

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

ANNEX

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I.

Venezuela's territorial claim and Process of decolonization of the British Guyana, 1961-1965

The *memorandum* elaborated by Severo Mallet-Prèvoist on February 8th, 1944 was submitted to Judge Otto Schoenrich by the author, authorizing him to proceed, after his death (which occurred on December 10th, 1948), to publish it. This is what Judge Schoenrich exactly did, with a preliminary note, in the American Journal of International Law (vol. 43, number 3, July 1949). It is interesting to mention that one hundred days after having issued the *memorandum*, Mallet-Prèvoist, in a letter addressed to John Foster Dulles on May 18th, 1944, noted, regarding the arbitration ruling of October 3rd, 1899:

“In that case I know that the two American Arbitrators, who wished to apply what they considered as law, were nevertheless compelled against their will and in order to avoid a threatened great injustice, to concur in a decision which was wholly indifferent to the legal principles which they considered as applicable”

Venezuela has always invoked that it was the discovery of the Mallet-Prèvoist *memorandum* - which allowed it to know what Foreign Minister Falcon Briceño called, on November 12th, 1962 in his speech before the Special Political Committee of the UN General Assembly, the “intimate history” of the award - which had risen at the official and diplomatic level a claim that existed decades ago in the collective soul of Venezuelans:

“we did not know the intimacy of the award, we did not know how things had really happened. In fact, we did know, that we had been stripped from it, but the Venezuela of 1899 and the one that follows it for a few years later, is a Venezuela that is in a situation of poverty, struck down by a recent civil war”

An official testimony immediately prior to the public knowledge of the *memorandum* was provided by the speech of the head of the Venezuelan delegation at the 9th Inter-American Conference (Bogotá, March 30th to May 2nd, 1948), Romulo Betancourt, in which he stated “not to renounce to territorial aspirations over zones today under colonial rule”. Even earlier, on June 30th, 1944, MP Dr. José A. Marturet demanded in the National Assembly “the review of its borders (those of Venezuela) with those of the English Guiana” and the President of Congress, Dr. Manuel Egaña, collected and confirmed, in the closing session, on July 17th, 1944, this “yearning to review the ruling by which the English imperialism stripped us of a large part of our Guayana.”

The publication of the Mallet-Prévost *memorandum* coincided with the opening of the British and private North American archives and the Venezuelan Foreign Ministry moved a team of historians to do research between 1950 and 1955.

During the dictatorial regime of Marcos Pérez Jiménez the claim was materialized in declarations within the framework of the OAS (the 4th Meeting of Consultation of Ministers of Foreign Relations, Washington DC March 26th to April 7th, 1951, statement of the Foreign Minister Dr. Luis Emilio Gómez Ruiz; the 10th Inter-American Conference, Caracas, March 1-28, 1954, statement by the Legal Counsel of the Ministry of Foreign Relations, Dr. Ramón Carmona) reserving the intention to “enforce” the fair

aspirations of Venezuela to be redressed according to an “equitable rectification” taking into account the damages suffered by the Nation as a result of a historical injustice.

In February 1956, following the establishment of the British Caribbean Federation, even though it did not include British Guiana, the Venezuelan Foreign Minister, Dr. José Loreto Arismendi, reiterated that the Venezuelan position on the boundaries of this colony would not be affected by any change of status that occurred in it.

In March 1960, with Venezuela under a democratic regime, Dr. Rigoberto Henríquez Vera presented to a parliamentary delegation of the United Kingdom the criteria of the Venezuelan National Assembly:

“A change of status in the English Guiana cannot invalidate the fair aspirations of our people to be redressed in an equitable manner and by amicable understanding, the great damages that the nation suffered under the unjust ruling of 1899”.

The beginning of the process of decolonization of British Guiana within the framework of the United Nations prompted the Venezuelan Government to formalize a claim in this regard, to prevent the independence of the British colony, supported by Venezuela, from becoming a settling obstacle for its claim, based on a historical justice backed by the many causes of nullity of the aforementioned award. An award that deprived the former General Captaincy of Venezuela of thousands of kilometers inherited from the Crown of Spain when coming to pass to its own independence in 1810, as part of the *Gran Colombia*.

The Prime Minister of British Guiana had made a statement before the 4th Committee of the General Assembly on December 18th, 1961 (Doc. A/C.4/515) and a letter from the Permanent Representative of the United Kingdom had been circulated, dated January 15th, 1962 (Doc. A /C.4/520) concerning the independence of Guyana. For his part, the Permanent Representative of Venezuela, Carlos Sosa Rodríguez, addressed a letter to Secretary General on February 9th, 1962, in which he expressed his reserve concerning the decolonization process announced:

“because there is a disagreement between my country and the United Kingdom over the demarcation of the border between Venezuela and British Guiana.”

The letter was accompanied by an explanatory memorandum of the situation; it called for the fair demands of Venezuela to be taken into account, that “the injustice committed be rectified in an equitable manner” and resolved “through negotiations between the interested Parties, the old issue between Venezuela and the United Kingdom regarding the limits of British Guiana.”

Days later, on February 22nd, 1962, Ambassador Carlos Sosa Rodríguez made a statement at the 1302 session of the 4th Committee of the General Assembly, hoping that the issue could be resolved through “friendly negotiations” between Venezuela and the United Kingdom (Doc. A/C.4/540):

“On this occasion, when the issue of the independence of British Guiana had been raised before the United Nations and the legitimate aspiration of its population to reach, through peaceful negotiations

with the United Kingdom, the full exercise of its sovereignty, the Government of Venezuela, by warmly supporting such fair aspirations, is at the same time obliged in defense of the rights of its own people, to request that its fair claim be taken into account and that the *injustice committed be rectified in an equitable manner*. My country hopes to be able to do it through friendly negotiations between the interested Parties, taking into account, not only their legitimate aspirations, but also the prevailing current circumstances and the legitimate interests of the people of British Guiana” (emphasis added).

On April 4th, 1962, the National Assembly approved a declaration in Caracas:

“Supporting Venezuela’s policy on the border dispute between the English possession and our country regarding the territory from which we were stripped by colonialism; and, on the other hand, to support without reserve the total independence of English Guiana and its incorporation into the democratic system of life”.

This position was reiterated in the agreement of the National Assembly of October 13th, 1965 and has been traditionally supported by Venezuela in the process of decolonization of this territory.

Given the negative attitude of the British government, Venezuela requested (on August 18th, 1962) the inclusion of the “issue of boundaries between Venezuela and British Guiana” (Doc. A/5168) in the agenda of the Seventeenth session of the General Assembly.

The Venezuelan Minister of Foreign Relations, Marcos Falcón Briceño, in addition to his speech before the General Assembly on October 1st, made a

comprehensive statement at the 348 session of the Special Political Committee on November 12, 1962 (Doc. A/SPC/71), suggesting a friendly solution to the dispute.

The next day (at the 349 session), the representative of the United Kingdom, C.T. Crowe (Doc. A/SPC/72), replied that the case was closed and rejected that there was a pending border issue between Venezuela and the United Kingdom in British Guiana. However, the British representative added that his government, with the consent of Guyana, was willing to discuss with Venezuela through diplomatic channels the arrangements for a tripartite examination of the lengthy documentary material regarding the issue, to “clear any doubt that the Government may continue to have regarding the validity of the award... It is better to proceed in this way, instead of continuing our discussions here at the United Nations”.

On November 16th, the Committee agreed, taking into account “the possibility of direct discussions between the interested Parties”, not to continue the discussion of the issue (350 session, Doc. A/SPC/73).

Venezuelan experts were in London in February 1963 for the first stage of document review. It was the Jesuits Hermann González Oropeza and Pablo Ojer, who were later joined by Dr. Rafael Armando Rojas, Ambassador of Venezuela in Nicaragua.

On November 5th, 1963, the ministers, Marcos Falcón Briceño and R. A. Butler, met in London to review the results of the experts’ research. The Venezuelan gave the British an *aide-memoire* summarizing the position of

Venezuela. In light of the evidence that was discovered and compiled, Venezuela claimed to have conclusive evidence of the moral and legal damage it suffered, as it was deceived and deprived of its legitimate territory by the 1899 award. The truth and historical justice demand that Venezuela claim the total return of the territory from which it has been dispossessed. In other words, it was about finding out the historical truth of what happened around the limits and, based on it, the reparation of the injustice committed with Venezuela.

The meeting of November 5th was informal, but the talks next day were conducted in a formal manner with all the members of the respective delegations. Since the work of the experts had not been completed, the ministers limited themselves to exchanging their preliminary opinions and confirming the ongoing procedure.

On November 7th, 1963, the Venezuelan and United Kingdom ministers signed a joint communiqué. The ministers agreed that, as a next stage, a British expert (Sir Geoffrey Meade), also acting on behalf of British Guiana, would travel to Caracas to examine the documentary material of the Venezuelan archives, which he did on December 3rd to 11th, 1963. Subsequently, experts from both sides would meet to discuss the results of their investigation and would report to their respective governments. These reports would be the basis for further discussions between them.

The experts from both sides met during fifteen sessions between February and May 1964. The Report of the Venezuelan Experts (Hermann González Oropeza S.J. and Pablo Ojer Celigueta, S.J.) submitted to the National Government was dated March 18th, 1965.

In a note dated June 21st, 1965, Venezuela's Foreign Minister, Iribarren Borges, transcribed to the United Kingdom ambassador in Caracas, Anthony H. Lincoln, the text of the Venezuelan communiqué signed on May 24th and made public on the 25th of the same year on oil exploration concessions in the Guayana Esequiba:

“The Minister of Foreign Relations learned, through press reports from London, that the Government of British Guiana has granted three oil exploration concessions to three companies.

Given the possibility that any of these concessions affected the territory claimed by Venezuela, the Ministry of Foreign Relations managed and obtained reliable information accompanied by the corresponding map on these concessions.

As two of the concessions affect the territory claimed by Venezuela and which by law belongs to it and the corresponding continental shelf, the Foreign Ministry:

- 1) Notes with surprise that, since there is a process of amicable diplomatic negotiations, regarding the border dispute between Venezuela and Great Britain, some concessions have been granted that affect the territory in dispute,
- 2) It declares to the interested Parties that Venezuela does not recognize the concessions granted on the territory and continental shelf claimed by it, and therefore it formulates the due reserve for the effects that may take place...

The efforts of the Venezuelan Government to keep the greatest discretion in the current negotiations - even at the cost of manifest sacrifices - have hardly had adequate response in such unilaterally granted oil concessions on the territory claimed by the Republic.

On the other hand, the Venezuelan Government reserves further comments on the issues related to the continental shelf and the territorial sea involved in those concessions”.

The reports of the Experts were exchanged by the Governments on August 3rd, 1965. In the note (N^o 1140) on that date, written by the Venezuelan ambassador to London, Hector Santaella expressed the satisfaction of the Venezuelan Government “for the happy termination of this stage of the negotiations, according to the text of the Joint Communiqué signed in London on November 7th, 1963.”

That satisfaction is reiterated in the note of September 7th, 1965, a reply to that of August 3rd, 1965 of the Foreign Office Secretary, Michael Stewart. The note of September 7th shows Venezuela’s disagreement with the interpretation arising from the last paragraph of the British note, which states that the attitude assumed by the Honorable Government of His Majesty does not imply a desire to enter into talks that affect the substance of the matter of the limits between Venezuela and British Guiana. The Venezuelan note adds:

“The absolute conviction of the Venezuelan Nation about the injustice committed in the matter of the limits between Venezuela and British Guiana and its attitude towards the Arbitration Award of 1899, which for Venezuela lacks validity, are not, of course, elements of recent knowledge of the Government of His Excellency; nor does the current position of my Government differ in anything from that adopted in the initial stages of these talks. What other basis could exist on the part of Venezuela in this matter, or what different motivation can serve as a basis for everything that has been done, other than the legitimate aspiration to redress the injustice that deprived my country of a significant part of its territory?

I certify, on behalf of the Venezuelan government and people, once again, our unswerving determination to seek the recovery of the

territory that we consider as an integral part of our national heritage. For this purpose, with this clear objective, Venezuela requested the initiation of the current process. It has not, therefore, been pursuing a simple interest in historical research or satisfying academic concerns. The Venezuelan position regarding the problem is clearly established. It has declared not to recognize the Arbitration Award of 1899 as the final settlement of the dispute with the United Kingdom and raised to the Honorable Government of His Majesty the desire to consider, with an unsuspecting spirit, the rectification of the injustice of which Venezuela was a victim, in an unfortunate hour that our people cannot forget, and a solution is reached that takes into account the legitimate interests of our country and those of the population of British Guiana.”

In an address on a national radio and TV broadcast on September 16th, 1965, Venezuelan Minister Iribarren Borges stated the following:

“British Guiana shares with Venezuela, although in a different sense, the same colonialist heritage, only that our country inherited the plunder, and the neighbor the fruit. If British Guiana carefully examines the family tree that one day will inherit from the Metropolis, it will find that it has sought to incorporate into its heritage a jewel - the *territorio Esequibo* - that was ripped out of the Venezuelan jewel chest in a long night of imperial dreams. British Guiana must wake up at the clear morning of independence, with its clean heritage, without being partly attributable to dark origins ...

... The warning issued by the National Government in the sense that it does not recognize the alleged oil exploration concessions granted by the Government of British Guiana over territory claimed by

Venezuela has the same application to any other concessions of the same origin that have as its target said territory...

... it should be highlighted once again that whatever the change in status in the current Colony of British Guiana, it will not affect the Venezuelan claim on the territory that legally belongs to it ... This would be the same as admitting, that due to the fact that the decolonization process comes to an end on the right bank of the Essequibo River, it must remain on the left bank, thus consecrating forever the atrocious injustice of Colonialism”.

In his address before the 20th General Assembly of the United Nations, on October 6th, 1965, Minister Iribarren Borges warns that:

“There are still territories that, split from an independent State, with no more justification than the law of the strongest, remain under the dominion of a colonial power”.

The Minister distinguish, following the resolutions adopted by the inter-American conferences, between *colonies* and *occupied territories*. If colonies must achieve independence by implementing the principle of self-determination, the occupied territories cannot have any other form of decolonization than reintegration into the State from which they have been split, a principle safeguarded in the sixth paragraph of resolution 1514 (XV):

“Precisely the issue of the Guayana Esequiba, a Venezuelan territory occupied by a colonial power and incorporated into a colony, is among the cases foreseen by that sixth paragraph.”

The Minister reiterates “the unwavering position” of the Venezuelan Government and points out:

“If my country maintains its claim even when there is a change of status in the current colony of British Guiana, it does not mean in any way that we put obstacles to the independence of that colony. Whatever the status of British Guiana, Venezuelan rights will be the same...”

The Minister recalls the supreme principles of “international equity and morals”, invoked by President Raúl Leoni in his First Address to the National Congress.

These concepts were reproduced in the note by the Venezuelan ambassador to London, Hector Santaella, addressed on November 2nd, 1965 to the Secretary of the Foreign Office, Michel Stewart, on the occasion of the Conference on the Independence of British Guiana. After stressing that Venezuela strongly desires the independence of British Guiana, it reiterates the claim about its “legitimate border” and the will to “achieve an amicable solution to the issue.” It concludes:

“expressing the unanimous will of the authorities and the people of Venezuela to reaffirm in a more formal and categorical way, the position of my Government in the sense that no change of status that could occur regarding British Guiana, arising from a declaration of independence or of any other cause will in no way affect the unwavering and imprescriptible territorial rights that Venezuela is legitimately entitled to the Guayana Esequiba.”

On November 3rd, Minister Iribarren Borges addressed his British counterpart, Michel Stewart, in a note, stating that:

“My Government wishes to record that I would consider an unfriendly act on the part of His Majesty’s Government if a transfer was agreed unreservedly of sovereignty over the territory claimed by Venezuela, a transfer that could not generate more rights than those legitimately owned by the Government granting them”.

II.

London Conference, December 9th-10th, 1965

The “Agenda for the continuation at the ministerial level of the government talks regarding the dispute between Venezuela and the United Kingdom on the border with British Guiana, according to the joint communiqué of November 7th, 1963,” agreed by the Parties on December 1st, 1965, was as follows:

1. Exchanging of views on the reports of the experts on the examination of the documents and discussion of the consequences thereof. Need to resolve the dispute.
2. Seeking satisfactory solutions to the practical settlement of the dispute that has arisen as a result of the Venezuelan contention that the Award of 1899 is void and null.
3. Summarizing plans for collaboration in the development of British Guiana.

4. Determination of the deadlines for compliance with the agreements that may be reached on items 1, 2 and 3.

5. Joint statement on the talks.

This Agenda reveals, as paragraph 2 shows, that the Parties were willing to “seek satisfactory formulas for the practical settlement of the dispute” regardless of the conclusion they could reach on the validity or nullity of the 1899 award after considering the reports of the experts on either side.

In the session of December 9th, 1965, the Parties quickly warned that continuing to discuss item 1 of the Agenda would not bring them closer to an agreement, so they moved on to item 2, as it was about “seeking satisfactory solutions for the practical arrangement of the issue.”

When questioned in this regard, Minister Iribarren Borges proposed as a satisfactory solution the return of the territory in claim, adding his willingness to thoroughly discuss any other proposal.

The Foreign Office Secretary, Michael Stewart, invited Venezuela to abandon its territorial claim or, at least, to postpone it while Guyana consolidated itself as a State and, with this purpose, focus on the consideration of the specific plans of development for British Guiana.

Iribarren Borges declined this invitation: they had met in London precisely to solve the political problem. The Venezuelan Minister submitted a second proposal: 1) recognition of the sovereignty of Venezuela over the claimed territory and a joint administration for a period to be agreed - for example, ten years, with obligations of both countries - in greater proportion for

Venezuela - in order to promote its development; and, 2) Venezuela's collaboration in the development of British Guiana.

This second proposal was rejected by the other party, considering it a variant of the first one, Iribarren Borges made a third proposal, namely the appointment of a Commission "to resolve the dispute between Venezuela and the United Kingdom on the territorial issue between Venezuela and British Guiana". It consisted of three representatives from each Party, whose work was to begin no later than January 20th, 1966. The mandate of the Commission would include: 1. Resolving the territorial dispute. 2. Formulating collaboration plans for the development of Guayana Esequiba and British Guiana. 3. Executing development plans according to studies. If by May 15th, 1966 the Commission had not reached a full agreement or any agreement, the Parties would choose a Mediator or Mediators in a term not exceeding three months that should present, in a reasonable time, conciliation solutions on the issue or issues pending solution. If the three-month period should expire, and the Parties had not agreed on the appointment of the Mediator or Mediators, or if they had not been able to propose conciliatory solutions within a reasonable period of time, then an international arbitration would be used to decide on the issue or issues pending solution. In that case, a treaty establishing the basis, conditions and rules for arbitration should be concluded within 18 months following January 1st, 1966 (that is, July 1st, 1967).

This proposal included 1) a Joint Commission; 2) Mediation; and 3) arbitration, whose basis, conditions and rules should be negotiated.

The next day, December 10th, Iribarren Borges refers to this arbitration as "a final decision, which is submitted to a totally neutral entity with the power

to decide” and to Venezuelan desire to cooperate in the development of the neighboring country. Iribarren’s statement shows clearly that the issue to be submitted to arbitration is not the validity or nullity of the award, but the territorial issue or dispute.

Iribarren Borges warns that Venezuela has attended the Conference to discuss and try to find a solution to the existing territorial problem on the border with British Guiana. That is clearly expressed in the title of the Agenda. Then, in the final sentence of item 1, the existence of the dispute and the need to resolve it are recognized. Item 2 provides that a satisfactory solution must be found for the practical settlement of the dispute that has arisen as a result of the Venezuelan claim. The Minister considers it absurd to expect that Venezuela has come to this conference to ratify the antagonistic positions of the Parties on the validity or nullity of the 1899 award. Here we have come, he says, to seek a solution to the existing territorial problem. Iribarren Borges rejects the desirability of returning to the United Nations. We come from that Organization. Our conversations arose in that instance. The United Nations will not solve the problem; it will exhort us to talk again, which is what we are doing so far and we must continue doing until we find a solution. Before elaborating on his latest proposal, the Minister warns that there are two separate problems that have been united in a solution: one is the political problem between Venezuela and the United Kingdom for the occupation of its territory; another is the problem of the development of British Guiana, whose responsibility lies with the United Kingdom as a colonial power.

At the end of their talks, on December 10th, 1965, the Parties signed a joint statement where it was noted:

1. In accordance with the terms agreed in the joint communiqué of November 7th, 1963, conversations have been held in London ... on the basis of the following Agenda...

2. In addition to considering the reports of the Experts on the documentary material relating to the Arbitration Award of 1899, the Ministers discussed ways and procedures to end the dispute that threatens to break the traditionally amicable relations between Venezuela, on the one hand, and the Kingdom United and British Guiana, on the other.

3. Ideas and proposals were exchanged for a practical settlement of the dispute. It was agreed that some of them should be submitted for further consideration and that Ministers should continue the present discussions during the week beginning February 13th, 1966, in Geneva, in order to consider such proposals, as well as others that could be suggested in agreement with the aforementioned Agenda. Since neither Party has been able to accept the conclusions of the experts designated by the other, item 1 will not be considered...

III.

Geneva Conference, February 16th-17th, 1966

On February 4th, 1966, the Venezuelan Foreign Ministry sent an *aide-memoire* to the British Embassy in Caracas expressing its concern and asking for explanations for the statements made by Foreign Office officials according to which it was foreseen that at the Geneva Conference “the Venezuelan claim” on Guayana Esequiba would not be discussed. This contradicted the commitment made in accordance with the Agenda signed in London on December 1st, 1965 and with the joint communiqué of December 10th of the same month and year. Those explanations were given in *aide-memoire* of the British Embassy of February 8th, 1966 and in a personal visit of Ambassador Sir Anthony Lincoln, to Minister Iribarren Borges of the same date, and were included in a press release of the Foreign Ministry: The Parliamentary Under-Secretary of State for Foreign Relations had been misinterpreted. Neither Lord Watson nor any other Representative of H.M.’s Government had made the statement attributed to him. The British Government ratified the Agenda as agreed on December 10th, 1965.

The Geneva Conference did not devote a word to the discussion on the validity or nullity of the 1899 Award. This debate was excluded from the negotiation, focused on reaching definitively a practical and satisfactory settlement. To that end, agreements on concrete plans for collaboration in the development of Guyana could play an important role.

At the opening of the first session of the Conference on February 16th, 1966, Minister Iribarren Borges raised Venezuela's claim to Guayana Esequiba, a territory usurped by Great Britain and annexed to British Guiana, in terms of justice. Venezuela honestly and enthusiastically supported the prompt independence of that colony, however, it could not admit that the territorial limits of the new State was established at the expense of Venezuelan soil as a result of a decision that constituted a mockery of the arbitration procedure and a disdain for the principles of International Law. The Minister underlines Venezuela's receptiveness towards solution formulas and recalls that in London, in December 1965, he already submitted to Great Britain "ways and procedures to put an end to the controversy". Iribarren Borges invites the Secretary of the Foreign Office, Stewart, to adopt a position on such proposals or to present a concrete and structured proposal applicable to the case. The Minister recalls that in London the Secretary of the Foreign Office limited himself to outlining the lines, on which the Antarctic Treaty was based, a case with substantial differences with that presented by the Venezuelan claim on Guayana Esequiba.

The Secretary of the Foreign Office, Michael Stewart, made a proposal limited to the examination of the joint economic development of British Guiana, avoiding the political problem (the Venezuelan claim on the Essequibo territory) that justified the presence of the Venezuelan delegation in Geneva. The Conference had been convened to seek practical solutions to the territorial controversy and, consequently, the British proposal was considered unacceptable.

A recess was agreed to reach, through informal talks between ministers, some agreement. Before attending this meeting, Minister Iribarren Borges explained to the Venezuelan delegation the two items he considered

fundamental: 1) that the dispute should have a form of "final solution" after an agreed period of time; and 2) a special regime for the development of Guayana Esequiba. A commission would come to clarify the details, which would be submitted to a further high-level meeting.

