

**BEWARE – THE NEW CONQUISTADOR**  
**Only the Law of Nations can stop Venezuela's Betrayal of Bolivar**

**Introduction:**

Fifty years after the completion of the Geneva Agreement and one hundred and sixteen years after an international arbitral tribunal had fully, perfectly and finally determined the boundary between the former colony of British Guiana and Venezuela, the Government of the Bolivarian Republic of Venezuela continues to postulate and inflate the case and arguments that did not find favour with the arbitrators in Paris. Today, Venezuela claims that it has been treated unjustly in every legal and diplomatic encounter and that others have conspired against its interests. In essence, Venezuela is repudiating every negotiated instrument.

Since February 1962 at the United Nations, on the eve of the independence of British Guiana and amidst the Cold War conjectures about the potential establishment of another Communist state in the Caribbean region, Venezuela has claimed that the arbitral award of 1899 is null and void and is the result of a fraud. Notwithstanding its refusal, or inability, over the ensuing years to substantiate this contention about nullity, as obliged under the Geneva Agreement of February 1966, Venezuela has taken the opportunity of the fiftieth anniversary of the agreement and its coincidence with its Presidency of the UN Security Council in the month of February 2016, to launch the most menacing broadside against the arbitral award, the integrity of the Geneva Agreement and create the most dangerous threat to the security of Guyana.

**Claims about “legitimate ownership” and “irrefutable titles”**

Masking its acquisitive intent against the territorial integrity of Guyana, Venezuela inscribed in an “Open Agenda” of a Security Council session in February 2016, the item: “Respect for the principles and purposes of the Charter as a key element for the maintenance of international peace and security.” On February 3, 2016, Foreign Minister, Delcy Rodriguez, offered some insight to Venezuela’s purpose by requesting a meeting in Venezuela with the Secretariat of the UN Secretary General to “reaffirm the legitimate rights of Venezuela over the Essequibo territory”. Claiming that “it is a historic position...” and that, in accordance with the Geneva Agreement, Venezuela was ready to pursue the territorial controversy “through diplomatic channels”. The statement went on to proclaim that the Geneva Agreement had “recognised the claim and the dissatisfaction of Venezuela of the seizure of nearly 160,000 (square) km of territory, forged through a null and void Arbitral Award...” Thus, the lofty proposal about the maintenance of peace and security

is juxtaposed with the blatant reshaping of the Geneva Agreement and the dismemberment of Guyana.

Simultaneous with this *démarche* was the official release of a document under the hand of President Nicolás Maduro styled: “Venezuelan Guayana Essequiba: The History of a Plunder.” The document also claims, *inter alia*, to be “the historical truth” that “Guayana Essiquiba” was “legitimately owned by Venezuela” and “in a fraudulent and coercive way they have tried to snatch a territory on which Venezuela has irrefutable titles.” These “irrefutable titles”, it is purported, have existed since the establishment of the Captaincy General of Venezuela in 1777, through the period of Dutch control, the independence of Venezuela on July 5, 1811, to the period of British acquisition of the Dutch possessions in the Treaty of London, August 1814.

It was this claim to “legitimate ownership”, “legitimate rights” and “irrefutable titles” that was rigorously examined by the arbitrators in Paris in 1899. The arbitral tribunal was the result of intensive diplomacy between Great Britain and the United States, acting on behalf of Venezuela, commencing from 1844 and culminating in the Treaty of Arbitration, signed in Washington in February, 1897. The treaty details the rules for the arbitration: rules about adverse holding, prescription during a period of fifty years, exclusive political control, actual settlement, or any principle of international law that the arbitrators may deem applicable to the case in order to establish a title.

### **Treaty of Arbitration, 1897**

In the document released, Venezuela has attacked the treaty repeating that it was pressured by the U.S. and Britain and, “at a disadvantaged condition”, it was forced to accept “an unfair arbitration” that had no Venezuelan on the arbitration tribunal. Thus, to make tenable the fabrication against the arbitral award, it was necessary first to jettison the preliminary legal instruments that established the arbitral tribunal.

