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Review paper

# THE GUAYANA ESEQUIBA CONFLICT: KEY HISTORICAL FRAMEWORKS AND LEGAL ISSUES

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*Abstract:* For many centuries South America was a place of great powers clash. After decolonization, many South American states established the *uti possidetis* principle based on which they grounded their frontiers. The case of Guyana Essequibo is an example of breaking this principle and international law. The question of Guayana Esequiba is the subject of a territorial dispute between Great Britain and British Guiana on one side, and Venezuela on another. In this regard, this work is divided into four chapters. In the introduction author deals with historical issues related to this territory, or analysis of the *uti possidetis* principle implementation. In the second chapter are emphasised the British claims to this territory expressed through the introduction of so-called Schomburgk line. The third chapter deals with the legal analysis of The Arbitral Award of Paris. The author points out that it was a crucial political argument rather than a legal one. The fourth chapter analyses the Geneva Agreement, or its non-implementation. At the end, the author emphasises the important role of multinational corporations for (un)solving of this problem.

*Key words:* Guayana Esequiba, Venezuela, Great Britain, The Arbitral Award of Paris, Geneva Agreement

## INTRODUCTION

Territorial disputes in the international law represent a particularly sensitive topic, especially due to the political factors' participation, which usually prevails in

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comparison with legal reasoning. In this regard, Guayana Esequiba is the subject of many controversies. Although this territory is within Co-operative Republic of Guyana (Guyana), the Bolivarian Republic of Venezuela (Venezuela) believes that this territory was temporarily occupied, and in regard to the legal aspect of the issue, it belongs to Venezuela without doubt.

After decolonization, many South American states were faced with problems. One of these was securing the sovereignty and territorial integrity. In this regard, ex-colonies of Spain and Portugal established the *uti possidetis* principle on the basis of which they divided all territories and in the event of any dispute as a valid frontier they would accept this which in that year divided ex-colonial territorial administrative units (vice-kingdoms, captaincies, etc.) (Krivokapić, 2010, p. 1110-1111) This was done in order to prevent European colonial powers to pronounce these territories as *terra nullius*, and then to occupy it[2] (Dujić, 2017, p. 102).

The Guayana Esequiba case is an example of flagrant breaking of this norm and international law. This is one disputable issue between Venezuela on one side, and the British Empire and Guyana on the other dated 200 years in the past.

*Review no 1: Map of Venezuela. Darkened territory represents Guayana Esequiba territory*

Sources for the Review: https://www.caracaschronicles.com/2014/03/31/esequibo-blues

[2] Professor Kreća defines under the term occupation the effective peaceful occupation, or: "taking over territories in order to establish sovereign administration that within relatively short period of time does not belong to anyone". (Kreća, 2012, p. 305)

During 1777, the Spanish Empire, in the part of the colonised territory of Latin America established the Captaincy General of Venezuela through a decree of the King Charles III. This document was brought in order to unite divided provinces regarding politics, economy and army. Thirty-three years later, after a long-lasting war for independence, on April 19th, 1810, the Declaration of Independence of Venezuela was signed that clearly established the territory of the new state. The Independence Act of 1811 established that the newborn Republic of Venezuela fully inherited the territory that had belonged to the former Captaincy General and the river Essequibo was established as the western frontier with the Netherland.

When the Napoleonic wars in Europe ended in 1814, Great Britain pushed the Netherland to renounce its territories in South America. At that moment Spain and Portugal represented the only obstacle for the foreign affairs policies of the USA and Great Britain. Frustration with the Spanish colonial administration and stumbling Spain empowered at that moment the fight for the independence of the colonies and the war with France contributed to the struggle to achieve independence (Paligorić, 2003, p. 52-53). The idea for regional Latin-American integration by Simon Bolivar caused the declaration of Great Colombia (*Gran Colombia*) signing the Constitution in the Congress of Cucuta in 1821 (Bethell, 1985, p. 141). In Article 6 of the above-mentioned Constitution, was stipulated "that territory of Colombia is the same one that had been former Viceroyalty of New Granada and the Captaincy General of Venezuela". Therefore, the Constitution itself confirmed the *uti possidetis* principle as valid with the determination of the frontiers of the new state.

