United Nations
GENERAL ASSEMBLY
SEVENTEENTH SESSION
Official Records

SPECIAL POLITICAL COMMITTEE, 349th MEETING

Tuesday, 13 November 1962, at 3.20 p.m.

NEW YORK

CONTENTS

Chairman: Mr. Leopoldo BENITES (Ecuador).

AGENDA ITEM 88

Question of boundaries between Venezuela and the territory of British Guiana (A/5168 and Add.1) (continued)

1. Mr. CROWE (United Kingdom) said that his Government's views on the subject had not changed since they had been expressed at the 1302nd meeting of the Fourth Committee in February 1962. It still considered that the Western boundary of British Guiana with Venezuela had been finally settled by the award which the Arbitral Tribunal had announced on 3 October 1899.1/ The frontier had been demarcated in accordance with that award by a boundary commission appointed by the British and Venezuelan Governments, and the work of the commission had been recorded in an agreement signed by the British and Venezuelan boundary commissioners on 10 January 1905. The Minister for External Relations of Venezuela himself had recognized at the 348th meeting that the arbitration tribunal had been set up as a result of the Pauncefote-Andrade Treaty concluded between the two Governments on 2 February 1897.2/ The composition and rules of procedure of the Tribunal had been laid down by the Treaty and, most important of all, under article XIII of that instrument the two Governments had pledged themselves to accept the tribunal's award as "a full, perfect and final settlement". His Government therefore could not agree that there could be any dispute over the question settled by the award.

2. The allegations made by the Minister for External Relations of Venezuela did not afford any grounds for re-opening the matter yet he felt obliged to comment on them without, however, entering too much into detail. The events that had led up to the frontier settlement had been fully taken into account by the arbitration tribunal when its award had been made; nevertheless, he would describe the salient facts to give the Committee the full picture. The present territory of British Guiana represented approximately the area occupied by the Dutch settlements of Berbice, Demerara and Essequibo, set up in the seventeenth century. Those settlements, formally recognized by Spain in the Treaty of Munster in 1648, had been occupied by Great Britain in 1781 and again in 1796, and were formally recognized as British territory by the Treaty of London signed with the United Netherlands in 1814. The Western boundary of that territory had never been defined by treaty, but had been demarcated by the British in accordance with the limits claimed and actually held by the Dutch settlers. That boundary had remained unchallenged for twenty-six years, either by the Spaniards or by their successors, the United States of Colombia, with which Venezuela had merged in 1819. In 1840 Venezuela had urged the British Government to enter into a treaty of limits, and that request had been followed by claims that the river Essequibo was the boundary of Venezuela, although there had been no Spanish settlers in most of the disputed area for over 100 years.

3. Mr. Schomburgk, the eminent German explorer to whose work the Venezuelan Foreign Minister had referred, had established between 1841 and 1843 a boundary line which the award had subsequently followed closely. In determining that line, Mr. Schomburgk had attached great importance to ascertaining the precise limits of the former Dutch possessions from which all traces of Spanish influence was absent and also to fixing a boundary which would be acceptable to Venezuela; he had therefore suggested that Great Britain should surrender its claim to a more extended frontier inland in return for formal recognition of its right to Point Barima at the Great Mouth of the Orinoco. From 1840 onwards, all efforts at compromise and agreement had failed, despite a number of concessions offered by the British Government; in 1895 at the request of Venezuela, the United States Government had offered to arbitrate, and negotiations had culminated in the conclusion of the Pauncefote-Andrade Treaty, which provided that the boundary question should be submitted to arbitration. The boundary commission, appointed under the arbitral award had recorded the results of its work in an agreement signed by the British and Venezuelan boundary commissioners in 1905; the award did not give effect to the greater part of the Venezuelan claim, but neither did it recognize any part of the British claim in the interior. The award had however, given Venezuela a valuable section, including Point Barima and the Great Mouth of the Orinoco and about 3,000 square miles in the interior which the Venezuelan Foreign Minister admitted had great strategic importance. The long-standing dispute had thus been finally settled to the satisfaction of the parties and in accordance with the Treaty of 1897.

4. It was thus clear that the Treaty of 1897 had been freely entered into by both sides and that the parties had undertaken to accept all the provisions of the arbitration agreement in good faith. But the Venezuelan Foreign Minister had inferred in his statement that Venezuela had been a victim of circumstance and as a small country, had been forced to bow to a more powerful opponent and so was not a free agent; yet he had stressed on several occasions the strong sup-

1/ See British and Foreign State Papers, 1899-1900 (London, His Majesty's Stationery Office, 1903), p. 160.

2/ Ibid., 1896-1897 (London, His Majesty's Stationery Office, 1901), p. 57.

port Venezuela had received from the United States, which had been on the verge of going to war with Great Britain, and he had even said that America had emerged as a great Power as the result of the dispute. With that active backing, therefore, Venezuela was at no disadvantage, or subject to "force majeure".

