

Global Americans Working Paper 1

**The Guyana-Venezuela Dispute in
Historical Perspective**

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The measures taken by Venezuela before and after the referendum on 3 December 2023 regarding the border dispute with Guyana were roundly condemned by western governments, the Commonwealth and the Caribbean Community (CARICOM). The International Court of Justice (ICJ), at the request of Guyana, also imposed provisional measures on the eve of the referendum, although these did not include halting the vote itself. It seemed to the uninformed observer as if Venezuela was acting with extreme irresponsibility over a land border dispute that had been seemingly settled by international arbitration in 1899 and which had been in the hands of the ICJ since 2018.

And yet, inevitably, there is another side to this story, which explains some — if not all — of Venezuela's actions and which needs to be taken into account. This document provides some historical context for understanding the current crisis. This is a story of British imperial expansion, Great Power intrigue and the rights of weak states in the face of muscular diplomacy by more powerful ones.

If Guyana, independent since 1966, is largely blameless (and it is), this does not exonerate the former imperial power from a series of misdeeds in the previous 130 years. Guyana's claim to the territory in question is now secure enough to be upheld by the ICJ when it eventually rules, but questions must still be asked about how we reached this position in the first place. And settling the land border definitively is only the first step, as there is a maritime area with vital hydrocarbon deposits whose boundaries will need to be defined subsequently.

Colonial Legacies

When the Portuguese and Spanish Empires ended on the mainland of Latin America 200 years ago, there emerged a series of new countries with claims to the lands previously administered by the Iberian powers. Boundary disputes between these states were not unknown, but most were resolved within a few decades and almost all by the end of the 19th century. Virtually all of these quarrels were zero-sum games, as the loss of land by one independent state (e.g. Nicaragua) would be the gain of another (e.g. Costa Rica). And, while the United States of America (US) was busy building its own global empire, the only independent mainland Latin American country to lose land permanently to the US was Mexico (the Panama Canal Zone, sovereign US territory from 1903, was returned to Panama in 1979).

It was different in the case of the three non-Iberian European powers with territorial claims in Latin America. These three were France, Holland and the United Kingdom (UK) whose mainland possessions included parts of Central America and the three Guianas in South America. The boundaries of French Guiana (modern Guyane) and Dutch Guiana (modern Suriname) with their Brazilian neighbor (but not with each

other) were eventually settled in 1900 and 1934 respectively. And, while the UK finally abandoned its territorial claim to Mosquitia (the eastern coast of Honduras and Nicaragua) in 1860, its attempt to end the border disputes over the colonies of British Guiana and British Honduras with their neighbors had not been resolved by the time the two colonies became independent in 1966 (as Guyana) and in 1981 (as Belize).

The Guyana-Venezuela boundary dispute is therefore of long standing and its history is by no means unique, although it does have a number of very distinctive features.

The Schomburgk Line

The relevant starting point for our purposes has to be the decision by the Royal Geographical Society in London to invite a German botanist, Robert Schomburgk, to take part in an expedition to what is now Guyana in 1835. When the expedition ended in 1839, Schomburgk wrote to the governor of the colony enclosing a sketch map of a proposed border line with Venezuela and Brazil and suggesting the need for further exploration before this western boundary could be finalized. Schomburgk then included this map and the suggested border line in a book published in 1840 and it has often been referred to as the Schomburgk Line. However, it was no such thing, as Schomburgk had simply copied the line from maps of 'Colombia' prepared by John Arrowsmith in 1832 and 1834.

The Colonial Office accepted Schomburgk's offer and he was contracted to carry out further work to survey and establish a 'definitive' boundary with Venezuela and Brazil. This work, completed in 1842, led to the official Schomburgk Line, but it was only recognized as such by the UK as the British government kept it secret until 1886! And this official Schomburgk Line was so unfavorable to Venezuela compared to the previous unofficial one (it pushed the boundary further westward into land claimed by Venezuela) that US President Grover Cleveland would later remark that the line had been extended 'in some mysterious way'.

