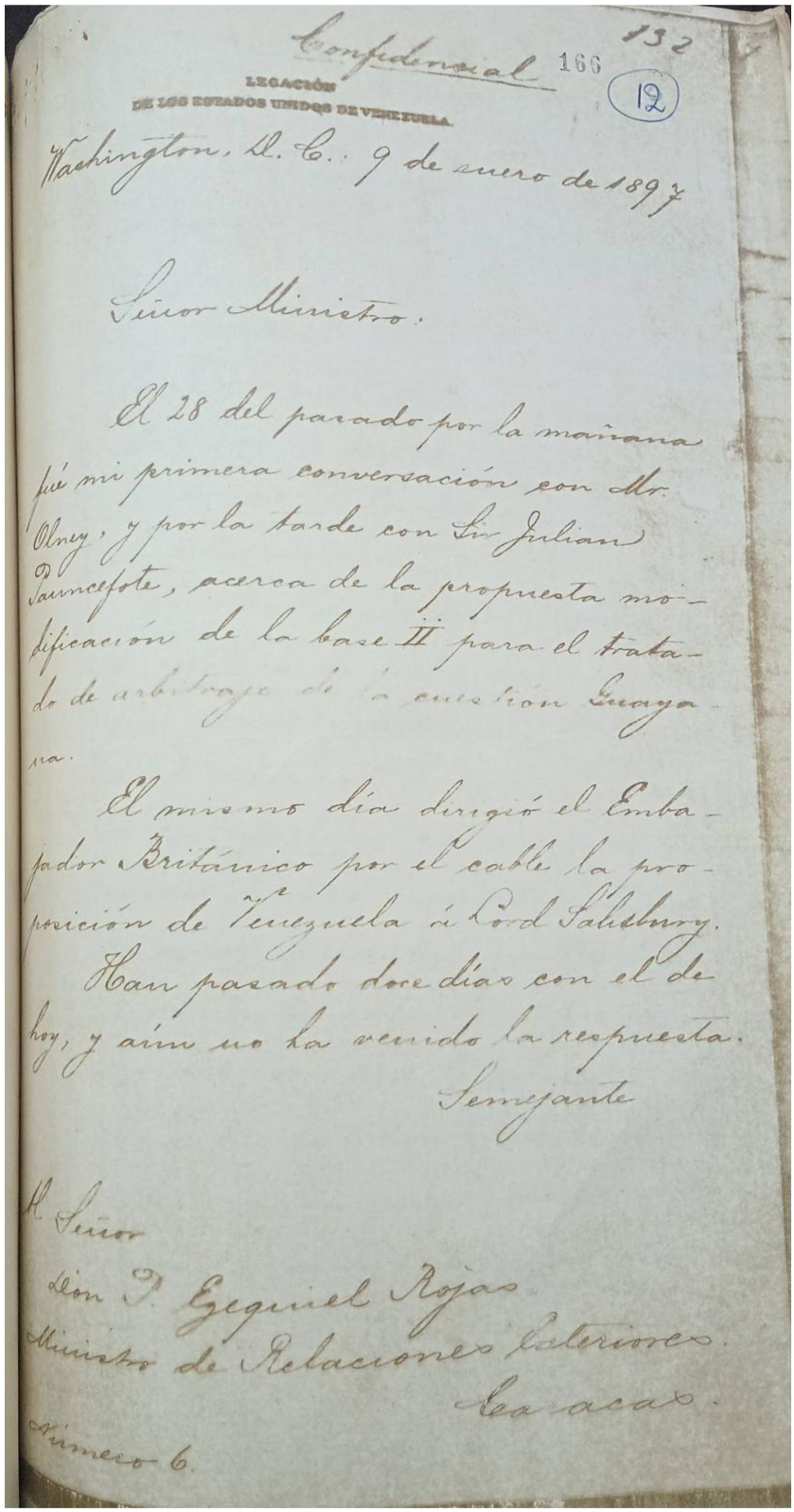

Confidencial 166 132

(12)

LEGACIÓN
DE LOS ESTADOS UNIDOS DE VENEZUELA.

Washington, D. C., 9 de enero de 1897

Señor Ministro:

El 28 del pasado por la mañana fué mi primera conversación con Mr. Olney, y por la tarde con Sir Julian Pauncefote, acerca de la propuesta modificación de la base II para el tratado de arbitraje de la cuestión Guayana.

El mismo día dirigió el Embajador Británico por el cable la proposición de Venezuela á Lord Salisbury.

Han pasado doce días con el de hoy, y aún no ha venido la respuesta.

Semejante

A Señor
Don D. Ezequiel Rojas
Ministro de Relaciones Interiores.
Caracas.

Número 6.

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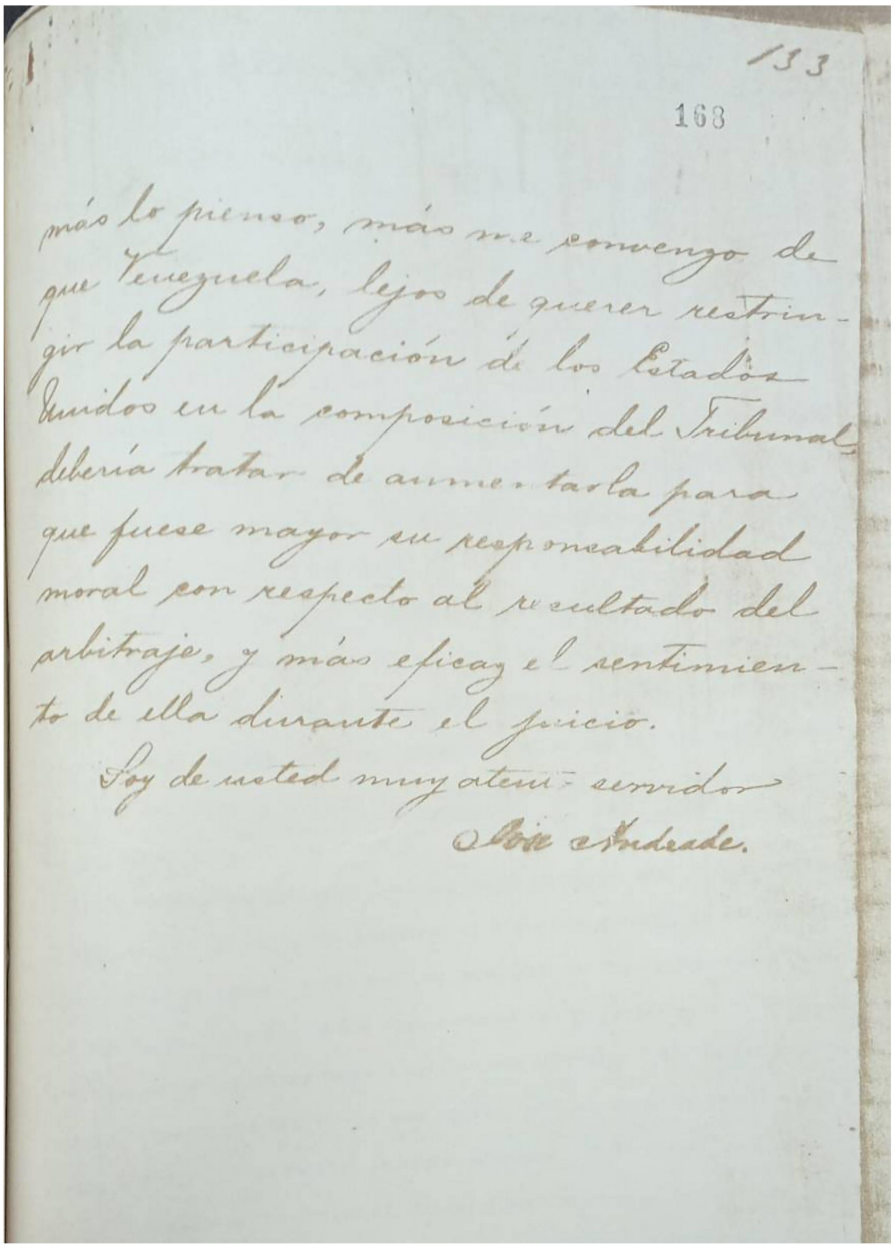
Semejante lentitud en un Gobierno tan diligente como el inglés me trae preocupado.

He vuelto al Departamento de Estado, con el objeto de preguntar á Mr. Olney lo que supiera en orden á la causa de la dilación y no ha podido satisfacerme.

Hablando otra vez del proyecto de reforma de dicha base á que se refiere mi comunicación Confidencial del 7, número 5. he convenido en que el Embajador y yo la consultemos al mismo tiempo á nuestros respectivos Gobiernos; pero atribuyendo á Venezuela el nombramiento de uno solo de los dos árbitros que le corresponden, y el otro á los Estados Unidos, con la advertencia de que el nombrado por Venezuela será un juez de la Corte Suprema de este país. Mientras

más



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más lo pienso, más me convenzo de que Venezuela, lejos de querer restringir la participación de los Estados Unidos en la composición del Tribunal, debería tratar de aumentarla para que fuese mayor su responsabilidad moral con respecto al resultado del arbitraje, y más eficaz el sentimiento de ella durante el juicio.

Soy de usted muy atento servidor

Josè Andrade.

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Annex 22

Letter from General Joaquin Crespo, President of Venezuela, to the Chief Justice of the United States of America (17 February 1897)

Letter from General Joaquin Crespo,
President of Venezuela, to the Chief Justice of the
United States of America.

Translation.

Caracas, 17th of February, 1897.

To the Honorable Melville Weston Fuller,
Chief Justice of the Supreme Court of the United States.

Sir:

The designation which I had the honor to make, in your person, to constitute with the Magistrate chosen by the Court over which you preside, a part of the Tribunal of five Jurists who are to take cognizance of the matter of the boundary between Venezuela and the British Colony of Guyana, satisfies most fully my own desire, and was received in the country with signal marks of approval. I owe you the especial expression of my gratitude for the noble good will which has led you to accept this lofty duty.

Your participation in the delicate task of this respected Arbitral Tribunal, called to pass upon one of the most grave international controversies of the present time, is of special importance for Venezuela, because, besides the title to our respect and esteem with which your personal qualifications inspire us, your aptitude for the duties which belong to the highest administration of justice, and which you have shown in the conspicuous office of Chief

Justice, constitute one assurance more that the Arbitral Tribunal will reach a correct result in its delicate deliberations.

I pray you, Sir, to accept the sincere homage of my especial esteem, and to believe that the service which you have rendered to Venezuela in accepting the important charge of a member of the Arbitral Body will never be forgotten, and by me will always be remembered with especial gratitude.

(Signed) Joaqn. Crespo.

Caracas: 17 de febrero de 1897

Al Honorable Señor Melville Weston Fuller,
Juez Presidente de la Suprema Corte de los Estados Unidos
de América.

Señor.

La designación que hice el honor de hacer en nuestra persona para constituir, con el Magistrado elegido por la Corte que presidís, parte del Tribunal de cinco juristas que ha de conocer del asunto de los límites entre Venezuela y la Colonia Británica de Guayana, satisfizo plenamente mi propio ánimo y fué acogida en el País con señaladas muestras de aprobación.

Aceptado ya el alto encargo con noble voluntad, os debo especial testimonio de gratitud.

Vuestra participación en las delicadas tareas del respetable cuerpo arbitral, llamado á dirimir una de las más graves controversias internacionales de los presentes tiempos, es para Venezuela de especial importancia, por cuanto, además de los títulos que al respeto y estima de todos os crean vuestras condiciones personales, la aptitud que poseéis para los asuntos relacionados con el alto ramo de la justicia y que tan manifiestamente probáis en el conspicuo cargo de Presidente de la Suprema Corte de los Estados Unidos, constituye una prenda más del

acierto con que ha de proceder el Tribunal Arbitral en sus delicadas deliberaciones.

Servios, Señor, aceptar el sincero homenaje de mi especial estima, y creed que el servicio que habéis rendido á Venezuela con la aceptación del importante cargo de Miembro del Cuerpo Arbitral, no será nunca olvidado, y por mí será siempre especialmente reconocido.

Dr. M. Cresp

Annex 23

El Libro Amarillo de los Estados Unidos de Venezuela, 1897 (extracts)

TRANSLATION

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N° 3495

THE

YELLOW BOOK

OF THE

UNITED STATES OF VENEZUELA

PRESENTED TO THE NATIONAL CONGRESS DURING ITS SESSIONS IN 1897

BY THE CITIZEN

MINISTER OF FOREIGN AFFAIRS

CARACAS
TIPOGRAFIA UNIVERSAL
1897

5 OCTOBER 1933

PRELIMINARY STATEMENT

Honorable Senators:

Honorable Deputies:

Once again, and by virtue of the honourable trust bestowed upon me by the President of the Republic, I find myself bound by noble duty to present to you the annual work of the Ministry of Foreign Affairs. In the time that has elapsed since your last sessions, as you will see, the matters studied by my Department have been of an unusually demanding and complex nature. In presenting these matters now for your unavoidable consideration, I humbly request your superior goodwill, even as I may be encouraged by the hope that, throughout this account, you will discern the irrevocable and committed purpose to uphold strict observance of the Law and the decorous preservation of national rights.

XXXII PRELIMINARY STATEMENT

Arbitration agreement signed in Washington on 12 November 1896.

The agreement reached by the United States with Great Britain and proposed to Venezuela as a basis of settlement was recorded in a Protocol signed on 12 November by the Secretary of State of His Excellency Mr. Cleveland and the Ambassador of His Majesty in the same Republic. The Protocol contained four articles related to the establishment of an Arbitral Tribunal for the resolution of the boundary issue with the Colony of Demerara. In the final part, the rules were set out for the Arbitrators to follow in the assessment of certain facts; as for any other matters that could have been the subject of a direct Treaty between Venezuela and Great Britain, the Protocol made no mention, thereby leaving the two parties genuinely concerned with the issue free to perfect the agreement and bring it to a positive conclusion.

The opinions expressed in the press of the Republic about the Protocol were numerous and highly contradictory, ever since it was published alongside the Letter in which His Excellency Mr. Cleveland recommended to the President of the United States of Venezuela that the same terms of settlement agreed with Great Britain be adopted.

Considerable calm and serenity were required of the Government to define the situation amidst the various and conflicting impressions generated from the outset by the Protocol of 12 November. The sentiment of patriotism, the guiding spirit of the noblest actions, spoke through the solemn words of all in these circumstances. As the wise saying goes, "nothing is as difficult as combating contradictory ideas at the same time,"

and one might be assured, by the same principle and by analogy, that there is no greater difficulty than uniting in a single procedural formula opinions of opposite nature when, as now, both are directed towards equally honourable purposes and of identical benefit for the Nation.

The President who seeks to reconcile the demands of the present with an understanding of what may benefit future generations, whose interests he is also bound to protect from unfortunate contingencies, must sometimes consider the natural effects of ideas and events from a perspective that may be scarcely accessible to those unfamiliar with certain precedents or outside the sphere in which high official obligations are engendered and determined. In those moments of profound reflection, it falls to the republic, truly conscious of its duties and responsibilities, to establish the balance that can be maintained between current circumstances and anticipated future challenges, to counterbalance the effects of one with the other and thereby avert a series of difficulties and dangers. No human law can foresee the infinite issues that may arise within the political order; when it becomes indispensable to modify an abnormal situation caused by long-standing factors and therefore difficult to overcome.

In studying the foundations of the Protocol, the Government immediately recognised the necessity of involving the Powers of Venezuela in the formation of the Tribunal tasked with resolving a dispute of such significant importance. The proposed articles

provided for the creation of the Arbitral Body with two members appointed by the judges of the Supreme Court of the United States and two appointed by the judges of the British Supreme Court, in addition to a fifth jurist chosen by the other four, or by His Majesty the King of Sweden and Norway, in the event of a failure to agree on such a choice. The honourable impartiality of such a constituted Tribunal was sufficiently guaranteed. The two Courts entrusted with the designation of the four Arbitrators are bodies of universal repute, where probity and wisdom are always held as points of honour. The Sovereign chosen to elect the fifth jurist, in the event the others could not agree on this point, offers in his high moral prestige and the noble rank of his name a most respectable guarantee of wise judgment. The exclusion of Venezuela from the process established to form the Tribunal did not therefore present any inconvenience other than what might arise, in a certain way, from a sense of national dignity, especially given that the very practice of arbitration equates to a kind of delegation of authority to a Power or an individual deserving of the full confidence of both contending parties. The obligation to address this point led to a modification proposed by Venezuela and accepted by Great Britain.

One of the jurists was selected by the President of the Republic, and his name appears in the Treaty. The others were chosen as follows: one by the Supreme Court of the United States and two by the Members of the Judicial Committee of the Privy Council of Her Majesty's Government in Great Britain. The four Arbitrators are individuals of high competence in the

field of Justice and widely recognised for their distinction and respectability. The one appointed by the President of the United States of Venezuela holds the high position of President of the Supreme Court of the United States, and the one elected by that Court is one of its Justices—the very same person appointed by the Honourable President Mr. Cleveland to preside over the Investigative Commission on the boundaries of Guiana.

As signed on 2 February by the Minister Plenipotentiary of Venezuela in the United States, the Treaty with Great Britain is now presented to you. You will find its text in the final pages of the Appendix. The Executive Branch entrusts the ultimate consideration of these clauses to your patriotism and wisdom, confident that, regardless of the course you choose to take on this matter, your love for Venezuela will be your guide and the national good your foremost aspiration.

From the account that precedes, you will have seen that the Government has neither paused nor spared any effort in the task of safeguarding the territorial integrity of the Republic. It trusts in the justice of History, which never fails those who call upon it with legitimate means and employs perseverance to uphold the sovereign rights of the Nation, independent of the difficulties arising from a political existence still limited in material power.

But, before concluding this chapter of my statement, allow me to express my conviction that the foundations of this Treaty represent, on the part of the United States, a noble and eminent effort for the sake of continental peace. These terms alone will constitute for them

a significant achievement, just as they will serve as an enduring reminder for Venezuela of the interest with which its powerful sister nation sought to reconcile it with the Great British Nation in a dispute lasting more than half a century, marked by bitter incidents and perilous situations.

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EL

LIBRO AMARILLO

DE LOS

ESTADOS UNIDOS DE VENEZUELA

PRESENTADO AL CONGRESO NACIONAL EN SUS SESIONES DE 1897

POR EL CIUDADANO

MINISTRO DE RELACIONES EXTERIORES

CARACAS
TIPOGRAFIA UNIVERSAL
1897

OCT 5 1933

EXPOSICIÓN PRELIMINAR

Ciudadanos Senadores:

Ciudadanos Diputados:

De nuevo y por virtud de la honrosa confianza que me dispensa el Señor Presidente de la República, vengo á cumplir la noble obligación de exponeros la labor anual del Ministerio de Relaciones Exteriores. En el tiempo transcurrido desde vuestras sesiones últimas han sido, como veréis, de naturaleza singularmente desemejante y complexa los asuntos estudiados por el Departamento de mi cargo. Al presentároslos ahora para su inapelable consideración, solicito vuestra superior benevolencia, aun cuando pudiera alentarme desde luego la esperanza de que en el curso del relato hayáis de descubrir el irrevocable y cumplido propósito de mirar á la guarda estricta de la Ley y al decoroso mantenimiento de los fueros nacionales.

Tratado de arbitramento suscrito en Washington el 2 de febrero.

Lo concertado por los Estados Unidos con la Gran Bretaña y propuesto á Venezuela como base de avenimiento, constaba de un Protocolo suscrito el 12 de noviembre por el Secretario de Estado del Excelentísimo Señor Cleveland y el Embajador de Su Majestad en aquella misma República. Contenía el Protocolo cuatro artículos referentes á la constitución de un Tribunal Arbitral para el arreglo de la cuestión de límites con la Colonia de Demerara. En la parte final figuraban las reglas á que debían atenerse los Árbitros en la apreciación de ciertos hechos; y en cuanto á lo demás que hubiera de ser objeto del Tratado directo entre Venezuela y la Gran Bretaña, nada decía el Protocolo, con lo cual se quiso dejar á las dos partes verdaderamente interesadas en el asunto, campo libre para perfeccionar el pacto y ponerlo en vía de positivo cumplimiento.

Infinitas y muy disconformes entre sí fueron las opiniones vertidas en la prensa de la República respecto del Protocolo, desde que apareció publicado junto con la Carta en que el Excelentísimo Señor Cleveland recomendaba al Señor Presidente de los Estados Unidos de Venezuela las mismas bases de arreglo ajustadas con la Gran Bretaña.

Calma y serenidad sumas necesitó el Gobierno para definir la situación de las cosas en medio de las varias y contradictorias impresiones producidas en el primer momento por el Protocolo del 12 de noviembre. El sentimiento de la patria, numen inspirador de las más altas acciones, era el que por los labios de todos hablaba en circunstancias tan solemnes. En sentir del sabio "nada es tan difícil como combatir al mismo tiempo dos ideas contra-

rias;" y bien pudiera asegurarse, bajo el propio concepto y por analogía, que no hay mayor dificultad que la de juntar en una sola fórmula de procedimiento opiniones de opuesta naturaleza cuando, como ahora, unas y otras se dirigen á fines igualmente honrosos y de idéntica conveniencia para la Patria.

El Magistrado que procura quilatar las exigencias de lo presente y discernir al propio tiempo lo que conviene á las edades pósteras, cuyos intereses le incumbe también precaver de contingencias lamentables, tiene que contemplar á veces los efectos naturales de las ideas y de los hechos desde un punto de vista poco accesible para los que son extraños á ciertos antecedentes ó están fuera de la órbita en que las altas obligaciones oficiales se engendran y determinan. En esos momentos de meditación suprema toca al repúblico verdaderamente poseído de sus deberes y responsabilidades, establecer la proporción que pueden guardar entre sí las circunstancias actuales y las presentidas emergencias de lo futuro, para ver de contrabalancear los efectos de las unas y de las otras y conjurar así de antemano toda una serie de dificultades y peligros. Ninguna ley humana alcanza á prever las infinitas cuestiones que dentro del orden político pueden sucesivamente suscitarse, cuando es indispensable modificar una situación anómala, producida por causas ya remotas y por tanto de difícil vencimiento.

Al estudiar las bases del Protocolo vió desde luego el Gobierno la precisión de hacer partícipe de algún modo á los Poderes de Venezuela en la constitución del Tribunal llamado á dirimir una disputa de tanta trascendencia. Los artículos propuestos ha-

cían formar el Cuerpo Arbitral con dos miembros nombrados por los jueces de la Suprema Corte de los Estados Unidos y dos nombrados por los jueces de la Suprema Corte Británica de Justicia, además de un quinto jurista elegido por los cuatro, ó por Su Majestad el Rey de Suecia y Noruega, caso de no haber acuerdo para tal elección. La honrada imparcialidad de un Tribunal así compuesto estaba suficientemente garantida. Las dos Cortes encargadas de la designación de los cuatro Árbitros son Cuerpos de reputación universal, donde la probidad y la sabiduría tienen siempre asiento de honor. El Soberano escogido para elegir el quinto jurista, al no avenirse los demás en ese punto, ofrece en su alto prestigio moral y en la noble jerarquía de su nombre, fianza respetabilísima de acierto. La exclusión de Venezuela en el trámite establecido para formar el Tribunal, no presentaba así otro inconveniente que el derivado, en cierto modo, de una idea de dignidad nacional, por más que la práctica misma del arbitraje equivalga siempre á una especie de delegación de facultades en un Poder ó en una personalidad que merece la confianza plena de las dos partes contendoras. La obligación de atender á este punto dió lugar á una modificación propuesta por Venezuela y aceptada por la Gran Bretaña.

Uno de los juristas fué elegido por el Presidente de la República, y su nombre figura en el Tratado. Los otros se eligieron así: uno por la Suprema Corte de los Estados Unidos y dos por los Miembros de la Comisión Judicial del Consejo Privado de Su Majestad Británica. Los cuatros Árbitros son personas de alta competencia en el ramo

de la Justicia y de notorio valimiento y respetabilidad. El nombrado por el Señor Presidente de los Estados Unidos de Venezuela ocupa el alto cargo de Presidente de la Suprema Corte de los Estados Unidos, y el elegido por ella es uno de sus Jueces, el mismo que designó el Excelentísimo Señor Cleveland para presidir la Comisión investigadora de los límites de Guayana.

Tal como fué suscrito el 2 de febrero por el Ministro de la República en los Estados Unidos, se os presenta ahora el Tratado con la Gran Bretaña. Su texto lo hallaréis en las últimas páginas del Apéndice. El Poder Ejecutivo fía á vuestro patriotismo y á vuestras luces la definitiva consideración de esas cláusulas, en la seguridad de que cualquiera que sea el rumbo que deis al asunto, será el amor á Venezuela vuestro guía y el bien nacional vuestra primera aspiración.

Por el relato que precede habréis visto que el Gobierno no se ha dado tregua ni ha omitido esfuerzo posible en la obra de salvar la integridad territorial de la República. Él confía en la justicia de la Historia, que no falta nunca al que apela á todos los recursos legítimos y de ellos se vale con perseverancia, para sobreponer los fueros de la Patria independiente á las dificultades nacidas de una existencia política, escasa aún en atributos de poderío material.

Mas, antes de concluir este capítulo de mi exposición, séame permitido expresaros el convencimiento de que las bases de ese Tratado representan por parte de los Estados Unidos un esfuerzo tan noble y eminente en favor de la paz continental, que por sí solas constituirán para ellos relevante ejecutoria, como

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habrán de ser para Venezuela recuerdo perdurable del interés con que su poderosa hermana procuró avenirla con la Gran Nación inglesa, en un litigio de más de media centuria, fecundo en incidencias amargas y en situaciones peligrosas.

Annex 24

H. James, *Richard Olney and his public service*,
Boston/New York, 1923 (extract)

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RICHARD OLNEY

AND HIS PUBLIC SERVICE

BY

HENRY JAMES

With Documents including Unpublished Diplomatic Correspondence

AND WITH ILLUSTRATIONS

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6.11.52

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XI

VENEZUELA — THE SUCCESSFUL SETTLEMENT

THE first move in the direction of an adjustment was made by England. On the 12th of January, Lord Playfair, a former Liberal Member in the House of Commons who had recently been raised to the peerage in recognition of his many services to public philanthropy and education, a man of seventy-five years who had married an American wife and who was probably regarded as a promising agent because of his considerable personal acquaintance in the States, called at the American Embassy with certain suggestions from Salisbury and Chamberlain. The gist of these was that England found it difficult, first, to acquiesce vaguely in the large claims which had been advanced in the name of the Monroe Doctrine, and, second, to submit subjects who had established *bona fide* settlements to the jeopardies of an arbitration. Would the United States, Lord Playfair inquired, meet these difficulties by agreeing to a European conference on the Monroe Doctrine and to an arbitration of all disputed territory exclusive of "settlements"? A conference, to which the United States should invite all the European Powers who had interests in America, would, he urged, benefit the United States, for it would practically write a definition of the Doctrine into the law of nations. On the other hand, the exclusion of "settlements" from arbitration would enable England to stick to a policy which was obviously important to the Empire. Bayard immediately cabled a sum-

mary of this interview and expressed a strong personal endorsement of the conference proposal.[1] But Olney cabled back:

> Suggestions coming through Lord Playfair highly appreciated, 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.[2]

In this cable he also hinted that arbitration might be arranged on such terms that long-continued occupation of territory should be taken into account by the arbitrators.

Playfair and Bayard continued, however, to discuss the other half of the English suggestion, and on the 20th Bayard cabled that settlements were said not to overlap the Schomburgk line anywhere, and that the British contended, as a point of principle, that settlements ought to be excluded from arbitration. He further reported, or proposed, "Definition of settlements to be arranged." [3]

This narrowed the difference to a point at which Olney was invited to say, "Everything appears to be conceded except settlements; let's proceed to agree about settlements." But the difficulty was that Great Britain seemed to want to define them *out* of the arbitration; that is, to predetermine certain territory as settled and withhold it

[1] Bayard to Olney, Jan. 13, 1896. Appendix IV.
[2] Olney to Bayard, January 14. Appendix IV.
[3] Bayard to Olney, January 20. Appendix IV.

from further consideration, while the United States wished the arbitral tribunal to ascertain the facts as to any alleged occupation. Accordingly Olney replied by cipher cable dated January 22d:

> With sincerest purpose to do so, am unable to comprehend the justice or pertinency of the proposition that mere occupation shall be decisive of title. The time, character, and all circumstances attending such occupation must necessarily be considered and must be interpreted and construed according to the principles of private and public law applicable thereto. Nor does the definition of settlements by agreement in advance seem to be feasible. Every one of the numerous elements involved in such definition would be subject of debate and of probable disagreement, while, as Venezuela must be consulted at every step, the inevitable delays would be interminable. As Great Britain desires the controversy should not drift, in which desire the United States heartily concurs, a resort to some form of arbitration which shall cover the real questions involved seems indispensable, since the moment it is agreed upon and the tribunal constituted, the controversy, so far as these two countries is concerned, is at an end.

But, as he did not mean to balk over a mere point of "feasibility," he also inquired how England would define "settlements," and on January 28th he cabled to Bayard again to suggest that a commission might report the facts about occupation under an agreement that the result, if not adopted, should go to arbitration. (See Appendix IV.) Over this question Bayard and Playfair between them were somehow so unfortunate as to let Chamberlain think the United States would assent to the exclusion of "settled districts." When, toward the end of February, the Colo-

nial Secretary became convinced that such was not Olney's intention, he cut Playfair's colloquies short by a letter in which he practically said that he had been misled.[1] Time had thus been lost.

To ask Europe to define what a French writer called "la doctrine du feu Monroe" would have been to accept such European jurisdiction over the Western Hemisphere as it was the essence of Monroe's and Olney's policy to make impossible. One effect of the Playfair episode was that Bayard's ready endorsement of the conference proposal destroyed Olney's confidence in the Ambassador's comprehension of the American policy.

Meanwhile Olney had been trying another approach. When Playfair's first call was reported to him, he saw his 'cue to enter and speak' informally, and went about it to insure the fullest possible discussion. He was never content to rely on an agent whom he trusted less than absolutely, so on January 22d he told the First Secretary of the London Embassy, Mr. J. R. Roosevelt,[2] who was just then sailing for England, to win Mr. Bayard to the idea of transferring negotiations to Washington, and at the same time he took George W. Smalley, then the American correspondent of the London "Times," 'into camp.' Smalley, in turn, advised Mr. Buckle, the editor of the "Times," of the full extent of his relation with the Secretary of State, and straightway began a series of inspired dispatches. Mr. Buckle published many of these, and put himself in direct

[1] Chamberlain to Playfair, February 25, 1896. Appendix IV.

