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**962. LETTER OF APPOINTMENT OF JUSTICE DAVID J. BREWER TO THE UNITED STATES VENEZUELAN BORDER COMMISSION
[4 January 1896]**

*Department of State,
Washington, January 4, 1896.*

To David J. Brewer:

You are hereby appointed member of the commission to investigate and report upon the true location of the divisional line between the territory of the Republic of Venezuela and that of British Guiana.

It is expected that the commission will avail itself of all possible sources of information, will apply to the matter all pertinent rules of municipal and international law, and will make a report to the President of their conclusions, together with the evidence and documents submitted to and considered by them, with as little delay as is compatible with the thorough and impartial consideration of the subject to be dealt with.

In testimony whereof, I have caused these letters to be patent and the seal of the United States to be hereunto affixed.

Given under my hand at the City of Washington on the 4th day of January, in the year of our Lord one thousand eight hundred and ninety-six and of the independence of the United States of America the one hundred and twentieth.

GROVER CLEVELAND.
By the President.

RICHARD OLNEY, Secretary of State.

**963. JUSTICE DAVID BREWER, PRESIDENT OF THE UNITED STATES VENEZUELAN BORDER COMMISSION, TO AMERICAN SECRETARY OF STATE, MR. RICHARD OLNEY
[15 January 1896]**

Dear Sir:

I have the honor to state that the Commission appointed by the President of the United States "to investigate and report upon the true divisional line between the Republic of Venezuela and

British Guiana," has organized by the election of the Honorable David J. Brewer as its president, and is entering upon the immediate discharge of its duties.

In so doing it has, after careful consideration, concluded to address you on the question of securing, so far as possible, the friendly cooperation and aid of the two nations which are directly interested in the now pending boundary differences.

It must have suggested itself to you, as it no doubt has to the President, that this Commission, thus authorized to ascertain and report the boundary line between two foreign nations, bears only a remote resemblance to those tribunals of an international character of which we have had several examples in the past. They were constituted by or with the consent of the disputants themselves, and were authorized by the parties immediately concerned to pronounce a final judgment. The questions at issue were presented by the advocates of the various interests, upon whose diligence and skill the tribunal might safely rely for all data and the arguments essential to the formation of an intelligent judgment. Their functions were therefore confined to the exercise of judicial powers, and they might fairly expect to reach a result satisfactory to their own consciences, while it commanded the respect of those whose interests were directly involved.

The present Commission, neither by the mode of its appointment nor by the nature of its duties, may be said to belong to tribunals of this character. Its duty will be discharged if it shall diligently and fairly seek to inform the Executive of certain facts touching a large extent of territory in which the United States has no direct interest. Whatever may be the conclusion reached, no territorial aggrandizement nor material gain in any form can accrue to the United States. The sole concern of our Government is the peaceful solution of a controversy between two friendly powers – the just and honorable settlement of the title to disputed territory, and the protection of the United States against any fresh acquisitions in our hemisphere on the part of any European State.

It has seemed proper to the Commission, under these circumstances, to suggest to you the expediency of calling the attention of the Governments of Great Britain and Venezuela to the appointment of the Commission, and explaining both its nature and object. It may be that they would see a way, entirely consistent with their own sense of international propriety, to give the Commission the aid that it is no doubt in their power to furnish in the way of documentary proof, historical narrative, unpublished archives, or the like. It is scarcely necessary to say that if either should deem it appropriate to designate an agent or attorney, whose duty it would be to see that no such proofs were omitted or overlooked, the Commission would be grateful for such evidence of good will and for the valuable results which would be likely to follow therefrom.

Any act of either Government in the direction here suggested might be accompanied by an express reservation as to her claims, and should not be deemed to be an abandonment, or impairment of any position heretofore expressed. In other words, and in lawyers' phrase, each might be willing to act the part of an *amicus curiae* and to throw light upon difficult and complex questions of fact, which should be examined as carefully as the magnitude of the subject demands. The purposes of the pending investigation are certainly hostile to none, nor can it be of advantage to any that the machinery devised by the Government of the United States to secure the desired information should fail of its purpose.