The British settlers, mostly from India, used to cross the river Essequibo continually and secretly. Simon Bolivar protested in 1822 believing that immigrants must respect the law of Great Columbia, i.e. to move back to their manors.

In 1825, the British Empire acknowledged the independence of Great Colombia and Guayana Esequiba as an integral part of that state (Kinsbruner, 2000, p. 105-106). But the Bolivar`s dream of a state with similar structure as the USA did not last too long. Venezuela declared independence in 1830 and the new state defined its territory in Article 5 of the new Constitution, which included all that had been called the Captaincy General of Venezuela (Nader de El-Andari, 2015).

## THE SCHOMBURGK BORDERLINE

Soon after the discovery of the gold mines in this territory, the British territorial claims of Guayana Esequiba were renewed[3] (Donovan, 2004, p. 672). In this regard,

[3] Great Britain during exploitation of the gold in Venezuela went to such extent that established in 1867 own company for digging and processing of the gold (The British Guyana Gold Mining Company). The map of British Guiana illustrates the Schomburgk line as the western frontier and not the border line with Great Columbia that Great Britain accepted in 1824.

Britain consciously decided to violate the *uti possidetis* principle, and they drew a new borderline that crossed the territory of sovereign, independent Venezuela. Without consulting with the government of Venezuela, Britain engaged Prussian botanist Robert Schomburgk to draw the map. Under the patronage of the Royal Geographic Society of London and The Colonial Office during 1835 was drawn so-called the first Schomburgk line by which there was attached 4.929 km$^2$ of Venezuelan territory. Several years later, in 1840 Schomburgk modified the map and drew a second borderline according to which British Guiana tried to take over 141.930 km$^2$ of the territory of Venezuela. This act of Britain was severely protested against by Caracas. Minister Alejo Fortique asked the British government to remove border milestones around the second Schomburgk line. After this protest, the British government removed randomly posted markers acknowledging the territorial sovereignty of Venezuela (2015, p. 17). In fact, Great Britain by Schomburgk lines tried to discover to which extent Caracas would tolerate its attempts, due to the fact that the Schomburgk line in London had never been understood as the final aim of the British Empire, but as the line of blackmail (Rose et al.,1959, p. 304). In 1850, Great Britain and Venezuela signed a treaty by which the British Empire was obliged not to occupy and inhabit the subject territory (Humphreys, 1967, p. 139). However, after secret explorations, Great Britain discovered new significant gold mines in the Jurua River (*Río Yuruía*) basin. Since Venezuela in that moment was in the civil war, they decided to support leading powers, which in return promised this territory to Great Britain[4]. (Humphreys, 1967, p. 139) After realising that Venezuela was significantly destabilized by the civil war, The British Empire made the third Schomburgk line during 1887, taking over 167.830 km$^2$ of the territory of Venezuela. Enabled at that moment to undertake armed intervention against a stronger enemy, Caracas ceased diplomatic relations with Great Britain.

[4] The civil war in Venezuela, known as Federal war or Five-year war (1859-1863) was a civil war between supporters of the conservative and liberal parties. Liberals or federalists wanted federal structure of the state while ruling conservatives, supported by oligarchs, were severe opposition to any reforms, Culmination of unsatisfaction was during Juliano Castro who by coup d'état with support by oligarchs took over the power in the country. This resulted in great demonstrations. Liberals enjoyed great support by the people and even they did not have organized central command and party apparatus, they won (Humphreys, 1967, p. 139).

*Review no 2: Schomburgk line*


Source for Review: Internet, http://venezuelasambassad.com/wp-content/uploads/2016/02/Ginebra-24-espa%C3%B1ol-con-gu%C3%ADas.pdf

1) Border line of "Gran Colombia" and Great Britain (1824);

2) The first Schomburgk line (1835);

3) The second Schomburgk line (1840);

4) The third Schomburgk border line (1887)

The United States (USA) was not satisfied by the British ultimatum. It collided with the Monroe doctrine according to which each intervention of European states on the territory of America represented a violation of the interests of the United States[5]. (Levy, 1995, pp. 213-216) In this regard, the USA by diplomatic act forced Great Britain to accept arbitration for the entire disputed territory.