5. Secondly, criticism had been expressed that there had been no Venezuelan judges on the arbitration tribunal, which had been composed of five judges, two British, two North American and a Russian professor as Chairman. Under article II of the Treaty, however, two members of the tribunal were to be appointed on the part of Great Britain and two on the part of Venezuela, one of the latter to be nominated by the Justices of the Supreme Court of the United States, which was supporting the Venezuelan case. The second judge for Venezuela was to be appointed by the President of Venezuela, and he had chosen no less a person than the Chief Justice of the United States. There was no indication that that choice had been anything other than free or that there had been any discrimination whatsoever against Venezuela.

6. It had also been implied by some speakers that the fact that the Chairman of the tribunal, a Russian professor of international law, had been a European had militated against Venezuela's interests. But the Chairman had been chosen by mutual agreement between the two sides, and there was nothing on record to indicate that his appointment was unsatisfactory to either of them.

7. Thirdly, criticism had been levelled against the provision in one of the rules laid down for the arbitrators in article IV of the Treaty that "(a) Adverse holding or prescription during a period of fifty years shall make a good title", in an attempt to show that the Venezuelan claims had been prejudiced by the Treaty itself before they ever got as far as the arbitration tribunal. That was not an unusual provision for that type of treaty, and the Venezuelan Government had not objected to the clause at the time of the signing of the Treaty.

8. Further, it was sometimes argued that the award had not recognized Venezuela's right over territory which had not been held by the British for fifty years. But the Treaty expressly authorised the arbitrators to recognize claims resting on other valid grounds. Thus the Tribunal had not ignored Venezuela's rights to those territories, but rather must have considered that Venezuela had no rights to them.

9. Fourthly, some representatives, including the Venezuelan Minister for External Relations, had suggested that the Tribunal had reached its decisions without reference to the rules of international law and other rules that it should have applied under the Treaty. That serious allegation was baseless, and the most effective denial of its validity rested on the actual verbatim records of the fifty-four meetings of the Tribunal. A careful examination of those documents showed that the Tribunal had been fully conscious of its duties and obligations under the rules laid down in the Treaty and that the final award was clearly justified both by the evidence weighed by the Tribunal and by the rules of international law which had been shown to be relevant during the proceedings.

10. The Foreign Minister for External Relations of Venezuela had insisted that the Government and people of his country had been greatly shocked by the contents of the award. But the award had been hailed as "a victory for Venezuela" both in that country and elsewhere, and President McKinley had said it appeared to be equally satisfactory to both parties. If the Government of Venezuela had been so shocked, it would surely not have proceeded without demur to set up a boundary commission in accordance with that award or six years later have accepted the commission's report on the completion of its work. And yet no protest had been made at the time.

11. For some forty years, very little had been heard of the award, and it seemed to have been accepted by all concerned as "chose jugée". Then a memorandum [3/] written in 1944 by Mr. Mallet-Prevost, an American who had been one of the junior counsel conducting the Venezuelan case, had been published in 1949 after his death. It was on that memorandum that Venezuela rested its case for re-opening the whole question. Mr. Mallet-Prevost had rightly been described as a man of the highest integrity but the question at issue was whether he had established beyond reasonable doubt that there were good and sufficient reasons to reopen the boundary dispute and whether he had successfully adduced any real evidence for his main contention, that the arbitral award had been made as a result of a political deal between Great Britain and Russia. It was on that point that the argument for re-opening the case rested. The mass of documentation on the subject had been carefully examined by another American lawyer, Mr. Clifton J. Child, who had concluded that there was not one single document which by the widest stretch of the imagination could be considered to indicate a deal between Great Britain and Russia of the sort suspected by Mr. Mallet-Prevost. On historical grounds, also, it was unlikely that any such deal had been made, since Anglo-Russian relations had been strained in 1899. Moreover, no one had ever suggested what the object of the suspected deal might have been.

12. Both Mr. Mallet-Prevost and General Harrison had undoubtedly wished to see the tribunal recognize the whole of Venezuela's claim, and the decision had been a bitter blow which had caused Mr. Mallet-Prevost to nurse grievances against the Tribunal for the rest of his life. But a curious feature of his attitude had been that, at the time of the award, he and General Harrison had attacked it in an interview with the press as being a diplomatic compromise, and yet in the same interview they had hailed it as "a victory for Venezuela". That victory had been applauded widely both at the time and since; incidentally, the Greater Soviet Encyclopaedia of 1928 contained an article in which the award was said to be "substantially in favour of Venezuela".