Following the informal meeting with the Secretary of the Foreign Office, the Venezuelan Minister told the members of his delegation that the “final solution” that he proposed to the British was arbitration and that they replied that they could not accept it “because it would be to agree that the arbitral award does not exist”.

The *travaux préparatoires* of the Geneva Agreement shows that Venezuela wanted to settle the territorial dispute as soon as possible by resorting to arbitration if a practical settlement was not reached within a mixed commission or other means of political third party settlement, such as mediation, the duration of which was to be limited in order to avoid its lasting indefinitely. These points were incorporated in the Venezuelan counter-proposals, always encountering British (and Guyanese) opposition. The object of the arbitration that Iribarren Borges proposed as a final solution becomes even more evident when he observed: “there can be another solution other than arbitration: they could agree to make a division of the territory”.

Iribarren Borges proposed a working paper that, after being debated within the Venezuelan delegation, ended up becoming the first Venezuelan counter-proposal. A commission would be appointed for:

- 1) Seeking solutions for the practical settlement of the Venezuelan claim, including a frozen period;

- 2) Considering a form of special regime of the territory in order to develop it jointly;
- 3) Collaborative schemes with British Guiana;
- 4) Dictate the basis for arbitration in the case that the search for solutions referred to in point 1 is not achieved; and,
- 5) Set a deadline for the Commission to report to governments.

To continue the talks, Iribarren Borges said in an internal debate of his delegation, the least Venezuela can get out of the negotiation is a commitment to go to arbitration, even if its basis cannot be established. If it is possible to appoint a commission to study them, that's already accepting arbitration. The idea is to agree to arbitration, but that the commission can seek other types of solutions. It is the same proposal made in London. For the Minister, arbitration is "something substantial" that can be taken out of the talks and without this it would be "unseemly" for the country to continue them. Our objective, he concluded, is to reach arbitration. The Minister insisted over and over again on it "or something similar to arbitration" (he went so far as to mention mediation or conciliation). One of the members of the delegation, Diaz Gonzalez, added: "arbitration is fundamental because it excludes the arbitral award". Other member of the delegation anticipated that the British will not accept arbitration; the Minister agreed, but they will accept, said the Minister, "keep on seeking for solutions" through a commission.

Minister Iribarren Borges went with this working paper to talk privately with Secretary of State Michael Stewart and British Guiana Prime Minister Forbes Burnham. After half an hour he returned to the offices of the Venezuelan delegation, reporting that the British (and in particular Burnham) did not accept items 2, 3 and 4, but included in item 1 the

examination of peaceful means of settling disputes in accordance with international law. On item 5, the Venezuelan Minister had proposed a period of six months for the Commission's Report, while the British (and Burnham) considered that it should be thought of "in terms of years". Iribarren Borges was of the view that the issue should not be given the impression of being postponed indefinitely, suggesting a first report and then a final report.

In short, the British-Guyanese counterproposal was the following:

Appointing a commission whose purpose was to seek satisfactory solutions for the practical settlement of the controversy arising from the Venezuelan contention that the 1899 arbitral award is null and void, including consideration of its peaceful settlement in accordance with international law, and to set a deadline for it to report back to Governments at a high-level ministerial meeting.

Although this counterproposal seemed to assume a dilatory policy, it was also an advance on the initial British-Guyanese position allowing to break out of the deadlock. Now there were talks about of a mixed commission to examine the territorial controversy, including the arbitration solution in a generic formulation.

The joint communiqué dated February 17th, 1966 reports:

"There was an exchange of ideas and proposals for the practical settlement of outstanding problems..., as a result of the deliberations, an agreement was reached, the provisions of which will enable a definitive solution to be found to these problems....The agreement was welcomed by the Ministers of the three Governments in that it

provides the means to resolve a dispute that threatened to damage relations between two neighbors and contains the basis of goodwill for the future cooperation of Venezuela and Guyana”.

IV.

Intervention of Minister Iribarren Borges on the Geneva Agreement at the National Congress, March 17th, 1966

Although the Geneva Agreement entered into force on the date of its signing (February 17th, 1966), it was submitted for parliamentary debate in Venezuela. Minister Iribarren Borges defended the Agreement at the session of March 17th, 1966.

Before, on March 11th, 1966, President Raul Leoni, in his II Address to the National Congress, affirmed that:

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

The intervention of Dr. Iribarren Borges on the Geneva Agreement at the National Congress at the session held on March 17th, 1966 was divided into two parts. In the First part it refers to the “Prior managements to the Geneva Agreement” and in the Second part to the Agreement itself.

In relation to *First Part*, the Minister begins with a brief reference to the 1899 arbitral award. He mentions “the painful political, economic and military circumstances that our Homeland went through at that time” that “prevented the National Government from carrying to its last consequences the categorical rejection of that ruling”. But “with the decline of the colonial era, the hope was reborn that one day the injustice of which we had been victims would be repaired. For many years this hope impregnated the increasingly clear and categorical declarations of the Venezuelan State in the face of that arbitrary award. However, no matter how solid and convincing the Venezuelan argument was, the United Kingdom refused to enter into discussions aimed at *revising* an arbitral award that it considered intangible” (emphasis added).

The Minister considers the beginnings of the bilateral negotiation, referring in particular to the agreement contained in the statement of the Chairman of the Special Political Committee of the General Assembly, of November 16th, 1962, to carry out a tripartite examination of the documentation relating to the territorial issue: “The transcendental value of this agreement is undeniable since it represents the starting point of a long bilateral process that will inevitably lead to the *revision* of the so-called 1899 arbitral award”. The Minister recalled that the agreement of November 16th, 1962:

“had as its object the examination of the documents, without Great Britain accepting in any way to enter into the substance of the

problem: the *revision* of the 1899 Tribunal's judgment... It was, therefore, the Venezuelan Government's intention to conduct the negotiation at the highest governmental level and to take it up to the *revision* of the Tribunal's judgment. In order to meet these objectives, it was necessary to break the obvious resistance of the British Government. As early as March 1963, Great Britain attempted to reduce the talks to the level of an academic discussion among experts, but Venezuela clearly expressed its view that it would in no way enter into those talks as long the United Kingdom commits itself beforehand to discussing the issue at the ministerial level... Venezuela continued to press until it obtained Britain's acceptance that the discussions would be held in two phases: first at the expert level, and second at the high ministerial level".

The Minister then refers to the first conference in London, in November 1963. Iribarren Borges understands that in this conference, an advance in favor of Venezuela was observed, if we stick to the joint communiqué, because after referring to the reports that the experts have to present to their Governments, it says that "these reports will serve as a basis for further discussions between the Governments". The Minister considers that:

"Therefore, by not qualifying these discussions, it allowed us to maintain that the conversations at the government level were going to have as their object the discussion of the substantive issue".

In the months leading up to the ministerial meeting of December 1965, the Venezuelan Foreign Ministry "went through repeated statements by the British Guiana Prime Ministers, Mr. Jagan and Mr. Burnham, to the effect that they were unwilling to discuss the line of the arbitral award, since they did not recognize the border conflict because they considered it resolved in 1899".

After recalling the notes exchanged in August and September 1965, following the exchange of experts' reports on August 3rd, 1965, Iribarren Borges points out:

“It was evident that Great Britain was reluctant to enter into substantive discussions on such a serious matter. Apparently, it still qualified the Venezuelan claim as unfounded, and was only open to a purely academic discussion that could not lead to any settlement of the old problem”.

Hence his allocution on the radio and TV channel of September 16th, 1965, with “express instructions” from President Raul Leoni:

“Our Government would be rightly accused of not being very serious if, in such a serious matter...it were to admit to entertaining itself in sterile free debates, in semantic interpretations of old texts”.

And now he concludes on this point:

“Our position was therefore clear that we were not going to go to a ministerial conference to engage in discussions that did not address the substance of the problem: the revision of the so-called 1899 arbitral award”.

The Minister then deals with British Guiana's independence:

“...our traditional claim was to receive increasing momentum as that date approached, given that it was appropriate to make it very clear that our controversy with the United Kingdom, the cause of the border problem, was not to end with British Guiana's independence, except for a satisfactory solution for Venezuela...The principle that any

change of *status* in the colony...will not affect the Venezuelan territorial claim has been repeatedly reaffirmed”.

The Minister also refers to the *Washington Act* and paragraph 6 of General Assembly resolution 1514(XV), which he himself invoked in his discourse on October 6th, 1965 address to the General Assembly. Also, to his note of November 3rd on the occasion of the Independence Conference of British Guiana.

In referring to the second London conference, the Minister commends the agreed Agenda “after long negotiations carried out by our Ambassador in London, in the months of October to December 1965”. The Agenda “meant a considerable advance in favor of our views.” Already in the title, observes the Minister,

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

The Minister makes a succinct explanation of his presentation and successive proposals made to try to find a satisfactory solution to the dispute. He adds:

“This offer came to clash against the intransigence of Great Britain, as well as British Guiana, which, determined to maintain the validity of the Award of 1899, rejected the existence of a territorial dispute between Venezuela and the United Kingdom over the border with British Guiana.”

The Minister then presented the British counterproposal, which

“was reduced to formulating some ideas, traced in Article IV of the Antarctic Treaty, which applied to our problem would lead to an economic development solution on both sides of the Award line, while the two neighboring countries would be forced not to press their respective claims for 30 years. At the same time it was insisted that there was no alternative but to return the matter to the United Nations informing of the outcome of the examination of the documents”.

Iribarren Borges explains the motives that led to the rejection of this counterproposal, warning that

“he could not accept that an attempt was made to avoid the legal-political problem of the border issue, to reduce it only to trying to solve the economic problem of the underdevelopment of Guayana Esequiba, for which the United Kingdom was precisely responsible...”

Having rejected a British proposal to continue the discussions with Lord Walston, when he visited Caracas in January 1966, we agreed to hold a new meeting of the same Ministerial Conference, in the city of

Geneva... When the examination of the documents was removed from the agenda, the discussion focused fully in the search of “satisfactory solutions to the practical settlement of the dispute.”

The last point of this First Part of the speech of the Minister focuses on the Geneva Conference, mentioning the exchange of notes on February 4th and 8th and the visits of the British ambassador to the Minister on those dates, to dispel any misunderstanding about some statements attributed to Lord Walston, that called into question whether the Venezuelan claim would be discussed in Geneva and not only the economic aid to British Guiana. “It was evident”, notes the Foreign Minister, “that the firmness shown by the Foreign Minister was working well”.

At the Conference, the United Kingdom reformulated its proposal inspired by the Antarctic Treaty, unacceptable for Venezuela, “for the reason of not contemplating the issues that, Venezuela believes, are fundamental to the practical resolution of the conflict, which is the purpose of the Conference”, by completely avoiding the territorial problem through a joint development plan to both sides of the Award line and freezing the Venezuelan claim for thirty years.

Iribarren Borges continues:

“After several informal contacts, our Delegation decided to leave on the table a formula similar to the third Venezuelan proposal that had been rejected in London, with the addition of the appeal to the International Court of Justice. The Delegations of Great Britain and British Guiana, after careful consideration of that proposal, although they were eventually receptive, objected to the specific mention of the recourse to arbitration and to the International Court of Justice.

Having overcome this objection replacing that specific mention with the reference to Article 33 of the Charter of the United Nations, which includes those procedures of arbitration and recourse to the International Court of Justice, it was found that there was a possibility of reaching an agreement. It was, therefore, on the basis of the Venezuelan proposal, how the Geneva Agreement was achieved... a Venezuelan proposal that was strictly rejected in London has been accepted in Geneva”.

The Minister adds:

“Evidently the Geneva Agreement is not the ideal solution to the problem, which is none other than the return of the territory to Venezuela. We did not go to the city of Lake Lemman to dictate the conditions of surrender of the adversary by putting the sword of a war victory on the scale of the dispute. We went to find a satisfactory solution to the difficult territorial issue. As a result of the diplomatic dialogue, and not of the monologue of the victors, the Geneva Agreement brings to a new situation the extreme positions of those who demand the return of usurped territory by virtue of a null award, and that of those who claimed that having no doubt about their sovereignty over that territory, were not willing to take the case to court. As a substantially Venezuelan solution, the Geneva Agreement received the unanimous support of the Delegation...”

The *Second Part* of the speech by the Minister Iribarren Borges is devoted to the presentation of the preamble and eight articles of the Geneva Agreement, warning that

“for its proper understanding it must be considered as a whole, since, while it contains substantive and adjective provisions, each of them is part of the general idea behind the instrument”.

The Minister maintains that Venezuela has been in favor of the participation of British Guiana, “as the opposite would be to admit that Britain as a colonial power can resolve serious matters in its colony without the participation of the latter.” Their exclusion “would have been a mistake with serious consequences for Venezuela.”

Iribarren Borges refers to the last part of the Preamble in which he sees

“an express recognition of the existence of the dispute between Venezuela and Britain over the border with British Guiana, recognition that is ratified in Article 1 of the Agreement”.

Article I, the Minister says,

“contains two points of great importance, namely: 1. To channel the talks through a Mixed Commission, that is, an *ad-hoc* body that allows for permanent and agile communication between the two Governments in order to reach a solution to the dispute. 2. Express recognition of the controversy that arose from the challenge of Venezuela to the so-called Arbitral Award of 1899. It should be noted that the continuation of the talks is of paramount importance and that a solution that allows a satisfactory end to the dispute, without resorting to the procedures provided for in Article 4 of the same Agreement, might emerge from them. Furthermore, the operation of the Commission allows direct and permanent contact with British Guiana to deal with any other matters related to the dispute”.

Regarding Article 3,

“naturally, the representatives will maintain contact and receive continuous instructions from their respective Governments; however, it would not hurt to establish the semiannual report, since it must be prepared by the full Commission, that is, by the four representatives, and will thus be a document of the Commission itself”.

In relation to the four years agreed for the Mixed Commission,

“if we agreed to a 4 years deadline, it was after arduous discussions with the British, who initially demanded 30 years.”

On the procedure, in the event that the Secretary General of the United Nations must act,

“Article 4 of the Geneva Agreement clearly states the following: a) The only function entrusted to the Secretary General of the United Nations is to indicate to the Parties, for their use, the means of peaceful resolution of the disputes established in the aforementioned provision of the Charter (article 33); b) These means are as follows: negotiation, investigation, mediation, conciliation, arbitration, judicial settlement and recourse to organizations or regional agreements. These are, strictly speaking, the procedures that must be used until the dispute is resolved or until they have been exhausted”.

The Minister notes that in the last stages of discussion the British proposed that the choice of means of solution be entrusted to the UN General Assembly, proposal dismissed by Venezuela: 1) because it was not appropriate to place this specific function under an eminently political and deliberative organ, which could lead to excessive delays “because strange

political elements would easily be introduced to the simple function of choosing the means of settlement”; and 2) because the Assembly only meets in ordinary sessions once a year for a period of about three months, to discuss matters previously mentioned in the Agenda and in extraordinary sessions at the request of the Security Council or the majority of the members of the United Nations.

Venezuela therefore proposed, the Minister continues, that this function to choose the means of solution be entrusted to the International Court of Justice, as a permanent body free from the aforementioned inconveniences. As this proposal was not accepted by the British, Venezuela proposed to entrust the function to the Secretary General. “In conclusion ... there is an unequivocal interpretation that the selection of the means of settlement will be made only by the Secretary General of the United Nations.”

And the exposition of article 4 ends: “Finally, in accordance with the terms of article 4, the so-called Award of 1899, in the case of not reaching a satisfactory solution for Venezuela, must be *reviewed* through arbitration or the judicial appeal” (emphasis added).

With regard to Article 5 of the Agreement, the Minister understands that thanks to it “Venezuelan reservations, on all types of concessions granted or that may be granted in the claimed territory, are thus recognized.”

The law approving the Agreement was adopted on April 13th, 1966. President Leoni, endorsed by Minister Iribarren Borges, signed its execution on the 15th. The Agreement was registered on May 5th, 1966 in the United Nations. Although Article 7 of the Agreement establishes its entry into force

on the date of its signature, Minister Iribarren Borges, in his speech of March 17th, 1966, held before the National Congress that “it is evident that when the law approving the Agreement is submitted to this Sovereign Congress, this Agreement will enter into force upon the ratification of that Law”.

In a letter dated April 4th, 1966, the Secretary General of the United Nations, U Thant, accepted the functions attributed to him by Article IV.2 of the Geneva Agreement, considering that “those functions are of such nature that they can be properly performed by the Secretary General of the United Nations”.

V.

The recognition of Guyana by Venezuela, May 1966

Through Note No. GG-00474 of May 18th, 1966, addressed to the Ambassador of the United Kingdom, Sir Anthony Lincoln, the Minister of Foreign Relations, Iribarren Borges, accepted the invitation for Venezuela to be represented in the acts of celebrating the independence of Guyana, warning that:

“... the presence of the Venezuelan Delegation ... does not imply recognition or in any way waiver or decrease of the territorial rights claimed by Venezuela and in no way affects the sovereignty rights that come from the claim arising from the Venezuelan contention that the so-called Paris Arbitration Award of 1899 about the border of Venezuela and British Guiana is null and void. Testimony of the same nature was made in the Geneva Agreement of February 17th of the current year. Therefore, my country in due course will recognize the new State of Guyana, with the express and indicated territorial reservation”.

On May 25th, 1966, the British Ambassador responded to the previous note, by instructions of the Secretary of the Foreign Office, in the following manner:

“Since Article V (2) of the Geneva Agreement stipulates that no act or activity that is carried out while the agreement is in force will constitute a basis to enforce, support or deny a claim of territorial sovereignty in the territories of Venezuela or British Guiana, the

reservations that the Government of Venezuela intends to make when granting its recognition to Guyana, seems that do not add anything to the legal position of Venezuela. It is, therefore, with regret that the Government of His Majesty notes that the Venezuelan Government has thought it necessary to express such reservations. However, since the Government of Venezuela has proceeded in this way, in the aforementioned Note of Your Excellency, the Government of His Majesty, for its part, feels obliged to reserve in this matter its rights and those of the Government of British Guiana.”

The *note of recognition* of Guyana by Venezuela was sent on the same day of its independence, May 26th, 1966. In the note, the Government of Venezuela expresses itself “eager to establish relations with the State of Guyana on a basis of common interest and mutual respect, and is willing to exchange diplomatic representatives... when both countries deem it convenient.”

After other complimentary and festive considerations, the note recalls that under Article 8 of the Geneva Agreement, Guyana becomes part of this Agreement from this date. And adds:

“Consequently, and in accordance with the provisions of article 5 of the same Convention, the recognition that Venezuela makes of the new State of Guyana does not imply on the part of our country the waiver or decrease of the claimed territorial rights, nor in any way affects the sovereignty rights that come from the claim arising from the Venezuelan contention that the so-called Paris Arbitration Award of 1899 on the border between Venezuela and British Guiana, is null and void. Therefore, Venezuela recognizes as territory of the new State that which is located east of the right bank of the Essequibo River, and reiterates before the new country, and before the

international community, that it expressly reserves its rights of territorial sovereignty over the entire zone to the left margin of the aforementioned river; consequently, the territory of the Guyana Esequiba on which Venezuela expressly reserves its sovereign rights, limits the East with the new State of Guyana, through the Essequibo river line, taken from its source to its mouth in the Atlantic Ocean”.

On June 21st 1966, speaking at the Security Council, Venezuelan representative, Mr. Zuloaga, reiterated:

“Venezuela formally reports that, neither its support for Guyana’s application of membership of the United Nations, nor the membership itself, when produced, could imply the renounce or reduction of Venezuela’s severing rights on the territory located on the left border of the Essequibo River, nor the recognition in any form of *Laudo Arbitral*’s call of Paris 1899 on the border between Venezuela and British Guiana, about which it has made a fact the appropriate reservation in recognizing the new State”.

This declaration was renewed ed in the UN General Assembly of September 20th 1966, on the occasion of the accession of Guyana as a member of the Organization.

The Guyana Government replied to the Venezuelan note of May 26th months after, August 19th 1966. The note stated:

“My Government takes note of the pleasure with which the Venezuelan Government has given its recognition to Guyana, but observes, with regret, that the Venezuelan Government has described the middle line of the Essequibo River as the occidental border of the

Guyana State, in contradiction with the 1905 Agreement resulting from the works of the Border Demarcation Commission...”

The note expressly notes that Article I (2) of Guyana’s Constitution, which defines the territory of the State, which includes all the area on the date of independence, was comprised in the British Guiana Colony. At the same time, referring to the Geneva Agreement, the Prime Minister and Minister for Foreign Relations, L.F.S. Burnham, affirms:

“I wish to give securities to the Government of Your Excellency that the Government of Guyana has the purpose, in accordance with the well-established international practice, to comply with all the obligations of such Agreement”.

On the establishment of diplomatic relations, the note observed that the limitations of the new State regarding trained personnel and resources prevent him to establish a mission in Venezuela, but the Government of Guyana would accept any decision of the Venezuelan Government of elevating its current General Consulate to the status of Embassy and naming, when appropriate, the Ambassador who represents it.

VI.

Mixed Commission, 1966-1970

The Geneva Agreement provided that the Parties designate their representatives in the Mixed Commission on the following months after the entry into force of the Agreement (February 16th, 1966). Guyana designated its commissioners, Mr. Donald Jackson and Mohamed Shahabuddeen, on April 14, 1966. Venezuela named its own, Dr. Luis Loreto and Mr. Gonzalo Garcia Bustillos, two days after. There were no changes in the four years in which the Commission operated. The Commission celebrated sixteen meetings.

According to the provisions of Article III of the Geneva Agreement, the Mixed Commission had to present partial reports every six months starting from the date of its first meeting. On the other hand, Article IV.1 stated that:

“If within a period of four years from the date of this Agreement, the Mixed Commission should not have arrived at a full agreement for the solution of the controversy, it shall, in its final report, refer to the Government of Guyana and the Government of Venezuela any outstanding questions...”.

A short synthesis of the Mixed Commission activity can be found in the brochure *The claim of the Guyana Esequiba (El reclamo de la Guyana*

Esequiba) (Bolivarian Republic of Venezuela, People's Power Ministry for Foreign Relations, General Directorate of Borders, Caracas, 1982, pp. 10-12). In this publication it is said that:

“... from the beginnings of its functioning, a radical disparity of criteria took place within the Mixed Commission between Venezuela and Guyana on the interpretation of Article I of the Geneva Agreement.

According to Venezuela, the High Contracting Parties had entrusted to the Mixed Commission the task of searching for practical solutions to the territorial controversy. This interpretation was based on:

- a) The background information of the diplomatic negotiations leading to the Geneva Agreement, since the first item on the Agenda of the Ministers Conference of London (1965), was excluded from the Geneva Conference. Item 1 referred to the examination of the documents on the nullity of the 'arbitral award';
- b) The Geneva Agreement text stipulating the search of satisfactory solutions for the practical arrangement of the controversy;
- c) The parity and diplomatic basis of the Commission.

According to Guyana's Representatives, the Mixed Commission should focus first on clarifying the objective of the controversy between the two countries. In other words, the Venezuelan contention that the 1899 arbitral award was null and void, and therefore had to start with the examination of documents which, according to Venezuela, supported its position.

The Venezuelan Delegation successfully resisted entering a legal discussion since, in addition to the reasons that supported its interpretation of the Geneva Agreement, it considered that a discussion of legal nature within a joint and diplomatic commission would not lead to any solution, since at the end both delegations will maintain their respective positions on the 'arbitral award'”.

And it continues:

“In an attempt to take the Mixed Commission out of the sterile discussion on the correct interpretation of Article I of the Geneva Agreement, Venezuela brought a broad proposal about the joint development of the *Guyana Esequiba* in the IV Meeting (Georgetown, March 1967). The promised answer of Guyana came to happen in the VI Meeting (October-November 1967), after the Venezuelan Delegation requested by Guyana broadened the proposal following Guayana’s request in a Joint Development Project meticulously crafted. Endless discussions resulted in the creation of the Subcommittee of experts to study plans of joint development, which came to hold two meetings, both in Georgetown, in February and June 1968.”

