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The Guiana Boundary Case (Brazil, Great Britain)

6 June 1904

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**THE GUIANA BOUNDARY
CASE**

PARTIES: Brazil, Great Britain.

COMPROMIS: Treaty and Declaration of 6 November 1901.

ARBITRATOR: Victor-Emmanuel III, King of Italy.

AWARD: 6 June 1904.

Determination of the extent of the territory which may lawfully be claimed by either of the two Parties, and delimitation of the boundary line between the Colony of British Guiana and the United States of Brazil—Application to the case of certain principles of International Law governing the acquisition of the sovereignty over *terra nullius*.

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SYLLABUS ¹

The dispute regarding the boundary between British Guiana and Brazil, which had been dragging on since 1842, and in connection with which the British proposal of Arbitration was accepted by the Brazilian Government on 8 March 1899, was formally submitted to the Arbitration of the King of Italy, by Article I of a Convention, signed at London, on 6 November 1901.

The award, rendered on 6 June 1904, was in favour of Great Britain. The line fixed in the award was said to have been the one proposed by Lord Salisbury in 1891, and rejected by Brazil.

¹ W. Evans Darby, *International Tribunals*, 4th ed., London, 1904, p. 900.

TREATY AND DECLARATION BETWEEN GREAT BRITAIN
AND BRAZIL, FOR REFERRING TO ARBITRATION THE
QUESTION OF THE BOUNDARY BETWEEN BRAZIL AND
BRITISH GUIANA, SIGNED AT LONDON, 6 NOVEMBER 1901¹

His Majesty the King of the United Kingdom of Great Britain and Ireland, Emperor of India, and the President of the United States of Brazil, being desirous to provide for an amicable settlement of the question which has arisen between their respective Governments concerning the boundary between the Colony of British Guiana and the United States of Brazil, have resolved to submit to arbitration the question involved, and, to the end of concluding a Treaty for that purpose, have appointed as their respective Plenipotentiaries:

His Majesty the King of the United Kingdom of Great Britain and Ireland, Emperor of India, the Most Honourable Henry Charles Keith Petty Fitzmaurice, Marquess of Lansdowne, Earl Wycombe, Viscount Caln and Calnstone, and Lord Wycombe, Baron of Chipping Wycombe, Baron Nairne, Earl of Kerry, and Earl of Shelburne, Viscount Clanmaurice and Fitzmaurice, Baron of Kerry, Lixnaw, and Dunkerron, a Peer of the United Kingdom of Great Britain and Ireland, a Member of His Britannic Majesty's Most Honourable Privy Council, Knight of the Most Noble Order of the Garter, etc., His Majesty's Principal Secretary of State for Foreign Affairs;

And the President of the United States of Brazil, Senhor Joaquim Aurelio Nabuco de Araujo, Envoy Extraordinary and Minister Plenipotentiary of Brazil to His Britannic Majesty;

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

Art. I. His Majesty the King of the United Kingdom of Great Britain and Ireland, Emperor of India, and the President of the United States of Brazil, agree to invite His Majesty the King of Italy to decide as Arbitrator the question as to the above-mentioned boundary.

II. The territory in dispute between the Colony of British Guiana and the United States of Brazil shall be taken to be the territory lying between the Takutu and the Cotinga and a line drawn from the source of the Cotinga eastward following the watershed to a point near Mount Ayangcanna, thence in a south-easterly direction, still following the general direction of the watershed, as far as the hill called Annai, thence by the nearest tributary to the Rupununi, up that river to its source, and from that point crossing to the source of the Takutu.

III. The Arbitrator shall be requested to investigate and ascertain the extent of the territory which, whether the whole or a part of the zone described in the preceding Article, may lawfully be claimed by either of the High Contracting

¹ *British and Foreign State Papers*, Vol. XCIV, p. 23. For the Portuguese text, see *ibid.*

Parties, and to determine the boundary line between the Colony of British Guiana and the United States of Brazil.

IV. In deciding the question submitted, the Arbitrator shall ascertain all facts which he deems necessary to a decision of the controversy, and shall be governed by such principles of international law as he shall determine to be applicable to the case.

V. The printed Case of each of the two Parties, accompanied by the documents, the official correspondence, and other evidence on which each relies, shall be delivered in duplicate to the Arbitrator, and to the Government of the other Party, within a period not exceeding twelve months from the date of the exchange of the ratifications of this Treaty.