## THE TREATY OF WASHINGTON AND THE ARBITRAL AWARD OF PARIS

The Arbitration agreement between Great Britain and Venezuela was signed in 1897 in Washington DC. This agreement prescribed the legal range of arbitration and Article 1 stipulated the final definition of the border between the British colony and Venezuela (Treaty of Arbitration between Great Britain and the United States of Venezuela, 1897). Article 2 of this agreement anticipated the membership of the arbitrary court and defined other members, procedures and other conditions.

The Arbitration Court had 5 members. On the side of Great Britain, there were Sir Richard Collins and Lord Russell. Venezuela did not have the right to its own representatives. Its interests (ironically) were defended by Melville Fuller and David Brewer who were nominated by the Supreme Court of USA. The main representatives of Venezuela were Benjamin Harrison, a former American president, and Mallet-Prevost (Internet, 2017).

The key argument of the side of Great Britain in this arbitration was the fact that before the independence of Venezuela, Spain had not undertaken the effective possession of the subject territory, i.e. that territory belonged to the local First Nations. Great Britain also thought that Venezuela had never achieved factual sovereignty over the subject territory (Lalonde, 2015, p. 254). American arbiters did not agree with the fact that the First Nations had any kind of sovereignty since such decision would not be adequate to them. As a compromise, Britain and the USA, pushed by Marten, unanimously agreed that the British side abandoned the thesis of the sovereignty of the First Nations due to neglecting the *uti possidetis* principle and the decision of the British side on the border confirmation as of 1824.

The Paris Arbitration decision was signed on October 3rd, 1899. This was one political and legally unfounded decision brought under the pressure of two empires[6]

[5] Monroe doctrine represents a principle expressed through formula: America to Americans. This represents unilateral act of USA pointing, on one hand to imperial ambitions of USA, and on the other side to their relative weakness and fear in front of the European intervention. Although Monroe doctrine was directed against expansion of European capitalism, it contains a seed of imperialism which later became its full label. (Levy, 1995, pp.213-216)

[6] Arbitration has, of course, its negative sides. First of all, there is increased possibility of abuse such as imposing unjustified solutions to the economically weaker side. In the dispute between Venezuela

(Varady at al., 2017, p. 574). Here was unanimously agreed that the line of separation between British Guiana and Venezuela should be the Schomburgk line with smaller changes[7] (Turner, 2006, p. 260). Although deeply frustrated, but on the other side loaded by the internal demonstrations in the country, Venezuela accepted this outcome of the arbitration.

## THE UNITED NATIONS AND THE GENEVA AGREEMENT

The publication of the Mallet-Prevost writings in "The American Journal of the International Law" in 1949, uncovered the background of the Arbitral Award of Paris[8] (Schoenrich, 1949, pp. 523-530). Venezuela decided to reject the decision of the arbitration commission and claimed the help by the United Nations (UN) in the further proceedings of this dispute.

Venezuela decided to claim such help significantly encouraged by the Permanent Arbitration Court which by its verdict in 1910 established invalidity of the arbitration agreement between the USA and Venezuela of the marine Orinoco Steamship Company case as of 1903 (Radivojević, 2009, p. 158).

Venezuela picked the right moment to inquire this question in the UN. After the World War II, the international community as the main objective proclaimed the maintenance of the peace and security as well as the respect of sovereign equality of all states regardless their size (UN Charter, 1945). Therefore the speech of the Minister of Foreign Affairs of Venezuela, Mr. Falcon Briceno in 1962 in front of the XVIII General Assembly of the UN left a great impression to the international community since the UN insisted at that moment on starting a debate between Venezuela and the British colony.

On February 1966 the Geneva Agreement was signed where the governments of Venezuela and Great Britain recognized the existence of the dispute over sovereignty of the territory of Guayana Esequiba establishing procedures for peaceful solutions (Geneva Agreement, 1966). In the preamble of the treaty is

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and British Empire those abuses are more than obvious (Varady at al., 2017, p. 574). The author of this article believes that The Arbitral Award of Paris violated conditions for validity of arbitration decisions, i.e. the condition of arbitration-ability was not fulfilled since one party (Venezuela) was disabled to present its opinion and statement.

[7] Territory of Guayana Esequiba by this arbitration belonged in the amount of 90% of its territory to the British Guiana. Venezuela was *awarded* by the border line on the Wenamu river gaining small extension to the territory that had not even been included in the arbitration, but *as concession* British Guiana got significant mine wealth. (Turner, 2006, p. 260).