And it adds:

“That said, since May 1967 to July 1968, both in the Mixed Commission and in the Subcommittee of experts, it could be seen that Guyana did not have any serious disposition to explore the joint development as a way that could lead to the solution of the controversy.

In the course of Mixed Commission discussions, and in government-to-government contacts ...it has come clear that Guyana is unwilling to accept any plan of joint development of the *Guyana Esequiba*, if there is no prior recognition by Venezuela of the sovereignty of Guyana in that territory.

Moreover, even though the Venezuelan project of Mixed Development is not confined exclusively to *Guyana Esequiba* but sees it as a primary object, the counter-proposals of Guyana intentionally excluded that territory, intending that Venezuela provided financial sources at very low interest rates, payable in 50 years and with ten years dead free of interests, for three Guyana projects located in Canje river close to Corentin river border with Surinam, Georgetown and the middle area of Demerara District.

Ultimately, Guyana:

- 1) Did not accept that the Joint Development Plan included the *Guyana Esequiba*.
- 2) Did not accept that Venezuela participate in the Administration of the Plan, nor of the concrete projects.
- 3) Used the discussions on the matter to exhaust the time allotted to the Mixed Commission and to neutralize at international level the impact of the statement by Venezuela on non-recognition of concessions to be granted by Guyana on the *Guyana Esequiba*".

March 30th 1968, at the beginning of the first session of the Commission's eight meeting, Dr. Luis Loreto read a statement that summarized the Venezuelan commissioners' perception on the progress of their works. Two years of the four years agreed upon in the Geneva Agreement have passed for the Mixed Commission to execute the mandate of Article I; the Venezuelan commissioners invited those from Guyana to seriously meditate on the deadlock of the negotiations.

The Venezuelan Commissioner made a devastating analysis on the work done in previous meetings of the Commission, which showed the

obstructive and dilatory policy pursued by the Guyana's commissioners and, in due course, by the Guyana experts in the subcommittee, referred to above:

“In the first meeting of the Commission (July 1966) the inflexible opposition of the Guyana commissioners on purely formal aspects, prevented the approval of its entire regulation rules of procedure.

In the second meeting (September 1966) a lot of time was wasted on procedural issues and, later, after having proposed the Venezuelan representatives the restitution of the territory to the west of Essequibo, the Guyanese commissioners tried hard to alter the mandate of the commission according to the Geneva Agreement, seeking to deliberate on the validity or nullity of the 1899 Award, a deliberation of legal nature: a) sterile, given the indisputably diplomatic and negotiating nature of the Commission; and b) irrelevant, given the mandate given to them by Article I of the Geneva Agreement.

In the third meeting (December 1966) the Guyana's commissioners opposed to the negotiations progress due to the fact that the serious territorial controversy was deteriorated by actions such as the attack to the flag and the Venezuelan consulate in Georgetown; consequently, only the first report could be approved.

In the fourth meeting (March 1967), the Venezuelan commissioners tried to seek new paths for understanding through the proposal of a joint development plan. The Guyanese commissioners promised an answer for the fifth meeting (July 1967), but instead of providing it, they requested a new extension of the proposal, an extension that Venezuela took to the sixth meeting (October/December 1967), which ended up splitting in two meetings. The Guyana's commissioners,

after trying to lead the discussion to marginal and insignificant points of the plan, they wanted to return the negotiations back where they were on the second meeting (September 1966), fourteen months before. Acting like this, the commissioners from Guyana, far from showing a serious and sincere will to comply with the expressed mandate of the Geneva Agreement, evidenced the intention of disregarding it. That is why the Venezuelan commissioners chose to return to their country, leaving the meeting, to which they came back after being informed by their colleagues from Guyana that were ready to get to the bottom of the matter. It happened, however, that after an endless debate, even of a semantic nature, the only thing that could be agreed upon was the establishment of a subcommittee of experts. As the Guyanese commissioners did not allow these aspects to be discussed, the deadlines for its creation and functioning had to be left for the seventh meeting (December 1967).

Following the establishment of the subcommittee, Dr. Loreto continues, the Guyanese hindered its work by not allowing the presence of the advisors accompanying the experts to the formal sessions, rejecting as a working paper the Joint Development Plan presented by Venezuela (discussed in its general lines in the sixth meeting of the Commission (October-December 1967)). Instead, the experts from Guyana declared that they expected from Venezuela the concession of a loan to face the debt of the country and refused to move forward under the pretext that the meaning of the expression “economic development”, used in the terms of reference of the Subcommittee, should be clarified, and asking the Commission to decide whether it included “social development”. This allowed the Guyanese experts to gain time for their dilatory and obstructive policy while the Commission lose it. The report of the Subcommittee was reduced to asking the Commission if the Subcommittee should carry

out studies on possible cooperation areas between Venezuela and Guyana for the financing and execution of development and economic, social and cultural exchange between the countries. Therefore, a complete negative outcome.

The severe territorial controversy between the States, Dr. Loreto concluded, far from taking an understanding path, it is being aggravated due to the obstructionist attitude that Guyana has shown in the Subcommittee and in the Mixed Commission. This is not the proper manner to handle this matter. To Venezuela the practical solution is that the territory from which it was stripped be restored to it. However, we have adopted a sympathetic attitude and as an answer you close all paths for us to understand each other. You have not offered a practical solution. We would like to know which one is the practical solution offered”.

In the 11th meeting of the Commission, held in Caracas on 28th and 29th December 1968, the Venezuelan commissioners issued an extensive statement in which it is highlighted:

“if the representatives from Guyana where willing to search in good faith satisfactory solutions for the practical settlement of the controversy, Venezuela would be willing to give reasonable time so that the Mixed Commission accomplished the mission and thus, will consent to extend the existence of that body for such periods as it deems appropriate for that purpose. Here is a proposal of practical content which we formally presented. If Guyana does not modify its behavior and continues to be intransigently locked up in its speculative position, it will corroborate with such attitude its reiterated

determination to disregard the Geneva Agreement, and particularly, Article I”.

In the 12th meeting held in Bridgetown, Barbados, from 8th to 10th April 1969, the Venezuelan commissioners insisted on the joint development of projects west of Essequibo as, although it was not the substantive solution to the dispute, it allowed to get close to it, while avoiding that, because of the main issue, development stagnated. The lines of the proposal were: 1) all Guyana territory would be eligible for development projects, but will not give priority to the territory west of Essequibo; 2) the projects would be planned and executed with a joint administration formula agreed by the Parties; 3) the projects would be undertaken under national, joint and international funding sources. This proposal was rejected.

The commissioners met in two occasions to prepare the *Final Report* (Caracas, May 13-16, 1970; and Port of Spain, June 15th, 16th and 18th), date in which it was signed. The scarce three pages of the *Final Report* expressed in its emptiness the Parties failure. The *Final Report* incorporated separate memoranda as annexes, focusing on highlighting that the signing of the Report did not constitute acceptance nor recognition of their positions with respect to each other’s memoranda. The partial reports that were presented every six months while the Commission was active were considered an integral part of the *Final Report*. “The non-compliance of the Geneva Agreement” can be read in the Venezuela’s memorandum:

“it is not that a satisfactory solution has not been found for the practical settlement of the controversy but, that despite the Venezuelan efforts, the search for a solution was not even attempted.”

VII.

The Protocol of Port of Spain, 1970-1982

The Protocol of Port of Spain was signed on June 18th, 1970; Rafael Caldera was the President of Venezuela (1968-1974), who intended to initiate a “Caribbean” policy.

The Protocol consists of the preamble and six articles. In the preamble the Parties show their conviction that

“the promotion of mutual confidence and positive and friendly intercourse between Guyana and Venezuela will lead to an improvement in their relations”.

Article I states that while the Protocol is in force, both Governments

“shall explore all possibilities of better understanding between them and between their peoples and in particular shall undertake periodical reviews, through normal diplomatic channels, of their relations with a view to promoting their improvement and with the aim of producing a constructive advancement of the same.”

According to Article II.1:

“So long as this Protocol remains in force no claim whatever arising out of the contention referred to in Article I of the Geneva Agreement shall be asserted by Guyana to territorial sovereignty in the territories of Venezuela or by Venezuela to territorial sovereignty in the territories of Guyana”.

According to Article III, once the Protocol enters in force,

“the operation of Article IV of the Geneva Agreement shall be suspended. On the date when this Protocol ceases to be in force the functioning of that Article shall be resumed at the point at which it has been suspended, that is to say, as if the Final Report of the Mixed Commission had been submitted on that date, unless the Government of Guyana and the Government of Venezuela have first jointly declared in writing that they have reached full agreement for the solution of the controversy referred to in the Geneva Agreement or that they have agreed upon one of the means of peaceful settlement provided for in Article 33 of the Charter of the United Nations”.

Article IV of the Protocol sets forth that Article V of the Geneva Agreement remains operative during this period.

Article V of the Protocol regulates its duration (twelve years renewable for identical terms –or by written agreement for shorter terms, but longer than five years - unless six months before the end of each term either Government notifies the other in writing of its termination.

Article VI provides that the Protocol shall be known as “Protocol of Port of Spain” and shall enter into force on the date of its signature. Both texts in Spanish and English have equal value.

In the explanatory memorandum of the Venezuelan draft law approving the Protocol, of June 22nd 1970, it is said that when the Venezuelan Government saw the possibility of losing control of,

“an issue of such vital importance for Venezuela, as the determination of the settlement means of the controversy... carefully examined the situation in which the relations between the countries were, as well as the general state of international politics, in what this could affect our aspirations, and concluded that it was not the proper time to enter into this new phase of the procedure”.

It continues:

“In effect..., given the lack of any process in the Mixed Commission and given the unfortunate but undeniable fact, of the deterioration of the relations between Venezuela and Guyana, it was difficult, if not impossible, to expect that the mechanism of the Geneva Agreement could fulfill its function of providing a satisfactory solution for the practical settlement of the controversy, since the achievement of such a solution necessarily presupposes in the exercise of the means of solution envisaged, a willingness of understanding by both sides”.

It goes on to explain that the Government undertook a wide range of consultations with politicians and experts, including “opinions of reputable foreign experts”, carefully weighing all alternatives and

“it was concluded that the most appropriate, even though in view of the environment that existed at the time seemed to be the most arduous, was the search for a negotiated route with

Guyana...Notwithstanding the wide initial divergence of positions...there was evidence of an effective willingness on the part of Guyana to negotiate. This desire for understanding on the part of both Parties eventually made it possible to arrive at the text of the Protocol which...opens the way for creating the necessary conditions to make possible a peaceful, honorable and equitable settlement of the dispute”.

Furthermore,

“When the negotiations began, the Government of Guyana proposed a suspension term too long in the opinion of the Government of Venezuela, based on the criterium that a new generation should complete the full examination of the issue. Venezuela, on the other hand, proposed a term that the Government of Guyana considered too short. So, the term of twelve years... represents a formula of commitment... but closer to the initial proposal of Venezuela that the one from Guyana”.

The advantages of the Protocol are listed below: a) maintains in force the Venezuelan claim on the territory seized by the 1899 Award; b) avoids the litigation from leaving the ambit of direct negotiations and passing into the hands of third parties in the short term; c) opens a long enough term for the Governments to explore all possibilities of improving their understanding and that of their peoples and, particularly, undertake through normal diplomatic channels regular reviews of their relations to promote their improvement and produce a constructive advance of them; d) contemplates the eventuality that, by the end of this period, more appropriate circumstances could exist so that, in the terms of the Geneva Agreement and according to the international situation prevailing in that moment, they can be translated into a solution of the dispute or in the determination of a

means to solve it; e) through intelligent and well-organized cultural, economic and all-embracing collaboration, Venezuela could not only decrease current tensions but considerably improve its image; and, f) makes possible to create a favorable environment that allows, after the twelve years, continue the procedure established in Article IV of the Geneva Agreement.

It is underlined that the term “freezing”, used by some interpreters of the Protocol, do not correspond to its true meaning nor its intention, since the twelve-year term will not be a period of inactivity; on the contrary, as provided by Article I, the Parties undertake to make effective efforts within that period to create a climate of real understanding that opens the path to address the solution of the controversy, as stated in Article III of the Protocol. Everything that the Geneva Agreement may contain that is positive for Venezuelan interests remains untouched. On the date on which the Protocol ceases to be in force, the mechanism of Article IV of the Geneva Agreement will resume at the point of suspension, i.e. as if the Final Report of the Mixed Commission had been submitted at that time. Through Article IV of the Protocol, Article V of the Geneva Agreement continues to operate, removing only anachronistic references.

According to the Government, the Protocol opened new positive perspectives:

“Represents a success of the willingness of understanding and a new phase in the search of the settlement of the controversy, not only because it avoids inconvenient or inopportune steps, but especially because emphasizes the constructive work of creating new ties of collaboration and trust between Venezuela and Guyana”.

The termination of the Protocol of Port of Spain

On April 4th, 1981, on the occasion of the official visit to Caracas by the President of Guyana, Forbes Burnham, a Communiqué from the Ministry of Foreign Relations of Venezuela informed that President Herrera Campins firmly reaffirmed the validity of the claim on the Essequibo and reiterated his refusal “to any commitment incompatible” with said claim, as well as “the national aspiration to obtain reparation for the grave injustice committed against our country by the voracity of the colonial empires”. In this sense, “he confirmed Venezuela’s rejection of the Alto Mazaruni hydroelectric project”, also recalled that Venezuela and Guyana “have committed themselves to seek satisfactory solutions for the practical settlement of the pending controversy” and recalled “the Venezuelan determination to continue exploring the most appropriate means to achieve this end”. As a result, “he stated that at this moment there is no provision on our part to extend the Protocol of Port of Spain”, which expired on June 18th, 1982.

The latter information was supplemented by a statement by the Venezuelan Minister of Foreign Relations, Dr. José Alberto Zambrano Velasco, of April, 10th, 1981:

“The Government considers that new ways should be explored to materialize our claim, and considers that it interprets, with its decision, national sentiment... The immediate consequence of the extinction of the Port of Spain Protocol is the full reactivation of the procedures indicated by the Geneva Agreement of 1966...We must assess whether Guyana and Great Britain have complied in good faith with the obligations derived from it. We should break down the means established in that treaty in order to choose the one that, within the

objectives assigned by the Parties, better suit the interests of the country. The unity of the Venezuelans is decisive for...the ethical and legal basis of our claim to be respected to obtain reparation for the violation of which we were victims by the action of the colonial empires. And that the commitment made by Venezuela, Guyana and United Kingdom in 1966 to find satisfactory solutions for a practical settlement of the dispute should also be respected... This unity will also be necessary to make Guyana and the International Community understand that for Venezuela it is unacceptable, pending a satisfactory solution to the dispute, that by unilateral decision there should be acts of disposition over the territory claimed, which could seriously affect it and which would seek to disregard our rights. In the specific case of the Alto Mazaruni dam, it must be clear at the international level that its construction under the current conditions is inadmissible for Venezuela and that consequently, we are not willing to recognize any right that might be invoked on the basis of the hypothetical execution of said project”.

This declaration was followed by another, from the National Government, dated May 2nd, 1981. In this declaration it is stated that

“Venezuela has striven to observe rigorously” the precepts of the Geneva Agreement and, without ignoring the value of some of the criticisms addressed to it, it is “convinced that if the two Parties intend to comply with it in good faith, its purpose will surely be obtained, that is, to find a satisfactory solution for the practical settlement of the controversy. Therefore, ... the Government insists on asserting for its provisions in order to find a solution to our claim”.

The statement continues:

“Obviously, in the event that the means of settlement provided for in the Geneva Agreement are exhausted, without the dispute having been resolved, or that it continues to be evident that the other Party has no intention of complying with its provisions, refusing to negotiate satisfactory solutions for the practical settlement of the territorial dispute, it may be necessary to rethink the orientation of the efforts to obtain reparation due to Venezuela. Consequently, if, according to recent declarations by the Government of Guyana, the territorial problem between our countries is restricted to the Treaty of 1897 and the Award of 1899, it is obvious that the intention is to dispense with the Geneva Agreement. To refuse to negotiate in accordance with what has been agreed is not only to ignore the injustice committed against Venezuela but also to refuse to comply with the international commitments undertaken”.

The declaration adds:

“The Geneva Agreement imposes on the Parties the duty to seek satisfactory solutions for the practical settlement of the dispute. That is why, from the outset, Venezuela has been prepared to consider all the problems involved in this matter, whether political, maritime, cultural, economic or social problems, and not to limit itself to merely examining the nullity of the non-existent 1899 Award, as Guyana seems to claim. Venezuela considers that a practical arrangement is not possible without addressing this issue as a whole and that any different conduct constitutes a violation of the obligation to negotiate a satisfactory solution, as agreed in the Geneva Agreement”.

The declaration recalls the terms of Guyana’s recognition by Venezuela, with express reservation over the entire Essequibo territory, until a practical settlement of the dispute is obtained.

It concludes:

“Venezuela is willing to find, within the provisions of Article IV of the Geneva Agreement, a suitable means of finding a satisfactory solution to the practical settlement of the dispute. This attitude is a necessary condition for recourse to the means of peaceful settlement provided for by international law. Hence, Venezuela is concerned to see certain attitudes of the Guyanese government or sustained under its protection, which seems contradictory with the purpose of finding a means of a peaceful solution to our controversy”.

Aware of Venezuela’s intention to resume the application of Article IV of the Geneva Agreement, Mr. Burnham initiated an international campaign against Venezuela. According to Venezuelan Minister Zambrano Velasco in his speech to the Convention of Governors held in Ciudad Bolivar on July 8th, 1982,

“Mr. Burnham intended to return to his country with a Venezuelan decision in support of the extension of the Protocol of Port of Spain, and with the national contribution for the construction of the Mazaruni dam, which had become the dream or panacea that would solve the economic problems affecting the brotherly people of Guyana”.

President Herrera Campins openly rejected both objectives and, the Minister continues, “the Guyanese reaction became strident and aggressive. He multiplied in all international fora, political or technical, a planned and belligerent accusation against Venezuela, presenting it as a rich, large and powerful country that aspires to two

thirds of a small newborn state to independent life, to which it made economic war and pursued a policy of aggression.

This strategy, according to Guyanese intentions, would have finished days before the date set for the cessation of application of the Protocol of Port of Spain, with a condemnation of Venezuela, describing it as an aggressor country, according to the statement made by the Foreign Minister of Guyana at the meeting of the Coordinating Bureau of the Group of Non-Aligned Countries, held in Havana last June.

This eventual condemnation would have been proposed by Guyana for ratification by the CARICOM Heads of State (in December) who would have been called for a meeting in Georgetown, which was later cancelled for not having found an echo among the eventual participants who realized the Guyanese maneuver. ...In those same days another accusation of aggression on the part of Venezuela circulated in the United Nations Security Council, promoted by Guyana...”.

Between April and December, 1981, a series of Guyanese initiatives took place in multilateral venues, which had to be replicated one by one by the representatives of Venezuela. In April 1981, it took place at the 68th International Labor Conference, in Geneva, where the representative of Venezuela objects to “the use of this Forum to address an issue that must be resolved bilaterally and by the peaceful means chosen by the Parties to the Geneva Agreement”. In May 1981, the same happened at the 34th Health Assembly. In June, at the 4th meeting of the Caribbean Economic Development Group held in Washington. In August, at the United Nations on New and Renewable Energy Conference in Nairobi. In October, at the British Community Heads of Government Meeting in Melbourne. In this case, a press release from the Venezuelan Ministry of Foreign Relations, issued on

October 7th, stressed that the statement by the Heads of Government meeting in Melbourne was taking place at a time when the Conference Secretariat belonged to Mr. S.S. Ramphal, the Guyanese Minister who signed the New Protocol of Spain.

This issue received its own treatment within the World Bank as a result of the financing of the hydroelectric project submitted by Guyana for execution in the Alto Mazaruni. On June 17th, 1981, the Embassy of Venezuela in the United States, following instructions from the Ministry of Foreign Relations, issued a communiqué informing the President of the World Bank of the delivery of a letter dated 8th June, signed by Foreign Minister Zambrano Velasco, in which Venezuela's position on the project was reaffirmed: "The projected Alto Mazaruni dam is located in the Essequibo territory, the object of territorial controversy, and is the result of a unilateral initiative by the Government of Guyana, which does not comply with its international obligations... The construction of the dam... involves considerable work that would profoundly and irreversibly alter the region and the physical environment. Venezuela reaffirms its firm opposition to the fulfillment of such a unilateral act of disposition over a territory whose sovereignty corresponds to it".

This evidences "a lack of serious will to comply with its international obligations, arising from the Geneva Agreement, which imposes on the Parties the duty to seek a satisfactory solution for the practical settlement of the dispute. It is obvious that this kind of unilateral acts deviates from the conduct owed by States obliged to negotiate in good faith, in view of a peaceful and practical settlement of a pending dispute and adds unnecessary elements of tension in international relations. Venezuela's opposition is even stronger as the political purpose pursued by Guyana with the project becomes evident...

The Venezuelan Government...confirms that it does not recognize any right or legal situation that could be invoked in the future, whether by third States, international organizations or entities, or by private corporations, based on a hypothetical unilateral act of disposition performed by Guyana over the Essequibo territory... The same considerations would be valid for the credits that could be granted for the financing of the work...Venezuela believes that it would be unusual for the World Bank... to proceed to finance a unilateral act over a territory in controversy, whose political purpose on the part of Guyana is evident”.

On September 24th, 1981, Foreign Minister Zambrano Velasco replicated the tendentious intervention of the Prime Minister of Guyana at the 36th session of the United Nations General Assembly, who had presented Venezuela as an expansionist, intervening country that tries to abuse the weakest:

“This is the central point of the matter -Dr. Zambrano Velasco said- Guyana and Venezuela freely, without pressure or threats, assumed the obligation to seek satisfactory solutions for the practical settlement of the territorial controversy existing between them. Unfortunately, the current Government of Guyana has been inclined to show solidarity with the iniquities of the past. Venezuela’s attempts at dialogue have come up against a wall of absolute intransigence, and the announced policy of the Government of Guyana is to transform at any cost the *de facto* conditions of the territories subject to claim in such a way as to make any settlement difficult or impossible”.

The Venezuelan Minister continues:

“The incredible horror of the Jonestown massacre brought to the world’s attention the disastrous results of that policy. Venezuelans are aware of the serious and growing economic and social difficulties suffered by the young Guyanese nation... We believe, however, that the temptation to divert public attention from real immediate problems to non-existent external threats must be resisted.... I clearly denounce the actions and statements of the Government of Guyana, such as seeking international support, publicizing alleged or non-existent support, or achieving an animosity against Venezuela. I denounce such activities as initiatives destined for Venezuela to fall into the trap of an explosive reaction... The arrogant, dismissive, defiant and even insulting activities of persons of the current Government of Guyana against Venezuela are only understandable as excuses not to comply with the obligation contracted to negotiate between the Parties satisfactory solutions for the practical settlement of the controversy... I emphatically deny that Venezuela harbors intentions of military aggression against Guyana”.

The Minister concludes with a friendly exhortation to the Government of Guyana to “sincerely and in good faith perform the duties which it freely assumed under the Geneva Agreement of 1966”.

This skirmish did not stop there. The Government of Guyana issued a memorandum (A/C.1/36/9), linking it with the item on the agenda of the UN General Assembly concerning the Declaration on the Strengthening of International Security. Venezuela considered this memorandum “an unsustainable propaganda move whose fantastic aspiration is to present Venezuela as a country that threatens to attack another”.