It is a fact that the treaty was negotiated substantially between the U.S, on behalf of Venezuela, and Britain and the U.S. Secretary of State, Richard Olney, bears the sole responsibility for this outcome. Yet in the evolution of these discourses, Venezuela had opted to promote its case through American agents, euphemistically called counsel or legal advisers, seeking a wider appeal to the American people. Two prominent ones were William Scruggs and James Storrow. It was Storrow who visited Caracas in November 1896 to discuss the draft treaty in company with José Andrade, the Venezuelan Minister in Washington, bilateral relations had not yet been upgraded to the level of Ambassador. It was also Storrow who corresponded with Olney on the discussions in Caracas and not Andrade. Both Storrow and Andrade were received with “the greatest punctillo” by

President Joaquin Crespo. They met also with some members of the Cabinet and had seats in the official box to the Opera. No discomfort with any of the existing arrangements in the draft treaty was revealed at the time. Further, it was Storror who telegraphed Olney on November 24, 1896, after another of those abrupt, though customary, changes of government had taken place, that President Crespo and the new cabinet had accepted the draft treaty without any difficulty.

It was, however, the Special Commission established earlier in January 1896 to examine the boundary that strongly opposed the treaty, particularly the clause dealing with prescription and the absence of Venezuela's right to name an arbitrator. Intense discussions took place after thanksgiving on November 27 and 28. By December 7, the cabinet had endorsed President Crespo's acceptance of the draft, though the Congress would later apply some delaying tactics. In the end, President Crespo was able to nominate one member of the tribunal and, on his own initiative, suggested Justice David Brewer rather than a Venezuelan judge. Eventually, he chose Justice Melville Fuller of the U.S. Supreme Court after Justice Brewer became the nominee of the U.S. According to Storror, the cabinet was less incensed by the absence of a Venezuelan nominee than by the denial of the right to nominate one of the judges. It is therefore quite disingenuous for Venezuela to claim that there was no Venezuelan national on the tribunal and to misrepresent the concessions it voluntarily encouraged toward U.S. involvement.

It is pertinent to note that in selecting its legal counsel before the arbitration tribunal, Venezuela also opted for American counsel. Its leading counsel was former President Benjamin Harrison, who took with him his former Secretary of the Navy, Benjamin Tracy, and his former Assistant Secretary of the Navy, J. Russell Soley. Severo Mallet-Prevost, though an American citizen, was born in Mexico, was the junior counsel. José Maria Rojas, a former Foreign Minister and Minister to the Court of St James', who gave his name to one of the proposed boundary lines, sat in the background as an agent for his government. Four papers prepared by Raphael Seijas, the former Foreign Minister and President of the Special Commission to investigate the boundary and, two papers by Rojas served no more useful purpose than as an appendix to the printed argument; Mallet-Prevost observing that the arbitrators "would not bother much" about them. They may have exceeded the bombast of the later claims and pretensions. If in 1899, Venezuela did not think its nationals accomplished enough to represent its case and interests, then it is less than honest to criticize today what it considers the absence of a Venezuelan judge on the tribunal.

There have been some vague, though recurring, references in the current releases suggesting that the arbitral award was the result of "the manoeuvres of British expansion and the Monroe Doctrine". Although the meaning is somewhat unclear, it should be noted that throughout the nineteenth century there was never any collaboration of the type

inferred between Britain and the U.S. in any British “expansionism” in the Americas. Indeed, the two nations were strong rivals.

The Monroe Doctrine of 1823 was promulgated precisely to halt further European colonization of the Americas. And it was Venezuela who first sought U.S. assistance in November 1876 in its claim to the Essequibo. Then in October 1881, it was Venezuela who first appealed to the Monroe Doctrine and directly brought the disputed territory under Monroe’s dogma. Many more impassioned appeals were to be made by Venezuela in the years leading to the crisis of 1895 to cause Professor Dexter Perkins to observe that no other American state would make such fervid and so many appeals to the principles of 1823. The crisis in Anglo-American relations which developed in late 1895 resulted from Richard Olney’s far-reaching exposition of the authority of the doctrine in the boundary dispute and British Prime Minister Salisbury’s pointed rejection of those pretensions. It was, some say, the last occasion that Britain and the U.S. almost came to war.