[8] Mallet-Prevost his document of policy-making of the Paris arbitration left to the judge Schoenrich. In his testimony he stated that the same must not be published except by Schoenrich personal decision after his death.

emphasised that to it approached two governments, British and Venezuelan, providing that "it was taken into considerations the following independence of the British Guiana"[9]. In this regard, Article 8 of the Agreement stipulates that after the independence of the British Guiana, besides Britain and Venezuela governments, it will also be the party in the dispute.

The entire dispute was entrusted to the Joint Commission that was made of two representatives of British Guiana and Venezuela. Its task was to find out a solution satisfying for both sides and it was obliged to report every 6 months starting with the first meeting. In the case of failure of the mutually acceptable solution within 4 years after signing the Agreement, the Joined Commission would in its final report provide the governments of Guyana and Venezuela all unsolved issues for consideration. These governments would with no delay select one of the means for the peaceful solution of disputes stipulated by Article 33 of the UN Charter[10]. In the event if these two governments within 3 months after receipt of the final report failed to establish a mutually acceptable solution pursuant to Article 33 of the UN Charter, the decision would be entrusted to a corresponding international body with the consent of both parties in the dispute; or in the case of disagreement to the UN General Secretary (Geneva Agreement, 4(2)). He is liable for the final solution of the dispute.

According to the quoted provisions, it is debatable why Britain became (remained) the third signatory of the Geneva Agreement in the moment when Guyana became independent since Britain was not predicted as the party in any legal instrument in the Arbitration.

However, the most controversial part of the Geneva treaty is Article 5, paragraph 2. Namely, it stipulates that "no acts or activities taking place while this Agreement is in force shall constitute a basis for asserting, supporting or denying a claim to territorial sovereignty in the territories of Venezuela or British Guiana or create any rights of sovereignty in those territories, except in so far as such acts or activities result from any agreement reached by the Mixed Commission and accepted in writing by the Government of Guayana and the Government of

[9] British Guiana became independent on May 26, 1966. Faithfull to the anticolonial tradition and respecting the UN Charter, Venezuela acknowledged among the first the independency of Guyana while not waiving its territorial rights.

[10] Article 33 of the UN Charter says:

1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, Mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangement, or other peaceful means od their own choice.
2. The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means.

Venezuela. No new claim or enlargement of an existing claim to territorial sovereignty in those territories shall be asserted while this Agreement is in force, nor shall any claim whatsoever be asserted otherwise than in the Mixed Commission while that Commission is in being". This was revoked several times (Gomez, 1992, p. 26). Since the Joint Commission was not able to bring a decision that would satisfy both parties, in 1970 negotiations were ceased by the Protocol of Port of Spain (The Protocol of Port of Spain, 1970). Namely, in Article 3, it was provided a delay on the period of 12 years of Article 4 of the Geneva Agreement regarding the way of selection of the dispute solution.

After 12 years, in 1982, Venezuela decided not to ratify the Protocol of Port of Spain and accordingly to activate again the bilateral negotiations embedded in the Geneva Agreement. Next year Venezuela proposed direct negotiations with Guayana while Guayana suggested the solution of the dispute in three ways: 1) solving of the dispute before the UN General Assembly; 2) solving of the dispute before the UN Security Council; and 3) solving of the dispute before the International Court of Justice. Venezuela rejected these proposals considering the disputable issue as the matter of interest of two sovereign and internationally recognized states. Ruined by a deep economic crisis, Venezuela in 1987 in the agreement with Guyana accepted the method of the "Good Offices", which is based on the invention of mutually acceptable solution for both parties in accordance with the Geneva Agreement and started to implement it the next year[11].

It is difficult to draw the conclusion that there is some progress in solving this dispute since this method is still in force[12] (Andrews, 2017, p. 5).