[2] Correspondence in Olney's private files. I am indebted to Mr. Roosevelt who has allowed me to examine papers in his possession. (H. J.)

communication with Lord Salisbury so that his editorial comments and his private cablegrams to Smalley were understood by Olney to reflect the views of the British Premier.

Undoubtedly this exchange, which Olney conducted through the columns of the "Times" while Bayard was discussing with Playfair, owed both its inception and its continuance largely to the satisfaction which Olney found in talking face to face with a man of Smalley's penetration and quickness, a man who also understood both countries and had access to the best sources of information about British opinion. It had the incidental advantage of informing the public on both sides of the Atlantic about the essential contentions of the two Governments, and of immediately linking a semi-official statement of England's concessions with the very friendly but more guarded references to the Venezuelan case which English statesmen — Balfour, Chamberlain, and others — were making in their public speeches.

In the course of the "Times" exchange Olney tried to feel London out on several points. As a result the "Times" made it clear that Great Britain would make two concessions — first, tacit admission of the United States's right to intervene; second, abandonment of the Schomburgk line. But in saying this, and in acquiescing in the idea of final arbitration, she stood firm for "settled districts." Having conceded so much, England said squarely that it was time for the United States to make some public avowal, preferably in the form of an official dispatch.[1] Here was a point of procedure. Salisbury's dispatches had, to be

[1] The *Times* leaders and its columns of American correspondence should

sure, not been answered except indirectly through Cleveland's message to Congress. But they had been so expressed as to close the door to discussion, and the feelings-out of the ground to which Lord Playfair and the "Times" had lent themselves had left one point to be cleared up still: no sufficient definition of settlements, nor formula for defining them, had been offered. It might have been fatal to resume correspondence in a formal way and arrive at a deadlock on this point. Olney accordingly moved to finish what remained to be done by personal conference with Sir Julian Pauncefote. The good pretext was that Venezuela had a representative in Washington, but none in London. Also the "Times" had suggested the transfer publicly. Olney, in a cable dated February 21st, drew these circumstances to the attention of Mr. Bayard whom Mr. Roosevelt had already prepared for the change. Salisbury assented to the transfer on the 27th, and apparently quite cheerfully, for Pauncefote quoted him as saying, "Now that the amateur diplomats have got through, perhaps serious negotiations can be set on foot." [1]

Salisbury's action in empowering Pauncefote to discuss with the Venezuelan representative, "or with the Government of the United States acting as the friend of Venezuela," has been described as conceding the main question at issue because "it tacitly withdrew the prior declaration

be consulted, especially from January 22d to February 21st inclusive. Its columns reflect the public aspects of the whole episode most helpfully, beginning December 10, 1895. The present writer's interpretation of *Times* matter has been corroborated by Smalley's private letters among the Olney papers. (Olney Coll.)

[1] Olney to Cleveland, March 6, 1901. See Appendix IV.

that American interference had no warrant in the law of nations."[1] But this is undiscerning, for Olney was not chiefly concerned to score such a showy but incomplete triumph for American diplomacy as was thus placed within his grasp. England had been willing all along to agree to a limited amount of arbitration, and could not have greatly objected to America's urging her to proceed with it. But she had not yet consented that "arbitration should have unrestricted application" to all the territory in question. Short of that, Olney saw, his contention would not have been clearly established.

To push a thing through from the *almost* stage to the *complete* stage is often the hardest part, and in this affair the "settled districts" proved to be a stubborn obstacle. Olney could discuss face to face with Sir Julian Pauncefote, however, and the two men were fitted to understand each other. Pauncefote had passed through a long and special experience, first as lawyer and judical officer in the Far East, and then as legal adviser in the Colonial and Foreign Offices in London before he came, at about the age of sixty, to his one diplomatic post in Washington. According to John W. Foster "he was methodical and attentive to business, a man of sound judgment, and he impressed every one who came in contact with him with his perfect sincerity and conscientiousness."[2] Furthermore — and this alone was enough to give him a claim on Olney's regard — he neither made public speeches nor gave out interviews to the press. The problem to be solved was a lawyer's prob-

[1] Peck, p. 434.
[2] *Diplomatic Memoirs*, II, 316.

Julian Pauncefote
Washington 1896.

lem. The Secretary of State and the British Ambassador canvassed it in personal conversations of which Olney's record is incomplete. But a cross-section picture of the situation which had been reached in June can be seen in an exchange of letters between Olney and Mr. Henry White, who was then in London unofficially. Before Mr. White went abroad in the spring, Olney had authorized him to explain the American point of view to any officials or influential persons in London and had asked him to send back confidential reports on the state of English sentiment. One of Mr. White's letters, which will be found in Appendix IV below, discloses the impressions he had gained after sounding the minds of Lord Salisbury, Sir William Harcourt, and Mr. Balfour (he also sounded Chamberlain, the Duke of Devonshire, Lord Rothschild and others), and shows with what freedom from personal animosity and with what anxiety to maintain good relations between the two countries the affair was considered by the men who were shaping England's policies. In July, Olney seized upon a statement of Salisbury's, that "the claim of Venezuela impeaches titles which have been unquestioned for many generations," to press again and more precisely the idea which he had broached in his reply to Bayard's first report of Playfair's advances.

> . . . will Her Majesty's Government assent to unrestricted arbitration of all the territory in controversy with period for the acquisition of title by prescription fixed by agreement of the parties in advance at sixty years? [1]

This question led shortly to the satisfactory solution.

[1] Olney to Pauncefote, *Foreign Relations*, 1896, 253, 254.

At this point the correspondence went before the public in a British Blue Book, and was also published in the United States. With the help of Mr. Henry White, Olney had the preliminary brief of counsel who was representing Venezuela before the American Commission printed in London at the same moment.[1] It was politically necessary for the Salisbury Government to let public opinion declare itself, but nothing that came from the public after this publishing of correspondence and arguments indicated discontent with the concessions that were contemplated or anything but a general desire to have the matter disposed of amicably and soon. Pauncefote made a trip to London in August, and the report that he had been called to attend a Cabinet meeting was taken in Washington to be a promising sign.

Chamberlain visited the States in September, but did not influence the case. He arranged through his brother-in-law, Mr. William C. Endicott, to call on Olney one day when he was in his office on Court Street in Boston, and explained that he wanted to talk about Venezuela. The Secretary of State, being content to deal with Sir Julian, and having no mind to risk confusing that negotiation, asked right off whether Chamberlain had been empowered by Lord Salisbury to arrange matters. Upon his replying, in effect, that he was not particularly authorized, but that, being a member of the Cabinet, he considered that he was in a position to talk about it, Olney quietly turned the con-

[1] At Olney's suggestion, Venezuela had retained James J. Storrow, Senior, of Boston, as counsel. Storrow visited Venezuela. Olney's letter files show that he and Storrow communicated with each other constantly during the remaining stages of the negotiation.

versation and would not be brought to the crucial point in the case.[1] We have all been told that when an Irresistible Force encounters an Insuperable Resistance, the result is not "a terrible uproar," as a luckless schoolboy once supposed, but just *nothing;* and most of us have felt that the statement is not wholly satisfactory, because "nothing" seems, after all, to ignore too completely that the result is quite what the Resistance wanted. The interview between Chamberlain and Olney must have illustrated deliciously both the soundness and the incompleteness of the physicist's proposition.

On November 9th, Lord Salisbury, speaking at the Guildhall, announced that the two countries had composed their difference and likened the solution to Columbus's trick with the egg.[2] The accord which had thus been reached at last provided that an arbitral tribunal should ascertain all the facts necessary to a decision and should thus also determine the boundary line, no territory whatever being excluded from its consideration. It met the difficulty of the settled districts by agreeing upon three rules to be applied to the facts. The first and most important read:

Adverse holding of prescription during the period of fifty

[1] Statement to the writer by Mr. Endicott.

[2] Speaking at the annual Lord Mayor's Banquet in the Guildhall on November 9th, Salisbury said, "[I believe] that the controversy is at an end. It is always surprising by what very obvious arrangements problems of great difficulty are solved, and in the continent which Columbus discovered the tradition of Columbus's egg must be properly revered. . . . The question has been, not whether there should be arbitration, but whether the arbitration should have unrestricted application. . . . Our difficulty for many months has been to find how to define the settled districts, and a solution has been found." (London *Times*, November 10, 1896.)

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.[1]

Although Olney had made the treaty, the parties to it were Great Britain and Venezuela. Cleveland remarked that "this was a fortunate circumstance, inasmuch as the work accomplished was thus saved from the risk of customary disfigurement at the hands of the United States Senate."[2]

The United States being concerned to bring about arbitration, rather than to establish any particular boundary-line, the ultimate decision of the Arbitral Tribunal had no importance for her. But it possessed a certain interest and a glance at the map on page 96 will show that the decision disappointed all Great Britain's claims beyond the Schomburgk line, and gave Venezuela a little of what Great Britain had begun by saying must not be arbitrated. On the other hand, it denied Venezuela's pretensions to a much larger area.

Abroad, the Venezuela messages stirred the Latin-American republics profoundly, and challenged the anxious attention of all the European powers who had territory in the Western Hemisphere or who sustained a creditor relation to the Latin-American states. None of them intervened in the discussion, at any rate so far as we know; but,

[1] For the full text see Appendix IV.

[2] *Presidential Problems*, 277. Great Britain and Venezuela signed in Washington on February 2, 1897.

standing by observantly, they saw England abandon an advantageous policy in South America in deference to the claim of the United States. If it was a fact — and nothing has come out that contradicts the appearances — that England did not remind other European powers of their community of interest with her, or invite them to support her against the United States, then her conduct certainly meant something else than that she did not care about the bit of territory in dispute. It meant that she was not averse to the enforcement of a substantial limitation upon European liberty of action in South America; and, also, it signalized her sense of a sort of solidarity between the English-speaking nations. For a difference which one arranges by making concessions and without consulting the neighbors who have something similar at stake is a difference settled in token of friendship. When Salisbury and other leaders of both parties in England said the matter was too small to quarrel over, they were not to be taken literally or to be interpreted as "condescending." What they wanted all the world to understand was that there would be no estrangement and no breach.[1] Their concessions were a portent. That they were so understood at the time may be illustrated by a quotation from the "Nineteenth Century" (London) for December, 1896, where an article summarized the Continental comments and noted in conclusion, "The best informed French and German journal-

[1] As this book goes to press, the *Life of Sir William Harcourt*, by A. G. Gardiner, has appeared. Pages 396–404 of vol. II include a number of Harcourt's letters about the Venezuelan affair and show how energetically he exerted his influence to bring about the adjustment that was accepted, and how genuinely an adjustment was desired by both political parties.

ists, . . . though they acknowledge the equity and prudence of the compromise [to arbitrate] which has been reached, think it necessary to point out that it involves possibilities of considerable gravity, not merely to England and the United States, but also to the civilized world in general." The author also cited, as typical, the Cologne "Gazette," which "insists that a precedent has been established by the joint action of the two Anglo-Saxon powers, the effects of which are likely to be felt long after the British Guiana boundary question has been forgotten." [1] When Germany and England went to war in 1914 the American Ambassador in London wrote to Colonel House, "If Germany should win, our Monroe Doctrine would at once be shot in two." [2]

Once an American consul, who had acted vigorously without waiting to receive special instructions that were on their way to him, reported himself as assuming "that they were something pretty perpendicular containing a genuine American ring." Olney's dispatches must be admitted to have been of the 'perpendicular' variety. The arrogance of some of his phrases, which have been quoted already, stirred up an angry clamor in Canada and piqued the national susceptibilities of our Central and South American neighbors. Although Canada soon consented to forget them, the Latin-American peoples showed, as they have on other occasions, that they attend more to words and remember mere expressions longer than do the Anglo-

[1] Passages quoted, with others, in Foster, *A Century of American Diplomacy*, 474.

[2] *Life and Letters of W. H. Page*, I, 334.

"JUST OFF!"

"PRETTY DICK!"

TWO ENGLISH CARTOONS

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Saxons. But what was done, as distinguished from what had been said during the doing, was the important matter and was something which they welcomed. Their weakness could not but cause them to rejoice when the United States gave proof of her willingness to come to their support — especially as she coupled with her action a disclaimer of any intention to interfere in their internal affairs.

The Venezuelan dispatch and message have been both panegyrized and severely condemned. Mr. A. C. Coolidge has said that the popularity of the Monroe Doctrine is partly due to the color of audacity which it wears. Olney and Cleveland appealed straight to this taste in the American public. The great majority of their countrymen, regardless of party, applauded them to the echo, and the applause still reverberates. It has even been said that they sowed the seeds of the "imperialism" which developed during the next ten years. It is more temperate, and wholly true, to say with Mr. Gaillard Hunt that the Venezuelan Episode had a profound influence upon our acceptance of international responsibility and international duty.

Only three criticisms seem to the present writer to have real force, and if they are stated along with certain other considerations the reader may be allowed to form his own conclusions.

Mr. Rhodes has said that a boundary dispute between two other countries should not have been allowed to involve us in the risk of war. This emphasizes the uncertainties of the Venezuelan boundary rather than the point Olney wished to establish, namely, that a European

power must not force an overbearing policy anywhere in America.[1]

The best single statement that can be set off against this criticism is a note which Olney supplied to Mr. R. H. Dana (3rd) for inclusion in his recent edition of the Elder Dana's paper on the Monroe Doctrine.[2] Incidentally this note is interesting as being the nearest thing to an Explanation that Olney appears to have vouchsafed to anybody.

President Cleveland feared [that] if this matter were allowed to run on till open rupture came between England and Venezuela, we should be involved in the war. Diplomatic relations between England and Venezuela had already been broken off, and armed conflicts, followed by threats of war measures, had already occurred in the disputed territory. Should war have begun, in which it must appear that there was good reason to believe England's claim to territory had been increased so that her action would seem to be the forcible extension of territory, the American people would become aroused and force our Government to side with Venezuela. Then, Great Britain could not retreat with honor. Inevitably it would then be too late to get arbitration by mere suggestion of force, while, on the other hand, Cleveland, being a man of peace above all things, foresaw the great advantage of making this suggestion in the diplomatic stages of the controversy.

[1] "The line determined by the arbitral board differed very little from the Schomburgk line, which, at times during the dispute, England was willing to accept as the boundary and which at any time could probably have been secured by sage and fair diplomacy. Reduced to concrete terms, it was not wise to risk a war with England for a difference so small, especially when 'to cavil on the ninth part of a hair' was not for our own but for the behoof of a South American country." (Rhodes, VIII, 453.)

[2] *See Speeches in Stirring Times*, R. H. Dana (Houghton Mifflin Company, 1910), 336-37.

The Jameson Raid illustrated the possibilities referred to.

Another criticism is that of a psychologist. William James, writing privately during the moment of tension (January 1, 1896), and referring especially to the outburst of jingoism and anglophobia which was then at its height, said:

> It has been a most instructive thing for the dispassionate student of history to see how near the surface in all of us the old fighting instinct lies, and how slight an appeal will wake it up. Once *really* waked, there is no retreat. So the whole wisdom of governors should be to avoid the direct appeals. This your European governments know; but we in our bottomless innocence and ignorance over here know nothing, and Cleveland in my opinion, by his explicit allusion to war, has committed the biggest political crime I have ever seen here. . . . Every one goes about now saying war is not to be. But with these volcanic forces who can tell? . . . Remember by what words the country was roused: "Supine submission to wrong and injustice and the consequent loss of national self-respect and honor." If any country's ruler had expressed himself with equal moral ponderosity wouldn't the population have gone twice as fighting-mad as ours? Of course it would.[1]

Clearly, Cleveland and Olney were not imaginative about what the French call "crowd-psychology," nor did they look upon popular emotion as a plastic matrix that no man may stir without thereby shaping prejudices and opinions which harden and endure. But it is fair to reiterate in the same breath that neither foresaw the explosion of jingoism which their action produced.

The third and commonest criticism has dwelt upon the

[1] *Letters of William James*, II, 31, 32.

rough language which Olney and Cleveland employed. On this obvious point Mr. Root remarked to the writer, "What one says in a court is of no consequence except as it impresses the mind of the judge. One need be concerned with no other mind; asides are not heeded; the audience doesn't matter. But a state paper is different; all the world studies it. Its effects on others than the Power to whom it is addressed are difficult to foresee; and often they are not considered." This, it will be noticed, seems to concede that the means used were fittingly chosen with a view to making a particular impression upon the Power to whom the messages were addressed. Olney himself seems to have adverted to the point once. In a letter to Secretary Knox, about an address on the Monroe Doctrine which Knox had just delivered before the New York State Bar Association, he said:

> The point particularly interesting and gratifying to me, of course, is your just and comprehending view of the true ground upon which the second Cleveland Administration felt bound to interfere in the boundary dispute between Great Britain and Venezuela. The words you quote from the dispatch to Lord Salisbury have been severely criticized on both sides of the Atlantic. They were undoubtedly of the bumptious order — as are some other parts of the same communication — and were felt to be so at the time. The excuse for them was that in English eyes the United States was then so completely a negligible quantity that it was believed only words the equivalent of blows would be really effective.[1]

The words which Knox had quoted were those of the

[1] Olney to Knox, January 29, 1912. Olney Coll.

Annex 25

Dr. Marcos Falcón Briceño, "Orígenes de la Actual Reclamación de la Guyana Esequiba"

Boletín de la Academia de Ciencias Políticas y Sociales, No. 91, 1981

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ORIGINS OF THE CURRENT CLAIM TO ESSEQUIBO GUYANA

Mr. Marcos Falcón Briceño

… As the presiding officer of this event and in my capacity as President of the Academy of Political and Social Sciences, I hereby declare this event open.

This series of lectures has been organised by the National Academy of History, whose director is here presiding over this event alongside us, Mr. Blas Bruni Celli, and by the Academy of Political and Social Sciences. Today, the floor is given to the former Minister of Foreign Affairs of the Republic, Mr. Marcos Falcón Briceño, who has had a long and distinguished career in foreign service and public life in Venezuela.

Mr. Falcón Briceño began his foreign service career as Consul in Baltimore. He later served as Commercial Attaché at the Embassy in Berlin, and subsequently as Secretary, Counselor Minister, and Ambassador in Washington. After the restoration of democratic rule, he took on the role of Minister of Foreign Affairs with great skill and insight, and today's presentation will address his initiatives and actions at the head of the Ministry of Foreign Affairs, particularly regarding his activities and efforts concerning the claim to the Guayana Esequiba.

It is a great honour for the Academy to host a man of such calibre, merits, and achievements as Mr. Marcos Falcón Briceño. We would also like to extend our gratitude to the Director of the Venezuelan Academy of Language, Mr. René de Sola, who is here with us today. The same gratitude goes to the Attorney General of the Republic, Mr. Carlos Leañez, and to the academics from the Academy of History, the Academy of Political Sciences, the Academy of Medicine, and the Academy of Physical, Mathematical, and Natural Sciences who are also present [...]

[…] An arbitral award by the King of Spain, issued in 1906, favored Honduras, which held possession of the territory like Guyana. [Similarly] Guyana has an award in its favour and possession of the territory. How can we overturn it? It doesn't seem like an easy task… We must seek other paths for justice to be served for Venezuela.

At that time, there was no obligation to provide statement of reasons for an arbitral decision unless it had been explicitly agreed upon in the arbitral treaty—in other words, in the document establishing the bases that the judges were to follow. That was not done in this case. To the best of my recollection, I have read in the Foreign Ministry's files the report by Mr. Rafael Seijas, an eminent Venezuelan jurist, in which he made this observation. I mention this detail because there has been discussion about the lack of reasoning behind the Award.

Regarding the Geneva Agreement, here's what happened: As a procedural agreement that does not delve into the substance of the issue, it does not address the territorial dispute. Nowhere in the document is such a matter discussed. Instead, it establishes a system of procedures to attempt to reach an agreement. If no agreement is reached, that much is clear, the following would occur: During the discussions in Geneva, Venezuela's delegation proposed referring the matter to arbitration or to the International Court of Justice. The British delegation declined, but over the course of the discussions, the two sides agreed to resolve the matter by the peaceful means outlined in Article 33 of the Charter of the United Nations. In that article, the peaceful means for resolving international issues are established, including negotiation, investigation, mediation, conciliation, arbitration, and judicial settlement (the Court), as well as recourse to regional organisations or other peaceful methods of their choosing. But those, as specified, are methods listed in Article 33 of the Charter of the United Nations, meaning they are agreements of mutual consent; the pact must be discussed. For example, the jurisdiction of the International Court of Justice is not mandatory but voluntary (it is mandatory for some countries, but for Venezuela it is not). Venezuela has always opposed the obligatory nature of bringing an issue to the International Court of Justice […]

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[…] If mandatory jurisdiction existed in the International Court of Justice, we could of course not appear there, purely and simply because it would not be convenient for us in that way. The case would have to proceed on an *ex aequo et bono* basis—that is, by addressing the bottom line of the matter. This is because there is already jurisprudence in the Court that would oppose a situation of this kind. But as I said before, we should not lose hope, I would say, and keep our position alive to someday reach a resolution to the dispute, at least by means of this diplomatic instrument.

Therefore, as this is about achieving the rectification of an injustice—demonstrated beyond doubt with documents and irrefutable maps, and with the accounts and statements of those who participated in that fraudulent Award—Venezuela will continue to press on until we find a solution that returns the dispossessed territory to us.

Ladies and gentlemen, as I have taken up about an hour of your time, I wish to conclude by thanking you for the attention you have given me in this presentation, which I have endeavoured to make as simple and clear as possible.

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N° 3405

ORIGENES DE LA ACTUAL RECLAMACION DE LA GUAYANA ESEQUIBA

Dr. Marcos Falcón Briceño

...Quién preside este acto y en mi condición de Presidente de la Academia de Ciencias Políticas y Sociales, declaro abierto el acto.

Este ciclo de conferencias ha sido organizado por la Academia Nacional de la Historia cuyo director está aquí presidiendo el acto junto con nosotros, el Dr. Blas Bruni Celli, y por la Academia de Ciencias Políticas y Sociales. Así es que hoy le corresponde el turno al ex-Canciller de la República. Dr. Marcos Falcón Briceño, quien tiene una larga y meritoria trayectoria en el servicio exterior y en la vida pública venezolana.

El Dr. Falcón Briceño se inició en el servicio exterior como Cónsul en Baltimore, posteriormente estuvo de Agregado Comercial en la Embajada en Berlín y posteriormente fue Secretario, Ministro Consejero y Embajador en Washington, y vino después de restablecido el régimen democrático; desempeñó la Cancillería con gran brillo y acierto y es precisamente parte de las ejecutorias del Dr. Falcón Briceño al frente de la Cancillería lo que viene hoy a relatarse en esta conferencia en lo que concierne a sus actividades y sobre sus gestiones en lo de la reclamación de la Guayana Esequiba.

Es para la Academia un alto honor tener un hombre de la talla, de los méritos y de las ejecutorias del Dr. Marcos Falcón Briceño. Igualmente queremos darle las gracias al director de la Academia Venezolana de la Lengua Dr. René de Sola, quién está aquí con nosotros en este acto. Lo mismo al Procurador General de la República, Dr. Carlos Leañez y a los académicos de la Academia de la Historia y de la Academia de Ciencias Políticas, de la Academia de Medicina y de la Academia de Ciencias Físicas y Matemáticas y Naturales que está aquí pre-

cierto bastante parecido al caso nuestro. Una sentencia arbitral del Rey de España, dictada en 1906, favoreció a Honduras, quien tenía la posesión del territorio como Guyana. Guyana tiene un Laudo a su favor y la posesión del territorio. ¿Cómo vamos a invalidarla?. No parece tarea fácil... Debemos buscar otros caminos, para que se repare la injusticia contra Venezuela.

En esa época no había la obligatoriedad de la motivación de la sentencia, salvo que se la hubiera pactado en el tratado arbitral, es decir, en el documento en el cual se establecían las bases por las cuales se iban a seguir los jueces. Eso no se hizo, de manera que yo recuerdo haber leído en los papeles de la Cancillería el Informe del Dr. Rafael Seijas, eminente jurista venezolano, en el cual hace esta observación. Menciono este particular porque se ha hablado de la falta de motivación del Laudo.

En cuanto al Acuerdo de Ginebra, lo que pasa es lo siguiente: Como es un acuerdo de procedimiento que no va al fondo del asunto, no se habla de disputa territorial, no es un documento de esta índole, se establecen sistemas de proceder para tratar de llegar a un arreglo o no llegar a nada, eso está claro; ahora, pasó esto: en las discusiones en Ginebra, la delegación de Venezuela propuso llevar el asunto al arbitraje o a la Corte Internacional de Justicia. Los ingleses dijeron que no, pero en el curso de la conversación convinieron en resolver el asunto por los medios pacíficos que señala la Carta de las Naciones Unidas en su artículo 33. Ahí están los medios de solución pacífica de los problemas internacionales, desde la negociación, la investigación, la mediación, la conciliación, el arbitraje y el arreglo judicial (la Corte) hasta el recurso a organismos o acuerdos regionales u otros medios pacíficos de su elección. Pero esos, dichos así, los medios que están en el artículo 33 de la Corte de la Carta de las Naciones Unidas, significa, que son pactos de contraendo, hay que discutir el pacto, por ejemplo, como la jurisdicción de la Corte Internacional de Justicia no es obligatoria sino voluntaria. (es obligatoria para algunos países, para Venezuela no) Venezuela se ha opuesto siempre a la obligatoriedad de llevar un asunto a la Corte Internacional de Justicia, es la tesis que he-

esfuerzo interesante, sujeto única y exclusivamente a la buena fé de Guyana. Si existiera, por supuesto la jurisdicción obligatoria de la Corte Internacional de Justicia, nosostros no podríamos presentarnos allí pura y simplemente, porque no nos convendría en esa forma, tendría que ser sobre la base exequo et bono, es decir yendo al fondo del asunto. Porque ya hay jurisprudencia en la Corte que se opondría a una circunstancia de este tipo, pero como digo antes, no hay que perder la esperanza diría yo, y mantener viva nuestra posición para llegar algún día a la solución del diferendo, al menos por medio de ese instrumento diplomático.

Por eso, como se trata de lograr la reparación de una injusticia, demostrada hasta la saciedad con documentos y mapas irreprochables, y con el relato e indicaciones de quienes participaron en aquel Laudo amañado, Venezuela seguirá adelante hasta encontrar la solución que nos devuelva el territorio del despojo.

Señores, como les he quitado a ustedes más o menos una hora, quiero terminar dándoles las gracias por la atención que han tenido para conmigo en esta exposición qué he procurado hacer en la forma mas sencilla y clara.

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Annex 26

Letter from Mr. Harrison to Mr. Miller (7 October 1899)

Benjamin Harrison Papers, Series 1, *General Correspondence and Related Material, 1787-1912; 1899, Apr. 13-1901, Feb. 27*, Library of Congress, available at https://www.loc.gov/resource/mss25064.mss25064-042_0018_1222/?sp=163

Hotel Der Kaiserhof, Berlin,
Oct. 7, 1899.

Dear Miller:

You have seen the award in the boundary case. Judged from the standpoint of British claims before the U. S. intervened it is a very good result - but judged from the standpoint of strict right, it is far from good. The case turned upon the question whether Spain had acquired by discovery and her early settlements a prior title to the disputed territory and tho both Great Britain and the Dutch, in the Manhattan controversy, were at the very time ascribing the validity of the Discovery title and the effectiveness of a few small settlements to perfect the title to vast unoccupied tracts - it was hard to make a tribunal apply the old rule. The British Judges were as always aggressive advocates - rather than judges. Law is nothing to a British judge it seems when it is a matter of extending British dominion. However, we got all of the country that G. Britain would allow to be open to arbitration, until Mr. Olney brought Lord Salisburg to another mind, and <u>besides</u> the mouth of the Orinoco and a good slice in the interior. Perhaps you will recall that the attempt to take the mouth of the Orinoco was the matter that especially aroused the interest of the U. S. It is a satisfaction to know that the British flag must come down from <u>three</u> (3) stations. The revolution in venezuela was a hard blow upon us - as to turn peaceful and prosperous British settlements over to a Gov't. always in revolution was only possible to a strictly judicial tribunal. As to the American Judges it was "lest a worse thing befall you". However, the British onlookers being the judges, the American lawyers lost nothing in the debate.

We turned away from Paris - stopped over two nights at Cologne to see the great Cathedral and arrived here last evg. Mr. White and his staff, the Consul General and a number of other Americans met us at the station and we are

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B. H. to Miller, p. 2, 10/9/99.

nicely fixed at the Hotel. I am now waiting for Mr. White and use the time to write this note. We go from here to the Hague, thence to Brussels, thence, from Ostend to Dover and London. And better than all we hope to sail for home October 28th by the St. Paul. We shall have a week in London and as I want to escape toasting G. B. and her Transvaal policy that will be long enough. The weather here is damp and chilly. We are all well. Remember us to all the family.

Sincerely your Friend,

Benj. Harrison

W. H. H. Miller.

[Samuel D. Miller MSS.]

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Annex 27

British Guiana Boundary, Arbitration with the United States of Venezuela, The Case on Behalf of the Government of Her Britannic Majesty,
London, 1898, Volume I (extracts)

BRITISH GUIANA BOUNDARY.

ARBITRATION WITH THE UNITED STATES OF VENEZUELA.

THE CASE

ON BEHALF OF

THE GOVERNMENT OF HER BRITANNIC MAJESTY.

LONDON:
PRINTED AT THE FOREIGN OFFICE,
BY HARRISON AND SONS, PRINTERS IN ORDINARY TO HER MAJESTY.

1898.

that 100 men could not come to the fortress without producing a famine. The interior was unknown except so far as the Capuchins had explored it, and that was only for a short distance. The whole province contained no more Spanish Settlements than Santo Thomé and sixteen Missions.

Removal of Santo Thomé.

