GUYANA-VENEZUELA BORDER DISPUTE: SEEKING A PEACEFUL SOLUTION

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GUYANA-VENEZUELA BORDER DISPUTE: SEEKING A PEACEFUL SOLUTION

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ABSTRACT

The purpose of this thesis is to examine and evaluate the effectiveness of those dispute settlement mechanisms that are capable of resolving the Guyana-Venezuela border dispute. This thesis will analyze those legal principles and/or techniques of the International Court of Justice, mediation and the Permanent Court of Arbitration, which are indispensable for dispute resolution. I argue that a resolution is significant for the stability of the international community.

Guyana and Venezuela possess economic and political interests in the disputed Essequibo region. Venezuela’s predilection for bilateral negotiations contradicts Guyana’s request for a judicial solution. These extreme positions are not novel but were shaped by the history of the dispute. A historical analysis of the Guyana-Venezuela border dispute will highlight those reasons for their extreme positions and reinforce the degree of complexity which is often associated with dispute resolution.

The border dispute was ‘settled’ by a tribunal in 1899 but it persists. Thus, the thesis will test whether the dispute is based on colonial inheritance or is solely based on the economic value associated with the Essequibo region. This analysis will help to evaluate the applicability of the aforementioned dispute settlement mechanisms. Additionally, it will predict those legal principles and/or techniques which are pertinent and necessary for the resolution of the dispute. Ultimately, the thesis will conclude by critically evaluating and predicting the roles and effectiveness of the International Court of Justice, mediation and the Permanent Court of Arbitration towards resolving this dispute. ‘Resolution’ will not be limited to a decision being made. Instead, ‘resolution’ will include the level of compliance and current relationship status of states that had their dispute settled by the International Court of Justice, mediation or the Permanent Court of Arbitration. One of the three dispute settlement mechanisms will then be selected as the best option for resolving the Guyana-Venezuela border dispute. Selection will be based on the effectiveness and relativity of the dispute settlement mechanism, in accordance with, the dynamics of the dispute.
Chapter I

A. INTRODUCTION

In international law, territory constitutes the spatial reference for the exercise of sovereign powers, and conveys the notion of *consistance* (consistency).¹ This legal principle, known as ‘territorial sovereignty’ was described by the International Court of Justice in the *Corfu Channel case* as an essential foundation of international relations.² Therefore, territorial sovereignty entails, subject to applicable customary or conventional rules of international law, that the state alone is entitled to exercise jurisdiction within its territory.³ Moreover, it safeguards a state against any form of interference by other states. However, in modern times, this right is often challenged by the responsibility to protect norm (R2P) and the principle of humanitarian intervention. Thus, the perception that territorial disputes were a thing of the past is debatable.

The demarcations of territorial borders during the colonial period did facilitate those efforts by independent states to consolidate their powers. However, the arbitrary and inconsistent demarcations of these borders have contributed immensely to the presence of territorial disputes among states. Thus, border and territorial disputes is classified as a sophisticated and prominent challenge to the doctrine of territorial sovereignty. This is due to the international community’s acceptance of those various demarcations of territorial boundaries as ‘legitimate’ despite their colonial origins.

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² *Corfu Channel (U.K. v. Alb.),* 1949 I.C.J. 6, 35 (Apr. 9) [hereinafter Corfu Channel].
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A territorial dispute occurs when two or more states formally claim legitimate jurisdiction over the same piece of territory.\(^4\) Existing literature examines sources of territorial disputes through the lens of power politics\(^5\) or the realist theory. Realism classifies territorial disputes as an expression of power, since territory is seen as a fundamental power base.\(^6\) Realists identify states as rational actors that seek power. Power is the core concept that influences a state’s behavior, interactions and capabilities relative to other states. Here, the acquisition of territory is instrumental for a state’s security apparatus and pursuit of economic growth. These benefits are achieved from the lucrative nature of natural resources which have resulted in a number of territorial disputes over the years.\(^7\)

On the other hand, normative theory has suggested that subjectively-formed norms, conceptions of justice, and beliefs can motivate territorial claims and trigger conflict over disputed territories.\(^8\) Hence, territorial disputes do not originate from political or economic interests entirely, but also serves as source of sovereignty and identity both for the states and their citizens.\(^9\) These theoretical explanations have compelled organizations such as the United Nations to intervene in resolving territorial disputes to preserve global peace. The United Nations’ system contains various dispute

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resolution mechanisms that utilize fact finding missions, mediation, peacekeeping and other initiatives to resolve disputes equitably and in some cases, juridical solutions.

The Guyana-Venezuela border dispute has attracted international attention once again. This is due to the significant oil discovery conducted by ExxonMobil in May 2015 at the Stabroek Block, which is approximately 120 miles offshore Guyana. In response to this discovery, Venezuelan President Nicolás Maduro had issued an official decree, no. 1787 which initially renewed Venezuela’s *de facto* claim to the Essequibo region of Guyana (see Figure 1). The decree was so disproportionate that Colombia, which has maritime disputes with Venezuela, issued a formal protest. Consequently, decree no. 1787 was withdrawn and decree no. 1859 was issued instead. The Venezuelan government had issued decree no. 1859 to support and justify the actions of the Bolivarian National Armed Force (FANB) in defending the newly created Integrated Defense Maritime Zones and Island (Zodimain). This decree’s sole purpose and exclusive range of concerns were protection against threats, risks and other vulnerabilities. The decree did not indicate any ruling on issues concerning territorial or alien by nature.

Despite the border dispute, both nations have co-operated on trade, health and other sectors. For example, the Guyanese government had signed a rice compensation agreement with Venezuela in 2009 wherein Guyanese rice exports were accepted in partial payment for imports of Venezuelan oil. This agreement ended in November

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2015 and has not been renewed. Nevertheless, it qualifies as a territorial dispute because Venezuela has historically refused to recognize Guyana’s territorial sovereignty over the Essequibo region. Venezuela continues to claim the Essequibo region as a part of its territory. The origins of this border dispute can be traced at the end of the 18th century during European colonialism of South America.

Great Britain (for British Guiana) signed a Treaty of Arbitration with the Republic of Venezuela signed in 1897. Article 1 of the treaty had provided for the immediate appointment of an arbitral tribunal to determine the boundary line between Guyana (British Guiana, at the time) and Venezuela. By virtue of arbitration proceedings, Guyana was awarded the Essequibo region in 1899. Since then, the international community has recognized Essequibo as a part of Guyana’s territorial sovereignty. However, Venezuela has repeatedly claimed that the arbitral award of 1899 is null and void. In 2015, Venezuela had intensified its claim over the Essequibo region after ExxonMobil’s
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significant oil discovery. After UN-led efforts to resolve the dispute were unproductive, Secretary-General, António Guterres decided to refer the border dispute to the International Court of Justice (ICJ).

The ICJ’s jurisdiction is based on the consent of the parties. Here, states possess the option to either accept or decline the court's jurisdiction under those terms and conditions they determine themselves. A state that is involved in a border dispute which has filed declarations that recognize the compulsory jurisdiction of the ICJ has the right to institute proceedings against a state that also accepted the ICJ’s compulsory jurisdiction. This provision is in accordance with Article 36 (2) of the ICJ Statute, (also known as the optional clause). Thus, if one state has not declared its recognition of the ICJ’s compulsory jurisdiction, it can decline a request to take a border dispute to the ICJ.

The UN Secretary-General’s decision to refer the Guyana-Venezuela border dispute to the ICJ was in accordance with the Geneva Agreement. This agreement was signed by Great Britain and Venezuela in 1966. Under Article IV (2), the Secretary-General possesses the authority to choose a means of peaceful settlement among those contemplated in Article 33 of the Charter of the United Nations. Article IV (1) of the Geneva Agreement had empowered the UN Secretary-General to do so once Guyana and

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**Article 33 of the Charter** states that any dispute that is likely to endanger the maintenance of international peace and security should first be addressed through negotiation, mediation or other peaceful means, and states that the Council can call on the parties to use such means to settle their dispute.
Venezuela had failed to reach an agreement to resolve the dispute.\textsuperscript{16} Despite this provision, Venezuela cannot be forced ‘in theory’ to be present at ICJ proceedings.

Venezuela’s objection to the Secretary-General’s decision to refer the border dispute to ICJ had increased the possibility of its non-participation with the ICJ. Thus, there is a real possibility that the border dispute may never be heard by the ICJ or will take an extended period of time to be heard. Therefore, other dispute settlement mechanisms should be considered as alternatives. The best alternatives I have identified within this thesis are: (1) mediation by a neutral state, Norway in this regard, or (2) settling the dispute at the Permanent Court of Arbitration.

B. RESEARCH QUESTION & THEORETICAL ARGUMENT

The research question is: Given the unwillingness of Guyana and Venezuela to resolve their border dispute through bilateral negotiations, how successful and effective can territorial dispute mechanisms such as the International Court of Justice, mediation by a neutral state or through the good offices of the UN Secretary-General and the Permanent Court of Arbitration be towards resolving border disputes?

In this thesis, I examine how successful either the ICJ, mediation by a neutral state or the Permanent Court of Arbitration can be towards resolving the Guyana-Venezuela border dispute. The Secretary-General’s decision to refer the Guyana-Venezuela’s border dispute to the ICJ for juridical settlement acknowledged the seriousness of the issue but was controversial. Neither nation has filed any declaration that recognizes the ICJ’s compulsory jurisdiction. Although Guyana had welcomed the

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decision, Venezuela can refuse to have the border dispute adjudicated by the ICJ. Thus, its declination can dismiss the ICJ’s role in resolving this dispute. Venezuela did not provide any official statement on the Secretary-General’s decision. Instead, Venezuela emphasized its predilection for the resumption of bilateral negotiations. Thus, I consider the possibility of Venezuela declining the ICJ’s jurisdiction as high and consequently will discuss other alternatives available to Guyana and Venezuela.

The more hopeful alternative dispute settlement mechanisms identified here are mediation by a neutral state as one option and the Permanent Court of Arbitration as another. I consider UN-led efforts as an alternative to be weak at this point. The United Nations has attempted to play an active role in resolving the dispute, as recent as 2017, but without success. The breakdown of negotiations between the two states was the main reason for their unproductivity. This thesis will examine why bilateral negotiations and UN-led mediation efforts did not make any significant progress.

Adding to this intransigence to settle this dispute is exemplified by Guyana and Venezuela’s opposing stances on the arbitral award of 1899. While Venezuela argues it is invalid and void, Guyana, on the contrary, argues it is legal and binding on the two nations. Consequently, their unwillingness to compromise on proposals such as, Guyana ceding some of its Essequibo territory to Venezuela or re-demarcating the region’s borders, had contributed to the Secretary-General’s decision to refer the case to the ICJ. Moreover, the recent oil discovery by ExxonMobil in the maritime area of the Essequibo region was identified as a catalyst for Venezuela’s claims. Venezuela’s claims to the disputed Essequibo region not only challenge Guyana’s territorial sovereignty but can potentially impede Guyana’s economic potential to attract foreign direct investment.
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Mediation can be considered an alternative to resolve the border dispute, if led by a neutral state. Norway will be selected as a possible neutral state. Norway’s determination to promote peace and reconciliation has varied in accordance with the conflict at question and other logistics. Norway has sought to demonstrate its relevance in the world by practicing what one commentator has called ‘niche diplomacy.’17 Thus, Norway is said to possess a voice and a presence on the international stage out of proportion to its modest position and assets achieved through a ruthless prioritization of its target audiences and its concentration on a single message: Norway as a force for peace.18 Norway’s large foreign-aid budget (second among industrialized countries) and its conflict resolution efforts in the Middle East, Sri Lanka and Colombia, the rapid reaction force (the Norwegian Resource Bank for Democracy and Human Rights) to assist in election monitoring and conflict prevention in about 20 countries annually, and the Nobel Peace Prize raise its profile as a peacemaker.19 Norway’s role and the possibility of its involvement in resolving the Guyana-Venezuela border dispute will be critically analyzed.

Unlike the ICJ, the Permanent Court of Arbitration (PCA) does not require the presence or consent of the states involved in the dispute per se. This feature is not intrinsic to the PCA itself. It is based on the provisions of multilateral or bilateral treaties signed between states which address arbitration proceedings. The PCA is not a “court” per se. It is an administrative organization with the object of having permanent and

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readily available means to serve as the registry for purposes of international arbitration and other related procedures, including commissions of enquiry and conciliation. The PCA’s jurisdiction is often outlined in arbitration agreements or treaties. The tribunal’s composition is outlined in the Conventions on Pacific Settlement of International Disputes. PCA decisions are binding and there is no mechanism for appeal. If the PCA arbitrates on the border dispute between Guyana and Venezuela, its jurisdiction would derive from the Geneva Agreement. However, Guyana and Venezuela can draft and sign an arbitration agreement that defines the scope of the PCA’s jurisdiction.

Nonetheless, I will investigate these questions:

1. Is the territorial dispute more to do with the significant oil discovery or colonial inheritance?

2. Why did the mediation efforts by the United Nations fail to resolve the Guyana-Venezuela border dispute?

3. How can the ICJ, Permanent Court of Arbitration or mediation by Norway: (i) safeguard Guyana’s territorial sovereignty and (ii) benefit its future economic development plans given ExxonMobil’s continuous discovery of huge oil reserves in the disputed region?

4. Of all the territorial dispute mechanisms available, which is most effective towards resolving the Guyana-Venezuela border dispute?

5. How would a legal decision be enforced?

6. If not enforceable, what advantage does a legal decision provide?

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C. METHODOLOGY

First, a historical analysis of the Guyana-Venezuela border dispute that explains those events, in chronological order, that led to a border dispute between Guyana and Venezuela will be presented. Political science and historical literature that evaluates the dispute’s origins will be used. The UN’s involvement in resolving the dispute will be provided. This will effectively support the analysis that explains the current unviability of UN led mediation and bilateral negotiations. Second, literature that explains the roles of the ICJ, mediation efforts by Norway and the Permanent Court of Arbitration in resolving border disputes will be examined. The advantages and disadvantages of each aforementioned dispute settlement approach will help to determine their effectiveness in resolving disputes peacefully and developing international law.

In analyzing the ICJ as a dispute settlement mechanism, I will examine the legal principles utilized by the ICJ in various territorial disputes that decided by the court itself. This will help the research to predict which legal principles are more applicable towards resolving the Guyana-Venezuela border dispute. Moreover, I will examine whether there is a hierarchy among the legal principles utilized by the ICJ in border disputes. The following ICJ cases are selected for judicial analysis:

- *Arbitral Award of 31 July 1989 (Guinea-Bissau v. Senegal)*

Mediation will be analyzed based on the techniques, Norway has implemented towards the reconciliation and resolution of border disputes. I argue that mediation led by
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Norway, can assist Guyana and Venezuela to work towards a resolution to the border dispute, despite the absence of legal underpinnings.