The Schomburgk Line was supposed to establish where the boundary might lie between the United States of Venezuela (independent since the breakup of Gran Colombia in 1830) and British Guiana (formed in 1831 by the merger of three colonies — Demerara, Berbice and Essequibo — acquired from the Dutch by Great Britain at the end of the Napoleonic Wars). Yet Schomburgk, a distinguished botanist who would later be knighted by the British state, was no independent arbitrator. The Schomburgk Line was extremely favorable to the UK and awarded the whole of the region west of the Essequibo River to Great Britain including part of the mouth of the mighty Orinoco River in the east of Venezuela. Needless to say, it was also unfavorable to Brazil, whose territorial claim covered the southern parts of the Essequibo region.

As Venezuela claimed the land allocated by Spain to the colonial Capitanía General de Venezuela, which extended in theory to the midpoint of the Essequibo River, the republic could not possibly have agreed to the official Schomburgk Line (of course, they only had access to the unofficial and less unfavorable one published in the sketch map in 1840). Indeed, the British government knew this and in 1844 Lord Aberdeen, the British Foreign Secretary, had suggested a different boundary that would have left all of the Orinoco and its tributaries in Venezuelan hands. However, the sparse population of the area (almost all indigenous tribes) and the lack of awareness at the time of the natural resources of the region meant that the *diferendum* received only sporadic attention from the governments of both sides for several decades.

The United States Gets Involved

The discovery of gold in the Essequibo in the 1860s, and the end of a long-running civil war in Venezuela in 1870, meant that the dispute would soon heat up. A note from the Venezuelan government in 1876 to the British government was copied to Washington D.C. and the US government, mindful of the Monroe Doctrine's pronouncements on 'European interference in hemispheric affairs', began to take a keen interest. In particular, US administrations floated the idea of international arbitration, but the British side was not yet ready to accept US hegemony in the Americas and certainly did not recognize the Monroe Doctrine as having any legal force.

In 1886 the UK unilaterally declared the 1842 Schomburgk Line to be the international boundary between British Guiana and Venezuela. After the British government refused to go to arbitration except over land to the west of this line, Venezuela broke off diplomatic relations with the UK. There was now a full-scale diplomatic row between a Latin American state and a European power over territory in the Americas and the US became even more deeply involved. However, it was not until 1895 that Richard Olney, recently appointed as Secretary of State in the Cleveland administration, drew explicitly on the Monroe Doctrine to demand that the dispute go to international arbitration.

Olney is best known for his crass remark that 'Today the United States is practically sovereign on this continent and its fiat is law upon the subjects to which it confines its interposition'. The British government was unimpressed, but could not afford to go to war with the US at a time when a rising Germany was being seen as the greatest threat to British interests. A bilateral treaty was therefore negotiated with the US in 1897, although it was signed not by the US but by Venezuela, which committed the UK and Venezuela to go to arbitration in principle over all the territory in dispute and not just the part west of the arbitrary line drawn by the British in 1842. Furthermore, Article III of the treaty required the arbitration panel to:

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

This looked *prima facie* like a huge risk from the British point of view, since Holland had not been in effective possession of the land west of the Essequibo River in 1814 when the transfer of the three Dutch colonies to the UK took place. However, all was not as it seemed as the British had persuaded the US negotiators in the agreed rules for arbitration that:

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

The British, skilled negotiators that they were, had therefore ensured that there was little risk of losing from arbitration as they could make a good case for political control of much of the region in dispute whereas Venezuela, which had not been involved in negotiating the treaty to which its name was attached, had not ‘settled’ any of it – and certainly not for fifty years.

Arbitration

And Venezuela’s troubles did not end there. The treaty specified a panel of five judges, of which two were to be appointed by the British. The initial draft of the treaty had specified that two other judges would be appointed by the US, but – after objections from Venezuela – it was agreed that the President of Venezuela could nominate one judge. However, he chose the US Chief Justice (in truth, he was given no other option) so the US ended up with two judges in any case. That left the all-important fifth judge, and the four judges eventually agreed that it should be Friedrich Martens, a distinguished Russian jurist (in the absence of agreement among the four judges, the treaty stipulated that the choice would be made by the King of Sweden and Norway who would become an outspoken supporter of Great Britain during the Boer War). And since it was assumed that the British judges would favor the UK and the US judges would take the side of Venezuela, the final decision was likely to come down to the views of the Russian.