III, p. 122. (1765.) In 1764 Santo Thomé was removed to Angostura (the present Ciudad Bolivar) about 100 miles above the mouth of the Caroni, the forts at the old site thenceforward known as Vieja Guayana being retained. As part of this scheme

IV, p. 91. (1771.) the missionaries were ordered to remove the Mission of Suay to Angostura, and also to remove

IV, p. 92. (1771.) the four villages of Unata, Uyacoa, Tiparua, and Piacoa, by which they had extended the Spanish occupation some few miles below Vieja Guayana.

V, p. 60. (1788.) The object in view was that an invader should find no supplies upon the frontier, and this policy

V, p. 174. (1802.) was still being maintained when the Orinoco was visited by a British officer in 1802.

IV, p. 112. (1773.) A Report by Don Manuel Centurion, Commandant of Guayana, dated the 11th November, 1773, describes the nature of the fortifications which in that year were remaining in the neighbourhood of the former capital. They consisted of a fort called the Castle of Santo Francis of Assisi with ten guns, situated on a rock on the south of the river, and a log fort on the hill of Padrastro within gun-shot of the

IV, p. 112. (1773.) Castle on the west, with nine guns. There had also been commenced a tower on the opposite bank, but it had collapsed in the course of construction. There was a garrison in each fort of about thirty-three men of all ranks, and an armed launch was stationed at the foot of the forts.

IV, p. 113. (1773.) Centurion considered that these defences would be better situated at Faxardo, off the mouth of the Caroni, there being no settlement existing below the Caroni near the Orinoco. It is stated in the

IV, p. 111. (1773.) same Report that the French and Dutch had occupied the whole sea-coast of Guiana.

Capture of Essequibo by the British.

V, p. 76. (1790.) In 1781 the British captured the Dutch Colony, and during the period of their occupation surveyed the captured Colony along the coast to a point beyond the Barima, and inside the Great Mouth of the Orinoco. A map was drafted by the officer in charge of this

Atlas, p. 30. expedition and published in London in 1783. Upon this map, there is a note which makes the

There is not a single piece of evidence that, beyond the actual limits of those settlements and Missions, any possession of outlying territory was taken, or that there was any attempt at developing the resources of the country by the opening of mines, the felling of timber, or the prosecution of fishing or hunting. Such enterprises did not fall within the scheme of the Missions; and the relations of the missionaries with the Indians outside their Missions would in any case have rendered them impossible.

British conquest.

In April 1796 the Dutch Colonies of Essequibo, Demerara, and Berbice, capitulated to the British forces.

Extent of British occupation.

Early in 1797 the Spaniards received information that the English had apportioned all the lands which stretch from Essequibo to Barima, and had planted stakes from point to point with the names of the grantees on notices attached. V pp. 164, 165. (1797.)

In reporting this to the Court of Spain, the Governor of Carácas stated that from an examination of the exact map drawn up by Marmion, Colonel of Engineers, when Governor of Guayana, he concluded that the territory which extended from the Essequibo to Point Barima—from the south-west to north-east—comprised 47 leagues of coasts, with many rivers and creeks which flow into the sea, while if the English had drawn their line from north to south to the fork of the Rivers Uruan and Yuruari, it would embrace about 40 leagues, and from east to west 46 leagues, forming the figure of a trapezoid. V. pp. 165, 166. (1797.)

Later in the same year an attack was made by the Spaniards upon the British Post at the Moruka River, in which the Spaniards were completely repulsed by the British forces with the assistance of the Colonists. No further attempt was made by the Spanish forces upon any part of the British Colony. V, pp. 168, 169. (1797.)

In 1801, the British Commandant was ordered to report on the extent of the Colony. His report was illustrated by a chart which shows the boundary commencing at Barima and includes the territories claimed by the Dutch in their Remonstrances. V, p. 172. (1801.) Atlas, p. 37.

On the 3rd December, 1802, in pursuance of the Peace of Amiens, the Colonies were restored to the Dutch, whose sovereignty was proclaimed on the 20th December, 1802.

In the following year war broke out again. The Colonies of Essequibo and Demerary were retaken by the British on the 19th September, and that

VI, p. 98. (1840.) In 1840 a lazaretto was established on a tributary of that river, and when small-pox broke out in 1841 public vaccination was organized
VI, p. 114. (1841.) under two doctors.

Upon the Essequibo, the Massaruni, and the Cuyuni, plantation was not extended at this period, the soil above the estuary not being sufficiently fertile. But in 1831 the country
VI, p. 41. (1831.) was described as settled to the falls of the three branches of the Essequibo, namely, the Essequibo, Massaruni, and Cuyuni.

VI, p. 46. (1831.) In 1831 a Mission was established at Bartica Point, between the Essequibo and the Massaruni,
VI, p. 65. (1839.) and in 1839 another was established at Urua, in the Rupununi. In 1835 and 1837 Mr. (afterwards Sir Robert) Schomburgk thoroughly
VII, p. 3. (1839.) explored the Essequibo, discovering its sources in 1837. In 1841 a penal settlement was established in the mouth of the Massaruni, on
VI, p. 109–11 (1841.) the site which the Post of Massaruni had occupied earlier in the century.

VI, p. 122. (1842.) In 1842 British troops occupied Pirara on the Brazilian frontier.

Superintendents of Rivers and Creeks.

In the year 1838 the office of Superintendent of Rivers and Creeks was substituted for that of Protector of Indians. The journals of
VI, p. 65. (1839.) Mr. Crichton, the first Superintendent, and of
et passim. Mr. King and Mr. McClintock, who succeeded him, show that these officers made periodical circuits throughout their districts. In the course of these circuits civil and criminal juris-
VI, p. 92. (1840.) diction was exercised as far as the western
VI, p. 112. (1841.) tributaries of the Barima. This will be the subject of special mention in the chapter upon political control. The journals and reports of the Superintendents of Rivers and Creeks and of the Postholder at Moruka also show that planting, boat-building, and wood-cutting were actively
VI, p. 132. (1844.) prosecuted in the Pomeroon district, giving em-
ployment to a large number of Indians from all
VI, p. 84. (1839.) the rivers as far as the Amakuru. Mention is
VI, p. 104. (1841.) also made of residents and wood-cutters in the Essequibo, Massaruni, and Cuyuni.

Schomburgk Surveys.

In November, 1840, Mr. Schomburgk, whose exploration of the Essequibo in 1835 and 1837 has already been referred to, was appointed by
VII, p. 71. (1840.) the British Government to survey provisionally the boundaries of British Guiana, and in con-

At the time of the signature of the Treaty of Arbitration the same *status quo* was tacitly observed.

The following facts are established by the evidence summarized in the foregoing chapter :—

1. From the end of the 16th century the Dutch constantly, and of right, traded to the coast of Guiana between the Orinoco and the Amazon.

2. During the whole of the 17th and 18th centuries the Dutch had control of the coast from the Corentin to the Orinoco.

3. During the same period the Dutch had the control of all the rivers flowing into the Atlantic from the Corentin to the Amakuru.

4. At least as early as 1623 the Dutch began to establish settlements in the territory between the Corentin and the Orinoco, and from that time down to the acquisition of British Guiana by Great Britain they continually extended their settlements in various parts of that district.

5. At different times during the same period the Dutch occupied various points in the interior on the Rivers Essequibo, Massaruni, Cuyuni, Moruka, Pomeroon, Waini, Barima, and Amakuru and their tributary streams.

6. The Spaniards recognized the Amakuru or the Barima as being the effective frontier of their possessions.

7. The Spanish authorities recognized the junctions of the Rivers Uruan and Curumo with the Cuyuni as being on the frontiers of their possessions, and proposed to establish a fort there in order to protect the Missions from the Dutch.

8. After they acquired British Guiana the British further developed the trade and resources of the country.

9. Prior to 1596 the Spaniards had established no settlements in Guiana.

10. From 1596 up to 1723 the only settlement of the Spaniards was Santo Thomé de Guayana, on the south bank of the Orinoco, originally founded in the year 1596, at the site shown on the Map No. 1, and subsequently twice removed to different sites on the river, the last being at the site of the present town of Ciudad Bolivar.

11. Between 1723 and 1796 the only additional points occupied by Spaniards or Spanish subjects were the Capuchin Mission stations south of

Annex 28

Letter from Mr. Olney to Mr. Cleveland (6 March 1901)

Richard Olney's Papers, Library of Congress, Reel 59

Boston, 6 March, 1901.

My dear Mr. Cleveland,

Thank you very much for your note of the 3d. inst.. It is most refreshing to hear from you once more and to feel that, so far as the past at least is concerned, there is much about which we cannot possibly disagree.

I have already made a moderate contribution in aid of the proposed Wilson Memorial. When St. George Tucker was here at the time of the Marshall dinner, he asked both Mr. Hamlin and myself to aid in the plan. I am as poor a beggar as yourself, and after talking with Hamlin, we concluded the best thing to do would be to print the Memorial in the Boston newspapers, have it endorsed by favorable editorials, and have ourselves announced as prepared to receive any contributions. One indirect result has been that Mr. Henry L. Higginson has sent Mr. Welch $2,000 -- desiring his contribution to be credited to Harvard College. Neither Mr. Hamlin nor myself thus far has received any donations of any considerable size.

I note your inquiry about the Venezuelan boundary arbitration affair. So much of the negotiation took place in the course of personal interviews between Sir Julian and myself, that I cannot always easily recall the order of events. In general, the matter lies in my mind in this way: The term "settlements" was first used in Lord Salisbury's letter of Nov. 26 1895, towards the close of which he spoke of the gradual spread over the country of "British settlements" and intimated

that under no circumstances would Great Britain submit to arbitration any claim which would affect them. After your special message to Congress, the first attempts at negotiation were between Mr. Chamberlain and Lord Playfair, on the one side, and Mr. Bayard on the other. One suggestion of Mr. Bayard's, you will remember, was that the United States should call a general conference of the great European powers over the Monroe Doctrine. It did not take us long to sit on that proposition. Pretty soon I found Mr. Chamberlain writing Mr. Bayard to the effect that he, Bayard -- presumably acting for me -- had committed the United States to the suggestion that there could be an arbitration of the boundary which should be exclusive of what was called "British settlements". That led to a note to Mr. Bayard stating quite emphatically that the United States would not consent to anything of the sort and instructing him to bring the communication to the notice of Mr. Chamberlain Mr. Chamberlain thereupon withdrew from the whole affair, declaring, as I recollect with some positiveness, that it was idle to expect any results from negotiations through those channels. About the same time we concluded that negotiations had better be transferred to Washington --- to which suggestion Lord Salisbury acceded with cheerfulness -- saying to Sir Julian, as Sir Julian confided to me confidentially, that now that the amateur diplomats had got through, perhaps serious negotiations could be set on foot. During the Playfair-Chamberlain-Bayard negotiations I had more than once, I think, asked Mr. Bayard to call for a definition of "British settlements", and, as you will

see in one of Lord Salisbury's letters, he promises to furnish such a definition. It was in fact never given. After the transfer of negotiations to Washington, they went on continuously and almost daily between Sir Julian and myself, but almost always at personal interviews. The insuperable obstacle to progress, however, was the attitude of Great Britain as to "British settlements". Early in March, 1896, Lord Salisbury made a little diversion from the particular matter in dispute by entering upon the subject of a general arbitration treaty between Great Britain and the United States. I followed the lead and took up the subject. But after several letters had passed on this subject, I took occasion to say, as you will see by my letter of June 12 to Sir Julian, that the United States would not include the Venezuelan boundary dispute within the scope of such a general arbitration treaty as was then under discussion. I had been all along taking the same line with Sir Julian, intimating that the Venezuelan boundary question must be settled by an arbitration which would be final and that the United States had taken its position on that particular subject, and would not depart from it. The result was that under date of May 22, 1896, Lord Salisbury wrote Sir Julian for the first time -- perhaps this answers your special inquiry -- making a definite suggestion as to the substance and form of a treaty for the adjustment of the Venezuelan boundary dispute. Sir Julian sent Lord Salisbury's letter to me in a note dated June 3, 1896. Some other correspondence followed -- notably my letter of July 13, in which I asked if Great Britain would submit to unrestricted

arbitration the whole of the disputed territory, provided it were a rule of the arbitration that territory which had been in the exclusive, notorious, and actual use and occupation of either party for sixty years should be held to belong to such party. Later on that suggestion was accepted by Lord Salisbury as offering a solution of what had up to that time been an insuperable objection to the proposed arbitration. The Summer vacation intervened and when Sir Julian and myself got back to Washington in the Fall we went at the matter again in the most diligent and vigorous fashion -- with the result announced, as you will recollect, by Lord Salisbury in his Guild-Hall speech early in November, in which he compared the American suggestion to Columbus' mode of showing how to make an egg stand on end.

The above is more of a dose than you have a right to expect from the simple inquiry contained in your note. I am going to let it stand, however, because it is possible it may recall or suggest something you would like to ask about or to which you would like to refer in your proposed addresses.

Further, the above is dictated from general recollection merely. If any special date or fact is called in question, I should want to verify any statement by reference to documents or papers before guarantying its exact accuracy.

I see that Mr. Mallet-Prevost has been talking with you and giving you his account of the way in which the Venezuelan boundary award was made. He told me, I suppose, practically the same tale. I found, however, in talking with Chief Justice Fuller last Fall that he did not fully concur in Mr. Mallet-

Prevost's views.

I have read the number of the Atlantic you refer to. I quite agree with you about [illegible]'s article on McKinley as a President. But what could you expect of a newspaper correspondent who is by profession a toady to the powers that be; of a Salvation Army man to whom what Mark Twain calls "pious hypocrisies" are as natural and congenial as they are to McKinley himself; of the present holder of an important office by the favor of McKinley; and of an unquestionable aspirant doubtless to yet more important offices by the same favor ?

Notwithstanding your very discomforting suggestion that you may not be at Gray Gables next Summer, I hope to see you there, and, begging to be remembered to Mrs. Cleveland and the children,

I am

Very sincerely yours,

Richard Olney.

Hon. Grover Cleveland

Princeton, N. J.

Annex 29

Letter from the Governor, Sir A. Moloney, to Mr. Chamberlain and enclosures
(24 February 1901)

The Venezuelan Arbitration before The Hague Tribunal, 1903,
Washington, 1905, pp. 457-464

58TH CONGRESS, 3d Session | SENATE | DOCUMENT No. 119

Hague. Permanent Court arbitr.

THE

VENEZUELAN ARBITRATION

BEFORE

THE HAGUE TRIBUNAL

1903

PROCEEDINGS OF THE TRIBUNAL UNDER THE PROTOCOLS BETWEEN VENEZUELA AND GREAT BRITAIN, GERMANY, ITALY, UNITED STATES, BELGIUM, FRANCE, MEXICO, THE NETHERLANDS, SPAIN, SWEDEN AND NORWAY, SIGNED AT WASHINGTON, MAY 7, 1903

WASHINGTON
GOVERNMENT PRINTING OFFICE
1905

CORRESPONDENCE RESPECTING THE AFFAIRS OF VENEZUELA.

Colonial Office to Foreign Office—(Received March 18).

No. 1.] DOWNING STREET, *March 16, 1901.*

SIR: I am directed by Mr. Secretary Chamberlain to transmit to you, for the consideration of the Marquess of Lansdowne, the accompanying copy of a dispatch from the governor of Trinidad, reporting the seizure of persons and property of certain individuals, some of whom are British subjects, on the island of Patos, being part of the colony of Trinidad, by soldiers from the Venezuelan gunboat *Augusto*.

2. His lordship will, no doubt, cause serious representations to be at once addressed to the Venezuelan Government on the subject of this grave outrage.

I am, etc., C. P. LUCAS.

[Inclosure 1—Extract.]

Governor Sir A. Moloney to Mr. Chamberlain.

GOVERNMENT HOUSE, *February 24, 1901.*

I have the honor to report that on the 22d ultimo the Venezuelan gunboat *Augusto*, under the command of General Velutini, landed in two boats a force of some 20 Venezuelan soldiers, under the command of Col. Enrico Torres, on the island of Patos, or Goose Island, in the Grand Bocas, such island being British territory and part of the colony of Trinidad and Tobago. This armed force seized 4 boats belonging to peaceful traders, the crews of which had taken refuge from rough weather on the island, confiscated the cargoes and valuables found in the boats, and carried away some ten or eleven persons whom they captured, leaving on the island, without food or water or means of escape, some 12 other persons who had escaped into the scrub.

Of the boats seized, one was the property of a British subject named Edward Brown, a resident of Trinidad. The other three were Venezuelan boats, but one had three British subjects as passengers.

The names of the British subjects who were carried away by the *Augusto* were: Mrs. Jones, Dolphus, Domingue, Montout, Graham, Maxwell, Manto(?), and George. Of these, Mrs. Jones was landed at Yacua and returned to Trinidad, George was landed at Mapire, and John (Manto or Graham?) at Guiria.

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I inclose statements made on oath before the harbormaster on the 25th and 26th January by 5 of the men. Also a joint report by the attorney-general (the Hon. N. Nathan, Q. C.) and the harbormaster (Captain Saunders). Also a statement which was volunteered by the Venezuelan consul (Mr. J. Arraiz) to the colonial secretary (Sir C. C. Knollys) on the 25th January, which was the day on which this occurrence was first heard of at Port of Spain. This statement was immediately written down by the colonial secretary.

To satisfy myself on the position, I took advantage of the presence here of Vice-Admiral Sir Frederick Bedford, the commander in chief of the North American and West Indian Squadron, to whom I have shown the correspondence, and accompanied by the colonial secretary and the deputy inspector-general of police, visited in His Majesty's ship *Quail* the island of Patos, on which I landed on the 4th instant, when I found it uninhabited and with no house.

Very serious notice should be taken of this incident, as otherwise neither life nor property will be safe on those parts of Trinidad which are nearest to Venezuela.

On the 31st January I forwarded to the chargé d'affaires at Caracas (Mr. A. C. Grant Duff) copies of the inclosures to this dispatch.

FEBRUARY 27, 1901.

P. S. I add a report by the colonial secretary (Sir C. C. Knollys) of an interview which took place to-day between him and the Venezuelan consul under my instructions.

FEBRUARY 28, 1901.

P. S. I also inclose a copy of a memorandum by the attorney-general forwarding a further statement by a woman named Greigo Martines, respecting the occurrences at Patos on the 22d January.

[Inclosure 2.]

Statement of Inocente Firmín.

I, Inocente Firmín, native of Carupano, Venezuela, carpenter, make oath and say as follows:

I was a passenger on board a boat coming from Guiria to Port of Spain; there was no cargo on board, but there were three other boats in company with us having cargoes of cocoa.

On Monday the 21st January, about midnight, we reached the island of Patos and landed for the purpose of cooking our food and to wait the tide to come up to Port of Spain.

On Tuesday at 8 a. m. the Venezuelan guardacosta *Augusto* laid off Patos and hailed us, and told us to send one of the boats so that they might give us a guaranty to proceed. We did not send the boat; we told the *Augusto* that we were in foreign waters.

We waited there, and at about 8 p. m. sent two boats to the shore with men, where we were. On seeing them about 12 of us ran in the bush, and the men from the *Augusto* took 11 men and 2 women prisoners. I do not know what has become of them. The *Augusto* then went away. At about 10 o'clock on Wednesday night a boat was passing Patos, and we called out to the men in it, and they took in 4 of us and brought us to Port of Spain; the boat could not carry any more, having 4 men on board as crew.

We paid the boat $15 to bring us to town. About six or eight of the total number belong to Trinidad, about four or five of whom were taken on board the *Augusto;* one of the latter was a woman.

INOCENTE FIRMÍN.

Interpreted and explained to the within-named Inocente Firmín in Spanish, and he appeared to understand the same.

J. C. LYON, Jr.

Sworn to at the harbormaster's office in the town of Port of Spain this 25th day of January, 1901.

Before me:

JAMES B. SAUNDERS,
Harbormaster and J. P.

HARBORMASTER'S OFFICE, *January 25, 1901.*

[Inclosure 3.]

Statement of Edward Brown.

I, Edward Brown, a native of Trinidad, make oath and say:

On Monday, the 21st instant, at about 6 p. m., I left Mapire, Venezuela, to come to Trinidad in a boat, with 7 persons all told, 8 bags of cocoa, my clothes, and $38.08. At about 4 a. m. on Tuesday I arrived at Patos. About 6 a. m. a Venezuelan guardacosta passed, and seeing us they remained cruising about the whole day. Being afraid to leave the island while the guardacosta was cruising around, I hauled my boat ashore. About 7 a. m. a boat with soldiers came ashore, and they took my boat and cargo. At that time I was hiding in the bush. When they left, I returned to the shore to see if they had left anything, but another boat came, and they took what the others had left.

The soldiers did not tell me anything, as I did not give them a chance, being in hiding during the whole time they were on the island.

EDWARD (his x mark) BROWN.

Witness:

W. J. KIRCALDIE.

Interpreted and explained to the within-named Edward Brown in patois, and he appeared to understand the same.

W. J. KIRCALDIE.

Sworn to at the harbor master's office, in the town of Port of Spain, this 26th day of January, 1901.

Before me:

JAMES B. SAUNDERS,
Harbor Master and J. P.

HARBOR MASTER'S OFFICE, *January 26, 1901.*

[Inclosure 4.]

Statement of Domingue Rich.

I, Domingue Rich, a native of Trinidad, make oath and say:

On Monday, the 21st instant, at about 6 a. m., I took passage from Mapire to Trinidad in a boat captained by Edward Brown, with my clothes and $25

in cash. At about 4 a. m. on Tuesday we arrived at Patos. And about 6 a. m. we saw a Venezuelan guardacosta cruising around. About 7 p. m. a boat came ashore with about 20 soldiers. On seeing them, being afraid they would take me prisoner, I escaped inland, and they took all the boats and cargoes. About 8 p. m. they returned and took some prisoners, and again left for the steamer. I do not know how many prisoners they took.

I have lost all my money and clothes, which the Venezuelans have taken.

DOMINGUE (his x mark) RICH.

Witness to mark:
W. J. KIRCALDIE.

Interpreted and explained to the within-named Domingue Rich in patois, and he appeared to understand the same.

W. J. KIRCALDIE.

Sworn to before me at the harbor master's office, Port of Spain, this 26th day of January, 1901.

Before me:

JAMES B. SAUNDERS,
Harbor Master and J. P.

HARBOR MASTER'S OFFICE, *January 26, 1901.*

[Inclosure 5.]

Statement of Alfred Pierre.

I, Paragua, alias Alfred Pierre, a native of India, who arrived here as a child some forty years ago, and worked as a laborer at various places for eight years, when I commenced trading to Venezuela, make oath and say:

On Monday the 21st instant, I left Mapire, Venezuela, to come to Trinidad, in a boat with 4 persons and 10 bags of cocoa. I also had $5 in cash and my clothes. On Tuesday, at about 5 a. m., I disembarked at Patos, as I saw the *Augusto*, a Venezuela guardacosta, and was afraid they would take me prisoner.

Later a boat with 3 men put off from the *Augusto* and came ashore. They called upon me to surrender, but I refused to as I was in British waters. They then left for reinforcements and returned with about 20 armed soldiers. Seeing them I escaped inland, and they seized my boat, cargo, clothes, and the $5 which I had left in the boat.

ALFRED (his x mark) PIERRE.

Witness:
W. J. KIRCALDIE.

Interpreted and explained to the within-named Paragua, alias Alfred Pierre, in patois, and he appeared to understand the same.

W. J. KIRCALDIE.

Sworn to at the harbor master's office in the town of Port of Spain this 26th day of January, 1901.

Before me:

(Signed) JAMES B. SAUNDERS.
Harbor Master and J. P.

HARBOR MASTER'S OFFICE, *January 26, 1901.*

[Inclosure 6.]

Statement of Felix Acituno.

I, Felix Aceituno, a native of Guiria, Venezuela, make oath and say:

On Monday, the 21st instant, at about 6 p. m., I left Mapire in my boat for Trinidad. I had as cargo 14 bags of cocoa, also my clothes and $150 in cash. At about 4 a. m. I saw a guardacosta, and, during the whole day, she remained cruising about the island.

About 5 p. m. they sent a boat, commanded by one Henrique Torres, ashore with 3 men, and they told us to go on board with them. This we refused to do as we were on British soil, and they said if we would not go they would take our boats—which they did, and mine was the first taken.

About 6.30 p. m. they returned with two boats and about 20 armed soldiers, and they collected and took away everything they could find, even our food and water, and told us they would leave us there to die of hunger and thirst.

During the whole night and until 4 o'clock the next morning the soldiers remained on guard ashore. They then left us taking everything with them.

FELIX ACEITUNO.

Interpreted and explained to the within-named Felix Aceituno, in patois, and he appeared to understand the same.

W. J. KIRCALDIE.

Sworn to at the harbor master's office in the town of Port of Spain this 26th day of January, 1901.

JAMES B. SAUNDERS,
Harbor Master and J. P.

HARBOR MASTER'S OFFICE, *January 26, 1901.*

[Inclosure 7.]

Report of attorney-general and harbor master.

HONORABLE COLONIAL SECRETARY: We beg to report that we have this day examined separately, through interpreters, the following witnesses:

Edward Brown, Nieves Bello, Felix Aceituno, Inocente Firmín, Ángel García, Josa Rivas, Elías Sánchez, and Pedro Cortez, and one lady who spoke English, Elvelina Jones.

It appears from the evidence of all these persons (transcript of the short-hand notes of which will be forwarded in due course) that on the 21st instant four boats, three Venezuelan an one belonging to a British subject named E. Brown, were at Patos waiting for the tide, on their way to Port of Spain, laden with cocoa. There were several passengers on board. There is no reason to suppose that any one of them was connected with the revolution, or had escaped as a belligerent from hostilities now being carried on. The boats were of the class which carry on the usual traffic between Port of Spain and the neighboring ports of the Republic, and may or may not be in the habit on their outward voyage of attempting to smuggle goods into Venezuela; but on this occasion they appeared to have been simply carrying cargo and passengers in the ordinary way to Port of Spain, and to have been waiting at Patos for the tide to bring them up. Something like 25 people altogether were sailors and passengers in the boats, several of whom were British subjects.

There is no doubt that early in the morning of the 22d instant a vessel known as the *Augusto*, belonging to the Venezuelan Government, with one Velutini in command, appeared off the cove at Patos, and remained there until the next morning close inshore. There is also no doubt that about 3 o'clock in the afternoon of the 22d, one Enrico Torres, described as a colonel, summoned the people then on shore to come on board the *Augusto*, and that the persons on shore declined to comply with this demand, alleging that they were on British territory. That later on in the evening, the same Torres with two boats and some 20 soldiers of the Venezuelan army landed on the island of Patos and proceeded to carry out their threats, by removing the boats, collecting the cargo, and moving it on board the *Augusto*. About one-half of the party fled into the woods, and the remainder were compelled to get on board the *Augusto*. Two women and one sick boy were allowed to land at a place known as Yaqua on the Venezuelan coast, from where one person, Elvelina Jones, has managed to make her escape. From her evidence it appears that the remaining persons on board the *Augusto* were compelled to sign a paper which was described by this witness as a statement that they had come on board voluntarily; which statement, as far as we are able to ascertain, is entirely untrue.

There is no doubt, if the evidence of these persons can be believed, and we can see no reason for disbelieving it, that some nine or ten people, British subjects for the most part, were taken by the steamship *Augusto* under the command of Velutini, by Torres, said to be a colonel in the Venezuelan army, and as to the whereabouts of these people we have no evidence, though it is believed that one has escaped and is in this island.

The island of Patos is British territory, and is so stated to be in the communication made by the Venezuelan consul to you. With regard to that communication there is no evidence before us that any person among those on board of the boats were revolutionists, or were chased by any gunboat, or that any revolutionists forced the boats to put into Patos, and it is certainly not true that the boats voluntarily approached the *Augusto*, and reported the matter, and explained that they were forced by superior numbers to land at Patos. For the whole of that statement, so far as we can ascertain, there is not the slightest ground of truth whatever.

It is stated by the witnesses that the crew of the *Augusto* appropriated one of the boats, the smallest, and cast the others adrift in the gulf; but the evidence is not specific as to this. We are not aware of any reason for the suggestion that Patos is made the point of departure for revolutionists. As far as we can ascertain none of these people had anything to do with the disturbances at present raging in the Republic, but there may be some ground for this assertion of which we are at present ignorant. The acts of the commander of the *Augusto*, if done by a private individual, would amount to piracy; but it seems that that vessel was under the command of an officer of the Venezuelan army, and therefore we presume that if there has been anything irregular it must form the subject of representations to the Government of the Republic. There seems to be several British subjects who have been carried away from British territory by armed forces of the Republic, and whose whereabouts have not been accounted for as yet. Any further evidence that can will be obtained and submitted in due course.

NATHL. NATHAN,
Attorney-General.
JAMES B. SAUNDERS,
Harbormaster.

JANUARY 29, 1901.

[Inclosure 8—Memo.]

Statement of Venezuelan consul.

The Venezuelan consul, M. J. Arraiz, accompanied us, interpreted by M. Ybarra, the chief of the Venezuelan navy, now seeing after the repairs to the Venezuelan ships here, called to-day and reported as follows:

Several boats were coming from Venezuela, perhaps La Guira, having on board many revolutionists leaving Venezuela. They were chased by the Venezuelan gunboat *Augusto*. The revolutionists forced the boats to put into Goose Island (Patos), where they landed. The *Augusto* could not follow them, because Patos was English territory; but after the revolutionists had landed, the boats voluntarily approached the *Augusto* and reported the matter, explaining that they were forced by superior numbers to land at Patos. The boats then went away. The people were left on Patos. The *Augusto* did not go near them. The consul reports this because the people are still on Patos.

He also asks if the police can not prevent Patos being made the point of departure of the revolutionists.

C. C. K.

JANUARY 25, 1901.

[Inclosure 9.]

Memorandum by the colonial secretary.

I have just seen the Venezuelan consul, Mr. J. Arraiz, who was accompanied by a young naval officer in uniform as interpreter.

I explained to him the information received by this Government concerning the landing of soldiers, etc., at Patos on the 22d January, and said that a report of the occurrence would be sent to the British Government.

He was much taken aback, and said that the soldiers never landed. Then he said that he had a document signed by those who left in the *Augusto* stating what had taken place; lastly, he said that the nationality of Patos was a disputed point. This I at once refuted, saying that Patos was in the possession of the English before Venezuela was a nation.

