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 SIX: REJOINDER OF VENEZUELA,

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

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GUYANA v. VENEZUELA. Arbitral Award of 3 October 1899

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

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REJOINDER OF VENEZUELA

VOLUMEN I

INTERNATIONAL COURT OF JUSTICE

ARBITRAL AWARD OF 3 OCTOBER 1899

(GUYANA V. VENEZUELA)

THE TRUTH ABOUT THE GUAYANA ESEQUIBA

Rejoinder of the Bolivarian Republic of Venezuela

VOLUME I

11 August 2025

El sol de Venezuela nace en el Esequibo

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INTRODUCTION

1. The Bolivarian Republic of Venezuela (hereinafter Venezuela) has historically maintained the position of not submitting matters related to its vital interests, such as its independence and territorial integrity, to dispute resolution mechanisms by third parties, including the International Court of Justice. This position, which arose after the fraud committed with the Arbitral Award of 1899, seeks to protect the most sacred interests of our nation.

2. Based on this position, Venezuela has formally objected to the Court's alleged jurisdiction to hear the Application submitted by the Cooperative Republic of Guyana (hereinafter Guyana). There is no basis whatsoever, even *prima facie*, for establishing the Court's jurisdiction to hear Guyana's unilateral claim. Venezuela has never expressly given its consent, nor can it be inferred from the content of Article IV of the Agreement to Settle the Controversy between Venezuela and the United Kingdom of Great Britain and Northern Ireland over the Frontier between Venezuela and British Guiana, signed in Geneva on 17 February 1966 (hereinafter the Geneva Agreement).

3. Notwithstanding the foregoing, Venezuela, in order to leave no room for inertia and the vacuum in defending the historical truth and its legitimate rights through peaceful means, has decided to submit this document to continue exposing to the world the violation of an international treaty and the attempt to confiscate the rights that historically belong to Venezuela over the territory of Guayana Esequiba, orchestrated through the manipulation of the International Court of Justice in a fabricated case that clearly violates international law.

4. Therefore, this document does not in any way imply recognition of the Court's jurisdiction over the territorial dispute concerning Guayana Esequiba, nor of any decision the Court may adopt in this regard. Likewise, the practical use of

the terms "Memorial", "Counter-Memorial", "Reply" or "Rejoinder" serves solely a methodological purpose, namely, to facilitate the smooth reading of this document.

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5. On 8 April 2024, Venezuela deposited with the Registry of the Court a Counter-Memorial entitled "The Truth of the Bolivarian Republic of Venezuela on Guayana Esequiba. Historical Position" in response to Guyana's Memorial in the proceedings unilaterally instituted by it.

6. The aforementioned Counter-Memorial, whose conclusions Venezuela now fully reaffirms, was the subject of a Reply by Guyana, which was deposited with the Registry of the Court on 9 December 2024.

7. In its Reply, Guyana fails miserably in its attempt to disprove and dismantle Venezuela's historical titles and rights, as well as its solid legal grounds. The most striking feature of Guyana's document, leaving aside its pretentious, arrogant, and at some point, discourteous tone *vis-à-vis* Venezuela, lies in its strenuous effort to get out of the true object and purpose of the Geneva Agreement.

8. Contrary to Guyana's claim, the Geneva Agreement was not concluded "to resolve the controversy over the validity of the 1899 award,"[1] but rather to govern the territorial dispute concerning the border between Venezuela and British Guiana, now Guyana, and to reach a practical and mutually satisfactory settlement thereof. This intention is clearly evident from the title of the Agreement, its preamble, and the language that is consistently repeated throughout its articles.

[1] *Guyana's Reply* ("GR"), p. 3, paragraph 17.

9. It is very significant that, after having repeatedly invoked Article IV, paragraph 2 of the Geneva Agreement to underpin the alleged jurisdiction of the Court in a matter that is beyond its jurisdiction, Guyana has disregarded the other clauses of the Agreement, thus violating the legal indivisibility of this instrument. If there is one thing that the Geneva Agreement is conspicuous for in Guyana's Reply, it is its absence.

10. Venezuela will demonstrate that Guyana's Reply is riddled with errors, distortions and a selective and decontextualised reading of the facts and the law. The Venezuelan contention that the Arbitral Award of 3 October 1899 is null and void was the premise of the negotiation that led to the Geneva Agreement. Yet, solving the issue of the invalidity of the Arbitral Award was not the purpose of the Geneva Agreement. Rather, the aim of the Geneva Agreement was to set aside this dispute on which the parties could not reach an agreement and to enter into a commitment to search for a practical settlement, satisfactory for both, Venezuela and Guyana

11. Guyana's Reply is yet another display of bad faith and ill intent, within the framework of a campaign of deception and manipulation that is part of a carefully orchestrated plan to unilaterally transform a diplomatic process into a judicial one, with the aim of satisfying the desires of transnational energy companies.

12. In 2015, while the good offices process under the auspices of the United Nations Secretary-General was still actively ongoing, Guyana, in coordination with its funder ExxonMobil, unilaterally decided that the controversy should be referred to the International Court of Justice, in order to gain quick access to, and exploit, a "world-class oil discovery."[2]

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[2] "ExxonMobil: Well Offshore Guyana Confirms 'World-Class' Oil Discovery," *Hartenergy*, 30 June 2016 (https://www.hartenergy.com/exclusives/exxonmobil-well-offshore-guyana-confirms-world-class-oil-discovery-28873). *See* also "Exxon Mobil announces significant oil discovery

13. At the same time Guyana adopted an obstructionist and evasive approach designed to frustrate and violate the Geneva Agreement. Despite having formally agreed to extend the good offices process —including elements of mediation— Guyana never intended to act in good faith or to seek a "mutually satisfactory solution", as it was expressly obligated to do under the Geneva Agreement.

14. As confirmed by Guyana's former Minister for Natural Resources, Raphael Trotman, Guyana managed to convince the UN Secretary-General to break with the 49-year-old practice of mutual consent in the choice of means of dispute settlement and refer the matter to the International Court of Justice in clear violation of Venezuela's express will, duly notified to the Secretary General.

15. Guyana has made all efforts to convince the international community that Venezuela is aggressive and on the verge of attacking it. This is a standard "strategy" of Guyana. In its quest to discredit Venezuela, Guyana has regularly denounced Venezuela for alleged "threats of recourse to force" over the past decades, and as history has proven, on no occasion have these allegations been true or accurate. [3]

16. On the contrary, since 2015, Guyana has systematically sought to expand and consolidate its military alliances with the United States and NATO in order to threaten Venezuela with the use of force.[4] This is clearly an attempt to revive the

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offshore Guyana," *ExxonMobil web site*, 20 May 2015, (https://corporate.exxonmobil.com/locations/guyana/news-releases/exxonmobil-announces-significant-oil-discovery-offshore-guyana).

[3] *See Memorandum of Venezuela, Question of Jurisdiction and/or Admissibility*, 28 November 2019, paras. 116-121.

[4] *See* "Southern Command poised to assist GDF to monitor Guyana's airspace", DEMERARAWAVES, 1 February 2024, available at https://demerarawaves.com/2024/02/01/us-southern-command-poised-to-assist-gdf-to-monitor-guyanas-airspace/ . *See* the following posted on X by U.S. Southern Command, @Southcom, om the 24th of March 2024: "Unjustified claim…" #SOUTHCOM Commander Gen. Laura Richardson discussed the recent Guyana-Venezuela border controversy & #SOUTHCOM efforts to support Guyana during testimony before the Senate Armed Services Committee #SASC today." *See* also de video available at https://x.com/Southcom/status/1768343841499971658

colonialist structural coercion of the 19th and 20th centuries and force Venezuela to relinquish its legitimate titles and rights over the territory it has owned since its inception.

17. This multifaceted strategy is doomed to failure. Venezuela will never waive its historical rights over Guayana Esequiba nor will it endorse the violation of the Geneva Agreement, a legally binding international treaty that establishes the only mechanism for achieving a peaceful and final settlement of the territorial dispute. This instrument is the only true path to ensuring peace in the region.

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18. After this Introduction, Part One of this Rejoinder (Chapters I-IV) focuses on the Geneva Agreement, on its object and purpose within its natural context of the decolonisation process in which it is inserted, which not only protects the self-determination of colonial populations, but also the claims of sovereign States dispossessed of a part of their territory as a result of the expansive voracity of the British Empire and of other colonialist powers, whether codified through unjust treaties or set out in arbitral awards, which cannot prevail, even supposing —*quod non*— that they could theoretically dismiss the clear grounds for the nullity of an anachronistic arbitral award from an outdated era now consigned to the darkest chapters of history.

19. The principles and norms applicable to decolonisation provide shelter to Venezuela's claim to Guayana Esequiba. Dispossessed States were forced, by gunboat diplomacy, to endure colonial impositions, while what was called, with iniquitous arrogance, the "international law of civilized countries" prevailed —one

of the most outstanding coryphaeus of which was, precisely, Fyodor Martens, president of the arbitral tribunal that adopted the 1899 Arbitral Award.

20. However, international decolonisation law has prevailed over the old colonial order. When the time came for a substantial alteration of the territorial *status quo* due to the imperative of decolonisation, the claims were activated. The right of retrocession of outraged States, stifled for decades, had to be taken into account. The time had come to correct a historical injustice by returning the stolen territories to their rightful owners.

21. Venezuela has always been a staunch advocate of Guyana's emancipation from the colonial yoke. However, independence does not entitle Guyana to inherit the United Kingdom's role as victimiser against Venezuela, nor does it justify Guyana taking advantage of its status to harm its neighbour, consolidating the plundering of the British Empire for its own benefit.

22. The Geneva Agreement was the result of a negotiation conducted within the framework of decolonisation and entailed the novation of any obligations of the parties under previous instruments. Under the Geneva Agreement, the parties undertook to negotiate a practical and satisfactory settlement of the territorial controversy between Venezuela and British Guiana, regardless of their conflicting views on the validity or nullity of the 1899 Arbitral Award and its application as provided for under the 1905 agreement. The United Kingdom (with Guyana) explicitly acknowledged that the negotiation and signing of the Geneva Agreement had been triggered by the Venezuelan contention that the 1899 Arbitral Award was null and void, but the Agreement did not intend at any time to address this issue in the dispute settlement process.

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23. In this context, it is very serious that the Court intends to rule on the validity or invalidity of the 1899 Arbitral Award, an issue that has been buried and superseded by the Geneva Agreement. However, since Guyana has placed this issue at the centre of its strategy, it must be addressed in order to uphold historical truth and prevent any violation of international law in the attempt to annihilate the Geneva Agreement. This gives rise to Part Two of this Rejoinder.

24. Venezuela is accordingly going to devote a whole chapter —Chapter V— to reaffirming the solid grounds for nullity of the 1897 Treaty of Washington and the 1899 Arbitral Award, as set out in its Counter-Memorial, relying in particular on additional documentary evidence that was not available at the time the 8 April 2024 Counter-Memorial was submitted.

**

25. Venezuela is going to devote Chapter VI of this Rejoinder to refute Guyana's extensive and lengthy presentation regarding the merely alleged Venezuelan acquiescence to the situation derived from the 1899 award. There has been no such acquiescence and, therefore, Guyana cannot use Venezuela's conduct to cure the vices of the 1897 treaty and the 1899 Arbitral Award. On the other hand, it will hardly be necessary to dwell on the alleged life of the 1905 agreement and the survival of the demarcated border in the face of the ailments of the agreement. The 1905 Agreement and the border delimitated by it are simple execution of the award, and hence depend on it and die with it.

26. It is false that Venezuela had access to evidence to prove its legitimate claim before 1949. Harbouring a suspicion is one thing, but having sufficient evidence to prove it is quite another. Guyana deliberately disregards the essential distinction in judicial proceedings between knowing and proving.

27. The Mallet-Prevost memorandum, drafted in 1944 and, following the instructions of its author, published only in 1949, after his death, as well as the partial opening of the British Archives that same year, provided evidence proving the invalidity of the 1899 Award. This evidence formed the basis for complaints that were clearly formulated from that moment onwards in various media outlets and multilateral forums, and not only from 1962 onwards, as Guyana maliciously claims.

28. It is impossible to overlook the fact that the United Kingdom has, to this day, deliberately blocked access to the information contained in its archives, which were only partially opened decades after the award was rendered.[5] This partial disclosure seeks to conceal the United Kingdom's active participation in the crime committed against Venezuela. There is no way for the United Kingdom to dilute its participation and evade its responsibility in the territorial spoliation carried out against Venezuela. They were the direct perpetrators of the fraud in collusion with the United States of America.

29. Venezuela must also insist, once again, on the structural coercion of which it was a victim before, in and after the 1899 Arbitral Award, a concept that Guyana glosses lightly and disdainfully over in its Reply. Today, Guyana's conduct serves as an instrument of the United States and the United Kingdom to destabilize Venezuela.

30. The British Empire, known throughout the world for its aggressive expansionism, negotiated with the United States a rigged arbitration to retain the territories usurped from Venezuela in exchange for recognising the hegemony of the United States in the Americas, underpinned by the Monroe Doctrine. This

[5] *See* Email from the Freedom of Information Requests' Office, The National Archives UK, **Annex 41**.

negotiation can be traced to the founding date of the *entente cordiale* of the two great powers on both sides of the Atlantic: Monroeism.

31. Venezuela's meek resignation for years did not crystallize its acquiescence, but it was merely a prudent response to the to the imminent threat posed by a powerful and expansionist empire willing to use force to exacerbate the dispossession to which it had already subjected a Republic weakened by its repeated internal conflicts. Faced with the threat of losing even more territory if it protested the fraudulent Award, Venezuela was forced to tolerate the dispossession, which left it with nothing but control over the mouth of the Orinoco River. Venezuela could raise its voice safely to protest only when the world order began to change and the decolonisation movement rightfully took off.

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32. In the last of its chapters (Chapter 5, "Appropriate Remedies"), Guyana's Reply seeks to sneak in a particularly irrelevant issue. Venezuela is not going to dedicate one more line to Guyana's treacherous initiative to take the debate to sterile paths.

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33. Consequently, the Court has no role to play in the territorial dispute between Venezuela and Guyana over Guayana Esequiba and must not interfere with the obligations arising from the 1966 Geneva Agreement, which provides for that the settlement of that dispute can only be achieved through a friendly, satisfactory and acceptable agreement between the parties, through peaceful, political and diplomatic means.

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34. Volume II includes the Documentary Annexes that support the statements made by Venezuela in this document.

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PART ONE: ABOUT THE GENEVA AGREEMENT

INTRODUCTION TO PART I

1. This First Part of Venezuela's Rejoinder is dedicated to the foundational instrument that governs the present controversy: the 1966 Geneva Agreement ("the Geneva Agreement"). Venezuela will demonstrate that this Agreement, far from being a mere procedural waypoint, lies at the very heart of the dispute, having fundamentally redefined the Parties' relationship and having provide an agreed pathway to a resolution of the controversy.

2. The Geneva Agreement was meticulously crafted not to adjudicate the validity of the 1899 Arbitral Award ("the 1899 Arbitral Award"), but rather to supersede the contentious legacy of that Award and to establish a new framework for achieving a practical, mutually satisfactory, and definitive settlement of the territorial controversy between Venezuela and the then soon-to-be independent Guyana.

3. Regrettably, Guyana's submissions to this Court have consistently sought to sidestep the true import of the Geneva Agreement. Instead, Guyana tried to pursue a narrow and erroneous focus on the 1899 Arbitral Award, with malicious intent to evade its responsibilities under the Geneva Agreement. Venezuela will accordingly demonstrate for one that Guyana's approach not only mischaracterizes the very nature and object of the dispute as defined by the Parties themselves in 1966. Besides, and second, it will also show that Guyana's attempt to manipulate the dispute before the Court also disregards fundamental principles of international law concerning treaty interpretation, decolonisation, and the transformation of legal obligations.

4. To elucidate these critical points, Part One is structured as follows:

a. In a first, introductory **Chapter I**, Venezuela will address Guyana's persistent failure to engage in any meaningful way with the Geneva

Agreement and its implications. Venezuela will thus expose how Guyana's tactical decision to ignore the Geneva Agreement's core purpose has obscured the true nature of the dispute, which is not the alleged simple question of the 1899 Arbitral Award's validity. Rather, the dispute is about the search for a mutually acceptable solution, as mandated by the Geneva Agreement itself.

b. In a second, foundational **Chapter II**, Venezuela will then undertake a thorough examination of the Geneva Agreement, interpreting its very text, its object and purpose in accordance with well-established principles of international law, including Article 31 Vienna Convention on the Law of Treaties ("VCLT"), as having codified customary law on the matter. This chapter will accordingly delve into the Agreement's Preamble, its title and its operative provisions, alongside its *travaux préparatoires* and the subsequent practice of the Parties, all of which demonstrate conclusively that the Agreement was intended from the outset to move beyond the issue of the invalidity of the 1899 Arbitral Award and instead achieve a practical settlement of the entire territorial controversy.

c. A third, contextual **Chapter III** will then situate the Geneva Agreement within its crucial historical and legal context, namely the decolonisation of British Guiana. Venezuela will demonstrate that the Geneva Agreement must be understood as an instrument designed to address and rectify colonial injustices, reflecting the then-ascendant principles of self-determination and the need for newly independent States to resolve inherited controversies on a basis of equality and mutual consent, rather than through the perpetuation of colonial-era impositions.

d. In a last **Chapter IV**, Venezuela will further establish that the Geneva Agreement effected a novation of the prior legal relationship between the Parties. By creating new, distinct obligations and a framework for their fulfilment, the Geneva Agreement extinguished any legal regime previously predicated on the 1899 Arbitral Award. This chapter will thus demonstrate that the novation enshrined in the Geneva Agreement precludes an all too simplistic return to the question of the Award's validity and mandates adherence to the new, agreed-upon path towards a negotiated, mutually satisfactory resolution.

5. Through these chapters, Venezuela will demonstrate that the Geneva Agreement constitutes the indispensable lens through which the territorial controversy between Guyana and Venezuela must be viewed and, ultimately, resolved by the Parties in accordance with its agreed terms.

CHAPTER I: GUYANA'S ESCAPE AND OMISSIONS

A. INTRODUCTION

1.1. Faced with proceedings it never consented to, and with the risk of the Court unjustly ruling on matters which it has no jurisdiction to address, Venezuela, in its writing of April 8, 2024, sought to identify the true and genuine object of the dispute.

1.2. This approach was the logical and indeed, only appropriate development of Venezuela's early protests that Guyana's unilateral description of the dispute was fraudulent and misleading.[6] Venezuela thus sought to ensure a real and adequate view of the parties' intents, expectations and commitments in accordance with the Geneva Agreement. As Venezuela has demonstrated at length, the Agreement delineates a specific controversy which bears no resemblance to what Guyana has described in its Memorial. For this reason, a substantial part of the Venezuela's Counter-memorial, (i.e., Chapters 2, 3, and 7) was dedicated to these issues.

1.3. Yet, Guyana in its Reply deliberately and utterly side-stepped these questions, curtly dismissing them in the introduction as something that "do[es] not call for a detailed response".[7] Instead, Guyana opted to persist with what Venezuela, already in its writing of April 8, 2024, had described as its "monomaniacal focus on the validity of the 1899 Award".[8]

1.4. In what follows, this Chapter will thus review Guyana's failure in the Reply to act upon its duties – notably reflects its partial and malicious intention to interpret the Geneva Agreement and to engage with Venezuela's broader arguments in the

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[6] *Arbitral Award of 3 October 1899 (Guyana v. Venezuela), Jurisdiction of the Court, Judgment, I.C.J. Reports 2020*, p. 455, para. 5. *See*, in this respect, Memorandum of Venezuela, paras. 104 et seq.

[7] GR, para. 1.6.

[8] Venezuela's Counter-Memorial ("VCM"), p. 19.

Counter-memorial. This will serve as a background to an overview -in Chapter II- of what is the true and genuine object of the controversy.

B. GUYANA NOT ONLY EVADES ITS OBLIGATIONS BUT ALSO IGNORES THE HISTORICAL TRUTH OF VENEZUELA

1.5. As a first step, it is essential to address the manner in which Guyana has chosen to approach this matter.

1.6. Despite its continued and well-founded opposition to the Court's jurisdiction, Venezuela has, from the outset, sought to enlighten it to the truth of the facts and the dark intentions of Guyana.[9] This concern notably underpinned Venezuela's preliminary objections, designed to ensure that the rights of a third party were not adjudicated upon.[10] A further illustration of this approach can be found in Venezuela's choice to dedicate several chapters of its Counter-memorial, to the complex interplay between the 1899 Arbitral Award and the Geneva Agreement.

1.7. Guyana's approach, as will be shown, in turn, has been radically different. This approach reflects a profound lack of respect for the parties' commitment, contained in the Geneva Agreement, to find a mutually satisfactory resolution, and, besides, demonstrates a systematic disregard for the core principles of international law.

a) Guyana's approach is not in keeping with the duty of good faith

1.8. The principle of good faith (*bona fides*) is a cornerstone of international legal proceedings. It requires parties to "deal honestly and fairly with each other,

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[9] For instance, and as explained in Venezuela's Preliminary Objections to the Admissibility of the Application, 7 June 2022, para. 29, Venezuela "wanted to emphasize its opposition to the jurisdiction of the Court by not appearing in the open proceeding on this issue, but it did spend its energy making its reasons available to the Court in one memorandum, accompanied by an annex".

[10] Venezuela's Preliminary Objections to the Admissibility of the Application, 7 June 2022.

[...] represent their motives and purposes truthfully, and [...] refrain from taking unfair advantage".[11] This principle applies broadly to treaty interpretation, dispute settlement, and the conduct of proceedings before international courts and tribunals.[12]

1.9. Guyana itself is well aware of this duty: in its arbitration with Suriname, it sought the cooperation of the respondent in locating documentary evidence – leading the tribunal to "emphasize[...] to both Parties the importance of equality of arms and good faith cooperation in international legal proceedings".[13]

1.10. Wise words – yet words that Guyana has not only forgotten, but were also mocked by its own failure to provide crucial documentary evidence to Venezuela. A failure on par with Guyana's procedural and substantive breaches of its Geneva Agreement and its other international law duties.[14]

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[11] A. D'Amato, Good Faith, Encyclopedia of Public International Law, vol. 7, p. 107 (R. Bernhardt, ed. 1984). As cited in *Phoenix Action Ltd v. Czech Republic*, ICSID Case No. ARB/06/5, Award, 15 April 2009, para. 107. *See* also "Declaration on Principles of International Law concerning Friendly Relations and Co-operation Among State", p. 124.

[12] *Chevron Corporation and Texaco Petroleum Company v. The Republic of Ecuador (II)*, PCA Case No. 2009-23, Second Partial Award on Track II, 30 August 2018, para. 7.87.

[13] *Delimitation of maritime boundary (Guyana v. Suriname)*, PCA Case No. 2004-04, Award, 17 September 2007, para. 20. *See* also *Id.*, Procedural Order No. 4, para. 15: "Whereas the Arbitral Tribunal, having considered the positions of the Parties with regard to access to documents, is of the view that both Parties should co-operate in granting access to relevant documents in order to facilitate the work of the Tribunal".

[14] Notably, Guyana has violated its obligations under the 1966 Geneva Agreement by acting unilaterally as if the territorial dispute has been resolved (e.g., by proceeding to the militarisation of the disputed territory). Together with Guyana's bad faith during the negotiations and the good offices process, this conduct is contrary to the principles of the threat of the use force, good faith in the performance of treaties, the non-aggravation of the dispute, and the principle of peaceful settlement of disputes enshrined in the UN Charter and the 1966 Geneva Agreement.

b) The Interpretative Task

1.11. Interpreting an international legal instrument is the international legal task *par excellence*.[15]

1.12. This task relies on a widely-accepted range of rules and principles governing interpretation, chiefly embodied in the Vienna Convention on the Law of Treaties ("VCLT"). The customary character of the principles governing interpretation is nearly unanimously recognised. These interpretative rules serve as safeguards against arbitrary or self-serving readings of legal instruments. Consequently, the interpretative process cannot be treated lightly, ignored, or substituted by a party's own preferred – and, in this case, distorted – meaning.

1.13. In the case at hand, Guyana's failure to engage meaningfully with the Geneva Agreement undermines the accurate delimitation of the extent of the controversy. Venezuela's Counter-memorial, dedicated extensive analysis to such an interpretative exercise, and demonstrated the integral nature of the Geneva Agreement – its object, purpose, and the ordinary meaning of its provisions in accordance with international law. This was done not merely out of strategic necessity, but as a fundamental contribution to the proper settlement of the controversy.

1.14. Guyana, assisted by a team of experienced international lawyers, is fully aware of the importance of this interpretative task. Indeed, it once sought to interpret the Geneva Agreement under international law, to argue that the Court had jurisdiction over this dispute. In its Memorial, Guyana accordingly dedicated several chapters reviewing the background to the Geneva Agreement[16] before

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[15] Hollis, Duncan B., 'The Existential Function of Interpretation in International Law' in Andrea Bianchi, Daniel Peat & Matthew Windsor (eds.) *Interpretation in International Law* (Oxford University Press 2014).

[16] Guyana's Memorial (Jurisdiction and/or Admissibility), Chapter 2.

proceeding to interpret it[17] – misleadingly, and in a way that denatured its actual terms, but nonetheless ostensibly in light of the VCLT.

1.15. However, as will be established next, there is no such attempt whatsoever contained in the Reply, which skirts any interpretation of the Geneva Agreement's application to the merits of the case at hand. This selective and opportunistic approach to interpretation undermines the credibility of Guyana's legal position.

1. The deliberate decision of Guyana to ignore the Geneva Agreement

1.16. In light of what precedes, the shortcomings of Guyana's approach become particularly glaring in two respects: (a) its utter failure to engage meaningfully with the Geneva Agreement – the very legal foundation of these proceedings – and (b) its dogmatic, almost stubborn, refusal to engage with Venezuela's legal contentions, thereby trying to evade the substantive issues before the Court.

a) The Unexplainable Disappearance of the Geneva Agreement from Guyana's Submissions

1.17. Guyana filed its Application relying on the Geneva Agreement, duly provided as one of the few Annexes which accompanied it.[18] Indeed, Guyana's entire jurisdictional argument is predicated on its reading of Article IV, para. 2, of the Geneva Agreement – a reading which Venezuela has already demonstrated to be flawed and inconsistent with the text, object, and purpose of the Agreement.

1.18. More importantly, the Geneva Agreement does not merely set the procedural framework seeking a resolution to the territorial controversy; it governs this controversy itself, defining the manner in which the dispute is to be settled and the principles that should guide this research. Even Guyana concedes this point: it has cited Venezuela's contention that the Geneva Agreement "governs as law the

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[17] *Ibid.*, Chapter 3.

[18] *See* Application instituting proceedings, 29 March 2018, Annex 4.

territorial controversy on the Essequibo".[19] Guyana bears the responsibility to demonstrate a sound understanding of the instrument upon which it relies. That responsibility derives from the principle of good faith under Article 26 of the VCLT. As put by the Court, this principle "obliges the Parties to apply [the treaty] in a reasonable way and in such a manner that its purpose can be realized".[20]

1.19. Given this foundational role, one would expect that a proper interpretation of the Geneva Agreement would be at the centre of Guyana's submissions, and that Guyana would engage comprehensively with its object, purpose, and scope.

1.20. However, there is no such interpretative exercise in Guyana's Reply.

1.21. In fact, Guyana's Reply is bereft of any interpretative analysis at all. The term "interpretation" is conspicuously absent; the VCLT is sparsely referred to, and mostly in the context of Guyana's dogmatic attempts to validate the fraudulent 1899 Arbitral Award.

1.22. In other words, Guyana's contention is that a key legal instrument, an instrument that both parties agree governs the dispute, can be utterly set aside and ignored. This assertion, which contradicts the most basic precepts of international law, represents an attempt to falsify the *true nature* of the controversy.

1.23. One may further suspect that this strange *aversion* to the Geneva Agreement is what also led Guyana, tactically, to refuse to engage with the facts and narrative that preceded it and led to its conclusion – and instead to insist, against all evidence to the contrary, that Venezuela somehow acquiesced to the 1899 Arbitral Award. Instead, as spelled out in further details below, the Geneva Agreement purposefully

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[19] Application instituting proceedings, 29 March 2018, para. 15, citing Ministry of Foreign Affairs of Venezuela, Note Verbale, No. 000322, 28 February 2018.

[20] *Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgment, I.C.J. Reports 1997*, pp. 78-79, para. 142.

left the question of the validity of the Award behind (Chapter II), to operate a novation of the parties' legal relationship (Chapter IV).

1.24. The only context in which the Guyana's Reply references the Geneva Agreement, if at all, is to support its argument that Venezuela had, through its supposed actions, already accepted the 1899 Arbitral Award and its established boundary.[21] Leaving aside the sheer contradiction at the heart of this argument – i.e., that Venezuela would have entered a specific instrument that changed *nothing* to the previous, unjust situation – this only confirms that Guyana is determined to breach the Geneva Agreement, and the specific way it described the dispute between the parties – and how it should be resolved.

1.25. Guyana's disregard for the Geneva Agreement – and what it entails – is patent in the Guyana's limited citations to it in the Reply: just over 30 references,[22] most of them discussed in a three-page span, which includes several quotes from Venezuela's own citations to the Geneva Agreement in its Counter-memorial. Even where the Agreement is invoked, it is treated as a factual backdrop only rather than as a legally operative instrument governing the dispute.

1.26. This cavalier dismissal of the Geneva Agreement is, furthermore, all the more striking as Guyana, in its previous submissions, relied heavily upon it to establish the Court's jurisdiction. Strikingly, the instrument is cited nearly as often in the 15 short pages of its Application[23] as in Guyana's latest, 200-page Reply.[24] It was a key plank of the Guyana's flawed jurisdictional reasoning in the Memorial but is nowhere to be found when discussing how the controversy should be

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[21] GR, paras. 4.81-4.87.

[22] By comparison, the Geneva Agreement is cited 179 times in VCM.

[23] *See* Application instituting proceedings, 29 March 2018; the Geneva Agreement is cited 24 times.

[24] GR, the Geneva Agreement is cited only 30 times.

resolved. In short, when the Agreement served Guyana's strategic interests, it was treated as a crucial legal foundation; when it became inconvenient, it was discarded.

1.27. Reading through the lines – since this is the only recourse one has –, Guyana's assumption seems to be that the Geneva Agreement only provides for a "mechanism",[25] or "framework"[26] for resolving their dispute, defined by Guyana in its Application, and nothing more. But this is a self-serving construction of a complex and important treaty. Rather, the Geneva Agreement is much more than a mere procedural stepping stone; it is a *substantive* instrument designed to address a specific controversy and to provide a path towards a mutually acceptable practical solution[27]. This character would have been evident to Guyana – had it taken the step of interpreting *bona fide* it and engage further with Venezuela's position.

1.28. In other words, Guyana's deliberate refusal to engage with the Geneva Agreement thus has profound implications: it undermines the credibility of its position and calls into question the sincerity of its submissions before the Court.

b) Guyana's Failure to Engage with Venezuela's Chief Contentions

1.29. As highlighted above, the question of the exact nature -territorial- of the controversy is spelled out over dozens of pages and is central to Venezuela's Counter-memorial.

1.30. And yet, from the other side, utter *silence*. Guyana has deliberately chosen not to engage with this fundamental argument. In fact, it went so far as to state that Venezuela's contentions "do[es] not call for a detailed response from Guyana."[28]

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[25] GR, para. 1.7.

[26] *See, e.g.*, GR, para. 4.85.

[27] *See, e.g.*, Letter dated 23 November 1981 from the Permanent Representative of Venezuela to the United Nations addressed to the Secretary-General, UN Doc. A/C.1/36/12, p. 6: "The Geneva Agreement therefore constitutes the *legal statute* for Venezuela's territorial claim and it is the product of the freely expressed will of Venezuela and Guyana." (emphasis added)

[28] GR, para. 1.6.

This curt dismissal of a fundamental argument is, at the very least, a remarkable omission; in light of the central importance of the Geneva Agreement, this is an astonishing abdication of procedural responsibility – and proves one thing: that Guyana lacks any sound response.

1.31. The most that Guyana offers is then a single, perfunctory paragraph in the introduction that fails to engage at all with the argument.[29] In that paragraph, Guyana relies on an argument that is, upon analysis, entirely circular, and which again utterly fails to engage with Venezuela's arguments. Guyana's argument, in a nutshell, is that "resolving the controversy over the validity of the 1899 Award is the very purpose of the Geneva Agreement."[30] To then simply assert that, by way of consequence, the 1899 Award's validity is at issue, without providing any substantive analysis, is not a contribution to the correct understanding of the matter.

1.32. It is, instead, nothing but a dogmatic assertion – a mere statement of what Guyana wishes the Court to believe rather than an actual engagement with Venezuela's legal position, or a genuine attempt at interpreting the key instrument to resolve the dispute. It thus also ignores the core contention advanced by Venezuela: that the Geneva Agreement does not mandate any assessment of the validity of the 1899 Arbitral Award, but instead sets forth a framework for negotiation of a practical solution, acceptable to both Parties, of their territorial controversy, within which a panoply of considerations must be taken into account.

1.33. A similar *petitio principii* pervades another section of the Guyana's Reply,[31] where Guyana argues that it can, somehow, rely on Venezuela's alleged acquiescence of the 1899 Arbitral Award – even though the parties executed an

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[29] Guyana further acknowledges the argument, without rebutting it (GR, footnote 378).

[30] Guyana's reliance on the Court's 2020 Judgment, a judgment that it obtained by misrepresenting the scope and content of the Geneva Agreement, is unavailing.

[31] GR, paras. 4.81-4.87.

instrument, the Geneva Agreement, that gave lie to any such acquiescence, if there ever was any – *quo non*. At this juncture as well, Guyana fails to engage in a proper interpretative exercise that would demonstrate that the Agreement offers no basis for, and indeed is antithetical to, the remedy it seeks, i.e., the confirmation of the 1899 Arbitral Award. [32]

1.34. What is particularly striking is that Guyana is aware of Venezuela's argument about the Geneva Agreement, and noted the "numerous" times it had been made.[33] Guyana even provides several quotes from the Venezuela's writing of April 8, 2024, in a footnote,[34] which also pointed out – correctly – that this argument has deep roots, since it was already part of the truth narrated by Venezuela in its 2019 Memorandum. The fact that Guyana has recognized the argument's prominence while simultaneously refusing to engage with it raises serious concerns about the credibility of its approach.

2. Guyana has obscured the true dispute between the Parties

1.35. Having established that Guyana, for tactical reasons, has opted to misrepresent the object of this dispute and evaded a debate on this point, Venezuela wishes to restate what has been demonstrated in its Counter-memorial: namely, that the Geneva Agreement's object and purpose has never been to settle the dispute as to the 1899 Arbitral Award, let alone through a judgment of the International Court of Justice. Instead, the Parties concluded the Geneva Agreement with the aim of rectifying the historical injustices resulting from the 1899 Arbitral Award. The Geneva Agreement was not intended to confirm or adjudicate the validity of that contested Award, but, first and foremost, as a way for the Parties to leave that Award behind them and, instead, seek a mutually satisfactory solution to the

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[32] In Chapter IV below, Venezuela will demonstrate how the Geneva Agreement – as a novation of the parties' obligations – rules out argument about acquiescence.

[33] GR, para. 4.82.

[34] GR, para. 3.78.

outstanding territorial controversy between the Parties. This fundamental purpose is evident from the text, context, and subsequent practice of the Parties under the Agreement.

1.36. The Court lacks jurisdiction over this controversy. However, if the Court had jurisdiction (*quo non*), it is settled law that it can and should decide by itself the scope and profile of the dispute[35] – in other words, "to isolate the real issue in the case and to identify the object of the claim".[36] It should be done "on an objective basis".[37] Accordingly, the Court may find that the dispute differs from what an applicant strategically alleges; this determination is, indeed, a "matter [...] of substance, not form".[38]

1.37. While the Geneva Agreement is *not* as a special agreement in the mould of those the Court is familiar with, it should nonetheless be subject to the same principles.[39] Therefore, Guyana's description of the controversy is a malicious attempt to influence the perception of its subject matter. By contrast, any genuine

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[35] *Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile)*, *Preliminary Objection, Judgment, I.C.J. Reports 2015*, p. 592, para. 26; *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Preliminary Objections, Judgment, I.C.J. Reports 2021*, p. 71, para. 42; *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)*, *Preliminary Objections, Judgment, I.C.J. Reports 2019*, p. 558, para. 24. *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, *Preliminary Objections, Judgment, I.C.J. Reports 2016*, p. 3, para. 51.

[36] *Nuclear Tests (Australia* v. *France), Judgment, I.C.J. Reports 1974*, p. 262, para. 29. *See* also para. 30, where the Court referred to "the true subject of the dispute".

[37] *Obligation to Negotiate Access to the Pacific Ocean (Bolivia* v. *Chile), Preliminary Objection, Judgment, I.C.J. Reports 2015,* p. 592, para. 26. *Fisheries Jurisdiction (Spain v. Canada)*, *Jurisdiction of the Court, Judgment, I. C.J. Reports 1998*, p. 432, para. 30.

[38] *Immunities and Criminal Proceedings (Equatorial Guinea v. France)*, *Preliminary Objections, Judgment, I.C.J. Reports 2018,* p. 292, para. 48.

[39] *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, *Jurisdiction of the Court, Judgment, I.C.J. Reports 2020*, p. 455, para. 1.

and lawful effort to find a solution to the controversy must begin with an objective identification of its "real issue".

1.38. In any event, the Court's preliminary findings as to the subject-matter of the dispute have been premised on a misleading presentation by Guyana. Whatever the Court might have found in this respect would therefore qualify as *obiter dicta*.

1.39. This is why, even though the Court concluded erroneously that the validity of the 1899 Arbitral Award falls within the scope *ratione materiae* of its jurisdiction,[40] this does not mean that it can effectively exercise that jurisdiction to resolve a matter that the parties have agreed to settle through a mutually satisfactory solution, as set out in the Geneva Agreement.

1.40. In the *Northern Cameroons* case, the Court stressed that:

> "[…] even if the Court, when seised, finds that it has jurisdiction, the Court is not compelled in every case to exercise that jurisdiction. There are inherent limitations on the exercise of the judicial function which the Court, as a court of justice, can never ignore. There may thus be an incompatibility between the desires of an applicant, or, indeed, of both parties to a case, on the one hand, and on the other hand the duty of the Court to maintain its judicial character. The Court itself, and not the parties, must be the guardian of the Court's judicial integrity."[41]

1.41. The case at hand is a perfect example of the limits of the "judicial function": where the parties have agreed between themselves, as will be demonstrated below,

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[40] *Arbitral Award of 3 October 1899 (Guyana v. Venezuela), Jurisdiction of the Court, Judgment, I.C.J. Reports 2020*, p. 455, paras. 128-135.

[41] *Case concerning the Northern Cameroons (Cameroon v. United Kingdom), Preliminary Objections, Judgment of 2 December 1963: I.C.J. Reports 1963*, p. 29. *See* also *Frontier Dispute (Burkina Faso/Niger), Judgment, I.C.J. Reports 2013,* p. 44, para. 45; *Orascom TMT Investments S.à r.l. v. People's Democratic Republic of Algeria*, ICSID Case No. ARB/12/35, Decision on Annulment, 17 September 2020, para. 257.

that what they are seeking is an amicable resolution of their dispute, the Court would be ill-advised to go beyond this function and interfere with that process in a manner that would prevent reaching a mutually satisfactory solution.[42] In particular, the Court should not do anything that would place them in an asymmetric situation where one party is the full "winner", while the other can never hope to achieve much – an outcome that would distort the very essence of the Geneva Agreement, which was designed to facilitate a mutually acceptable resolution rather than impose a unilateral adjudication.

1.42. It is therefore clear that the Court has no role to play in resolving the territorial dispute over the Guayana Esequiba. Any other approach would exacerbate the dispute and constitute a flagrant violation of the Geneva agreement.

[42] *See, e.g.*, *Haya de la Torre Case (Colombia v. Peru)*, *Judgment, I.C.J. Reports,1951*, page 79: "these courses are conditioned by facts and by possibilities which, to a very large extent, the Parties are alone in a position to appreciate. A choice amongst them could not be based on legal considerations, but only on considerations of practicability or of political expediency; it is not part of the Court's judicial function to make such a choice."

CHAPTER II: THE FRAUDULENT SUBMISSION OF GUYANA BEFORE THE COURT AND THE REAL INTERPRETATION OF THE GENEVA AGREEMENT

A. INTRODUCTION

2.1. When the parties entered into the negotiations that ultimately led to the conclusion of the 1966 Geneva Agreement, they were deeply divided by an obvious and fundamental disagreement as to the purpose of what was to become the Geneva Agreement. While the United Kingdom wanted the said agreement to focus on the issue of the (in)validity of the 1899 Arbitral Award, Venezuela sought that the future agreement to provide for a way to reach a mutually satisfactory negotiated solution of the territorial controversy. Yet, as will be subsequently shown, and as confirmed by its *travaux préparatoires*[43], it was the latter position that was ultimately accepted by *both* parties, *i.e.* Venezuela *and* the United Kingdom, and that was accordingly incorporated into, and is reflected in, the very text of the Geneva Agreement.

2.2. It is against this background that the parties, by entering into the Geneva Agreement, aimed at solving their territorial controversy for good, and thereby bring about a peaceful solution to their overall territorial controversy. Hence, it is malicious to claim, as Guyana does, that the parties of the Geneva Agreement had wanted the process envisaged by the said agreement to focus on the issue of the (in)validity of the 1899 Arbitral Award.[44] Rather, they wanted to detach themselves from the issue of the validity and invalidity of the 1899 Arbitral Award, as this would have not solved the overall dispute pending at the time between the Republic of Venezuela and Guyana's then colonial power, the United Kingdom, and now between Venezuela and Guyana.

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[43] *See* paras. 2.82-2.123.

[44] *Ibid.*

2.3. Put otherwise, whatever might have then been the legal situation as to the (in)validity of the 1899 Arbitral Award prevailing at the time of the conclusion of the Geneva Agreement, and whatever might be the current legal situation as to this very question today, is legally irrelevant. Any such dispute has been superseded by the joint will of the parties to exclusively search for, and reach, a mutually acceptable practical settlement of the territorial controversy between at the time Venezuela and the United Kingdom, and now between Venezuela and Guyana, *i.e.* one that would satisfy the interests of *both* sides, and to do so regardless of the issue of the (in)validity of the 1899 Arbitral Award.

2.4. Notably, it must be assumed on the one hand that the colonial power, in the wake of Guyana's decolonisation process, must have strived for such an overall solution since otherwise it would have left Guyana with a pending and ongoing territorial controversy and with unsettled boundaries.

2.5. On the other hand, Venezuela, both in the wake of Guyana's independence and thereafter, repeatedly confirmed that it did not agree with the Venezuelan-Guyanese boundary as having allegedly been determined by the 1899 Arbitral Award.[45]

2.6. Given the structure and very text of the Geneva Agreement, they wanted to reach such an overall settlement by way of negotiations. As was already outlined in Venezuela's Counter-Memorial[46], and as will subsequently be shown in more detail, the Geneva Agreement was, first and foremost, a way for the parties to leave behind them the harmful consequences of the null and void 1899 Arbitral Award –

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[45] *See* already VCM, para. 3.14 at fn. 71.; *see* also Presentation to the National Congress by Mr. Ignacio Iribarren Borges, Minister of Foreign Affairs of Venezuela, about the Geneva Agreement 17 March 1966, p. 7 ff., **Annex 2**; UN General Assembly, Twentieth Session, 1398th Plenary Meeting, 16 December 1965, Statement of the Venezuelan Representative, paras. 45–49; Letter from Venezuela's Ambassador in London, Dr. Héctor Santaella to Michael Stewart, Minister of Foreign Affairs of Great Britain, dated 2 November 1965, **Annex 26**.

[46] VCM, paras. 2.1-3.118.

in a context where its validity was thoroughly contested – and, instead, seek a mutually satisfactory solution to the controversy through a novation of their legal relationship. That remains its purpose to this day.

2.7. This core purpose is clearly enshrined in the text, context, and object of the Geneva Agreement, in accordance with Article 31, para.1, of the VCLT, which requires interpretation of treaties "in good faith in accordance with the ordinary meaning to be given to [… its] terms […] in their context and in the light of its object and purpose" (**B**). It can also be discerned from the *travaux préparatoires* (**C**) and the subsequent practice of the Parties (**D**).

B. The Geneva Agreement's Ordinary Meaning in Light of its Object and Purpose

2.8. When starting with the ordinary meaning of the Geneva Agreement, the analysis should first consider the following elements:

a. The Agreement's goal of "resolv[ing] the controversy over the frontier" is explicit from its very title and preamble;[47]

b. Article I of the Geneva Agreement mandates the establishment of a Mixed Commission for the purpose "of seeking *satisfactory* solutions for the *practical* settlement of the controversy between Venezuela and the United Kingdom."[48] This formulation, repeated in the *travaux préparatoires*,[49] emphasizes a negotiated outcome rather than a legal determination of the 1899 Arbitral Award's (in)validity.

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[47] *Arbitral Award of 3 October 1899 (Guyana v. Venezuela), Jurisdiction of the Court, Judgment, I.C.J. Reports 2020*, p. 455, para. 73.

[48] Geneva Agreement, Article I (emphasis added).

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

c. The Mixed Commission was conceived as a diplomatic rather than a legal body. In other words, the Geneva Agreement did not establish a mechanism to review or confirm the 1899 Arbitral Award; instead, it provided a structured process for the diplomatic and political negotiations that should pave the way to a resolution, in stark contrast to a framework geared toward adjudication or confirmation of the 1899 Arbitral Award.

d. Article IV of the Geneva Agreement explicitly envisions a progressive and stepwise approach to dispute resolution, incorporating negotiations, mediation, and other non-adjudicative means. These mechanisms are inherently ill-suited to a binary question of the 1899 Arbitral Award's validity or invalidity. As Venezuela has consistently maintained,[50] the principles of graduality and progressivity embedded in Article IV demonstrate that the Geneva Agreement was designed to facilitate an evolving political settlement, rather than a rigid judicial determination.

e. Crucially, the United Kingdom (and later Guyana) expressly opposed any reference to arbitration or recourse to the Court during the negotiation of the Geneva Agreement.[51] This historical fact is directly at odds with Guyana's present claim that the Agreement contemplated a judicial resolution.

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

[51] Presentation to the National Congress by Mr. Ignacio Iribarren Borges, Minister of Foreign Affairs of Venezuela, about the Geneva Agreement 17 March 1966, **Annex 2**, pp. 11-12, and p. 16.

2.9. With this overview of the Agreement in the background, a more detailed focus confirms that the parties were aiming at a negotiated, mutually-satisfactory resolution of the controversy.

1. Preamble of the Geneva Agreement

2.10. That the Geneva Agreement addresses the territorial issue as such, and not the (in)validity of the 1899 Arbitral Award, is first confirmed by the wording of its preamble. As the Court has, time and again, stated, it is notably the preamble that has to be taken into account when interpreting a treaty. As the Court put it as early as 1952:

> "(...) the interpretation of the provisions of the Act [of Algeciras] must take into account its purposes, which are set forth in the Preamble (...)",[52]

while the Court in 2002 considered

> "(...) that the object and purpose of the 1891 Convention [between the Netherlands and the United Kingdom] was (...) shown by the preamble to the Convention (...)".[53]

2.11. As a matter of fact, as again confirmed by the Court, this applies particularly to the preamble of arbitration agreements, in which the parties may express their desire to reach a settlement of their dispute.[54] In the preamble they may thereby

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[52] *Case concerning rights of nationals of the United States of America in Morocco, Judgment, I.C.J. Reports 1952*, p. 197.

[53] *Sovereignty over Pulau Ligitan and Pulau Sipadan (IndonesialMalaysia), Judgment, I. C. J. Reports 2002, p. 625,* para. 51.

[54] *Arbitral Award of 31 July 1989, Judgment, I.C.J. Reports 1991*, p. 53, para. 56.

circumscribe the aim of such a treaty, unless specific treaty provisions were to limit their consent as far as the powers of the arbitral tribunal are concerned.[55]

2.12. In the case at hand, the preamble of the Geneva Agreement unequivocally provides that the agreement was specifically concluded to resolve

> "(...) *any outstanding controversy* between the United Kingdom and British Guiana on the one hand and Venezuela on the other (...) *in a manner acceptable to both parties*",[56]

and that this attempt, besides, should be undertaken

> "(...) [i]n conformity with the agenda that was agreed for the governmental conversations concerning the *controversy* between Venezuela and the United Kingdom *over the frontier* with British Guyana (...)".[57]

2.13. This wording confirms that the Geneva Agreement, in line with, as will be shown, other provisions of the treaty as well as the Joint Communiqué of 7 November 1963, aimed to settle the overall *bilateral boundary issue at large*. It did so by referring to the wish to settle the "*controversy* between Venezuela and the United Kingdom *over the frontier*",[58] rather than decide upon the issue of the validity or nullity of the 1899 Arbitral Award.

2.14. This result is further confirmed by the fact that, as the preamble puts it, "*any* outstanding controversy"[59] pending between the parties should be resolved, and that it ought to be resolved in a *manner acceptable to both parties*. Yet, to state the

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[55] *See mutatis mutandis, Ibid.*
[56] Emphasis added.
[57] Emphasis added.
[58] Emphasis added.
[59] Emphasis added.

obvious, by its very character, deciding the issue of the validity or the nullity of the 1899 Arbitral Award could never be satisfactory to both parties since it would either unilaterally favour Guyana or Venezuela. Rather, the parties in concluding the Geneva Agreement aimed at reaching a mutually acceptable *negotiated* agreement, thereby setting aside their dispute as to (in)validity of the 1899 Arbitral Award.

2.15. Moreover, as the Court itself, notwithstanding the fact that it lacks jurisdiction to decide the case at hand, has stressed

> "(…) the [Geneva] Agreement is entitled "Agreement to Resolve the Controversy (…) over the Frontier between Venezuela and British Guiana" and [that] its preamble states that it was concluded 'to *resolve*' that controversy."[60]

2.16. The Court further underlined that "(…) [t]he Agreement also refers, in Article I, to the task of "seeking satisfactory solutions for the practical settlement of the controversy"[61], all of which in the Court's view thus indicated

> "(…) that the object and purpose of the Geneva Agreement is to ensure *a definitive resolution of the controversy* between the Parties."[62]

2.17. It is patent that a judicial decision dealing with the issue of the nullity of the 1899 Arbitral Award would not lead to a definitive, mutually satisfactory resolution of the territorial controversy.[63] Such a judgment would thus be contrary to the very object and purpose of the Geneva Agreement.[64]

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[60] *Arbitral Award of 3 October 1899 (Guyana v. Venezuela), Jurisdiction of the Court, Judgment, I.C.J. Reports 2020*, p. 455, para. 73; emphasis added.
[61] *Ibid.*
[62] *Ibid.*; emphasis added.
[63] *Ibid.*, para. 86.
[64] *Arbitral Award of 3 October 1899 (Guyana v. Venezuela), Jurisdiction of the Court, Judgment, I.C.J. Reports 2020*, p. 455, para. 86.

2.18. This understanding of the Geneva Agreement was shared by the parties to that agreement given that in a

> "(…) joint statement on the ministerial conversations held in Geneva on 16 and 17 February 1966 between the Venezuelan Minister for Foreign Affairs, his British counterpart and the Prime Minister of British Guiana declare[d] that '[a]s a consequence of the deliberations an agreement [*i.e.* the Geneva Agreement] was reached whose stipulations will enable a definitive solution for [the] problems [relating to the relations between Venezuela and British Guiana]'."[65]

2.19. In that regard, it ought to be also underlined that the treaty, as perceived by the parties themselves, was meant to bring about a definitive, satisfactory solution of their bilateral territorial problem as such instead of focusing on the issue of the invalidity of the 1899 Arbitral Award.

2.20. It thus follows that the task of the dispute settlement mechanism provided for in Articles I to IV of the Geneva Agreement can only be to provide for a solution that will not only resolve *the whole of the controversy* pending between the parties, but that will do so in a way that is satisfactory for both, Guyana *and* Venezuela, and thereby, and thereby only, lead to a *definitive solution* to the overall boundary controversy. For this reason, the exclusion of the Court as a means of solution of this controversy is evident.

2. Article I of the Geneva Agreement

2.21. The very wording of Article I of the Geneva Agreement confirms that this Agreement was from its very outset meant to solve the territorial dispute by

[65] *Ibid.*, para. 87.

obliging the parties to seek a mutually acceptable solution. Article I of the Geneva Agreement reads in English as follows:

> "A Mixed Commission shall be established with the *task of seeking satisfactory solutions for the practical settlement* of the controversy between Venezuela and the United Kingdom which *has arisen as the result of* the Venezuelan contention that the Arbitral Award of 1899 about the frontier between British Guiana and Venezuela is null and void."[66],

while the equally authentic Spanish version provides as follows:

> "Se establece una Comisión Mixta *con el encargo de buscar soluciones satisfactorias para el arreglo práctico de la controversia* entre Venezuela y el Reino Unido *surgida como consecuencia* de la contención venezolana de que el Laudo arbitral de 1899 sobre la frontera entre Venezuela y Guayana Británica es nulo e irrito."[67]

a) Venezuela's contention as the starting point for a search for a mutually acceptable solution to the overall territorial controversy

2.22. This provision thus did not instruct the Mixed Commission to settle the dispute between Venezuela and the United Kingdom as to the nullity or validity of the Arbitral Award of 1899. Rather, the provision, given its very explicit wording, not only empowered, but also obliged, the Mixed Commission to seek a solution to the overall dispute, specifying that such solution needed to be satisfactory to both parties.

[66] Emphasis added.
[67] Emphasis added.

2.23. To that end, the parties jointly defined the dispute to be settled by the Mixed Commission, as one that

> "(…) *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".[68]

2.24. This falls in line with Venezuela's initial position as described above and entails that it was the two parties' *jointly agreed* position that the Venezuelan contention as to the nullity of the 1899 Arbitral Award had only brought to light a broader controversy for which the parties now wanted to seek satisfactory solutions. This, however, further entails that the Geneva Agreement was meant from the outset, contrary to Guyana's claim, to provide for a practical settlement of the overall territorial question pending between the parties, rather than focusing on the issue of the nullity of the 1899 Arbitral Award.

2.25. Put otherwise, the Venezuelan contention, as confirmed by the usage of the words '*has arisen*', was only the starting point of the overall controversy: The ongoing and still existing controversy to be solved by the methods provided for in Articles I and IV of the Geneva Agreement was considered to be a broader one, namely "to seek a *solution to the frontier dispute* between the parties that *originated* from their opposing views as to the validity of the 1899 Award".[69]

b) The broad task of the dispute settlement mechanisms foreseen

2.26. Moreover, the parties agreed that any solution to be reached must be one that would lead to a practical settlement of the controversy *in toto*, *i.e.*, the one

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[68] Emphasis added.

[69] *Arbitral Award of 3 October 1899 (Guyana v. Venezuela), Jurisdiction of the Court, Judgment, I.C.J. Reports 2020*, p. 455, para. 65; emphasis added.

concerning the frontier between Venezuela and British Guyana, which had already been placed before the General Assembly's 4th Committee by Venezuela in 1962.

2.27. Had it been the intention of the parties to entrust the Mixed Commission, and the other dispute settlement mechanisms envisaged in Article IV Geneva Agreement, with only a much more limited task, *i.e.* with the task to determine the nullity or validity of the 1899 Arbitral Award, it would have been most natural, if not mandatory, for the parties to formulate Article I of the Geneva Agreement differently, namely as follows:

> "A Mixed Commission shall be established with the task of resolving the controversy between Venezuela and the United Kingdom *as to the validity of the Arbitral Award of 1899* about the frontier between British Guiana and Venezuela."

2.28. It should be further highlighted that Article I refers to the "controversy" / "controversia" – and not to a "dispute" / "diferendo". This wording choice is important, since it means that the Geneva Agreement deliberately sought to echo Article IV of the 1897 Washington Treaty, which had already used the term 'controversy' when referring to the *original* dispute that was submitted to the arbitral tribunal. The Washington Treaty, in turn, had established the tribunal "*to determine the boundary-line* between the Colony of British Guiana and the United States of Venezuela".[70]

2.29. The 1897 Washington Treaty had however, to again state the obvious, been concluded *prior to* the 1899 Arbitral Award, and thus well *before any dispute as to the invalidity of said award could have even arisen*. Accordingly, the parties of the 1897 Washington Treaty, *i.e.*, the same parties as those of the Geneva Agreement,

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[70] Article I Treaty of Arbitration between Great Britain and the United States of Venezuela, 2 February 1897 (Washington Treaty); emphasis added; *see Arbitral Award of 3 October 1899 (Guyana v. Venezuela), Jurisdiction of the Court, Judgment, I.C.J. Reports 2020*, p. 455 para. 64.

namely Venezuela and the United Kingdom, by using the term 'controversy' in 1897 could have therefore only referred to the boundary issue at large, and not to any dispute related to the invalidity of the 1899 Arbitral Award. By necessary implication, the 'controversia' to be settled by the Geneva Agreement was *not* the dispute relating to the invalidity of the 1899 Arbitral Award, but rather the overall bilateral controversy *in toto* that was still pending between the parties.

2.30. This is obviously what the parties had in mind when they drafted, and agreed to Article I of the Geneva Agreement, as adopted and as reflected in the very text of the provision. And as further confirmed by its drafting history, the parties opted for a wording that was meant to prevent further discussions on the (in)validity of the Award.[71] The competence of the Mixed Commission (and hence also the follow-up mechanism provided for in Article IV Geneva Agreement), was thus much broader, and tasked said Commission to further, and possibly reach, a mutually acceptable solution to the overall territorial controversy *at large*.

2.31. It is worth noting in passing and at this stage, that by agreeing to task the Mixed Commission to search for a practical agreement, the parties did not mean that the inability of the Mixed Commission to reach such agreement would entail that this goal should be given up. Rather, in such a scenario they wanted to then successively exhaust the further methods of peaceful settlement of disputes provided for in Article 33 of the UN Charter, and notably negotiations, as mandated by Art. IV, para. 2 Geneva Agreement until a definitive solution is reached *by the parties*.

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[71] For a detailed analysis *see* paras. 2.82-2.123; *see* also Radiogram of the Ministry of Foreign Affairs of Venezuela to the Director General of the Embassy in London, 15 October 1965, **Annex 27 A**, as well as the Cypher message from Blas Pérez to Ignacio Iribarren Borges, Minister of Foreign Affairs of Venezuela, dated 20 October 1965, **Annex 27 B**.

c) The *search* for satisfactory solutions

2.32. Moreover, Article I Geneva Agreement entrusted the Mixed Commission "with the task of *seeking*"[72] satisfactory solutions for the boundary controversy. Had the parties wanted to task the Mixed Commission (and hence also the other ensuing mechanisms contemplated in Article IV Geneva Agreement), to simply *decide* upon the nullity of the 1899 Arbitral Award, it would have been most natural for them to provide for a different formula. In particular, the parties would have then entrusted the Mixed Commission with the mandate 'of *finding*' (rather than *seeking*) a solution for the controversy by determining whether the award was valid or rather not. Yet, the parties decided otherwise.

2.33. As a matter of fact, the reference to the very notion of '*seeking* satisfactory solutions' in Article I Geneva Agreement implies the willingness by the parties to entrust the Mixed Commission with a mandate where the invalidity of the Arbitral Award was barely tangential given that the very point of seeking a resolution to a dispute implies a process, rather than merely making a finding as to a legal situation that already exists.

2.34. The Geneva Agreement was accordingly meant as a future-oriented, forward-looking instrument, rather than one that was meant to address what had happened in the past. This is further confirmed by the fact that the Mixed Commission was tasked to seek '*satisfactory* solutions'/ 'soluciones *satisfactorias*'.

d) The notion of *satisfactory* solutions

2.35. The notion of '*satisfactory*' solutions implies that the Mixed Commission was obliged to reach a negotiated result that would be in line with the interests of *both* sides, since otherwise this could never constitute a mutually *satisfactory* result. Yet, any such *satisfactory* result by necessary implication must constitute a

[72] Emphasis added.

compromise between the positions of the two parties. Accordingly, the Mixed Commission was not meant to make a finding on either the validity or the nullity of the 1899 Arbitral Award, since finding either way could not satisfy the interests of *both* sides. Thus, such a limited approach could *per definitionem* not have led to a result that would satisfy the interest of both parties.

2.36. Put otherwise, a finding by the Mixed Commission (and accordingly by *any* of the other mechanisms provided for in Article IV Geneva Agreement) that the 1899 Arbitral Award was valid, and that it had determined the boundary would have satisfied Guyana, but only Guyana. *Vice versa* finding the said award to be invalid would have merely satisfied the interests of Venezuela, but only Venezuela's. Neither finding could however constitute a 'satisfactory' solution, as required by Article IV of the Geneva Agreement.

2.37. As a matter of fact, any solution by the Mixed Commission that would have focused on the question of the validity or nullity of the 1899 Arbitral Award, could *necessarily* only decide that either the award would be valid or invalid. Any such binary solution could thus not constitute a satisfactory solution, nor indeed a solution equally acceptable to both parties, as required by the text of the Geneva Agreement.

e) The reference to satisfactory *solutions*

2.38. Moreover, the Mixed Commission's task was not limited to merely reaching a binary solution as to the validity versus nullity of the award, is also underlined by the fact that the text of Article I Geneva of the Agreement refers to the aim of finding 'satisfactory solution*s*'/ 'solucion*es* satisfactorias' to the controversy in the plural, rather than referring to a single 'satisfactory solution'/ 'solución satisfactoria' in the singular. Had the parties to the Geneva Agreement wanted to focus, as Guyana claims, on the issue of the (in)validity of the 1899 Arbitral Award, it would have been logical, and indeed mandatory, to task the Mixed Commission

to reach a 'satisfactory solution'/ 'solución satisfactoria' in the singular to this distinct single issue.

2.39. This is further confirmed, if ever there was need, by the fact that the parties in their subsequent practice explored various formula for finding mutually acceptable solutions, including but not limited to discussing different boundary lines, joint exploitation of the territory, or other forms of economic cooperation.[73]

2.40. This wording thus entails that what the parties agreed on was that the various mechanisms contemplated in Articles I and IV of the Geneva Agreement ought to find various possible solution*s* to resolve the overall frontier controversy. The use of the notion of 'solution*s*' in the plural thus excludes the possibility to merely establishing a boundary line based on the one which had been wrongly and fraudulently, determined by the 1899 Arbitral Award.

f) The notion of a 'practical settlement'

2.41. Moreover, Art. I of the Geneva Agreement provides that its goal is to reach a 'practical settlement' of the controversy between the parties. This is not the first case of an agreement that strive for a 'practical settlement' of a dispute and relates to a prior decision with effect of *res judicata*. In the *Polish Postal Service in Danzig* Advisory Opinion the Permanent Court of International Justice had to similarly deal with the interrelationship between, in that case, a 1922 decision of the High Commissioner of the League of Nations in Danzig and a subsequent agreement reached in 1923 between the Senate of the Free City of Danzig on the one hand, and Poland on the other.

[73] *See* paras. 2.124-2.181.

2.42. The Court found that the functions of the High Commissioner were of a judicial character[74] and that the decision he had rendered as to the scope of Poland's rights in Danzig concerning its postal service had become final and binding upon the parties, [75] *i.e.*, that it had acquired the force of *res judicata*. Just as in the matter at hand, when a dispute then arose between the parties concerning this decision Poland and Danzig concluded an agreement meant – just like the Geneva Agreement – to supersede the previous decision, its *res judicata* effect notwithstanding. [76] Said agreement thus set out the parameters how to solve the dispute as to the scope of the rights of Poland to establish a postal service in Danzig whatever the content of the previous decision by the High Commissioner, and regardless of its *res judicata* character.

2.43. There is one fundamental difference between the agreement between Poland and Danzig compared to the Geneva Agreement. The former, in sharp contrast with the latter, had made clear that "[t]his *practical settlement* of the question in no way changes the legal position."[77] It goes without saying that, had this savings clause *not* be inserted into the 1923 Agreement concluded by the two parties, it would have legally superseded the 1922 decision of the High Commissioner – the latter's final and binding character notwithstanding.

2.44. Venezuela and the United Kingdom, just like Poland and Danzig at the time, could have certainly inserted a clause in the Geneva Agreement akin to the language just quoted from the 1923 Agreement between Danzig and Poland providing that said agreement 'in no way changes the legal position'. They would have done so if

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[74] PCIJ, *Collection of Advisory Opinions, Polish Postal Service in Danzig, Ser. B, No. 11, May 16th 1925,* p. 6 et seq.

[75] *Ibid.*, p. 25.

[76] Minutes of the 24th session of the Council of the League of Nations with text of the Agreement of April 18, 1923 between the Senate of the Free City of Danzig and Poland; text to be found in PCIJ, Ser. B, No. 11, p. 6 et seq. (164-165).

[77] Emphasis added.

they had wished by concluding the Geneva Agreement to *not* thereby set aside the 1899 Arbitral Award and its legal effect (if at all).

2.45. Had the parties done so (which they did not) any *res judicata* effect of the 1899 Arbitral Award (if ever it did possess one at the first place, *quod non)* would have been safeguarded – just like the final and binding effect of the 1922 decision of the High Commissioner of Danzig was safeguarded by the 1923 agreement due to its savings clause. Yet, to state the obvious, in the case of the Geneva Agreement, no such savings clause was inserted, nor indeed ever contemplated.

2.46. Instead of following the approach from this well-known advisory opinion, the drafters of the Geneva Agreement deliberately opted for a new start, aimed at reaching a practical settlement of the underlying boundary controversy in order to bring about a mutually satisfactory negotiated solution to their overall territorial dispute, and not upholding the content 1899 Arbitral Award whatever its validity and legal status. Put otherwise, the parties were willing to replace the 1899 Arbitral Award, on which they held fundamentally divergent and irreconcilable positions, with a new practical settlement, regardless of the Award's legal status. Otherwise, it would neither have made sense for the Geneva Agreement to even formally acknowledge Venezuela's contention as to the invalidity of the 1899 Arbitral Award.

2.47. In the same vein, in his opinion in the Eastern Greenland case, *Judge Vogt* quoted a statement of *Norwegian Minister Ihlen* explaining that "(…) the Danish Government fully recognized the weight of the geographical and economic arguments in favour of uniting these islands [i.e. Spitzbergen/Svalbard] with Norway, and considered this as the most *practical settlement*."[78] Here, once again, the notion of 'practical settlement' meant, like in the case at hand, just this, namely

[78] *PCIJ, Legal Status of Eastern Greenland, Judgment, Ser. A/B, Judgments, Orders and Advisory Opinions, 1933, No. 53,* p. 21, Diss. Op. Vogt, p. 115.

a practical political settlement, *i.e.* an agreed bilateral negotiated future-oriented settlement of a pending boundary issue, taking into account different parameters and notably here geographical and economic factors, rather than a mere confirmation of a previously (ill-)defined boundary.

3. Article II of the Geneva Agreement

2.48. The broad scope of the Geneva Agreement and its goal to reach a mutually agreed solution to the various aspects of the overall boundary controversy, rather than focusing on the issue of the invalidity of the 1899 Arbitral Award, is further confirmed by Article II, para. 3 Geneva Agreement.

2.49. The provision foresees that '*any* individual matter under consideration'[79] may also be considered by additional experts as appointed by the Mixed Commission. This, once again, implies that there exists a wide range of 'matters' that form part of the overall controversy to be considered under the Geneva Agreement. Accordingly, all methods provided for in Article IV Geneva Agreement, ought to try to resolve the overall boundary controversy, rather than focusing on the issue of the invalidity of the 1899 Arbitral Award.

2.50. Moreover, the fact that Article II Geneva Agreement refers to "experts to assist the Mixed Commission" hints at work to be done by cartographers, geologists or experts of a similar kind that can assist in delimiting and demarcating a boundary anew as such. Any determination concerning the (in)validity of an arbitral award, as being a purely legal undertaking in nature, would have not required such experts. It could have been undertaken by the Mixed Commission alone. The reference in Article II Geneva Agreement to such experts thus, once again, confirms that the

[79] Emphasis added.

overall aim of the Geneva Agreement was *not* meant to decide upon, and eventually reach an agreement on, the invalidity of the 1899 Arbitral Award.

4. Article IV of the Geneva Agreement

2.51. Similarly, Article IV Geneva Agreement also implies a broad understanding of the 'controversy' to be solved.

a) Article IV, para. 1 of the Geneva Agreement

2.52. For one, Article IV, para. 1 refers to a 'full agreement for the solution of the controversy', which the Mixed Commission might not reach, and where it shall then refer *'any outstanding questions'* to the governments of Guyana and Venezuela. Yet, if the controversy to be dealt with by the Mixed Commission had been meant to refer to the invalidity of the 1899 Arbitral Award, there could have eventually only been one single outstanding unresolved question, namely the issue of the award's validity or its nullity itself.

2.53. In contrast thereto, Article IV, para. 1 Geneva Agreement presupposes that, apart from that very issue, and even if an agreement could have been reached concerning that question either way, there would still continue to exist other 'outstanding questions'. This in turn confirms that the parties understood that, even if, *quod non*, the question of the invalidity of the 1899 Arbitral Award had been settled, there would still have remained 'outstanding questions' pending between the parties. The notion of 'outstanding questions' obviously thus meant the issue how to resolve the overall frontier controversy as such, and how to delimit the frontier between the two countries in order to reach a mutually acceptable solution.

2.54. Accordingly, Article IV, para. 1 Geneva Agreement implies an overall process that resolves *any* outstanding questions pending between the parties related to the overall frontier controversy.[80]

b) Article IV, para. 2 of the Geneva Agreement

2.55. This result is further confirmed by Article IV, para. 2 Geneva Agreement and its reference to the methods of peaceful settlement of disputes contained in Article 33 UN Charter. Article 33 UN Charter, to state the obvious, *inter alia* makes references to negotiations, mediation, and conciliation as possible means to solve a given dispute.

2.56. Yet, as the Court has confirmed on several occasions, negotiations entail a process where both parties may not insist upon their own respective position without contemplating any modification of it.[81] The parties to the Geneva Agreement, by making reference to Article 33 UN Charter generally, and to negotiations more specifically, had thus foreseen that the overall controversy ought to be settled by way of negotiations, and must have thus necessarily contemplated modifications to their respective positions.

2.57. Given that the determination as to the validity or invalidity of an arbitral award would, by its very nature, constitute a legal question *par excellence*[82], it could however only be decided one way. Accordingly, this limited question would, by its very nature, not be susceptible to negotiations. It follows that the parties, by

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[80] *See Arbitral Award of 3 October 1899 (Guyana v. Venezuela), Jurisdiction of the Court, Judgment, I.C.J. Reports 2020*, p. 455 para. 130.

[81] *North Sea Continental Shelf Case, I.C.J. Reports 1969*, p. 3, 47; *see* also *Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgment, I.C.J. Reports 1997*, p. 7, 77; *Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, I.C.J. Reports 2010*, p. 14 para. 146; *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Judgment, I.C.J. Reports 2011*, p. 17 paras. 157–59.

[82] Declaration of Judge Tomka, *Arbitral Award of 3 October 1899 (Guyana v. Venezuela), Jurisdiction of the Court, Judgment, I.C.J. Reports 2020*, p. 455 para. 6.

referring to Article 33 UN Charter, and thus the possibility of solving their boundary controversy *by way of bilateral negotiations*, must have necessarily envisaged to reach a solution that provides for a compromise reconciling their divergent position on how to dispose of the territory.

2.58. Any such "*full agreement* for the solution of the controversy", expressly contemplated in Art. IV Geneva Agreement, further necessarily implies that the dispute is amicably resolved in a manner acceptable to both parties taking into account their respective positions, and which cannot be the outcome of a judicial decision based on legal considerations only.

2.59. As a matter of fact, a judicial decision, by its very nature, is imposed by an adjudicatory body and reflects the application of legal rules to the facts, as determined by the court or tribunal. It therefore does not depend on the parties' consent to the substance of the outcome. In contrast, Art. IV Geneva Agreement, by referring to the goal of reaching a full agreement for the solution of the controversy; implies an agreement to be reached *ex novo* by the parties, rather than a binding adjudication on the issue of the invalidity of the 1899 Arbitral Award

2.60. *Mutatis mutandis,* the same considerations do apply to the implicit references in Article IV, para. 2 of the Geneva Agreement to the concepts of mediation and good offices, which, once again, presuppose either the aim of reaching a mutually acceptable compromise solution[83], or efforts to induce the parties to resume negotiations.[84]

2.61. Those references to negotiations, mediation, and good offices in Article IV, para. 2 Geneva Agreement therefore all imply that the parties had envisaged that

[83] Simma *et. al.*, The Charter of the United Nations: A Commentary, Volume I (3rd Edition), 2012, Article 33 para. 28.
[84] *Ibid.*, para. 30.

any solution to the controversy addressed in the Geneva Agreement necessarily encompasses issues other than the question of the validity or nullity of the 1899 Arbitral Award.

2.62. This result is also further confirmed by Article V Geneva Agreement.

5. Article V of the Geneva Agreement

a) Article V, para. 1 of the Geneva Agreement

2.63. Article V, para. 1 Geneva Agreement unequivocally accepts that Venezuela has a territorial claim to the disputed territory. Furthermore, Article V, para. 1 Geneva Agreement also confirms that the Geneva Agreement as such cannot be interpreted as amounting to a renunciation of such claim of territorial sovereignty, and that these rights or claims to the territory are not being prejudiced in any manner by entering into the treaty. This, by the same token, entails that, until an agreement has been reached that satisfies the interests of *both* parties, such claims may still be asserted.

2.64. *A contrario* it follows that Article V, para. 1 Geneva Agreement assumes by necessary implication that both, the parties, as well as third actors, involved in the settlement of the overall dispute, must strive for a solution taking into account such claims to territorial sovereignty by the parties to the controversy. This in turn excludes a solution that would necessarily involve either side completely giving up their claim to territorial sovereignty over the area in question.

b) Article V, para. 2 of the Geneva Agreement

2.65. Besides, Article V, para. 2 Geneva Agreement further provides that the parties may also reach agreements within the framework of the Mixed Commission to allow for acts and activities, which may then serve to support or create rights of sovereignty in the disputed territory, provided the parties have previously accepted such activities. This, once again, confirms that the parties had reached a consensus

in the Geneva Agreement that regardless as to whether the 1899 Arbitral Award was to be considered valid or void, any such result would still not constitute the final outcome as to the delimitation of the boundary and the legal regime governing the disputed territory. Rather, other factors, including *inter alia* the aforementioned agreed activities contemplated in Article V, para. 2 Geneva Agreement, would have to be considered, in any case, in order to determine the legal status of the territory in question, or parts thereof.

2.66. On the whole, therefore, throughout its very text, the Geneva Agreement assumes that a holistic solution ought to be found for the overall frontier controversy between Venezuela and the United Kingdom, respectively Guyana after its independence. The Geneva Agreement accordingly provides for the need to seek a satisfactory result for the overall territorial controversy that must be mutually acceptable rather than providing for a solution based on a determination on the (in)validity of the 1899 Arbitral Award.

2.67. This result is, apart from the wording *stricto senso* of the Geneva Agreement, further confirmed by the very title of the treaty.

6. Title of the Agreement

2.68. As the Court has stated, the actual terms of a treaty are to be also interpreted in light of its title. Thus, the Court has *inter alia* in the Oil Platforms case noted that

> "(...) the actual title of the Treaty of 1955 [between the United States and Iran] - contrary to that of most similar treaties concluded by the United States at that time, such as the Treaty of 1956 between the United States and Nicaragua - refers, besides 'Amity' and 'Consular

Rights', not to 'Commerce' but, more broadly, to 'Economic Relations'."[85]

2.69. Considering this title, the Court in said case concluded that the notion of 'commerce', as used in the treaty, is to be broadly interpreted.[86]

2.70. What is more is that, as again confirmed by the Court's jurisprudence, it is the title of a given treaty which provides an indication as to the object and purpose of the instrument concerned.[87]

2.71. As far as the Geneva Agreement is concerned, the treaty is referred to as the "Agreement to Resolve the Controversy between Venezuela and the United Kingdom of Great Britain and Northern Ireland *over the Frontier between Venezuela and British Guiana*".[88] Put otherwise, it is *not* titled "Agreement to Resolve the Controversy between Venezuela and the United Kingdom of Great Britain and Northern Ireland *over the Validity of the Arbitral Award of 1899*".

2.72. It goes without saying that, had the parties indeed wanted to focus on the issue of the invalidity of the 1899 Arbitral Award by concluding the Geneva Agreement, instead of searching for an overall settlement of their territorial dispute, they would have chosen a title in line with this significantly more limited goal. Instead, they deliberately chose a significantly broader title.[89]

2.73. This is confirmed, *a contrario, inter alia* by the agreement between Honduras and Nicaragua related to the Arbitral Award handed down by the King

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[85] *Oil Platforms (Islamic Republic of Iran v. United States of America), Preliminary Objection, Judgment, I.C.J. Reports 1996*, p. 803, 819 para. 47.

[86] *Ibid.*, para. 49.

[87] *Certain Iranian Assets (Islamic Republic of Iran v. United States of America), Preliminary Objections, Judgment, I.C.J. Reports 2019*, p. 7 para. 57.

[88] Emphasis added.

[89] VCM, para. 3.49.

of Spain on 23 December 1906.[90] Said agreement specifically referred to "the disagreement existing between them *with respect to the Arbitral Award* handed down by His Majesty the King of Spain on 23 December 1906"[91], rather than to the boundary dispute as such. It is obvious that Venezuela and the United Kingdom, when negotiating the Geneva Agreement, were fully aware of that agreement which the Court had been dealing with in the Case concerning the Arbitral Award made by the King of Spain on 23 December 1906 just some years before in its 1960 judgment. Hence, had Venezuela and the United Kingdom, when concluding the Geneva Agreement, also wanted to thereby settle the question of the (in-)validity of the 1899 Arbitral Award they would have certainly chosen the same language as Honduras and Nicaragua had done just some years earlier. Instead, Venezuela and the United Kingdom deliberately opted for a much broader formula.

2.74. As a matter of fact

> "(…) the object of the Geneva Agreement was to seek a solution to the *frontier dispute* between the parties that *originated* from their opposing views as to the validity of the 1899 Award."[92]

2.75. Hence, the Geneva Agreement was meant

> "(…) to ensure a definitive resolution of the dispute between Venezuela and the United Kingdom *over the frontier* between Venezuela and British Guiana".[93]

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[90] For the text of the agreement *see Arbitral Award made by the King of Spain on 23 December 1906, Judgment of 18 November 1960, I.C.J. Reports 1960*, p.192 et seq., p. 203.

[91] Emphasis added.

[92] *Arbitral Award of 3 October 1899 (Guyana v. Venezuela), Jurisdiction of the Court, Judgment, I.C.J. Reports 2020*, p. 455 para. 65; emphasis added.

[93] *Arbitral Award of 3 October 1899 (Guyana v. Venezuela), Jurisdiction of the Court, Judgment, I.C.J. Reports 2020*, p. 455 para. 130; emphasis added.

2.76. Accordingly, while the territorial controversy to be settled by the Geneva Agreement *originated* from their opposing views as to the (in)validity of the 1899 Arbitral Award, the said controversy from the outset extended beyond that very question. The very object and purpose of the Geneva Agreement, in line with the wording of its title, is thus *not* to address the question of the nullity of the arbitral award. Rather, the Geneva Agreement aimed from its very outset to address the overall causes of the parties' bilateral frontier controversy and thereby bring about a peaceful solution to their overall territorial disagreement.

2.77. This reading of the Geneva Agreement is the most natural one.[94] To pretend, as Guyana does, that the final outcome of this dispute should be an entirely asymmetrical solution where one party (Guyana) could get everything, and the other party (Venezuela) nothing, is a malicious reading of the Geneva Agreement, which begs the question as to why, exactly, have the parties decided to enter into it.

2.78. One could also look at what the Geneva Agreement's text *does* not provide, and in particular, at the fact that the instrument does not, at any point, stipulate that answering the question of the validity or invalidity of the Arbitral Award is a pre-condition for the mutually satisfactory solution the Parties are seeking.

2.79. This omission – which undermines the *entire* case of Guyana in these proceedings – can only be deliberate: the Geneva Agreement was drafted at a time when the negotiators were necessarily aware of the *King of Spain Award* case, in

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[94] *See, e.g.*, *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, Dissenting opinion of Judge Gevorgian, para. 16, opining that the "Agreement's object and purpose consists of facilitating an agreed solution to the controversy."; *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, Partly Separate and Partly Dissenting Opinion of Judge *ad hoc* Couvreur, para. 37: "the only reasonable reading of the Geneva Agreement in this regard is that the United Kingdom, as a former colonial Power, sought to facilitate the settlement of the dispute relating to the territory that it had transferred to the newly independent Guyana."

which the parties had squarely and directly referred the dispute as to the award's validity to the Court – by contrast with this matter.

2.80. More importantly, the Geneva Agreement was negotiated and executed after the Parties had *unsuccessfully* established contacts to present their disagreements regarding the validity or invalidity of the 1899 Arbitral Award.[95]

2.81. It is only such an interpretation of the Geneva Agreement that is also in line with the drafting history of the Geneva Agreement and the subsequent practice of the parties.

C. THE *TRAVAUX PRÉPARATOIRES* CONFIRM THE ORDINARY MEANING OF THE GENEVA AGREEMENT

2.82. In its Counter-Memorial Venezuela has already extensively demonstrated that the drafting history of the Geneva Agreement confirms that both Venezuela, as well as the United Kingdom and respectively Guyana, from the very beginning of the negotiations leading to the adoption of the Geneva Agreement, and indeed even before, had in mind that the envisaged agreement should settle the overall boundary controversy, rather than focusing on the dispute about the (in)validity of the 1899 Arbitral Award.[96]

2.83. Venezuela uses this opportunity to outline once again, and in even more detail, the essential steps in the negotiation process, namely the December 1965 London Meeting and the following Geneva Conference, that confirm the parties' understanding as to the goal of the future Geneva Agreement, namely to settle the overall frontier dispute.

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[95] As noted by the Court, in *Arbitral Award of 3 October 1899 (Guyana v. Venezuela), Preliminary Objection, Judgment, I.C.J. Reports 2023,* p. 262, para. 37.

[96] VCM, paras. 3.9 *et seq.*, especially paras. 3.24 *et seq.* and 3.42 *et seq.*

1. Agenda for the London Ministerial Meeting on 9 and 10 December 1965

2.84. Already prior to the conclusion of the Geneva Agreement in 1966 the governments of then (British-)Guiana, Venezuela and the United Kingdom had discussed practical solutions to the *overall* territorial controversy, discussions that led to the adoption of the Geneva Agreement and must inform its interpretation.

2.85. After the parties had initially entered into technical debates on expert level in 1963, negotiations then took place between October and December 1965 between Venezuela and the United Kingdom,[97] which culminated in ministerial meetings on 9 and 10 December 1965 that took place in London.

2.86. As will become apparent from the discussions leading to the adoption of the agenda of this meeting, the content of the meetings themselves and the subsequent practice thereto, the very aim of these negotiations, which constituted the framework for the upcoming Geneva Conference and the ensuing Geneva Agreement, was to reach a practical settlement of the boundary controversy, rather than to deal with the (in)validity of the 1899 Arbitral Award.

2.87. How the Agenda had been drafted was explained in a contemporary confidential document from Venezuela's Ambassador to the United Kingdom, Hector Santaella. In particular, Ambassador Santaella described the Agenda's wording as a drafting victory for Venezuela, since it broke entirely with the UK's erstwhile position, which had only committed to a "documentary review" regarding the 1899 Arbitral Award.[98] The title of the Agenda – which does not mention the

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[97] VCM, paras. 3.24.-3.37.

[98] *See* the Statement of Mr. C.T. Crowe, Representative of the United Kingdom, at the 349th meeting of the Special Political Committee on 13 November 1962, UN Doc. A/SPC/72, p. 18: "mon gouvernement, avec le plein assentiment du Gouvernement de la Guyane britannique, est disposé à discuter avec le Gouvernement vénézuélien, par les voies diplomatiques, de dispositions à prendre en vue d'un examen tripartite de la volumineuse documentation afférente à cette question [...]. En faisant cette offre, je dois bien préciser qu'il ne s'agit nullement d'une offre d'entamer des conversations de fond sur la révision de

Award at all – as well as its content – e.g., the need for "time limits" to fulfil the parties' agreement – evidence that the parties were seeking a reset of their relationship, one that leaves the award in the dustbin of history.[99]

2.88. This was illuminatingly explained in the words of Ambassador Santaella:

> "This wording, as we had envisaged from the outset, tended to avoid mentioning the 1899 Award, by stating, in a straightforward manner, that there is a border dispute whose solution would be sought at the Ministerial Conference. If Great Britain were to accept such wording, it would be somewhat implicit that the 1899 Award was not an adequate solution to the problem and, therefore, that the boundary question is open to redetermination. In this way, it would have been easy to consider the Award as non-existent at once, which could mean an immediate triumph for Venezuela. It could almost be said that, with such a wording, the Ministerial Conference would be almost unnecessary, since, England having admitted the non-existence of the Award on the agenda itself, the only way left would be to fix a new border."

2.89. He added:

> "those who are sure of the validity of their titles do not allow themselves to seek 'practical solutions' for those who dispute their right."[100]

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la frontière." How this position gradually changed is recounted in Presentation to the National Congress by Mr. Ignacio Iribarren Borges, Minister of Foreign Affairs of Venezuela, about the Geneva Agreement 17 March 1966, **Annex 2**.

[99] Confidential letter from Venezuela's Ambassador in London, Dr. Héctor Santaella to Iribarren Borges, Minister of Foreign Affairs of Venezuela, dated 23 October 1965, **Annex 25**, para. 11.

[100] *Ibid.*, para. 47.

2.90. Further historical documents confirm that inner view of the negotiations. At the outset there had been a debate as to the scope and goal of these negotiations. The United Kingdom's initial position had been that the upcoming talks ought to only encompass a documentary review of the process that had led to the 1899 Arbitral Award.[101] Accordingly, as confirmed by a contemporary report, the first two agenda items for the forthcoming meeting in London in December 1965, as initially proposed by the United Kingdom, would have focused solely on the 1899 Arbitral Award and the examination of experts' reports concerning its (in)validity.[102]

2.91. Venezuela, on the other hand, insisted that the second agenda item be changed, lest it entail a renewed discussion on the validity or invalidity of the Award only.[103] This in turn could have led the United Kingdom claiming once more that the envisaged agreement to be concluded, *i.e.* the Geneva Agreement, would not deal with the border controversy as such.[104]

2.92. Accordingly, Venezuela introduced a different wording for agenda item 2, namely that the negotiations ought to seek solutions for the practical settlement of the boundary controversy.[105] The United Kingdom finally agreed to the inclusion of this item, as proposed by Venezuela.[106] Thus, the parties ultimately decided to address the overall border issue in their Ministerial Conference in 1965, as

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[101] *See* Confidential letter from Venezuela's Ambassador in London, Dr. Héctor Santaella to Iribarren Borges, Minister of Foreign Affairs of Venezuela, dated 23 October 1965, para. 4, **Annex 25**.

[102] *See* for details Radiogram of the Ministry of Foreign Affairs of Venezuela to the Director General of the Embassy in London, 15 October 1965, **Annex 27 A**.

[103] *Ibid.*

[104] *See* Cypher message from Blas Pérez to Ignacio Iribarren Borges, Minister of Foreign Affairs of Venezuela, dated 20 October 1965, **Annex 27 B**.

[105] *Ibid.*; *see* also Radiogram of the Ministry of Foreign Affairs of Venezuela to the Director General of the Embassy in London, 15 October 1965, **Annex 27 A**.

[106] *See* para. 2.96 below.

confirmed by the very text of the adopted agenda, which then led to the Geneva Agreement.

2.93. The London Conference accordingly took place on the basis of the "Agenda for the continuation at Ministerial level of governmental conversations *concerning the controversy* between Venezuela and the United Kingdom *over the frontier* with British Guiana (…)".[107] The very title of the agenda alone already confirmed that these negotiations, unlike the previous bilateral technical debates that had taken place in 1963, were meant to address the substance of the boundary dispute rather than the issue of the dispute about the validity or invalidity of the 1899 Arbitral Award.

2.94. Within these meetings a total of five different agreed agenda items were then discussed. The most relevant ones are the first two, namely item 1 entitled

> "Exchange of points of view about the reports of the Experts on the examination of documents and discussion of the consequences derived from them. Need for dispute settlement"

and item 2 entitled

> "To seek satisfactory solutions for the practical settlement of the controversy that has arisen as a result of the Venezuelan contention that the 1899 Award is null and void".[108]

2.95. While the first issue related, as mentioned, to the "Exchange of points of view about the reports of the Experts on the examination of documents and

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[107] Text of the agreed agenda to be found in Joint Communiqué issued 10 December 1965, in accordance with what had been agreed in the Joint Communiqué of 7 November 1963, talks that took place in London on 9 and 10 December, **Annex 1**; emphasis added.

[108] *Arbitral Award of 3 October 1899 (Guyana v. Venezuela), Jurisdiction of the Court, Judgment, I.C.J. Reports 2020*, p. 455 para. 132.

discussion of the consequences derived from them. Need for dispute settlement", by the same token it also stressed the need for dispute settlement. It goes without saying, however, that a mere documentary review would have not been able to resolve the underlying dispute between the parties.[109] If anything, it could have only laid down the historical and factual foundation for a broader dispute settlement approach. By accepting the "need for dispute settlement", a phrase, which has been introduced by Venezuela, the United Kingdom admitted to the existence of an open question, which calls for deliberations, and defined it as a dispute to be then solved by seeking a practical settlement of the matter.

2.96. The second item on the agenda was however, as also mentioned, to

> "(...) [b]uscar soluciones satisfactorias para el arreglo práctico de la controversia que ha surgido como resultado de la contención venezolana de que el Leudo de 1899 es nulo e írrito".

respectively

> "(…) seek satisfactory solutions for the practical settlement of the controversy that has arisen as a result of the Venezuelan contention that the 1899 Award is null and void".[110]

2.97. This demonstrates that the parties from the very outset clearly differentiated between, on the one hand, issues regarding the (in)validity of the 1899 Arbitral Award, and, on the other, issues relating to the overall border controversy. Whilst the United Kingdom thus had initially wanted to focus solely on the status of the

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[109] This was stressed as early as 1965 by Venezuela, *i.e.* already prior to the adoption of the Geneva Agreement, *see* Confidential letter from Venezuela's Ambassador in London, Dr. Héctor Santaella to Iribarren Borges, Minister of Foreign Affairs of Venezuela, dated 23 October 1965, para. 8, **Annex 25**.

[110] *Arbitral Award of 3 October 1899 (Guyana v. Venezuela), Jurisdiction of the Court, Judgment, I.C.J. Reports 2020*, p. 455 para. 132.

Arbitral Award, it ultimately relinquished its position. Thus, by the end of the day the parties explicitly decided to address the overall controversy in their negotiations and hence later also in their future agreement.