Furthermore, the decisions of the Permanent Court of Arbitration on territorial disputes help to determine how international law and/or principles of natural justice/equity are applied when interpreting the provisions of treaties, relative to the dispute itself. The following dispute is selected for analysis:

- *The Government of Sudan / The Sudan People's Liberation Movement/Army (Abyei Arbitration)* [ICGJ 422 (PCA 2009)]

Last, the thesis will investigate the current relationships between states that were involved in border dispute which was resolved by the ICJ, PCA or mediation. This analysis will measure the successes and effectiveness of each dispute settlement mechanism. The research will conclude by analyzing the effects a resolution will have on: (1) Guyana and Venezuela’s diplomatic relations and (2) the territorial sovereignty and future economic development prospects Guyana anticipates after ExxonMobil’s oil discovery.
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Chapter II: Literature Review

Borders and boundaries evoke emotion, protect, contain, shape relations, facilitate trade, promote or deter conflicts, and define jurisdictions.\(^{22}\) The resolution of border disputes is necessary because it safeguards the territorial sovereignty of states. It also provides stability within the international community. The absence of a supranational authority compels states to co-operate in establishing organizations and treaties that include dispute settlement mechanisms. The peaceful settlement of disputes is entrenched in numerous conventions and is a customary law principle.\(^{23}\)

Realists such as Robert Gilpin in the book, *War and Change in World Politics* argue that within an anarchic international system, a state’s principal objective embodies the conquest of territory in order to advance economic, security, and other interests.\(^{24}\) Thus Goertz and Diehl in their book, *Territorial Changes and International Conflict* question whether territorial disputes are due to the issue of claiming territory itself or from, state behavior that includes some projection of power over a smaller neighboring state. Goertz et.al in *the Puzzle of Peace: The Evolution of Peace in the International System* explains that scholars like Robert Ardrey (1966) argue that humans contain ‘territory imperatives’ which lead them to fight over land in order to control resources that further their survival and development.\(^{25}\) John Vasquez (1983) believes that control over territory is significant because it possesses intangible and tangible benefits for a


\(^{23}\) ICJ, Case Concerning Military and Paramilitary Activities In and against Nicaragua, Merits (Nicaragua v USA), ICJ Reports (1986) 14, para. 290.


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sovereign nation. Those tangible benefits refer to those elements of territory that enhance security, survival and wealth while intangible benefits are associated with culture, pride and justice. Of all interstate disputes, Vasquez had suggested that those over territory tend to be the most salient for states and most likely to lead to armed conflict. This observation can be associated with the political instability that the Middle East region continues to grapple with today. The Guyana-Venezuela border dispute has not yet yielded any significant indicators of an incoming armed conflict. Therefore, one should not immediately link territorial claims to armed conflicts between states.

There is an indication that territorial disputes are a consequence of a state’s survival behavior. However, globalization and its insistence on ‘co-operation’ have shaped state behavior and attitudes. Nye and Keohane’s *Power and Interdependence: World Politics in Transition* argue that states are interdependent, i.e. mutual dependence resulting from the types of international transactions catalogued by transnationalists – flows of money, goods and services etc. Complex interdependence refers to a situation among a number of countries in which multiple channels of contact connect societies. Complex interdependence has increased exponentially due to globalization, and has shifted attitudes of territorial conquest towards sustaining diplomatic relations in order to protect trade. Thus, Goertz and Diehl’s description of a territorial dispute as zero-sum

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(usually only one entity can control a piece of land) helps to reinforce the economic importance of resolving territorial disputes.

A significant portion of alliances have contained territorial settlement agreements which ultimately removed one of the most contentious issues between states, (i.e. territorial claims) and ushered in an era of peaceful relations. Since 1953, states have successfully resolved ninety-seven territorial disputes through bilateral negotiations, third-party mediation, arbitration, or adjudication at the International Court of Justice. Therefore, it would be an argumentum ad populum to automatically claim that globalization was responsible for this inclination to have dispute settlement mechanisms available in agreements among states.

Due to increasing interdependence of the global economy, there is a strong perception that borders should not matter as much. However, territorial disputes have persevered despite this interdependence. Thus, the idea that territory still matters should not be overlooked. In *Enduring Territorial Disputes: Strategies of Bargaining, Coercive Diplomacy, and Settlement*, Krista Wiegand calls this dilemma the ‘endurance of territorial disputes.’ Wiegand states that this dilemma explains the current status of states’ behavior and their willingness to incur long-term military costs to maintain or prepare for troop mobilization, armament preparations, and ship or submarine deployments in waters near the disputed territory. Consequently, financial resources are diverted from other domestic needs such as social welfare, education, infrastructures, economic

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33 Krista Wiegand, p. 2.
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development, or other important issues.\textsuperscript{34} Thus, Wiegand presents to her readers an empirical puzzle, asserting that territorial disputes will remain a complex international threat to global security and even the economic development of states.

Wiegand argues that ambiguous historic treaties signed by colonizers but rejected by most postcolonial sovereign states remain a major source of territorial disputes. However, Goertz and Diehl have rationally deduced that some states prefer to stand firm in territorial disputes. The effects of such action can either maintain or increase a state’s reputation and territorial expansion may be considered as an outgrowth of domestic and economic development.\textsuperscript{35} Wiegand simplifies this analysis by stating that some states intentionally create a territorial dispute to utilize it as ‘bargaining leverage’ against other disputed issues.\textsuperscript{36} Wiegand highlights Saudi Arabia’s deliberate usage of its border dispute to compel North Yemen to reconsider unification with South Yemen and Yemeni relations with the Soviets as an example of bargaining leverage.\textsuperscript{37} This bargaining leverage theory illustrates that not all disputes occur due to the saliency of the territory but due to geopolitical and economic interests of states. Wiegand concludes that the level of salience a disputed territory possesses greatly influences a state’s reluctance to agree to territorial concessions. Thus, analysts are forced to consider what are a state’s intention and the feasibility of mediation as a capable dispute mechanism.

Therefore, the resources or economic value attached to the disputed territory can be the major source of the dispute, and not necessarily an ambiguous colonial treaty. Wiegand argues that issue saliency explains reasons for the presence of a border dispute while the realist approach focuses on the relationships between the states.\(^{38}\) Studies of interstate territorial conflict have recognized natural resources as one of the elements that make many territories ‘salient’ or valuable to the claimant states.\(^{39}\)

Macaulay and Hensel do not address whether claims over territory with a resource component compels states to pursue dispute settlement mechanisms. However, most bilateral and multilateral treaties contain dispute settlement clauses that compel states to seek resolution. There is not much literature that explains the willingness of states to have their territorial disputes settled by judicial mechanisms. I believe that states fear the winner/loser situation that the ICJ or arbitration effectively begets. Nonetheless, Wiegand reckons that the settlement of disputes is beneficial because they often reduce those costs that are incurred during a dispute. Moreover, settlement lessens the need for higher military expenditures and contributes to overall positive bilateral relations between states.

Dispute settlement mechanisms can be classified into two groups: diplomatic-political and adjudication-legal. This distinction is characterized by the binding nature of the dispute settlement processes. Thus, the International Court of Justice and Permanent Court of Arbitration can be categorized as adjudication-legal. These mechanisms apply international law, equity and/or natural justice to facts; conventions define their composition, responsibilities and processes that are culminated by a legally binding


decision. On the other hand, mediation can be classified as diplomatic-political. Its purpose is to reconcile strained relations between states and encourage co-operation. States can then create a peace agreement, binding them to its terms and conditions.

The International Court of Justice’s contribution to resolving territorial disputes within the international community is well documented. In *Politics and the Emergence of an Activist International Court of Justice*, Thomas Bodie argues that the ICJ continues to respond adequately to the political realities of adjudicating disputes while restricting any attempts at judicial activism. He concludes that the court has been cautious not to embroil itself in political issues while simultaneously not shying away from cases with political overtones. This approach has led to suitable decisions on even the most political disputes. Furthermore, Bodie contends that the ICJ’s relevance is exhibited through its jurisprudence which has successfully addressed a wide range of sovereignty-related issues. Bodie’s view offers a fresh perspective on the ICJ’s relevance and contribution to international law. However, Bodie leaves us to ponder whether the pluralistic nature of the international community will compel the ICJ to expand its established jurisprudence to consider political factors when making a decision.

In Sumner’s article, *Territorial Disputes at the International Court of Justice*, the author argues that there is a hierarchical structure in territorial claims which were decided by the ICJ. Sumner states that territorial disputes adjudicated by the ICJ are generally divided into nine categories: treaties, geography, economy, culture, effective control, history, *uti possidetis*, elitism, and ideology. Sumner asserts that there is a tripartite

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hierarchy among treaties, *uti possidetis* and effective control. Effective control has the outcome of giving a broad scope to treaty law and possibly imputing more meaning to the principle of *uti possidetis* than it merits at this stage in the evolution of public international law.\(^{42}\) In justifying his observation, Sumner evaluates various territorial disputes held before the ICJ and had offered three explanations for the presence of this hierarchy. Sumner explains that ICJ decisions are based on international treaties. Sumner claims that this rationale is pursued because it restores predictability and stability to the international system. Hence, Sumner argues that this behavior raises suspicions of the ICJ being bias towards treaties and other legal justifications.

Sumner’s article clearly challenges the relativity of Bodie’s perspective on the ICJ’s strict adherence to its jurisprudence in today’s pluralistic society. In support of Sumner’s analysis, Posner and Figueiredo present a quantitative study that seems to provide some evidence that ICJ judges vote for their home states about 90% of the time. When their home states are not involved, judges vote for states that are similar to their home states—along the dimensions of wealth, culture, and political regime.\(^{43}\) However, Posner and Figueiredo’s data expresses mere suspicions of bias rather than actual certainty in their results. Consequently, there is doubt in the evidence presented in their research. The two conflicting perspectives can introduce a comprehensive study on whether the ICJ should maintain its strict adherence to law or also consider political factors in its decision making process. Will consideration of political factors undermine the ICJ’s judicial heritage and relevance? This question will ultimately confront the ICJ.


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in future cases on territorial disputes. It offers a great platform on how the Guyana-Venezuela border dispute is viewed by both states and whether the ICJ may consider those political factors inherent to the dispute.

Kleiboer describes mediation as a form of conflict management in which a third party assists two or more contending parties to find a solution without resorting to force.\textsuperscript{44} Kleiboer’s article, \textit{Understanding the Success and Failure of International Mediation} presents wide-ranging answers on those factors that explain mediation outcomes and when is it appropriate to label mediation a success. Kleiboer emphasizes that there are no definitive criteria for assessing mediation’s success. However, success can be determined via two criteria: (1) in a situation where both parties formally or informally accept a mediator and a mediative attempt is done within five days and (2) the mediation actually produces an outcome, i.e. a ceasefire, a partial or full settlement.\textsuperscript{45} The main disadvantage of the first criterion is that it completely eliminates mediation in disputes where the relationships between the states are strained. Moreover, the first criterion disregards the mediation outcome which the second criterion emphasizes on.

Nonetheless, Kleiboer lists three factors of disputes that impact mediation outcomes. They are: (1) conflict ripeness, (b) the level of conflict intensity and (c) the nature of the issues(s) of the conflict. These three factors are not mutually exclusive and are reinforced by Wiegand’s hypothetical analysis of mediation and disputes in the article, \textit{Mediation in Territorial, Maritime and River Disputes}. Wiegand tests whether the aforementioned factors encourage the type of mediation strategy to pursue, (i.e.


\textsuperscript{45} Marieke Kleiboer, “Understanding the Success and Failure of International Mediation,” \textit{The Journal of Conflict Resolution,} 1996, p.361
procedural, directive or communications), how and why. Her hypothesis i.e. the higher
the levels of tangible saliency of disputed territory, the less likely states are pursue
mediation as a disputed resolution strategy achieved mixed results.

Wiegand explains that the timing of mediation is critical to the type of strategy
that will be utilized for a territorial dispute. E.g. Wiegand states that it would be logical
for a neutral state to use the directive strategy in a territorial dispute where armed conflict
is ongoing or was recent. Previous research illustrated that if the disputed territory has
tangible salience to the disputants and is divisible, a successful conflict resolution,
through mediation or other methods is likely. Wiegand challenges this previous
research. She argues that mediation’s success is not as effective as bilateral negotiations
because divisible territory that has tangible value encourages compromise and
concessions by the disputants, making mediation less necessary. Weigand’s article on
mediation will be tested when critically analyzing the efficacy of mediation by Norway in
the Guyana-Venezuela border dispute.

Last, Copeland’s article, the Use of Arbitration To Settle Territorial Disputes
focuses on the strengths and weaknesses of arbitration and also critically discusses
international disputes that have been arbitrated. Copeland accepts that the inclusion in
peace treaties of such dispute resolution mechanisms as arbitral clauses may be one way
to peacefully solve territorial disputes. However, Copeland’s notes that states are
reluctant to pursue arbitration for the settlement of disputes because a judicial outcome
creates a zero-sum (winner/loser) situation. Copeland’s critique seems to rely heavily on
issue saliency and the impact it has on states’ behavior towards dispute settlement

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mechanisms. Although Copeland’s assessment is well acknowledged, there is limited literature that evaluates the Permanent Court of Arbitration’s contributions towards peaceful solutions of disputes. Instead, much of the literature focuses on the features of the court itself and its comparative advantages over the ICJ.

Nonetheless, the literatures discussed in the aforementioned paragraphs do provide a comprehensive evaluation of territorial disputes. Theoretical frameworks help to explain those factors that are accountable for the persistence of territorial disputes despite the phenomenon of interdependence among states. The literature provides several perspectives on how the effectiveness of dispute settlement mechanisms in territorial disputes is measured. It presents a compelling case for one to select which mechanism is more appropriate based on the current status and factors attributable to a particular border dispute. Thus, a review of the literature provides the advantages and disadvantages on the three dispute settlement mechanisms relative to the resolution of the Guyana-Venezuela border dispute. It is evident that literature on the success rates of the ICJ and POA is insufficient. Success rate is not limited to whether a decision is made. It includes whether or not the ICJ, PCA or mediation by Norway had improved diplomatic relations between the states embroiled in the territory dispute.
Chapter III: Background of Border Dispute

A. COLONIAL PERIOD (1840-1949)

1. Early History of the Dispute

In November 1840, Robert Hermann Schomburgk was appointed by the British government to survey the boundaries of its colony, British Guiana provisionally.\(^{47}\) Schomburgk carried out a comprehensive topographical survey and proposed a boundary line with Venezuela (see Figure 2). Schomburgk did not discover or invent any new boundaries. His reports derived from actual exploration and information that provided evidence of Dutch occupation and trade with the Amerindians at Barima and on the Cuyuni Rivers.\(^{48}\) Schomburgk had relied on this evidence to ascertain the limits of Dutch occupation and the zone where all trace of Spanish influence was absent.\(^{49}\)

![Figure 2: Map published by Venezuela in 1841 showing the Schomburgk Line and Essequibo Region](image)

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\(^{47}\) Odeen Ishmael, *The Trail of Diplomacy, the Guyana-Venezuela Border Dispute Vol. One, Colonization, Boundary Dispute and Arbitration*. 2013, p. 78.

\(^{48}\) Odeen Ishmael, 2013, p. 103.