### **Rejection of the primacy of the acclaimed act of discovery**

The foundation for the claim to “historic truth”, legitimate rights and ownership, and irrefutable titles resides in the acclaimed discovery of the New World and the papal bull of 1493 issued by Pope Alexander VI, albeit the Spanish Pope Rodrigo de Borgia, dividing America between Spain and Portugal. Upon this averred act of discovery, Venezuela fundamentally rested its case before the arbitral tribunal. In the years during the colonial rivalry in the New World, as submitted by the counsel for Britain, the legal, albeit European and American, opinion, had developed the presumption that “title by occupation is gained by the discovery, use, and settlement of territory not occupied by a civilized power. Discovery gives only an inchoate right which must be confirmed by use or settlement.” Native Americans, it was understood, did not hold any right to title, though such right could be claimed by the “civilized” power that exerted control and influence over them. This consensus of opinion on the right to title developed in the declarations of Grotius (1633), Pufendorf (1688), Vattel (1750), Twiss (1846), Kluber (1819), Wheaton (1836), Halleck (1861), Phillimore (1871), Hall (1880), and, contemporary with the arbitration, the American, John Basset Moore.

After four centuries of non-recognition of the primacy of the act of discovery, not even the most Catholic princes of France paid any obeisance to it, Venezuela ignored the prevailing sentiments. Leading counsel Benjamin Harrison was not unaware of the implications. For he had noted in January 1898, during his preparation of the case that Venezuela’s claims were not “gilt edged” and that if the argument for the original Spanish title were countered by an argument for non-occupation by Spain, then they were “insecure”.

The oral arguments would also show that during the eighteenth century Spain at the Treaty of Utrecht in 1713, which incorporated articles V and V1 of the Treaty of Munster, 1648, that had recognized the independence of the Netherlands from Spain and provided for the possessions held by Spain and Netherlands in the East and West Indies, did not advance any superior, or historic, title to Guiana. Spain accepted the *status quo* in 1713, comprising the Dutch settlements or trading posts in the Amakura, the Barima, the Waini, and the Pomeroun. The only Spanish settlement in Guiana at the time was at Santo Thomé on the Orinoco. If Spain had any views about Dutch trespassing in the region west of the Essequibo, Utrecht was the appropriate place to protest and rectify the situation with, on this occasion, the strong arm of France in support. Spanish “silence” at Utrecht and Venezuelan counsel’s inability to explain this, confirmed the *uti possidetis (juris)* of 1713, “as you possess, so may you possess”. Venezuela had strongly contested ownership on the basis on this principle *uti possidetis juris*, the doctrine dating back to the Roman Empire had re-emerged prominently during the decolonization period in South and Central America.

In the years following, this situation remained unchanged with Spanish officials not contesting Dutch occupation west of the Essequibo. Thus, at the close of the Spanish period in Guiana, Spanish officials, by virtue of their action or inaction generally admitted that the Dutch were in control of the coast of the Essequibo and a large part of the Cuyuni. The legality of Dutch occupation was never questioned. Nor was there any prior title advanced to territory occupied or controlled by the Dutch. On these points of substance counsel for Venezuela maintained a customary ‘silence’ as was the ‘silence’ of Spain at Utrecht. This was the situation when the territories of the Essequibo, Demerara and Berbice came under British possession in April 1796 during the Napoleonic wars. Britain duly informed Spain that it was in control of all the lands between the Essequibo and Barima rivers. This acquisition was ratified between Britain and the Netherlands in August 1814 with no protest, whatsoever, from Spain.

### **The Arbitral Award, 1899**

The tribunal award followed closely the line drawn by Robert Schomburgk during his surveys of 1841-1842, departing at two points; on the coast to give Venezuela the full control of the Orinoco, and in the interior to give Venezuela the fiercely contested upper Cuyuni. No portion of territory actually settled or controlled by Spain or Venezuela came within the territory awarded to Britain in the area beginning from Point Playa to the junction of the Acarabisi with the Cuyuni. Judged by ‘the strictest judicial standard, this part of the line is unassailable. In the remainder the arbitrators faced the uncertainty and difficulty that the Dutch had experienced during the seventeenth century and especially in the eighteenth century in determining precisely the limits of their occupation and

control. In the intervening areas, essentially *terra nullius*, between the established occupation and control, principles of equity and compromise were paramount in determining this part of the line.