2.98. Furthermore, in item 4 of the agenda the parties, again following a proposition by Venezuela,[111] agreed to set deadlines for the implementation of what may be agreed in relation to the first, second and third item of the agenda. However, setting a deadline for the 'fulfilment' of a documentary review seems to be far-fetched. Rather, said deadline must have meant to cover, for one, the resolution of the overall dispute (contemplated in item 1), and besides, to do so by agreeing on satisfactory solutions for the practical settlement of the boundary controversy (contemplated in item 2).

2.99. Apart from setting out the agenda of the forthcoming meeting in London, *The Joint Communiqué* further stated that "[i]deas and proposals for the practical settlement of the controversy were exchanged". Yet, 'ideas and proposals' cannot certainly be related to the binary question whether an arbitral award is valid or not.

2.100. Lastly, the Joint Communiqué further stated that "[n]either side [has] been able to accept the conclusions of the experts appointed by the other side" on the issue of the (in)validity of the 1899 Arbitral Award. Accordingly, it was already then that the parties agreed to discard any further debate on item 1 (dealing with the examination of the reasons for a possible invalidity of the 1899 Arbitral Award) which, they stated, "will not be considered" any further in the future negotiations. This once again confirms that the focus of the parties in the forthcoming negotiations of the future Geneva Agreement should be the search for a practical settlement of the overall boundary controversy.

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[111] Confidential letter from Venezuela's Ambassador in London, Dr. Héctor Santaella to Iribarren Borges, Minister of Foreign Affairs of Venezuela, dated 23 October 1965, para.7, **Annex 25**.

2. Content of the Ministerial Level Conversations on 9 and 10 December 1965

2.101. The fact that the parties aimed to reach a practical settlement of the boundary controversy rather than to deal with the (in)validity of the 1899 Arbitral Award was then further confirmed by the content of the meeting that took place in line with the agreed agenda.

2.102. Notably, during the London meeting on 9 and 10 December 1965, the parties debated alternative substantive solutions to the dispute.

2.103. As Venezuela already pointed out in its Counter-Memorial[112] (and although Guyana, once again, did not engage with that argument), these propositions included, *inter alia*, an agreement that, similar to the Antarctic Treaty of 1959, would have kept the legal status of the disputed territory *in limbo*,[113] or a possible joint administration of the disputed area.[114]

2.104. Remarkably, as confirmed by the British record of the conversation, such joint administration was proposed by Guyana itself rather than by Venezuela.[115] This fact alone is telling since Guyana even before the conclusion of the Geneva Agreement thus envisaged a *substantive* solution to the overall territorial controversy, rather than a settlement based on the nullity or validity of the 1899 Arbitral Award.

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[112] VCM, 8 April 2024, para. 3.38.

[113] Record of Conversations held at the foreign office in London on the border dispute between Venezuela and British Guiana in London on 10 December 1965, p. 3 - 4. VCM, Annex 86.

[114] Government of the United Kingdom, Record of Discussions between the Foreign Secretary, the Venezuelan Minister for Foreign Affairs and the Premier of British Guiana at the Foreign Office on 9 December 1965, No. AV 1081/326, 9 December 1965, p. 4, Guyana's Memorial (Jurisdiction and/or Admissibility), Volume II, Annex 28, p. 4.

[115] *Ibid.*

3. Subsequent Behaviour of the Parties following the London Conference

2.105. The London meeting on 9 and 10 December 1965 was followed by a joint communiqué dated 10 December 1965, in which the Minister of Foreign Affairs of Venezuela on the one hand and the Secretary of State for Foreign Affairs of the United Kingdom on the other jointly stated, that during the meeting they had "(...) exchanged ideas and proposals for a practical *settlement* of the *dispute*."[116]

2.106. The representatives further decided that

> "(...) some of these [exchanged ideas and proposals] should receive further consideration and that Ministers should continue the present discussions in the week starting 13 February , 1966 at Geneva in order to consider those proposal [...]".[117]

2.107. This once again confirms that the aim of the future negotiations leading to the adoption of the Geneva Agreement was to reach a practical settlement of the boundary controversy rather than deal with the (in)validity of the 1899 Arbitral Award.

2.108. That this was not a mere coincidence, but rather a deliberate concession by the United Kingdom became apparent in January and February 1966 when the British Parliamentary Under-Secretary of State for Foreign Affairs, Lord Walston, visited Venezuela. In reply to questions by journalists, he outlined the British position at the forthcoming Geneva Conference, that was to follow the London meeting of 9/10 December 1965, and would adopt the future Geneva Agreement. Press reports claimed that in his statements Lord Walston, as well as other high-ranking British officials, had stated that the Geneva Conference would address the

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[116] Joint Communiqué issued 10 December 1965, in accordance with what had been agreed in the Joint Communiqué of 7 November 1963, talks that took place in London on 9 and 10 December, **Annex 1**; emphasis added.

[117] *Ibid.*

question of economic aid to British Guiana, but that the Venezuelan claim as to the disputed territory would not to be discussed.[118]

2.109. This led to a diplomatic note of 4 February 1966 by the Venezuelan Ministry of Foreign Affairs addressed to the British embassy in Caracas. The note stated:

> "Such statements appear to contradict the commitment made by their country with Venezuela, according to the agenda, signed in London on December 1, 1965, and the joint communiqué of December 10 of that year.
>
> This agenda represents a commitment to 'seek satisfactory solutions to the practical settlement of a dispute' which the joint communiqué says 'threatens to break the traditionally cordial relations between Venezuela on the one hand, and the United Kingdom and British Guiana, on the other.'
>
> Our two countries are committed to finding solutions to the dispute between Venezuela and the United Kingdom on the border with British Guiana. Therefore, it is inconceivable that on the eve of the meeting of foreign ministers in Geneva, a declaration that the controversy will not be even considered.
>
> The government of Venezuela considers it necessary to request an explanation from the government of Her Britannic Majesty, in the sense that the meeting in Geneva will discuss the points agreed in the agenda, which includes in its title and, under No. 2, the Venezuelan territorial claim and the search for practical solutions to resolve it. Otherwise, the

[118] Presentation to the National Congress by Mr. Ignacio Iribarren Borges, Minister of Foreign Affairs of Venezuela, about the Geneva Agreement 17 March 1966, **Annex 2**, p. 12; O. Ishmael, The Trail of Diplomacy, The Guyana-Venezuela Border Issue, vol. II (2015), p. 111.

> Venezuelan government will be forced to reconsider their attendance at the meeting on February 16 and 17."[119]

2.110. It is particularly worth noting that Venezuela thereby made it a *conditio sine qua non* for its attendance of the forthcoming negotiations that the latter would focus on Venezuela's territorial claim and the search for practical solutions to resolve it. As such, it is disingenuous to claim that the Geneva Agreement is not focused on solving the boundary issue as such.

2.111. On 8 February 1966, the Ambassador of the United Kingdom to Venezuela then visited the Venezuelan Foreign Minister transmitting a reply note on behalf of his government declaring that any such statement, as described in the Venezuelan note just mentioned, had not been made neither by Lord Watson nor by any other British representative. The British ambassador confirmed that

> "(…) neither Lord Walston nor any other Representative of Her Majesty's Government has stated that the Geneva Conference 'will *not* discuss the Venezuelan claim' over the Guayana Esequiba".[120]

2.112. Moreover, the British ambassador reassured the Venezuelan Foreign Minister, that "[a]s far as Her Majesty's government is concerned, the agenda for the Geneva meeting remains the same, as agreed in the Joint Communiqué of 10 December 1965".[121]

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[119] Republic of Venezuela, Ministry of Foreign Affairs, Claim to Guayana Esequiba Documents 1962 -1981 (1981), p. 66-67, Guyana's Memorial (Jurisdiction and/or Admissibility), Vol II, Annex 39.

[120] Ministry of Foreign Affairs of Venezuela, Office of Information, Press and Publications, Bulletin N°350-C, dated 8 February 1966, **Annex 36**, p. 1; emphasis added.

[121] Presentation to the National Congress by Mr Ignacio Iribarren Borges, Minister of Foreign Affairs, on the Geneva Agreement and the Law approving the Geneva Agreement, 17 March 1966, Annex 2, p. 13.

2.113. This proves Great Britain's continued agreement with the objective of the Geneva Agreement, which is to find satisfactory solutions for the practical settlement of the controversy, given that it had thus 'ratified'[122] the above-mentioned agenda of December 1965 despite knowing well its background and the implications that this wording carried.

2.114. On the whole therefore, the Agenda, as well as the content and the subsequent acceptance of the outcome of the London meeting of December 9/10, 1965 confirm that the discussions leading to the Geneva Conference were meant to bring about an overall solution to the territorial controversy. All this leaves therefore no doubt that the validity or invalidity of the 1899 Arbitral Award simply ceased to be an issue in play in the context of the negotiations of the Geneva Agreement. And this is not simply how Venezuela understood it at the time. Days before the signature of the Geneva Agreement, the United Kingdom expressly disavowed press reports that suggested that point 2 of the Agenda – i.e., the need to find "practical solutions" to the controversy – would not be discussed.[123] And in contemporary resolutions, neighbouring States – such as Panama and Colombia – expressed the vow that, "through diplomatic proceedings, the Venezuelan Republic recover the territory of Guyana Esequiba."[124]

4. Geneva Conference

2.115. This aim was further pursued during the Geneva Conference itself, where the Geneva Agreement was concluded. During these negotiations, Venezuela and

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[122] Presentation to the National Congress by Mr. Ignacio Iribarren Borges, Minister of Foreign Affairs of Venezuela, about the Geneva Agreement 17 March 1966, **Annex 2**, p. 14. *See* also Ministry of Foreign Affairs of Venezuela, Office of Information, Press and Publications, Bulletin N°350-C, dated 8 February 1966, **Annex 36**, p. 1.

[123] *Ibid.*

[124] Ministry of Foreign Affairs, Office of Information, Press and Publications. Bulletin No. 349-C, dated 26 January 1966, **Annex 35**.

the United Kingdom, as shown, decided not to further examine the expert reports and documents nor to discuss the consequences derived therefrom.[125]

2.116. Rather, the Geneva Conference focused fully on "seeking satisfactory solutions for the practical settlement of the dispute." Thereby, the parties left the issue of the (in)validity of the report behind and redirected the conference's focus to new, practical solutions of the territorial controversy. This is reflected in the drafting process and its final outcome, *i.e.* the 1966 Geneva Agreement.

2.117. As was already briefly mentioned in Venezuela's Counter-Memorial,[126] the specific wording of the Geneva Agreement and its preamble was discussed again in February 1966.

2.118. The British representatives, which in 1965 had still tried to insist that the 'controversy' to be addressed by the future agreement [*i.e.* the Geneva Agreement] was meant to cover the issue of the (in)validity of the 1899 Arbitral Award,[127], finally agreed to the formula which had been proposed by Venezuela to settle the controversy in 1966.[128] Namely, that the purpose of the envisaged agreement was meant to provide for 'satisfactory solutions' of the overall frontier controversy.

2.119. It is telling, that the United Kingdom had initially preferred the notion of 'satisfactory solution' (in the singular), which the future Geneva Agreement was meant to provide for, rather than 'satisfactory solution*s*' (in the plural).[129] Yet, it was that latter formula, which had been proposed by Venezuela, that was later used

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[125] Presentation to the National Congress by Mr. Ignacio Iribarren Borges, Minister of Foreign Affairs of Venezuela, about the Geneva Agreement 17 March 1966, **Annex 2**, p. 12; Note Verbale from the Foreign Secretary of the United Kingdom to the U.K. Ambassador to Venezuela, 25 February 1966, VCM, 8 April 2024, Annex 69, para. 2.

[126] VCM, 8 April 2024, para. 3.52– 3.53.

[127] *See* Guyana's Memorial (Jurisdiction and/or Admissibility) – Volume II, Annex 28, p. 3.

[128] Presentation to the National Congress by Mr. Ignacio Iribarren Borges, Minister of Foreign Affairs of Venezuela, about the Geneva Agreement 17 March 1966, **Annex 2**, p. 15-16.

[129] *See* Guyana's Memorial (Jurisdiction and/or Admissibility), Volume II, Annex 30, para. 6.

by the parties in the final version of the Geneva Agreement.[130] This, as shown above, indicates that the parties ultimately agreed to draft an agreement that was meant to provide for a holistic solution to their overall territorial controversy.

2.120. Besides, on the very day of the signing of the Geneva Agreement, Guyana and Venezuela again issued a Joint Communiqué, which also forms part of the context of the treaty, in which the parties referred to the goal of the agreement as being the "*practical* settlement of *outstanding problems*".[131] By referring to the *practical* settlement of outstanding problems, and following up on the drafting process and the adoption of the aforementioned broad preamble, this final statement reiterates that the Geneva Agreement from the outset had been drafted not only to address the border controversy as such, but that it was also meant to be settled by the parties by way of negotiations.

2.121. Such reading is further supported by looking at the domestic ratification process of the Geneva Agreement by Venezuela. Foreign Minister Ignacio Iribarren Borges pointed to the same elements, and to the Agenda in particular, as denoting the changing attitude of the United Kingdom, and their desire to resolve the controversy over the frontier while giving no heed to the 1899 Arbitral Award.[132]

2.122. In a particularly important statement, Venezuelan President Raúl Leoni described the Geneva Agreement to the Venezuelan parliament as such:

> "By signing the Geneva Agreement, the National Government has not only defended the intangibility of our territory *by placing our claim in the same situation as the border dispute was when it was submitted to*

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[130] *Ibid.,* Volume II, Annex 28, p. 3.

[131] Joint Communiqué on the Ministerial Talks held in Geneva on 6 and 17 February 1966, 17 February 1966, VCM, Vol. III, Annex 94; emphasis added.

[132] Presentation to the National Congress by Mr. Ignacio Iribarren Borges, Minister of Foreign Affairs of Venezuela, about the Geneva Agreement 17 March 1966, **Annex 2**, p. 10.

arbitration in 1897, but has been consistent with Venezuela's traditional international position inspired by the principles enshrined in the Preamble of the Constitution, which order cooperation with other nations, in the aims of the international community, on the basis of reciprocal respect for sovereignty, self-determination of peoples and repudiation of war and conquest as instruments of international policy."[133]

2.123. How would that contemporary reading of the Geneva Agreement comport with Guyana's contention that the Court should overlook it, and simply confirm and validate the 1899 Arbitral Award is never explained in the Guyana's Reply, as Guyana preferred to ignore this inconvenient issue.

D. SUBSEQUENT PRACTICE CONFIRMS THE NATURE AND THE OBJECT OF THE GENEVA AGREEMENT

2.124. Article 31, para.3, lit. (b) of the VCLT next provides that "any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation" shall be taken into account when interpreting a treaty. In this case, the Parties' subsequent practice overwhelmingly supports that the Geneva Agreement is meant to settle the overall border controversy.

1. Work of the Mixed Commission

2.125. After the entry into force of the Geneva Agreement, the Mixed Commission established by said agreement began its work, the content of which has already been outlined in Venezuela's Counter-Memorial.[134]

2.126. What is crucial in that regard is that, while the Mixed Commission was unable to reach a compromise solution as to the overall boundary controversy, the

[133] Memorandum of Venezuela, Annex, p. 25 (emphasis added).
[134] VCM, paras. 3.61.-3.65.

work of the Mixed Commission only tangentially addressed the dispute about the (in)validity of the 1899 Arbitral Award.

2.127. Rather, the parties involved in the work of the Mixed Commission, *i.e.*, Venezuela and the by then independent Guyana, notably discussed substantive issues how to reach a mutually acceptable overall solution to their boundary controversy.

2.128. Already during the very first session of the Mixed Commission on 4 July 1966 it was the Guyanese representative Mr. Shahabuddeen who *inter alia* stated, that Guyana is "not insensible to the real nature of the claim being put forward by Venezuela".[135] This is also in line with Guyana's position during the later work of the Mixed Commission stating that

> "(…) the parties have been devided [*sic*!] on the question whether any *territorial issues* could be examined without the Mixed Commission first dealing with the fundamental Venezuelan contention that the arbitral award was null and void."[136].

2.129. This statement by Guyana presupposes that even in Guyana's own view, territorial deliberations were well within the mandate of the Mixed Commission, and are thus clearly within the mandate of all other dispute settlement mechanisms contemplated in Article IV Geneva Agreement.

2.130. That the parties were willing to solve the *overall* territorial controversy existing between them within the framework of the Mixed Commission is furthermore proven by the actions taken as part of its work. Notably, as was already

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[135] First Interim Report, Minutes of the 4th Meeting, 1st Session of the Mixed Commission, 4 July 1966 (VCM, Annex 95, p. 5.).

[136] Statement read by Sir Donald Jackson on behalf of the Guyanese Delegation in the Mixed Commission (APPENDIX D), 2 April 1968 (VCM, Annex 44).

previously addressed in more detail by Venezuela[137], the Mixed Commission, in their meetings, established a Sub-Commission whose mandate was to

> "(…) study possible areas of co-operation between Venezuela and Guyana for the financing and carrying out by them of plans of economic development (…)."[138]

2.131. This Sub-Commission was obliged to report back to the Mixed Commission. These *substantive* reports covering the above-mentioned issues were then in turn discussed by the Mixed Commission. This confirms for one that during the work of the Mixed Commission the parties focused on issues well beyond the issue of the (in)validity of the 1899 Arbitral Award. They thus took it for granted that the mandate of the Mixed Commission established under Article I Geneva Agreement was not limited to dealing with only this question. By instead actively seeking a substantive solution to their overall territorial controversy, they therefore, by the same token, confirmed their shared understanding that the Geneva Agreement generally, and its Article IV in particular, mandates the various dispute settlement mechanisms to bring about an overarching solution to this bilateral territorial controversy.

2.132. This result that neither the mandate of the Mixed Commission – nor indeed that of any of the other alternative mechanisms contemplated in Article IV – was confined to making a determination as to the invalidity of the 1899 Arbitral Award is further confirmed by the Final Report adopted by the Mixed Commission in 1970.

2.133. While the Mixed Commission could not reach an agreed result in its Final Report, Guyana added a separate memorandum to said report. In this memorandum,

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[137] VCM, 8 April 2024, paras. 3.63-3.64.

[138] Third Interim Report, 7th Session of the Mixed Commission, 27 and 28 December of 1967 (VCM, Annex 97, p. 5.).

Guyana once more drew attention to its proposal to provide for a special development programme for Guyana and Venezuela which would have included the disputed territory, and which was to be implemented through multinational cooperation

> "(…) with the aim that such a program should be accepted as the *solution to the substantive problem* given Venezuela's position".[139]

2.134. After no consensus could be reached on neither the various Guyanese nor Venezuelan propositions, Guyana thereby tried to compromise and formally accepted Venezuela's position that the scope of the mandate of the Mixed Commission was to address *substantive* issues related to the territorial dispute as such. It was thus on this issue, namely that the object and purpose of the Geneva Agreement was to bring about a substantive solution to the overall territorial controversy, that the parties had indeed subsequently reached an agreement.

2.135. Once the Mixed Commission had submitted its Final Report to the parties, Venezuela and Guyana then embarked on negotiations, which in 1970 led to the signing of the Port of Spain Protocol.

2. 1970 Port of Spain Protocol

2.136. As noted above, the parties' treaty practice – which is instrumental in interpreting it – in this case notably includes the Port of Spain Protocol, a moratorium agreed upon in 1970. In the Counter-Memorial,[140] Venezuela demonstrated that Port of Spain Protocol – which is never even considered in the Guyana's Reply[141] – as yet another attempt for the Parties to reach a settlement of

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[139] Final Report of the Mixed Commission, Separate Memorandum by Guyana of 17 June 1970 (VCM, Annex 101, p. 4) emphasis added.

[140] VCM, paras. 3.66-3.91.

[141] While the Protocol is cited once, it is only in the context of Guyana's argument that Venezuela had allegedly acquiesced 1899 to the Award: see GR, para. 4.94.

this dispute by drawing a line over the null 1899 Arbitral Award. The Port of Spain Protocol further confirms the real purpose of the Geneva Agreement, in the following manner:

> a. It acknowledged the work of the Mixed Commission,[142] making clear that this was the way forward;
>
> b. It emphasised "the promotion of mutual confidence and positive and friendly intercourse between Guyana and Venezuela",[143] as well as "all possibilities of better understanding between them and between their peoples";[144]
>
> c. It referred several times to the "controversy" in the Geneva Agreement, never suggesting that it was this related to the issue of the (in)validity of the 1899 Arbitral Award;[145] while
>
> d. The changes to the Geneva Agreement specified in the Protocol, such as substituting mentions of "British Guiana" with "Guyana",[146] cemented the agreement's role in the context of decolonisation (a matter which will be taken up in the next Chapter);

2.137. The Protocol's validity period of (renewable) 12-year spans (or any amount of time agreed between the parties, but never fewer than 5 years)[147] indicates that the parties were contemplating a long and meticulous diplomatic process. In this context, it bears recalling that Guyana, not Venezuela, had been in favour of

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[142] Port of Spain Protocol, Preamble and Article III.
[143] *Ibid.*
[144] *Ibid.*, Article I.
[145] *Ibid.*, Articles II and III.
[146] *Ibid.*, Article IV.
[147] *Ibid.*, Article V.

prolongating the Protocol[148] – thus evidencing that it had thought, at least at that time, that such direct diplomatic endeavours were the only possible approach to the controversy.

2.138. Apart from the preamble of the said protocol[149] and its Article 1[150], it is also its very title, as well as Articles 2 and 3 of the Port of Spain Protocol that reconfirm that the Geneva Agreement was meant from its very outset to bring about an agreed solution to the overall territorial dispute.

2.139. As a matter of fact, the parties in the very title of the Port of Spain Protocol continued to refer to their attempt to

> "(...) resolve the controversy between Venezuela and the United Kingdom of Great Britain and Northern Ireland *over the frontier* between Venezuela and British Guiana".[151]

2.140. Hence, the parties, once again, did not refer to their controversy as being one related to the validity of the 1899 Arbitral Award. Rather, their disagreement was still perceived as one overall territorial controversy, which larger dispute they now aimed to settle by way of the Port of Spain Protocol.

2.141. Moreover, Article II of the Port of Spain Protocol aimed at freezing the territorial *status quo ante*. However, it also referenced once again, and thereby recognised, the Venezuelan "contention referred to in Article I of the Geneva Agreement". Yet, Venezuela's contention from the very beginning of the process leading to the adoption of the Geneva Agreement, related to a claim that a mutually acceptable solution for the overall territorial controversy ought to be found.

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[148] Memorandum of Venezuela, Annex, pp. 57 *et seq.*
[149] On that *see* VCM, para. 3.69.
[150] *Ibid.*, para. 3.70-3.71.
[151] Emphasis added.

2.142. Finally, Article III Port of Spain Protocol suspended the applicability of Article IV of the Geneva Agreement. It however also provided that, once the Port of Spain Protocol were to cease to be in force, as it did in 1982, the functioning of Article IV Geneva Agreement would resume

> "(…) unless the Government of Guyana and the Government of Venezuela have first jointly declared in writing that they have reached *full agreement* for the solution of *the controversy referred to in the Geneva Agreement* (…)".[152]

2.143. This indicates, and reconfirms, that the parties' continued aim was to reach a full, i.e., overall agreement for the whole of the boundary controversy, as defined in the Geneva Agreement, rather than focusing on the merely partial issue whether or not the 1899 Arbitral Award was invalid.

2.144. This understanding was confirmed by a statement of the then Guyanese Prime Minister Burnham on the day of the signing of Port of Spain Protocol. In this statement he referred to "outstanding problems" and understood the Port of Spain Protocol as a mean to resolve "all differences between us [i.e. between Guyana and Venezuela]".[153] Thus, from the very beginning it was Guyana's own position, when negotiating, drafting and adopting the Port of Spain Protocol, that the Protocol shall address the boundary controversy in toto in a holistic manner.

2.145. That such a practical solution to the overall dispute was intended, and that Guyana was also open to discuss issues beyond the invalidity of the 1899 Arbitral Award as part of the Port of Spain Protocol, is also further confirmed by later

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[152] Emphasis added.

[153] Statement by the Prime Minister, Hon. L.F.S. Burnham, in the National Assembly, Georgetown, 18 June 1970 (VCM, Annex 45, para. 12, 14) emphasis added.

practice, such as a communication of Guyana to the United Nations Secretary General dated 2 November 1981:

> "The spirit generated by the Protocol of Port-of-Spain provided the climate for exploratory conversations *of substance* which took place in 1978 between the then President of Venezuela, Carlos Andrés Pérez, and Guyana's then Prime Minister, Forbes Burnham. These conversations examined in considerable depth the state of relations between Guyana and Venezuela and were regarded as helpful in *advancing the objectives of the Protocol* and in *opening the way for a more ordered search for a settlement* of the controversy which stemmed from the Venezuelan contention that the Award of 1899 was a nullity."[154]

2.146. Guyana thereby confirmed that *substantive discussions* as to the overall frontier issue indeed were the object of the Port of Spain Protocol, and thereby also of the Geneva Agreement that the said Protocol was meant to further implement. Put otherwise, in concluding the Port of Spain Protocol, the parties reiterated their joint wish to reach a mutually acceptable solution by way of negotiations.

3. Further Subsequent State Practice Confirm the Wish of the Parties to Provide for a Mutually Acceptable Solution of Their Territorial Controversy

2.147. As was evidenced in detail in Venezuela's Counter-Memorial,[155] and as is further demonstrated above, the Geneva Agreement (and thereafter the Port of Spain Protocol) were both meant to provide for an overall, mutually acceptable

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[154] Letter dated 2 November 1981 from the Permanent Representative of Guyana to the United Nations addressed to the Secretary-General, UN Doc. A/C.1/36/9, 9 November 1981 (VCM, Annex 148, p. 11) emphasis added.

[155] VCM, paras. 3.49-3.60.

solution to the underlying frontier controversy between Venezuela and Guyana, rather than focusing on the issue of the invalidity of the 1899 Arbitral Award.

2.148. The subsequent practice by both, Venezuela and Guyana, further confirms this result given that the contracting parties ever since 1966, and notably since 1970, engaged in further bilateral negotiations that did *not* focus on the validity or invalidity of the 1899 Arbitral Award. Instead, the parties were trying to bring about an agreement on the future legal status of the disputed territory and how to determine its boundaries.

2.149. It is particularly worth recalling, as per the practice already mentioned[156], that it was Guyana that on several occasions referred to the need to solve the boundary controversy as such in line with the Geneva Agreement, and it was Guyana that submitted concrete proposals how to delimit the boundary regardless of the legal status of the 1899 Arbitral Award.[157]

2.150. As shown, during the post Port of Spain Protocol period multiple border hypotheses were discussed by Guyana and Venezuela.[158] Notably, during the negotiations Dr. Shahabuddeen presented on behalf Guyana a proposal which contained what might be considered a modified 'Aberdeen line'.[159] In agreement with Guyanese Prime Minister Burnham he suggested to use this line, which, to state the obvious, deviated from the boundary line wrongly determined by the 1899 Arbitral Award, as a preliminary working hypothesis.[160] During this round of negotiations discussions then followed as to the possibility of Guyana eventually

[156] VCM, paras. 3.72.-3.91.
[157] *Ibid.*, paras. 3.75 et seq.
[158] *Ibid.*
[159] Confidential Report by Morales Paul, p. 9, 10 (VCM, Vol. III Annex 108).
[160] *Ibid.*

accepting at least partially Venezuela's territorial claim, thereby granting Venezuela a larger outlet to the Atlantic Ocean.[161]

2.151. Further discussions then also took place between the Guyanese ambassador and Brigadier General Mendoza in the 1980s.[162] Once again the parties did not discuss the issue of the invalidity of the 1899 Arbitral Award, but instead, and in line with the object and purpose of the Geneva Agreement and the Port of Spain Protocol, discussed what the Guyanese ambassador himself referred to as the 'territorial problem' or the 'territorial controversy' ("reclamación territorial" and "problema territorial") to be solved by such bilateral negotiations.[163]

2.152. It is also noteworthy that, in 1983, Venezuela had proposed to enter into direct negotiations with Guyana on the overall boundary controversy. Guyana in turn proposed to have recourse, *inter alia,* to either the United Nations General Assembly or the United Nations Security Council.[164] What is important to note, however, is that both the General Assembly and the Security Council, to state the obvious, as *political* organs of the United Nations, are neither meant to solve, nor are they equipped to solve, a purely legal dispute. Yet, the question whether the 1899 Arbitral Award is valid or null and void is legal question *par excellence.*[165]

2.153. *A contrario*, this confirms that Guyana, when proposing to have the controversy solved either within the framework of the General Assembly or the Security Council, shared Venezuela's understanding that the 'controversy' to be solved related to the question of how to delimit the boundary, but *not* the purely

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[161] *Ibid.*, p. 13; *see Clyde*, The Guyana-Venezuela Territorial Controversy: the International Approaches of the Government of Guyana, 1966-1992 (2002), p. 189.

[162] Report on the courtesy visit of Ambassador R. Collins of Guyana, to Brigadier General (AV) Ramón Enrique Mendoza Ibarra, Director General of Frontiers (VCM, Annex 90, p. 2).

[163] *Ibid.*

[164] *See* Press Release, Ministry of Foreign Affairs of Guyana, 30 March 1983 (VCM, Annex 47).

[165] *Arbitral Award of 3 October 1899 (Guyana v. Venezuela), Jurisdiction of the Court, Judgment, I.C.J. Reports 2020*, p. 455, Declaration of Judge Tomka, para. 6.

legal issue of the invalidity of the 1899 Arbitral Award. Otherwise, Guyana's proposal to either have the General Assembly or the Security Council address this controversy would have been nonsensical.

2.154. The fact that the parties understood that the Geneva Agreement's purpose was to reach an overall mutually acceptable agreement is further confirmed by further extensive substantive discussions that took place on 10 November 1984.

2.155. During those so-called Figueredo/Ramphal conversations between then Secretary General of the Commonwealth and former Minister of Foreign Relations of Guyana, Ramphal, and the personal representative of the Venezuelan President, Figueredo, the parties again concerned themselves with the delimitation of the bilateral border.[166]

2.156. During these talks, and according to a contemporaneous record of the negotiations, the parties discussed in significant detail possible alternative boundary lines. Although these discussions did not result in an agreement, they at the very least confirm once more that the parties had moved away from discussions about the invalidity of the Arbitral Award. Instead, and in line with the Geneva Agreement, they addressed the delimitation of the frontier as such.[167]

2.157. And while Venezuela, in this context, put forward the so-called Shahabudeen line (which Guyana dismissed),[168] Guyana alternatively proposed what it understood as a potential cession of a smaller coastal strip.[169] At the same

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[166] VCM, para. 3.96.

[167] I. Report concerning conversations held between Emilio Figueredo and Shridat Ramphal, November 1984, 19 February 1990, VCM, Vol. III Annex 114; Office of Border Affairs, File No. 27, Report by Emilio Figueredo, 10 November 1984, VCM, Vol. III Annex 113.

[168] I. Report concerning conversations held between Emilio Figueredo and Shridat Ramphal, November 1984, 19 February 1990, VCM, Vol. III Annex 114.

[169] Office of Border Affairs, File No. 27, Report by Emilio Figueredo, 10 November 1984, VCM, Vol. III Annex 113, p. 1 para. 2.

time, Guyana was open to adjust the maritime borders, and even presented a concrete proposal in that regard.[170] Accordingly, Guyana, in then fulfilling its legal obligations under the Geneva Agreement, was willing to discuss the territorial controversy as such regardless of its own position as to the alleged validity of the 1899 Arbitral Award. These negotiations, and, in particular, Guyana's own proposals, again demonstrate that the 'controversy' that the Geneva Agreement was meant to provide a solution for by way of negotiations is a territorial one rather than one concerning the invalidity of the 1899 Arbitral Award.

2.158. This was followed by meetings between the Venezuelan Foreign Minister Simón Alberto Consalvi and the Guyanese Foreign Minister Rashleigh Jackson in September 1985. Guyanese Foreign Minister Jackson was pleased with the negotiations taking place, stating they provide an

> "(...) opportunity of having discussions on the affairs affecting our relations. Among them, the *issues raising in the border area* [...]".[171]

2.159. During these negotiations both, the need for the framework for cooperation in the disputed territory and the proper dispute settlement mechanism, were discussed. In this regard, Jackson stated the Guyanese's intention that the above-mentioned Ramphall-Figueredo conversations continue.

2.160. This highlights Guyana's then willingness to engage in meaningful negotiations, which aimed at finding practical solutions for the boundary controversy as such rather than focusing on the (in)validity of the Award. More importantly, however, Jackson elaborated the domestic political difficulty of the

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[170] *Ibid.* para. 3; *see* Report concerning conversations held between Emilio Figueredo and Shridat Ramphal, November 1984, 19 February 1990, VCM, Vol. III Annex 114, p. 5.

[171] Minutes from the meetings of the Ministers of Foreign Affairs Consalvi and Jackson, dated 24 September 1985, **Annex 31**; emphasis added.

negotiations, namely that "[t]he problem is how to manage the publics."[172] It was for that reason that he was anxious about the Ramphall-Figueredo conversations being leaked to the Guyanese public.[173]

2.161. On the whole this subsequent practice once again confirms that it was the joint understanding of both, Guyana and Venezuela, that each and every of the methods for the peaceful settlement of disputes contemplated in Article IV Geneva Agreement should, and indeed must, address the overall boundary dispute, regardless of the question of the nullity of the 1899 Arbitral Award.

2.162. Although these negotiations have so far not yet brought about an agreement, this practice unequivocally confirms that *both* parties understood the controversy under the Geneva Agreement to be territorial in nature, and that the very object and purpose of the Geneva Agreement was, and continues to be, to bring about an overall practical solution to this bilateral boundary controversy.

4. Post-1982 good offices efforts by the Secretary General of the United Nations

2.163. This broad scope of the 'controversy', and that it ought to be solved by addressing the issue of the delimitation of the boundary anew, while leaving the controversial issue of the invalidity of the 1899 Arbitral behind, is further confirmed by the content and approach underlying the good offices of the Secretary General undertaken in the framework of the Article IV Geneva Agreement.

2.164. As, once again, outlined in detail in Venezuela's Counter-Memorial, the post-1982 good offices efforts by the Secretary General of the United Nations sought to reach a negotiated settlement to the overall "border controversy".[174]

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[172] *Ibid.*, p. 8.
[173] *Ibid.*, p. 6.
[174] VCM, paras. 3.97 et seq.

While this good office effort did not yield any final result, it is worth noting that, the parties, as well as notably the representatives of the Secretary General, dealt frequently with the substantive question as to how the boundary controversy as such can be resolved. As such, they shared the understanding as to the scope and telos of the Geneva Agreement, namely that it was meant from the very outset to provide for a mutually acceptable negotiated settlement of the overall frontier controversy.

2.165. This understanding of the mandate of the good offices of the UN Secretary General was not only reflected in internal debates. Rather, it was also communicated publicly, as confirmed by a 1998 Joint Declaration of the Presidents of Guyana and Venezuela emphasizing their support for the Good Offices of the Special Representative for a mutually satisfactory solution to the *territorial* controversy.[175]

2.166. Notably, in a letter dated 18 August 1998 to the former Minister of Foreign Affairs of Guyana, the Guyanese President herself reiterated that the purpose of the Good Offices process is to

> "(...) explore *all* avenues that would lead to a settlement of the *border controversy* in an open-ended exchange of views under the 'chairmanship' of Sir Alister McIntyre."[176]

2.167. In the same vein, she referred to the controversy as being one "over the border with Venezuela."[177] This is in line with a statement of Venezuelan Foreign

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[175] Joint Communiqué issued on the occasion of the State visit to Venezuela of the president of the Cooperative Republic of Guyana, H.E. Mrs Janet Jagan, 23 July 1998 (VCM, Annex 49, p. 2) emphasis added.

[176] Letter to Mr. Rashleigh Jackson by President Janet Jagan dated 18 August 1998 (VCM, Annex 126) emphasis added.

[177] *Ibid.*

Minister José Vicente Rangel, who soon thereafter in 1999 confirmed the solution to be found in the Good Offices process must be "reasonable, fair and equitable".[178]

2.168. Similarly, upon a request of the representative of the Secretary General, Oliver Jackmann, the parties prepared a paper containing their views on the way the good offices process should be conducted. This paper, which was accepted by both parties, stated that the parties "(...) recognize the mandate of the good officer in assisting them to resolve problem*s*, difference*s*, dispute*s* and controversi*es*."[179] The fact that the parties phrased this in the plural proves that they understood the controversy to be resolved comprised the border issue as such since otherwise they would have used a singular referring to their controversy (in the singular) as to the (in)validity of the 1899 Arbitral Award.

2.169. Notably, this interpretation of the mandate of the Geneva Agreement was not only shared by the parties, but also by the Secretary General himself as well as by representatives. In a press release the Secretary General, as early as 1993, stressed his willingness to secure

> "(...) a *mutually satisfactory* settlement of the *controversy*",[180]

without even mentioning the 1899 Arbitral Award once.

2.170. Most importantly, however, in a letter to the Venezuelan government of 6 October 2010, Norman Girvan, in his function as the Personal Representative of the Secretary General, himself referred to "the *border controversy* between Guyana

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[178] Memorandum of Venezuela, Annex p. 100.

[179] Report from Luis Herrera to the Minister of Foreign Affairs, concerning the answer to Mr. Ralph Ramkarram about the role of the Good Officer, dated 11 July 2003, **Annex 37**.

[180] UN Doc. SG/SM/5108, 24 September 1993 (VCM, Annex 130) emphasis added.

and Venezuela" in general, and "the border issue" as such that needed to be resolved.[181]

2.171. He later repeated this understanding of his mandate arising under Article IV Geneva Agreement on several occasions. In 2012 he thus organized a workshop with the parties related to the "border controversy".[182] One year later, in 2013, when reflecting upon the Good Offices progress, he reiterated that the United Nations remain committed to supporting the parties in the pursuit of a mutually satisfactory resolution of the "controversia fronteriza", *i.e.* the *border* dispute.[183] Once again, the 'controversy' was thus not considered as one related to the (in)validity of the 1899 Arbitral Award, but the issue to be solved in accordance with Article IV Geneva Agreement was rather considered to be the frontier matter as such.

2.172. Similarly, already upon Mr. Girvan's appointment the United Nations Secretary General in a press release had labelled the dispute as constituting a "*[b]order controversy* between Guyana, Venezuela".[184] He equally concluded that the "United Nations remains committed to supporting the Parties in the search for a *mutually satisfactory* resolution of the border dispute."[185]

2.173. It is also telling that the Secretary-General on 12 November 2015 issued a document entitled "The Way Forward",[186] and in which the Secretary-General *inter alia* referred to the need for the parties to bring about "(…) a *practical solution* to the controversy (…)"[187] ". This, once again, confirmed that the Secretary General,

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[181] Letter by Norman Girvan to Nicolás Maduro Moros dated 6 October 2010 (VCM, Annex 135) emphasis added.

[182] UN News, UN envoy hails workshop related to Guyana-Venezuela border dispute, 17 May 2012, (VCM, Annex 136).

[183] Letter by Norman Girvan to Elías Jaua dated 29 October 2013 (VCM, Annex 138) emphasis added.

[184] UN Doc. SG/A/1230-BIO/4183 of 20 April 2010 (VCM, Annex 134) emphasis added.

[185] Letter by Norman Girvan to Elías Jaua dated 29 October 2013 (VCM, Annex 138).

[186] VCM, para. 1.13.

[187] Guyana's Memorial (Jurisdiction and/or Admissibility), Vol. IV, Annex 100.

too, took the position that the overarching goal of the Geneva Agreement from the very outset has been to bring about a *practical* solution to the overall controversy by the parties by way of negotiations.

2.174. By the same token, this also indicates that it was the Secretary General's considered position that a decision focusing on the issue of the invalidity of the 1899 Arbitral Award, would not be in line with the object and purpose of the Geneva Agreement.

2.175. After taking office on 1 January 2017, the new Secretary-General, Mr. António Guterres, then appointed a new personal representative and gave him a strengthened mandate of *mediation*.[188] Inherent in the concept of mediation is the idea to find a mutually acceptable *compromise* solution to a dispute with the help of the mediator by way of negotiations.[189]

2.176. This again implies that any solution that would focus on the invalidity of the 1899 Arbitral Award, and could thus only lead to an either-or-decision, is incompatible with the very idea of the Secretary General acting as a mediator. Instead, the Secretary General perceived his role as being obliged as a mediator to propose solutions that could be mutually acceptable, *i.e.*, would indeed constitute a compromise.

5. Joint Communiqués of the parties as to the scope and character of the 'controversy' and possible solutions thereto

2.177. The parties also shared this common understanding of the goal of the dispute settlement process to be undertaken under Article IV Geneva Agreement. As was

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[188] *See Arbitral Award of 3 October 1899 (Guyana v. Venezuela), Jurisdiction of the Court, Judgment, I.C.J. Reports 2020*, p. 455 para. 58; emphasis added.

[189] Simma *et. al*, The Charter of the United Nations: A Commentary, Volume I (3rd Edition), 2012, Article 33 para. 28.

already outlined in Venezuela's Counter-Memorial,[190] it is apparent from the three Joint Communiqués from 2004, 2010 and 2013 respectively, that the parties deliberately abstained to refer to the issue of the invalidity of the Arbitral Award. Instead, they rather focused on practical and satisfactory solutions to be found for the territorial controversy as such.[191]

2.178. Thus, on the conclusion of a visit of President of Venezuela Hugo Chávez to Guyana the two parties in 2004 referred to the "search for a peaceful and *practical settlement* of the controversy" undertaken within the framework of the United Nations Good Offices Process.[192]

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

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

and in Spanish:

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[190] VCM, paras. 2.30; 3.112-3.115.

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

[192] Joint Communiqué issued at the end of the State visit to Guyana of his Excellency Hugo Chávez Frías, President of the Bolivarian Republic of Venezuela, 19 and 20 February 2004, para. 4 (VCM, Annex 51) emphasis added.

> "(...) reafirmaron su confianza en el Proceso de los Buenos Oficios como Mecanismo que ofrece la ventaja de permitir a las Partes avanzar en una *solución práctica y satisfactoria* a la *controversia territorial*".[193]

2.180. This joint perception of the scope of the controversy, and how to solve it by way of a practical settlement, was reiterated on the occasion of a visit of President Maduro in Georgetown on 31 August 2013.[194]

2.181. On the whole, the parties thus aligned themselves with the view taken by the United Nations Secretary General and its various special representatives, namely that only an overall settlement that would take into account the interests of *both* parties would be in line with the Geneva Agreement.

E. CONCLUSION

2.182. On the whole, therefore, both, the parties to the dispute, as well as external actors mandated by Article IV Geneva Agreement, all understood Article IV Geneva Agreement as requiring, a search for a *mutually acceptable and practicable solution* to the overall territorial controversy, which the 1899 Arbitral Award had not been able to bring about, and to do so regardless of the question as to its invalidity.

2.183. This is the only path that is in line with the very object and purpose of the Geneva Agreement, as confirmed by its text, preamble, and drafting history, as well as the subsequent practice, not only of the parties to the Geneva Agreement, but also of the Secretary General.

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[193] Joint Statement by Presidents Hugo Chávez Frías and Bharrat Jagdeo on the Occasion of the Official Visit of the President of the Cooperative Republic of Guyana to the Bolivarian Republic of Venezuela, Caracas 21 July 2010, para. 11 (VCM, Annex 52) emphasis added.

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

2.184. Indeed, Guyana has long agreed that an amicable settlement was the mandated way forward, and acted accordingly, as illustrated by its participation in the good offices process over the years. It is striking in this respect that Guyana's written submissions are almost completely silent on these decades of negotiations, as if they never happened and the parties negotiated in vain. Guyana changed its attitude and position only in 2015, when it consciously decided to give in and yield to the oil transnationals, and to subordinate its relationship with Venezuela to the economic interests of those oil majors.

2.185. The evidence therefore overwhelmingly favours a reading of the Geneva Agreement that left the question of the *legal* validity of the 1899 Arbitral Award behind, and committed the parties – Venezuela and a soon-to-be independent Guyana- to a new legal relationship, one premised on a path of cooperation and negotiations designed at reaching a mutually-satisfactory solution.

2.186. Guyana has persisted in its misleading approach to the dispute, in particular by maliciously attempting to divert the focus toward the validity of the 1899 Arbitral Award. While Venezuela has provided sufficient elements to disprove Guyana's reliance on that Award's validity[195] the question is, ultimately, irrelevant: an outcome that merely repeats the Award would represent a negation of what the Geneva Agreement is, why it was executed, and what it stands for.

2.187. The Court has itself recognized that the validity of the 1899 Arbitral Award is not necessarily dispositive. In its 2020 Judgment, the Court acknowledged that a finding that the Award was null and void would not, in itself, settle the dispute.[196]

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[195] VCM, Chapters 5-6.

[196] *Arbitral Award of 3 October 1899 (Guyana v. Venezuela), Jurisdiction of the Court, Judgment, I.C.J. Reports 2020*, p. 455, para. 86.

It follows that the opposite conclusion – affirming the validity of the Award – would likewise fail to resolve the underlying controversy.

2.188. The true object of the Geneva Agreement is to provide a framework – procedural and substantive – for reaching a conclusive, equitable, and mutually agreeable resolution. A winner-takes-all judicial decision on the Award's (in)validity is fundamentally incompatible with that objective.

2.189. Any analysis of the Award's validity should not detract from the Geneva Agreement's fundamental purpose: securing a lasting and mutually satisfactory settlement of the Essequibo controversy.

CHAPTER III: THE DECOLONISATION IMPERATIVE

A. INTRODUCTION

3.1. The Reply was not only silent on the interpretation of the Geneva Agreement and the true object of the territorial controversy, it was also deliberately blind to Venezuela's fundamental arguments situating this case within the framework of the international law of decolonisation.

3.2. As recently put by Judge Tladi:

> [C]olonialism is a blemish on the history of humanity and indeed, on the reputation of international law – one of the most egregious violations against humanity, whose consequences continue to be felt long after its formal end, and will likely continue to be felt for decades or even centuries to come. Yet, on the other hand, international law continues to respect, normatively, many of the legacies of colonialism [...].[197]

3.3. Sadly, this case is yet another example of the lingering persistence of the colonial era's cruelty and injustice. However, it is also an example of negotiations and efforts designed to remedy these circumstances, efforts that culminated with the Geneva Agreement and the independence of British Guiana – but remains to be perfected.

3.4. This Chapter addresses the crucial intersection of the Geneva Agreement with the principles of decolonisation under international law, arguing that the Agreement, a product of colonial power dynamics, must be understood within the context of redressing colonial wrongs – of which the 1899 Arbitral Award is a

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[197] *Land and Maritime Delimitation and Sovereignty Over Islands (Gabon v. Equatorial Guinea)*, Judgment, 19 May 2025, Separate Opinion of Judge Tladi, para. 2.

perfect embodiment – and the right to self-determination. The parties' decision to novate their legal relationship, the consequences of which are analysed in the next Chapter, should be appreciated in light of these goals.

B. THE IMPERATIVE TO REMEDY COLONIAL WRONGS

3.5. Decolonisation is not merely a historical event but an ongoing legal imperative, and this case must be examined through that lens.

1. Decolonisation requires the rectification of colonial injustices

3.6. Decolonisation under international law mandates the eradication of colonialism in all its forms, encompassing not only the formal transfer of political control but also the redress of colonial injustices and the realization of the self-determination of formerly-colonised peoples and nations. In a "defining moment" of the decolonisation movement,[198] the United Nations adopted Resolution 1514, entitled "Declaration on the Granting of Independence to Colonial Countries and Peoples", which specifically condemns colonialism and asserts the right to self-determination, a core tenet of decolonisation.[199] As confirmed by the Court,[200] "although resolution 1514 (XV) is formally a recommendation, it has a declaratory character with regard to the right to self-determination as a customary norm".

3.7. This position was in accordance with the principles of the Charter of the United Nations, the foundational document of the post-colonial international order,

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[198] *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Preliminary Objections, Judgment, I.C.J. Reports 2021*, p. 71, para. 86.

[199] UNGA Res. 1514 (XV), Declaration on the Granting of Independence to Colonial Countries and Peoples; *See* also UNGA Res. 2625 (XXV), Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.

[200] *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, p. 95, para. 150.

which explicitly affirms the inalienable right to self-determination of all peoples,[201] in a strong rebuke to the colonial orders of the past. This right of self-determination is a *jus cogens* norm, representing the most fundamental and peremptory norms of general international law, reflecting the core values of the international community, and is binding on all states, regardless of their consent.[202] The principle of self-determination, therefore, is a critical tool in addressing the pernicious legacies of colonialism.

3.8. Venezuela has always supported this principle, and acted accordingly. In particular, Venezuela called for Guyana's independence, based on its "long-standing anti-colonial position dating back to its own struggle for sovereignty and independence."[203] Venezuela's legislative branch supported "the total independence of British Guiana and its immediate inclusion into a democratic system."[204] Before the United Nations' General Assembly, Venezuela stressed in no unclear terms that the colonial legacy of the territorial controversy with the United Kingdom dis not condition its support for Guyana's independence[205]

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[201] UN Charter, Arts. 1(2), 55.

[202] *East Timor (Portugal v. Australia), Judgment, I.C.J. Reports 1995*, p. 90, para. 29; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Reports 2004, p. 136, para. 155.

[203] President Don Rómulo Betancourt and the Venezuelan Claim, VI, Presidential Message, 7 March 1964, in *Claim to Guyana Essequibo – Documents 1962-1981*, Caracas 1981, p. 8 (available at Peace Palace Library). In this same regard *see* Note from the Minister of Foreign Affairs of Venezuela Mr. Ignacio Iribarren Borges, to the Ambassador of Great Britain, Sir Anthony H. Lincoln, 18 May 1966, available at *Ibidem*, p. 100, and Statement by the Minister of Labour, Mr. Hens Silva Torres, and by Ambassador Francisco Alvarez Chacin, at the International Labour Organization (ILO), June 1966, at *Ibidem*, p. 112-113.

[204] *Ibid.*; Memorandum of Venezuela, p. 7.

[205] UNGA 20th session, 1398th Plenary Meeting, 16th December 1965 (3pm), p. 4 (Mr. Sosa Rodriguez, Venezuela): "I wish to confirm that Venezuela has at no time made its support for the independence of British Guiana conditional upon the prior settlement of its claim to part of that Territory, which is the subject of conversations between the Governments of the United Kingdom, Venezuela and British Guiana continued from those held in 1962. That position too remains unchanged." *See* also *Ibid.*, p. 15 (Mr. Medina, Colombia).

Guyana was recognised as a sovereign State on the same day of its independence, expressly stating the persistence of its claim.[206]

3.9. The purpose of decolonisation, however, extends beyond merely granting formal political independence; it demands the rectification of historical injustices, including the restitution of territory or compensation for lost resources, and the dismantling of the structures of colonial domination[207]. Within this context, decolonisation entails not only the ending of formal political control but also the addressing of colonial-era territorial disputes. This encompasses not only the redrawing of borders but also the restitution of territories that were unjustly seized or administered during the colonial period. The principle of decolonisation, in this context, is intrinsically linked to the principle of self-determination.

3.10. In the *Frontier Dispute (Burkina Faso/Mali)*, Judge *ad hoc* Abi Saab stressed that there can "be no question of even circuitously finding in contemporary international law any retroactive legitimation whatever of colonialism as an institution."[208] Quoting that passage, Judge Bennouna later described colonialism as "an institution which law and history have definitively classed among those which have been profoundly violent and unjust because of their violation of the dignity and freedoms of entire populations", and asked "whether, when drawing frontiers, contemporary international law can rely on law produced by such an institution".[209]

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

[207] *See, e.g.,* Ministry of Foreign Affairs, Office of Information, Press and Publications. Bulletin No. 349-C, dated 26 January 1966, **Annex 35**, which contains Panama's Resolution expressing the hope that, in granting independence to Guyana, the UK government "does not wish to perpetuate an era of colonialism in the American continent based on territorial usurpation".

[208] *Frontier Dispute (Burkina Faso/Republic of Mali), Judgment, I.C.J. Reports 1986*, p. 554, Separate Opinion of Judge *ad hoc* Abi-Saab, para. 4.

[209] *Frontier Dispute (Burkina Faso/Niger), Judgment, I.C.J. Reports 2013,* p. 44, Declaration of Judge Bennouna, p. 2.

3.11. As recently put by a member of the Court, "[t]he answer to Judge Bennouna's question is a clear and simple no."[210]

2. The Decolonisation of British Guiana as a Lost Opportunity to Rectify Colonial Wrongs

3.12. This case, and the history of British Guianas decolonisation, is a perfect illustration of the efforts expanded by formerly-dependent states to correct the crimes of colonialism.

3.13. In April 1948, the Organization of American States, declaring it "a just aspiration of the American Republics that colonialism and the occupation of American territories by extra-continental countries should be brought to an end", created the American Committee of Dependent Territories.[211] In this context, the head of the Venezuelan delegation recalled "Venezuelans' right, in the event of a serene and cordial re-evaluation of the history and geography of the Americas, to assert their territorial claims over areas now under colonial tutelage and which in the past belonged to our own sphere."[212] In a subsequent meeting, Venezuela registered its view that Guyana's anticipated independence should not have any consequence on its own right to obtain reparation from the damages it suffered from the manoeuvres of Guyana's colonial master.[213]

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[210] *Land and Maritime Delimitation and Sovereignty Over Islands (Gabon v. Equatorial Guinea)*, Judgment, 19 May 2025, Separate Opinion of Judge Yusuf, para. 9.

[211] C. G. Fenwick, "The American Committee on Dependent Territories" (1950) 44 The American Journal of International Law 2, pp. 363-370.

[212] As recounted in the memorandum from Venezuela's Ministry of Foreign Affairs entitled "The problem of the borders of Venezuela with British Guiana and the Venezuelan position before the independence of this country", 3 January 1966, p. 1.

[213] Resolutions and declarations in international forums on the territorial issue with British Guiana, **Annex 34**, p. 3.

3.14. This explains why, at the time, Venezuela was hopeful that the issue be resolved quickly,[214] and with the participation of British Guiana.[215] This needs to be contrasted with the deceitful attitude of the United Kingdom, which stated before the United Nations that they expected to quell this issue before independence of Guyana,[216] all the while its own diplomats were stating that "our general aim will be to try to string the Venezuelans along amicably until British Guiana is independent".[217]

3.15. As such, when the United Nations, in pursuance of its mandate to support and accomplish decolonisation, turned towards the situation of what was then British Guiana, the existence of negotiations between the UK and Venezuela was at the forefront of everyone's minds.[218] Before the United Nations, Venezuela repeated its support for Guyana's self-determination, regardless of its rightful claims to part of the territory at stake.[219] (Similar sentiments were expressed to the UK directly.[220]) The eventual adoption, by the Fourth Committee of Resolution VII dealing with the decolonisation of British Guiana (among many other non-independent territories)[221] saw many states, and Latin American states in particular,

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[214] Confidential letter from Venezuela's Ambassador in London, Dr. Héctor Santaella to Iribarren Borges, Minister of Foreign Affairs of Venezuela, dated 23 October 1965, **Annex 25**, para. 31.

[215] Presentation to the National Congress by Mr. Ignacio Iribarren Borges, Minister of Foreign Affairs of Venezuela, about the Geneva Agreement 17 March 1966, **Annex 2**, p. 3.

[216] Statement of Mr. C.T. Crowe, Representative of the United Kingdom, at the 349th meeting of the Special Political Committee on 13 November 1962, UN Doc. A/SPC/72, p. 16: "espérons cependant que cette question pourra être réglée une fois pour toutes et que la Guyane britannique accédera à l'indépendance sans que le moindre doute s'élève quant à son territoire et ses frontières". Mr. Crowe further rejected the idea of leaving the issue for Guyana itself to resolve once it becomes independent.

[217] Letter from Edmonds to John, dated 23 March 1962, **Annex 23**, p. 2.

[218] UNGA, 20th session, Fourth Committee 1583rd meeting, 10 December 1965 (11am).

[219] *Ibid*, p. 427 (Mr. Sosa Rodriguez, Venezuela), para. 5.

[220] Letter from Venezuela's Ambassador in London, Dr. Héctor Santaella to Michael Stewart, Minister of Foreign Affairs of Great Britain, dated 2 November 1965, **Annex 26**: "In the case of British Guiana, the reasons that move Venezuela to strongly desire its independence are even more powerful [...]."

[221] Fourth Committee, A/6160, 13 December 1965.

abstain over the lack of reference to the territorial controversy.[222] As powerfully stated by Uruguay at the subsequent Plenary Meeting of the UNGA:

> In the draft resolution we have just adopted there is not a word about [the controversy]. [...]. The Latin American delegations wanted to rectify it, but in a more detailed way: in other words, they wanted to ensure that when a resolution as important as that on British Guiana was adopted, the problem would not be disregarded. As a matter of simple logic affecting the continuity of the work of the United Nations, some reference should have been made to it so that the omission would not be interpreted as a decision of the Assembly. [...]
>
> The dispute will not cease to exist merely because it is not mentioned in the resolution. This kind of problem is a millstone round the neck of a small country on the threshold of independence [...].[223]

3.16. Even after Guyana's independence and the signature of the Geneva Agreement, Venezuela left no doubt that the controversy remained tainted by its colonial roots, and cried for a resolution in line with the anti-decolonisation principles. When the Agreement was presented to Venezuela's National Congress, one of the very first words of its Ministry of Foreign Affairs was to hope that, "[a]t the twilight of the colonialist era, hope was rekindled that one day the injustice we had been victims of would be redressed."[224] And when, in the 1980s, Guyana

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[222] *Ibid.*, recording the position of Spain (para. 11), Peru (para. 12), Costa Rica (para. 14), Nicaragua (para. 15), Colombia (para. 16), Argentina (paras. 18-19), Dominican Republic (para. 22), Paraguay (para. 23), El Salvador (para. 24), Guatemala (para. 37), Honduras (para. 42), Panama (para. 43) – all of which preferred to abstain in light of the lack of specific reference to the controversy. Most other states, while voting for the Resolution, expressed their wish that the controversy be ultimately settled to the mutual satisfaction of the parties involved.

[223] UNGA 20th session, 1398th Plenary Meeting, 16th December 1965 (3pm), p. 22 (Mr. Marques Sere, Uruguay), paras. 247-248.

[224] Presentation to the National Congress by Mr. Ignacio Iribarren Borges, Minister of Foreign Affairs of Venezuela, about the Geneva Agreement 17 March 1966, **Annex 2**, p. 1.

circulated a false and misleading view of the controversy,[225] Venezuela had to set the record straight: this was just an attempt to "consolidate an injustice and frustrate a just claim for the benefit of Guyana, as the heir to colonial spoliation."[226]

3.17. As demonstrated by the *Chagos Archipelago* Advisory Opinion, the Court has recognized the continuing relevance of decolonisation, even where formal independence has been achieved, as a necessary process to ensure that the fundamental principles of self-determination and the protection of human rights are upheld.[227] The Court's focus on the illegality of the UK's separation of the Chagos Archipelago from Mauritius highlights the importance of ensuring that the process of decolonisation is complete and that the interests of the formerly colonized population are fully taken into account. This ruling demonstrates that decolonisation is not simply a historical event, but an ongoing process.

3.18. Moreover, *Chagos* confirms that an administering power's undue influence over colonial-era legal mechanisms is relevant to assessing their legitimacy. Here, as in *Chagos*, the UK exercised significant influence over the arbitral process, ensuring an outcome that secured its colonial interests rather than a fair and equitable resolution. The Court's ruling in *Chagos* thus provides a direct legal precedent for reassessing the legitimacy of the British colonisation of South America, the fraught arbitration process, and the 1899 Award under modern international law.

3.19. This further means that, assuming for the sake of argument that the 1899 Arbitral Award were valid (*quod non*), its territorial consequences could not be

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[225] Letter dated 2 November 1981 from the Permanent Representative of Guyana to the United Nations addressed to the Secretary-General, UN Doc. A/C.1/36/9, with attached memorandum (VCM, Annex 148).

[226] Letter dated 23 November 1981 from the Permanent Representative of Venezuela to the United Nations addressed to the Secretary-General, UN Doc. A/C.1/36/12, p. 3.

[227] ICJ, *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, ICJ Reports 2019*, p. 95, para. 174.

applied in absolute and unconditional terms in a dispute where the law of decolonisation is the governing legal framework. The object and purpose of the applicable principles and norms of decolonisation is to remedy the very injustices caused by imperial territorial arrangements.

3.20. In other words, decolonisation law does not merely recognize the self-determination of indigenous populations, but also protects the territorial claims of sovereign states dispossessed by colonial expansionism. The international community has consistently upheld the obligation to negotiate retrocession of such territories, overriding any colonial-era instruments that had previously legitimized imperial territorial claims.

C. The Geneva Agreement and the Culmination of the Decolonisation

3.21. Being adopted in the middle of the most important decade for the decolonisation movement, the 1966 Geneva Agreement must be understood as a direct consequence of this intensifying global movement for decolonisation and the impending independence of British Guiana. The Agreement reflected a growing international consensus that colonial powers should address outstanding grievances and territorial disputes inherited from the colonial era, especially those involving newly independent states. A few years later, Venezuela indeed described it as such: "a formal agreement by which the three parties involved committed themselves to a political search for peaceful solutions to a dispute inherited from colonialism."[228]

3.22. The timing of the Agreement – just three months before British Guiana's independence – was not coincidental but deliberate. The preamble explicitly references "the forthcoming independence of Guyana", and Article VIII specifically provides for Guyana to become a party to the Agreement upon

[228] Letter dated 23 November 1981 from the Permanent Representative of Venezuela to the United Nations addressed to the Secretary-General, UN Doc. A/C.1/36/12, p. 6.

independence. This timing demonstrates that all parties recognised that the colonial-era legal framework was insufficient for the post-colonial relationship between Venezuela and an independent Guyana.

3.23. The participation of British Guiana as a distinct entity in the negotiation and conclusion of the Agreement further demonstrates its decolonisation context. Despite not yet being formally independent, British Guiana participated as a separate party from the United Kingdom, with its own representatives and interests, a situation explicitly wished-for by Venezuela at the time.[229] This unique arrangement reflected the recognition that the controversy would primarily affect the relationship between Venezuela and the soon-to-be independent state. Likewise, the fact that the Mixed Commission was composed only of representatives from Venezuela and British Guiana, with no direct participation by the United Kingdom, reflected the recognition that the controversy's resolution would primarily affect the relationship between Venezuela and the newly independent Guyana, not the colonial power.

3.24. As such, and as Venezuela has already shown,[230] the execution of the Geneva Agreement demonstrates a shared recognition among all parties that the 1899 Arbitral Award, a product of the colonial era, did not provide a definitive or just resolution to the territorial controversy. Its flaws certainly have historical relevance: they represent one of the most glaring examples of "might-made-right", or of the perversion of nascent international justice for imperial goals. But that historical question, interesting as it is – and which Venezuela reviews at length in Part Two of this Rejoinder – is not, and cannot be of any use in reaching a mutually-satisfactory resolution to the controversy.

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[229] Presentation to the National Congress by Mr. Ignacio Iribarren Borges, Minister of Foreign Affairs of Venezuela, about the Geneva Agreement, 17 March 1966, **Annex 2**, p. 3.

[230] VCM, Chapter 2.

3.25. Instead, the duals lens of decolonisation and state equality provides a clearer view of what the Geneva Agreement is and is not about. This was reflected in the attitude of the parties towards the conclusion of the Agreement (as well as the subsequent Port-of-Spain Agreement, into which independent Guyana entered freely).

a. The United Kingdom, facing increasing pressure to grant independence to its colonies, (and secure its interests in doing so),[231] sought a mechanism to address pre-existing disputes and ensure a smoother transition to independence. This is consistent with the decolonisation goals.

b. British Guiana's participation in the Geneva Agreement as a party in its own right reflects the evolution of the principle of self-determination, which mandated the involvement of the colonized people in decisions affecting their future. As an impending newly independent state, Guyana had the capacity to assess the Award, and its participation suggests recognition by the soon-to-be independent state that a new path for resolution was needed.

c. Venezuela, free at last from the colonial shackles in the first quarter of XIX century and from the gunboat diplomacy that defined the XIX

[231] In particular, as recounted in contemporary documents, the UK at the time was in the midst of the grave crisis to its authority over the Commonwealth caused by the calls for independence in Rhodesia: *see* Confidential letter from Venezuela's Ambassador in London, Dr. Héctor Santaella to Iribarren Borges, Minister of Foreign Affairs of Venezuela, dated 23 October 1965, para. 37, and 39 (**Annex 25**): "In such a harsh and difficult scenario, would Great Britain immediately abandon British Guiana in its claim against Venezuela, exposing itself to the repudiation of the Commonwealth and especially Afro-Asians? On the other hand, would Great Britain openly confront Venezuela and Latin America?"

and early XX centuries, could finally challenge the 1899 Arbitral Award. [232]

3.26. In the same vein, the appointment of a Mixed Commission to seek a mutually agreeable settlement cannot but be read as a significant departure from a rigid defence of the 1899 Arbitral Award that would have prevailed – and that did prevail – before the decolonisation era. At the very least, this approach implicitly acknowledged the need to address the colonial-era injustice.

3.27. In other words, what the Geneva Agreement did was to set the Parties (i.e., Venezuela, and the soon-to-be independent Guyana) on the path of reaching a solution that is mutually beneficial and does not repeat the mistakes (and dead-end) of the colonial situation that had prevailed between Venezuela and the United Kingdom.[233]

3.28. By contrast, insisting – as Guyana now does – that the Geneva Agreement endorsed the *status quo* and the behaviour of the British Empire is patently incompatible with the Agreement's time and context.

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[232] This had been clearly stated in the context of the Experts' Meeting to review the Documentary evidence: *see, e.g.*, Expert's conversations on the boundary issue Venezuela-British Guiana, Minutes of the Twelfth Session, dated 2 April 1964 (10:00 am), statement by Father Ojer: "Venezuela's internal and international situation forced my country to postpone the denunciation of the Award. This is well-known history, but it is worth pointing out some facts. It was a period of internal Venezuelan conflict, of civil wars, and a time when the great Powers, primarily England and Germany, were exerting pressure on Venezuela to pay off its debts […] Venezuela was even aware that Germany wanted to seize Margarita Island to settle its claims for unpaid debts. And we know that even Italy, although it had only one debt owed by Venezuela amounting to two million bolivars—a sum which today might seem ridiculous—nonetheless that amount shows how, for a small sum, a foreign country would declare a blockade against a weak nation. Of course, this attitude by the great Powers was only possible in the colonial era, not in this current era when nations aspire to the fulfilment of international justice." *See* **Annex 30**.

[233] *See, e.g., Arbitral Award of 3 October 1899 (Guyana v. Venezuela), Partly Separate and Partly Dissenting Opinion of Judge ad hoc Couvreur, I.C.J. Reports 2023,* para. 37: "the only reasonable reading of the Geneva Agreement in this regard is that the United Kingdom, as a former colonial Power, sought to facilitate the settlement of the dispute relating to the territory that it had transferred to the newly independent Guyana."

3.29. The Geneva Agreement, therefore, must be understood as a crucial step in the process of decolonisation, demonstrating a commitment to address colonial-era grievances and to seek a just and equitable solution to a territorial controversy that stemmed from the imbalances of the colonial period. As the next Chapter will explain, this approach – leaving a flawed legal relationship in the past for the benefit of a new framework – comports with the international law notion of novation.

CHAPTER IV: THE GENEVA AGREEMENT AS A NOVATION INSTRUMENT

A. INTRODUCTION

4.1. Entered into in the shadow of impending decolonisation and in response to Venezuela's enduring objection to the 1899 Arbitral Award, the Agreement marked a decisive departure from the legal framework previously imposed by colonial power dynamics. In doing so, it gave rise to a new legal regime, one shaped by mutual consent, oriented toward a negotiated resolution, and grounded in the normative evolution of international law.

4.2. This transformation is best understood as a novation, i.e., a mutually-agreed substitution of the previous situation based on colonial domination for a new negotiated framework. The Geneva Agreement amounted to such a novation and must be interpreted and applied as such.

4.3. In what follows, Venezuela thus demonstrates that the concept of novation is recognised under international law (**B**), before establishing that the Geneva Agreement meets all the criteria for novation, both formally and substantively (**C**). On this basis, this chapter further explores the legal consequences of novation for this matter – and most notably, in the Court's obligation to respect the transformed legal relationship (**D**).

B. INTERNATIONAL LAW RECOGNIZES NOVATION AS A MECHANISM FOR THE SUBSTITUTION OF OBLIGATIONS

4.4. This section outlines the essential elements of novation, its doctrinal basis in both general and international law (**1**), and the legal consequences that follow once novation is established (**2**) – chief among them, the extinction of the prior regime and the binding character of the new one.

1. Novation as Substitution of Legal Obligations Through Mutual Consent

4.5. It is undisputed that the venerable institution of novation applies in international law. The notion, known since Roman law,[234] describes how a legal relationship, while subsisting between the same parties, may acquire a different content.[235] This transformation constitutes the replacement of one set of obligations with another through mutual consent, or else the substitution of a different party in the relationship.[236] By mutually replacing the colonial-era regime with a tailored framework, both Venezuela and the United Kingdom (and, eventually, Guyana) stood to benefit equally, making novation the natural and mutually advantageous way forward.

4.6. Novation may take several forms: it may create a new obligation between the same parties, substitute a different creditor, introduce a different debtor, or involve both a new creditor and debtor.[237] For a novation to be effective, the new

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[234] In the Digest, "Novatio est prioris debiti in aliam obligationem vel civilem vel naturalem transfusio atque translatio, hoc est cum ex praecedenti causa ita nova constituatur, ut prior perematur. novatio enim a novo nomen accepit et a nova obligation" (Digest, 46.2.1.1). *See* also L. Caflish, "The Law of State Succession: Theoretical Observations", *Nederlands Tijdschrift voor Internationaal Recht*. 1963; 10(4), 337-366, at 361.

[235] *See* J.H.W. Verzijl, *International Law in Historical Perspective*, Volume VI (1973), pp. 777-778, citing the examples of an obligation to make restitution of an object or territory replaced by pecuniary compensation; a treaty claims to military assistance substituted with another form; and an engagement to grant autonomy replacing an initial undertaking for an independence vote. Verzijl specifically mentions the 1814 case where the Netherlands' obligation to compensate Sweden for Guadeloupe's retrocession to France was transformed from territorial to financial compensation (see preamble of the Anglo-Swedish Treaty of 13 August 1814, Martens, N.R., II, 55, and its first additional article, *Ibid.*, 60); and the 1839/1873 case where the Netherlands' obligation to Belgium regarding a canal across Limburg territory was later replaced with an obligation to allow a railway instead (see Article 12 of the Treaty of Separation with Belgium of 19 April 1839, Martens, N.R. XVI2, 773, and joint declaration of 18 June 1873, made on the exchange of the ratifications of their treaty of 13 January 1873, *Ibid.*, N.R.G.2, II, 1 and 3).

[236] *See Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, p. 16, Dissenting opinion of Judge Gerald Fitzmaurice, pp. 52-55.

[237] R. Martha, *The Financial Obligation in International Law* (Oxford University Press, 2015), p. 574.

obligation must contain something different from the original one; otherwise, the old obligation remains unchanged. Most importantly, the intention to novate must be clear and unambiguous.[238]

4.7. International tribunals have consistently recognized that novation occurs when an existing legal obligation is replaced by a new one through mutual agreement. Judge Fitzmaurice's opinion in the *Namibia* Advisory Opinion explicitly recognised this concept, emphasizing that novation requires "consent in order to be good as such".[239] He further explained that novation requires "consent unequivocally and unambiguously expressed, or at least evidenced by unequivocal acts or conduct".[240] This requirement ensures that parties cannot be bound by obligations that haven been replaced without their agreement. Obligations cannot therefore be replaced without proper consent, as this would improperly impose new obligations without the required legal foundation.[241]

2. The Legal Consequences When Novation Is Established: Original Obligations Are Extinguished

4.8. Novation fundamentally transforms the substance of legal obligations rather than merely modifying their details. Its primary legal consequence is the extinction of the original obligations between the parties.[242]

4.9. This extinction of prior obligations distinguishes novation from amendment. Following an amendment, the original obligation continues in a modified form; following a novation, it is replaced entirely by a new obligation.

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[238] *Ibid.*

[239] *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, p. 16, Dissenting opinion of Judge Gerald Fitzmaurice, para. 52.

[240] *Ibid.*

[241] *Ibid.*, paras. 52-53 (explaining that without proper consent, no novation could occur with respect to South Africa's obligations under the Mandate).

[242] Martha, *The Financial Obligation in International Law* (Oxford University Press, 2015), p. 573.

The fundamental consequence of this transformation is that once parties have consented to transform their legal relationship through novation, they cannot selectively invoke aspects of their previous relationship while disregarding the novation. Principles of good faith require respecting this transformation of the legal relation in its entirety.

4.10. For the avoidance of doubt, novation does not impair the principle of *pacta sunt servanda*. Rather, it represents the exercise of sovereign rights to transform commitments into new ones better suited to evolving relationships. As the Permanent Court of International Justice recognized in the *Oscar Chinn* case, when parties conclude a new agreement concerning matters previously regulated by other instruments, this new agreement becomes the one governing the relationship.[243] The Court there acknowledged that by entering into the Convention of Saint-Germain, the parties had effectively transformed their previous obligations under earlier agreements, stating that "no matter what interest may in other respects, attach to these Acts [...] the Convention of Saint-Germain of 1919 [...] must be regarded by the Court as the Act which it is asked to apply".[244]

4.11. By extinguishing prior obligations and creating new ones, novation establishes an entirely fresh legal foundation for the relationship between parties. This transformative effect is particularly significant in disputes rooted in the colonial era. When parties deliberately novate, as the Parties to the Geneva Agreement did, such arrangements to create a framework more appropriate to relations between sovereign equals, international law requires that this transformation be fully respected.

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[243] *The Oscar Chinn Case, P.C.I.J., Serie A/B, Judgment, Orders and Advisory Opinions, n° 63, 1934,* p. 84.
[244] *Ibid.*, p. 80.

4.12. Through the Geneva Agreement, Venezuela and the United Kingdom. with Guyana as a party, transformed their legal relationship regarding the territorial controversy. Whatever obligations may have resulted from the invalid 1899 Arbitral Award and its ineffectual implementation in the 1905 demarcation agreement would have been in any event novated into a new obligation: to seek a practical, peaceful, and satisfactory solution for both parties.

C. THE GENEVA AGREEMENT AS AN INSTRUMENT OF NOVATION

4.13. The clearest manifestation of the Geneva Agreement's novation effect lies in its substitution of the rigid, binary logic of the 1899 Award with a forward-looking commitment to mutual satisfaction (**1**). Where the colonial framework purported to impose a definitive and unalterable territorial determination, the Geneva Agreement created an entirely new legal regime—one structured around a cooperative process and grounded in the consent of all parties, including the soon-to-be independent Guyana. For this reason, the Geneva Agreement must be seen as it is: a structured response to the decolonisation imperative (**2**).

1. Novation Replaced Binary Determination With Mutual Satisfaction As the Governing Principle

4.14. The Geneva Agreement established both procedural and substantive obligations that were entirely absent from the previous legal framework, further demonstrating its novation effect. These new obligations fundamentally altered how the controversy would be addressed.

4.15. Procedurally, the Agreement created a structured process for resolving the controversy that had no parallel in the previous framework. Article II established the Mixed Commission, with specific provisions for its composition, timeline, and reporting requirements. Article IV further created a progressive mechanism for resolving the controversy if the Commission failed, providing for successive recourse to various means of peaceful settlement.

4.16. Substantively, the Agreement transformed the parties' obligations regarding the territorial controversy. Instead of claiming to be bound by the null and void 1899 Arbitral Award as "a full, perfect, and final settlement" under the Washington Treaty, the parties became obligated to seek "satisfactory solutions for the practical settlement of the controversy." This is why Venezuela described the Agreement before the United Nations as the "legal statute" governing this issue.[245] This new substantive obligation replaced rather than supplemented the previous one.

4.17. The Agreement also created new substantive obligations specific to the relationship between the Parties. Furthermore, Article VIII provided that upon independence, Guyana would become a party to the Agreement, creating direct obligations between Venezuela and Guyana that had not existed previously – a key feature demonstrating the Geneva Agreement's place in the decolonisation movement. This provision further demonstrates the novation effect of the Agreement, as it created a new legal relationship rather than merely transferring existing obligations.

4.18. That the Geneva Agreement amounted to such a fundamental change of the legal relationship between the parties is patent from the contemporary views of its drafters. In a statement before the National Congress, Venezuela's Foreign Minister Ignacio Iribarren Borges confessed that it was the result of a compromise between the parties, and therefore "[c]learly [...] not the ideal solution to the problem".[246] However, he added, the Agreement had the virtue of placing on a new footing the positions of those who demanded the return of the usurped territory by virtue of a

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[245] Letter dated 23 November 1981 from the Permanent Representative of Venezuela to the United Nations addressed to the Secretary-General, UN Doc. A/C.1/36/12, p. 6: "The Geneva Agreement therefore constitutes the *legal statute* for Venezuela's territorial claim and it is the product of the freely expressed will of Venezuela and Guyana." (emphasis added).

[246] Presentation to the National Congress by Mr. Ignacio Iribarren Borges, Minister of Foreign Affairs of Venezuela, about the Geneva Agreement, 17 March 1966, **Annex 2**, p. 17.

null Award, and those who, having no doubt about their sovereignty over that territory, were not willing to even entertain dialogue about this.[247]

4.19. Two points merit particular consideration.

a. First, it is essential to distinguish between treaties that involve rights *in rem* – so-called "dispositive treaties" – and those that establish personal obligations requiring novation for successor states. International law clearly differentiates between dispositive treaties, which attach rights and obligations directly to the territory itself and thus transfer automatically upon changes in sovereignty, and treaties creating personal obligations that do not automatically transfer but require a deliberate act of novation.[248] Treaties *in rem* are intrinsically tied to territorial sovereignty and therefore automatically shift attribution with changes in sovereignty. In contrast, other treaties, although potentially transferable to successor states, require at least the tacit consent of the other party, amounting effectively to a novation.[249]

Describing the Geneva Agreement as anything else but a novation would indeed imply that the Agreement functions as a dispositive treaty – one that automatically transfers rights *in rem* with a change in sovereignty. However, this interpretation runs counter to both its textual provisions and its underlying purpose. The Geneva Agreement explicitly creates new procedural and substantive obligations through mechanisms that require clear, mutual consent rather than merely transferring pre-existing rights. In essence, to reject the novation

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[247] *Ibid.*

[248] H. Thirlway, "Concepts, Principles, Rules and Analogies: International and Municipal Legal Reasoning" (Volume 294), *RCADI*, p. 356.

[249] K. Zemanek, "State Succession after Decolonization" (Volume 116), *RCADI*, p. 244.

argument is to misconstrue the deliberate transformation that the Agreement embodies: a reset of the legal relationship between the parties in a manner that addressed the inequities of the colonial era.

b. Second, and equally important, is a consideration of how the Agreement challenges the notion of a "final determination". International jurisprudence provides support for this understanding of how parties can replace previously "final" determinations through mutual consent. Particularly instructive is the 2009 *Abyei* arbitration, which expressly recognized the concept of novation in the context of a territorial dispute. In that case, the Tribunal acknowledged that when both parties consented to arbitration in 2008, this had the effect of reopening the "ABC Experts' Report" that was previously accepted as "final and binding", thus "*novating* the issues for decision".[250]

4.20. This approach is particularly relevant when compared to the novatory mechanism at the heart of the Geneva Agreement. Just as the *Abyei* arbitration illustrates the possibility of revisiting and revising earlier determinations through mutual consent, the Geneva Agreement itself should overcome the obsolete legal obligations allegedly derived from the 1899 Arbitral Award and replace them with a new, consensual framework geared towards a mutually-satisfactory solution. In other words, the Agreement was not intended to simply amend the colonial-era decision; it was meant to transform the entire legal relationship between the parties, establishing a regime of obligations that reflects contemporary principles of decolonisation, self-determination, and mutual satisfaction.

4.21. The approach taken in the *Abyei* arbitration further epitomises the parties' ability to re-open issues that were previously regarded as settled. When the parties

[250] P.C.A. The Govern of Sudan/ The Sudan People's Liberation Movement/Army *Abyei Arbitration*, 22 July 2009, para. 450 (emphasis added).

agree to do so, they are effectively nullifying the finality of earlier decisions. In the *Abyei* case, the Tribunal's authority to review the mandate of the ABC Experts signalled that any instrument – however once binding – can be rendered obsolete if the parties, through clear mutual agreement, opt for a new process of determination. This is analogous to the function of the Geneva Agreement, where the parties deliberately sought to replace the fraudulent 1899 Arbitral Award with a framework that would foster a negotiated and equitable resolution of the dispute.

4.22. Just as, in the *Abyei* arbitration, the parties' consent allowed for a mechanism that both re-examined and effectively modified the existing legal order, by entering into the Geneva Agreement Venezuela, the United Kingdom, and the future state of Guyana agreed to a novatory process that precluded any later reliance on the null and void 1899 Arbitral Award. In both scenarios, the parties' commitment to a new set of obligations ensures that the legal framework governing the controversy is responsive to contemporary needs and is not unduly burdened by outdated decisions.

2. The Geneva Agreement as a Structured Response to Decolonisation Imperatives

4.23. As explained in the previous Chapter, the Geneva Agreement cannot be understood outside of the decolonisation context, of which Guyana has first-hand experience. Decolonisation occasioned a necessary and a radical transformation of colonial-era legal frameworks. As such, the novation effect brought about by the Geneva Agreement must also be understood within that context.

4.24. The Agreement's structure as a novation rather than a mere succession arrangement was essential to its decolonisation function. By creating new obligations focused on mutual satisfaction rather than simply transferring colonial-era obligations to the newly independent state, the Agreement provided a

framework for addressing the territorial controversy in a manner consistent with the emerging post-colonial international order.

4.25. In this context, the role of the United Kingdom in negotiating and executing the Geneva Agreement as a novation bears particular scrutiny (**a**), as well as the timing of the Geneva Agreement – just before Guyana's independence (**b**).

a) The role of the United Kingdom

4.26. The United Kingdom's established practice further confirms international recognition of novation as a distinct and deliberate mechanism for the transformation of treaty obligations following independence.

4.27. One clear example can be found, e.g., in the UK's approach towards Laos concerning the continued applicability of the Anglo-French Civil Procedure Convention of 1922. Initially extended to French Indo-China in 1933, this convention became the subject of correspondence between Laos and the United Kingdom after Laotian independence. While Laos initially maintained that the convention continued automatically due to the Treaty of Friendship and Association between France and Laos (1953), the UK explicitly rejected this automatic succession.

4.28. Instead, the UK emphasised that continuation required an explicit agreement between the newly independent state and the pre-existing contracting party. In its diplomatic note of 26 December 1962, Laos ultimately accepted this position. The UK's stance was unequivocal: automatic succession by newly independent territories to treaty rights and obligations entered into by the colonial power was not recognized unless explicitly agreed upon after independence. According to British practice, the post-independence agreement constituted a novation, establishing new obligations between the parties distinct from and

replacing the original colonial arrangement[251]. The UK's careful and overall consistent stance on these matters is well documented, *inter alia*, in the work of the International Law Commission ("ILC").[252]

4.29. It follows that, when negotiating and executing the Geneva Agreement, the UK was entirely cognisant of the critical distinction between automatic succession and deliberate novation. What is more, the UK's insistence on an explicit post-independence agreement with Laos highlights the foundational requirement for novation: clear, deliberate, and mutual consent to establish substantively new obligations.

4.30. While the Geneva Agreement situation is distinct in that the UK continued explicitly as a party alongside Venezuela and the newly independent Guyana, this difference reinforces, rather that undermine the novation argument. Far from merely transferring existing colonial-era obligations, the continued participation of the UK highlights that the Geneva Agreement represented a conscious redefinition and transformation of obligations involving all relevant parties. The UK's continuation as a party demonstrates that the novation in this case was even clearer and more deliberate, as all parties – including the former colonial power – actively consented to the creation of an entirely new framework.

4.31. Thus, the Geneva Agreement explicitly transformed the legal relationship between the parties from a colonial-era binary determination concerning the (in)validity of the 1899 Arbitral Award to a new, cooperative framework focused on finding a mutually-satisfactory solution.

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[251] *See* United Nations Legislative Series (1967) 188–9.

[252] *See Yearbook of the International Law Commission, 1969*, Vol. II, p. 60, including the reference to a similar case where the UK notably warned Burma that a devolution agreement could not bind third states without explicit consent, suggesting formal accession as the preferred route.

b) The Timing of the Agreement just Before Independence Was Deliberate and Significant

4.32. Agreements concluded immediately before independence hold particular significance under international law, as highlighted in discussions by the ILC. Such agreements, often termed "devolution agreements," typically aim at anticipating the legal relationships that will govern the newly independent state.

4.33. The ILC has extensively debated the status and legal effects of these pre-independence arrangements, recognising their frequent occurrence but underscoring their inherently complex legal status. Article 8 of the 1978 Vienna Convention on State Succession explicitly addresses this issue, stating clearly that obligations or rights under treaties do not automatically transfer to a successor state merely because an agreement providing for such transfer has been concluded between the predecessor and successor states.

4.34. Crawford specifically discusses this complexity by referencing the Treaty of Friendship concluded between Belgium and Congo on 29 June 1960, just one day prior to Congo's independence.[253] He pointed out that, according to the ILC discussions, the conclusion of such an agreement alone was insufficient to constitute a novation. This treaty primarily aimed at transferring existing rights and obligations and did not necessarily indicate a clear intent or explicit consent by all parties required to effectuate a novation. During these discussions, differing views emerged: Ago argued strongly in favour of the inherent international validity of such agreements, whereas Yasseen, Bedjaoui, and Ushakov expressed significant scepticism regarding their validity and effectiveness in automatically transferring obligations.

[253] James Crawford, The Creation of States in International Law, (Oxford University Press 2010, 2nd edition), pp. 659-660.

4.35. The ILC itself explicitly recognized the Geneva Agreement of 1966 between the United Kingdom and Venezuela as a distinct and noteworthy example of a bilateral treaty concluded just before independence.[254] In its commentary on Article 10 of the Draft Articles on State Succession, the ILC expressly cites the Geneva Agreement as a model, noting that the reference in its preamble to consultation with British Guiana, as well the provision in Article VIII to the effect that the successor State must formally accept participation. The ILC specifically emphasized that this Agreement explicitly provided for Guyana's future participation upon independence, underscoring its deliberate and anticipatory nature. Article VIII of the Agreement clearly stated that upon achieving independence, Guyana would become a party alongside Venezuela and the United Kingdom. The Agreement was formally approved by the House of Assembly of British Guiana prior to independence, a clear expression of explicit consent by the emerging state. Furthermore, Venezuela explicitly highlighted this provision upon notifying the Secretary-General of the Agreement's entry into force, reinforcing the significance of Guyana's explicit participation as a newly independent state.

4.36. Against that background, the best and most conclusive evidence that the Geneva Agreement amounts to novation is offered by its own provisions. Unlike typical pre-independence agreements – such as the Belgium-Congo treaty mentioned above, which primarily sought to transfer existing obligations – the Geneva Agreement explicitly established new and substantively different obligations. Specifically, it created a structured process involving a Mixed Commission and subsequent peaceful settlement mechanisms, distinctly different from any obligations previously existing under colonial-era arrangements. Furthermore, its substantive obligation to seek mutually satisfactory practical solutions clearly denoted a novel legal framework intentionally designed for the

[254] Yearbook of the International Law Commission, 1974, Vol. II, Part One, p. 195.

post-colonial relationship. Thus, while the ILC's recognition highlights the deliberate nature of the Geneva Agreement, it is the explicit terms and structures within the Agreement itself that firmly establish its unique character as an instrument of novation under international law.

D. Legal Implications of the Novation that the Court must Respect

4.37. Once novation is established, its legal consequences are unavoidable. Having supplanted the 1899 Arbitral Award as the governing framework, the Geneva Agreement redefined not only the nature of the controversy and the obligations of the Parties, but also the role of any means convened for its resolution. Any resolution to this matter must therefore proceed not from the premises of the discredited 1899 Arbitral Award, but from the obligations – procedural and substantive – undertaken anew by Venezuela and the United Kingdom, and inherited by Guyana, in 1966. It is therefore conclusive that the Court has no role whatsoever in the resolution of the territorial dispute that is to be resolved through the Agreement.

1. The Court Must Respect the New Obligations Created by the Agreement

4.38. Venezuela has made it very clear that the Court lacks jurisdiction under the Geneva Agreement; however, it remains the basis of the controversy, which must be resolved by the parties in light of its object and purpose. As explained above,[255] an interpretation of the Geneva Agreement under the structures of the VCLT – a fundamental constraint Guyana failed to apply– leads to an inescapable conclusion:

[255] *Supra*, Chapter II.

the parties committed to let the 1899 Arbitral Award behind, and to work towards a mutually-satisfactory solution.

4.39. As further demonstrated above,[256] the Agreement replaced the colonial and imperialist paradigm of "might makes right" with a bilateral framework of negotiated resolution. The controversy therefore is not – and cannot be – centred around the adjudication of colonial-era claim as if frozen in time, but as to how the parties could land on a mutually satisfactory solution, consistent with the Agreement's object and purpose.

2. The Inapplicability of Acquiescence Arguments in the Face of Novation

4.40. Venezuela never acquiesced to the 1899 Arbitral Award. Any allegation to the contrary is legally untenable, and even more so in light of the novation.

4.41. In the Counter-Memorial, Venezuela demonstrated that Guyana's focus on acquiescence was unsustainable.[257]. We will return to this point in Chapter VI. The Award's flaws and injustice were readily apparent to everyone – including two of the arbitrators, who concluded that arbitration on such terms could not be a proper way to settle disputes.[258] Venezuela then forcefully contested the Award once it learned of the Mallet-Prevost Memorandum, which evidenced all concerns it previously held, in multiple *fora* and circumstances, and collected the necessary proofs.[259]

4.42. Moreover, the Counter-Memorial evidenced that this alleged acquiescence is entirely belied by the Geneva Agreement,[260] whose very object and purpose – as

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[256] *Supra*, Chapter III.

[257] VCM, Chapter 7.

[258] VCM, Chapter 7, para. 2.9, quoting from Library of Congress, Richard Olney Papers, Vol. 12. pp. 455-457.

[259] *Ibid.*, paras. 2-25-2.29.

[260] *Ibid.*, paras.7.47-7.48.

explained above – was to transform the parties' relationship and set up a framework – procedural *and* substantive – to resolve the controversy. Once again, Guyana fails to explain why the parties ever executed the Geneva Agreement if the question was already settled.