The choice of Martens might at first sight have seemed a risk for Great Britain, especially as he had first been proposed by the US side. However, Martens — distinguished though he was — was also a ‘man of the world’. He had already acted as a judge in an arbitration panel to settle a dispute between the UK and France over Newfoundland (the judgment went in Britain’s favor) and he succeeded in securing unanimous support from the other judges in the 1899 arbitration award, which established the frontier between Venezuela and British Guiana. The border largely followed the Schomburgk Line with the main exception being in the north where the panel awarded the whole of the mouth of the Orinoco to Venezuela (the boundary between British Guiana and Brazil was left for another day and was in fact settled by arbitration in 1904 by the King of Italy). The UK therefore received from the arbitrators 90 percent of what it had claimed while Venezuela received very little despite the fact that the US had been acting on its behalf.

An aggrieved Venezuela had no choice but to accept the panel’s ruling and dutifully took part in marking the border with British surveyors from 1901 to 1905 (the Venezuelan border with Brazil would then be settled in 1929 with a point on Mount Roraima becoming the spot where the three boundaries meet). Diplomatic relations between Venezuela and the UK were restored and in due course British capital would flow to Venezuela to extract oil and other resources vital in both war and peace.

The Mallet-Prevost Memo

Yet the sense of grievance never disappeared and was given an unexpected boost in 1949 by the publication of an article in the *American Journal of International Law*. This erudite journal, normally filled with scholarly work on the finer points of international jurisprudence, contained an article by Otto Schoenrich that was nothing less than a bombshell lobbed into the peaceful waters of Anglo-Venezuelan relations. It turned out that one of the lawyers involved in the 1899 arbitration case on the Venezuelan side had suffered a fit of conscience and had penned a memorandum in 1944 to be opened only after his death and only if the person he gave it to (Otto Schoenrich) considered it appropriate to do so. This man, Severo Mallet-Prevost, had then died in 1948 and the memorandum was published by Schoenrich as part of his article the following year.

Mallet-Prevost was a Spanish scholar and expert in Latin American law whose career was spent in the US, which is why he had been chosen by the US government in January 1896 to participate in the Boundary Commission set up by President Cleveland to establish where the frontier between Venezuela and British Guiana might lie. It was therefore natural that he would be one of the four counsellors (the chief counsel was former US President Benjamin Harrison) chosen to act for the US government on behalf of Venezuela in the arbitration case established by the 1897 treaty.

Mallet-Prevost's concerns had started when, on his way to Paris for the meeting of the five arbitrators, he had dined in London with Lord Chief Justice Russell (one of the two British judges). In answer to a suggestion from Mallet-Prevost that 'international arbitrations should base their decisions exclusively on legal grounds', Russell replied:

'I entirely disagree with you. I think that international arbitrations should be conducted on broader lines and that they should take into consideration questions of international policy'.

Mallet-Prevost therefore concluded from this exchange that at least one of the judges, and possibly others, would be more swayed by wider geopolitical concerns than the strict merits of the case suggested, and his concerns would prove to be fully justified.

Yet the case apparently started well. Mallet-Prevost and his UK counterpart made their presentations (each spoke for 13 days without a break!), the second British judge (Lord Collins) paid careful attention to the legal niceties and there was no sense of a stitch-up. The case then adjourned for two weeks, and the US team took a holiday (presumably in France). The two British judges, however, returned to London and ominously took the Russian judge, Friedrich Martens, with them. On their return from London, Mallet-Prevost noticed a big change in the attitude of Lord Collins, who was now uninterested in the details of the case — as if he already knew the outcome.