I don't think he seriously meant to dispute the nationality of Patos, and said no more on that point. (See report of our interview of the 25th January, p. 37 of this inclosure, when he admitted that Patos is British territory.)

He then said he was very sorry that there should be any dispute between the two Governments, as the Venezuelan Government wished to be on good terms with the Trinidad Government, and General Castro desired to encourage commerce, and was thinking of removing the 30 per cent additional duty. He asked what I wanted him to do.

I said that I did not want him to do anything. I told him what this Government is doing in order that we may remain friends, and that the matter now will be settled by the Government in England, and that even if there is a difference of this kind between the two Governments, that is no reason why we should not remain friends.

He then took his leave in a most friendly manner.

C. C. KNOLLYS.

FEBRUARY 27, 1901.

[Inclosure 10.]

Memorandum from attorney-general.

HONORABLE COLONIAL SECRETARY: Forwarded in connection with previous papers. Of the 11 people kidnapped by the *Augusto* 3 are now accounted for. On referring to the evidence taken verbally you will find that of the remaining 8, at least 2, Maxwell and Graham, are British subjects. There may be others. What has become of those people is not at present known or whether there is any likelihood of their being seen in Trinidad again.

NATHL. NATHAN.

FEBRUARY 8, 1901.

[Inclosure 11.]

Statement of Greigo Martínez.

I, Greigo Martínez, native of Rio Grande, Venezuela, make oath and declare as follows:

I was a passenger on the boat of one Felix Aceituno, and left Rio Grande for Port of Spain on the 17th January last. We reached Patos on the following day (18th) and landed there to await the tide. Early on Tuesday morning we saw the Venezuelan guarda costa *Agusto* lying off the island, and the men on board called to us to go on board that vessel, but we refused, saying we were on English land. The *Augusto* then sent a boat ashore with soldiers, who took some of us prisoners and carried us on board with our luggage. They also seized all the boats and their cargoes. Eleven of us were taken on board the *Augusto*. The rest of the party ran away and hid in the bush and were not taken prisoners. The *Augusto* landed Madame Elvy Jones (a native of Trinidad), a boy called Adolphus Peter, and myself at Yacua in Venezuela. I do not know where the other people who were made prisoners have been carried to. The men on board the *Augusto* took $25 from my basket, but returned my clothing and other effects. I returned to Port of Spain from Yacua by the boat *Salvador* on Saturday last, the 2d instant.

GREIGO (her x mark) MARTÍNEZ.

Witness:

Q. H. SPICER.

Interpreted and explained to the within-named Greigo Martínez, in patois, by me, and she appeared to understand the same.

APOLON MATRIEN.

Sworn to at the harbor master's office in the town of Port of Spain this 7th day of February, 1901.

Before me:

JAMES B. SAUNDERS.
Harbor Master and J. P.

HARBOR MASTER'S OFFICE, *February 7, 1901.*

Annex 30

Letter from Mr. Grant Duff to the Marquess of Lansdowne (17 April 1901)

The Venezuelan Arbitration before The Hague Tribunal, 1903,
Washington, 1905, pp. 481-482

58TH CONGRESS, 3d Session | SENATE | DOCUMENT No. 119

Hague. Permanent Court arbitr.

THE

VENEZUELAN ARBITRATION

BEFORE

THE HAGUE TRIBUNAL

1903

PROCEEDINGS OF THE TRIBUNAL UNDER THE PROTOCOLS BETWEEN VENEZUELA AND GREAT BRITAIN, GERMANY, ITALY, UNITED STATES, BELGIUM, FRANCE, MEXICO, THE NETHERLANDS, SPAIN, SWEDEN AND NORWAY, SIGNED AT WASHINGTON, MAY 7, 1903

WASHINGTON
GOVERNMENT PRINTING OFFICE
1905

As the *Maria Teresa* had been seized by disaffected persons and was, undoubtedly, being used for unlawful purposes, against the will of the owner and master, the *Miranda* was perfectly justified in arresting her. There are, nevertheless, many points in the evidence which require elucidation. For what reason did the commander of the *Miranda* cause the *Maria Teresa* to be boarded and a little later suffer her to proceed to Trinidad, shortly afterwards apparently changing his mind and again sending a force to board her? No attempt at escape or resistance seems to have been made by the crew of the *Maria Teresa*, yet that vessel was burnt, the property on board seized, and her sailors arrested and placed in an open boat with a broken oar. The unfortunate man Patterson was put under arrest on reaching Yrapa and detained for several days, but no mention is made of the reasons which induced the military authorities to keep him in close confinement; on the other hand, the owner of the *Maria Teresa* was in custody of the insurrectionary forces.

Whatever may have been the circumstances which justified the commander of the *Miranda* in detaining the *Maria Teresa*, he would appear to have acted with excessive and unnecessary violence, and no arguments can possibly be put forward in support of the treatment to which the sailors of the *Maria Teresa* were subjected when they were set adrift in an open boat.

As the *Maria Teresa* was the property of a British subject, I have the honor to express the hope that your excellency will be so good as to cause a searching inquiry to be instituted into the proceedings of the commander of the *Miranda*, and to beg that I may be furnished, at your excellency's earliest convenience, with the results of this investigation.

I avail, etc.,

A. C. GRANT DUFF.

Mr. Grant Duff to the Marquess of Lansdowne—(Received May 9).

No. 12.] CARACAS, *April 17, 1901.*

MY LORD: I have the honor to transmit herewith copies of dispatches received from the governor of Trinidad and of notes which I have addressed to the Venezuelan Government respecting the proceedings of the commander of an unnamed Venezuelan guardacosta on the island of Patos in the month of February last.

On the 26th of that month John Craig, a fisherman of Trinidad and a British subject, left that island on a fishing expedition in his boat the *Sea Horse*. He proceeded to the island of Patos, which he reached at 8 a. m. on the following day, and there he met another boat, the *Buena Fe*, belonging to Simon Revera, a Venezuelan citizen.

At about 8.30 a. m. John Craig, having in the meanwhile landed and beached his boat, there sailed into the bay in which he had gone ashore a small Venezuelan guardacosta. The name of her commander is given as Agapine or Agropelle. This vessel carried a crew of 8 men, and of this number 3, armed with cutlasses and rifles came on shore and began to beat Anthony Andrew and some of the companions of John Craig, who, however, was not struck by them. Simon Revera was one of those assaulted on this occasion. A man whose

name is stated to be Badian, ran away and was fired upon by order of the commander of the guardacosta. He, however, escaped unhurt. The Venezuelan sailors then seized the *Sea Horse* and the *Buena Fe* and the stores which the boats contained, leaving John Craig, Simon Revera, and the other men on the island without food or water.

I have urged the Venezuelan Government to institute an immediate inquiry into the acts alleged to have been committed by the commander of the guarda costa, who, according to the sworn declarations of the complainants, landed an armed force on the territory of a friendly power, assaulted the subjects of that power, as well as certain other persons, and seized their property, while they were peacefully engaged in their lawful avocations.

I have, etc., A. C. GRANT DUFF.

[Inclosure 1.]

Governor Sir A. Moloney to Mr. Grant Duff.

GOVERNMENT HOUSE, TRINIDAD, *March 28, 1901.*

SIR: I have the honor to transmit herewith, for your information, copies of a petition and a statement relative to the alleged seizure of a boat belonging to one John Craig by a Venezuelan guarda costa.

Copies of these documents have been forwarded to the secretary of state for the colonies.

I have, etc., ALFRED MOLONEY.

[Inclosure 2.]

Petition of John Craig.

To His Excellency Sir A. Moloney, K. C. M. G., governor and commander in chief of the Colony of Trinidad and Tobago, etc.

The humble petition of the undersigned, of Port of Spain, most respectfully sheweth:

That your petitioner's grievance is of a serious representation of this day, under which lay before your excellency for investigation.

That your petitioner is a fisherman of this island, and some time of the 27th February last I went to see after my fish pot on British waters, and during which time I have also went ashore on British soil, known as Patos or Goose Island, of the Colony of Trinidad, where your applicant was assaulted by General Agropelle, of Venezuelan water cruiser; who have maliciously ill used your petitioner to the greatest extent by means of using firearms at your petitioner. I was then obliged to lay prostrated to escape from the danger in his cruel attempt. That your petitioner had otherwise severe beating by him, in which he have taken away the boat and clothing.

That your petitioner, in manner most comfortable, state your excellency may minutely observe that the grievance done to your petitioner on the British soil, and as British subject crave your excellency's protection in the matter grievance.

And your petitioner, as in duty bound, will ever pray.

JOHN CRAIG.

11 SOUTH SQUARE, *Port of Spain,*
March 6, 1901.

Annex 31

Letters from Acting medical officer, northwestern district, to Government secretary (21 and 27 December 1901)

The Venezuelan Arbitration before The Hague Tribunal, 1903,
Washington, 1905, pp. 526-527

58TH CONGRESS, 3d Session | SENATE | DOCUMENT No. 119

Hague. Permanent Court arbitr.

THE

VENEZUELAN ARBITRATION

BEFORE

THE HAGUE TRIBUNAL

1903

PROCEEDINGS OF THE TRIBUNAL UNDER THE PROTOCOLS BETWEEN VENEZUELA AND GREAT BRITAIN, GERMANY, ITALY, UNITED STATES, BELGIUM, FRANCE, MEXICO, THE NETHERLANDS, SPAIN, SWEDEN AND NORWAY, SIGNED AT WASHINGTON, MAY 7, 1903

WASHINGTON
GOVERNMENT PRINTING OFFICE
1905

seizure and detention by the Venezuelan authorities of a colonial British owned and British registered sloop, the *Indiana*, in the waters of the Barima River in Venezuelan territory, which is open to free navigation under the award of the 3d October, 1899.

I am, etc.,

C. P. LUCAS.

[Inclosure 1.]

Governor Sir J. A. Swettenham to Mr. Chamberlain.

GOVERNMENT HOUSE,
Georgetown, Demerara, December 31, 1901.

SIR: I have the honor to forward for your information the inclosed papers on the subject of the seizure and detention by the Venezuelan authorities of a colonial British-owned and British-registered sloop named the *Indiana* in the waters of the Barima River, in Venezuelan territory, but where the ships of all nations enjoy the privilege of free navigation under the award of the 3d October, 1899.

I inclose copy of a letter which I have written to His Britannic Majesty's chargé d'affaires in Venezuela on the subject, asking him to apply for the release of the vessel.

I have, etc., J. A. SWETTENHAM.

[Inclosure 2.]

Acting Government medical officer, northwestern district, to Government secretary.

DECEMBER 21, 1901.

SIR: I have the honor to inform you that it was reported to me by the owner, Antonio Consalves Jardine, a British subject, that on Monday evening the 16th instant his sloop *Indiana*, anchored midstream on the Barima, beyond the boundary line, was seized and the whole crew arrested by Venezuelan officials.

I have, since the information given by the owner, seen the captain of the sloop, who made his escape, and he confirmed the above.

Names of crew: Nathaniel Roberts, captain; James Nixon, Charlie—all British subjects.

I have, etc., FRED. S. WILLS.

[Inclosure 3.]

Acting Government medical officer, northwestern district, to Government secretary.

DECEMBER 28, 1901.

SIR: I have the honor to acknowledge receipt of your letter of the 23d instant.

On the arrival of the stipendiary magistrate I reported the matter to him, and he took sworn statements from the owner (Antonio Jardine) and the captain (Nathaniel Roberts), who made his escape.

I have read the statements and are same as have been reported to me.

The stipendiary magistrate informd me that the sworn detailed statements would be sent to you for his excellency's information by steamer leaving to-day.

The owner and the captain expect leaving here to-day for Georgetown; the others of the crew have not yet returned, and I believe are still in custody.

I have, etc.,

FRED. S. WILLS.

[Inclosure 4.]

Acting Government agent, northwestern district, to Government secretary.

DECEMBER 27, 1901.

SIR: I have the honor to forward, for the information of his excellency the governor, two sworn statements taken from the owner and captain of the sloop *Indiana*, relative to her seizure by the Venezuelans whilst at anchor in mid-stream in the Barima River and to ask for his excellency's instructions in the matter. The owner of the sloop, Jardine, informs me that on the day he saw the Venezuelan governor the two boys, viz, Charlie and Joesph Dixon, were still on the sloop, but whether they have been put in prison since he has not heard.

As the Indian girl, on whom it is alleged by the captain of the sloop that a rape had been committed, is apparently a British subject, I have instructed the police to make most careful inquiries in the matter, and will report further the result.

Mr. McTurk interviewed both the owner and captain of the sloop in my presence on the morning of the 25th instant.

Both the owner, Antonio Gonsalves Jardine, and the captain, Nathaniel Roberts, leave for Georgetown by the steamer to-morrow, and I have instructed them to report themselves at 10 a. m. on Monday at your office in case you wish to see them.

I have, etc.,

ARTHUR CHOPPIN,
Stipendiary Magistrate.

[Inclosure 5.]

Statement by Antonio Gonsalves Jardine.

ANTONIO GONSALVES JARDINE, sworn, states:

I live at Lot No. 8, Coomacka street, Georgetown, and am the owner of the sloop *Indiana*. About midday on the 17th December, 1901, one Cæsar brought me the information that my sloop, the *Indiana*, had been seized by the Venezuelans. I immediately left in a corial for the place where the sloop had been seized, and arrived at Amakura on the morning of the 19th instant. I at once went on shore to see the governor, who told me that I might take charge of the sloop that day, but his secretary, who was present during my interview, told me "No," because he saw contraband taken ashore, and that if anything came of his refusal to release the sloop he would be responsible for it. The governor then told me that he was going to write to the Government of Bolivar for instructions in the matter.

ANTONIO (his x mark) GONSALVES JARDINE.

DECEMBER 27, 1901.

Witnesses:

ARTHUR CHOPPIN,
Stipendiary Magistrate.

THOMAS NARAIN,
Clerk of Court.

Taken and sworn before me this 27th day of December, 1901.

ARTHUR CHOPPIN,
Stipendiary Magistrate, N. W. J. D.

Annex 32

Memorandum on existing causes of complaint against Venezuela (20 July 1902)

The Venezuelan Arbitration before The Hague Tribunal, 1903,
Washington, 1905, pp. 608-613

58TH CONGRESS, 3d Session | SENATE | DOCUMENT No. 119

Hague. Permanent court arbit.

THE

VENEZUELAN ARBITRATION

BEFORE U.S.

THE HAGUE TRIBUNAL

1903

PROCEEDINGS OF THE TRIBUNAL UNDER THE PROTOCOLS BETWEEN VENEZUELA AND GREAT BRITAIN, GERMANY, ITALY, UNITED STATES, BELGIUM, FRANCE, MEXICO, THE NETHERLANDS, SPAIN, SWEDEN AND NORWAY, SIGNED AT WASHINGTON, MAY 7, 1903

WASHINGTON
GOVERNMENT PRINTING OFFICE
1905

two English colonies was seized outside Venezuelan waters—i. e., on the high seas—by a Venezuelan man-of-war; that she was towed into a Venzuelan port and stripped of her sails and her papers. She was finally confiscated on a mere suspicion of having carried a cargo of arms, the crew being put on shore and left destitute.

It is not necessary for me to point out to your excellency what a serious charge this is against the Venezuelan authorities, both those who captured the ship and those who were engaged in the subsequent proceedings which resulted in her confiscation. More than one important question is involved in this charge, and I should be much obliged if your excellency will state to me, for the information of His Majesty's Government, the steps that the Venezuelan Government intend to take with reference thereto.

I avail, etc., W. H. D. HAGGARD.

[Inclosure 3.]

Vice-Consul Schunk to Mr. Haggard.

LA GUAIRA, *June 14, 1902.*

SIR: I have the honor to send you inclosed the affidavit of a British subject named John Patrice, from which it appears that his vessel, a British sloop called the *Queen*, was, on her voyage from Grenada to Trinidad in ballast, overhauled by the Venezuelan gunboat *Restaurador*, and sent first to Porlamar and then to Juan Griego in Margarita, where she was confiscated on a supposed charge of having brought arms to Venezuela.

I have, etc., L. SCHUNK.

Mr. Haggard to the Marquess of Lansdowne—(Received July 20).

[Telegraphic.]

No. 107.] CARACAS, *July 20, 1902.*

Venezuelan Government state that their previous opinions are not modified by the assurances contained in your lordship's telegram of the 3d instant, and they continue to protest against the vessel being recognized as other than a pirate by Great Britain.

They proceed to say that those assurances in no way invalidate their claim on His Majesty's Government from the moment when the *Ban Righ* left England with British papers and flying the British flag to that at which hostile acts were committed by her against this country, after having already been declared a pirate.

Memorandum on existing causes of complaint against Venezuela.

No. 108.]

CASE OF SEIZURE BY THE VENEZUELAN GUNBOAT "AUGUSTO."

It appears from the sworn evidence of ten witnesses examined before the attorney-general of Trinidad that, on the 21st January,

1901, four boats—three Venezuelan and one belonging to a British subject—were at Patos Island waiting for the tide on their way to Port of Spain laden with cocoa. The boats were of the usual class which trade between Port of Spain and the neighboring ports of Venezuela, and appear on this occasion to have been simply carrying cargo and passengers in the ordinary way to Port of Spain.

There were some 25 persons altogether in the boats, sailors and passengers, including several British subjects.

On the morning of the 22d the Venezuelan gunboat *Augusto* appeared off the island, and, after remaining close inshore for some hours, summoned the people who had landed from the vessels above referred to to come on board the *Augusto*. This demand not being complied with, a force of some 20 armed Venezuelans under Colonel Torres was landed on Patos, and proceeded to remove the boats and collect their cargoes. About half the passengers and crew of the trading-boats were removed on board the *Augusto*, the remainder taking refuge in the woods, where they were left without food, water, or means of leaving the island.

Representations were at once made by His Majesty's chargé d'affaires at Caracas with reference to this reported seizure and deportation of British subjects. A stringent inquiry was demanded, but, so far as His Majesty's Government are aware, no attention was paid to this demand.

CASE OF THE "SEA HORSE."

On the 26th February, 1901, John Craig, a fisherman of Trinidad, a British subject, proceeded to Patos in pursuance of his calling in his boat, the *Sea Horse*. Having beached his boat and landed with his boat's crew on the island, he was followed by the crew of a Venezuelan guardacosta, armed with cutlasses and rifles, who beat one of his companions, fired at another, who, however, escaped unhurt, and finally seized the boat and its contents, leaving the men on the island without food or water. They were fortunately relieved by a passing boat two days later and taken back to Port of Spain.

In this case, a strong remonstrance was addressed to the Venezuelan Government in respect of the landing of an armed force on British territory, and the assault on the persons and seizure of the property of British subjects.

On the same occasion the *Buena Fé*, a boat belonging to a Venezuelan citizen resident in Trinidad, was seized under similar circumstances, and although the owner's nationality precluded support of any claim on his part the interference with the boatmen and the seizure of the property on Patos Island constituted a grave violation of British territory.

The statements of fact were in each case supported by sworn declarations. The Venezuelan Government justified the action of their guarda costa by declaring that they considered Patos as belonging to Venezuela, and by stating that the *Sea Horse* was thought to be engaged in smuggling. No proof of this was, however, adduced, nor did there appear to be any reasonable ground for the assumption. This plea was subsequently amended by the further statement that the *Sea Horse* was suspected of landing arms, but the Venezuelan version of the fact proves that she never touched the coast and could not therefore have landed arms, while it was not even alleged that after being chased to Patos where she was seized she had any arms on board.

The explanations offered after six months' correspondence were wholly unsatisfactory, and, as His Majesty's minister states in his last dispatch received on this subject, "no redress has been offered for an act which, even according to their own account (i. e., that of the Venezuelan Government) and if their assumed possession of the island be allowed, was one of unjustifiable violence."

CASE OF THE "MARÍA TERESA."

In January, 1901, the sloop *María Teresa*, the property of a British subject, but flying the Venezuelan flag, was, when about to leave the Venezuelan port of Guaira, compelled to heave to, and ordered to proceed to Trinidad instead of to her destination at Yrapa on the mainland. On the *María Teresa* proceeding to follow these instructions, she was boarded by a boat from the *Miranda*, which took off the master and two sailors, and after seizing the property on board the *María Teresa* set on fire and completely destroyed her.

The Venezuelan Government, in justification of the *Miranda's* action, contended that the owner and master of the sloop had been actively engaged in assisting the revolutionists. Although the treatment of the British subjects on board the sloop afforded ground for remonstrance, His Majesty's Government, in view of these statements, which were not, however, supported by proof, forebore to press the matter strongly, as there was some evidence that the vessel had been in communication with, if not in the employ of, the revolutionary party. Further inquiry and explanations were promised.

CASE OF THE "PASTOR."

The case of the *Pastor*, however, afforded still stronger ground for protest. On the 30th August last year the Venezuelan-owned sloop *Pastor* left Port of Spain with a cargo of goods and with three passengers, one of whom at least was a British subject.

There is some evidence to show that the *Pastor*, in conjunction with

three other boats of Venezuelan nationality, was engaged on a smuggling venture. On her arrival at Patos Bay the Venezuelan revenue boat *Totumo* appeared on the scene, and after examining the papers and cargo of the *Pastor* landed some of her crew on the island, seized and carried on board goods which had been there deposited by the *Pastor*, and took the men engaged in the expedition as prisoners. She subsequently fired on the *Pastor* when that vessel was still in British waters.

The correspondence exchanged with the Venezuelan Government with reference to this incident made it clear that they were determined to consider and to treat Patos as belonging to the Republic. In these circumstances it was thought expedient to record a formal protest against this renewed and gross violation of British territorial waters by a Venezuelan gunboat, which the facts that the *Pastor* was a Venezuelan vessel, and had infringed the customs regulations of Trinidad, were not held in any way to justify.

His Majesty's minister accordingly made a strong remonstrance with reference to this incident, but the Venezuelan Government stated that they could not make any investigation with regard to the violation of British territory, as they considered Patos Island, on which the violation of territory occurred, as their own legitimate possession.

CASE OF THE "INDIANA."

A further case of the violation of British rights occurred in January last in the seizure and detention of the British owned and registered sloop *Indiana* in the River Barima, within Venezuelan territory, the waters of which are, by the terms of the Anglo-Venezuelan boundary award, open to the navigation of all nations in time of peace.

In this instance the vessel, which carried only a cargo of empty barrels used for the conveyance of corn to the market of Georgetown, was suspected of smuggling, seized and carried into the Venezuelan port of Amakuru, the captain escaping in a native canoe.

There was no evidence to support this charge of smuggling, and the colonial authorities, to whom the case was reported, point out that the confiscation of the vessel was an excessively severe penalty for any infraction of the customs laws, if such were deemed to have occurred.

The representations made to the Venezuelan Government have hitherto failed to elicit any explanation.

CASE OF THE "IN TIME."

A more recent instance of a similar character is the destruction of the British vessel *In Time* by the Venezuelan gunboat *General Crespo*, in the Venezuelan harbor of Pedernales on or about the 1st May last.

It appears that on the arrival of the gunboat *General Crespo* in Pedernales orders were given to seize all craft in port, and this was done. No provocation or justification of this order has been assigned. The *In Time* was then fired on by the gunboat, and an armed party from the *Crespo* boarded her and broke her up. She subsequently drifted down the river and sank.

In connection with this case, His Majesty's minister was instructed to inform the Venezuelan Government that unless they could disprove the reports received as to the destruction of this vessel, His Majesty's Government might be obliged to cease extending the hospitality of British ports to Venezuelan cruisers.

The Venezuelan Government have protested against the "menacing tone" of this communication, which they consider "inadmissible" even as a simple notification.

CASE OF THE "QUEEN."

The seizure on the high seas of the British ship *Queen*, of Grenada, reported by His Majesty's minister in June, is the latest instance of such unwarrantable interference.

In this case it appears, from sworn evidence, that the vessel while on her voyage from Grenada to Trinidad in ballast, was overhauled by the Venezuelan gunboat *Restaurador* some 20 miles off Carupano; that after the seizure the *Queen* was towed into the Venezuelan port of Porlamar, there stripped of her sails and papers, and finally confiscated on a mere suspicion of having carried a cargo of arms to Venezuela, the crew being put on shore and left destitute.

The master and one of the crew, after remaining there twenty-seven days, obtained a passage on a Venezuelan sloop and found their way to La Guaira, where they reported themselves to the British vice-consul.

The facts having been brought to the knowledge of His Majesty's minister, he at once addressed a representation to the minister for foreign affairs and requested "to be informed what steps the Venezuelan Government intended to take with reference to this charge, in which more than one important question was involved."

The action of the Venezuelan consul at Trinidad, Señor Figueredo, has also given rise to grave complaints with reference to his issuing irregular clearances, exaction of improper fees and charges, and assumption of unwarranted authority by the collection of customs dues for Venezuela in Trinidad.

He has, further, in some cases, refused to accept dispatch of vessels for Venezuela on the ground that they belonged to persons who were not acceptable to the Venezuelan Government, and in others is stated to have placed every sort of hindrance in the way of the dispatch of vessels, thus seriously prejudicing the trade of British subjects at Trinidad.

M. Figueredo's conduct was brought to notice especially in connection with his refusal to dispatch the British registered lighter *Euterpe*, belonging to the Compagnie Générale des Asphaltes de France, when he informed the company that if the vessel was otherwise dispatched she would be seized or sunk as soon as she was outside British waters.

His Majesty's minister has been instructed to protest against M. Figueredo's action, and to inform the Venezuelan Government that unless satisfactory assurances were forthcoming, no exequatur would be issued to their consul. Of this communication no notice has been taken.

Besides these specific outrages and grounds of complaint there are cases in which British subjects and companies have large claims against the Venezuelan Government.

The Venezuelan Government declines to accept the explanations and assurances of His Majesty's Government with regard to the *Ban Righ* as in any way modifying the situation. As a result, the position of His Majesty's legation at Caracas has been rendered for diplomatic purposes quite impracticable, as all representations, protests, and remonstrances now remain disregarded and unacknowledged..

FOREIGN OFFICE, *July 20, 1902.*

The Marquess of Lansdowne to Mr. Buchanan.

No. 109.] FOREIGN OFFICE, *July 23, 1902.*

SIR: The German ambassador spoke to me to-day about the state of affairs in Venezuela. I told his excellency that we had various causes of complaint against the Venezuelan Government, and that we intended to obtain satisfaction for the claims of British subjects. We should be quite ready to confer with the German Government with a view to joint action.

I am, etc., LANSDOWNE.

The Marquess of Lansdowne to Mr. Haggard.

[Telegram.]

No. 110.] FOREIGN OFFICE, *July 29, 1902.*

The liberty and property of British subjects have, in a succession of cases, been interferred with in a wholly unwarrantable manner by the Venezuelan Government. The following incidents have been the subject of serious consideration by His Majesty's Government:

The action of the gunboat *Augusto* in seizing and deporting certain

Annex 33

Letter from Mr. Haggard to the Marquess of Lansdowne (30 June 1902)

The Venezuelan Arbitration before The Hague Tribunal, 1903,
Washington, 1905, pp. 606-608

58TH CONGRESS, 3d Session | SENATE | DOCUMENT No. 119

Hague. Permanent Court arbitr.

THE

VENEZUELAN ARBITRATION

BEFORE

THE HAGUE TRIBUNAL

1903

PROCEEDINGS OF THE TRIBUNAL UNDER THE PROTOCOLS BETWEEN VENEZUELA AND GREAT BRITAIN, GERMANY, ITALY, UNITED STATES, BELGIUM, FRANCE, MEXICO, THE NETHERLANDS, SPAIN, SWEDEN AND NORWAY, SIGNED AT WASHINGTON, MAY 7, 1903

WASHINGTON
GOVERNMENT PRINTING OFFICE
1905

Mr. Haggard to the Marquess of Lansdowne—(Received July 16).

No. 105.] CARACAS, *June 24, 1902.*

MY LORD: I have the honor to inclose copy of a note which I have addressed to the Venezuelan minister for foreign affairs relative to the case of the *In Time.*

I have, etc., W. H. D. HAGGARD.

[Inclosure.]

Mr. Haggard to General Ferrer.

CARACAS, *June 21, 1902.*

M. LE MINISTR: I regret to have to bring the following circumstances before the Venezuelan Government:

On or about the 1st May the Venezuelan gunboat *General Crespo*, according to the sworn testimony of Joachim Rodriguez, supported by general knowledge and information, was at Perdernales, where the British ship *In Time* was lying with the sails unbent. A number of the crew of the *General Crespo* went on board the *In Time* and broke her up. She then drifted down the river and sunk about half a mile from her original moorings.

There does not appear to have been any provocation for this action, and I have the honor to request your excellency to state for the information of His Majesty's Government the steps which the Venezuelan Government propose to take in view of what was apparently a wanton destruction by a Venezuelan gunboat of a British vessel.

I avail, etc., W. H. D. HAGGARD.

Mr. Haggard to the Marquess of Lansdowne—(Received July 16).

No. 106.] CARACAS, *June 30, 1902.*

MY LORD: I have the honor to inclose a copy of a note which I have addressed to the Venezuelan Government, as well as one of a dispatch from the British vice-consul at La Guayra, forwarding affidavits with reference to the seizure by a Venezuelan man-of-war on the high seas of the British vessel *Queen*, belonging to Grenada, on her way to Trinidad in ballast.

It appears that after seizure, the ship was towed into the Venezuelan port of Porlamar, there stripped of her sails and papers, and finally confiscated on a mere suspicion of having carried a cargo of arms, the crew being put on shore and left destitute.

I requested the minister for foreign affairs on the 18th instant, at the close of my note, to inform me of the steps that the Venezuelan Government intended to take with reference to this charge, in which more than one important question was involved, but I have received no reply to this inquiry.

I have, etc., W. H. D. HAGGARD.

[Inclosure 1.]

Declaration by John Patrice.