4.43. That Venezuela did not acquiesce to the award is further demonstrated by its clear and consistent position during the UN General Assembly Plenary Meeting on 16 December 1965, a critical juncture merely five months before British Guiana was scheduled to achieve independence on 26 May 1966.[261] At this meeting, Venezuela's representative not only solemnly reaffirmed that Venezuela "maintains its claim intact, since it relates to inalienable and absolute rights which it cannot renounce" and pointed to ongoing trilateral discussions as part of an agreed procedure, but also took the significant step of abstaining from the vote on the resolution welcoming British Guiana's independence *precisely* due to the "complete omission" of any reference to Venezuela's long-standing claim in the resolution.[262] This stance was supported by several other Latin American States who also abstained or expressed reservations for similar reasons, underscoring the unresolved nature of the territorial controversy.[263]

4.44. But, even if Venezuela had, in fact, acquiesced before 1966 (which it did not), the Geneva Agreement extinguished such considerations by establishing a new framework[264] governed by principles of good faith and decolonisation.

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[261] UNGA 20th session 1398th Plenary Meeting, *supra* note 205.

[262] *Ibid*, paras. 9, 49, 50 (Mr. Sosa Rodriguez).

[263] Colombia (Mr. Marin Vanegas) noting the "obvious lacuna" of not referencing the claim, para. 178; Dominican Republic (Mr. Heredia Bonetti) stating its abstention was because "Venezuela's claim should be mentioned," para 88; Costa Rica (Mr. Redondo Gomez) abstaining because Venezuela "was not given an opportunity to place on record the existence of a frontier or territorial dispute," para 235; and Uruguay (Mr. Marques Sere) mentioning efforts to include a formula that "would recognize the existence of a problem involving a territorial dispute," para 246

[264] *Ibid. supra,* para. 4.30.

4.45. That understanding was reflected in the conduct of the United Kingdom itself. In a confidential 1983 communication, the Foreign and Commonwealth Office stressed the importance of not giving the impression that the UK still had *locus standi* in the dispute – effectively acknowledging that they still considered that there was a "dispute", if one for Venezuela and Guyana to resolve under the terms of the Geneva Agreement.[265] Far from suggesting that the controversy had been resolved, this confirmed that the Agreement had created a new bilateral regime, displacing the Award as the dispositive instrument.

4.46. This is, indeed, the very point of the novation that the Geneva Agreement represented at the time. Under this new regime, the parties left the dispute as to the Award behind, and demand that the territorial controversy be resolved on terms acceptable to both sides.

3. A Winner-Takes-All Validation of the 1899 Arbitral Award Would Contradict the Novation and Sanction an Unconscionably Asymmetric Outcome

4.47. To pretend a mechanical validation of the 1899 Arbitral Award would thus fly in the face of the Geneva Agreement. The Agreement was explicitly designed to move beyond a binary, adjudicative resolution and toward a negotiated, politically acceptable settlement. Beside flowing from a good faith reading of the treaty, this has long been the understanding the parties themselves.[266] In practical terms, this means that the absurd adventure into which Guyana has dragged the Court, pretending of it a ruling that simply affirms the validity of the 1899 Arbitral Award would revive a framework the Parties mutually abandoned nearly six decades ago. It would reduce the Geneva Agreement to an empty shell and elevate

[265] Letter from Adrian Sindall to David Gore Booth, dated 5 October 1983, **Annex 28**.
[266] *See*, *e.g.*, para. 4.31 above.

a discredited colonial artefact above an international agreement concluded under the aegis of the decolonisation movement.

4.48. This is why Guyana's proposed approach is also deeply unconscionable, because it seeks to perpetrate and entrench a repugnant set of asymmetries:

a. An asymmetry of burdens: the Geneva Agreement is very clear that the dispute arose from the parties' inability to agree as to the validity or invalidity of the 1899 Arbitral Award, which is why they opted to give a new impetus to their negotiations through a Mixed Commission (of a deliberate diplomatic, and not legal, bend), while keeping in mind that what they are really after is a practical and amicable settlement of the controversy. Guyana's fraudulent strategy, by contrast, pretends to place the burden of proof fully on Venezuela yet again, which is expected to prove something that generations of jurists and diplomats have argued over without managing to resolve.

This is not all: as noted by the Court[267] and individual judges,[268] even if Venezuela manages to prove the award's invalidity -which it certainly is- in this abusive procedure initiated by Guyana, Venezuela would then have to relitigate its claim to the Essequibo territory – an enormous endeavour if the original arbitration's record is to be followed, and an endeavour where Venezuela is on the back foot, given Guyana's long stewardship of that territory under the aegis of the fraudulent 1899 Arbitral Award.

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[267] *Arbitral Award of 3 October 1899 (Guyana v. Venezuela), Jurisdiction of the Court, Judgment, I.C.J. Reports 2020*, p. 455, para. 86.

[268] *Arbitral Award of 3 October 1899 (Guyana v. Venezuela), Jurisdiction of the Court, Judgment, I.C.J. Reports 2020*, p. 455, Declaration of Judge Tomka, para. 7; *Id.*, Dissenting Opinion of Judge Bennouna, para. 10.

It bears stressing that for both of these issues (the validity of the 1899 Award and the territorial claims), the evidence is old and partially inexistent, enhancing the odds of an unjust outcome. Averting such an outcome is, again, why the parties undertook under the Geneva Agreement to reach an amicable, diplomatic solution to the controversy – a practical over a "legal" solution (if the Award even deserves that qualification) that is odious to one party.

b. An asymmetry of outcomes: under Guyana's delirious manipulation of the Geneva Agreement, the final settlement of the controversy can take one of two forms: either Guyana is fully victorious and gains 100% of its claims as to the Essequibo territory; or the parties will have to find a middle ground, meaning that Venezuela can never, in no circumstance, obtain sovereignty over the entire territory that, by right, belongs to it.

4.49. Again, one wonders why Venezuela would have entered into the Geneva Agreement – what it expected to gain from it –, and why did *both* parties engage in decades of good offices and negotiations, if supposedly the parties agreed that any solution should be favourable to Guyana, and that if it does not win, it's a draw. Such an idea is absolutely absurd.

4.50. The truth is that the Geneva Agreement was never a procedural formality, nor a quiet endorsement of a colonial imposition. It was a sovereign act of resistance, a deliberate break from the juridical legacy of empire. For Venezuela, it represented a path toward justice rooted in equality, mutual respect, and the emerging principles of decolonised international law. To pretend to reduce that act to a mere formality for resurrecting a stillborn award is to erase its historical meaning.

4.51. The decades of negotiations and good offices undertaken by Venezuela and Guyana under the Geneva Agreement were not empty gestures, but evidence of a shared understanding: that the arbitral ruling imposed under colonial domination had been left behind.[269] This is consistent with the position expressed in *Gabon/Equatorial Guinea*, where the Court stated that it "attaches great weight to the clear, and mutually consistent, conduct of the Parties over many years of negotiations disregarding" the earlier treaty—adding that "[t]he natural inference from this conduct is that at no point did they consider themselves bound by it".[270]

4.52. Guyana's position is reprehensible: it presents itself as the heir to the rights attributed to the United Kingdom by an award as fraudulent as it is repugnant in which it played no part. Yet, Guyana is also one of the parties to an agreement that drew a line over that award in the hope of finding a just solution to a territorial controversy, and it should be held to that obligation (*pacta sunt servanda*).

4. The Obligation to Seek a Mutually Satisfactory Solution of the Territorial Controversy as the Only Outcome

4.53. As repeated several times in the Counter-Memorial and this Rejoinder, the Court lacks jurisdiction over the case; its intervention is at odds with the actual content of the legal obligations that bind the Parties – obligations that, framed in the terms of an instrument such as the Geneva Agreement, cannot lead to any outcome in terms of victory or defeat, but one that requires mutual satisfaction.

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[269] *See* Joint Communiqué issued 10 December 1965, in accordance with what had been agreed in the Joint Communiqué of 7 November 1963, talks that took place in London on 9 and 10 December, **Annex 1**, recording that the parties exchanged ideas and proposals aimed at a practical settlement of the controversy and that, while it was agreed that certain proposals merited further consideration and that ministerial discussions would resume in Geneva during the week beginning 13 February 1966 to examine these and any additional proposals consistent with the agreed Agenda, but that, as neither side accepted the conclusions of the experts appointed by the other, the exchange of views on the experts' reports on the examination of documents and discussion of the consequences resulting therefrom would not be discussed.

[270] *Land and Maritime Delimitation and Sovereignty over Islands* (Gabon/Equatorial Guinea), Judgment of 19 May 2025, para. 91.

4.54. Accordingly, the only possible outcome is to recognize and respect the binding obligation of the Parties to seek a practical solution of its territorial controversy acceptable to both through negotiations. This obligation, as the Court put it in *Gabon/Equatorial Guinea*, "does not prevent the Parties from agreeing to adjust their land boundary in light of the existing situation on the ground and the interests of the local populations".[271] But even so, this obligation is not discretionary, arising as it does from the Agreement, which remains in force, and from the legal logic of novation, which requires that the new obligation replace the old.

[271] *Id.*, Judgment of 19 May 2025, para. 157.

PART TWO: BEFORE THE GENEVA AGREEMENT

INTRODUCTION TO PART II

1. Having established in Part One the paramount importance and transformative nature of the 1966 Geneva Agreement, this Second Part of this document turns to the historical antecedents that necessitated this novation of the parties' legal relationship and their hope to finally reach a satisfactory settlement of their territorial controversy. Specifically, Part Two will address the parties' previous, and disappointed hope to settle this dispute through the 1899 Arbitral Award. Due to its profound injustices and inherent invalidity, the Award ultimately served to aggravate the dispossession.

2. As also demonstrated in the previous part, the (in)validity of the 1899 Arbitral Award is no longer the decisive factor for the resolution of the current dispute; its primary relevance today is historical. However, an examination of the 1899 Arbitral Award – its flawed genesis, its procedurally and substantively vitiated character, and the manifest injustices it wrought – is indispensable. It illuminates the origins of the controversy and provides the crucial context for understanding why the Parties to the Geneva Agreement consciously chose to bury the 1899 Arbitral Award and chart a new course toward a practical, satisfactory and mutually acceptable settlement.

3. Therefore, the discussion of the 1899 Arbitral Award in this Part is not a concession to Guyana's malicious attempts to defraud the international justice system by unilaterally proposing a process to validate that null and void instrument, which cannot be remedied. Rather, it is driven by a moral imperative to reaffirm the historical truth of the dispossession committed against Venezuela and to thoroughly demonstrate why the 1899 Arbitral Award could never serve as a legitimate or stable basis for relations between the Parties. Indeed, it was the overwhelming evidence of grounds for nullification that convinced the Parties of the necessity to novate the pre-existing legal framework through the Geneva

Agreement. As Guyana has undertaken a spiteful manoeuvre intended to rehabilitate the 1899 Arbitral Award and deny its fundamental flaws, Venezuela is compelled to set the record straight.

4. This Part comprises

a. Chapter V shall meticulously dissect the 1899 Arbitral Award, exposing the multiple, interrelated grounds that render it invalid under established principles of international law. Venezuela will first address and refute Guyana's persistent distortion of the historical facts surrounding the negotiation of the 1897 Treaty of Washington and the arbitral proceedings (**Section B**). Thereafter, Venezuela will demonstrate conclusively that the 1899 Arbitral Award is invalid because: it was rendered on the basis of an invalid treaty procured by error and fraud (**Section C**); the Tribunal improperly failed to state the reasons on which it was based (**Section D**); and the Tribunal manifestly exceeded its powers as granted under the Treaty of Washington (**Section E**). This chapter will conclude by reflecting on the illegitimate genesis of the arbitral award in the shadow of colonialism (**section F)**.

b. In a subsequent Chapter VI, Venezuela's will address Guyana's erroneous theory positing that Venezuela's conduct after 1899 would have supposedly validated or cured the inherent defects of the Arbitral Award. Venezuela will demonstrate that Guyana's assertions about its post-1899 conduct are irrelevant for such purposes (**section B)**. Furthermore, it will establish that, even if considered, Venezuela's actions, undertaken in a context of structural coercion and before the full extent of the Award's nullity was known, cannot be construed as acquiescence (**section C)**. Finally, Venezuela will show that the 1905 demarcation, being merely a technical exercise to mark the line dictated

by the invalid 1899 Arbitral Award, cannot save the Award or the unlawfully established boundary **(section D)**.

5. Through this detailed historical and legal analysis, Part Two will provide an irrefutable account of the injustice that lies at the heart of this long-standing controversy, thereby underscoring the wisdom and necessity of the Geneva Agreement as the sole legitimate framework for its resolution.

CHAPTER V: A FRAUDULENT AWARD VITIATED BY MANIFOLD GROUNDS OF INVALIDITY

A. INTRODUCTION

5.1. As indicated in preceding chapters, the 1966 Geneva Agreement requires the parties to reach an amicable and satisfactory settlement of their territorial controversy. The Geneva Agreement reflects the desire of all parties to move beyond prior debates about the (in)validity of the 1899 Arbitral Award. As such, the question of whether the 1899 Arbitral Award is valid or not is no longer useful for determining how the parties can resolve their territorial controversy. Today, the relevance of this question is only historical. Shedding light on the origin of the controversy between Venezuela and Great Britain helps understand why the parties of the Geneva Agreement accepted to replace the 1899 Arbitral Award with a framework that would foster a negotiated and equitable settlement of the dispute.

5.2. It is with this basic premise in mind that Venezuela engages with the question of the (in)validity of the 1899 Arbitral Award. The fact that Venezuela addresses this question must not and cannot be taken as an acceptance of the framework proposed by Guyana regarding the dispute. Venezuela remains faithful to the obligations it has assumed under the Geneva Agreement. This also means that, while the evidence of the invalidity of the Award is clear and irrefutable, Venezuela has to move beyond such invalidity, as the resolution of the controversy hinges exclusively on negotiations leading to an amicable and satisfactory settlement.

5.3. Venezuela will address the (in)validity to demonstrate that it was the victim of a fraud that dispossessed it of its territory. Generations of lawyers and historians, from Venezuela and abroad, have contributed to accumulate evidence of the fraudulent and unjust events that led to the Award of 3 October 1899. These efforts had a major role in convincing the Parties to novate the legal framework for the

settlement of their controversy by concluding the Geneva Agreement. Now that Guyana is attempting to call into question the historical truth of the injustice perpetrated at end of the 19th century, in terms that exceeded those employed before by the UK itself, Venezuela is compelled to refute these false allegations.

5.4. Chapter 5 of Venezuela's Counter-Memorial demonstrated that the Arbitral Award of 3 October 1899 is invalid. As set out in that context, this invalidity is the result of three different, alternative yet interrelated reasons, namely: (a) the fact that the Award was rendered on the basis of an invalid treaty; (b) the fact that the Award failed to state the reasons on which it was based, and (c) the fact that, in rendering the Award, the Tribunal had manifestly exceeded its powers.

5.5. Venezuela's arguments were developed on the basis of the factual account of the period preceding the 1899 Arbitral Award, including the negotiations of the 1897 Treaty of Washington and the proceedings before the Tribunal. They assessed the Award against the yardstick of the internationally-recognised rules governing the invalidity of Awards, drawing on principles adopted in 1875 by the Institut de Droit International,[272] the subsequent work of the International Law Commission,[273] and the clarifications brought about by the Court's 1960 judgment assessing the validity of the Arbitral Award made by the King of Spain on 23 December 1906 and its subsequent judgment concerning the Arbitral Award of 31 July 1989.[274]

5.6. Guyana's response to Venezuela's arguments, set out in its Reply, is selective and often formalistic. However, it does mark an acknowledgement contrary to the position it seemed to be taking in its Memorial; Guyana no longer

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[272] *Institut de Droit International, Draft Regulations for International Arbitral Procedure,* Basel session 1875.

[273] ILC, Draft Convention on Arbitral Procedure, with commentaries, UN Doc. A/CN.4/92 (1955).

[274] *See*, respectively, *ICJ Reports 1960*, 192; *ICJ Reports 1991*, 53.

disputes that Awards – including those rendered in 1899 – are only binding if they are not vitiated by defects resulting in their invalidity. What is more, it now accepts that their invalidity can be assessed even where the underlying treaty does not expressly envisage such a possibility. Venezuela welcomes this clarification.

5.7. Despite its belated recognition of the applicable legal standards, Guyana in its Reply continues to disregard the grave and glaring defects of the 1899 Award. Its position on the question of (in)validity is informed by – and can only be explained by – its wilful misreading and distortion of the historical record. Venezuela's response in this chapter thus begins with an analysis of these distortions (**section B**). Following that, Venezuela engages with Guyana's selective treatment of the three defects that render the 1899 Award invalid, affirming in turn that the Award was rendered on the basis of an invalid treaty (**section C**), improperly failed to state the reasons on which it was based (**section D**), and was based on a manifest excess of the powers granted to the Tribunal under the Treaty of Washington (**section E**). The Chapter will conclude with a reflection on the illegitimate genesis of the 1899 Arbitral Award in the shadow of Colonialism (**section F**).

B. GUYANA'S DISTORTION OF THE HISTORICAL FACTS

5.8. Before addressing the different grounds that render the 1899 Arbitral Award invalid, Venezuela deems it necessary to address again some basic points regarding the events that preceded the Tribunal's decision. Guyana's Reply is based on such a distortion of the historical facts that re-establishing an accurate picture of reality is imperative.

5.9. In this section, given that the facts which took place during the negotiations of the 1897 Treaty and the proceedings leading to the 1899 Award have already been duly recounted, and their repetition is therefore unnecessary, Venezuela will not restate its historical position of those facts. In that respect Venezuela maintains

all positions already set forth in Chapter 5 of its Counter-Memorial. This section will only respond to the different points of fact made by Guyana in its Reply, which features multiple attempts to deny the unjust and fraudulent treatment inflicted upon Venezuela by the United States and Great Britain imposed on Venezuela. It will start with some general considerations about Guyana's approach to the relevant facts (1). It will then move to correct some of most glaring distortions concerning, respectively, (2) Venezuela's role in the negotiation of the 1897 Treaty, (3) the inclusion of a rule on prescription in the Treaty, (4) the exclusion of Venezuelan arbitrators, and (5) the coercion exerted on Venezuela for accepting the Treaty.

1. Guyana's attempt to build a narrative that makes a mockery of reality: Venezuela did not "get what it wanted"

5.10. It has been the longstanding position of Venezuela that the 1899 Arbitral Award "was the result of a political transaction carried out behind Venezuela's back and sacrificing its legitimate rights"[275]. In its Counter-Memorial, Venezuela exposed once again its historical position on this matter. In particular, Venezuela provided ample evidence showing that a) it was forced to conclude an arbitration treaty that was clearly prejudicial to its interests, and b) that the arbitral proceedings that took place in Paris were marred by grave irregularities.

5.11. In its Reply, Guyana has not provided a credible answer to the extensive account of the relevant facts offered by Venezuela in its Counter-Memorial. Nor has it made a serious attempt to engage with the evidence submitted by Venezuela to support this account. Three aspects of Guyana's approach to the historical facts warrant a general comment.

5.12. First, Guyana systematically and stubbornly denies even the most evident forms of fraud and coercion of which Venezuela was victim. What an external and

[275] Letter from the Permanent Representative of Venezuela, 1962 (VCM, Annex 140).

impartial observer qualified as "une situation quasi-coloniale"[276] is presented by Guyana as the privileged situation of an American State under multiple pressures which, thanks to the loyal support of its powerful neighbour, the United States, was able first to coerce Great Britain into accepting arbitration[277], then to negotiate an arbitration agreement where "nothing was included ... contrary to its interests"[278], and finally to obtain an award which was fully satisfactory to it[279]. This account of the facts makes a mockery of reality.[280] Not even the circumstance that no Venezuelan arbitrator was allowed to sit on the bench of the Tribunal is regarded as problematic by Guyana. In Guyana's narrative, by obtaining such a composition of the Tribunal, Venezuela allegedly "got what it desired", since, first, having two United States Supreme Court Justices was supposedly advantageous to Venezuela[281] and, secondly, because in the end Venezuela was empowered to appoint as one of the arbitrators a Justice of the United States Supreme Court[282].

5.13. Guyana's blatant denial of the unequal treatment imposed upon Venezuela by the United States and Great Britain is outrageous, distorting historical reality to an extreme degree. Such distortion reveals much about Guyana's approach to historical facts.

5.14. Secondly, in a clear attempt to sow confusion and divert the Court's attention from the relevant events, Guyana does not hesitate to assert alleged contradictions in Venezuela's accounts of the historical facts, where in fact there

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[276] P. Reuter, "La motivation et la révision des sentences arbitrales à la Conférence de la paix de la Haye (1899) et le conflit frontalier entre le Royaume-Uni et le Vénézuéla", in Mélanges Offerts À Juraj Andrassy, Springer, Dordrecht, p. 247.

[277] GR, para. 2.38.

[278] GR, para. 2.56.

[279] GR, para. 4.10.

[280] In fact, as Guyana itself recognizes, the position of Venezuela, prior, during and after the negotiations of the 1897 Treaty was one of great vulnerability "in the face of Great Britain's superior military power". GR 2.18.

[281] GR, para. 2.83.

[282] GR, para. 2.82.

are none. To illustrate this point, in its Reply Guyana devotes considerable energy and many pages to an attempt to demonstrate that Venezuela had requested the intermediation of the United States in order to convince Great Britain to accept arbitration[283]. Yet, somehow for Guyana, this circumstance entails that Venezuela cannot now claim, without falling into contradiction, that it was the victim of a fraudulent and unjust process[284].

5.15. According to Guyana, supposedly, the fact that Venezuela had requested the intermediation of the United States would be in itself evidence that Venezuela obtained exactly what it wanted. It is clear, however, that there is no contradiction in observing that, while it was Venezuela which requested the United States to intercede, both the United States and the United Kingdom behaved in a way that was highly prejudicial to Venezuela's rights and interests. By focusing disproportionately on Venezuela's request for intermediation, Guyana is simply attempting to direct the attention away from the pertinent facts. Its entire strategy of Guyana aims at building a false narrative asserting that Venezuela "got what it desired" rather than engaging in good faith with the historical evidence presented by Venezuela.

5.16. Thirdly, in its Reply Guyana has alluded several times to a supposed change in Venezuela's account of the historical facts. It contends that it is only now that Venezuela has claimed, for the first time, to have been the victim of a fraudulent collusion between the Unites States and Great Britain[285] or raised the question of the improper communications between British lawyers and British arbitrators[286]. It

[283] GR, paras. 2.15-2.39.
[284] GR, para. 2.29.
[285] GR, para. 2.39.
[286] GR, para. 3.56.

also pretends that the claim that Venezuela was coerced into concluding the arbitration treaty is a new one[287].

5.17. Again, Guyana's assertions distort reality. Venezuela's position, consistently supported by extensive documentary evidence, has remained unchanged over decades. In its Counter-Memorial Venezuela reaffirmed the position to which it has consistently adhered and which it has set forth in different international contexts. To contend, as Guyana does in its Reply, that Venezuela had referred to a collusion between the United States and Great Britain only now is preposterous or in bad faith. A plain reading of the many documents contained in the annexes to Venezuela's Counter-Memorial suffices to confirm that Venezuela has consistently argued that "during the course of the negotiation [of the Arbitral Treaty] , Venezuela was left aside, particularly during its final and most important stage"[288], that "the scope of various clauses of the Arbitral Treaty, particularly the prescription clause was made understood to Venezuela in a way different from the one confidentially agreed between (the U.S. Secretary of State) Olney, and the British Government"[289], and that "British judges acted under the influence of the British Government"[290].

2. Venezuela was not involved in the negotiation, it was only informed of the result

5.18. In its Counter-Memorial, Venezuela has provided much evidence showing that the Arbitration Treaty was negotiated by the United States and Great Britain behind Venezuela's back. The message of the Venezuelan President to the

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[287] GR, para. 2.96.

[288] Report on the Boundary Question with British Guiana submitted to the National Government by the Venezuelan Experts, 1967, VCM, Annex 150, p. 12.

[289] *Ibid.*, p. 12.

[290] *Ibid.*, p. 40.

Venezuelan Congress of 20 February 1897[291], the letters exchanged between Great Britain's and United States negotiators[292], the documents showing the vain attempts made by Venezuela to change the text agreed upon by the negotiating states, all converge in showing that – to use the words of a leading British historian - Venezuela "was not consulted till the very end of the negotiations, and then only perfunctorily" [293].

5.19. In its Reply, Guyana makes no attempt whatsoever to engage with this evidence. By contrast, it claims that there was a close collaboration between the United States and Venezuela throughout the negotiations. Its claim relies on three main arguments, all of which are entirely unsubstantiated.

5.20. First, Guyana emphasizes that there is no evidence showing Venezuela's dissatisfaction with the way in which the United States and Great Britain conducted the negotiation[294]. To the contrary, Guyana pretends that Venezuela was supposedly satisfied by the manner in which negotiations were conducted and refers to the words of gratitude towards the United States expressed by the Venezuelan President on 20 February 1897 to support its claim[295].

5.21. Guyana's claim begs the question. It pretends that Venezuela was involved in the negotiations simply because allegedly there is no evidence showing Venezuela's dissatisfaction with the conduct of the United States. In fact, the letter

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[291] Message from President Joaquín Sinforiano De Jesús Crespo to Congress, 20 February 1897, reprinted in Odeen Ishmael, "Chapter 13: The Arbitral Tribunal and the Award" in Trail of Diplomacy, GNI Publications, 1998 (available at: http://www.guyananews.org/features/trail_diplomacy_pt3.html).

[292] 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 Annex 150); Telegram from Olney to Storrow, 12 December 1896 (VCM, Annex 60).

[293] R. A. Humphreys, "Anglo-American Rivalries and the Venezuela Crisis", in Transactions of the Royal Historical Society, Vol. 17 (1967), pp. 131-164, at p. 158.

[294] GR, para 2.41.

[295] GR, para. 2.54.

sent by the Venezuelan Minister for Foreign Affairs, Rojas, to Andrade, on 9 December 1896, clearly noted that Venezuela had not actively participated in the negotiations: "[the Executive of Venezuela] has decided to accept, not simply, but with certain changes, the articles proposed, in the drafting of which, unfortunately, it was not given a part"[296]. Moreover, as the evidence presented in the Counter-Memorial clearly shows, Venezuela was prevented from expressing any possible dissatisfaction. When, in December 1896, it was presented, for the first time, with the text negotiated by the United States and Great Britain, it was given no possibility of making her voice heard. The United States made it clear that the slightest form of dissatisfaction would have been regarded as a sign of ingratitude and would have constituted a hindrance to arbitration. The reply of Secretary of State Olney's to Venezuela's timid request to modify the text negotiated by the United States and Great Britain speaks loudly about the position to which Venezuela was relegated: "Present Venezuelan attitude offensive – tends to block all negotiations"[297].

5.22. Guyana insists that Venezuela was fully satisfied with the result of the negotiation and gives as evidence the attestations of gratitude towards the United States expressed by different Venezuelan authorities. Yet, it is hardly surprising that a State in the vulnerable position Venezuela had at the time would thank its powerful intermediary, even when that intermediary behaved disloyally by prioritizing its own interests to Venezuela's detriment – as it indisputably did. The United States had its own political agenda, based on the Monroe Doctrine, which was imposed for the first time using this dispute as a pretext. It wanted Venezuela to sign the Treaty rapidly, irrespective of whether the Treaty was prejudicial to Venezuela's rights and interests. The letter sent by the President of the United States, Cleveland, to the President of Venezuela, Crespo, was very clear in that

[296] Letter from Rojas to Andrade dated 9 December 1896, VCM, Vol. III, Annex 59, p. 2.
[297] Telegram from Olney to Storrow, 12 December 1896, VCM, Annex 60.

respect: how could Venezuela refrain from accepting a treaty that was presented as "the best possible solution to all concerned of the long pending question?"[298] Venezuela was heavily dependent on the support of the United States. It could not risk losing that support and be exposed to the reactions of Great Britain. In this atmosphere imposed by the United States to break the will of Venezuela, all that was open to it was to feign polite gratitude towards its powerful neighbour. The speech of the Venezuelan President of 20 February 1897 reflects this situation[299]. The President did not fail to report Venezuela's lack of involvement in the negotiation; at the same time, he could not avoid thanking the United States for having acted as it did.

5.23. Secondly, Guyana claims that documentary record during the relevant period supposedly demonstrates that the United States constantly informed Venezuela about the progress of the negotiations[300]. Ironically, a significant portion of the documentary record referred to by Guyana consists of letters exchanged between U.S. Secretary of State Olney and British authorities. Guyana fails to mention the compelling evidence of Olney's deception of Venezuela, revealed to Pauncefote.[301] Guyana attempts to mask this reality, either by misrepresenting

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[298] Letter from Mr. Cleveland to General Crespo, dated 8 December 1896, **Annex 13**.

[299] Message from President Joaquín Sinforiano De Jesús Crespo to Congress, 20 February 1897, reprinted in Odeen Ishmael, "Chapter 13: The Arbitral Tribunal and the Award" in Trail of Diplomacy, GNI Publications, 1998 (available at: http://www.guyananews.org/features/trail_diplomacy_pt3.html).

[300] GR, para. 2.45.

[301] "Further -*entre nous* entirely- being inquired of last summer, on behalf of Venezuela, respecting diplomatic correspondence preceding the Treaty, I replied that my letter to you of the 13th July, 1896, was the last thing of record. I did not so reply until I had first written Mr. Cridler, Third Assistant Secretary of State, and received from him an assurance to that effect, made after an examination of the State Department files. The Counsel for Venezuela have unquestionably been banking on that statement of Mr. Cridler's and my own ever since, and would be both surprised and irritated, and perhaps justly so, if now confronted with writing they had been led to believe did not exist.", *see* Letter from Richard Olney to Julian Pauncefote, dated 24 May 1899, **Annex 19**.

Olney's position as Venezuela's own[302] or by using ambiguous formulas such as "the United States (with Venezuela's concurrence)"[303], without however providing any evidence showing that the Government of Venezuela was indeed consulted or expressed its support.

5.24. Thirdly, Guyana emphasizes the role played in the negotiations by James J. Storrow, the U.S. lawyer who acted as Venezuelan legal advisor during the negotiations. It contends that the letters exchanged between Storrow and Olney during the negotiations testify of the close collaboration between the Venezuelan Government and the United States[304].

5.25. Venezuela has already disposed of this matter in its Counter-Memorial, where it addressed the ambiguous role played by Storrow[305]. While appointed to represent Venezuela's interests, Storrow failed to act as an intermediary between the Venezuelan government and the United States. In fact, he almost never consulted the Government of Venezuela. In several instances, and particularly in the final stages leading up to the conclusion of the Treaty, he played a radically different role: he was the key individual entrusted by the U.S. Secretary of State Olney with the task of convincing Venezuela to accept the text negotiated between the United States and Great Britain.

5.26. In fact, the Government in Caracas had repeatedly expressed its lack of confidence in Storrow, as well as its disagreement with the views expressed by him over the delimitation of the disputed territory. The words of the Venezuelan Minister for foreign affairs are clear in this respect: "You will by this date be aware

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[302] *See* in particular the letter referred to at fn. 82 of GR. In this letter, Pauncefote wrote: "I regret to report that the Secretary of State cannot be induced to accept your Lordship's proposal". No mention is made of any opposition from the Government of Venezuela.

[303] GR, para. 2.48.

[304] GR, paras. 2.49-2.52.

[305] VCM 5.24.

of the various and powerful motives which have obliged the government to reserve the services of the above-mentioned gentleman, or to defer for the moment the engagement of his services regarding the question of the boundaries of Guayana. The more one meditates on the disparity between his ideas and our ideas concerning the understanding of the territorial rights of the Republic and between his view and our view of the titles on which the Republic relies to defend the Esequibo line, the more dangerous or inconvenient his role in the dispute is deemed to be."[306] If in the end Venezuela accepted to be represented by Storrow, it was only because of the pressure made by the United States. As Olney clearly communicated to Andrade, Venezuela "could not make a greater mistake than to waste the services of such a person as Mr. Storrow"[307].

5.27. Guyana contests that that there is no evidence demonstrating Storrow's lack of loyalty to his client[308]. Yet, a simple review of the correspondence between Storrow and Olney clearly supports Venezuela's position. In particular, throughout the duration of the negotiation between the United States and Great Britain, of the text of the Arbitration Treaty text, Storrow sent several messages to Olney. Yet, he never mentioned consulting the Government of Venezuela presenting its position. Only once, in a letter of 11 June 1896, did he inform Olney that "I am to send my work to Caracas for inspection before it is filed", adding immediately after, as if he had to justify himself, that "that is a natural and reasonable request"[309]. In other circumstances, he openly admitted that he was privy to what the views of the Government of Venezuela were[310] or defended views despite being aware that Venezuela "would hardly agree to that"[311]. The correspondence between Olney

[306] Letter from Pedro Ezequiel Rojas to José Andrade, dated 18 May 1896, **Annex 6**.
[307] Letter from José Andrade to Pedro Ezequiel Rojas, dated 13 May 1896, **Annex 5**.
[308] GR, para. 2.66.
[309] Letter from James Storrow to Richard Olney, dated 11 June 1896, **Annex 7**, p. 6.
[310] Letter from James Storrow to Richard Olney, dated 29 August 1896, **Annex 10**.
[311] Letter from James Storrow to Richard Olney, dated 15 June 1896, **Annex 8**.

and Storrow continued between September and November 1896, the most intense months of negotiations. Nowhere is there in this correspondence a reference to contacts with, or to the views of, the Venezuelan Government. Because of his strict relationship with Olney, Storrow could have been aware of the negotiations between the US Secretary of State and Pauncefote; he certainly did not inform Venezuela about it. A clear description of Storrow's attitude was given by the American lead counsel for Venezuela, Harrison, two years later. Being informed by his English counterpart of the existence of a confidential correspondence between Olney and Pauncefote, Harrison observed: "I suppose these notes now presented by Sir Charles [Webster] were not before the Venezuelan Government, but I must believe that they were known to Mr. Storrow; for his relations to Mr. Olney were very confidential... I think it is quite possible that Mr. Storrow, knowing the impracticability of some of those he had to deal with, may have purposely left this matter a little vague" [312].

5.28. When, in November 1896, the text negotiated between the United States and Great Britain was transmitted to the Government of Venezuela, Storrow was sent to Caracas to present the text. At that point, his role became essentially that of informing Olney about the reactions of the Venezuelan Government and of devising strategies for getting the text accepted. The following exchange of telegrams between Storrow and Olney is highly illustrative in this regard[313]. On 10 December 1896, Storrow cabled to Olney that there were "sharp attacks about appointment of arbitrators" as well as specific requests concerning the prescription clause[314]. In a new telegram dated 12 December, he wrote: "I prefer no definite answer at present. Would like confidential indication your views". On the same date, Olney replied

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[312] Letter from Benjamin Harrison to Mallet-Prevost, dated 9 March 1899, **Annex 16**.

[313] *See* also letter from James Storrow to Richard Olney, dated 29 August 1896, **Annex 10**.

[314] The changes requested by Venezuela are detailed in the letter send by the Venezuelan Minister for Foreign Affairs, Rojas, to Andrade, on 9 December 1896, VCM, Vol. III, Annex 59.

that "Matter closed as between Great Britain and United States". The day after Storrow replied: "Your cable pleases me. Things better. I think I can work it out. President firm"[315].

5.29. The facts Guyana presents as evidence of a supposed collaboration – Storrow's presence, Olney's self-appointed role as a defender of Venezuela's interests, the absence of clear signs of dissatisfaction from Caracas – in fact prove the opposite. They are markers not of partnership, but of coercion. Guyana's claim is baseless. The Arbitration Treaty was imposed on Venezuela, which was deliberately excluded from a negotiation that predetermined and conditioned the arbitral outcome, thereby putting its territorial rights at risk.

3. The 50-years prescription rule was imposed on Venezuela despite being prejudicial to its interests

5.30. Equally baseless is Guyana's contention that, far from being opposed to it, "Venezuela favoured inclusion of a rule providing that effective occupation for a prescribed period would constitute valid title to a disputed territory"[316].

5.31. In addressing the adverse prescription rule a preliminary remark is in order. In its Counter-Memorial, Venezuela developed two distinct arguments in relation to this rule. It argued, first, that the rule in question was clearly prejudicial to Venezuelan interest[317] and, secondly, that the true meaning of this clause, as agreed between the United States and Great Britain through confidential correspondence, was concealed from Venezuela[318]. In its Reply, Guyana addresses the two arguments together in a twelve-pages section entitled "The 50-year Prescription Rule Was Not Fraudulent and Did Not Prejudice Venezuela". In fact, ten out of

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[315] *See* Cable sent by James Storrow to Richard Olney, dated 10 December 1896, **Annex 14**.
[316] GR, para.2.59.
[317] VCM, paras. 5.33-5.40.
[318] VCM paras. 5.41-5.67.

twelve pages of this section are directed to rebut Venezuela's argument that the inclusion of the prescription clause was contrary to Venezuela's interests, while only the last two pages rapidly address the question of the confidential agreements between the United States and Great Britain.

5.32. In the following paragraphs, Venezuela will address the argument that the prescription rule was prejudicial to Venezuela. The second argument, on the existence of confidential agreements, will be addressed later together with the question of the invalidity of the 1897 Arbitration Treaty.

5.33. To support its contention that Venezuela supposedly favoured the inclusion of the prescription rule, Guyana relies on the same mix of arguments it uses to claim that Venezuela had been actively involved in the negotiation of the Treaty – namely that supposedly Venezuela never communicated to Olney its opposition to the prescription rule[319]; that Venezuela would have expressed its gratitude towards the United States for the result of the negotiations[320]; that in order to defend Venezuelan interests, Olney would have opposed Great Britain's request to refer to a period of prescription shorter than 50 years[321]; and Storrow allegedly supported the inclusion of a rule on adverse prescription[322].

5.34. There is no reason to repeat what has already been said about the role of Storrow, the position of Olney, or the fact that Venezuela was not given the possibility of making her voice heard in the negotiation of the Treaty. It is sufficient to consider the different legal title claimed by Venezuela and Great Britain to support their respective claim over the contested territory to realize that the

[319] GR, para. 2.61.
[320] GR, paras. 2.69-2.70.
[321] GR, para. 2.62.
[322] GR, paras. 2.63-2.68.

inclusion of a rule on prescription, including a rule setting a 50 year period for prescription, was prejudicial to Venezuela.

5.35. Venezuela had consistently based its claim of sovereignty over the disputed territory on the discovery of the coast of Guayana by Spain and on the succession of Venezuela into the rights which Spain had over that territory. Discovery and succession were the titles invoked against Great Britain to contest the illegal occupation of the territory of Guayana in the decades before the negotiation of the Arbitration Treaty. It was essentially on these titles that Venezuela based its legal arguments before the Arbitral Tribunal in Paris[323].

5.36. By contrast, Great Britain, unable to rely on any historical title, and in order to legitimize its aggressive campaign of occupation of the territory of Guayana, consistently denied the relevance of titles based on discovery and invoked de facto control to justify its claim of sovereignty[324]. The inclusion of a rule on prescription, particularly with a short time period, was clearly essential for the legal strategy pursued by Great Britain.

5.37. When the negotiations of the arbitration treaty started, the United States was well aware that Venezuela based its legal claim on discovery and succession, and that it was therefore prejudicial to Venezuela to introduce a rule expressly recognizing that prescription made good title. In its Reply, Guyana contests that Venezuela did not cite any source to support this assertion[325]. In fact, the sources and evidence are clearly reported in Venezuelan Counter-Memorial. Guyana merely fails to engage with them.

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[323] *Arbitration between the Governments of Her Britannic Majesty and The United States of Venezuela Proceedings*, Vol. IV, Paris, 1899, p. 583 and pp. 870 ff.

[324] Letters from Lord Salisbury to Sir Julian Pauncefote, dated 26 November 1895, **Annex 3**.

[325] GR, para. 2.56.

5.38. At paragraph 5.35 of its Counter-Memorial, Venezuela refers to the letter of 5 February 1896 sent to Olney by the Venezuelan Foreign Minister, Pedro Ezequiel Rojas. This letter constitutes a reply by Venezuela to the note sent to Olney on 16 November 1895 by the Secretary of State of Great Britain, Lord Salisbury. In this long letter, Rojas set out in a very detailed way the legal arguments on which Venezuela relied to defend its claim to sovereignty. He made clear that "Spain, as the first discoverer of the coasts of Guayana, could well be considered as owner of the territories thereof, for otherwise the Dutch would not need her recognition of them to make valid their acquisitions in the said territory"[326]. He also emphasized that "Venezuela inherited the rights which Spain had in the Captaincy-general of that name"[327].

5.39. Importantly, in the letter Rojas underlined that prescription was the main legal argument on which Great Britain pretended to assert its sovereignty[328]. In a detailed analysis of the views expressed by legal scholars on prescription, Rojas pointed out that "several of them hold opinions against prescription, others admit, at the most, immemorial prescription"[329]. He also specified that, even if international law were to accept that prescription may, under certain conditions, constitute valid title, Venezuela could not accept to recognize that such conditions were met in the case of Guayana. He stated in clear terms: "the only thing that will be refuted will be the allegation of prescription of twenty-five or fifty years, applying the rules of Ortolan: 1st Great Britain could not possess as owner territories not specified as belonging to the grantor, nor included expressly in the transfer made by Holland…4th The English possession has been and is forcible, which renders it impossible of being converted into lawful origin, however long it

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[326] Memorandum by The Ministry of Foreign Affairs of Venezuela: relative to the note of Lord Salisbury to Mr. Olney, dated 26 November 1895, **Annex 33**, p. 17.
[327] *Ibid.*, p. 11.
[328] *Ibid.*, p. 53.
[329] *Ibid.* p. 45.

may last; and it only serves to aggravate by its duration the offense against the proprietor"[330].

5.40. Despite Venezuela's clear refusal to regard prescription as a valid title to settle the dispute over the territory of Guayana Esequiba, the United States and Great Britain not only agreed to include the rule on prescription in the Arbitration Treaty. What is more, they gave it a prominent place among the rules that the arbitrators were instructed to apply. Olney did not pay any attention to the position of Venezuela as expressed in Rojas' letter.

5.41. Aware that Venezuelan authorities would resist the inclusion of such rule into the treaty, the United States did not hesitate to mislead them into believing that the rule would have better protected Venezuela's interests. In a dramatic reversal of the position expressed by the Venezuelan Foreign Minister a few months before, the rule on prescription was presented as a success for Venezuela. Demonstrating once again his lack of loyalty to his client, Storrow sought to overcome the resistance opposed by the Government's legal experts in Caracas, by falsely affirming that it had been the United States which had led Great Britain to accept the rule on prescription, and not the other way round: "[W]e said, it was not a concession. Prescription was, I thought, our strongest ground, and I wanted G.B. to agree to it; and of all possible terms, 50 years was the best for us. To get England to assent to a rule we wanted was not giving away our case[331]."

5.42. Despite the pressure exerted by the United States in order to have the text accepted, Venezuela made a final desperate attempt to modify the rule. This is evidenced by the letter sent by the Venezuelan Foreign Minister, Rojas, to Andrade, on 9 December 1896[332]. In his correspondence from Caracas, Storrow informed

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[330] *Ibid.*, pp. 54-55.

[331] Letter from James Storrow to Richard Olney, dated 29 November 1896, **Annex 11**.

[332] Letter from Rojas to Andrade, 9 December 1896, VCM, Vol. III, Annex 59.

Olney of the mounting criticism against the draft text, including as regards the rule of prescription. In order to address these concerns, in a telegram of 10 December 1896 Storrow transmitted to Olney the following request: "Also would like a clause that rule (a) refers to international law for definition what acts constitute adverse holding. Can you do something?"[333].

5.43. This request was in line with the historical position of Venezuela on this matter, as reported inter alia in the Rojas's letter of February 1896. As previously noted, Rojas had stressed that under international law prescription may not transform forcible possession into a valid title.

5.44. Yet, once again, Venezuela's request remained dead letter and its objections dismissed. Olney's reply was categorical: "Matter closed as between Great Britain and United States"[334].

4. The absence of any Venezuelan arbitrator is the clearest evidence of the fraudulent and unjust treatment accorded to Venezuela

5.45. As already observed, Guyana's distortion of the historical facts becomes most evident and most outrageous when it comes to the absence of Venezuelan arbitrators in the composition of the arbitral Tribunal. In its Reply, Guyana contends that, with that composition, Venezuela "got what it wanted"[335]. Guyana's position relies on two arguments: First, that the absence of Venezuelan arbitrators was a condition forcefully defended by Great Britain but that did not reflect the position of the United States[336]; secondly, that upon Venezuela's request that the United States to have a say in the appointment of arbitrators, Olney actively

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[333] Cable sent by James Storrow to Richard Olney, dated 10 December 1896, **Annex 14**.
[334] Telegram from Richard Olney to James Storrow, dated 12 December 1896, **Annex 15**.
[335] GR, para. 2.90.
[336] *Ibid.* paras. 2.79-2.80.

engaged to change the text negotiated with Great Britain, thereby giving Venezuela "what it wanted"[337].

5.46. Guyana's approach to this issue reveals the extent to which it misconstrues the relevant facts. It fails entirely to engage with – or even mention – the evidence submitted by Venezuela showing that, since the early stages of the negotiations, the United States had shown its intention to restrict the composition of the tribunal to English and U.S. judges. Moreover, Guyana distorts the historical record by focusing solely on Venezuela's last-minute request to amend Article II of the draft text, while wilfully ignoring all other relevant facts.

5.47. In paragraph 5.27 of its Counter-memorial, Venezuela reviewed the telegram sent on 14 January 1896 by United States Secretary of State, Olney, in which he proposed to Great Britain that no Venezuelan arbitrator be included on the future arbitral tribunal: "Tribunal to consist of two members of present American Commission, of two persons chosen by Great Britain, and of a fifth agreed upon by the two Governments"[338]. Even more telling, in a confidential note of 25 January 1896, the President of the United States advanced the following proposal: "New proposal to be created by agreement between United States and Great Britain, consisting of two Englishmen and two Americans"[339].

5.48. Guyana makes no attempt whatsoever to rebut this evidence. It simply ignores it, and the reason is clear. This evidence flatly contradicts Guyana's narrative. It shows that, the United States was against the appointment of Venezuelan arbitrators, and that it was the United States, and not Great Britain, that first suggested replacing Venezuelan arbitrators with United States ones.

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[337] *Ibid.* 2.86.

[338] VCM, Annex 55.

[339] Confidential note with proposal from the President of the United States on the composition of the Arbitral Tribunal, dated 25 January 1896, **Annex 4**.

5.49. This evidence also shows that since the beginning of the negotiations, Great Britain and the United States agreed on this issue. Seeking to downplay this fact and cast the United States as a loyal defender of Venezuelan interests, Guyana cites to the concern expressed by Sir Julian Pauncefote over the possibility of the United States accepting the request of Venezuela to appoint a Venezuelan arbitrator. In particular, Guyana quotes this line from a private letter to Lord Salisbury of 8 December 1896: "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".[340]

5.50. The quotation is misleading. A full reading of Pauncefote's letter reveals the broader context. In it, Pauncefote wrote to Salisbury:

> "There is no danger of Mr. Olney listening a moment to the Venezuelan howl for a modification of our terms of Arbitration. But 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. I enclose a copy of a private note I received from him, and of my reply. He has not revived the subject since the Press here seems to assume that there is an understanding between Mr. Olney and Sr. Andrade that a Venezuelan will be appointed. But it seems to me that there has been an implied understanding with us throughout the whole correspondence and negotiation that the Arbitrators on the side of Venezuela should be American [..]"[341].

5.51. The letter confirms three points: a) there was an understanding between Great Britain and the United States about the exclusion of Venezuelan arbitrators, b) that Venezuela was never informed nor consulted about this solution, and c) that

[340] GR, para 2.80.
[341] VCM, Annex 150 (emphasis added).

Great Britain had been given assurances that, whatever the reaction of the Venezuelan Government to the draft text, that text would have not been modified.

5.52. Subsequent events fully confirmed Pauncefote's prediction that that "[t]here is no danger of Mr. Olney listening a moment to the Venezuelan howl". At the very time Pauncefote wrote to Salisbury, Storrow – then in Caracas to present for the first time the draft treaty to the Venezuelan authorities – wrote a telegram to Olney: "Treaty stands accepted as cabled but there are sharp attacks about appointment of arbitrators and cabinet very desirous have one Venezuelan on tribunal. This would help much with public and Congress"[342]. Olney's well-known response was blunt and final: "Matter closed as between Great Britain and United States"[343].

5.53. Guyana notes in its Reply[344] that, following repeated attempts by Venezuela, the United States and Great Britain eventually agreed to amend Article II of the draft. But Guyana shamelessly presents this superficial adjustment as a victory for Venezuela, as evidence of the fact that Venezuela "got what it wanted". In fact, this superficial modification was meant to mask the arrogance and contempt for Venezuela. The common understanding that had guided the action of the United States and Great Britain throughout the whole negotiation – that the Arbitrators on the side of Venezuela should be American – remained fully intact through to the final text.

5. Fearing British Aggression with United States Support, Venezuela Was Coerced into Signing the Arbitration Treaty

5.54. In its Counter-memorial, Venezuela clearly sets out the impossible dilemma it faced when the United States first communicated to it the draft arbitration treaty negotiated with Great Britain. The draft was clearly contrary to the rights and

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[342] Cable sent by James Storrow to Richard Olney, dated 10 December 1896, **Annex 14**.
[343] Telegram from Richard Olney to James Storrow, dated 12 December 1896, **Annex 15**.
[344] GR, para 2.82.

interests of Venezuela. But rejecting it would have had two grave consequences: first, the loss of U.S. alleged support; and secondly, a return to the *status quo* prior to the United States' intermediation, marked by repeated incursions and forcible occupation by Great Britain of increasingly large parts of territories claimed by Venezuela. Guyana itself acknowledges this in its Reply, noting that "[t]he alternative for Venezuela was to forego arbitration of the territorial dispute, which has long been its central objective, and once again expose itself to conflict with Great Britain"[345].

5.55. Venezuela and Guyana, however, appear to disagree about the consequences that a return to the conflict with Great Britain would have concretely entailed for Venezuela. Guyana admits that a return to the conflict with Great Britain would have had consequences for Venezuela but argues that these consequences "were a reflection of the geopolitical reality, not evidence of 'coercion' by Great Britain or the United States"[346]. For Venezuela, what Guyana qualifies as "geopolitical reality" is simply a euphemism that masks a reality in which for decades Great Britain had used force against Venezuela to extend its control over the Venezuelan territory. Venezuela was coerced into accepting the treaty precisely because the refusal to sign it would have entailed being again exposed to the aggressive attitude of Great Britain – and this time without being able to rely on the support of the United States.

5.56. Guyana objects that there is no evidence that Venezuela was exposed to a serious risk of forcible actions by Great Britain. This objection is baseless. It also contradicts Guyana's admission that, if Venezuela strongly pushed for a peaceful settlement of the dispute through arbitration and requested the intervention of the United States to obtain it, it was because there existed a situation of structural

[345] GR, para. 2.60.
[346] GR, para. 2. 99.

coercion dictated by Great Britain's territorial expansion. This situation of structural coercion did not disappear in 1896. To the contrary, the threat of a further territorial expansion by Great Britain became more concrete than ever when Venezuela was asked to accept the text negotiated between the United States and Great Britain.

5.57. The records of the years immediately preceding the start of negotiations over the arbitration treaty provide abundant evidence of the aggressive attitude of Great Britain and of the sentiment of vulnerability resented by Venezuela. Guyana itself, in its Reply, openly recognizes this historical reality.

5.58. As Guyana reports, first in 1883 and then in 1887, Venezuela, "alarmed by the ongoing westward expansion of British settlement into what it claimed was its own territory" and "[f]eeling vulnerable in the face of Great Britain's superior military power and diplomatic stalemate", repeatedly sought U.S. assistance to resolve the dispute peacefully[347].

5.59. Guyana also cites the 19 December 1894 letter from Venezuela's Minister in Washington, José Andrade, to W. Q. Gresham, Secretary of State of the United States. In this letter, Andrade clearly explained the danger that the aggressive attitude of Great Britain represented in the eyes of Venezuelan authorities: "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 regular centres. In view of this, and as the Venezuelan Government always endeavours to exhaust all lawful means to reach an amicable settlement, it wishes to inform the Embassy of the new danger posed by this matter [..]"[348].

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[347] GR, paras. 2.16-2.20.

[348] *See* the letter reported in GR, para. 2.23.

5.60. In a message sent to Lord Salisbury on July 1895, equally reported in Guyana's Reply, Secretary of State Olney refers openly to "new alleged instances of British aggression upon Venezuelan territory". Olney admitted that the attitude of Great Britain "in effect deprives Venezuela of her free reason and puts her under virtual duress"[349].

5.61. In sum, there is conclusive evidence showing that Venezuela faced constant threats of British aggression and saw the arbitration treaty, brokered by the U.S., as its only peaceful alternative. Guyana cannot insist that Venezuela appealed to the United States to help it obtain an arbitration agreement, without at the same time recognizing that such help from the United States was Venezuela's only option to put to a halt Great Britain's military threat.

5.62. This the more so since the forcible interventions by Great Britain continued even in the months when negotiations were taking place. In a letter send to Olney on 18 August 1896, Andrade informed about a "new aggression of Great Britain", making clear that "if the Republic does not firmly stand against such advances of the British, they will take them as far as they please, and will then say that the territories thus occupied cannot be arbitrated because they are Settled Districts"[350]. The structural coercion of which Venezuela was victim is clearly evidenced by the fact that, in the same cable with which Andrade informed Olney that Venezuela was keen to accept the result of the negotiation, he also wrote that "Venezuela expects by treaty or by diplomatic notes through your agreement to prevent aggression or unfriendly acts near line of contact and also that no new mining concessions shall be granted"[351].

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[349] GR para. 2.27-2.29.

[350] Letter from José Andrade to Richard Olney, dated 18 August 1896, **Annex. 9**.

[351] Cable from José Andrade to Richard Olney, dated 5 December 1896, **Annex 12**.

5.63. Venezuela's consent to be bound by a treaty which was unjust and prejudicial to its interests, was not freely given. In fact, that consent was procured by the threat of forcible measures against it. As shown in Venezuela's Counter-Memorial, the United States had made it clear that they would have withdrawn their support to Venezuela had Venezuela not accepted the treaty[352]. This would have immediately exposed Venezuela to the risk of Great Britain using again force to extend its dominion over the disputed territory.

5.64. A last observation is in order. In its Reply Guyana refers to a statement made by the President of Venezuela, Crespo, in which he declared that "[t]he 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"[353]. Guyana suggests that this statement is evidence of the fact that Venezuela was not coerced into signing the arbitration treaty. This is disingenuous. That President Crespo felt compelled to state there was no coercion speaks volumes about the perception in Caracas at the time as regards the pressure put on the government to accept the text. And importantly, Crespo was clearly referring to the conduct of the United States, not Great Britain. President Crespo was denying that the United States had coerced Venezuela into accepting the Treaty – an opinion which, as reported by Storrow to Olney[354], found support in Venezuelan public opinion. This denial had nothing to do with the threat to the use of force coming from Great Britain.

6. Interim conclusion

5.65. In its Counter-Memorial Venezuela has provided a rich body of evidence showing the unjust and fraudulent treatment accorded to it by the United States and Great Britain during the negotiation of the 1897 Treaty. In its Reply Guyana avoids

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[352] VCM, para. 5.75.

[353] GR, 2.100.

[354] Letter from James Storrow to Richard Olney, dated 29 November 1896, **Annex 11**.

to seriously engage with such evidence, preferring to describe a parallel reality in which Venezuela allegedly actively instructed the United States about the conduct of the negotiation, where the exclusion of any Venezuelan arbitrator was clearly in the interest of Venezuela, and where the 50-years prescription rule was the best solution to defend Venezuela's legal claims. This parallel reality is grounded in a shameless manipulation of the facts. Venezuela had no role in the negotiation and did not get what it wanted. The colonial dynamic at play in the relationship with Great Britain and the United States forced Venezuela to sign a treaty which was openly contrary to its interests – a treaty which, as shown in the next section of this chapter, was negotiated so to avoid to make Venezuela aware of the true meaning of certain crucial clauses.

C. THE AWARD IS INVALID BECAUSE IT WAS RENDERED ON THE BASIS OF AN INVALID TREATY

5.66. The Arbitration Treaty of 1897 was invalid on the ground of error and fraud. This is so because, as stated in 1965 by the Minister of Foreign Affairs of Venezuela, Ignacio Iribarren Borges, "the correspondence exchanged between the United States and Great Britain during the decisive period of the negotiation (September to November 1896) was concealed from Venezuela until 1899, in other words, two years after the signature of the Treaty"[355]. In its Counter-Memorial, Venezuela demonstrated how both the law and facts support its position.

5.67. As regards the applicable law, Guyana concedes 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"[356] and that "the Parties are not

[355] Statement made by Dr. Ignacio Iribarren Borges, Venezuelan Foreign Minister, to the Ministerial Conference Held in London (9 December 1965), Guyana's Memorial on the Merits ("GMM"), Vol. IV, Annex 76.

[356] GR, para. 2.7.

significantly divided on this point"[357]. Guyana does not give clear indications about the possible residual differences between the Parties. It only observes that "Venezuela fails to point out that the error must be demonstrated by 'convincing evidence'"[358]. If this is Guyana's only objection, in a rare moment of clarity, it is evident that it finally acknowledges the applicable law. Venezuela does not object that error or fraud must be proved by convincing evidence. It is indeed by convincing evidence that Venezuela has demonstrated the error and fraud of which it was victim.

5.68. In its Counter-Memorial, Venezuela presented evidence showing irrefutably that during the negotiations of the Arbitration Treaty, the United States and Great Britain exchanged confidential correspondence, that this correspondence concerned the interpretation to be given to fundamental clauses of the Treaty, that Venezuela was never informed of these exchanges between the two negotiating states, and that the relevant correspondence was used against Venezuela during the arbitral proceedings in Paris.

5.69. In its Reply, Guyana fails to engage with the evidence presented by Venezuela. It devotes only two pages to this issue[359], even though it is crucial for determining the alleged validity of the 1897 Treaty.

5.70. Venezuela will not restate here what it has already extensively demonstrated in its Counter-Memorial[360]. Given the importance of these points, however, it deems it useful to recall the two issues on which the existence of this confidential correspondence had a most evident impact.

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[357] GR, para. 2.9.
[358] GR, para. 2.10.
[359] GR, paras. 2.71-2.78.
[360] VCM, paras. 5.41-5.67.

5.71. The first issue concerns the interpretation to be given to Article IV (a) of the 1897 Treaty. According to this provision, "[a]dverse holding or prescription during a period of fifty years shall make a good title". Unlike Article IV (c), which expressly establishes that the critical date for the application of that clauses is "the date of this Treaty"[361], Article IV (a) does not provide that the critical date for calculating the fifty-year period is the date of the conclusion of the 1897 Treaty. The difference in formulation between Article 4 (a) and Article 4 (c) clearly supports the view that the starting point for calculating the prescription period was not 1897.

5.72. In its Counter-Memorial, Venezuela provided evidence showing that, during the arbitral proceedings, Great Britain made use of the confidential correspondence[362] – unknown until that moment to Venezuela – to show that it was the intention of the negotiating parties to take the date of the conclusion of the Treaty as critical date for prescription[363]. In particular, Venezuela provided evidence attesting the following facts[364]:

- That in its written memorial submitted to the Arbitral Tribunal, Venezuela had argued that the starting point for prescription was the date when Great Britain acquired the Colony of British Guiana and that therefore Article IV (a) had no application to the period subsequent to 1814;

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[361] "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".

[362] *Arbitration between the Governments of Her Britannic Majesty and The United States of Venezuela Proceedings*, Vol. I, Paris, 1899, p. 27.

[363] *Arbitration between the Governments of Her Britannic Majesty and The United States of Venezuela Proceedings*, Vol. VII, Paris, 1899, p. 1752.

[364] VCM, paras. 5.49-5.61.

- That, as it results from a letter of 12 May 1899 sent by lead counsel of Great Britain, Sir Webster to the American counsel for Venezuela, Mallet Prevost, neither the Venezuelan Government nor the U.S. lawyers defending Venezuela were aware of the confidential correspondence, which contradicted the interpretation defended by Venezuela[365];

- That, after the initial refusal of the U.S. lawyers defending Venezuela to accept the request of Great Britain to change Venezuela's position in this regard, the British Ambassador, Pauncefote, in a letter of 12 May 1899, informed Secretary of State Olney of Great Britain's intention to use the confidential correspondence to show that the negotiating parties had agreed that the relevant period for prescription was the period immediately prior to the date of the Treaty; Olney's response to Pauncefote provides a further evidence of the fact that at the most important stage of the negotiation Venezuela was left in the dark;[366]

- That the Venezuelan Government, informed by the U.S. lawyers in Paris about Great Britain's request to withdraw the argument, strongly opposed any change in the legal strategy;[367]

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[365] *See* Letter from Richard Webster to Mallet-Prevost, dated 12 May 1899, **Annex 18** ("We gather from your letter that those who prepare the Argument on behalf of Venezuela were not acquainted with the Correspondence which led up to the Treaty of Arbitration. This may no doubt to some extent account for the contentions to which we were obliged to take exception, because we are convinced that no one who was a party to or acquainted with the negotiations between Mr. Olney and Sir Julian Pauncefote can have any doubt whatever that the position which we take up is not only justified by the antecedent negotiations, but is the only one which is consistent with them").

[366] Letter from Richard Olney to Julian Pauncefote, dated 24 May 1899, **Annex 19**.

[367] Letter from J. Calcaño to José Andrade, dated 23 March 1899, **Annex 17**.

- That in a private meeting with the lead counsel of Great Britain, which took place on 13 June 1899, the American lead counsel for Venezuela, Harrison, accepted to withdraw the argument, considering that "the good faith of the United States, through whom the Treaty was made, was involved in the matter"[368];

- That, in an oral statement before the Arbitral Tribunal, Harrison, referring to the confidential letters exchanged between Olney and Pauncefote – and openly contravening the instructions of the Venezuelan Government – did in fact withdrawn the argument, affirming: "I would not be candid if I did not say [the notes] seem clearly to indicate that Mr. Olney and Sir Julian Pauncefote understood that the prescriptive period applied to the years after 1814"[369].

5.73. Guyana's says nothing on this matter. Not a word on Venezuela's original position in respect of the interpretation of the Treaty. Not a word on the Great Britain's pressure on the U.S. lawyer defending Venezuela to withdraw that argument. Not a word on the use made by Great Britain of the confidential correspondence. Not a word on the indecent attitude shown by U.S. lead counsel for Venezuela, Harrison, who withdrew the Venezuelan argument despite clear instructions to the contrary received from the Venezuelan authorities.

5.74. Guyana maliciously argues that Venezuela cannot invoke an error in which it allegedly took part. Yet, it provides no evidence of Venezuela's participation in the error. The best it can offer, in this respect, is the unsubstantiated statement that "it is most unlikely that the contents [of the confidential letters] were not known by

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[368] Letter with Annexure of Great Britain's Leading Counsel, Sir Richard Webster, to Sir Thomas Sanderson, 13 June 1899, in J. Gillis Wetter, *The International Arbitral Process: Public and Private*, p. 27 (available at the Peace Palace Library).

[369] *Verbatim* record of the 1899 proceedings, reproduced in J. Gillis Wetter, *The International Arbitral Process: Public and Private*, pp. 28-30 (available at the Peace Palace Library).

Venezuela's representatives — Mr. Storrow and Minister Andrade — who met with the Secretary at his home the previous evening"[370]. Yet, what appears most unlikely to Guyana, appears very likely to the U.S. lawyers defending Venezuela. In a striking passage of a letter sent to Mallet Prevost on 9 March 1899, the American lead counsel for Venezuela, Harrison, observed: "I suppose these notes now presented by Sir Charles [Webster] were not before the Venezuelan Government, but I must believe that they were known to Mr. Storrow; for his relations to Mr. Olney were very confidential"[371]. He also added: "I think it is quite possible that Mr. Storrow, knowing the impracticability of some of those he had to deal with, may have purposely left this matter a little vague"[372].

5.75. Guyana also claims that Venezuela could have avoided the error by not introducing the confidential correspondence into evidence before the Tribunal. This is yet another distortion. The evidence shows that it was Great Britain – not Venezuela – that introduced the documents and threatened to use them, both with Olney and the U.S. lawyers defending Venezuela, making it clear that it intended to make use of the confidential correspondence to oppose Venezuela's arguments. It was Great Britain which presented the documents to the Tribunal. Guyana's response – a mix of omissions and unsubstantiated allegations – reveals the absence of arguments to rebut Venezuela's contention.

5.76. These facts clearly establish that the conditions of Articles 48 (error) and 49 (fraud) of the VCLT are met. Venezuela was misled about the meaning of a critical clause. By keeping their correspondence confidential, the United States and Great Britain concealed to Venezuela the existence of an agreement about the interpretation to be given to Article IV. The error and fraud concerned an essential

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[370] GR, para. 2.76.

[371] Letter from Benjamin Harrison to Mallet-Prevost, dated 9 March 1899, **Annex 16**.

[372] *Ibid.*

part of the 1897 Treaty, as the determination of the relevant period for the calculation of the prescription was crucial for establishing the impact of the rule of prescription on Venezuela's aspiration to see its sovereignty over the disputed territory recognized by the Tribunal. Finally, Venezuela did not contribute to the error since it was not, and could not be, aware of the existence of a confidential correspondence between Great Britain and the United States. The disloyal attitude of the U.S. lawyers and advisors representing Venezuela both during the negotiations of the Treaty and during the arbitral proceedings further contributed to keep Venezuela in the dark about the true meaning of the prescription clause.

5.77. The error and fraud of which Venezuela was victim is also confirmed by the use made by Great Britain of another piece of confidential correspondence, concerning this time the 1850 Agreement between Venezuela and Great Britain.

5.78. In its Counter-memorial[373], Venezuela has provided ample evidence showing that, during the negotiations of the 1897 Treaty, the United States and Great Britain had agreed not to refer to the 1850 Agreement in the text of the Arbitration agreement. Venezuela was never consulted about this decision, as also attested by the fact that, once informed of the content of the draft text, the Venezuelan Foreign Minister requested that a reference to the Agreement be included in the Arbitration Agreement[374] – a request which remained dead letter. The confidential correspondence attesting the agreement on this point between the two negotiating States was later used during the arbitral proceedings for interpreting the content of the clause of the 1897 Treaty dealing with prescription.

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[373] VCM, paras. 5.62-5.67.

[374] Letter from Rojas to Andrade dated 9 December 1896, VCM, Vol. III, Annex 59. ("The third addition is as follows: 'The High Contracting Parties confirm the agreement concluded among them on the 18th of November and 20th of December of 1850, by which they declared that they had no intention of occupying any part of the territory in dispute, and that they would abstain from taking measures that could justly be considered as aggressive').

5.79. In its Reply, Guyana fails to provide serious arguments against the existence of such confidential agreement. It first observes that there is no evidence demonstrating that the letter of the Venezuelan Foreign Minister, which was addressed to the Venezuelan Ambassador in Washington, was ever communicated to the United States[375] – as if one should assume that the Ambassador of Venezuela had the authority of refusing to transmit the letter of the Venezuelan Foreign Minister to the U.S. authorities. Guyana is lying; there is evidence. Guyana omits Andrade's report to the Venezuelan Foreign Minister, Rojas, about its meeting with Olney.[376]

5.80. Guyana also insists that the omission of any reference to the 1850 Agreement had no consequences for Venezuela. This would be so, according to Guyana, because, by fixing in 50 year the period for prescription, Olney would have ensured that the 1897 Treaty preserved the force of that Agreement[377].

5.81. This argument is entirely without merit. It fails to recognize the critical role of the 1850 Agreement in determining the starting point for the prescription period. This is a crucial point, as an express reference to the 1850 Agreement in the 1897 Treaty would have provided a decisive argument for interpreting the Treaty to the effect that the starting point could not be 1897, as claimed by Great Britain, but have been earlier, namely before 1850. This is because the 1850 Agreement, by binding both Venezuela and Great Britain not to occupy the disputed territory, prevented Great Britain from asserting that prescription could run during the period

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[375] GR, para. 2.71.

[376] "Mr. Olney found all the additions commendable, save the one regarding prescription, about which he expressed with some discouragement that he deemed it superfluous, believing such an interpretation as that which concerned Venezuela to be neither possible nor likely, and that, without need, it would give occasion for Great Britain to delay us with a discussion lasting months or perhaps years, from which no benefit would ultimately result. I hinted that if such were his view, I would not insist upon submitting the aforementioned clarification to the British Ambassador—and with a nod unmistakable in its meaning, he approved of such disposition." *See* Letter from José Andrade to Pedro Ezequiel Rojas, dated 28 December 1896, **Annex 39**.

[377] GR, para. 2.74.

in which the Agreement remained in force. In other words, an occupation since 1847 would have been interrupted after three years and, therefore, could not create any title to the disputed territory.

5.82. Venezuela has consistently emphasized the importance of the 1850 Agreement in determining the applicable prescription period. Indeed, during the proceedings before the Arbitral Tribunal, Venezuela maintained the view that prescription could not run during the period covered by Agreement[378].

5.83. Yet, the agreement between Great Britain and the United States "not to give the Agreement of 1850 any status on the face of the Convention even by reference", as indicated in the confidential letter of Secretary of State Olney of 29 October 1986[379], deprived this argument of much of its force. The letter, which was disclosed during the proceedings, diminished the importance to be accorded to the 1850 Agreement. It even allowed to raise doubts as to its continued validity. Great Britain did not fail to exploit this circumstance. As reported in the Counter-memorial, Great Britain claimed before the Tribunal that the Agreement had come to an end before 1886 and that the critical date for the purposes of the prescription period was only the date of the conclusion of the Treaty[380].

5.84. The existence of confidential correspondence concerning the status of the 1850 Agreement in the relation to the Arbitration Treaty confirms that Venezuela was induced into error and was a victim of fraud when giving its consent to the Treaty. For this reason, the 1897 Treaty is to be regarded as null and void.

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[378] *Arbitration between the Governments of Her Britannic Majesty and The United States of Venezuela Proceedings*, Vol. VII, Paris, 1899, pp. 2041-2051.

[379] Strictly personal letter from Richard Olney, Secretary of State, to Sir Julian Pauncefote, British Ambassador in Washington, 29 October 1896, Ministerio de Relaciones Exteriores Republica de Venezuela in Report on the Boundary Question with British Guiana submitted to the National Government by the Venezuelan Experts, 1967, p. 40 (VCM, Vol. IV, Annex 150).

[380] VCM, para. 5.67.

D. THE AWARD IS INVALID BECAUSE THE TRIBUNAL FAILED TO STATE THE REASONS ON WHICH IT WAS BASED

5.85. In its Counter-memorial Venezuela has demonstrated that the absence of any reasoning in the 3 October 1899 Award is, by itself, sufficient ground to declare the Award null and void. Two distinct arguments support such conclusion.

5.86. First, as set out in paras 6.60-6-71 of Venezuela's Counter-memorial, international law imposes on adjudicator a duty to state the reasons for an award. Failure to state the reasons is a recognized ground of invalidity of the award.

5.87. In its Reply, Guyana offers no new rebuttal, merely confining itself to repeating what it had already written in its Memorial. Its position hinges a single contention, namely that the law in force at the time when the Award was rendered allegedly did not require that an award be reasoned and did not recognize the absence of reasons as a ground of invalidity of an award.

5.88. Guyana seems to suggest that at the relevant epoch there was no consensus among states about the existence of a duty to state the reasons for an award. It refers to the 1899 Hague Peace Conference to support its contention[381]. But this argument collapses under scrutiny. The principal opposition at the Conference came from the Russian delegate, Martens. In its Counter-memorial Venezuela had detailed how Martens' objections were isolated and unpersuasive.[382]. It suffices here to note that Martens' opposition remained an isolated voice. In fact, legal scholars widely agree that the 1899 Hague Conference marked the formal establishment of the duty to give reasons[383]. Writing in 1903, Alvarez could observe that "[l]'opinion des

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[381] GMM, para. 8.33 and GR para 3.13.

[382] VCM, paras. 6.74-6.76.

[383] Castberg, 'L'excés de pouvoir dans la justice internationale' (1931) 35 *Recueil des cours* 353, at p. 389 ("La règle d'après laquelle les sentences arbitrales doivent être motivées fut définitivement consacrée par le droit international positif en vertu de l'article 52 de la Convention de 1899 pour le Règlement pacifique des conflits internationaux").

publicistes est unanime sur ce point. Toute sentence doit être motivée, sauf dispense expresse dans le compromise"[384].

5.89. While the 1875 Resolution of the *Institut de droit international* recognizes a duty to state the reason, it does not list the lack of reasons as an autonomous ground of invalidity of an award. Yet, this is more a question of form than substance. An overview of the scholarly consensus at the time reveals that while certain authors regarded the lack of reasons as an autonomous ground of invalidity of awards[385], others qualified it as a species of excess of power – a ground of invalidity which is, in fact, expressly mentioned in the 1875 Resolution[386]. Either way, an unreasoned award was invalid.

5.90. This also finds indirect confirmation in the Court's judgment in Arbitral Award made by the King of Spain. Contrary to what Guyana alleges, the lack of reason was very much at issue in that case. The Court did address Nicaragua's claim concerning "the alleged lack or inadequacy of reasons in support of the conclusions arrived at by the arbitrators"[387]. The fact that the Court did not elaborate on whether this was a recognized ground of invalidity simply reflects that the parties themselves were, on this point, in agreement[388].

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[384] Alvarez, 'Des occupations de territoires contestés: A propos de la question de limites entre le Chili et la République Argentine' (1903) 10 *Revue générale de droit international public* 651, at p. 681.

[385] Fiore, *Le droit international codifié et sa sanction juridique*, Paris, 1890, p. 294; Pierantoni, "La nullité d'un arbitrage international" (1898) 30 Revue de Droit International et de Législation Comparée, p. 459.

[386] Castberg, 'L'excés de pouvoir dans la justice internationale' (1931) 35 *Recueil des cours* 353, at p. 389; Balasko, *Causes de nullité de la sentence arbitrale en droit international public*, Paris, 1938, p. 273.

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

[388] *Arbitral Award made by the King of Spain on 23 December 1906, Judgment, I.C.J. Reports 1960*, p. 346. (Röling) (*see* also https://www.icj-cij.org/sites/default/files/case-related/39/039-19600915-ORA-01-00-BI.pdf).

5.91. Guyana devotes also considerable energy in showing that the Arbitration Treaty of 1897 does not contain any explicit reference to the duty of the arbitrators to state the reason for the award[389]. The omission, however, is simply irrelevant, as under international law applicable at the time existed independently of treaty language. Arbitrators, therefore, were under a general duty to state the reasons for the award. The only question is whether the Treaty explicitly relieved the Tribunal of that duty – which it did not.

5.92. In its Counter-memorial Venezuela has already demonstrated that the structure and content of the 1897 Treaty strongly imply an expectation that the Tribunal would provide a reasoned decision[390]. The fact that the Treaty, in a very detailed way, indicated the rules to be applied to adjudge the case, together with the fact the arbitrators had been selected on the basis of their legal expertise and background, all militate in favour of this reading.

5.93. This expectation is also confirmed by contemporaneous statements. Of particular importance, in this respect, is a statement made at The Hague Peace Conference in 1899 by the representative of the United States a few months before the Tribunal rendered its award. Replying to Martens, who had expressed his opposition against the possibility that an award of an arbitral tribunal be subject to revision, Mr Holls observed:

> "Before the decision has been rendered it is not always possible to know what species of fact or what argumentation has made the greatest impression upon the judges and has determined their decision. Take, for example, the question in controversy at this moment before the court of arbitration of which our honourable colleague from Russia is acting so worthily as president - the question of the frontier between British

[389] GMM, paras. 8.20-8.29; GR, para. 3.10.
[390] VCM, paras. 6.63-6.67.

> Guiana and Venezuela. In this case the delay of three or six months could not be truly called anything but minimal, in view of the fact that this difference has existed and gone on for three or four years, and, in a form more or less obscure, for more than eighty years. It would therefore be unimportant whether the decision should be rendered on the first of October or the first of January, by comparison with the danger arising from a manifestly erroneous or unjust decision. Among other things this controversy implies the interpretation of treaties made more than two hundred and fifty years ago; it includes a great number of historical precedents, or questions about colonization, of jurisdiction over the barbarous tribes, as well as questions of the weight and authority to be given to different maps. Upon these latter both parties will lay great stress, in order to prove that their contentions have already been recognized and admitted. Up to the moment of the decision of the tribunal it will be impossible to know what kind of facts and what argumentation have determined the award"[391].

5.94. As this passage makes clear, the representative of the United States clearly expected that the award of the Tribunal presided by Martens would set "the facts and argumentation" at the basis of the decision. In other words, he expected a reasoned award. The statement is all the more telling since it comes from the representative of the very state which had negotiated the treaty.

5.95. In sum, the 1899 Arbitral Award was rendered at a time when the duty to state the reason for an award was widely recognized by states and on the basis of an arbitration treaty which, because of its specific features, clearly created an expectation that the Tribunal would provide reasons for its decision.

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[391] J.B. Scott, *The Proceedings of the Hague Peace Conference*, 1920, pp. 621-622.

5.96. Guyana nevertheless contends that these circumstances are insufficient to conclude that the 1899 Arbitral Award was invalid for absence of reasons. To support its contention, it refers to the arbitration practice of the 19th century, in an attempt to show that unreasoned awards reflected the norm at the time the 1899 Arbitral Award was rendered.

5.97. But Guyana's argument amounts to little more than the collection of unrelated and contextually irrelevant arbitral decisions. The examples it cites either predate the evolution of modern arbitration law or, for the specific features of the concerned arbitral agreements, are entirely inapposite.

5.98. The awards in the River Saint Croix and in Decision under Article IV of the Treaty of Ghent cases[392] were rendered respectively more than a century and more than eighty years before the 1899 Arbitral Award – at a time when international arbitration was still in its infancy. In the Halifax Fisheries Commission and in Award by the Venezuela-United States Mixed Commission at Washington cases,[393] the arbitrators were requested to decide the claims submitted to them "in accordance with justice and equity"[394]. As already observed in Venezuela's Counter-memorial[395], where a *compromis* authorized an adjudicator to decide *ex aequo et bono*, arbitrators often did not consider it necessary to issue reasoned decisions. In the Demarcation of the Puna de Atacama boundary between Argentine Republic and Chile case[396], it was the *compromis* which dispensed the arbitrators from rendering a reasoned award. As Guyana admits, "Article IV of the

[392] GR, pp. 179-182.
[393] *Ibid.*, pp. 182-184 and pp. 186-188.
[394] H. La Fontaine, *Pasicrisie Internationale 1794-1900, Histoire documentaire des arbitrages internationaux*, 1902, p. 149 and p. 421.
[395] VCM, para. 6.66.
[396] GR, pp. 188-189.

1898 Agreement provided that there should be a statement of reasons only for a dissenting opinion"[397].

5.99. Confusingly, Guyana's list also includes decisions that do, in fact, contain statements of reasoning. This is clearly the case, as Venezuela already observed in its Counter-memorial[398], for the awards rendered in the Bering Sea Fisheries and in the San Domingo Improvement Company Claims cases[399]. During the 1899 Hague Conference Martens himself cited the Bering Sea award as an example of a reasoned decision acknowledging that some members of the tribunal refused to sign the award precisely because it included reasons"[400]. The same objection applies to the award rendered in The Alaska Boundary Case. This award cannot plausibly be regarded – and was not, in fact, regarded by contemporary commentators[401] - as an unreasoned award, since it was accompanied by the opinions of each arbitrator, spanning over more than forty pages and explaining the reasons of their decision[402].

5.100. As previously noted, Venezuela advanced in its Counter-Memorial two independent and parallel arguments to show that the absence of reasons renders the 1899 Arbitral Award invalid. Guyana's Reply fails to meaningfully challenge the first and ignores the second altogether.

5.101. In its Counter-memorial, Venezuela has shown that, depending on the circumstances, the lack or the inadequacy of reasons in support of an award creates a presumption that the arbitrators did not comply with the conditions established by the *compromis* and justifies the conclusion that the award is invalid for excess of

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[397] GR, p. 189.
[398] VCM, para. 6.70.
[399] GR, pp. 184-186 and 191-192.
[400] J. B. Scott, *The Proceedings of the Hague Peace Conference*, 1920, p. 748.
[401] L. Rolland, in *Revue générale de droit international public*, t. 11, 1904, p. 210.
[402] *The Alaska Boundary Case (Great Britain, United States of America), Award of the Alaska Boundary Tribunal,* 20 October 1903, *UNRIAA,* Vol. XV, pp. 496-535.

power.[403] Referring to the question of the validity of the 1899 Arbitral Award, Paul Reuter observed that "[l]a question de savoir si l'absence de motivation était en elle-même contraire aux règles applicables à cet arbitrage est moins importante que celle de savoir si la sentence a été fondé sur des procédés entièrement étrangers aux normes posées par le compromis du 1897 et au demeurant incompatibles avec les méthodes arbitrales"[404].

5.102. In its Counter-memorial Venezuela has already shown that the Tribunal exceeded its powers by deviating, on multiple issues, from the terms assigned to it by the arbitration treaty[405]. The next section of this Chapter will further develop on this. Any interpretation in this regard can only be based on the simple fact of the absence of reasons for reaching the same conclusion, namely that the 1899 Arbitral Award is invalid for excess of power.

5.103. The idea that lack of reasoning may prove an excess of power was already recognized at the time the Award was rendered[406]. Balasko qualifies this situation as excess *de pouvoir par omission*, since, by omitting to give the reasons for their decisions, the arbitrators make it impossible to determine whether they applied the rules which the *compromis* required them to apply in reaching their decision[407].

5.104. The 1899 Arbitral Award falls squarely within this category of excess *de pouvoir par omission*. In this case the *compromis* fixed rigid instructions to the arbitrators. Articles III and IV of 1897 Arbitration Treaty established in detailed way the rules that they were required to apply and the order in which the different

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[403] VCM, paras. 6.72-6.85

[404] P. Reuter, "La motivation et la révision des sentences arbitrales à la Conférence de la paix de la Haye (1899) et le conflit frontalier entre le Royaume-Uni et le Vénézuéla", in *Mélanges Offerts À Juraj Andrassy*, Springer, Dordrecht, p. 247.

[405] VCM, paras. 6.86-6.190.

[406] *See* VCM, para. 6.73.

[407] Balasko, *Causes de nullité de la sentence arbitrale en droit international public*, Paris, 1938, p. 273.

issues were to be addressed in order to decide the territorial dispute between Venezuela and Great Britain. The Award, however, provides no indication of whether these terms were observed. As a result, it is impossible to ascertain whether the Tribunal acted within its mandate – rendering the Award invalid for excess of power.

5.105. This conclusion is all the more compelling in the light of contemporaneous evidence showing that the president of the Tribunal, Martens, was well aware of the implications of being required to issue a reasoned decision. At the Hague Peace Conference, he took a strong position against the recognition of such obligation, presenting it as "a hindrance from a practical point of view"[408], "an obstacle in the way of an absolutely just decision"[409]. As other scholars have noted[410], it is difficult not to see that the position of Martens reflected his concerns as regards the decision that the Tribunal presided by him would have rendered a few months after. Given the strict conditions imposed by the 1897 Treaty, a reasoned award represented in his eyes "a hindrance from a practical point of view", for his objective was to reach "an absolutely just solution", irrespective of whether such solution was the result of a rigorous application of the terms of the *compromis*.

5.106. In conclusion, Guyana's response to Venezuela's arguments on the invalidating the 1899 Arbitral Award consists largely of repetition and omission. It fails to rebut Venezuela's central argument that, under the international law applicable at the time, absence of reasons constituted a ground for invalidity. Worse still, Guyana offers no reply at all to Venezuela's equally valid argument that, in

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[408] J. B. Scott, *The Proceedings of the Hague Peace Conference*, 1920, p. 748.

[409] *Ibid.*, p. 615

[410] P. Reuter, "La motivation et la révision des sentences arbitrales à la Conférence de la paix de la Haye (1899) et le conflit frontalier entre le Royaume-Uni et le Vénézuéla", in *Mélanges Offerts À Juraj Andrassy*, Springer, Dordrecht, p. 246.

the circumstances surrounding the flawed Arbitral Award, the absence of reasons provides compelling evidence that the Tribunal exceeded its powers.

E. THE AWARD IS INVALID BECAUSE THE TRIBUNAL MANIFESTLY EXCEEDED ITS POWER

5.107. The Geneva Agreement paved the way for a negotiated, mutually acceptable solution to the dispute for a further reason. The 1899 Arbitral Award could not be the final word, because the Tribunal that issued it had manifestly exceeded its powers.

5.108. On pp. 270-310 of its Counter-Memorial, Venezuela detailed multiple, often glaring instances of excess of jurisdiction committed by the Tribunal. Guyana's response to this detailed account is selective, superficial, and scattered. Its main engagement with these serious allegations is confined to just over four pages in a section tellingly titled "An Alleged Excess of Power",[411] where Guyana comments briefly on two of Venezuela's claims; some further responses are found scattered over chapter 3 of Guyana's Reply.

5.109. Tellingly, Guyana now concedes a key point it had previously downplayed: that in "[i]n the performance of the task entrusted to it, the tribunal 'must conform to the terms by which the Parties have defined this task'",[412] and that a manifest failure to conform to these terms renders an award invalid for excess of power. This is a useful clarification, which establishes a common baseline against which the 1899 Arbitral Award is to be assessed.

5.110. As regards the Tribunal's approach, Guyana's Reply in relevant aspects concedes central points made in Venezuela's argument, and where it chooses to

[411] GR, pp. 85-90.
[412] *See e.g.* GR, p. 84, para. 3.39.

engage, fails to rebut them. Put simply, Guyana's Reply does not meaningfully challenge Venezuela's argument set out in the Counter-Memorial. In fact, Guyana occasionally seeks to use in its favour the fact that the Tribunal had not rendered a reasoned Award - and thus could obviously not be faulted.[413] Yet this is disingenuous, ignoring the fact that the absence of reasons (as noted above[414]), is a factor supporting the view that a Tribunal had failed to comply with the conditions established by the *compromis*.

5.111. In light of Guyana's Reply, Venezuela affirms its position articulated in the Counter-Memorial, namely that no less than five excesses of power committed by the Tribunal render the Award invalid, namely

- first, the Tribunal's failure to respond to one of the questions put to it in Article III;
- second, its failure to apply the Rules it was tasked to apply under Article IV, or ignored the meaning of the rule without giving any reasoning whatsoever;
- third, its decision to overstep the limits of powers, as defined in Articles I and III, and instead decide on matters falling outside of the Washington Treaty;
- fourth, its failure to act impartially, in violation of Article V; and ultimately,
- fifth, its failure to render an award based on international law.

5.112. Venezuela addresses each of these points in turn.

[413] GR, pp. 85-90.

[414] *See supra* paras. 5.85-5.106.

1. The Tribunal failed to respond to one of the questions put to it in Article III

5.113. On pp. 275-282 of the Counter-Memorial, Venezuela has shown that the Tribunal failed to" conform to the terms [of Article III of the Treaty of Washington] by which the Parties have defined this task".[415]

5.114. Under Article III, the parties required the Tribunal to perform two tasks and answer two questions:

> "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 Guyana, and shall determine the boundary line between the Colony of British Guiana and the United States of Venezuela".

5.115. While the tribunal answered the second question, by drawing a boundary, it failed entirely to address the first, namely, which territories were lawfully claimed by Spain or the Netherlands in 1814. This is an omission that would later be described as a "serious dereliction of [its] duties … and no doubt … a valid ground for a nullity claim".[416]

5.116. Guyana does not dispute the principle that a Tribunal's failure to comply with the obligations stipulated in its *compromis* constitutes a ground of nullity of arbitral awards. Yet, it attempts to explain away the Tribunal's 'dereliction of duty' by asserting that all the Tribunal had to do was to determine the boundary line. This,

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[415] VCM, paras. 6.97-6.108.

[416] Wetter III, 345

however, is to use Guyana's own words, 'plainly at odds with the text'[417] and with the Washington Treaty.

5.117. As Venezuela made clear in its Counter-Memorial, the ascertainment of title and the determination of a boundary line are distinct legal questions. As Jennings and Watts explain in Oppenheim's International Law, disputes over title concern 'the fact and mode of acquisition of territorial title', whereas boundary disputes concern 'the proper interpretation of some instrument, award or adjudication, or course of historical development, that is claimed to have established the boundary of the territory in question'.[418] While the two issues may arise, and often do arise, in the same case, they are distinct and involve different legal assessments. Guyana does not – because it cannot – dispute this fundamental distinction.

5.118. The British-Venezuelan dispute plainly raised questions over title and required the identification of a boundary line. Article III of the Washington Treaty thus required the Tribunal to answer both. It did so by imposing on the Tribunal two duties, each formulated with the mandatory verb 'shall': the Tribunal 'shall' investigate and ascertain title and 'shall' determine the boundary line. But Guyana chooses to see only the latter, arguing that the Tribunal was asked to make only one determination: the boundary. This is totally incorrect. The Tribunal was also required to 'ascertain' which State had title over it. Unable to ignore this express duty, Guyana attempts to downplay it by reading words into Article III: in Guyana's retelling, the Tribunal was 'directed' to ascertain title only 'as a step towards determining the boundary'.[419] But these words appear nowhere in the text of Article III, or in any other provision of the Washington Treaty for that matter.

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[417] *See* GR, p. 81 at para. 3.32.
[418] Jennings & Watts, *Oppenheim's International Law* (9th ed, OUP 1996), Vol. I (Peace), 668-669.
[419] GR, p 82 para. 3.33.

5.119. Guyana deploys the same cherry-picking approach to its interpretation of Article IV.[420] Both paragraphs permitted the tribunal to rely on events subsequent to 1814 to establish title (the 50-year prescription rule) or determine and adjust the boundary line (possession by subjects of the other party). By implication, Guyana claims, there was no need to determine title-holding, only to investigate and ascertain it as a step towards determining the boundary. Guyana conveniently overlooks the rest of the text of Article IV, which expressly refers to the 'matters submitted' to the tribunal – in the plural.

5.120. Moreover, Guyana's argument ends up subordinating the ascertainment of title to the boundary determination: it turns the question of title into a mere procedural step in the determination of the boundary line. It is absurd to pretend that this is what the parties intended in the Washington Treaty. The dispute between Venezuela and Guyana was above all else about title: what mattered to them is which of the two States could lay a valid claim over the Essequibo region.

5.121. The record of the proceedings confirms that the parties understood that the Tribunal was tasked with answering the two distinct questions. President Harrison's argument made clear that the Tribunal's duty was not just to find the boundary line between the two parties, but it was also to ascertain title to the territory. This was a duty that the Tribunal could not 'put off'.[421] Lord Russell's letter also confirms that the Tribunal was very conscious of this. Guyana chooses to ignore this evidence, preferring instead to accuse Venezuela of 'newly-minting' this construction of the Washington Treaty in 2024.[422]

5.122. Guyana finally contends that the Tribunal allegedly complied with the requirements of Article III: it investigated and ascertained title and then determined

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[420] GR, p 82 paras. 3.33-34.
[421] *See* VCM, p. 276, para. 6.102.
[422] *See* GR, p. 82, para. 3.32.

the boundary. Yet, neither the Award nor Guyana provide the outcome of this supposed ascertainment. The Tribunal merely asserted that it 'investigated and ascertained', without explaining the result that its investigation and ascertainment had produced. The letters by President Harrison and Lord Russell referred to in the Reply offer Guyana no comfort. In his letter, Lord Russell notes that arbitrators had taken different views about the question of discovery, but does not suggest that the Tribunal had formulated a decision on the question of title.[423] Harrison's letter, in turn, focused on the question of possession – namely on a matter that was significant to the application of Article IV(c) on adjustments in the determination of the boundary, and not to the establishment of the title as such.[424]

5.123. Nothing in the history of this dispute, the Treaty of Washington, or the proceedings, suggest that the Tribunal could simply bypass the question of title to territory. Its failure to do so constitutes a dereliction of its duties as specified in the compromis: a failure to comply with its obligations, which resulted in the nullity of the award.