\(^{49}\) Ibid, p. 103.
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Venezuela rejected the boundary line proposal. Venezuela argued that Schomburgk’s survey had included territory to the west of the Essequibo River, which it declared as part of its jurisdiction.\(^{50}\) Consequently, diplomatic discussions on the boundary arose between the governments of Great Britain and Venezuela. Thus, the Venezuelan government proposed the negotiation of a Treaty of Limits which would precede the survey and demarcation of the frontier by Schomburgk. Venezuela had insisted that the ‘Schomburgk Line’ was invalid. Venezuela argued that the Essequibo region was the natural boundary between Venezuela and British Guiana and the British colonists possessed little or nothing beyond that river.\(^{51}\) Venezuela’s repeated proposals to arbitrate the Essequibo boundary were largely ignored by Great Britain.

2. United States Intervention

Venezuela suspended diplomatic relations with Britain in 1887 and appealed to the United States for help. Venezuela proposed arbitration of the border dispute in 1877 but the United States had initially rebuffed any involvement. Britain’s Lord Salisbury refused Venezuela's requests for arbitration, and brushed aside the offers of mediation by the United States.\(^{52}\) The United States was at that time primarily concerned with the development of the trans-continental canal, and the extension of the Monroe Doctrine in Latin America.\(^{53}\) The USA believed that Great Britain’s refusal to arbitrate had indicated its commitment to continue its aggressive policies in Latin America.\(^{54}\) President Cleveland had encouraged the United States Congress to pass a resolution urging Britain

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\(^{50}\) Ibid, p. 106.
\(^{51}\) Ibid, p. 107.
\(^{53}\) Thomas Donovan, “Challenges to the Territorial Integrity of Guyana: A Legal Analysis,” p. 673.
\(^{54}\) Ibid, p. 674
and Venezuela to arbitrate the dispute. The resolution passed both Houses of the U.S. Congress by a unanimous vote and was signed into law on February 20, 1895.\textsuperscript{55} This resolution granted the U.S. Congress the power to nominate the members of a boundary commission. For the USA, arbitration between Venezuela and British Guiana served as a pre-textual way to assert its dominance over the Caribbean and Latin America, and to help establish the United States as an international power.\textsuperscript{56}

3. **1899 Arbitral Award**

In 1897, Great Britain signed a Treaty of Arbitration (also known as the Treaty of Washington) with Venezuela which established a tribunal. By virtue of Article XIII of the aforementioned treaty, the contracting parties would recognize the arbitral award as the full, perfect and final settlement.\textsuperscript{57} This meant that the tribunal’s decision would be legally binding on Great Britain (British Guiana) and Venezuela. The treaty had also defined its core concepts of law, (i.e. principle of occupation), the tribunal’s rules and composition. Article II of the treaty authorized Great Britain and Venezuela to nominate two (2) jurists each, and the four jurists would choose the President of the tribunal.\textsuperscript{58}

After this treaty was signed, the US boundary commission was officially dissolved. Its report which included historical analysis on Dutch colonization in Essequibo and the geography of the region was subsequently made available to

\textsuperscript{55} Odeen Ishmael, *The Trail of Diplomacy, the Guyana-Venezuela Border Dispute Vol. One, Colonization, Boundary Dispute and Arbitration*, 2013, p. 132.


\textsuperscript{57} Thomas Donovan, p. 676.

\textsuperscript{58} Odeen Ishmael, *The Trail of Diplomacy, the Guyana-Venezuela Border Dispute Vol. One, Colonization, Boundary Dispute and Arbitration*, 2013, p. 346. The arbitral tribunal comprised of Justice David Brewer, Chief Justice Melville Fuller (both selected by Venezuela), Dr. Frederic de Martens (President of the tribunal), Lord Herschell and Lord Justice Collins (both selected by Great Britain).
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Venezuela to prepare for its case before the tribunal.\textsuperscript{59} Arbitration commenced in 1899 in Paris, France.

- **Venezuela’s Case before the Tribunal**

  The Venezuelan case before the tribunal focused primarily on the claim that after Great Britain acquired British Guiana in 1814, its colony’s boundary was the Essequibo River. Venezuela claimed that the frontier shown on various maps printed in London and Venezuela had shown the Essequibo line as the original Schomburgk Line of 1835.\textsuperscript{60} Venezuela argued that this evidence was identifiable on maps drawn by Schomburgk, before he showed partiality for British interests.\textsuperscript{61}

- **Great Britain’s Case before the Tribunal**

  The British argued that they inherited the Dutch occupied areas, which were the Essequibo, Mazaruni, Cuyuni, Moruka, Pomeroon, Waini, Barima and Amakura Rivers.\textsuperscript{62} Britain’s case relied heavily on Dutch occupation and trade with the Amerindians on the coast of Guiana between the Orinoco and Amazon Rivers.\textsuperscript{63} Britain’s claim would have extended to the west of the Essequibo River and west of Point Barima where neither Spain nor Venezuela had ever exercised jurisdiction. Great Britain’s claim relied exclusively on the principle of effective occupation in international law.

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\textsuperscript{59} Odeen Ishmael, *The Trail of Diplomacy, the Guyana-Venezuela Border Dispute Vol. One, Colonization, Boundary Dispute and Arbitration*. 2013, p. 331.

\textsuperscript{60} Thomas Donovan, “Challenges to the Territorial Integrity of Guyana: A Legal Analysis,” in *Georgia Journal of International and Comparative Law*, Vol. 32, p. 676

\textsuperscript{61} Ibid. p, 676

\textsuperscript{62} Ibid. p, 676

\textsuperscript{63} Odeen Ishmael, *The Trail of Diplomacy, the Guyana-Venezuela Border Dispute Vol. One, Colonization, Boundary Dispute and Arbitration*. 2013, p. 360
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- **Decision of the Arbitral Tribunal**

On October 4, 1899, the arbitration panel had presented a unanimous award to a border dispute that lasted over 45 years – a controversy which could have caused Venezuela, the United States and Great Britain to go to war.\(^6^4\) The boundary line chosen by the tribunal started from Point Playa, forty-five miles east of Point Rivers and extended south along the Amacura River (See Figure 3). Consequently, Great Britain was granted nearly ninety percent of the Essequibo region. In total, Great Britain received 45,000 of the 53,000 square miles disputed.\(^6^5\) However, Great Britain had lost control of the mouths of the Amakura and the Barima Rivers and territory in the upper Cuyuni Basin. The award coincided greatly with much of the Schomburgk Line of 1840. On the other hand, Venezuela was awarded only the mouth of the Orinoco River and a 5,000 square mile extension around Point Barima.\(^6^6\)

\(^6^4\) Odeen Ishmael, *The Trail of Diplomacy, the Guyana-Venezuela Border Dispute Vol. One, Colonization, Boundary Dispute and Arbitration*. 2013, p. 387


The arbitral award was criticized by Venezuela. Venezuela argued that the boundary line’s description was ambiguous. Moreover, Venezuela stated that the award did not clarify the constructive occupation realities which supposedly were the spirit of the award and the 1897 Treaty of Arbitration. Although, Venezuelan politicians and its press had expressed discontent with the arbitral award, its government had reassured British representatives that the boundary was a chose jugée – a matter which has already been decided legally and is therefore not worth discussing. Thus, both states accepted the tribunal’s decision as final.

In keeping with the tribunal’s decision, Britain and Venezuela established a boundary commission. Their commissioners were sent to carry out a survey and demarcate the boundary, between 1901 and 1905. On January 7, 1905, the resulting boundary line was drawn on a map and was signed by British Guianese and Venezuelan representatives (See Figure 4). The agreement was published as a sessional paper of the Combined Court of Policy of British Guiana.

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68 Odeon Ishmael, The Trail of Diplomacy; the Guyana-Venezuela Border Dispute Vol. One, Colonization, Boundary Dispute and Arbitration, 2013, p. 410
69 Ibid, p. 407
70 Ibid, p. 407
4. Mallet Prevost’s Allegations

It was widely acknowledged that Venezuela’s acceptance of the arbitral award of 1899 had permanently resolved the border dispute with British Guiana. Even as late as 1941, the Venezuelan Minister of Foreign Affairs, Esteban Gil Borges, agreed that the frontier with British Guiana was well defined and a closed issue. However, the posthumous publication of a memorandum in 1949 by Mallet Prevost, one of the American jurists on the boundary commission established by the USA in 1896 had indicated that the tribunal’s decision was the result of a political deal between Great Britain and Russia.

Prevost claimed that the American jurists of the tribunal (nominated by Venezuela) had favored granting Venezuela much more territory but resented the

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‘pressure’ brought upon them to avoid such an award. Prevost stated that the President of the Tribunal and the jurists nominated by Great Britain feared that the economic development of South America would be hindered if an adverse decision was handed to Great Britain. 

American historian, Clifton Child had examined verbatim records of the tribunal and dispatches passing among London, St. Petersburg and New York during that period. He concluded that there was “not a single document, which, by the widest stretch of the imagination, could be considered to indicate a deal between Great Britain and Russia of the sort suspected by Mr. Mallet Prevost.” However, on the contrary, American historian, William Cullen Dennis supported Prevost’s memo. Most interestingly, Dennis did agree that the 1899 award was valid but he emphasized that methods of ‘political compromise’ used, should be prohibited from future arbitral procedure. Nonetheless, Prevost’s memo became the impetus for Venezuela to reassert its claim against the Essequibo region. Various Venezuelan governments were adamant that Prevost’s memo should invalidate the 1899 arbitral award under international law.

- **Venezuela’s Motives**

The publication of the Prevost memo had coincided with Venezuela’s exploration of mineral resources such as iron, petroleum and manganese in its Guayana region (see Figure 5) immediately to the west of Guyana’s border. American companies and

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74 Ibid, p. 23.
75 Ibid, p. 40.
76 The Guayana Region is an administrative center of Venezuela and is known for its abundance in mineral resources. It is a part of the Guiana Shield. The Guiana Shield comprises of from west to east, (1) western Colombia, (2) Venezuela, where the Orinoco river makes the northern limit of the Shield, (3) Guyana, (4) Suriname, (5) French Guiana, and (6) northern Brazil, (Roraima, Pará and Amapá states) in the North Region, limited to the south by the
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capital were utilized to carry out these works. As huge deposits of petroleum were being discovered, right wing politics was gaining momentum. These politicians introduced the Prevost memo to motivate the Venezuelan people to demand ‘reclamation’ of the Western Essequibo region.  

Figure 5: Map of Venezuela showing the Guayana region (to its right is the Essequibo Region of Guyana which Venezuela is claiming)

Amazon river. It is bounded by the Atlantic Ocean to the east, the Orinoco river to the north and west, the Negro river to the southwest, and the Amazon river to the south

B. INDEPENDENCE PERIOD (1966 – 2013)

1. Guyana’s Independence

As British Guiana pushed for independence, Venezuela’s desire to expand its territory increased exponentially. Venezuela did support British Guiana’s independence. However, it opposed the western Essequibo region being a part of Guyana’s territory. Thus, in 1962, the Venezuelan government had issued a memorandum to the UN Secretary-General, U Thant (1961-1971), which officially raised their contention against the validity of 1899 arbitral award. Additionally, it had reinforced their claim of ownership of the western Essequibo region.\(^79\) As independence drew closer, representatives from Britain, British Guiana, and Venezuela signed an agreement in Geneva on February 17, 1966 much to British Guiana’s dismay.\(^80\)

2. The Geneva Agreement

Article 1 of the Geneva Agreement established a Mixed Commission. This Commission consisted of two Guyanese and two Venezuelans. Their purpose was to determine an amicable solution to the border dispute. Under Article IV of the Geneva Agreement, the Mixed Commission would last for 4 years and if no solution was found, both nations would select one of the peaceful settlements provided in Article 33 of the UN Charter. If both nations failed to select a mechanism for peaceful settlement, Article IV (2) empowered the Secretary-General to select a dispute settlement mechanism until the dispute was resolved. The commission’s work stagnated and was unable to achieve any substantial progress. Guyana alleged that Venezuela was covertly interfering in its

\(^79\) Ibid, p. 54-55.

internal affairs by disseminating propaganda to undermine the loyalty of its Amerindian population located in the Essequibo region.  

3. Venezuelan Aggression against Guyana’s half of Ankoko Island  

Another reason for the Commission’s failures occurred on October 12, 1966. The Guyanese military discovered that Venezuelan military and civilian personnel had occupied the Guyanese half of the Ankoko Island in the Cuyuni River (See Figure 6). The Guyanese government stressed that Venezuela’s actions violated the Geneva Agreement and complicated the Mixed Commission’s work. Furthermore, the Guyanese government argued that Venezuela’s illegal encroachment on its territory represented an unwillingness to be deterred either by international law or by the specific terms of bilateral and multilateral agreements it had solemnly concluded. Guyanese Prime Minister Burnham protested the occupation and demanded Venezuela's complete withdrawal and removal of its military garrison.

![Figure 6: Map Showing the Ankoko Island and the Cuyuni River region where Venezuelan military occupies illegally](image-url)
Venezuela refused to comply with Mr. Burnham’s request. Instead, Venezuela reckoned that Ankoko Island was always a part of their territory. In actuality, this was fallacious. The border commission, which was formed after the 1899 arbitral award had judicially and administratively, recognized the Ankoko Island as a part of Guyana’s territory. Moreover, the Venezuelan government had never before challenged the validity or accuracy of the map produced by the commission. At no time did Venezuela assert its sovereignty over the entire Ankoko Island. With Guyana unable to force a Venezuelan withdrawal due to its economic, political and military inferiority, Ankoko Island remains occupied illegally by Venezuela.


With no substantial progress clearly visible, the Prime Minister of Trinidad and Tobago, Eric Williams decided to intervene as a mediator. Guyana and Venezuela’s diplomatic relations were non-existent but they both agreed to improve their relationship. On June 18, 1970, the governments of Venezuela, Britain, and Guyana signed an agreement to place a twelve year moratorium on the border dispute. This agreement was called the Port-of-Spain Protocol. The Port-of-Spain Protocol provided for continued discussions, a suspension of territorial claims, and automatic renewal of the protocol if it remained uncontested after the twelve years.

The Guyanese opposition party, the Peoples Progressive Party (PPP) opposed the agreement. The PPP argued that it undermined the purpose of the Geneva agreement, i.e.

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84 Odeen Ishmael, *The Trail of Diplomacy, the Guyana-Venezuela Border Dispute Vol. Two*, p. 147.
87 Thomas Donovan, p. 679.
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resolving the dispute. Moreover, it permitted Venezuela to continue its illegal occupation of the Guyanese part of the Ankoko Island.\(^{88}\) This was true. Venezuela continued to claim all lands west of the Essequibo Region after 1970. Various maps of Venezuela had shaded the Essequibo region and labeled it the ‘Zona en Reclamación’ – Zone of Reclamation (see Figure 7).

![Map of Guyana produced by Venezuela showing the Zona en Reclamación](image)

Figure 7: Map of Guyana produced by Venezuela showing the Zona en Reclamación

In 1981, Venezuela announced that it would not renew the protocol. Its decision to end the protocol hinged on numerous events. First, Venezuela had alleged that Guyanese soldiers had fired shots on two occasions at Venezuelan army personnel; at the Guyanese border post near to Ankoko Island.\(^{89}\) Guyana fervently denied these allegations. Second, Guyana’s declining economy in 1982 had presented Venezuela with

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\(^{88}\) Odeen Ishmael, *The Trail of Diplomacy, the Guyana-Venezuela Border Dispute Vol. Two*, p. 296.