### **Mallet-Prevost's allegations about the arbitral award**

The award was well received by the leading media in Britain and the U.S. Venezuela did not protest nor offer any objection at the time. On his return from Paris, Mallet-Prevost denounced it as “a line of compromise” and not “a line of right.” The released document represents it as, “a political decision without legal justification” imposed under the coercion of two great empires. On two occasions between December 22 and 27, 1899, Mallet-Prevost called on Olney to tell him “how the thing went and why it went as it did.” He later visited former President Cleveland on February 25, 1901 and the latter wrote to Olney on March 3rd stating that he was surprised to find “how mean and hoggish Britain was” and that he was glad to learn that Venezuela did “pretty well” in the arbitration but added “what a disgusting story he told about the way the award was reached”. By this time Olney had received another version and replied to Cleveland on March 6, 1901: “I see Mallet-Prevost has been talking to you and giving you his account of the way in which the boundary award was made. He told me, I suppose practically the same tale. I found however, in talking with Chief Justice Fuller last fall that he did not fully concur in Mallet-Prevost's view.”

Mallet-Prevost's version of events was already at some variance. It is striking that Venezuelan scholars and researchers, the published official documents, not to forget the Foreign Minister's statement during the reopening of the issue at the UN in September 1962, missed these and other unflattering references.

Apart from Mallet-Prevost, Justice David Brewer was the only other member of the tribunal to comment publicly on the award at the time. He had said that each judge would have made an award “differing in extent and character.” Only at the last moment, he added, was agreement possible and it was only by the greatest conciliation and mutual concession that a compromise was reached. Hence, there were four, or even five, demarcations which would have persuaded de Martens to apply as much pressure as possible to achieve a unanimous decision.

Justice Brewer, who had served under the earlier Commission which President Grover Cleveland had unilaterally appointed to determine a boundary after Britain's refusal to go to arbitration, was, as *The New York Times* observed in its editorial of October 5, 1899, best prepared to justify any stand for Venezuela that he thought should be asserted and recognized. The editorial further stated that the “compromise” arrived at compelled the

conclusion that both Justices Fuller and Brewer were convinced that the claims of Venezuela for a boundary at the Essequibo could not properly be approved.

President Cleveland, in retirement, would describe this claim as “a proposition of such extreme pretension that the Venezuelan representatives knew, or ought to have known, it would not be considered for a moment by Great Britain.” Further, Andrew White, a member of the Cleveland Commission that had abandoned its task in February 1897 after Britain had agreed to arbitration, later observed that the award agreed “substantially” with the line worked out by the Commission after much trouble.

Much rancour prevailed between the contending counsel, Benjamin Harrison and Mallet-Prevost, on the one hand, and Sir Richard Webster, the leading counsel for Britain, on the other. There was also much tension between Justice Russell and Mallet-Prevost; indeed, Russell stood out among all the participants at Paris for his mastery and grasp of the complexities in this contest for territory; he left nothing to chance. It was predictable, therefore, that Harrison and Mallet-Prevost would disapprove of any award that did not acknowledge “historic and legitimate rights”; and described it as “a line of compromise” and not “a line of right.” Harrison’s public protest had ignored his private doubts about the case not being “gilt edged.”

Mallet-Prevost would continue to expand his condemnation, after all the participants at Paris had departed the scene, that the award was the result of a deal between the Russian chairman and the British judges. In a memorandum dictated on February 8, 1944, to a partner in the law firm Curtis, Mallet-Prevost, Colte and Mosle, shortly after being decorated in January 1944 with the Order of the Liberator by the Venezuelan Government, he described the award as the result of a “deal” between Britain and Russia when the British Judges, Russell and Collins, had returned to Britain during a recess and took the Chairman, Professor Fyodor de Martens, with them. He also instructed that the memorandum be published after his death.

The memorandum, published posthumously in the *American Journal of International Law*, Vol. 43, number 3, July 1949, has been the leading argument in the Venezuelan representation about nullity. The award is currently described as a “fraud”, “the unethical, unlawful conduct that make Venezuela undergo a real scam, dispossessing it of ... territory legitimately owned by Venezuela.” Emanating from the highest Venezuelan authority in February 2016, this is the most acerbic denunciation of an international award and scathing impugning of the integrity of eminent jurists of their time. That an international award, exhaustively and unanimously reached and internationally recognized for over a century, can be so fatuously and peremptorily dismissed portends the gravest implications for regional peace and security and particularly for the general security of Guyana.

Severo Mallet-Prevost was born in Zacatecas, Mexico. He has had a long and intensely personal connection with the dispute. He was Secretary of the Cleveland Commission. So profoundly had he impressed the Venezuelan authorities with his passion and energy for the case for Venezuela that he was among the first counsel to be appointed.