2. The Tribunal failed to apply the applicable law rules specified in Article IV

5.124. On pp. 282-288 of the Counter-Memorial, Venezuela has shown that the Tribunal failed to apply the applicable law rules specified in Article IV of the Treaty of Washington.

5.125. As Venezuela demonstrated, a tribunal can commit an excess of power by 'misinterpreting the express provisions of the [Arbitration] Agreement in respect of the way in which [the arbitrators] are to reach their decisions, notably with regard

[423] *See* GR, pp. 76-77, citing Letter from Lord Russell to Lord Salisbury (7 October 1899), in VCM, Volume II, Annex 67.
[424] *See* GR, pp. 77-78, citing the Letter from Mr. Harrison to Mr. Miller (7 October 1899), in VCM, Volume III, Annex 26.

to the legislation or principles of law to be applied'.[425] This is a central aspect of the 'terms by which the Parties have defined [the tribunal's] task', and to which the Tribunal must 'conform'.[426] It requires tribunals not merely to 'postulate' that they had abided by the terms, but to 'demonstrate' that they had been guided by them.[427] As Venezuela has also shown, it gains particular significance in the present dispute because in Article IV of the Treaty of Washington, the Parties formulated highly precise rules ('des règles fort précises') that were to govern the Tribunal's decision-making process.[428]

5.126. Guyana does not dispute any of these propositions. Instead, its Reply restricts itself to two points. First, Guyana takes issue with one aspect of Venezuela's reading of Article IV, asserting that the rules and principles mentioned in the provision did not have to be applied in a particular order.[429] Second, Guyana asserts that the Tribunal did in fact apply the Rules set out in Article IV(a) and Article IV(b) by adopting a boundary line that largely followed the Schomburgk line - all the while noting that, in an unreasoned award, the Tribunal naturally could not explain that this was the case.[430]

5.127. These speculative responses only highlight the problem. Guyana's brief comments show how carelessly the Tribunal carried out its mandate, and the laxity with which it disregarded the terms imposed upon it by the Parties in Article IV. Moreover, Guyana's speculation about the relevance of the Schomburgk line may be accurate or not - but it does not come close to establishing that the Tribunal was

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[425] *Orinoco Steamship Company Case (Annulment),* (1910) R.I.A.A., pp. 238-239.

[426] *Delimitation of the Maritime Boundary in the Gulf of Maine Area, Judgment, I.C.J. Reports 1984,* p. 246, para. 23.

[427] See *Klöckner v. Cameroon*, Decision on Annulment, 3 May 1985, para. 79. 238-239.

[428] P. Reuter, "La motivation et la révision des sentences arbitrales à la Conférence de la paix de la Haye (1899) et le conflit frontalier entre le Royaume-Uni et le Vénézuéla", in *Mélanges Offerts à Juraj Andrassy*, Springer, Dordrecht 1968, p. 238.

[429] GR, p. 84, para. 3.38.

[430] GR, pp. 83-84, paras. 3.37 and 3.39.

willing to conform to the terms imposed upon it by Article IV. Even taking Guyana's speculation at face value, there is no evidence that the Tribunal was guided by (in the terms of Article IV) the 'Rules ... agreed upon by the High Contracting Parties [to the Treaty of Washington] as applicable to the case'.

5.128. Proceeding from the text of Article IV and the submissions in the matter, it is clear that the Parties expected the Tribunal to base its decisions on a consideration of the following questions:

a. Had title been established via 'adverse holding or prescription during a period of fifty years', as envisaged in Rule (a) set out in Article IV? Could this have been done because of the 'exclusive political control of a district' or its 'actual settlement'?

b. Did the tribunal recognise claims based on other 'principles of international law', and if so, could it be shown that these were 'not in contravention' to the rule on prescription and adverse holding, as required by Rule (b) of Article IV?

c. Did the Tribunal, under Rule (c) of Article IV, have to 'give effect' to the 'occupation' of lands by 'subjects or citizens' of one party that were found to be on the other party's territory?

d. Finally, to the extent that the Tribunal considered to move beyond applicable law clauses of Rules (a), (b), (c), did it consider that other 'principles of international law' that may have guided its decisions were 'not inconsistent with' Article IV?

5.129. It is plain from a reading of the Award that the Tribunal did not give express answers to any of these questions. As set out in the Counter-Memorial and highlighted above, this in itself is indicative: it is difficult to ignore the conclusion

that 'se rendant compte de la difficulté d'expliquer sa décision sur la base [de l'Article IV], [le tribunal] s'en est volantairement abstenu'.[431]

5.130. From Guyana's Reply, it is equally plain that speculation about the reasons that may have informed the Award cannot mask the Tribunal's failure to comply with its duty. Nothing in Guyana's speculation comes close to explaining how a boundary largely following the Schomburgk line would have been based on the applicable law set out in Rules (a)-(c) of Article IV. To illustrate, was the Schomburgk line chosen because no party had made a case based on prescription and/or adverse holding in line with Rule (a)? Did the Schomburgk line reflect Great Britain's title according to prescription based on that Rule? If it was based on another consideration in line with Rule (b), why was that other consideration 'not in contravention with' Rule (a) on prescription and adverse holding? Were the minimal concessions agreed as part of the Tribunal's 'deal' based on Rule (c)?

5.131. Nothing in the Award, and nothing in Guyana's two rounds of written pleadings, provides any evidence that the Tribunal considered, let alone took seriously, 'the substance of its mandate'[432] under Article IV. For that reason, too, the Award is invalid.

3. The Tribunal acted inconsistently with the scope of its powers, by deciding matters falling outside of its competence

5.132. On pp. 288-295 of the Counter-Memorial, Venezuela has shown that the Tribunal acted inconsistently 'with the scope of its powers … by deciding matters falling outside of the Washington Treaty'.

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[431] *See* VCM, p. 287, para. 6.131 (citing Pierantoni, "La nullité d'un arbitrage international" (1898) 30 Revue de Droit International et de Législation Comparée, p. 459). On the presumptions flowing from an absence of reasons see already *supra*, paras. 5.85-5.106.

[432] *Arbitral Award of 31 July 1989, Judgment, I.C.J. Reports 1991*, p. 53, Diss.Op Weeramantry, p. 162.

5.133. As Venezuela demonstrated, the Tribunal went beyond its mandate in at least two instances. The Tribunal was required by Articles I and III of the Treaty to ascertain title over the Essequibo and determine the boundary between Venezuela and British Guiana. Having failed to answer one of these questions, it then went on to decide two further matters that were not within the scope of its powers. First, it determined the boundary between Brazil and British Guiana, a decision which contemporary commentators described as a 'grossière erreur'.[433] Second, it imposed a navigational regime for the rivers Amakuro and Barima, an imposition subsequently described as 'a blind, unauthorised excursion into an area wholly outside the conception of the draftsmen of the Treaty, the parties and their counsel',[434] and one which brought significant benefit to Great Britain.[435]

5.134. These are both manifest excesses of power by the Tribunal, which rendered the award null and void.

5.135. Guyana does not deny that a Tribunal acting outside of its competence constitutes a ground of nullity of its awards. Nor could it: this is a very well-established ground of nullity, which was undoubtedly accepted at the time of the Award. But Guyana's attempts to minimise the Tribunal's transgressions are to no avail.

5.136. As regards the navigational regime for the rivers Amakuro and Barima, Guyana no longer advances its (plainly implausible) argument that Article III

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[433] Nys, 'La revision de la sentence arbitrale', 1910, RDILC, Vol. 12, No 596, p. 614.

[434] Wetter III, pp. 345-346.

[435] A British official minute published immediately after the Award felt that the right to free navigation made up for the loss Barima Point: *see* Letter to Mr. Charles Prestwood Lucas (Asst. Under-Secretary of C.O.), dated 3 October 1899, **Annex 22**. In his correspondence with Chamberlain, Great Britain's lead counsel had intimated that he might 'press strongly for free passage ... on the Barima': *see* Letter from Richard Webster to Joseph Chamberlain, dated 15 July 1899, **Annex 20**.

provided a basis for the Tribunal's decision.[436] Instead it now seems to rely on Article IV(c) of the Treaty.[437] The imposition of this river regime, Guyana says, is 'entirely justifiable under Article IV(c)', which allowed adjustments to the boundary to account for settlements of either party who found themselves on the opposite side of the line. However, there is nothing in the text of this provision to support Guyana's argument: Article IV(c) expressly and unequivocally applies only 'in determining the boundary-line'. The Article contains not a single reference, even oblique, to the Tribunal's power to impose a navigation regime for the Amakuro and Barima rivers, or any other local rivers for that matter. What is more, there is nothing in the text of the Washington treaty, in the negotiations of this treaty, or in the proceedings before the Tribunal that in any way support Guyana's claim.

5.137. Guyana tries to get around this obvious obstacle to its argument by taking a statement from the Venezuelan written pleadings and interpreting it so widely that it would essentially give the Tribunal unlimited leeway to decide on any aspect of the 'relations' between the Venezuela and British Guiana. In its written pleading, Venezuela explained that Article IV(c):

> "recognizes the fact that when the territories of each party shall have been ascertained by the defining of the true boundary line, it might be found that the subjects or citizens of one party were at the date of the treaty actually settled upon territory thus ascertained to belong to the other. The question would then arise how, with the greatest fairness both 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; and it was accordingly provided in the Treaty that the

[436] *See* GMM, paras. 8.50-8.51.
[437] *See* GR, paras. 3.51-3.54.

> 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 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."[438]

5.138. According to Guyana, in this passage Venezuela would have granted the tribunal authority to decide at its own discretion 'the relations' between Venezuela and the UK, which 'naturally extended beyond the question of which State had title to the particular territory'.[439] From a fallacious argument Guyana concludes that, supposedly, it was 'natural' that the Tribunal should impose a river regime as an aspect of 'the relations between the two", since British subjects lived on both sides of the boundary, and used the Amakuro and Barima which crossed the boundary.

5.139. Yet there is nothing 'natural' about Guyana's interpretation. Article IV(c) was not an open-ended invitation, but a provision which - as part of the parties' agreement on detailed rules - contemplated potential adjustments to the boundary-line in light of specific factors, including settlers of either party finding themselves on the 'wrong' side of the border. It defined the purpose that such adjustment could only serve ('determining the boundary-line') and listed factors that could be drawn upon. To the extent that Venezuela's above-quoted statement, taken out of context by Guyana, is drawn upon, it can only be drawn upon within the parameters of

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[438] *Boundary between the Colony of British Guiana and the United States of Venezuela,* Printed Argument on Behalf of the United States of Venezuela (1898), Vol. I. p. 56 (as cited in GR, pp. 88-90, para. 3.51).

[439] GR, p. 88, para. 3.51.

Article IV(c). River navigation regimes simply did not come within these parameters.

5.140. Guyana further claims that Venezuela's Counter Memorial fails to explain why 'the tribunal could not consider itself authorized' to make adjustments in relation to the rivers.[440] But this misstates the issue. The relevant question is not whether the tribunal 'considered itself' authorized, but whether Venezuela actually granted it that authority. An authorization to the Tribunal to decide matters beyond the compromis would need to be clear and unambiguous, and given by someone capable of binding the Venezuelan State in this way. The US appointed counsel, who represented Venezuela in this arbitration, lacked any such authority to extent the Tribunal's mandate.

5.141. Besides, Guyana's interpretation stretches the statement to an absurd extreme. Under Guyana's reading, the Venezuela's US-appointed counsel would have unilaterally authorised the Tribunal to rule on any aspects of 'the relations between' the UK and Venezuela, provided it was linked to settlements of one State in the territory of the other.

5.142. By this logic, Venezuela would have empowered the Tribunal to decide on questions concerning taxes, nationality, trade, jurisdiction, and so on, so long as the Tribunal deemed this relevant to the 'relations' between the two States. Such an expansive reading of a short paragraph in the Venezuelan written statement finds no support in the text itself, or in the proceedings as a whole, and is wholly untenable.

5.143. The upshot of all this is that the Tribunal was not authorized by the Treaty, and it was not so authorized by either of the parties. Guyana's interpretation of a statement made by Venezuela, taken out of its clear context (adjustments to the

[440] GR, p. 89, para. 3.52.

boundary in line with Article IV(c)) in no way amounts to an authorization to impose a river regime. If the Tribunal had considered itself so authorized it ought to have clarified the basis of its purported authority. Yet it failed to do so - without a doubt, because it would have had no basis upon which to ground its alleged authority.

4. The Tribunal failed to act impartially as it was required to do under Article V of the Washington Treaty

5.144. On pp. 295-299 of the Counter-Memorial, Venezuela showed that the Tribunal failed to act impartially, as was it required to do under Article V of the Washington Treaty. Article V of the Treaty required that the Tribunal 'proceed impartially and carefully to examine' the questions posed to it by Article III, in light of the rules stipulated by Article IV. The documentary evidence shows that arbitrators and counsel – none of which were appointed by Venezuela itself, as it was denied all agency in these proceedings – engaged in extra-judicial communications with one another. This evidence is sufficient to raise a reasonable doubt as to the arbitrators' impartiality, thus rendering the award null and void.

5.145. Guyana offers no response to this allegation. It simply accuses Venezuela of engaging in pure rhetoric, while itself evading the central issue: unable to deny the breach of Article V by the Tribunal, it engages in deflections. Where Venezuela raises evidence that justify doubting the Tribunal's impartiality, Guyana responds that it was well-known that maps were doctored, that there is no evidence of fraud, or that if there was not impartiality it benefited Venezuela. But a breach of Article V does not depend on whether maps were forged, or whether fraud occurred, or even whether one party gained an advantage. Rather, a Tribunal may be justifiably perceived as not acting impartially, even in the absence of all these issues.

5.146. What is required of Tribunals is to act in such a way that no reasonable observer would doubt its impartiality. That standard is not in dispute. Nor is the

principle that a failure to meet it renders an award invalid. On these agreed criteria, the Tribunal's conduct falls short — and Guyana's Reply, which fails to deny or rebut the factual basis of Venezuela's claim, leaves the violation uncontested.

5.147. To illustrate, Guyana seeks to deny that any communications between British appointed arbitrators and counsel took place.[441] It argues that the various letters raised in Venezuela's Counter-Memorial do not prove that communications took place, and indeed that that these letters prove the absence of communications between them. It is not clear how letters in which British counsel casually mentioned they would convey the favoured British position to the British appointed arbitrators prove the 'absence of such communications'.[442] Guyana's argument is as flawed as claiming that a note saying 'I will call you later' proves that no call ever happened.

5.148. On the contrary, the only reasonable inferences that can be drawn from these letters are that communications did take place between British counsel and British arbitrators. Mr. Webster clearly stated his intention to write to 'our arbitrators' using the modal verb 'shall', a clear expression of commitment rather than mere possibility. The letters also refer to these communications in a very casual manner, as if they were entirely routine in such circumstances. The most likely inference, therefore, is that the specific communications mentioned, and possibly broader communications, took place between British counsel and arbitrators. If a person says to another 'I shall call you tomorrow', any reasonable observer would be more justified in thinking that the call had been placed than that it was not placed. The same applies here. Whether the specific communications mentioned by Mr. Webster did indeed take place is beside the point. What matters is that this evidence

[441] GR, pp. 92-93, para. 3.61-3.62.
[442] GR, p. 93, para. 3.62.

raises – as it unquestionably does – a justifiable doubt as to the impartiality of the Tribunal.

5.149. Guyana tries to downplay the relevance of communications between British counsel and British arbitrators by arguing that at the time it was normal for arbitrators to 'represent' their own country in proceedings.[443] But this candid admission is no answer to the charge of partiality – it rather concedes the point. The Washington Treaty imposed a clear and express duty on the Tribunal to act impartially, and by implication its arbitrators were required not to represent their States of nationality or champion their State of nationality's interests. As set out in the Counter-Memorial, this duty was particularly important to Venezuela for it had been denied all agency in these proceedings, including by being denied to have Venezuelan arbitrators on the Tribunal, a point which, as General Harrison explicitly noted in direct opposition to Professor de Martens' approach accepted by Guyana, "distinctly excludes the idea of representation, for when that idea is allowed, the representation is direct and equal".[444] Guyana's admission not only ignores the parties' expectations of the arbitral process, but further substantiates Venezuela's justifiable doubts as to the impartiality of the arbitrators: despite the express and clear duty in Article V of the Treaty, there seems to have been no hope – from the very start – that the Tribunal would conduct itself in a manner that was consistent with the duty of impartiality.

5.150. Seeking to refute justified perceptions of partiality, Guyana notes that US American arbitrators communicated with Venezuelan counsel, and that for this reason, Venezuela is 'not in a position to complain'.[445] But Guyana's focus on these

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[443] *See* GR, p. 66, para. 3.6 (where Guyana approvingly cites Professor de Martens' view that "arbitrators are not only judges; they are also representatives of their Governments.")

[444] S*ee Arbitration between the Governments of Her Britannic Majesty and The United States of Venezuela, Proceedings*, Verbatim Record, p. 2984, and further VCM, pp. 224-227.

[445] GR, pp. 93-94, paras. 3.64-3.67.

communications, and their alleged advantageous effect for Venezuela, are but attempts at deflection. The fact that Venezuela retained sovereignty over the mouth of the Orinoco River is a meagre outcome that pales in comparison with the benefit Great Britain derived from this arbitration: more territory than it had ever claimed, plus rights of navigation on Venezuelan territory,[446] an outcome that an American observer closely involved in the arbitration felt "takes my breath away".[447] All of this is, in any event, beside the point for present purposes: the question is not whether any extra-judicial communications resulted in advantages for one party or another. It is that the mere existence of these communications taints the proceeding by raising doubts as to the impartiality of the arbitrators' conduct.

5.151. As is clear from these considerations, Guyana's response does not dispel the evidence presented by Venezuela regarding the lack of impartiality. On the contrary, by openly conceding that arbitrators were considered at the time as 'representatives' of their State of nationality, it has further substantiated Venezuela's well-grounded doubts about the conduct of the Tribunal. The Tribunal failed to live up to the duty imposed on it by Article V of the Treaty, and accordingly its award is invalid.

5. The Tribunal failed to comply with its duty to render a decision based on law

5.152. Of all the Tribunal's failings, none is more serious than its failure to render a decision based on law. On pp. 299-308 of its Counter-Memorial, Venezuela showed that the Tribunal failed to comply with its duty to do so. This is the most

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[446] To illustrate, in a British official minute published immediately after the Award the loss of 'Barima Point [was considered] worthless as we are given the free navigation of the Barima and Amakura Rivers. ... On the other hand the award appears to make the north bank of the Cuyuni where the boundary follows that river, the boundary thereby giving us the river whereas we have I think hitherto never claimed more than a share of the river as far as midstream': *see* Letter to Mr. Charles Prestwood Lucas (Asst. Under-Secretary of C.O.), dated 3 October 1899, **Annex 22**.

[447] *See* Letter from George L. Burr to White, dated 30 September 1899, **Annex 21**.

fundamental of the Tribunal's excesses of power: it is a defect that affects the core of the dispute settlement function of arbitration. It also made a mockery of the parties' desire for a 'judicial' decision guided by international law, which were reflected in the specific guidance set out in Article IV and upon which Venezuela, lacking arbitrators of its nationality on the bench, depended in particular.[448] Former President Harrison put the point powerfully to the Tribunal in a quote which is worth re-stating in full:

> "[T]he purpose of this Treaty Arbitration was to bring in just this judicial element, and to exclude the representative element which has appeared in many former arbitrations [...] There is no Venezuelan here. This latter provision distinctly excludes the idea of representation, for when that idea is allowed, the representation is direct and equal. Venezuela, then, Mr President, comes to this tribunal as to a great court. She gives to each member of it her fullest confidence, and submits her case to be judged upon the principles of international law and the rules of the treaty, and not to be compounded or compromised upon suggestions of political expediency."[449]

5.153. Guyana's Reply does not deny that the Washington Treaty required the Tribunal to decide on the basis of law, and that the failure to decide on the basis of law is an excess of power entailing the invalidity of the Award. Guyana does, however, attempt to normalize the Tribunal's conduct, portraying the outcome as the result of 'compromise achieved to obtain unanimity',[450] and seeking to recast the conduct of the Tribunal's members as a normal part of decision-making taking place in arbitral or judicial institutions. Guyana notes that 'no one needs to explain

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[448] *Verbatim* Records, p. 2983, quoted in VCM, 302 (para. 6.165).
[449] *Verbatim* Records, p. 2984, quoted in VCM, 302 (para. 6.165).
[450] GR, p. 80, para. 3.28.

to the Court that consensus-building is a common practice enabling judicial bodies to reach a majority, in order to render a decision'.[451]

5.154. Venezuela is well aware that decision-making in judicial or arbitral tribunals may require compromise. But as Venezuela made clear in the Counter-Memorial,[452] this may not be read so extensively as to empower international courts and tribunals to dispense with the duty to render an award based on law. Compromise, in other words, is to be reached within the parameters of the law, not at the expense of law: it is (in the words of Hersch Lauterpacht) 'circumscribed by the duty to apply the existing law'.[453] The conduct of the members of the Tribunal failed to uphold this fundamental duty.

5.155. Guyana argues that the Tribunal's decision was grounded in law because it was reached at the end of legal proceedings;[454] because the arbitrators adopted a law-based reasoning, albeit with some compromise;[455] and because President Martens' perceived it to be a 'moral duty' to achieve a unanimous award.[456] But this argument fails. It does not respond to Venezuela's central contention: that the Tribunal departed from the legal framework established by the parties and issued a decision rooted not in law, but in compromise at the expense of legal reasoning. To the detailed evidence supporting this conclusion, set out in Venezuela's Counter-Memorial, Guyana offers no meaningful reply.

5.156. Rather than repeating the evidence, Venezuela limits itself to recalling four essential building blocks of its argument, which are not disputed:

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[451] GR, p. 75, para. 3.19.
[452] *See* VCM, para. 6.161.
[453] *See* Hersch Lauterpacht, *The Development of International Law by the International Court of Justice* (1958), 399.
[454] GR, p. 76, para. 3.20.
[455] GR, pp. 76-79, paras. 3.21-3.25.
[456] GR, pp. 79-80, paras. 3.26-3.28.

- First, following the hearings, which had addressed complex legal and factual matters, the Tribunal issued its Award in less than a week.

- Second, in this Award, the Tribunal - while asserting that it had heard the parties' arguments - did not offer any trace of legal reasoning that could help understand how it arrived at its decision. The Award plainly contradicts Guyana's assertion that the decision was based on law.

- Third, the uncontroverted record shows that, in reaching its decisions, the members of the Tribunal eventually accepted a line identified by the President which was (as a commentator would later note) not based 'on a process of legal reasoning'.[457] As detailed in Venezuela's Counter-Memorial, drawing on the contemporary evidence provided by observers directly exposed to the threats (such as Lord Russell), President de Martens in separate meetings outside the Tribunal's formal deliberations, threatened the British and American arbitrators: unless they accepted his compromise line, he would support the opposing side's territorial claims in full.

- Fourth, the record further shows that, faced with this pressure, the members of the Tribunal eventually abandoned whatever legal conclusions they had previously reached, out of fear that President de Martens would side with the other side. Just as President de Martens made no attempt to justify his line by reference to legal principle, so none of the arbitrators pretended they had been persuaded by anything

[457] Wetter III, p. 348. For details of the methods by which President Martens secured acceptance of his proposed line see VCM, paras. 5.116-5.123.

except pressure and threat. Legal reasoning was absent; political coercion prevailed.[458]

- Fifth, in his obsessive quest to achieve for the first time in the contemporary history of arbitration a unanimous decision, the President of the Tribunal, Professor De Martens, in addition to exerting undue pressure on the other arbitrators, ended up violating not only the very nature of the arbitration governed by the Washington Treaty as an arbitration at law, but also the requirement to state the grounds for the award, as set out both in general rules of international law and implicitly in the Washington Treaty itself.[459]

5.157. Guyana's Reply seeks to deflect from this uncontested evidence, but its attempts at deflection only throw the Tribunal's political bargaining into starker relief.

5.158. To illustrate, Guyana argues that the proceedings preceding the Award had been conducted in a 'legal' manner. Quite to the contrary, contrasted to the parties' insistence on legal principle and depth of legal argument,[460] the non-legal character of the Tribunal's decision-making is particularly plain.

5.159. Guyana also asserts that, based on Lord Russell's correspondence, the members of the Tribunal formed at some point their own legal assessment of the parties' opposing arguments. From the evidence set out in Venezuela's Counter-Memorial, it is clear that whatever legal assessment might have been formed at

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[458] *See* Judge Brewer's Opinion in the New York Times, dated 5 October 1899, **Annex 38**.

[459] *See* Excerpts of the Private Diary Entries of Professor Fyodor Fyodorovich Martens, 4 June 1899-3 October 1899, AVPR, opis 787, delo 9, ed.k hr. 1-7, VCM, Annex 149, p. 394.

[460] As Guyana notes in its Memorial, the parties engaged in three rounds of written proceedings, with more than 2600 documents submitted to the tribunal, and 56 days of hearings, totaling more than 3200 pages in verbatim transcripts: see GM, pp 69-70 and 217-218. Article X reflected the parties' expectations that an Award would be rendered "if possible ..., within three months from the close of the argument".

some point, was cast aside as the Tribunal bowed to President de Martens' threats and endorsed a compromise line.

5.160. Finally, Guyana's attempt to explain President de Martens' conduct as a reflection of his sense of 'moral duty'[461] is beside the point. Clearly, the Washington Treaty imposed no duty on the Tribunal to decide unanimously, but envisaged decisions by majority.[462] President de Martens' views on his role may have been held sincerely - but the fact that he was guided by them 'above else'[463] (i.e. above the requirements of the Washington Treaty defining his role) merely shows how little care he paid to the terms in which the parties had defined his role.

5.161. Stepping back from the details, it comes as no surprise that contemporary observers - on the Venezuelan and British sides - would highlight the absence of any legal basis of the Award, which was described as a 'farce', an 'iniquitous' result.[464] It comes as no surprise either that Lord Russell's private secretary, JR Block, would describe the outcome as 'Martens' deal' and said that this 'deal gave us victory. '[465]

5.162. At a meeting of the American Society of International Law, the decision was referred to as one of 'expediency and compromise'.[466] Subsequent commentators such as Arthur Nussbaum presented the Paris Award as a 'clear

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[461] *Private Diary Entries of Prof Fyodor Fyodorovich Martens* (4 June 1899-3 October 1899), p. 11, quoted at GR, p. 79, para. 3.26 (emphasis in original).

[462] *See* Article V of the Washington Treaty. According to Article X, the decision of the Tribunal 'shall be made in writing and date and shall be signed by the Arbitrators who may assent to it'.

[463] Letter from Lord Russel to Lord Salisbury, 7 October 1899 (emphasis in original), cited in GR, p. 79, para 3.25.

[464] *See* the references in VCM, p. 233, paras. 5.124-5.125.

[465] Cited in *Report on the Boundary Question with British Guiana submitted to the National Government by the Venezuelan Experts*, 1967, VCM, Annex 150.

[466] Foster, Anderson, Mcveagh, and Aymar, 'Arbitration as a judicial remedy: An examination of concrete cases actually submitted and decided by arbitration: how far they are of a judicial character and how far they have been governed by diplomatic convenience' (1909) 3 *ASIL Proceedings* 25, 28 (Foster).

example of de Martens's "expediency" doctrine', in which '[t]he idea of international law, foundation of international arbitration, is cast aside',[467] while Paul Reuter saw in it a 'marchandage purement politique'.[468]

5.163. While Venezuela is well aware that 'that consensus-building is a common practice enabling judicial bodies to reach a majority, in order to render a decision',[469] it is not willing to believe that the approach adopted by the Arbitral Tribunal in its deliberations preceding the Award could be seen as a 'common practice' - not by the World Court nor by an arbitral tribunal worthy of its name. The verdict in the Award was not a compromise based on law, as Guyana claims, but a compromise achieved decisively at the expense of law. This is its fundamental defect.

6. Interim conclusions

5.164. The excesses of power besetting the Award of 3 October 1899 are manifold and grave. Venezuela's analysis in the Counter-Memorial illustrates how completely the Tribunal distanced itself from the terms of its mandate, and how carelessly it went about its business. Guyana's Reply accepts that awards can be invalidated where tribunals rendering them manifestly exceeded their power. It offers responses on some points, seeking to gloss over some of the excesses while accepting others. But Guyana's Reply does not - and cannot - meaningfully challenge the main impression resulting from any renewed engagement with the Award: that the Tribunal palpably disregarded its central task – ignoring questions put to it, failing to adhere to applicable law provisions, deciding matters not submitted to it, creating plain doubts as to its impartiality, and engaging in political

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[467] A. Nussbaum, 'Frederic de Martens Representative Tsarist Writer on International Law' (1952) 22 Nordic Journal of International Law 51, 59.

[468] P. Reuter, "La motivation et la révision des sentences arbitrales à la Conférence de la paix de la Haye (1899) et le conflit frontalier entre le Royaume-Uni et le Vénézuéla", in *Mélanges Offerts à Juraj Andrassy*, Springer, Dordrecht 1968, p. 238.

[469] GR, p. 75, para. 3.19.

maneuvers to bring about a 'deal' not supported by any reasons. The Award of 3 October 1899 is the product of a Tribunal 'going rogue'. It cannot stand.

5.165. Additionally, as already demonstrated in the Counter-Memorial, there is a wealth of documentary evidence that, from the beginning of the negotiations, the United States and the United Kingdom cooperated closely in the case against Venezuela, within the framework of a broader diplomatic understanding that implied, on the part of the United Kingdom, the effective recognition of the Monroe Doctrine. In this context, first the US negotiators objected to the appointment of a Venezuelan judge, and then the US-appointed judges accepted the so-called "De Martens' agreement," in a decision clearly aligned with the political interests that both governments shared at the time.

5.166. This outcome was described by President Grover Cleveland in 1900 at Princeton University as a major diplomatic triumph. Although this passage has already been quoted in the Counter-Memorial, it is worth recalling here for its explanatory and significant nature:

> "I hope there are but few of our fellow-citizens who, in retrospect, do not now acknowledge the good that has come to our nation through this episode in our history. It has established the Monroe Doctrine on lasting foundations before the eyes of the world; it has given us a better place in the respect and consideration of the people of all nations, and especially of Great Britain; it has again confirmed our confidence in the overwhelming prevalence among our citizens of disinterested devotion to American honor; and last, but by no means least, it has taught us where to look in the ranks of our countrymen for the best patriotism."[470]

[470] *See* VCM, para. 517, footnote 417.

5.167. For the US representatives, the Venezuelan case —or the applicable legal principles— was ultimately of little importance. As Cleveland himself candidly acknowledged:

> "In these circumstances neither the character of the people claiming the soil as against Great Britain, nor the value of the lands in dispute, was of the least consequence to us; nor did it in the least concern us which of the two contestants had the best title to any part of the disputed territory." [471]

F. CONCLUSION, AND A REFLECTION ON THE ILLEGITIMATE GENESIS OF THE ARBITRAL AWARD IN THE SHADOW OF COLONIALISM.

5.168. In light of the preceding considerations, it is clear why, in the 1966 Geneva Agreement, Venezuela and Great Britain sought to lay the foundations for an amicable and mutually acceptable solution of their territorial controversy. The Award of 3 October 1899 plainly could not be the basis for any mutually acceptable solution: based on an invalid treaty imposed upon Venezuela, the Award was not an exercise in arbitral justice worthy of its name. The Tribunal's decision not to state the reasons upon which its decision was based sought to conceal an ugly truth: that, in rendering the Award, the Tribunal manifestly exceeded its powers - by omission, by transgression, and above all, by replacing legal considerations with a compromise that ignored both parties' desire for a judicial decision.

5.169. Against that background, the parties had ample reason to replace the 1899 Arbitral Award with a framework that would foster a negotiated and equitable

[471] *Ibid.*

settlement of the dispute. This they did in the 1966 Geneva Agreement, upon which - despite Guyana's attempts to the contrary, this territorial controversy centres.

5.170. In Chapter III Venezuela has addressed the crucial intersection of the Arbitral Award with the principles of decolonisation under international law, arguing that the award, a product of colonial power dynamics, must be understood within the context of redressing colonial wrongs and the right to self-determination. Now, it is appropriate to close this Chapter with a final reflection on the illegitimate genesis of the Arbitral Award in the shadow of Colonialism.

5.171. The 1899 Arbitral Award cannot be examined in a vacuum. It must be viewed as a historical artefact of the colonial era, a period marked by the subjugation of weaker states and the imposition of unjust arrangements by dominant powers, especially in Latin America, and especially by the United Kingdom. Venezuela's recount of how the Essequibo controversy came to be offered multiple examples of its colonial roots.[472]

5.172. While there are many reasons to consider the 1899 Arbitral Award invalid – and these reasons are elaborated at length in the Counter-Memorial and in this Chapter – one must therefore not lose sight of the fact that it is tainted by the profound imbalance of power between Great Britain, a global colonial hegemon controlling vast swathes of territory across the globe, and Venezuela, a newly independent state grappling with the challenges of consolidating its sovereignty and establishing its international standing after its secession from the Gran Colombia. This resulted in several crucial asymmetries.

5.173. As demonstrated in the Counter-Memorial, the negotiation and signing of the Treaty of Washington, the legal instrument establishing the arbitration, were subject to the coercive pressures exerted by Great Britain's superior position. Many

[472] VCM, paras. 4.138 *et seq.*, and the documents cited.

scholars have stressed – and rightly deplored – the "colonial" dynamic that led to the Treaty.[473] This asymmetry in bargaining power casts doubt on the voluntariness and fairness of the consent provided by Venezuela, thus undermining the legitimacy of the resulting agreement and subsequent award.

5.174. The Tribunal's composition itself reflected this inherent power imbalance. While ostensibly constituted to appear impartial, the presence of two British representatives, tasked with advocating for British interests and implementing the colonial agenda, cast a long shadow over the proceedings. In fact, the entire bench reflected the principles of imperialism at the time, with the American representatives supposedly standing on behalf of Venezuela (although, by necessity, they did not possess the same level of vested interest in Venezuela's sovereignty as Venezuela itself[474]), and the Chair proposed by Great Britain rested with an arbitrator from the Tsarist Russia – who used the case as a stepping stone for his own benefit and fame, acting in his own interest and that of his nation.[475] As put by the USA's Ambassador to the United Kingdom at the time: "Venezuela

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[473] *See, e.g.*, P. Reuter, "La motivation et la révision des sentences arbitrales à la Conférence de la paix de la Haye (1899) et le conflit frontalier entre le Royaume-Uni et le Vénézuéla", in Mélanges Offerts À Juraj Andrassy, Springer, Dordrecht, p. 246, discussing "une situation quasi-coloniale". A similar view was expressed by H. Gros Espiell, "Estudio preliminar", Academia Nacional de la Historia (1981), p. 21 ("The conditions under which Venezuela agreed to be represented by two American judges, without the existence of a protectorate or any other similar institution, are very rare in arbitration proceedings and reveal a quasi-colonial sovereignty."["Las condiciones en las que Venezuela consintió en hacerse representar por dos jueces norteamericanos, sin que existiera un protectorado o cualquier otra institución análoga, se encuentra muy raramente en un procedimiento arbitral y ponen de manifiesto una soberanía cuasi colonial"]); C. Sosa Rodríguez, "El Acta de Washington y El Laudo de Paris", in T. Carrillo Batalla (ed.), *La reclamación venezolana sobre la Guayana Esequiba*, Biblioteca de la Academia Venezolana de Ciencias Políticas y Sociales, 1983, p. 146 ("Venezuela is treated as if it were a colony or a country under mandate." ["Venezuela es tratada como si fuera una colonia o un país bajo mandato"]).

[474] As explained in VCM, paras. 2.13 *et seq.*, the USA very much acted in light of their own interests in this controversy, which did not match Venezuela's interests.

[475] This was perceived by contemporaries. S*ee* August Mason, 1928, p. 3, recounting the sentiment of General Harrison: "It can hardly be supposed that he (Mr. Martens) was entirely free from a sense of Russian interests".

does not appear to have any [...] participation, nor any voice, in the tribunal of settlement".[476]

5.175. This inherent imbalance rendered the arbitral proceedings vulnerable to undue influence and pressure, subtle or overt, all in the pursuit of favouring British interests. As has been cogently demonstrated by Venezuela,[477] this is exactly what happened: the Arbitration's outcome was the result of a manipulation designed to entrench Britain's colonial power, a "spoliation to which (Venezuela was) subjected through the acts of imperial and colonial Powers".[478]

5.176. It is a well-established principle of international law that territorial sovereignty cannot be lawfully altered through secret political arrangements between third-party States. Any such division of the territory of a sovereign State, undertaken without its consent, constitutes a grave violation of the principle of territorial integrity and the prohibition of the use of force or coercion to settle territorial disputes. Nevertheless, and much to Guyana's likely discomfort, there exists compelling evidence that such a political arrangement did occur, due to the collusion between the United States and Great Britain based on Monroe Doctrine.[479]

5.177. The Award must therefore be viewed as a product of this environment, a direct outcome of colonial influence[480]. Moreover, the imposition of an agreement on a weaker state by a colonial power, an agreement that directly served the

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[476] Letter from Thomas Bayard to Richard Olney, 15 January 1896, VCM, Annex 56.

[477] VCM, paras. 5.97-5.110.

[478] Letter dated 23 November 1981 from the Permanent Representative of Venezuela to the United Nations addressed to the Secretary-General, UN Doc. A.C.1/136/12, p. 2.

[479] *See* Letter from Mr. Slater to Mr. Edmonds, dated 28 May 1964, **Annex 24**, pp. 4-5, describing how Dr. Martens had been pressured by Russia to favour the United Kingdom.

[480] *See* also Presentation to the National Congress by Mr. Ignacio Iribarren Borges, Minister of Foreign Affairs of Venezuela, about the Geneva Agreement, 17 March 1966, **Annex 2**, p. 24, situating the tribunal and its work "in the midst of the imperial and colonialist era".

interests of the colonial power, is a direct contradiction of the principle of sovereign equality, a cornerstone of the post-colonial international order. Article 2(1) of the UN Charter emphasizes sovereign equality, requiring that all member states are equal before the law, regardless of their size or power. The VCLT further underscores this by highlighting the conditions under which treaties are considered void, including coercion.[481] These principles should be applied when considering the 1899 Arbitral Award, which emerged from a fundamentally unequal bargaining process dominated by colonial-era coercion.

5.178. In this context, it is necessary to stress that the colonial power, Great Britain, had specific economic, strategic, and political interests to be served by the Award. These interests included control over the mineral-rich territory and consolidating its regional dominance. The Award, therefore, must be viewed as a tool to advance these interests, rather than a genuine attempt to achieve a resolution based on international law.

5.179. Conversely, Venezuela, as the weaker party, lacked the institutional resources and international influence necessary to counteract these strategic designs.[482]

5.180. Thus, it is inescapable to consider the circumstances under which the Award was created and to assess its compatibility (or incompatibility) with the modern principles of self-determination, sovereign equality, and the fundamental right to be free from colonial domination. The principle of decolonisation, which emerged

[481] Vienna Convention on the Law of Treaties, Arts. 2(1)(a), (b), 51 & 52.

[482] The asymmetry of powers between newly independent states and colonial empires is a relevant consideration, in this case as in others dealing with decolonisation: *see, e.g. Land and Maritime Delimitation and Sovereignty Over Islands (Gabon/Equatorial Guinea),* Judgment, 19 May 2025, Declaration of Judge Xue, para. 22.

as a central tenet of international law in the aftermath of World War II, provides the necessary framework to confirm the invalidity of the 1899 Arbitral Award.

CHAPTER VI: VENEZUELA'S POST-AWARD CONDUCT

A. INTRODUCTION

6.1. Chapter 4 of Guyana's Reply elaborates around its claim that Venezuela's "post-award conduct" would somehow support Guyana's claim. The legal consequences Guyana draws from this alleged "conduct", namely that this "cures" the flaws of the 1899 Arbitral Award, are set out in Chapter 9 of Guyana's Memorial. Guyana contends that "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".[483]

6.2. As a matter of fact, Chapter 7 of Venezuela's Counter Memorial deals with Guyana's theory according to which Venezuela's conduct allegedly cured the effects of the Award. Since Guyana's Reply restates this theory, Venezuela will respond to this contention.

6.3. This Chapter is structured in three parts.

6.4. First, Venezuela will recall that the relationship between Guyana and Venezuela regarding the resolution of the territorial dispute is governed by the Geneva Agreement, and that under this Agreement any argument of Guyana about Venezuela's post-1899 Arbitral Award conduct is futile and devoid of usefulness (B).

6.5. Second, Venezuela will address in detail Guyana's curing theory (C).

6.6. Third, Venezuela will demonstrate that the 1905 demarcation based on the 1899 Award cannot save the invalid Award or the boundary line it unlawfully established (D).

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[483] GR, para. 4.4.

B. GUYANA'S TWISTED AND USELESS ARGUMENT REGARDING VENEZUELA'S CONDUCT AFTER THE AWARD

6.7. In its Reply, Guyana devotes no more than six paragraphs to the Geneva Agreement. At least two problems are raised by Guyana's arguments.

6.8. The first is that they are based on a fraudulent interpretation of the Geneva Agreement. Contrary to what Guyana contends, the Geneva Agreement does not set up a framework or procedure to decide on the (in)validity of the 1899 Arbitral Award. As has been amply demonstrated in Chapter II, this is not its object and purpose, is inconsistent with its text, including its title, its *travaux préparatoires* and subsequent practice. The legal effect of the Geneva Agreement, a novation instrument, is to engage Guyana and Venezuela in the search for a satisfactory and mutually acceptable solution for the practical settlement of the territorial controversy. The very point of departure of the process of resolution of the controversy in a manner satisfactory to both parties, the "given" from which the Geneva Agreement intends the Parties to build upon, is Venezuela's contention that the 1899 Arbitral Award is null and void. Guyana, to the contrary, suggests rejecting this contention, based on Venezuela's alleged acquiescence. But it cannot be correct since it would obviously be neither "satisfactory" nor a "practical settlement" of the frontier controversy. Therefore, the only "post-1899 Award" conduct that is relevant is the adoption of the Geneva Agreement. It follows that Guyana's insistence on what Venezuela did or did not do between 1899 and the Geneva Agreement is simply useless.

6.9. The second is that the UK never raised a preclusion argument against Venezuela based on its alleged conduct during the negotiation of the Geneva Agreement.[484] It follows that Guyana has lost any right to raise it.[485]

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[484] *See* VCM, para. 7.50.

[485] *See* VCM, paras. 7.55-7.56.

6.10. Guyana's response on this point is that "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."[486] But none of the five documents on which Guyana relies supports this contention.

6.11. First, Guyana relies on its own acts or activities opposing to Venezuela its post-1899 Award conduct dating back to 1980[487], 1983[488], and 2014[489]. But Article V, para. 2 of the Geneva Agreement provides that:

> "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"

6.12. The Geneva Agreement is in force since 1966. Visibly, Guyana tries once again to escape its obligation under this Agreement, in denying Venezuela's claim on the basis of its own post-1966 acts and statements. This further evidence that Guyana pays no respect to its international legal obligations under the Geneva Agreement is unacceptable.

6.13. Second, Guyana invokes a U.S. memorandum, internal to the U.S. administration, which Guyana does not argue that it was known to Venezuela. In any event, a US Memorandum internal to the US administration is plainly irrelevant to Guyana's assertion.[490]

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[486] GR, para. 4.100.
[487] GR, para. 4.94- 4.96.
[488] GR, para. 4.90.
[489] GR, para. 4.97.
[490] GR, para. 4. 98.

6.14. Third, Guyana quotes from a British speech at the UN dating back to 1962, where the UK's representative indicated that Venezuela did not challenge the Award until recently. According to Guyana, in doing so the UK allegedly claimed that supposed acquiescence precluded Venezuela's nullity claim.[491] This is wrong. The UK's representative actually complained about the alleged lapse of time before Venezuela formally challenged the Award, but did not draw any legal argument from this complaint. In the same statement he concluded:

> "I am therefore authorized to say that my Government, with the full concurrence of the Government of British Guiana, are prepared to discuss with the Venezuelan Government, through diplomatic channels, arrangements for a tripartite Venezuela -British Guiana- United Kingdom examination of the voluminous documentary material relevant to this question. For our part, we would naturally expect to examine any Venezuelan records and documents too. In making this offer I must make it very clear that it is in no sense an offer to engage in substantive talks about revision of the frontier. That we cannot do, for we consider that there is no justification for it. This offer on the part of my Government simply reflects our anxiety, having regard to our friendly ties with Venezuela, to dispel any doubts which the Venezuelan Government may still have about the validity or propriety of the arbitral Award."[492]

6.15. As a matter of fact, what the UK did in 1962 was formally agree to enter into contradictory discussion with Venezuela regarding "the voluminous documentary material relevant to" Venezuela's contention that the Award is

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[491] GR, para. 4.91-4.93.

[492] Statement made by the Representative of the United Kingdom at the 349th meeting of the Special Political Committee (13 November 1962), p. 2; Guyana's Memorial (Jurisdiction and/or Admissibility), Vol. II, Annex 24.

invalid. At no point did the UK claim that this contradictory debate regarding the evidence that the Award is invalid was moot because its flaws would somehow have been "cured" by Venezuelan conduct since then. It follows that, contrary to what Guyana argues, the 1962 statement cannot be seen as a British claim of "Venezuela's prolonged acceptance and acquiescence".[493] To the contrary, it is a British acceptance of a contradictory debate based on the "voluminous documentary material" related to the Award.

6.16. With respect to the period after 1962, during the *travaux préparatoires* of the Geneva Agreement adopted in 1966, Guyana cites no UK statement in its Reply that raises a "curing" or "acquiescence by conduct" theory against Venezuela. To the contrary, the UK opened some of its archives regarding the Award to the Venezuelan experts so that, according to the UK, they could ensure the alleged lawfulness of the 1899 Arbitral Award. The UK would not have done so if the only point was about Venezuela's post-Award conduct that would have somehow "cured" the flaws of the Award, whatever they be. Venezuela was therefore plainly entitled to consider that the UK had no intention to rely on this claim in the context of the implementation of the Geneva Agreement.

6.17. Yet, Guyana goes on to argue that "[t]he 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 Arbitral 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."[494]

6.18. Again, this is plainly wrong. As shown above, the UK did agree in 1962 to enter into a contradictory discussion on the basis of the "voluminous documentary

[493] GR, para. 4.89.
[494] GR, para. 4.99.

material", without any mention of an "acquiescence" claim. Such formal agreement is a clear representation, made explicitly by the UK, that the contradictory discussion between the Parties about the nullity of the 1899 Arbitral Award would not be precluded by an argument based on Venezuela's post-Award conduct. Venezuela relied on this representation, -which in fact constituted a formal offer-, during the *travaux préparatoires* of the Geneva Agreement. The outcome of the examination of the voluminous documentation evidencing the nullity of the 1899 Arbitral Award was obviously one of the reasons why the Agreement, as a novation instrument, was finally agreed to by the Parties.

6.19. Guyana is therefore estopped from opposing Venezuela in any way on the basis of its alleged post-Award conduct, and this resolves the question of the alleged "post Award conduct". However, for the sake of argument, Venezuela will show in the next paragraphs that even if Guyana was not estopped and could oppose to Venezuela its alleged "post-Award conduct", Guyana's "curing theory" would not support its claim.

C. GUYANA'S "CURING THEORY" IS GROUNDLESS

6.20. Guyana states that:

> "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 flaw which might otherwise have formed the basis for invalidating the Award."[495]

6.21. According to this absurd argument by Guyana, the Geneva Agreement secured Venezuela's right to contend that the Award is null and void, but that right

[495] GR, para. 4.87.

had supposedly already been substantively extinguished, because the original flaws had allegedly long been "cured" long ago.

6.22. As explained in the previous Chapters, the Geneva Agreement process shows that this is incorrect. Its object and purpose were for the Parties to search for a practical solution acceptable by both of them. Guyana's "curing theory" is certainly not even close to such a solution.

6.23. Besides this obvious point, Venezuela takes note that Guyana's "curing theory" is based on three authorities. First, the King of Spain judgment, decided in 1960. This case directly inspired Article 45 of the Vienna Convention on the Law of Treaties, adopted in 1969, on which Guyana also relies as a second authority. The third authority mentioned by Guyana is article 45 of the 2001 ILC's Articles on international responsibility of States for wrongful acts.[496]

6.24. In the next paragraphs Venezuela will show that these authorities are irrelevant to this case.

- First, it will be shown that Article 45(b) of the Vienna Convention on the Law of Treaties does not reflect customary international law and is not opposable to Venezuela **(1)**.
- Secondly, Venezuela will show that Article 45 of the ILC ARSIWA is equally irrelevant **(2)**.
- Thirdly, Venezuela will demonstrate that the King of Spain Case is irrelevant and cannot be compared to this subject matter **(3)**.
- Fourthly, Venezuela will show that even if Guyana's "awareness theory" based on the King of Spain Judgment were relevant, in any event Venezuela could not make a claim regarding the flawed

[496] GMM, para. 8.12.

deliberation of the 1899 Arbitral Award until it had evidence in hand **(4)**.

- Fifthly, it will be shown that the Mallet-Prevost Memorandum is the first eyewitness testimony of the unlawful process leading to the 1899 Award **(5)**.

- Venezuela will finally demonstrate that it raised its contention that the 1899 Award is null and void in due time **(6)**, disregarding the fact that there is not preclusion for invoking the nullity of an award due to fraud.

1. Article 45(b) of the Vienna Convention on the Law of Treaties does not reflect customary international law and is not opposable to Venezuela

6.25. Article 45 (b) of the Vienna Convention on the Law of Treaties (VCLT) has been adopted by the Vienna Conference on the Law of Treaties after the conclusion of the Geneva Agreement. This provision is about the "[l]oss of a right to invoke a ground for invalidating, terminating, withdrawing form or suspending the operation of a treaty" by way of acquiescence. It is directly inspired by the King of Spain case.[497] The Vienna Conference was therefore the perfect opportunity for sovereign States to express their opinion on the principle on which the Court had relied in the King of Spain case. They did, and the fact that the provision attracted strong controversy during the Vienna Conference,[498] and was specifically rejected by many States, including Venezuela, indicates that it did not – and indeed, to this day, does not - reflect customary international law.

6.26. The strongest advocates of this debated provision were the representatives of the UK and Guyana. The strongest objection came from Venezuela, accompanied by Cuba, Argentina, Spain, and Bolivia. The representative of

[497] M. Cohen, S. Heathcote, *Commentary of article 45*, in O. Corten, P. Klein, The Vienna Convention on the Law of Treaties, a Commentary, Vol. I, Oxford, 2011, para. 5.
[498] *Ibid*, para. 19.

Switzerland naively said that he could not see any connection with the principle involved in this text and the struggle against colonialism.[499] But the connection was obvious for former colonised countries, in particular Latin-American States, as well as for Spain.

6.27. During the second Session of the Vienna Conference, Venezuela specifically argued against paragraph b) of this article dealing with acquiescence. Many States agreed with Venezuela, in particular Latin-American States. When Venezuela requested a separate vote on this paragraph, this was opposed by Sir Francis Vallat, the UK representative, and by the Guyanese representative, both arguing against a separate vote. The vote on the question whether a separate vote was to be held recorded 21 States in favour, including 12 Latin American States and Spain. Most Latin American States "regarded Article 45 as being "extremely dangerous", since the principle of acquiescence would 'bind [young developing nations] more closely to their former colonial masters'".[500] The only Latin-American States to reject the principle of a separate vote were Guyana, Jamaica, and Barbados. Together with other States, they prevailed, and the text of Article 45 as a whole was subsequently adopted by a majority of the participants to the Vienna Conference. "This outcome was criticized as being an 'antidemocratic gesture'".[501]

6.28. Venezuela, like others, voted against the adoption of this paragraph, and neither signed nor ratified the Vienna Convention – which is not in force for Venezuela. Venezuela has consistently and firmly opposed the view that the rule contained in Article 45 (b), of the VCLT may have been or have become part of general international law, at least in respect of Venezuela.

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[499] *Ibid.*

[500] M.E. Villiger," Article 45: Loss Of A Right To Invoke A Ground For Invalidating, Terminating, Withdrawing From or Suspending The Operation Of A Treaty", in M.E. Villiger, *Commentary on the 1969 Vienna Convention on the Law of Treaties*, Brill | Nijhoff, 2009, p. 575.

[501] *Ibid.*

6.29. Venezuela s' firm rejection of the outcome of the work of Sir Humphrey Waldock, the ILC special rapporteur on the topic, and to Sir Francis Vallat, during the Conference, has been summed up as follows:

> "The Venezuelan representative Mr Carmona affirmed that the Article only served to 'erect barriers against the revision of illegal instruments and thus to close the door to any honourable solution of situations which were patently unjust because they had been imposed by the strong party upon the weak' (Official Records, Summary Records, 2nd session, pp 78–9). Nor is it surprising that Guyana and the United Kingdom were amongst those which most strongly favoured the provision [...] (cf the statements of Sir John Carter (Guyana) and of Sir Francis Vallat (United Kingdom), ibid, pp 80–3)."[502]

6.30. It may be added that Sir Humphrey Waldock and Sir Francis Vallat were well-acquainted with the UK's position regarding the British Guiana/Venezuela's longstanding controversy. So much that they both became in early April 1970 the London-based legal advisers of Guyana on the international law aspects of the border controversy with Venezuela.[503] One would struggle to find a more glaring conflict of interest.

6.31. In sum, Guyana now seeks the retroactive application to Venezuela of a rule of "acquiescence by conduct" rule which is neither treaty law in relation to Venezuela, nor customary international law, and that Guyana itself, together with the UK, actively promoted. This cannot be accepted.

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[502] M. Cohen, S. Heathcote, *Commentary of article 45*, in O. Corten, P. Klein, The Vienna Convention on the Law of Treaties, a Commentary, Vol. I, Oxford, 2011, ftn 17.

[503] Odeen Ishmael, *The Trail of Diplomacy: The Guyana-Venezuela Border Issue*, Xlibris, 2013, Ch. 28.

6.32. But in any event, the condition that must be fulfilled for a conduct to be considered as manifesting acquiescence is that this behaviour occurred "after becoming aware of the facts".[504] That means, as has been rightly recalled, that "[c]learly, Article 45 cannot operate if facts existed of which the State in question was, in good faith, not or only partly aware", meaning if the State was not "fully aware".[505] As demonstrated without contradiction by Rosenne and Ago during the ILC work on what was to become Article 45 of the VCLT, the notion of "fact" does not mean a suspicion or hearsay, but must be a fact of such a nature as to be a decisive factor.[506] As will be developed below, and contrary to what Guyana now claims, Venezuela did not have in its hands sufficient evidence to challenge the 1899 Arbitral Award until the second half of the 20th century. Speculations, suspicions or rumours are not legally relevant facts to be taken into account for qualifying a conduct as acquiescence or recognition.

2. Article 45 of the ILC ARSIWA is irrelevant

6.33. Article 45 of the ILC Articles on the International Responsibility of States for Wrongful Acts (ARSIWA) is "analogous to article 45 of the 1969 Vienna Convention concerning loss of the right to invoke a ground for invalidating or terminating a treaty."[507]

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[504] Vienna Convention on the Law of Treaties, Article 45, chapeau.

[505] M.E. Villiger, "Article 45: Loss Of A Right To Invoke A Ground For Invalidating, Terminating, Withdrawing From or Suspending The Operation Of A Treaty", in M.E. Villiger, *Commentary on the 1969 Vienna Convention on the Law of Treaties.*

[506] Rosenne made the point that "In the opening sentence of the article, the term " fact" could hardly be taken as meaning any fact, however insignificant or remotely related to the matter under discussion; it should be understood in the sense in which it was used in article 61 of the Statute of the International Court, where it had to be of such a nature as to be a decisive factor." ILC, Discussions in Plenary, 701st meeting, 17 June 1963, Law of treaties, ILCYB (1963) Vol. I, p. 183, at para. 40. Ago expressed the same view in stating that "Clearly, it must not be divorced from its context; it must be a "fact" sufficiently serious to give one party the right to avoid or denounce the treaty." *Ibid.*, p. 186, para. 50.

[507] ARSIWA with commentaries, Commentary of Article 45, p. 121, para. 1.

6.34. It is therefore equally irrelevant. And even if it were not inspired by the irrelevant Article 45, b) of the Vienna Convention on the law of treaties, Article 45 of ARSIWA would still be manifestly irrelevant here since there is no question of responsibility to be discussed.

3. The King of Spain Case is irrelevant and cannot be compared to the current matter

6.35. The core basis of Guyana's "curing" theory is the King of Spain case.[508] But, as demonstrated above, the position taken by the Court in this case can neither be seen as mirroring customary international law, nor can it be opposed to Venezuela. Thus, this case cannot be considered a "precedent" *vis-à-vis* Venezuela.

6.36. Furthermore, the King of Spain case is very different from the current matter and should be distinguished on multiple grounds.

6.37. The first difference is, of course, that in the King of Spain case there was nothing like the Geneva Agreement. Nicaragua and Honduras did not engage in a process for searching for a practical solution to the territorial controversy that is acceptable to both Parties. In fact, the King of Spain case referred to a situation where Honduras and Nicaragua needed a demarcation of their common boundary. It was not a territorial dispute, but a boundary dispute, that is, a difference of appreciation of where the boundary inherited from colonisation was lying. This was very different from the Venezuela/United Kingdom territorial dispute, opposing a young, decolonised State to the British colonising Empire endeavouring to swallow as much Venezuela's territory and resources as it could.

6.38. The second difference is that in the King of Spain case, the treaty upon which the arbitral award had been rendered contained an Article VII providing: "The arbitral decision, whatever it be, rendered by a majority vote, shall be held as

[508] GMM, para. 9.15.

a perfect, binding and perpetual treaty between the High Contracting Parties, and shall not be subject to appeal".[509] The mention "whatever it be" has no equivalent in the 1897 Washington Treaty.

6.39. Thirdly, in the King of Spain case Nicaragua was considered by the Court as having been satisfied of the Award, because of compelling evidence. The following were mentioned:

> - The President of Nicaragua had sent to the President of Honduras a telegram stating: "Through a cable of today's date I have taken cognizance of the arbitral award made by the King of Spain in the matter of the delimitation of the frontier. Having regard to this decision, it appears that you have won the day, upon which I congratulate you. A strip of land more or less is of no importance when it is a question of good relations between two sister nations. The irksome question of the delimitation of the frontier has been resolved in such a satisfactory manner thanks to friendly arbitration. I hope that in the future no obstacle will disturb the good relations between our respective countries."[510]
> - The Foreign Minister of Nicaragua had addressed a note to the Spanish *Chargé d'affaires* in Central America expressing the appreciation of Nicaragua: "for the graciousness of the King of Spain who, by his arbitral award, has terminated our frontier dispute with the neighbouring state of Honduras".[511]
> - The President of Nicaragua had addressed a message to the National Legislative Assembly of Nicaragua stating that: "My government has

[509] *Arbitral Award made by the King of Spain on 23 December 1906, Judgment of 18 November 1960, I.C.J. Reports 1960*, p. 208.
[510] *Ibid.* p. 210.
[511] *Ibid.*, p. 211.

noted with satisfaction that this important dispute has been terminated by the highly civilized method of arbitration and, [...] it accepts this decision with pleasure".[512]

- The Court noted that the Foreign Minister of Nicaragua did produce a report to the National legislative assembly of Nicaragua stating, inter alia, that: "we must rejoice at the friendly solution we have been able to find in the settlement of so delicate a question, whatever lines of demarcation have today been laid down for our frontiers with Honduras."[513] The National Legislative Assembly took note of the report and approved it.

6.40. Venezuela notes in passing that in the King of Spain judgment the Court seemed to give some weight to internal statements exchanged between authorities of the same State. But this kind of internal statement can of course not be relevant for determining a State's conduct that other States could oppose to it. They can give some context for the proper interpretation of an international conduct, but they cannot, in and by themselves, create any international legal effect.

6.41. This being pointed out, Venezuela recalls that in its Counter Memorial it demonstrated that Venezuela had never been "satisfied" with the Award,[514] contrary to what Guyana tried to argue, relying on a series of misrepresented and out of context statements. Guyana complains in its Reply that "Venezuela completely ignores these statements of its own highest officials, and many others like them."[515] This is a very unfortunate accusation, unsurprising since Guyana's writings are replete with this kind of unhelpful contentions. Venezuela duly

[512] *Ibid.*
[513] *Ibid.*, p. 212.
[514] VCM, paras. 7.6-7.16.
[515] GR, para. 4.11.

addressed in its Counter Memorial all the statements or alleged statements put forward by Guyana in its Memorial, namely those of:

- Venezuela's agent, José María de Rojas, relied on by Guyana in its Memorial;[516]
- Its highest official, its President, relied on by Guyana in its Memorial, although the document is neither annexed to the Memorial, nor to the Reply;[517]
- Venezuela's counsel, a statement of whom is relied upon by Guyana in its Memorial, although the document supposedly containing this statement is neither annexed to the Memorial, nor to the Reply.[518]

6.42. Guyana insists with these statements and some others in its Reply, yet the fact remains that, unlike in the King of Spain case, the statements on which Guyana relies do not support its claim that Venezuela's post-Award conduct are evidence that Venezuela was satisfied with the 1899 Arbitral Award. To the contrary, these statements – many of which stem from authors external to Venezuela or that cannot bind it under international law, and/or are sourced from documents that have not been made available– demonstrate the opposite: that Venezuela had, from the outset, been deeply dissatisfied with the arbitral decision.

6.43. Guyana relies in its Memorial[519] and in its Reply[520] on an internal Letter, from the Venezuelan Ambassador to the United Kingdom to the Venezuelan Minister of Foreign Affairs (7 Oct. 1899).[521] Yet, this letter's content is far from suggesting any Venezuela's willingness to be bound by the Award or some "post-

[516] GMM, paras. 4.4-4.6, and VCM, para. 7.8.
[517] *See* GMM, para. 4.7, and VCM, para. 7.11.
[518] *See* GMM, para. 4.8, and VCM, para. 7.12.
[519] GMM, paras. 4.4-4.6, 9.8.
[520] GR, para. 4.10.
[521] GMM, Vol. II, Annex 3;

award conduct" suggesting satisfaction. In it, after having recalled that together with M. Rojas, the agent of Venezuela to the 1899 Tribunal, the Venezuelan Ambassador had communicated a brief commentary right after the Award was rendered stating that "Arbiters and Counsel for Venezuela were brilliant", the author writes that:

> "Whatever the area may be, the right of Venezuela to a great part of the territory which has been left under the dominion of Great Britain was absolutely clear, as was demonstrated to satiety by its Counsel before the Tribunal. The award does not appear to be based on reason and justice, as Mr. de Martens affirmed in his closing speech, and the Venezuelan arbiters only gave their adhesion in order to avoid an even greater flouting of the essential attributes of any faultless judgment. [...] for us the sentence is hardly satisfactory as regards that to which our right was clear".[522]

6.44. This does not support Guyana's contention. In any event, a letter internal to the administration of a State, between an ambassador and a minister, cannot have the legal effect of a unilateral act, or be qualified as an international "conduct", whatever its content.

6.45. Guyana also relies in its Memorial[523] and Reply[524] on a press article published by an unknown author in a paper apparently called "Nouvelles de l'Étranger : Venezuela, Le temps, 11 octobre 1899". However, this document is not part of the documentation annexed by Guyana to its written pleadings. According to Guyana, in this non-annexed document Venezuela's President is quoted as saying that the "award was a source of satisfaction for the country, as international

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[522] GMM, Vol. II, Annex 3.
[523] GMM, paras. 4.7, 9.8.
[524] GR, para. 4.10.

justice has returned a part of its territory that had been usurped and vindicated its right".[525] It is difficult to understand how this could support Guyana's contention. Saying that the Award partially satisfied Venezuela in returning a part of its territory points out, by contrast, that the Award is not satisfactory in that it does not return to Venezuela all its territory. Thus, even if it could be seen as evidence, which it cannot, it would not support Guyana's claim and, to the contrary, demonstrates that Venezuela was from the beginning contending that its territory had been unlawfully stolen from it.

6.46. Guyana relies in the Memorial[526] and in the Reply[527] on another press article published by an unknown author in The Times, dated 4 October 1899. Again, it is neither annexed to the Memorial nor the Reply. In this non-annexed document, Guyana contends that there is a quote from Venezuela's counsel in the Arbitration saying "[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 has been awarded to Venezuela …". Such statement is not a "post-award conduct". It simply describes one limited aspect of the award which was corresponding to Venezuela's rights and which it had argued as such. It says nothing of the rest of the Award. Nevertheless, the reality is that the United Kingdom ultimately lost nothing. As revealed in a letter from Webster to Chamberlain, "[i]f I get the chance and think the tribunal is against us as to Point Barima, I shall press strongly for free passage for commercial vessels in the Barima". In other words, the United Kingdom had already anticipated that, should it fail to secure sovereignty over Punta Barima, it would still obtain navigational rights, particularly access to the Orinoco River. And indeed, it got everything it needed. In colonial times, rivers functioned as vital arteries of

[525] GR, para. 4.10.
[526] GMM, paras. 4.8, 9.8.
[527] GR, para. 4.10.

commerce and control – equivalent to highways- essential for projecting influence, transporting goods, and asserting territorial reach. The mouth of the Orinoco, in particular, was regarded as a key gateway to the South American interior. Thus, access to the Orinoco River was not merely incidental, but a central strategic objective underlying the United Kingdom's territorial ambitions in the controversy with Venezuela. It was driven by clear economic, geopolitical, and imperial motivations at the high of European competition in Latin America.

6.47. Guyana also evokes a report internal to Venezuela's Ministry of Foreign affairs, dated May 1900.[528] As such, this report does not contain any "declaration", and does not qualify as "Venezuela's conduct" that could somehow evidence international acceptance of or satisfaction vis-à-vis the Award. Its author merely says that it would be difficult for Venezuela to challenge the Award despite its many apparent defects, and that it did not do so as Venezuela felt obliged to respect this Award as it was.

6.48. Guyana next mentions an alleged letter from the Venezuela's Foreign Minister to the British Ambassador to Venezuela dated 1941.[529] In fact, the document annexed is not a "letter". It is a short memo in which it is reported that Venezuela was abiding by the Award, in strict conformity with what was then the posture of Venezuela – at a time when the Mallet-Prevost Memorandum was not yet known.

6.49. In the same vein, Venezuela puts forward a speech by the Venezuelan Ambassador to the United States to the Pan-American Society of the United States (1944).[530] This speech is exemplary of what was Venezuela's view at the time, that

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[528] GMM, para. 9.8; quoting MMG, Vol IV, Annex 66.

[529] GMM, Vol. III, annex 56.

[530] GMM, para. 9.8, quoting from Guyana's Memorial (Jurisdiction and/or Admissibility), Vol. II, Annex 9.

is, after the Award was rendered, and before the Mallet-Prevost Memorandum came to light. The Ambassador stated that:

> "The award was made in 1899 and by an unparalleled miscarriage of justice, England was given 60.000 square miles of Venezuelan territory. We have accepted the verdict of the arbitration for which we have so persistently asked; but in the heart of every Venezuelan there is the undying hope that one day the spirit of equity will prevail in the world and that this will bring us the reparation which morally and justly is due to us".[531]

6.50. This speech was, as recalled above, pronounced before the Mallet-Prevost Memorandum was rendered public. Until then, Venezuela was certainly not satisfied with the 1899 Award – how could it be satisfied to have been stolen such a big part of its territory? - but did not yet have sufficient evidence to challenge it.

6.51. Guyana goes on with a 1962 communication between a Minister Counsellor of Venezuelan Embassy, on the one hand, and a United States "Director, EST" together with an "Officer in Charge of Venezuela Affairs", reported in a U.S. Department of State, Memorandum of Conversation, No.741D.00/1-1562 (15 Jan. 1962).[532] In this communication, the Venezuelan civil servant, certainly not a Venezuelan authority, recalls some of the flaws of the Award, stating, according to the author of the Memorandum, that it was "inequitable and questionable". It seems that the Spanish word used was "viciado", which means "flawed'. Not only this exchange cannot be considered an official statement opposable to Venezuela, but it reveals is that Venezuela was not accepting the outcome of the Award as unquestionable.

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[531] *Ibid.*

[532] *Ibid.*, Annex 16.

6.52. In sum, it is clear, contrary to what Guyana argues, that Venezuela was never satisfied with the 1899 Arbitral Award, and never suggested so. The UK could never have believed so, and Guyana does not provide any evidence to the contrary. It follows that, in addition to the fact that the King of Spain judgment cannot be considered as mirroring a customary international law rule opposable to Venezuela, a comparison of the current matter with the King of Spain case is wholly inapposite.

4. Even if the "awareness theory" based on the King of Spain case was relevant, in any event Venezuela could not make a claim regarding the flawed deliberation of the 1899 Award until it had evidence in hand

6.53. In its Reply, Guyana argues that Venezuela was allegedly aware of the flaws affecting the validity of the 1899 Arbitral Award since its deliberation, and concludes that because Venezuela did not formally challenge the Award for decades despite such alleged knowledge, and to the contrary implemented it on the ground, it would follow that the flaws affecting its validity would be now "cured". Guyana contends that the Mallet-Prevost Memorandum did not change anything, because it did "reiterate what Venezuela has said it already knew and believed from the time the Award was issued, and at all times thereafter".[533]

6.54. Leaving aside that the nullity due to fraud cannot be "cured", the truth is that before 1949, Venezuela could not challenge the shameful 1899 Arbitral Award that had rendered two of the five arbitrators "quite (pretty) sick of arbitration"[534], and this for two reasons: on the one hand, Venezuela did not have eyewitness testimony of the manner the 1899 Arbitral Award had been unlawfully deliberated; on the other hand, Venezuela was in a state of structural coercion, which precluded it from formally claiming justice. Venezuela was only able to do so when the United Nations begun to engage the decolonisation process. Venezuela will deal in the

[533] GR, para. 4.74.
[534] VCM, para. 5.130, 6.83, 7.9.

following paragraphs with the first of these two reasons, while the second will be addressed in sub-section 6.

6.55. It is important at the outset to underline that in the King of Spain case the Court itself made clear that making claims is senseless where such claims are not based on evidence. In this case Nicaragua was claiming inter alia that the King of Spain had not been appointed properly as an arbitrator. But at the time of Nicaragua's claim, the available records did not support such contention. The Court held that:

> "In support of the first contention, Nicaragua has argued that the requirements of Articles III and V of the Gámez-Bonilla Treaty were not complied with in the designation of the King of Spain as arbitrator. ".. an allegation that such was not in fact the case must be established by positive proof. No such proof has been placed before the Court."[535]

6.56. It follows that, assuming that the "curing theory" put forward by Nicaragua is relevant – *quod non*, "awareness" or "knowledge" cannot be a correct trigger to acquiescence or recognition of an unlawful situation. No State can be deemed agreeing with an injustice because it did not challenge it until evidence of such injustice emerged. The correct trigger is evidence, not "awareness" or unsubstantiated "knowledge".

6.57. Neither in its Memorial nor in its Reply has Guyana put forward anything that could support the contention that before the publication of the Mallet-Prevost Memorandum Venezuela had concrete evidence of the irregularities committed during the deliberation of the Award.

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[535] *Arbitral Award made by the King of Spain on 23 December 1906, Judgment of 18 November 1960, I.C.J. Reports 1960*, p. 205.

6.58. Guyana relies on a letter from Rojas, the Agent of Venezuela to the Tribunal, to the Foreign Minister of Venezuela, dated 4 October 1899,[536] as supposed evidence that Venezuela was aware of the manner the Award had been "negotiated" between the arbitrators.[537] In this letter, Rojas broadly explained what he thought he knew about the deliberation. He wrote:

> "what happened between said Mr. de Martens and the American Arbitrators did not happen in my presence, but I learned about it through truthful channels".[538]

6.59. Despite Roja's view that he had learned anything "through truthful channels", hearsay, of course, cannot be sufficient evidence to challenge an arbitral Award.

6.60. Guyana also relies on the alleged fact that the Minister of Foreign Affairs of Venezuela told on 22 October 1900 the Venezuela's commissioner on the Joint Boundary Commission 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".[539] But, first, the quoted document does not support the very existence of the said fact. Indeed, it does not mention any interaction between the Minister of Foreign Affairs and another official, but between "the Chancellery" and an official. Secondly, what the Chancellery suggested about the Award was not based on specific knowledge,

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[536] VCM, Vol. 3, Annex 65.

[537] GR, para. 4.31.

[538] Letter from Rojas, the Agent of Venezuela to the Tribunal, to the Foreign Minister of Venezuela, dated 4 October 1899, VCM, Vol. III, Annex 65.

[539] GR, para. 4.32, quoting from a Report on the Boundary Question with British Guiana submitted to the national Government by Venezuelan Experts, 1967, p. 21, para. 28 (VCM, Vol. III, Annex 150.

let alone proof, of how the arbitration had been rendered, but "after analysing the nature of the Award".[540]

6.61. In the same vein, in its Reply Guyana argues that Venezuela was allegedly aware of the grounds for its current allegations that the Tribunal had failed to apply international law, or the rules set out in the 1897 Treaty.[541] But what Venezuela was aware of was that there is no apparent legal reasoning at all in the Award to explain its content, itself questionable on its face. That does not necessary prove that the arbitrators did not elaborate a legal reasoning to render their decision; they might have followed such reasoning, without mentioning it in the Award. At the time there were no evidence of the contrary; only inferences.

6.62. In sum, the point is not that Venezuela believed in or knew stories or had impressions about what was behind the 1899 Arbitral Award. Any reader of the Award could have suspected its flaws, as did Venezuela. The point, however, is that Venezuela had no evidence authorizing it to challenge the Award, until it took cognizance of the Mallet-Prevost Memorandum, the first testimony of a direct eyewitness of the facts, and subsequent documents found in the British archives.

5. The Mallet-Prevost Memorandum is the first eyewitness testimony of the unlawful process leading to the 1899 Award

6.63. The origin of the Mallet-Prevost Memorandum is well-known. Mallet-Prevost died on December 10, 1948. His Memorandum had been dictated on February 1944. The Memorandum was rendered public in 1949 by Mr. Otto Schoenrich in his article published in Vol. 43, No. 3, of the American Journal of International Law, that described it as a:

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[540] Report on the Boundary Question with British Guiana submitted to the national Government by Venezuelan Experts, 1967, VCM, Vol. III, Annex 150, p. 21, para. 28.
[541] GR, paras. 4.26, 4.27.

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

6.64. In his Memorandum, Mallet-Prevost explained that during a first period of pleadings, Lord Collins, one of the arbitrators designated by the UK, appeared to him very visibly interested with the details of the case, appearing to be willing to "getting into the full facts of the case [...] the numerous questions which he asked were critical of the British contentions and gave impression that he was leaning toward the side of Venezuela". But Mallet-Prevost then went on to say that after a holidays break in London, when the hearings resumed, "the change in Lord Collins was noticeable"; "his whole attitude was entirely different". He continued by stating that "[i]t looked to us (by which I mean to the counsel for Venezuela) as though something must have happened in London to bring about the change".

6.65. These are impressions. But they were so strong that Mallet-Prevost was still remembering them decades after. Regarding Lord Collins, it may be added that in the Dictionary of Irish Biography,[542] it is said about him that in the course of his career:

"Largely due to his association with Lord Esher, the master of the rolls, he was appointed a judge of the queen's bench in April 1891 and was knighted. Excelling in business litigation cases, he displayed a sound knowledge of the laws relating to traffic and locomotion. As a result, he was appointed as the judicial member and chairman of the railway and canal commission (1894). In 1897 he became lord justice of appeal and was appointed to the privy council. He disapproved of the workman's compensation act of the same year and refused to enlarge the statute. Several of his judgments relating to this act were reversed

[542] Available at https://www.dib.ie/biography/collins-sir-richard-henn-a1862.

by the lords, and he was criticised for his attempts at obstruction. Nevertheless, he was chosen as the British representative for the Venezuelan arbitration tribunal in Paris in the summer of 1899, successfully defending the interests of the Foreign Office in this boundary dispute. He became master of the rolls in 1901."

6.66. Concerning Lord Russel, the other British arbitrator appointed to take the place of Lord Herschell after he passed away, the letter of 15 March 1899 of Lord Salisbury proposing to him to be appointed by the British Queen as arbitrator was clear on his mandate: it was to carry out a "patriotic sacrifice".[543]

6.67. The notion that one supposedly "independent" arbitrator in an arbitration between UK and Venezuela acted to carry out a "patriotic sacrifice", while the other "successfully defend[ed] the interests of the Foreign Office in this boundary dispute", gives credible background to what Mallet-Prevost observed in 1899.[544]

6.68. Mallet-Prevost also testified that the two American arbitrators did invite him, when he was counsel for Venezuela, to a meeting at their hotel to disclose what was going on with the deliberation and ask guidance as to how they should behave. One of them said, at the beginning of the meeting: "Mallet-Prevost, it is useless any longer to keep up this farce pretending that we are judges and that you are counsel. The chief and I decided to disclose to you confidentially just what has passed". And then, as testified by Mallet-Prevost, the arbitrator explains how de Martens had blackmailed him and the other American arbitrator to force them to support the line they had decided to reject as legally unfounded. The arbitrator, after lamenting about this situation, guaranteed to Mallet-Prevost that the American

[543] R. Barry O'Brien, The Life or Lord Russel of Killowen, London, 1901, p. 307.
[544] *See*, by contrast, the unsubstantiated claims provided by Guyana, GMM, para. 8.80.

judges would take whichever position during the deliberation of the Award that the counsel to Venezuela would ask them to adopt.

6.69. This revelation, by a direct eyewitness of the facts, is the proof of *ex-parte* substantial discussion about the deliberation of the Award, resulting from a direct request made by arbitrators to the counsel of one party, for being provided with voting guidance. Article V of the Washington Treaty expressly stated that the Arbitrators "shall proceed impartially". The Mallet-Prevost Memorandum is evidence that arbitrators did not proceed impartially. There is nothing impartial for the American arbitrators asking one party how they should vote during the deliberation. Just as there is nothing impartial for Lord Collins to arbitrate in "defending the interests of the Foreign Office", as observed in Collins biography, or for Lord Russel to carry out a "patriotic sacrifice".

6.70. Guyana seems to argue that because this conduct is attributable to American arbitrators appointed by Venezuela, Venezuela cannot rely on it to claim the nullity of the 1899 Arbitral Award. But Venezuela has not been the initiator of this *ex parte* communication. The initiative came from the American arbitrators, not from Venezuela. The counsel involved did not include Venezuela's Agent to the Tribunal, namely Mr. J. M. de Rojas, but Benjamin Harrison and S. Mallet-Prevost, counsel. There is no evidence that Venezuela instructed them to have *ex parte* discussions with arbitrators.

6.71. But there is more. Indeed, the Mallet-Prevost Memorandum reveals, in the first direct testimony of a direct eyewitness, what until then was only assumed: that the 1899 Award had nothing to do with an award based on the application of international law. As rightly said by the Foreign Minister Falcon Briceño in a Statement of 12 November 1962, during a meeting of the Special Political

Committee of the UN General Assembly,[545] the "inner history" of the 1899 Award came to light through the Memorandum.

6.72. Until then, Venezuela's officials had strong doubts and bitterness. They had heard stories about the lack of any legal foundation of the deliberation, and they could not understand – indeed, nobody could - the legal reasoning behind the apparent arbitrary line unanimously drawn by the arbitrators. But they had simply no evidence on which to rely to challenge the Award. Until the Mallet-Prevost Memorandum was released, Venezuela had never had in hands anything close to the written testimony of a direct witness of how the arbitration process had been deliberately transformed into a "farce", unrelated to anything close to the resolution of a dispute by an independent and impartial third party on the basis of international law.

6. Venezuela raised its claim of nullity of the 1899 Arbitral Award when it had a well-founded opportunity to do so

6.73. As explained above, Venezuela was not able to justify its claim that the 1899 Arbitral Award is null and void before having in hands evidence to this effect. The first solid element which arose in this regard was the Mallet-Prevost Memorandum. Until then, Venezuela had no other choice than to endure the Award against its will, to protect its territory from further unlawful annexation. This is because Venezuela was in a situation of structural coercion, facing the risk of Great Britain seizing more of its territory.[546]

6.74. As Venezuela has explained, Great Britain was initially not even willing to accept the principle of a judicial resolution of the territorial dispute. Great Britain

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[545] Question of Boundaries between Venezuela and the Territory of British Guiana: Statement of His Excellency, Dr. Marcos Falcon Briceno, Minister for External Relations of Venezuela, at the 348th Meeting of the Special Political Committee on 12 November 1962, VCM, Annex 143.

[546] As already quoted above, Olney admitted that the attitude of Great Britain "in effect deprives Venezuela of her free reason and puts her under virtual duress", *see* GR para. 2.27 -2.29.

perfectly knew it had no right to claim Venezuelan territory; thus, it knew that a judicial resolution, based on international law, would certainly not have met its interests. As has been rightly said by an independent observer of the time:

> "To support its claims, Great Britain demonstrated flexible and unscrupulous tenacity. It used everything to its advantage, even its own ministerial crises. Its goal never wavered: it wanted to extend the boundaries of British Guiana as far as possible. Its usual method of discussion has always been the same: to delay negotiations in order to argue later that its colonists had made steady progress in the disputed territory; to respond to the rights of the other party with the argument of fait accompli; and to always consider the last claim made as a minimum achievement, to be used to support a new claim."[547]
>
> (…)
>
> "[Venezuela] [y]oung and still weak, he did not shy away from what appeared to be an unequal fight. Great Britain is a formidable opponent." [548]
>
> (…).
>
> "But Venezuela is not only defending its interests, it is protesting on behalf of its rights, and these rights are so numerous and have been so

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[547] G. Pariset, Historique sommaire du conflit Anglo-Vénézuélien en Guyane, des origines au traité d'arbitrage, 1493-1897, Berger-Levraut et Co., Paris, Nancy, 1898, p. 74. ("Pour soutenir ses prétentions, la Grande-Bretagne a fait preuve d'une ténacité souple et sans scrupules. Tout lui a servi : même ses propres crises ministérielles. Son but n'a jamais varié: elle voulait étendre aussi loin que possible les limites de la Guyane britannique. Son procédé usuel de discussion a toujours été le même: temporiser dans les négociations, afin d'arguer ensuite des progrès constants de ses colons dans le Contesté ; répondre aux droits de la partie adverse par l'argument du fait accompli; considérer toujours la prétention formulée en dernier lieu comme un minimum acquis, devant servir à étayer une prétention nouvelle.").

[548] *Ibid.*, p. 79 ("Jeune et faible encore, il n'a pas reculé devant une lutte d'apparence inégale. La Grande-Bretagne est un adversaire redoutable").

outrageously trampled upon that it is perhaps no exaggeration to say that the Venezuelan cause is now the cause of justice."[549]

6.75. Knowing that it had no right to claim Venezuelan territory, Great Britain preferred to rely on its capacity to unilaterally dictate its will to Venezuela, which was then a "weaker adversary".[550] As has already been demonstrated, it was only because of the U.S.A.'s initial pressure that Great Britain had reluctantly accepted to enter an arbitration process.[551]

6.76. Venezuela had expected to obtain from the arbitration process two important bulwarks against Great Britain's expansionist stance: justice, that is, a resolution of the territorial dispute created by Great Britain based on international law, and protection. But, as Venezuela has evidenced, the arbitration process has been carried out in such a manner as to ensure a parody of justice, giving Great Britain most of the territory it unlawfully coveted.[552] Venezuela sadly did not obtain justice through the 1899 Arbitral Award. Yet, it still needed the protection of its territorial rights.

6.77. Of course, the 1899 Arbitral Award did not change the fact that Great Britain was a powerful empire, and that its neighbour was far weaker. As a matter of fact, the relation between the two countries kept being comparable to "une situation quasi-coloniale",[553] where an expanding colonial power proves a

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[549] *Ibid.* ("Mais le Vénézuéla ne défend pas seulement ses intérêts, il proteste au nom de ses droits, et ces droits sont en somme si nombreux, ils ont été si outrageusement foulés aux pieds, qu'il n'est peut-être pas exagéré de dire que la cause vénézuélienne est maintenant la cause du droit.").

[550] President Cleveland's annual message to Congress, December 3, 1894; *Blue Book 6*, pp. 280-282 (available at: https://kamuru.mppre.gob.ve/index.php/s/XSLfiiQbn2mtAF4).

[551] VCM, paras. 4.148- 4.165.

[552] VCM, Chapter 5.

[553] P. Reuter, "La motivation et la révision des sentences arbitrales à la Conférence de la paix de la Haye (1899) et le conflit frontalier entre le Royaume-Uni et le Vénézuéla", in Mélanges Offerts À Juraj Andrassy, Springer, Dordrecht, p. 246. A similar view was expressed by other authors. *See* H. Gros Espiell, "Estudio preliminar", Academia Nacional de la Historia (1981), p. 21 ("The conditions under which Venezuela agreed to be represented by two American judges, without the existence of

structural threat to its neighbours. Thus, Venezuela was not only not in a position to challenge the 1899 Arbitral Award,[554] but it was to the contrary constrained to tolerate it despite its repudiation to avoid further losses. Therefore, it is of no support to Guyana's alleged "recognition and acceptance" thesis that after 1899 "Venezuela engaged in a wide range of official acts which expressly affirmed the Award".[555] These were all instances where Venezuela was forced to endure the award, despite its opposition, to mitigate the risk to see Great Britain enlarge even further the territory of its colony to the expenses of Venezuela.

6.78. As a first alleged evidence of Venezuela's "recognition" and "acceptance" of the Award, Guyana relies on the fact that the "Recommendations of the Boundary Commissioners for the Adoption of the Watersheds between the Caroni and Mazaruni River Systems as the Boundary between the Source of the Wenamu River and Mount Roraima in place of the Direct Line Mentioned in the Award …" had been denied by Venezuela, which preferred to keep strict adherence to the line described in the Award.[556] But contrary to what Guyana seems to suggest in mentioning that this Recommendation was "considered beneficial to Venezuela",[557] Venezuela's rejection of the proposed modification was "because it amounts to a veritable cession of territory",[558] as compared to the 1899 line. Indeed.

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a protectorate or any other similar institution, are very rare in arbitration proceedings and reveal a quasi-colonial sovereignty." ["Las condiciones en las que Venezuela consintió en hacerse representar por dos jueces norteamericanos, sin que existiera un protectorado o cualquier otra institución análoga, se encuentra muy raramente en un procedimiento arbitral y ponen de manifiesto una soberanía cuasi colonial"]); C. Sosa Rodríguez, "El Acta de Washington y El Laudo de Paris", in T. Carrillo Batalla (ed.), *La reclamación venezolana sobre la Guayana Esequiba*, Biblioteca de la Academia Venezolana de Ciencias Políticas y Sociales, 1983, p. 146 ("Venezuela is treated as if it were a colony or a country under mandate." ["Venezuela es tratada como si fuera una colonia o un país bajo mandato"]).

[554] VCM, paras. 10, 7.20-7.74.

[555] GR, para. 4.54. *See* also GMM, paras. 4.23-4.32; GR, paras. 4.55-4.57.

[556] GMM, para. 4.23-4.27; GR, paras 4.55-4.56.

[557] GMM, para. 4.24.

[558] GMM, para. 4.26, quoting *Letter* from Señor Paúl to Mr. O'Reilly (4 Sept. 1907) (*Inclosure in Letter* from Mr. O'Reilly to Sir Edward Grey (5 Sept. 1907)), pp. 1-2. MMG, Vol. III, Annex 48.

This is expressly written in the Boundary Commissioners Recommendations: "[a] boundary line following the watershed from Wenamu head to Roraima if adopted in place of a direct line between the same points would result in a gain to British Guiana of an area of 222.6 square miles of 576.506 square kilometres".[559] For Venezuela, sticking to the line described in the Award was clearly a protection against further territorial loses.

6.79. It was also manifestly to protect itself against further annexation of its territory by its powerful neighbour that Venezuela had insisted that the pillars marking the boundary should be located on the line described by the Award,[560] and had referred to this line in other occasions.[561]

6.80. Guyana contends that the negotiation of the boundary with Brazil is supposedly an act of recognition and acceptance of the 1899 Arbitral Award, because it was made "in conformity with the 1899 Award and the 1905 Agreement".

6.81. As explained by Venezuela in its Counter Memorial, there is no reference to the 1899 Award or to the 1905 demarcation in the Agreement between Venezuela and Brazil.[562]

6.82. Guyana recognizes this fact.[563] However, it also contends that because the agreement with Brazil refers to "mount Roraima where the frontiers of Brazil, Venezuela and British Guiana meet", it was referring to "the precise location where the 1899 Award had determined the borders of British Guiana and Venezuela".[564]

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[559] GMM, Vol. IV, Annex 69.
[560] GMM, paras. 4.28-4.29.
[561] GR, para. 4.56.
[562] VCM, para. 7.66.
[563] GR, para. 4.63.
[564] GR, para. 4.63.

Guyana concludes that this "clearly reflects Venezuela's acceptance ... of the validity of the boundary established by the 1899 Award".[565]

6.83. Yet, as recalled by Venezuela in its Counter Memorial, the negotiation of the border between Great Britain and Brazil only confirmed that the 1899 Arbitral Award was not based on international law, as evidenced not only by the fact that it attributed to Great Britain a territory belonging to Venezuela, but also because it went as far as to allocate territories to British Guiana that, at the time, were disputed between the United Kingdom and Brazil.[566] Moreover, at the time Venezuela had no evidence that the 1899 Arbitral Award was null and void. As explained above, the evidence begun to emerge years later, with the Mallet-Prevost Memorandum. Until then, Venezuela was forced to endure against its will the line described by the 1899 Arbitral Award as a sort of legal shield against further British annexation of Venezuelan territory.