I, John Patrice, captain of the British sloop *Queen*, of the island of Grenada, hereby make the following declaration on oath:

On the 12th of May last I left Grenada in the *Queen* bound for Trinidad in ballast. There were two other men on board with me, Nelson and Willie Patrice. On the 15th we got becalmed 8 or 9 miles off the Venezuelan coast, about 20 miles east of Carúpano, where the wind and tide had brought us, and, on seeing a steamer approaching, we hoisted the British flag. It turned out to be the Venezuelan gunboat *Restaurador*, which boarded us and took our clearance. I and one of my men were then taken aboard the steamer and carried to Carúpano, where we remained one day. The sloop was put in charge of two men (Venezuelans) from the *Restaurador*, who, together with Willie Patrice—left on board—took it to Porlamar, Margarita. When the *Restaurador* got to Porlamar next evening we were released. We found that the sloop had been stripped of her sails, and her papers had been taken away. I also lost $25 in cash, and our good clothes and other belongings had disappeared. The commandant at Porlamar then told me to go to Juan Griego, where I saw the collector of customs and the fiscal judge, who sent me back to Porlamar to fetch the sloop, giving me to understand that it would afterwards be delivered up to me. The sails were put back on the sloop and, on my arriving at Juan Griego with it, accompanied by three Venezuelan soldiers, put on at Porlamar, I was told that the vessel had been confiscated because I was suspected of having carried a cargo of arms. We then returned to Porlamar on foot, and led a precarious existence, for the commandant refused us any assistance. We remained there twenty-seven days until the captain of a Venezuelan sloop, called the *Maria de Lourdes*, took pity on us and brought us to La Guaira, where we arrived this morning.

JOHN ABRAHAM PATRICE.

We, the undersigned, Nelson Patrice and Willie Patrice, declare on oath that the statements made by John Patrice in the foregoing affidavit are correct and true.

NELSON (his x mark) PATRICE.
WILLIE (his x mark) PATRICE.

Sworn to and signed by John Abraham Patrice, Nelson Patrice, and Willie Patrice at La Guaira on the 14th day of June, 1902, before me.

L. SCHUNK, *British Vice-Consul.*

BRITISH VICE-CONSULATE.

[Inclosure 2.]

Mr. Haggard to General Ferrer.

CARACAS, *June 18, 1902.*

M. LE MINISTRE: I have the honor to inclose a sworn declaration made by a British subject named John Patrice, captain of the British sloop *Queen*, supported by the sworn declaration of Nelson Patrice and Willie Patrice, of the truth of John Patrice's statement, recounting the circumstances connected with the confiscation of that ship by the Venezuelan war ship *Restaurador*.

From this account it would appear that an English ship trading between

two English colonies was seized outside Venezuelan waters—i. e., on the high seas—by a Venezuelan man-of-war; that she was towed into a Venzuelan port and stripped of her sails and her papers. She was finally confiscated on a mere suspicion of having carried a cargo of arms, the crew being put on shore and left destitute.

It is not necessary for me to point out to your excellency what a serious charge this is against the Venezuelan authorities, both those who captured the ship and those who were engaged in the subsequent proceedings which resulted in her confiscation. More than one important question is involved in this charge, and I should be much obliged if your excellency will state to me, for the information of His Majesty's Government, the steps that the Venezuelan Government intend to take with reference thereto.

I avail, etc., W. H. D. HAGGARD.

[Inclosure 3.]

Vice-Consul Schunk to Mr. Haggard.

LA GUAIRA, *June 14, 1902.*

SIR: I have the honor to send you inclosed the affidavit of a British subject named John Patrice, from which it appears that his vessel, a British sloop called the *Queen*, was, on her voyage from Grenada to Trinidad in ballast, overhauled by the Venezuelan gunboat *Restaurador*, and sent first to Porlamar and then to Juan Griego in Margarita, where she was confiscated on a supposed charge of having brought arms to Venezuela.

I have, etc., L. SCHUNK.

Mr. Haggard to the Marquess of Lansdowne—(Received July 20).

[Telegraphic.]

No. 107.] CARACAS, *July 20, 1902.*

Venezuelan Government state that their previous opinions are not modified by the assurances contained in your lordship's telegram of the 3d instant, and they continue to protest against the vessel being recognized as other than a pirate by Great Britain.

They proceed to say that those assurances in no way invalidate their claim on His Majesty's Government from the moment when the *Ban Righ* left England with British papers and flying the British flag to that at which hostile acts were committed by her against this country, after having already been declared a pirate.

Memorandum on existing causes of complaint against Venezuela.

No. 108.]

CASE OF SEIZURE BY THE VENEZUELAN GUNBOAT "AUGUSTO."

It appears from the sworn evidence of ten witnesses examined before the attorney-general of Trinidad that, on the 21st January,

Annex 34

Letter from Mr. Eduardo Blanco to Mr. Grant Duff (27 March 1901)

The Venezuelan Arbitration before The Hague Tribunal, 1903,
Washington, 1905, p. 470

58TH CONGRESS, 3d Session | SENATE | DOCUMENT No. 119

Hague. Permanent court arbit.

THE

VENEZUELAN ARBITRATION

BEFORE U.S.

THE HAGUE TRIBUNAL

1903

PROCEEDINGS OF THE TRIBUNAL UNDER THE PROTOCOLS BETWEEN VENEZUELA AND GREAT BRITAIN, GERMANY, ITALY, UNITED STATES, BELGIUM, FRANCE, MEXICO, THE NETHERLANDS, SPAIN, SWEDEN AND NORWAY, SIGNED AT WASHINGTON, MAY 7, 1903

WASHINGTON
GOVERNMENT PRINTING OFFICE
1905

As on previous occasions, when there has been trouble in connection with the island in question, the Venezuelan Government have seen fit to incidentally raise the question of the sovereignty over Patos.

So far I have refrained from making any representation respecting the violation of British territorial waters by the Venezuelan gunboat *Augusto*, and have confined my complaints to the seizure and deportation of certain British subjects by order of the commander of that vessel.

I have the honor to inclose copy of a note in which I have informed the Venezuelan Government that no new considerations have been adduced to show cause why the island of Patos should not be considered a dependency of Trinidad, and consequently a portion of His Majesty's dominions, the waters surrounding it being thus British territorial waters.

[Inclosure 1—Translation.]

Señor Blanco to Mr. Grant Duff.

CARACAS, *March 27, 1901.*

SIR: With reference to your two notes of the 21st and 23d instant, I have the honor to inform you that this ministry has been obliged to have recourse to the departments of the interior, of finance, and of war and marine in order to institute the requisite investigation into the facts therein related by you and on which the subjects named in the first of the said notes found their complaint.

As Venezuela holds that the island of Patos lawfully belongs to her, the Government will have to consider the incident as it is affected by that circumstance.

Until I can throw light on the matter and see if the act in question is really censurable or has resulted from the natural and very justifiable watchfulness against clandestine trade, I restrict myself to acknowledging the receipt of the two notes of your honorable legation.

Accept, etc., EDUARDO BLANCO.

[Inclosure 2.]

Mr. Grant Duff to Señor Blanco.

CARACAS, *March 29, 1901.*

M. le MINISTRE: I have the honor to acknowledge the receipt of your excellency's note of the 27th instant, in which you are so good as to inform me of the steps which your excellency proposes to take for the purpose of investigating the facts which I had the honor of bringing to your excellency's notice in connection with the seizure of certain British subjects on the island of Patos by the Venezuelan gunboat *Augusto*, in the month of January last.

There is a passage in your excellency's note which would appear to give expression to a view respecting the sovereignty over Patos with which I regret to say I am unable to agree.

The passage alluded to is, in translation, as follows:

"As Venezuela holds that the island of Patos lawfully belongs to her the Government will have to consider the incident as it is affected by that circumstance."

Annex 35

Letter from General Pachano to Mr. Haggard (20 December 1901)

The Venezuelan Arbitration before The Hague Tribunal, 1903,
Washington, 1905, pp. 524-525

58TH CONGRESS, 3d Session | SENATE | DOCUMENT No. 119

Hague. Permanent Court arbitr.

THE

VENEZUELAN ARBITRATION

BEFORE

THE HAGUE TRIBUNAL

1903

PROCEEDINGS OF THE TRIBUNAL UNDER THE PROTOCOLS BETWEEN VENEZUELA AND GREAT BRITAIN, GERMANY, ITALY, UNITED STATES, BELGIUM, FRANCE, MEXICO, THE NETHERLANDS, SPAIN, SWEDEN AND NORWAY, SIGNED AT WASHINGTON, MAY 7, 1903

WASHINGTON
GOVERNMENT PRINTING OFFICE
1905

to the Venezuelan Government, of which I have the honor to inclose a copy, pointing out that His Majesty's Government had asked for no such investigation, and that my note had conveyed no such request on their part, but that I had confined myself therein to stating that the action of the Venezuelan gunboat *Totumo* had constituted a renewed violation of British territory, and to conveying to his excellency the strong remonstrance of His Majesty's Government against any infringement of the sovereign rights of Great Britain at the island of Patos.

I have, etc., W. H. D. HAGGARD.

P. S.—DECEMBER 27.—I have also the honor to inclose a translation of the rejoinder to my above-mentioned note, and a copy of my reply thereto.

W. H. D. H.

[Inclosure 1.]

Mr. Haggard to General Pachano.

CARACAS, *December 17, 1901.*

M. LE MINISTRE: I have been directed by the Marquis of Lansdowne, His Majesty's principal secretary of state for foreign affairs, to lay the following circumstances before your excellency.

A Venezuelan ship called the *Pastor* left Port of Spain on or about the 20th of last August with a cargo of goods and three passengers. She appears to have been under the orders of a Venezuelan named Euphemio Bompart, the navigating captain being a British subject named Abraham Williams. At least one of the passengers also, a man named Numa Audrey, was a British subject.

The *Pastor* proceeded to the British island of Patos, and some of the goods she contained were landed there on the next day.

A Venezuelan gunboat, the *Totumo*, then appeared and boarded the *Pastor* with armed men whilst still at the island. These examined her papers and cargo. Some of the crew of the *Totumo* were then landed on the island, where they seized and carried on board the gunboat the goods there deposited. They further took some men prisoners—all this on British soil. The *Totumo* subsequently fired on the *Pastor* whilst still in British territorial waters.

In view of the discourteous action of the Venezuelan gunboat *Totumo* in landing a party on the island of Patos and there seizing goods put ashore by the *Pastor*, which constituted a renewed violation of British territory, and in further firing on that vessel whilst in British territorial waters, I have received instructions from His Majesty's Government, by telegraph, to address a strong remonstrance to the Venezuelan Government against any infringement of the sovereign rights of Great Britain in that island.

I avail, etc., W. H. D. HAGGARD.

[Inclosure 2.—Translation.]

General Pachano to Mr. Haggard.

CARACAS, *December 20, 1901.*

M. LE MINISTRE: In answering your excellency's note of the 17th instant I have the honor to inform you that in the matter of the Venezuelan ship *Pastor*,

to which it referred, the investigation of the Government will not be able to be made with reference to violation of territory, since if, as appears from the facts transmitted to your excellency, the event occurred in waters of the island of Patos or within its boundaries, it must be considered in connection with the notorious circumstance that Venezuela considers the island in question as its legitimate possession.

With respect to the complaint which the British subjects Abraham Williams and Numa Audrey have wished to put forward as to the action taken on the ship of whose crew the former was a member, this ministry will ask information on the matter from the department of war and marine, as well as from that of finance and of public credit, for this may be a question of an act due to information received as to revolutionary plans on the coast, or of its having been chased on account of strong evidence pointing to the fact that the ship was engaged in the smuggling trade.

I avail, etc., J. R. PACHANO.

Forcign office to colonial office.

No. 47.] FOREIGN OFFICE, *January 21, 1902.*

SIR: I am directed by the Marquis of Lansdowne to acknowledge the receipt of your letter of the 9th instant, forwarding a copy of a dispatch from the governor of Trinidad respecting the allegation that the sloop *Maria Teresa*, burnt by a Venezuelan gunboat off Guiria, was carrying arms and ammunition at the time.

I am to state that a copy of your letter will be sent to His Majesty's minister at Caracas, but that Lord Lansdowne does not propose to give him, at any rate for the present, further instructions.

I am, etc.,

F. H. VILLIERS.

[Telegram.]

The Marquess of Lansdowne to Mr. Haggard.

No. 48.] FOREIGN OFFICE, *January 23, 1902.*

You should inform Venezuelan Government that *Ban Righ* left this country in November. There was no reason for detaining her as no state of war existed between Colombia and any other power, and the Colombian minister stated that she was intended for the service of his Government.

Colonial office to foreign office—(Received January 27).

No. 49.] DOWNING STREET, *January 25, 1902.*

SIR: I am directed by Mr. Secretary Chamberlain to transmit to you, to be laid before the Marquis of Lansdowne, the accompanying copy of a dispatch, forwarding correspondence on the subject of the

Annex 36

Letter from Venezuela's Minister of Foreign Affairs, General Jacinto Regino Pachano, to the British Minister Resident, Mr. William Henry Doveton Haggard (24 March 1902)

The Venezuelan Arbitration before The Hague Tribunal, 1903, Washington, 1905, p. 351

58TH CONGRESS, 3d Session | SENATE | DOCUMENT No. 119

THE

VENEZUELAN ARBITRATION

BEFORE

THE HAGUE TRIBUNAL

1903

PROCEEDINGS OF THE TRIBUNAL UNDER THE PROTOCOLS BETWEEN VENEZUELA AND GREAT BRITAIN, GERMANY, ITALY, UNITED STATES, BELGIUM, FRANCE, MEXICO, THE NETHERLANDS, SPAIN, SWEDEN AND NORWAY, SIGNED AT WASHINGTON, MAY 7, 1903

WASHINGTON
GOVERNMENT PRINTING OFFICE
1905

No. 409.] UNITED STATES OF VENEZUELA,
DEPARTMENT OF FOREIGN AFFAIRS,
OFFICE OF FOREIGN PUBLIC LAW,
Caracas, March 24, 1902.

SIR: I have just learned that the insurgent steamer *Ban Righ (Libertador)* has anchored at the Port of Spain without any opposition or difficulty whatever on the part of the colonial authorities. Venezuela protested at the time to the honorable legation against the acts of hostility committed against the Government by the said vessel on the coast of the Republic, to the detriment of general security. Later it protested against the attitude of indifference or toleration assumed by the governor of Trinidad in the presence of revolutionary movements openly prepared in the territory of the island against the constitutionally established authorities of the Estados del Oriente. Herewith, in conformity with a special charge from the constitutional President of the Republic, I present in this note, with all the energy demanded by the case, a new protest against the unusual act of the colonial authorities, who, after the proceedings had before this respectable legation, harbored said steamer without taking into consideration, to judge from the development of affairs, the aforesaid proceedings.

With the earnest request that you will please take cognizance of this new protest from the Government of the Republic, and of the grave circumstances which occasion it, I offer to your excellency new assurances of my highest and most distinguished consideration.

J. R. PACHANO.

His Excellency Mr. WILLIAM HENRY DOVETON HAGGARD,
Minister Resident of His Britannic Majesty.

BRITISH LEGATION,
Caracas, March 25, 1902.

SIR: I have the honor to acknowledge the receipt of your excellency's note, dated yesterday, in which protest is made against the presence in Port of Spain of the insurgent steamer *Ban Righ (Libertador)*, without any objection being made on the part of the colonial authorities.

I communicated this matter to H. M. Government without delay.

I avail myself of this opportunity to reiterate to your excellency the assurances of my highest consideration.

W. H. D. HAGGARD.

His Excellency Gen. J. R. PACHANO,
Minister of Foreign Affairs.

Annex 37

Letter from Mr. R. Lopez Baralt to Mr. Haggard (16 July 1902)

The Venezuelan Arbitration before The Hague Tribunal, 1903,
Washington, 1905, p. 622

58TH CONGRESS, 3d Session } SENATE { DOCUMENT No. 119

Hague. Permanent court arbit.

THE

VENEZUELAN ARBITRATION

BEFORE U.S.

THE HAGUE TRIBUNAL

1903

PROCEEDINGS OF THE TRIBUNAL UNDER THE PROTOCOLS BETWEEN VENEZUELA AND GREAT BRITAIN, GERMANY, ITALY, UNITED STATES, BELGIUM, FRANCE, MEXICO, THE NETHERLANDS, SPAIN, SWEDEN AND NORWAY, SIGNED AT WASHINGTON, MAY 7, 1903

WASHINGTON
GOVERNMENT PRINTING OFFICE
1905

that His Majesty's Government had received satisfactory assurances from the Colombian Government, firstly, that the *Ban Righ* belonged to them, and, secondly, that, so long as no state of war existed between Venezuela and Colombia, they would not authorize her being used for the purpose of committing hostile acts against Venezuela, and, further, that orders had been issued that the ship should proceed to and be stationed in Colombian waters; and that the governor of Trinidad had been instructed to permit her to refit at Port of Spain and to proceed to those waters.

I have now the honor to inclose a translation of the reply of the Venezuelan Government to that communication.

[Inclosure.—Translation.]

Señor Baralt to Mr. Haggard.

CARACAS, *July 16, 1902.*

M. LE MINISTRE: In the communication which your excellency addressed on the 4th instant to General Ferrer, you forwarded to the Venezuelan Government by direction of His Majesty's Government the result of inquiries with reference to the ship *Ban Righ*, which your excellency yourself had promised this department on the 8th April. The vice-president charged with the executive power has taken note of the full assurances which the Government of His Majesty has given with reference to that ship, but these do not alter for the Government of Venezuela the point of view from which it has, from the beginning, regarded that ship, and which now compels it to protest solemnly against her being recognized by Great Britain as one which is not to be considered as outside international law.

In like manner the above-mentioned assurances can not restrict nor detract in the slightest manner from the rights claimed by Venezuela arising from former circumstances from the time of the dispatch of the *Ban Righ* from English ports with the English flag and papers until the subsequent committal by that boat—already declared a pirate—of acts directly prejudicial to the commerce, peace, and general interests of the Republic.

I avail, etc., R. LOPEZ BARALT.

Mr. Haggard to the Marquess of Lansdowne—(Received August 14).

No. 119.] CARACAS, *July 27, 1902.*

MY LORD: In my dispatch of the 13th July I had the honor of stating to your lordship that I had on the 4th instant addressed a note to the Venezuelan Government, stating that His Majesty's Government could not admit that there was any connection between the question of the Bolivar Railway and that of the *Ban Righ*, and could not acquiesce in the attempt of the Venezuelan Government to postpone dealing with other questions until that of the latter was disposed of.

Annex 38

Protest of Mr. Herbert W. Bowen, Agent for Venezuela, Against the Award submitted to the Secretary-General of the International Tribunal at The Hague (15 March 1904)

The Venezuelan Arbitration before The Hague Tribunal, 1903, Washington, 1905, pp. 140-141

58TH CONGRESS, 3d Session } SENATE { DOCUMENT No. 119

Hague. Permanent court arbitr.

THE

VENEZUELAN ARBITRATION

BEFORE

THE HAGUE TRIBUNAL

1903

PROCEEDINGS OF THE TRIBUNAL UNDER THE PROTOCOLS BETWEEN VENEZUELA AND GREAT BRITAIN, GERMANY, ITALY, UNITED STATES, BELGIUM, FRANCE, MEXICO, THE NETHERLANDS, SPAIN, SWEDEN AND NORWAY, SIGNED AT WASHINGTON, MAY 7, 1903

WASHINGTON
GOVERNMENT PRINTING OFFICE
1905

PROTEST OF MR. HERBERT W. BOWEN, AGENT FOR VENEZUELA, AGAINST THE AWARD.

CARACAS, VENEZUELA, *March 15, 1904.*

SIR: Having read the award of the tribunal in the Venezuelan case, I have the honor to protest against this paragraph thereof:

"Whereas the good faith which ought to govern international relations imposes the duty of stating that the words 'all claims,' used by the representative of the Government of Venezuela in his conferences with the representatives of the allied powers (statement left in the hands of Sir Michael Herbert by Mr. H. Bowen of January 23, 1903) could only mean the claims of these latter and could only refer to them."

The conclusion therein contained is absolutely erroneous, as but a glance at the statement of January 23, 1903, proves. This was the statement:

"Mr. Bowen proposes that all claims against Venezuela shall be paid out of the customs receipts of the two ports of La Guaira and Puerto Cabello, the percentage to be 30 per cent each month of the receipts. In case of failure on the part of Venezuela to pay the said 30 per cent, the creditor nations will be authorized to put, with the consent and without any opposition on the part of Venezuela, Belgian custom officials in charge of the said two custom-houses, and to administer them until the entire foreign debt is paid."

If instead of the words "all claims against Venezuela," "the creditor nations," and "the entire foreign debt," these words had been used, "all claims of the allied powers against Venezuela," "the allied creditor nations," and "the entire debt of the allied powers," the interpretation given to the statement by the arbitrators would be exact, but as the statement reads no such meaning can be properly given to it. The representatives of the allied powers accepted it without a protest, and four days later they requested and accepted another statement, which contained this clause, "and it is distinctly understood that the said 30 per cent will be given exclusively to meet the claims mentioned in the recent ultimatums of the allied powers and the unsettled claims of other nations that existed when the said ultimatums were presented."

140

Lord Lansdowne's cablegram of January 23, 1903, also shows that there was no doubt as to the meaning of the words "all claims," for in it he states: "It is understood that £213,000 is the sum which 30 per cent of the customs of the two ports would yield, and that this amount is intended to meet not only the claims of all the powers for compensation, but the entire foreign debt of Venezuela, which amounts to £5,742,000." Not satisfied with that arrangement, he proposed that "a portion of the revenue of the two ports might possibly be set apart" to extinguish the claims of the allied powers within five years.

A further and a positive proof that the said conclusion of the arbitrators is erroneous is to be found in my credentials, which the said representatives examined and accepted without protest before the negotiations began. The credentials were these:

"The Venezuelan Government grants full powers to Mr. Herbert W. Bowen to effect at Washington with the representatives of the nations that have claims against Venezuela the immediate settlement of them or the preliminaries for the submission to arbitration of such of them as can not be settled immediately."

It is perfectly clear, therefore, that "all claims" did not mean simply the claims of the allied powers, but of all the powers.

If the representatives at Washington of the allied powers had understood that I had only their claims in mind when I presented to them my credentials and the statements of January 23 and 27, they would subsequently have accused me of deception and bad faith when I refused to give them preferential treatment, and the other creditor nations would have refrained from countenancing, much less supporting, my contention that the demand for preferential treatment was new and unacceptable.

Consequently the paragraph in question of the award should be marked with my protest, and I wish to be clearly understood as declaring that the paragraph to be correct would have to read thus:

"Whereas the good faith which ought to govern international relations imposes the duty of stating that the words 'all claims,' used by the representative of the Government of Venezuela in his conferences with the representatives of the allied powers, could only mean the claims of all the creditor nations, and not of the allied powers alone."

I gladly avail myself of this opportunity to renew to your excellency the assurance of my highest consideration.

HERBERT W. BOWEN.

His Excellency Mr. L. H. RUYSSENAERS,
Secretary-General of the International Tribunal at The Hague.

Annex 39

Letter from Mr. Andueza Palacio to British Foreign Office (29 March 1900)

United Kingdom, National Archives, Kew, FO 80/424

Translation.

Caracas, March 29th, 1900,

Monsieur le Ministre,

At the Cabinet meeting held yesterday, the Supreme Chief of the Republic gave very serious attention to Your Excellency's Note of the 26th inst., in which you were pleased to inform me of the views of the British Government, with regard to the actual delimiting of the frontier established by the Paris Award of the 3rd of October last. In accordance with the instructions I there received from the Supreme Magistrate, I now answer your Excellency.

The difficulties which the Government of Venezuela has had in immediately attending to a matter of such importance, arise on the one hand from the preference which it has had to give to questions in connection with public order, and on the other, to the fact of being obliged since the month of November to fulfil the peremptory duties relating to the execution of the Arbitral Award of 1891, concerning the limits between Venezuela and Colombia.

The Government of the Republic, persuaded as it is that it is mutually beneficial to proceed in all that concerns the sentence of October 1899, by concerted and simultaneous action, would make an effort to treat on the matter before the 3rd of June next; but, in consideration of the shortness of the time, it hastens to propose very respectfully that Her Majesty's Government should condescend to prolong the time fixed in Your Excellency's note

His Excellency
W.H.D.Haggard.

&c &c &c

5-1980cc

note till the expiration of twelve months from the Award I. e. until the 3rd of October next. The Government would then be in a position to arrange with the necessary calm, the manner of uniting the action of its special Commissioners with that of those whom Her Majesty's might nominate for the object in question .

In submitting the foregoing to the British Governmentthrough the worthy and friendly medium of Your Excellency, the Governemnt does so in the hope of obtaining the most satisfactory result.

I renew &c

(Signed) R. Andueza Palacio.

Annex 40

Ministerio de Relaciones Exteriores, *Tratados Públicos y Acuerdos internacionales de Venezuela: Volumen 3 (1920-1925)* (1927) (extract)

TRANSLATION

UNITED STATES OF VENEZUELA
MINISTRY FOR FOREIGN AFFAIRS

Public Treaties
and
International Agreements of Venezuela

VOLUME III

1920-1925

Commemorative Edition
of the
FIRST CENTENARY OF THE BATTLE OF AYACUCHO

CARACAS

AMERICAN PRINTING OFFICE

1927

VU NE VARIETUR
Traduction conforme à
l'original en langue esp
N° 3405

EXPERT TRADUCTEUR PRÈS LA COUR D'APPEL DE PARIS
Jimena MARTINEZ ROJAS
36 rue Saint Didier
75116 PARIS
01 71 73 64 36

PUBLIC TREATIES
AND
INTERNATIONAL AGREEMENTS
OF VENEZUELA

Agreement, by exchange of notes, concerning Passports (1919). Extradition Treaty.—19th January 1922.

France.—Agreement on Manufacturing and Trade Marks. —3rd May 1879. Convention for the restoration of friendly relations. —26th November 1885. (Partially in force.) Protocol for the restoration of diplomatic relations. —19th February 1902. Convention on Trade and Navigation.—19th February 1902. Declaration regarding the Capitulations regime in the French Zone of the Sherifian Empire.—8th February 1916.

Great Britain.—Treaty of Friendship, Commerce and Navigation. —18th April 1825. (The perpetuity of the commercial provisions of this Treaty is under discussion between the High Parties.)

Convention adopting the preceding Treaty. —29th October 1834.

Arbitral Award on the boundary question with British Guiana. —3rd October 1899.

Proceedings of the Joint Boundary Commission constituting an international agreement.—(1900-05).

Convention on Postal Parcels.—27th April 1912.

Italy.—Treaty of Friendship, Commerce and Navigation. 19th June 1861.

Convention submitting to arbitration the matter of the Lanzoni Martini & Co.—21st December 1920.

Mexico.—Agreement, by exchange of notes, on Diplomatic Pouch Service (1919). (Suspended).

Norway.—Arrangement for the transmission of diplomatic correspondence. (1923).

Netherlands.—Award of H.M. Queen Isabella II on the question concerning the dominion and sovereignty of Aves Island. —30th June 1865.

Protocol for the restoration of diplomatic relations. —20th August 1894.

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ESTADOS UNIDOS DE VENEZUELA

MINISTERIO DE RELACIONES EXTERIORES

Tratados Públicos

Y

Acuerdos Internacionales de Venezuela

VOLUMEN III

1920 - 1925

Edición Conmemorativa

del

PRIMER CENTENARIO DE LA BATALLA DE AYACUCHO

CARACAS

TIPOGRAFÍA AMERICANA

1927

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N° 3405

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TRATADOS PUBLICOS

y

ACUERDOS INTERNACIONALES DE VENEZUELA

Convenio, por cambio de notas, sobre Pasaportes (1919).
Tratado de Extradición.—19 de enero de 1922.

Francia.—Convenio sobre Marcas de Fábrica y de Comercio. —3 de mayo de 1879.
Convención para el restablecimiento de las relaciones de amistad.—26 de noviembre de 1885. (Subsistente en parte.)
Protocolo para el restablecimiento de las relaciones diplomáticas.—19 de febrero de 1902.
Convención sobre Comercio y Navegación.—19 de febrero de 1902.
Declaración referente al régimen de las Capitulaciones en la zona francesa del Imperio Jerifiano.—8 de febrero de 1916.

Gran Bretaña.—Tratado de Amistad, Comercio y Navegación.—18 de abril de 1825. (La perpetuidad de las disposiciones sobre Comercio de este Tratado, es objeto de discusión entre las Altas Partes.)
Convención por la cual se adopta el Tratado anterior.—29 de octubre de 1834.
Laudo que decidió la cuestión límites con la Guayana Inglesa.—3 de octubre de 1899.
Actas de la Comisión Mixta de Límites que implican acuerdo internacional.—(1900-05).
Convenio sobre Bultos Postales.—27 de abril de 1912.

Italia.—Tratado de Amistad, Comercio y Navegación. 19 de junio de 1861.
Convención por la cual se somete a arbitraje el asunto de la Sociedad Lanzoni Martini & C°.—21 de diciembre de 1920.

México.—Convenio, por cambio de notas, sobre Servicio de Valijas diplomáticas (1919). (En suspenso).

Noruega.—Arreglo para el envío de la correspondencia diplomática. (1923).

Países Bajos.—Laudo de S. M. Isabel II en la cuestión relativa al dominio y soberanía de la Isla de Aves.—30 de junio de 1865.
Protocolo para el restablecimiento de las relaciones diplomáticas.—20 de agosto de 1894.

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TRADUCTEUR PRÈS LA COUR D'APPEL DE PARIS
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EXPERT

Annex 41

El Libro Amarillo de los Estados Unidos de Venezuela, 1905 (extracts)

TRANSLATION

STATEMENT

PRESENTED TO

the NATIONAL CONGRESS

DURING ITS CONSTITUTIONAL SESSIONS OF 1905

BY THE CITIZEN

MINISTER OF FOREIGN AFFAIRS

OFFICIAL EDITION

CARACAS
NATIONAL PRINTING OFFICE

1905

VU NE VARIETUR
Traduction conforme à
l'original en langue esp
N° 3405

EXPERT TRADUCTEUR PRÈS LA COUR D'APPEL DE PARIS
Jimena MARTINEZ ROJAS
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OCT 5 1933

STATEMENT

Honorable Senators:

Honorable Deputies:

Having been honored by the Provisional President of the Republic in January of last year with the appointment as Minister of Foreign Affairs, it is my duty to report to you on matters pertaining to this Office, in compliance with Article 86 of the National Constitution.

In fulfilling this obligation, I express my fervent wishes that Justice may inspire all your acts for the welfare of the Nation and your glory.

that the Isla de Aves (Aves Island) constitutes sovereign territory of the Republic of Venezuela.