I have the honor to remain, your most obedient servant,

DAVID J. BREWER,

President

964. MR. RICHARD OLNEY, AMERICAN SECRETARY OF STATE, TO MR. THOMAS BAYARD, AMERICAN AMBASSADOR TO GREAT BRITAIN
[18 January 1896]

[No. 956]

Department of State,
Washington, January 18, 1896.

Excellency,

The Commission appointed by the President of the United States "to investigate and report upon the true divisional line between the Republic of Venezuela and British Guiana" has organized by the election of the Hon. David J. Brewer, justice of the Supreme Court of the United States, as its president, and is entering upon the immediate discharge of its duties.

Since its organization I have received a letter from the president of the Commission in which, while pointing out that it is in no view an arbitral tribunal, he nevertheless suggests that Great Britain and Venezuela, the parties immediately interested in the subject matter of the Commission's inquiry, may both, or either of them, desire to see fit to aid the labors of the Commission and facilitate their reaching a correct conclusion by giving it the benefit of such documentary proof, historical, narrative, unpublished archives, or other evidence as wither may possess or control.

Justice Brewer adds:

It is scarcely necessary to say that if either should deem it proper to designate an agent or attorney whose duty it would be to see that no such proofs were omitted or overlooked, the Commission would be grateful for such evidence of good will, and for the valuable results which would be likely to follow therefrom.

Either party responding affirmatively to the Commissioner's invitation would do so of course merely as *amicus curiae*. As the president of the Commission declares in the concluding sentence of his communication:

The purposes of the pending investigation are certainly hostile to none, nor can it be of advantage to any that the machinery devised by the Government of the United States to secure the desired information should fail of its purpose.

Requesting you to bring the matter to the attention of the British foreign office at your earliest convenience,

I am, etc.,

(Signed) RICHARD OLNEY

965. MR. THOMAS BAYARD, AMERICAN AMBASSADOR TO GREAT BRITAIN, TO MR. RICHARD OLNEY, AMERICAN SECRETARY OF STATE

(Telegram)

London, February 9, 1896.

Lord Salisbury readily places at the disposal of the Government of the United States any information in the hands of Her Majesty's Government relating to Venezuela boundary. Engaged in collecting documents for presentation to Parliament. He will have great pleasure in forwarding advance copies as soon as completed.

BAYARD

966. EXTRACT FROM THE SPEECH OF HER MAJESTY QUEEN VICTORIA TO THE BRITISH PARLIAMENT

[11 February 1896]

The Government of the United States have expressed a wish to co-operate in terminating the differences which have existed for many years between my Government and the Republic of Venezuela upon the boundary of that country and my colony of British Guiana. I have expressed my sympathy with the desire to come to an equitable arrangement, and I trust that further negotiations will lead to a satisfactory settlement. . .

967. VENEZUELAN MINISTER OF FOREIGN AFFAIRS, SEÑOR PEDRO EZEQUIEL ROJAS, TO AMERICAN SECRETARY OF STATE, MR. RICHARD OLNEY

[22 February 1896]

Toward the end of December last this department began to perfect a plan to facilitate in favor of those who may take part in the settlement of the boundary q

uestion the examination of the innumerable documents, works, and maps collected by Venezuela with the object of re-enforcing her rights in the controversy. That plan eventually resolved itself into the appointment of a Commission of eminent men, composed of four members having a vote, and their operations with respect to the aforesaid maps, documents, and works are clearly defined in the order published in No. 6606 of the *Official Gazette*, where likewise appears the appointment of the persons chosen for that office.