Venezuela replied with another memorandum, dated 20 November 1981 (A/C.1/36/12), denouncing the Guyanese Government

“misrepresentations and interested and slanderous interpretations... which once again manifest the Guyanese intention to deviate from the fulfillment of its international commitments and duties... Guyana has systematically violated the Geneva Agreement of 1966, by refusing to seek “a satisfactory method for the practical settlement of the dispute” (art.1), so that the dispute could be “amicably settled in a manner acceptable to both Parties” (preamble). Guyana has persistently refused to negotiate with Venezuela a solution of the kind described by that treaty... The only case in which Venezuela has not even been able to begin a real negotiation has been precisely with Guyana, as a consequence of the obstinate determination of the only government that this country has had in its fifteen years of Independence, to refuse to comply with its obligations under the Geneva Agreement”.

Referring to the Agreement, the Memorandum states that

“it constitutes the legal status of the Venezuelan territorial claim, and is the product of the will freely expressed by Venezuela and Guyana..., a formal agreement by which the three parties involved committed themselves to a political search for peaceful solutions to a controversy inherited from colonialism.... However, the fact that Guyana insists on raising the issue within a multilateral field may reveal, beyond a propaganda drive on its part, a purpose to move away from the bilateral instrument called, by our common will, to be the means to resolve the dispute. Venezuela wonders “how can international security be affected if a treaty is complied with in good faith, Article IV of which expressly refers to the means of peaceful settlement of disputes provided for in Article 33 of the UN Charter?... It is also a matter of concern that, as part of its publicity stunt, Guyana is attempting to present Venezuela as a conflictive country, to the

point of daring to assert that the Caribbean region has faced a constant threat to its peace and security as a result of the Venezuelan claim”.

In his Third Address to the Congress of the Republic, on March 11th, 1982, President Herrera Campins regrets that

“in almost all the international fora held after President Burnham’s visit to Venezuela, we have constantly been victims of attacks by the Guyanese delegation, which we have responded to and rejected in form and substance on each of those occasions”.

These lamentations are reiterated in the IV Address Message, to the Congress, March 10th, 1983.

In accordance with Article V of the Protocol, on December 11th, 1981, Venezuela formally notified (Note No GM-515) its termination at the end (June 18th, 1982) of the twelve years of the initial period. In the same note, Venezuela transmitted to Guyana

“the firm willingness of the Government of the Republic of Venezuela to find, through the fulfillment in good faith of the provisions of the Geneva Agreement, a satisfactory solution for the practical settlement of the outstanding territorial dispute, so that it may be amicably and peacefully settled in a manner acceptable to both Parties”.

Identical note No. GM-516) was addressed to the Foreign Office and both notes were communicated (note No. GM.517) to the Secretary-General of the United Nations, Kurt Waldheim.

On the same date, the Ministry of Foreign Relations of Venezuela issued a communiqué informing of this decision. It states, *inter alia*, that:

“During the four years of activity of the Mixed Commission, Guyana maintained an inflexible position, aimed at evading negotiation through which a satisfactory solution could have been found for the practical settlement of the dispute. As a result of the intransigent Guyanese non-compliance, the Mixed Commission was unable to fulfill its mandate under the Geneva Agreement... In the light of the international situation at the time, the immediate background within the Mixed Commission, and the supreme interests of the country, the national Government at the time concluded that the time was not ripe for the immediate implementation of Article IV of the Geneva Agreement. By virtue of this, the Protocol of Port of Spain was negotiated and signed..., although this did not preclude the possibility of taking steps, by other means, to seek a solution to the controversy raised... The Venezuelan Government’s decision not to extend the Protocol of Port of Spain carries with it a firm determination to comply with and enforce compliance with the Geneva Agreement, which establishes an obligation to negotiate a satisfactory solution for the practical settlement of the dispute, so that it is resolved in a manner acceptable to both Parties. We have repeatedly denounced Guyana’s failure to comply with this obligation to negotiate in good faith. At this moment, when the matter takes a new turn, Venezuela renews the hope that Guyana will rectify this conduct and that genuine negotiations will be undertaken... We must proceed, through that international treaty, to seek a solution that, without losing sight of all the historical, geographical, political, social and legal factors present in the matter, proposes the achievement of the fundamental objective for Venezuela, which is the achievement of a practical arrangement

that rectifies the injustice committed with the abusive dispossession of which we were victims in the Guayana Esequiba...”.

Both the Senate (on December 14th) and the Chamber of Deputies (on December 15th) adopted resolutions supporting the Government’s decision not to extend the application of the Protocol of Port of Spain, as well as its determination “to comply with and enforce compliance with the Geneva Agreement, in search of a satisfactory solution for the practical settlement of the territorial dispute raised”.

On May 11th, 1982, Guyana expressed unfounded accusations of alleged aggressions and imminent invasions by the Venezuelan Armed Forces in a letter to the President of the Security Council, forcing Venezuela to deny it in a letter dated June 1st, 1982, distributed as a document of the Security Council (S/15208).

This document recalls that these accusations are not new and respond to Guyana’s intention to use the Security Council and the United Nations as an instrument of propaganda against Venezuela. Once again it is pointed out, referring to the activities of the Mixed Commission:

“The obstinacy with which Guyana maintained a point of view far removed from reality and from the fulfillment of the obligation to negotiate in good faith, raising as a question prior to any subsequent conversation, the useless intellectual exercise of examining the validity or nullity of the 1899 Award, rendered the activities of the Mixed Commission inoperative, frustrating the purpose of the Geneva Agreement, which is, according to its Article 1, the search for practical solutions, that is, of a political nature and, therefore, opposed to a speculative, theoretical and exclusively legal solution, such as that

relating to the validity or nullity of an arbitral award... The Government of Guyana has been engaged in a publicity effort, repeating over and over again that it is the victim of a Venezuelan aggression...as if by repeating this slogan alone, Guyana aspires to justify its 16-year sustained breach of the specific obligation to negotiate in good faith in order to achieve a satisfactory solution to the practical settlement of the dispute.

This strategy became even more evident since April 1981, when the President of Guyana Forbes Burnham visited Venezuela and President Luis Herrera Campins participated eight months before the date foreseen in the Protocol of Port of Spain that Venezuela would not continue to apply that Protocol... This is the opportunity to reiterate that the Geneva Agreement imposes on the Parties the duty to search a practical solution to the problem; to reaffirm that Venezuela has been willing, from the outset, to consider all the aspects involved in the matter, because a practical solution such as the one that has been agreed upon requires that the entire issue be addressed as a whole. Limiting the discussions to a merely theoretical-legal aspect implies a violation of the obligation contracted in good faith by both countries when adopting the Geneva Agreement... In view of this reality, the Government of Guyana seems to be desperate for a dossier, a formula, a mechanism to avoid its obligation to negotiate...The failure to comply with the obligation to negotiate in good faith in a repeated and systematic manner constitutes an offence to the law, a contempt for the other party, a veiled form of violence and an expeditious method of breaking faith in peaceful dispute settlement mechanisms”.

On June 17th, 1982, on the eve of the effective termination of the application of the Protocol of Port of Spain, the Venezuelan Minister of Foreign

Relations, Zambrano Velasco, delivered an extensive speech at the Congress of the Republic: “The history of dispossession is the history of a maneuvering between hegemonies that, believing themselves eternal, tried to turn the law of the empire into a false ‘rule of law’” he says, and then extended broadly into the historical process of the “judicial farce” that led to the 1899 Award, at a time when Venezuela’s weakness was critical. And he goes on:

“After the Second World War, when new facts previously unknown in all their significance proved the justification for Venezuela’s rejection of the 1899 Award, our claim was strengthened. These facts revealed the precise circumstances surrounding the work of the so-called Tribunal of Paris and made it possible to perceive with greater clarity the dimension of the outrage committed. At that time, under the auspices of the UN, the process of decolonization began, which gave hope to the peoples who were victims of colonialism to re-establish the territorial integrity violated by the expansionism of the empires. Since 1948, before the OAS, the Venezuelan denunciation against the arbitrary farce and colonialist usurpation, as well as the consequent territorial claim, has been formulated repeatedly”.

The Minister refers to the Geneva Agreement “from the outset interpreted as the statute of our territorial claim”, and to its application, as well as to the independence of Guyana, which Venezuela recognized “clearly reserving the country’s rights over the usurped territory”.

The Geneva Agreement, Foreign Minister Zambrano Velasco says,

"starts from the recognition of the existence of a controversy and establishes the procedures to find a solution by peaceful means. It expressly provides that the matter must be resolved in a manner

acceptable to both Parties. Article I of the Agreement obliges the Parties to negotiate “a satisfactory solution for the practical settlement of the dispute”. This leads to taking into account not only the legal elements involved in the issue, but also all historical, moral, political, geographical and any other considerations that may lead to a balanced, practical, acceptable and, ultimately, equitable result. The treaty also binds the Parties to approach the negotiation of the matter in good faith, so that it makes sense and is not reduced to a mere exercise of intolerance”.

In relation to the work of the Mixed Commission:

“Venezuela made an effort to fully comply with this obligation to negotiate in good faith, in the terms defined by International Law. Our representation did everything in its power, took all possible initiatives, so that the negotiations made sense and could offer some progress. On the other hand, the Guyanese representation, instead of addressing the issue of territorial claim in the manner in which it was legally obliged to do so, stubbornly refused to consider any possibility of a practical and satisfactory solution to the matter. It merely argued that the 1899 Award was a *fait accompli* and that, until Venezuela obtained its annulment, there was nothing more to discuss. The action of the Guyanese delegation frustrated the mechanisms of the treaty. Indeed, the intention to subject the possibility of negotiation to the previous annulment of the award, or to limit the application of the means of solution to the legal aspects involved, constitutes a clear violation of the letter and spirit of the Geneva Agreement.

The “controversy”, according to the aforementioned Agreement, is not purely a legal dispute but a broader one, which includes aspects of natural justice and morality. The approach of the Guyana delegation is incompatible with the content of the Geneva Agreement...To ensure

the objective of a mutually acceptable solution, it gives a fundamental role to negotiation. The latter, in turn, is conceivable only as a reciprocal movement of rapprochement of the positions of the Parties, so that thanks to this concerted exercise of flexibility, sufficient points of contact can be established between the aspirations of both Parties and a balanced, mutually acceptable result is obtained. It is clear that the validity or nullity of an award cannot be negotiated, because it is inconceivable to achieve a balanced and mutually acceptable result on this matter. Indeed, the Geneva Agreement sets aside the fraudulent 1899 Award. Its own text points out that there is a dispute and that the Parties must negotiate their solution. At all times Venezuela has faced this attempt by the Government of Guyana to evade its obligation to negotiate in good faith. Not only because it is morally unacceptable that Guyana seeks to impose as the argument based on the 1899 Award, the existence of judicial fraud itself, but because, above all, we cannot admit the denaturalization of the Geneva Agreement, which is an international commitment freely agreed and which constitutes the statute of our territorial claim". With this precedent, says the Minister, it is not surprising that the Mixed Commission could not fulfill the mandate entrusted to it".

The Minister alludes to the difficult circumstances in which the Protocol of Port of Spain was signed at a time of stagnation. The Minister understands that, analyzed with the greatest objectivity, the Protocol has justified its existence:

“Before the Guyanese people it has been clearly demonstrated that their permanent economic and social crisis does not derive, as his Government wanted it to believe, from an alleged Venezuelan harassment... The patient and serene action of Venezuela has counteracted the attempts to portray an image of aggressor and a

sustained diplomatic action has made known to the countries of the world the fundamentals of elementary justice of the Venezuelan claim and the permanent willingness of our country to reach reasonable solutions by peaceful means. The degree of detente allowed renewing dialogue during the past constitutional period. There were new negotiating initiatives, which express the continuity of our claim. Although they were implemented at the highest level, the attitude of the Government of Guyana did not contribute to design of a draft solution. Today, Venezuela, strengthened in all aspects and with a solid and respected international trajectory, can approach the new negotiation process under more favorable conditions”.

The Minister explains the road map from June 18th, 1982, when the procedure set forth in Article IV.1 of the Geneva Agreement is opened, and concludes by referring to the strategy of “internationalization of the problem” deployed, with no results, by the Government of Guyana, presenting the controversy in an accusatory tone in the most diverse international fora, in search of condemnations for Venezuela, invoking an alleged aggression: “The absence of results in the deployment of this strategy allows us to think that there will be a change in Guyana’s attitude, which will facilitate the beginning of constructive conversations”.

The text of this speech was annexed to the notes addressed the following day, on June 18th, 1982, to the Foreign Minister of Guyana, Rashleigh Jackson (Note No. GM-135) and to the Secretary of State of the Foreign Office, Francis Pym (Note No. GM-136), formally ratifying the decision not to extend the application of the Protocol of Port of Spain, repeating the contents of the notes transferred the previous December 11th.

VIII.

Reactivation of the Geneva Agreement: election of means of settlement by the Secretary-General of the United Nations, 1982-1983

On July 1st, 1982, implementing the Article IV.2 of the Geneva Agreement, Venezuela proposed to Guyana the adoption of direct negotiation by the Parties, “the first mode of dispute settlement provided for in (Article 33 (of the Charter)”. This information was transmitted to the Secretary General of the United Nations (Note No. DG-401, dated 2nd August) and to the Secretary of State of the Foreign Office (Note No. DG-406, dated 4th August).

The reasons for this proposal had been anticipated by Minister Zambrano Velasco in his speech to the National Congress on June 17th:

“The means of solution to be chosen must be adapted to the nature of the controversy and respect the terms that the Parties have defined to resolve it, since the fundamental idea that underlying the Geneva Agreement also governs this phase. In order to satisfy this requirement, it is necessary, that the stage of direct negotiations, which has not yet taken place, be fully implemented....

It is clear that the negotiation, which has never really been undertaken, is far from having exhausted its possibilities to bring a satisfactory result to our territorial controversy... The National Government is fully aware of the difficulties that, given the antecedents, this process

will present. However, it has considered it appropriate to insist on negotiation. Firstly, because, it is the method that best fulfills the aims of the Geneva Agreement, to which we will adhere strictly. Secondly, because we must not lose hope that the twelve years since 1970... have served to bring the Government of Guyana to the negotiating table in a different spirit ...”

Although Article IV.1 of the Geneva Agreement provided that the Parties, once the task entrusted to the Mixed Commission had been completed without agreement, should choose “without delay” one of the means of peaceful settlement provided for in Article 33 of the Charter, Guyana took its time, and its ambassador in Caracas confused with speculative statements about Venezuela’s alleged aggressive intentions (see press release of the Venezuelan Ministry of Foreign Relations, August 4th).

Guyana rejected the Venezuelan proposal for direct negotiation and proposed a judicial settlement by the International Court of Justice in a note dated 20th August 1982. In its communiqué the following day, the Venezuelan Ministry of Foreign Relations warned that

“it is incomprehensible that an invitation as open as the one formulated by Venezuela to negotiate should be responded with a proposal to resort to judicial means... The attitude assumed by the Government of Guyana does not correspond objectively with the letter and spirit of the Geneva Agreement. We cannot forget that the solution to the dispute, as conceived by the Geneva Agreement, must meet two requirements: first, *it must be of a practical nature*; second, *it must be acceptable to both Parties*; the two requirements call for negotiation in good faith”(emphasis in the original). .

In a note dated 30th August, 1982 (No. GM-185), Foreign Minister Zambrano Velasco addressed his Guyanese counterpart in these terms:

“It is surprising for the Government of Venezuela that a friendly invitation to negotiate is answered, once again, in terms that do not even show any willingness to discuss or, at least, to listen. Therefore, Venezuela considers it necessary to remember that it is not possible to fully comply with the Geneva Agreement by refusing to consider negotiation as a means of solving the underlying problem and considers that the counterproposal of the government of Guyana departs from the purpose of that treaty”.

He further explained:

“The Geneva Agreement, in effect, expressly provides that its basis is to address the existing controversy over the border between Venezuela and Guyana (then British Guiana), so that it is “amicably resolved in a manner acceptable to both Parties” (Preamble). It also defines, in Article I, the purpose that the signatories of this international instrument set out to achieve, as well as its very nature, by stipulating, as an obligation of the Parties, the search for “satisfactory solutions for the practical settlement of the controversy”. In this perspective, and with the purpose of faithfully fulfilling its obligations, Venezuela has maintained since the Mixed Commission began its work that the solution of the dispute, under the terms of the Geneva Agreement, must meet two requirements: the first, to be practical, not theoretical, speculative or exclusively legal; the second, to be acceptable to both Parties.

The settlement of the dispute, as conceived in the Geneva Agreement, is essentially placed at the level of equity, natural justice and ethics. It has therefore been Venezuela’s invariable position to be willing to

consider any means capable of ensuring a practical solution acceptable to both Parties in accordance with the provisions of the Geneva Agreement. In this regard, it is permanently willing to examine not only those aspects strictly related to the territorial dispute itself, but also all those that, within the framework of our bilateral relations, can contribute to a solution of the aforementioned characteristics.

Even before the Geneva Agreement and all the more so after its conclusion, we have insistently proposed negotiation as a means of settling the current dispute, because only through diplomatic means can a balanced and practical settlement be achieved that will mean a satisfactory and acceptable outcome for both Parties. From the foregoing, it must be concluded that the means proposed by the Government of Guyana is inadequate for the objectives and purposes of the Geneva Agreement. As a consequence, I would like to reiterate, on behalf of the Government of Venezuela, the invitation to negotiate on the broadest basis in search of a satisfactory solution to the practical settlement of the dispute”.

This note was also brought to the attention of the Secretary of State of the Foreign Office (Note No. GM-187 on the same date, August 30th, 1982).

Guyana’s reply is dated 9th September 1982. Guyana reiterates its proposal. Two days earlier, on the 7th September, Venezuelan Foreign Minister Zambrano Velasco had met in New York with UN Secretary-General Javier Perez de Cuellar. The press release reporting this meeting anticipated that, if by September 18th Venezuela and Guyana had not agreed on a means of peaceful settlement, the Secretary-General would indicate one at the request of either party. While Venezuela was still waiting for a response to its latest communication, “the official spokespersons of the Government of Guyana

have again insisted on trying to present Venezuela as an aggressive and threatening country”.

After the three months provided for in Article IV.2 of the Geneva Agreement expired without the Parties having been able to agree on one of the means laid down in Article 33 of the Charter of the United Nations, the Government of Venezuela notified the Government of Guyana (note No. GM-210, dated 19th September 1982) that it was convinced that

“the most appropriate international body to indicate a means of settlement is the Secretary-General of the United Nations”.

Accordingly, the note added,

“the Government of Venezuela intends to bring the matter to the attention of the Secretary-General and would welcome a similar approach on the part of the Government of Guyana”.

A copy of this note was forwarded to the Secretary of State of the *Foreign Office* (Note No. GM-212) and to the Secretary-General of the United Nations (Note No. GM-214) on the same day (September 19, 1982).

Two days earlier, on September 17th, the representative of Guyana addressed the President of the Security Council (S/15398) with further accusations against Venezuela, along the lines he had already followed on 11th May 1982. As at that time, the Representative of Venezuela replied by letter dated on September 30th:

“It is curious that signs of this nature take place on dates linked to the process of selecting the means of resolving the territorial controversy over the border between Venezuela and British Guiana, today the Cooperative Republic of Guyana, which could be interpreted as an additional sign of the intention to neglect the primary interest in settling the dispute between our countries, in view of the imminent obligation to leave in the hands of an appropriate international body, or of the Secretary-General of the United Nations as expressly agreed in the text of the Geneva Agreement itself, the choice of the means of peaceful settlement of the territorial controversy”.

On 27th September 1982, Venezuelan Foreign Minister Zambrano Velasco addressed the UN General Assembly at its thirty-seventh session period. On this occasion, the Foreign Minister recalled that:

“Venezuela has never, in its one hundred and seventy-two years of independent life, had not a single war, nor a single armed encounter with any of its neighbors... For years, Guyanese spokespersons have been carrying out a systematic campaign to promote feelings of sympathy on the basis of presenting their country as a small and poor nation whose territory is the object of the greed of a rich and powerful neighbor, and to try to create an image of Venezuela as an aggressor country indifferent to the law, justice and solidarity that must exist between countries fighting for their development... For almost two decades, Guyanese statements about an imminent aggression have been heard in international fora, yet it is an obvious fact that no aggression has taken place”.

The Foreign Minister informs that

“after repeated rejections of our formal invitations to the Guyanese government to begin negotiations that will allow a satisfactory and practical solution, Venezuela will elevate to the Secretary General of the United Nations the decision to indicate a means of resolving the controversy, thus conforming our conduct to the letter and spirit of the international treaty signed between the Parties, which is known as the Geneva Agreement...”.

Venezuela formally referred the matter to the Secretary General by Note No. GM-233 of 6th October 1982. Only two days later, on October 8th, Guyana responded to the Venezuelan note of September 19th. His note, signed by M. Shahabuddeen, as Acting Minister of Foreign Relations, had a clear dilatory intention:

“It is observed”, says the note, “that the current provisions of Article IV (2) of the Geneva Agreement provide that the Government of the Cooperative Republic of Guyana and the Government of the Republic of Venezuela “shall refer the decision on the means of agreement to an appropriate international body on which both Parties agree, or in the absence of an agreement on this point, to the Secretary-General of the United Nations. The Government of the Cooperative Republic of Guyana has the highest respect for the distinguished Secretary-General of the United Nations and, should it be necessary, will be pleased that he assumes the role established for him in the Geneva Agreement. However, the Government of the Cooperative Republic of Guyana would be concerned to invite him to assume it at the appropriate time with a view to ensuring that he has no shadow of doubt about his competence to act under the Geneva Agreement, except in the residual role expressly and specifically reserved for him, in the second alternative of the provision referred to, i.e. under the circumstances in which the two Governments have not reached

agreement on the appropriate international body under the first alternative, an event which has not yet occurred. Moreover, and in any case it is observed that the terms of the proposal of the Government of the Republic of Venezuela have actually been formulated under the second alternative of the provision in question, despite the fact that as stated above, the stipulated precedent condition of recourse to that alternative has not yet been satisfied, in view of the fact that the two Governments have not yet taken any steps to reach agreements on an international body as contemplated by the first alternative. For these reasons, the Government of the Cooperative Republic of Guyana is of the opinion that the proposal of the Republic of Venezuela is premature and inadmissible at this stage. However, in accordance with its commitments under the Geneva Agreement, the Government of the Cooperative Republic of Guyana is prepared to attempt to reach an agreement with the Government of the Republic of Venezuela on an international body under the first alternative of that provision”.

It was on October 11th, 1982, when the Minister for Foreign Relations of Guyana, Rashleigh Jackson, during his intervention at the 37th General Assembly of the United Nations - and not through diplomatic channels - made a counter-proposal: that the General Assembly, the Security Council or the International Court of Justice should be the body responsible for designating the applicable means of settlement. His intervention was marked by a rhetoric of denunciations of false aggressions and intentions on Venezuela's part.

On October 15th, 1982, the representative of Venezuela was forced to make a new reply to the intervention of the Foreign Minister of Guyana. For 16 years, the Government of Guyana

“has systematically eluded compliance (with the Geneva Agreement) and has limited itself to defaming and slandering Venezuela with descriptions of aggressor, which have been denied by the facts...” On the other hand, the Guyanese Minister, without respecting the diplomatic channel, “has formulated a counterproposal within the context of a speech pronounced in an unacceptable tone. The Government of Venezuela, notwithstanding the serious reservations it has about the fact that such proposals have been formulated in such circumstances, has submitted them to careful study. However..., he will not answer them on this occasion, but rather, within the firm purpose that encourages him to resolve the controversy through the Geneva Agreement, he will again resort to the ordinary diplomatic channel, unilaterally abandoned by the Government of Guyana”.

The same date, October 15th, 1982, Venezuela delivered its answer through diplomatic note (No. GM-251):

“After these alternatives have been carefully analyzed, the government of Venezuela reiterates its conviction that the most practical and appropriate thing to do is to entrust the UN Secretary-General with the choice of the means. And it added: “As it is evident that there is no agreement between the Parties for the choice of an international organ to fulfill the function set forth in Article IV.2, it is obvious that it is entrusted to the UN Secretary-General”.