13. Mr. Mallet-Prevost had contended that the award had been a compromise and not a truly judicial decision. It seemed inevitable that any unanimous decision of an arbitral tribunal was likely to involve some reconciliation of conflicting views but the resulting compromise did not affect the validity of the award or deprive it of its judicial character. The tribunal's task under article III of the Treaty had been to determine the boundary line, and it had clearly been preferable for its decision to be unanimous; now, having heard evidence based on historical documents ranging over some 300 years the members could hardly have been expected to reach conclusions which were identical in every respect. Mr. Justice Brewer, a member

[3/] The American Journal of International Law, 1949, Vol. 43, Lancaster, Pa., pp. 528-530.

of the Tribunal appointed on the part of Venezuela, had written that until the last moment he had believed a decision would be impossible and that it had only been by the greatest conciliation and mutual concession that a compromise had been reached. Nevertheless, there was nothing to suggest that that final adjustment of views was contrary to international law or to the rules of the tribunal. Besides Mr. Justice Brewer had expressed great admiration for the impartial and strict sense of justice shown by the British arbitrators; that indicated that at least one of the judges appointed on the part of Venezuela had no complaints about the legality of the award. Finally, even the Venezuelan Government seemed to have had doubts concerning the validity of Mr. Mallet-Prevost's arguments: although in 1951 the Venezuelan Foreign Minister had denounced the award in a press interview, the Venezuelan Government had waited no less than thirteen years before making any formal approach to the British Government with a request for new negotiations.

14. With regard to the third party involved, the Government of British Guiana, for whose external relations his Government was responsible, it was regrettable that the Venezuelan Government had chosen the closing period of British Guiana's existing status to raise the frontier dispute. Its progress towards independence would not be affected in any way by the current debate, but it was to be hoped that the matter could be disposed of once and for all, so that the territory could enter upon its independence without any doubts concerning its frontiers. It would be easy for the British Government to leave the matter to be settled between an independent British Guiana and Venezuela, but that was a wrong course, for the United Kindgom did not accept that there was any frontier dispute to discuss and there was no reason why the Government of British Guiana should be faced by such a contention.

15. Summarizing the essential points of the arguments he had adduced, he urged the Committee to consider most seriously whether, after fifty-seven years from the date on which a frontier settlement had come into effect, it should be allowed to be re-opened, particularly since there was no new evidence which had to be taken into account. All would agree with his Government's view that respect for international agreements freely concluded was not only essential to world stability, but axiomatic if the rule of international law was to survive. If a departure from those principles were allowed the United Nations would soon be inundated with claims from all parts of the world for the re-opening of questions which had been regarded as settled for generations; and by agreeing that such questions should be re-opened, the very means of settling disputes would be destroyed.

16. It was highly regrettable that Venezuela, a country with which the United Kingdom had friendly ties, should have brought such a claim to the United Nations, but there was no need for that unfortunate disagreement to affect the relations between the two countries in any way. Moreover, his Government was convinced that the disagreement was due to a misunderstanding which could be put right. He was authorized to state that his Government, with the full concurrence of the Government of British Guiana, was prepared to discuss with the Venezuelan Government, through diplomatic channels, arrangements for a tripartite examination of the voluminous documentary material relevant to the question. That offer was in no sense a proposal to engage in substantive talks about the revision of the frontier, for which there was no justification; it merely reflected the British Government's anxiety to dispel any doubts that the Venezuelan Government might have about the validity of the arbitral award and to remove once and for all the misunderstanding that had arisen.

17. Mr. HOOD (Australia) requested that the statement just made by the representative of the United Kingdom should be circulated in full as an official documents.

It was so decided [4].

18. Mr. TABIBI (Afghanistan) had listened with great interest to the statements of the Venezuelan Minister for External Relations (348th meeting) and the representative of the United Kingdom on the question of boundaries between Venezuela and the territory of British Guiana. Without going into the substance of the issue, he would like to present a few brief comments.

19. First, it was essential that the dispute should not be allowed to hamper the speedy independence of British Guiana. It was doubly unfortunate that the negotiations for fixing an early date for that country's independence should have been unsuccessful, for its presence in the United Nations was essential to a proper consideration of the dispute. The legitimate interests of the people of British Guiana were one of the paramount factors in the whole situation.

20. Secondly, the frontier dispute between Venezuela and British Guiana was yet another legacy of the colonial era, which had created discord and animosity among many neighbouring nations that might otherwise have been living in peace and amity. Unless a just and honourable solution was found to the dispute, it would remain a hindrance to the progress of those two Latin American countries. The case had a more important aspect, however, than the frontier dispute itself. The Venezuelan delegation had sought to show how in the past the colonial Powers had used the principles of international law for their own purposes as instruments for domination and subjugation. The new nations of Africa, Asia and Latin America, with the experience of their own sufferings should work together to improve the principles of international law. Many nations had been forced to accept treaties under duress and to submit to unequal agreements and arbitrations designed to serve the interests of the colonial Powers.