By this you will see that the labors of the classifying commission embrace making a synthetical report concerning the spirit or nature of the documents, with the aid of which these, together with the books and maps, may be examined much more rapidly and carefully, and therefore to greater advantage. The Government has deemed this more consonant with the necessities of the case than would be the dispatch of the documents themselves forthwith without any key thereto or summary or index to facilitate their examination. The time which the Venezuelan Commission will consume in this work will be made up later on in clearness and in method, as well as in

rapidity and order, in so far as concerns the examination of the important collection. . .

968. DISPATCH FROM LORD SALISBURY, BRITISH PRIME MINISTER AND SECRETARY OF STATE FOR FOREIGN AFFAIRS, TO SIR JULIAN PAUNCEFOTE, BRITISH AMBASSADOR IN WASHINGTON, CONTAINING SUGGESTIONS IN NEGOTIATING THE PROPOSED ARBITRATION TREATY

[5 March 1896]

Foreign Office, London, March 5, 1896.

(Extract)

1. Her Britannic Majesty and the President of the United States shall each appoint two or more permanent judicial officers for the purpose of this treaty, and on the appearance of any difference between the two powers, which, in the judgment of either of them, cannot be settled by negotiation, each of them shall designate one of the said officers as arbitrators, and the two arbitrators shall hear and determine any matter referred to them in accordance with this treaty.

2. Before entering on such arbitration, the arbitrators shall select an umpire, by whom any question upon which they disagree, whether interlocutory or final, shall be decided. The decision of such umpire upon any interlocutory question shall be binding upon the arbitrators. The determination of the arbitrators, or, if they disagree, the decision of the umpire, shall be the award upon the matters referred.

3. Complaints made by the nationals of one power against the officers of the other; and pecuniary claims or groups of claims, amounting to not more than £100,000, made on either power by the nationals of the other, whether based on an alleged right by treaty or agreement or otherwise; all claims for damages or indemnity under the said amount; all questions affecting diplomatic or consular privileges; all alleged rights of fishery, access, navigation, or commercial privilege, and all questions referred by special agreement between the two parties, shall be referred to arbitration in accordance with this treaty, and the award thereon shall be final.

4. Any difference in respect to a question or fact or of international law, involving the territory, territorial rights, sovereignty, or jurisdiction of either power, or any pecuniary claim or group of claims of any kind, involving a sum larger than £100,000, shall be referred to arbitration under this treaty. But, if in any such case, within three months after the award has been reported, either power protests that such award is erroneous in respect to some issue of fact, or some issue a international law, the award shall be reviewed by a court composed of three of the Judges of the Supreme Court of Great Britain and three of the Judges of the Supreme Court of the United States; and if the said court shall determine, after hearing the case, by a majority of not less than five to one, that the said Issue has been rightly determined, the award shall stand and be final, but in default of such determination, it shall not be valid. If no protest is entered by either power against the award within the time limited, it shall be final.

5. Any difference, which, in the judgment of either power, materially affects its honor or the integrity or its territory shall not be referred to arbitration under this treaty, except by special agreement.

6. Any difference whatever, by agreement between the two powers, may be referred for decision by arbitration, as herein provided, with the stipulation that, unless accepted by both powers, the decision shall not be valid.

The time and place of their meeting and all arrangements for the hearing and all questions of procedure shall be decided by the arbitrators or by the umpire if need be.

969. STATEMENT BY MR. SEVERO MALLET-PREVOST, SECRETARY OF THE UNITED STATES VENEZUELAN BORDER COMMISSION

[21 March 1896]

During the last week reports have been industriously circulated to the effect that the commission has reached a decision with reference to the boundary question favorable to Venezuela. This having been denied, the report has been circulated in another form, and it is now asserted that, while the commission, as a body, has reached no such conclusion, the Commissioners individually entertain the views referred to.

It must be evident to all that so long as anything remains to be examined and considered the Commissioners are not in a position to form an opinion respecting the merits of the controversy. As a matter of tact, neither the commission nor the individual Commissioners are as yet in possession of all the evidence. The papers presented by Venezuela are but a part of what has been promised.