\(^{89}\) Ibid, p. 369.
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an opportunity to press for a settlement of the border dispute.\textsuperscript{90} Last, Guyana had proposed a massive hydroelectric project on the upper Mazaruni (north-western region of Essequibo) to the World Bank, which was later approved. To Venezuela, this project would mark the beginning of Essequibo’s development without its participation.\textsuperscript{91} Venezuela’s request to the World Bank to refrain from financing a hydroelectric project in the Essequibo region had convinced Guyana to acquiesce to Venezuela’s decision to end the protocol.\textsuperscript{92} Venezuela’s action was labeled as ‘economic aggression’ by Guyana.

The Guyanese Prime Minister, Forbes Burnham addressed the border issue in a speech which marked the 12\textsuperscript{th} anniversary of Guyana’s republic status. Burnham said, “Now that Venezuela has refused to permit automatic renewal of the Protocol, Guyana stands ready as provided by Article IV of the Geneva Agreement to have recourse to any one of the means of settlement provided under Article 33 of the Charter of the United Nations. These include negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement - obviously by the International Court of Justice, resort to regional agencies or organisations, or other means of settlement mutually agreed by the two parties.”\textsuperscript{93}

C. United Nations Intervention (1990-2013)

Venezuela favored bilateral negotiations with Guyana to settle the border dispute. On the other hand, while Guyana expressed optimism initially, it later favored a judicial settlement by the International Court of Justice as a means of settlement. Venezuela rejected this proposal but did not provide any explanation. Diplomatic relations between

\textsuperscript{92} Odeen Ishmael, \textit{The Trail of Diplomacy, the Guyana-Venezuela Border Dispute Vol. Two.}, p. 405.
\textsuperscript{93} Odeen Ishmael, p. 445
the two nations had improved, especially in trade, public health and education. However, both nations were unwilling to compromise on border resolution.\textsuperscript{94} Thus, the United Nations decided to intervene.

1. First Good Offices Process

UN Secretary-General Pérez de Cuéllar (1982-991) appointed Dr. Alister McIntyre in 1990 to act as ‘envoy’ to help resolve the border dispute.\textsuperscript{95} Both nations had accepted Dr. McIntyre’s appointment. Under the good offices process, representatives from Guyana and Venezuela met with Dr. McIntyre occasionally to examine practical ideas that could contribute to a peaceful settlement of the border controversy.\textsuperscript{96} Diplomatic relations improved drastically in the 1990s between Guyana and Venezuela. For example, Venezuela had sponsored Guyana’s bid to join the Organization of American States in the 1990s.

However, the good offices process did not achieve any substantial results on resolving the dispute. The process failed due to Guyana’s rejection of Venezuela’s ‘globality’ approach. This approach advocated moving the border dispute from a multilateral framework to bilateral. Guyana believed that this “globality” approach was disadvantageous to its national security interests. Guyana believed that Venezuela’s intentions were to eliminate the joint commission and undermine the legitimacy of the UN good offices process.\textsuperscript{97}

\textsuperscript{95} Odeen Ishmael, \textit{The Trail of Diplomacy, the Guyana-Venezuela Border Dispute Vol. Three}, p. 102.
\textsuperscript{96} Ibid, p. 103.
\textsuperscript{97} Ibid, p. 136.
2. **Second Good Offices Process**

In 1999, UN Secretary-General Kofi Annan (1997-2006) appointed another good officer, Mr. Olive Jackman.\(^{98}\) Mr. Jackman discovered that Guyana was unrelenting towards Venezuela’s proposal to cede part of its territory. To Guyana, any proposal of ceding part of its territory would be in conflict with the 1899 arbitral award. Guyana was adamant that a ‘practical settlement’ of the border dispute (in accordance with the Geneva Agreement) meant: (1) recognition of the validity of the 1899 arbitral award and (2) not ceding territory or revising its existing frontiers.\(^{99}\) Jackman reported that Venezuela’s willingness to negotiate with Guyana on delimiting the maritime boundary would ultimately present Guyana with a *fait accompli*.

This dilemma was caused by a treaty signed between Venezuela and Trinidad & Tobago in 1990. The treaty had regarded a significant portion of Guyana’s exclusive economic zone as Venezuela’s. Outraged by this, the Guyanese government responded by sending both nations protest notes urging them to review their geographical coordinates of their maritime area. Guyana’s plea was supported by many Commonwealth nations and the situation began to diffuse due to the political unrest that occurred in Venezuela in 2002.\(^{100}\) Thus, progress stagnated because Mr. Jackman was unable to meet regularly with the representatives to facilitate dialogues and proposals on resolving the border dispute. Jackman died on January 24, 2007, but this setback did not deter Guyana and Venezuela from signing the PetroCaribe bilateral agreement,\(^{101}\) which provided

\(^{98}\) Ibid, p. 177.


\(^{100}\) Ibid, p. 215.

\(^{101}\) Roger Rogers et al., “Guyana's PetroCaribe Rice Compensation Scheme Has Ended Assessment and Policy Implications,” *Country Department Caribbean Group*, 2016, p. 2. Notes: On October 21, 2009, the government of Guyana signed an agreement with the government of Venezuela to barter rice for oil.1 The Venezuelan government, in a yearly renewable contract, would (a) set the maximum quantity of paddy and white rice that it would receive and (b)
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economic benefits for Guyana alone. On the other hand, Venezuela was able to burnish its image as a donor as they gained the support of its PetroCaribe partners for its various diplomatic positions in international fora.\(^{102}\) However, discussions on the border issue were mute until both nations agreed yet again for another good offices process.

3. **Third Good Offices Process**

   On April 20, 2010, UN Secretary-General, Ban Ki-Moon (2007-2016) appointed Dr. Norman Girvan as good officer. Unfortunately, Girvan was unable to produce any substantial progress on reaching an amicable solution to the border dispute, due to his death in 2013.

4. **Conclusion**

   In conclusion, the UN Good Offices process attempted to bridge a gap between the two nations. The process intended to facilitate dialogue between Guyana and Venezuela to settle the dispute amicably. However, no any substantial progress on resolving the border dispute was achieved because both nations had adopted ‘extreme’ positions adopted by both nations. Neither nation was willing to compromise on their respective demands. Guyana preferred a judicial solution on the border dispute. Once Venezuela rejected this proposal, all Guyanese governments continued to assert that the 1899 arbitral award had settled the dispute. On the other hand, Venezuela maintained that the allegations which emanated from Prevost’s memorandum had invalidated the award. Due to these extreme positions adopted, the good offices process was unable to introduce any viable compromises that both nations were willing to accept.

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Chapter IV: Nature of the Dispute Today (2011-Present)

1. Guyana’s Application for an Extension of its Continental Shelf

Guyana and Venezuela’s relationship had progressed substantially since they both enjoyed a period of sustained growth and co-operation. They continued to co-operate in economics, natural disasters prevention and reaction, health and education. However, this relationship would be tested again. On September 6, 2011, Guyana had submitted an application before the United Nations’ Commission on the Limits of the Continental Shelf, in accordance with Article 76 of UNCLOS, to extend its continental shelf by an extra 150 nautical miles (170 m) from its current 200 nautical miles (exclusive economic zone), (See Figure 8).

Figure 8: Map showing Guyana’s application to extend its continental shelf (black line is the current and red line is the proposed increased)

Generally, the UNCLOS Commission declines a state’s request of continental shelf extension once that state is embroiled in territorial disputes. Guyana’s application

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had omitted Venezuela’s claim to the Essequibo region by stating, "there are no disputes in the region relevant to this submission of data and information relating to the outer limits of the continental shelf beyond 200 nautical miles."\textsuperscript{104} Venezuela responded to Guyana’s application by submitting an objection to the UNCLOS Commission.

In its objection, Venezuela stated that Guyana did not consult them and its application for an extension of its continental shelf had included the disputed territory, west of the Essequibo River which, in accordance with the Geneva Agreement of 1966, was still disputed.\textsuperscript{105} Although Venezuela is not a member of UNCLOS, it had a legitimate expectation that Guyana’s application would be rejected under Annex 1 of the Rules of Procedure of the UN Commission on the Limits of the Continental Shelf.\textsuperscript{106} If Venezuela was a member of UNCLOS, it could have settled this situation through arbitration or any other dispute mechanism as provided by Article 287 of UNCLOS. Presently, the status of Guyana’s application remains unclear.

2. **Venezuelan Aggression**

Despite Venezuela’s objection to Guyana’s exercise of its territorial sovereignty over the Essequibo Region and its maritime borders, both nations have maintained a good relationship. In 2012, Guyana issued an exploration license to American company, Andarko Petroleum Corporation. The Venezuela navy was alarmed about the oil


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concession granted by Guyana near the Venezuelan Atlantic front of Orinoco Delta. Guyana ignored all of Venezuela’s concerns. Thus, the Venezuelan army believed that their concerns were substantial and consequently, action was taken.

On October 10, 2013, an armed Venezuelan navy vessel entered Guyana’s territorial waters and forced a seismic vessel, the MV Teknik Perdana, into Venezuelan waters. The ship and its 36 crew members were detained by the Venezuelan military. The Guyanese government stated that Venezuela’s actions were aggressive and a direct threat to international peace. The Guyanese government added that Venezuela had failed to act in accordance with its obligations under Article 33 of the UN Charter. On October 14, 2013, the ship and all 36 crew members were released but the captain of the ship was charged with violating Venezuela’s economic exclusive zone.

3. Exxon Mobil Oil Discovery

In May 2015, Exxon Mobil had announced a significant discovery of high quality hydrocarbon reserves, including crude oil, in an offshore concession 190 kilometers (120 miles) off the coast of Guyana called the Stabroek Block. It is an area offshore of the Essequibo territory with a size of 26,800 km (See Figure 9). As Exxon continued to announce more discoveries, Venezuela questioned the legality of the oil exploration. Venezuela argued that the oil discoveries were mostly located in the disputed territory’s maritime areas and Exxon’s actions amounted to a gross violation of international law.

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Political unrest continued to grip Venezuela in 2015. Thus, bilateral negotiations were seldom but Venezuela maintained its opposition. On September 22, 2015, Venezuela’s army deployed over 200 troops with missiles, machine guns and a military boat on Guyana’s frontier between San Martin and Ankoko Island. Although, the troops later retreated, Guyanese President, David Granger began to intensify efforts to pursue a juridical settlement to the border dispute.

![Figure 9: Map showing Stabroek Block](image)

4. **End of the PetroCaribe Agreement**

Venezuela’s decision to end the PetroCaribe Agreement in November 2015 was met with disappointment from Guyana. The compensation agreement was viewed by observers as under constant threat of modification or cancellation for some time, given the internal economic and political challenges Venezuela had begun to encounter.\(^{111}\) The drastic drop in oil prices from 2014 to the present had caused Venezuela’s oil revenues to plummet and some observers argued that this economic shock was the main reason behind Venezuela’s decision. On the other hand, the Guyanese press had expressed

suggestions that Venezuela’s decision to end the agreement was a form of retaliation against Guyana.\textsuperscript{112}

5. UN Intervention

Guyana had expressed its disappointment in the work of the UN’s good offices. Guyana was concerned that the good offices had exhausted its mandate and a juridical settlement was the final mechanism available. UN Secretary-General António Guterres had appointed Mr. Dag Halvor Nylander of Norway, as his Personal Representative on the Border Controversy between Guyana and Venezuela in February 2017.\textsuperscript{113} Mr. Nylander’s appointment was recommended after he helped to arrange a final peace agreement between the Farc left-wing rebels and the Colombian government.\textsuperscript{114} Similar to the previous good offices processes, the Secretary-General had expressed his confidence in this initiative. Once again, there was no significant process in negotiations. Nylander had reportedly attempted several times to convince Guyana to cede both valuable land and marine space to Venezuela to settle the case.\textsuperscript{115} However, Guyana’s “not a blade of grass” political campaign became popular among the public and these suggestions were rejected immediately by its government.

Therefore, UN Secretary-General, António Guterres decided, in accordance with Article IV (2) of the Geneva Agreement of 1966, to refer the dispute to International Court of Justice. Guyana welcomed the Secretary-General’s decision while Venezuela


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criticized it. Venezuela voiced its support in pursuing bilateral negotiations with Guyana. However, historical antecedents reveal that bilateral negotiations had achieved no significant progress in resolving the dispute.

6. CARICOM’s continuous support of safeguarding Guyana’s territorial integrity

Since its establishment, the Caribbean Community (CARICOM)\textsuperscript{116} has supported Guyana’s territorial sovereignty over the Essequibo Region. In its 38\textsuperscript{th} meeting of the Heads of Government, its members had reiterated their unequivocal support towards the maintenance and preservation of Guyana’s sovereignty and territorial integrity. CARICOM has not intervened or suggested any forms of dispute resolution. Instead, its activism in the dispute is limited to public statements that support Guyana.

7. Current Status

Exxon has continued to announce significant oil discoveries which Guyana foresees as vital to its economic growth. On the other hand, Venezuela continues to battle with high inflation rates which have triggered civil unrests and a call for elections. Although, the possibility of military confrontation is low, Guyanese president, David Granger had commenced preparations to review a formal agreement for military cooperation with Brazil. This action was taken after Venezuelan president, Nicolás Maduro announced that presidential elections would be held on May 20, 2018.\textsuperscript{117} Maduro’s motive is not clear. I reckon that the elections’ results can intensify the current civil unrest. Maduro’s potential re-election coupled with his low approval ratings can

\textsuperscript{116} Established in 1973, CARICOM comprises of 15 Caribbean nations, aimed at promoting sustainable economic integration, co-operation amongst its members. Additionally, it strives to ensure that the benefits of integration are equitably shared, and to coordinate foreign policy.

\textsuperscript{117} Venezuela Concerns...Guyana, Brazil to ramp up military co-operation, Kaieteur News, 10 February, 2018. https://www.kaieteurnewsonline.com/2018/02/10/venezuela-concerns-guyana-brazil-to-ramp-up-military-cooperation/
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deepen anti-Maduro rhetoric among the population. Widespread violence in Venezuela can become a national security threat to Guyana’s safety and investment opportunities. Thus, the Guyanese President had established two army bases on its jungle frontier with Venezuela, in an attempt to thwart incursion and invasion. Moreover, this action was adopted to protect its borders from potential refugee flows.

Guyanese Foreign Minister Carl Greenidge has persistently stated that the stalemate will continue as the position of Guyana remains the same; “the arbitral award of 1899 had demarcated their boundaries and it was as full, final and a legal settlement of the issue.” On the other hand, Venezuela continues to insist that the award was null and void due to the revelation made in Prevost’s memo. On 4 April, 2018, Guyana filed its application to the International Court of Justice against Venezuela.