The case finally adjourned, and Mallet-Prevost was anxiously awaiting the decision of the five arbitrators when he was called for a meeting with the US judges. They revealed that Martens had been to see them and presented them with Hobson's Choice. In their own words, as reported by Mallet-Prevost:

'He [Martens] informs us that Russell and Collins [the two British judges] are ready to decide in favor of the Schomburgk Line which starting from Point Barima on the coast would give Great Britain the control of the main mouth of the Orinoco; that if we insist on starting the line on the coast at the Moruca River [the one proposed by Lord Aberdeen in 1844] he will side with the British and approve the Schomburgk Line as the true boundary. However, he [Martens] is anxious to have a unanimous decision; and if we will agree to accept the line which he proposes he will secure the acquiescence of Lord Russell and Lord Collins and so make the decision unanimous.'

What Martens then proposed is that the line should start southeast of Point Barima, thus giving control of the Orinoco and some 5,000 square miles of territory to Venezuela, before joining the Schomburgk Line. The US side had been cornered, as the

alternative to accepting this proposed boundary was that the UK would receive 100 percent of what it wanted. And, despite much huffing and puffing, they duly accepted, giving the unanimous decision that Martens had desired and providing the UK with 90 percent of its claim.

It was clear that the US judges and US counsel, including former President Benjamin Harrison, had been ‘played’. This was a matter of national (dis)honor, but much more serious was what had happened to Venezuela. She had been badly misled by the US administration and had in the end been ‘shafted’. The Venezuelan government had been assured that the US would act on its behalf and would secure a better deal over the frontier than would have been possible if Venezuela had dealt directly with the UK. Yet the line agreed was less favorable than the one Lord Aberdeen had offered Venezuela in 1844!

The US would not be so naive again in its diplomatic dealings with the UK and within a few years Great Britain had bowed to the inevitable and accepted US hegemony in the Americas – including, by implication, the application of the Monroe Doctrine to disputes involving European powers. The Haye-Pauncifote Treaty, signed in 1901, recognized the new reality and paved the way for US control over any transisthmian canal that might be built. That in turn made possible US annexation of Panama in 1903 as a result of US support for the rebels in the Colombian province of that name. The Panama Canal Zone was then declared sovereign US territory and the canal was built under US control. The rest, as they say, is history.

Yet what had persuaded a Russian judge, at a time when relations between Russia and the UK were relatively tense, to throw his weight behind a border proposal that so clearly favored Great Britain? A perusal of the literature on Anglo-Russian relations at the time when Martens was in London with the British judges reveals three areas of friction. The first was Manchuria, where the UK was fearful of Russian expansion; the second was Iran [Persia], where the British were concerned about Russian military and diplomatic initiatives; the third was Afghanistan where Russia was keen to open direct relations with the government after the death of the Amir.

We will probably never know for sure, but a possible candidate is Persia, where Russia announced on 31 January 1900 a loan of £2.4 million whose conditions forbade the Persian government from borrowing further from any other source, thus placing the country firmly in the Russian orbit – at least temporarily. If this was the *quid pro quo* agreed by Martens in the summer of 1899, then Venezuela’s territorial ambitions in South America had been sacrificed in return for Russian influence in the Middle East. It would have been a perfect example of what Lord Russell had described as the need for international arbitration to ‘take into consideration questions of international policy’.

The Path to the ICJ

With the panel's decision and the demarcation of the border, the dispute between Venezuela and the UK over the border with British Guiana appeared to have been ended. Even the publication in 1949 of Mallet-Prevost's memorandum did not change the *status quo*, despite the heightened sense of grievance on the Venezuelan side. Yet, as so often in international affairs, events were about to take an unexpected turn as a result of the rise to power in 1959 of Fidel Castro in Cuba. Guerrilla movements with links to Cuba started to emerge in Latin America, including in Venezuela, while in British Guiana Cheddi Jagan had returned to power in 1961 after having been ousted by the British colonial authorities in 1953 for his alleged communist sympathies. It was a perfect moment for Venezuela to revisit the border dispute as it could count on US understanding and in 1962, during the presidency of the staunchly anti-communist and pro-US Rómulo Betancourt, the republic's foreign minister denounced the 1899 arbitration award at the United Nations and declared it null and void.