VI. Within six months after the Case shall have been delivered in the manner provided in the preceding Article, either Party may in like manner deliver in duplicate to the Arbitrator and to the Government of the other Party a Counter-Case and additional documents, correspondence, and evidence in reply to the Case, documents, correspondence, and evidence as presented by the other Party.

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

VII. Within four months after the expiration of the time fixed for the delivery of the Counter-Case on both sides, each Party shall deliver in duplicate to the Arbitrator and to the Government of the other Party a printed Argument showing the points and referring to the evidence upon which each Government relies; and the Arbitrator may, if he desires any further elucidation with regard to any point in the Argument of either Party, require a further written or printed statement or argument upon it; but in such case the other Party shall be entitled to reply by means of a similar written or printed statement or argument.

VIII. The Arbitrator may, for any cause deemed by him sufficient, extend the periods fixed by Articles V, VI, and VII, or any of them, by the allowance of thirty days additional.

IX. The High Contracting Parties agree to request that the decision of the Arbitrator may, if possible, be made within six months of the delivery of the Argument on both sides.

They further agree to request that the decision may be made in writing, dated, and signed, and that it may be in duplicate; one copy to be handed to the Representative of Great Britain for his Government, and the other copy to be handed to the Representative of the United States of Brazil for his Government.

X. The High Contracting Parties engage to accept the decision pronounced by the Arbitrator as a full, perfect, and final settlement of the question referred to him.

XI. The High Contracting Parties agree that the Indians and other persons living in any portion of the disputed territory, which may by the award of the Arbitrator be assigned either to the Colony of British Guiana or to the United

States of Brazil shall, within eighteen months of the date of the award, have the option of removing into the territory of Brazil or of the Colony, as the case may be, themselves, their families, and their movable property, and of freely disposing of their immovable property, and the said High Contracting Parties reciprocally undertake to grant every facility for the exercise of such option.

XII. Each Government shall provide for the expense of preparing and submitting its Case. Any expenses connected with the arbitral proceedings shall be defrayed by the two Parties in equal moieties.

XIII. The present Treaty, when duly ratified, shall come into force immediately after the exchange of ratifications, which shall take place in the city of Rio de Janeiro within four months from this date, or sooner if possible.

IN FAITH WHEREOF WE, the respective Plenipotentiaries, have signed this Treaty and have hereunto affixed our seals.

DONE in duplicate at London, the 6th day of November, 1901.

[L.S.] LANSDOWNE.

[L.S.] Joaquim NABUCO.

DECLARATION

The Plenipotentiaries on signing the foregoing Treaty declare, as part and complement of it and subject to the ratification of the same, that the High Contracting Parties adopt as the frontier between the Colony of British Guiana and the United States of Brazil the watershedline between the Amazon basin and the basins of the Corentyne and the Essequibo from the source of the Corentyne to that of the Rupununi, or of the Takutu, or to a point between them, according to the decision of the Arbitrator.

[L.S.] LANSDOWNE.

[L.S.] Joaquim NABUCO.

AWARD OF HIS MAJESTY THE KING OF ITALY WITH
REGARD TO THE BOUNDARY BETWEEN THE COLONY
OF BRITISH GUIANA AND THE UNITED STATES OF BRAZIL.
GIVEN AT ROME, JUNE 6, 1904^{1 2}

Détermination de l'étendue du territoire qui peut être à bon droit réclamée par quelqu'une des deux Parties, et fixation de la ligne frontière entre la colonie de la Guyane anglaise et des Etats-Unis du Brésil—Application à l'affaire de certains principes du droit international régissant l'acquisition de la souveraineté sur un territoire *nullius*.

We, Victor Emmanuel, by the grace of God and the will of the people, King of Italy, Arbitrator in the matter of deciding the question of the frontier between British Guiana and Brazil.

His Majesty the King of the United Kingdom of Great Britain and Ireland, Emperor of India, and the President of the United States of Brazil, having, in the Treaty concluded between them in London on the 6th November, 1901, decided to invite Us as Arbitrator, to settle the question of the frontier of British Guiana and Brazil, We have accepted the task of defining the limits of the frontier.

The High Contending Parties having undertaken, in the above-mentioned Treaty which was ratified at Rio de Janeiro on the 28th January, 1902, to accept our arbitral decision as a complete, perfect, and definitive settlement of the question referred to Us, We, wishing to act in a manner corresponding to the trust reposed in Us by the said Parties, have examined carefully all the memoranda and all the documents produced to Us, and have weighed and duly considered the reasons on which each of the High Contracting Parties founds its claim.