His memorandum, with its demonstrated inaccuracies and weaknesses, both of fact and opinion, is at the centre of Venezuela's contention for reopening the boundary issue. However, Venezuela did not do so immediately at the time of its publication in July 1949. The gap in the currently released document and the absence of pertinent commentary on the matter during the years 1949-1962 are markedly evident. Venezuela would take the opportunity of what it considered to be propitious, geopolitical circumstances on the eve of the independence of British Guiana to challenge the arbitral award. Mallet-Prevost, too, had awaited the deaths of all the principal parties and his recognition with the Order of the Liberator. And even at that late stage, he did not confide in his Venezuelan principals to dictate the memorandum and to transmit advance knowledge about his intention. He did not permit any defence of his allegation while alive.

The British Foreign Office, after examining the allegations of Mallet-Prevost and, having inspired a rejoinder by Clifton Child of the Americas department, decided to let the matter rest. Child, rather liberally noting in a department minute, that he did not think that there was anything to stir up trouble. Moreover, at the very time of the debate in the UN in 1962, Dr Francisco Alfonso Ravard, Director of International Policy in the Venezuelan Foreign Ministry, was admitting to the Head of Chancery of the British Embassy in Caracas that Venezuela had shared "the existing doubts" that the Mallet-Prevost memorandum was simply the "belated self-justification of an elderly lawyer."

During the course of his work Mallet-Prevost was not beyond suppressing evidence to support Venezuela. As Secretary of the Cleveland Commission, he received, read and often assessed on his own, all the documentary material, data, maps and other communication that came before the Commission. On two occasions during its work, he was chided by colleague members for suppressing their conclusions and inserting his opinion to give what he considered an advantage to Venezuela. He received a mild rebuke from F.R.Coudert for ignoring the case history of the Schomburgk line as constructed by Sir Clements Markham, President of the Royal Geographical Society, to whom Mallet-Prevost had written for an appraisal of the boundary lines drawn on the various maps. Coudert rebuked him for "deciding the case and leaving nothing for the commission" and disregarding some points of law.

Professor G.L.Burr, upon whose historical expertise Mallet-Prevost relied, was also obliged to question his conclusion on the site of the Dutch Cuyuni post of 1766-69, by abandoning Burr's conclusion that the post was higher up the river than the British had placed it.

## **Venezuela's official recognition of the Arbitral Award**

Demarcating on the ground the line defined by the award was as official an endorsement of the award as can be expected. This took place during the work of a Joint Anglo-Venezuelan Boundary Commission during late 1900 to early 1905. Years later Venezuela would claim that this demarcation exercise was of a "purely technical character". It has now produced in the released document - "Venezuelan Guayana Essequiba: The History of a Plunder" - various arguments that it was pressured by Britain and the U. S, along with a threat of a naval blockade by Britain, Germany and Italy to collect debts owed to their respective citizens, to participate in the demarcation.

The real story is that after the Venezuelan Commissioners had submitted the joint report to their government, a modification of the award was recommended for a section of the line to afford a more practical line that followed the watershed of the Cuyuni and Mazaruni. The modification was not accepted by the Federal Executive, the Venezuelan Congress, nor the Permanent Committee of both houses. The Federal Executive thus ratified only the work of the Commission that accorded with the award, and duly recorded in a report and maps prepared by the Commissioners at Georgetown, dated January 10, 1905. The direct line in that portion of the boundary has remained.

Further official recognition of the award was evident during 1915-1917 when Venezuela tried unsuccessfully to persuade Britain to share the work and expense of cleaning and refurbishing the markers in the coastal sector of the boundary and demarcating more satisfactorily a mountainous sector.

Also, as the result of the continuous influx of Brazilians into the Rupununi since the mid 1890's, in November 1901, Britain and Brazil agreed to submit a section of the boundary to arbitration under the King of Italy, Victor Emmanuel III. Territory bounded by the Cotinga River in the west, the Takutu in the south, and the Ireng in the east and north was awarded to Brazil. In the late 1930's, a joint Anglo-Brazilian commission marked out the boundary and the joint report was signed in Brazil on January 19, 1939. The piece of territory granted to Brazil was awarded to British Guiana in 1899 although it had been claimed by Venezuela. It is significant that Venezuela has not made a corresponding claim against Brazil when it reopened the issue. As a matter of fact, Brazil is the only neighbouring state against whom Venezuela has not advanced a territorial claim.

Again, in July 1932, in the exchange of notes Britain and Venezuela agreed to the precise tri-point location of the boundary with Brazil in Mount Roraima.