21. The Minister for External Relations of Venezuela had made it clear that Venezuela disagreed with the award of the tribunal set up under the Treaty of 1897 rather than with the Treaty itself. The Venezuelan case was that the arbitrators had not acted in conformity with the rules to which both parties had agreed and that in its award the tribunal had been moved by political considerations. It would appear that those contentions were at least partially justified. For example, the award contained no statement of reasons, and the posthumously published memorandum of Mr. Mallet-Prevost cast a certain doubt on the good faith of the arbitrators. Members of the United Nations should henceforth take as a guide in such cases the Model Rules on Arbitral Procedure considered by the General Assembly at its thirteenth session and cir-

[4] The complete text of the statement made by the representative of the United Kingdom was circulated as document A/SPC/72.

culated to Member Governments for their use.5/ The preamble of the Model Rules declared that good faith and the equality of the parties in all proceedings before the arbitral tribunal were the cornerstones of arbitration. Under international law, the validity of an award could be challenged where there was corruption on the part of a member of an arbitral tribunal or a failure to state the reasons for the award, or a serious departure from a fundamental rule of procedure. Article 35 of the Model Rules could usefully be applied in the case in point. Venezuela might consider using the machinery of the International Court of Justice as one means of settling the dispute.

22. In conclusion, he expressed the hope that a just solution would be found by peaceful means so that stable and friendly relations could be established between Venezuela and the new nation of British Guiana whose speedy independence was eagerly awaited by all. He noted with gratification the offer of the United Kingdom to arrange for a tripartite Venezuela-British Guiana-United Kingdom examination of the relevant documentary material.

23. Mr. GORE (United States of America) said that the general question of the boundaries between Venezuela and British Guiana had a long history, in which the United States was to a certain extent involved. The uncertainty over the boundary had become an official dispute in 1841 when the Venezuelan Minister to the United Kingdom had proposed joint action by the two Governments to determine the boundary. The United Kingdom had not rejected the idea in principle but many delays had ensued which in turn had led to prolonged controversy. In 1876, Venezuela had proposed that negotiations should be renewed and had informed the Government of the United States of its proposal. There had been little progress over the next few years, but in 1881 Venezuela had suggested that the question should be submitted to arbitration. In that same year, the United States had told the Venezuelan Government of its opposition to attempted encroachment of foreign Powers upon the territory of any of the Republics of the American continent. In 1882, the United States had said that if Venezuela so desired, it would propose to Great Britain that the boundary question should be submitted to the arbitrament of a third Power. Venezuela had again pressed for arbitration in exchanges of diplomatic notes in 1885 and 1886. When they brought no constructive response, Venezuela had broken off diplomatic relations with the United Kingdom in 1887. In that year and again in 1890 the United States had offered its good offices to promote an amicable settlement of the controversy. President Grover Cleveland had announced in his annual message to Congress in 1894 that he would renew efforts to restore diplomatic relations between the Parties and to induce them to refer the dispute to arbitration. The Arbitration Treaty which was ultimately concluded between the United Kingdom and Venezuela in 1897 was signed and ratified in Washington.

24. That Treaty and the arbitral award made in 1899 under the Treaty had been commented upon in detail by the Minister of External Relations of Venezuela and by the representative of the United Kingdom. The United States delegation did not intend to comment upon the award or upon the substance of any of the allegations that had been made. Both Venezuela and the United Kingdom were good friends of the United States and it earnestly hoped that a way would be found to resolve the disagreement amicably. The United States delegation had noted with satisfaction the United Kingdom's offer to go over all the evidence and documentation in the case with representatives of Venezuela and British Guiana. The United States Government had complete faith in the devotion of both parties to peaceful means for settling their differences, according to the terms and the spirit of the Charter.

25. The action of Venezuela in raising the matter before the United Nations (A/5168 and Add.1) in an open and conciliatory fashion was in accord not only with the Charter but with Venezuela's own Constitution, in which it undertook to settle by peaceful means any differences which it might have with other countries. Venezuela was well known as a champion of self-determination for dependent territories and the Minister's of External Relations statement (348th meeting) that Venezuela had no desire to affect adversely in any way the achievement of independence by British Guiana nor the legitimate interests of its people was in keeping with that attitude. The United States also looked forward with anticipation to the day when an independent British Guiana with a freely elected non-totalitarian Government representing all the races there could be welcomed to the United Nations.

26. In conclusion, he expressed his delegation's deep appreciation of the co-operative and statesmanlike attitude shown by the representatives of both Venezuela and the United Kingdom. The restraint and responsibility displayed by both Governments in their handling of that delicate question should be welcomed by all.

The meeting rose at 4.35 p.m.

5/ Official Records of the General Assembly, Thirteenth Session, Supplement No. 9, chap. II, sect. II.

Litho in U.N. 77111—October 1963—2,100