6.84. This transpires again in Venezuela's position mentioned by Guyana in its Reply, quoting from a British document, by which it rejected a revision of the line described by the Award proposed by Great Britain.[567] Indeed, in his rejection letter dated 31 October 1931, the Venezuelan Minister for Foreign Affairs wrote "I have most carefully considered the proposal .... A similar modification was proposed as long ago as 1904".[568] He was referring to the "Recommendations of the Boundary Commissioners for the Adoption of the Watersheds between the Caroni and Mazaruni River Systems as the Boundary between the Source of the Wenamu River and Mount Roraima in place of the Direct Line Mentioned in the Award ...", which

[565] *Ibid.*
[566] VCM, paras. 6.139-6.142; 7.67-7.72.
[567] GR, para. 4.59.
[568] GMM, Vol. III, Annex 53.

was indeed rejected in 1904 because it would have "result[ed] in a gain to British Guiana".[569]

6.85. It is clear that at this moment in time, in the 1920's, Venezuela was not only not in a position to challenge legally the 1899 Arbitral Award, it could not do so on the ground either, because it was still fully aware that it was in a position of structural coercion vis-a-vis vis Great Britain, which had showed with the 1902-1903 blockade that it was ready to use force against Venezuela. In addition, in the 1920's Venezuela's economy was largely dependent of oil exploitation, which was controlled by British oil companies like Shell.

6.86. Despite this critical context, Guyana contends in its Reply that "Venezuela does not allege that it was forced to engage in acts such as those described above as a result of "structural coercion". According to Guyana, Venezuela's alleged silence in its Counter-Memorial confirms that these official acts were all done in the exercise of its sovereign free will, and reflected Venezuela's supposed acceptance of the 1899 Award and the resulting boundary."[570] This is plainly incorrect. Venezuela has expressly argued that it was in a situation of structural coercion during all the period covering the facts alleged by Guyana as evidence of acceptance and recognition of the Award.[571]

6.87. Guyana seems to suggest that the first half of the 20th Century was just normal, that Venezuela, a young, decolonized country, on the one hand, and the British Empire and the United States of America, on the other hand, were put on an equal footing and that Venezuela was in a position to freely challenge the unjust 1899 Arbitral Award whenever it wished. This completely unfounded argument is probably put forward because Guyana is aware that, in the words of the Court,

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[569] GMM, Vol. IV, Annex 69; and *supra*, para. 6.78.
[570] GR, para. 4.57.
[571] VCM, paras 7.2, 7.20-7.22, 7.58.

'acquiescence [...] presupposes freedom of will'.[572] But contrary to what Guyana contends, the reality of the situation of structural coercion in which Venezuela was at the time cannot be seriously disputed. None of the arguments advanced by Guyana in its Reply supports the contrary.

6.88. First, Great Britain, Venezuela's immediate neighbour that used to have recourse to all sort of tricks to annex Venezuela's territory, was an extraordinarily powerful empire compared to Venezuela. This reality was clearly understood by Venezuela. For example, Counsel for Venezuela in the Venezuelan Preferential Case stated that there were:

> "vast inequality of strength between Great Britain and Venezuela [...]. [Great Britain] is one of the most powerful nations of the earth, and she was confronting one of the weakest nations, then torn by internal commotion and needing every particle of strength she possessed and every dollar of revenue she could collect at her ports to maintain her own existence" [...].
>
> "This disparity in strength is clearly shown in the Statesman's Yearbook for 1903, an accepted authority in such matters, which details the great and efficient standing army of Great Britain, as well as her supreme control of the seas by her vast navy, while it reports that the army of Venezuela consists of 9,000 men, and her navy of 3 steamers, 2 sailing vessels, and some small gunboats; and the propriety of great forbearance in pressing doubtful claims by so powerful a nation against a nation so incapable of resistance ought, it would seem, to have been

[572] *Frontier Dispute (Burkina Faso/Mali), ICJ Reports 1986*, p. 597, para. 80.

always recognized even before the high-sounding proclamation of the peace conference."[573]

6.89. Second, Great Britain had made very clear, both before and after the 1899 Award, that it was ready to engage its strength against Venezuela, should it decide that it was conform to its interests.

6.90. Guyana argues that Venezuela's contention is "impossible to reconcile with the assertive and sometimes threatening nature of Venezuela's communications to Great Britain regarding the boundary controversy in the period immediately preceding the issuance of the Award", referring to two events.[574] But the events Guyana refers to are facts occurred in 1887 and 1893,[575] that is, before Venezuela was effectively coerced to accept the otherwise unacceptable 1897 Treaty of Washington.[576] It is by 1896 that it became clear to Venezuela that Great Britain was ready to use force against is to promote its interests.

6.91. Concerning the period following the 1899 Arbitral Award, Guyana tries to mislead the Court in claiming that "Venezuela ... 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."[577]

6.92. To the contrary, the evidence is overwhelming. For instance, in a report of May 4, 1900, provided by Guyana itself, Venezuelan Counsellor Dr Rafael Seijas wrote:

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[573] *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 (1905) p. 1130.

[574] GR, para. 4.38, referring to events mentioned in VCM, paras. 4.176-4.178.

[575] GR, para. 4.38, fn 312 and 313.

[576] VCM, paras. 5.68-5.76.

[577] GR, para.4.38.

"Now as regards Great Britain, its contempt for the weak being notorious and its persistence in laying hands on the mouth of our great river, a plan on which it has been working since the end of the 18th century, it is considered not only that it would not agree to Venezuela's opinion that the case should be reopened, but that it would take advantage of it with a view to retaining what it still holds, and very probably to extend its encroachment".[578]

6.93. Strikingly, this report shows that Venezuela could not even refuse to discuss the demarcation, which was finally agreed on 1905. In the 1967 Report of the "Boundary Question With British Guiana Submitted to the National Government by the Venezuelan Experts", it is confirmed that:

"27.- A note from the British Minister in Caracas to his Government of December 5, 1899, records that the Venezuelan Government wished to delay the demarcation of the frontier. In July 1900, the British Minister notified the Venezuela Government that if it did not dispatch the Demarcation Commission before October 3 the British Government would begin the demarcation alone. On October 8, that Minister notified the Venezuelan Chancellery that the Governor of British Guiana had been given instructions to commence demarcation. On October 19, the British Commissioners had already set up the Punta Playa boundary post. Under such an open pressure as this, Venezuela had no other alternative than to proceed to send its Demarcation Commission".

(...)

29.- If Venezuela concurred with Great Britain in the demarcation of the so-called border of the "Award", it was for the tremendous pressure

[578] GMM, Vol. IV, Annex 66.

of the circumstances and to prevent greater evils. The work of this Commission, evidently of a purely technical character, did not imply the assent to the so-called sentence of the Arbitral Tribunal".[579]

6.94. Clearly, for Venezuela, at the time, protection against further territorial losses could only come from sticking to the line of the Award, as unfounded as it was. It was the only protection it could rely on "to prevent greater evils". This explains why Venezuela, against its will, had to stick to this line until evidence of the Award's flaw emerged.

6.95. Guyana further argues that Venezuela was not "intimidated by Great Britain since, to the contrary, it carried out bellicose actions against it.[580] Those "bellicose actions", according to Guyana, included "use of force against British assets and British subjects".[581]

6.96. Again, Guyana tries to mislead. None of the incidents on which Guyana relies for substantiating this argument evidence a confrontation with Great Britain based on a rejection of the law. None of the incidents mentioned by Guyana [582] are "bellicose actions" against Great Britain; all of them are based on what Venezuela thought were its rights to defend itself against insurrectionists.

6.97. The first incident featured a Venezuelan warship carrying out police enforcement action against four private ships, three of them being of Venezuelan nationality. The Venezuelan consul, M. J. Arraiz, explained that the Venezuelan gunboat was chasing several boats leaving Venezuela with revolutionists onboard, forcing them to put into the island of Patos.[583] He also argued that the Venezuelan

[579] VCM, Vol. III, p. 422, Annex 150.
[580] GR, paras. 4.39-4.40.
[581] GR, para. 4.39.
[582] GR, para. 4.39.
[583] GR, Vol. III, Annex 29, p. 279.

soldiers never landed, and that "he was sorry that there should be any dispute between the two Governments".[584] This can hardly be seen as a bellicose action. The Venezuelan counsel argued, in relation to this incident, that Great Britain put forward during the Venezuelan Arbitration of 1903, that "the whole incident is of an unimportant character", and "does not call for war by a power fresh from signing The Hague Convention for mediation and arbitration".[585] The second incident, dated 27 February 1901, is of the same nature. A Venezuelan warship carried out what was thought to be a police enforcement activity against Venezuelan insurrectionary forces having seized a boat and used it against the will of its owner.[586] The third and fourth incidents mentioned by Guyana,[587] dated December 1901 and May 1902, are of the same nature. Nothing close to what now Guyana portrays as "bellicose actions" against Great Britain. They all involve private individuals suspected to be related to insurrectionary forces or to be involved in traffic in arms or smuggling, at a time when Venezuela was facing a civil war, which turned out to be the so-called "Liberating revolution". This certainly cannot substantiate Guyana's claim that Venezuela was allegedly in a position to challenge the 1899 Arbitral Award, let alone trespass the boundary line that it described.

6.98. Guyana further argues that, during the exchanges related to these incidents, Venezuela claimed that the island of Patos was under Venezuelan sovereignty. But this was certainly no a new claim "disputing British title to the island of Patos", since the title over this island had long been in dispute.[588]

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[584] *Ibid.*

[585] *See* Argument of Venezuela, *The Venezuelan Preferential Case (Germany, Great Britain, Italy, Venezuela et al)*, https://legal.un.org/riaa/cases/vol_IX/99-110.pdf, p. 192.

[586] GR, Vol. III, Annex 30, p. 285.

[587] GR, para. 4.39.

[588] *See* Argument of Venezuela in, *The Venezuelan Preferential Case (Germany, Great Britain, Italy, Venezuela et al)*, https://legal.un.org/riaa/cases/vol_IX/99-110.pdf, pp. 159, 190, 196; *see* also Basdevant, "L'action Coercitive Anglo-germano-italienne Contre Le Vénézuéla (1902-1903)",

6.99. Yet, the case of the island of Patos is instructive. Indeed, Jules Basdevant wrote that the dispute regarding this island had lead Great Britain to "substituer pour la première fois les mesures effectives aux controverses diplomatiques".[589] Great Britain's reaction to what it saw as a threat to its alleged title over the island of Patos, never recognized by Venezuela, was so strong that it informed Venezuela that it would have been risking even more losses of its territory if it had decided to challenge the 1899 Arbitral Award without concrete evidence as to its nullity.

6.100. Moreover, Venezuela's conduct upon which Guyana relies to suggest that Venezuela could have challenged the 1899 Arbitral Award has been unilaterally avenged by force by Great Britain through the naval blockade of 1902-1903.

6.101. Of course, the naval blockade of 1902-1903 demonstrates that Venezuela was vulnerable at the time, and subject to a structural coercion.[590] As was written, "on December 1902 [...] it was already evident that Venezuela must bow to force".[591] The coercion against Venezuela has been explained as follows by Yepes:

> "L'action coercitive de l'Angleterre, de l'Allemagne et de l'Italie contre le Venezuela en 1902 a eu pour prétexte des réclamations en faveur de leurs nationaux.
>
> (...) Les Etats réclamants — avec cette mentalité de pays colonisateur dont l'Europe a fait preuve pendant longtemps à l'égard de l'Amérique latine — ne comprenaient pas les choses de la même façon que le Venezuela. Ils [...] adressèrent un ultimatum au Venezuela. Après un délai de vingt-quatre heures, les mesures de violence commencèrent.

Revue Générale de droit international public, Paris, 1904, pp. 362-458, pp. 368-369, (https://gallica.bnf.fr/ark:/12148/bpt6k6461282p/f379.item.r =jules%20basdevant.langFR.

[589] *Ibid.*, p. 371.

[590] VCM, para. 5.136.

[591] *See The Venezuelan Preferential Case (Germany, Great Britain, Italy, Venezuela et al)*, https://legal.un.org/riaa/cases/vol_IX/99-110.pdf, p. 205.

> Elles consistaient dans le bombardement de Puerto Cabello, dans le blocus soi-disant pacifique des côtes vénézuéliennes et dans la saisie des navires de guerre vénézuéliens, dont deux furent coulés.
>
> […] C'est à l'occasion de cette coalition contre le Venezuela que le ministre argentin, M. Drago, proclama la doctrine qui porte son nom. D'après cette doctrine, «la dette publique ne peut donner lieu à une intervention armée, moins encore à une occupation matérielle du sol des nations américaines par une Puissance européenne".[592]

6.102. Guyana does not deny it but argues that the blockade "lasted just three months".[593] But Guyana overlooks that it ended only when Venezuela was forcibly reduced. Indeed, as a condition to raise the blockade, Great Britain imposed to Venezuela the signature of a "Protocol Between Great Britain and Venezuela Relating to the Settlement of the British Claims and Other Matters (1903)",[594] by which Venezuela was forced to recognize "in principle the justice of the claims which have been preferred by His Majesty's Government on behalf of British subjects" (Article 1), and committed to "satisfy at once, by payment in cash or its equivalent, the claims of British subjects, which amount to about £ 5,500, arising

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[592] J. Yepes, «Les problèmes fondamentaux du droit des gens en Amérique », *Recueil des cours de l'Académie de droit international de La Haye,* Vol. 47, 1934, pp. 61-62 ("The coercive action taken by England, Germany and Italy against Venezuela in 1902 was justified on the grounds of claims made on behalf of their nationals. […] The claimant states — with the colonial mentality that Europe had long displayed towards Latin America — did not see things the same way as Venezuela. They […] issued an ultimatum to Venezuela. After a twenty-four-hour deadline, violent measures began. These consisted of the bombing of Puerto Cabello, the so-called peaceful blockade of the Venezuelan coast and the seizure of Venezuelan warships, two of which were sunk. […] It was during this coalition against Venezuela that the Argentine minister, Mr Drago, proclaimed the doctrine that bears his name. According to this doctrine, "public debt cannot give rise to armed intervention, let alone the physical occupation of the soil of American nations by a European power").

[593] GR, para. 4.41.

[594] In reality, the Protocol was concluded by M. Bowen, an American citizen, not a Venezuelan citizen, in contradiction with the Venezuelan constitution; *see* J. Basdevant, "L'action Coercitive Anglo-germano-italienne Contre Le Vénézuéla (1902-1903)", p. 439.

out of the seizure and plundering of British vessels and the outrages on their crews, and the maltreatment and false imprisonment of British subjects" (Art 2).[595] As has been rightly written, this Protocol is based on "la satisfaction immediate et sans contestation des reclamations dites du premier rang" … Pour celles-ci, l'arbitrage est complètement écarté pour laisser place à une solution purement et simplement imposée par la force" … Il est évident, cependant, que rien n'établit le bien fondé de toutes ces réclamations de premier rang".[596]

6.103. Indisputably, this episode constitutes strong evidence that, during the colonial era, when the British empire was in its full strength, Venezuela lacked the means and conditions to resist its acts of aggression. The end of the naval blockade certainly did not change this state of fact, which deterred Venezuela to challenge the 1899 Arbitral Award until it had both evidence in hand and confidence that Great Britain would not use force against it.

6.104. To attempt—unsuccessfully—to prove otherwise, Guyana puts forward that Venezuela did lodge a formal protest against an aspect of the award rendered by the Arbitral Tribunal in the 1903 Venezuela Preferential Case before the Permanent Court of Arbitration.[597] Guyana's argument is that since Venezuela did protest at this time, it was allegedly also capable of protesting against the 1899 Arbitral Award. Yet, the said protest was made by Mr. Herbert W. Bowen, the American diplomat who had negotiated for Venezuela and acted as agent in the Venezuela Preferential case. Since the Award had interpreted his words or intent during certain negotiation preceding the case in a manner that directly damaged Venezuela's case,

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[595] It is recalled that Venezuela did disagree with the "justice" of these claims and accepted to recognize them as funded as the sole result of the blockade.

[596] J. Basdevant, "L'action Coercitive Anglo-germano-italienne Contre Le Vénézuéla (1902-1903)", p. 435 ("the immediate and uncontested satisfaction of so-called first-ranking claims" ... For these, arbitration is completely ruled out in favour of a solution that is purely and simply imposed by force" ... It is clear, however, that there is no evidence to support the validity of all these first-ranking claims").

[597] GR, para. 4.42.

he felt committed to protest, in his own name rather as in the name of Venezuela. To appreciate the personal nature of Bowen's protest it suffices to compare the title of his protest, in the proceedings of the 1903 Venezuelan Arbitration - i.e., " Protest of Mr. Herbert W. Bowen, Agent for Venezuela, against the Award" - to either the title of the protest lodged by Japan (i.e., "Protest of Japan .."), or to the title of letters send to the Administrative Council of the PCA, such as "Letter of counsel for the United States to the Administrative Council", and "Letter of French agent to the Administrative Council".[598]

6.105. Secondly, as recalled by Guyana itself, the protest made by Bowen against a paragraph of the Award was expressly based on "positive proof that the said conclusion of the arbitration is erroneous".[599] It is only with "positive proof" in hands that Bowen considered possible to challenge the award. By contrast, as has been explained above, Venezuela had no positive proof for challenging the 1899 Arbitral Award at the time, and in the situation of structural coercion in which it was vis-à-vis Great Britain, it was simply impossible for it to challenge the 1899 Arbitral Award, however unjust it was.

6.106. Guyana further suggests that even if during the blockade Venezuela could not question the 1899 Arbitral Award, after the latter was lifted there was supposedly no more justification for the absence of challenge to the Award for more than half a century after it ended.[600] But Guyana overlooks that, notwithstanding the fact that Venezuela could not bring evidence regarding the nullity of the Award before the second half of the XXth Century, it had been coerced and defeated by Great Britain twice, once when it had no other choice than to sign the 1897 Washington Treaty despite its many flaws, the second time during the blockade.

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[598] *The Venezuelan Preferential Case (Germany, Great Britain, Italy, Venezuela et al)*, https://legal.un.org/ riaa/cases/vol_IX/99-110.pdf, p. 3.
[599] GR, para. 4.42.
[600] GR, para. 441.

From there, Venezuela was obviously not in a position to challenge the 1899 Arbitral Award, until it had evidence and sufficient strength to push forward its claim. This moment came exactly in the second half of the XXth Century,

6.107. Guyana also puts forward that the structural coercion afflicting Venezuela at the time is allegedly contradicted by the statement made by Dr Marcos Falcón Briceño on 12 November 1962 before the United Nations, in which, according to Guyana,

> "Dr 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"".[601]

6.108. Once again Guyana, sticking to its manipulative tactics, grossly misinterprets Dr Marcos Falcón's statement. It reads:

> "Replying to my own query, namely, why is the matter being raised now, it was because earlier we were not acquainted with the inner history of this award. We did not know exactly how things had taken place. Certainly, we knew that we had been robbed, but the Venezuela of 1899 and the Venezuela of many years thereafter was a country which was poverty-stricken, which had been ravaged by civil war. 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 for this is an historical fact – Venezuela was virtually without a government. Naturally, that is our fault, not the fault of Great

[601] GR, para. 4.43.

Britain, but I am trying to depict the atmosphere which prevailed at the time these various events were taking place".[602]

6.109. Reading this complete statement, it is clear that when the Venezuelan Minister said "this is our fault, not the fault of Great Britain", he was simply saying that the specific fact that Venezuela was virtually without Government was not the fault of Great Britain.

6.110. It stays clear that without a functional government for a long period of time, contrary to Great Britain, which was in full strength, and without evidence that the Award was null, Venezuela had no possibility to legally challenge the Award, let alone to ignore on the ground the boundary line it describes. Great Britain's threats of force against Venezuela before the 1897 Treaty and after the 1899 Award, including the naval blockade in 1902-1903, meant that Venezuela knew full well that if it protested in favour of its interests and against the interests of Great Britain, especially on a matter as sensitive as its boundaries with Great Britain, new threat of force or, even worst, force without prior threat would ensue, at a time when the military power disparities between Great Britain and Venezuela were gigantic. The naval blockade by Great Britain instilled a well-founded fear in Venezuela, which remained the critical factor that determined its conduct for decades.

6.111. Guyana contends in its Memorial that "between 1944 and 1962, when Venezuela began to question the equitableness of the 1899 Award, [it] avoid[ed] formulation of any legal ground for a Venezuelan claim".[603] Guyana repeats the same in its Reply.[604]

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[602] VCM, Vol. III, Annex 143, p. 333.
[603] GMM, para. 9.11.
[604] GR, para. 4.77.

6.112. Venezuela only became aware of the Mallet-Prévost Memorandum when it was made public by Mr. Otto Schoenrich, after the death of its author. It was at this juncture, and based on this impetus, that Venezuela began research in the British archives, which also became partially accessible only during the 1950s. This was a diligent effort to find conclusive evidence from the official documents of the British Government that may support lack of impartiality. The research in the British archives required effort and time to access, to collect the relevant information and properly to appreciate it. This was a period of time when there was no online access of academic journals, and the publicity of articles in academic journals would not have been widely and quickly disseminated around the world, in the way that can happen in today's world of academic publications websites, blogs and social media.

6.113. The process of acquisition of evidence by Venezuela from the moment it was aware of the Mallet-Prevost Memorandum has been described by the Venezuelan expert, Padre Ojer, during a session of the Venezuelan and British experts in charge of studying the evidence that the 1899 Arbitral Award was null:

> "In 1949, Venezuela came to know of Mallet-Prevost's Memorandum. This document—as we know—reveals the inner workings of the Paris farce. Clearly, the Memorandum caused a major stir in the country, as is well known to anyone familiar with the Venezuelan press of the time. And a curious fact is that its publication coincided with the 50-year period required for the British archives to be opened, and it also coincided with the opening of private archives. Venezuelan historians immediately began studying these documents. These studies by Venezuelan researchers were conducted between 1950 and 1955. I would like to emphasize those two facts—the coincidence of both events—because they explain why Venezuela waited to formalize its

denunciation of the Award and to make its "approach" to the British Government to discuss the documents related to the Award."[605]

(...)

"Once Venezuela had obtained the extensive documentation supporting its traditional position regarding the 1899 Award, it reaffirmed that position in February 1962 through its Ambassador to the United Nations, Dr. Carlos Sosa Rodríguez, who is now President of the General Assembly of the United Nations."[606]

6.114. The British Archives, in the form of microfilms, revealed to Venezuela, as reported by a Venezuelan expert in a Memorandum dated 3 September 1963:

1) The history immediately preceding the award, which highlights the various factors that led to the Venezuelan defeat, and particularly serious irregularities in the arbitration process.

2) The verification of the bad faith and fraud of Great Britain in the presentation of documents on the Schomburgk line, a fundamental piece of evidence, although undeservedly so, presented to the court.

The flaws in the award, the reason for its injustice, the corruption of the English arbitrators and the bribery exercised by the president of the Court, to obtain the ruling.[607]

6.115. Taking into account this process, in the conditions of the 1950s, and the capacity of Venezuela as a developing State at this moment in time, it would not be

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[605] Expert's conversations on the boundary issue Venezuela-British Guiana, Minutes of the Twelfth Session, dated 2 April 1964, **Annex 30**, pp. 24-25.
[606] *Ibid.*, p. 27.
[607] *See* VCM, Annex 150.

reasonable to expect Venezuela to have protested against the Award's nullity before the 1960s.

6.116. Secondly, as a matter of fact, despite the real challenges Venezuela faced on the ground, it challenged the Award in 1904, 1944, 1945, 1951 and 1954, in ways that were sufficiently soft so as to avoid the grave danger of Great Britain's use of force again. Venezuela increasingly felt more confident it could safely challenge the Award during the period of decolonisation and the conclusion of the UN Charter. As such, it is when it had sufficient evidence of the nullity of the Award, and it was as the decolonisation process was being consolidated, that Venezuela raised its nullity claim.

6.117. It follows that Venezuela did raise its nullity claim in due time, when it became in a proper situation to do so: with sufficient evidence, and when the situation of structural coercion created by its imperial neighbour faded away due to the decolonisation process.

D. THE 1905 DEMARCATION BASED ON THE 1899 AWARD CANNOT SAVE THE INVALID AWARD OR THE BOUNDARY LINE IT UNLAWFULLY ESTABLISHED

6.118. Venezuela has explained in its Counter Memorial, and this is obvious, that the 1905 demarcation which merely marked on the ground the line of the 1899 Arbitral Award could certainly not somehow survive the nullity of the Award.[608]

6.119. In its Reply, Guyana contends that "1905 Agreement was not "merely a technical exercise".[609] However, Guyana contradicts itself with what it states in its own Memorial, which is repleted with assertions such as the following:

[608] VCM, paras. 7. 60-7.64.
[609] GR, para. 4.48

- "Soon after the 1899 Award was delivered by the Tribunal, the parties established a Joint Boundary Commission and appointed its members, who proceeded to physically demarcate the boundary."[610]
- "Great care was taken to achieve an accurate demarcation, in strict compliance with the 1899 Arbitral Award."[611]
- "the demarcation of the boundary had been completed in conformity with the 1899 Arbitral Award".[612]
- "On 10 January 1905, the Agreement Between the British and Venezuelan Boundary Commissioners with Regard to the Map of the Boundary ("the 1905 Boundary Agreement" or "the 1905 Agreement") was signed, demarcating the entire boundary between British Guiana and Venezuela in compliance with the 1899 Arbitral Award."[613]

6.120. The demarcation was obviously nothing more than a lengthy technical exercise aiming at transposing the 1899 Arbitral Award delimitation on the ground.

6.121. This is confirmed by a document setting out some agreed coordinates signed by the Commissioners on 24 November 1900. It reads: "The undersigned, members of the Commission appointed by her Majesty the Queen of Great Britain and Ireland to delineate technically the boundary line between the United States of Venezuela and the Colony of British Guiana of the one part and, of the other part of the Commission named for the same object by the United States of Venezuela".[614]

6.122. For its part, the text of the 1905 agreement makes it clear that its sole object is to describe, in an agreed document, "the result of [the] work [of the demarcation

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[610] GMM, para. 4.10.
[611] GMM, para. 4.14.
[612] GMM, para. 4.18.
[613] GMM, para. 4.20.
[614] *See* Commission of Her Majesty the Queen of Great Britain and Ireland to delineate technically the boundary line, dated 24 November 1900, **Annex 29**.

commission] in the demarcation of the boundary between the territories … as laid down by the Arbitral Award".[615] It does not establish a boundary. Its sole ambit is to describe, in an agreed manner, the location on the ground of what the Award establishes. In legal terms, it simply commits the Parties to accept a certain interpretation, on the ground, of the line established by the 1899 Award.[616]

6.123. Guyana contends that this 1905 agreement would somehow supposedly survive the nullity of the Award, because it is a binding Treaty.[617] But even if it were the case, this agreement would not suddenly be transformed into a boundary treaty. It would still be a mere agreed description on the ground of what is written in the 1899 Arbitral Award. As such, it could not determine the boundary, as if it was a boundary treaty.

6.124. In addition, the text of the 1905 agreement states: "whereas both Government ought to possess authentic documents of like tenure which set forth their respective rights in the territory that has been demarcated, they agree and declare: 1st that they regard this document as having a perfectly official character with respect to the acts and rights of both Governments in the territory demarcated; that they accept the points mentioned below as correct …".

6.125. It follows that the "official character" of the demarcation, as well as the acceptation of the basepoints mentioned, are triggered by the possession by the Parties of documents setting forth their respective rights on either side of the line determined by the 1899 Arbitral Award. Since, as contended by Venezuela, the 1899 Award is null and void, then Guyana, and before it the UK, never possessed any document setting forth their rights on the eastern side of the alleged boundary

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[615] AG, Annex III.

[616] This is plainly wrong. It simply describes on the ground a line in compliance with the 1899 Award.

[617] GR, paras. 4.50-4.53.

unlawfully determined by this Award. As a consequence, the description made in the 1905 agreement does not have "official character", and indeed any relevance.

E. CONCLUSION

6.126. As has been demonstrated, Guyana's claim based on alleged acquiescence and presumed recognition is groundless and unfounded. First, as a novation instrument, the Geneva Agreement does exclude any reliance on past conduct. Second, the concept of acquiescence/recognition upon which Guyana relies cannot be opposed to Venezuela, vis-à-vis which it never acquired an international customary law nature. Third, even if acquiescence, as a legal principle, could be opposed to Venezuela, it would not apply since Venezuela did challenge the 1899 Arbitral Award appropriately, when it had sufficient evidence in hand and when the structural coercion it was submitted to during the colonial era faded away. The 1905 demarcation agreement, which object and purpose are solely to interpret, on the ground, the line described in the 1899 Arbitral Award cannot survive the nullity of this Award. For these reasons, Guyana's claim is both baseless and devoid of meaning.

CONCLUSIONS

1. Venezuela has demonstrated, once again, that there are solid legal and factual reasons for its irrevocable historical position of not submitting to third parties (including the International Court of Justice) any matters related to its vital interests, such as its independence and territorial integrity.

2. This position, which arose after the fraud committed with the 1899 Arbitral Award, seeks to protect the most sacred interests of the nation and is expressly contained in the 1966 Geneva Agreement. It was also reiterated to the Secretary-General of the United Nations before his unprecedented decision to choose the International Court of Justice as the means to settle the dispute.

3. This historical position is an inalienable part of the legal order of the Bolivarian Republic of Venezuela and was ratified emphatically and irrevocably by the Venezuelan people in the consultative referendum held on 3 December 2023.

4. Since 2018, Venezuela has consistently opposed the Court's purported jurisdiction to hear the fraudulent unilateral claim initiated by Guyana, to which Venezuela has not consented, abiding by the Geneva Agreement, which in no way constitutes a basis for jurisdiction to hear such a claim.

5. Notwithstanding the above, the Court, in its questionable 2020 decision, asserted its jurisdiction to hear Guyana's unilateral claim, thereby precluding the parties from resolving the dispute amicably and "in a manner acceptable to both Parties," and further contributing to the violation of a bilateral international treaty: the Geneva Agreement.

6. Guyana has not ceased in its effort to drag and instrumentalise the Court into its delusional actions, which included blatant attempts to interfere in Venezuela's internal affairs and the recourse to fraudulent proceedings before the

Court, seeking to cover up the illegal and belligerent conduct it has engaged in to usurp Venezuela's rights.

7. Since 2015, Guyana has consistently sought to increase and consolidate its military alliances with the United States and NATO in order to threaten Venezuela with the use of force. There is no doubt that this is a re-edition of the structural colonialist coercion of the 19th and 20th centuries and an attempt to force Venezuela to relinquish its legitimate rights over the territory that has belonged to it since its birth.

8. Since 2015, Guyana has intensified its strategic approach of ill intent and bad faith aimed at disregarding and violating its obligations under the Geneva Agreement in order to satisfy the energy demands of transnational hydrocarbon companies.

9. Once the matter was wrongfully submitted to the Court, Guyana invoked the Geneva Agreement in a self-serving and selective manner, disregarding its indivisibility, in an attempt to artificially draw from the Agreement a consent to the Court's jurisdiction that has never been granted.

10. With its limited and meagre arguments, Guyana failed to refute any of the compelling truths exposed by Venezuela. In the face of opposition, it fled. In the face of truth, it hid. And in the face of defeat, it lied without any sense of decorum.

11. Venezuela has irrefutably demonstrated that every word and every provision of the Geneva Agreement, as well as the *travaux préparatoires* and subsequent practice, was agreed upon by the Parties in order to bury the dispute over the validity of the 1899 award, on which they held divergent and irreconcilable positions, and to focus exclusively on finding a mutually practical, satisfactory and acceptable solution to the territorial dispute.

12. Guyana, for its part, not only avoids interpreting the Geneva Agreement, falsifies its purpose, and maliciously induces an inappropriate judicial response to a dispute that is completely unrelated to it, but also deliberately disregards the fact that the Agreement falls within the framework of international law on decolonisation as a remedy for one of the most emblematic injustices of colonialism.

13. Decolonisation does not merely promote the self-determination of colonial peoples; it also safeguards the territorial claims of sovereign States that have been stripped of part of their territory by the greed of colonial empires. The immediate consequence of this process of decolonisation is the restitution of those territories, thereby rendering null and void the colonial instruments designed to gloss over the abuses of the colonial powers, such as the Washington Treaty of 1897 and the Award of 1899. Decolonisation cannot allow itself to consolidate and perpetuate such grievances.

14. Colonial spoliation by the United Kingdom cannot translate into a legal title for Guyana. Venezuela's legitimate claim to recover Guayana Esequiba forms part of the decolonisation process and crystallised in the Geneva Agreement, which obliges the Parties to seek in good faith a practical arrangement to heal a wound caused by colonialism. As long as imperial colonial spoliation persists, the decolonisation process cannot be considered complete.

15. The Geneva Agreement entailed the novation of the legal framework imposed by the colonial powers through structural coercion. By signing the Geneva Agreement, the Parties superseded the fraudulent legal framework that included the 1899 award —and its corollary, the 1905 demarcation agreement— with another in which, acknowledging the imperative of decolonisation, they undertook to seek, through a specific procedure, a peaceful, practical and satisfactory solution to their

territorial dispute. The Geneva Agreement is decolonisation law, and it must be interpreted within that framework.

16. The Geneva Agreement permanently repealed the fraudulent 1899 Award and any consequences that might have been intended from it. The award was, in any case, incompatible with the fundamental principles of decolonisation, which is why it was doomed to expire and disappear.

17. As a result of the novation, any legal analysis of the dispute must focus on the obligations —both procedural and substantive— the Parties undertook under the Geneva Agreement, and not on the validity or invalidity of the 1899 award or the subsequent conduct of the Parties, which are irrelevant to any consequence arising from the Agreement.

18. Any attempt to seek a judicial decision limited to nullifying or validating the 1899 award is incompatible with international law. Such a decision would be tainted by the interests of a major colonial power in an international treaty freely entered into and legitimised by the imperative of decolonisation, which would only resurrect the *status quo ante*, bringing back the disgraceful decades of colonialism.

19. In the unlikely event that the Court could hear this illegitimate action by Guyana, it has only one option: to respect the validity and independent existence of the Geneva Agreement on which it bases its alleged jurisdiction. No one is permitted to interfere in the settlement of the dispute without the consent of the Parties.

20. The only possible solution under international law is found in the Geneva Agreement, and it is none other than to achieve a practical and satisfactory settlement for both parties to the territorial dispute between them, which is incompatible with and excludes a judicial resolution. The Geneva Agreement

established a procedure to achieve a substantive goal: a practical arrangement mutually acceptable to the parties to their territorial dispute.

21. The main motivation behind Guyana's stubborn behaviour lies in its bitterness at not having received a title that legitimises the vulgar spoliation of which it has become the heir. Guyana still seems to be ashamed of such complicity. Venezuela, for its part, has an incontrovertible right, derived from its historical titles, over the territory of Guayana Esequiba.

22. The null and void award of 1899 was a nefarious attempt to legitimise the spurious interests of the British Empire in collusion with the United States, as part of the privileged and special relationship that found in this event one of the founding milestones of the Monroe Doctrine in the Americas.

23. In other words, the award was yet another expression of colonialism, of the imposition, through structural coercion, of the interests of the dominant powers, in this case the United Kingdom, on more modest States which they sought to dominate as they did their colonies.

24. In any case, following the signing of the Geneva Agreement, the question of whether or not the 1899 award is valid has been superseded and is no longer relevant to the territorial dispute. Its relevance is purely historical. Venezuela, in defence of its territorial integrity and inalienable rights, has demonstrated to the world, and in particular to Guyana and the Court, the grotesque theft of which it was a victim.

25. Venezuela has demonstrated that the Washington Treaty of 1897, which supposedly forms the legal basis for the 1899 Award, is blatantly fraudulent. That treaty, tainted by error and fraud, was conceived behind Venezuela's back and imposed on it through the threat of force. It is an unequal and colonialist treaty, deeply unjust and the original source of the nullity of the 1899 Award.

26. Venezuela was excluded from the negotiation of the 1897 Treaty by the United States and the United Kingdom, an infamous duo that shamelessly colluded behind the Monroe Doctrine, seeking to split the world between them under rules that ensured their exclusive benefit and expansionism.

27. During the negotiation of that bogus treaty, Venezuelan arbitrators were excluded and a fraudulently devised 50-year statute of limitations rule was incorporated. This is overwhelming proof of the audacity of these powers in carrying out the vile plunder of which they sought to make Venezuela a victim. The error into which Venezuela was maliciously induced radically vitiated the 1897 treaty and, as an inevitable consequence, the 1899 award.

28. Venezuela has proven beyond doubt and irrefutably that the 1899 Award is null and void. It is an unfounded Award, in which the arbitrators were blatantly biased and unquestionably abused their power, both by action and omission. All the evidence and legal grounds presented conclusively refute Guyana's malicious narrative.

29. The lack of reasoning in the award is a cause for nullity, either as an independent cause or as a manifestation of an abuse of power by omission on the part of the arbitrators.

30. The excess of power under the Award took many other forms: it set the border without ruling on legal titles; it overlooked the rules that should have guided its decisions; it failed to act impartially, serving the interests of the country that had appointed the arbitrators and going against Venezuela's interests; and, finally, it ruled on the matter on the basis of a political compromise, outside the framework of international law.

31. Guyana's attempt to characterise Venezuela's conduct prior to the signing of the Geneva Agreement as a form of acquiescence is entirely futile. The Geneva

Agreement repealed all previous obligations between the parties, replacing them with new obligations that substantially transformed the legal relationship between them. In any case, such conduct was not invoked by the United Kingdom during the negotiations that led to the Geneva Agreement and, even if considered in itself, did not remedy the proven defects of the award.

32. Before the Mallet-Prevost Memorandum was made public and the British Archives were partially opened, Venezuela lacked the necessary evidence to transform the plausible grounds for nullity of the 1899 award into proven facts. Suspecting, knowing, and inferring are not the same as proving.

33. Furthermore, under structural coercion, Venezuela faced the paradox that, despite the flaws in the award, it was under constant threat of further abuses and territorial expansionism by the United Kingdom. Against such a backdrop, the alleged omission or silence regarding the flaws in the award, or even its invocation, did not imply acquiescence. When the United Nations and the decolonisation process came along, things changed, favouring the recognition of Venezuela's rights.

34. The 1905 border demarcation agreement was nothing more than the mere technical enforcement on the ground of the border line described by the null and void 1899 award. The nullity of the award inevitably renders the 1905 agreement null and void; any claim to the contrary is pure fantasy.

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35. In light of the foregoing, the International Court of Justice has no role or function to play in resolving the territorial dispute between Venezuela and Guyana over the territory of Guayana Esequiba. The Geneva Agreement is the only valid, current instrument that offers the only solution to this dispute: Venezuela and

Guyana are obliged to reach a practical arrangement that is mutually acceptable. That is the genuine and complete object and purpose of the Geneva Agreement.

36. The submission of this document does not imply recognition of the Court's jurisdiction over the territorial dispute concerning Guayana Esequiba, nor of any decision it may adopt in this regard, whatever it may be. Likewise, the practical use of the terms "Memorial", "Counter-Memorial", "Reply" or "Rejoinder" serves solely a methodological purpose, namely, to facilitate the smooth reading of this document..

37. Throughout this document, Venezuela's historical rights, its just claim to the territory of Guayana Esequiba, and its unwavering commitment to the Geneva Agreement have been demonstrated.

Samuel Reinaldo Moncada Acosta

Agent of the Bolivarian Republic of Venezuela

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.

11 August 2025

Samuel Reinaldo Moncada Acosta
Agent of the Bolivarian Republic of Venezuela

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INTERNATIONAL COURT OF JUSTICE

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THE TRUTH ABOUT THE GUAYANA ESEQUIBA

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VOLUME II

ANNEX 1

Joint Communiqué issued 10 December 1965, in accordance with what had been agreed in the Joint Communiqué of 7 November 1963, talks that took place in London on 9 and 10 December

Source: Ministry of People's Power for Foreign Affairs, Borders Archive, Joint Communiqué on the Ministerial Talks Held in London on December 9 and 10, 1965, between the Minister of Foreign Affairs of Venezuela and the Secretary of State for Foreign Affairs of the United Kingdom, Mr. Michael Stewart, and the Prime Minister of British Guiana, Mr. L. Forbes S. Burnham, 1965, Box: E-5

JOINT COMMUNIQUE ISSUED 10 DECEMBER, 1965.

In accordance with what had been agreed in the Joint Communiqué of 7 November, 1963, talks took place in London on 9 and 10 December between the Minister of Foreign Affairs of Venezuela on the one side and the Foreign Secretary of the United Kingdom and the Premier of British Guiana on the other on the basis of the following Agenda:

Agenda for the continuation at ministerial level of Governmental conversations concerning the controversy between Venezuela and the United Kingdom over the frontier with British Guiana in accordance with the Joint Communiqué of 7 November, 1963.

1. Exchange of views on the experts' reports on the examination of documents and discussion of the consequences resulting therefrom. Necessity of resolving the dispute.

2. To seek satisfactory solutions for the practical settlement of the controversy which has arisen as a result of the Venezuelan contention that the 1899 award is null and void.

3. Concrete plans for collaboration in the development of British Guiana.

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

5. Joint Communiqué on the present talks.

In addition to considering the experts' reports on the documentary material relating to the Arbitration Award of 1899, the Ministers considered ways and means of putting an end to the controversy which threatens to damage the traditionally cordial relations between Venezuela on the one hand and the United Kingdom and British Guiana on the other.

Ideas and proposals for a practical settlement of the controversy were exchanged. It was agreed that some of these should receive further consideration and that the Ministers should continue the present discussions in the week starting 13 February, 1966 at Geneva, in order to consider those proposals as well as others that might be suggested under the above agenda. Neither side having been able to accept the conclusions of the experts appointed by the other side, Item 1 will therefore not be considered. It was further agreed that preparatory talks between officials should start at an early date.

ANNEX 2

Presentation to the National Congress by Mr. Ignacio Iribarren Borges, Minister of Foreign Affairs of Venezuela, about the Geneva Agreement
17 March 1966

English Translation

Source: Ministry of Foreign Affairs, (1981), Claims of the Essequibo Guayana, Documents (1962-1981), Caracas.

PRESENTATION TO THE NATIONAL CONGRESS BY MR IGNACIO IRIBARREN BORGES, MINISTER OF FOREIGN AFFAIRS, ABOUT THE GENEVA AGREEMENT
17 MARCH 1966

President of the National Congress,
Vice-President of the National Congress,
Congress attendees,

It is an honour and a privilege for me to have been offered this opportunity to address the Sovereign Congress of the Republic on the important issue that I will set out.

I have divided my presentation into two parts:

1. Steps taken prior to the Geneva Agreement.
2. The Geneva Agreement.

STEPS TAKEN PRIOR TO THE GENEVA AGREEMENT

Unilateral rejection of the Award

The attitude of the government and people of Venezuela towards the arbitrary Award of 3 October 1899, which purported to mark the boundary between our country and British Guiana, is well-known.

After discovering the significant substantive and formal defects that affected the decision, the Venezuelan Foreign Ministry was convinced that it had the right to declare it invalid. The difficult political, economic, and military circumstances that our country was experiencing at that time prevented the national government from fully rejecting the ruling to its ultimate consequences.

At the twilight of the colonialist era, hope was rekindled that one day the injustice we had been victims of would be redressed.

For several years, that hope seeped into the declarations of our Venezuelan State, each time more categorical and clearer than before with respect to that Arbitral Award. Nonetheless, however solid and convincing the Venezuelan argument was, the United Kingdom was reluctant to enter into discussions aimed at revising an Award which it considered intangible.

Beginnings of bilateral negotiations

We maintained the unilateral nature of our claim until, in November 1962, my predecessor in the Foreign Ministry, Dr Marcos Falcón Briceño, after presenting our thesis in detail before the Special Political Committee at the General Assembly of the United Nations, managed to come to an agreement with Great Britain to carry out a tripartite examination of the documentation related to the issue. This Agreement was noted in the Declaration of the President of the Special Political Committee on 16 November that same year.

The transcendental value of the agreement is undeniable as it represents the starting point of a long bilateral process which will unfailingly lead to the revision of the so-called Award of 1899.

However, it is important to stop and observe the British position at the point at which it agreed to treat with Venezuela on this question.

The Representative of the United Kingdom, C. T. Crowe, after trying to refute the views of the Venezuelan Foreign Minister, said the following:

> "I hope I have convinced the members of the Committee that if international law and freely concluded agreements are to be respected, then the borderline issue between British Guiana and Venezuela should not have been brought for consideration at the United Nations."

After referring to the examination the British experts had carried out of the documentation related to the issue, which in their opinion showed that there was no justification for reopening the question, he then concluded:

> "Therefore, I have been authorised to say that my Government, fully endorsed by the Government of British Guiana, is willing to deal with the Government of Venezuela through our respective diplomatic channels, the arrangements for a tripartite examination, i.e., Venezuela, British Guiana and United Kingdom, on the extensive documentation pertinent to this question."

The British offer was accepted by Venezuela and it led to an agreement on the examination of the documentation relating to the so-called Award of 1899.

One might wonder why Venezuela accepted the participation of the Government of British Guiana in the discussions, the latter not yet being independent.

It must be observed that the conversations were to take place between Venezuela and the United Kingdom in consultation with British Guiana and therefore the participation of the Government of Georgetown would not be equivalent to that of the two sovereign countries as the subjects of the dispute. On the other hand, our Government, given its unwavering anticolonial position, always favoured the presence of the colony in those discussions affecting its territorial area. Our diplomacy was going to act cleanly, and therefore had nothing to fear from the involvement of the colony's representatives. When diplomats resort to shady dealings, they try to do them, as our country experienced first-hand in the Arbitration Tribunal of 1899, behind the backs of the peoples, no matter whether they are free or dependent.

I want to highlight the fact that it is since 1962 (that is, since the very beginning of the diplomatic process leading to the Geneva Agreement) that these conversations have had a tripartite nature in the way I explained in the previous paragraph.

Before moving forward, it is useful to remember that the agreement concluded within the framework of the United Nations in 1962 aimed at the examination of the documentation, but Great Britain absolutely refused to address the substance of the issue: the revision of the decision rendered by the Arbitral Court in 1899. Mr Crowe stated this point of view very clearly in the intervention mentioned above:

> "While making this offer, I also want to make it clear that this is not an offer to start talks on the substance of the border revision. We cannot do that because we consider that it would not be justified."

Finally, I would like to say that since the above-mentioned agreement did not specify the level at which the conversations were to take place, the United Kingdom tried to belittle it. The Venezuelan Government insisted on taking this negotiation to the highest level of government in order to achieve the revision of the Tribunal's decision.

In order to meet these goals, it was necessary to overcome the obvious reluctance of the British Government. In March 1963, Great Britain tried to scale down the talks to the level of an academic discussion among experts, but Venezuela made clear its view that it would in no way enter into such talks until the UK committed itself in advance to discussing the issue at ministerial level. Despite warnings from those who predicted that the Foreign Office would never engage in such a commitment, Venezuela continued to press until it obtained Britain's

agreement that the discussions would be held in two phases: first, at the level of experts, and second, at high ministerial level.

Great Britain could no longer doubt the firmness of the Venezuelan claim. The President of the Republic, Mr Rómulo Betancourt, in his message to the National Congress, on 12 March 1962, declared:

> "The disagreement between a weak Venezuela and an arrogant Albion from the Victorian era was resolved through an award —iniquitous and unacceptable, and always rejected by Venezuela—, rendered by a political court and not a court of law, in its judgment of 3 October 1899. Venezuela has never and will never admit that such a large portion of territory which is rightfully its own should cease to be part of its geography."

First London Conference

The first meeting of Ministers took place in London in November 1963. The Venezuelan and British delegations were led by Dr Marcos Falcón Briceño and Hon. R. A. Butler, respectively. Governor Sir Ralph Grey was the representative of British Guiana. On that occasion, Venezuela made the discussion go to the substance of the issue by presenting its point of view in an Aide-Memoire, dated 5 November, which summed the arguments for Venezuela's rejection of the Award of 1899 and finished with the following categorical position:

> "Historical truth and justice demand that Venezuela claim the full return of the territory of which it has been dispossessed, and in this respect, it relies confidently on the goodwill and co-operation of Her Majesty's Government."

On their part, Great Britain reiterated the position their Representative Mr C. T. Crowe had already put forward. They rejected the Venezuelan arguments and

regarded the 1899 Award as a "full, final and definitive settlement." These two positions have been held in parallel throughout the present negotiation, up to the opening session of the Geneva Conference.

A breakthrough in Venezuela's favour was noted at the above-mentioned London meeting in November 1963, according to the joint communiqué of that meeting. In fact, following a reference to the reports to be submitted by the experts to their respective governments, the communiqué reads: "These reports will be used as a basis for future discussions between Governments." Consequently, since the communiqué failed to indicate the nature of future discussions, we could argue that talks at the government level would be aimed at discussing the substance of the issue.

Venezuela, with a firm determination to recover the territory that rightfully belongs to it, understood this to be the case, as can be seen in the words of the then President of the Republic, Mr Rómulo Betancourt, in the account on the London talks he provided to the National Congress on 7 March 1964:

> "Negotiations have moved on and, for the good of the Republic and to redress an injustice done to Venezuela, they will have to keep going. The final outcome must be the reincorporation into national territory of an area which, from a legal and historical point of view, has never ceased to belong to Venezuela. I must add, with no triviality, that Venezuela's claim to an area of territory that is rightfully its own in no way affects or hinders the aspirations of the people of British Guiana for their independence. They have the sympathy of the Venezuelan nation, whose anti-colonial position dates back to the days when it itself insurged as a sovereign nation, shaking off foreign tutelage."

The first phase of discussions between the Venezuelan and British experts, with the participation of the British Guiana experts, was completed in the first half of 1964. The resulting reports were exchanged on 3 August 1965, and then negotiations began for the ministerial meeting held in London in December 1965.

During this period, the Foreign Ministry repeatedly reiterated its claim that the so-called 1899 Award was null and void, that there was a dispute threatening relations between our country and the United Kingdom and British Guiana, and that the ministerial talks had to delve into the substance of the issue. In this way, we reacted to repeated statements by the Prime Ministers of Guiana Mr Jagan and Mr Burnham, who were reluctant to discuss the boundary line under the Award, as they did not acknowledge the boundary dispute, which they considered to have been settled in 1899. Meanwhile, the Venezuelan Foreign Ministry, consistently with its claim to Guayana Esequiba, raised complaints against oil exploitation concessions allegedly granted by the government of British Guiana in the territory west of the Essequibo River.

In line with the Venezuelan stand that the 1899 Award is null and void, the Foreign Ministry took several initiatives, including the publication of a map of the Republic showing the *Área en Reclamación* [Area under Reclamation] and the issue of postage stamps alluding to the dispute.

These actions were rejected by the British Government, which reiterated its position on the intangibility of the aforementioned Award. Thus, in a note of 4 March 1965, referring to that map, they stated:

> "The Embassy has been instructed to state that Her Majesty's Government cannot accept the Venezuelan Government's demarcation of the boundary or any other matter which casts doubt upon the sovereignty of Her Majesty's Government in the said area of British Guiana. Her Majesty's Government

> has no doubt of its sovereignty over that territory, and reserves its rights in this matter."

In response, we reaffirmed the position that "the map in question, published by the National Cartography Agency of the Ministry of Public Works, is merely a graphic expression of the statements made publicly and repeatedly by the Venezuelan Foreign Ministry, which are well known to the British Government, to the effect that the so-called Award of 3 October 1899 is null and void, and that Venezuela therefore reserves its rights to the Guayana territory of which it was unjustly dispossessed.

On 2 August 1965, just before the exchange of the experts' reports, Mr Padley, Parliamentary Secretary of the Foreign Office, explained the British stance to the British Parliament:

> "The boundary between Venezuela and British Guiana was established by the Arbitral Tribunal of 1899, in accordance with the terms of the Treaty signed in 1897 between the United Kingdom and Venezuela. Both parties agreed to accept the Arbitral Award as a 'full, perfect and final settlement' under Article XIII of this Treaty. The Venezuelan government has claimed that the 1899 Award is null and void and, in May of 1962, informed Her Majesty's government of its intention to claim part of British Guiana. When the question was raised at the United Nations later on, the United Kingdom representative, while insisting that the matter was *res judicata*, offered to arrange for an examination of documentary material relating to the Award in order to reassure Venezuelans that they had not been the victims of an injustice. This examination of documents has now been completed and the results are to be reviewed by the Governments. It remains the position of Her Majesty's Government that the whole question was settled once and for all by the Arbitration Tribunal in 1899.

> This is also the position of the Government of British Guiana."

The experts' reports were exchanged on 3 October 1965. After presenting the Venezuelan report to the British Government, the Ambassador to London expressed Venezuela's complacency "at the successful completion of the technical studies phase," and in a note dated 7 September, he also expressed the unwavering and traditional position of Venezuela:

> "The Venezuelan stance on the dispute has been clearly established. Venezuela has stated that it does not recognize the Arbitral Award of 1899 as the final and definitive settlement of its dispute with the United Kingdom. The country has expressed to Her Majesty's Honourable government that it wished consideration to be given, in an unprepared spirit, to the rectification of the injustice to which Venezuela had fallen victim in the past, at an unfortunate time our people cannot forget. hopes that a solution will be reached that takes into account the legitimate interests of both Venezuela and the people of British Guiana."

In response, the British government replied to this note, and to that of 3 August, reaffirming, once again, the initial position it had adopted in 1962, by reproducing the words of its Representative at the Special Political Committee, quoted above, to the effect that the offer to examine the documentation "was in no way an offer to enter into substantive talks on the revision of the boundary," but "to dispel any doubts that the Venezuelan government might still have about the validity or justice of the Arbitral Award."

It was evident that Great Britain was reluctant to enter into substantive discussions on such a serious matter. Apparently, Great Britain still considered the

Venezuelan claim to be unfounded, and was only willing to engage in a purely academic discussion that could not lead to any settlement of the old issue. It was necessary that, on the express instructions from the President of the Republic, Mr Raúl Leoni, I addressed the country on radio and television on 16 September, 1965, to declare categorically that "if Venezuela had embarked on the diplomatic path, it was not to be satisfied with purely academic discussions." And I added: "In a matter as serious as the usurpation of 150,000 square kilometres of national territory, our government would rightly be accused of lacking seriousness if it were to engage in sterile bookish debates and semantic interpretations of old texts."

Our position was clearly stated: we would not attend a ministerial conference to discuss anything other than the heart of the issue —the revision of the so-called 1899 Award.

The independence of British Guiana

Before further elaborating on the theme I am developing, i.e., the antithetical positions of Venezuela and the United Kingdom with regard to the dispute, I must refer to the fact, happy in many respects, of the forthcoming independence of British Guiana.

For many years, the Foreign Ministry had warned of the proximity of that event, although those forecasts were not fulfilled before due to internal and external reasons affecting the colony. It was clearly evident that our traditional claim should increasingly gain momentum as the date approached, since it was important to clearly set out that our dispute with the United Kingdom, the cause of the border issue, would not come to an end when British Guiana gained independence, unless a satisfactory solution was found for Venezuela. In this sense, the Foreign Ministry has issued clear formulations in relation to the territorial dispute.

The principle that any change of *status* in the colony of British Guiana will not affect the Venezuelan territorial claim has been repeatedly reaffirmed.

In addition, at the initiative of Venezuela and other countries, the following was included in the Protocol of Washington, approved by the First Special Inter-American Conference held in December 1964:

> "The Council of the Organisation shall not take any decision on an application for admission submitted by a political entity whose territory is subject, in whole or in part and prior to the date of this resolution, to litigation or claim between an extra-continental country and one or more member States of the American States, until the dispute has been brought to an end by means of a peaceful procedure."

We have also upheld the principle that our dispute over Guayana involves the occupation of territory by a foreign power, in violation of paragraph 69 of United Nations resolution 1514 (XV):

> "Any attempt to undermine a country's national unity or territorial integrity is incompatible with the purposes and principles of the United Nations Charter."

In this regard, I made an express statement to the United Nations on 6 October 1965:

> "These territories cannot escape the corrective action of history. However, we must insist, as in the various resolutions adopted by the Inter-American Conferences, on the distinction between colonies and occupied territories. If the former are to gain independence through the application of the principle of self-determination, the latter, colonial territories that have been seized from other States, can have no other way of decolonisation than reintegration into the State from which they have been dismembered. Not to make such a distinction

> would be to admit that the principle of self-determination can be distorted in order to enshrine a *de facto* situation in disregard of the fundamental principle of respect for the territorial integrity of States."

On the occasion of the Conference held in London in November 1965 on the Independence of British Guiana, I addressed to the British government a note, dated 3 November, in which I expressed the following:

> "My Government wishes to place on record that it would consider it an unfriendly act on the part of Her Majesty's Government if a transfer of sovereignty over the territory claimed by Venezuela were agreed without reservation, a transfer which could not generate more rights than those to which the Government transferring them is legitimately entitled."

Second London Conference

From the above, it is clear that the Venezuelan government aimed to ensure that the agenda for the London talks reflected their views on the subject matter and nature of the discussions. Following extensive negotiations by our Ambassador to London from October to December 1965, an agenda was agreed upon that significantly favoured our views.

Indeed, already in the title defining the nature of the talks, it is established that their purpose is "the dispute between Venezuela and the United Kingdom."

This admission that there is a dispute "over the border with British Guiana" is reaffirmed when "the need to solve the dispute" is admitted in the first item of the agenda.

Additionally, to dispel any doubt as to the nature of the talks, which could no longer be reduced to the academic examination of documents, it was stipulated in the second item of the agenda that the talks would seek "satisfactory solutions for the practical settlement of the dispute which has arisen as a result of the Venezuelan contention that the 1899 Award is null and void."

Furthermore, this interpretation is reinforced by the fourth item, which provides for the "determination of deadlines" for the solutions that may be reached.

It can escape no one's notice that the British position at the beginning of these proceedings in 1962 had already changed significantly. What was agreed in the agenda was a far cry from that first offer made by their representative, Mr Crowe, to the effect that they were only willing to examine the documents relating to the 1899 Award.

In accordance with the aforementioned agenda, we went to London to discuss with the Minister of Foreign Affairs of Great Britain, the Hon. Michael Stewart, and the Prime Minister of British Guiana, the Hon. Forbes Burnham, the present dispute, and to try to find a satisfactory solution to it. Our meetings were held on 9 and 10 December 1965.

At the beginning of the first session, I presented the Venezuelan government's opinion on the report of the British experts as follows:

> "The government of Venezuela has carefully examined the report of the British experts, and has come to the firm conviction that their conclusions are totally unacceptable."

Later on, I added:

> "The defects of substance and form in the report of the British experts have surprised the Venezuelan government. These

> defects justify the expression in your note AV 1081/75, dated 3 August 1965, that the report 'does not necessarily represent the considered opinion of Her Britannic Majesty's government on any of the points under discussion.'"

I listed some of the defects of substance and form and concluded that:

> "The report of the British experts has convinced my government of the unshakable firmness of its position, rather than persuading it that its claim was without merit."

I ended by stating:

> "The government of Venezuela is convinced that the return of the territory which rightfully belongs to our country is the satisfactory solution to the boundary dispute with British Guiana. Consequently, the government believes that the establishment of the rightful border between Venezuela and British Guiana should be agreed upon."

I am not going to enumerate all the incidents of the discussion arising from the rejection by Great Britain of that first proposal for a solution formulated by Venezuela, which was answered with a counter-proposal so that Venezuela, with an "act of great statesmanship and courage," should renounce its claim. I formulated a second Venezuelan proposal in the sense of agreeing, for a period that could be discussed, on a joint administration of the territory claimed by Venezuela, prior recognition of our sovereignty over such territory. This formula was also rejected. Finally, in an effort to seek an honourable solution to the issue, I presented as a third Venezuelan proposal a formula that envisaged the solution of the border dispute through three consecutive stages with their respective deadlines, with the

particularity that the process had to have an end: a) mixed commission; b) mediation; c) international arbitration.

This last proposal collided with the intransigence of Great Britain and British Guiana, which, determined to maintain the validity of the 1899 Award, rejected the existence of a territorial dispute between Venezuela and the United Kingdom over the border with British Guiana.

The British counter-proposal boiled down to formulating some ideas, modelled on Article IV of the Antarctic Treaty, which, if applied to our issue, would lead to an economic development solution on both sides of the Award line. The proposal also included an agreement between the two neighbouring countries to refrain from pressing their respective claims for 30 years. At the same time, it was emphasized that there was no alternative but to refer the matter back to the United Nations, reporting the outcome of the examination of the documents.

After studying this proposal, the Venezuelan delegation unanimously agreed to reject it. When the debate was reopened, I argued that there was no point in taking the matter to the United Nations, which could do no more than urge the parties to continue talking as we were doing at that moment. On the proposal inspired by the Antarctic Treaty, I stated:

> "I find no connection between the case of Antarctica and that of our issue with the United Kingdom. Antarctica does not form part of the national or territorial unity of several signatory States to that Treaty, as is the case with Great Britain. On the other hand, Venezuela's issue with the United Kingdom in relation to British Guiana concerns a Territory which is part of the Venezuelan Territory. It is situated on the very border of British Guiana with Venezuela; it is not an overseas territory. Consequently, this question cannot be solved according to the Antarctic Treaty; it is a question which, unless a satisfactory solution is found, will continue to

> be the cause of friction between Venezuela and Great Britain and British Guiana."

I warned that Venezuela could not accept any attempt aimed at circumventing the legal-political problem of the border issue in a way to limit the discussion to trying to solve the economic problem of the underdevelopment of Guayana Esequiba, for which Great Britain was precisely responsible. Venezuela's position was clearly expressed in the following terms:

> "Finally, I want to be quite clear that Venezuela has come to this conference table with good intentions, as demonstrated by the proposals it has made, including the one I submitted yesterday, and also that Venezuela's goodwill should not be mistaken for weakness or doubt about its unwavering position. Venezuela will continue to assert its claim with determination. the Venezuelan Territory extends as far as the Essequibo. My country does not accept any of the actions and decisions resulting from the despoliation that we are suffering."

At first glance, anyone could imagine that it would be impossible to fully consider the proposals in the remaining half day of the Conference. But having rejected a British proposal to continue the discussions with Lord Walston, when he visited Caracas in January of 1966, we agreed to hold a new meeting of the same Ministerial Conference in the city of Geneva next February, as expressed in the Joint Communiqué of the London Conference, issued on 10 December 1965.

It must be noted that in this document, Great Britain and British Guiana recognize that the dispute "threatens to ruin the traditionally friendly relations between Venezuela on the one hand and United Kingdom and British Guiana on the other." Further, by eliminating the examination of the documents from the

agenda for the Conference of Geneva, the discussion focused fully on "seeking satisfactory solutions for the practical settlement of the dispute."

The Geneva Conference

The Parliamentary Under-Secretary of State for Foreign Affairs, Lord Walston, visited Venezuela in January. In reply to journalists' questions, he outlined the position that Great Britain was to adopt at the Geneva Conference:

> "It will be cordial and receptive. We will discuss the issue at the diplomatic level and you can be sure that, at that meeting, or at subsequent ones, there will be a decision on this matter." (*El Universal*, 11/1/1966)

Subsequently, press reports and statements by Lord Walston himself and other high-ranking officials affirmed that the Geneva Conference would address the question of economic aid to British Guiana, but that the Venezuelan claim was not to be discussed. Therefore, on 4 February, on the instructions of the President of the Republic, I received the British Ambassador in my office to inform him that the Foreign Ministry viewed those statements with concern, as they contradicted the commitment made by his country in accordance with the agenda signed in London on 19 December and the Joint Communiqué of the 10th of the same month and year. At the end of our meeting, I gave the Ambassador the following in writing:

> "The government of Venezuela deems it necessary to request an explanation from Her Britannic Majesty's government regarding the items agreed upon in the agenda, which includes, in its title and under No. 2, the discussion of the Venezuelan territorial claim and the search for practical

> solutions to resolve it. Otherwise, the Venezuelan government will be forced to reconsider its attendance to said meeting on 16 and 17 February."

On 8 February, the British Ambassador visited me in order to inform me that:

> "The British Parliamentary Under-Secretary of State for Foreign Affairs has been misinterpreted. Neither Lord Walston nor any other Representative of Her Majesty's Government has made the statement quoted in the first paragraph of the Venezuelan Memorandum of 4 February.
>
> As far as Her Majesty's government is concerned, the agenda for the Geneva meeting remains the same, as agreed in the Joint Communiqué of 10 December 1965, a copy of which is attached hereto for reference."

It was clear that the firmness with which the Chancellery had been acting was fruitful. We received unanimous endorsement from the Nation expressed in agreements issued by the National Congress, hundreds of City Councils, all the political institutions, bodies as diverse as the National Academy of History, the National Library and National Archives, Professional Associations, the Venezuelan Association of Catholic Education, the Business Sector, Labour and Peasant Unions, The Venezuelan Federation of Teachers, Student Associations, and particularly the Comisión Nacional Pro-Guayana Esequiba (Pro-Guayana Esequiba National Committee).

It was evident that the firmness shown by the Foreign Ministry was yielding good results. We had the unanimous support of the Nation expressed in agreements issued by the National Congress, hundreds of Municipal Councils, all political organisations, entities as diverse as the National Academy of History, the National Library and Archives, professional associations, the Venezuelan Association of

Catholic Education, the business sector, labour and peasant unions, the Venezuelan Federation of Teachers, student groups, and particularly, the National Pro-Guayana Esequiba Commission.

The President of the Republic, Mr Raúl Leoni, in his New Year's Message on 1 January of the current year, described this national moment with accurate words:

> "We are no longer an economically weak country, torn by factional strife, barely convalescing from the painful ravages of long and bloody fratricidal wars and powerless to defend itself against acts of aggression. In this new Venezuela, national awareness as to the justice of our claim has taken shape. Without abandoning our unwavering position in favour of the peaceful and amicable settlement of differences between nations, we are prepared to use all our resources to defend our territorial rights."

In addition to the impressive national expressions of support for our just claim, there was also the support of friendly nations. Thus, I must express the deep satisfaction we experienced upon learning of the declaration of the Senate of Colombia, dated 12 January 1966, that of the House of Representatives of the same country, dated 18 January of the same month and year, and the resolution of the National Assembly of Panama, dated 24 January 1966. The Venezuelan government and people are grateful for the expressions of support from the legislative bodies of Colombia and Panama.

The sessions of the Geneva Conference took place in Room VIII in the Palais des Nations on 16 and 17 February. At the first meeting, I reiterated very clearly the Venezuelan position:

> "Venezuela has asserted, and maintains, that the Arbitral Award rendered in Paris on 3 October 1899 is invalid and that our country does not consider itself bound by it. This Venezuelan assertion is supported by irrefutable legal reasons. Founded on a position which we have no doubt is just, the expression of the Venezuelan will is integral.
>
> As unequivocal proof of this, I am surrounded by representatives of the different political organisations, both those who actively and directly participate in the government's administration and those who, from the opposition, do not hesitate to criticise the government's actions.
>
> All of them, aware of their patriotic duty, contribute to unite the national will and determination to obtain reparation for the injustice to which Venezuela was subjected as a result of the Arbitral Award of 1899, which my country considers null and void."

I emphasized Venezuela's willingness to find satisfactory solutions. After mentioning the various formulas for solution put forward by our country at the London Conference, I invited the British Foreign Minister to set out any further considerations he had prepared on the Venezuelan proposals.

Great Britain again reaffirmed its stand on the intangibility of the Award and, responding specifically to my invitation, put forward a proposal inspired by the Antarctic Treaty, which was delivered to the Venezuelan Delegation in writing.

After a recess was agreed upon in order for us to consider the British proposal, our Delegation came to the conclusion that it was unacceptable to Venezuela, as it sought to completely circumvent the territorial issue by means of a joint development plan for the areas on both sides of the Award line, while at the same time proposing to force Venezuela to freeze its claim for thirty years.

When the debate was resumed, I categorically expressed our position to the delegations of Great Britain and British Guiana as follows:

> "I must inform Your Excellency that, after having considered the proposal presented by the British Delegation, the Venezuelan Delegation considers it substantially unacceptable, because it fails to address the issues which, in Venezuela's opinion, are fundamental for the practical solution of the conflict, which is the object of this Conference."

In informal meetings that, along with some members of our Delegation, I held with the British Minister and Prime Minister Burnham, I expressed my concern about the state of the talks, given the scant British receptiveness to face the issue that was the subject of our meeting. I even hinted at the consequences of a possible breakdown in the talks.

The Venezuelan Delegation could not hide its emotion when I read the cable from the President of the Legislative Assembly of the State of Bolívar, Mr Roger González, which I had just received, informing me of the contents of the Bolívar Declaration, issued by the Convention of Legislative Assemblies of the States and Municipal Councils of the Federal Territories, meeting in Ciudad Bolívar on 14 and 15 February, on the occasion of the 147th anniversary of the Congress of Angostura.

After several informal contacts, our Delegation opted to leave on the table a formula similar to the third Venezuelan proposal that had been rejected in London, plus the recourse to the International Court of Justice.

The delegations of Great Britain and British Guiana, after thoroughly studying this proposal, although eventually receptive, objected to the specific mention of the recourse to arbitration and to the International Court of Justice.

This objection having been overcome, by replacing that specific reference with a reference to Article 33 of the United Nations Charter, which provides for such two procedures of arbitration and recourse to the International Court of Justice, it became clear that there was a possibility of reaching an agreement.

The Geneva Agreement was therefore reached on the basis of the Venezuelan proposal. Far from being, as has been maliciously suggested, an imposition or a British trick that took the naïve Venezuelan delegation by surprise, the agreement is based on a Venezuelan proposal that, after being categorically rejected in London, was accepted in Geneva.

Clearly, the Geneva Agreement is not the ideal solution to the problem, which is none other than the return of its territory to Venezuela. We did not go to the city on Lake Geneva to dictate the terms of surrender of the adversary by placing the sword of a war victory in the balance of the dispute. We went in search of a satisfactory solution to the arduous territorial issue. Through diplomatic dialogue, and not through the monologue of the victors, the Geneva Agreement created a new situation for the extreme positions of those who demanded the return of the territory usurped by virtue of a null and void Award, and those who argued that they had no doubt about their sovereignty over that territory, but were not prepared to take the case to any court of law.

As a substantially Venezuelan solution, the Geneva Agreement gained the unanimous support of the Delegation, which included delegates from three government parties, three from the opposition and one Senator from the independent group. All of them endorsed with an emotional vote the signature that, with the authorisation of the President of the Republic, I affixed to the transcendental instrument.

THE GENEVA AGREEMENT

The Agreement concluded in Geneva on 17 February 1966 comprises a preamble and eight articles.

For a proper understanding, it must be considered as a whole, because although it contains provisions on substance and procedure, each of them is part of the general idea underlying the instrument.

First of all, it should be noted that this is an Agreement concluded between two sovereign States, namely the Republic of Venezuela and the United Kingdom of Great Britain and Northern Ireland, the latter in consultation with the Government of British Guiana. British Guiana, as of the date of signature of the Agreement, is not a sovereign and independent State. Under the constitutional provisions governing it, the government in its internal affairs has some autonomy from the mainland, but international and defence matters are conducted by the Government of the United Kingdom of Great Britain and Northern Ireland. At the same time, consideration should be given to the fact that British Guiana, under the name of Guyana, as decided by the recent independence conference of that colony, held in London in November of last year, will become independent and sovereign on 26 May this year.

It should be recalled that British Guiana has been present in the course of all these diplomatic discussions and demarches which culminated in the Geneva Agreement. The statement of the Chairman of the Special Political Committee of the United Nations, issued on 16 November 1962, expresses this as an agreement between the Parties.

Consistent with its anti-colonialist position, Venezuela has welcomed the participation of British Guiana, for to do otherwise would be tantamount to admitting that Great Britain as a colonial power can resolve serious issues in its colony without the colony's participation.

On the other hand, as I have just indicated, Great Britain cannot constitutionally enter into an Agreement which, however international, has a direct bearing on the internal affairs of British Guiana which fall within the competence of British Guiana. Thus, the exclusion of British Guiana from the Geneva

Agreement, or from the steps that preceded it, would have been a mistake with serious consequences for Venezuela. In any case, the Agreement took into account the fact that British Guiana was not yet independent; Article 8 provides that it shall be a party to the Agreement from the moment it gains its independence.

As I have already stated in this same presentation, this was precisely one of the realities that Venezuela had to face at the Geneva meeting: the forthcoming independence of British Guiana. Hence, this fact this fact is expressly provided for in the preamble and in the aforementioned Article 8.

The last part of the preamble explicitly sets out that in order to resolve the dispute between Venezuela and the United Kingdom over the border with British Guiana, the agreement contained in the subsequent articles has been reached. This is an express recognition of the existence of the dispute between Venezuela and Great Britain over the border with British Guiana, a recognition which is ratified in Article 19 of the Agreement.

Article 1 provides for the establishment of a Mixed Commission for the purpose of seeking satisfactory solutions for the practical settlement of this dispute, which has "arisen as the result of the Venezuelan contention that the Arbitral Award of 1899 about the border between Venezuela and British Guiana is null and void." This article contains two points of great importance, namely:

1. To channel the talks through a Mixed Commission, that is to say, an *ad hoc* body that allows permanent and agile communication between the two Governments, with the aim of reaching a solution to the dispute.
2. The express recognition of the dispute arising from Venezuela's claim against the so-called Arbitral Award of 1899.

It should be noted that the continuation of the talks is of paramount importance and that a solution may emerge from them which would bring the dispute to a satisfactory conclusion without recourse to the procedures provided for in Article 4 of the same Agreement. Additionally, the functioning of the

Commission allows for direct and permanent contact with British Guiana on any other matters related to the dispute.

Article 2, of a procedural nature, defines the number of representatives and how they are to be appointed, and lays down the rules for the functioning of the Mixed Commission. Venezuela shall appoint two representatives to join the Mixed Commission, with the other two to be appointed by the Government of British Guiana. It further provides that each Government has freedom to choose and remove its respective representatives, as well as the duty to replace them immediately in the event of their inability to act. And finally, it empowers the Joint Commission, by agreement between the representatives, to appoint experts to assist it, either generally or in relation to a particular matter.

The capacity of British Guiana to appoint its two representatives to the Mixed Commission prior to its independence was the subject of exhaustive clarification at the Geneva meeting. It was expressly defined that the two representatives of British Guiana, for the time prior to 26 May 1966, the day of its independence, would be appointed by proxy and with the authorisation of the Government of the United Kingdom of Great Britain and Northern Ireland, which up to this time, by constitutional prescription, conducts the foreign affairs of British Guiana. Clarification was also made that, by signing the Agreement, Great Britain authorised the Government of British Guiana to execute said agreement.

If we had negotiated and formalised the Agreement only with the metropolis, behind British Guiana's back, this would have been tantamount to admitting the colonialist thesis according to which the metropolis can dispose of overseas territories without taking into account the will of the peoples who inhabit them.

On the other hand, would it have been sensible, right, to exclude British Guiana from the talks, if that country will very soon, on gaining its independence, be able to reject those commitments in which it had not taken part?

According to the terms of Article 1, the Commission is entrusted with "the task of seeking satisfactory solutions." It therefore has a broad role in conducting the negotiations in agreement with the respective Governments.

With such powers, the Commission had to be formed by all parties. The presence of an appointed arbitrator is alien to the very concept of this Commission.

Article 3 provides for an official and explicit report to be made available to the Governments every six months on the activities of the Mixed Commission. Naturally, the representatives will maintain contact and receive continuous instructions from their respective Governments; however, it was not superfluous to establish the six-monthly report, since it is to be drawn up by the Commission as a whole, i.e., by the four representatives, and will thus be a document of the Commission itself as such.

Article 4 establishes a period of 4 years as the time limit for the work of the Mixed Commission. At the end of this period, if no complete agreement has been reached on the settlement of the dispute, the Commission must draw up a final report to refer to the respective Governments the outstanding issues on which no agreement has been reached.

The setting of a time limit is customary and its determination, that is, the length of the term, can only be estimated on the basis of the factors that had to be taken into account and the various circumstances affecting its setting. It was necessary to set a reasonable period of time, taking into consideration the specific purposes of the Mixed Commission, which is, as stated in Article 1, to seek satisfactory solutions to the dispute, a difficult task which cannot be expected to yield the desired results in too short a period of time. Nor was it acceptable to set too long a period of time.

Another circumstance taken into account was the upcoming independence of British Guiana on 26 May 1966. The new State should be given a reasonable period

of time for its evolution and consolidation. Only a sufficiently established State can devote its efforts to working with us to settle the territorial dispute.

Finally, we agreed on a 4-year term only after arduous discussions with the British, who initially demanded 30 years.

The most important point of the Geneva Agreement is the adoption of a procedure in the event that the negotiations conducted by the Mixed Commission fail to resolve the issue. The following stages are established for that purpose:

1st The Governments shall try to reach an agreement on the choice of one of the means of peaceful settlement provided for in Article 33 of the Charter of the United Nations.

2nd Three months after receipt of the final report of the Mixed Commission, if the Governments have not reached an agreement on the procedure for settlement of the dispute, the decision on the choice of the means of settlement shall be referred to an appropriate international body mutually agreed by both Governments.

3rd In the absence of agreement on the choice of an appropriate international body to choose the means of settlement, that role shall be entrusted to the Secretary-General of the United Nations.

4th The Secretary-General of the United Nations shall choose the procedures for peaceful settlement provided for in the above-mentioned Article 33, "until the dispute has been resolved, or until all the means of peaceful settlement set forth in the said Article have been exhausted."

Article 4 of the Geneva Agreement thus clearly states the following:

a) The only role entrusted to the Secretary-General of the United Nations is to bring to the attention of the Parties, for their use, the means of

peaceful settlement of disputes set out in the above-mentioned article of the Charter.

b) These means are the following: negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement and recourse to regional agencies or arrangements. These are, exhaustively, the procedures to be used until the dispute is resolved or until these procedures have been exhausted.

I should put on record that in the final stages of discussion of the Geneva Agreement, the British proposed entrusting the General Assembly of the United Nations with the choice of the means of settlement provided for in Article 33 of the Charter.

This proposal was discarded by Venezuela for the following reasons:

1. Because it was not appropriate to entrust this specific role of choosing the means of settlement to an eminently political and deliberative body such as the UN General Assembly. This procedure could lead to disproportionate delays because outside political elements could easily be introduced into the simple role of choosing the means of settlement;
2. Because the General Assembly of the United Nations only meets for regular sessions once a year, for a period of about three months, to deal with matters previously identified in the Agenda, and for special sessions at the request of the Security Council or of a majority of the members of the United Nations.

These reasons were put forward by Venezuela, and it proposed that the role of choosing the means of settlement be entrusted to the International Court of Justice as a permanent body exempt from the inconveniences mentioned above. Since this proposal was not accepted by the British, Venezuela then proposed to give this role to the Secretary-General of the United Nations.

In conclusion, because of the Venezuelan objections that were accepted by Great Britain, there is an unequivocal interpretation that only the Secretary-General of the United Nations, and not the Assembly, will participate in the choice of the means of settlement.

Finally, according to the terms of Article 4, in the event that no satisfactory solution for Venezuela is reached, the so-called 1899 Award shall be revised through arbitration or judicial recourse.

Article 5 comprises two provisions:

First: The Agreement cannot be interpreted as a waiver or diminution of our territorial claim to Guayana Esequiba; and

Second: None of the acts or activities occurring during the validity of the Agreement shall constitute a basis for asserting, supporting or denying a claim of territorial sovereignty, except where such acts or activities are the result of agreements reached by the Mixed Commission and accepted in writing by the Governments.

This means that no act or activity in the territory claimed by Venezuela entails any undermining of our rights nor any support for the claims of Great Britain or British Guiana. The Venezuelan reservations over all types of concessions granted, or which may be granted, in the territory claimed are thus recognised.

Article 5 also mentions the claim or bases for claim by the United Kingdom or British Guiana over the territory of Venezuela. In this respect, I must state:

1st The only territorial claim in the present dispute is the one raised by Venezuela.

2nd If Great Britain or British Guiana were to raise any territorial claims against Venezuela, it would automatically mean that they accept the invalidity of the so-called 1899 Award.

3rd Neither Great Britain nor British Guiana have any historical or legal basis for claiming Venezuelan territory. On the contrary, only Venezuela has irrefutable titles to claim the Guayana Esequiba, which the ill-named Paris Award of 1899 incorporated into the territory of British Guiana.

4th If the nullity of the 1899 Award is declared, either by agreement between the Parties or by decision of a competent international authority provided for in the Agreement, the dispute will go back to its original state. On the Venezuelan side, the claim extended to the Essequibo. The maximum British claim was represented by the so-called "Schomburgk Line," which dates from 1840, i.e., 26 years after Great Britain definitively received its colony of Guiana from the Netherlands under the Treaty of London in 1814.

However, a thorough study carried out by the Ministry of Foreign Affairs on hundreds of confidential documents of the Foreign Office and the Colonial Office in London leads to the irrefutable conclusion that the only "Schomburgk Line" recognised by the Foreign Office until 1886 and disseminated up to that date as the maximum British claim, was the so-called Línea Norte-Sur (North-South Line), which is the blue line on the map in the brochure entitled "The Schomburgk Line in the boundary issue between Venezuela and British Guiana."

From the origins of the controversy until 1886, when Great Britain officially disseminated that line as its maximum claim, it recognised the following as Venezuelan territories out of dispute: Alto Barima and Alto Barama, as well as the territory comprised between that blue line and Venamo. These territories, despite being recognised as belonging to Venezuela by Great Britain itself up to 10 years before the Arbitration Treaty, were awarded to British Guiana by the Tribunal.

Consequently, with the nullity of the Award, for the purposes of any procedure for establishing the new border, Venezuela must consider out of question

those territories which, as I have already stated, were recognised by Great Britain itself for 46 years since the origins of the dispute in 1840.

British Guiana will not be able to claim as its maximum aspiration the so-called "Extended Schomburgk Line" (marked red on the map in the above-mentioned brochure), because it was a line derived from the falsification of maps, unknown to the Foreign Office itself until June 1886, and first published in 1887, that is, only 10 years before the Arbitration Treaty.

I can assure you that these assertions are supported by irrefutable evidence.

It follows from the foregoing that if the nullity of the Award is declared, the only Venezuelan territory that would fall within the maximum British claim would be the narrow yet important area of the lower course of the Barima River on its right bank. Venezuela has no doubt about its title to this territory, and it is also certain that when Great Britain included it in its claim, it did not take into account historical and legal titles but the simple desire to dominate the Orinoco River. If in the middle of the imperial and colonialist era, the Tribunal, which proceeded so arbitrarily, did not dare to snatch that small territory from our poor, weak and troubled Venezuela, much less will a Tribunal acting in accordance with the rules of law today snatch it from us.

With regard to Article 7, it is clear that when the law approving the Agreement is submitted to this Sovereign Congress, the Agreement will enter into force upon ratification of said law.

Regarding Article 8, it must be noted that its interpretation must be made in relation to the entire Agreement, which repeatedly makes it clear that the dispute is between Venezuela and the United Kingdom over the border with British Guiana.

The wording that the dispute is between Venezuela and the United Kingdom appears in the heading of the Agreement; it appears again twice in its preamble, and in Article 1, which states precisely that the task entrusted to the Mixed

Commission is "to seek satisfactory solutions for the practical settlement of the dispute between Venezuela and the United Kingdom."

By this assumption, it then appears with absolute clarity that, according to Article 8, British Guiana becomes a party to the Agreement as a result of its independence, in addition to the Governments of Venezuela and the United Kingdom of Great Britain and Northern Ireland.

The Geneva Agreement offers a challenge to which the country must respond appropriately. The creation and action of the Mixed Commission, as well as the subsequent process, should the latter fail to reach a satisfactory solution, require Venezuela to put all its strength into action to consolidate its claim with serious and detailed studies. The challenge of the Guayana issue presents our country, which had seen with pain how its territory was shrinking, with the beautiful task of recovering our legitimate Eastern border, a task which should not be restricted to study alone.

It will depend to a large extent on the persons appointed to represent Venezuela in the Mixed Commission, on their preparation, intelligence, dedication and patriotism, that the Guayana issue moves forward, through the channel already opened, to a fully satisfactory solution for the Republic.

In conclusion, I consider that the Geneva Agreement is highly beneficial to the interests of the Homeland. As the President of the Republic, Mr Raúl Leoni, said in his recent Message to the National Congress, "the Geneva Agreement reopens the case of Guayana Esequiba, offering Venezuela an opportunity, like never before, to assert its rights and achieve reparation for the damage caused to us by the fraudulent Paris Award."

ANNEX 3

Letters from Lord Salisbury to Sir Julian Pauncefote, dated 26 November 1895

Source: Official history of the discussion between Venezuela and Great Britain on their Guiana Boundaries (1896), Atlanta, GA: Franklin Printing & Publishing Company
available at: https://www.loc.gov/item/04010002/, pp. 413-420

OFFICIAL HISTORY

OF

THE DISCUSSION BETWEEN

Venezuela and Great Britain

ON

THEIR GUIANA BOUNDARIES.

THE FRANKLIN PRINTING AND PUBLISHING COMPANY
ATLANTA, GA., 1896.

Lord Salisbury to Sir Julian Pauncefote.

No. 189.] FOREIGN OFFICE.
November 26, 1895.

Sir:

On the 7th of August I transmitted to Lord Gough a copy of the despatch from Mr. Olney which Mr. Bayard had left with me that day, and of which he had read portions to me. I informed him at the time that it could not be answered until it had been carefully considered by the Law Officers of the Crown. I have therefore deferred replying to it till after the recess.

I will not now deal with those portions of it which are concerned exclusively with the controversy that has for some time past existed between the Republic of Venezuela and Her Majesty's Government in regard to the boundary which separates their dominions. I take a very different view from Mr. Olney of various matters upon which he touches in that part of the despatch; but I will defer for the present all observations upon it, as it concerns matters which are not in themselves of first-rate importance, and do not directly concern the relations between Great Britain and the United States.

The latter part however of the despatch, turning from the question of the frontiers of Venezuela, proceeds to deal with principles of a far wider character, and to advance doctrines of international law which are of considerable interest to all the nations whose dominions include any portion of the western hemisphere.

The contentions set forth by Mr. Olney in this part of his despatch are represented by him as being an application of the political maxims which are well known in American discussion under the name of the Monroe doctrine. As far as I am aware, this doctrine has never been before advanced on behalf of the United States in any written communication addressed to the Government of another nation; but it has been generally adopted and assumed as true by many eminent writers and politicians of the United States. It is said to have largely influenced the Government of that country in the conduct of its foreign affairs: though Mr. Clayton, who was Secretary of State under

President Taylor, expressly stated that that Administration had in no way adopted it. But during the period that has elapsed since the Message of President Monroe was delivered in 1823, the doctrine has undergone a very notable development, and the aspect it now presents in the hands of Mr. Olney differs widely from its character when it first issued from the pen of its author. The two propositions which in effect President Monroe laid down were, first, that America was no longer to be looked upon as a field for European colonization; and, second, that Europe must not attempt to extend its political system to America, or to control the political condition of any of the American communities who had recently declared their independence.

The dangers against which President Monroe thought it right to guard were not as imaginary as they would seem at the present day. The formation of the Holy Alliance ; the Congresses of Laybach and Verona ; the invasion of Spain by France for the purpose of forcing upon the Spanish people a form of government which seemed likely to disappear, unless it was sustained by external aid, were incidents fresh in the mind of President Monroe when he penned his celebrated Message. The system of which he speaks, and of which he so resolutely deprecates the application to the American Continent, was the system then adopted by certain powerful States upon the Continent of Europe of combining to prevent by force of arms the adoption in other countries of political institutions which they disliked, and to uphold by external pressure those which they approved. Various portions of South America had recently declared their independence, and that independence had not been recognized by the Governments of Spain and Portugal, to which, with small exception, the whole of Central and South America were nominally subject. It was not an imaginary danger that he foresaw, if he feared that the same spirit which had dictated the French expedition into Spain might inspire the more powerful Governments of Europe with the idea of imposing, by the force of European arms, upon the South American communities the form of government and

the political connection which they had thrown off. In declaring that the United States would resist any such enterprise if it was contemplated, President Monroe adopted a policy which received the entire sympathy of the English Government of that date.

The dangers which were apprehended by President Monroe have no relation to the state of things in which we live at the present day. There is no danger of any Holy Alliance imposing its system upon any portion of the American Continent, and there is no danger of any European State treating any part of the American Continent as a fit object for European colonization. It is intelligible that Mr. Olney should invoke, in defence of the views on which he is now insisting, an authority which enjoys so high a popularity with his own fellow-countrymen. But the circumstances with which President Monroe was dealing, and those to which the present American Government is addressing itself, have very few features in common. Great Britain is imposing no "system" upon Venezuela, and is not concerning herself in any way with the nature of the political institutions under which the Venezuelans may prefer to live. But the British Empire and the Republic of Venezuela are neighbors, and they have differed for some time past, and continue to differ, as to the line by which their dominions are separated. It is a controversy with which the United States have no apparent practical concern. It is difficult, indeed, to see how it can materially affect any State or community outside those primarily interested, except perhaps other parts of Her Majesty's dominions, such as Trinidad. The disputed frontier of Venezuela has nothing to do with any of the questions dealt with by President Monroe. It is not a question of the colonization by a European Power of any portion of America. It is not a question of the imposition upon the communities of South America of any system of government devised in Europe. It is simply the determination of the frontier of a British possession which belonged to the Throne of England long before the Republic of Venezuela came into existence. But even if the interests of Venezuela

were so far linked to those of the United States as to give to the latter a *locus standi* in this controversy, their Government apparently have not formed, and certainly do not express, any opinion upon the actual merits of the dispute. The Government of the United States do not say that Great Britain, or that Venezuela, is in the right in the matters that are in issue. But they lay down that the doctrine of President Monroe, when he opposed the imposition of European systems, or the renewal of European colonization, confers upon them the right of demanding that where a European Power has a frontier difference with a South American community, the European Power shall consent to refer that controversy to arbitration; and Mr. Olney states that unless Her Majesty's Government accede to this demand, it will "greatly embarrass the future relations between Great Britain and the United States."

Whatever may be the authority of the doctrine laid down by President Monroe, there is nothing in his language to show that he ever thought of claiming this novel prerogative for the United States. It is admitted that he did not seek to assert a Protectorate over Mexico, or the States of Central and South America. Such a claim would have imposed upon the United States the duty of answering for the conduct of these States, and consequently the responsibility of controlling it. His sagacious foresight would have led him energetically to deprecate the addition of so serious a burden to those which the Rulers of the United States have to bear. It follows of necessity that if the Government of the United States will not control the conduct of these communities, neither can it undertake to protect them from the consequences attaching to any misconduct of which they may be guilty towards other nations. If they violate in any way the rights of another State, or of its subjects, it is not alleged that the Monroe doctrine will assure them the assistance of the United States in escaping from any reparation which they may be bound by international law to give. Mr. Olney expressly disclaims such an inference from the principles he lays down.

But the claim which he founds upon them is, that if any independent American State advances a demand for territory of which its neighbor claims to be the owner, and that neighbor is the colony of a European State, the United States have a right to insist that the European State shall submit the demand and its own impugned rights to arbitration

I will not now enter into a discussion of the merits of this method of terminating international differences. It has proved itself valuable in many cases; but it is not free from defects, which often operate as a serious drawback on its value. It is not always easy to find an Arbitrator who is competent, and who, at the same time, is wholly free from bias; and the task of insuring compliance with the Award when it is made is not exempt from difficulty. It is a mode of settlement of which the value varies much according to the nature of the controversy to which it is applied, and the character of the litigants who appeal to it. Whether, in any particular case, it is a suitable method of procedure is generally a delicate and difficult question. The only parties who are competent to decide that question are the two parties whose rival contentions are in issue. The claim of a third nation, which is unaffected by the controversy, to impose this particular procedure on either of the two others, cannot be reasonably justified, and has no foundation in the law of nations.