## INSTEAD OF CONCLUSION

All mentioned disagreements lead us to a conclusion that achievement of the permanent solution in this dispute is a challenging and hard job. Powers from this region still treat states in Latin America as subordinated, i.e. as the object of their

[11] Professor Krivokapić defines the method of good offices defines as an instrument of peaceful solution of international disputes. Good offices today in the most often cases means an attempt of the international community, particularly the UN General secretary to bring into the contact parties in dispute that they can in between reach satisfactory solution. This method we differentiate from mediation because mediation third party directly participates in negotiations (provides comments, suggestions, etc.), while with good offices the role of third party is just inducement of the parties to approach negotiations or to convey message between the parties. Since third party continues in practice to help searching peaceful solution and after providing direct contact, there are more and more authors that put this method in a kind of mediation (Krivokapić, 2015, p. 200)

[12] Guyana Chronicle informed that UN General Secretary Mr. Antonio Guterres would entrust this issue to the International Court of Justice unless it would be solved until the end of this year.

policies. In this regard, finding out the permanent and sustainable solution depends primarily on their compromises (Nikolić, 2017, p. 26). However, multinational corporations represent another significantly important factor within the macro plan when *solving* this problem.

Namely, the lack of any control of the frontiers of marine regions by Venezuela is used for many misuses with the exploitation of natural resources. Guyana, contrary to the Geneva treaty in 1993, approved an exploration to the Exxon Mobile in the disputed Stabroek block. It is estimated that this company will on the basis of the oil reserves and natural gas perform the pure profit higher than 40 billion dollars (Fuelfix, 2015). After the Bolivarian socialist revolution, Venezuela is even more against exploitation of its natural resources. However, the culmination of frustration of Caracas is the incident in 2013 when the seismic exploration ship "RV Teknik Perdana" directly controlled by the American oil company Anadarko Petroleum Inc. entered into the epicontinental shelf of Venezuela (Felix, 2015, p. 45). Consequently, for the first time, Nicolás Maduro expressed open threats with the military intervention if the misuse of the Geneva Agreement continues (Kaieteur news, 2013). Therefore, multinational companies made a certain turn in the politics. Since the death of Hugo Chávez, the financing of opposition started in order to break the socialist regime. After the triumph of the ruling power and the breakdown of the coup d'état, the government in Caracas decided to calculate future prices of oil and fuel in Chinese currency and not in dollars as it did before (Martić, 2017, pp. 50-53). This broke, temporarily, the *Monroe doctrine*.

The *uti possidetis* principle and the British acknowledgment of the borderlines in 1825 will stay further on the strongest legal arguments on the side of Caracas in this dispute. The International Court of Justice decision in 1992 in a dispute between El Salvador and Honduras goes in favour of these arguments. The Court at the time predicted to solve this territorial dispute by the *uti possidetis* principle unless both parties explicitly agree to solve this dispute in some other way (ICJ Reports, 1992, p. 514). However, political factors tell us that the solution of this dispute depends on the interests and the real ratio of powers on the terrain. How this will perform we can only wait to see. In long terms, present *status quo* is not convenient to any party in this dispute.

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# SUKOB OKO GVAJANE ESEKIBE: KLJUČNI ISTORIJSKI OKVIRI I PRAVNA PITANJA

*Apstrakt:* Južna Amerika je vekovima bila mesto ukrštanje velikih sila. Nakon oslobađanja od kolonijalne vlasti, brojne južnoameričke države ustanovile su princip *uti possidetis* na osnovu kojeg su utvrdile granice novonastalih država. Slučaj Gvajane Esekibe predstavlja primer kršenja ovog principa i međunarodnog prava.

Pitanje Gvajane Esekibe predmet je teritorijalnog spora između Velike Britanije i Britanske Gvajane s jedne, odnosno Venecuele s druge strane. S tim u vezi rad je podeljen na četiri celine. U uvodu autor govori o istorijskim pitanjima vezanim za ovu teritoriju, odnosno analizom primene principa *uti possidetis*. U drugom delu rada ističu se britanske pretenzije prema ovoj teritoriji iskazane kroz povlačenje tzv. Šomburgove linije. Treći deo rada bavi se pravnom analizom Pariske arbitraže. Tu autor u prvi plan ističe kao presudne političke a ne pravne argumente. Četvrti deo se bavi analizom Ženevskog sporazuma, odnosno njegovom (ne)primenom. Na kraju, autor ističe značaj multinacionalnih kompanija za (ne)rešavanje ovog problema.

*Ključne reči:* Gvajana Esekiba, Venecuela, Velika Britanija, *uti possidetis*, Pariska arbitražna odluka, Ženevski sporazum.

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