![Figure 10: Map showing the current borders of Guyana and the disputed territory](image)

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Chapter V: Conclusion

In this concluding chapter, I outline three options for finding a peaceful solution to the Guyana-Venezuela border dispute. In the previous chapters, I have carefully described the positions of Guyana and Venezuela on the border dispute. Guyana’s position is based on the legality of the 1899 arbitral award. Guyana classifies Venezuela’s claim to the Essequibo region as an unnecessary political agenda that is designed to inhibit economic development within its mineral rich region. On the other hand, Venezuela argues that the allegations of political bias revealed in Prevost’s memorandum resulted in the 1899 arbitral award becoming null and void. According to Prevost, the decision not to award Venezuela more territory within the Essequibo region was due to the West’s fear that Venezuela would develop the region and inevitably become an economic superpower.

A. Summary of Border dispute: Colonial inheritance or Essequibo’s economic value?

If we are to sufficiently evaluate the possible effectiveness of the dispute settlement mechanisms available for resolving this dispute, it is important to analyze whether the dispute is more to do with the colonial inheritance or economic value associated with the Essequibo region. To suggest that the Guyana-Venezuela border dispute is based on colonial inheritance, the normative theory is more pertinent. Normative theory suggests that subjectively-formed norms, conceptions of justice, and beliefs can motivate territorial claims and trigger conflict over disputed territories. Here, Venezuela’s contention that the arbitral award is invalid is grounded on social

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justice. The social justice narrative argues that Venezuela inherited the Essequibo region which was initially occupied by Spain, which later lost its autonomy over the region. The Schomburgk Line had shifted the original western Essequibo border and caused Venezuela to lose territory. Wiegand explains that ambiguous historic treaties signed by colonizers are a major source of territorial disputes. However, the relevant events that followed the 1899 arbitral award challenges this assumption. After the award was given, Venezuela had collaborated with Guyana (British Guiana – at the time) on a boundary commission to demarcate the western border of the Essequibo region. The boundary commission established the Essequibo region’s border. Venezuela signed a joint declaration in 1905 with Great Britain which legally recognized the border.

Prevost’s allegations do not adequately challenge the legal basis of the 1899 arbitral award. Instead, it revealed the political motives of some members of the tribunal. The principle of effective occupation which was applied to the case had distinctively favored Britain’s arguments. Thus, Guyana’s assertion that the border dispute is more of a ‘controversy’ than a ‘dispute’ itself has substantial merit. Venezuela’s reluctance to agree to a juridical settlement also introduces a hypothesis. It can be argued that the Venezuelan government needs to keep the dispute alive in order to divert the attention of their peoples and rally their support. Historian, Leslie B. Rout had applied this hypothesis to Guyana in the 1980s. He found that Guyanese President, L.F.S Burnham had used the border dispute successfully in times when the population was divided. Burnham was able to: (i) divert the people’s attention away from the threats of general strikes by civil

servants and (ii) condition Guyanese into accepting that the continuance of Burnham’s authoritarian government would provide security and peace.\textsuperscript{123}

Rout’s historical analysis parallels the ultra-nationalist views of Venezuelans such as ex-dictator Marcos Perez Jimenez, who in 1981, admitted that he had planned to invade the Essequibo region in 1958.\textsuperscript{124} This ‘invasion hysteria’ was advanced after Guyana had announced numerous plans to establish settlements for Chinese immigrants in the region and to award foreign oil companies to explore the Essequibo region.\textsuperscript{125} Guyana’s actions violated Article V of the Geneva Agreement and Article IV of the Port-of-Spain Protocol but neither the Geneva agreement nor Port-of-Spain protocol made any provisions for repercussions to breaches of their terms. It can be assumed that breaches would be addressed through the usual diplomatic channels available for conflict resolution. However, a right to intervene in the disputed territory, i.e. the use of force for breaches committed was not anticipated since international law prohibited it.

It seems as though this ‘ultra-nationalist view’ of social justice encompassed the pragmatic understanding that if Guyana developed the disputed region: (1) any future attempts of Venezuelan occupation would be difficult,\textsuperscript{126} (2) the region’s underdevelopment could no longer be used as propaganda to promote its case for participating in the region’s development\textsuperscript{127} and (3) it would expose the government as weak against a state that is economically and militarily inferior.

\begin{footnotesize}
\textsuperscript{124} Ibid. p. 250
\textsuperscript{125} Ibid. p. 252
\textsuperscript{126} Ibid, p. 254
\textsuperscript{127} Ibid, p. 254
\end{footnotesize}
On the contrary, the dispute’s history shows that Venezuela’s social justice platform is based entirely on the economic value associated with the Essequibo region. As identified in Chapter 4, Venezuela only intensifies their claims against the Essequibo region whenever Guyana pursues economic development within the region. Therefore, it is presumable that the natural resources contained in the Essequibo region is the major source of the dispute and not necessarily the arbitral award. Wiegand did suggest that issue saliency is accountable for the presence of border disputes. Macaulay and Hensel emphasizes that natural resources ultimately determine whether territories are salient (valuable) or not. The Essequibo region covers approximately 2/3 of Guyana's ‘sovereign’ territory and contains gold, bauxite, diamonds and other natural resources. A realist would argue that there is a border dispute between Guyana and Venezuela because of security and economic interests. For Venezuela, the Essequibo region adds more territory to its state and would allow this already oil-driven nation to conduct even more oil explorations on the Essequibo coast. Mineral resources such as diamonds and gold offer Venezuela the opportunity to exploit these minerals for economic gain. Venezuela’s acquiescence to Guyana’s development of the region rids it of this opportunity.

Venezuela’s motives are based primarily on the economic value associated with the region and its ‘social justice’ narrative conceals their true intentions. This is the argument Guyana has maintained throughout the years. Interestingly enough, Guyana and Venezuela have sustained bilateral relations despite the border dispute. They have co-operated in education, health care and even global affairs. However, the pattern of Venezuelan behavior seems to suggest that the Essequibo region becomes a political dilemma whenever Guyana announces plans to develop the region. For Guyana, the
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Guyana has proclaimed that the border dispute is a distraction ploy by the Venezuelan government of Nicolas Maduro, whose approval ratings are at a historical low and has accumulated into a civil unrest within the state. Thus, Maduro’s decree no. 1859 is viewed as a boisterous political attempt to maintain a ‘strongman’ image in the face of fervent public opposition to his administration. Venezuela prefers bilateral negotiations and even called for another UN Good Office process which Guyana rejected immediately. According to the Guyanese Minister of Foreign Affairs, Carl Greenidge, the Guyanese government interpreted Venezuela’s actions as a last ditch effort to unify its divided population and stymie Guyana’s future economic plans for the region.

It is puzzling that Venezuela is adamant that the Essequibo region is rightfully theirs and the arbitral award was invalid yet it opposes juridical settlement. Venezuela is yet to provide substantial reasons that support its opposition to juridical settlement. Instead, it has maintained its predilection for bilateral negotiations. On the other hand, Guyana has remained open to a juridical settlement which is currently going forward.
B. Proposed Solutions to the Guyana-Venezuela Border Dispute

1. The International Court of Justice

Guyana has persistently identified the International Court of Justice (ICJ) as the ultimate dispute settlement mechanism capable of resolving the border dispute with Venezuela. Guyana’s predilection for a juridical settlement was evident after UN Secretary-General António Guterres had referred the matter to the ICJ, in accordance with Article IV (2) of the Geneva Agreement 1966. The ICJ requires both parties to a dispute to consent to its jurisdiction before the matter can be adjudicated. However, it is unclear whether Article IV (2) of the Geneva Agreement suspends this requirement.

- What would be Guyana’s case before the ICJ?

In its application to the ICJ, Guyana requested the court “to confirm the legal validity and binding effect of the Award Regarding the Boundary between the Colony of British Guiana and the United States of Venezuela, of 3 October 1899.” Here, Guyana will argue that under Article XIII of the Treaty of Arbitration, Venezuela agreed that the arbitral award would be the “full, perfect and final settlement.” Guyana will present evidence that proves Venezuela did accept the arbitral award. This evidence is Venezuela’s active participation in a boundary commission between November 1900 and June 1904 which “identified, demarcated and permanently fixed the boundary established by the arbitral award.” After these actions were completed, Venezuela had signed a joint declaration on 10 January 1905 (referred to by Guyana as the “1905 Agreement”)


\[130\] Treaty of Arbitration, Article XIII states: The High Contracting Parties engage to consider the result of the proceedings of the Tribunal of Arbitration as a full, perfect, and final settlement of all the questions referred to the Arbitrators. http://legal.un.org/riaa/cases/vol _XXVIII/331-340.pdf

recognizing the validity of the boundary, which effectively ended the border dispute. Furthermore, Guyana will rely on the principle of *uti possidetis* which was applied by the ICJ in the *Land and Maritime Boundary (Cameroon v. Nigeria: Equatorial Guinea Intervening) 1994* case. Here, Guyana will argue that it inherited the pre-independence boundaries set by Great Britain (its former colonial power) and Venezuela in 1905.

I expect Guyana to argue that the Venezuelan government up until 1946 had declared the matter as a *chose jugée* and its opposition to the award was only fuelled by Prevost’s allegations. Guyana will look to convince the ICJ that Prevost’s allegations do not challenge the legal decision of the tribunal. Instead, these allegations are political and their veracity has been discredited by many historians. Guyana will inevitably request that the ICJ avoid this political issue. Last, I anticipate that Guyana will present evidence that shows it has maintained effective control and sovereign activity over the Essequibo region. That evidence will most likely be demonstrated by its hosting of regional and national elections, various developmental and administrative projects within the region. Thus, Guyana in its case against Venezuela will attempt to convince the ICJ that Venezuela’s claims against the Essequibo region lack judicial merit. Guyana will persuade the court to uphold the sanctity of treaties and respect for its sovereignty and territorial integrity over the Essequibo region.

- **What would be Venezuela’s case before the ICJ?**

  I anticipate that Venezuela’s case before the ICJ will rely heavily on one element: (1) Mallet Prevost’s memorandum. Venezuela will argue that Prevost’s allegations of ‘political manipulation’ and ‘pressure’ by the arbitral tribunal (particularly, the president of the tribunal and the jurists nominated by Great Britain) should invalidate the arbitral
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award. Venezuela will contend that the award was biased in Great Britain’s favor. Although, historians have failed to substantiate Prevost’s claims, Venezuela will maintain that these allegations cast doubt on the “fairness” of the award. I expect Venezuela will attempt to refer to its historical relationships with Great Britain in the latter half of the 19th century to illustrate the power; Britain supposedly had over the tribunal’s proceedings. I believe it will be quite complex for the ICJ to comprehend what exactly are the ‘legal’ grounds Venezuela will argue.

- How would the ICJ rule on the Guyana-Venezuela Border Dispute?

The ICJ’s decisions are legally binding. Therefore, states must comply with ICJ decisions despite the doctrine of sovereignty. The UN Security Council can intervene and impose sanctions on the non-complying state but rarely if ever does so. In addressing the Guyana-Venezuela case, I reckon that the ICJ’s decision will place particular emphasis on treaty law, uti possidetis, and effective control. In Sumner’s *Territorial Disputes at the International Court of Justice*, the author suggested that of all the legal principles available, these 3 principles are commonly applied by the ICJ. Sumner argued that the ICJ’s hierarchical preference of applying these 3 principles is in the following sequence: (i) treaty law, (ii) uti possidetis and (iii) effective control.132

In the *Arbitral Award of 31 July 1989 (Guinea-Bissau v. Senegal)*, Senegal and Guinea Bissau had requested the ICJ to decide (i) whether an agreement on their maritime boundary which was concluded by an exchange of letters between France and Portugal on 26 April 1960 is valid. Previously, the two states had established an arbitral

tribunal under the Arbitration Agreement dated 12 March 1985. The tribunal was composed of 3 members who would decide whether the 1960 agreement was valid and if it was not, the tribunal award would include re-demarcating the boundary. The tribunal voted in favor of the 1960 agreement. Dissatisfied with the tribunal’s decision, Guinea-Bissau and Senegal agreed to have the matter heard by the ICJ. Guinea-Bissau argued that the Award was inexistent and invalid. Guinea-Bissau argued that the president of the tribunal, who was one of the two arbitrators that voted in favor of the text was said to have ‘expressed a view in contradiction with the one apparently adopted by the vote,’ in an affixed declaration.

In rejecting Guinea-Bissau’s argument, the ICJ stated that the president’s declaration can only be viewed as ‘indication of what he considered would have been a better course.’\textsuperscript{133} His declaration was not a blatant contradiction to the tribunal’s decision. The ICJ did note that the tribunal’s decision can be criticized but the ICJ lacked jurisdiction to dictate the politics of the tribunal. Instead, it emphasized that the tribunal had the authority to decide the case and apply what principles it seemed fit, in accordance with the Arbitral Agreement 1985.

In the Guyana and Venezuela case, there is high probability that the ICJ will refer to this case when making its decision. The 1899 arbitral award had decided the outcome of the border dispute and it was accepted by both states. Similar to Guinea-Bissau, Venezuela will rely on a memorandum (Prevost) which alleged the political bias by members of the tribunal. However, I expect that the ICJ will find that the Prevost memorandum does not challenge the legality of the award itself. Instead, this ‘political

compromise’ should have been prohibited by the tribunal. The ICJ should analyze the tribunal’s decision which invoked the doctrine of effective occupation (argued by Great Britain). I anticipate that no fundamental challenges will be introduced against this principle. Thus, the ICJ will most likely exercise restraint at questioning the validity of the arbitral award 1899. As Sumner stated, by protecting states’ harmonized expectations about border placement, the ICJ’s decision to uphold international treaties may be to restore predictability and stability to the international system in territorial disputes.\(^{134}\)

Moreover, the ICJ may look at the principle of *uti possidetis* as identified in the *Land and Maritime Boundary (Cameroon v. Nigeria: Equatorial Guinea Intervening)* 1994 dispute. Here, Cameroon lodged proceedings against Nigeria, focusing generally on sovereignty over the Bakassi Peninsula and the Lake Chad region. The ICJ found that the 1929–1930 Thomson-Marchand Declaration, to which the United Kingdom and France (former colonial powers) had signed, provided a detailed delimitation of the interstate border. The ICJ found particularly persuasive the United Nations Trusteeships over Nigeria and Cameroon after World War II. It referred explicitly to the Thomson-Marchand Declaration and the exchange of diplomatic notes that made the Declaration a legal international agreement.\(^{135}\) Similarly, the Lake Chad Basin Commission had supported the Declaration’s delimitation of the disputed frontier. This evidence was admissible towards the ICJ’s rejection of Nigeria’s claim.

In the Guyana and Venezuela case, I would assume that the ICJ would rule that the joint declaration by the commissioners which was signed on 10 January 1905 after the


arbitral award had established a boundary commission (composed of Venezuelan and British surveyors) is valid. Venezuela’s signature had confirmed its approval of the Essequibo boundary. There is no evidence that indicates Venezuela acted under duress when signing the declaration. Thus, Guyana’s subsequent and effective control (after independence) over the Essequibo region could not be replaced by Venezuela’s unverified claims. The ICJ should reckon that the signed declaration between Venezuela and Great Britain (former colonial power of Guyana) in 1905 was based on the relevant facts and laws utilized by the arbitral tribunal. Thus, the acquisition of the Essequibo region by Guyana after independence was in accordance with international law.