A copy of this note (No. GM-258) was sent on 28th October 1982 to the Secretary of State of the Foreign Office and to the Secretary-General of the United Nations (No. 260).

Guyana delayed its response. Four months later, on 21st February 1983, its Foreign Minister Jackson announced that the Government would not delay it any further but, the days passed.

On March 10th, 1983, President Herrera Campins, in his Fourth Address to the National Congress, reported:

“We invited the Government of the Cooperative Republic of Guyana to agree on a means of peaceful solution and proposed direct negotiation between the two Republics to find an amicable and acceptable solution. That demonstration of good will did not find the welcome we had hoped for in the Guyanese Government, which insisted on developing a campaign of attacks, offenses and false accusations against Venezuela in all the international fora it attended”.

On the same date, Foreign Minister Zambrano Velasco presented the *Yellow Book* to the National Congress. In his introduction, it is noted that the Guyanese government, instead of maintaining the controversy within the bilateral framework of the Geneva Agreement:

“has sought at all times its internationalization, in order to make it appear as a generalized conflict and to avoid the mechanisms of the Geneva Agreement. Responding to this purpose, the issue of the claim has been presented in various international fora, in order to obtain a resolution or declaration adverse to Venezuela and to distort the justice of our claim. In the UN and in several of its specialized organizations, such as FAO, UNESCO, WHO and ILO, the Guyanese representation has launched aggressive and manifestly disproportionate accusations against Venezuela. These accusations have also occurred in other instances of which our country is not a part, as has happened with meetings of countries of the British

Commonwealth of Nations, CARICOM and the Movement of Non-Aligned Countries...”

The *Yellow Book* refers to the notes exchanged by the Parties to comply with the provisions of Article IV of the Geneva Agreement and points out that, at the same time, in a constant search for the internationalization of the controversy, the Minister of Foreign Relations of Guyana used the platform of the UN General Assembly to formulate the Guyanese position, a procedure that Venezuela objected to by diplomatic note.

It was on March 28th, 1983 that Guyana responded to Venezuela’s proposal of October 15th, 1982, which it had no choice but to accept.

On May 23th, 1983 (Note No. GM-95) Foreign Minister Zambrano Velasco acknowledged receipt of the Guyanese note of March 28th. It states:

“Although I cannot share and I am obliged to reject many of the views contained in your communication and despite the late response, I must acknowledge the satisfaction of the Government of Venezuela at the acceptance by the Government of Guyana of our proposal to go to the Secretary General of the United Nations as the most appropriate international organ to carry out the function provided for in Article IV.2 of the Geneva Agreement”.

He concluded:

“On this occasion, at a time when the pending territorial controversy is entering a new stage, I am pleased to reiterate to you the unalterable readiness of the Government of Venezuela to faithfully comply with

and require compliance with the Geneva Agreement, in the conviction that a satisfactory solution to the practical settlement of the dispute can be reached by that route, so that the dispute is amicably resolved, in a manner acceptable to both Parties, as we have agreed by that Treaty”.

On May 31st, 1983, the UN Secretary-General, based on the notes of October 15th, 1982 and March 28th, 1983, of which he had received copies sent by the Parties,

“now having the assurance that it is the desire of both the government of Guyana and the government of Venezuela that I assume the responsibility conferred on me by Article IV (2) of the Geneva Agreement, I will communicate to His Excellency and the government of Guyana, after careful consideration, the conclusion to which I will arrive in the exercise of said responsibility”.

IX.

The choice of Good Offices, 1983-1989

UN Secretary-General, Javier Pérez de Cuéllar, sent Diego Cordovez to Caracas and Georgetown on an exploratory mission in August 1983. It should be noted that on the occasion of the inauguration of President Lusinchi on the 2nd February 1984, attended by a high-level Guyanese delegation, Guyana's desire to restore a climate of cordiality with Venezuela was observed.

This allowed the initiation of an *informal procedure* parallel to the one that Cordovez was running, led by Shridat Ramphall, then Secretary General of the Commonwealth and former Attorney General and Minister of Foreign Relations, and Emilio Figueredo, personal representative of President Lusinchi and closely related to Foreign Minister Morales Paúl. In September 1984, the Foreign Ministers of Venezuela and Guyana had met with the UN Secretary-General in New York. Starting in November 1984, Figueredo and Ramphall held several meetings.

The purpose of the informal procedure, through those who were designed as "facilitators", was to assess the possible scope of a hypothesis that would allow the "practical arrangement" and determine its meaning for Guyana, as well as to verify its actual willingness to negotiate. This level of communication complemented the other two agreed by the Ministers, namely the communication with the UN Secretary-General, represented by Mr. Diego Cordovez, and the official communication between Ministers.

Mr. Emilio Figueredo summed it up like this: first, an attempt was made to obtain the opening of informal and official channels of communication between the Parties, with a view to establishing a propitious ground for the proposal of a practical arrangement; second, an objective evaluation was made of the role of the UN in the implementation of the Geneva Agreement; third, a consultation process was carried out to identify the positive and negative aspects of the proposal made by Diego Cordovez; fourth, tactical schemes were developed on how to carry out an assessment of public opinion on the substance of the problem, in an attempt to determine the country's real interest in this dispute; finally, the foundation was laid for a systematic analysis of the issue under its different perspectives.

These informal contacts, aimed at assessing hypotheses that might allow a practical settlement of the dispute, resulted in some proposals. By insisting on the fact that a symbolic solution should not present Guyana with a major sacrifice of its territory, Mr. Ramphall presented a concrete proposal in the maritime area which he believed would constitute an equitable solution.

Between February 6th and 9th, 1985, Venezuelan Foreign Minister Morales Paúl officially traveled to Georgetown, with Emilio Figueredo recently appointed Ambassador in special mission accredited to the United Nations for the implementation of the Geneva Agreement.

On February 16th, 1985, the Foreign Ministries of Venezuela and Guyana sent notes to the UN Secretary-General requesting an early visit to both countries by his Representative, Diego Cordovez. He traveled to Caracas and Georgetown in March 1985 with a first proposal: a five-member conciliation commission whose final report for the Secretary-General's consideration would include a solution proposal.

In July 1985, while Figueredo-Ramphall contacts were resumed, Venezuela officially informed Cordovez of its reservations to the proposed conciliation as a means of settlement. Conciliation was the most legal of the political means of settlement; it was a rigid means, without control by the Parties, prone to resemble an arbitral or judicial decision, but without its binding force; to accept it directly was to burn beforehand the possibilities of other less invasive means of settlement, such as good offices or mediation, and it granted too much discretion to the Secretary-General.

In September 1985, in response to these objections, Cordovez produced a second and then a third text, in which the Commission became a contact group, with no competence to present proposals for solutions. However, Venezuela continued to encourage a formula of good offices.

The disagreement with the Cordovez proposal, the leaks to the press tending to create unease in public opinion, as well as the death of Guyana's President Forbes Burnham (August 6th, 1985) imposed a pause in the process.

It was in March 1987 when the process was re-launched, on the occasion of the visit to Caracas, between 24th and 28th, of the new President of Guyana, Desmond Hoyte. The Parties agreed to invite the Secretary-General to choose good offices as a means of settlement.

This invitation was formulated at the meeting of the Permanent Representatives of Venezuela (Reinaldo Pabón) and Guyana (Samuel Insanally) at the United Nations with the Secretary-General on April 6th, 1987. It was agreed that the name of the person designated as good officer

would be submitted to the consideration of both governments for approval prior to designation.

The agreement on Alister McIntyre as the good officer was reached on August 5th, 1989 at a meeting between Presidents Carlos Andrés Pérez and Desmond Hoyte in Tobago and was announced on November 8th at a new presidential meeting in Puerto Ordaz. It was only later that the Secretary-General appointed him. His task was to “define, in the most flexible and informal way possible, the hypotheses of a practical solution” to be communicated to the Parties.

In a meeting held at United Nations headquarters in New York by the Foreign Ministers (Reinaldo Figueredo and Rasleigh Jackson) with Alister McIntyre on 28th April 1990, three levels of communication were agreed, similar to those already used in previous years: a) the good officer with the governments; b) the good officer with the facilitators and with each other, and c) between the foreign ministers.

X.

The process of Good Offices, 1989-2014

Alister McIntyre (1989-1999)

The facilitators (Emilio Figueredo, for Venezuela, and Barton Scotland, for Guyana) held four meetings (New York, 13th August 1990; New York, 29 October 1990; London, 26th January 1991; New York, 5th April 1991) at which the Personal Representative of the Secretary-General, Alister McIntyre, was present as a “friendly witness”, foreseeing that “as the talks progress, he may assume a more active role, helping to dispel doubts about the aspirations and purposes of the Parties”. On April 5th, 1991, the Foreign Minister also met with the Secretary General.

According to the report presented to the Venezuelan Government by Emilio Figueredo, at the first meeting (August 13th, 1990) Venezuela pointed out the convenience of breaking the problem down into three large areas:

1. A coastal area that involves territorial cessions to be defined in favor of Venezuela, above all to achieve a greater Atlantic projection;
2. A central area or zone of the Mazaruni, linked to energy cooperation, and with possible territorial implications; and,
3. An area considering an ecological reserve solution (which could be binational) could be visualized.

The Guyanese facilitator found this approach to areas interesting, and it was possible to complement it with cooperation formulas.

It was agreed to maintain informal and low profile status, without public statements.

It seemed to Emilio Figueredo that the Guyana facilitator did not want to accelerate the pace until elections were held in Guyana.

At the second meeting (29th October 1990), the intention was expressed to focus on the various geographical, development and cooperation aspects of the problem, without making precise territorial observations, but rather insisting on general assessments of parameters of common interest and points of convergence.

The Guyanese facilitator was interested in what the Venezuelan understood by a hypothesis that contemplated, among others, a solution in the area of the possible Mazaruni dam and ruled out the possibility of establishing an ecological reserve zone arguing that Guyana had recently decreed a large area of this nature.

The Guyanese facilitator underlined the difficulties, including constitutional ones, of any territorial arrangement, indicating that he was aware that the greatest contribution Guyana could make to overcome the dispute was in the maritime area. He agreed on a corridor towards the Atlantic, possibly accompanied by a small stretch of coastline. There was a strong resistance, therefore, to solutions that significantly modify the land map and to share control of natural resources.

The facilitator from Guyana, however, was open to dealing without prejudice with all issues and geographical areas and to abandon a purely legal view of the dispute.

At the third meeting (January, 26th 1991), the Personal Representative of the Secretary-General, Alistair McIntyre, stated that, although the talks should be open, the objective of the process should also be borne in mind: to reach an agreement to resolve the territorial dispute by tying it to a scheme of economic cooperation.

The Guyanese facilitator argued that it was necessary to break with traditional schemes and seek new formulas, suggesting as a sign of goodwill and progress the development of a *modus vivendi* in fisheries.

At the fourth meeting (5th April 1991) the Venezuelan facilitator raised the inconvenience of Guyana carrying out unilateral acts, without prior consultation or knowledge of Venezuela, in areas under dispute. Granting mining concessions (i.e. gold, oil) or an environmental protection zone of 900,000 acres, or the decree establishing an exclusive economic zone (even more so when there was no delimitation and the coastal zone was important for negotiations) were at least “unfriendly acts”.

It was agreed to come to the substance, trying to define in general terms the areas of interest in territorial terms, as well as to define the parameters of convergence and common interests to translate them into concrete ideas that help the design of hypotheses for the solution of the controversy.

Emilio Figueredo examined the Secretary-General’s powers to choose the means of solution and, after consulting the views of all the international

legal advisers to which the Government could have recourse, reached the following conclusions:

1. There must be consent of the Parties to accept the means indicated by the Secretary-General.
2. The task of the Secretary-General is limited to the choice of means, with the consent of the Parties.
3. There is an obligation to negotiate between the Parties.

Between April 5th, 1991 and September 1st, 1993 there was no further contact between the facilitators. However, several meetings were held between Foreign Ministers and Heads of State in which it was agreed to suspend the process until the completion of the Guyana elections leading to the election of Mr. Cheddi Jagan in October 1992.

In February 1993 President Cheddi Jagan visited Caracas, improving relations by increasing cooperation in non-conflict areas, both Presidents expressing their support for Alister McIntyre's good offices.

On August 10th, 1993, Venezuelan Foreign Minister Fernando Ochoa Antich addressed a note to his Guyana counterpart, Clement Rohee, regarding the granting of oil concessions to Mobil offshore the Zone in Reclamation.

On September 1st, 1993, the Ministers met in New York with the Secretary-General, Boutros Boutros Ghali, and his Personal Representative, Alister McIntyre, and it was agreed to resume talks at the point they had reached on April 5th, 1991, with both Parties reaffirming their willingness to seek a

practical settlement of the dispute in accordance with the provisions of the Geneva Agreement.

For this meeting, a note from *facilitator* Emilio Figueredo to Minister Ochoa Antich highlighted:

1. The convenience of ratifying the three-tier mechanism.
2. Alister McIntyre's role as "receiver of the official position of governments, as well as transmitter of the hypotheses that emerge from the facilitators' conversations, and ultimately, to try to get the Parties to reach a practical settlement of the dispute".
3. Foreign Ministers "should in the first instance give a procedural impetus to the facilitators' mechanism. In a second stage, and provided that progress has been made in the other instances...they will intervene in the substantive part of achieving acceptance of the agreement and its respective ratification. It is very important to remember that it is not convenient to advance at the official level in the negotiation process since it could run the risk of blocking the negotiations".
4. Facilitators "should be able to act as flexibly as possible, in order to multiply, without any restriction, the options that could lead to a practical settlement of the dispute".

In another note by Emilio Figueredo on the September 1st, 1993 meeting with the Secretary-General, Boutros Boutros Ghali, it is noted that the Secretary-General

"emphasized the need to remove the legal dimension in the treatment of the problem"

and also

“the strengthening of the role of the UN in the search for a negotiated solution, as well as that this should be a continuous negotiation”.

On 24th September 1993, Foreign Ministers Ochoa Antich and Clement Rohee met again with the Secretary-General and his Personal Representative in New York.

In October 1993 Alister McIntyre visited Caracas and Georgetown.

On November, 24th 1993, a meeting was held in New York with First Lady Janet Jagan, as head of the Guyana delegation, at which the good offices was ratified. The rest of the conversation revolved around the profile that the new “facilitator” of Guyana should have (since the previous day Dr Barton Scotland had been dismissed).

On March 23th, 1994, Alister MacIntyre met in New York with the facilitators (the Guyanese facilitator was already Harl N. Ramkarran): a recount of the previous conversations was made, and a timetable was agreed. The Guyanese policy was to gain time and to delay the procedure, in order to strengthen its position in the dispute, prepare public opinion and improve the economic and political stability of the country.

In May 1994, Venezuelan Foreign Minister Burelli Rivas met with Alister McIntyre in Caracas. He expressed his concern concerning the press reports on the apparent ecological damage caused by the alleged indiscriminate exploitation of Guayana Esequiba timber resources by foreign companies with concessions from the Guyanese government. In the same vein, instructions were issued to the Venezuelan Ambassador in Georgetown to express his concern and willingness to provide the necessary assistance for a

rational exploitation compatible with a sustainable development of the resources of Guayana Esequiba.

A further meeting of the facilitators with Alister McIntyre was held on 10th June 1994, advancing the discussion of an approach to work on various negotiating scenarios from which an appropriate formula for a practical settlement of the dispute under the Geneva Agreement could emerge.

The activity report of the Venezuelan *facilitator*, Emilio Figueredo, concludes:

“More than ten years after the UN Secretary-General chose the ‘good offices’ mechanism in 1983, not much progress has been made in the substantive part of the process negotiated between Venezuela and Guyana... Several factors have influenced the process, highlighting the changes of government in one country or another and, more recently, the institutional crisis that affected the neighboring country... However, significant progress has been made in defining the procedural aspects... It could be said that the ‘good offices’ mechanism has proved its usefulness and both Parties have reiterated their confidence in it”.

In the second half of 1994 the Guyanese authorities raised the need for a Meeting of Heads of State to discuss "Border Cooperation", urged by the measures adopted under the presidency of Rafael Caldera to prevent the illicit trafficking of commodities, especially fuel, with which Guyanese miners operating in the vicinity of the *de facto* boundary were supplied. Those measures had led to some local incidents.

In November 1994, the Ministry of Foreign Relations considered it convenient to apply greater pressure in the regions close to the Reclamation

Zone, given the levels of dependence of Venezuela existing in the Guayana Esequiba, as well as the postponement of the Meeting of Presidents in order to propose to the Guyanese Government to negotiate both, a hypothesis of a satisfactory solution to the territorial question and a project of cooperation and border integration, in parallel and with a criterion of globality.

At the beginning of March 1995, Foreign Minister Burelli Rivas visited his counterpart, Clement J. Rohee, in Georgetown, where he presented a proposal that responded to this scheme of globality. A press release from the Venezuelan Ministry of Foreign Relations, dated March 3rd, stated that the Ministers reviewed the pending items on the bilateral agenda with the intention of evaluating the situation and “advancing practical solutions to common problems, including the good offices procedure...for the search for a definitive solution to the territorial dispute”.

Alister McIntyre visited Caracas on July 10th and 11th, 1995.

On November 1st, 1995, Mr. Carlos M. Ayala Corao replaced Mr. Emilio Figueredo as facilitator from Venezuela. According to Mr. Ayala Corao’s report on his activity between this date and 24th November 1995, on 23th November 1995, Foreign Minister Burelli Rivas informed him of the state of the matter: there was a proposal for maritime delimitation and the possibility of recovering part of the disputed territory, the other part being subject to a “leasing” regime to be defined. Four days later, on the 27th, Mr. Ayala met with President Rafael Caldera, who considered positive the progress of the talks and Guyana’s readiness to seek for the first time a solution to the dispute.

On December 14th and 15th, 1995, the first meeting was held in New York between the Good Officer, Alister McIntyre, and the facilitators (Ayala Corao and Harry Ramkarran). Its purpose was to clarify the procedural and methodological aspects of the conversations and review the content of the issues discussed in the past. In this regard, general parameters on maritime delimitations favorable to Venezuela were discussed, as well as the possibility of “returning” to Venezuela with full jurisdiction of a territory in the North of the Reclamation Zone and a “leasing” in favor of Guyana of another portion of the Venezuelan territory. But Ramkarran said that the political conditions in Guyana had changed, so he did not consider it viable in the short term to advance talks on those parameters.

On April 26th and 27th, 1996, a second meeting took place in New York to assess the status of the dispute and its progress. They also addressed the possibility that the Good Officer would propose to the Parties to discuss on a possible demarcation of submarine and marine areas henceforth of the 200 nautical miles, without prejudice of continuing the conversations about the territorial dispute (continental).

On June 21th and 23th, 1996, a new round of conversations was held in New York. The Guyanese facilitator informed that his government was not ready in that moment to initiate a process of maritime delimitation due to lack of knowledge on the matter and issues of domestic politics. Nevertheless, he expressed his full and determined support to the *McIntyre Process*. Ayala Corao declared his confusion on the impossibility expressed by Ramkarran and requested to the Good Officer a direct intervention before both governments.

On August 26th and 27th, 1996, the Good Officer, Alister McIntyre, met with President Caldera in Caracas, Foreign Minister Burelli and *facilitator* Ayala Corao. Before meeting with the President, McIntyre stated that “there are not negotiations, but rather discussions. The important thing is that both governments currently have a good relationship and they are prepared to discuss their differences in the UN”.

McIntyre then visited (on September 2nd and 3rd) Georgetown. In Guyana, the Good Officer affirmed that both Parties were cooperating, and they seemed to be satisfied about the way in which the process was developing. Guyana had adopted a Law of Environmental Protection that led to the creation of an Agency of protection of the Environment. The Guyanese Foreign Minister reiterated his desire to collaborate on the fishing sector, particularly to eliminate the incidents. A dialogue existed whose purpose was to clarify the concept of Globality as a base of cooperation between both countries.

In a letter dated on September 13th, 1996, addressed to Foreign Minister Burelli Rivas by his counterpart Clement J. Rohee, he informs him of the success of the visit of the Good Officer, refers to his next meeting in New York and considers it important that both seize the opportunity to reaffirm its commitment and support to the McIntyre process.

On October 4th, 1996, a meeting took place in New York between the Assistant for Political Issues of the Secretary-General (Álvaro de Soto), the Good Officer, the Foreign Ministers and Facilitators of the Parties. In a very cordial atmosphere, Mr. Álvaro de Soto invited the Parties to start the debates on the maritime delimitation. Guyana stated that to do so, it was necessary a previous political agreement and, in addition, Guyana lacked the

expertise and experience in the field. The Foreign Minister Burelli explained that the maritime delimitation *per se* is a normal act of the relations of the coastal States and reminded the political consensus refer to concrete hypothesis and not to abstract ones. Mr. de Soto insisted the Guyanese representation on the need to indicate its will to initiate conversations about the issue, providing the Parties with the experts on the law of the sea of the United Nations. At the end, the Guyanese representation accepted to proceed, via non-official conversations with the facilitators, with an exploration of the issue. As a consequence, in the same date, McIntyre met with the facilitators to agree the methodology in order to initiate the consideration of the parameters of a future maritime delimitation.

On December 14th and 15th, 1996, the Good Officer met in New York with the *facilitators*. Mr. Ayala Corao briefly explained the maritime delimitation treaties signed by Venezuela, specially the one held with Trinidad and Tobago. Mr. Ramkarran informed that, even though Guyana did not have maritime delimitation treaties, he would inform in the next meeting about a national law on the matter.

On April 19th, 1997, the Good Officer again met in New York with the *facilitators*. The Guyana's facilitator presented the Maritime Boundary Act of the Republic and some presidential orders attached. It was suggested that in the next meeting, they would insist in the possibility to initiate a maritime delimitation from the 350 nautical miles. Venezuela reiterated its concern regarding the irrational exploitation of natural resources of the Guayana Esequiba. He suggested that Guyana would keep informing the Venezuelan authorities on the exploitation of natural resources and its environmental impact. Venezuela offered a cooperation agreement.

On May 24th, 1997, a new meeting was held in New York between the Good Officer and the *facilitators*. The Guyana's facilitator expressed the acceptance for his country to negotiate an agreement on environmental matters under the procedure of the good offices of McIntyre. Mr Alister McIntyre expressed his intention to formalize this initiative in his next visit to Caracas and Georgetown, which was agreed in the mid July.

On July 14th, 1997, Alister McIntyre met in Caracas with President Caldera and Foreign Minister Burelli Rivas, who expressed his interest to move forward in the environmental and maritime delimitation agreements. McIntyre went to visit Georgetown from July 20th to 23th, 1997. The Venezuelan ambassador, Hector Azócar, informed of this visit via fax on July 23rd. He stated that McIntyre expressed that he had found a very positive atmosphere in Caracas as well as in Georgetown. The proposal of a greater environmental cooperation had been favorably welcomed by the President, Sam Hinds, and even more by the Foreign Minister, Clement J. Rohee, both being more suspicious about the maritime delimitation because “we must first define the framework of what was sought with this”.

Closing this series of meetings, on July 26th, 1997, the Secretary-General and his Personal Representative met in New York with the Foreign Ministers, Permanent Representatives and *facilitators*. Similarly, McIntyre held a meeting apart, on the same date, with the *facilitators*.

In the following months, and until March 1998, the meetings were suspended due to the elections in Guyana. On 20th and 21st of that month, the Good Officer met again in New York with the *facilitators*. The Guyana's facilitator pointed out the difficult political situation of his

country and reiterated the decision of the new government of President Janet Jagan to accept the proposal to conclude an environmental agreement within the framework of the McIntyre Process.

On July, 1998, President Janet Jagan held an official visit in Caracas. A joint communiqué was issued:

“the Presidents assessed the progress of the process for a mutually satisfactory solution of the existing territorial dispute between Venezuela and Guyana, and they reiterated their firm commitment to resolve it peacefully. In this regard, they expressed their satisfaction because of the efforts made by Sir Alister McIntyre... and they confirmed their decision to continue supporting the McIntyre Process in order to reach a final settlement as established by the Geneva 1966 Agreement” (emphasis in the original).