You will find the relevant diplomatic correspondence concerning this matter in the *Documents* Section.

*
* *

Boundaries with British Guiana

It gives me particular satisfaction to inform you that the Commission charged with representing Venezuela in the boundary delimitation with British Guiana, pursuant to the Arbitral Award rendered in Paris on October 3, 1899, has successfully completed its mandate. This effectively resolves the significant territorial dispute that Venezuela maintained with Great Britain for approximately three-quarters of a century.

In the corresponding Section, you will find the final report submitted to this Office by Dr. Abraham Tirado, Chief Engineer of the aforementioned Commission.

VU NE VARIETUR
Traduction conforme à
l'original en langue ..... 28 .....
N° ..... 3405 .....

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57/150

Doc 37

EXPOSICION

QUE DIRIGE AL

CONGRESO NACIONAL

32

EN SUS SESIONES CONSTITUCIONALES DE 1905

EL CIUDADANO

MINISTRO DE RELACIONES EXTERIORES

EDICION OFICIAL

CARACAS
IMPRENTA NACIONAL
1905

VU NE VARIETUR
Traduction conforme à
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N° 3425

EXPERT TRADUCTEUR PRÈS LA COUR D'APPEL DE PARIS
Jimena MARTINEZ ROJAS
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01 71 73 64 36

OCT 5 1933

EXPOSICION

Ciudadanos Senadores:

Ciudadanos Diputados:

Honrado por el Señor Presidente Provisional de la República, en enero próximo pasado, con el cargo de Ministro de Relaciones Exteriores, tócame daros cuenta de los asuntos correspondientes á este Despacho, en observancia del artículo 86 de la Constitución Nacional.

Al cumplir este deber, os expreso mis fervientes votos por que la Justicia inspire todos vuestros actos para bien de la Patria y gloria vuestra.

que la Isla de Aves es propiedad de la República de Venezuela.

En la Sección *Documentos* veréis la correspondencia relativa á este incidente.

* * *

Límites con la Guayana Británica

Cábeme particular satisfacción de participaros que la Comisión encargada de representar á Venezuela en el deslinde con la Guayana Británica, en ejecución del Laudo dictado en París á 3 de octubre de 1899, ha dado feliz remate á su tarea; quedando, en tal virtud, sellada la importantísima cuestión que Venezuela mantuvo con la Gran Bretaña durante cerca de tres cuartos de siglo.

En la Sección respectiva hallaréis el informe final que ha dirigido á este Despacho el Señor Doctor Abraham Tirado, Ingeniero en Jefe de la expresada Comisión.

VU NE VARIETUR
Traduction conforme à
l'original en langue esp
N° 3495

EXPERT TRADUCTEUR PRÈS LA COUR D'APPEL DE PARIS
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01 71 73 64 38

Annex 42

Presidential Decree concerning the division of the border between the State of Bolívar and the Federal Territory of Delta-Amacuro with British Guiana into two National Border Offices under the Ministry of Home Affairs (3 January 1911)

Recopilación de Leyes y Decretos de Venezuela,
Vol. XXXIV (1911), pp. 5-6 (11068)

TRANSLATION

Digital copy provided by:

the Academy of Political and Social Sciences CIDEP Logo

COMPILATION

OF

LAWS AND DECREES OF VENEZUELA

VOLUME XXXIV

YEAR 1911

OFFICIAL EDITION

TIP. EMP. EL COJO
CARACAS – 1913

Retrieved from www.cidep.com.ve

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N°.....3475.....

EXPERT TRADUCTEUR PRÈS LA COUR D'APPEL DE PARIS
Jimena MARTINEZ ROJAS
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75116 PARIS
01 71 73 64 36

UNITED STATES OF VENEZUELA

Ministry of Home Affairs - Administrative Division - Caracas: July 1st, 1913 - 104 and 55

RESOLUTION:

By direction of the President of the United States of Venezuela and pursuant to the Ministerial Act, the Administrative Division of this Office shall compile and publish Volumes XXXIV and XXXV of the Compilation of Laws and Decrees of Venezuela for the years 1911 and 1912. The sum of eight thousand bolivares (Bs. 8,000) is hereby allocated for this purpose, to be charged to the "OFFICIAL PUBLICATIONS" budget line.

SO ORDERED.

By Order of the Executive Branch,

C. ZUMETA

COMPILATION

OF

LAWS AND DECREES OF VENEZUELA

DECREE No. 11068

of January 3, 1911

Concerning the division of the border between the State of Bolívar and the Federal Territory of Delta-Amacuro with British Guiana into two National Border Offices under the Ministry of Home Affairs.

GENERAL J. V. GÓMEZ,
CONSTITUTIONAL PRESIDENT OF
THE REPUBLIC,

Considering:

That the surveillance of national borders and the development of their resources require immediate action by the Public Administration for territorial policing, protection of civil liberties, and enforcement of the Republic's laws, as well as the promotion of local interests to ensure prosperity,

DECREES:

Article 1. For more effective and efficient administration, the border between the State of Bolívar and the Federal Territory of Delta-Amacuro with British Guiana shall be divided into two National Border Offices under the Ministry of Home Affairs, designated as: first, the National Border Office of Amacuro, and second, the National Border Office of El Dorado.

Article 2. The Border Office of Amacuro, whose jurisdiction extends from Punta Playa to the headwaters of the Barima in the Imataca range, shall be headquartered in San José de Amacuro with the following staff:

- The Commissioner
- A Secretary
- A Police Officer

Auxiliary and subordinate to this Office shall be two Police Inspectorates, located in Yariquita and San Víctor, each with an Inspector and three police officers.

Article 3. The Border Office of El Dorado shall extend its jurisdiction from the headwaters of the Caroní to the boundary line with the Republic of Brazil, and shall have the following staff:

- The Commissioner
- A Secretary
- An Assistant
- A Medical Officer
- A Police Officer

Auxiliary and subordinate to this Office shall be three Police Inspectorates: the first shall be stationed opposite to Anacoco Island at the mouth of the Venamo in the Cuyuni, the second in the Venamo range near Araguary Falls, and the third in the Roraima savannas near El Picacho.

Article 4. The two Border Offices referred to in this Decree shall be equipped with boat service operated by naphtha-powered engines, with each boat to be staffed by one Navigation Officer and one Engine Officer.

Article 5. Separate Administrative Orders shall establish the regulations for the service and the duties of the Border Offices, and shall fix their respective budgets.

Article 6. The Minister of Home Affairs is charged with the execution of this Decree.

Given, signed, sealed with the Seal of the Executive Branch and countersigned by the Minister of Home Affairs, at the Federal Palace in Caracas, this third day of January nineteen hundred and eleven - Year 101 of Independence and 52 of Federation. (L.S.)

J. V. GÓMEZ

Countersigned: The Minister of Home Affairs (L.S.)

F. L. ALCÁNTARA

RESOLUTION No. 11069

of January 7, 1911

Establishing the anchoring zone for vessels engaged in Orinoco River traffic at Ciudad Bolívar port.

United States of Venezuela.- Ministry of Finance and Public Credit -Customs Division- Caracas: January 7, 1911
101st Year of Independence and 52nd of Federation

BE IT RESOLVED:

WHEREAS despite the fact that the former Port Regulations of Ciudad Bolívar designate the Western Zone of the right bank of the River as an anchoring area for vessels engaged in Upper Orinoco traffic, changes over time have rendered this Zone a real hazard for vessels anchoring within its limits;

WHEREAS the Government is committed to safeguarding public and private interests of the community;

NOW, THEREFORE, General Juan Vicente Gómez, Constitutional President of the Republic, has seen fit to resolve:

That henceforth the Zone for anchoring and mooring vessels of the River and Coastal Navigation Company of Venezuela shall extend from the Maritime Customs Office to the cattle corrals, comprising the area between Punta de Mateo and Punta de Castillos. Within this same Zone shall anchor the vessels engaged in Upper and Lower Orinoco traffic, with the Castillos area being reserved for "Cocos" [small vessels] intended for Upper Orinoco vessels that may wish to anchor there, at their own risk.

This Resolution shall take effect upon its publication in the Official Gazette.
By Order of the Executive Branch,

ANTONIO PIMENTEL

RESOLUTION No. 11070

of January 9, 1911

Regulating the duties of officials of the National Border Offices of Amacuro and El Dorado.

United States of Venezuela -Ministry of Home Affairs- Political Division. Caracas: January 9, 1911 101st Year of Independence and 52nd of Federation

BE IT RESOLVED:

By direction of the Constitutional President of the Republic and in accordance with Executive Decree dated the 3rd of the current month, the following duties are hereby established for the officials of the National Border Offices of Amacuro and El Dorado.
The duties of the Commissioners are:
First - To exercise superior authority at the border and maintain public order and tranquility.
Second - To safeguard territorial integrity...

VU NE VARIETUR
Traduction conforme à
l'original en langue ESP
N° 3405

EXPERT TRADUCTEUR PRÈS LA COUR D'APPEL DE PARIS
Jimena MARTINEZ ROJAS
36 rue Saint Didier
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VU NE VARIETUR
Traduction conforme à
l'original en langue.....esp.....
N°.....3405.....

EXPERT TRADUCTEUR PRÈS LA COUR D'APPEL DE PARIS
Jimena MARTINEZ ROJAS
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Centro para la Integración y el Derecho Público

RECOPILACION

DE

LEYES Y DECRETOS DE VENEZUELA

TOMO XXXIV

AÑO DE 1911

EDICION OFICIAL

TIP. EMP. EL COJO
CARACAS—1913

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ESTADOS UNIDOS DE VENEZUELA

Ministerio de Relaciones Interiores.—Dirección Administrativa.—Caracas: 1º de julio de 1913.—104º y 55º

Resuelto:

Por disposición del Ciudadano Presidente de los Estados Unidos de Venezuela y de conformidad con la Ley de Ministerios, procédase a compilar y a imprimir por la Dirección Administrativa de este Despacho los tomos XXXIV y XXXV de la Recopilación de Leyes y Decretos de Venezuela, correspondientes a los años de 1911 y 1912. Se destina al efecto la cantidad de ocho mil bolívares (B 8.000), que se erogará con cargo al ramo de «IMPRESIONES OFICIALES».

Comuníquese y Publíquese.

Por el Ejecutivo Federal,

C. ZUMETA

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RECOPILACION
DE
LEYES Y DECRETOS DE VENEZUELA

11068

Decreto de 3 de enero de 1911 por el cual se divide la frontera que separa el Estado Bolívar y el Territorio Federal Delta-Amacuro de la Guayana británica en dos Comisarías dependientes del Ministerio de Relaciones Interiores.

EL GENERAL J. V. GOMEZ,
PRESIDENTE CONSTITUCIONAL DE LA REPÚBLICA,

Considerando:

Que la vigilancia de las fronteras nacionales y el desarrollo de sus riquezas exigen la acción inmediata de la Administración Pública para realizar la policía del territorio, el ejercicio de las garantías ciudadanas y la aplicación de las leyes de la República, así como el fomento de los intereses locales a fin de asegurar su prosperidad,

Decreta:

Artículo 1º Para su más conveniente y eficaz administración se divide la frontera que separa el Estado Bolívar y el Territorio Federal Delta Amacuro de la Guayana Británica, en dos Comisarías dependientes del Ministerio de Relaciones Interiores y denominadas la primera: Comisaría Nacional de Amacuro, y la segunda: Comisaría Nacional de El Dorado.

Artículo 2º La Comisaría de Amacuro, cuya jurisdicción comprende desde Punta Playa hasta las cabeceras del Barima en la sierra de Imataca, residirá en San José de Amacuro y su personal será el siguiente:

El Comisario,
Un Secretario, y
Un Policía.

Anexas y dependientes de esta Comisaría habrá dos Inspectorías de Policía, situadas en Yariguita y San Víctor, con un Inspector y tres números de policía cada una.

Artículo 3º La Comisaría de El Dorado extenderá su jurisdicción desde las cabeceras del Caroní hasta la línea divisoria con la República del Brasil, y su personal será el siguiente:

El Comisario,
Un Secretario,
Un Ayudante,
Un Médico, y
Un Policía.

Anexas y dependientes de esta Comisaría habrá tres Inspectorías de Policía: la primera que se estacionará frente a la Isla de Anacoco en la desembocadura del Venamo en el Cuyuni, la segunda en la sierra de

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Venamo a inmediaciones del Salto de Araguay, y la tercera en las sabanas del Rorayma a inmediaciones de El Picacho.

Artículo 4º Las dos Comisarías a que se refiere el presente Decreto tendrán un servicio de lanchas que se hará por el sistema de motores de naphta y se compondrá de un Práctico y un Motorista para cada lancha.

Artículo 5º Por Resoluciones separadas se reglamentará el servicio y las atribuciones de las Comisarías y se fijarán sus respectivos presupuestos.

Artículo 6º El Ministro de Relaciones Interiores, queda encargado de la ejecución de este Decreto.

Dado, firmado, sellado con el Sello del Ejecutivo Federal y refrendado por el Ministro de Relaciones Interiores, en el Palacio Federal, en Caracas, a 3 de enero de mil novecientos once.—Año 101º de la Independencia y 52º de la Federación.

(L. S.)

J. V. GOMEZ.

Refrendado.

El Ministro de Relaciones Interiores,

(L. S.)

F. L. ALCÁNTARA.

11069

Resolución de 7 de enero de 1911 por la cual se fija la Zona donde anclarán, en el puerto de Ciudad Bolívar, los vapores que hacen el tráfico del Orinoco.

Estados Unidos de Venezuela.—Ministerio de Hacienda y Crédito Público.—Dirección de Aduanas.—Caracas: 7 de enero de 1911.—101º y 52º

Resuelto:

A pesar de que el antiguo Reglamento del Puerto de Ciudad Bolívar, designa la Zona Occidental de la margen derecha del Río como fondeadero para los vapores que hacen el tráfico del Alto-Orinoco, los cambios, obra del tiempo, que ha sufrido la referida Zona, constituye un verdadero riesgo para las embarcaciones que anclen dentro de sus límites.

Atento el Gobierno a velar por los intereses públicos y privados de la comunidad; el General Juan Vicente Gómez, Presidente Constitucional de la República, ha tenido a bien resolver:

Que en adelante la Zona para fondear y amarrar los vapores de la Compañía de Navegación Fluvial y Costanera de Venezuela será: desde el Resguardo Marítimo, hasta los corrales de ganado, o sea el espacio comprendido entre Punta de Mateo y Punta de Castillitos. En esta misma Zona anclarán los buques que hagan el tráfico del Alto y Bajo Orinoco, quedando la de Castillitos a los «Cocos» destinada a los buques del Alto Orinoco que quisieren situarse allí, bajo su propia responsabilidad.

Comuníquese y publíquese.

Por el Ejecutivo Federal,

ANTONIO PIMENTEL.

11070

Resolución de 9 de enero de 1911 que reglamenta las funciones de los empleados de las Comisarías Nacionales de Amacuro y de El Dorado.

Estados Unidos de Venezuela.—Ministerio de Relaciones Interiores.—Dirección Política.—Caracas: 9 de enero de 1911.—101º y 52º

Resuelto:

Por disposición del Presidente Constitucional de la República y en conformidad con el Decreto Ejecutivo fecha 3 del mes en curso, se enumeran a continuación las funciones de los empleados de las Comisarías Nacionales de Amacuro y de El Dorado.

Son atribuciones de los Comisarios:

Primera.—Ejercer la autoridad superior en la frontera y mantener el orden y la tranquilidad públicos.

Segunda.—Velar por la integridad

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Annex 43

Convenio de la Misión Del Caroní (22 February 1922)

República de Venezuela, Ministerio de Justicia, Comisión Indigenista, Fuero Indígena Venezolano, Parte II: Periodo de la República (1811 a 1954), Texto No. 89

FROM: Armellada, Cesareo de, O.F.M. Cap. (comp.), Venezuelan Indigenous Law [Fuero indígena venezolano], Vol. 2 (Caracas, 1954), pp. 275-278

DOCUMENT No. 89

AGREEMENT ON THE CARONÍ MISSION
FEBRUARY 22, 1922

Caracas, February 22, 1922. – RESOLVED – By direction of the Provisional President of the Republic, in Council of Ministers, and in accordance with Article 1 of the Missions Act of June 16, 1915, and its implementing Decree of October 26, 1921, a Mission in the Caroní region is established, under the limits expressed in article 2nd of the Agreement hereby inserted.

Between the Minister of Home Affairs of the United States of Venezuela, duly authorized by the Provisional President of the Republic, on the one part; and Father Félix de Vegamián, Superior of the Capuchin Religious Order in Venezuela, on the other part, and in accordance with the Missions Act and its Implementing Decree, the following has been agreed:

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Article 1. Father Félix de Vegamián, Superior of the Capuchin Order in Venezuela, on behalf of the Capuchin Order, duly authorized by his Superiors and with the consent of the Holy See regarding the necessary canonical faculties, undertakes that said Order shall establish in the territory hereinafter defined an Apostolic Vicariate, which shall be responsible for organizing and administering the works necessary for the civilization and evangelization of the tribes existing in the territory specified in the following article.

Article 2. The Mission Territory under the authority of the aforementioned Religious Order shall be bounded as follows: To the North, from Port S. Félix on the Orinoco River, following the bank of this river until reaching the boundary of the Federal Territory of Delta Amacuro, with said Territory being wholly incorporated within the Missionary Territory. To the East, the boundary with British Guiana. To the South, the boundary with Brazil up to the source of the Paragua River in the Paracaima mountain range; and to the West, following the course of the Paragua River northward to its confluence with the Caroní River, thence along the Caroní River to Port S. Félix.

Article 3. As circumstances permit, missionary activity shall be directed primarily as follows: In the North of the Federal Territory of Delta-Amacuro, toward the regions of Araguao and Aragüaito. In the same Territory, toward the region adjacent to British Guiana on the left bank of the Barima River.

In the region located on the eastern bank of the Cuyubini River. In the region near the settlement of S. Victor, close to the British boundary. Toward the tribes of the Camaracoto Indians, near the settlement of Casacoima on the Cuyuní River. Toward the tribes of the Cachirigotos on the Yuruán River. Toward the region situated at the settlement of Cuyuní, near the Rioconte range. Toward the falls or settlement of Arawai or Arawi on the Venamo River. Toward the mouth of the Cuyuní at its confluence with the Venamo. Extending to the Maraüón, Paso, and Acarabisí areas, and to the territories of the Arinagoto, Barinagoto, and Arecuna peoples along the Brazilian frontier.

Article 4. Within three years of the Vicar taking office, he shall present to the Minister of Home Affairs a plan detailing the centers he intends to establish during the year, to operate in one or more of the regions referred to in Article 3 of this Agreement, together with the number of Missionaries, priests or lay brothers, Sisters of Charity and other staff members for each center, their respective duties, as well as the methods of engagement and instruction he deems appropriate.

Article 5. For better organization of said Mission, the Parishes currently included in the territory defined in Article 2 shall be temporarily served by Religious members of the aforementioned Order, until the development of the Mission permits the establishment of indigenous settlements as Municipalities and ecclesiastical Parishes.

Article 6. The Religious members serving these Parishes shall be subordinate in ecclesiastical matters to the authority of the Apostolic Vicar, who shall coordinate with the Executive Branch, through the Ministry of Home Affairs, regarding all matters that by relevant Laws correspond to Bishops in relation to their Parish Priests and to the Civil and Political Authorities of the Nation.

Article 7. Supply centers and temporary residences referred to in Article 3 of the Implementing Decree on Missions may be established in said parishes; however, Religious members serving there as Parish Priests may not perform Missionary functions, but exclusively Parish duties, nor may Missionaries perform parish functions or duties, nor conduct catechetical instruction regarding the indigenous people.

Article 8. The occasional and temporary presence of some indigenous people in the aforementioned settlements shall not be considered acts of this nature, when authorized by the Vicar as a means to encourage in them an appreciation for civilized life.

Article 9. For the maintenance of the personnel referred to in this Agreement, as well as for travel expenses and provisions, the sum of Thirty thousand bolivares (Bs. 30,000.00) is allocated for the first year, starting from the day the first Missionaries arrive in the Mission territory. This amount shall be disbursed in installments, based on the respective budgets submitted by the Vicar to the Minister of Home Affairs.

Article 10. The hamlets or population centers to be established, in accordance with the Vicar's reports and Executive approval, shall be developed according to a plan that allows for their growth.

Article 11. The work performed by indigenous people in building their own dwellings or cultivating lands assigned to them as property shall be supported by the Missionaries with necessary materials and tools; work performed on land or projects that are not their own shall be equitably compensated.

Article 12. To maintain order in Mission Territories, the Superior of each center shall use the mediation of other indigenous people in dealing with the indigenous population, if this suffices; in case of feared attacks by them, he shall communicate this to the Vicar for appropriate action.

Article 13. The Vicar shall grant, under conditions deemed appropriate, entry permits to the Mission Territory to persons who desire them, such permits to be requested in advance.

Article 14. The Executive Branch may appoint, for the location and duration it deems appropriate, special Inspectors to visit the Mission Territory, wherein they may not exercise any authority or functions other than taking note of what they deem necessary to report to the Minister of Home Affairs.

Done in duplicate to the same effect, in Caracas, on February 21, 1922, Year 112 of Independence and 64 of Federation. - The Minister, *Ignacio*

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P. 278 Andrade. - The Superior of the Capuchins in Venezuela, Father Félix de Vegamián. - SO ORDERED. By order of the Executive Branch, Ignacio Andrade.

(Official Gazette No. 14612, March 1, 1922).

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FROM : P. FRAY CESAREO DE ARMELLADA (comp.) Fuero indígena venezolano : (pt. 2) (Caracas, 1954, p. 275-278)

TEXTO Nº 89

CONVENIO DE LA MISION DEL CARONI, DE 22 DE FEBRERO DE 1922.

Caracas, 22 de febrero de 1922. — Resuelto. — Por disposición del Ciudadano Presidente Provisional de la República, en Consejo de Ministros, se establece, de acuerdo con el artículo 1º. de la Ley de Misiones de 16 de junio de 1915 y el Decreto que la reglamenta de 26 de octubre de 1921, una Misión que se designa con el nombre de Misión del Caroní, bajo los linderos expresados en el artículo 2º. del Convenio que a continuación se inserta:

Entre el Ministro de Relaciones Interiores de los Estados Unidos de Venezuela, debidamente autorizado por el Ciudadano Presidente Provisional de la República, por una parte; y por otra, Fray Félix de Vegamián, Superior de los Religiosos Capuchinos en Venezuela, y de acuerdo con la Ley de Misiones y el Decreto Reglamentario de ella, se ha convenido lo siguiente:

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Art. 1º.—Fray Félix de Vegamián, Superior de los Religios Capuchinos en Venezuela, en nombe de la Orden Capuchina, debidamente autorizado por los Superiores y con anuencia de la Santa Sede por lo que respecta a las facultades canónicas necesarias, se compromete a que la expresada Orden establezca en el territorio que más adelante se deslindará, un Vicariato Apostólico, a cuyo cargo queda la organización y régimen de las obras necesarias a la civilización y evangelización de las tribus existentes en el territorio expresado en el artículo siguiente.

Art. 2º.—Los limites del territorio confiado a la acción misionera de la referida Orden Religiosa, son los siguientes: Por el Norte, desde el puerto de S. Félix sobre el río Orinoco, la costa de este río hasta encontrar el límite del Territorio Federal Delta Amacuro, Territorio que queda íntegramente comprendido en el Territorio de la Misión. Al Este, el límite de Venezuela con la Guayana Británica. Al Sur, el límite con el Brasil hasta el nacimiento del río Paragua, en la sierra Paracaima; y al Oeste, el curso del río Paragua hasta la desembocadura en el Caroní; luego este río hasta el puerto de S. Félix.

Art. 3º.—A medida que las circunstancias lo vayan permitiendo la acción de los Misioneros se dirigirá principalmente así. En el Norte del Territorio Federal Delta-Amacuro, hacia las regiones del Araguao y del Araguaito. En la parte del mismo Territorio, hacia la región limítrofe a la Guayana Británica en la margen izquierda del río Barima.

En la región situada en la margen oriental del río Cuyubini. En la región cercana a la población de S. Victor, cerca del límite Británico. Hacia las tribus de los indios Camaracotos, cerca de la población Casacoina sobre el río Cuyuní. Hacia las tribus de los Cachirigotos sobre el río Yuruán. Hacia la región situada en la población Cuyuní, cerca de la sierra Rioconte. Hacia el salto o población de Arawai o Arawi sobre el río Venamo. Hacia la desembocadura en el Cuyuní en el mismo Venamo. Hacia las de Marauón y Paso y el Aca-

rabisi y hacia los Arinagotos, Barinagotos y Arecunas, en los confines del Brasil.

Art. 4º.—En el término de tres años de haber tomado el Vicario posesión de su cargo presentará al Ministro de Relaciones Interiores el plan de situación de los centros que piensa establecer en el año, para obrar sobre alguna o algunas de las regiones de que se trata en el artículo 3º. de este Convenio, y juntamente el número de Misioneros, sacerdotes o legos, Hermanas de la Caridad y demás elementos del personal de cada centro, y las atribuciones respectivas, así como los medios de atracción e instrucción que juzgue oportuno.

Art. 5º.—Para la mejor organización de la expresada Misión las Parroquias hoy comprendidas en el territorio deslindado en el artículo 2º. serán servidas interinamente por Religiosos de la expresada Orden, en tanto que el desenvolvimiento de la Misión permita erigir en Municipalidades y Parroquias eclesiásticas algunas poblaciones indígenas.

Art. 6º.—Los Religiosos que sirvan las expresadas Parroquias, dependerán en lo eclesiástico de la autoridad del Vicario Apostólico, quien se entenderá con el Ejecutivo Federal, por órgano del Ministerio de Relaciones Interiores para todos los efectos, que por las Leyes de la materia correspondiente a los Obispos respecto de sus Párrocos y de las Autoridades Civiles y Políticas de la Nación.

Art. 7º.—Podrán constituirse en dichas parroquias los centros de previsiones y residencias transitorias a que se refiere el artículo 3º del Decreto Reglamentario de Misiones; pero los Religiosos que en ellas presten sus servicios de Párrocos, no podrán ejercer funciones de Misionero, sino exclusivamente Parroquiales, ni los Misioneros podrán ejercer funciones o cargos parroquiales, ni ejercitar respecto de los indígenas, actos de instrucción catequesis.

Art. 8º.—No se consideran actos de esta especie la presencia eventual y transitoria de algunos indígenas en las expresadas poblaciones, cuando el Vicario lo autorice como medio de estimular en ellos el amor a la vida civilizada.

Art. 9º.—Para el sostenimiento del personal a que se refiere este Convenio, como para gastos de viajes y provisiones, se calcula la cantidad de Treinta mil bolívares (Bs. 30.000,00), para el primer año, contando a partir del día en que lleguen los primeros Misioneros al territorio de las Misiones. Esta cantidad se irá entregando por partes, sobre los presupuestos respectivos por el Vicario remita al Ministro de Relaciones Interiores.

Art. 10.—Los caseríos o centros de población que se establezcan, de acuerdo con las informaciones del Vicario y la aprobación del Ejecútivo, se harán conforme a un plan que permita el desarrollo de ellos.

Art. 11.—El trabajo que ejecuten los indígenas en la construcción de sus propias viviendas o en el cultivo de los terrenos que se les asignen en propiedad, serán auxiliados por los Misioneros con los materiales e instrumentos necesarios; los trabajos que ejecuten en terrenos u obras que no sean propios, les serán remunerados equitativamente.

Art. 12.—Para mantener el orden en los territorios de la Misión, el Superior de cada centro se valdrá para con los indígenas de la mediación de otros indígenas, si ello bastare; en caso de temer ser atacados por estos, lo comunicará al Vicario para que éste provea.

Art. 13.—El Vicario concederá, bajo las condiciones que juzgue convenientes, permiso de entrada en el territorio de la Misión a las personas que lo desearen, permiso que pedirán a ésta con anticipación.

Art. 14.—El Ejecutivo Federal podrá nombrar para el lugar y por el tiempo que crea conveniente, inspectores especiales que visiten el territorio de la Misión, en el cual no podrán ejercer ninguna autoridad ni otras funciones que tomar nota de lo que juzguen necesario para informar al Ministro de Relaciones Interiores.

Se hacen dos ejemplares de un mismo tenor, a un sólo efecto, en Caracas, a 21 de febrero de 1922, año 112 de la Independencia y 64 de la Federación. — El Ministro, *Ignacio*

P 278 Andrade. — El Superior de los Capuchinos en Venezuela, *Fray Félix de Vegamián*. — Comuníquese y publíquese. Por el Ejecutivo Federal, *Ignacio Andrade*.

(Gaceta Oficial Nº 14613, del 1º de marzo 1922).

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Annex 44

El Libro Amarillo de los Estados Unidos de Venezuela, 1933 (extracts)

TRANSLATION

THE YELLOW BOOK

OF THE

UNITED STATES OF VENEZUELA

1933

AMERICAN PRINTING OFFICE
CARACAS

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GREAT BRITAIN

Boundary between Venezuela and Great Britain - Venezuelan Proposal accepted by the British Government

MEMORANDUM

In accordance with the Paris Award of 3 October 1899, the boundary line between Venezuela and British Guiana terminates in a straight line connecting the sources of the Venamo River with Mount Roraima summit. This latter point is, moreover, the terminus of the boundary between British Guiana and Brazil.

In 1904, the commissioners charged with demarcating the Award line between Venezuela and British Guiana placed a marker at what they hastily judged should be its terminal point; however, subsequent surveys have confirmed that this marker is not situated on Mount Roraima's summit but rather on one of the edges of the great plateau on which said mountain terminates.

Venezuela's desire is precisely that indicated in the second part of the Foreign Office telegram to the British Minister in Caracas, which he has communicated in copy to the Ministry of Foreign Affairs, namely, to adjust the 1904 marker to its proper position on Mount Roraima, at the point where the three boundaries converge: those of Venezuela, British Guiana, and Brazil. This solution is the only one that enables the boundary line to meet the condition of being a straight line between the Venamo sources and Mount Roraima, as required by the terms of the aforementioned Award. If the 1904 marker were to be maintained and subsequently connected to the triple boundary point, it would result in two straight lines instead of one.