Having taken due note of everything, We have considered:—

That the discovery of new channels of trade in regions not belonging to any State cannot by itself be held to confer an effective right to the acquisition of the sovereignty of the said regions by the State whose subjects the persons who in their private capacity make the discovery may happen to be;

That to acquire the sovereignty of regions which are not in the dominion of any State, it is indispensable that the occupation be effected in the name of the State which intends to acquire the sovereignty of those regions;

That the occupation cannot be held to be carried out except by effective, uninterrupted, and permanent possession being taken in the name of the State, and that a simple affirmation of rights of sovereignty or a manifest intention to render the occupation effective cannot suffice;

That the effective possession of a part of a region, although it may be held to confer a right to the acquisition of the sovereignty of the whole of a region which constitutes a single organic whole, cannot confer a right to the acquisition

¹ *Parliamentary Paper*, Brazil No. 1 (1904).

² *British and Foreign State Papers*, Vol. XCIX, p. 930.

of the whole of a region which, either owing to its size or to its physical configuration, cannot be deemed to be a single organic whole *de facto* :

That consequently, all things duly considered, it cannot be held that Portugal in the first instance, and Brazil subsequently have effectively taken possession of all the territory in dispute, but that it can only be recognized that they have possession of some places in the same, and have there exercised their sovereign rights.

On the other hand, We have had under our consideration —

That the arbitral Judgment of the 3rd October, 1899,¹ delivered by the Anglo-American Tribunal, which, when deciding the boundary between Great Britain and Venezuela, adjudged to the former the territory which constitutes the subject of the present dispute, cannot be cited against Brazil, which was unaffected by that Judgment;

That, however, the right of the British State as the successor to Holland, to whom the Colony belonged, is based on the exercise of rights of jurisdiction by the Dutch West India Company, which, furnished with sovereign powers by the Dutch Government, performed acts of sovereign authority over certain places in the zone under discussion, regulating the commerce carried on for a long time there by the Dutch, submitting it to discipline, subjecting it to the orders of the Governor of the Colony, and obtaining from the natives a partial recognition of the power of that official;

That like acts of authority and jurisdiction over traders and native tribes were afterwards continued in the name of British sovereignty when Great Britain came into possession of the Colony belonging to the Dutch;

That such effective assertion of rights of sovereign jurisdiction was gradually developed and not contradicted, and, by degrees, became accepted even by the independent native tribes who inhabited these regions, who could not be considered as included in the effective dominion of Portuguese, and later on of Brazilian, sovereignty;

That in virtue of this successive development of jurisdiction and authority the acquisition of sovereignty on the part of Holland first, and Great Britain afterwards, was effected over a certain part of the territory in dispute;

That it does not appear from the documents produced to Us, which have been weighed and duly considered, that there are historical and legal claims on which to found thoroughly determined and well-defined rights of sovereignty in favour of either of the contending Powers over the whole territory in dispute, but only over certain portions of the same;

That not even the limit of the zone of territory over which the right of sovereignty of one or of the other of the two Parties may be held to be established can be fixed with precision;

That it cannot either be decided with certainty whether the right of Brazil or of Great Britain is the stronger.

In this condition of affairs, since it is our duty to fix the line of frontier between the dominions of the two Powers, We have come to the conclusion that, in the present state of the geographical knowledge of the region, it is not possible to divide the contested territory into two parts equal as regards extent and value, but that it is necessary that it should be divided in accordance with the lines traced by nature, and that the preference should be given to a frontier which, while clearly defined throughout its whole course, the better lends itself to a fair decision of the disputed territory.

For these reasons, We decide:—

¹ *Ibid.*, Vol. XCII, p. 160.

The frontier between British Guiana and Brazil is fixed by the line leaving Mount Yakontipu; it follows eastwards the watershed as far as the source of the Ireng (Mahu); it follows the downward course of that river as far as its confluence with the Takutu; it follows the upward course of the Takutu as far as its source, where it joins again the line of frontier determined in the Declaration annexed to the Treaty of Arbitration concluded in London by the High Contending Parties on the 6th November, 1901.

In virtue of this declaration every part of the zone in dispute which is to the east of the line of frontier shall belong to Great Britain, and every part which is to the west shall belong to Brazil.

The frontier along the Ireng (Mahu) and Takutu is fixed at the "thalweg" and the said rivers shall be open to the free navigation of both conterminous States.

Wherever the watercourse may be divided into more than one branch, the frontier shall follow the "thalweg" of the most eastern branch.

GIVEN at Rome on the 6th June, 1904.

VICTOR EMMANUEL.