In this meeting of Presidents, they agreed to give a comprehensive and global approach to the treatment of the common agenda, with a High Level Bi-national Committee, led by the Foreign Ministers, and a series of Subcommittees on Politics, Environment, Cultural Exchange, Economic and Consular Integration, Culture, Health, Agriculture, Farming and Agro-industry, and Transport.

On October 24th 1998, the Good Officer met in New York with the *facilitators*. The Guyanese facilitator informed that the interpretation of the news about the agreement of environmental cooperation contained in the joint communiqué of Presidents Caldera and Janet Jagan had caused a radical reaction against by the media and Guyanese opposition, which forced to postpone any subsequent development. The agreement, even though within the McIntyre Process, should be developed within the

framework of the multilateral agreements. The Venezuelan facilitator insisted that its framework should be the Geneva Agreement, as an initial step in order to establish the foundations leading to a solution of the dispute.

Venezuela entered into an electoral period, and meetings were called off. However, on December 30th, 1998, Guyana's Foreign Minister, Clement J. Rohee, said at a press conference that politically it would be foolish to abandon the McIntyre Process and that the Guyanese Government was not interested in conducting direct negotiations with Venezuela.

On February 2nd, 1999, Hugo Chávez Frías took office as President of Venezuela, an occasion to meet with the President of Guyana, Janet Jagan, invited to the event. As a result, on March 30th, a committee chaired by Foreign Minister José Vicente Rangel officially visited Georgetown, signing the terms of reference of the High Level Bi-national Committee.

Fifteen days earlier, on March 15th, 1999, the Venezuelan Foreign Minister had met with the Good Officer, Alistair McIntyre, in Caracas. The Minister informed on the meeting in April of the *facilitators* to establish a work agenda on very specific points, including the environment and maritime delimitation. Relations with Guyana, said José Vicente Rangel, are excellent at this time, aiming at to its cultural, economic and cooperative projection. For the Minister, the solution of the dispute should be “reasonable, fair, and equitable”.

On June 15th, 1999, Mr. Ayala Corao expressed to the Foreign Minister his willingness to continue acting as a *facilitator* for Venezuela, recalling in his letter the basis for carrying out his mission:

1. Personal and informal agent of the Foreign Minister (and of the President).
2. Always depending on the express instructions of the Foreign Minister.
3. Reserved nature of its management.

In one of the *Annexes -Annex A-* attached to the letter of Mr. Ayala Corao, he made some *considerations on the Process of Good Offices within the framework of the Geneva Agreement*. Ayala understood that the Secretary-General chose the Good Offices and executed them by himself through a Personal Representative. This one was the closest formula to Venezuela's proposal and the farthest one to Guyana's.

Ayala Corao ended up noting, in a footnote, that

“the position taken by the Government of Venezuela is that the Secretary General only has jurisdiction for the general indication of the means of solution and the Parties must agree the aspects concerning the organization and functioning of this means”.

On September 9th, 1999, the Venezuelan Foreign Minister, José Vicente Rangel, wrote to the Good Officer, Alistair McIntyre, regarding the granting of off shore oil concessions by Guyana to Century GY and Exxon companies (object of a previous note addressed by the Minister to his Guyanese counterpart, Clement J. Rohee, dated on July 13th).

In that letter, the Minister observed that

“all issues of delimitation of maritime and submarine areas have considerable importance in the pursuit of a solution of the dispute outstanding between Guyana and Venezuela”, remembering that it should be, in accordance with the Geneva Agreement, “amicably

solved in a way that is acceptable to both Parties” and “satisfactory solutions for the practical settlement of the dispute should be sought”.

In that same letter, the Minister pointed out that

“a fundamental and vital element for Venezuela regarding the delimitation... in the Atlantic, is its right, independent of the outstanding dispute, and its solution, to extend its sovereignty or jurisdiction over the territorial sea, the exclusive economic zone and the continental shelf... corresponding to the projection of Delta Amacuro coast between Punta Araguapiche and Punta Playa”.

The Minister clarified that It was precisely those areas that were delimited between Venezuela and Trinidad and Tobago, “and not those corresponding to the projection of the coast of the Zone in Reclamation, which were delimited between Venezuela and Trinidad and Tobago”.

And the Minister continued:

“Ignoring the most essential obligations imposed by the Geneva Agreement and international law, the Government of Guyana has unilaterally granted to CENTURY GY and EXXON companies hydrocarbon exploration concessions that, far from being limited to underwater areas corresponding to the Zone in Reclamation... cover areas ... that constitute the maritime projection of Delta Amacuro coast between Punta Araguapiche and Punta Playa ...”, with the “aggravating circumstance that the Government of Guyana ignored the protest that Venezuela had formulated in August 1993, in the similar case of offshore hydrocarbon concessions to MOBIL. The Guyanese Government also ignored the repeated statements made in

this regard by the previous Venezuelan Government in the framework of the Good Offices.”

And the Minister concluded:

“It is surprising that an act of this nature was committed at a time when bilateral relations were strengthening... in particular through the establishment and installation, on March 30th, 1999, on the occasion of the official visit of the Minister of Foreign Relations of Venezuela to Georgetown, of a High Level Bilateral Commission. Moreover, the signing by the then President of Guyana of the document by which EXXON was granted the said concession came a few days before the date that both Governments had agreed for the meeting of a Technical Group on Marine Resources, whose establishment responded precisely to the need to prevent and resolve the fishing incidents that have arisen”.

On September 20th, 1999, Alister McIntyre renounced as Personal Representative of the Secretary General.

Oliver Jackman (1999-2007)

Oliver Jackman was appointed Personal Representative of the Secretary General on November 1st, 1999. The new Good Officer visited Caracas and Georgetown in the early days of March 2000.

President Hugo Chavez confirmed his support for the Good Offices, expressing at the same time his energetic opposition to the installation of an aerospace base in the Essequibo. However, on May 19th, 2000, Guyana signed an agreement with the United States Company, Beal Aerospace Technologies for the construction of a commercial satellite launch base in

the north-west of the Essequibo. Venezuela raised the corresponding protest to Guyana. On July 3rd, President Chavez declared:

“Venezuela will not allow it to be installed in that territory, which is Venezuelan, a rocket launch base ...”

President Chavez warns of a change in the attitude of Guyana, which is aggressive. He considers statements by Foreign Minister Clement J. Rohee out of tune in mid-August 2000.

“Venezuela wants that the issue can be treated under the Geneva Agreement. If we do not recognize that there is a problem, where are we going to get the will to solve it?” says Chavez on August 17th, 2000. “If it were true that the borders are already set, as Foreign Minister of Guyana argues, there would not even be a Geneva Agreement, nor any Mr. Jackman traveling”.

The Good Offices process was paralyzed for three years until April 30th, 2003, when the *facilitators* of Venezuela (Dr. Luis Herrera Marcano since February 25th, 2002) and Guyana (Ralph Ramkarran) met in Georgetown to prepare their meeting with the Good Officer, Oliver Jackman, in Barbados on May 23th. Jackman indicated that his role was limited to “facilitating negotiation between Governments”, a clarification that, as stated by the Guyanese facilitator, Ramkarran, to Herrera, was due to an initiative of the Foreign Minister of Guyana before the UN Secretary-General.

According to what was previously agreed, Ramkarran affirmed –and Herrera confirmed- that:

1. both Venezuela and Guyana had had, in recent times, very difficult domestic situations that had drawn the attention of their Governments.

2. That situation had led to a virtual stoppage of the process of good offices since 2000, which did not mean a lack of interest of the Parties.
3. Both countries had provided a new impulse to their bilateral relations.
4. Both countries agreed on assigning a high priority to the prompt reactivation of the good offices process.
5. Initially, it was desirable that the process was focused on the cooperation measures in order to consolidate an atmosphere of trust.
6. Both Governments considered very important to continue having this procedure that offers the opportunity to keep in a constructive dialogue under the auspices of the Geneva Agreement and without formalities and limitations of diplomatic contacts.
7. Both Governments were full confident with Ambassador Oliver Jackman as Good Officer.

Regarding the following steps, they agree:

1. A meeting of Good Officer Jackman with Foreign Ministers in Santiago de Chile on the occasion of OAS General Assembly (June 7th-8th, 2003).
2. Visits of Jackman to Caracas and Georgetown in July 2003.
3. A meeting of Foreign Ministers with the UN Secretary-General, with Jackman and the *facilitators* present (September 2003, on the occasion of UN General Assembly).

This meeting implied the reactivation of the Good Offices mechanism, without entering on the substantive discussions.

On June 8th, 2003, as scheduled, the Foreign Minister of Venezuela, Roy Chaderton, met in Santiago de Chile with Good Officer Jackman. Unfortunately, he could not do it with the Foreign Minister of Guyana, Samuel Insanally, who could not travel to Santiago for health reasons. The

Venezuelan Foreign Minister referred to his recent official visit to Georgetown and the positive results of his conversations with the President and the Foreign Minister of Guyana.

The Good Officer, Oliver Jackman, taking up an initiative of the last meeting in 2000, requested to the *facilitators* the presentation of a paper containing their views on the way how the good offices process should be conducted. They agreed that the *facilitators* tried to jointly prepare a half-page text. In the resulting document, written by Mr. Ramkarran and accepted by Mr. Herrera with minor amendments on July 11th, 2013, they stated:

“...2. The good offices process is led by the same Parties that, at the same time, recognize the mandate of the good officer in assisting them to resolve problems, differences, disputes and controversies. 3. Both Parties have expressed their continued support and confidence in the process and continue believing that it is playing an important role in facilitating an approach to - and facilitating - discussions. 4. The Good Officer facilitates meetings of the Parties represented by their facilitators in places and with the regularity that they determine and agree to the Good Officer. The agenda of these meetings is agreed by the Parties. However, the Good Officer can offer guidance, suggestions and recommendations in this regard. 5. The Good Officer chairs the meetings in which he participates. He is expected to provide clarity and focus of the discussions. The Good Officer addresses issues that arise that require a contribution from him or the Secretary General. He summarizes the discussions and conclusions and the tasks to be carried out, if necessary, before the next meeting. 6. The Good Officer maintains regular contact with the Governments to officially inform them of the course of the discussions. 7. The Good Officer will determine its relationship, level of commitment and nature of the

report, if applicable, with the Secretary General. 8. The Good Officer is seen as a symbol of the desire of both Parties to resolve the dispute in a peaceful and friendly manner. 9. The Good Officer tries to keep alive the possibility of annual meetings between the Ministers of Foreign Relations and the Secretary General, in which he may consider being present. In these meetings, the progress achieved will be reviewed and the commitment to the process will be renewed. 10. To this end, the Good Officer may consider visiting Caracas and Georgetown once a year before the beginning of the session of the General Assembly, especially if a meeting is scheduled in New York between the Foreign Ministers and the Secretary General.”

On September 27th, 2003, the Foreign Ministers of Venezuela, Roy Chaderton, and Guyana, Samuel Insanally, met with Secretary General, Kofi Annan, and with the Good Officer, Oliver Jackman, and the *facilitators*, Luis Herrera Marcano and Ralph Ramkarran. Since 1999, a high-level meeting did not take place. The objective was to relaunch the good offices process, benefitting of increased cooperation between both countries on health, trade and fishing areas, which contributed to create an atmosphere of confidence. In statements to the press, the Good Officer, Oliver Jackman, explained that the process depended on the governments and not on the UN.

In December 2003, the Government appointed Hector Azócar, who previously served as Ambassador of Venezuela in Guyana (1997-2000), as *facilitator*.

On February 19th and 20th, 2004, President Hugo Chávez officially visited Guyana, with Bharrat Jagdeo as President of the Cooperative Republic. President Hugo Chávez proposed to favor the mechanisms of integration and exchange on territorial differences, always within the framework of the

Geneva Agreement. The new Venezuelan *facilitator*, Hector Azócar, took this opportunity to contact with the Guyanese *facilitator*, Ralph Ramkarran.

The joint communiqué issued at the end of the visit highlighted the spirit of cordiality that had permeated the approach to dialogue between the Parties and reiterated its commitment to the good offices process, praising Mr. Oliver Jackman's work in the pursuit of a peaceful and practical solution to the controversy, in accordance with the Geneva Agreement of 1966. As a gesture of solidarity, President Chávez agreed to cancel Guyana's debt with Venezuela. Later, on September 6th, 2005, Guyana joined the Petrocaribe Energy Agreement.

On May 21st, 2004, the Venezuelan and Guyanese *facilitators* met in Barbados with the Good Officer, Oliver Jackman. Ramkarran reiterated his country's commitment to the good offices process and highlighted President Chavez's visit to Guyana. For Ramkarran, it was necessary to hold more frequent meetings with the Good Officer and a greater participation of the United Nations. Previous meetings of the facilitators would clarify or define those issues requiring the intervention of the Good Officer.

Oliver Jackman expressed that the Secretary-General was participating in the process based on the Geneva Agreement, and that his role as Good Officer was to advise and facilitate what governments put forward and that

“the vision that countries have about the Agreement (of Geneva) would be very useful, in particular with respect to Article IV”.

According to the Good Officer, the Secretary-General was not in a position to conduct the process; it is the governments that have to give the guidelines

and suggest the way forward. The meetings could not be limited to exchanging courtesies and cordialities.

In this meeting, the *facilitator* of Venezuela gave a broad presentation on the events that the Government had had to face since December 2001; however, his commitment to further consolidate relations with Guyana had not stopped. The statements made by President Chavez in Guyana reflected his opinion that both governments should consult each other when dealing with sensitive projects, without Venezuela ever separating itself from the spirit and content of the Geneva Agreement, which provided that no act carried out in the territory under dispute meant resignation or decrease of the rights that each party claimed. The President's statements had to be seen in the context of deepening Latin American integration.

According to Venezuelan facilitator, Hector Azócar:

“The Good Officer was perceived with an interest in inducing governments to enter into substantive issues and to seek an answer to the Secretary General's proposal to establish a road map. His insistence on knowing the effect of the statements of President Hugo Chávez on future steps was revealed even before the meeting of the Facilitators themselves”.

Ban Ki-moon took office as UN Secretary-General on January 1st, 2007, replacing Kofi Annan. On January 24th, 2007 the Good Officer Oliver Jackman, passed away.

Norman Girvan (2009-2014)

In February 2007, in a note addressed to the Secretary-General, Venezuela expressed interest in continuing the Good Offices process, requesting the consideration to appoint a new Good Officer

In those months, despite the excellent relations between Venezuela and Guyana under the presidencies of Chavez and Jagdeo, the incidents were not missing, involving the detention of fishing vessels and the arrest of crew members by the Guyanese authorities, or Venezuela acting at the boundary *de facto* to fight oil smuggling, illegal mining and protecting rivers and the environment. These incidents resulted in the exchange of diplomatic notes, written with care not to disturb the recipient. In this context, a Venezuelan note of December 10th, 2007 suggested a high-level meeting to prepare a meeting with the UN Secretary-General and promote the process of good offices, useful not only to identify satisfactory solutions to the practical arrangement of territorial controversy, but also to establish fast and timely communication channels to avoid incidents likely to tarnish excellent relations.

It took almost three years before Norman Girvan could be appointed as a Good Officer on October 9th, 2009. These were the best moments of the cooperation, solidarity and integration policy sponsored by President Chávez who, on July 20th-21st, 2010, received in Caracas, on an official visit, the President of Guyana, Bharrat Jagdeo. It was not desired that the territorial dispute clouded such an environment.

However, Guyana initiatives such as the request for recognition of its claim of a continental shelf beyond two hundred miles before the Commission on the Limits of the Continental Shelf on September 6th, 2011, as well as the oil

exploration licenses granted by Guyana in the projection, not only on the Essequibo coast, but even in the mouth of the Orinoco, caused incidents that affected the process of good offices.

Thus, meeting in Port of Spain on September 30th, 2011, the Foreign Ministers of Venezuela, Nicolas Maduro, and Guyana, Carolyn Rodrigues-Birkett, signed a joint statement in which:

- 1) The right of Venezuela to make its views on Guyana's request known to the Commission on the Limits of the Continental Shelf is confirmed, as well as the agreement that the “facilitators” of both States discuss said request and inform their Governments;
- 2) It is recognized that the delimitation of maritime boundaries remains an outstanding issue that will require negotiations;
- 3) It is recognized that “the controversy regarding the 1899 Arbitral Award about the frontier between Guyana and Venezuela still exists” and is “a legacy of colonialism (which) must be resolved, reaffirming the Ministers in “their commitment to the Geneva Agreement and the Good Offices Process”;
- 4) It is noted that the Ministers informed the Personal Representative of the UN Secretary-General on their discussions; and,
- 5) They welcomed the excellent relations that have developed between the two States, and reiterated their commitment to maintain them at that level.

In a communication to the UN Secretary-General on 9th March 2012, signed by Foreign Minister Nicolas Maduro, Venezuela objected to Guyana’s submission to the Commission on the Limits of the Continental Shelf. The continental shelf intended by Guyana constituted the projection of a

coastline forming part of Venezuela's Zone in Reclamation, a shelf to which Venezuela was entitled on the basis of customary international law. Venezuela, however, considered the fruits that could be derived from a constructive dialogue within the framework of the Good Offices process in the search for a practical solution to the territorial dispute. On the same date, Foreign Minister Nicolas Maduro wrote to his Guyanese counterpart in similar terms.

On March 14th, 2012, Guyana replied the communication from the Venezuelan Foreign Ministry. Guyana says:

“My Government is of the view that the scope of the Geneva agreement of February 17th, 1966 is clear and proscribed. Maritime issues were not among the repertoire of issues that were addressed in the Agreement; it was not in the remit of the Mixed Commission; and cannot therefore be under the mandate of the Good Offices Process...”

Guyana denied the territorial nature of the dispute and insists that the purpose of the Geneva Agreement is to resolve on the validity or nullity of the 1899 Award. According to Guyana, maritime delimitation had to be negotiated by the Parties, but not within the framework of the Good Offices process.

Guyanese Foreign Minister, Carolyn Rodrigues-Birkett, also addressed a long letter to the UN Secretary-General, Ban Ki-moon, on April 4th, 2012 (with a copy to the Venezuelan Foreign Ministry). In this letter Guyana requested to ignore the Venezuelan objection to the consideration of the Guyanese claim, denying the existence of a territorial dispute and limiting the purpose of the Geneva Agreement to the dispute on the validity or nullity of the 1899 Award.

In this strained environment, Mr. Girvan devised a new approach to the performance of his task as a good officer through the so-called technical workshops. It was not a question of focusing on the subject of the border dispute and waiting for the Parties to take a position, but of clarifying concepts and issues involved in the resolution of multidimensional disputes, which could be related to future conversations about said controversy. With the *workshops* the authorities and teams of the Parties would begin to know each other and build trust, applying the so-called *Chatham House Rule*.

The first of these *workshops* was held in New York on May 15th, 2012. Half a dozen people participated in each of the Parties. The delegations were headed by *facilitators* Chaderton and Ramkarram.

A second *workshop* was held on May 17th, 2013, in Port of Spain. Under the coordination of the Good Officer and the participation of *facilitators* Chaderton and Ramkarran, delegations from both countries met (10 members for each party) in a very positive atmosphere. “We have made progress and will continue to make progress” said Guyanese facilitator Ramkarran. “It is important that we keep this process going, taking steps instead of gigantic leaps”, concluded the Good Officer, Girvan.

Following the death of President Chavez on March 5th, Nicolas Maduro made his first official visit to Guyana as President of the Bolivarian Republic on August 30th-31st, 2013. On that occasion, the 5th Bilateral High Level Council (COBAN) was held and the steps were taken to launch the Committee of Prevention, Investigation and Peaceful Solution of Fishing Incidents. This committee had been created through a Memorandum of Understanding signed by the Foreign Ministers on July 21st, 2010, on the

occasion of the official visit of the President of Guyana, Jagdeo, to Caracas. In the joint declaration signed by the Presidents, Nicolas Maduro and Donald Ramotar, on August 31st, 2013, it was pointed out that a new impetus had been given to the process of good offices, and the reassignment of the good officer Norman Girvan was requested for a new period.

On October 10th, 2013, a naval unit of Venezuela (*Yekuana*) arrested the Panamanian-flagged *Teknik Perdana* ship, hired by the American company Anadarko to carry out oil exploration under a Guyana license on the continental shelf of the Essequibo coast. This arrest originated the protest of Guyana, in note of October 11th, open to accept an explanation based on the Venezuelan Navy's mistake in placing the ship in Venezuelan waters. Then, noticing through the Venezuelan note of October 15th that this had not been a mistake, Guyana qualified Venezuelan arrest as an aggression and regretted that the incident occurred when bilateral relations were better than ever (note DG: 7/10/2013).

The Foreign Ministers, Elías Jaua and Carolyn Rodrigues-Birkett, met in Port of Spain on October 17th, 2013. In a joint statement they recognized the importance of urgently addressing the delimitation of maritime spaces to avoid incidents and agreed to explore mechanisms to his end in the framework of international law.

Norman Girvan met with the Venezuela's Foreign Minister, Elias Jaua, in Port of Spain, on the same date. As a result, he sent him a letter on October 29th, accompanied by a detailed work plan proposal. Girvan informed the Minister that in the summer of 2014 the Secretary-General intended to carry out a review of the progress achieved, a review that could consider other

alternative means of resolving the dispute. “However”, Girvan says in his letter,

“I am convinced that the current process of good offices allows more empowerment of the two States than any other alternative and that it is possible to achieve significant progress towards the settlement of the border dispute.”

And he concluded:

“The United Nations remains committed to supporting the Parties in the search for a mutually satisfactory resolution of the border dispute.”

XI.

Work plan Proposal

Process of good offices in the border dispute between Guyana and Venezuela 2013

The work plan is proposed in order to facilitate discussion between the Parties based on the following:

- Both Parties are ready to discuss concrete options for the resolution of the border dispute.
- Any discussion or suggestion will be carried out without prejudice to the legal position of the two states.
- Nothing is understood as agreed until it is included in a signed and formalized agreement.

Work plan

- Mid-November to mid-December: A work meeting of two days in Port of Spain, Trinidad and Tobago, with the participation of delegations of both states. In the meeting will be studied and discussed, in a non-binding manner the following: 1) options for the economic development and cooperation; 2) mechanism for maritime delimitation; 3) options for a binational dialogue (as a complementary process to promote exchange between the civil societies of both countries); 4) other possible means of resolution.
- January: Visits by the Personal Representative of the UN Secretary-General to both capitals to present the Foreign Ministers a report

about the work meeting. The report could include suggestions for specific follow-up actions. These could consist on: Proposals of additional work meetings to develop a series of particular scenarios for resolving the border dispute; proposals for the organization of a binational dialogue.

- February: Follow-up on the proposals in order to obtain the views of both Parties and agree on an agenda for the elaboration and implementation of any suggestions that have been agreed upon. This agenda could also include a series of high-level work meetings to delve deeper into the options.
- Mid 2014: The Personal Representative, in close contact with both Parties and the UN Secretary-General would carry out a review of the status of the Good Offices process in order to provide recommendations on the way to follow, including the continuation of the Good Offices or the consideration of other means of resolution of the dispute, as established in the Geneva agreement of 1966.

The Personal Representative will keep in regular contact with the Facilitators to implement the work plan and discuss its progress.

XII.

Events leading to the communiqué of the UN Secretary-General of January 30th, 2018 (2014-2018)

The last Good Officer agreed by the Parties, Norman Girvan, passed away on April 9th, 2014. In addition, the relationship between Venezuela and Guyana became increasingly strained in 2014.