If the ICJ rules in Guyana’s favor, the decision will become legally binding between Guyana and Venezuela. Thus, the arbitral award would maintain its legitimacy under international law. Nevertheless, enforcement will be of major concern for Guyana and the rest of the international community. It is anticipated that Venezuela may claim that the ICJ is biased because it purposefully ignored or downplayed the Prevost memorandum’s allegations. Although Venezuela’s criticisms of the ICJ’s decision (which most likely will happen) would support Posner and Figueirido’s study on ICJ bias, Venezuela’s decision to comply or not is key. It is anticipated that the UN Security Council would establish a mechanism to monitor Venezuela’s decision to comply or not. Any further acts of Venezuelan aggression against Guyana’s Essequibo region would then constitute a threat to peace. Furthermore, non-compliance may result in the UN Security Council imposing sanctions on Venezuela’s already weakened economy. Sanctions can cripple the country and even cause a humanitarian crisis. Compliance would ultimately be the best political decision for the Maduro regime to make.
For Guyana, the ICJ’s positive decision would strengthen its territorial sovereignty. It would finally settle a dispute that Guyana has viewed as a ‘controversy’ for many years. The ICJ’s decision can end the Geneva Agreement. Moreover, Guyana could continue to exercise its sovereignty over the Essequibo region. Major economic activities such as oil exploration off the Essequibo coast and other developmental projects could be pursued within the region without any aggressive acts from Venezuela. Last, Guyana could reassure investors that their investments in the Essequibo region are subject to Guyanese law only.

2. **Mediation by a Possible State: Norway**

With the threat of territorial conflict between Guyana and Venezuela at a minimal level, mediation can be an alternative to resolve this dispute before the dispute might escalate. Venezuela has persistently approved of bilateral negotiations as the ideal dispute mechanism. Moreover, Venezuela had requested another UN Good Offices process but as noted, Guyana rejected this measure. If mediation is to be pursued, the status of the mediator is important. Norway was selected as a possible state because of its international reputation at promoting peace. For Norway, the Oslo Accords on the Middle East marked a milestone for its reputation as peace facilitator.\(^{136}\) Norway’s role in the secret negotiations between Israel and the Palestine Liberation Organization that culminated in the 1993 agreements signed in Washington, D.C. placed the country on the exclusive map of world diplomatic powers.\(^{137}\)

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137 Javier Fabra-Mata, *Measuring the effectiveness of Norwegian peace facilitation*, p. 2
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- How effective are Norway’s mediation techniques?

Norwegian peace mediation is characterized by a particular set of qualities – non-coercion, impartiality, disinterest, respect of local ownership and commitment to peace both short and long term. These characteristics are combined with close collaboration from Norwegian civil society (non-governmental organizations and the research community) to provide financial resources and long-term commitment to peace. However, a close analysis of Norway’s success depends primarily on (1) success measured in terms of facilitating a dialogue between conflict parties ("sit down and talk"); (2) success measured in terms of the signing of a peace agreement between the conflict actors (“negative peace”); and (3) success measured in terms of the peaceful transformation of the conditions that made conflict possible (“positive peace”).

Unfortunately, the Oslo Accords did not resolve the Israel-Palestine conflict. However, it did encourage dialogue and the signing of a peace agreement. The political, cultural and religious dynamics that are endogenous to the conflict thwarted the implementation of those conditions in the Oslo Accords which were necessary to achieve peace. In Sri Lanka, Norway’s reputation was damaged. Norway’s involvement in the negotiations of a peace settlement between the Sri Lankan government and Tamil Tigers

**Figure 11: Norway’s Mediation Technique**

Unfortunately, the Oslo Accords did not resolve the Israel-Palestine conflict. However, it did encourage dialogue and the signing of a peace agreement. The political, cultural and religious dynamics that are endogenous to the conflict thwarted the implementation of those conditions in the Oslo Accords which were necessary to achieve peace. In Sri Lanka, Norway’s reputation was damaged. Norway’s involvement in the negotiations of a peace settlement between the Sri Lankan government and Tamil Tigers

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had purportedly intensified the conflict instead of safeguarding the peaceful transformation of conditions within Sri Lanka. Norway did help to institute a ceasefire which prevented 1000s of citizens from being killed. However, Norway was accused of supporting the rebel’s desire to secede from Sri Lanka and for usurping the mandate of a UN based observation mission.140

- **Norway’s Mediation in the Guyana and Venezuela Dispute: would it be effective?**

Kleiboer listed: (1) ripeness of the conflict, (2) the level of conflict intensity and (3) nature of the issue, as the three factors which impact mediation outcomes. There is no current physical conflict between the Guyana and Venezuela. However, there were sporadic military actions by both nations in the 1970s and 1980s. None have satisfied the threshold that warrants international reaction. It does not contain any cultural or religious variables and its level of intensity is low. Last, the nature of the issues is political and economic. The dispute targets the validity of the 1899 arbitral award.

Renewed dialogue between Guyana and Venezuela is only possible if Norway can actually influence both nations to refrain from and put an end to their political campaigns that advocate for possession of the Essequibo region. Given the current status of the dispute, Norway would inevitably encounter a challenge. History has shown that both nations have maintained their extreme political positions on the dispute. Both nations fear that by relaxing their political campaigns, the public will view their governments as weak and unpatriotic. Politically, such actions can prevent the current governments from being re-elected. Thus, the political risks are high for both nations.

Guyana has maintained that Venezuela’s claims are only intensified whenever economic development is pursued within the Essequibo region. On the other hand, Venezuela has argued in support of ‘social justice.’ Most interesting, UN Secretary-General António Guterres selected a Norwegian envoy to lead the 4th UN Good Offices process between the two nations. The process failed because Guyana refused to cede any Essequibian territory to Venezuela. Guyana voiced its lack of faith in dialogue in many press releases. Thus, the mediation strategy of communication and its timing are probably not applicable given Guyana’s insistence on a juridical settlement and the current political instability that grips Venezuela. Guyana would argue that ceding any of its territory would be a violation of its sovereignty. Furthermore, the Guyanese government would face criticism from its nationalistic populace. Ceding territory to Venezuela would be described as unpatriotic. Moreover, Amerindian communities in the Essequibo region which complain consistently about harassment from Venezuelan gangs would refuse to become subjects under Venezuelan law.

Wiegand’s hypothesis: the higher the levels of tangible saliency of disputed territory, the less likely states pursue mediation as a disputed resolution strategy becomes relevant. In testing Wiegand’s hypothesis, the presence of bauxite, gold, diamonds and oil off the Essequibo coast can deter the likelihood of mediation as a dispute resolution strategy. Previous research contradicted this hypothesis by arguing that mediation can be successful once the disputed territory has tangible saliency but is divisible. I agree with Wiegand that the mediation’s success is still not likely. Moreover, I concur that bilateral negotiations are more suited for territory with tangible value since compromise and concessions are easier to achieve. However, the history of bilateral negotiations between
Guyana and Venezuela has proven that a compromise is based on the political will of the two nations. Given the history of this dispute, there is doubt about Wiegand’s conclusion.

Any proposal of ceding territory to Venezuela will be rejected by Guyana outright. Guyana will argue on the principles of effective occupation under international law. Most importantly, Guyana will maintain that Venezuela had signed and accepted the 1899 arbitral award. On the contrary, Venezuela may be open to accepting some territory from Guyana, once it contains those valuable mineral resources. The division of territory to ensure Venezuela has adequate resources will be intricate to resolve. If dialogue pertaining to giving up territory is immediately dismissed by Guyana, the success of Norway’s mediation technique which relies heavily on dialogue is already defeated. Thus, mediation as much as it is a preferred dispute solution mechanism seems to exhaust its effectiveness in this dispute. Any potential dialogue leading to a peace agreement is realistically convoluted given that the dispute was referred to the ICJ. However, Guyana and Venezuela can always settle the dispute outside the court.

3. **Permanent Court of Arbitration**

The possibility of Venezuela abstaining from court proceedings at the ICJ must be considered. The ICJ requires states to consent to its jurisdiction but their appearance before the court is also intrinsic. On the other hand, a bilateral or multilateral treaty which is signed between states and includes a dispute settlement clause, often an arbitral clause, may vividly provide whether non-appearance would constitute a bar to court proceedings. China’s absence from proceedings in the South China Sea Arbitration PCA Case (No 2013-19) did not affect the POA’s ability to adjudicate under UNCLOS. Article 9 of
UNCLOS Annex VII provides that absence or failure of a party to defend its case shall not constitute a bar to the proceedings.

The Geneva Agreement does not address arbitration or provide any procedural rules on arbitration between Guyana and Venezuela. Thus, it is difficult to definitively determine whether Guyana or Venezuela’s absence from the PCA would thwart proceedings. The PCA was selected because its procedural rules and flexibility give it a comparative advantage over the ICJ. Article 44 and 45 of the 1907 Convention for the Pacific Resolution of International Disputes provides for the contracting parties (in this case, Guyana and Venezuela) to select two arbitrators of their own (one of whom may be a national of the party concerned) and the four selected arbitrators choose the fifth and presiding arbitrator. This composition bears similarity to the 1899 tribunal.

Although, the PCA may also invoke natural justice and equitable principles when hearing a case, the facts of the dispute often shape the tribunal’s behavior. Similar to the ICJ, the Guyana and Venezuela case will be based on the ‘legality’ of the 1899 arbitral award. The PCA may consider Prevost allegations as a factor when determining the ‘fairness’ of the award. Thus, the PCA’s case would focus on the tribunal itself and whether the award was fair.

This issue was brought up in the The Government of Sudan / The Sudan People's Liberation Movement/Army (Abyei Arbitration) case. In 2008, the Government of Sudan and the Sudan People's Liberation Movement/Army (SPLM/A) agreed to submit their dispute concerning the boundaries of the oil-rich Abyei area to the Permanent Court of Arbitration (PCA). Under the Arbitration Agreement (signed between the two entities),
the issue before the PCA was to determine whether the ‘Abyei Boundaries commission,’
had exceeded their mandate which was ‘to define (i.e., delimit) and demarcate the area of
the nine Ngok Dinka chieftdoms transferred to Kordofan in 1905’ as stated in the Abyei Protocol.\footnote{141} A resolution was necessary for the 2011 referendum on South Sudan’s independence. If it did exceed its mandate, Article 2 of the Arbitration Agreement empowered the PCA to make a declaration to that effect, and proceed to delimit the boundaries of the aforementioned area.

In reaching its decision, the PCA relied on a general principle of law. That principle states that traditional rights are not extinguished by boundary delimitations, unless there is an explicit prohibition to do so.\footnote{142} An early doctrinal foundation of the principle that customary rights ‘survive’ the transfer of territorial title was provided in the Right of Passage case, where the ICJ recognized that Portugal continued to enjoy certain rights of passage over Indian territory that used to be Portuguese.\footnote{143} Section 1.1.3 of the Abyei Protocol had confirmed the continued application of this principle. It provides for the Misseriya and other nomadic peoples to retain their traditional rights to graze cattle and move across the territory of Abyei.\footnote{144}

Therefore, the PCA found that ABC Experts did not exceed their mandate in adopting a ‘tribal’ interpretation of the commission, but had exceeded the mandate by failing to give sufficient reasons for their conclusions regarding the northern shared

\footnote{143} Reports of International Arbitral Awards, p. 408.
boundary and the eastern and western boundaries.\textsuperscript{145} Subsequently, the PCA became a part of the peace process. Its responsibility was to reduce the size of the region and give greater territorial control to the Government of Sudan to the areas containing oil fields.

The Arbitration Agreement signed between the Government of Sudan and the SPLM had authorized the PCA to take such actions based on a balance of probabilities. It was not a feature of the PCA to do so. The Geneva Agreement between Guyana and Venezuela does not contain any provisions that cover arbitration. Thus, the PCA would only be effective if Guyana and Venezuela decide to establish an arbitration agreement, similar to the one in the \textit{Abyei Arbitration} case.

An arbitration agreement between Guyana and Venezuela would empower the PCA to adjudicate the case on the ‘fairness and legality’ of the award. I would presume that the PCA would most likely rule in Guyana’s favor if the dispute. Venezuela’s inability to succinctly provide evidence that accredits the allegations of Prevost’s memorandum cannot challenge the ‘fairness’ of the award. Guyana’s arguments would be similar to those that will be used presumably in the ICJ. Fairness may be evaluated based on the evidence presented before the 1899 arbitral tribunal (at the time) and not necessarily the motives of the tribunal. Legality will be analyzed based on the ‘effective occupation’ principle under international law.

\textsuperscript{145} Reports of International Arbitral Awards, p. 384
C. **ICJ, Mediation or Permanent Court of Arbitration: Which is most effective?**

The effectiveness of these dispute settlement mechanisms can be evaluated based on two criteria: (1) the current relationships of states that utilized these mechanisms and (2) compliance with the agreement/decision made. The binding nature of a juridical settlement does not immediately ‘resolve’ a dispute *per se*. Resolution extends beyond a decision being made. It encompasses a complete understanding and commitment that the dispute has ended, its decision will be complied with and actions that are necessary to enforce its resolution will be implemented.

In analyzing the cases before the ICJ, I found that the ICJ’s strict application of legal principles eliminates the political elements that are intrinsic in territorial disputes. In some territorial disputes, cultural or religious factors have created an ‘endogenous imperfection’ within the relations of some states. Therefore, some territorial disputes are outside the realm of international law because the ICJ does not account for religious or cultural history when making a decision. For example, the Israel-Palestine conflict is the most intractable dispute today. The ICJ has only provided an advisory opinion on the legal consequences of Israel’s construction of a border wall on occupied Palestine territory. This opinion did not have any effect on the dispute but it did harm Israel’s image worldwide. Currently, Israel and Palestine are embroiled in conflicts because the territorial dispute extends beyond a legal paradigm.

The Cameroon-Nigeria dispute that was brought before the ICJ eased the tensions momentarily between the two nations after a short period of conflict. The strict application of *uti possidetis* had assisted the UN and governments of both states to demarcate the border. By delimiting the border, Nigeria, Cameroon's biggest economic
partner in sub-Saharan Africa had commenced talks to construct cross-border roads to support the fishing trade. They are also in the process of establishing an agreement for joint management of oil resources in the Bakassi area.\textsuperscript{146} However, as of 2018, the cross-border region has been riddled with conflict from separatists who have attacked Cameroonians at the border or crossing it.\textsuperscript{147}

The Permanent Court of Arbitration may not be as strict as the ICJ when settling disputes. However, its effectiveness depends entirely on the treaty that governs the relationship between the contracting parties. Although, the PCA had made a decision on the Abyei region of Sudan, the process of delimitation has not commenced. There was no instrument that defined a ‘resident of Abyei’ for the purposes of voting in the Abyei referendum 2011. Consequently, the conflict between the Sudanese government and SPLM within the region has intensified once more. However, literature has illustrated that the PCA’s effectiveness is high in maritime cases. This is due in part to the provisions of UNCLOS which provide comprehensive information on those principles that are associated with maritime and sea relations. Though the PCA’s decision is binding, its enforcement mechanism is non-existent. China’s rejection of the ruling in the China-Philippines Arbitration case casts doubt on the tribunal’s ability to encourage compliance with its ruling.