The Blue Book of the British Government, while remarkably full and detailed, does not include all the documents which may be adduced in support of its contentions. The commission has not and will not limit itself to the consideration of what those two Governments may present. It has been engaged upon independent lines of inquiry, and will continue to follow those lines until all its sources of information shall have been exhausted.

Then, and not until then, will it be in a position to form any opinion or to make any report.

The so-called Uruan incident has been separated from the Venezuelan boundary dispute, and practically terminated, it is understood, through the good offices of the United States, without the representatives of Great Britain and the South American republic coming into direct relations regarding the affair.

This Uruan incident, so called, had at one time a somewhat threatening aspect, but finally developed into comparative insignificance, capable of exceedingly tame adjustment. It is strenuously contended by those most intimately concerned that the incident never had an ultimatum stage, and that there was never any foundation for the report that a British fleet would be called upon to imitate the Corinto demonstration.

While originally the claim presented through the German Legation in November, 1894, was for a violation of the frontier of British Guiana, and therefore inseparable from the boundary controversy, at Secretary Olney's instance Great Britain, a few weeks ago, modified it into a demand similar in effect to that pressed by Italy against the United States on account of the New Orleans riots in 1890, which claim was settled by the payment by President Harrison of a certain sum of money out of the State Department contingent fund.

It is understood that the Uruan demand now simply becomes one for personal damages inflicted upon British property and persons by Venezuelan officials, leaving out of controversy the

question whether the occurrence was upon Venezuelan territory as being irrelevant. When Douglas Barnes, the British Guiana constable, was arrested in July, 1894, by Venezuelan soldiers on the right bank of the Cuyuni River, which he had crossed to stop a Venezuelan planter from cutting trees on land which he owned, the Venezuelan Government paid Barnes \$300 or \$400 on account of his imprisonment, which he personally considered as satisfactory.

But when the Colonial Government heard of it, considerable indignation arose in Demerara, and the damages were soon magnified to enormous amounts, which at that period the home Government felt constrained to present as a claim against Venezuela. After two years, however, and in view of the changed aspect of the boundary dispute, the claim has dwindled to \$5,000, and this amount is probably about what Venezuela will shortly pay, with the distinct understanding that it does not affect the title to the territory upon which the arrest occurred.

970. MEMORANDUM FROM THE VENEZUELAN FOREIGN MINISTER, SEÑOR PEDRO EZEQUIEL ROJAS, TO AMERICAN SECRETARY OF STATE, MR. RICHARD OLNEY
[28 March 1896]

Memorandum by The Ministry of Foreign Affairs of Venezuela relative to the Note of Lord Salisbury to Mr. Olney, dated November 26, 1895, on the question of boundary between Venezuela and British Guayana**

(Translation)

United States of Venezuela, Ministry of Foreign Affairs, Department of Exterior, No. 463, Caracas, March 28, 1896.

Most Excellent Sir:

The reply, dated November 26th last, transmitted to Your Excellency through the British Ambassador at Washington by the Chief Secretary of State of Her Britannic Majesty's Government, has elicited special interests in this office; the more particularly since it is known to have been occasioned by the very able and lucid exposition which Your Excellency had previously brought to the attention of the Court of St. James touching the question pending between Venezuela and the British Colony of Demerara. The Government of the Republic, naturally desirous of not leaving uncorrected some of the statements and ideas therein put forth by the representative of Her Majesty's Government relative to the question named, has thought it not inexpedient to cause to be prepared by this Ministry a Memorandum on the subject, which, together with a copy of this note, will be handed to Your Excellency by Señor José Andrade, the Venezuelan Minister at Washington.

I beg, therefore, that Your Excellency may be pleased to give this Memorandum your careful attention. The facts and arguments therein are believed to constitute a complete refutation of the adverse opinions and positions put forth and assumed by the British Secretary of State; copies of whose note, together with copies of the very important special message (of December 17th) of

His Excellency President Cleveland, and other accompanying documents, Your Excellency was so good as to transmit hither, through the Venezuelan Legation, on the 26th December last.