Any difficulties that might arise in reaching the proposed solution would, in any case, be minimal, since the point of convergence will necessarily be determined when demarcating the boundary between British Guiana and Brazil, as it forms part of that latter boundary. For this purpose, Great Britain has invited Venezuela to send a Special Commissioner. Furthermore, the telegram referenced above assumes that this point will be determined, noting the advantage of extending the Anglo-Venezuelan boundary to it.

It will therefore suffice, to fulfill Venezuela's desire, that when this point of convergence is established, it be designated as the terminal point of our boundary with British Guiana and connected to the Venamo sources, disregarding entirely the 1904 marker.

This operation would not increase in any way the work of the Commissioners, nor would it alter the tasks that must subsequently be undertaken to draw the Venamo-Roraima straight line.

However, for the solution proposed in the Foreign Office telegram, namely, to maintain the 1904 marker and connect it to the point of convergence Venezuela would face the serious disadvantage of requiring express authorization from the National Congress, due to the boundary change that such solution would entail.

Caracas, 16 December 1931.

(TRANSLATION)

British Legation Caracas, 17th October, 1932

Sir,

With reference to Memorandum No. 1,683 (International Policy Division) of 16th December last, wherein Your Excellency was pleased to inform this Legation regarding the Venezuelan Government's position on the boundary between Venezuela and British Guiana, I have the honour to inform Your Excellency, following instructions received from His Majesty's Government, that it has been decided to accept Venezuela's proposal that the boundary in question be determined by a straight line drawn from the source of the Venamo River to the triple frontier point on Mount Roraima, where the boundaries of Venezuela, British Guiana and Brazil converge, as recently demarcated by the Venezuelan, British and Brazilian Commissions and marked by them with a boundary post.

However, I am instructed to state that, due to discrepancies in the latitude and longitude values of the triple frontier point, as determined separately by the three Commissions, His Majesty's Government suggests that the boundary post itself be accepted as the meeting point of the three boundaries, regardless of any future or more exact calculation of its geographical position.

I must also state that, as the recently erected boundary post is accessible only by a path located in Venezuelan territory, His Majesty's Government considers it essential that any agreement concluded between His Majesty's Government and the Government of Venezuela regarding this boundary should secure right of access to Mount Roraima summit for British subjects.

I should be grateful, Your Excellency, to receive in due course the Government of Venezuela's views on these matters.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

A. B. HUTCHEON

To His Excellency
Dr. P. Itriago Chacín
Minister for Foreign Affairs of the United States of Venezuela
Caracas

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EL LIBRO AMARILLO

DE LOS

ESTADOS UNIDOS DE VENEZUELA

1933

TIPOGRAFIA AMERICANA
CARACAS

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GRAN BRETAÑA

Frontera entre Venezuela y la Gran Bretaña.—Proposición de Venezuela aceptada por el Gobierno inglés

MEMORANDUM

De conformidad con el Laudo de París de 3 de octubre de 1899, la línea divisoria entre Venezuela y la Guayana Británica termina con una recta que une las fuentes del río Venamo con la cumbre del Roraima. Este último punto es, además, el final de la frontera entre la misma Guayana y el Brasil.

En el año de 1904, fijaron los comisionados encargados de replantear la línea del Laudo entre Venezuela y la Guayana Británica un poste en el sitio donde juzgaron, muy a la ligera, que debía ser su punto terminal; pero según lo han comprobado posteriores estudios, dicho poste no está situado en la cumbre del Roraima sino en uno de los bordes de la gran Meseta en que remata el referido monte.

El deseo que abriga Venezuela es precisamente el que se indica en la segunda parte del telegrama del Foreign Office al Ministro inglés en Caracas y que éste se ha servido comunicar en copia a la Cancillería, esto es, ajustar el poste de 1904 a la posición que debe ocupar en el Roraima, o sea en el punto en que coinciden los tres linderos, el de Venezuela, el de la Guayana Británica y el del Brasil. Esta solución es la única que permite dar a la línea divisoria la condición de ser una recta entre las fuentes del Venamo y el Roraima, como lo exigen las voces del mencionado Laudo. Si se conservara el poste de 1904, para unirlo después con el punto donde concurren los tres linderos, resultarían dos rectas en vez de una sola.

Los inconvenientes que podrían existir para llegar a la solución de que se trata, serían, en todo caso, mínimos, puesto que el punto de concurrencia quedará necesariamente determinado al trazarse la frontera entre la Guayana Británica y el Brasil, ya que forma parte de esta última frontera, y que para escogerlo ha invitado la Gran Bretaña a Venezuela para que envíe un Comisionado Especial. Además, en el telegrama a que antes se alude, da por sentado que el referido punto va a ser determinado, al señalar la ventaja de que se prolongue hasta él la frontera anglo-venezolana.

Bastará, por tanto, para realizar el deseo de Venezuela, que al fijarse ese punto de concurrencia, se le caracterice como punto final de nuestra frontera con la Guayana Británica y se le enlace con el de las fuentes del Venamo, prescindiendo en absoluto del poste de 1904.

Esta operación no aumentaría en nada el trabajo de los Comisionados, ni tampoco los que han de emprenderse con posterioridad, para trazar la recta Venamo-Roraima.

En cambio, para la solución que se propone en el telegrama del Foreign Office, es decir, conservar el poste de 1904 y unirlo con el punto de concu-

rrencia de los tres linderos, se presenta para Venezuela el grave inconveniente de que para esto se necesitaría la expresa autorización del Congreso Nacional, por razón del cambio de frontera que dicha solución implica.

Caracas, 16 de diciembre de 1931.

(TRADUCCIÓN)

—

Legación Británica.

Caracas, octubre 17 de 1932.

Señor:

Con referencia al Memorandum Nº 1.683 (Dirección de Política Internacional) de 16 de diciembre último, con el cual tuvo a bien Vuestra Excelencia ilustrar a esta Legación con respecto al parecer del Gobierno Venezolano acerca de la frontera entre Venezuela y la Guayana Británica, tengo el honor de informar a Vuestra Excelencia, siguiendo instrucciones que he recibido del Gobierno de Su Majestad, que se ha decidido aceptar la proposición de Venezuela de que la frontera en cuestión esté determinada por una línea recta trazada de la fuente del río Venamo al punto del Monte Roraima donde se encuentran las tres fronteras de Venezuela, Guayana Británica y Brasil, recientemente determinado por las Comisiones Venezolana, Británica y Brasileña, y marcado por ellas con un poste.

Sin embargo, tengo instrucciones de hacer constar que, debido a las discrepancias existentes en los valores de la latitud y de la longitud del punto del triple corte, tal como fueron determinados, separadamente, por las tres Comisiones, el Gobierno de Su Majestad sugiere que se acepte el poste mismo como punto de encuentro de las tres fronteras, independientemente de cualquier cálculo futuro o más exacto de su posición geográfica.

También debo hacer constar que, como el poste recientemente plantado no es accesible sino por un sendero que se encuentra en territorio Venezolano, el Gobierno de Su Majestad considera esencial que en cualquier convenio que se concluya entre él y el Gobierno Venezolano con respecto a esta frontera, se establezca el derecho de acceso a la cumbre del Monte Roraima, para los súbditos británicos.

Agradeceré a Vuestra Excelencia tenga a bien hacerme informar oportunamente acerca de la opinión del Gobierno Venezolano a este respecto.

Me valgo de la oportunidad para renovar a Vuestra Excelencia las seguridades de mi más alta consideración.

A. B. HUTCHEON.

A Su Excelencia el Señor Doctor P. Itriago Chacín, Ministro de Relaciones Exteriores de los EE. UU. de Venezuela.

Presente.

VU NE VARIETUR
Traduction conforme à
l'original en langue es
N° 3495

EXPERT TRADUCTEUR PRÈS LA COUR D'APPEL DE PARIS
Jimena MARTINEZ ROJAS
36 rue Saint Didier
75116 PARIS
01 71 73 64 36

Annex 45

Note Verbale from the Ministry of Foreign Affairs of the Republic of Guyana to the Ministry of Foreign Affairs of the Bolivarian Republic of Venezuela, No. 976/2014 (25 August 2014)

Rec: 2/7/15

Note No: 976/2014

The Ministry of Foreign Affairs of the Republic of Guyana presents its compliments to the Ministry of the People's Power for External Relations of the Bolivarian Republic of Venezuela and has the honour to refer to the latter's Note No: 004796 dated August 15, 2014, through which the Government of the Bolivarian Republic of Venezuela has sought, yet again, to interrupt and impede Guyana's economic development.

The Government of Guyana is deeply perturbed by the aggressive tone and content of this Note. Indeed its language suggests that the Government of Venezuela has now escalated its contention that the Arbitral Award of 1899 is null and void into the preposterous and most untenable claim that there are areas in Guyana which are 'under unquestionable Venezuelan sovereignty'. It is a declaration that flies in the face of history, that denies reality, that defies all the applicable norms of international law and is, in the final analysis, inimical to the development of any relationship with Guyana that is based on the pursuit of friendship and cooperation as befits neighbours. It is, sadly, in stark contrast to the positive sentiments presumably expressed in good faith during the visit to Guyana last August of His Excellency Nicolás Maduro Moros, President of Venezuela.

The Ministry of Foreign Affairs wishes to remind the Government of the Bolivarian Republic of Venezuela, yet again, that the border between Guyana and Venezuela was definitively settled by an International Tribunal over 100 years ago in an Arbitral Award which the countries had agreed would be a "full, perfect and final settlement''. There is therefore no question regarding the precise limits of the boundary between the Republic of Guyana and the Bolivarian Republic of Venezuela, including the fact that the Essequibo is an indivisible part of the territory of Guyana over which Guyana exercises sovereignty and jurisdiction in accordance with international law. The fact that Venezuela has challenged the validity of the Arbitral Award, after

accepting it for several decades, does not give it the right to assert or to claim sovereignty, as it has done in the Note under reference, over any part of the territory that was awarded to Guyana.

There is no legal or rational basis for such a claim or assertion. The Government of Guyana has always exercised sovereignty over the area to which Venezuela illegally and irresponsibly lays claim. Moreover the Ministry of Foreign Affairs wishes to point out in clear and unequivocal terms that the Geneva Agreement of 1966, to which the Venezuelan Note makes reference and within which the Bolivarian Republic of Venezuela appears to find baseless justifications for its provocative acts towards the Republic of Guyana, does not in any of its provisions support the Venezuelan claim. Accordingly, the Government of Guyana completely rejects the purported complaint in the second paragraph of the Note under reference as being without any foundation whatsoever. The Government of Guyana also rejects the assertion in the fourth paragraph that the Essequibo region of Guyana is "an area under claim as recognized through the Geneva Agreement of 17 February 1966" also as being without any foundation.

It follows that it is clearly the responsibility of the Government of the Bolivarian Republic of Venezuela, and not Guyana, as the Note under reference mistakenly states, "to take appropriate corrective measures in accordance with the principles of international law and the stipulations of the Geneva Agreement of 1966". The Government of Guyana expects that, instead of resorting to unseemly and what can only be described as acts of intimidation and aggression in pursuit of its illegal claim to Guyana's territory, the Government of the Bolivarian Republic of Venezuela would revert to the principles of mutual respect, commitment to international law and good neighbourly relations that both sides sought to engender in the not so distant past in their relations.

The Ministry of Foreign Affairs has noted the assertion of the Government of the Bolivarian Republic of Venezuela that it "wishes to ratify its commitment to peace and the respect of international law, consistent with the legacy of Latin American and Caribbean integration

fostered by Supreme Commander Hugo Chavez Frias". In this regard the Ministry of Foreign Affairs wishes to convey the hope of the Government of the Republic of Guyana that the sentiments thus expressed will form the basis for the conduct of Venezuela's relations with Guyana rather than the pursuit of such a relationship on the basis of preposterous assertions contained in the ill-conceived Note under reference.

The Ministry of Foreign Affairs of the Republic of Guyana avails itself of this opportunity to renew to the Ministry of the People's Power for External Relations of the Bolivarian Republic of Venezuela the assurances of its highest consideration.

GEORGETOWN
August 25, 2014

Annex 46

Memorandum by Mr. Jerome Henry Silber, Office of the Legal Adviser,
to John Calvin Hill, Director, Office of Colombian-Venezuelan Affairs
(7 September 1965)

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MEMORANDUM file

September 7, 1965

TO: John Calvin Hill
Director,
Office of Colombian-Venezuelan Affairs

FROM: Jerome Henry Silber
Attorney,
Office of the Legal Adviser

SUBJECT: BOUNDARY DISPUTE BETWEEN VENEZUELA AND BRITISH GUIANA

References: Memorandum to Mr. Vaughn (ARA) from Mr. Leddy (EUR), August 5, 1965;
Memorandum to Mr. Vaughn (ARA) from Mr. Hill (ARA/CV), August 11, 1965.

In your memorandum to Mr. Vaughn you wrote: "Since Mr. Leddy's memorandum was prepared, Embassy London (Embtel 575, Tab E) has reported that the UK is giving consideration to suggesting to Venezuela that the claim be referred to the ICJ. We have asked L/ARA for its views on the desirability of this step from the U.S. standpoint, and it is currently working on an opinion."

The attached analysis is in response to your request.

An attempt has been made, first of all, to reduce the lengthy history (including the Department's voluminous files) of the boundary problem to an accurate resume so that those of us who must work on its current aspects will have handy a single, convenient reference document to date. With apologies, footnotes seemed an unavoidable necessity.

Secondly, a step-by-step analysis of the politico-legal alternatives which the United States could pursue has been set forth. A rational approach to our interests and the interests of the immediate parties is offered for your consideration.

In this connection, it is suggested that we could all benefit by a current reading by our Embassies at London and Caracas and our Consulate General at Georgetown on the specific question of the likely reactions to a suggestion that the dispute be referred to the ICJ. Perhaps the attached analysis should be pouched to these missions for such appraisals.

Finally, an estimate of how the case would fare in the ICJ if submitted is annexed. It should be noted that it cannot be considered an opinion of the Legal Adviser at this point and is subject to revision.

ACTION REQUESTED: To forward these materials to Mr. Vaughn (ARA) with your considered comments.

cc: Mr. Meeker (L)
Mr. Reis (L/EUR)
Mr. Schwebel (L/UNA)

Mr. Davis (EUR)
Mr. Cobb (EUR/BNA)

Mr. Crowley (ARA/CV/V)

OPR/RS/R

Attachment (Secret)

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THE VENEZUELAN-BRITISH GUIANA BOUNDARY

Background

The Venezuela-British Guiana boundary dispute, originating in the nineteenth century, (1) once thought to have been settled by the Paris Arbitral Award of October 3, 1899, (2) has been revived by Venezuela due to the publication in 1949 posthumously of a memorandum (3) concerning the circumstances of that Award written by Mr. Severo Mallet-Prevost, a junior counsel for Venezuela in the arbitration. The memorandum is dated February 8, 1944, and alleges that the Award, which was rendered unanimously by the Tribunal consisting of a Russian as president, two English judges, and two members of the United States Supreme Court, (4) was reached on the basis of a "deal" between Russia and Great Britain. The memorandum states the author was informed before the making of the Award by the two American arbitrators that the Russian president had told them that he was prepared to vote with the English judges for the full extent of the British claim, including control of the main mouth of the Orinoco, allowing the Americans to dissent from such an Award; but that, in the interests of rendering a unanimous Award, he would obtain the votes of the English judges for a line largely supporting the British claim but leaving entirely to Venezuela the Orinoco if the Americans would similarly agree. Having consulted with Venezuela's senior counsel, Gen. Harrison, the former U.S. President, Mallet-Prevost stated in his memorandum that he advised the American judges, under these circumstances, to accept the Russian's proposition for a unanimous Award. Consequently, the 1899 Award established a line which, it is said, granted to Venezuela some 5,000 square miles around the mouth of the Orinoco out of approximately 50,000 square miles in dispute.

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(1) Under the Treaty of 1814 the Netherlands ceded to Great Britain 3 Dutch settlements on the northern coast of South America without defining their boundaries. 2 Brit. & For. State Papers 370. Upon its independence Venezuela claimed sovereignty over the territory previously claimed by the Captaincy General of Venezuela under Spanish rule, which it is said extended to the western bank of the Essequibo River. In succeeding decades the British territorial claims extended further and further west of that River, over the protests of Venezuela. Gold was discovered in the disputed area in the latter part of the 19th century. Heeding the pleas of Venezuela, the United States called on Britain to settle the dispute definitively or submit it to binding arbitration. The history of the dispute is examined exhaustively in the famous exchange between Secretary Olney and Lord Salisbury in 1895, which explored the legal and political status of the Monroe Doctrine, as it applied to the increasing large territorial claims of British Guiana. 6 Moore, Dig. of Int. Law, 535-575. The U.S. then proceeded unilaterally to establish its own commission of jurists to determine the proper boundary in order to defend it against future encroachments. This commission had reached no conclusions when it was disbanded upon conclusion of the Treaty of Arbitration between Great Britain and Venezuela signed at Washington on Feb. 2, 1897. 89 Brit. & For. State Papers 57.

(2) 92 Brit. & For. State Papers 160. The Award did not contain any reasoning or otherindication of the manner of reaching its result.

(3) The memorandum is contained in an article written by Mallet-Prevost's N.Y. law partner, Judge Schoenrich. 43 Am J. Int'l L. 523.

(4) Frederic de Martens, president; Lords Russell and Collins "on the part of Great Britain"; Justices Fuller and Brewer "on the part of Venezuela."

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In 1950 two articles were published, one (5) attacking the credibility of the Mallet-Prevost memorandum upon a full examination of the publicly-known facts and records contemporaneous with the arbitration, the other (6) corroborating the essential parts of the memorandum on the basis of a private conference between the author, a former Assistant Solicitor of the Department, and Mallet-Prevost in 1910.

The publication of these articles naturally excited considerable interest in the Venezuelan press. In March 1951 at the 4th Meeting of Foreign Ministers of American States held at Washington, Venezuela expressly declared that no change in the status of British Guiana would prevent Venezuela "from pressing its just demand that the injury suffered (when the Award was made) should be redressed by an equitable rectification of the frontier." A declaration in similar terms was made three years later at the 10th Inter-American Conference at Caracas. (7)

The Dispute Since 1962

In February 1962 Venezuela formally raised the boundary dispute in the United Nations General Assembly's 4th Committee during its discussion of the question of independence for British Guiana, expressing itself in favor of such independence while calling for the "rectification of the injustice through friendly negotiations with the parties concerned." (8) The following month talks on the issue were initiated between the British Ambassador at Caracas and the Venezuelan President and Foreign Minister. (9) Concerned at the prospect of a Jagan-controlled independent British Guiana as a neighbor, Venezuela proposed some kind of joint Venezuelan-British administration of a part of Guiana, or a cordon sanitaire under Venezuelan sovereignty in which economic preference would be given to British, Venezuelan, and U.S. development capital. (10)

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(5) By Clifton J. Child, 44 Am. J. Int'l L. 682.

(6) By William C. Dennis, 44 Am. J. Int'l L. 720.

(7) The texts of the Declarations were annexed to the memorandum enclosed with the Venezuelan letter to the U.N. Sec. Gen., Feb. 14, 1962, Doc. A/C.4/536.

(8) U.N. Gen. Ass. records, 4th Comm., 1302d mtg., Feb. 22, 1962, p. 884.

(9) A-1184, 4/27/62, from Caracas; A-171, 5/4/62, from Caracas.

(10) Ibid.; Desp. 755, 5/15/62, from Caracas.

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In August 1962 Venezuela requested the inclusion of the question of her boundaries with British Guiana in the General Assembly's agenda. (11) Claiming newly-discovered corroborating evidence, Venezuela solicited U.S. support in the matter. (12) Ambassador Stewart at Caracas suggested taking the initiative on this dispute between two good friends, letting them both know precisely where we stand and urging bilateral talks in lieu of U.N. debates with recourse as a last resort to the International Court of Justice or some otherinternational legal body. (13) The Department replied by asking Embassy Caracas for its estimate of Venezuelan willingness to refer the problem to the ICJ, stating "FYI. Department assesses Venezuela's legal case as quite weak. END FYI," and asking Consulate General Georgetown for information as to U.S. economic or other interests in the disputed territory "that might make US proposals for moderation appear embarrassingly self-serving." (14) As to the latter point, the Consulate General stated (15) that the only significant US economic interest was certain manganese mines operated by a subsidiary of Union Carbide. Embassy Caracas replied that, although Venezuela considered the boundary issue "as primarily a legal one," reference to any impartial international tribunal would result in awarding most if not all the disputed territory to her, thus "embarrassing all concerned" and righting the wrong "too much." However, the Embassy believed that Venezuela would accept referral to the ICJ if her efforts in the U.N. failed to enlist the necessary support. (16)

The U.S. position in the 17th General Assembly was:

> "The U.S. Delegation should avoid being drawn into any dispute between the United Kingdom and Venezuela. The U.S. Delegation should assume the position that it welcomes signs thatthe parties are attempting to arrive at a bilateral settlement of their differences. The U.S. Delegation may indicate that it supports the intention of the parties to arrive at an amicable settlement." (17)

The Department specifically denied that USUN Delegate Bingham had indicated U.S. support for Venezuela's claim in February 1962 or that any other U.S. official has made any commitment, directly or indirectly, to support her substantive claim.(18)

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(11) U.N. Gen. Ass. rec., 17th sess., annexes, agenda item 88.

(12) A-164, 9/1/62, and A-200, 9/22/62, from Caracas. See also the Memcon, 9/12/62, between the Venezuelan first sec., Dr. Nass, and the Director EST, Mr. Wellman, wherein Dr. Nass referred to "new evidence from the Ben. Harrison Papers in the U.S. Library of Congress." Mr. Wellman indicated that the U.S. favored bilateral negotiations despite the difficulty for the U.K. and British Guiana to agree to a revision of the Award.

(13) Tel 301, 9/11/62, from Caracas.

(14) Deptel 251 to Caracas, 1682 to London, 100 to Georgetown, 733 to USUN, 9/21/62.

(15) Tel 91, 9/24/62, from Georgetown. The area also had some U.S. missionaries as well as small-time diamond and gold prospectors.

(16) Tel 368, 9/25/62, from Caracas.

(17) U.S. position paper, 17th G.A. sess., SD/A/C.5/316, 9/5/62, which reviewed the antecedents of the Award and concluded that Venezuela would have considerable difficulty in successfully challenging the Award on legal grounds.

(18) A-164, 9/1/62, from Caracas; CA-3615, 10/4/62, to Caracas, etc.

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During the general debate on October 1, 1962, the Venezuelan Foreign Minister, Falcon Briceno, made extensive reference to the boundary dispute, indicating that his government had obtained evidence corroborating the Mallet-Prevost memorandum and stating that it would be published "in due course." (19) After a discussion of the problem in the Special Political Committee on November 12 and 13, 1962, during which the U.K. representative stated that the U.K, with the concurrence of British Guiana, was willing to discuss through diplomatic channels with Venezuela arrangements for a tripartite examination of the documentary evidence in the case (although that "was in no sense a proposal to engage in substantive talks about the revision of the frontier, for which there was no justification"), the matter was dropped, the Committee chairman indicating his understanding that the parties would inform the U.N. of the "results of these conversations." (20)

Since 1962 the examination of documents has proceeded at a leisurely pace. On August 3, 1965, Venezuela and Great Britain exchanged copies of their respective experts' reports. Venezuela is now expecting the British to discuss these reports at the Foreign Minister level, the British hesitating to do so, and no report to the U.N. has been made to date. (21)

On December 15, 1964, during an interview in the Department with Venezuelan Foreign Minister Irribarren-Borges and Ambassador Tejera-Paris, the Acting Secretary, Mr. Ball, declined to comment on the boundary issue. The Venezuelans left with Mr. Ball a memorandum which said in part:

> "If the North American arbitrators who participated in the tribunal on behalf of Venezuela did not register their protest, it was because they had in mind the high interests of their own country and tried to avoid in as much as possible any deterioration in the then cordial Anglo-American relations.
>
> "The Government of Venezuela, by means of recently complied documentation, has become aware of the responsibility of the United States in the proceedings, of judicial appearance, by which the rights of Venezuela were subordinated to the interests of Great Britain. This aspect of the problem has not yet spread to Venezuelan public opinion." (22)

On December 18, 1965, the First Special Inter-American Conference approved the "Act of Washington", which resolved:

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(19) U.N. Gen. Ass. rec., 17th sess., 1138th mtg., p 245.

(20) U.N. Gen. Ass. rec., 17th sess., annexes, agenda item 88.

(21) A-102, 8/10/65, from Caracas.

(22) Memorandum attached to Memcon, 12/15/64. See also Memcon, 8/5/64, between Ass't Sec. Mann and the Ven. Amb. to London, Falcon Briceno , and the Memcon, 11/19/64, between Mr. Mann and Ven. Amb. Tejera-Paris.

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"3. That the Council of the Organization shall not take any decision with respect to a request for admission on the part of a political entity whose territory, in whole or in part, is subject, prior to the date of this resolution, to litigation or claim between an extracontinental country and one or more member states of the Organization of American States, until the dispute has been ended by some peaceful procedure."

Upon voting for the "Act of Washington", Venezuela made a statement reiterating its "pending claim" against British Guiana, adding that it "desires to state expressly in the record that it gives its approval to point 3 of the operative part of the 'Act of Washington' in the understanding that this provision will apply both to the present situation of British Guiana and in the event that this entity obtains its independence without a prior settlement of the Venezuelan claim having been made." (23).

Recent Developments

Since the beginning of 1965 the boundary dispute has excited increasing concern on all sides. It is now expected that constitutional conference will be convened in November 1965 by the British to fix a date for the independence of British Guiana, which should occur, according to current estimates, sometime in 1966. (24) Whether territorial provisions relating to such independence will be determined in November, and if so, what their nature may be, is uncertain at this point.

In February 1965 the Venezuelan Government published a new official map of the country, illustrating the territory between the 1899 boundary and the Essequibo River (roughly two-thirds of present-day British Guiana) as a "zone in dispute." In May the Venezuelan Foreign Ministry publicly expressed "surprise" that British Guiana had granted an oil exploration concession in that area and declared that it did not "recognize" that concession. A similar announcement was published in the London Times on July 8th. The same week the Venezuelan Minister of Mines and Hydrocarbons called in the Caracas representative of Continental Oil, which had received the concession, and which has certain interests in Venezuela, and told him that acceptance of the concession from British Guiana would be regarded as "an unfriendly act." (25) After consulting with the Department, Continental Oil decided to go ahead with the concession. The Department suggested that the company inform the Venezuelan Government of its decision beforehand and assure that government that the company "would of course abide by any future possible change in sovereignty of the area." (26)

A newspaper dispatch from London in July 1965 indicating that the U.S. and the U.K. were negotiating a treaty to guarantee the present territorial limits of British Guiana upon her independence against the Venezuelan claim led to denials by the Consul General to Prime Minister Burnham and by Ambassador Bernbaum to Foreign Minister Iribarren-Borges and newspaper reporters. (27) The Department instructed the Consul General at Georgetown on July 13, 1965:

"Although Venezuela has told us of its claim we have refrained from commenting on its merits. We have said only that we hope such dispute as may exist, can be amicably resolved between two such good friends as Venezuela and the United Kingdom.

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(23) Texts of the "Act of Washington" and the Venezuelan statement are contained in the Final Act of the Conference, OAS Doc. 31, Rev. 2, 12/18/64.

(24) Memo from Assist. Sec. Leddy to Ass't. Sec. Vaughn, 8/5/65.

(25) A-102, 8/10/65, from Caracas, which supplies otherindications of the deepening Venezuelan concern.

(26) Deptel to Caracas 128, 33 to Georgetown, 8/16/65. SECRET

(27) Tels 44 from Caracas and 12 from Georgetown, 7/12/65; Deptel 13 to Georgetown 40 to Caracas, 204 to London, 10 to Port of Spain, 7/13/65; Tels. 57 from Caracas and 181 from London, 7/14/65; Tel 18 from Georgetown, 7/19/65.

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"We have not questioned the boundary resulting from the arbitration of 1899 in which US citizens participated. We are not and do not wish to become involved in this boundary claim. You should therefore not provide Burnham with any statement which might give rise to Venezuelan assertions that we are taking sides or which might be used in a manner which could harm our relations with Venezuela." (28)

Mr. Burnham told the Consul General (29) that he had asked the Attorney General to study the question of taking the subject to the World Court (ICJ).

Embassy Caracas thinks that Venezuela will press her claim again in the U.N., the objective being "to force Britain to let the issue be decided by the International Court, where Venezuela is genuinely confident she will win." As for her motives in pushing her claim, the Embassy discounts any desire to attract world attention, to "put Venezuela on the map," to distract public attention from pressing internal problems, or simple economic greed (30) (although a subsidiary, but possibly growing, motivation is Venezuelan interest in possible mineral resources in the claimed territory). (31) Nor is her concern with the political instability of the Burnham Government primary in this regard, but rather the "conviction which is virtually unanimous among Venezuelans that Venezuela was 'robbed' in the 1899 Arbitral Tribunal of territory which is rightfully hers." (32) Iribarren-Borges told Ambassador Bernbaum on July 30th that the elements were present for a possible solution of the problem since (a) the area claimed was almost completely unpopulated and (b) economic and political aid to British Guiana from Venezuela, which the former must be able to count on, would be forthcoming "under the proper political circumstances." (33)

Embassy London reported in August 1965 that the views of British Foreign and Colonial Offices were: (a) there is no legal or documentary support for Venezuela's claim and will shortly inform the Venezuelan Ambassador at London to that effect; (b) any concession of substance would discredit the Burnham Government and weaken the U.K. position on other Border questions (i.e., the Guatemala-British Honduras mediation effort); (c) independence for British Guiana will not be delayed by this dispute; (d) there might be a possibility (34) for a "face-saving device in the form of a joint agreement for the development of the frontier area"; (e) but that otherwise the British, after a close examination of its own case, might suggest to Venezuela that the case be presented

to the

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(28) Deptel 13 to Georgetown, 7/13/65.

(29) Tel 39, 8/6/65, from Georgetown.

(30) A-102, 8/10/65, from Caracas.

(31) Deptel 59 to Caracas, 18 to Georgetown, 322 to London, 7/20/65; Tel 83, 7/21/65 from Caracas.

(32) Ibid.