In selecting a dispute mechanism for the Guyana-Venezuela border dispute, it is imperative to address the position of each state on a balance of merits. Guyana’s firmness

\textsuperscript{146} Camerooon-Nigeria border settlement faces tough development challenges, The Guardian.

on the validity of the 1899 arbitral award is economically and politically significant for the development of the country. Venezuela’s concern that the 1899 arbitral award was flawed with irregularities is also valid. Bilateral negotiations between the two states have only contributed to the signing of the Geneva Agreement and Port-of-Spain Protocol. These instruments have not yielded any progress towards resolving the dispute per se. Even the UN Good Offices, which relies on mediation failed to achieve any substantial progress that could advocate mediation as a potential dispute settlement strategy.

The UN Secretary-General’s decision to refer the dispute to the ICJ showed that mediation was no longer viable and that a juridical settlement was the last alternative available. Judicial settlements are unpopular due to the zero-sum scenario (winner/loser situation) they create. However, they assure the international community and non-state actors that a decision based on international law can be made. Thus, I argue that the ICJ, in its capacity and given the current developments of the dispute is the most effective dispute settlement mechanism available among the three mechanisms analyzed.

Following a decision from the ICJ, Guyana and Venezuela should establish a Mixed Commission, similar to the commission set up in 1905 to clearly delineate the western border of the Essequibo region. Moreover, it should oversee the removal of Venezuelan military personnel from the Guyanese half of the Ankoko Island since their occupation would be illegal under international law. The Commission’s mandate would enforce the ICJ’s decision on this dispute and reassure the boundaries of the nations. I anticipate that Venezuela may boycott this initiative. Given that the ICJ decision would most likely favor Guyana, Venezuela would refuse to contribute resources and personnel
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to participate in such activity. Consequently, Venezuela’s omission would immediately put an end to collaborative efforts of demarcation.

How the ICJ might adjudicate this case and the consequences that would follow after a decision is made, will incur global interest on how future territorial disputes will be handled, in Latin America, the African region or elsewhere. Guyana remains optimistic and confident that the decision would be in their favor. This optimism is reflected in the range of development projects they have slated for the Essequibo region. However, Venezuela’s opposition to the ICJ, in the face of hostile political instability may damage Venezuela’s image. Moreover, there is a legitimate concern that if the decision does not favor Venezuela, a conflict may ripen by those ultra-nationalists in Venezuela, encouraging Venezuelans to take actions against Guyana. Thus, finding a peaceful solution to this dispute is essential as it would avoid such an escalation that would benefit neither party.
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Appendix

Members of the 1899 tribunal (From left to right): Justice Brewer, Lord Russell, Prof Martens, Chief Justice Fuller, Lord Justice Collins

Punch newspaper cartoon shows Lord Salisbury of England (chuckling). "I like arbitration — In the PROPER PLACE!" after the 1899 arbitral award was given
Guyana-Venezuela Border Dispute: Seeking a Peaceful Solution

Appendix B

MALLET-PREVOST’S MEMORANDUM 8/11/1934

(Extract)

When I was shown into the apartment where the two American arbitrators were waiting for me, Justice Brewer arose and said quite excitedly: "Mallet-Prevost, it is useless any longer to keep up this farce pretending that we are judges and that you are counsel. The judge and I have decided to disclose to you confidentially just what has passed. Martens has been to see us. He informs us that Russell and Collins are ready to decide in favor of the Schomburg Line which starting from Point Barima on the coast would give Great Britain the control of the main mouth of the Orinoco; that if we insist on keeping the line on the coast at the Moroco River he will side with the British and approve the Schomburg Line as the Boundary. However, he added that, "Mr. Martens is anxious to have a unanimous decision and therefore we will agree to the line which he proposes; he will secure the acquiescence of Lord Russell and Lord Collins and make the decision unanimous." What Martens then proposed was that the line on the coast at Point Barima on the coast should start at some distance southeast of Point Barima so as to give Venezuela control of the Orinoco mouth; that the line should connect with the Schomburg Line at some distance in the interior leaving to Venezuela the control of the Orinoco mouth and some 5,000 square miles of territory around that mouth. "That is what Martens proposed. The Chief and I are of the opinion that the boundary on the coast should start at the Moroco River. The question for us is whether we shall agree to Martens' proposal or whether we shall file dissenting opinions. Under these circumstances the Chief and I have decided that we must consult you, and I am at this moment prepared to follow whichever of the two courses you wish us to do." From what Justice Brewer had just said and from the change he had all noticed in Lord Collins, I became convinced and still believe that during Martens' visit England a deal had been concluded between Russia and Great Britain to divide the case along the lines suggested by Martens, and that pressure to which had in some way been exerted on Collins to follow that course. I naturally felt that the responsibility which I was asked to shoulder greater than I could alone bear. I so stated to the arbitrators and I asked for permission to confer with General Harrison. This they gave and I immediately went to General Harrison's apartment to confer on the subject with him.

After disclosing to General Harrison what had just passed he rose in indignation and pacing the floor described the action of Great Britain and Russia in terms which it is needless for me to repeat. His first reaction was to ask Fuller and Brewer to file dissenting opinions, but, after cooling down and considering the matter from a practical standpoint, he said: "Mallet-Prevost, if it should ever be known that we had it in our power to save for Venezuela the mouth of the Orinoco and failed to do so, we should never be forgiven. What Martens proposes is iniquitous but I see nothing for Fuller and I shall consent to it." I concurred with General Harrison and so advised Chief Justice Fuller and Justice Brewer. The decision which was accordingly rendered was unanimous but while it gave to Venezuela the most important strategic point at issue it was unjust to Venezuela and deprived her of very extensive and important territory, to which, in my opinion, Great Britain had not the shadow of a right.


An excerpt from Mallet Prevost's memorandum

Guyanese illustration (which appeared in a local newspaper) showing Venezuela's occupation of the Ankoko Island, in defiance of Guyanese President, L.F.S. Burnham’s ‘not one blade of grass’ campaign
Guyana-Venezuela Border Dispute: Seeking a Peaceful Solution

“We ain’t giving up no mountains
We ain't giving up no tree
We ain’t giving up no river
That belongs to we
Not one blue saki,
Not one rice grain,
Not one kuras,
Not a blade of grass”

An excerpt from the popular, “Not a Blade of Grass,” song, performed by Guyanese band, Tradewinds.

Flags of Venezuela (Left) and Guyana (right)

Guyanese ranks stand alongside Guyana and Venezuela boundary marker after the demarcation exercise was undertaken by a boundary commission from 1900-1905.
UN Secretary-General Ban-Ki Moon (at that time) meets with Venezuelan President, Nicolás Maduro (left) and Guyanese President, David Granger (right)

UN Secretary-General (at the time), Ban Ki-Moon poses alongside Venezuelan President, Nicolas Maduro (Left) and Guyanese President, David Granger (Right): No substantial progress on dialogue was made on the border dispute

Guyana’s Minister of Foreign Affairs, Carl Greenidge (right) poses with Philippe Couvreur, Registrar of the ICJ (left) after submitting Guyana’s application to the ICJ
Award regarding the Boundary between the Colony of British Guiana and the United States of Venezuela

3 October 1899

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PART XXV

Award regarding the Boundary between
the Colony of British Guiana and
the United States of Venezuela

Decision of 3 October 1899

Sentence arbitrale relative à la frontière
entre la colonie de Guyane britannique
et les États-Unis du Venezuela

Décision du 3 octobre 1899

SENTENCE DU TRIBUNAL ARBITRAL, ÉTABLI EN VERTU DE L’ARTICLE I DU TRAITÉ D’ARBITRAGE, SIGNÉ À WASHINGTON, ENTRE LA GRANDE BRETAGNE ET LES ÉTATS-UNIS DU VENEZUELA, RELATIVE À LA FRONTIÈRE ENTRE LA COLONIE DE GUYANE BRITANNIQUE ET LES ÉTATS-UNIS DU VENEZUELA, DÉCISION DU 3 OCTOBRE 1899”

Determination of borders – question of the boundary-line between the Colony of British Guiana and the United States of Venezuela.

Maintenance of navigation rights for merchant ships of all nations on rivers Amakuru and Barima – rights of British and Venezuelan ships on shared rivers.

* * * * *

WHEREAS, on the 2nd day of February, 1897, a Treaty of Arbitration was concluded between Her Majesty the Queen of the United Kingdom of Great Britain and Ireland and the United States of Venezuela in the terms following:—

Ratifications exchanged at Washington, June 14, 1897.

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and the United States of Venezuela, being desirous to provide for an amicable settlement of the question which has arisen between their respective Governments concerning the boundary between the Colony of British Guiana

and the United States of Venezuela, have resolved to submit to arbitration the question involved, and to the end of concluding a Treaty for that purpose have appointed as their respective Plenipotentiaries:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the Right Honourable Sir Julian Pauncefote, a Member of Her Majesty’s Most Honourable Privy Council, Knight Grand Cross of the Most Honourable Order of the Bath and of the Most Distinguished Order of St. Michael and St. George, and Her Majesty’s Ambassador Extraordinary and Plenipotentiary to the United States;

And the President of the United States of Venezuela, Señor José Andrade, Envoy Extraordinary and Minister Plenipotentiary of Venezuela to the United States of America;

Who, having communicated to each other their respective full powers, which were found to be in due and proper form, have agreed to and concluded the following Articles: —

ART. I. An Arbitral Tribunal shall be immediately appointed to determine the boundary-line between the Colony of British Guiana and the United States of Venezuela.

II. The Tribunal shall consist of five Jurists: two on the part of Great Britain, nominated by the members of the Judicial Committee of Her Majesty’s Privy Council, namely, the Right Honourable Baron Herschell, Knight Grand Cross of the Most Honourable Order of the Bath, and the Honourable Sir Richard Henn Collins, Knight, one of the Justices of Her Britannic Majesty's Supreme Court of Judicature; two on the part of Venezuela, nominated, one by the President of the United States of Venezuela, namely, the Honourable Melville Western Fuller, Chief Justice of the United States of America, and one nominated by the Justices of the Supreme Court of the United States of America, namely, the Honourable David Josiah Brewer, a Justice of the Supreme Court of the United States of America; and of a fifth Jurist to be selected by the four persons so nominated, or in the event of their failure to agree within three months from the date of the exchange of ratifications of the present Treaty, to be selected by His Majesty the King of Sweden and Norway. The Jurist so selected shall be President of the Tribunal.

In case of the death, absence, or incapacity to serve of any of the four Arbitrators above named, or in the event of any such Arbitrator omitting or declining or ceasing to act as such, another Jurist of repute shall be forthwith substituted in his place. If such vacancy shall occur among those nominated on the part of Great Britain, the substitute shall be appointed by the members for the time being of the Judicial Committee of Her Majesty’s Privy Council, acting by a majority, and if among those nominated on the part of Venezuela, he shall be appointed by the Justices of the Supreme Court of the United States, acting by a majority. If such vacancy shall occur in the case of the
fifth Arbitrator, a substitute shall be selected in the manner herein provided for with regard to the original appointment.

III. The Tribunal shall investigate and ascertain the extent of the territories belonging to, or that might lawfully be claimed by, the United Netherlands or by the Kingdom of Spain respectively at the time of the acquisition by Great Britain of the Colony of British Guiana, and shall determine the boundary-line between the Colony of British Guiana and the United States of Venezuela.

IV. In deciding the matters submitted, the Arbitrators shall ascertain all facts which they deem necessary to a decision of the controversy, and shall be governed by the following Rules, which are agreed upon by the High Contracting Parties as Rules to be taken as applicable to the case, and by such principles of international law not inconsistent therewith as the Arbitrators shall determine to be applicable to the case: —

Rules.

(a.) Adverse holding or prescription during a period of fifty years shall make a good title. The Arbitrators may deem exclusive political control of a district, as well as actual settlement thereof, sufficient to constitute adverse holding or to make title by prescription.

(b.) The Arbitrators may recognize and give effect to rights and claims resting on any other ground whatever valid according to international law, and on any principles of international law which the Arbitrators may deem to be applicable to the case, and which are not in contravention of the foregoing rule.

(c.) In determining the boundary-line, if territory of one Party be found by the Tribunal to have been at the date of this Treaty in the occupation of the subjects or citizens of the other Party, such effect shall be given to such occupation as reason, justice, the principles of international law, and the equities of the case shall, in the opinion of the Tribunal, require.

V. The Arbitrators shall meet at Paris, within sixty days after the delivery of the printed arguments mentioned in Article VIII, and shall proceed impartially and carefully to examine and decide the questions that have been, or shall be, laid before them, as herein provided, on the part of the Governments of Her Britannic Majesty and the United States of Venezuela respectively.

Provided always that the Arbitrators may, if they shall think fit, hold their meetings, or any of them, at any other place which they may determine.

All questions considered by the Tribunal, including the final decision, shall be determined by a majority of all the Arbitrators.
Each of the High Contracting Parties shall name one person as its Agent to attend the Tribunal, and to represent it generally in all matters connected with the Tribunal.

VI. The printed Case of each of the two Parties, accompanied by the documents, the official correspondence, and other evidence on which each relies, shall be delivered in duplicate to each of the Arbitrators and to the Agent of the other Party as soon as may be after the appointment of the members of the Tribunal, but within a period not exceeding eight months from the date of the exchange of the ratifications of this Treaty.

VII. Within four months after the delivery on both sides of the printed Case, either Party may in like manner deliver in duplicate to each of the said Arbitrators, and to the Agent of the other Party, a Counter-Case, and additional documents, correspondence, and evidence, in reply to the Case, documents, correspondence, and evidence so presented by the other Party.

If in the Case submitted to the Arbitrators either Party shall have specified or alluded to any report or document, in its own exclusive possession, without annexing a copy, such Party shall be bound, if the other Party thinks proper to apply for it, to furnish that Party with a copy thereof, and either Party may call upon the other, through the Arbitrators, to produce the originals or certified copies of any papers adduced as evidence, giving in each instance notice thereof within thirty days after delivery of the Case, and the original or copy so requested shall be delivered as soon as may be, and within a period not exceeding forty days after receipt of notice.

VIII. It shall be the duty of the Agent of each Party, within three months after the expiration of the time limited for the delivery of the Counter-Case on both sides, to deliver in duplicate to each of the said Arbitrators, and to the Agent of the other Party, a printed Argument showing the points, and referring to the evidence upon which his Government relies, and either Party may also support the same before the Arbitrators by oral argument of Counsel; and the Arbitrators may, if they desire further elucidation with regard to any point, require a written or printed statement or argument, or oral argument by Counsel upon it; but in such case the other Party shall be entitled to reply either orally or in writing, as the case may be.

IX. The Arbitrators may, for any cause deemed by them sufficient, enlarge either of the periods fixed by Articles VI, VII, and VIII by the allowance of thirty days additional.

X. The decision of the Tribunal shall, if possible, be made within three months from the close of the argument on both sides.

It shall be made in writing and dated, and shall be signed by the Arbitrators who may assent to it.
The decision shall be in duplicate, one copy whereof shall be delivered to the Agent of Great Britain for his Government, and the other copy shall be delivered to the Agent of the United States of Venezuela for his Government.

XI. The Arbitrators shall keep an accurate record of their proceedings, and may appoint and employ the necessary officers to assist them.