This trend of official acceptance of the arbitral award continued undisturbed. During the Second World War, after the dramatic collapse of the Low Countries and France to the Nazis by June 1940, and the threat of invasion of Britain loomed, there was widespread alarm in the Americas over the fate of the European colonies and the possibility of Nazi

occupation of the possessions of the conquered states. The administration of F.D. Roosevelt, as well as the authorities of a number of Latin American states, considered that the possible transfer of these possessions would pose a serious threat to hemispheric security.

Accordingly, a meeting of Foreign Ministers was hastily convened in Havana in July 1940 and adopted a resolution reaffirming adherence to the principle of no-transfer of any European possession in accordance with the recent resolution passed by the First Meeting of Foreign Ministers of the American Republics which met in Panama in October 1939. The meeting further adopted the Act of Havana Concerning the Provisional Administration of European Colonies or Possessions in the Americas. It provided that, when colonies in the western hemisphere were in danger of changing hands, the American states would establish a regime of provisional administration with the understanding that the possessions would ultimately either be made independent or restored to their previous status. In the case of territories or possessions which were considered to be disputed between a European power and an American republic, these were omitted from the provisions of the final Act in deference to the expressed concerns of Argentina over the Falklands, Chile over Antarctica and Guatemala over British Honduras. There was no reference to Venezuela as its interest, at that time, was reflected in its call for plebiscites to determine whether European colonies desired annexation to the “nearest American Republic.” This was understood to refer to the Dutch territories of Aruba, Curacao and Bonaire. Venezuela had not considered, and did not intimate, the existence of any “dispute” with British Guiana at the time. It is recalled that, as recent as July 1932, Venezuela had marked out the tri-junction point in Mount Roraima with British Guiana and Brazil.

Prompted by these security concerns of the European war, agitation among left-wing circles in Latin America increased for the elimination of the European colonies. In July 1941, the first articles appeared in the pro-German journal *Heraldo* questioning the arbitral award of 1899. The British Minister in Caracas, Sir David Ganier, the highest diplomatic representative at the time, immediately protested to Foreign Minister, Esteban Gil Borges. At the time Britain was negotiating with Venezuela over the cession of the isle of Patos, to the north west of Trinidad, to Venezuela. Ganier told Gil Borges that it would be difficult to conclude the negotiation if the cession were to be considered as a precedent in relation to British Guiana. Gil Borges replied that from time to time an odd article would appear in the media about British Guiana, but no notice would be taken since the Venezuelan Government had definitely considered the boundary with British Guiana as final, well defined and a *chose jugée*. Gil Borges added that the writer of the three articles “had obviously never had access to the archives of his Ministry or he would never have written such nonsense.”

Taken together, these public acts of acquiescence in the arbitral award over a long period, and without any duress, certainly preclude contesting the award at a later date. The judgement of the International Court of Justice in the case of Honduras vs Nicaragua, November 18, 1960, underlines this proposition. Venezuela cannot be unaware of this judgement and has been obliged to hatch up reasons to fashion an explanation for its acceptance of the 1899 Award over six decades resorting to, on at least four occasions, announcements about the discovery of new historical documents but giving very little details. Currently, the Foreign Minister has promised to deliver “formal accusations” about the “recognition” of the Geneva Agreement.

### **The Geneva Agreement, 1966**

When the parties met at Geneva in February, 1966, the date for an independent Guyana having been set for May 26, Venezuela launched every offensive to convert its allegations into the existence of a “territorial dispute” or a “frontier dispute”. Venezuela had been asserting this position since November 1965 when the agenda for a meeting was being drawn up for the examination of the experts’ reports on the documents, simultaneous with the convening of another independence conference. That meeting, convened in London during December 9-10, 1965, failed to reach any conclusion on the experts’ reports as Guyana would not entertain any substantive discussion that could lead to any revision of the arbitral award.