In the remarks which I have made, I have argued on the theory that the Monroe doctrine in itself is sound. I must not, however, be understood as expressing any acceptance of it on the part of Her Majesty's Government. It must always be mentioned with respect, on account of the distinguished statesman to whom it is due, and the great nation who have generally adopted it. But international law is founded on the general consent of nations; and no statesman, however eminent, and no nation, however powerful, are competent to insert into the code of international law a novel principle which was never recognized before, and which has not since been accepted by the Government of any other country. The United States have a right, like any other nation, to interpose in any contro-

versy by which their own interests are affected; and they are the judge whether those interests are touched, and in what measure they should be sustained. But their rights are in no way strengthened or extended by the fact that the controversy affects some territory which is called American. Mr. Olney quotes the case of the recent Chilean war, in which the United States declined to join with France and England in an effort to bring hostilities to a close, on account of the Monroe doctrine. The United States were entirely in their right in declining to join in an attempt at pacification if they thought fit; but Mr. Olney's principle that "American questions are for American decision," even if it receive any countenance from the language of President Monroe (which it does not), cannot be sustained by any reasoning drawn from the law of nations.

The Government of the United States is not entitled to affirm as a universal proposition, with reference to a number of independent States for whose conduct it assumes no responsibility, that its interests are necessarily concerned in whatever may befall those States simply because they are situated in the Western Hemisphere. It may well be that the interests of the United States are affected by something that happens to Chile or to Peru, and that that circumstance may give them the right of interference; but such a contingency may equally happen in the case of China or Japan, and the right of interference is not more extensive or more assured in the one case than in the other.

Though the language of President Monroe is directed to the attainment of objects which most Englishmen would agree to be salutary, it is impossible to admit that they have been inscribed by any adequate authority in the code of international law; and the danger which such admission would involve is sufficiently exhibited, both by the strange development which the doctrine has received at Mr. Olney's hands, and the arguments by which it is supported in the despatch under reply. In defence of it he says :

"That distance and 3,000 miles of intervening ocean *make any permanent political union between a European and an American*

State unnatural and inexpedient will hardly be denied. But physical and geographical considerations are the least of the objections to such a union. Europe has a set of primary interests which are peculiar to herself; America is not interested in them, and ought not to be vexed or complicated with them."

And again:

"Thus far in our history we have been spared the burdens and evils of immense standing armies, and all the other accessories of huge warlike establishments; and the exemption has highly contributed to our national greatness and wealth, as well as to the happiness of every citizen. But *with the Powers of Europe permanently encamped on American soil,* the ideal conditions we have thus far enjoyed cannot be expected to continue."

The necessary meaning of these words is that the union between Great Britain and Canada; between Great Britain and Jamaica and Trinidad; between Great Britain and British Honduras or British Guiana are "inexpedient and unnatural." President Monroe disclaims any such inference from his doctrine; but in this, as in other respects, Mr. Olney develops it. He lays down that the inexpedient and unnatural character of the union between a European and American State is so obvious that it "will hardly be denied." Her Majesty's Government are prepared emphatically to deny it on behalf of both the British and American people who are subject to her Crown. They maintain that the union between Great Britain and her territories in the Western Hemisphere is both natural and expedient. They fully concur with the view which President Monroe apparently entertained, that any disturbance of the existing territorial distribution in that hemisphere, by any fresh acquisitions on the part of any European State, would be a highly inexpedient change. But they are not prepared to admit that the recognition of that expediency is clothed with the sanction which belongs to a doctrine of international law. They are not prepared to admit that the interests of the United States are necessarily concerned in every frontier dispute which may arise between any two of the States who possess

dominion in the Western Hemisphere; and still less can they accept the doctrine that the United States are entitled to claim that the process of arbitration shall be applied to any demand for the surrender of territory which one of those States may make against another.

I have commented, in the above remarks, only upon the general aspect of Mr. Olney's doctrines, apart from the special considerations which attach to the controversy between the United Kingdom and Venezuela in its present phase. This controversy has undoubtedly been made more difficult by the inconsiderate action of the Venezuelan Government in breaking off relations with Her Majesty's Government, and its settlement has been correspondingly delayed; but Her Majesty's Government have not surrendered the hope that it will be adjusted by a reasonable arrangement at an early date.

I request that you will read the substance of the above despatch to Mr. Olney, and leave him a copy if he desires it.

S.

Lord Salisbury to Sir Julian Pauncefote.

No. 190.] FOREIGN OFFICE.
November 26, 1895.

Sir:

In my preceding despatch of to-day's date I have replied only to the latter portion of Mr. Olney's despatch of the 20th July last, which treats of the application of the Monroe doctrine to the question of the boundary dispute between Venezuela and the colony of British Guiana. But it seems desirable, in order to remove some evident misapprehensions as to the main features of the question, that the statement of it contained in the earlier portion of Mr. Olney's despatch should not be left without reply. Such a course will be the more convenient, because, in consequence of the suspension of diplomatic relations, I shall not have the opportunity of setting right misconceptions of this kind in the ordinary way in a despatch addressed to the Venezuelan Government itself.

ANNEX 4

Confidential note with proposal from the President of the United States on the composition of the Arbitral Tribunal, dated 25 January 1896

Source: JC 7/5 (Foreign affairs: pre-1899). Joseph Chamberlain Collection – 1819- [late 20th century], Cadbury Research Library, University of Birmingham

25/1/1896

 JC 7/5

Most Secret. The following proposals have come from the United States President by an unofficial but tolerably sure channel.

If any of my colleagues object to the acceptance of these terms substantially, will they kindly let me know without delay:—

The United States' Govt to withdraw its Commission;

New Commission to be created by agreement between United States and Great Britain, consisting of two Englishmen and two Americans;

This new Commission to take up the enquiry, not in order to determine the boundary or to draw a line, but to ascertain and report upon fact;

Each set of Commissioners to report to its own Govt;

The four members to complete the enquiry if unanimous, or if a majority of the whole concur;

If they fail to agree, a fifth member, a neutral, to be appointed by the President of the Swiss Republic or other acceptable personage;

The conclusions of the Commission not to be binding upon either Govt unless perhaps as to their findings upon matters of fact, but to serve as a basis for subsequent direct negotiations between all parties concerned, or, if preferred, to be remitted to a tribunal composed for instance of the Chief Justices of England and the United States, with, if necessary, a third neutral member.

January 25/96 S.

10

Suggestion.

A new Commission of four members.

2 by Great Britain

2 by U. S. [probably from present U. S. Commission]

In case of non-agreement by equal vote, a fifth member to be agreed upon, or else nominated by ———————

This Commission not to report a line, but to report all the facts to the two Governments.

The two Governments shall then endeavour to fix a line satisfactory to all parties including Venezuela.

Failing in this, the entire proceedings and facts to be submitted to a Tribunal of three:-

The Lord Chief Justice of England.

The Chief Justice of the U. S.

and a third member to be mutually agreed upon, or else nominated by ———————

And the Tribunal so constituted shall declare a line of demarcation which shall be accepted by, and bind, all parties in interest including Venezuela.

ANNEX 5

Letter from José Andrade to Pedro Ezequiel Rojas, dated 13 May 1896

English Translation

Source: AHMPPRE, Antique Archive, Country: Great Britain. Boundaries with Guyana. Diplomatic Efforts with the United States, 1896, Vol. 176, folios 63-64 and reverse

UNITED STATES OF VENEZUELA

MINISTRY OF FOREIGN AFFAIRS

GREAT BRITAIN

—

LIMITS OF GUAYANA

—

DIPLOMATIC EFFORTS BEFORE THE UNITED STATES

—

1896

—

FOLIOS 336

LEGATION OF THE UNITED STATES OF VENEZUELA

Washington, D.C., 13 May 1896

Dear Minister,

I have just received the enclosed short letter from Mr Storrow, followed by the accompanying telegram. The copy of the letter which he addressed to you — and to which both the short letter and the telegram refer— would be superfluous at the Ministry, as the original will reach the Ministry in this post.

I immediately went to Mr Olney, as Mr Storrow recommended me, in the short letter, to speak to Mr Olney for a few minutes before I write to you about the letter Mr Storrow sent to you, and which he says he copied to Mr Olney and myself.

Mr Olney had not yet received his copy, or anything else from Mr Storrow. Although the Boston post arrives at twelve o'clock, it takes half an hour for the post to be delivered, unless it is stamped "Special Delivery," as Mr Storrow's letter to me was. I showed Mr Storrow's letter to the Secretary of State, who deemed it excellent, and noted that he did not know what flaw my government could find in it. He went on to say, after a short pause, that he had no idea what Mr Storrow might have requested of him concerning me; that if it turned out to be anything of interest, he would communicate it to me in writing before closing his post to Venezuela.

To Mr. Minister of Foreign Affairs

Number 161

Please ensure, Mr Olney added, that you impress on the mind of your government the importance which the president and I and the whole cabinet attach to Mr Storrow's intervention in the defence of Venezuela, and how sorry we shall be to see your country reject it. You all could not make a greater mistake than to waste the services of such a person as Mr Storrow. The president regards his appearance in our way as providential. I would rather pay half his fee out of my own pocket if the real reason for not wanting to engage him were the expenses associated with it. Your government's decision needs to be promptly made, for I wish Mr Storrow would sooner publish a preliminary work, quick and lively, which would open Britain's eyes to his Blue Book.

I found the above recommendation so serious that I have decided to send Mr José Andrade Penny, an attaché of this Legation, to place this note in your own hands and to persuade the government of the advisability of acceding to the wishes of the United States in this matter.

Yours sincerely,

José Andrade

ANNEX 6

Letter from Pedro Ezequiel Rojas to José Andrade, dated 18 May 1896

English Translation

Source: AHMPPRE, Antique Archive, Country: Great Britain, Boundaries with Guyana, Diplomatic Efforts with the United States, 1896, Vol. 176, folio 72 and back

Caracas, 18 May 1896

Sir,

All three communications from you, numbered 149, 150, and 151, of the 1st, 2nd, and 4th of the present month, refer to Mr Storrow. You will by this date be aware of the various and powerful motives which have obliged the government to reserve the services of the above-mentioned gentleman, or to defer for the moment the engagement of his services regarding the question of the boundaries of Guayana. The more one meditates on the disparity between his ideas and our ideas concerning the understanding of the territorial rights of the Republic and between his view and our view of the titles on which the Republic relies to defend the Esequibo line, the more dangerous or inconvenient his role in the dispute is deemed to be. Nothing could harm us so much as the universal recusal of a legal counsel who, in the wake of setbacks, might appear to have a different view from that which informed his work on boundaries when he was working independently of government. And I speak of a different view because, should Venezuela accept Mr Storrow's involvement, Venezuela could never agree to the work including any views that diverge on even one point from the fundamental concept of the Venezuelan claim. This point was made very clear to your Legation as early as April 8, when the first sign emerged that Mr Storrow did not agree with Venezuela in the understanding of one of the most important elements of the Guayana boundary question. The difficulty such disagreement entails will doubtless be the best argument you can bring forth to justify the scruples of the government and to reassure the Honourable Head of the State Department.

To Mr. José Andrade, E.E. and M.N. of Venezuela in USA, Washington D.C.

The report of the Venezuelan commissioners, issued on 18 October 1841, could not include the answers to the points consulted by Mr Storrow, because the dossier was under study and it was not possible to obtain a copy of it until now. Such a copy is enclosed herewith, together with the copy of another document (the Treaty of 1650 between Spain and the Netherlands), as also requested by Mr Storrow.

The word misused in the telegram to which you refer in your communication N° 151 was "yesterday," which the telegrapher wrote instead of "worse."

Any news concerning Volumes II and III of Fray Pedro Simón's work will be reported from now on through the Legation in Bogotá.

Yours sincerely,

P. Ezequiel Rojas

ANNEX 7

Letter from James Storrow to Richard Olney, dated 11 June 1896

Source: Manuscript Division, Library of Congress, Washington D. C., Richard Olney Papers, MSS35139, Box 50, Reel 20

40 State St., Boston.

June 11, 1896.

Hon. Richard Olney,

My dear Olney:

I have written out the facts and the proofs about the "Settled Districts." When you really need them, let me know, and I can send them with a map. I should probably put them in type for you unless you were in a great hurry. A couple of days would do that. Some papers which I expect will fortify the proofs but cannot change anything.

I have not yet reached any formula which will express what is wanted, without some geographical limitation. There are papers in the Dip. Corr. and the Blue Book which assert settlement absurdly beyond any possible limit (e.g. Blue book p.3). To exclude "settlements" under those circumstances would ~~either~~ be dangerous and would mean nothing, because it would still leave the arbitrators to determine what were "settelled districts" and to do it with a strong bias given them by the agreement. I do not yet see any way except by a limit of time, which is in some ways objectionable, or by the limit of a line; i.e., settled districts within a specified line; or districts settled before a named date.

9698

I am to send my work to Caracas for inspection before it is filed. That is a natural and reasonable request. The delay it will cause will really not be great, because it will be at least a month yet before some necessary papers are in condition to be used.

Another Subject,

It just occurs to me that our rebellion furnishes an instance which has a strong bearing on the Competitor Case. Probably you know of it, but I will risk the chance that you may not.

Very early in our rebellion the crew of the Confederate "privateer" Savannah were tried for piracy before Judge Grier and convicted. The complete trial was published in an octavo of two or three hundred pages. It was at a time when feeling in the north was very intense, and when Dana was insisting in the prize courts that we could exercise municipal rights against the rebels, and before the Supreme Court had overruled that idea. The Prize Cases, 2 Black,635. Mauran vs. Ins.Cos. 6 Wall.1.

But the Government at once felt that when the contest had assumed large proportions (though when the cases arose the contest had only been pending a few weeks, and the Bull Run fight had not taken place) the laws of nations and of humanity forbade the infliction of the death penalty; and the crew of

9699

the Savannah were exchanged like prisoners of war.

There are some obvious differences between that case and the Competitor, but not enough, I think, to distinguish them as matter of law. The more important use however to make of it is that, in the face of the most intense feeling by our public and by our Government, it was determined, freely and without outside pressure, that nothing could justify the penalty of death under such circumstances even against men who were caught with arms in their hands, committing acts which, under other circumstances, would have called for their execution.

You are at most, I suppose, asking Spain to do what we already have done.

Your obedient servant,

James G. Blaine

Hon. Richard Olney,

Secretary of State,

Washington,

9700

ANNEX 8

Letter from James Storrow to Richard Olney, dated 15 June 1896

Source: Manuscript Division, Library of Congress, Washington D. C., Richard Olney Papers, MSS35139, Box 55, Reel 20

40 State St., Boston.

June 15, 1896.

Hon. Richard Olney,

Secretary of State,

My dear Sir:

Lord Salisbury's despatch of 1880, repeated in 1895, states the claim by Venezuela to be one which, if allowed, would require a large number of British subjects (not Aborigines) to change their allegiance or their long established homes.

I should be willing to agree to the exclusion of that, so expressed, even with the word "long" softened or perhaps omitted; speaking as of the date 1880, or Jan.1, 1884; hardly as of 1887, for reasons which I will presently state.

Neither side wants to risk having an arbitration become illusory be reason of any dispute or misunderstanding as to its terms; and it would therefore be wise to agree that the foregoing stipulation should ipso facto withdraw from the power of the arbitrators the territory between the Pomeroon or Moruca and the Essequibo, and the settlements on any of the three rivers (Essequibo, Cuyuni, Mazeruni) below the cataracts; that it should not ipso facto, withdraw from their consideration the basin of the Cuyuni and Mazeruni and Essequibo above the cataracts, nor the banks of the Orinoco, mainstream

9765

nor the region traversed by the water courses of the Orinoco delta south of its main mouth; but that the arbitrators might consider whither it did or did not apply to anything beyond the part first stipulated in favor of the English.

Something on these lines, to be made less cumbersome, is the best I have yet been able to reach. It seems to me to go fairly and honestly to the real substance of the matter.

As to date. Gold working became pretty active in 1884, which was the year of the first McTurk invasion. It is not justifiable to base rights on a forcible occupation; and all occupation after that is virtually by force of arms.

There were no "settlements" even in 1887 outside of the ancient lines according to my understanding of the word; but people might differ about its meaning. Thus, in 1887 or 1888 there were extensive mining camps in the Cuyuni and Mazeruni basin. Each camp was inhabited continuously until the pay-dirt gave out, and then abandoned. The laborers, however, came in reliefs from their homes on the coast-generally for three months. But the foreman, and very likely a few laborers staid over. One of them had a kitchen garden. Except for that, all the food was brought up from the coast.

9766

Now possibly some persons might call that a settlement; certainly it was not an established or permanent home of settlers.

About 1887-8 something of the sort began in the Barima district and perhaps went further. By 1890, 40 or 50 men - colored laboring men I think and perhaps a few Portuguese- had made small clearings there and raised fresh provisions which they sent to the Georgetown market. I think that this began after 1887 but am by no means sure; because stations for armed police began in 1884, and near them these Gardens sprang up.

The most troublesome district to define is the Potaro Gold field(I return your "British Guiana and its Resources" which will show all this). The census of 1891 gave for this region, above the lowest Essequibo cataracts, 3908 persons. Of these there were only 78 women; 68 indian, and 10 colored. Plainly there were no homes there. How many of the 3908 were the 3 months laborers I cannot find out. Of these 3908, 18 were Portuguese, and 18 of other European races.

At the same time the Cuyuni had 312 and the Mazeruni 144 total population according to the census.

9767

North West district, i.e, from the Moruca to the Orinoco.

Europeans not Portuguese.	12	
Portuguese.	39	
Black, mixed and East Indian.	486	
Aborigines	404	941.

The best estimate of the transcient laborers, made and published officially is about 6000 in the bush at a time, out of 17000 to 20,000 licensed to work for gold; and other means of checking this estimate confirm it.

I do not think that the conditions are materially changed since then. The gold product, and the total laborers registered in 1895 are about the same- the increase is slight.

The report of the Supt. Mines for 1895 as well as other reliable publications show that the gold working is substantially all hand-washing, requiring no capital except for expenses until the product is marketed; that these gold diggers make no permanet improvements; and that the gold already taken out is from 5 to 10 times the total capital put in.

The government gets a royalty of 90 cents per oz. This has very much more than paid its expenditures, if we omit its garrisonexpenses- i.e. police barracks, officials' houses etc. and I should think might cover even ~~that~~ those.

9768

The Potaro district is for many reasons difficult to handle on the question of title. I think Venezuela is better off without it. It is rich in gold but almost absolutely inaccessible from Venezuela, and reached in about 10 days by water from Demerara. my chiefs, however, would hardly agree to that.

9769

As to my argument:

The part which you speak of and which will be really the main argument, I hope to send to the printer tomorrow or next day. But it cannot be used until we get the new Blue Book, and some other proofs, which must be met or availed of.

I propose to send it to Caracas by the steamer of the 24th., and I think I can send you a proof Saturday night. If you can, through Mr. Andrade, get my clients to approve it promptly, and perhaps say so by wire, I could then very speadily weave into it the new matter when it comes.

Yours truly,

James J. Storrow

I have been seriously ill lately, with very little strength for work & must show up for a few days. I have however got the work so far blocked out & reduced to paper that some one else could finish the work if I am to keep it.

Hon. Richard Olney,

Secretary of State,

Washington, D.C.

9770

ANNEX 9

Letter from José Andrade to Richard Olney, dated 18 August 1896

English Translation

Source: Microcopy No. T 93. Roll 8. Volume 8. April 2, 1896, August 11, 1906, The United States National Archives and Records Administration

Cape May, 18 August 1896

Honourable Secretary of State of the United States

Richard Olney

Dear sir,

With reference to the telegram which I had the honour to hand to His Excellency Mr Rockhill on the 3rd of July last, relative to the occupation by agents of the colonial government of Demerara of the road opened by Venezuela from Acarabisi to Amacuro, I have now the honour to forward to Your Excellency herewith enclosed, for the knowledge of the government of the United States, a copy of a document which this Legation has recently received from the Ministry of Foreign Affairs of Venezuela. Said document states the facts concerning this new aggression by Great Britain, which may be said to have been perpetrated the day after Harrison's, which Venezuela in no way provoked and for which it was not in any way responsible.

All these events show that if the Republic does not firmly stand against such advances of the British, they will take them as far as they please, and will then say that the territories thus occupied cannot be arbitrated because they are Settled Districts. Nevertheless, this time, the Republic has not contented itself with establishing another Venezuelan post in front of the new British post at Cuyuní to contain the invasion, but has also instructed the chief of that post and the chiefs of the others to continue to handle the situation with extreme care, so that new difficulties may not be caused by Venezuela.

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

José Andrade

ANNEX 10

Letter from James Storrow to Richard Olney, dated 29 August 1896

Source: Manuscript Division, Library of Congress Washington, D. C., Richard Olney Papers, MSS35139, Box 60-62, 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.

10741

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' damps, 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 private official maps which will help to make this clear, if you have occasion to.

Hon. Richard Olney,

Secretary of State,

Washington, D.C.

10743

ANNEX 11

Letter from James Storrow to Richard Olney, dated 29 November 1896

Source: Manuscript Division, Library of Congress, Washington D. C., Richard Olney Papers, MSS35139, Box 66-68, 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.

Mr. Andrade afterwards had a long talk with him, and afterward with the Minister of Foreign Affairs and Dr. Braynel Arce, 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. Braynel 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. Tiso, gave his name to one of the proposed lines, which appear on the maps. One of the four is a young chap of 30 or 35; 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 Carl Thomas", said to us that he thought their conclusion would be facilitated if Mr. Amarada and I would meet them; and he has 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 between 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

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 loyal 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. He 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 not a concession. Prescription was, I thought, our strongest ground, and I wanted G.B. to agree to it; out 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 Colombia, they expected to hold certain towns by prescription; which

right however the arbitrator did not recognize. He 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. Dr. 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 Dr. 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

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 [redacted] 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 [redacted]; 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 Vice Admiral 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,

to 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 its modifications putting the allowances at the 6 mm., 4 mm., 4 mm., with liberty to the Tribunal to give a month's grace.

Dr. Pino 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 confer it. Probably we can extinguish it here. We have no notion that 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. Vico 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 12

Cable from José Andrade to Richard Olney, dated 5 December 1896

Source: Record Group 84. Series: United States Diplomatic Records for Venezuela, 1835-1936. Vol. 23 (July 23, 1895, to January 7, 1897). The United States National Archives and Records Administration

Cable sent Dec. 5, 1896.

" "

Olney, Secretary, Washington.

Memorandum accepted. Will be published here Monday afternoon. Extra session of Congress will be called as soon as possible. I am authorized to sign treaty with small corrections, such as provision filling vacancies in case of death or disability. But Venezuela expects by treaty or by diplomatic notes through you agreement to prevent aggression or unfriendly acts near line of contact, and also that no new mining concessions shall be granted.

José Andrade.

(Sent in cipher)

Venezuela.

ANNEX 13

Letter from Mr. Cleveland to General Crespo, dated 8 December 1896

Source: Ministry of People's Power for Foreign Affairs, Borders Archive, Letter from Mr. Cleveland to Mr. Crespo, 1896

M.R.E. GRAN BRITTANIA T. XXI - F. 357

Clipping from N.Y. Journal

CLEVELAND TO GENERAL CRESPO.

Writes to Venezuela's President, Highly Praising the Treaty.

Recommends Acquiescence in the Arrangement Made by Olney.

No Better Solution Possible, He Says, of the Boundary Dispute.

LETTER PUBLISHED IN CARACAS.

Reply of the Chief Executive of the South American Republic is Couched in Cordial but Diplomatic Terms.

Caracas, Venezuela, via Hayti, Dec. 8 - The Government today publishes a personal letter from President Cleveland to President Crespo, in regard to the Guiana boundary treaty, which has been agreed upon between Mr. Olney, the American Secretary of State, and Lord Salisbury, the British Prime Minister.

The reply of President Crespo is also published and the Venezuelan public has thus been made aware of the steps that led up to this country's acquiescence in the arrangement.

In his letter Mr. Cleveland commended the terms of the treaty to the chief executive of Venezuela and with many expressions of international courtesy advises its acceptance as the best possible solution to all concerned of the long pending question.

President Crespo answers in cordial, but diplomatic, terms.

He expresses the gratitude of his Government and people toward the United States and adds the belief that the Congress of Venezuela will undoubtedly give the treaty the attention that it deserves.

Minister Andrade and Attorney Storrow, who have been charged with Venezuela's interests in this matter, will leave for New York on Thursday.

ANNEX 14

Cable sent by James Storrow to Richard Olney, dated 10 December 1896

Source: The United States National Archives and Records Administration. Record Group 84. Series: United States Diplomatic Records for Venezuela, 1835–1936. Vol. 23
(From Jul 23, 1895, to Jan 7, 1897)

WEST POINT HOTEL.

[illegible], Proprietor.

West Point, N.Y. Dec: 10

Personal

My dear Wm Gray.

I am here for a day or two with Mrs [illegible] to see our Cadet boy. We go from here to N. York city (Hotel Marlborough) – then in two or three days start for Cuba.

I recall [illegible] Bowen who wrote the letter you [illegible] to me. I [illegible] he was employed by the Spanish Government. If he again goes to Cuba to write letters for the World he must take the Insurgents side. If he does, he is in no position to get their [illegible] for the Spanish [illegible] in him. [illegible] the [illegible] [illegible] by the [illegible] [illegible]

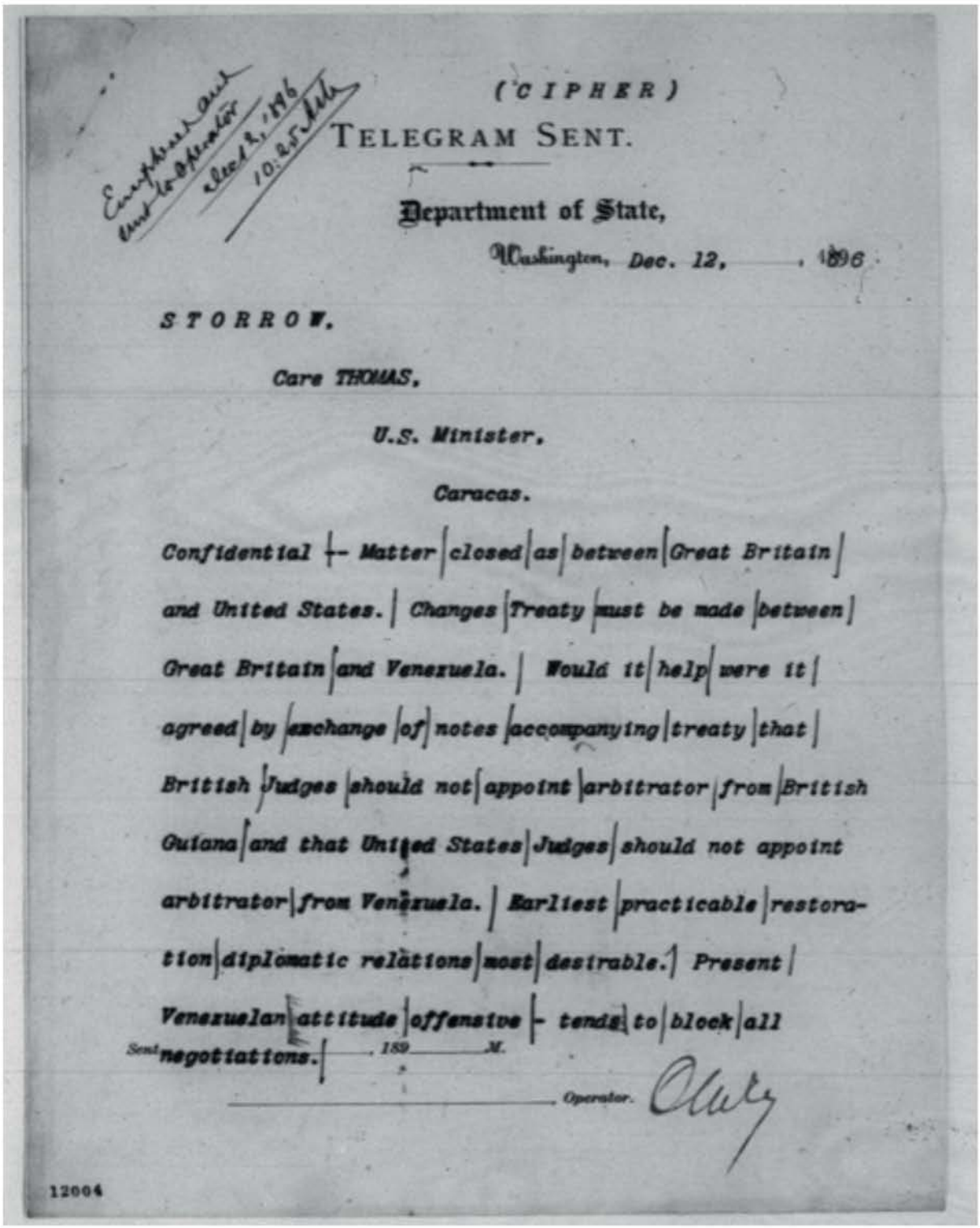
[illegible]

000426

ANNEX 15

Telegram from Richard Olney to James Storrow, dated 12 December 1896

Source: Manuscript Division, Library of Congress, Washington D.C., Richard Olney Papers, MSS35139, Box 66-68, Reel 24



(CIPHER)

TELEGRAM SENT.

Department of State,

Washington, Dec. 12, 1896.

STORROW,

Care THOMAS,

U.S. Minister,

Caracas.

Confidential |- Matter |closed |as |between |Great Britain |and United States. | Changes |Treaty |must be made |between | Great Britain |and Venezuela. | Would it |help |were it | agreed |by |exchange |of |notes |accompanying |treaty |that | British Judges |should not |appoint |arbitrator |from |British Guiana |and that United States |Judges |should not appoint arbitrator |from Venezuela. | Earliest |practicable |restoration |diplomatic relations |most |desirable. | Present | Venezuelan |attitude |offensive |- tends |to |block |all negotiations. |

Sent ____ 189__ M.

_____ Operator.

12004

ANNEX 16

Letter from Benjamin Harrison to Mallet-Prevost, dated 9 March 1899

Source: AHMPPRE-VE, Antique Archive, Country: Great Britain. Boundaries of Guiana. Establishment of the Court of Arbitration. Volume 186, 1899, folios 115-118

/ 15

LEGACIÓN
DE LOS ESTADOS UNIDOS DE VENEZUELA.

Benjamin Harrison.
1814 North Delaware St. Indianapolis. Ind.
March 9,1899.

S. Mallet-Prevost, Esq.
New York.

My dear Sir:

I have your letter of the 7th. I do not know what he outcome of these differences as to the fifty year clause is to e, but I am a little apprehensive that Great Britain may be very tiff in the stand Sir Charles Webster has taken. This makes me think hat Great Britain does not anticipate a very satisfactory decision rom the Tribunal and would like to throw the case back into diplo- atic stage. I suppose these notes now presented by Sir Charles were ot before the Venezuelan Government, but I must believe that they ere known to Mr. Sterrow; for his relations to Mr. Olney were very onfidential. I think too, that until General Tracy presented his riticism of the Treaty, Mr. Andrade and all of us were inclined o accept the fifty year period as dating from the Treaty, though he more I studied the correspondence and the clauses of the Treaty he more strongly the opinion grew upon me that its fair meaning as that the line of 1814 is to be established.

However, I do not think this is a turning point in the case t all, for it seems to me that the Agreement of 1850, beyond any uestion, cuts off any prescriptive title based upon any extensions ade by Great Britain after 1814, even if there had been any, which here was not. That Agreement absolutely destroys any claim by olitical control, especially in view of the fact that the British dmitted a joint jurisdiction with Venezuela in the territory. I m inclined to think, and am working the matter out a little, that he correspondence in relation to the Schomburgk Line, and the osts he set up, has the same effect as the Agreement of 1850. It

was an acknowledgment of a disputed region, and a profession on the part of Great Britain that she did not intend to occupy, but to negotiate. But, to come back; since Sir Charles Webster has presented to us these notes which in our judgment show the view taken by the United States and by Great Britain, can we do less than to consent to stipulate them into the case? It seems to me that to refuse to do this would be unfair. Having knowledge now of the existence of these notes I for one would n t feel like arguing to the Tribunal that the Treaty was, as to this matter, understood in the sense of our brief. It would be an utterly insincere thing to do. I think that you should present to Mr. Andrade and the Venezuelan Government the question whether we must not at least consent to allow these notes to come into thecase. If they are admitted to the case, we must be left to our own judgment as to what their effect is. I think it is quite possible that Mr. Storrow knowing the impracticability of some of those he had to deal with, may have purposely left this matter a little vague.

Very sincerely yours,

Benj. Harrison.

En copia

Dr. Andrade

ANNEX 17

Letter from J. Calcaño to José Andrade, dated 23 March 1899

Source: Benjamin Harrison Papers: Series 1, General Correspondence and Related Material, 1787-1912; 1897, June 2-1899, Apr. 12
Available at https://www.loc.gov/resource/mss25064.mss25064-041_0018_1232/?sp=1195&st=image

Ministry of Foreign Affairs,

Caracas, March 23, 1899.

Sir:

I have had the honor to receive your despatch Number 75, and the papers referred to therein.

It relates to an extraordinary pretention of Sir Richard E. Webster, Attorney General, and one of the counsel for Great Britain in the Guayana boundary question, who denies the right of the counsel for Venezuela to argue that rules A and B of Article 4 of the Treaty of Arbitration agreed upon between the two nations on February 2, 1897, for the settlement of the dispute, do not apply to the period subsequent to 1814. They think that such an argument is contrary to the understanding in which the negotiations were carried on between Lord Salisbury and Mr. Olney in the name of Venezuela; and announce, that unless the claim be withdrawn, the English lawyers will make it the basis of a formal protest before the Arbitrators.

The Government of Venezuela is unable to comprehend upon what authority the British lawyers demand from those of Venezuela a relinquishment of our case. The counsel of Venezuela may have been right or wrong in their judgment, but this is of little consequence as affecting the result of the case. If Great Britain interprets the treaty in another sense, Venezuela understands it, as do her counsel, in the opposite one. As neither of the two

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parties can impose its opinion upon the other, it is for the arbitrators to give effect to the agreement in conformity with the dictates ofimpartiality and wisdom. There is no reason to raise disputes here, nor to do anything which may interfere with the course of the proceeding. If Venezuela or her counsel have fallen into error, the difficulty may be obviated by the British simply demonstrating it before the Arbitrators.

The Treaty authorized the contending parties to present a case, counter-case, and argument, together with correspondence and proofs; and each has done so. The Tribunal will weigh these documents, and accord to them such value as they deserve, without any necessity on the part of counsel to discredit their arguments in that behalf, doing this at the solicitation of their adversaries who have and contend for opposing interests.

Venezuela, under the exceptional circumstances of the case, will consent that there be incorporated in the British Argument the letters omitted from it, in this regard, in view of the fact that Her Majesty's Government have asked it, since they prove the contrary of what is alleged; but fears that this may be opening the door to other analagous exigencies, in view of that fact that the periods fixed by the treaty for the presentation of proof have expired, and that the door has been shut to the litigants, permitting them to improve upon or repair their faults

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or omissions. They say to Venezuela today, "In order that we may beat you more easily, despoil yourself even of some of the arms you are fighting us with, and lend aid also to the putting into our hands of others to reinforce us." Tomorrow they may ask us to suspend the course of a proceeding already approaching its close.

With regard to the Agreement of 1850, the British Case mentions it on pages 125 and 126, without the compilers venturing to say that it is void; only that the Republic has invoked it many times, but has violated it repeatedly. The Case of Venezuela has demonstrated that the British Government observed it at the beginning, and appealed to it as recently as in January, 1887; that it never has been annulled and therefore preserves its force in full. Pages 715 and 716 of the Argument have made it most clear, that even adopting the British understanding with regard to the application of rules A and B of Article 4,of the Treaty to the epoch subsequent to 1814, the year 1850 marks an absolute line of demarcation in the boundary controversy,,and that thus the acts of occupation or political control executed by one or the other party, subsequent to the agreement of that date, lack all legal effect. Its reasons are so conclusive, that it is not to be feared that the Tribunal will deny its assent to them, nor adopt the English theory of the nullity of the agreement for the supposed infrac-

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tions of it attributed to Venezuela.

Nevertheless, as it is not undesirable that advantage betaken in this matter, of the letter of Sir Julian Pauncefote of October 30, 1896, as among the other documents whose insertion in evidence is desired, two of them are among those published in our Case; and, moreover, as they and all the others referred to, are favorable to Venezuela, our counsel should flatly refuse to withdraw from their position; but they may add that this Government will not oppose the presentation by the British in their oral arguments, as though they were incorporated in the evidence in the case. Let it be understood that our counsel are to continue to most forcibly refute the claims which the British found upon these documents, and to show that such evidence is really against them.

I am, etc.

J. Calcaño Mathieu.

Señor Jose Andrade,

37866

ANNEX 18

Letter from Richard Webster to Mallet-Prevost, dated 12 May 1899

Source: Guiana Boundary, Arbitration. Various. Reference: FO 80/418. The National Archives, United Kingdom

223

2, PUMP COURT, TEMPLE, E.C.
May 12., 1899.

Dear Mr. Mallet-Prevost:-

British Guiana Boundary:
Arbitration with Venezuela.

I have carefully considered with my Colleagues your letter of the 22nd. April. Its contents lead us to hope that no difficulty may ultimately arise, but as it is essential that there should be no doubt on the matter, we think it right to send you in reply a formal Statement of our position:-

We gather from your letter that those who prepared the Argument on behalf of Venezuela were not acquainted with the Correspondence which led up to the Treaty of Arbitration. This may no doubt to some extent, account for the contentions to which we were obliged to take exception, because we are convinced that no one who was a party to or acquainted with the negotiations between Mr. Olney and Sir

Julian

nourable
Mallet-Prevost,
30, Broad Street,
New York, U.S.A.

Julian Pauncefote, can have any doubt whatever, that the position which we take up, is not only justified by the antecedent negotiations, but is the only one which is consistent with them.

You state that the Argument to which attention was called in my letter of the 2nd. February, was distinctly stated at Page 106, Volume I of the Counter-Case of Venezuela.

In this we cannot agree. It is possible, in the light of that which has subsequently been put forward, to gather from the passage to which you refer, a suggestion of the contention. Read in its natural meaning and in connection with the context the passage cited refers to an entirely different matter and was obviously inserted with another object; and we would moreover point out that in the formal statement of Conclusions at the end of the Case not only is there no trace to be found of any such contention but it is directly opposed to paragraph 1 on Page 179, Paragraph 1

on

on Page 197, and proposition 29 on page 225.

We note that you consent to the copies of the Diplomatic Correspondence which Mr. Buchanan furnished to you, and of which I enclose a further copy, being laid before the Arbitrators and we repeat, for the reasons stated in my letter of the 2nd. February, that it cannot properly be questioned that the Rules in Article IV were intended by both parties to apply to the action and protect the interests of Venezuela and Great Britain respectively, and had no relation to the periods of Spanish and Dutch ownership. While we are unwilling to anticipate any difficulty we must ask you distinctly to understand that Great Britain will not acquiesce in any position which will deprive her of the rights conferred by Article IV of the Treaty, which embodies the terms upon which alone she assented to the arbitration.

As regards the three points that are enumerated at the conclusion of your letter, we are at a

loss

loss to know for what purpose they were inserted.

We do not know to what parts of the British Case, Counter-Case, or Argument you refer, but they have no bearing upon the important matter to which we felt bound to direct your attention in my letter of the 2nd. February.

I am, &c.,

(Signed) R. E. Webster

ANNEX 19

Letter from Richard Olney to Julian Pauncefote, dated 24 May 1899

Source: Boundary between British Guiana and Venezuela Further Correspondence. Reference: FO 420/189. The National Archives, United Kingdom

Printed for the use of the Foreign Office. May 1900.

CONFIDENTIAL.

(7320.)

PART XVII.

FURTHER CORRESPONDENCE

RESPECTING THE

BOUNDARY

BETWEEN

BRITISH GUIANA AND VENEZUELA.

189

1899.

3. They approve of the Secretaries to the two Judges being paid salary at the rate of 2*l.* 2*s.* per diem each.

4. They agree also to 5*l.* a-month for an official servant, besides the cost of his travelling and maintenance.

5. My Lords approve of the payment of half of the expense of taking and printing shorthand notes, estimated to amount to between 180*l.* and 200*l.* a week.

6. The proposal about which my Lords feel the greatest difficulty is that for paying 2,000*l.* to each of the British Arbitrators for their services. The payment of a similar sum by Venezuela to each of the American Arbitrators, and by Venezuela and Great Britain jointly to M. de Martens, does not furnish a real analogy for a similar payment by Her Majesty's Government to the two British Judges, having regard to the fact that, presumably, none of the other three Arbitrators are at the same time in receipt of salaries from the Government paying the honorarium. My Lords are not, moreover, aware that any payment of the kind has ever been made to one of Her Majesty's Judges. It does not appear that any such payment was made to Lord Cockburn in the Alabama case, though the sittings extended from May to September, and, although 1,000*l.* was offered to Lord Hannen, as one of the Arbitrators in the Behring Sea case, he requested permission to decline the honorarium, feeling that—in his position as one of Her Majesty's Judges—his services were already at the disposal of Her Majesty's Government for the duty in question (Foreign Office letter of the 10th October, 1893). In these circumstances it would seem improbable that the Lord Chief Justice and Lord Justice Collins would think it right to accept the honorarium which has been proposed; but if, after considering the facts above stated, Lord Salisbury should deem it essential that it should be offered, my Lords would not think it right to refuse their assent, in view of the precedent afforded by the Behring Sea case.

I am, &c.
(Signed) FRANCIS MOWATT.

No. 101.

Mr. Olney to Sir J. Pauncefote.—(Received June 5.)

(Strictly Private.)
Boston, May 24, 1899.

My dear Sir Julian,

I HAVE your favour of the 12th instant, and note the contents.

As regards the publication in the diplomatic correspondence of my letter to you of the 29th October, 1896, marked Strictly Personal, my feeling is that it ought not to be so used. When you and I returned to Washington in the fall of 1896, we went to work on the Venezuela business industriously, and kept at it continuously; but we did so mostly by informal personal talks, or, so far as the negotiations were in writing, by equally informal and private notes, none of which were regarded by me as of an official character, or were allowed to go on to the files of the State Department. Do you not think that it would be unfair that one out of the many notes so exchanged should be selected for publication while the remainder are suppressed?

Further, if one is now brought to the notice of the Arbitral Tribunal and the parties, may not all similar correspondence, and even our recollections of our oral conversations, be also called for? I confess myself quite appalled at the possible, and not improbable, consequences of our opening up such a field of investigation and inquiry as the letter in question naturally points to.

Further — *entre nous* entirely — being inquired of last summer, on behalf of Venezuela, respecting diplomatic correspondence preceding the Treaty, I replied that my letter to you of the 13th July, 1896, was the last thing of record. I did not so reply until I had first written Mr. Cridler, Third Assistant Secretary of State, and received from him an assurance to that effect, made after an examination of the State Department files. The Counsel for Venezuela have unquestionably been banking on that statement of Mr. Cridler's and my own ever since, and would be both surprised and irritated, and perhaps justly so, if now confronted with a writing they had been led to believe did not exist.

I note your suggestion to the effect that it may be possible for me to do something to facilitate a satisfactory disposition of the difficulty referred to in your note. I should be very glad to do it if it is within my power; but, as at present advised, I do not see my way to do anything, unless the present Secretary of State, Mr. Hay, should

be induced to take the matter up, and should think fit to consult with me on the subject. If he chose to do that, I should certainly do my utmost to have carried out what I believe to have been the intent and understanding of all the parties concerned in the Boundary Treaty.

I am, &c.
(Signed) RICHARD OLNEY.

No. 102.

Foreign Office to Treasury.

Sir, *Foreign Office, June 5, 1899.*

I LAID before the Marquess of Salisbury your letter of the 2nd instant respecting the allowances and other expenses in connection with the arbitration on the boundary question with Venezuela.

With regard to the honorarium of 2,000*l.* which was proposed for each of the British Arbitrators, I am directed by his Lordship to observe that, as 1,000*l.* was offered to Lord Hannen for his services in the Behring Sea arbitration, it seems to him impossible to withhold the offer of an honorarium on the present occasion, when the labour imposed on the Arbitrators is still heavier, and that the amount offered should not be less than that which will be received by the Umpire and by the American Arbitrators.

The additional work which is thrown upon the two Judges in studying the mass of documents which have already been submitted to the Arbitrators by the two Governments is extremely severe—the British Case being contained in eleven volumes, running to 2,525 pages of folio print, and the Venezuelan Case occupying eight volumes, amounting in all to 3,164 octavo pages. It is probable that the proceedings of the Tribunal will extend over the whole of the ordinary summer vacation.

Lord Salisbury feels bound, therefore, to make the offer of extra remuneration which the Lords Commissioners have sanctioned, and will inform their Lordships of the replies received.

The allowances to the clerks employed by the two Judges will be reduced to 1*l.* 5*s.* a-night, as desired in your letter.

I am, &c.
(Signed) F. H. VILLIERS.

No. 103.

M. de Martens to Mr. Buchanan.—(Received June 6.)

Dear Sir, *Hôtel Paulez, The Hague, June 5, 1899.*

TO-DAY I am able to say, that at Tuesday, the 13th, in the afternoon, I shall arrive in Paris in order to open the sittings of our Arbitration Tribunal on the 15th, as it has been decided. But it would be quite impossible to me to remain in Paris. I shall be obliged to return to the Hague on Friday, the 16th. Then I may again return to Paris for one or two days for the hearing of the Case.

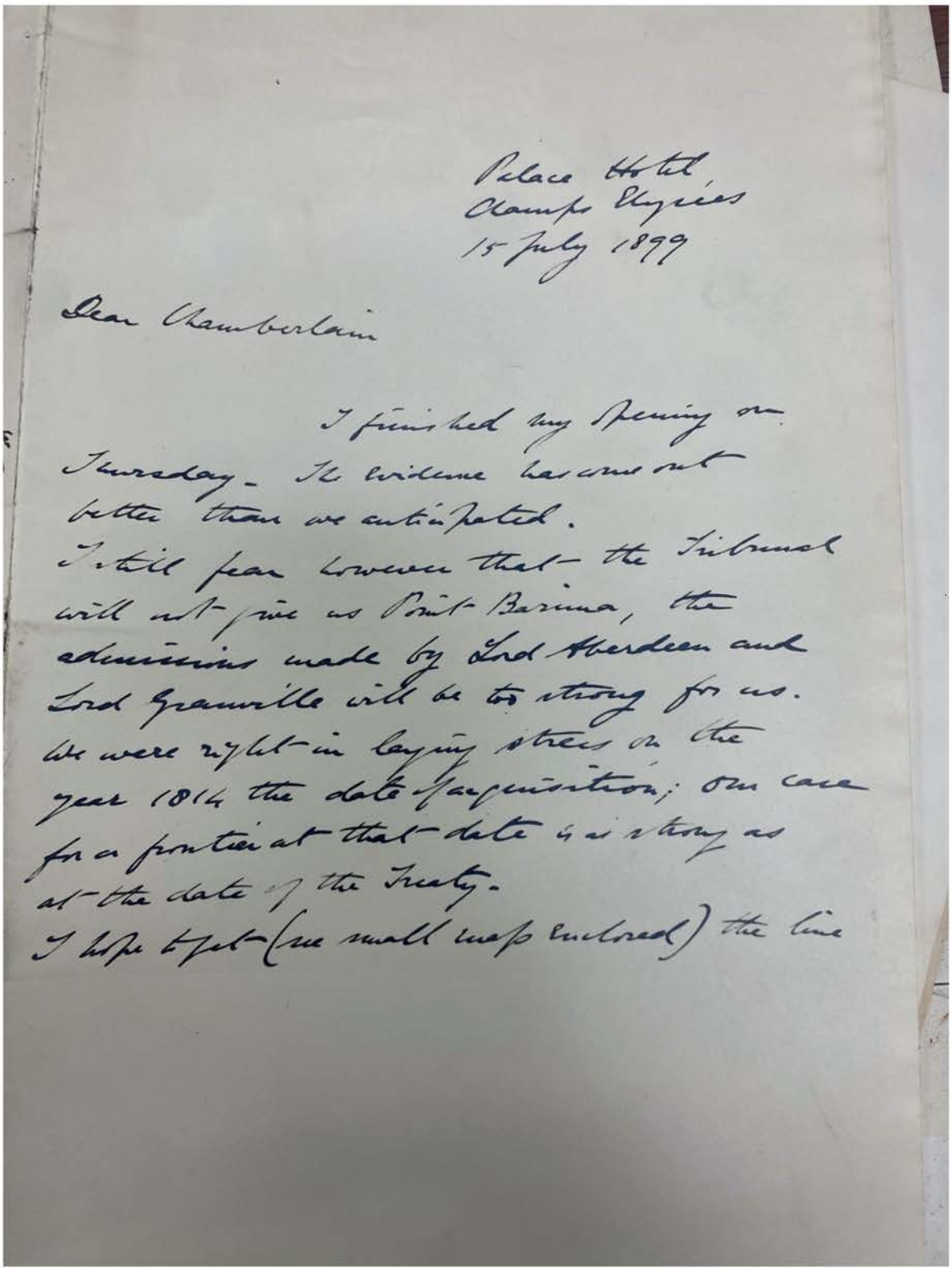
I am quite sure that before the end of this month the Peace Conference will have finished its work, and I shall be able to settle myself in Paris for the whole summer. The sittings may then take place almost every day. But at present it will be impossible to me to leave the Hague without returning to it. In this week the principal work—so I do hope—will be done, and about a fortnight would be necessary in order to finish the whole. In such circumstances, I beg you to make the necessary steps, with M. de Rojas, for the sitting of the 15th June. But if you and M. de Rojas wish to adjourn, better for one week more, till the 22nd June, the beginning of the sittings of the Tribunal, you would oblige me very much by sending me a word so soon as possible.

I have, &c.
(Signed) MARTENS.

ANNEX 20

Letter from Richard Webster to Joseph Chamberlain, dated 15 July 1899

Source: JC 7/5 (Foreign affairs: pre 1899). Joseph Chamberlain Collection – 1819- [late 20th century], Cadbury Research Library, University of Birmingham



Palace Hotel
Champs Elysées
15 July 1899

Dear Chamberlain

I finished my opening on Thursday. It evidence has come out better than we anticipated.
I still fear however that the Tribunal will not give us Point Barima, the admissions made by Lord Aberdeen and Lord Granville will be too strong for us. We were right in laying stress on the year 1814 the date of acquisition; our case for a position at that date is as strong as at the date of the Treaty.
I hope to get (we shall keep enclosed) the line

a b corresponding with the 65th degree
of longitude then Schomburgk's line (red) b
c, from c I am claiming to go along the
Imataka mountains to d & then south
along the tributary of the Cuyuni & due
South to f or alternatively along the Cuyuni
to g & thence down the Cuyuni to f, from
f the Schomburgk line b the South.
We are very weak between the Cuyuni &
Venamu, it is quite possible the boundary
may let go East of the Cuyuni from f.
I hope you will be able to follow this but
Harris is at present in London & can explain
it to you - You will find maps no 4 in the
British Atlas the best to follow -
If I get the chance & I think the tribunal
against us as to Point Barima I shall
press strongly for free passage for Commercial
vessels in the Barima - I should be very

glad if you would talk the matter over with Harris & send me any instructions or I can come over for a day if necessary to see you & Lord Salisbury -

I have written to him a similar letter It has been very hard work & the constant interruptions of the sittings were very trying

I am very truly yours
Richard Webster

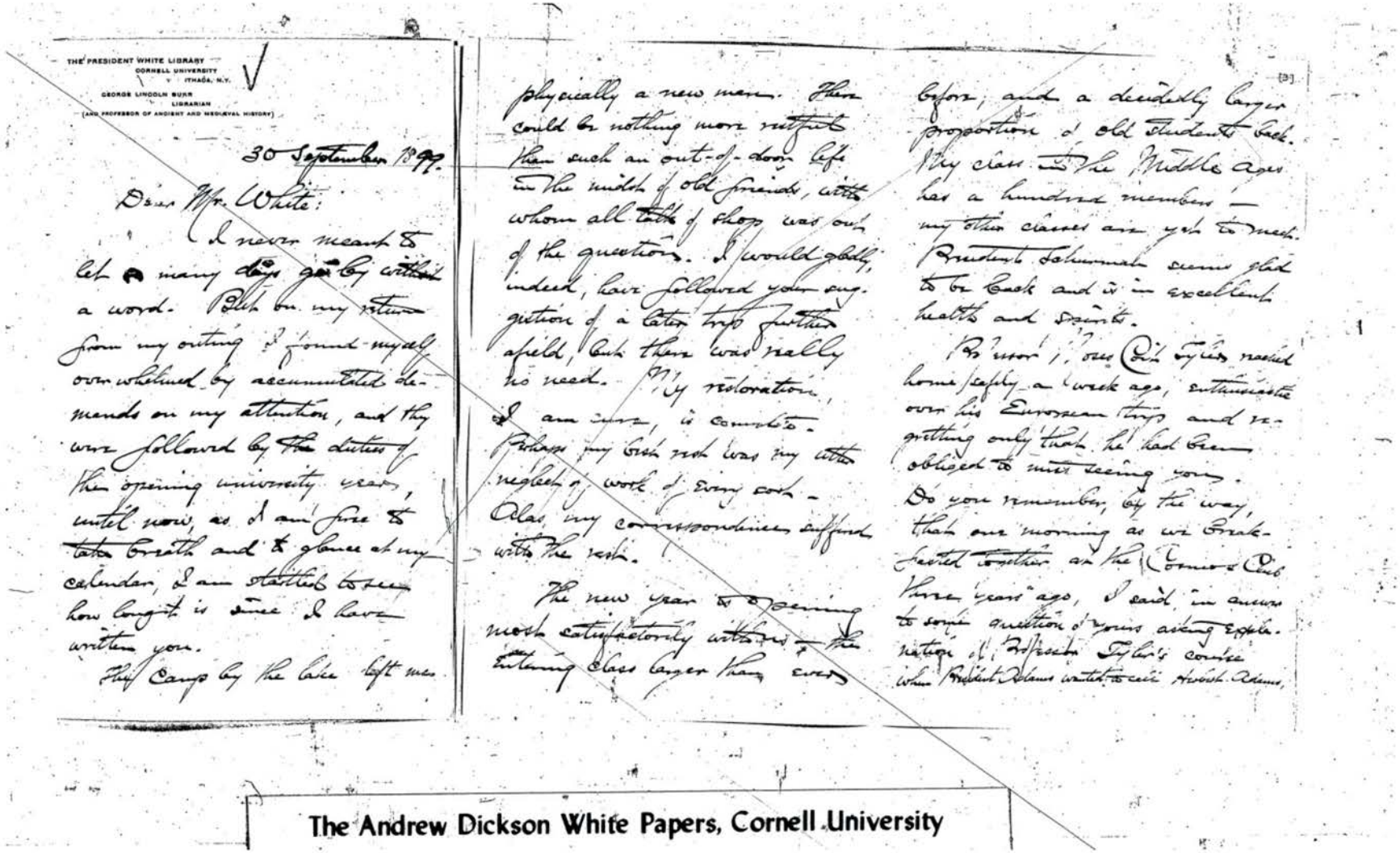
The Right Honorable
Joseph Chamberlain M P

The Solicitor General knows all about the case it might be well to talk this letter over with him - If you see Andrade do not make any proposition without letting me know -

ANNEX 21

Letter from George L. Burr to White, dated 30 September 1899

Source: Burr, George Lincoln. to White, Andrew Dickson, Ithaca, New York, Sept 30, 1899. See: Cornell University Library, Division of Rare and Manuscript Collections, Andrew Dickson. White papers 1846-1918, Microfilm reel 79, September 1899-January 15, 1900



THE PRESIDENT WHITE LIBRARY
CORNELL UNIVERSITY
ITHACA, N.Y.
GEORGE LINCOLN BURR
LIBRARIAN
(AND PROFESSOR OF ANCIENT AND MEDIEVAL HISTORY)

30 September 1897.

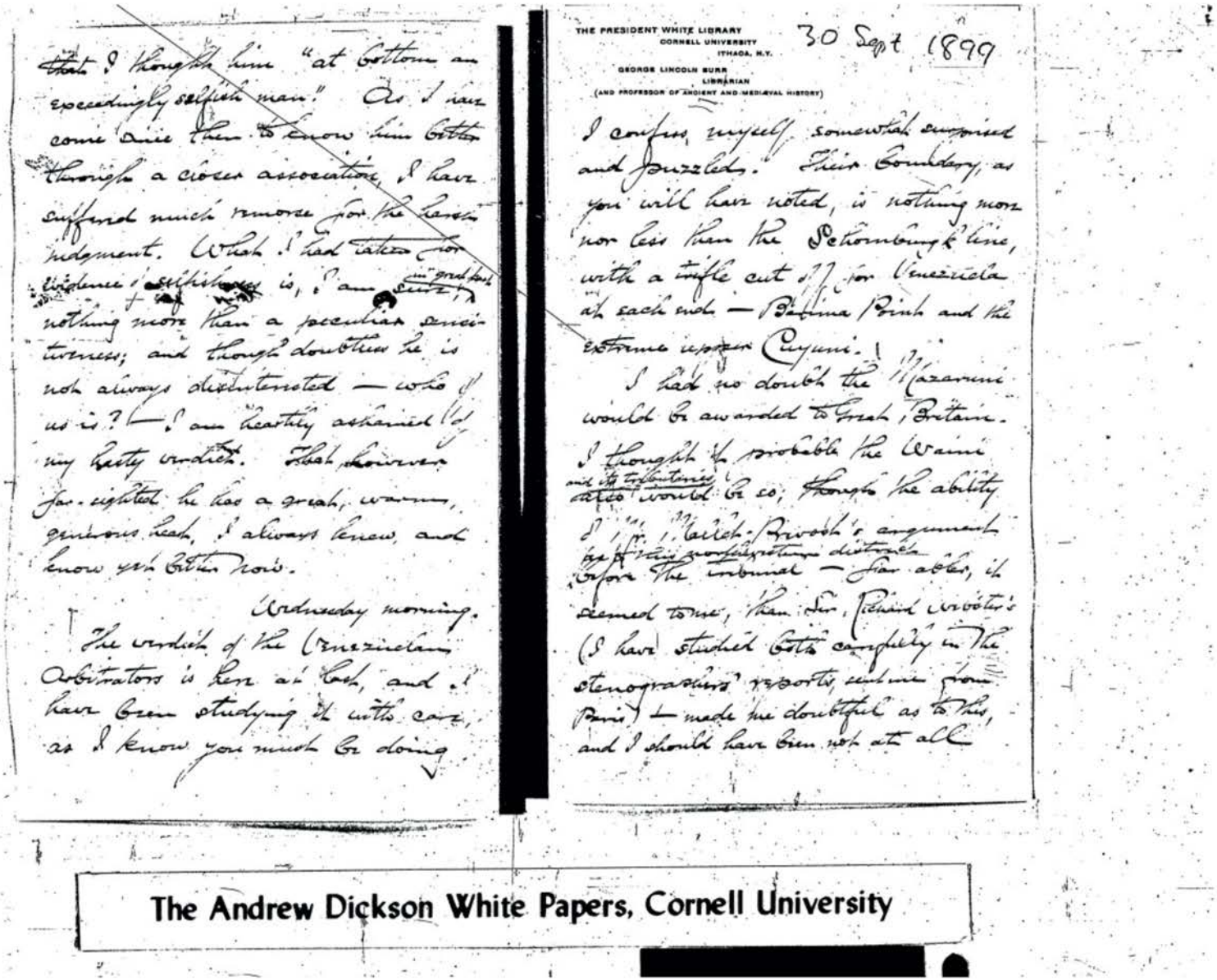
Dear Mr. White:

I never meant to let so many days go by without a word. Back on my return from my outing I found myself overwhelmed by accumulated demands on my attention, and they were followed by the duties of the opening university year, until now, as I am free to take breath and to glance at my calendar, I am startled to see how long it is since I have written you.

The Camp by the Lake left me physically a new man. There could be nothing more restful than such an out-of-door life in the midst of old friends, with whom all talk of shop was out of the question. I would gladly, indeed, have followed your suggestion of a later trip further afield, but there was really no need. My restoration, I am sure, is complete. Perhaps my sick rest was my utter neglect of work of every sort. Alas, my correspondence suffered with the rest.

The new year is opening most satisfactorily with us. The entering class larger than ever before, and a decidedly larger proportion of old students back. My class in The Middle Ages has a hundred members — my other classes are not to mean. President Schurman seems glad to be back and is in excellent health and spirits.

Professor Tyler reached home safely a week ago, enthusiastic over his European trip and regretting only that he had been obliged to miss seeing you. Do you remember, by the way, that one morning as we breakfasted together at the Commons Club three years ago, I said, in answer to some question of yours arising out of Professor Tyler's course with Robert Adams, wanted to tell about Adams,



that I thought him "at bottom an exceedingly selfish man." As I have come more to know him better through a closer association, I have suffered much remorse for the severe judgment. What I had taken for evidence of selfishness is, I am sure, nothing more than a peculiar sensitiveness; and though doubtless he is not always disinterested — who of us is? — I am heartily ashamed of my hasty verdict. That however far-sighted he has a great, warm, generous heart, I always knew, and know yet better now.

Wednesday morning.

The verdict of the Venezuelan Arbitrators is here at last, and I have been studying it with care, as I know you must be doing.

THE PRESIDENT WHITE LIBRARY
CORNELL UNIVERSITY
ITHACA, N.Y.

GEORGE LINCOLN BURR
LIBRARIAN
(AND PROFESSOR OF ANCIENT AND MEDIÆVAL HISTORY)

30 Sept 1899

I confess myself somewhat surprised and puzzled. Their Boundary, as you will have noted, is nothing more nor less than the Schomburgk line, with a trifle cut off for Venezuela at each end — Barima Point and the extreme upper Cuyuni.

I had no doubt the Mazaruni would be awarded to Great Britain. I thought it probable the Waini and its tributaries also would be so; though the ability of Mr. Justice Brewer's argument before the tribunal — fine as it seemed to me, than Sir Richard Webster's (I have studied both carefully in the stenographers' reports sent me from Paris) — made me doubtful as to this, and I should have been not at all

surprised if nothing work of the Mission had been allowed to expend. I was quite prepared, however to see the Barima made the line or to run a line drawn due south from Point Playa. But that the whole Barima — except its mouth — should be granted Great Britain, and the frontier carried even to the Amacuna, — that not only the Mazaruni but all the courses of the Cuyuni as far as the Wenamu should be accorded her, — I confess this takes my breath away. I can only divine that the judges counted the region as "still" in this century essentially unexplored and unoccupied, and treated Schomburgk's explorations as themselves creative of title. At least, I can think of nothing else which could have been counted a basis of claim to either the Wenamu or the upper Barima.

However, it was in the last issue a question of fact, and it is perhaps not to be expected that a layman should understand it. The great thing is that the thing should be decided, and by a court. Few will count them and itself too happy to have fallen to Great Britain. It would be interesting to know whether and how far the pending revolution in Venezuela influenced the feeling of the arbiters.

I am glad you are pushing on with the memoirs. I sincerely hope you will not omit about them. Stay Close to a larger public than your immediate friends, and I believe they will be much cordially received.

[7]

[8] I was much interested to your account of the Bayreuth festival and have been discussing it with Professor Tyler, who thinks you are right as to the immanence of the thing. I too have been vastly enjoying this summer Dill's book on the Later Roman Empire, and count it a peculiarly sane and sound study. The book of the Marquis de Nadaillac, of which you wrote some months ago, I took already some time on the Secret Seas, both for myself and for Professor Crane. The latter, by the way, was clearly made very happy by your message of congratulation on his administration.

I must go. With cordial greetings to Mrs. White and Miss Lucy,

Faithfully yours,
George L. Burr.

ANNEX 22

Letter to Mr. Charles Prestwood Lucas (Asst. Under-Secretary of C.O.), dated 3 October 1899

Source: Offices: Admiralty and Crown Agents. Offices: Foreign (1899 Jan-Oct). Reference: CO 111/515. The National Archives, United Kingdom

C.O. 111/515

MINUTA DEL 3 DE OCTUBRE DE 1899.-

Mr. Lucas

I have indicated roughly on the annexed map the award by a line ———— We lose Barima Point which is worthless as we are given the free navigation of the Barima & Amakura Rivers. We secure both banks of the Waini River at its mouth which is good.

To the south we lose a tract of country the value of which is doubtful but it includes Uruan the loss of which fever stricken places is perhaps more moral than material. On the other hand the award appears to make the north bank of the Cuyuni, where the boundary follows that river, the boundary thereby giving us the river whears we have I think hitherto never claimed more than a share of the river as far as midstream.

CAS
3/10

ANNEX 23

Letter from Edmonds to John, dated 23 March 1962

Source: Frontier Dispute with British Guiana. Reference: FO 371/162665. The National Archives, United Kingdom

1519/62

BRITISH EMBASSY,
CARACAS.

RECEIVED IN
27 MAR 1962
AV1081/51.

March 23, 1962.

RESTRICTED AND PERSONAL

My dear John,

Please see my Saving telegrams Nos. 9 and 10 of today's date. They are very long but I have tried to give a detailed account and to give you a bit of atmosphere.

The major impression left on my mind was of uncertainty about how to handle things in the minds of the others. This rather bears out what I said I suspected in the first sentence of paragraph 5 of my letter to you of March 15. I cannot also stress too much how pleasant the atmosphere was. I should add that I took Leslie Boas with me, with the approval of all concerned, because I wanted to be quite certain that there could be no possibility of mistranslation. Leslie assured me afterwards that there could be no possible doubt that the other grasped entirely clearly every point that I made. On our side there is no doubt that we understood what they said.

It also seemed clear to us that the junior party of the other side realised more fully the difficulties and dangers of the position and the small chances of success. Nevertheless he loyally supported his senior because he (the junior) fully realised that the senior is in a difficult position.

I very much hope that you will be able to let me have your early comments by telegram including, I trust, approval of the line I took. I would not be so worried about this question if the other side really understood. However, I think I achieved something today. As it is we have to combine polite education for them; standing up for our own principles for us; and an effort to help them out of what is, I am convinced, a genuine difficulty.

Yours ever,

(D.L. Busk)

P.S. I am not quite clear how far you take the Americans into your confidence in this matter. From the local point of view I should like to show my first Savingram to my American colleague and to discuss the second with him. Please let me have your views.

You will appreciate that it is not going to be easy for me to play continually poker face with all my diplomatic colleagues here but I shall have to manage this somehow. It would at least be nice if I could be reasonably frank with our friends the Americans and, of course, the Canadians.

N.J.A. Cheetham, Esq., C.M.G.,
Foreign Office,
London, S.W.1.

RESTRICTED AND PERSONAL

Seen 5/4

NOTHING TO BE WRITTEN IN THIS MARGIN.

Registry No.

~~Top Secret~~ Secret. ✓ Personal ~~Confidential~~ ~~Restricted~~ ~~Open~~

Draft. letter to:

Sir D. Busk KCMG CBE

From: Mr. Cheetham

Mr. Watts First

Mr. Cheetham

5/iv

We had hoped to get in to-day's bag the instructions about British Guiana promised in paragraph 2 of our telegram No. 205. I am afraid that with so much on our and the Colonial Office's plate at the moment we have not been able to ~~meet~~ do this ~~deadline.~~ Meanwhile ~~We should therefore have to send you a telegram, but~~ you may like to know how our minds are moving ~~in the meanwhile~~.

2. As you will know from our telegram, we should be most reluctant to embark on even the most informal talks about the Venezuelan claim ~~which~~ with that would amount to a Venezuelan delegation in London. Of course we cannot prevent the Venezuelan Ambassador from coming to talk to us about the claim any more than we can prevent the Foreign Minister talking to you; and we have to listen to what they have to say. Moreover, it is clearly in our general interests not to turn the Venezuelans down flat. We think, therefore that our general aim will be to try to string the Venezuelans along amicably until British Guiana is independent. How exactly we should do this, I am not sure, but to begin with we might try to gain time by saying that we need to study the documents which the Venezuelans have submitted (useless though they are in fact) and to consult with the Premier of British Guiana. We could perhaps make some play with the fact that Jagan is heavily involved in his internal affairs, including the forthcoming Commission of Enquiry, and that we should therefore prefer to wait until

/his

(82305) H.w.

his next visit to London, which (for your own information) does not look like being before July.

3. When we do give our substantive reply to the Venezuelan approach I am afraid that it will just have to be that we can find nothing new in the Venezuelan documents, and in particular nothing to shake our view that the 1899 award is both fair and legally binding. We cannot therefore agree to negotiations of any kind. We might, As a softener add that - irrespective of the Venezuelan claim - we fully understand that Venezuela has good reason for concern at the way in which British Guiana's internal politics have developed. Provided therefore that the Venezuelan Government could guarantee secrecy, we should be prepared to keep in close touch with them about our policy regarding British Guiana and the future of the territory in general. Clearly it would be essential that none of this should come to Jagan's ears.

4. All this is very tentative at the moment, although I should be glad to have your comments. You may also like to see the enclosed copy of a minute by American Department's Legal Adviser, which explains itself.

attached

NOTHING TO BE WRITTEN IN THIS MARGIN.

5/4

SECRET and PERSONAL

(AV1081/51.)

FOREIGN OFFICE,
S.W.1.

April 5, 1962.

AV 1081/54

We had hoped to get in to-day's bag the instructions about British Guiana promised in paragraph 2 of our telegram No.205. I am afraid that with so much on our and the Colonial Office's plate at the moment we have not been able to do this. Meanwhile you may like to know how our minds are moving.

2. As you will know from our telegram, we should be most reluctant to embark on even the most informal talks about the Venezuelan claim with what would amount to a Venezuelan delegation in London. Of course we cannot prevent the Venezuelan Ambassador from coming to talk to us about the claim any more than we can prevent the Foreign Minister talking to you; and we have to listen to what they have to say. Moreover, it is clearly in our general interests not to turn the Venezuelans down flat. We think therefore that our general aim will be to try to string the Venezuelans along amicably until British Guiana is independent. How exactly we shall do this, I am not sure, but to begin with we might try to gain time by saying that we need to study the documents which the Venezuelans have submitted (useless though they are in fact) and to consult with the Premier of British Guiana. We could perhaps make some play with the fact that Jagan is heavily involved in his internal affairs, including the forthcoming Commission of Enquiry, and that we should therefore prefer to wait until his next visit to London, which (for your own information) does not look like being before July.

3. When we do give our substantive reply to the Venezuelan approach I am afraid that it will just have to be that we can find nothing new in the Venezuelan documents, and in particular nothing to shake our view that the 1899 award is both fair and legally binding. We cannot therefore agree to negotiations of any kind. As a softener we might add that - irrespective of the Venezuelan claim - we fully understand that Venezuela has good reason for concern at the way in which British

/ Guiana's

His Excellency Sir D. Busk, K.C.M.G., O.B.E.,
CARACAS

SECRET and PERSONAL

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SECRET and PERSONAL

NOTHING TO BE WRITTEN ON THIS PAGE

Guiana's internal politics have developed. Provided therefore that the Venezuelan Government could guarantee secrecy, we should be prepared to keep in close touch with them about our policy regarding British Guiana and about the future of the territory in general. Clearly it would be essential that none of this should come to Jagan's ears.

4. All this is very tentative at the moment, although I should be glad to have your comments. You may also like to see the enclosed copy of a minute by American Department's Legal Adviser, which explains itself.

N. J. A. CHEETHAM

(N.J.A.Cheetham.)

SECRET and PERSONAL

CONFIDENTIAL

INWARD SAVING TELEGRAM

FROM CARACAS TO FOREIGN OFFICE

A

AV1081/53

Cypher/OTP/By Bag

DEPARTMENTAL DISTRIBUTION

Sir D. Busk

No. 9 Saving

D. March 23, 1962

R. March 26, 1962

CONFIDENTIAL

Addressed to Foreign Office telegram No. 9 Saving of March 23.

Repeated for information Saving to:

U.K.Mission New York

Governor Georgetown

Your telegram No. 196. AV1081/49

When I saw the President today he said that he had arranged meeting at his private house in order to avoid publicity and to establish cordial and intimate basis. I welcomed this. The Minister for Foreign Affairs was present.

2. The President said that Venezuela was part of the West and with us must look to security. The United Kingdom had vast investments here and it would be disastrous if Venezuela followed Cuba. He was much alarmed by possible centres of gun-running, sabotage and agitation in neighbouring territories. He suggested that the United Kingdom and Venezuela should jointly administer the area along the frontier which would provide security cordon. He was not specifying any particular size (see my telegram No. 53, paragraph 2).

AV1081/53

3. I said that it was not certain to me personally that Jagan would follow Cuba. What was certain was that he could easily be pushed into this if we or Venezuela or the United States handled him badly. Good neighbourly relations were vital between Venezuela and new independent British Guiana. I did not know when full independence would be achieved but it must come sooner or later, and one way to push Jagan into the arms of Castro was to thwart this.

4. The President then said Her Majesty's Government was ready for talks with Guatemala about British Honduras. Why not about British Guiana? I said that the main difference was the arbitral award. Her Majesty's Government would listen to any statement

/the

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Caracas telegram No. 9 Saving to Foreign Office

the Venezuelan Government made on this subject but I was sure that in reply Her Majesty's Government would reaffirm the view that the award was final and still in force. I could hold out no hope that we would agree to talks. As far as I knew the British Honduras talks were to be on basis that we maintained our views, but that we were prepared to arrange for discussions with the Guatemalans to try and improve relations in general terms. Elected Ministers of British Honduras would participate in such talks. Independence of members of the Commonwealth was a matter exclusively for the United Kingdom and for the people concerned. We could admit no outside influence. What ex-colonies did after full independence was their affair. I myself doubted whether independent British Honduras would join Guatemala but they would be free to do so.

5. This enabled me to add that constitutionally elected Ministers of British Guiana were equally involved in the future of their country whether before or after complete independence. This was fundamental and I could not believe Jagan would be enthusiastic about the idea of jointly administered area.

6. The President then said that "new data" showed that the award was inequitable. This was not question of law such as dealt with by The Hague court but of equity. It was a great opportunity for the United Kingdom to right a wrong. He asked for negotiations to be started soon in London led by Venezuelan Ambassador plus two more Venezuelans. There would be no publicity and he wanted intimate atmosphere with no date fixed for the completion of negotiations.

7. I repeated that I could hold out no hope and asked if it was his intention to communicate "new data" now. He said Venezuelan team would have all the papers with them and would like to discuss with our experts. He understood our principles and would agree to Jagan being present. The conversations might have to be continued with Jagan after [grp. undec.]? independence.

/8. He said that

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Caracas telegram No. 9 Saving to Foreign Office

8. He said that the arguments were not based on aggressive nationalism. He himself would disappear after the 1964 election. The solution need not be reached by then. He had been careful in congressional speeches (my letter of March 15, paragraph 2) not to commit his Government to any action but he was anxious that exploratory discussions should start soon.

9. I repeated that I could see little hope that my Government would agree to discuss something we considered settled by the 1897 treaty (particularly Article 13 which I produced) and the 1899 award. I asked what were the new data. The Minister for Foreign Affairs then produced various documents which I did not have time to examine on the spot. I am sending them by this bag and as you will see they seem to contain nothing new. The Minister for Foreign Affairs repeated that the Venezuelan claim was based in equity and history and not on law. I said that arbitration took account of these factors and it was thus different from pure legal decisions.

10. I said I would report fully to you but concluded by holding out no hope that Her Majesty's Government would agree to talks. The President and the Minister for Foreign Affairs said they fully understood my position and reiterated that they would have no objection to Jagan being present.

11. The question of Trinidad did not come up.

Foreign Office pass Saving to U.K.Mission New York No. 4 and Governor Georgetown No. 3.

[Repeated Saving to U.K.Mission New York.
Copies sent to Telegraph Section C.O. for repetition Saving to Governor Georgetown.]

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American Department
News Department
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C-O-O-O

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ANNEX 24

Letter from Mr. Slater to Mr. Edmonds, dated 28 May 1964

Source: Border Dispute with British Guiana. Reference: FO 371/174362. The National Archives, United Kingdom

1964

A

AMERICAN DEPARTMENT

(Security Grading—to be Up-graded where Appropriate)

RESTRICTED

VENEZUELA

A V1081/57

FROM Mr. Edmonds (Caracas) to Mr. States

No. 1519/64

Dated April 28

Received May 5

SUBJECT: British Guiana Frontier Dispute

British Guiana Section has been set up in the Ministry of Foreign Affairs under Dr. Blas Perez Perez

Encloses Copy of:

newspaper cutting from 'El Nacional' of April 27.

References and Relevant Papers:

-/23(65)

(Outward Action)

D/S) Mr. Edmonds, Caracas from Mr. States May 11.

D/S) Sir G. Meade, Abingdon from Mr. Martin May 15.

MINUTES

For comment on the establishment of a British Guiana Section in the Venezuelan M.F.A., please see AV1081/58.

2. The newspaper article from "El Nacional" of April 27 concerns the statements of an 80-year Italian who fought for the Russians at Port Arthur in 1904 before going out to Venezuela to work in the National Frontier Guard. The article is the vehicle for an exposition of the reasons why an Anglo-Russian deal took place in 1899. and what concessions the Russians obtained. These are allegedly concessions on spheres of influence in China, Tibet, India and Persia. Sir Geoffrey Meade & Mr Childs should see.

A.W. Martin
6/5

Sir Geoffrey Meade
Mr Childs (Library)

OK

(Printing Instructions)

(Referred to Legal Adviser)

(Action completed)	(Main Indexed)
2/6/64	3/6.

Sir Geoffrey Meade has seen this article and considers that it is of some importance in the Venezuelan case as an attempt to prove that Russia had benefitted from the "deal" which gave Great Britain an unfair award in 1899, at Venezuela's expense. He wishes to submit it to Dr Grenville for his opinion, and for this purpose a translation is required. Can this be done here, or should it be referred back to Caracas? I am inclined to the former, since this exercise is hardly part of the normal work of an Embassy abroad.

A.L. Martin
6/5

Mr Childs (Library)
Mr Foster (Translator)

I agree that if Sir Geoffrey Meade considers this to be of some importance the sooner we get Dr Grenville's opinion the better. In the circumstances I hope the translation can be produced here in London - and fairly soon.

Draft acknowledgement.

T.L. Hutchison 8/5

(If the Venezuelans were prepared to furnish documentary evidence we can presumably demand to see it)

8/5

Translation within. But this really should have been done at the post where there are at least three Information officers.

Norman Foster
20/V/64

Mr. Martin 29/5

Number of copies.................
Number of copies of enclosures..........................

NOTHING TO BE WRITTEN IN THIS MARGIN.

Minutes.

A) Mr. Sutherland, Witon, to Mr. Child, May 18.

Sent to Sir G. Hende (AV 1081/57) July 1/6

M.F.P

ANNEX 25

Confidential letter from Venezuela's Ambassador in London, Dr. Héctor Santaella to Iribarren Borges, Minister of Foreign Affairs of Venezuela, dated 23 October 1965

English Translation

Source: Ministry of People's Power for Foreign Affairs, Borders Archive, Confidential Letter from Ambassador Santaella to the Minister of Foreign Affairs of Venezuela. Subject: Considerations on the conversations between the Embassy and the Foreign Office regarding the ministerial conference, 1965, Caracas

EMBASSY OF VENEZUELA
TO GREAT BRITAIN
CONFIDENTIAL

Caracas, 23 October 1965

N° 1606

Special Director for Guayana

Subject: Considerations regarding the talks between the Embassy and the Foreign Office on the ministerial conference

Mr Minister:

1. I have the honour to write to you in order to make some comments and observations which may hopefully be of assistance when determining the policy to be pursued with regard to the boundary question between Venezuela and British Guiana.

2. I am referring in particular to the questions raised in your radiogram No. 192 regarding the date of your possible visit to London and to the contents of your radiograms DGG-573, DGG-579 and DGG-584.

3. Based on the contents of your radiograms, I will continue to insist, by all possible means and as I have done so far, on the adoption of an agenda that meets all the instructions outlined therein. However, I do consider it appropriate to bring the following considerations to your attention.

4. Significant progress has been made so far. As a matter of fact, the British position has been and still is officially, according to Foreign Office Note No. AV 1081/112, that Great Britain has only committed itself, when accepting talks with Venezuela, to a documentary review in order to prove to our country that it was not the victim of any injustice on the occasion of the border demarcation resulting from the 1899 Award. From that position, which I formally contested in my notes No. 1347 and No. 1492, to the present attitude, there is a remarkable difference. While the agenda we have agreed so far is not entirely satisfactory to us, it does reflect a significant change of position and gives us a number of advantages that are worth considering.

5. Britain has accepted all our points except the wording of paragraph two. The title of the agenda, which will be official, defines the Foreign Ministers' Conference as intended to "Discuss the Dispute between Venezuela and the United Kingdom on the Borders with British Guiana, according to the Joint Communiqué of 7 November 1963." This wording is essentially the same as that proposed by us under agenda item 2.

6. I believe, as I stated in my note No. 1546 to the Foreign Ministry, that the title of a Conference defines its purpose. It can hardly be argued that any participants in a conference with a purpose clearly stated and agreed in advance can refuse to address the central issue for whose consideration they agreed to

attend, free of pressure and with the prior consent of the parties. Certainly, they may not accept each other's views or contentions since, in essence, a Conference is convened to discuss one or more issues, but it does not oblige the parties, in advance, to agree, although it does oblige them to attend and act in good faith. I consider that the title therefore favours the Venezuelan position.

7. Great Britain also agrees to set deadlines for the implementation of what is agreed in relation to the items on the agenda. No one could think, even by the most imaginative stretch of the imagination, that anyone who agrees to set deadlines for implementing what might be agreed would do so merely in the spirit of a documentary review, as has hitherto been the British position. No deadline is required for the enforcement of that. Similarly, the clear and well-defined Venezuelan position of not accepting the validity of the 1899 Award cannot be given a "deadline for its enforcement."

8. The British also agree to add, in item 1, the phrase "The need to resolve the dispute." It is clear that a simple documentary review would not resolve anything and, on the other hand, by accepting the inclusion of the phrase, the existence of the question is admitted, defining it as a dispute and not as a historical or any other kind of question.

9. Great Britain also agrees to delete item 6 of the draft agenda contained in Annex E of my note No. 1546 to the Foreign Ministry. This is in line with your instructions.

10. I have deliberately left the considerations relating to item 2 of the draft contained in Annex E at the end.

11. As you know, the draft which I presented in the first place, and whose wording I have tried to maintain throughout the course of these discussions, reads as follows: "To find solutions for the practical settlement of the border issue." This wording, as we had envisaged from the outset, tended to avoid mentioning the 1899 Award, by stating, in a straightforward manner, that there is a border dispute whose solution would be sought at the Ministerial Conference. If Great Britain were to accept such wording, it would be somewhat implicit that the 1899 Award was not an adequate solution to the problem and, therefore, that the boundary question is open to redetermination. In this way, it would have been easy to consider the Award as non-existent at once, which could mean an immediate triumph for Venezuela. It could almost be said that, with such a wording, the Ministerial Conference would be almost unnecessary, since, England having admitted the non-existence of the Award on the agenda itself, the only way left would be to fix a new border.

12. To this first proposal of mine, the Foreign Office replied that the Award should be mentioned insofar as, in any case, consideration of the boundary question required some reference to that instrument. After arduous negotiations,

they agreed to accept our wording in the title of the Conference, to which I have referred above.

13. I wanted to keep the Venezuelan position quite clear and, to this end, in response to a question from the representatives of Great Britain and British Guiana about the meaning of our position regarding the reference to the Award in the agenda, I plainly stated that Venezuela does not recognise any validity of that document and that, in this respect, the statements of the President of the Republic and those of our Foreign Minister were widely known, as well as the other Venezuelan statements on the matter, including my Note No. 1347 addressed to the Foreign Office.

14. Great Britain replied that nothing prevented Venezuela from attending the Conference subject to due qualification of its position, but Great Britain could not accept deleting from the agenda the mention of the Award, the validity of which, for its part, it upholds. Accordingly, they proposed to draft item 2 in the two forms which I transcribed in my radiogram No. 205 to your dignified Ministry of Foreign Affairs.

15. Other formulas for drafting have been tried and tested and thoroughly discussed and weighed by both sides. According to your latest instructions, I must insist on a wording basically the same as our original wording, i.e., "To seek solutions for the practical settlement of the boundary between Venezuela and British Guiana, whose demarcation by the 1899 Award Venezuela does not accept."

16. At the next meeting, perhaps on Tuesday 26th, I will present, in accordance with your instructions, this new formula.

17. At previous meetings I probed for the possibility that the following wording, which is clearly not so explicit about our intentions, might be accepted: "To seek solutions for the practical settlement of the <u>boundary</u> dispute arising out of the 1899 Award on the boundary between Venezuela and British Guiana." My purpose was to ascertain whether Great Britain would accept the inclusion of the word "boundary" in the wording they had proposed and which is contained in item 2 of Annex E to my Note No. 1546. This attempt did not yield positive results. Great Britain insisted on not accepting the inclusion of this word. To my new proposal to delete the mention of the Award in item 2, they also responded in the negative, insisting that the Venezuelan wording is accepted in the heading or title of the Ministerial Conference, in which, as I stated above in this same communication, the nature of the meeting is defined.

18. Notwithstanding the above, and in compliance with the instructions of your dignified Ministry of Foreign Affairs, I will present, as I have already said, the draft wording that you indicated in your radiogram No. DGG-584.

19. In summary, Great Britain has accepted all our proposals, except the inclusion in item 2 of the agenda of the word limits or boundaries in the form

originally proposed by us, and in any other similar ones. It accepts its inclusion, in the form already known to you, in the headline.

20. In the last meeting with the Foreign Office, the latter noted the efforts it has made to reach an agreement with Venezuela on this matter, accepting all our suggestions except the one already mentioned. Their representatives also expressed that, given the inflexibility of both sides on this specific point, it was perhaps useless to continue holding the meeting, since their instructions did not allow them to make any further progress on the matter, thus suggesting that we are coming to the end of the current negotiations.

21. In order not to give any impression of weakness in our position or any sign that such an attitude puzzled me, I replied that, if such is the stand of Great Britain, Venezuela would also consider it unnecessary to continue the talks as long as the position of Great Britain did not change.

22. Before the meeting ended, I asked the Foreign Office representatives to clarify the real substance of their position, insisting that Venezuela is not willing to accept academic discussions. Mr Slater, who heads the British group during the absence of Mr J.O. Rennie (see my radiogram No. 201) replied to this as follows: "We do not prejudice that your view is valid nor that our view is invalid." This should be left open for discussion among the Ministers. But we cannot accept from this moment that the only valid position is the Venezuelan one.

23. "Does that mean you are willing to discuss the border?" I insisted. Slater replied: "The Award laid down the boundary, didn't it? If the Award is up for discussion, then the boundary is up for discussion."

24. On the other hand, he added that the Joint Communiqué cites the 1899 Award, and then read to me some passages from the Yellow Book of the Ministry of Foreign Affairs in which, likewise, reference is made to the aforementioned instrument. As a matter of fact, the Joint Communiqué of November 1963 reads as follows: "...to review the progress made in the examination of documentary material relevant to the 1899 Arbitral Award on the boundary between Venezuela and British Guiana."

25. In reply, (since I could not contradict said text), I stated that the Joint Communiqué leaves, however, the way open for any discussion, since further on, when referring to the Government-to-Government talks, it does not limit in any way their nature. In short, I used the same argument used in the draft of Note P8 annexed to my Note No. 1464 to your Ministry of Foreign Affairs. But the British countered that such reasoning is not opposed to mentioning the Award itself, since the Joint Communiqué, which is the basis of these talks, clearly mentions it, as was stated.

26. This exchange of views left the door open for further negotiations, and it was agreed, in principle, that a new meeting could be held next week. Tuesday 26th was also mentioned in principle as a possible date.

27. It seemed to me very convenient not to break off the negotiations, consistent with the previously outlined strategy of extending the negotiations as long as possible, and as long as this does not mean sacrificing our position or weakening our attitude, as I expressed in one of the telephone conversations I had with you, Minister, during your stay in New York, during the last General Assembly of the United Nations, it seemed to me very convenient not to break off the negotiations.

28. But everything seems to indicate that we are reaching the end of the possibilities of understanding, which compels us to examine the consequences a possible cancellation of the current negotiations could have on our future position.

29. In the event that such cancellation should occur, without agreement being reached, the official position of Great Britain would continue to be, for all purposes of our claim, that already known and expressed by Foreign Secretary Stewart in his Note No. AV 1081/112 of September 16, that is to say, that the United Kingdom has only entered into these conversations in order to dissipate in the mind of Venezuela, and in view of our friendly relations, any doubts that might exist, etc.

30. I doubt very much that the British are willing to continue these talks with a view to the Conference between you and Foreign Secretary Stewart to take place in December. The observations I made earlier about the current state of the talks support this suspicion on my part.

31. Why does Great Britain want the Ministerial Conference to take place in November? Venezuela, for its part, has sought a solution to the border problem prior to independence. British Guiana, for its part, insists on a solution to the dispute also prior to its independence, in order to avoid all the problems that would result for it from a direct confrontation with our country.

32. Secretary Stewart has been travelling continuously since my arrival here, as is evident from his successive presence in Poland, Blackpool (for the Labour Party Convention), the United Nations, Washington, Japan, Korea, etc. This gave him a valid excuse for not agreeing to a meeting with you at an earlier date, as was my purpose. He considers that the coincidence of both Conferences in November (as expressed in Note No. AV 1081/112) can be useful, and this must be one of the reasons why he has accepted until today almost all of our points of view on the agenda, with the exception already indicated. As it stands now, when the respective positions have reached their maximum point of divergence, it is very difficult to continue negotiating, unless one of the two parties gives in or a compromise is found, which would save the position of the two countries.

33. On the other hand, the continuation of these talks in the atmosphere prevailing today, during the meeting of the Constitutional Conference, would

weaken, before the Guyanese opinion, the position of Great Britain, as well as Venezuela's. The former would appear as anxious to obtain Venezuela's agreement and the latter as lending itself to a meaningless game. That is why I doubt, I repeat, that the talks can continue with a view to a meeting of Ministers in December, although of course, such being the instructions of Caracas, I shall do my best to achieve it.

34. The information I have managed to obtain leads me to believe that Great Britain, anxious not to damage its relations with Venezuela and, by extension, with Latin America and, at the same time, faced with its responsibilities to the Commonwealth, is seeking, in accordance with its political tradition, a compromise solution.

35. They do not wish to insist on an agenda that, like the one presented by their representatives at the beginning of the negotiations (see Annex C of my Note No. 1546), is totally unacceptable to Venezuela. Faced with our pressure, they are gradually giving in, in order to achieve the holding of the Conference of Ministers in November. But they hold back on a wording that, in advance, would give the victory to Venezuela. This could lead to the strongest protests from the Guyanese representatives and, probably in the British Commonwealth, with the consequent discredit for this country.