(33) Tel 116, 7/31/65, and A-102,8/10/65, from Caracas, which also reports that the Chief of the Venezuelan Joint Chiefs of Staff, Adm. Croce, indicated to a U.S. military officer that Venezuela was considering taking its claim to the ICJ and that, should it be denied, "military action could not be ruled out." The Embassy thinks the latter largely an empty threat.

(34) Tel 575, 8/6/65, from London, which reports the Embassy's belief that the Foreign Office "has asked its lawyers to check the British case again as a matter of some urgency."

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to the International Court of Justice. The latter possibility would, according to the Embassy's information, have the disadvantage from the British point of view of admitting that there was a legitimate dispute, but would be presented in terms of "enabling the Venezuelan Government to satisfy itself as to the weakness of its own case." The latter could hardly reject the offer and would have the advantage of taking much of the political steam out of the issue for several years. The difficulty of getting British Guiana to go along with such an offer was recognized, but it was assumed that, even after independence, the British would supply Court costs and most of the expertise. (34)

Does the United States have a Stake in the Resolution of this Dispute?

Ordinarily the answer to this question would be no. The traditional U.S. policy towards boundary disputes between other countries has been that they are matters strictly for the parties involved, the U.S. usually being content with any resolution reached; and that, unless there is a use or threat of use of force, the U.S. would not intervene to urge a resolution, for to do so would likely strain relations with at least one of the parties. This traditional attitude has supplied the policy which the United States has followed to date in the Venezuelan-British Guiana boundary dispute.

Should this policy be maintained, what is the probable course that this dispute will take? It seems likely that all sides will take increasingly more rigid positions, that the independence of British Guiana will not be delayed on this account, that the relations between an independent Guiana and Venezuela will be embittered right from the start, and that Venezuela will prevent Guiana's admission to OAS membership and accession to the Rio Inter-American Treaty of Reciprocal Assistance pursuant to the 1964 "Act of Washington." While the United States has a certain interest in the existence of smooth relations between newly-independent States and the rest of the international community, it has a much greater interest in extending to these States in the western hemisphere the rights and, particularly, the duties of parties to the Rio Treaty and members of the OAS. In light of the political and racial dangers currently existing in British Guiana, it is surely as important to bring her into the political and legal framework of this hemisphere as it is regarding Jamaica, or Trinidad and Tobago, or British Honduras (if it becomes independent).

Consequently, are there not reasonable grounds to believe that present U.S. policy in the boundary dispute is no longer likely to achieve these U.S. objectives in this developing and changing situation? The United States does, it seems, have a stake in a peaceful resolution of the dispute.

Will a New United States Policy help in Fact to Resolve the Dispute? At what Cost?

The U.S. could decide to offer unqualified support for Venezuela's claim on the merits, or alternatively, sign an agreement with the British guaranteeing the territorial integrity of British Guiana upon her independence. While these alternatives have the admirable advantage of clarity in our foreign policy, neither one should be expected to endear the United States to the government disadvantaged thereby nor to advance the resolution of the dispute. Venezuela is no longer the weak State it was in the last century when the United States felt it had to interpose itself against British "imperialistic designs," nor obviously are the United States and the United Kingdom in the same postures as they were then. An independent Guiana is in no need, certainly in absence of a real threat to the peace, of a guarantee of her borders separate from that which is applicable to any U.N. and OAS member.

(34) Tel 575, 8/6/65, from London, which reports the Embassy's belief that the Foreign Office "has asked its lawyers to check the British case again as a matter of some urgency."

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On the other hand, a more active U.S. policy need not necessarily imperil our relations with any of the parties involved; it depends on what it is and how it is handled. For example, a successful U.S. mediation effort requested by the parties would, almost by definition, earn their praise. Of course, a high price would be paid if the effort turned out unsuccessfully. In this connection, the results of any U.S. mediation effort would likely be compared with the results of the U.S. mediation in the Guatemala-British Honduras dispute (the possibilities of invidious comparisons certainly cannot be ruled out, especially in light of Venezuela's present allegations of a "political deal" in the 1899 arbitration). Mediation by the U.N. Secretary-General or his designee (35) could be proposed (although, so long as British Guiana remains a British dependency, this proposal apparently would run counter to traditional British policy). Upon British Guiana's independence, mediation by the OAS Secretary General or the Inter-American Peace Committee could be suggested if Georgetown re-orients its primary attention from London to the western hemisphere (specifically Washington). The IAPC provides mediatory services at the request of governments of "American States" (36) in dispute, but usually when there is some incident or threat to the peace (the IAPC has certain limited powers which it can take on its own initiative,(37) but it is doubtful whether these powers could be considered to be applicable to or "bind" non-OAS members). Then again,another State mightbe persuaded to mediate (e.g., Brazil, which has a common boundary with both countries, (38) but which presently has no diplomatic relations with Venezuela). In short, there is a variety of candidates for the mediatory party, even if the United States chose to decline the responsibility (which should not be ruled out at this time).

The result of any mediation, if successful, could be along the lines of the Venezuelan thinking in 1962, i.e., joint Venezuelan-British (or independent Guianese) administration of a part of the disputed area, or along the lines suggested more recently by the British Foreign Office, i.e., joint agreement for the economic development of the area. It should be recognized, however, that these proposed solutions would be in the nature of "face-saving" devices. Accordingly, it may be asked whether any of the parties is interested in "saving face" or compromise at this time or would be in the near future. A successful mediation requires some "motivation" to mediate on both sides. It is clear that if the parties maintain their view that the dispute is essentially, if not wholly, a dispute about their legal rights as a result of the 1899 arbitration, each side insisting that the Venezuelan claim be measured by reference to international law, there is little or no room for mediatory efforts since any mediator would be met at the outset with his inability to decide or compromise legal issues. Unless all parties could be persuaded to dismiss or otherwise reserve their legal positions, which seems highly doubtful at this time, a mediation would probably be doomed to failure in short order.

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(35) This was done, for example, in the Ethiopia-Somalia boundary dispute. See 3 Whiteman, Digest of International Law (1964) 668 ff.

(36) Resolution XIV, 2d mtg. of consultation of Ministers of Foreign Affairs Havana (1940) which created the Committee; Arts. 2 and 15 of the Statutes of the IAPC (1956).

(37) Para. 2, Resolution IV, 5th mtg. of consultation of Ministers of Foreign Affairs, Santiago (1959).

(38) The boundary between Brazil and British Guiana was fixed by the Arbitral Award of Victor Emanuel, XI Revue Generale de Droit International Public (1904), Doc. 18. On February 22, 1962, the Brazilian representative on the General Assembly's 4th Committee stated that his country would welcome the future independence of British Guiana and that Brazil had no outstanding boundary claims against her neighbors. U.N. Gen. Ass. records, 4th Comm., 1302d mtg., Feb. 22, 1962, p.884.

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Would Suggesting Reference to the International Court of Justice make Sense?

At first glance it would seem "logical" that legal disputes be resolved through legal procedures and that questions of international law should be definitively decided by the World Court (ICJ) or other international tribunal, e.g., an international arbitral tribunal. (39) However, few problems in international affairs are strictly and purely legal in nature; (40) in most boundary controversies it is usually the case that one of the parties relies heavily on its "legal rights" although this position may cover vital economic, cultural, and/or military interests while the other parties to the controversy, while largely conceding that the "law" might favor their opponent, rest their case upon the alleged "injustice" of that law (or all traditional European-developed international law) viewed in the context of their vital economic, cultural, and/or military interests. (41) The Venezuela-British Guiana boundary dispute, it seems, is one of the purest legal problems in this sense that have recently arisen: it really arose because of the publication in a legal periodical of a memorandum arguing that Venezuela's legal rights were violated; the response to these allegations has been largely confined to insisting that there is no truth to them and that, in any case, revived claims are barred by the Treaty of Arbitration, which states that the Award shall be regarded by the parties "as a full, perfect, and final settlement," and by the legal concept of "estoppel", i.e., the lack of protest against the Award for many years.

However, it is not always in the best interests of the United States to suggest resort to the ICJ to other countries, even when they are involved in a "legal" controversy. For example, the United States may not be willing to abide by just any decision in the matter; the U.S. might not always be ready to "take its chances" on the outcome. (42) Nor might the parties involved themselves be willing to do so. (43) While perhaps Venezuela might

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(39) Resort to arbitration to resolve a dispute arising from a previous arbitration seems singularly inappropriate on the face of it and doubtless would be unacceptable to the parties.

(40) See for example the Alto Adige (South Tyrol) dispute between Austria and Italy, in which the U.N. General Assembly recommended bilateral negotiations and, should they fail, resort to the ICJ. See 3 Whiteman, Digest of International Law (1964) 38 ff.

(41) The possibility of a plebiscite in the disputed area of British Guiana probably should be dismissed in light of the politically primitive Amerindians who inhabit the area, A-134, 12/18/64, from Georgetown, although the Dutch-Indonesian settlement of the New Guinea (West Irian) dispute is some precedent to the contrary. U.N. Doc. A/5170 (1962).

(42) The U.S. economic interests in the area here involved, see notes 15 and 26 supra, would apparently not be jeopardized if sovereignty was transferred to Venezuela ipso facto.

(43) A special agreement between the parties to submit the case to the ICJ would have to be negotiated, Venezuela not having accepted the compulsory jurisdiction of the Court, and the U.K. excluding from her acceptance "disputes in respect of which arbitral or judicial proceedings are taking, or have taken place, with any State which, at the date of the Commencement of the proceedings, had not itself accepted the compulsory jurisdiction of the International Court of Justice." ICJ Yearbook, 1963-1964, p. 240.

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might be persuaded (44) that she "has nothing to lose" by submitting her legal rights to the ICJ (except, of course, her case), and while the U.K. might come to see that the ICJ offered the best of the admittedly poor alternatives of extricating herself out of the situation, it must be recognized that a substantial problem would exist in attempting to persuade the Government of British Guiana to abide by a decision to go to the ICJ (45). This problem probably would be even more acute once independence was achieved. After all, the extreme claims of Venezuela, if accepted, would result in a loss to British Guiana of about two-thirds of her territory (albeit nearly unpopulated and without significantly proven mineral resources). While it is unlikely that the extreme claims of Venezuela would in fact be accepted, (46) it is doubtful that the Government of British Guiana or any similarly-situated government would readily take its "chances "in the ICJ even though a victory would confirm the stability of its borders.

Until independence, of course, London remains in control of the foreign relations of British Guiana although there is a felt obligation to at least consult if not obtain the concurrence of Georgetown on these matters. It is therefore a possibility that as a condition of independence the U.K. and British Guiana could agree that the boundaries of the new State will be subject to the outcome of an ICJ case then pending or that an agreement to submit the matter to the ICJ will be negotiated between an independent Guiana and Venezuela within a certain period after independence. In any case, the U.K. has a political responsibility to provide for some means of settling the boundaries of a colony to be granted independence, and perhaps London's assistance could be enlisted in an effort to this end vis-a-vis Georgetown.

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(44) The difficulty involved for the present administration and controlling political party in Venezuela in deciding to take its case to the ICJ should not be minimized; Embassy Caracas reports that the Venezuelan claim "is based on an emotional conviction" and "there will be great disappointment in Venezuela should its hopes of regaining at least part of the disputed territory be finally and ultimately dashed." In such an event, the Government would certainly be concerned not only with the positions taken by oppositionist groups but also the military. A-102, 8/10/65, from Caracas. In Venezuela "feeling runs deep on the border question" and "a concensus exists among all political parties that Venezuela's claim is a legitimate one." Memo to Ass't Sec. Vaughn from ARA/CV (Mr. Hill, 8/11/65).

(45) On Feb. 28, 1964, Premier Jagan told the Legislative Assembly that "we are not prepared to surrender a single inch of soil" and "we are not prepared to engage in substantive talks on the revision of the frontier." A-177, 3/8/64 from Georgetown. Venezuela formally objected to these remarks. A-530, 3/7/64, from Caracas. All Guianese political leaders take the position that no territory "would ever be conceded", and there has been little press coverage on the issue in British Guiana. A-134, 12/18/64, from Georgetown. Since July 1965 however, more concern has been evident in Georgetown. On July 10, 1965, Premier Burnham stated publicly that "his government would not yield or recognize one square inch of B.G. as Venezuelan." Opposition leaders made similar statements. More recently, Jagan's PPP has created a "Committee in Defense of Guyanese Territory." Tels 12, 7/12/65, and 39, 8/6/65, from Georgetown.

(46) By ratifying the Arbitration Treaty with Great Britain (signed on Feb. 2, 1897, at Washington), Venezuela in effect conceded a large portion of the territory west of the Essequibo by abandoning previous insistence on the strict application of the doctrine of uti possidetis juris: Art. IV (a) of the Treaty states that the Arbitrators will be governed by, inter alia, the following rule: "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

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Current British thinking is that, if resort to the ICJ were proposed to the Venezuelans, it would be presented in terms of "enabling the Venezuelan Government to satisfy itself as to the weakness of its own case." Certainly the 1962 agreement to examine each other's documentary evidence was designed for the same purpose, but has not in fact softened either side's legal position. Perhaps if both sides were confronted with the raw alternatives of either going to the ICJ or mediating the dispute at a high enough level to ensure serious negotiations, the latter course would be chosen. This may be what the British now have in mind. As was said before, unless all parties could be persuaded to dismiss or otherwise reserve their legal positions, a mediation would probably be doomed to failure in short order. It seems therefore that the suggestion of reference to the ICJ does make some sense in order to move the boundary dispute off dead center into serious negotiations.

Would it be Wise for the United States in Light of Its own Interests to Advance on its own Initiative the ICJ Suggestion in the Three Capitals?

If the U.S. were to suggest that the U.K. (on behalf of British Guiana) and Venezuela submit the boundary dispute for final adjudication by the International Court of Justice, what reactions could be foreseen? Of course, both sides might accept the suggestion. The United States certainly could live with any decision the ICJ made (47) and would thereby be provided with a convenient and authoritative peg on which to hang its refusal to entertain any later requests from the parties for support for a boundary revision. In the meantime, British Guiana's independence would not be delayed on account of the dispute (48) and, more importantly, British Guiana, once independent, would not be automatically barred from admission to the OAS or from accession to the Rio Treaty.

On the other hand, both sides might well refuse our suggestion, thereby tacitly admitting to each other that neither is as confident of its legal position as they have heretofore asserted. This would clearly be the necessary "break-through" which would permit serious negotiations and/or a joint request for mediation.

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(46) (Continued) constitute adverse holding or to make title by prescription." 89 Brit. & For. State Papers 57 at 60. For the doctrine of uti possidetis juris, see Ralston, The Law and Procedures of International Tribunals (1926), pp 322-323. If the parties submit the question of the validity of the Award of 1899 to the ICJ, they might also submit the question of the obligations of the parties under the 1897 Treaty of Arbitration, including the rules laid down in Article IV thereof, in case the Court holds the Award defective. The ICJ would probably find some means of giving present-day effect to those rules, thus preventing Venezuela from automatically extending her borders to the Esseguibo. An ICJ victory for Venezuela at most, therefore, would mean that the legal situation would revert in some fashion to the situation existing between 1897 and 1899. Perhaps the Court would decide that the parties had an obligation to negotiate in good faith within the context of those rules or re-submit the dispute to arbitration based on those rules.

(47) Annexed hereto is an estimate of how the case would fare in the International Court of Justice if submitted. It must be emphasized that the correctness of this estimate has little bearing on whether the suggestion to the parties that they submit the case ought be made in the first place.

(48) Typically it takes several years from the date of an agreement to submit a case to the ICJ before a final judgment on the merits is rendered. Independence for British Guiana would not, of course, have to wait until such a judgment is reached.

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A third course is possible: one side accepting, the other side refusing the suggestion. This situation would likely strengthen the political position of the acceptor; it would, on the other hand, tend to permit the refusing party the opportunity to re-examine and re-state its position in non-legal terms. The latter would mark an advance towards a more meaningful understanding of the "real" issues in controversy: a necessary purgative before any resolution by non-legal means can be achieved.

In the meantime, the U.S. could escape from being "put in the middle" of the dispute by being offered documents, arguments, etc., by both sides for U.S. appraisal and "judgment"; the simple answer to such offers would be, "Tell it to the ICJ!" It is difficult to see how such an answer could really strain relations between ourselves and any of the parties; it is, after all, they and not the U.S. who have advanced the arguments based on international law.

It may, of course, be wiser if the United States did not take the initiative in making the suggestion in all three capitals, for this might appear to be an uncalled-for intrusion into the controversy, but waited until the next propitious time when we are approached for our support in the dispute. This matter naturally depends on the way it is handled and by reference by our own necessities and interests in the resolution of the dispute. Again, future U.S. policy ought not be exclusively determined by what we suppose the interests of the parties to be, but by what we determine our own interests are. The United States need not be more "Venezuelan" than the Venezuelans nor more "Guianese" than the British. Since the parties themselves are each examining the possibilities of resorting to the International Court of Justice at the present time, now may, on the other hand, be precisely the propitious time for a United States initiative to advance the dispute to a more fruitful stage and a mutually-satisfactory resolution.

Annex 47

Headquarters Intelligence Corps Base Camp Ayanganna, Thomas Lands, Georgetown, *Venezuela Military Helicopter Flew Over Guayana's Airspace* (22 December 2023)

Headquarters
Intelligence Corps
Base Camp Ayanganna
Thomas Lands
GEORGETOWN

Tel: 592-225-1655
Email: coint@gdf.mil.gy

Friday 2023-12-22

INFORMATION ALERT					
Subject:		**VENEZUELA MILITARY HELICOPTER FLEW OVER GUYANA'S AIRSPACE**			
Originating Source		Open Source			
INTELLIGENCE GRADE					
Source Reliability	**A** Completely Reliable	**B** Usually Reliable	**C** Fairly Reliable	**D** Not Usually Reliable	**E** Reliability cannot be judged /New source
Analysis of Information	**1** True/Confirmed by other sources	**2** Probably True	**3** Possibly True	**4** Improbable	**5** Truth cannot be judged/False
Results	**B1**				

VENEZUELA MILITARY HELICOPTER FLEW OVER GUYANA'S AIRSPACE

1. Information received indicates that on Friday 2023-12-22, a Venezuelan military helicopter lifted off from San Juan and was later seen overhead Arau Village at about 1243 hours. The residents at Arau Village captured a video of the helicopter as it was passing overhead.

2. About seventeen minutes later, the helicopter was seen overhead Eteringbang. It circled the airstrip two times then made a landing at San Martin.

2. Information received prior indicated that a Governor was scheduled to visit San Juan today.

IMAGES SHOWING THE ROUTE THE HELICOPTER ALLEGEDLY TRAVELLED
REFERENCE
NIL

Annex 48

Extract from Map of the Boundary Line Between British Guiana and Venezuela Surveyed by The Commission of Both Countries from November 1900 to June 1904

Ministry of Foreign Affairs of Guyana, *Guyana/Venezuela Boundary, The Ankoko Affair*, 1981 (extract)

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Guyana/Venezuela Boundary

THE ANKOKO AFFAIR

Notes on Guyana's Protest

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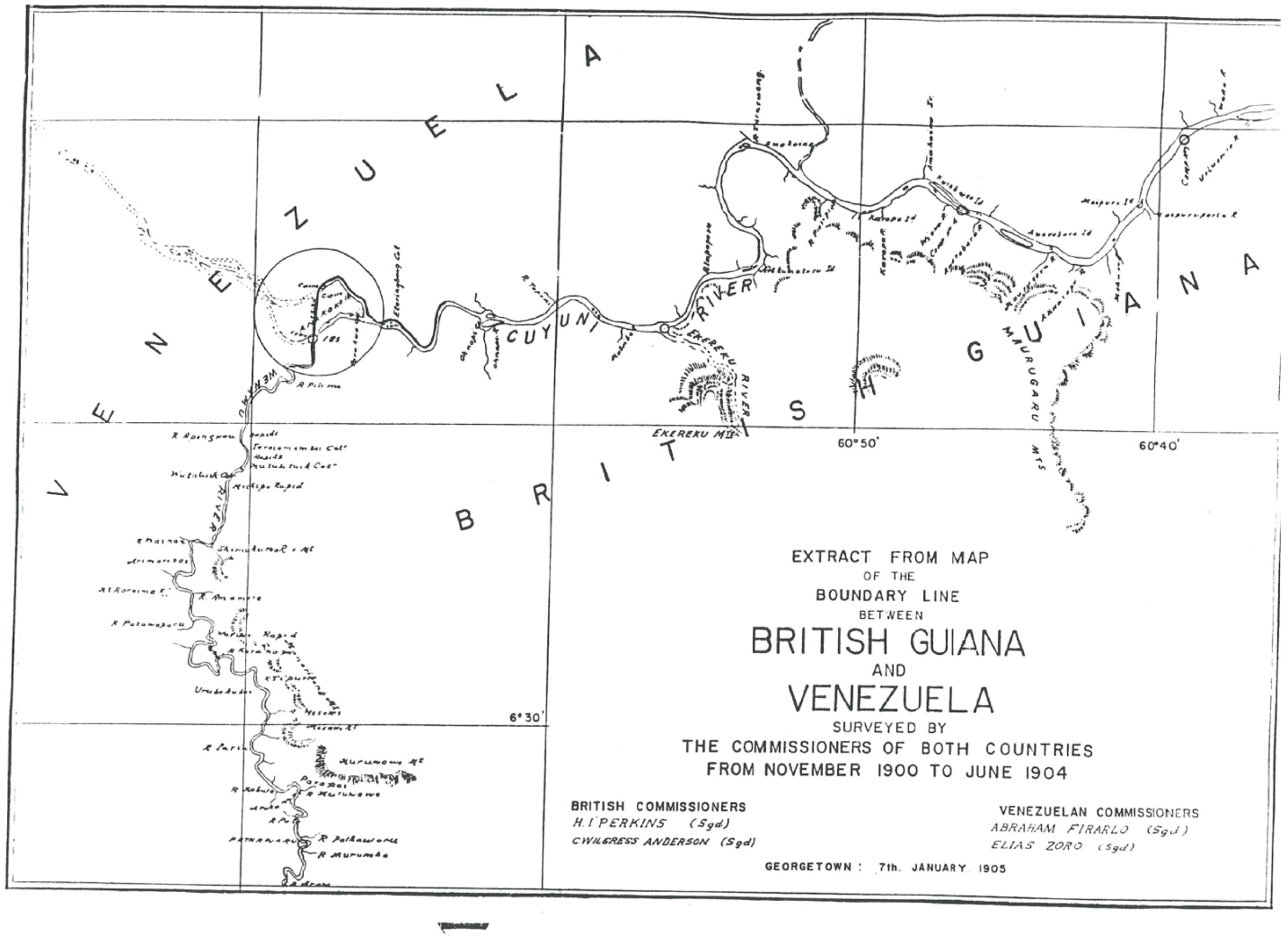
VENEZUELA
BRITISH GUIANA
CUYUNI RIVER
EKERERU RIVER
EKERERU MTS
MAURUGARU MTS
60°50'
60°40'
6°30'
EXTRACT FROM MAP
OF THE
BOUNDARY LINE
BETWEEN
BRITISH GUIANA
AND
VENEZUELA
SURVEYED BY
THE COMMISSIONERS OF BOTH COUNTRIES
FROM NOVEMBER 1900 TO JUNE 1904
BRITISH COMMISSIONERS
H.I PERKINS (Sgd)
C.WILGRESS ANDERSON (Sgd)
VENEZUELAN COMMISSIONERS
ABRAHAM FIRARLO (Sgd)
ELIAS ZORO (Sgd)
GEORGETOWN : 7th. JANUARY 1905

Annex 49

Cable from Primer Minister and Minister of Foreign Affairs of Guyana, Mr. F.S. Burnham, to Minister of Foreign Affairs of Venezuela, Dr. Ignacio Iribarren Borges, concerning the Ankoko Island (14 October 1966)

Republica de Venezuela, Ministerio de Relaciones Exteriores, *Reclamación de la Guyana Esequiba*, *Documentos*, *1962-1981*, Caracas, 1981, p. 121

REPUBLIC OF VENEZUELA
MINISTRY OF FOREIGN AFFAIRS

[Coat of Arms]

THE CLAIM TO THE GUAYANA ESEQUIBA

DOCUMENTS
1962-1981

CARACAS, 1981

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N° 3405

EXPERT TRADUCTEUR PRÈS LA COUR D'APPEL DE PARIS
Jimena MARTINEZ ROJAS
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REPUBLIC OF VENEZUELA
MINISTRY OF FOREIGN AFFAIRS

[Coat of Arms]

THE CLAIM TO THE GUAYANA ESEQUIBA

DOCUMENTS
1962-1981

CARACAS, 1981

CABLE FROM THE PRIME MINISTER AND MINISTER FOR FOREIGN AFFAIRS [OF GUYANA], THE HON. F. S. BURNHAM, TO HIS EXCELLENCY DR. IGNACIO IRIBARREN BORGES, MINISTER FOR FOREIGN AFFAIRS OF VENEZUELA, CONCERNING ANACOCO ISLAND

Georgetown, 14th October, 1966.

His Excellency Dr. Ignacio Iribarren Borges
Minister for Foreign Affairs,
Caracas.

No. 26.

A Guyanese inspection mission conducted on 12th October has discovered Venezuelan personnel occupying an area of that portion of Anacoco Island in the Cuyuni River situated within Guyanese territory. It has further been observed that Venezuelans have erected installations and are constructing an airfield within Guyanese territory. I strongly protest this intrusion of Venezuelan personnel into Guyanese territory and request that immediate measures be taken by your Government to guarantee the withdrawal and removal of the installations and ensure compliance with the Geneva Agreement.

BURNHAM
Prime Minister and Secretary of State for Foreign Affairs

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REPUBLICA DE VENEZUELA

MINISTERIO DE RELACIONES EXTERIORES

RECLAMACION DE LA GUAYANA ESEQUIBA

DOCUMENTOS

1962 - 1981

CARACAS, 1981

V35r
1981

REPUBLICA DE VENEZUELA
MINISTERIO DE RELACIONES EXTERIORES

RECLAMACION DE LA GUAYANA ESEQUIBA

DOCUMENTOS
1962-1981

CARACAS, 1981

Máxima pretensión británica en 1887-97 (morada en el mapa).—A los pocos meses de haber declarado esa tercera línea Schomburgk (la que había sido falsificada) como máxima pretensión de Gran Bretaña, el Gobierno Británico la declaró como frontera de absoluto derecho, y avanzó su aspiración al territorio del Yuruari, hasta cerca de Upata, que había siempre reconocido como territorio venezolano de indiscutible derecho. El público está en conocimiento de cómo se logró detener la expansión d Guayana Británica en nuestro territorio. De lo contrario, el propio Orinoco habría corrido el riesgo de caer en manos de los británicos.

Línea del Laudo (marrón en el mapa).—A simple vista se puede apreciar la injusticia cometida a Venezuela por el Tribunal de Arbitraje en 1889. Basta decir que la línea del Laudo sigue casi con absoluta exactitud la tercera línea Schomburgk, o sea la línea que había sido falsificada en el Colonial Office. Si en la región del Alto Cuyuní se aparta la línea del Laudo para seguir por el Río Venamo es porque Gran Bretaña consideraba que esas tierras eran improductivas y expuestas a las fiebres palúdicas. Igualmente no les importaba retirarse de la boca del Amacuro porque desde el Guainía, y por el Canal de Morajuana, podía llegar a las bocas del Orinoco, dada la intercomunicación fluvial de aquella zona.

Las sucesivas usurpaciones expresadas en kilómetros cuadrados.—Las sucesivas usurpaciones británicas de territorio venezolano, siempre en dirección al Orinoco, vienen representadas en las siguientes cifras, según cálculos de geógrafos modernos:

La línea Schomburgk daba a Guayana Británica	4.920	Km.² al Oeste del Esequibo
La línea Schomburgk de 1840-1886. daba a Guayana Británica	141.930	" " " " "
La línea Schomburgk de 1887 (falsificada) daba a Guayana Británica ..	167.830	" " " " "
La máxima pretensión Británica de 1887-1897 daba a Guayana Británica	203.310	" " " " "
La línea del Laudo de 1899 daba a Guayana Británica ..-.....	159.500	" " " " "

Se observa que el Tribunal de Arbitraje dio a Guayana Británica 137.010 Km.² de territorio que Gran Bretaña había reconocido como venezolano hasta 1840, y 17.612 Km.² de territorio que el mismo Reino Unido había reconocido a Venezuela hasta 1886, o sea diez años antes de que se firmara el Tratado de Arbitraje.

La actual reclamación venezolana.—Una vez que el Laudo de 1899 ha sido declarado inexistente, Venezuela está dispuesta a hacer valer sus títulos originales al territorio guayanés, y, por consiguiente, considera que la frontera de derecho con Guayana Británica está formada por el Río Esequibo, frontera que Gran Bretaña reconoció a la Gran Colombia, de la que Venezuela era parte integrante, y casi la misma que admitieron originalmente el propio Schomburgk (hecho que hasta hoy no se había hecho público) y la más autorizada sociedad científica de Gran Bretaña: la Royal Geographical Society.

CABLEGRAMA DEL PRIMER MINISTRO Y MINISTRO DE RELACIONES EXTERIORES F. S. BURNHAM, AL MINISTRO DE RELACIONES EXTERIORES DE VENEZUELA DR. IGNACIO IRIBARREN BORGES, REFERENTE A LA ISLA DE ANACOCO.

Georgetown, 14 de Octubre de 1966.

Iribarren Borges Ministro de Relaciones Exteriores
Caracas.

Nº 26.

Una misión guyanesa de inspección practicada el 12 de octubre descubrió personal venezolano que ocupaba un área de esa porción de la Isla de Anacoco en el río Cuyuní situada en el territorio del Estado de Guyana. También que los venezolanos habían levantado instalaciones y que estaban construyendo un aeropuerto dentro del territorio guyanés. Protesto enérgicamente la intromisión de personal venezolano en el territorio de Guyana y pido que sean tomadas medidas inmediatas por su Gobierno para garantizar el retiro y remoción de las instalaciones y asegurar el cumplimiento de lo estipulado por el Acuerdo de Ginebra.

BURNHAM
Primer Ministro y Ministro de Relaciones Exteriores

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Team Lead 28 November 2024

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Subscribed and sworn to before me on

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