The meeting in Geneva, therefore, was a continuation of the London meeting. The arguments were more forcefully advanced with Venezuela essaying larger proposals about the “token” session of sovereignty over an undetermined portion of British Guiana, or joint development of an imprecise area, the establishment of a Mixed Commission “to solve the territorial controversy” or to “formulate plans for collaboration in the development of Essequiban Guyana and British Guiana”. At every stage, the British Guiana delegation, Prime Minister L.F.S. Burnham, Mr Shridath S. (now Sir Shridath) Ramphal and Sir Lionel Luckhoo, rejected every Venezuela proposal so long as the phrase “territorial dispute”, or similar claims, remained. A late effort to insert a reference to “the existence of a frontier dispute” in the preamble also failed. Venezuela understood quite well the obligations to which it subscribed in the Agreement, that is, in Article I, to seek solutions for the practical settlement of the controversy...which has arisen as the result of the Venezuelan contention that the Arbitral Award of 1899 about the frontier...is null and void”. The award was never considered, or entertained, as being “null and void”, as Venezuela now claims; and there was nothing ambiguous about this in the agreement.

That Venezuela appreciated fully the germ of the Agreement is discerned in its contribution to its formulation. It was Venezuela which proposed the inclusion of Article 33 of the UN Charter outlining the various means of peaceful settlement to include

judicial settlement, against which it currently balks. And later, in the closing stages of the meeting, it was Venezuela which proposed that in the event of failure of the means chosen by the Parties to reach a solution, that the UN Secretary General choose another means of settlement until the controversy has been resolved or the means exhausted. Snide doubts about the Secretary General's authority to choose a means of settlement are being heard in some quarters.

Yet Venezuela has retreated from all of its obligations and thwarted all attempts at resolution. Over the fifty years, it has refused consistently to substantiate its contention that the arbitral award is "null and void" and has exploited the phrase "practical settlement" to demand the cession of territory. It has done so during the sessions of the failed Mixed Commission and the twenty-five years of the UN Good Officer process.

### **Referral to ICJ is beyond dispute**

In an unbroken series of *volte-face*, Venezuela has rejected all the legal instruments and processes that were jointly agreed, including the Treaty of Arbitration; the arbitral award and the judges who framed the award; the demarcation of the boundary by the joint Anglo- Venezuelan Commission; and is currently misrepresenting the intent of the Geneva Agreement as recognizing its claim to the Essequibo." Against this Venezuela proposes that the controversy be pursued "through diplomatic channels". How in the context of the diplomatic experience of the last fifty years can bilateral diplomatic negotiations be pursued when Venezuela has crippled every legal and diplomatic undertaking? Or, what purpose can resort to other means of settlement, such as enquiry, mediation or conciliation, have except to foster persistent prevarications and further undermine the general security of Guyana? The only practical remaining means of settlement must be recourse to judicial settlement to adjudge thoroughly the claims about null and void.

Fifty years on, it is as if the Geneva Agreement never existed; the award of 1899 is being distorted as Venezuela calculatedly strives to impose a freeze on the development of Guyana. The Bolivarian Republic should be mindful of the counsel of Simón Bolívar when, in his letter from Jamaica in September 1815, he drew on Montesquieu's aphorism that it was harder to release a nation from servitude than to enslave a free nation. Is an independent and free Guyana an object of modern day serfdom?

True, periods of cordiality and peace have been aggressively interrupted by periods of crises: 1968-1970, immediately after independence and the completion of the Geneva Agreement, with, *inter alia*, the seizure of the Guyanese part of Ankoko; the issuance by President Raúl Leoni of a decree purporting to annex the waters off the Essequibo coast; and fomenting the rebellion in the Rupununi; 1981 -83, as the Protocol of Port of Spain

was about to expire when Venezuela blocked the World Bank's consideration of the Upper Mazaruni hydro-electric project; and, currently, in May 2015, contemporary with the inauguration of President David Granger, the issuance of Presidential Decree No. 1.787, a flagrant violation of international law and the Geneva Agreement, purporting to annex Guyana's maritime space off the Essequibo coast, after the announcement by ExxonMobil of a substantial find of oil and gas in Guyana's maritime zone.

It is timely, therefore, to summon the *Charter of the United Nations*, in all its purposes and principles, to the defence and protection of a small state. It is time to uphold without equivocation the sovereignty and territorial integrity of Guyana; full respect for the sanctity of treaties; refraining from the threat or use of force; and the peaceful settlement of disputes. Immediate recourse to judicial settlement by the International Court of Justice provided for under the Geneva Agreement is the only practical path toward a peaceful and just resolution.

The UN Secretary General is seized of these existing issues and their continuing impact on peace and security. Guyana has full confidence in the office of the UN Secretary General in the exercise of its responsibility in the maintenance of peace and security.

**Ministry of Foreign Affairs**

**March 7, 2016**