36. The situation in Rhodesia has complicated things. There, the white minority, which intends to reproduce a situation of racist predominance similar to that prevailing in South Africa, demands independence, threatening to declare it unilaterally, in open defiance of British power and prestige. The Commonwealth countries and, especially, the African ones, demand, with all their energy, that Great Britain use all its means of pressure, including armed force, to oppose the anti-African pretensions of Premier Ian Smith, placing in the hands of this country all the responsibility for what happens.

37. Therefore, England is facing an extremely difficult situation. Great Britain's authority within the Commonwealth, its international prestige, the very foundations of its political system are at stake. Their "image" is in imminent danger of being tarnished in the eyes of the Commonwealth and the rest of the world. What stance have they taken so far? That of seeking a 'compromise,' allowing time to pass while they find the ideal way out, which would be to relinquish direct responsibility for the matter.

38. Wilson proposes that a Commission of Commonwealth countries should travel to Rhodesia and make recommendations. Smith has flatly rejected this, as he cleverly wishes to prevent Great Britain from diluting its direct responsibility in a multi-nation forum. In the meantime, Britain is looking for support in other countries. France's declaration that it will not recognise any new government that might emerge in Rhodesia as a result of a unilateral declaration of independence

wins the moral support of the United States. Prime Minister Wilson offers to travel to Salisbury to confer, until he finds the "compromise" he might not be able to find.

39. In such a harsh and difficult scenario, would Great Britain immediately abandon British Guiana in its claim against Venezuela, exposing itself to the repudiation of the Commonwealth and especially Afro-Asians? On the other hand, would Great Britain openly confront Venezuela and Latin America?

40. This has been noticed by the British Guiana Commissioner, who seems to be very adept at behind-the-scenes manoeuvring. The press in the colony, inspired by Luckhoo, is already accusing Great Britain of negotiating with Venezuela behind British Guiana's back. Foreign correspondents covering the issue, with whom I frequently speak in London, reflect this sentiment. Some even let such fear creep in. In this connection, I informed you in my radiogram No. 185, asking for quick instructions, for I feared that the pressure from the Guyanese might change the attitude shown by Great Britain, hitherto inclined to negotiate.

41. So, what could be the way out for Great Britain? A somewhat undefined solution (a "compromise") that allows them to give independence to British Guiana, without having pronounced themselves too much in favour or against our claim.

42. That is why I believe that the decision to be taken at this time is of the utmost importance. Not to attend the Conference of Ministers is to allow the British position to remain defined in accordance with the terms of Secretary Stewart's oft-quoted Note No. AV 1081/112. In this case, and in line with our statements that British Guiana's independence will not affect our position in any way, we would continue our claim on British Guiana, if it gains its independence at the next Constitutional Conference. But Great Britain would have saved its position in two ways; first, by indicating that it never committed itself to Venezuela to revise the border or even to discuss the Award, and second, by disengaging from a serious problem vis-à-vis us. In the worst-case scenario, their responsibility would at least be diluted.

43. Instead, if we agree to come to the Conference of Ministers on the proposed date and with an agenda which, like the one achieved so far, at least allows for discussion of the Award, I sincerely believe that our diplomatic position would be greatly improved, even if no agreement were to be reached.

44. If independence does not come about, our position vis-à-vis Great Britain would be greatly strengthened, as it would be vis-à-vis an independent British Guiana if that were the case.

45. In addition to the reasoning put forward earlier in this note, I would like to advance another that I consider to be of importance. The draft agenda so far accepted does not speak of "discussing the Award." It says, verbatim, "Seek

solutions for the practical arrangement..." as I proposed in the first draft agenda (see Annex B of my Note No. 1546).

46. Could Great Britain, after such an agenda has been accepted by both sides, argue that it was never committed to discussing the border issue? I think not. If this nation considers the Award to be a complete, final and definitive solution, as it has been maintaining, it is because it presumably attributes to it the full force that similar instruments have in international law. It is, in their view, the legitimate title to their sovereignty over the disputed territory.

47. However, those who are sure of the validity of their titles do not allow themselves to seek "practical solutions" for those who dispute their rights. They can, however, seek legal solutions in law, in accordance with the law. But not to look for practical solutions because, in doing so, they would be assuming, in advance, that the validity of their titles is open to doubt.

48. If, to date, by sticking to the Benítez statement at the United Nations and the 1963 Joint Communiqué, Venezuela has managed to bring Great Britain to the terms on which we now do, despite all its reticence and manoeuvring and repeated statements to the effect that it has never promised to discuss the substance of the problem, would it not substantially improve our position after having in our hands an agenda such as the one Great Britain is now prepared to accept?

49. I believe that if we could hold such a document in our hands today, we could multiply the strength of our position many times over.

50. I insist that I have tried and will continue to try, by all means at my disposal, to impose our criteria on the issue that threatens to bring these talks to an end. That if that is the instruction from Caracas, I will make the same effort to achieve a meeting in December, provided the agenda is satisfactory. I would also like to highlight that none of the above is intended to demonstrate that the position we have held so far has been inconvenient or ill-presented. On the contrary, you are aware that, from the beginning of our deliberations, I have agreed to the agenda being presented in the form indicated in Annex B because I was involved in drafting it.

51. But the talks being on the verge of an impasse, I believe that, before terminating them without any results, and after a new effort, which I am making, it is preferable to convene the Conference of Ministers in November, even at the risk of not reaching agreement there, but in exchange for having in our hands the elements favourable to our cause which the draft so far accepted would offer us. From our point of view, this draft agenda is certainly not the best, but it represents a major step forward in the defence of our cause, which is not and will not be easy or short term, at least as long as we are acting, as we are now, by diplomatic means. In this arena, such a draft could be seen as yet another success story for the Foreign Ministry.

52. As you know, I did not at first (see my radiogram No. 130) consider your coincidence with Mr Burnham here convenient, as I thought that he might take advantage of such a circumstance to stage an anti-Venezuelan rostrum.

53. However, having reassessed the situation, I believe that this risk can be taken without major consequences, as it is clear that you will, in any case, be able to state the basis of our position as clearly, if not more clearly, than Burnham will be able to state his. I do not think it would be in Great Britain's interest to expose itself to you speaking as clearly as you could, if necessary, especially as it was Foreign Secretary Stewart who suggested that your coming to London should take place on 9 and 10 November.

54. In any case, the action plans formulated so far (see instruction sheet) envisage you making a strong statement if attempts to reach an agreement fail (illegible), you could make such a statement in London if there was no agreement at your meeting with Foreign Secretary Stewart.

55. I therefore submit the above ideas for your careful consideration, confident that you will give them your full attention.

56. In the event that you do not consider it advisable to accept the recommendation I have taken the liberty of making and the Constitutional Conference on British Guiana begins without agreement having been reached on the meeting of Foreign Ministers, I consider it advisable to make official to the Foreign Office the reservations formulated by Venezuela to the effect that the independence of that colony will in no way affect its inalienable rights. I suggest this because the latest statements on the matter have been made publicly, including at the United Nations, but not in an official note to Great Britain.

57. To this end, I will submit a draft note for your consideration, which I will send you in the next pouch.

58. The only thing left for me to do is to ask you, in view of the extremely short time available to me between now and 2 November and the fixing, in principle, of Tuesday 26 November as the date of the next and perhaps last meeting, to kindly send me your instructions by cable, by telephone if possible, or by special diplomatic courier.

59. As in the past, I have numbered the paragraphs of this note for easier reference by wire or telephone.

Yours faithfully,

Héctor Santaella

To Mr Ignacio Iribarren Borges,

Minister of Foreign Affairs.

CARACAS

HS/fc.

ANNEX 26

Letter from Venezuela's Ambassador in London, Dr. Héctor Santaella to Michael Stewart, Minister of Foreign Affairs of Great Britain, dated 2 November 1965

English Translation

Source: Ministry of Foreign Affairs, (1981), Claims of the Essequibo Guayana, Documents (1962-1981), Caracas, pp. 60-61

REPUBLIC OF VENEZUELA
MINISTRY OF FOREIGN AFFAIRS

CLAIM TO GUAYANA ESEQUIBA

DOCUMENTS
1962 -1981

CARACAS, 1981

NOTE FROM THE AMBASSADOR OF VENEZUELA IN LONDON, DR. HECTOR SANTAELLA, TO THE HON. MICHAEL STEWART, MINISTER FOR FOREIGN AFFAIRS OF GREAT BRITAIN. London, 2 November 1965

Your Excellency,

On the occasion of the Conference on the Independence of British Guiana, for whose happy development and fruitful results the government of Venezuela presents its sincere wishes, I have the honour to reiterate to Your Excellency, by express instructions of my government, the explicit and constant position of Venezuela with respect to colonialism and the old dispute with the United Kingdom about our limits with British Guiana.

It will not escape the perspicacity of Great Britain that Venezuela, consistent with its own history, as a nation that contributed effectively and selflessly to the liberation of other peoples, has maintained throughout its republican existence a definite position in favour of the independence of former colonies or territories in some way dependent on their respective metropolises. This Venezuelan position has been especially applicable to the process of decolonization of American territories, with which our country is particularly linked for reasons of continental brotherhood.

In the case of British Guiana, the reasons that move Venezuela to strongly desire its independence are even more powerful, since Venezuela understands that, due to their geographic proximity, the two countries are called to consolidate a lasting friendship that will benefit both countries and the continent.

I shall not tire Your Excellency's attention by quoting the numerous and significant official statements of Venezuela in this regard, nor those relating to the claim which it has maintained, and will continue to maintain, clearly and firmly, to its legitimate boundary with British Guiana. Your Excellency is also aware of the expressions of Venezuelan willingness to reach an amicable solution of the issue with the cooperation of Her Majesty's Honourable government.

For all the foregoing reasons, and at a time when the Conference on the Independence of British Guiana is meeting in this capital, I welcome, on behalf of my government, the lofty objectives of those who advocate the granting of independence to that territory linked by various titles to the affection of Venezuela.

However, the indeclinable duty to maintain intact the sacred rights of Venezuela in the face of any contingency, obliges my government to renew, at the same time, with a very clear sense and deep appreciation of the responsibility that this implies, its territorial claim.

Consequently, I have the honour to address Your Excellency expressing the

unanimous will of the authorities and the people of Venezuela to reaffirm, in the most formal and categorical manner, the position of my government in the sense that any change of status that may occur with respect to British Guiana arising from a declaration of independence or any other cause, will in no way affect the inalienable and imprescriptible territorial rights that Venezuela legitimately has in Guayana Esequiba.

I request Your Excellency to bring this note to the attention of the Conference on the Independence of British Guiana, which is meeting in this city from November 2.

I renew to Your Excellency the assurances of my highest and most distinguished consideration.

(signed) Héctor Santaella.

ANNEX 27 A

Radiogram of the Ministry of Foreign Affairs of Venezuela to the Director General of the Embassy in London, 15 October 1965

English Translation

Source: Ministry of People's Power for Foreign Affairs, Borders Archive, Cypher message to Venezuelan Minister, 1965

REPUBLIC OF VENEZUELA

MINISTRY OF FOREIGN AFFAIRS

Directorate for Guayana

[Stamp:
"MINISTRY OF FOREIGN AFFAIRS. GENERAL DIRECTORATE. RECORDED ON 16 OCTOBER 1965 6:14 PM"]

No.

Caracas, 15 October 1965

Mr

Director General

Please kindly give your instructions for the following encrypted radiogram to be transmitted:

ETAT

EMBAVENEZ LONDON DGG

573 Dige.

Your reference 1546 (full stop) The title for the agenda in Annex B you indicated in point 9 of the referenced note has been accepted (full stop) I will now refer to Annex E (full stop) Item 1 has been accepted but even though it should be included in the agenda (comma) it is appropriate to state in the same (comma) that he will not be heard by the Ministers at the ministerial meeting (comma) but in a separate meeting (comma) within the same timeframe as agreed for the ministerial meeting (comma) at Embassy level with the advice of the experts (full stop) In item 2 the mention of the award cannot be accepted since this would imply a discussion on its validity which Venezuela would categorically reject (full stop) I therefore suggest striking out the phrase from (open inverted commas) which to Award (close inverted commas) both words included (full stop) The wording would then read as follows (open inverted commas) To seek solutions for the practical settlement of the Controversy on the boundary between Venezuela and British Guiana (close inverted commas) (full stop) Please insist on this as it is a core element of the negotiation (comma) and the wording of the title or heading of the

agenda would not be sufficient to avoid the situation referred to above (comma) since the agenda items are a precise determination of the matters discussed in the talks and the title is only a general mention of them (full stop)

...

REPUBLIC OF VENEZUELA
MINISTRY OF FOREIGN AFFAIRS
DIRECTORATE FOR _____

573

No._____
Mr
Director General

Please kindly give your instructions for the following encrypted radiogram to be transmitted:

- 2 -

The unquestionable change in the original English position began to become apparent in Lord Caradon's note of 7 October 1965 and must be exploited as fully as possible (full stop) Item 3 accepted since as you will note it would only come about in the event of a compromise (full stop) Item 4 accepted (full stop) Item 5 accepted (full stop) Propose deleting item 6 (full stop) The expression (open inverted commas) Agreed Statement (close inverted commas) should not be accepted (full stop) UN document A/SPC/SR 350 does not include the word Agreed (full stop) Neither does A/5313 (full stop) More so (comma) the text of Dr Falcón's statement at the meeting of 16 November 1962 and the Benítez statement itself imply that it was a statement by the President at the request of the parties as you rightly indicated in point 18 of your note 1546 (full stop) It is not advisable to mention the Special Political Committee (comma) as the Assembly (comma) the Committee of 24 or any other UN body deemed appropriate could be informed as

convenient (full stop) Finally we should not commit ourselves to a joint report to the UN (comma) as it might be better to report separately (full stop) As a last resort, item 6 may be convenient as follows (colon)

...

REPUBLIC OF VENEZUELA
MINISTRY OF FOREIGN AFFAIRS
DIRECTORATE FOR _____

573

No._____
Mr
Director General

Please kindly give your instructions for the following encrypted radiogram to be transmitted:

- 3 -

(open inverted commas) Report to the United Nations on the results of the talks (close inverted commas) (full stop) I am required to attend (comma) on the instructions of the President (comma) to the forthcoming conferences in Montevideo 3 November and Rio 17 November (comma) so these commitments prevent me from accepting the proposed dates of 9 and 10 November (full stop) Please provide the necessary explanation and propose that talks at ministerial level take place after 8 December (full stop) An encrypted copy of this cable is sent by special pouch

IRIBARREN

For the Minister,
Blas Pérez Ferrás
Director

IIB.BPF.HG:gf.

ANNEX 27 B

Cypher message from Blas Pérez to Ignacio Iribarren Borges, Minister of Foreign Affairs of Venezuela, dated 20 October 1965

English Translation

Source: Ministry of People's Power for Foreign Affairs, Borders Archive, Cypher message to Venezuelan Minister, 1965

REPUBLIC OF VENEZUELA
MINISTRY OF FOREIGN AFFAIRS
DIRECTORATE FOR Guiana

No._____ Caracas, 20 October 1965

Dear Sir:
Director General

Please kindly give your instructions for the following encrypted radiogram to be transmitted:

ETAT

VENEZUELAN EMBASSY TO LONDON DGG

584

Your reference 205 (stop) I find both of the two wordings of point 2 proposed by Great Britain unacceptable because both of them would lead to a discussion on the validity of the award, which Venezuela does not accept because it does not wish to expose itself to the risk of Great Britain claiming once again that the award is *res judicata* and then there would be no discussion on the merits of the case (comma) that is to say (comma) on the boundaries (stop) Propose this wording (colon open inverted commas) Seek solutions for the practical settlement of the boundary between Venezuela and British Guiana whose demarcation by the 1899 award Venezuela does not accept (stop close inverted commas)

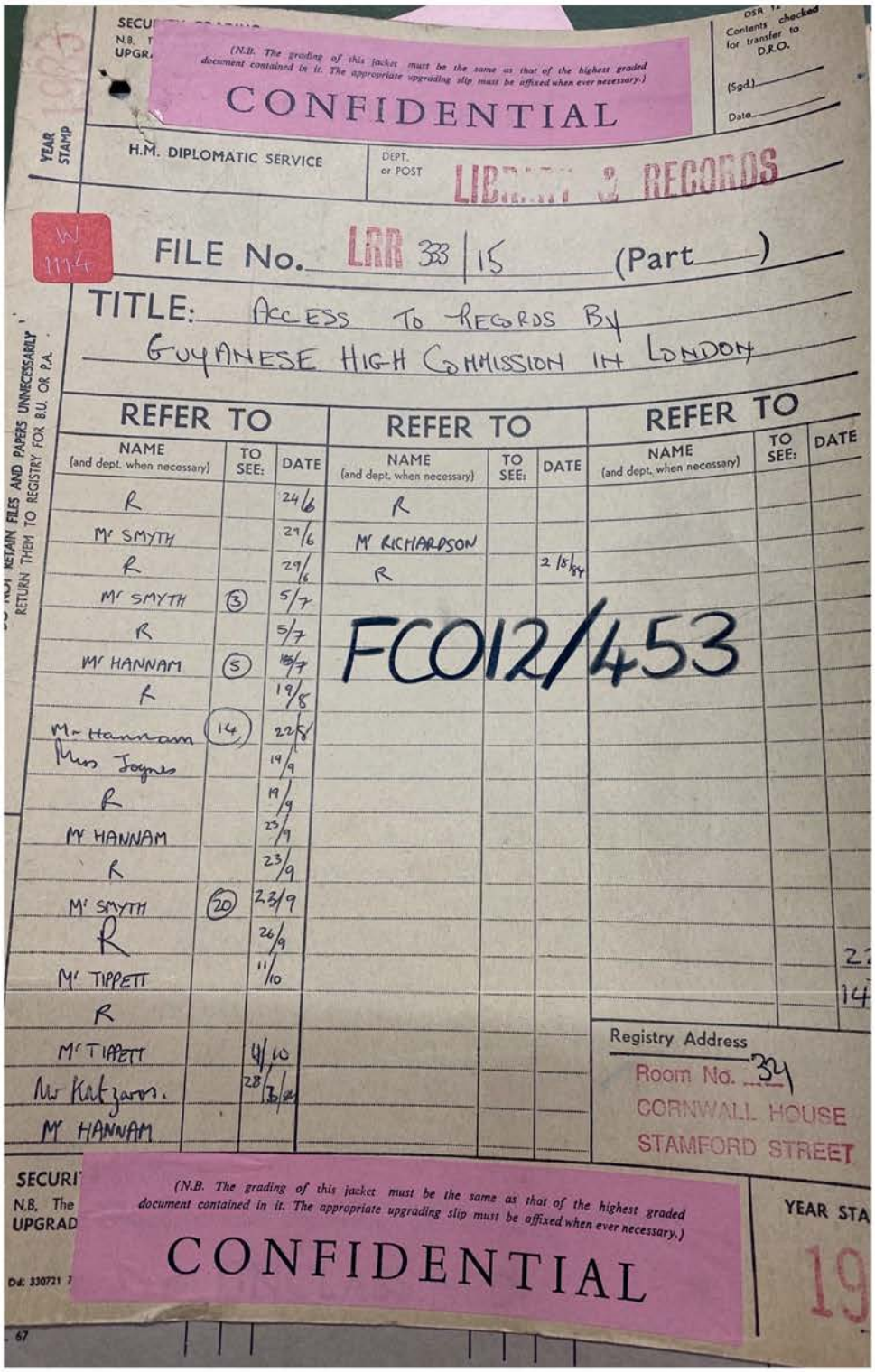
IRIBARREN
For the Minister,
Blas Pérez Ferrás
Director

BPF:gf.

ANNEX 28

Letter from Adrian Sindall to David Gore Booth, dated 5 October 1983

Source: Request by the Guyana High Commission, London, for access to records regarding the border dispute between Venezuela and Guyana. Reference: FCO 12/453. The National Archives, United Kingdom



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Mr Hannam	(14)	22/8
Miss Joynes		19/9
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R		23/9
Mr SMYTH	(20)	23/9
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Miss Blaykey
Mr Smyth
Mr Hannam
+ P/A

Foreign and Commonwealth Office
London SW1A 2AH

LRR 333/15
RECEIVED IN REGISTRY NO. 32
11 OCT 1983

D A Gore Booth Esq
UKMIS NEW YORK

Your reference

Our reference

Date 5 October 1983

Dear David

VENEZUELA/GUYANA

1. Thank you for sending us a copy of your minute of 2 September recording the Ambassador's discussion with Sr Cordovez. It was helpful to have this account of Sr Cordovez's first round of contacts with the parties and reassuring that both sides seem content to play matters fairly long.

2. I note with some unease Sr Cordovez's hope that we may be able to supply the Secretary-General with 'information'. We shall need to tread warily on this. For your own information, you should know that we recently gave the Guyanese photocopies of 452 documents relating to the Essequibo dispute. These were mainly copies of exchanges of correspondence between London and Georgetown which took place in the run-up to the Geneva conference and to Guyana's independence. We have not therefore given the Guyanese anything that they should not theoretically already have on their files.

3. In the context of this exercise, we did give some thought to the possibility of making these documents available to the Venezuelans (though they have not asked us, nor do they yet know what we have done for the Guyanese). It was decided that this would not be possible. The reason for this was that at the Geneva Conference of February 1966, the British Government was acting on behalf of British Guiana which became independent 3 months later. We therefore consider we have some obligations towards the Guyanese regarding the documentation of the dispute prior to British Guiana's independence. What we are now doing is supplying them with exchanges of correspondence in fulfilment of that responsibility. The Venezuelans do not, of course, fall into this category and it is not our practice to grant privileged access to documents less than 30 years old. Similar considerations would apply to other third parties such as the UN. We should thus prefer you, therefore, to turn a deaf ear to Sr Cordovez's request should he drop any further hints. We may well have to submit this question to Ministers if Sr Cordovez or Sr Perez de Cuellar choose to make their request more formally.

/5.

CONFIDENTIAL

5. Finally, you will know that Ministers maintain the position that we should be very cautious about any attempts to re-involve HMG in this dispute. You may find it helpful to have the attached paper which spells out our position. You will note that, whilst we have an interest in the smooth working of the Geneva Agreement, we do not consider that the Agreement envisages any further role for the United Kingdom. We are grateful for your efforts in keeping us abreast of Sr Cordovez's activities; there is continuing interest here in the evolution of this dispute. I know that you will have fully in mind the need not to leave the impression with anyone that we consider we still have locus standi in the dispute.

A J Sindall
South America Department

cc: Chancery, CARACAS
Chancery, GEORGETOWN
WIAD
Mr Hannam, LRD

CONFIDENTIAL

ANNEX 29

Commission of Her Majesty the Queen of Great Britain and Ireland to delineate technically the boundary line, dated 24 November 1900

Source: Guiana Boundary. Reference: FO 80/424. The National Archives, United Kingdom

Copy.

WHEREAS

The undersigned, members of the Commission named by Her Majesty the Queen of Great Britain and Ireland to delineate technically the boundary line between the United States of Venezuela and the Colony of British Guiana in execution of the Award of the Paris arbitration of the 3rd of October, 1899, Michael Mc Turk, C.M.G., 1st Commissioner, Captain Arthur Wybrow Baker, 2nd Commissioner, Surgeon Captain John Charles Ponsonby Widdup, 3rd Commissioner and Harry Innis Perkins - Land Surveyor - 4th Commissioner of the one part, and of the other part Drs Felipe Aguerrevere and Irino Celis Rios - Engineer in Chief and Legal Adviser, respectively of the Commission named with the same object by the Government of the United States of Venezuela, hereby make known that both Commissions having assembled at Point Playa, the place on the Coast designated by the said Award of the Paris Arbitration as the initial point of the frontier line, and having made the necessary scientific observations in the case mutually and with perfect accord determine the geographical situation of said Point Playa to be

Latitude 8°. 33'. 22". North

Longitude 59°. 59'. 40". West of Greenwich,

as being the fixed point of the boundary line on the Coast of the Atlantic between the United States of Venezuela and the Colony of British Guiana in accordance with the decision of the Arbitral Tribunal.

Done

7-1714a

Done with the name effect and tenour, one in English, and one in Spanish at Norawhana the 24th day of November, 1800.

Sgd Michael Mc Turk. Sgd. P.Aguerrevere.

A. W. Baker.

J. C. P. Widdup. Irino Celis Rios.

H. T. Perkins.

Y.# - 1714a

ANNEX 30

Expert's conversations on the boundary issue Venezuela-British Guiana, Minutes of the Twelfth Session, dated 2 April 1964

English Translation
(Excerpt)

Source: Ministry of People's Power for Foreign Affairs, Borders Archive, Minutes of the Twelfth Session of Experts, 1964

EXPERT CONVERSATIONS ON THE BOUNDARY ISSUE VENEZUELA–BRITISH GUIANA

MINUTES OF THE TWELFTH SESSION

April 2, 1964

TIME: 10:00 a.m.

PLACE: Foreign Office

ATTENDEES: P. Pablo Ojer, S.J. (Venezuela); Sir Geoffrey Meade (United Kingdom) Mr. H. Persaud (British Guiana)

Interpreter provided by the Embassy of Venezuela: Mr. F. M. de Juan.

Parliamentary Stenographer: Mrs. Mercedes Senior.

FATHER OJER – Venezuela's internal and international situation forced my country to postpone the denunciation of the Award. This is well-known history, but it is worth pointing out some facts. It was a period of internal Venezuelan conflict, of civil wars, and a time when the great Powers, primarily England and Germany, were exerting pressure on Venezuela to pay off its debts—and I must note that some of those debts dated back to the time of Independence. As an expression of the atmosphere of that period, let us recall the letter from Mr. J. Harris of the Venezuela Panama Gold Company, who wrote to Villiers(?) of the Foreign Office on January 3… stating that the time had come to apply pressure… (he read aloud). (Document F.O.80–443).

Venezuela was even aware that Germany wanted to seize Margarita Island to settle its claims for unpaid debts. And we know that even Italy, although it had only one debt owed by Venezuela amounting to two million bolivars—a sum which today might seem ridiculous—nonetheless that amount shows how, for a small

sum, a foreign country would declare a blockade against a weak nation. Of course, this attitude by the great Powers was only possible in the colonial era, not in this current era when nations aspire to the fulfillment of international justice. Even England, as is well known, gave refuge in Trinidad to Venezuelan revolutionaries. There are ample documents.

[...]

FATHER OJER

In 1949, Venezuela came to know of Mallet-Prevost's Memorandum. This document—as we know—reveals the inner workings of the Paris farce. Clearly, the Memorandum caused a major stir in the country, as is well known to anyone familiar with the Venezuelan press of the time. And a curious fact is that its publication coincided with the 50-year period required for the British archives to be opened, and it also coincided with the opening of private archives. Venezuelan historians immediately began studying these documents. These studies by Venezuelan researchers were conducted between 1950 and 1955. I would like to emphasize those two facts—the coincidence of both events—because they explain why Venezuela waited to formalize its denunciation of the Award and to make its "approach" to the British Government to discuss the documents related to the Award.

[...]

FATHER OJER

Once Venezuela had obtained the extensive documentation supporting its traditional position regarding the 1899 Award, it reaffirmed that position in February 1962 through its Ambassador to the United Nations, Dr. Carlos Sosa Rodríguez, who is now President of the General Assembly of the United Nations. My distinguished colleagues are familiar with these documents.

ANNEX 31

Minutes from the meetings of the Ministers of Foreign Affairs Consalvi and Jackson, dated 24 September 1985

English Translation

Source: Ministry of People's Power for Foreign Affairs, Borders Archive, Minutes of the Meeting between Foreign Ministers Consalvi and Jackson, 1990, Caracas, File 53

Bolivarian Government of Venezuela | People's Power Ministry of **Foreign Affairs**

OFFICE OF BORDER AFFAIRS
DOCUMENTATION DIVISION

CODE: [ ][ ][ ] [ ][ ][ ][ ][ ][ ][ ][ ][ ]
SECTION SERIES

FILE NUMBER: 53

ITEM:

GEOGRAPHICAL DESCRIPTOR: VENEZUELA

TOPIC DESCRITOR: MINUTES OF THE MEETING BETWEEN FOREIGN MINISTERS CONSALVI AND JACKSON (IN ENGLISH AND SPANISH). FIGUEREDO-RAMPHAL TALKS (1984). VARIOUS HYPOTHESES FOR THE DELIMITATION OF THE BORDERS WITH THE TERRITORY OF THE ESEQUIBO.

YEAR(S): 1990

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MINUTES OF THE MEETING BETWEEN SIMÓN ALBERTO CONSALVI AND RASHLEIGH JACKSON
(Statements made by Consalvi)

January 1990

MINUTES OF THE MEETING BETWEEN FOREIGN MINISTERS SIMÓN ALBERTO CONSALVI AND RASHLEIGH JACKSON

24 SEPTEMBER 1985

Attendees:

For Venezuela:	Simón Alberto Consalvi Emilio Figueredo Jean François Pulvenis Horacio Arteaga Acosta
For Guyana:	Rashleigh Jackson Noel Sinclair Rudolph Collins

Formal exchange of words:

SAC: I am pleased we are holding this meeting aimed at exchanging views on our relations in this process of rapprochement and cooperation between Venezuela and Guyana. We had planned for the Foreign Ministers to meet elsewhere, but New York gave us the opportunity to meet here.

From our standpoint, we are interested in discussing two or three points. On the one hand, our relations, our bilateral cooperation programmes within the framework of what was agreed during Morales-Paul's visit to Georgetown. We are open to addressing this point.

And of course, we are interested in discussing the role of the United Nations and the Secretary-General (in the framework of the enforcement of the Geneva Agreement). This would be the focus of our conversation.

Then, finally, we could talk about the situation in Latin America, Central America and the Caribbean.

I have already had the opportunity to tell Ambassador Miles in Caracas that we were very interested in working on the agreements reached in Georgetown and that we could see how this cooperation process would develop; I even suggested that she and I could meet once a month. But we could leave this issue of cooperation to someone in our team, so that I could get in touch with you and discuss this point.

RJ: Thank you very much. I am pleased of our presence in New York for this gives us the opportunity of having discussions on the affairs affecting our relations. Among them, the issues raising in the border area, and also beyond it.
To make maximum use of the time, we should concentrate on two aspects:
First, the framework for cooperation which has been agreed in Georgetown in February; second, the issue of the implementation of the Geneva Agreement.
As to the first, we have no doubt of the existence of your desire to apply these agreements; I think once we agree on the mechanism for monitoring the development of our relations in this matter, in this regard, we make strong contribution to the process. May be we should not involve the Ministers themselves (he suggested that this matter be left to the consideration of a technical team); periodically we could review the process. We have not any particular issue to raise on this matter here in New York.
As regards the implementation of the Geneva Agreement, I am ready to hear any specific ideas.

SAC: From the political angle, it is very important for us in Venezuela that we find a solution mechanism that is as flexible as possible. I think it would be a mistake for the Secretary-General to point us down an inflexible route or method of solution. That is our primary approach.

RJ: Have you communicated this concern to the Secretary General?

SAC: No (in a categorical tone). We have the impression that the Secretary General is quite wary, and especially Cordovez. We believe that when two countries have a problem to resolve and there is a body such as the United Nations, which has to seek to harmonise their positions, the most logical thing, it seems to me, I don't know if this is reckless, is to try to advise or choose the method of solution that brings the parties closer together and creates the necessary environment for these things to come to fruition.
We have told Cordovez —I want to speak very candidly— that we are in favour of the mechanism being as flexible as possible. It is not in the interest of the countries, and not in the interest of the United Nations, to lead us into a dead end.

When I told Cordovez that dialogue between Venezuela and Guyana was perhaps positive, Cordovez said he disagreed and did not support the idea of dialogue.

RJ: I would like to raise a question. I understand the purpose was that the two parties should speak together with Cordovez? (Jackson had the impression that, because of contacts made by the parties, SAC y EFP refer to the need for tripartite contacts with Cordovez instead of the contacts that Cordovez has carried out with the parties separately.

EFP: He (Cordovez) said that all discussions between the parties should take place after choosing the mechanism and not before.

RJ: We represent two sovereign governments. We have an agreement (i.e. the Geneva Agreement) which sets out the basis for the resolution of the controversy between us. I do not see anything which might inhibit the parties to discuss between themselves.

SAC: (Insisting on the need to speak clearly and openly).

Cordovez knows where we stand. (Consalvi adds that Cordovez doesn't seem to like the idea of the Secretary General simply pointing to a very simple means of solution after so much time has passed and so much effort has been made). He relies too much on "originality". I do not know whether such originality is in the interests of our two countries.

It is in the interest of both countries that the mechanism be as conducive and as flexible as possible.

RJ: Do you detect anything in the present proposal which deters flexibility?

SAC: I think the approach is too rigid. This approach could create more problems than solutions. This is what we think.

RJ: I am going to tell you the approach we used. We started off with the recognition of the role of the Secretary General. We understand that the Secretary General has a mandate to choose the mean of settlement, and we give the Secretary General a free hand.

1. He (the Secretary General) said to us that he would like to (adopt, propose) his rule, on the presumption of acceptability by the two parties of his decision.

2. He could indicate not only the mean but also de mechanism for the implementation of the mean.
3. He, himself, would not be part of that mean, because he anticipates the possibility of failure of the mean, and he must keep apart, because the first mean might not be successful.
4. The Secretary General will not merely choose the mean; he will take an (interest, participation) either directly or through an agent, to see how the mean is implemented.
We said to him, then, fine, it is also our point of view.

He concluded that the intervention of a third party is necessary.

But we get the impression that the Secretary General would not press his mean if he feels that one of the parties is unhappy about it.

We are not adverse to conversation if you have particular concerns on the mean, but we must think that the Secretary General has a measure of independence that we are obliged to respect.

EFP: Our feeling is that the scheme (presented by Cordovez) is too elaborated and could lead us to the constitution of one big panel, etc., and that would force us to become tremendously specific about our own legal positions. Independently of the way we can explore, if we have a forum where we become very formal, we could create pressure in our public opinions to generate more and more arguments.
The Secretary General is free to choose. We consider, however, that the first mean should be more flexible, less cumbersome, less specific and more in the nature of good offices.
It is not said, for instance, (in the Proposal of Cordovez) how the decision is going to be taken. There is also the problem of the choice of the fifth.

RJ: Twelve is too many, one is not enough. What would be your preference about the procedure,

EFP: We think that the best way is to reach a direct agreement between the parties. Everything would naturally and freely flow from this agreement.

We must make clear, as I had the opportunity of telling to Sinclair yesterday evening, that we are not here in a game to obtain little gains on procedural matters. We should not see this problem through exclusively legal eyes. We must look this with trust and confidence between the two parties.
It is important to stress that nobody can substitute himself to the will of the parties.

RJ: (He remains silent for a while)

There is an interesting question. I can not remember all the details of the proposal, about the decision making. There should be prior agreement on the rule for decision. We do not believe it should be a majority decision. Decision making must reflect the agreement or the absence of agreement between two parties. Once you pursue the idea, it seems clear that decision should be by unanimity.
You understand better your internal situation that I do, and we understand better our internal situation than you do. We do not want our publics to get an impression that was has been proposed is not acceptable to either government.
Do I get the feeling that you find the mechanism to be cumbersome, because of the number of members or because of the procedure, or both of them?

EFP: Both

The momentum of the procedure must be given by the parties and the parties must have room to be able to do any exercise that they might want to do.
During the informal conversations that I had with Shridath Ramphall, lastly in Geneva, we mentioned the Olaf Palme approach for the solution of the Iran-Irak controversy. We believe in a scheme which should be simple, a trusted person who could assess the solution without a too legalistic approach.
How can we simply the Cordovez proposal if he has the approach that the parties should not discuss this point together?

RJ: Very fundamentally, it seems to me that you want a different mechanism, and not a modification of the Cordovez proposal?
But, on the basis of similar concerns, we have ourselves suggested the extension of the number of members as an additional guaranty. In that sense, we do not see that there is a problem.

EFP: Anyway, as to the number, the problem is not how many members there are, because the important one is the fifth.
But the real problem is that we have to avoid those mechanisms which drive us toward rigid positions and send us back to the time of the Mixed Comission and to have a series of claims and counterclaims.

RJ: But we consider that there is a sine qua non, that the Comission know the basic positions of the parties.
The problem is how we manage the publics.

EFP: We must assess this problem in a very frank way, and to ensure that the procedural mean is neutral.

RJ: We must leave now because we have to listen to the statement of the President of Uruguay.
(The meeting was adjourned; as Foreign Minister Jackson was leaving, he said that they would be in touch to determine the date and time of the next meeting).

JFP
New York, 24-09-1985.

MINUTE OF THE CONSALVI-JACKSON'S MEETING
Del 26-9-85. Hotel Barclays, N.Y.

9: 45 a.m.
Formal exchange of words.

RJ: When we left last time, there were some ideas that you elaborated. We gave some-thoughts to these ideas. If I may recapitulate, parts of your desire regarding the mechanism was to build some modalities in it in order to satisfy the interest of both countries. For instance, there was a question of the unanimity in the decision making, and also the question of the link with the informal consultations.

I would like to suggest – I gave the position when I met your predecessor Morales Paúl – having regard to the sensibility of the Secretary General or of Cordovez, but I want to concentrate for now on the Secretary General. We know that he is a cautious man and that he does not make proposals if he does not visualize chances of success, we see how he proceeds in the matter of Cyprus.

Tactically there are three approached which should be parallel and we should not care for now to see how they will converge:

1.- The Secretary General mechanism: I saw him and reaffirmed to him our confidence in his choice.

2.- The Ramphall conversations: now – I say this in a conversation with your predecessor Morales Paul—as you know, our approach to the Ramphall-Figueredo talks is that those talks are not inter-governmental their purpose acceptable to the governments, and that will be a new basis for (future evolution of the process)

3.- There should be continuing consultations at the level of the governments both to deal with bilateral relations and to see how evolve the two other tracks, but more specially the first one, so we might try to ensure that neither of the other two has a negative feedback.

Our conversations here are a manifestation of the third track. So, that would be my response to the conversation we had earlier.

I do not know what is your reaction.

SAC: I reacted positively to the three tracks. I do believe the three track approach involves, on the one hand, that the formulas agreed upon during the interviews with Morales Paul are fully in force, and that they are ratified and that the contacts you refer to as informal contacts between Ramphal and Figueredo are given the green light,

and without any doubt, to the mechanism the Secretary-General is to propose.

RJ: If we refer to the history of the controversy and if we have confidence in the informal contacts, I suggest we drop the "mister" so we might speak may be of the Consalvi-Jackson treaty. I am sorry to interrupt you.

SAC: In this sense, because we are confident in the rationale of the three tracks, we are strongly emphasising that it is necessary that the mechanism to be proposed by the Secretary General is such that it facilitates the other two tracks, and that we spare the whole process from the drawbacks of an overly formal and excessively rigid mechanism, where we would only reiterate positions.
We do believe that both for Guyana and for Venezuela, and for the United Nations as well, a Good Offices mechanism could be much more positive, and indeed it could be much more convenient, given the present climate.
Of course we recognise the sensitivity of the Secretary-General and Cordovez, but, at the same time, given their role in exploring possibilities and facilitating understanding between the parties, they should be receptive to our views. We should, if Guyana shares our opinion, see how best to express this to the Secretary-General or to Cordovez. This is our point of view.

RJ: This poses some difficulties for us.
I do not want to recapitulate the whole history, but we must remind that, first, Venezuela proposed negotiations and Guyana judicial settlement. We could not reach agreement, and so we invoked the Secretary General, which is a mechanism proposed in the Geneva Agreement.
I do not believe we know what you have said to the Secretary General and that you know what we have said to the Secretary General. Very frankly, we have not sought to ascertain from Cordovez what you have said to him.
We said to him that we were fundamentally in agreement with the mechanism he proposed but that we wanted to consider some points and that we needed time to study them. We studied these points and the Vice-president came to New York in April to clarify them.

In those circumstances, it would be difficult to steer the Secretary General in a direction which diverges substantially from what he proposes.

Of courses, I do not intend to tell to the Secretary General about our own conversation, unless he asks me. Then, I would say we had our discussion, I would repeat our position, and if he asks about your position I would tell him to speak with you.

We should look at the mechanism and see if there are points on which you might agree. One of the points is the unanimity.

The Secretary General is concentrating not on the (qualification) of the mean, but on the mechanism of the mean. Now, if he he can see the mechanism falling in the mean you are proposing, it is fine to him.

We have concentrated fundamentally on the mechanism, and we think it is possible to go ahead with that, and that this is really through diplomatic management skills that we must try to ensure that this mechanism does not transform itself into a dysfunctional one.

Another thing that we must concern about, particularly now that we are in New York is that of the attitude of the press. Venpres has already contacted me. I, of course, said that we met, that we are seeing each other everyday (in the meetings in the United Nations), but I think that at some stage the press might become more specific, for example, they might ask what you think about the role of the Secretary General. We might ourselves agree on what to say, but we cannot anticipate the reaction of the Secretary general to the press, for instance, if they ask him what he is going to propose under the Geneva Agreement. That is his problem.

SAC: I share your concern. The press is quite anxious about everything that goes on in the United Nations. At least, it is no surprise that we are talking. Now reporters have a very peculiar system. They say, "Minister Consalvi told me that you spoke to him." One can easily fall into the traps of reporters, but we need to be prepared to reply to them.

Fortunately, we can count on the Secretary-General's big caution.

RJ: Could I say something else?

I have not spoken to the Secretary General since October 5th of last year, but he did, last year, raise the question of the Figueredo-Ramphall talks. I said to him what was happening.

He is so cautious that if we try to make a link, at this stage, between the Ramphall-Figueredo talks and his own efforts., his natural caution might make him to withdraw, and he might say to the press that, as the two parties are talking, he must wait for the result of their talks. That would bring us an internal problem.
In Venezuela, the Ramphall-Figueredo talks have surfaced in the press, in Guyana no. If it surfaces, the publics would say: "what is this talking about?".

EFP: I was present in the meeting between Ramphall and the Secretary General. The idea was that anvery informal talk was handled and that whatever efforts in this sense would be independent from the process of the United Nations and that it is only in case of it being successful that its results would be incorporated in the United Nations process. That in any case we would not interrupt the action of the Secretary General and no way it could pass out that Guyana has renounced to its position and has agreed to negotiations.
This discussion which was to be held in the house of the Secretary General was interrupted by an attitude of Cordovez who was seriously concerned by any kind of movement. Cordovez was in the meeting, so the exchange of information was very tense.
Shortly after that, the leak came; I am not assuming from where.
Even this informal channel has been considered by Cordovez as inconvenient for the parties, unless there is a mechanism which monitor anything that can be done.
When we speak of neutrality of the procedure, it is that we are aware that for Guyana it is very difficult any form of negotiation, but for Venezuela also. The proposal for settlement must come through a third party, but this third party must co-operate with the parties. It must not interfere.
I believe that, speaking to the Secretary General separately, we could go along the media and tell him that what we want to avoid in the mechanism is the possibility of creating confrontation between the parties. We must avoid the institution of a forum for confrontations. We must avoid tactical advantages based on procedural considerations.

RJ: There is nervousness from Cordovez and the Secretary General. We must take caution. I told him that I met together with Morales Paúl. He tends to say, wait for the result of this (contact between the parties).

That is why I am extraordinarily cautious myself in appearing before the Secretary General as if we want to deviate him.
We must make the point that the mechanism do not create confrontational and do not interfere negatively with the two tracks.
I do not see if I explained myself.

SAC: I truly believe that a conversation between the three of us would give the Secretary-General some confidence and would allow him to see the climate between us —a conversation without an agenda, without other witnesses.

EFP: He would be reassured that he acts in an objective way, and does not reflect one or the other party views and interests.
The point is that there is no way we can be ruled. We must have room to explore freely on the side.

RJ: Are you seeing the Secretary General, as your President is here?

SAC: This morning we will give him the report on Contadora. On Monday we will visit him before the discourse of the President.

RJ: I am just thinking in terms of what I may say to him on Saturday. I do not intend to say that we were talking but I wonder now if this is the right attitude. Maybe I should day to him that we were talking.

EFP: He must really think that the parties really trust him and may speak to him without intermediary. He must receive the message: "We will abide by your mandate but we must help your mandate to work".

SAC: He would feel satisfied or supported by such a meeting.

RJ: I had not thought of this possibility. How do we implement it?

EFP: To meet in his own house is the only possibility. Any public place is ruled out, and the meeting should take place early in the morning.
(A long silence ensued).

SAC: Your meeting is on Satuday?

RJ: yes.

(A long silence ensued).

RJ: Let me see how things go on our meeting on Satuday, then I might be in touch with you.

SAC: we could be in touch on Satuday or on Sunday.

RJ: (laughes). Sunday, I need Sunday to write my speech!!

(After some banter, the meeting was adjourned.)

NEW York, 26-09-85.

ANNEX 32

Minute of the meeting with the Good Officer, Oliver Jackman, on 22 February 2000, at the Venezuelan Embassy in Barbados

English Translation

Source: Ministry of People's Power for Foreign Affairs, Archives, Libraries and Dissemination, Yellow House, Minutes of the Meeting with the Good Officer Oliver Jackman on February 22, 2000, at the Embassy of Venezuela in Barbados, 2000

Embassy of the Bolivarian Republic of Venezuela to Barbados

MINUTE OF THE MEETING WITH GOOD OFFICER OLIVER JACKMAN ON 22 FEBRUARY 2000 AT THE VENEZUELAN EMBASSY IN BARBADOS

1. Ambassador Jackman said that his courtesy visit was the beginning of a series of engagements he intends to carry out in both Guyana and Venezuela, as the Personal Representative and Good Officer of the UN Secretary-General.
2. He announced that on 7 March he would travel to Guyana to meet with government authorities and the Guyanese Facilitator, Mr Ralph Ramkarran. He will then go to Venezuela, where he intends to hold similar meetings at the highest level, including the possibility of meeting with representatives of the Venezuelan Armed Forces.
3. He voiced his intention to propose a meeting of the Facilitators of both countries in Barbados this year.
4. He said he hoped that, in his role as UN Good Officer, he could "help find a light at the end of the tunnel" in the border issue between Venezuela and Guyana.
5. He made positive remarks about Venezuelan Facilitator Carlos Ayala Corao.
6. For her part, the Ambassador of Venezuela, Corina Russian, thanked Ambassador Jackman for the initiative of his visit and expressed the willingness of this Embassy to collaborate in everything he deemed necessary to facilitate his communication with the Government of Venezuela.
7. Similarly, Ambassador Russian told Ambassador Jackman that she was cognizant of the Venezuelan Government's confidence in the reactivation of the Good Offices efforts he is pursuing, adding that she was personally pleased that a well-seasoned Barbadian diplomat had been appointed as UN Good Officer.

REPUBLIC OF VENEZUELA

EMBASSY TO BARBADOS

ANNEX 33

Memorandum by The Ministry of Foreign Affairs of Venezuela: relative to the note of Lord Salisbury to Mr. Olney, dated 26 November 1895

Source: Ministry of Foreign Affairs, (1896), Memorandum by the Ministry of Foreign Affairs of Venezuela Relative to the Note of Lord Salisbury to Mr. Olney, dated November 26, 1895. On the Question of Boundary Between Venezuela and British Guiana, Caracas, pp. 3-67

MEMORANDUM

BY THE

MINISTRY OF FOREIGN AFFAIRS

OF VENEZUELA.

RELATIVE TO THE NOTE OF LORD SALISBURY TO MR. OLNEY, DATED NOVEMBER 26, 1895.

ON THE QUESTION OF BOUNDARY BETWEEN VENEZUELA AND BRITISH GUAYANA.

ATLANTA, GEORGIA:
Franklin Printing and Publishing Company.
Geo. W. Harrison, State Printer.
1896.

[Translation.]

MEMORANDUM.

As could not fail to be the case, the message sent by President Cleveland to the Congress of the United States of America on December 17, 1895, relating to the territorial dispute pending between the United States of Venezuela and Great Britain, as well as the printed correspondence sent as an appendix to said document, has been read with deep interest.

It is considered opportune to offer here some observations with respect to the note of Lord Salisbury therein published, and which, under date of November 26th last, treats exclusively of the boundary question as a means of contributing to its elucidation.

* * * * * * *

Although the boundary dispute commenced in 1840, as regards Venezuela, ever since 1822 her predecessor, Colombia, had given her Agent in London, Señor José Rafael Revenga, instructions to present a *project* of a treaty containing articles relating to boundaries, observing to him that the Colonists of Demerara and Berbice had usurped a great part of the lands belonging to the Republic, and that it was indispensable that they place themselves under the protection of her laws or else withdraw.

In an article in the London *Times* of October 17th last, which appears to have been a reflection of the ideas of the Foreign Office, it is asserted that it is exactly a hundred years since the question of determining the true area possessed by Holland began.

The dispute between it and Spain had existed for a much longer time, as is proved, among other facts, by the assault in 1797 on one of the forts which the Dutch had constructed under the name of New Zealand and Middleberg, near the

Pumaron. Lord Salisbury himself mentioned that in 1759 and in 1769 there were complaints and claims by Holland for the incursions of the Spaniards into the settlements and establishment on the lower Cuyuni, and the advisability was expressed of a proper demarcation between the Colony of the Essequibo and the Orinoco river.

In 1781 the English, having only military occupation of the Dutch Colonies, could illy have laid out their boundaries on the upper Orinoco further than Punta Barima.

If Spain took part in the negotiations which led to the treaty of cession to Great Britain of the Dutch Colonies in 1814, and did not object to the boundaries claimed by her, although fully acquainted therewith, that fact does not appear in any article of the said Convention, to which the only parties were her Britannic Majesty and the United Provinces of the Netherlands. Article 1, principal, and the additional article 1, relating to the cession, speak only of the establishments of Demerara, Essequibo, and Berbice, without in any way establishing their boundaries. It is known that England has gone on advancing them progressively.

When Venezuela proclaimed as her boundaries those of the territory which had constituted the Captaincy-General of the same name, she did no more than to declare herself inheritor of the rights of Spain therein, without pretending to destroy international arrangements previously concluded by the nation from which she separated herself, as has been charged. There is no arrangement through which Spain established the dividing line between her possessions and those of the Dutch in Guayana. Did one exist there would be no ground for this dispute.

The argument of Lord Salisbury in this regard is a *petitio principii*.

He asserts that there is no authoritative statement by the Spanish Government in which the territories of the Captaincy-General of Venezuela are determined; for a decree which the Government of this Republic sets up, and which was issued by the King of Spain in 1768, in which the Province of Guayana

is described as bounded on the south by the Amazon and on the east by the Atlantic, cannot be so regarded. He adds that the decree utterly ignores the Dutch establishments, which not only existed *de facto*, but had been formally recognized by the Treaty of Munster ; that it would, if now considered valid, transfer to Venezuela the British, Dutch, and French Guayanas, and an enormous tract of territory belonging to Brazil.

The Royal Rescript of 1768 has nothing absurd in it. This will be seen by any one who reads the instruction, issued on March 9, 1779, by the Intendant General of Venezuela to settle and occupy lands in the province of Guayana, which says: "The Dutch Colony of Essequibo, and the other colonies of the States-General on that coast were usually situated on the banks of the river near the seacoast without penetrating much into the interior of the country, and that therefore to the rear of the Essequibo and the other Dutch possessions, running towards the east as far as French Guayana, and on the south to the Amazon river, was the territory unoccupied by them, and only occupied by the heathen Indians and a large population of fugitive negroes, slaves of the Dutch ; that the Commissioners should endeavor to occupy the said lands as belonging to Spain, their first discoverer, and not thereafter ceded to nor at any time occupied by, any other power having title thereto ; advancing in the operation as far as possible to the extent of reaching French Guayana; and extending also as far to the south as possible until the boundaries of the Crown of Portugal should be reached ; that the occupation of the lands of all the said Colonies should be made as though they were a part of the said Province of Guayana, and in the name of the Governor and Commandant thereof, as its head and chief, by command and appointment of H. M."

Therefore, it is clear that, saving the points of the seacoast where the Dutch, the French, and the Portuguese were established, Spanish Guayana was bounded on the south by the Amazon, and on the east, not only by the Atlantic, but (from the Essequibo) by the Dutch, French, and Portuguese Colonies.

It is true that by the boundary treaty of 1750 between Spain and Portugal, the former had ceded the portion which she had on the Amazon from the mouth of the Rio Negro; but as, in 1761, the parties agreed to rescind the said compact and to place things in *status quo ante*, Spain could, in 1768, declare herself riparian owner of the Amazon.

In 1777 the said parties revived the boundary treaty, and then Spain again relinquished her rights to a part of the great river of which she only retained the portion comprised from the mouth of the Jabari up to the westermost point of the Yapurá, which empties into the Amazon on its northern bank.

Although Commissioners were sent for the purpose of effecting the demarcation, in 1780 it had not been done; nor was it ever concluded, because of the obstacles which the Portuguese obstinately interposed, as may be seen in the "Historical Memorial of the Demarcation of Boundaries of the Dominions of Spain and of Portugal in America, presented in 1797 by Don Vicente Aguilar y Turado, Clerk of the Second Class of the Department of State, and Don Francisco Requena, Brigadier Engineer of the Royal Spanish Armies."

From such a Royal Rescript it cannot be inferred, then, that British Guayana, part of the former Dutch Guayana and recognized by Spain, together with that bearing the same name to-day as belonging to the Netherlands, or that French Guayana, tolerated or virtually recognized by Spain in the compacts of alliances, of guarantee, and of family as a possession of France, or that Brazilian Guayana, recognized by Spain as the property of Portugal in the treaty of October 1 of 1777, belonged to Spain.

So much value is attributed by Spain to that Royal Rescript of 1768, that upon it, above everything else, did its Government (selected as arbitrator in the boundary dispute between Venezuela and Colombia) found its declaration that the latter was joint owner of the Orinoco from the entry therein of the Meta river to the Guaviare river, in the award made on the 16th of March of 1891, and adjudicating thereto several towns founded and possessed by Venezuela.

It may be added that even (according to the Annals of Guayana, published in 1888 by the Englishmen, Messrs. James Rodway and Thomas Watt) King James, learning that the King of Spain had actual possession of Guayana in 1620, revoked the patent that he had granted in 1617 to Captain Roger North to form the Amazon Company, and ordered the immediate return of himself and his companions in adventure, who found themselves called upon to appear before the said King James and renounce all the rights to them granted by the patent.

These compilers add that the Portuguese, when subjects of Spain, succeeded in establishing themselves at the mouth of the Amazon; and it is further recorded that the Spaniards were the discoverers and first occupants thereof.

That prior to 1750 the Amazon belonged to Spain, appears from the Preamble of the boundary treaty concluded between her and Portugal on the 13th of January of that year, which, in specifying the grounds therefor, says (Paragraph 2): "As the Crown of Portugal is occupying the two banks of the Maranon (or Amazon) river up-stream as far as the mouth of the Tabari river, which enters it on the southern bank, *it clearly results that it has introduced itself in the demarcations of Spain* for the whole distance, from the said city [of Pará] *to the mouth of that river, the same being the case in the interior of Brazil by the inland advances that this Crown has made as far as Cuyaba or Matogroso.*"

Cayenne, near the Amazon, afterward a French possession, was first colonized by the Spaniards.

"1568. Gaspar de Sotelle, with 126 families from Spain, formed an establishment in Cayenne, whence he was driven out five years later by the Caribs." (Sloane, M.S., Description of Guayana.) *Passage taken from the said "Annals of Guayana."*

"But of the territories claimed and actually occupied by the Dutch, which were those acquired from them by Great Britain," says Lord Salisbury, "there exist the most authentic declarations. In 1759, and again in 1769, the States-General of Holland addressed formal remonstrances to the Court of

Madrid against the incursions of the Spaniards into their posts and settlements in the Basin of the Cuyuni. In these remonstrances they distinctly claimed all the branches of the Essequibo river, and especially the Cuyuni river as lying within Dutch territory. They demanded immediate reparation for the proceedings of the Spaniards and reinstatement of the posts said to have been injured by them, and suggested that a proper delineation between the Colony of Essequibo and the Rio Orinoco should be laid down by authority.

"To this claim the Spanish Government never attempted to make any reply. But it is evident from the archives which are preserved in Spain, and to which, by the courtesy of the Spanish government, reference has been made, that the Council of State did not consider that they had the means of rebutting it, and that neither they nor the Governor of Cumana were prepared seriously to maintain the claims which were suggested in reports from his subordinate officer, the Commandant of Guayana. These reports were characterized by the Spanish Ministers as insufficient and unsatisfactory, as 'professing to show the Province of Guyana under too favorable a light,' and finally by the Council of State as appearing from other information to be very 'improbable.' They form, however, with a map which accompanied them, the evidence on which the Venezuelan Government appear most to rely."

The Republic is not acquainted with all the documents here alluded to. It does know that, in 1769, the Dutch asserted the right they believed they had to fish at the entrance of the Orinoco, and that they complained of the actions of the Spaniards who were established there. Then all the data was collected with relation to the extension of the boundaries of the Dutch; which, however, was adverse to their pretensions, and the matter was laid before the Council. But the Dutch Government allowed more than fifteen years to pass without making any move in the premises; wherefore it was felt that, being better informed of the want of just grounds for their claim, they had desisted therefrom. Then came the

Treaty of 1791, which decided the question, describing the Spanish as owners of the establishments of the Orinoco, and the Dutch as owners of those of the Essequibo.

Several agents of Venezuela have inspected the old archives of Spain without discovering therein aught, save proofs in every way contrary to those now, for the first time, cited in the communication of Lord Salisbury.

For instance, it appears therefrom, that in 1757 the Commandant of Guayana sent against Cuyuni a detachment by which was destroyed a "post" which the Dutch had established some fifteen leagues from the mouth of this river, taking as prisoners the Dutch, the Indians, and the slaves found there; that in 1758 there was also destroyed the hut that the Dutch had on the island of Caramucuro, on the same river only a short distance from the Essequibo, taking its occupants, etc., prisoners.

Lord Salisbury also asserts that:

"The fundamental principle underlying the Venezuelan argument is, in fact, that inasmuch as Spain was originally entitled of right to the whole of the American continent, any territory on that continent which she cannot be shown to have acknowledged on positive and specific terms to have passed to another power can only have been acquired by wrongful usurpation, and if situated to the north of the Amazon and west of the Atlantic must necessarily belong to Venezuela, as her self-constituted inheritor in those regions."

Venezuela inherited the rights which Spain had in the Captaincy-General of that name, in accordance with the cession contained in the treaty of peace, amity and recognition, concluded at Madrid on March 30, 1845; and in the second article of which it appears, that "H. C. M. recognizes the Republic of Venezuela as a free, sovereign, and independent nation, composed of the Provinces and territories set forth in its Constitution and other subsequent laws, to wit: Margarita, *Guayana*, Cumana, Barcelona, Caracas, Carabobo, Barquisimeto, Barinas, Apure, Merida, Trujillo, Coro, Maracaibo, and *other territory or islands whatsoever that may belong to it.*"

Had not the territory occupied by the Dutch in Guayana constituted a part of the dominions of Spain, the mere fact of its occupation would have sufficed to confer upon them the right of property, without need of the Treaty of Munster in 1648 to perfect their title, stipulating, in Article III., that "The King of Spain and the States respectively shall remain in the possession and enjoyment of those seigniories, cities, castles, forts, commerce, and countries of the East and West Indies, as well as in Brazil and the coast of Asia, Africa, and America, respectively, which the said King and States had and possessed."

Without this treaty, it was then believed, the Dutch occupation would not have had the effect of conferring the title which is exclusively attributed to it.

If, then, what the Dutch occupied in the Essequibo was not considered as legitimately theirs until after, by the Treaty of peace of 1648, Spain ceded it to them, it is clear that prior to this the said territory belonged to Spain. And the same is equally true of territory which was not included in the cession, and which was adjacent to the part alienated. Towards the part not transferred, the Dutch could neither trade nor navigate because they were expressly prohibited therefrom by Article VI. of the said Treaty of Munster.

In like manner, Article VIII. of the Spanish-British Treaty of July 18, 1670, prohibited the English from carrying their commerce and navigation to the posts or localities which the Catholic King had in the West Indies.

Moreover, Great Britain, by the Treaty of July 13, 1713, concluded at Utrecht, had guaranteed to Spain the preservation of the limits of her dominions in America "as they existed in the time of Charles II."

By the Boundary Treaty that Spain and Portugal concluded on the 13th of January, 1750, Portugal obligated herself to uphold Spain in her original right to the territory which lay on the coast between the Amazon and the banks of the Orinoco; and in the interior of America the guarantee was

indefinite. The same guarantee was stipulated by both powers in the treaty of March 11, 1778.

The persistent efforts of Spain to drive the Dutch away from the Orinoco, the Moroco, the Pumaron, the Cuyuni, etc., constitute as many more evidences of her intent to retain the possession of those localities, and to exclude the intruders therefrom.

Title founded on discovery has been held generally as valid; and in their controversy with Great Britain regarding the Northwestern boundary, the United States invoked the same with respect to the mouth of the Columbia river and its sources. They also alleged the acquisition by them of all the titles of Spain, which had derived the same through having discovered the coasts of the region in dispute prior to their having been seen by any other people from a civilized nation.

Another ground upon which the United States based their contention was that of contiguity, arguing that if some few English trading-posts on the shores of Hudson Bay were considered by great Britain as conferring on it a right of property up to the Rocky Mountains; if its new and more southern establishments on the Atlantic coast justified the claim from there to the southern seas, which in effect was sustained to the Mississippi; then the rights of American citizens, already touching the said seas, could not be denied without inconsistency. And, they added that the doctrine was accepted in all its amplitude by Great Britain, as appears from all the privileges it gave to colonies then established only on the shores of the Atlantic, and which extended from that ocean to the Pacific.

Even leaving aside the Bulls of the Popes, who, according to the contemporary jurisprudence, distributed the lands to be discovered between the Spanish and Portuguese, if the practices of peoples who acted independently of the Holy See is examined, it will be found that, "notwithstanding some declarations merely theoretical, occupation is effected in a fictitious manner. Any manifestations, such as the erection of a monument, of a cross, the unfolding of a flag, suffices

to realize the occupation of the vast territories which provoke a thousand difficulties with the competitors as regards the exact limits of the territories belonging to each. Moreover, the religious prejudices from which Francisco Victoria could not free himself in his Essay *de Indis* (1557), make it appear that "the heathens are without any right of sovereignty, or even of *property which should be respected, and the covetous interest of colonizing countries still retains this view, when fanaticism no longer explains it.*"

"We must come down to contemporaneous times to find the condition of taking of *actual possession* of the territory practically demanded, in accordance with rational and juridical ideas of occupation, as it had been understood by the publicists of the XVIIIth century, notably Vattel."

"It is known that this new rule was formally accepted by the powers signing the last Protocol of Berlin, on February 26, 1885, Article 35, as regards *future* occupations of the coast of the African continent; and that the effective character of the taking of possessions, according to the same article, is shown by the fact of establishing or of *maintaining*, should it already exist, an authority sufficient to cause the required rights to be respected, and, should the case arise, the liberty of commerce and of transit." [*General Review of Public International Law, Paris, Nov.* 2, 1894. Article on the occupation of Territories and the *Process of "Hinterland," a German word which means the back territory.*]

The writer, Mr. F. Despagnet, professor of International Law in the University of Bordeaux, explains that the essence of the process consists in establishing, through an international agreement, a topographical line on this side of which each country has the right of occupation, or to establish a protectorate to the exclusion of the other contracting State; that is its *Hinterland*, or territory this side of the conventional line. On the other hand, each country binds itself to make no attempt at acquisition of territory or of a protectorate, and to not assail the influence of the other State beyond the line established. In practice, the *Hinterland* is the prolongation

towards the interior of the territory first occupied on the coasts up to the limits of the possessions of the other contracting State, or of its *Hinterland*, recognized in the treaty.

The author adds that as the German Foreign Office said on the 30th of December, 1886, "the purpose is not so much to establish the frontiers in accordance with the present possession, as it is to come to an understanding to determine the sphere of reciprocal interests in the future"; that much similarity exists between the present system of the *Hinterland* and the *a priori* limitations of the spheres of influence established in the XVth and XVIth centuries between colonizing countries by the Holy See; that the famous Bull of Alexander VI., of March 4, 1493, is nothing more than the limitation of a vast *Hinterland* divided among the Spanish and the Portuguese, and when these two countries, little satisfied with the Papal decision, modified the frontiers marked by the Sovereign Pontiff in the Treaty of Tordesillas, June 3, 1494, they concluded a convention which does not differ from the modern treaties regulating the *Hinterland*, save in the scope of its application and the spirit of submission to the Pope, to which it was subordinated, since Julius II. had to approve it in 1509: "that the same *Hinterland* system appears in various recent treaties made between France and England in 1847, relative to the Hebrides Islands, and those of the windward of Tahiti; that, with respect to Africa, in those concluded between England and Germany, in eastern Africa and in Zanzibar, in 1886 and 1890; between Germany and Portugal, also relating to eastern Africa in 1886; between France and England in 1889 respecting the western coast of Africa, and in 1890 with regard to the eastern coast of Zanzibar and Central Africa; between France and the Congo along the basin of the Oubangi, in 1887 and 1888; between England and Italy, touching eastern Africa, in March and April of 1891; between the Congo and Portugal regarding Guinea and the Congo, in 1886; and, lastly, between England and Portugal relative to the center of southern Africa, in August and November of 1890."

In the historical memorial regarding boundaries between the Republic of Colombia and the Empire of Brazil, by the national Librarian of the former, Señor Jose Maria Quijano Otero, there appears, in part 1st, paragraph 2 (speaking of the Bull of Pope Alexander VI., identical with that of his predecessors respecting Portugal):

"All the Christian Princes recognized the validity of these Bulls, and there is even cited the case where some English merchants desiring to carry on trade with Guinea, the King of Portugal, Don Juan II., called on the King of England, Edward IV., to prevent the same, relying on the dominion which was granted him by a Pontifical Bull over the same territory; and the prohibition was effected, the British monarch being convinced of the right of the claimant." In proof of this, he cites *Hackluyt's Navigations*, Voyages and Travels of the English, vol. 2, paragraph 2, p. 2.

Add to this, as appears in Wharton's Digest, Appendix, sec. 2, that "when any European nation takes possession of any extensive seacoast, that possession is understood as extending into the interior country to the source of the rivers emptying within that coast, to all their branches and the country they cover; and to give it a right in exclusion of all other nations to the same."

"Whenever one European nation makes a discovery and takes possession of any portion of that continent, and another afterwards does the same at some distance from it, where the boundary between them is not determined by the principle above mentioned, the middle distance becomes such, of course." "Whenever any European nation has thus acquired a right to any portion of territory on that continent, that right can never be diminished or affected by any third Power by virtue of purchases made, by grants, or conquests of the natives within the limits thereof."

"The two rules generally, perhaps universally, recognized and consecrated by the usage of nations have followed from the nature of the subject. By virtue of the first, prior discovery gave a right to occupy, provided that occupancy took

place within a reasonable time and was ultimately followed by permanent settlement and by the cultivation of the soil. *In conformity with the second, the right derived from prior discovery and settlement was not confined to the spot so discovered or first settled. The extent of territory which would attach to such first discovery or settlement, might not in every case be precisely determined. But that the first discovery and subsequent settlement, within a reasonable time, of the mouth of a river, particularly if none of its branches had been explored prior to such discovery, gave the right of occupancy, and ultimately of sovereignty, to the whole country drained by such river and its several branches, has been generally admitted. And in a question between the United States and Great Britain her acts have with propriety been appealed to as showing that the principles on which they rely accord with their own.*"

The foregoing statements and citations have been made to demonstrate that the argument upon which Venezuela relies is not as groundless as Lord Salisbury asserts, and that Spain, as the first discoverer of the coasts of Guayana, could well be considered as owner of the territories thereof, for otherwise the Dutch would not need her recognition of them to make valid their acquisitions in the said territory.

Finally, as Story says in his Commentaries on the Constitution of the United States: "The discovery was the British title to the territory composing them. That right was held among the European nations a just and sufficient foundation on which to rest their respective claims to the American continent. Whatever controversies existed among them (and they were numerous) respecting the extent of their own acquisitions abroad, they appealed to this as the ultimate fact, by which their various and conflicting claims were to be adjusted. It may not be easy upon general reasoning to establish the doctrine that priority of discovery confers any exclusive right to territory. It was probably adopted by the European nations as a convenient and flexible rule by which to regulate their respective claims. For it was obvious that in the mutual contests for dominion in newly discovered lands,

there would soon arise violent and sanguinary struggles for exclusive possession unless some common principle should be recognized by all maritime nations for the benefit of all. None more readily suggested itself than the one now under consideration; and as it was a principle of peace and repose, of perfect equality, of benefit in proportion to the actual or supposed expenditures and hazards attendant upon such enterprises, it received a universal acquiescence, if not a ready approbation. It became the basis of European polity and regulated the exercise of the rights of sovereignty and settlement of all the cisatlantic plantations." It is also stated there that no one of the European powers gave its assent to this principle more unequivocally than England; that when she commissioned any one to acquire territory she limited the authority to countries "then unknown to Christian people;" that a great part of the territory of the United States, when transferred to them by the treaty of peace and recognition of 1782, was in the possession of Indians, as was a great part of Florida when Spain ceded it to the British in 1763, as was Louisiana almost entirely when Napoleon sold it in 1803, there being there numerous tribes of Indians really independent, etc.

It is seen in the communication of Lord Salisbury that upon the return of an exploration to the interior of British Guayana made by Mr. R. Schomburgk, he suggested to the English Government the necessity of a prompt demarcation of its limits; and that he was then named special commissioner to draw the plan thereof and to temporarily establish the same, notice of which was given to the interested Governments, including that of Venezuela.

It is not strange that this Commissioner, therefore, should endeavor to please the Government that had acceded to his suggestions by presenting it a line in accord with its desires.

It is true that the British Consul-General gave this Government notice of the charge entrusted to Mr. Schomburgk, but that was on the 13th of January of 1841, when he might

have already been in Guayana making the survey and demarcation. Not only was it not stated that the demarcation would be temporary, or that Venezuela was invited to take part on the operation, but the notification was coupled with the threat that there had been sent to the Governor of Demerara an order to resist the aggressions of the Republic in the territory near the frontier, up to that time inhabited by independent tribes, which signified at least that H. B. M. appropriated them to herself and defended them.

In vain did this Government urge the concluding of the boundary treaty.

That Schomburgk did not discover or invent any new boundaries, but relied on the history of the matter, and based his reports on his own explorations and *on information obtained from the* Indians and on the evidence of local remains, as at Barima, and local traditions as on the Cuyuni, and fixed the limits of the Dutch possessions and the zone from which all trace of Spanish influence was absent. That at the very outset of his mission he surveyed Point Barima, where the remains of a Dutch fort still existed, and placed there, and at the mouth of the Amacura two boundary posts, afterwards removed, at the urgent entreaty of the Government of Venezuela, but without prejudice to its (the British) rights to that position. This is what Lord Salisbury says.

Previously he asserted that from 1796, and at the time of a previous occupation of the Dutch settlements in 1781, the British authorities had marked the western limit of their possessions as beginning some distance up the Orinoco beyond Point Barima, in accordance with the limits claimed and actually held by the Dutch, and that from that time on this has always been the frontier claimed by Great Britain.

In the first place, it is not conceivable how the English, mere military occupants prior to 1814, could have made the demarcation of a territory which did not yet belong to them. In the second place, if the boundaries were already designated, what need was there to resort to the traditions of ignorant, barbarous men like the Indians? What did they know of the

Dutch or Spanish occupations? There might be no Spanish settlements, but this does not mean to say that they had not founded any. There was an absence of Dutch settlements also. It is not asserted that any such were found, but only remains of those that had disappeared. Such being the case, the reason for the preference in favor of the Dutch is not announced.

In a previous passage Lord Salisbury wrote that the Dutch claimed immediate reparation for the proceedings of the Spaniards and the reinstatement of the "posts" destroyed by them in 1759, and again in 1769, by reason of the incursions of the Spaniards into the "posts" and settlements in the basin of the Cuyuni. Therefore it is undeniable that the Spaniards did penetrate to that river and did destroy the works of the Dutch, considering them as intruders, and that the influence of the Spaniards made itself felt on the Cuyuni, as well as on the other affluents of the Essequibo.

Lord Salisbury also states that the States-General had suggested to the court of Madrid the feasibility of an authorized demarcation between the Colony of Essequibo and the Orinoco river. It is readily noticed that if this was demanded by the Dutch, their successors, the British, have carried their pretensions much further, as they have appropriated to themselves several tributaries of the Orinoco, among them the Barima, and the Amacuro.

There was no Dutch fort in Barima. According to the historian cited, Netscher, such a supposition is erroneous, and grew out of the fact that in the XVIIth and XVIIIth centuries, the Commandants of the Netherlands Colonies in Guayana established small "posts" in the most distant part of the territory to trade with the natives or Indians, and that in some maps, without reason and exaggeratedly, they are called "forts." "They were made up," he says, "of a guard—two or three subaltern Europeans and some twenty soldiers as assistants, besides a few Indian or negro slaves. The frame house or guard house was almost always surrounded by an earth-wall or a palisade, as a precaution against the occasional attacks

of the Indian enemy, and the holder of the post raised the flag of the West India Company."

"That in the middle of the XVIIth century there existed at the mouth of the Barima a post of that kind detached from the Essequibo, appears to be true. Hartzingck, at least, makes mention of it, and we follow his example on page 92 (last line), but after more accurate investigations in the archives of the Kingdom, we have become convinced that that post no longer existed from 1683 to 1684, and therefore it must have been either destroyed by the enemy or abolished."

Netscher concludes by observing that in the very exact correspondence of the Commandants of the Essequibo and of the Pumaron, no mention is made of the said post at Barima, but there is mention of others; and that this is not to be wondered at, for already in 1685, the West India Company had decided not to carry on any more trade by the Orinoco.

It results therefrom: 1st, that the "posts" were not military, but mercantile; 2nd, that that of Barima, if indeed there was any in the middle of the XVIIth century, was detroyed or abandoned.

Although the Dutch subsequently endeavored to return to Barima, the Commandant-General (Centurion) ejected them therefrom forever in 1768.

Schomburgk, on submitting his maps for adoption, as Lord Salisbury states, called the attention of the Government of Her Majesty to the circumstance that it might claim the whole basin of the Cuyuni and Yuruari on the grounds that the natural boundary of the Colony included any territory through which flowed rivers which fall into the Essequibo.

Great Britain, in her discussions with the United States, rejected the said principle which she now endeavors to apply to Venezuela. But she forgets that the Dutch did not discover the coast where the Essequibo empties. It was discovered by the Spaniards, from whom she derived the Dutch title conveyed in the Treaty of Munster.

At Cayena, near the Amazon, afterwards a French possession, the Spaniards began the establishment of a colony.

"In 1568 Gaspar de Sotelle, with 126 families from Spain, formed an establishment at Cayena, from which, however, he was expelled, six years afterwards, by the Carib Indians." [Sloane, M.S., "Description of Guiana." The passage is taken from the *Annals of Guayana, etc.*]

In a letter of the Duke de Lerma to the President of the Council of the Indies, dated February 2, 1615, the former reports that the Dutch General, Wilhelm Veelinex, was getting vessels ready to establish and found certain colonies upon three or four coasts in America, West Indies, the first in Wiapons, the second in Cayenne, and the third in Surinama, where there was a body from twelve to fifteen Spaniards, who tilled the soil there to raise *cazabe*, from which bread is made, under the authority of the Governor of Trinidad and of Orinoco, Don Fernando de Borrás.

In the same cited Annals of Guayana, it is written (part 1, pages 1 and 2) that Lawrence Keymis, one of the early explorers of Guayana, and a captain under Raleigh when he endeavored to go inland in search of the El Dorado, set sail on the Corentin in the direction of the Essequibo, but *hearing that there were Spaniards on that river*, he did not think his attempted explorations safe."

Page 7: "It is supposed that Alonzo de Ojeda, in 1499, entered the mouths of the Essequibo and the Orinoco, but did not see any of the inhabitants until he reached Trinidad, or its neighborhood." Ojeda was a Spaniard.

Page 41: "He (Keymis) in 1596 has something to say of the greater part of the larger rivers. On the Corentin there was an abundance of honey; the Indians of the Orinoco from the east never came this side of Berbice; *and on the Essequibo the Spaniards attempted to found a town.* The last river flowed into a lake called Roponowini, which was supposed to be the locality of the 'situation of Manoa.' The Spanish had made so many inroads *between the Orinoco and the Essequibo* that the Caribs endeavored to combine among themselves in order to oppose resistance. *The Dutch say that their establishments on the Essequibo were destroyed during this year by the Spaniards and the*

Arnacas. Keymis, however, either did not know anything of this Colony or purposely failed to mention it, as it might invalidate Raleigh's rights of discovery."

Page 117: "Leonard Berrie, who commanded the *Wat*, of Raleigh's expedition, in 1596, heard it said in Orcala, on the banks of the Corentin, that *there were three hundred Spaniards on the Essequibo.* Taking the two vessels up stream, they reached the town of Maruranano, and passing on thence in boats and canoes a part of the expedition reached the cataracts of this river, from which place they could not go on further in search of Parima Lake, which was reputed to be situated a short distance from the upper Essequibo, and which could be reached from the Corentin, owing to an affray which had occurred between the friends of Berrie, the Caribs and the Acaruayas. Less than a month before, the latter had come down from the upper part of the cataract and killed ten of the Caribs. Not desiring to be embroiled in the fight, which might bring about disturbances in the future, Berrie decided to return to the vessel. Here it was rumored that the Spaniards had left the Essequibo, and also that ten canoes filled with Spaniards had come to the Corentin, stories whose falsehood he discovered."

Schomburgk, in his description of Guayana, published in 1840, in speaking of the Essequibo river, on page 11, says, that this name comes from the surname of Don Juan Esquibel, one of the officers under Diego Colon; another proof of its discovery by Spaniards.

Great Britain also falls into another inconsistency which consists in not applying to the Orinoco the principle of which it here speaks, for if this river belongs to Venezuela, the right of property therein, perforce, includes that of its affluents, like the Barima, and the Amacura, for instance; and nevertheless H. B. M. following Schomburgk, places them within the limits of the English Colony.

To rebut the assertion of Mr. Olney that it seems impossible to treat the Schomburgk line as being the boundary claimed by Great Britain as matter of right or as anything but a line

originating in considerations of convenience and expediency, Lord Salisbury, at the same time that he characterizes this idea as correct, says that in fact that line was a great reduction of the boundary claimed by Great Britain as matter of right, and its proposal originated in a desire to come to a speedy and friendly arrangement with a weaker power with whom Great Britain was at the time and desired to remain in cordial relations.

As appears from the communication which Lord Palmerston, Secretary of State for Foreign Affairs, instructed to be sent to Lord John Russel, Colonial Minister, on the 18th of March, 1840, published in a parliamentary document, the former suggested to the latter the making of a map of British Guayana, in accordance with the limits described by Mr. Schomburgk, accompanying it with a comprehensive report of the natural features of the line, and its transmission to the Governments of Venezuela and Brazil and of Holland *as an exposition of the British claim;* the appointment of British Commissioners, who should come to establish boundaries on the land, in order to mark with permanent posts *the frontier line thus claimed by Great Britain;* and, finally, the transmission to the three Governments of the said map and report, which done, it would be proper for each of them to make known any objections that might occur to them, with the grounds therefor, to which the Government of Her Majesty would make proper and just answers.

This and the circumstance that in the Schomburgk map the limits were marked with the notice that they were *those claimed by Great Britain* convinces one that she then aspired to nothing further, and that no reservations were made.

Another argument favoring the same conclusion grows out of the fact that when Lord Aberdeen made the Moroco proposition to Señor Fortique, he stated "*that it involved the cession or relinquishment to the Republic of the territory comprised between the mouth of the Orinoco and that of the Amacuro, and the chain of mountains in which it had its source.*" If Great Britain had considered herself as possessing the right to more territory,

that was the opportunity for stating it, in order to augment the proffered favor.

The Schomburgk line designated on the map annexed to a pamphlet on Guayana, published in 1840, and on that attached to the book in German of his travels, printed in Leipzig, in the year 1841, is very different from that claimed since 1886 and communicated to Dr. Urbaneja in 1890 by Lord Salisbury, as has been often pointed out. The new line by which it has been replaced sweeps inland much more considerably into the territory of Venezuela and reaches a point on the Cuyuni, situated in front of the mouth of the Yuruan, where for a short time past an English station has existed.

A single glance at the map of the various lines, made by order of Venezuela, will show the magnitude of the difference noted.

In no other way can be understood the increase of the territory of British Guayana, which in one year, from 1885 to 1886, grew 33,000 square miles, as the Government of the United States has itself observed, and as is evinced by the English publication, "The Statesman's Year Book," and the "British Colonial Office List."

Lord Salisbury, in referring to the negotiation initiated by Señor Fortique, and to which the Foreign office opposed many delays, characterized his arguments as obsolete, and as having no other support than quotations, more or less vague, from the writings of travelers and geographers, but adducing no substantial evidence of actual conquest or occupation of the territory claimed as far as the Essequibo, which he demanded as the boundary of Venezuela.

Although this is a vague charge at best, it will not seem improper to recall that the discovery of America by Spain is a fact which cannot be got away from in any discussion regarding the boundaries of regions of this continent, and that it is not Venezuela alone who has advanced it, as has been before said.

Calvo observes, book 5, section 283, that the dominion of Europe over the lands and islands of the New World did not

rest solely on the decisions of the Holy See and the precepts of canonical law; but that it had another basis, that of discovery, which Spain herself invoked more than once in support of her rights to the territories of which her daring navigators had succeeded in taking possession.

In his turn Lord Aberdeen made use of citations from writers and geographers, and did not adduce any proofs that the Dutch had conquered or legitimately occupied the territory claimed by Great Britain. He did say that Venezuela had no establishment whatever on the Essequibo, and that the acceptance of this river as a frontier involved the delivery of the half, more or less, of the Colony of Demerara, including Point Cartabo, and the Island of Kykoveral, where the Dutch founded their first establishment on the Mazaruni, the missions of Bartika Grove, and many settlements and establishments which existed on the coast of the Acarabisi, up to within fifty miles of the Capital. But even though the said establishments existed to-day, what is important is to demonstrate that they were founded, as Lord Aberdeen said, relying on the terms of some concessions to the West India Company, before the time of the Treaty of Munster of 1648; because what is therein recognized as Dutch is limited to the possessions at the date of the agreement, and advances towards the Spanish possessions were prohibited absolutely. For that reason the Treaty of 1791 between Spain and the Netherlands refers to the colonies of "Essequibo, Demerara, Berbice, and Surinam," and does not say those of Pumaron and the Cuyuni, much less of the Orinoco, because there the Spanish colonies were in front of the Dutch.

When Lord Salisbury refers to the proposition of Lord Aberdeen of 1844, he states that "no answer to the note was ever received from the Venezuelan Government; and that in 1850 Her Majesty's Government informed Her Majesty's Chargé d'Affaires in Caracas that as the proposal had remained for more than six years unaccepted, it must be considered as having lapsed, and authorized him to make a communication to the Venezuelan Government to that effect."

It is true that no immediate answer was made because Dr. Alejo Fortique, to whom it was entrusted, had died; but subsequently, upon the negotiations being renewed, the Minister of Venezuela, Dr. José Maria Rojas, in a note of February 13, 1877, informed Her Majesty's Secretary of State for Foreign Affairs (then Lord Derby) that this government had not accepted the proposal of Lord Aberdeen for such and such reasons. He repeated the same on the 19th of May, 1879, to Lord Salisbury himself, who was then exercising the same functions he now does.

As regards the assertion of having given out in 1850 for the information of the Government of Venezuela the lapsing of the proposal of Lord Aberdeen, what can be said is that the British Legation did not communicate it to the Minister of Foreign Relations of the Republic.

In 1857, on the 18th of December, Lord Clarendon wrote to Mr. Bingham, the British Chargé d'Affaires in Caracas, respecting the permission requested by English subjects to enter the gold lands which had just been discovered in El Caratal, and towards which a road was projected from Demerara; to which this Government could not consent, as entrance into Venezuela ought not to be allowed except through ports of entry, nor was it lawful to open any way through territory not demarked. His Lordship then stated, without in any way mentioning the lapsing of the proposal of Lord Aberdeen, as the occasion would seem to demand, as follows: "It is not impossible that the various questions which have arisen, and that are likely to arise in connection with the gold discoveries, may call the attention of the Venezuelan Government to the advantages which might result from a final settlement of the boundary between the territory of British Guayana and that of Venezuela, and you will point out that the Venezuelan Government in returning no answer to the proposals made by Her Majesty's Government in 1844 is responsible for any inconvenience which has resulted from the question being still undetermined."

There is brought to mind the declaration made in 1850 by

Great Britain that she did not propose, as had been reported, to seize Venezuelan Guayana, and that she would not view with indifference aggressions upon the disputed territory by the Republic, which territory both parties agreed not to occupy or usurp, at the suggestion of the Chargé d'Affaires, Belford Hinton Wilson. And then, to the frequent invocation of the same by Venezuela, it is objected that the Venezuelans repeatedly violated it in subsequent years.

These alleged violations were: 1st, the occupation of new positions to the east of their previous establishments, and the founding in 1855 of Nueva Providencia on the right bank of the Yuruary, all previous settlements being on the left bank; 2d, the granting of licenses in 1876 to trade and cut wood in Barima and eastward; 3d, the concession to General Pulgar, in 1881, which included a large portion of the territory in dispute; and 4th, two different grants made by Venezuela in 1883, which covered the whole of the territory in dispute and which were followed by actual attempts to settle there, by reasons of which the British Government could not remain longer inactive, and a British Magistrate was sent into the threatened district to assert the British rights, warning of which was given to the Venezuelan Government and to the concessionaires.

In this way it is endeavored to justify the violation of the Agreement of 1850 by the English Government, since it has occupied many places comprised within the disputed territory.

To appreciate that conduct it is very pertinent to state that the Agreement of 1850, proposed by Mr. Wilson for the acceptance of Venezuela, did not determine, as it should have done to prevent controversies, the territory in dispute by designating it with precision. Nor is there any place mentioned therein, except incidentally in a passage where the Chargé d'Affaires says he had transmitted to his Government letters from Ciudad Bolivar, in which he was informed "that orders had been communicated to the authorities of the Province of Guayana to place it in a state of defense, and to repair and arm the dismantled and abandoned forts; that the Governor, José Tomás Machado, had spoken of constructing

a fort at *Port Barima, the right of possession to which is in dispute between Great Britain and Venezuela.*"

Point Barima is exactly the place where Sir Robert Ker Porter, Chargé d'Affaires of Great Britain, urgently asked the Government of Venezuela, in an official note of May 26, 1836, to locate a signal or lighthouse which should be sufficiently conspicuous. Sir Robert also spoke of the inefficiency of the pilotage of the Orinoco, recalling that a Venezuelan schooner had been detailed to go out daily from Point Barima and to cruise in aid of the vessels that might seek the entrance of the river; and he observed that the failure of the due arrangement, followed by its abandonment, caused that wise and *well known plan of the Department of Marine* to be frustrated. Then Venezuela did exercise jurisdiction over Point Barima, and could therefore order that its vessels should depart therefrom, and locate at the proper point the lighthouse whose erection had been recommended, and grant permission to trade therewith and to cut wood.

In the Annals of Guayana already cited, volume P, part first, page 8, we find this:

"1530. In this year the Spaniards who had succeeded in establishing themselves on *Terra Firma* made their initial attempt to settle in the country contiguous to Guayana. One Pedro de Acosta, with two small caravels and three hundred men, *reached Barima* probably from Cumana on *Terra Firma*. Nevertheless the party was repulsed from Barima in the same year by the Caribs, or it should be said rather, the remains of the expedition, because the cannibals had killed and ate many, and the few who succeeded in escaping with their lives were compelled to abandon all their goods and the houses they had erected."

Thus it is proven that the Spaniards were the first to discover and occupy Barima, and to set up and construct houses there; forcible ejection therefrom by the native Indians not destroying the right acquired, as the English alleged in the analogous case of their expulsion from the island of Santa Lucia.

In the concessions mentioned, and especially in the Manoa concession, it was stipulated in a conclusive manner that it ran to where British Guayana began, without designating the boundary with greater precision, as the demarcation had not been made.

Even though there may have been such violations of the Agreement of 1850, the appropriation by Great Britain of the territory in dispute cannot be justified thereby.

Lord Salisbury asserts that the Government of Venezuela never replied to the proposition of Lord Granville regarding boundaries.

Under date of October 15, 1883, the British Minister at Caracas, Colonel Mansfield, addressed to the Minister of Foreign Relations a note in which he solicited the simultaneous adjustment of the three questions then pending between the two countries, to wit: 1st, the question of limits between Venezuela and British Guayana; 2d, that of differential duties upon importations from British Colonies; and 3d, that of claims of British creditors of the Republic. "As preliminary to the taking up of the negotiations," said Mr. Mansfield, "Lord Granville considers it indispensable that a reply be made to the proposals of Her Majesty's Government in the matter of boundaries. If the reply should be in the affirmative, and if the other questions should be satisfactorily adjusted, the desires of the Government of Venezuela with respect to the island of Patos will obtain favorable consideration."

On the 15 of November following, the Government of Venezuela replied in these terms :

"The citizen President has for many years been consulting the opinion of jurisconsults and public men of great eminence, seeking light which should lead him to the solution of the Guayana boundary question in the form of a treaty; but, as all the documents and all the talent consulted have in each instance more strongly confirmed that the boundary, of right inherited by the Republic, between the former Dutch Colony, now the British Colony, is the Essequibo river, the impossibility of resorting to any other method of terminating that

discussiion save the decision of an arbitrator who, by the voluntary and unanimous election of both Governments, shall hear and finally determine it, has been evident.

"This is the obstacle which His Excellency the President encounters in satisfying, as he would like to do, the desire of Lord Granville to determine all cause for discussion between the two Governments through a treaty."

These words evidently involve the rejection of the proposal of Lord Granville, as it substitutes therefor the proposition to submit the whole matter to the decision of an arbitrator.

After having considered the latter proposition, Lord Granville, through Mr. Mansfield, and under date of March 29, 1884, replied thereto: "That the government of Her Majesty was not of the opinion that the boundary between this Republic and Great Britain should be submitted to arbitration, but at the same time they expressed the hope that some other method of bringing this matter to a satisfactory conclusion for both powers would be evolved."

In the first months after his arrival at London, the Minister of Venezuela, Gen. Guzman Blanco, insisted that as the fundamental law of the Republic prohibited all alienation of territory, the boundary controversy could not be decided except through arbitration, and he proposed in place of arbitration by a friendly power the judgment of a judicial tribunal, to be made up of persons designated by the parties respectively.

On February 13, 1885, Lord Granville replied in the negative, as appears from these words: "I regret to inform you, Mr. Minister, that the said proposition presents constitutional difficulties which prevent the government of Her Majesty from acceding thereto, and it is not disposed to withdraw from the method proposed by the Government of Venezuela and accepted by the Government of Her Majesty to decide the question by adopting a conventional boundary established by mutual accord between the two Governments."