On April 8th, 2014, the Venezuela's Foreign Ministry addressed a note to the Ministry of Foreign Relations of Guyana regarding information from the Guyanese Government Information Agency on the partnership between Guyana and Brazil to develop a hydroelectric complex in the Mazaruni, and the statements attributed to the Minister, Carolyn Rodrigues-Birkett, in the sense that she did not expect a negative reaction from Venezuela "in view of the fact that that area is no longer in dispute." The Venezuelan note stated that, on the contrary, the Venezuelan claim remained in full force, recalled the traditional position of Venezuela and believed that "it was necessary to make clear that no bilateral negotiations, arrangements or agreements have been concluded whereby both States have decided to put an end to the dispute." The note highlighted that the statements of the head of Foreign Relations of Guyana, were not "in harmony with the Good Offices Process ... and do not conform to the spirit of understanding and cooperation established in the Geneva Agreement", which governs the dispute. Venezuela invoked Article V.2 of the Geneva Agreement to call into question the Brazilian-Guyanese project in the Mazaruni.

Guyana replied through note on April 14th, 2014. It clarified that the quotation attributed to the Minister of Foreign Relations was not accurate. She did not state that "that area is no longer in dispute"; she said: "I cannot

predict the future, but I do not foresee any issues developing with our neighbor and even so, Guyana's position is that it does not have a territorial dispute with Venezuela". The Minister considered that the Venezuelan note was in contradiction with the expectations generated in Guyana by the broad vision of President Hugo Chavez when he described the border issue as a machination of imperialism to prevent unity in Latin America. Article V.2 of the Geneva Agreement did not limit the activities of Guyana in the Essequibo. According to the note, the position of the Venezuelan government on investments in Guyana was a regressive step that could negatively affect its economic and social development. Guyana's activities in the Essequibo did not fall under the mandate of the Good Offices Process. The note recalled, once again, the desirability of assembling a technical group to discuss a mechanism for the negotiation of a maritime delimitation agreement, a commitment assumed by both Governments at the level of Ministers of Foreign Relations.

A month later, the note of the Venezuelan Foreign Ministry of May 14th, 2014, referred to the death of Mr. Norman Girvan, it noted that this unfortunate fact "has temporarily paralyzed Good Offices Mechanism agreed by both Parties" and invited Guyana to formally request, with Venezuela, to the UN Secretary-General the appointment of a Good Officer, and thus, "resuming the Good Offices mechanism currently in force for both Parties." The Ministry of Foreign Relations reiterated the position of reaching with Guyana "a practical arrangement that successfully settle the territorial dispute existing between both States, derived from the nullity and consequent invalidity of the Award of October 3, 1899, issue that was recognized and accepted peacefully by all Parties of the Geneva Agreement of 1966".

Guyana's response was formalized in a note dated June 16th, 2014. It reaffirmed its disagreement with Venezuela's contention on the invalidity of the 1899 Award. According to the note, the Geneva Agreement provided a way for the Venezuelan Government to prove its assertion. There was no reference in that Agreement to the existence of a border dispute between the Parties. The appointment of a Good Officer to replace Norman Girvan "is currently under consideration by the Government of Guyana."

Four days later, on June 20th, 2014, the First Technical Meeting of the teams of Venezuela and Guyana was held in Port of Spain, scheduled by the joint declaration of October 17th, 2013. Venezuela contended that the delimitation of maritime spaces was as important to avoid incidents - in what coincided with Guyana - as it was inevitably linked to the previous settlement of the pending territorial dispute, which Guyana insisted on denying. At that meeting it could be seen that Guyana had no interest in the appointment of a new Good Officer.

The exploration activities licensed by Guyana on the continental shelf of the Essequibo coast led to further incidents and exchanges of diplomatic notes in the first months of 2015.

The Ministry of Foreign Relations of Venezuela issued a note on February 26th, 2015 protesting the concessions for oil exploration and drilling in Stabroek Block, located on the maritime facade of the *Essequibo*, an area under reclamation, and partially on the continental shelf of the Orinoco Delta, a Venezuelan undisputed area. Venezuela has not received information about the establishment of the *Deep Water Champion* oil platform. Any act, the note stressed, lacked any effects. The note called for a peaceful and constructive dialogue and the reactivation of the Good Offices

process through the appointment of the Personal Representative of the Secretary-General (pending due to the rejection of Guyana). At the same time, a letter was sent to the Country Manager of Esso Exploration.

A note from Guyana dated February 28th, required Venezuela to desist from such actions that are detrimental to the development of Guyana and contrary, it said, to international law. The note rejected the claims of Venezuela.

Venezuela ratified its position in a statement dated March 3th and in a note dated March 4th, 2015. The first one highlights its contribution to the development of Guyana, and mentioned the interference of foreign factors. The second accused Guyana of “confusing and erratic behavior” and expressed its surprise at a behavior that contradicted the formal request made by the Government of Guyana through its Minister of Foreign Relations, Mrs. Carolyn Rodriguez Birkett, on July 20th, 2014, in Port of Spain, who raised the need to delimit maritime and submarine areas. The note recalled a similar event in 2000 involving Esso and the same block and that “in light of the clear evidence of a border dispute, the aforementioned company formalized its withdrawal, recognizing that it should be resolved in advance between the States concerned.” Finally, the note called again for the restoration as soon as possible of the mechanism of Good Offices, without the interference of foreign factors.

In relation to this incident, on March 13th, 2015, Venezuela published in a Guyanese media - the Kaieteur News - a communique replied the same day by Guyana (and published the following day, March 14th). In Guyana’s reply, it rejected the link between the issues of the continental shelf and the exclusive economic zone with the territorial claim of Venezuela under the

Geneva Agreement. Guyana even considered a “subtle threat” the fact that in its statement Venezuela states that “it reserves the right to carry out all actions in the diplomatic field and in accordance with the international law that are necessary to defend and safeguard sovereignty and independence over the *Essequibo*.”

David Granger won the elections on May 11th, 2015 and assumed the Presidency of the Cooperative Republic of Guyana. Four days earlier, May 7th, Guyana announced that Exxon Mobil had found oil in the Stabroek block.

On May 26th, 2015, Venezuela enacted Decree No. 1,787, published in the Official Gazette of the following day, establishing the Operational Zones for Integral Maritime and Insular Defense (ZODIMAIN).

In a note dated June 8th, 2015, Guyana described Decree No. 1,787 as

“a serious act of provocation and a clear threat to the sovereignty and territorial integrity of Guyana... also a threat to regional peace and security... to exacerbate tensions... another dangerous precedent in the adventurism of Venezuela’s unilateral and unfounded claim to Guyana’s territory.”

In this note, Guyana totally ignores the Geneva Agreement and claims that Venezuela respect “the International Treaty to which Venezuela was a signatory party and out of which was handed down the Arbitral Award of 1899”.

On the same date, June 8th, 2015, Venezuela reissued Decree No. 1,787 correcting errors, showing that the Decree was not intended to unilaterally delimit maritime spaces, but to make operational areas of defense and protection against multiform threats, including natural disasters, which have, unfortunately, multiplied in number, intensity and unpredictability as a result of climate change. A paragraph in the preamble states that:

“The Venezuelan State recognizes the existence of maritime areas that are to be delimited in accordance with international agreements and treaties signed by the Bolivarian Republic of Venezuela and that need to be addressed by the Venezuelan State until a definitive delimitation is achieved in an amicable way.”

With regard to the so-called “ATLANTIC ZODIMAIN”, it is expressly provided that:

“There is a maritime area, defined by T-U-V points, to be delimited which will be determined once the pending dispute between the Bolivarian Republic of Venezuela and the Cooperative Republic of Guyana has been settled under the 1966 Geneva Agreement”.

In addition, Venezuela replied to Guyana’s note in a communiqué dated June 9th and a note dated June 10th, 2015. The communiqué emphasized the need to continue with good offices and expressed that the only and surprising aggression is that the Government of Guyana had allowed a transnational company as powerful as the Exxon Mobil, with no intention to solve Guyana’s right to development, to enter into territory in dispute. The new Government of the Cooperative Republic of Guyana, it is noted, exhibits a dangerous policy of provocation against Venezuela, supported by the imperial power of a US transnational corporation, the Exxon Mobil.

Venezuela regrets that a Decree aimed at organizing, through the assistance of new information technologies, daily monitoring and maritime protection activities which in no way affect the Cooperative Republic of Guyana, is used to artificially create a crisis, using highly offensive language. Venezuela has done a lot for the development of Guyana and for the benefit of the Guyanese people, such as *Petrocaribe*. Venezuela ratifies the invitation to the Foreign Minister of Guyana to a prompt meeting to continue, through political dialogue, the path of cooperation and overcoming the historical dispute, which had its genesis in fraudulent actions of former colonial powers against Venezuela.

In the note of June 10th, 2015, Venezuela rejected the tone and the disconcerting, serious and false accusations of the Guyanese note, which do not correspond to the Bolivarian peace diplomacy of Venezuela. The note insisted on the objectives of Decree No. 1,787 and regretted the misperception of the Cooperative Republic of Guyana as it constituted a severe failure at the principle of good faith, from the perspective of international law, to endorse baseless accusations of alleged Venezuelan actions to “usurp a territory of Guyana.” It is strange and alarming, the note continued, that the Guyanese note did not mention the Geneva Agreement, which is the regulatory framework to be observed in order to resolve the territorial dispute and then proceed to the delimitation of maritime spaces. It was Guyana who opened the door of those spaces to the imperial formulas embodied in one of the greediest transnational company in the world. The note, finally, reiterated Venezuela willingness to dialogue and hopes for an early meeting with the Foreign Minister of Guyana.

Despite this conciliatory attitude, on June 10th, 2015, the Vice President and Foreign Minister of Guyana, Carl Greenidge, addressed the National

Assembly of Guyana again calling the Decree No. 1,787 “unfounded and shameless attempt to usurp the territory of Guyana”, contrary to any rule and principle of international law and evoking the “illegal” occupation of Anakoko, the incursions into the territory of Guyana, the obstruction of its development projects in the region, such as the Upper Mazaruni hydroelectric project or more recent projects with Brazil, and the pressures to deter foreign investment, all of which qualify as acts of aggression, military, paramilitary and economic. He also referred to the “use of force” in the case of *Teknik Perdana*, shortly after the visit of President Nicolas Maduro to Georgetown. The logical and reasonable point, Mr. Greenidge said, is that Venezuela and Guyana had sat down to discuss the maritime delimitation, an issue that both Parties had considered important and that should be resolved through negotiations, as expressed in the joint statement of September 30th, 2011, but the efforts of Guyana in this regard had been futile. For 49 years, Mr. Greenidge concluded, Guyana has lived in the shadow of the “illegal” claim of Venezuela. The Decree is a warning that Venezuela intends to continue to press Guyana and has come only to widen the gap between the two countries. The sword of Damocles still hangs over our heads and it is time to finish this cycle and seek a definitive solution within the framework of the Geneva Agreement, once the Good Offices have failed.

In order to put an end to misinterpretations, which Guyana had taken care of feeding among CARICOM members, Venezuela chose to derogate Decree No. 1,787 by Decree No. 1859, dated July 6th, 2015, published in the Official Gazette of the same date.

On July 6th, 2015, President Nicolás Maduro delivered an important speech in a special session of the National Assembly. He announces that he will communicate with the UN Secretary-General, Ban Ki-moon, to activate the appointment of a new Good Officer. The National Assembly unanimously adopted a resolution supporting the policy announced by the President.

Three days later, on July 9th, 2015, the President of Venezuela addressed a letter to the Secretary-General, Ban Ki-moon, requesting the initiation of the procedure of designation of the Good Officer,

“given that the method of good offices has not been exhausted”, including “the possibilities of historical research as a means of contributing to the best performance of good offices and assistance in the proper negotiation that must lead to a peaceful and acceptable arrangement for both Parties, which is the object and purpose of the Geneva Agreement”.

The letter recalls that the Parties recognized that the territorial dispute should be settled amicably in an acceptable manner to both Parties (preamble). Likewise, it is denounced that

“the new government of Guyana has ignored, if not disregarded, the validity of the Geneva Agreement of 1966, showing a recalcitrant and ambivalent attitude and inflicted serious offenses on my country and my people”.

It draws attention to the unilateral behavior of Guyana, operating without notification, not to mention agreement, in vast extensions of the disputed territory. It identifies the attributes that the Good Officer must meet. It reiterates the terms of the recognition of Guyana as an independent State.

A day later, July 10th, 2015, Foreign Minister Delcy Rodríguez turned to the Secretary- General, on behalf of President Nicolás Maduro, to appoint a new Good Officer.

However, on July 13th, 2015, the Foreign Minister of Guyana, Carl Greenidge, told the Secretary-General - and publicly - that he was not interested in the continuation of the Good Offices, a process manipulated by Venezuela “to keep unsettled the border dispute”, accusing it of feeding a dilatory policy. For Guyana the only option was the International Court of Justice.

On July 28th, President Maduro denounced the provocations of Guyana and called for the reactivation of the Good Offices mechanism.

Guyana published its maritime coordinates dated July 22th, 2015, in the Official Gazette of the 29th. By note dated 22th September, 2015 addressed to the UN Secretary-General, Venezuela objected to the straight line of closure of the mouth of the Essequibo.

On September 27th, 2015, Ban Ki-moon met with Presidents Nicolás Maduro and David Granger in New York. As a result of the meeting, on October 3rd, 2015, it were announced the return to Georgetown of the Venezuelan ambassador, who had been called to consultations in Caracas, and the *placet* to the new Guyana’s Ambassador in Caracas. One delegation (a technical team headed by the Chief of Staff of the Secretary General) visited Caracas and Georgetown on October 13th-14th, 2015. Days later, the technical team of the General Secretariat formulated a working paper: “A way forward”.

In a letter from the Foreign Minister, Delcy Rodríguez, to the Secretary-General, Ban Ki-moon, of March 15th, 2016, concerns are expressed "at erroneous legal interpretations in the proposal submitted by the technical team sent by you ..." The working paper "A way forward" reflected the spirit of the proposals of the Government of the Cooperative Republic of Guyana, which had distanced itself from the due respect to the Geneva Agreement, a position contrary to the search for a "practical, satisfactory and acceptable settlement to both Parties to the dispute ", as central commitment of this legal instrument.

The letter highlights the lack of political will, reluctance and unusual aggressiveness of the current government of the Cooperative Republic of Guyana to move towards a friendly settlement, carrying out a series of unilateral actions for the disposition of the disputed territory and the maritime spaces. Overall, with the arrival of the new government (of David Granger), the relations had suffered an unexpected deterioration that had affected the hard-built trust. Hence the skepticism about the good faith of the Guyanese side in moving forward against a lapse of time that conditions the outcome. "The haste derived from the aggressiveness imposed by one of the Parties cannot determine the most appropriate means of resolving the dispute."

On July 5th, 2016, the Venezuelan Foreign Minister wrote again to the Secretary-General, insisting, in accordance with the spirit, purpose and reason of the Geneva Agreement, on a friendly negotiated solution (a practical, satisfactory and mutually acceptable settlement) of the territorial dispute with the good offices of the Secretary-General through the appointment of a new Personal Representative or Good Officer to conduct

intensive contacts with both Parties. To that end, the Foreign Minister suggested the option of a set of candidates with a particular profile.

On July 28th, 2016, Secretary-General, Ban Ki-moon proposes through a letter to Foreign Minister, Delcy Rodríguez, candidates to conduct the process of Good Offices.

On August 18th, 2016, the Foreign Minister pointed out to the Secretary-General the “no complacency” of Venezuela regarding the proposed candidates and suggested the name of another person

“whom we would like to invite Venezuela, as soon as possible, to convene a meeting with the President of the Republic, Nicolás Maduro Moros, in order to adopt a definitive answer regarding his suitability”.

On October 31st, 2016, the Secretary-General addressed the Venezuelan Foreign Minister (with whom he had met on the 13th), to remind her that the person proposed by Venezuela was unavailable. Considering that the other candidates had not been accepted by the Venezuelan government, he added:

“I regret to inform you that I will not be able to appoint a Personal Representative for the Good Offices process. As I have indicated in my previous communications, my intention is to proceed to make an assessment in November of the progress made in resolving the dispute, with a view to taking a decision before the end of my mandate on how to proceed. Allow me to reiterate that I attach the highest priority to the search for a solution to the border dispute, and it is my intention to use the remaining time until the end of the year in the most productive manner.”

On November 4th, 2016, the Venezuelan Foreign Minister replied to the Secretary- General, expressing concern about his position. The selection of the Personal Representative, as confirmed by experience, is a difficult and complex process. Not having arranged a suitable candidate in so few months, could not result in the elimination of the mechanism. This was the time to redouble efforts.

The Foreign Minister added:

“We are concerned that an exit to this controversy might be contemplated with the back turned to the international legality and closing the doors to peaceful negotiation, which would allow for a negotiated solution, in an atmosphere of trust between the Parties. This scenario glimpses an uncertain and conflictive landscape in a region that has been declared by CELAC as a territory of peace.”

The Foreign Minister continued:

“the government of Guyana has exacerbated the violation and disregard of this valid and binding legal instrument for the Parties (the Geneva Agreement), seeking to resort to the International Court of Justice, excluding its normative sense, which contemplates the successive exhaustion of the political negotiation mechanisms contemplated therein. Attempting to resort to the judicial means blatantly violates the legal instrument in force and valid for this dispute, which in its spirit, nature and reason expressly excludes it ... defined by the achievement of the practical and satisfactory settlement for both Parties. Being even more strict, it is imperative to remember that any way to reach a settlement must have the mutual consent of the Parties, as it has always been in compliance with the Geneva Agreement ... Such recommendation (to resort to the Court) would be

so burdensome for the national interest of Venezuela and for regional stability, that it would be impossible for us to accept.”

The Foreign Minister concluded:

“We know that because of the short time remaining for your outstanding mandate, it is not possible to address this delicate issue with all the legal, political and diplomatic considerations that are required. We therefore reiterate the respectful request presented to you by President Nicolás Maduro in his recent conversations, to bring this dispute to the immediate attention of the designated Secretary-General, Antonio Guterres.”

Ten days later, on November 14th, 2016, the Venezuelan Foreign Minister sent two letters to the Secretary-General. In one of them, the Foreign Minister reported that on November 12th the Government-Opposition Dialogue Table had agreed on a unanimous position in defense of the legitimate and inalienable rights of Venezuela over Guyana Esequiba and in defense of the Geneva Agreement.

In the second letter denounced the reckless actions of the government of Guyana in detriment of the legality, responsibility and good faith due to the effective fulfillment of the Geneva Agreement. During 2015 and 2016, the government of Guyana had magnified the abusive practice of granting concessions to transnational corporations for exploration and exploitation of natural resources in the territory, which had resulted in a “dramatic environmental deterioration... of the planetary lung of the Amazon... a clear depredation of the environment...”. The same had been done in the maritime spaces that make up the projection of the Essequibo, which seemed incompatible with the principles applicable in the framework of

dispute settlement set out in resolutions 37/10, article 8, and 53/101, article 2,e , of the UN General Assembly. If the behavior of the government of Guyana allowed a manifest intention of non-compliance with the Geneva Agreement to be suspected, that of Venezuela had been prudent and adjusted to law in the face of provocation, avoiding an escalation of tension.

On December 15th, 2016, Ban Ki-moon addressed a letter to President Nicolas Maduro in which he proposed to incorporate an element of mediation into good offices, a mandate for which he set a mandatory deadline to end “at the end of 2017”. The Secretary-General added that if by this date he concluded that significant progress had not been achieved in reaching a solution to the dispute, he will choose the International Court of Justice as the next means of settlement, unless both Parties jointly request the contrary.

Ban Ki-moon pointed out that he had shared these conclusions with the Secretary-General designated to succeed him, Antonio Guterres, and that he would appoint at his discretion a Personal Representative, who would be able to make proposals on any aspect of the bilateral relationship that could facilitate a complete agreement for the solution of the dispute. As a first step, he will discuss with the Parties possible measures aimed at building trust in order to create an environment conducive to dialogue.

President Nicolas Maduro replied to Secretary-General Ban Ki-moon on December 17th, 2016. In his letter he stated that Venezuela was firmly committed to reach a negotiated solution within the strict framework of the Geneva Agreement. To this end,

“he hopes that, as happened with the appointment of the Personal Representatives all the preceding Secretaries-General, the Parties will be consulted before the new Secretary General, Mr. Antonio Guterres, proceeds to their designation.”

The President insisted on

“our objection to the intention ... to recommend to the Parties that they resort to the Court...”

and added that this recommendation

“is not in accordance with the letter or the purpose of the [Geneva] Agreement.”

In addition,

“the mere announcement... is an incentive for the Party that insists on it to have no interest in a negotiated solution and simply to let time go by... The government of Guyana has exacerbated the violation and disregard of the Geneva Agreement..., excluding its normative sense, which contemplates the successive exhaustion of the political negotiation mechanisms contemplated therein. That means of last ratio deviates from the object, purpose and reason of the Geneva Agreement - as well as its terms ... - conducive to a friendly, practical and satisfactory settlement acceptable to both Parties...”

Effectively, the government of Guyana welcomed the communication of Secretary-General Ban Ki-moon of December 15th, 2016. In this connection, President Granger said on December 22nd, 2016 before the Guyanese Armed Forces that 51 years had been too long to continue with the Venezuelan claim, and therefore, they expected to submit the matter to the International

Court of Justice. Foreign Minister Greenidge had said the same thing before the National Assembly of that country on December 20th, 2016. Further, President Granger sent a communication to President Maduro on December 21st in the same keynote of reluctance to negotiations and with an evident intention to recourse to the International Court of Justice. Such actions become especially significant because they unveil Guyana's true purpose, as it actually happened, of not betting at all to the political means for settlement of controversies and delegitimize, in this manner, the good offices that had just being announced.

On February 23rd, 2017, the new Secretary General, Antonio Guterres, addressed President Nicolas Maduro informing him of the election of Mr. Dag Nylander as his Personal Representative and attaching the "terms of reference" of his mission.

This letter was replied on February 25th, 2017 by the Foreign Minister, Delcy Rodríguez. With respect to this letter it is worth emphasizing the following:

1. The precision that the designation of the Good Officers has always been done with the approval of the Parties after consultation. To this end, in order to respect the procedure that has historically been complied with, a visit by the candidate to Caracas would be appreciated, as soon as possible, to meet with President Maduro and the Venezuelan team.
2. Venezuela's willingness to collaborate closely and in good faith with the Personal Representative of the Secretary General, once the Parties have

given their approval, with special attention to the reduced timeframe in which the intended means will be applied, which condemns in advance its effective possibilities of action and favors the disinterest of Guyana, since the immobility would automatically lead to the Court.

3. A recommendation of the Secretary-General in this regard would otherwise be absolutely inadmissible, considering the fundamentals of the Geneva Agreement, which provides for a full and successive use of political means to solve the dispute. This recommendation could not be accepted by Venezuela. There is also no principle of jurisdiction that allows it.

On March 27th, 2017, the Secretary-General, Antonio Guterres, wrote to President Nicolás Maduro, informing him that the President of Guyana, David Granger, had welcomed Mr. Dag Nylander's election and confirmed Guyana's full cooperation in all the aspects of the process. The Secretary General added that:

“Mr. Nylander, whom I have designated according to the parameters that former Secretary General Ban Ki-moon defined in the letters of December 15th, 2016..., is willing to visit your country and Guyana as soon as possible”.

Mr. Dag Nylander made his first exploratory visit to Caracas on April 11th, 2017. The second was on May 3rd and 4th. His greatest interest was to identify short-term confidence-building measures, such as the reactivation of the High Level Binational Commission, the establishment of a mechanism for rapid and direct communication between the Parties in the event of maritime or border incidents, or restoration of the exchange of *rice for oil* within the framework of *Petrocaribe*.

The letter of the Foreign Minister, Delcy Rodriguez, to the Secretary-General, Antonio Guterres, on May 7th, 2017 reiterated some points of her letter of February 25th. The minister observed that the Good Officer has always been designated with the approval of the Parties through a round of consultations,

“which is why it got our attention that this good practice has not been observed”.

And she added:

“However, the candidate nominated by you has the profile and willingness to recreate an environment of mutual trust ... that can benefit the good development of the good offices mechanism.”