XII. Each Government shall pay its own Agent and provide for the proper remuneration of the Counsel employed by it, and of the Arbitrators appointed by it or in its behalf, and for the expense of preparing and submitting its case to the Tribunal. All other expenses connected with the Arbitration shall be defrayed by the two Governments in equal moities.

XIII. The High Contracting Parties engage to consider the result of the proceedings of the Tribunal of Arbitration as a full, perfect, and final settlement of all the questions referred to the Arbitrators.

XIV. The present Treaty shall be duly ratified by Her Britannic Majesty and by the President of the United States of Venezuela, by and with the approval of the Congress thereof, and the ratifications shall be exchanged in London or in Washington within six months from the date hereof.

In faith whereof we, the respective Plenipotentiaries, have signed this Treaty, and have hereunto affixed our seals.

Done in duplicate at Washington, the 2nd day of February, 1897.

(L.S.)                (L.S.)
JULIAN PAUNCEFOTE.    JOSÉ ANDRADE

And whereas the said Treaty was duly ratified, and the ratifications were duly exchanged in Washington on the 14th day of June, 1897, in conformity with the said Treaty;

And whereas since the date of the said Treaty, and before the arbitration thereby contemplated had been entered upon, the said Right Honourable Baron Herschell departed this life;

And whereas the Right Honourable Charles Baron Russell of Killowen, Lord Chief Justice of England, Knight Grand Cross of the Most Distinguished Order of St. Michael and St. George has, conformably to the terms of the said Treaty, been duly nominated by the members of the Judicial Committee of Her Majesty's Privy Council to act under the said Treaty in the place and stead of the said late Baron Herschell;

And whereas the said four Arbitrators, namely: the said Right Honourable Lord Russell of Killowen, the Right Honourable Sir Richard Henn Collins, the Honourable Melville Weston Fuller, and the Honourable David Josiah Brewer, have, conformably to the terms of the said Treaty, selected his Excellency Frederic de Martens, Privy Councillor, Permanent Member of the Council of
the Ministry of Foreign Affairs in Russia, LL.D. of the Universities of Cambridge and Edinburgh, to be the fifth Arbitrator;

And whereas the said Arbitrators have duly entered upon the said Arbitration, and have duly heard and considered the oral and written arguments of the Counsel representing respectively Her Majesty the Queen and the United States of Venezuela, and have impartially and carefully examined the questions laid before them, and have investigated and ascertained the extent of the territories belonging to or that might lawfully be claimed by the United Netherlands or by the Kingdom of Spain respectively at the time of the acquisition by Great Britain of the Colony of British Guiana:

Now we, the undersigned Arbitrators, do hereby make and publish our decision, determination, and award of, upon, and concerning the questions submitted to us by the said Treaty of Arbitration, finally decide, award, and determine that the boundary-line between the Colony of British Guiana and the United States of Venezuela is as follows: —

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

Provided always that the line of delimitation fixed by this Award shall be subject and without prejudice to any questions now existing, or which may arise, to be determined between the Government of Her Britannic Majesty and the Republic of Brazil, or between the latter Republic and the United States of Venezuela.

In fixing the above delimitation, the Arbitrators consider and decide that in times of peace the Rivers Amakuru and Barima shall be open to navigation by the merchant-ships of all nations, subject to all just regulations and to the payment of light or other like dues: Provided that the dues charged by the Republic of Venezuela and the Government of the Colony of British Guiana in respect of the passage of vessels along the portions of such rivers
respectively owned by them shall be charged at the same rates upon the vessels of Venezuela and Great Britain, such rates being no higher than those charged to any other nation: Provided also that no customs duties shall be chargeable either by the Republic of Venezuela or by the Colony of British Guiana in respect of goods carried on board ships, vessels, or boats passing along the said rivers; but customs duties shall only be chargeable in respect of goods landed in the territory of Venezuela or Great Britain respectively.

Executed and published in duplicate by us in Paris, this 3rd day of October, A.D. 1899.

F. DE MARTENS.
MELVILLE WESTON FULLER.
DAVID J. BREWER.
RUSSELL OF K.
R. HENN COLLINS.
No. 8192

VENEZUELA
and
UNITED KINGDOM OF GREAT BRITAIN
AND NORTHERN IRELAND

Agreement to resolve the controversy over the frontier between Venezuela and British Guiana. Signed at Geneva, on 17 February 1966

Official texts: Spanish and English.
Registered by Venezuela on 5 May 1966.

VENEZUELA
et
ROYAUME-UNI DE GRANDE-BRETAGNE
ET D'IRLANDE DU NORD

Accord tendant à régler le différend relatif à la frontière entre le Venezuela et la Guyane britannique. Signé à Genève, le 17 février 1966

Textes officiels espagnol et anglais.
Enregistré par le Venezuela le 5 mai 1966.
No. 8192. AGREEMENT 1 TO RESOLVE THE CONTROVERSY BETWEEN VENEZUELA AND THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND OVER THE FRONTIER BETWEEN VENEZUELA AND BRITISH GUIANA. SIGNED AT GENEVA, ON 17 FEBRUARY 1966

The Government of the United Kingdom of Great Britain and Northern Ireland, in consultation with the Government of British Guiana, and the Government of Venezuela;

Taking into account the forthcoming independence of British Guiana;

Recognising that closer cooperation between British Guiana and Venezuela could bring benefit to both countries;

Convinced that any outstanding controversy between the United Kingdom and British Guiana on the one hand and Venezuela on the other would prejudice the furtherance of such cooperation and should therefore be amicably resolved in a manner acceptable to both parties;

In conformity with the agenda that was agreed for the governmental conversations concerning the controversy between Venezuela and the United Kingdom over the frontier with British Guiana, in accordance with the joint communiqué of 7 November, 1963, have reached the following agreement to resolve the present controversy:

Article I

A Mixed Commission shall be established with the task of seeking satisfactory solutions for the practical settlement of the controversy between Venezuela and the United Kingdom which has arisen as the result of the Venezuelan contention that the Arbitral Award of 1899 2 about the frontier between British Guiana and Venezuela is null and void.

Article II

(1) Within two months of the entry into force of this Agreement, two representatives shall be appointed to the Mixed Commission by the Government of British Guiana and two by the Government of Venezuela.

(2) The Government appointing a representative may at any time replace him, and shall do so immediately should one or both of its representatives be unable to act through illness or death or any other cause.

1 Came into force on 17 February 1966, the date of signature, in accordance with article VII.
2 British and Foreign State Papers, Vol. 92, p. 160 (see also United Kingdom: Treaty Series No. 5 (1897), C. 8439, for text of Treaty of 2 February 1897).
The Mixed Commission may by agreement between the representatives appoint experts to assist the Mixed Commission, either generally or in relation to any individual matter under consideration by the Mixed Commission.

**Article III**

The Mixed Commission shall present interim reports at intervals of six months from the date of its first meeting.

**Article IV**

(1) If, within a period of four years from the date of this Agreement, the Mixed Commission should not have arrived at a full agreement for the solution of the controversy it shall, in its final report, refer to the Government of Guyana and the Government of Venezuela any outstanding questions. Those Governments shall without delay choose one of the means of peaceful settlement provided in Article 33 of the Charter of the United Nations.

(2) If, within three months of receiving the final report, the Government of Guyana and the Government of Venezuela should not have reached agreement regarding the choice of one of the means of settlement provided in Article 33 of the Charter of the United Nations, they shall refer the decision as to the means of settlement to an appropriate international organ upon which they both agree or, failing agreement on this point, to the Secretary-General of the United Nations. If the means so chosen do not lead to a solution of the controversy, the said organ or, as the case may be, the Secretary-General of the United Nations shall choose another of the means stipulated in Article 33 of the Charter of the United Nations, and so on until the controversy has been resolved or until all the means of peaceful settlement there contemplated have been exhausted.

**Article V**

(1) In order to facilitate the greatest possible measure of cooperation and mutual understanding, nothing contained in this Agreement shall be interpreted as a renunciation or diminution by the United Kingdom, British Guiana or Venezuela of any basis of claim to territorial sovereignty in the territories of Venezuela or British Guiana, or of any previously asserted rights of or claims to such territorial sovereignty, or as prejudicing their position as regards their recognition or non-recognition of a right of, claim or basis of claim by any of them to such territorial sovereignty.

(2) No acts or activities taking place while this Agreement is in force shall constitute a basis for asserting, supporting or denying a claim to territorial sovereignty in the territories of Venezuela or British Guiana or create any rights of sovereignty in those territories, except in so far as such acts or acti-
activities result from any agreement reached by the Mixed Commission and accepted in writing by the Government of Guyana and the Government of Venezuela. No new claim, or enlargement of an existing claim, to territorial sovereignty in those territories shall be asserted while this Agreement is in force, nor shall any claim whatsoever be asserted otherwise than in the Mixed Commission while that Commission is in being.

Article VI

The Mixed Commission shall hold its first meeting at a date and place to be agreed between the Governments of British Guiana and Venezuela. This meeting shall take place as soon as possible after its members have been appointed. Thereafter the Mixed Commission shall meet as and when agreed between the representatives.

Article VII

This Agreement shall enter into force on the date of its signature.

Article VIII

Upon the attainment of independence by British Guiana, the Government of Guyana shall thereafter be a party to this Agreement, in addition to the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Venezuela.

In witness whereof the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

Done in duplicate at Geneva this 17th day of February, 1966, in the English and Spanish languages, both texts being equally authoritative.

For the Government of the United Kingdom of Great Britain and Northern Ireland:

Michael Stewart
Secretary of State for Foreign Affairs
L. F. S. Burnham
Prime Minister of British Guiana

For the Government of Venezuela:

Ignacio Iribarren Borges
Minister for Foreign Affairs
Guyana files an application against Venezuela

THE HAGUE, 4 April 2018. On Thursday 29 March 2018, the Co-operative Republic of Guyana (hereinafter “Guyana”) filed an application against the Bolivarian Republic of Venezuela (hereinafter “Venezuela”) with the International Court of Justice (ICJ), the principal judicial organ of the United Nations.

In its Application, Guyana requests the Court “to confirm the legal validity and binding effect of the Award Regarding the Boundary between the Colony of British Guiana and the United States of Venezuela, of 3 October 1899 (hereinafter the ‘1899 Award’)”. The Applicant claims that the 1899 Award was “a full, perfect, and final settlement” of all questions relating to determining the boundary line between the colony of British Guiana and Venezuela.

Guyana affirms that, between November 1900 and June 1904, a joint Anglo-Venezuelan Boundary Commission “identified, demarcated and permanently fixed the boundary established by the . . . Award” before the signing of a Joint Declaration by the Commissioners on 10 January 1905 (referred to by Guyana as the “1905 Agreement”).

Guyana contends that, in 1962, for the first time, Venezuela contested the Award as “arbitrary” and “null and void”. This, according to the Applicant, led to the signing of the Agreement to resolve the controversy between Venezuela and the United Kingdom of Great Britain and Northern Ireland over the frontier between Venezuela and British Guiana at Geneva on 17 February 1966 (hereinafter the “Geneva Agreement”), which “provided for recourse to a series of dispute settlement mechanisms to finally resolve the controversy”.

Guyana submits that the Geneva Agreement authorized the United Nations Secretary-General to decide which appropriate dispute resolution mechanism to adopt for the peaceful settlement of the dispute, in accordance with Article 33 of the United Nations Charter. The Applicant further argues that:

“On 30 January 2018, . . . Secretary-General [H.E.] António Guterres determined that the Good Offices Process had failed to achieve a peaceful settlement of the controversy. He then took a formal and binding decision, under Article IV, paragraph 2 of the Agreement, to choose a different means of settlement under Article 33 of the Charter. In identical letters to both Parties, he communicated the terms of his decision that, pursuant to the authority vested in him by the Geneva Agreement, the controversy shall be settled by recourse to the International Court of Justice.”
Guyana states that it “files [the] Application pursuant to the Secretary-General’s decision”.

In its Application, Guyana requests the Court to adjudge and declare that:

“(a) The 1899 Award is valid and binding upon Guyana and Venezuela, and the boundary established by that Award and the 1905 Agreement is valid and binding upon Guyana and Venezuela;

(b) Guyana enjoys full sovereignty over the territory between the Essequibo River and the boundary established by the 1899 Award and the 1905 Agreement, and Venezuela enjoys full sovereignty over the territory west of that boundary; Guyana and Venezuela are under an obligation to fully respect each other’s sovereignty and territorial integrity in accordance with the boundary established by the 1899 Award and the 1905 Agreement;

(c) Venezuela shall immediately withdraw from and cease its occupation of the eastern half of the Island of Anikoko, and each and every other territory which is recognized as Guyana’s sovereign territory in accordance with the 1899 Award and 1905 Agreement;

(d) Venezuela shall refrain from threatening or using force against any person and/or company licensed by Guyana or engage in economic or commercial activity in Guyanese territory as determined by the 1899 Award and 1905 Agreement, or in any maritime areas appurtenant to such territory over which Guyana has sovereignty or exercises sovereign rights, and shall not interfere with any Guyanese or Guyanese-authorised activities in those areas;

(e) Venezuela is internationally responsible for violations of Guyana’s sovereignty and sovereign rights, and for all injuries suffered by Guyana as a consequence.”

Note: The Court’s press releases are prepared by its Registry for information purposes only and do not constitute official documents.

The full text of Guyana’s Application of 29 March 2018 will be available shortly on the Court’s website.

The International Court of Justice (ICJ) is the principal judicial organ of the United Nations. It was established by the United Nations Charter in June 1945 and began its activities in April 1946. The seat of the Court is at the Peace Palace in The Hague (Netherlands). Of the six principal organs of the United Nations, it is the only one not located in New York. The Court has a twofold role: first, to settle, in accordance with international law, legal disputes submitted to it by States (its judgments have binding force and are without appeal for the parties concerned); and, second, to give advisory opinions on legal questions referred to it by duly authorized United Nations organs and agencies of the system. The Court is composed of 15 judges elected for a nine-year term by the General Assembly and the Security Council of the United Nations. Independent of the United Nations Secretariat, it is assisted by a Registry, its own international secretariat, whose activities are both judicial and diplomatic, as well as administrative. The official languages of the Court are French and English. Also known as the “World Court”, it is the only court of a universal character with general jurisdiction.
The ICJ, a court open only to States for contentious proceedings, and to certain organs and institutions of the United Nations system for advisory proceedings, should not be confused with the other — mostly criminal — judicial institutions based in The Hague and adjacent areas, such as the International Criminal Court (ICC, the only permanent international criminal court, which was established by treaty and does not belong to the United Nations system), the Special Tribunal for Lebanon (STL, an international judicial body with an independent legal personality, established by the United Nations Security Council upon the request of the Lebanese Government and composed of Lebanese and international judges), the Mechanism for International Criminal Tribunals (MICT, mandated to take over residual functions from the International Criminal Tribunal for the former Yugoslavia and from the International Criminal Tribunal for Rwanda), the Kosovo Specialist Chambers and Specialist Prosecutor’s Office (an ad hoc judicial institution which has its seat in The Hague), or the Permanent Court of Arbitration (PCA, an independent institution which assists in the establishment of arbitral tribunals and facilitates their work, in accordance with the Hague Convention of 1899).

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