Under different circumstances, and in an earlier age, the UK might have brazened it out. However, that option was no longer possible. As soon as Cheddi Jagan was maneuvered out of office in 1964, thanks to a voting system that no British colony had ever previously been required to adopt, British Guiana began to prepare for independence. As soon as that happened, the UK-Venezuela border dispute would become the Guyana-Venezuela dispute and the US needed to keep Venezuela on its side not only because of the Cold War but also because of its supply of hydrocarbons. Thus, three months before independence in 1966 the UK and Venezuela signed the Geneva Agreement that mapped out a pathway to resolve the dispute.

Article 1 of the treaty recognized that Venezuela now considered the 1899 arbitration award to be 'null and void' (the UK, of course, did not agree). A Mixed Commission was therefore to be appointed with representatives from Guyana (still referred to as British Guiana in the text) and Venezuela on the understanding that if, after four years, no solution had yet been found:

'Those Governments [Guyana and Venezuela] shall without delay choose one of the means of peaceful settlement provided in Article 33 of the Charter of the United Nations. [if that did not work] they shall refer the decision as to the means of settlement to an appropriate international organ upon which they both agree or, failing agreement on this point, to **the Secretary-General of the United Nations** (author's emphasis). If the means so chosen do not lead to a solution of the controversy, the said organ or, as the case may be, the Secretary-General of the United Nations shall choose another of the means stipulated in Article 33 of the

Charter of the United Nations, and so on until the controversy has been resolved or until all the means of peaceful settlement there contemplated have been exhausted.’

This gave plenty of scope for delay by either side and in 1970, at the expiry of the four years referred to in the Geneva Agreement, the two sides agreed to the Port of Spain Protocol that provided a space of 12 years in which the two governments could seek a solution. This led nowhere, however, and there was now no escaping the essential point that the Secretary-General of the United Nations was empowered by the 1966 treaty eventually to find a solution. Furthermore, the need to resolve the matter became more urgent when Guyana awarded licenses in 2015 to an oil company to drill oil in waters that Guyana claimed and which did indeed lead to the discovery of oil in commercial quantities.

The Secretary-General, having ‘exhausted all other possibilities’, concluded that the dispute would have to go to the ICJ — a decision that could only be blocked if **both** governments chose to do so. Venezuela, knowing that it was almost certain to lose, was against a referral, but Guyana was in favor and asked the ICJ in 2018 to settle the case. In 2020, in the middle of the pandemic, the Court ruled that it did have jurisdiction despite the refusal of Venezuela to take part in the proceedings. At some point in the next few years, the ICJ will therefore give its decision on the boundary, no doubt in favor of Guyana, and it will be final.

This will be a hard pill for Venezuela to swallow, which is why it has done what it can to delay proceedings, deny the jurisdiction of the ICJ and undermine its authority. Indeed, one of the questions in the referendum held by Venezuela on 3 December 2023 was precisely on this point ("Do you agree with Venezuela's historical position of not recognizing the jurisdiction of the International Court of Justice to resolve the territorial controversy over Guayana Esequiba?"). Yet, although the question was answered overwhelmingly in the affirmative by those who voted, it will not change the position in international law.

Going Forward

There has been much speculation in recent months on what will happen after the December 3rd, 2023 referendum and, in particular, in the period leading up to the national elections in Venezuela to be held on 28 July 2024. The feverish atmosphere since the referendum was not helped by the dispatch of a British warship to the Guyanese coast and loose talk around the construction of a US military base in Guyana. Much of the language used by Venezuelan politicians has been bellicose and unhelpful as well. Yet it is very unlikely that the two countries will go to war regardless of how the

ICJ eventually rules. The disputed territory is dense, largely undeveloped and a challenge to access — much less wage war. Consider also that, although US hegemony in the region may be much diminished, other powerful actors — notably Brazil as well as regional groupings such as CARICOM — are counselling restraint. And Venezuela, despite its understandable sense of injustice over the land border, has much to gain from pursuing a peaceful path since the maritime border — containing so many valuable minerals — still has to be defined even after the ICJ rules.

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