Lord Salisbury says: "Mr. Olney is mistaken in supposing that in 1885 'a treaty was practically agreed upon containing a general arbitration clause, under which the parties

might have submitted the boundary dispute to the decision of a third power, or of several powers in amity with both.' It is true that Gen. Guzman Blanco proposed that the Commercial Treaty between the two countries should contain a clause of this nature, but it had reference to future disputes only. Her Majesty's Government have always insisted on a separate discussion of the frontier question, and have considered its settlements to be a necessary preliminary to other arrangements."

It might have been added that Lord Granville agreed to it on saying to the Venezuelan Minister, under date of May 15, 1885, that : "Her Majesty's Government agreed in that the obligation was to refer to arbitration all the disagreements that might arise between the High Contracting parties, and not those only growing out of the interpretation of the treaty."

Thus the respective article remained in the following terms :

"If, as it is to be deprecated, there shall arise between the United States of Venezuela and the United Kingdom of Great Britain and Ireland any differences which cannot be adjusted through friendly negotiations, the two Contracting Parties agree to submit the decision of all such differences to the arbitration of a third power, or of several powers, in amity with both, without resorting to war; and that the result of such arbitration should be binding upon both Governments."

The article does not say "*future* disputes." The fact is that Lord Salisbury, successor to Lord Granville, thought it applicable to the pending boundary controversy. In that understanding he retracted it on the 27th of July of the said year in these words, which under any other hypothesis, would not have been opportune :

"Her Majesty's Government are unable to concur in the assent given by their predecessors to the general arbitration article proposed by Venezuela, and they are unable to agree to the inclusion in it of matters other than those arising out of the interpretation or alleged violation of this particular treaty. To engage to refer to arbitration all disputes and controversies whatsoever would be without precedent in the treaties made by Great Britain. *Questions might arise such as those*

involving the title of the British Crown to territory or other rights of sovereignty which the Government of Her Majesty could not bind themselves beforehand to refer to arbitration."

To wean him from this opinion, vain it was to recall to Lord Salisbury examples where Great Britain herself had applied arbitration to the settlement of frontier disputes with the United States of America in 1827 and 1871, in the last case on her proposal repeated as many as six times. Mr. Olney, in his note of the 20th of July last to Lord Salisbury, states that Great Britain has arbitrated the extent of her Colonial possessions, twice with the United States, twice with Portugal, once with Germany, and perhaps in other instances.

The Minister of Venezuela, in London, also recalled at that juncture that the proposition for arbitration had been made to Señor Fortique on this same subject, according to his correspondence; that Lord Salisbury had declared that he could not fail to carry out the promises made by his predecessors, even though they should be contrary to his ideas; and that the same had been done with the correspondence addressed to Russia, which was precisely on the subject of boundaries with Afghanistan, although the present Minister deemed it inexpedient.

Lord Salisbury writes: "Early in 1884 news arrived of a fourth breach of the agreement of 1850 through two different grants, which cover the whole of the territory in dispute, and as this was followed by actual attempts to settle on the disputed territory, the British Government could no longer remain inactive."

"Warning was, therefore, given to the Venezuelan Government and to the concessionaires, and a British Magistrate was sent into the threatened district to assert the British rights."

"Meanwhile, the negotiations for a settlement of the boundary had continued, but the only replies that could be obtained from Señor Guzman Blanco, the Venezuelan Minister, were proposals for arbitration in different forms, all of which Her Majesty's Government was compelled to decline as involving a submis-

sion to the arbitrator of the claim advanced by Venezuela in 1844 to all territory up to the left bank of the Essequibo."

"*As the progress of settlement by British subjects made a decision of some kind absolutely necessary, and as the Venezuelan Government refused to come to any reasonable arrangement, Her Majesty's Government decided not to repeat the offer of concessions which had not been reciprocated, but to assert their undoubted right to the territory within the Schomburgk line, while still consenting to hold open for further negotiations, and even for arbitration, the unsettled lands between that line and what they consider would be the rightful boundary, as stated in the note to Señor Rojas of the 10th of January, 1880.*"

Lord Salisbury first said that the violations of the Agreement of 1850 had moved the British Government to remain inactive no longer ; to give notice to the Government of Venezuela and to the concessionaires of 1884, and to send to the threatened district a Magistrate to assert the British rights. But in the next line his Lordship adds: "The progress of settlement by British subjects made a decision of some kind absolutely necessary, and as the Venezuelan Government refused to come to any reasonable arrangement, Her Majesty's Government decided not to repeat the offer of concessions which had not been reciprocated, but to assert their undoubted right to the territory within the Schomburgk line."

Add to this the following paragraph from the same communication from Lord Salisbury:

"*Señor Rojas's proposal was referred to the Lieutenant-Governor and Attorney-General of British Guayana, who were then in England, and they presented an elaborate report, showing that in the thirty-five years which had elapsed since Lord Aberdeen proposed concessions, natives and others had settled in the territory under the belief that they would enjoy the benefits of British rule, and that it was impossible to assent to any such concessions as Señor Rojas's line would involve.* They, however, proposed an alternate line which involved considerable reductions of that laid down by Sir Robert Schomburgk."

From these citations, it results that from 1844 new settle-

ments began to be secretly founded on the territory to which Lord Aberdeen's line referred ; that the agreement of 1850 not to occupy any part of the territories in dispute, did not serve as an obstacle to the fresh occupations ; that consequently the British Government and its authorities violated it, notwithstanding the emphatic assertions and promises of Mr. Wilson ; and that, Venezuela, trusting, as she did, in the strict compliance with such solemn words, could not even suspect that the act which Lord Salisbury now for the first time confesses was being consummated.

Such acts cannot diminish the rights of the Republic, which, as has been said, has been protesting against them since they came to its notice.

So that even if Venezuela had committed the violations imputed to her, Great Britain, which had begun them, would not have the right to complain of her example being followed.

Let it be borne in mind that despite the alleged violations, H. B. M. considered the Agreement of 1850 to be in force, as appears from the official communication addressed on January 31, 1887, by Mr. F. R. Saint-John, Minister Resident of H. B. M. in Caracas, to the Minister of Foreign Relations of Venezuela, in which he says : " *That the intention to erect this lighthouse* (at Point Barima) *without the consent of the Government of H. M., would be a violation of the reciprocal obligation contracted by the Governments of Venezuela and England in 1850 to not occupy or usurp the territory in dispute between the two countries ; and that the Government of H. M. would have the right to oppose resistance to such a proceeding as an aggressive act on the part of Venezuela.*"

Although it is here called, and in the text, *reciprocal* agreement, Great Britain had been violating it for some time past, signally from 1884, and she was deaf to the complaints in this regard made on July 28, 1886, by the then Minister in London, General Guzman Blanco ; for she made no reply either during that year or subsequently. So that the said Agreement is valid as against Venezuela, but not in favor of Venezuela, to judge from the action of her opponent.

It was not until 1893, when replying to the proposal of

Señor Thomas Michelena to revive the Agreement of 1850, that the English Government, through Lord Rosebery, alleged as a ground for its refusal what Lord Salisbury now repeats with regard to violations by Venezuela, and which no other Minister had advanced.

According to that, then, the Agreement ceased to exist and the Republic is free from the obligation imposed by it, and consequently has recovered full authority to occupy what it understands to belong to it.

But there is more. When two States have subscribed a Convention, if one of them commits a breach thereof the injured party can demand its observance through every means, including the last and most formidable—war; or in case it does not desire to go so far, it may limit itself to the declaration that, on its part, it does not consider it as binding.

Let Vattel, an old and ever-respected master of the science, Book 2, Chapter 13, section 200, state it:

"Treaties contain promises that are perfect and reciprocal. If one of the allies fails in his engagements the other may compel him to fulfill them—a perfect promise confers a right to do so. But, if the latter has no other expedient than that of arms to force his ally to the performance of his promises he would sometimes find it more eligible to cancel the promises on his own side also, and to dissolve the treaty. He has undoubted right to do this, since his promises were made only on condition that the ally should, on his part, execute everything which he had engaged to perform. The party, therefore, who is offended or injured in those particulars which constitute the basis of the treaty, is at liberty to choose the alternative of either compelling a faithless ally to fulfill his engagements or of declaring the treaty dissolved by violation of it. On such an occasion, prudence and wise policy will point out the line of conduct to be pursued."

Nevertheless, good faith should always govern the relations between States, particularly in the matter of treaties; it is inadmissible to act in a clandestine manner, but rather with loyalty and frankness on such occasions. To maintain silence

and wait until the last hour to justify acts the intention to execute which had not been announced, is not, and cannot be, permitted between nations, much less when such acts are at variance with the words of their authors.

Great Britain has never complained to Venezuela of the alleged violations of the Agreement of 1850 nor asked reparation therefor, nor given notice that in case of failure to obtain the same she would hold it as null. Nothing of this kind. It has already been seen that, in January of 1887, Lord Salisbury invoked the Agreement as valid, and still in force, in order to oppose the erection of a lighthouse at Point Barima without his acquiescence, and to assert that to attempt it would be a violation thereof, which he would have the right to resist as an aggressive act. This, long after the time when the violations attributed to Venezuela, had been consummated. It was only in 1885 that the British Legation in Caracas made known to the Government *that in certain districts the sovereignty over which was equally in dispute between the Government of H. M. and that of Venezuela* the Manoa Company was executing acts to which its attention was called, and requested moreover that steps be taken which should prevent the agents thereof (or of Mr. Gordon, who also had a concession for colonizing) from claiming or obstructing any part of the territory claimed by Great Britain. The Legation added that in the event of Venezuela refusing to take action, the Government of H. M. would feel called upon to adopt measures to prevent the usurpation of said Company, and that the Governor of Guayana would be authorized to employ police force for the purpose, and to maintain order, but that, nevertheless, the Governor would do nothing while this reference to the Government of Venezuela should be pending. So wrote the English Minister in Caracas under date of January 8, 1885. On the 25th of the same month and year, he gave notice that orders had been issued to the Governor of Guayana to send a Mr. Mac Turk, Stipendiary Magistrate, with a force of police to institute in the district on the eastern bank of the Amacuro River an inquiry as to the actions of the Manoa Company, and more especially as to the conduct

of Mr. Robert Wells and others, who were accused of having tortured some persons by hanging them for a long time by their ankles, etc. The Legation stated further that Mr. Mac Turk would act pursuant to the laws in force in other parts of British Guayana, remembering that the words of the contract with the Manoa Company are specifically *as far as British Guayana.*

Without awaiting, then, the result of the measures of the Government of Venezuela to elucidate the facts, and in contradiction to its spontaneous offers, the British Government hastened to send to those localities a police force to apprehend Mr. Robert Wells, Commissary of Venezuela, and to take him to Demerara for trial; to place a guard where the Commissary was; to visit the Amacuro, Barima, Morajuana, and Guaima Rivers; to place in the principal localities thereof notices in the English language stating that they were British property; to establish posts, and to exercise the other acts of jurisdiction which have given rise to the claims of Venezuela and which since that time have been followed by other and yet other acts. The British Government was informed of the astonishment caused by its failure to apprise Venezuela of any grounds of complaint it might have, before resorting to force, and because it had not employed the measures of conciliation and good understanding practiced by nations.

There is nothing more frequent in treaties than clauses like this, to be found in those that Colombia in 1824 and Venezuela in 1836 concluded with the United States of America, and which is also to be found, substantially, in those of this Republic with the Hanseatic Republics, of 1837, with New Grenada, of 1842, with France, of 1843, with Spain, in 1845, etc.:

"If (what, indeed, cannot be expected), unfortunately, any of the articles in the present treaty shall be violated or infringed in any other way whatever, it is expressly stipulated that neither of the contracting parties will order or authorize any act of reprisal, nor declare war against the other, on complaints of injuries or damages, until the said party considering itself offended shall have presented to the other a statement

of such injuries or damages verified by competent proofs, and demanded justice and satisfaction, and the same shall have been either refused or unreasonably delayed."

This accords with what Vattel says: "If neither of the disagreeing nations finds it expedient to abandon its rights or its pretensions, natural law, which counsels peace, concord and charity, obligates them to try the most conciliatory means to terminate their controversies."

And this accords with what G. F. de Martens lays down: "The sovereign States themselves, when they complain of the infraction of their original or derivative rights, and the same is not apparent, must produce the evidence before the party of whom they demand satisfaction before resorting to force; that is to say, they should make the fact on which their complaint rests so clear (not only that on which their right is based, if an acquired one, but also that which constitutes the injury for which reparation is asked) that no reasonable cause for doubt may exist."

But, suppose that Venezuela did violate the Agreement of 1850, would such an offense justify the appropriation of the territory which Great Britain herself had declared in dispute? Nowhere has it been found that such a violation constitutes a method of acquisition among nations. The violation of a treaty, it has already been said, may lead to war, if satisfaction for the offense be denied; or to the invalidation of the compact, if the party injured considers it more in keeping with the circumstances. In case war is adopted, the outcome thereof may be conquests occasioning the loss of territory, when confirmed in the treaty of peace; but during the progress of the war, occupancy gives no right to the territory taken by force. Much less when that is done against the will of the owner, and in spite of oft-repeated protests, as in the present case.

From the first time that this Government knew what was occurring, besides sending Commissioners to the localities occupied to ascertain the truth of the usurpation, it seriously complained of the offenses of the invader, through the British Representative in Caracas, taking a firm stand on that of the

imprisonment and carrying off of the Venezuelan Commissary at the mouth of the Amacuro, and claiming satisfaction therefor. Immediately thereafter the Minister of the Republic in London, after stating the facts, demanded: 1st, the removal of all the evidences of British sovereignty located on the territory in dispute; 2d, the withdrawal of the public officials and force stationed there; 3d, satisfactory explanations for the failure to carry out the Agreement of 1850, and the violation of the laws of the Republic with respect to ports not open to foreign vessels; 4th, a dismissal of the case brought against the Venezuelan Commissary, his liberation and indemnity for the injuries to him caused by his arrest and imprisonment, subjection to trial and punishment, charged with an offense on Venezuelan territory; and 5th, complete restoration of things to their status in 1850, date of the said Agreement, and written orders to the Governor of British Guayana to scrupulously observe the said treaty while the two Governments settled the question of their boundaries.

The English Government paid not the slightest astention to this demand—quite the reverse of what took place in 1842, when Dr. Fortique, with great reason, demanded the removal of posts and other signs of dominion located by the Engineer Schomburgk in Barima and Amacuro. Lord Aberdeen ordered these removed, being no doubt convinced by the arguments of the Plenipotentiary of Venezuela. The British Minister apologetically explained that the marks did not signify sovereignty, but only a presumption of what were considered the English boundaries. Like explanations were given by the Governor of Demerara to the Commissioners, Señores Juan José Romero and José Santiago Rodriguez, sent there for the purpose of requesting them, and to protest in case they were refused.

Towards the end of 1886, after the visit of the new Commissioners, Señores Dr. Jesus Muñoz Tébar and General Santiago Rodil, information was had of the acts of jurisdiction which British authorities were exercising in Amacuro, Barima, Aruca, Cuabana, and Guaramuri, and of the work-

ing of gold mines situated between the Cuyuni, Mazaruni and Puruni rivers. For this reason (and the Governor of Demerara having written to the Commissioners that the said localities were included within the boundaries established by resolution of the Government of H. M., dated on the 21st of October, 1886, which declares them to be British, because they are in dispute with Venezuela) explanations were requested of the English Minister in Caracas, who gave no satisfaction. Then the evacuation of the territory occupied from the Orinoco to the Pumaron, and the submission to arbitration of the whole boundary question was demanded. As the British Government refused this, the Venezuelan Government on the 20th of January, 1887, declared the diplomatic relations between the two countries suspended, and protested against the acts of spoliation, which, to the prejudice of the Republic, Great Britain had consummated; declaring before her and before the whole world that at no time and for no reason would it recognize such acts as capable of altering in the slightest degree the rights that it had inherited from Spain, and which it was ready to submit to the decision of a third power.

It again protested on the 15th of June, 1888, by reason of the Governor of Demerara having created the new District of the Northwest in which he included Barima, and of having sent there as Commissary Mr. Bartholomew A. Day.

It again protested on the 29th of October, 1888, when it learned that the English had established in Barima a Custom House, an inspector and corps of police, a barrack and a coast-guard, which would not permit the Venezuelan pilots to cut wood, or the guard-ship (*Ponton*) to anchor within a mile from shore, and who had also occupied Amacuro.

It again protested on the 16th of December, 1889, on seeing the decree of the Colonial Government of Demerara, dated the 4th of that month, declaring Barima an English port; and also against the pretension, by that Colony, to exercise dominion over Venezuelan territory by the proposed construction of a road through the federal domain of the Republic in Yuruary.

It again protested before the Government of Demerara on the 2d of May, 1890, through the Consul of Venezuela there, and through Señor Rafael F. Seijas, Special Commissioner, sent to examine the condition of things in the neighboring territory, against all the official acts authorized by the Government of the Colony to the prejudice of the rights of Venezuela, of which a long list was made as a result of that agent's trip of investigation.

It again protested on the 1st of September, 1890, against the ordinance of the Government of Demerara, published on the 19th of July previous, which, under pretext of establishing an additional District under the name of Pumaron, and of changing the delineation of the district of the northwest, provided limits showing the design of incorporating another portion of Venezuelan territory into that occupied by England.

It again protested on the 30th of September, 1890, declaring, through its Confidential Agent in London, Señor Dr. Lucio Pulido, to the Government of Great Britain, that Venezuela would never recognize the territories of Guayana, declared to be in dispute and neutral in 1850, nor any steps that might be taken by the Colonial authorities of the Government of H. B. M. looking towards their permanent occupancy, reserving for all time its right to repossess them.

It again protested on the 30th of December, 1891, against a speech read by the Governor of Demerara before the Joint Court of that Colony, in which he spoke of the advisability of establishing on the upper Cuyuni a Station and police government, and against the authorization of the said court to apply a sum of money to that end.

It again protested to Lord Rosebery, Secretary of State for Foreign Affairs of H. B. M. on the 6th of October, 1893, against the actions of the Colony of Demerara; and against the reply of the said official, in which he asserted that the acts denounced by Venezuela as offending the sovereignty thereof were only measures of an administrative character, in his judgment in no wise antagonistic to the rights of the Re-

public, as was replied to Señor Michelena, who had made the complaint.

It protested again on the 15th November, 1894, when information was received that a project was before the Legislature of Demerara looking to the construction of a road from the sources of the Barima to the upper Cuyuni or to the Yuruán. The Government of the Republic looked upon that act as a direct aggression upon its territorial rights, in that it contemplated jurisdiction over lands which, in virtue of indisputable historical titles and natural geographical position, Venezuela considered her own exclusive property. That protest, as also the renewal and reaffirmation of all former ones, was communicated to the Government of the Colony of Demerara through the Venezuelan Consul at Georgetown.

It protested, finally, on the 3d of January last, before the Government of Demerara, through the Consul of Venezuela there, against two bills authorizing several persons to construct, maintain, and operate two railway lines from the right bank of the Barima river to the interior; against the concession to Messrs. Garnett and Company, to gather *purguos* at certain points on the right bank of the Cuyuni; and against the concession of lands situated on the right bank of the Cuyuni, for the organizing of the so-called "British Guayana Chartered Company."

With respect to maps lately published in which there is attributed to the Colony of Demerara more territory than belongs thereto, the Executive has taken the necessary steps to object to them, and to prohibit their introduction, sale and circulation in the country, as containing false notions regarding the frontier of Venezuela, and as having been drawn without the slightest idea of the antecedents, which the authors should have studied. And he is untiring in his efforts.

It has likewise, since 1876, addressed itself to the Government of the United States of America, stating its complaint and requesting its aid, as the great Republic of this continent, thereby, and because of its antecedents, called upon to lend

support to its sisters against the extravagant demands of the powerful.

And the cause of all the Republics of the New World being one, Venezuela took care also to inform them of the situation in which she had been placed, and to ask their moral support for the purpose of inclining Great Britain to agree to submit to arbitration the boundary controversy. Its aspirations have been limited to this.

Finally, Venezuela has never failed to declare that she rejects the imposition of force, and will continue to consider as hers the territories of which she has been dispossessed thereby, no case having arisen in which there could be attributed to her an assent to the cession or abandonment of her territorial rights.

As complementary to the measures taken at all times to oppose the publication and introduction into Venezuela of maps antagonistic to the rights thereof, on December 27th, 1893, the Government urgently demanded the correction of certain data concerning British Guayana, published by the International Bureau of Washington, which an association of Republics of the Western Hemisphere created and maintains, and which was principally intended for the compilation, arrangement, and circulation of statistical data regarding the wealth and commerce thereof. It had published a series of notices relative to the so-called mines of British Guayana. Nevertheless it treated of mines situated in regions which, being Venezuelan, are unlawfully held by the authorities of Demerara. Therefore this government deemed such data not only erroneous, but also antagonistic to the rights of the Republic, which served as a basis for the instructions communicated to the Minister of this country in Washington to make the proper complaint and demand in the premises.

Finally the result aimed at was secured. In one of the subsequent bulletins it was explained that in the November number, 1893,—the cause of the complaint—it was not intended to express any judgment regarding the merits of the controversy existing between Venezuela and Great Britain, nor to

advance an opinion respecting the right of either Government, but to give out notices deemed important for commerce. So that from nothing written could there ever be drawn any conclusion or argument unfavorable to Venezuela.

Previously Mr. Secretary Blaine had been requested to order the correction of a map issued by the International American Company, the errors in which had given rise to just observations by the Government of this Republic.

All this series of acts, the result of a plan thoughtfully conceived and firmly and perseveringly carried out, prove the intention of the Government of the Republic to never recognize on any ground whatever the forcible possession which the British have taken of places over which Venezuela asserts dominion, and to the evacuation of which they have tenaciously objected.

These are precisely the resources to be employed by States to prevent the effects of force as an element of prescription in the judgment of publicists.

It must be borne in mind that several of them hold opinions against prescription as between States; others admit, at the most, immemorial prescription; and others assert that uninterrupted possession of territory or other property for a certain time excludes the claim of any one else. It seems that the last case identifies itself with the second.

Eugéne Ortolan has treated the subject *ex professo* in his work "On the Methods of Acquiring International Dominion or State Property between Nations according to Public International Law, compared with the methods of acquiring property between individuals according to private law, followed by an examination of the principles of political equilibrium."

He was a Doctor of Laws and an attaché of the Ministry of Foreign Relations of France.

He says that such methods are:

1. The occupation of things belonging to no one through possession, and the intent to appropriate them and hold them as one's own.

2. Effects of the changes arising in bordering waters and the springing up of islands or islets.

3. Agreement to transfer international dominion and taking of possession; for example: treaties of cession in general, treaties of sale, of compromise, of exchange, of settlement of limits, or partition.

4. Arbitration decisions, not in general; for they would be only the recognition, the declaration, in favor of the winning party, of the pre-existing right of property; but only in cases in which disputing nations may have wished to conclude a compromise and had consented to reciprocally exchange, cede, or abandon territorial property rights, and had left the arbitrators at liberty to establish the bases and sacrifices of the compromise, obligating themselves beforehand to submit to the result of the arbitration; a case in which the arbitrator may, without overstepping the authority conferred on him, not only recognize this or that pre-exising right, but may even create a new right of international property, by deciding in the compromise that such a power abandons the sovereignty of such a Province to transfer the same to the other State; and his decision becomes the source of the acquisition of the ceded territories."

"It may also be supposed that the dispute has for object, a partition of land or a settlement of boundaries between the two States, and that they have referred the operation to arbitral decision, giving the arbitrators, in case of partition, authority to make the adjudications of the necessary parcels, or, in case of a settlement of boundaries, the power to effect reciprocal cessions between the two States, in order to establish the limits in a more convenient manner."

"Nevertheless those cases will not be frequently met in practice with such amplitude of powers conferred on the arbitrators. It is rare that two nations consent to confer, without any limitations, upon a third power the authority to decide, and much less to definitely settle, their territorial property rights. Nearly always disputants reserve the right to change the agreements that may be proposed to them, and, conse-

quently, the compromise offered them is only a *promise* which begets no obligation or right except in so far as it is ratified. The right grows out of the acceptance of these conditions, and not of the decision of the arbitrators."

Pradier-Fodere recognizes that the arbitrator determines disagreements *according to law;* he seeks out on what side it is to be found; examines in what way international law should be applied to the particular case forming the subject of the disagreement between the parties. To state the law; that is his trust. He is not charged with reconciling the parties—the office of the mediator—but with causing the disagreements to disappear through a friendly decision which he draws from the principles of law, and which is conventional, but morally binding upon the parties. This does not prevent them (it all depends on their will) from granting him the authority of a law arbitrator (*arbitrador amigable componedor*).

The most recent case of this kind occurred in the year 1890, between France and the Netherlands. Being engaged in determining the limits of their respective Guayanas, they decided on the 20th of November, 1888, to resort to arbitration in the premises. They entrusted it afterwards to the Czar of Russia with the understanding that he was to decide the question of law, that is, whose was the territory comprised between the Lava and Tapana rivers.

The Czar did not consent to accept a trust so limited and asked for an extension of authority. Whence it resulted that the same parties signed in Paris on the 28th of April, 1890, a new convention in which it was stipulated "that in case the arbitrator, after examination, should not succeed in designating as a boundary one of the two rivers mentioned in the Convention of 1888, he was authorized, as a compromise solution, to adopt and determine another limit that should pass through the disputed territory."

Some are of the opinion that this precedent should not be followed, because it distorts the nature of arbitration, which it confuses with mediation; since every one will wish to follow the example of the Czar of Russia, and because, if the parties

interested are disposed to compromise, they could do it directly without the necessity of calling in a third party.

5th. Conquests, but only when they have been confirmed in the treaty of peace which brings the war to a close: This is understood with reference to real estate, for personal property is acquired as booty in determinate cases, or as the result of a formal judgment when treating of maritime prizes.

The author maintains that the principles observed by ancient countries and in subsequent barbaric times, according to which war and conquest were the methods of acquiring property among nations, have been completely changed. That in civilized countries war ought not to be considered as a means of extending power or of enlarging dominions, but only as a fatal necessity, inevitable consequence of the right of independence; a necessity which would disappear were it possible to place over States a collective and common authority, and, consequently, taking from among the rights of nations the right of absolute independence which now exists. That it can only be undertaken when it is forced upon a State through the violation or serious questioning of an essential right, and when all the pacific means for preventing it have been vainly exhausted.

He attributes certain consequences to military occupation, which he does not consider forcible and contrary to law, but valid, and producing the same effects as possession in good faith, so that the possessor may collect imposts, exercise authority and jurisdiction. He also believes that military occupation may serve as a just ground, in international law, for the transfer of property effected in the convention which brings an end to the war; and, lastly, that, according to several publications, it may also serve as the foundation of prescription.

Although the author does not say it, it is to be admitted, with others, that not only does the treaty of peace confirm the conquests, but also the fact of complete subjection of one State to another as the result of war, because the former, becoming extinct, it is no longer admissible for it to retain territory.

6th. Finally, Ortolan includes prescriptive acquisition among the methods of acquiring international property.

After justifying the application thereof among individuals, he asserts that it should be equally extended to States, but with certain requirements.

The first is that it should be held in the capacity of owner and sovereign of the territory, and that therefore it would not suffice for some individuals belonging to the nation to have in their own name performed acts of private ownership of that territory, because the possession must be in the name of the State through acts of enjoyment, command, and jurisdiction, which constitute the exercise of international dominion.

The second is that the possession in the capacity of owner shall be public; would be manifested by open acts, visible to all, because in furtive and clandestine acts, which the true proprietor has been unable to see, there is wanting the fundamental fact of prescription, the rôle of proprietor assumed by one, and surrendered by another.

The third requisite is that the possession shall be continuous, as is always the essence, the character, of the rôle of proprietor which passing, transitory, intermittent acts cannot constitute.

So that if the possession be begun with the intention of continuity and it is abandoned and subsequently recovered, each interruption irrevocably destroys, as regards the unfinished course of prescription, the effect of the previous possession; the separate fragments of those several possessions not being unitable to form a whole. Each new entry into possession constituting a new starting point, the time being only reckoned from this new point. Ortolan lays down the rule that these three conditions of publicity, continuity, and absence of interruption, necessary in private law to prescriptive acquisition, are equally necessary in international law. Although he considers that between country and country clandestine territorial possession is barely possible, he finds cases of uninterrupted possession more feasible.

Passing on afterwards to examine the acts which give rise

to possession or the maintenance thereof, he finds that field full of difficulties. But he judges that force, during its continuance, cannot become legitimate and convert itself into a right; and that the longer it lasts the graver becomes the fault and the greater the offense against right. He adds that the possession which is only maintained through forcible means cannot be advantageously relied on, and that it is inadmissible to say that one who finds himself expelled and driven away therefrom by force abandons the rôle of proprietor.

Nevertheless, speaking of usurpations, of violent invasions, he says that they may serve as the origin of territorial occupation for the invading country which may retain the possession, and that even in this last case (and saving then the extension of the time required for prescription) it must be logically recognized that the force once terminated, and the dispossessed State being at liberty to claim, if it has not done so and has remained passive, prescription will have commenced to run in favor of the State possessing the territory, and by this means the possession will finally be changed into international dominion.

He also maintains that military occupation of a territory resulting from a formal war, although insufficient to convey the title to that territory, gives a possession thereof, which international usages liken to a possession in good faith.

He then passes on to study the question of the time necessary to prescription, and, recalling that the civil law distinguishes between cases of real and personal property, of presence or absence of good or bad faith, and that it establishes terms of 10, 20 or 30 years, proportionate to the life and the action of individuals, asserts that they are not applicable to cases of States; and that without determining the precise terms, and leaving the influence they should have to the circumstances of each case, it is thought that a long series of years is necessary to transfer the right of dominion and territorial sovereignty over a country, from one country to another.

What method there may be to arrest the course of the pre-

scription already begun, originating in the passiveness of the owner—the failure to exercise the rights and functions of ownership—Ortolan sets forth by suggesting that it is to emerge from the inertia to prosecute, or at least to claim, the exercise of his rôle of owner before the completion of the course thereof, and the realization of acquisition by the possessor. The civil law requires resorting to the judicial authority, extra-judicial claims, protests or even exhibiting of documents being insufficient, and only then is he considered as in fact replaced in possession; the delays in confirming the existence of his right depending only on the imperfections and slowness of human justice.

The same rule not being applicable in international law, owing to the absence of a common judge, States find themselves limited to claiming their rights one from the other through the channel of diplomatic negotiations, and, if necessary, do justice to themselves through their own strength. But he adds that in order to interrupt prescription war is not necessary; that a weak country or one placed temporarily in a difficult situation may find itself forced to await other resources or other times to take up arms, and until then to resort to diplomatic demands. That such demand interrupts prescription, because once made, the State in possession should satisfy, if it be just, and immediately restore the proprietor State to power.

He thinks that, as regards protests and exhibitions of documents, taking into account the difficult situation and the impossibility to act in an efficacious manner in which a power may find itself, it may be said in general that they will not produce the interruptive effect, save in so far as they may assume the character of a true diplomatic demand addressed to the adverse power; and that notifications to other States are only means of greater publicity, as though to make them witnesses to the violation of its rights for which the demand is made.

It appears to him that with greater reason attempts to recover in fact the possession of the disputed territory would be

cause for its interruption, even though they should have been unsuccessful; but provided they are made in the name of the State, as a public untertaking, and by it so recognized, and not by mere individuals who act without authority and in a private capacity.

Finally, that the recognition the State in possession may grant to the rights of the adverse power, or even the mere desire to submit the controversy to examination, to diplomatic discussion will likewise interrupt the course of the unfinished prescription.

The doctrines of the author named being once known (and they are the most favorable to the method of acquisition by prescription, since it is desired to place the matter in the furthest extreme), it is advisable to examine, whether in the light thereof the appropriation by great Britain, either from the year 1884, or from a previous date, more or less unknown, of territory in dispute with Venezuela, is justified.

It is unnecessary to dwell longer on the other means of acquisition before specified. Prescription will be spoken of principally for the reasons which will be set forth.

Not occupation, because the subject in hand is not things that were originally acquired, since the titles of Venezuela as well as of Great Britain are exclusively derivative.

Not the changes in bordering waters or the appearance of island—changes which can only occur between regions definitively delineated, which the Republic and the English Colony of Demerara are not.

Not agreements to transfer dominion, which in this case are the treaty of recognition of the independence of Venezuela by Spain on March 30, 1845, and that of 1814, in which Holland ceded to Great Britain its Colonies of Essequibo, Demerara, and Berbice. The question does not rest on the act of transfer itself, but on the extent of the territories therein included, which was absolutely not defined in either of the conventions.

Not the result of an arbitration decision where the arbitrator receives the authority of a friendly adjuster, and pursuant thereto adjudicates territories to one of the litigants or to

both. Venezuela has urged arbitration, but judicial, as the only one compatible with the constitutional provisions which prohibit the alienation of any part of her territory, and Great Britain has not accepted it, except under conditions evidently inadmissible.

Not conquests, which do not now constitute acquisition of international property, save when confirmed by the treaty of peace which puts an end to the war. Fortunately, there has been none between Venezuela and Great Britain, so it can have no bearing here, however much it may be endeavored to widen the sphere of conquests.

Therefore, there remains nothing but prescription, and in effect the English assert it. In an article in the London "*Times*," of January 18, of this year, a paper which follows the footsteps of the Foreign Office, appears the following:

"It should be borne in mind, in the first place, that neither this country nor Venezuela have an original title to the territory or can show the history of a very long possession. We derive ours from the Dutch, from whom we took the establishments of Demerara, Essequibo, and Berbice almost a century ago. Venezuela derives hers from the Spaniards, whose yoke she threw off at the beginning of this century. In 1796, as on another previous occasion in which the Dutch Colonies were occupied, this country claimed a boundary which began at Barima, on the banks of the Orinoco, and included practically all the basin of the Essequibo river. By the treaty of 1814 the results were finally sanctioned, *the Spanish Government having been a party to the negotiations and not having raised any objection against the boundary claimed by Great Britain.* At that time Venezuela was in rebellion against Spain, but had not obtained the recognition of her independence. Neither in 1814 or in 1819 when Venezuela was incorporated into the *United States of Colombia*, was any question raised by the former or latter with respect to the validity of the frontier that the Spanish tacitly accepted. On the contrary, the *United States of Colombia* frankly recognized what they owed to the friendly attitude of Great Britain, and when, in 1830, Vene-

zuela, on her own account, made herself an independent Republic, she also manifested her friendship with warm expressions, and likewise preserved silence on the boundary question.

At that time therefore we had a prescription of twenty-five years in favor of our claims, or of fifty years, if we reckon from the first British occupation of the Dutch establishments in 1781. In the Venezuelan Constitution, promulgated in 1830, it was not endeavored to attack the *frontier arrangements* which the British Government had laid down. The Constitution merely defined the territory of Venezuela as the extent of what the Spaniards had denominated the *Captaincy-General* of Venezuela. Naturally such a declaration has no binding force unless it be formally accepted by other interested nations. It is not an international instrument, but it is interesting because it gives the extreme measure of what Venezuela then claims."

Leaving aside the errors contained in that editorial of the "*Times*," such as that in the treaty of London of 1814, relating to the cession of the Dutch Colonies of Demerara, Essequibo and Berbice to Great Britain, the latter determined the boundaries she claimed therefor, and that no objection was made by Spain, a party to the negotiation of the treaty; that neither Venezuela nor Colombia said anything against those boundaries which Great Britain attributed to herself about 1830 when neither one nor the other ever knew them, and the former claimed the Essequibo in 1822; the only thing that will be refuted will be the allegation of prescription of twenty-five or fifty years, applying the rules laid down by Ortolan:

1st. Great Britain could not possess as owner territories not specified as belonging to the grantor, nor included expressly in the transfer made to her by Holland.

2d. Her possession has not been public, but clandestine, and therefore has not reached the knowledge of Venezuela; only since 1884, and with regard to places near her, has she given notice of her taking possession, against which there began then and there has been carried on uninterruptedly, a series of complaints, claims, protests and the establishment of posts and other measures of defense.

3d. Neither has there been continuity in the possession, because it must be considered as having been interrupted by the tenacious opposition of Venezuela.

4th. The English possession has been and is forcible, which renders it impossible of being converted into lawful origin, however long it may last; and it only serves to aggravate by its duration the offense against the proprietor.

England has herself maintained this doctrine. When her dispute with France touching the Island of Santa Lucia was referred, after the treaty of Aquisgran, to the decision of certain Commissioners, and gave rise to State Papers in 1751 and 1752, the French negotiators maintained that though the English had established themselves there in 1639 they had been driven out or massacred by the Caribs in 1640, and they had, *animo et facto* and *sine spe redeundi* (with the intention and in fact, and without hope of returning), abandoned the island. That Santa Lucia being vacant, the French had again seized it in 1650, when it became immediately and without the necessity of prescriptive aid, their property. The English negotiators contended that their dereliction had been the result of violence, that they had not *abandoned* the island, *sine spe redeundi*, and that it was not competent to France to profit by this act of violence and surreptitiously obtain the territory of another State; and that by such a proceeding no *dominium* could accrue to them. [See *Phillimore, International Law*, "*Prescription.*"]

It is not stated there what the Commissioners decided, but as the English are seen ceding the island to France in 1763, it is to be inferred that the decision was in their favor.

If we go on to the requirement of time, which is to consist of a long series of years, saving the influence of special circumstances, illy could it be aspired to consider as sufficient the term of eleven years which elapsed since the beginning of the last invasions, which was in 1884. As regards the previous invasions they met with the obstacles that they were clandestine, as has been already observed. Aside from the fact that its course would have been arrested by the accumulation of

claims, protests and the creation of posts and other measures of forcible defense.

Consequently, even though twenty or fifty years may have elapsed since the occupation, it signifies nothing, because the requirements necessary to confirm it are wanting; and it is pertinent to reiterate with Heffter "that a century of unjust possession does not suffice to take therefrom the defects of its origin."

The doctrine implied in the assertion of Lord Salisbury means that Venezuela cannot claim as hers places colonized by natives and others in the belief that they would enjoy the benefits of British rule during the thirty-five years which have elapsed from the date of the proposed concession offered by Lord Aberdeen in 1844.

The claim seems to be indefensible, not only because it is incompetent to apply thereto the cited rules of international prescription, but also for the following reasons:

1st. Because Venezuela has not been able to colonize the said regions by reason of her deference to the proposal of the British Government to not occupy them during the boundary controversy, in the understanding that the obligation was reciprocal, and very especially in view of the credit it ought to give the solemn protestations of Mr. Wilson, Chargé d'Affaires in Caracas, that Great Britain had no intention to usurp Venezuela Guayana, and would not authorize or sanction acts of occupation by her authorities whom it would order, reiteratedly if necessary, to abstain from acts which the Venezuelan authorities might justly consider as aggressions.

2nd. Because, as Calvo says: "if the right of States to incorporate into themselves a larger extent of still savage regions than those that they can civilize or administer is disputed, this can only be applied to recent acquisitions or occupations," and not to old possessions, sanctioned at once by time and by historical right, which form, properly speaking, a generally admitted exception to the preceding rule. When a State finds itself in possession of a country all that that country includes becomes its property, even when the occupation

shall be actual only in a portion of the country. If it should leave therein uncultivated or deserted places, no one has the right to take possession thereof without its consent. Even though the possessing State may not actually use them, those places belong to it; depend upon its sovereignty; it has interest in retaining them for ulterior uses, and to no one has it to give account of how it uses its property. Such is the special position of the United States of North America, of the States of South America, which possesses several unpopulated territories, or inhabited by savage tribes."

3d. Because this same is the opinion of Vattel, from whom Calvo took it almost intact.

4th. Because the Colombian publicist, Doctor Madiedo, professes like principles, and maintains them thus: "There is no nation of the earth which possesses absolutely and materially and through actual and constant occupation all the territory that its geographical dimensions determine. The most populated nations of the earth have uncultivated wastes and deserts where not a single human habitation is to be found."

If we were to lay it down as a principle that a nation has no territorial sovereignty save over the soil it corporally and actually occupies, which is the principle which prevails among the savage hordes, according to the original *Jus Gentium*, there would result the admissible absurdity that no nation would have the right to all the territory marked for it on the map as an entity of international law.

"And not only that, but by a logical deduction from such a doctrine, it would have to recognize in any other foreign power the right to occupy those vacant portions, even within the national territorial boundaries, with the obligatory addition of recognizing in that foreign occupant the still stranger right to establish himself there under the jurisdiction of laws foreign to the sovereign on whose soil such vacant territories should exist, which includes all the sovereigns of the world."

"And what would then become of the sovereignty and independence of nations obliged to recognize such absurd solu-

tions of continuity in the exercise of their own power? Would not this be like sowing confusion to reap ceaseless discord and anarchy"?

5th. Because the English historian, Macaulay, on condemning the attempt by a Scotch expedition, headed by Patterson, to take possession, in 1699, of the Isthmus of Darien, which had been discovered and occupied by the Spaniards, but from which they withdrew afterwards to Panama, owing to the unhealthfulness of its climate, leaving the Indians there found to continue living after their own manner, says that regions of other countries are in like condition. He names as an example some mountainous districts situated not more than one hundred miles from Edinburgh where there lived clans who paid as little attention to the authority of the King, of Parliament, of the Privy Council, and of the Court of Sessions, as did the aboriginal population of Darien of the authority of the Spanish Viceroys and of Audiencias. The enlightened historian, statesman, minister, and Member of Parliament, concludes with these words: "It is safe to say that the taking possession of Appin and Lochaber by the King of Spain would not have been considered a less atrocious violation of the public law than that the Scotch should take possession of a Province situated in the very center of his possession under the pretext that it was in the same condition that Appin and Lochaber had been for centuries."—[*History of England.*]

6th. Because in recent cases the validity of the titles invoked by Venezuela has been admitted, as may be seen in the history of the question of the Caroline islands between Germany and Spain. Having been submitted to the mediation of the Pope, he made the following proposition to the parties: "The discovery by Spain in the XVIth century of the Caroline and Palen Islands, which formed part of the Archipelago, and a series of acts performed at different periods by the Spanish Government on the same Islands for the welfare of the natives, in the opinion of that Government and of that nation, have created for it title to the sovereignty, founded on the maxims of international law invoked and followed at that time in similar disputes. In

truth, when the history of the said acts is examined, the authenticity of which is confirmed by several documents in the Archives of the Propaganda, the beneficent work of Spain in those Islands cannot but be recognized. . . . On the other hand, Germany and England, in 1875, expressly informed the Spanish Government that they did not recognize the sovereignty of Spain over those Islands. On the contrary the Imperial Government thought that actual occupation of a territory is what creates sovereignty, an occupation which was never carried into effect on the part of Spain on the Caroline Islands. In accordance with this principle it acted on the Island of Yap and in that, as well as in what the Spanish Government has done on its part, the Mediator is pleased to recognize the complete *loyalty* of the Imperial Government."

In consequence, the Pope suggested the advisability of confirming the sovereignty of Spain over the Caroline and Palen Islands; of Spain making her sovereignty effective by establishing a regular administration, with force sufficient to guarantee order and the rights acquired; of offering Germany complete liberty of commerce, navigation and fishing, and the right to establish a naval and coaling station, and the liberty to found on the Islands agricultural establishments.

It was so agreed in a protocol signed in Rome on the 17th of December 1885, by the Ministers of Spain and Prussia before the Holy See,—a protocol which the respective governments approved. In 1886 the article V, regarding Germany's right to establish on the Islands a naval and coaling station was rescinded, whereby the sovereignty of Spain therein was restored.

7th. Because, according to the Monroe Doctrine, "the American continents, by the free and independent condition which they have assumed and maintain, are henceforth not to be considered as subjects for future colonization by any European powers."

Says Lord Salisbury:

"As regards the rest, that which lies within the so-called Schomburgk line, the Government of Great Britain do not

consider her rights open to question. Even within that line they have, on various occasions, offered to Venezuela considerable concessions as a matter of friendship and conciliation and for the purpose of securing an amicable settlement of the dispute. *If, as time has gone on, the concessions thus offered diminished in extent, and have now been withdrawn, this has been the necessary consequence of the gradual spread over the country of British settlements, which Her Majesty's Government cannot, in justice to the inhabitants,* offer to surrender to foreign rule;" and he considers such *withdrawal is amply borne out by the researches* in the national Archives of Holland and Spain, which have furnished further and more convincing evidence in support of the British claims.

Here it is seen repeatedly placed beyond doubt that the last settlements of Great Britain in the disputed territory are of recent date, and this explains the system of delay followed by her since 1841, in which year Venezuela urgently requested her to conclude the boundary treaty, of which the Agreement to her proposed, with an admixture of threats, by Mr. Wilson in 1850, appears to have been a part.

Strange, at least, seems the desire to insist on the Schomburgk line after it was abandoned by Lord Aberdeen in 1844, by Lord Granville in 1881, and by Lord Rosebery in 1886; it being particularly noticeable that the latter not only laid that line aside, but he furthermore proposed arbitration of a Joint Commission to divide equally what he denominated the territory in dispute, or be it that situated between the lines of Dr. I. M. Rojas and of Lord Granville, presented in 1881, and that Schomburgk himself characterized his map as incomplete, as many of its details were based on information obtained from the natives.

Lord Salisbury writes:

"The discrepancies in the frontiers assigned to the British Colony in various maps published in England and erroneously assumed to be founded on official information are easily accounted for by the circumstances which I have mentioned.

Her Majesty's Government cannot, of course, be responsible for such publications made without her authority."

Without doubt this paragraph is intended to meet the objection presented in the official communication of the Acting Secretary of State, of the U. S., who, as complimentary to the communication of Mr. Olney of July 20, wrote to Mr. Bayard on the 24th following regarding the sudden increase of the area of British Guayana from 1884 to 1886, and which was 33,000 square miles, thereafter asserting that such settlement was made on the authority of the British publication entitled the "Statesman's Year Book." He observes that it is corroborated by the British Colonial Office List, a Government publication, citing the proper passages, and he concludes by saying that the official maps in the two volumes mentioned (of 1885 and 1886) are identical; so that the increase claimed for British Guayana is not thereby explained; but that the latter map of the Colonial Office List show a varying sweep of the boundary westward into what previously figured as "Venezuelan Territory," while no change is noted on the Brazilian frontier.

If Lord Salisbury were referring to the "Statesman's Year Book," perhaps his explanation will have some weight, but it will not do to extend it to works issued from the Colonial Office. And there is no reason for denying a fact which agrees with the previous assertions of the Minister in which he says that the size of the concessions of his Government has diminished as a necessary consequence of the gradual spread of British settlements.

Attention has been called already to another point of his note in which he asserts that the progress of those settlements made a decision absolutely necessary, and that therefore the Government of H. M. resolved to make no more concessions and to assert its undoubted right to the territory comprised within the Schomburgk line.

As is notorious, such new settlements are due to the existence of gold mines in the regions where they have been founded, and it appears reasonable to suppose that they, and

not the alleged breaches by Venezuela of the Agreement of 1850, constitute the true motive of its disregard in 1893 by Great Britain; the fact being that even in 1887, that is, after the said breaches, she relied on it to oppose the erection of a light-house at Barima.

Lord Salisbury concludes with these words: "They (the Government of H. M.) have, on the contrary, repeatedly expressed their readiness to submit to arbitration the conflicting claims of Great Britain and Venezuela to large tracts of territory which from their auriferous nature are known to be of almost untold value. But they cannot consent to entertain, or to submit to the arbitration of another power or of foreign jurists, however eminent, claims based on the extravagant pretensions of Spanish officials in the last century, and involving the transfer of large numbers of British subjects, who have for many years enjoyed the settled rule of a British Colony, to a nation of different race and language, whose political system is subject to frequent disturbance, and whose institutions as yet too often afford very inadequate protection to life and property."

The arbitration to which Great Britain will lend herself relates to the territory situated to the West of the extended Schomburgk line, to pretensions which, owing to their novelty and unjustifiable nature, Venezuela ought to have rejected as often as they were advanced in 1890, 1891, and 1892.

The pretensions which the Republic upholds, it inherited, not from the Spanish officials, if by this it is desired to designate subordinates, but from the very Government itself of Her Catholic Majesty, as appears from several acts emanating from herself.

The argument of the injuries which will befall British subjects in being transferred from the settled rule of a British Colony to a nation of different race and language whose political system is subject to frequent disturbances, has no connection whatever with the matter under discussion. The purpose is to discuss the right of Venezuela and of Great Britain to certain portions of territory; not to put on trial the

institutions of the Republic; neither in this nor in her other domestic matters is it proper for foreign nations to intervene, much less to characterize them offensively. In their infancy all have met obstacles more or less similar to those which have presented themselves to Venezuela in the path of her effort to consolidate herself, insuring the benefits of a permanent peace and order. But even States, the oldest, most populous, cultivated, and apt in the science of politics, do not succeed in overcoming the difficulties of the Government, and it can be asserted with the book of history in hand, that there is not in the universal world, even one capable of flattering itself as being unassailable and having carried out the ends of its establishment.

Very near the beginning of his reply to Mr. Olney, Lord Salisbury writes:

"The definite cession of the Dutch settlements to England was placed on record by the treaty of 1814, and although the Spanish Government were parties to the negotiations which led to that treaty, they did not at any stage of them raise objection to the frontiers claimed by Great Britain, though those were perfectly well known to them." At that time the Government of Venezuela had not been recognized even by the United States, though the province was already in revolt against the Spanish Government, and had declared its independence. No question of frontier was raised with Great Britain either by it or by the Government of the United States of Colombia in which it became merged in 1819. That Government, indeed, in repeated occasions, acknowledged its indebtedness to Great Britain for its friendly attitude. When in 1830 the Republic of Venezuela assumed a separate existence, its Government was equally warm in its expressions of gratitude and friendship, and there was not at the time any indication of an intention to raise such claims as have been urged by it during the latter part of this century."

With respect to the participation of Spain in the treaty, or in the negotiations for the treaty, of 1814 regarding the trans-

fer of Essequibo, Berbice, and Demerara to Great Britain, it has already been noted that there is no document proving it.

Regarding Colombia, it has been recalled that in the instructions issued in 1822 to the agent appointed in London, Señor José Rafael Revenga, he was authorized to propose the delineations with British Guayana and to claim the Essequibo.

Dr. José Manuel Restrepo, Minister of the Interior of Colombia, in his history of the Revolution of that Republic, printed for the first time in 1827, established the same frontier.

As regards Venezuela, she had no opportunity to ventilate the subject till 1840, when she was informed of the appointment of the Engineer Schomburgk to survey British Guayana by himself, without the concurrence of this country. She at once urged a boundary treaty, and later on requested the removal of the posts and other signs of dominion, located at Barima and Amacuro. Thus advised of the danger which threatened the Republic in its essential part bathed by the Orinoco, except in some intervals, it has used its best efforts to seek the settlement of the question, and has claimed what it believes to be its rights; and it believes that the right of preservation and progress of sovereignty and independence, and that of property lay upon it the obligation to maintain them manfully. The English Government through its Ministers, Lord Aberdeen, Lord Granville, and Lord Rosebery, have recognized the importance to Venezuela of the free possession of the mouths of that, its principal, river. She understands that it will not be complete until the boundary shall be established according to law. Wherefore, Great Britain, which in every way seeks her own advantage, ought not to think it ill that Venezuela should in her turn work to secure the same object. By claiming the said boundaries she proposes to herself to perform a duty; not to be wanting in any duty of friendship or of gratitude with respect to Great Britain, towards whom during all the period of her existence she has endeavored to prove such sentiments.

She has not forgotten that she subserved the ends of justice

declining to enter into the Holy Alliance and in opposing the plans to aid Spain in reconquering her American colonies, acting in this in accord with the United States, whence was born the Monroe Doctrine; and in recognizing, following their example in 1825, the independence of Colombia.

In the treaty referring thereto, British commerce was placed on the footing of the most favored nation unconditionally; the equality of the flag was stipulated; the English were placed on a par with the Colombians with respect to the acquiring of personal property of all kinds and classes, through sale, donation, exchange, or will; and with respect to the administration of justice they were granted several exemptions; and British and Colombian vessels were defined in like terms, demanding for the latter that they should have been actually constructed in Colombia, which was in the cradle. Finally her concurrence was promised for the abolition of the slave trade, which ever since 1810 the Supreme Junta of Caracas had spontaneously ordered suppressed. There was such a haste in the signing of the treaty that there was omitted therefrom the clause relating to its duration, which is so indispensable, and others which have not been added to it to complete it, as it was therein stipulated to do in a short time, for which reason it still exists without change, after seventy years, which have rendered it antiquated, as Lord Granville judged on negotiating its amendment, in 1884 and 1885.

Venezuela, adopting it in 1834, left it as it was.

Since that time, she has accepted other conventions which Great Britain has proposed relating to postal arrangements, the extradition of fugitive offenders with several English Antilles, pecuniary claims, and above all the convention of 1839, referring to the abolition of the slave trade. In it the Republic bound herself to preserve in force the Colombian law of 1825, which declares it to be piracy, and punishes it with the penalty of death; and moreover, with a reciprocity notably illusory, she granted her the right of search in time of peace of merchant vessels, which in vain was requested of France and of the United States, and the arrogation of which even

in the absence of a convention she had to renounce. Neither was any term established therefor. But that accords with the Constitutions established by Venezuela since 1864, which have proscribed slavery forever, and assured liberty to slaves who tread her soil.

It also condescended to subscribe the Agreement of 1850, the origin of so many difficulties.

Venezuela has duly appreciated, as did Colombia in her turn, the personal co-operation which brave Britons, the friends of liberty, rendered them in the war of independence, generously shedding their blood for her cause, such as O'Leary, MacGregor, D'Everaux, Minchin, Chitty, Wilson, Fergusson, etc., and some of them occupy a place in the Pantheon of our national glories.

On decreeing thanks and honors to the victims in the battle of Carabobo, the Congress of Colombia in 1821 ordered them "to be especially extended to the valiant British battalion which could be even distinguished among so many brave men, and suffered the lamentable loss of many of its worthy officers, thereby contributing to the glory and existence of their adopted country."

Colombia and the Republics succeeding her carried their magnanimity to the extent of admitting without the inspection made necessary by the multifarious and enormous abuses committed by usury under the contemporaneous circumstances, the supplies of money, arms, munition, clothing, and other articles obtained in England to meet the necessities of the struggle with Spain. Venezuela is still paying to-day, with great punctuality, the balance of that debt, augmented, it is true, by subsequent loans; and the present government takes such great interest in the matter that it not only satisfies the current dividends, but moreover, at the same time, is paying off a large installment, the back payment growing out of the revolution of 1892. It also satisfies, month by month, the quota apportioned for the British credits growing out of diplomatic arrangements.

Behold numerous proofs of the gratitude of Venezuela and

of her earnest desire to preserve the friendly character which has always distinguished her relations with Great Britain, notwithstanding the inconsiderate attitude she has assumed in some of her claims.

In defending the integrity of the most valuable part of her territory, Venezuela carries out solemn obligations, without diminishing her sentiments of gratitude, without ceasing to preserve her desire to agree to the honorable and amicable settlement of the disputes which have divided the two countries, and for the settlement of which she has been perseveringly pressing.

Caracas, March 25, 1896.

ANNEX 34

Resolutions and declarations in international forums on the territorial issue with British Guiana

English Translation

Source: Ministry of Foreign Affairs, Country: Great Britain, Subject: Boundaries between Venezuela and Guyana. Official Venezuelan Documents on the 1899 Award and Relations with Great Britain and British Guiana, (1942-1952). File 954, Caracas, pp. 22-23

BOLIVARIAN REPUBLIC OF VENEZUELA

Ministry of Foreign Affairs

Country: GREAT BRITAIN

File Nº 954

Item Nº

Topic:

VENEZUELAN BOUNDARIES WITH GUYANA
VENEZUELAN OFFICIAL DOCUMENTS RELATED TO THE 1899 ARBITRATION AWARD
AND VENEZUELAN RELATIONS WITH GREAT BRITAIN AND BRITISH GUIANA

Year 1942 – 1952

Vault I

Box Nº

Module Nº

Section Nº

Side **A** **B**

RESOLUTIONS ADOPTED AT THE INTERNATIONAL CONFERENCES OF AMERICAN STATES REGARDING THE EUROPEAN COLONIES IN THE AMERICAS

- - - - - -

STATEMENT BY LUIS EMILIO GÓMEZ RUIZ AT THE 4th MEETING OF CONSULTATION OF MINISTERS OF FOREIGN AFFAIRS OF AMERICAN STATES

- - - - - -

COMMUNIQUÉ OF THE MINISTRY OF FOREIGN AFFAIRS ON THE POLITICAL EVENTS OF OCTOBER 1953 IN BRITISH GUIANA

- - - - - -

STATEMENT BY THE DELEGATE OF VENEZUELA AT THE TWELFTH PLENARY MEETING, TENTH INTERNATIONAL CONFERENCE OF AMERICAN STATES, ON THE ONGOING BORDER ISSUE WITH BRITISH GUIANA

- - - - - -

April 1948

XXXIII

COLONIES AND OCCUPIED TERRITORIES IN THE AMERICAS AND CREATION OF THE INTER-AMERICAN COMMITTEE ON DEPENDENT TERRITORIES

WHEREAS:

The historical process of the emancipation of America will not be complete so long as there remain on the continent peoples and regions subject to a colonial regime or territories occupied by non-American countries;

The ideal that inspired the epic of the independence of the Americas will always animate our peoples and governments, united in their moral pledge to strive by all peaceful means within their power to banish from the continent any status of dependence, whatever its political, economic or juridical form;

Ever since they achieved their independence, the American States have had this common objective, which has lately been defined in precise terms at the Meetings of Consultation of Ministers of Foreign Affairs held at Havana and at Rio de Janeiro, in Resolutions condemning colonial regimes in the Americas and reaffirming the right of the peoples of this continent to freely determine their own destinies;

The American States have fixed a zone of continental security to which extra-continental conflicts should not extend, as might happen in consequence of the existence on the continent of territories dependent on or occupied by non-American countries;

The principle of peaceful settlement of international controversies is part of the juridical heritage of the Organization of American States, and controversies exist between American Republics and European countries over rights of sovereignty in respect to certain territories of the continent;

The *de jure* or *de facto* status of the colonies, possessions and dependent or occupied territories on the American continent or within its security region varies in each case, within the framework of their common status, making it necessary to carry out studies on a case-by-case basis in order to find a suitable solution in each case;

It is in the spirit of the American nations to preserve and strengthen the close solidarity of all the democratic nations of both hemispheres,

DECLARES:

That it is a just aspiration of the American Republics that colonialism and the occupation of American States by extra-continental countries be brought to an end; and

RESOLVES:

1. To create an "Inter-American Committee on Dependent Territories" to centralize the study of the problem of the existence of dependent and occupied territories, in order to find an adequate solution to that question.
2. The Committee shall be composed of one representative of each member of the Organization of American States, whose appointment shall, in each case, be communicated to the Council of the Organization before September 1, 1948, if possible. As soon as fourteen representatives have been appointed, the Council, in agreement with the Government of Cuba, shall convene the

Commission so it can be installed and perform its duties in the city of Havana.

3. The functions of the Committee shall be the following:
   a) To centralise all information on the above issues submitted to it by the governments and entities concerned;
   b) To study the situation of the colonies, possessions and occupied territories existing in the Americas, and the problems related to such situation, whatever their nature, with a view to seeking peaceful means for eliminating both colonialism and the occupation of American territories by extra-continental countries;
   c) The Committee shall submit a report on each of such colonies, possessions and territories to the Council of the Organization of American States, which shall transmit copies to the governments of the States Members of the Organization for their information and study. These reports shall be considered at the first Meeting of Consultation of Ministers of Foreign Affairs that is held after their submission;
   d) The Committee shall draw up its own regulations.
4. The creation of this Committee and the performance of its functions shall not exclude or limit the right and action of the interested States directly concerned with the problems to which this Resolution refers to seek a solution of such problems by themselves through peaceful means.

- -

NOTE: The Delegation of Brazil found it appropriate not to adhere to the Declaration on Colonies and Occupied Territories in the Americas.

"The stand of the Government of Venezuela is that none of the changes of status which may occur in British Guiana as a consequence of the international situation or of the measures which may be adopted in the future, or as a result of

the progress of the inhabitants of the said territory towards the determination of their own destinies, will be an obstacle for Venezuela —in view of the peculiar circumstances which prevailed when its boundaries with the said colony were demarcated— to avail itself of its just aspirations for reparation, through equitable rectification, of the damages suffered by the Nation on that occasion."

(Statement made by Luis e. Gómez Ruiz at the Fourth Meeting of Consultation of Ministers of Foreign Affairs, held in washington, d.c., from 26 march to 7 april 1951)

- -

March-April 1951

REAFFIRMATION OF INTER-AMERICAN PRINCIPLES REGARDING EUROPEAN COLONIES AND POSSESSIONS IN THE AMERICAS

WHEREAS:

The First Meeting of Consultation, held in Panama during October 1939, approved Resolution XVII, which contains provisions to be applied in case of a transfer of sovereignty in geographic regions of the Americas under the jurisdiction of non-American States;

At the Second Meeting of Consultation, held in Havana during July 1940, the Governments of the American Republics signed the "Act of Havana," which contemplated emergency measures to determine the action those Republics should take in the face of a situation that might, because of World War II, affect the status of non-American possessions located in this Hemisphere;

At that Second Meeting of Consultation the "Convention on the Provisional Administration of European Colonies and Possessions in the Americas" was also

signed, which subsequently came into force in accordance with the provisions of the Convention itself; and

The American Republics declared, in Resolution XXXIII of the Ninth International Conference of American States, the continental aspiration that colonialism be brought to an end in the Americas,

DECLARES:

The firm adherence of the American Republics to the following principles adopted at the First and Second Meetings of Consultation:

1. The non-recognition and non-acceptance of transfers or attempts at transferring or acquiring interest or right, directly or indirectly, in any territory of this continent held by non-American States, in favour of another State outside the continent, whatever the form used to accomplish this purpose;
2. That, in case it should be necessary to apply the measures prescribed in the "Convention on the Provisional Administration of European Colonies and Possessions in the Americas," the interests of the inhabitants of those territories should be taken into account, so that the gradual development of their political, economic, social, end educational life may be promoted.

- -

Political Events in British Guiana

COMMUNIQUÉ OF THE MINISTRY OF FOREIGN AFFAIRS

Considering the very special links of geographical community that exist between British Guiana and Venezuela, Venezuela is concerned about the situation that has arisen in that friendly country.

Having examined the question in a general way and without taking a stance on the present political trends or on the underlying immediate or mediate causes, because that would be tantamount to violating the principle of non-intervention which Venezuela has always advocated, the Government reaffirms its conviction that today more than ever the existence of vassal countries and the continuation of colonial regimes are inappropriate in the Americas.

The Government of Venezuela, convinced that equity must be the basis of any solution to international disputes, is confident that, faced with the problem posed in a continent for which law is the most solid bulwark, Great Britain will know how to respect the principle of self-determination.

Venezuela earnestly hopes that the conflict between Great Britain, with which it maintains firm relations of friendship, and British Guiana, to which it is linked by the solid ties referred to above, will be brought to a solution as ennobling for the former as it is satisfactory for the latter. Additionally, Venezuela, as the bearer of a tradition on which it bases its best title of glory, offers moral support to the same yearnings which in the past gave rise to the foundation of the Republic.

Caracas, 16 October 1953.

- -

March 1954 **XCVI**

COLONIES AND OCCUPIED TERRITORIES IN THE AMERICAS

The Tenth Inter-American Conference

WHEREAS:

The common devotion to liberty of the peoples of the Americas has its roots in the achievement of emancipation, and inter-American solidarity will not acquire

its true breadth and depth so long as there remain on the continent territories occupied by extra-continental countries and peoples deprived of the right to govern themselves;

The present stage of evolution of these peoples, which has given them the consciousness of their right to self-determination, makes more urgent than ever the final elimination of colonialism in any of its forms; and

As a result of their devotion to the peaceful settlement of international disputes, the use of force to maintain colonialism and the occupation of territories in the Americas affects the Republics of the Americas,

RESOLVES:

1. To declare that it is the will of the peoples of the Americas that both colonialism and the occupation of territories against the desire of peoples be definitively ended.
2. To express the sympathy of the Republics of the Americas for the legitimate aspiration of now-subject peoples to obtain their sovereignty.
3. To proclaim the solidarity of the Republics of the Americas with the just claims of the peoples of the Americas to the territories occupied by extra-continental countries.
4. To reiterate the faith of the Republics of the Americas in the methods of peaceful settlement set forth in treaties in effect, and to repudiate the use of force to maintain colonial systems and the occupation of territories in the Americas.

- -

XCVII

COLONIES IN THE AMERICAS

The Tenth Inter-American Conference,

WHEREAS:

Resolution XXXIII of the Ninth International Conference of American States expressed the common aspiration of the American States that the colonial system on the continent should be brought to an end;

The Inter-American Committee on Dependent Territories, appointed by the Ninth International Conference of American States, submitted a report, which had been entrusted to it by the aforementioned Conference;

The Americas will have fully realized their historical destiny and fulfilled their mission of liberty only when there are no more American territories under the colonial system of extra-continental nations;

It is necessary, through peaceful means and with the understanding and assistance of the interested extra-continental countries, to find the best way to enable the above-mentioned territories to organize their own autonomous existence, so that they will become sovereign members of the community of nations;

It is a permanent aspiration of the peoples of this hemisphere to contribute to the end that the aforementioned territories may emerge from the present regime of subordination in order to participate, on a basis of equality and independence, in the benefits of the American community and the responsibilities of international life;

The Charter of the United Nations assigns to the administering powers the "sacred trust" of developing the ability of non-self-governing territories to govern themselves, and to assist them in the development of their free political institutions;

The Member States of the Organization of American States are likewise members of the United Nations, of which the Organization is a regional agency, under Article 52 (2) of the United Nations Charter and Article 1 of the Charter of the Organization of American States; and

Accordingly, in addressing their common problems, both the American States and the extra-continental powers have the competence to examine and take an interest in promoting the application of the provisions of the Charter of the United Nations, with a view to the effective realisation of the lofty purposes which inspired them.

RESOLVES:

1. To declare the necessity for the extra-continental countries having colonies in the territory of the Americas not to delay in fully enforcing the measures set forth in the provisions of the United Nations Charter to enable the respective peoples to exercise fully their right of self-determination, so that colonialism in the Americas may be definitively eliminated.
2. To declare that this Resolution does not refer to territories that are the subject of disputes or claims between extra-continental countries and some Republics of the Americas.
3. To transmit to the United Nations all the texts of the discussions related to item 2 of the Agenda of the Tenth International Conference of American States.

- -

XCVIII

INTER-AMERICAN COMMITTEE ON DEPENDENT TERRITORIES

The Tenth Inter-American Conference

WHEREAS:

The report and "Proceedings" prepared by the Inter-American Committee on Dependent Territories,

RESOLVES:

1. To thank the Inter-American Committee on Dependent Territories for the admirable and detailed work it did and for its valuable conclusions, which have been taken carefully into account in the deliberations and resolutions of the Committee on Juridical-Political Matters.
2. To transmit to the United Nations the Report and "Proceedings" submitted by the Inter-American Committee on Dependent Territories.
3. To recommend to the Council of the Organization of American States that, in accordance with Resolution XXXIII of the Ninth International Conference of American States, it convene the Inter-American Committee on Dependent Territories when circumstances so advise.

- -

STATEMENT BY THE VENEZUELAN REPRESENTATIVE AT THE TWELFTH PLENARY MEETING OF THE TENTH INTERNATIONAL CONFERENCE OF AMERICAN STATES

Mr President,

The stand that Venezuela has maintained throughout its history with regard to the issue we are considering is well known, since it is linked to the very origin of our nationality, which sprang from our vocation to freedom and independence of the peoples, and from the efforts and sacrifices that contributed to the fulfilment of those ideals in a large part of the American continent.

However, for my Delegation, it is essential to insist on this occasion on this Venezuelan tradition and to recall, among the most significant recent events highlighting it, the statement made by the Venezuelan Representative to the Fourth Meeting of Consultation of Ministers of Foreign Affairs of the American Republics, held in Washington in 1951, and the Communiqué issued by the Venezuelan Foreign Ministry on 15 October last, on the occasion of the events that took place in Georgetown.

Looking back now at this background, the Venezuelan Government wishes to reaffirm the criteria it upheld on those occasions and, accordingly, makes the following statement before this Meeting, the terms of which it requests to be expressly placed on record, as follows:

1. With regard to the general problem of colonialism in the Americas, the Government of Venezuela considers that today more than ever the existence of vassal countries and the continuation of colonial regimes are inappropriate in the New World,
2. With regard to the specific case of British Guiana, the Government of Venezuela declares that none of the changes of "status" that may occur

in that neighbouring country can be an obstacle for the National Government, interpreting the unanimous sentiment of the Venezuelan people, and in view of the peculiar circumstances that prevailed in relation to the demarcation of its border with the aforementioned country, to assert its just aspiration for reparation, through equitable rectification, for the damages suffered by the nation on that occasion.

In accordance with the foregoing, no decision taken at this Conference on the subject of colonies shall in any way prejudice the rights of Venezuela in this respect, or be interpreted as a waiver thereof.

FGP.

ANNEX 35

Ministry of Foreign Affairs, Office of Information, Press and Publications.
Bulletin No. 349-C, dated 26 January 1966

English Translation

Source: Ministry of People's Power for Foreign Affairs, Borders Archive, Bulletin No. 349-C, 1966, Caracas

MINISTRY OF FOREIGN AFFAIRS

Office of Information, Press and Publications

BULLETIN No. 349-C

The National Assembly of Panama unanimously adopted the resolution presented by the Honourable Deputies René Crespo and Carlos Iván Zúñiga, whereby it expresses its best wishes for the sister Republic of Venezuela to recover the territory of Guayana Esequiba.

Below you will find the resolution, which textually reads as follows:

"RESOLUTION

The National Assembly of Panama,

Whereas the sister Republic of Venezuela has submitted to the Special Political Committee of the United Nations a declaration of nullity of the Award of 3 October 1899, whereupon the Government of Great Britain and the Government of British Guiana have agreed to examine the documentation relating to said Award;

Whereas it is patently obvious that the Venezuelan people, like the Panamanian people, demand redress for the injustices that have occurred in the past as a result of the existence of a colonialist policy that is now obsolete;

DOES HEREBY DECIDE AS FOLLOWS:

1.- To convey the wish that the aspirations of the Venezuelan Republic with regard to Guayana Esequiba will be successfully realised;

2.- To voice its confidence that the Government of Great Britain does not wish to perpetuate an era of colonialism on the American continent on the basis of territorial usurpation;

./..

3.- To place on record for history that, bearing in mind that it faithfully interprets the hopes and aspirations of the Panamanian people, it looks forward to the Republic of Venezuela recovering the territory of Guayana Esequiba through diplomatic procedures, thus fulfilling the long-standing and just aspirations of this brotherly people.

Raúl Arango Jr.
President

Alberto Arango N.
Secretary."

Caracas, 26 January 1966.

ANNEX 36

Ministry of Foreign Affairs of Venezuela, Office of Information, Press and Publications, Bulletin N°350-C, dated 8 February 1966

English Translation

Source: Ministry of People's Power for Foreign Affairs, Borders Archive, Bulletin No. 350-C, Caracas

MINISTRY OF FOREIGN AFFAIRS

Office of Information, Press and Publications

BULLETIN N° 350-C

The Honourable Sir Anthony Lincoln, Ambassador of the United Kingdom to Venezuela, visited Foreign Affairs Minister Dr Ignacio Iribarren Borges this afternoon at 4 pm.

On behalf of the Government of Great Britain, the Ambassador reported that the statements of Lord Walston, Under Secretary of State for Foreign Affairs, had been mistranscribed. He also assured the Venezuelan Government on behalf of his Government that neither Lord Walston nor any other Representative of Her Majesty's Government has stated that the Geneva Conference "will not discuss the Venezuelan claim" over the Guayana Esequiba.

The British Government also ratified the Agenda for the Geneva Meeting in exactly the same terms as agreed in the Joint Communiqué of 10 December 1965.

For purposes of duly informing the public, the Joint Communiqué signed in London on 10 December 1965, which contains the full text of the agreed Agenda, is transcribed below:

"1. As agreed in the Joint Communiqué of 7 November 1963, talks have been held in London on 9 and 10 December between the Foreign Minister of Venezuela, on the one hand, and the Secretary of State for Foreign Affairs of the United Kingdom and the Prime Minister of British Guiana, on the other hand, on the basis of the following Agenda:

.....

Agenda for the continuation at ministerial level of governmental talks concerning the dispute between Venezuela and the United Kingdom on the border with British Guiana, in accordance with the Joint Communiqué of 7 November 1963.

1.- Exchange of views on the Experts' Reports regarding the review of documents and discussion of the implications arising therefrom. Need for dispute settlement.

2.- Seek satisfactory solutions for the practical settlement of the dispute that has arisen as a result of the Venezuelan contention that the 1899 Award is null and void.

3.- Concrete plans for collaboration in the development of British Guiana.

4.- Determination of deadlines for the fulfilment of what is agreed with respect to items 1, 2 and 3 above.

5.- Joint communiqué on the present talks.

2.- In addition to considering the Experts' Reports on the documentary material relating to the 1899 Arbitral Award, the Ministers discussed ways and means of ending the dispute which threatens to break down the traditionally cordial relations between Venezuela on the one hand, and the United Kingdom and British Guiana on the other.

3.- Ideas and proposals for a practical settlement of the dispute were exchanged. It was agreed that some of them should be submitted for further consideration and that Ministers should continue the present discussions during the week beginning 13 February 1966 in Geneva in order to examine the said proposals, as well as any others which might be raised in accordance with the above-mentioned Agenda. As neither

party was able to accept the conclusions of the experts appointed by the other party, item one will not be considered.

.....

- 3 -

It was also agreed that officials from the governments concerned will start preparatory talks shortly.

4.- The text of this Communiqué will be brought to the attention of the Secretary-General of the United Nations".

Caracas, 8 February 1966

ANNEX 37

Report from Luis Herrera to the Minister of Foreign Affairs, concerning the answer to Mr. Ralph Ramkarram about the role of the Good Officer, dated 11 July 2003

English Translation

Source: Ministry of People's Power for Foreign Affairs, Archives, Libraries and Dissemination, Yellow House, file number: 3, piece: 3.2, Geographic Descriptor: Special Unit of Guyana, Thematic Descriptor: Good Offices Process, years: 2000-2007

Bolivarian Government of Venezuela

People's Power Ministry of **Foreign Affairs**

SECTION: Venezuela-Guyana Bilateral Relations

FILE NUMBER: 3

ITEM: 3-2

GEOGRAPHICAL DESCRIPTOR:

Special Unit for Guyana

TOPIC DESCRIPTOR: Good Offices

YEAR(S): 2000 - 2007

REPORT

To: The Honourable Minister

From: Luis Herrera Marcano

Subject: Reply to Mr Ralph Ramkarram on the role of Good Officer

As you are fully aware, Ambassador Oliver Jackman, the Good Officer appointed by the Secretary-General of the United Nations in the Venezuela-Guyana boundary dispute, requested the Facilitator for Guyana, Mr Ralph Ramkarram, and the undersigned to submit a paper with our views on how good offices should be conducted.

Mr Ramkarram submitted a draft entitled *The Role of Good Officer* (Annex A). At yesterday's meeting between the Directors General for International Policy and for Sovereignty and Borders, accompanied by officials from their respective Directorates, as well as Special Adviser Admiral Elías Daniels and the undersigned, the document was discussed and found to be acceptable, with two minor changes.

Today I sent by e-mail to Mr Ramkarram, as agreed at said meeting, the communication the text of which is attached (Annex B).

Caracas, 11 July 2003.

Luis Herrera Marcano

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ANEXO A

ROLE OF GOOD OFFICER

1. The Good Offices of the Secretary General of the United Nations is

offered as a mechanism to assist in the resolving of issues between countries or within a country in a large variety of circumstances.

2. In relation to the Venezuela Guyana Border Controversy, the Good Offices of the Secretary General was requested by the parties under the Geneva Agreement to which Venezuela and Guyana (then British Guiana) are parties. For this reason the Good Officer Process is driven by the parties themselves while at the same time they recognise its mandate in assisting the parties to resolve problems, differences, disputes and controversies.

3. Both parties have expressed their continuing support for and confidence in the Good Officer Process and continue to believe that it is playing an important role in providing a focus for and facilitating discussions.

4. The Good Officer facilitates meetings of the parties at such venues and with such regularity as they may determine and as are convenient to the Good Officer. The agenda for such meetings is set by the parties. However, the Good

Officer may offer guidance, suggestions and recommendations in relation to these matters.

ANNEX 38

Judge Brewer's Opinion in the New York Times, dated 5 October 1899

Source: Judge Brewer's Opinion, Venezuela's Arbitrator Tells How the Veredict Was Reached, The New York Times, 05 October 1895
https://www.nytimes.com/1899/10/05/archives/judge-brewers-opinion-venezuelas-arbitrator-tells-how-the-verdict.html

THE NEW YORK TIMES, THURSDAY, OCTOBER 5, 1899. 7

JUDGE BREWER'S OPINION

Venezuela's Arbitrator Tells How the Verdict Was Reached.

FINAL AWARD A COMPROMISE

There Were Differences on Every Point, but No Real Casting of Votes—Each Conceded Something.

PARIS, Oct. 4.—From a conversation had this evening with Justice Brewer of the United States Supreme Court regarding the award of the Anglo-Venezuelan Arbitration Tribunal, it appears that the deliberations of the court did not proceed as smoothly and with the spontaneous unanimity which a perusal of the award would lead one to believe.

Justice Brewer, in reply to a question, said:

"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 to draw a line running between what each thought right."

Being asked whether political considerations influenced the award, the Justice said he could not admit that, as such an admission would reflect on the Judges, but there was no doubt that the present insurrection in Venezuela and the consequent feeling of instability weighed to a certain extent in the balance.

In reply to an inquiry as to what questions separated the Judges, Justice Brewer replied:

"Nearly every point. In the first place, European lawyers do not look upon the question of prior rights resulting from rights of discovery in the same way we do. Then, the question of the nature of control and the extent of influence and relationship with the native races, and many such matters are not viewed in the same manner on either side of the Atlantic. In fact, the whole situation is not so keenly appreciated by Europeans as it is by Americans."

Replying to a query regarding the deliberations within the court, Mr. Brewer said that there was, properly speaking, no casting of votes. Each Judge conceded something in turn.

With regard to the proceedings in open court, he said the hearing of arguments might have been considerably curtailed had the case been heard exclusively by either an English or an American court, but the Judges thought it prudent to allow counsel full liberty in order to make matters clearer to the President, who, after all, was not a lawyer.

Asked whether, according to his own opinion, Venezuela was entitled to more than she actually received, Justice Brewer, after some hesitation, shrugged his shoulders, and said he would rather say nothing on that subject, and concluded by remarking that, whatever the two parties might think of the award, Venezuela received Barima Point, which gives her full control of the interior of her country, and England is confirmed in the possession of territory, in the development of which she has spent considerable money and energy, but "the principal blessing is that the two nations can at last develop peacefully, side by side, large tracts of territory, which, owing to previous antagonisms, have remained unproductive."

WHAT IS DOING IN SOCIETY.

[illegible]

Stevens—Glover.

Special to The New York Times.

BERRYVILLE, Va., Oct. 4.—[illegible]

FOUR WED IN THE SAME HOME.

Frank McCord Marries Mark Twain's Niece—Webb—McCord.

Special to The New York Times.

GREENWICH, Conn., Oct. 4.—[illegible]

THE NEWS OF NEWPORT.

Special to The New York Times.

NEWPORT, Oct. 4.—[illegible]

MORAL IN SHORT SKIRTS.

[illegible]

ANNEX 39

Letter from José Andrade to Pedro Ezequiel Rojas, dated 28 December 1896

English Translation

Source: Historical Archivo of the Ministry of the People' Power for Foreign Affairs (AHMPPRE-VEN), Old Archive, Guayana Boundary Dispute, vol. 179, 1986-1987.

UNITED STATES OF VENEZUELA

MINISTRY OF FOREIGN AFFAIRS

GREAT BRITAIN

—

BOUNDARIES OF GUAYANA

—

BASES PROPOSED BY THE UNITED STATES

—

1896 to 1897

—

FOLIOS 303

Vol. 179

AHMPPRE

Confidential

LEGATION

OF THE UNITED STATES OF VENEZUELA

Washington, D.C., December 28, 1896

Sir Minister:

The day before yesterday, at five o'clock in the afternoon, I disembarked at the Brooklyn pier which serves as the landing point for the steamers of the "Red D Line."

I departed from New York to this city on the 3:20 p.m. train, the fastest available, arriving here at 8:25. Mr. Storrow had taken the 11:00 a.m. train ahead of me, by agreement between us, so that he might have time to speak with Mr. Olney regarding the matter I had in hand.

To

Señor Don P. Ezequiel Rojas,

Minister of Foreign Affairs.

Caracas.

Number 393.

At home I found the note which I herewith insert:

'Personal: Dear Mr. Andrade – I have seen Mr. Storrow, and as your business needs despatch, can you not call here – at my house – at nine (9) o'clock tomorrow morning? He shall get rid of the reporters – among other advantages.

Very truly – Richard Olney. – 27 December.'

At nine this morning I attended Mr. Olney's appointment. He received me with cordial interest, and, excusing himself for having invited me to leave my residence so early, told me that, by fortunate chance, I had arrived in Washington at perhaps the most opportune moment—one which ought to be seized to obtain what Venezuela desired—and that he believed no time should be lost in beginning to work toward that end.

He then asked whether I bore full powers to sign the arbitration treaty with England on the basis agreed upon between Her and the United States. I replied in the affirmative, but added that my Government was intent upon securing from Great Britain acceptance of three additions, which I proceeded to specify in the order in which they appear in my instructions—giving the first part of the first addition the form recommended therein "at the eleventh hour"; namely, that Venezuela (the petitioner) be empowered to name one of the two arbitrators eligible by the Supreme Court of the United States.

As you will see, I added, the portion of the first addition concerning the manner of filling vacancies that may arise in the arbitral tribunal is necessary and does not alter the bases in the least. The same may be said of the third additional clause.

Even the second clause, which merely aims to explain or define the term "prescription," though of great importance to Venezuela, due to the fear that said term, left without any qualifying language, might be interpreted in the sense that mere passage of time suffices to produce the acquisition of rights. In sum, only the part of the first addition relative to the appointment of arbitrators may be regarded as a modification of the Protocol. The Government proposes it to silence public clamor and to facilitate the treaty's ratification by Congress, with the intention of naming one of the two individuals whom the Supreme Court of the United States may have considered as suitable for appointment as arbitrators.

Mr. Olney found all the additions commendable, save the one regarding prescription, about which he expressed with some discouragement that he deemed it superfluous, believing such an interpretation as that which concerned Venezuela to be neither possible nor likely, and that, without need, it would give occasion for Great Britain to delay us with a discussion lasting months or perhaps years, from which no benefit would ultimately result. I hinted that if such were his view, I would not insist upon submitting the aforementioned clarification to the British

Ambassador—and with a nod unmistakable in its meaning, he approved of such disposition.

Then, speaking of Sir Julian Pauncefote, he told me that he was expecting him at noon in order to discuss the final details of the general arbitration treaty between the United States and Great Britain, which is to be signed in these very days. He said he would inform him of Venezuela's endeavor, recommending it with interest, and would make known my desire to have a conversation with him today on the subject; that he was confident Sir Julian would agree to it, and would indicate an hour at which he could receive me.

Undoubtedly, the circumstance that the aforementioned treaty—long the desideratum of Her Britannic Majesty's Government—was on the verge of conclusion, and the opportunity thus afforded to incline that Government to accept any modifications to the bases proposed for resolving the Venezuelan question; no doubt to this did Mr. Olney refer when, in his telegram to Mr. Storrow, he warned that any delay in acting might prove fatal to Venezuela, and when this morning, at the very beginning of the interview of which I now render account, he told me I had arrived at the most opportune moment, one which ought to be seized.

I remain your most attentive and obedient servant,

José Andrade

ANNEX 40

Letter from Lord Playfair to Thomas Bayard, dated 19 January 1896

Source: Thomas F. Bayard Papers, 1780-1899, Manuscript Division, Library of Congress, Washington, D.C., MSS12088, General Correspondence (1780-1899) Box 163.

Copy of a letter read by
Lord Playfair to Mr Bayard

Jan 19th 1896

My dear Playfair

Surely the Americans would be wrong not to accept a conference to adopt the Monroe doctrine. Such an international confirmation would tend to clear the air, and remove from the minds of all the American people the idea — so extraordinary to us — that either we or any other European nation covets one additional inch of soil on the American continent.

Besides this advantage the plan would in our eyes appear to be more regular and more in accordance with the precedents of diplomacy.

However, if Mr Bayard does not like it, I am not inclined to press for it strongly.

I think there would be no objection to introducing an article to some convention establishing a general arbitration between G. B and U. S. for all cases of —

1. Disputed boundaries in unsettled territories.

2. Complaints by nationals of one side alleging injury by officials on the other. (This is

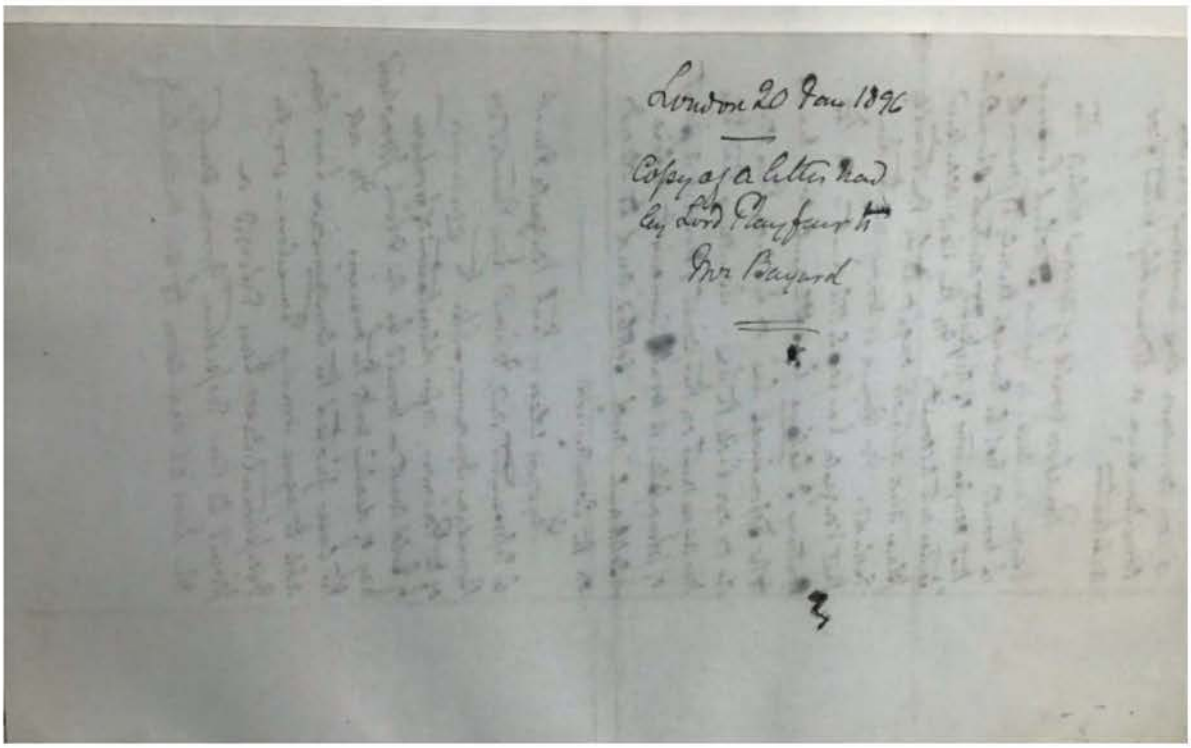
33255

a very common case involving much correspondence & admirably fitted for arbitration.)

The above would of course include the Venezuelan cases, in regard to which however it would not be enough merely to provide that occupations of disputed districts should be "taken into account". In my view occupied places and districts ought to be mutually excluded. Mr Bayard is wrong in thinking that Venezuela has few settlements — on the contrary I believe her settlements come nearer to Mr Schomburgk line on her side than ours do on our side the line. Assuming that there was agreement on this point, which is a point of principle, it would remain to define "Settlement" and "Settled" and to decide on the Commission.

My own idea is that Venezuela must be represented and should have thought of Boundary Commission like the Commission of the Parana, or for delimitation of frontiers by Gold Coast — would be the most practical way of dealing with the business. In all the cases quoted the Commissioners have been able to agree among themselves — or in exceptional cases have referred a point to their respective governments, who have at once come to an understanding.

33256


London 20 Jan 1896

Copy of a letter read
by Lord Playfair to
Mr Bayard

ANNEX 41

Email from the Freedom of Information Requests' Office
The National Archives UK

Source: Email from FOIRequests@nationalarchives.gov.uk
to mctoro@venezlon.co.uk dated 31 January 2023

From: **FOI Requests**<FOIRequests@nationalarchives.gov.uk>
Date: Tue, 31 Jan 2023 at 11:50
Subject: Freedom of Information Request: Reference CAS-96397-F0Z3T1 and CAS-96399-C3T2L1 CRM:0254575
To: Maia Toro <mctoro@venezlon.co.uk>

Dear Ms Toro,

Thank you for your enquiries of 18/10/2022 07:00 regarding a review of:

FO 420/401 Venezuela: British Guiana (Guyana) boundary; memoranda by Mr Reddan and Mr Harris; 1889-1891. With maps

FO 420/402 Venezuela: British Guiana (Guyana) boundary arbitration; various papers memoranda, memoire etc; 1895-1897. With maps and tables

We wrote to you on 1 December to inform you that the information in these records are covered by a qualified exemption under the Freedom of Information Act 2000. This requires us to carry out a public interest test to determine whether the information can be released.

The test is still being considered and we hope to have reached a decision by 01/03/2023 19:00.

We hoped it would have been completed by this time but unfortunately a decision has not yet been reached. Under the FOI Act we are allowed a reasonable period of time to conduct the test, and where a case raises complex public interest considerations we are permitted to extend the time allowed to reach a decision.

To remind you, the exemption being considered is section **section 27 (1)(a)(c)(d)** of the Freedom of Information Act 2000.

Section 27 (1) of the Act exempts information that, if it was released, could put at risk; **(a)** relations between the UK and any other state, **(c)** the interests of the UK abroad, or **(d)** the UK's ability to promote or protect its interests.

When this exemption applies we are required to consider whether it is in the public interest to release the information. However, if it is decided that the public interest would not be served by releasing the information we will explain the reasons for this in our final response.

I would like to thank you for your continued patience in this matter. We will let you know the outcome of the public interest test as explained above. In the meantime if you have any queries regarding this email please do not hesitate to contact us. Remember to quote the reference number above in any future communications.

Yours sincerely,

FOI Assessor
Freedom of Information Centre
Public Access and Government Services Directorate
The National Archives
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