The Foreign Minister recalled that in the visits made by Mr. Dag Nylander it was reiterated

“our indeclinable position on the impertinence and inadmissibility of a possible recommendation to resort to the International Court of Justice, which contradicts and excludes the purpose and reason of the Geneva Agreement”.

And she continued:

“In the same way, we express the unfeasibility of considering limiting the good offices to a few months ..., since the teaching of our and other’s experience is that territorial disputes take their time ... It is of the utmost interest of Venezuela to reach, sooner or later, friendly ... practical and satisfactory settlement for both Parties that, based on the rich experience and learning achieved during these years through good

offices, have motivated and allowed us to responsibly take a great additional step within the succession of the political means contemplated by the Geneva Agreement, by accepting that good offices transcend with mediation elements ... It is essential to reflect on the very short time frame that is intended to be imposed, which would curtail the function and expectation of solution resulting from the adoption of a new political and successive method with the quality, complexity and exigency of the good offices assisted by mediation”.

It should be noted that in the “*basic observations to the terms of reference*”, attached to the letter of the Foreign Minister, it was indicated that the experimentation of good offices with mediation elements

“requires more than the year foreseen by the Secretary General, especially when it has already consumed more than a third of it ... It is impossible to meet the objective of the Geneva Agreement in such a peremptory term ... Limiting good offices would encourage poor availability by the new government of Guyana to advance negotiations through this political means”.

This aspect was stressed when evaluating the *action plan* of the Personal Representative:

“not even to date (May 3rd, 2017) there are proposals for a detailed action plan with substantive elements, goals, objective and indicators to diagnose the effective and accurate compliance within the framework of good faith that informs and obliges both Parties... Considering also that only this week, from May 3rd to 6th, 2017, the candidate for Good Officer has made exploration visits”.

The letter continued:

“Venezuela reiterates that under no circumstances will accept the part that says that the Secretary-General will choose the International Court of Justice as the next means of solution, in the event that no significant progress has been made in solving the dispute, if this is recommended by your Personal Representative and the Parties do not request otherwise by mutual agreement. This provision, together with the very short deadline to evacuate good offices / mediation, only guarantees its failure, especially when one of the Parties (Guyana) fervently longs to resort to the Court under erroneous and false considerations”.

Then it is added:

“Venezuela also reiterates that there is no basis for jurisdiction established between the Bolivarian Republic of Venezuela and the Cooperative Republic of Guyana that allows a possible recommendation of the Secretary-General to prosper without the consent of both Parties. If that had been the intention of the Parties to the Geneva Agreement, that would have been agreed. The opposite was precisely agreed, as can be seen from the dispositions of the Agreement and the logic that encourages it that such means are a last resort that can be adopted by agreement, that is, through a special agreement, including the regulation of its multiple aspects, after having exhausted all successive political means”.

And the letter concluded:

“Venezuela will not accept a recommendation of the Secretary General in this regard, not only for reasons of opportunity, but simply for respect of the Geneva Agreement, which marks an object that is

none other than reaching amicably a practical and satisfactory settlement for both Parties and, to that end, it establishes the limits of the powers conferred on the UN Secretary-General”.

On May 9th, 2017, the Personal Representative of the Secretary General, Mr. Dag Nylander, wrote to the Foreign Minister, Delcy Rodríguez, informing her that he wanted to “continue exploring measures to build trust that could be implemented in the short term in order to promote positive environment for the Good Offices Process ”, mentioning several areas that had been alluded to in the meetings of May 3rd and 4th in Caracas in which it would be possible (environment, fisheries, commercial exchanges, reinforced communication protocols and bilateral cooperation of security). Mr. Nylander invited the Venezuelan Government to suggest in writing, before May 20th, concrete ideas in this regard, preferably in the form of a *non-paper*.

On May 21st, the Foreign Minister responded to Mr. Nylander's request. The working paper *Beneficial measures in the framework of Good Offices to strengthen compliance with the Geneva Agreement aimed at reaching a practical and satisfactory settlement for both parties in the territorial dispute over the Essequibo* included five transversal proposals to be developed in the five targeted work areas: environment, fisheries and maritime spaces, agriculture, energy, security and defense.

The Personal Representative of the Secretary General, Mr. Dag Nylander, visited Caracas for the third time on June 5th and 8th, 2017. On this occasion it was reiterated that Venezuela considered it impossible to continue the Good Offices with mediation elements if he insisted on proposing that this laborious and complex task be accomplished within a peremptory period of a few months, a condition impossible to fulfill that, in advance, condemn it

to failure. There were no precedents that allowed to state the contrary and anyone could realize that this process required a longer investment of time. Mr. Nylander was reminded that the Geneva Agreement did not set deadlines for any of the means. In the same vein, it was reiterated the determination not to accept an eventual recommendation of the Secretary General to refer the case to the Court, exceeding the implicit limits of the Geneva Agreement in the performance of his powers.

Mr. Dag Nylander sent a communication to the Foreign Minister on June 22nd, 2017, which included a document entitled *Guidelines for the Negotiation Process*. The eight-page document was essentially procedural in nature. It raised the how, where and when of a mediation for the solution by the Parties of the “central issue”, which he defined as “border dispute” (main table), completed with measures he called “confidence building” (secondary technical table).

It should be noted the omission of any consideration of the observations made and repeated by Venezuela on the “terms of reference” marked by the Secretary-General to his mission, despite the express warning that they represented for Venezuela “red lines”. These had to do, essentially, with the very short duration of the Good Offices / Mediation process, together with the warning that the Secretary General would recommend to resort to the International Court of Justice if the process had not advanced properly in the opinion of his Personal Representative and unless both Parties requested its continuation. Guyana’s most fervent yearning was to reduce the controversy to the point of validity or nullity of the 1899 Award and transfer its resolution to the Court, so that the “terms of reference” of the Secretary General endorsed *avant la lettre* the points of view and goals of Guyana. The paper made no mention of the object of mediation under the Geneva

Agreement of 1966, which could not be any other but to achieve a “practical arrangement” satisfactory to both Parties.

The paper referred to a step-by-step process to reach an arrangement “as soon as possible”; it talked about “moving fast”, working “intensely”. But it was not necessary to be very thoughtful to know that mediation on a complex and secular territorial issue is not settled in a few months. On the contrary, if given due time, which should not be closed beforehand, mediation, can lead to satisfactory solutions. As for the “confidence-building” measures, their introduction in the mediation framework was meaningless unless they were linked to the satisfaction of their central purpose, namely the "practical arrangement" satisfactory for both Parties of the controversy. It was necessary not conflate measures serving the practical settlement of the dispute with the isolation of the controversy to jeopardize other areas of the bilateral relationship.

Despite the conviction that, first, a fixed and peremptory term mediation would not allow significant progress in achieving the practical and satisfactory settlement of the dispute, second, it was manifestly imprudent to anticipate, as the Secretary General did, a decision - the recommendation to resort to the Court - incompatible with the provisions of the Geneva Agreement and, third, the insistence on maintaining the “terms of reference” that implied a certain agreement between the interests of Guyana and certain influential media in the United Nations, Venezuela, while reiterating its warnings, agreed to cooperate in good faith in the procedure.

In order to continue the exchange “on the elaboration of an agenda towards the resolution of the controversy, including concrete elements for discussion in relation to the central issue, as well as confidence-building measures”, the

Personal Representative visited again Caracas between June 26th and 28th, 2017.

In his meeting with the delegation of Venezuela, Mr. Dag Nylander insisted on his two-table methodology, the main one, on the central issue, the border controversy, and the secondary, technical one, on trust measures. Two separate tables did not seem to go, in Venezuela's opinion, in the desirable direction that the measures serve to reinforce the Good Offices and contribute the objective of the Geneva Agreement.

As reported by the Personal Representative on April 11th, since the first meeting Guyana had warned that it would not accept that the measures would revolve around the resolution of the dispute. Given this, Venezuela informed him that there was no point in insisting on such measures, despite that the Personal Representative had requested proposals in this regard (in his letter of May 9th) and Venezuela complied with this petition on May 21st. Mr. Nylander delayed his response to Venezuela's proposals on June 27th, and gave it orally. He again omitted to refer to the observations made by Venezuela to the "terms of reference".

The possibility of embarking the Parties on an environmental conservation project over a circumscribed area of the Essequibo, a pilot plan as a first step for a practical and satisfactory arrangement, was suggested.

The Personal Representative was presented with the possibility to define an indicator of what *significant progress* would mean, in order to move the deadline of November 30th, 2017. Mr. Nylander replied that it was difficult.

On July 7th, 2017, Mr. Dag Nylander met in New York with the Foreign Minister of Venezuela, Samuel Moncada, and proposed the following agenda for the first meeting of the Parties:

1. The Venezuelan contention that the Paris Arbitration Award of 1899 on the Essequibo is null and void.
2. Options for the solution.
 - A. Maritime issue
 - B. Environmental issue
 - C. Dimensions of bilateral cooperation
 - D. Other matters
3. Implementation and verification of agreements.

The idea was to meet in Port of Spain (Trinidad) as soon as possible and on successive occasions, with duration of three days per meeting. The different items of the agenda could be alternated, without the need to exhaust one to move on to another. Technical teams, such as the Division of Ocean Affairs and Law of the Sea, could be invited,. The work of the experts would help to reduce the tension in the discussion. Everything would be confidential. It would be the Personal Representative who would report on the progress of the meetings, notwithstanding that the Parties, prior agreement between them, could issue pronouncements.

The Personal Representative, who made these proposals orally, required the Venezuelan Minister's views no later than July 11th, 2017. However, already at the meeting the Minister made some observations, which he developed at his meeting on July 21st.

Finally, the meetings of the Parties with the Personal Representative of the Secretary General, Mr. Dag Nylander, were held in Greentree (New York).

On November 20th, 2017, Venezuela proposed to apply a *modus vivendi* while the direct negotiations were resumed. According to this proposal, during the negotiations, Venezuela would not interfere in the activities of Guyana in the Essequibo territory provided that Guyana offered timely information on its investment and development plans that could affect the natural environment and bearing in mind that, as provided in the article V.2 of the Geneva Agreement, none of these activities would constitute a basis for enforcing or creating sovereignty rights.

As regards the maritime spaces, projection of the Essequibo coast, Venezuela proposed its division into three segments or corridors was proposed: The eastern corridor or segment under Guyanese administration, the western one, under Venezuelan administration and the central one as a reserve area where the Parties would act in concert. Venezuela undertook to respect the exploration and exploitation activities of non-living resources of the continental shelf based on licenses granted by the Cooperative Republic of Guyana until the date of adoption of the *modus vivendi*. The granting of new licenses would correspond to each administration in its corridor, prior information and consultation with the other Party. Only those licenses having being mutually agreed would be granted in the reserve area.

The Venezuelan proposal anticipated that the Parties would accommodate their education plans in order to prevent the territorial dispute from being taught in terms of confrontation, and promote empathy and cooperation with a view to solving the dispute through a practical and satisfactory arrangement for both Parties.

Finally, according to the Venezuelan proposal, if, by December 31st, 2019, the Parties had not reached a full agreement, Article IV.2 of the Geneva

Agreement, suspended while negotiations were taking place, would be reactivated at the point where it was suspended, unless the Parties agree to continue negotiations or agree to another means of settlement.

Unfortunately, the response of Guyana, on November 25th, was characterized by the misrepresentation of the Venezuelan proposals, the confusion of the Guyanese own claims with consolidated and undisputed rights, the deliberate disregard of the position of the “other”, the conception of the negotiation as an imposition of its own points of view, ignoring that the commitment that results from any negotiation in good faith requires that the Parties abandon their maximalist positions to reach an agreement; all this while using a categorical language that sought to delegitimize the adversary dogmatically. In short, for the Cooperative Republic of Guyana, the only possible agreement was the one that implied the unconditional acceptance of all its claims by Venezuela.

Between November 28th and 30th, 2017, a third and final meeting was held in Greentree Foundation (New York) between the delegations of the Parties, headed by the respective Foreign Ministers, and convened by the Personal Representative of the Secretary General. At the end of this meeting, it was clear that Guyana had sat down just to wait, refusing to negotiate and did not make any additional proposal other than insisting on its maximalism. President Granger’s speech at the Christmas luncheon with his armed forces on December 22nd, 2016, has become a reality: *“Well we have already decided that we have already waited 51 years too long. It is our territory and we will go to court to prove that it is our territory.”*

It was the case of the draft Memorandum of Understanding that, one held these three meetings, Guyana decided to send on its own. This draft

proposed to Venezuela an unconditional surrender and a renunciation of all its rights. Seeking to hide with this document its intransigence, Guyana was only providing the clearest proof of it. The memorandum was configured as a pre-agreement that would become a formal treaty within three months and, if it is was not the case, it entailed Venezuela's consent to submit to the International Court of Justice the object of the dispute as Guyana conceived it, namely, the validity or nullity of the 1899 Award.

On December 11th, 2017, the Personal Representative of the Secretary-General, Dag Nylander, made an informative visit to Caracas.

On December 18th, 2017, President Nicolas Maduro wrote to the Secretary-General, Antonio Guterres. In his letter, the President of Venezuela contrasted the behavior of Venezuela at the end of 2017 with Guyana's. While Venezuela had demonstrated its total commitment to negotiation, Guyana simply let time pass to take advantage of the promise made by the previous Secretary-General in its communication of December 15th, 2016. The mere announcement of the Secretary-General had been an incentive for Guyana's lack of interest in reaching a negotiated solution. Venezuela signed the Geneva Agreement to commit to reach a practical and mutually acceptable arrangement, and not to go to an unconsented international jurisdiction that it has never accepted and that was contrary to the object, purpose and reason of the Geneva Agreement, as well as its letter. In any case, the agreement of the Parties was essential to support the jurisdiction. The letter concluded asking the Secretary General to continue the facilitation of negotiations through good offices and mediation, even reinforced, of his Personal Representative, for a period of at least two years. "Venezuela, the letter assured, is firmly determined to try to reach a negotiated solution."

On January 30th, 2018, the Secretary-General, Antonio Guterres, informed President Nicolas Maduro that

“within the framework established by my predecessor, and since no significant progress has been achieved in reaching a negotiated solution to the dispute, I have chosen the International Court of Justice as the means that must now be used for its solution”.

In his letter, the Secretary-General noted that Article IV.2 of the Geneva Agreement

“confers on the Secretary General of the United Nations the power and responsibility to choose, among the means of peaceful settlement referred to in Article 33 of the Charter of the United Nations, the means to be used for the resolution of the dispute”; and, "if the means so chosen does not lead to a solution... the responsibility of choosing another means ...”

Antonio Guterres recalled the communication of his predecessor of December 15th, 2016, and referred to “the high-level intensive efforts” carried out by his Personal Representative, Dag Nylander, in 2017, which he had “carefully analyzed”, arriving to the conclusion mentioned above.

The Secretary-General offered

“continuity in good offices ... through a complementary process established by virtue of the powers granted to me by the Charter”, a

process that: “Firstly ... could contribute to the use of the means of peaceful solution chosen.”

In an official communiqué issued by the Ministry of Foreign Relations the following day, January 31st, 2018, it is stated that:

“Venezuela duly recorded its strong opposition to the letter dated December 15th, 2016... warning that the steps announced exceeded the powers granted to him by the Geneva Agreement, contravening to its spirit, purpose and reason, as well as the principle of fairness agreed between the Parties”.

And it added:

“The communication of the Secretary-General ignores the successive order of the means of peaceful settlement established by the Geneva Agreement as the agreed methodology to reach an acceptable, practical and satisfactory solution to the dispute.”

And it concluded:

“It is worth asking the reasons to recommend the International Court of Justice to two States that do not accept its jurisdiction ... The Government of the Bolivarian Republic of Venezuela ... reiterates its firm willingness to ... maintain political negotiation based on the Geneva Agreement of Geneva 1966 as the only path to reach a peaceful, practical and satisfactory solution for both Parties”.

President Nicolás Maduro addressed the Secretary-General, Antonio Guterres, on February 25th, 2018, stating that he had received

“with concern, surprise, and at the same time regrets, the content of his letter, as it exceeds, as does the letter signed on December 15th, 2016 by his predecessor, Mr. Ban Ki-moon, the powers granted to him by the Geneva Agreement, and contravenes its spirit, purpose and reason.”

The letter continued:

“The judicial settlement contravenes the Geneva Agreement because it violates its preamble, which stipulates that the dispute must be “amicably resolved in a manner that is acceptable to both Parties. It also violates its article I, since it does not lead to satisfactory solutions to the practical settlement of the dispute”.

The letter added:

“In addition,... Venezuela does not recognize the jurisdiction of the Court... and in this sense it has been consistent with its historical position...”

so that the proposal of the Secretary-General

“would be sterile, unacceptable and contrary to the interests of Venezuela and its People”.

Venezuela

“considers important to continue to have the Good Offices method ... in the terms in which it was initially accepted by the Parties under the Geneva Agreement.”

On March 28th, 2018, the Ministry of Foreign Relations of Venezuela sent a diplomatic note to Guyana with its position regarding the communication of the UN Secretary General of January 30th. For this purpose, the note included the essential lines of President Maduro's letter to the Secretary-General of February 25th, 2018. The note reiterated to the Guyanese government that resorting to the judicial settlement was

“unacceptable, sterile and unenforceable, proposing the restart of the diplomatic contacts that allow to reach a peaceful and satisfactory solution to the territorial controversy, as well as the joint evaluation of the advisability of continuing with the figure of the Good Offices under the auspices of the UN Secretary-General”.

On March 29th, 2018, Venezuela learned that Guyana had filed an Application by a public communiqué from the Ministry of Foreign Relations of Guyana, before having received the official communication of the *Greffier* of the Court. A statement from the Venezuelan Foreign Ministry made on 30th insists on retaking the path of negotiation and political means to solve the dispute.

Guyana's response to the Venezuelan note of March 28th, on April 3rd, 2018 was replied by the Venezuelan Foreign Ministry on May 4th, 2018.

Venezuela has been protesting every time Guyana has proceeded to grant licenses for exploration and / or exploitation of oil resources in maritime areas that are the projection of the Essequibo coast. It has sent warning letters to the concessionary companies and carried out an information activity *in situ* to ships conducting exploratory operations in these areas

within the disputed territory. The disregard for this territory on one occasion end up with the arrest of one of these ships (*Teknik Perdana*, October 10th, 2013).

In 2017, concessions and exploration activities skyrocketed. But, in order not to disturb the process of good offices that was just beginning, Venezuela postponed the diplomatic protest. However, in 2018 these activities were the object a series of successive verbal notes (DVMAL No. 000307 to 000321, transferred between on January 25th and 30th, 2018; and DVMAL n°000322 to 000335, dated February 28th and sent jointly by note DVMAL, n° 000338, of March 1st). Guyana replied (notes n° 366 / 2018 to 369/2018, transferred on March 21st; and No. 301/2018 to 304/2018, transferred on March 27th, 2018). Some of these notes also referred to mining activities in the land territory.

At the end of 2018, one of the most dangerous scenarios was confirmed when ships hired by *Exxon Mobil* conducted exploration activities in sectors of the *Stabroek* block partially located in the maritime projection of the Delta Amacuro. The delimitation of these areas falls outside the framework of the Geneva Agreement, but depends on the solution of the territorial dispute to be achieved within that framework.

On December 22nd, 2018, a ship hired by *Exxon Mobil* - the *Ramform Thetis* - was intercepted by a Venezuelan naval unit. Guyana's protest note of the same date was replied by Venezuela on December 27th (Venezuela had already sent diplomatic notes on 20th and 24th). The note of December 27th, reiterating the terms of the note of the 24th, stated

“the misconception and Manicheism that underlies Guyana's approach to the situation and leads to unilateral initiatives that, beyond their

illegality, cause situations susceptible of producing undesirable incidents. The People's Power Ministry for Foreign Relations of the Bolivarian Republic of Venezuela is reluctant to believe that this is precisely the objective pursued by Guyana in the current circumstances”.

The note continued reminding that:

“existing a territorial dispute between the two countries west of the middle of the Essequibo River, neither party can refer to maritime spaces which are the projection of its coast as areas under their sovereignty and jurisdiction, as long as that dispute is not resolved, and even then a problem of delimitation of the respective spaces will remain pending”.

The note pointed out that in this case:

“the exploration of hydrocarbon resources licensed to transnational companies by the Government of Guyana extends through an area of the natural projection of the Delta Amacuro on the sea and invades the Atlantic front of the undoubtedly Venezuelan coast. This implies a flagrant violation of the sovereignty of Venezuela, as a result of unilateral claims and actions of Guyana that Venezuela will not allow”.

After denouncing the misrepresentation made by the Ministry of Foreign Relations of Guyana qualifying as a hostile and illegal act occurred within the Exclusive Economic Zone of Guyana the prudent and proportionate action of the Venezuelan Navy, the note continued addressing the false accusation of threats and terrorism, both aspects aimed at preventing

Venezuela from exercising its sovereign rights. To this effect had deferred this situation to the UN Secretary-General.

In the note, the Ministry of Foreign Relations of Venezuela reiterated its concern over the series of unilateral and arbitrary actions in disputed or not delimited maritime spaces, with which Guyana intends to consolidate irreversible situations or precedents favorable to its interests. Venezuela has so far refrained from following that intrinsically destabilizing course of conduct, and requires Guyana to do the same. In the note Venezuela insisted on the need to refrain from forcing the situation with exploration activities in such territories, if they are not by mutual agreement, until the dispute is resolved and subsequently the maritime spaces corresponding to each one are delimited.

The note observed that:

“The peaceful settlement of the territorial dispute and the delimitation of maritime spaces will only be possible through the negotiation of the Parties, eventually assisted by political means, such as good offices, used in the past, or mediation, capable to lead to practical, satisfactory and acceptable settlement for Venezuela and Guyana, contemplated by the 1966 Geneva Agreement”.

“Contrary to what Guyana maintains in its note No. 1863/2018”, the note clarified, “Venezuela asserts that the International Court of Justice lacks jurisdiction over the unilaterally application of Guyana, invoking as sole basis a choice made by the UN Secretary-General that does not correspond to his powers in accordance with Article IV.2 of the Geneva Agreement and which, in any case, is in itself insufficient to substantiate unilateral action. Hence its refusal to participate in the proceedings initiated before the Court, politically

condemned to failure even in the most favorable scenario for the plaintiff’.

Venezuela, the note went on:

“does not exclude in absolute terms the search for a judicial solution of the territorial dispute, after exhaustion of the political means that assist the negotiation of the Parties, verified by both by mutual agreement, through a special agreement that attaches relevance to the historical dimension of justice and concludes with an equitable decision. It is only from there that the negotiation of the delimitation of maritime spaces could proceed”.

And it concluded:

“Considering all the above, the Government of Venezuela proposes to the Government of Guyana, the resumption of direct negotiations, on the date and place to be fixed by mutual agreement for the coming year, and counting with the assistance of the UN Secretary-General. The Venezuelan Government considers that, encouraged by the principle of good faith, which implies taking into account the views and interests of the other party and the willingness to give up maximalist approaches for the benefit of reciprocal assignments, an agreement may be reached”.

Guyana responded to Venezuela’s note of December 27th, 2018, on January 8th, 2019. On that note, as in a previous note, dated December 28th, 2018, Guyana warned that it planned to continue with its development program in areas over which it had sovereign rights (implying that Guyana had them where the events subject to the diplomatic exchange had occurred).

The Minister of Foreign Relations of Guyana, Carl Greenidge, made a extensive statement on these facts before the National Assembly of Guyana on January 3rd, 2019. He referred, once again, to the “aggressive actions” from Venezuela. Guyana insists time and again to present as “violations of the territorial integrity of Guyana” any Venezuelan initiative aimed at preventing Guyana’s unilateral exercise of jurisdiction in controversial maritime spaces and is determined to move forward with the application of unilateral policies in such spaces, with the inevitable increase in tensions that can lead to incidents that could be manipulated diplomatically and by the media.