I have the honor to again express to Your Excellency the assurances of my highest consideration and esteem.

(Signed) P. EZEQUIEL ROJAS

To His Excellency Richard Olney, Secretary of State of the United States, Washington D.C.

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(Translation)

MEMORANDUM

As could not fail to be the case, the message sent by President Cleveland to the Congress of the United States of America on December 17, 1895, relating to the territorial dispute pending between the United States of Venezuela and Great Britain, as well as the printed correspondence sent as an appendix to said document, has been read with deep interest.

It is considered opportune to offer here some observations with respect to the note of Lord Salisbury therein published; and which, under date of November 26th last, treats exclusively of the boundary question as a means of contributing to its elucidation.

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Although the boundary dispute commenced in 1840, as regards Venezuela, ever since 1822 her predecessor, Colombia, had given her Agent in London, Señor José Rafael Revenga, instructions to present a *project* of a treaty containing articles relating to boundaries, observing to him that the Colonists of Demerara and Berbice had usurped a great part of the lands belonging to the Republic, and that it was indispensable that they place themselves under the protection of her laws or else withdraw.

In an article in the London *Times* of October 17th last, which appears to have been a reflection of the ideas of the Foreign Office, it is asserted that it is exactly a hundred years since the question of determining the true area possessed by Holland began.

The dispute between it and Spain had existed for a much longer time, as is proved, among other facts, by the assault in 1797 on one of the forts which the Dutch had constructed under the name of New Zealand and Middleberg, near the Pumarón. Lord Salisbury himself mentioned that in 1759 and in 1769 there were complaints and claims by Holland for the incursions of the Spaniards into the settlements and establishment on the lower Cuyuni, and the advisability was expressed of a proper demarcation between the Colony of the Essequibo and the Orinoco river.

In 1781 the English, having only military occupation of the Dutch Colonies, could not have laid out their boundaries on the upper Orinoco further than Punta Barima.

If Spain took part in the negotiations which led to the treaty of cession to Great Britain of the Dutch Colonies in 1814, and did not object to the boundaries claimed by her, although fully acquainted therewith, that fact does not appear in any article of the said Convention, to which the

only parties were her Britannic Majesty and the United Provinces of the Netherlands. Article I, principal, and the additional article I, relating to the cession, speak only of the establishments of Demerara, Essequibo, and Berbice, without in any way establishing their boundaries. It is known that England has gone on advancing them progressively.

When Venezuela proclaimed as her boundaries those of the territory which had constituted the Captaincy-General of the same name, she did no more than to declare herself inheritor of the rights of Spain therein, without pretending to destroy international arrangements previously concluded by the nation from which she separated herself, as has been charged. There is no arrangement through which Spain established the dividing line between her possessions and those of the Dutch in Guayana. Did one exist there would be no ground for this dispute.

The argument of Lord Salisbury in this regard is a *petitio principii*. He asserts that there is no authoritative statement by the Spanish Government in which the territories of the Captaincy-General of Venezuela are determined; for a decree which the Government of this Republic sets up, and which was issued by the King of Spain in 1768, in which the Province of Guayana is described as bounded on the south by the Amazon and on the east by the Atlantic, cannot be so regarded. He adds that the decree utterly ignores the Dutch establishments, which not only existed *de facto*, but had been formally recognized by the Treaty of Munster; that it would, if now considered valid, transfer to Venezuela the British, Dutch, and French Guayanas, and an enormous tract of territory belonging to Brazil.

The Royal Rescript of 1768 has nothing absurd in it. This will be seen by any one who reads the instruction, issued on March 9, 1779, by the Intendant General of Venezuela to settle and occupy lands in the province of Guayana, which says: "The Dutch Colony of Essequibo, and the other colonies of the States-General on that coast are usually situated on the banks of the river near the seacoast without penetrating much into the interior of the country, and that therefore to the rear of the Essequibo and the other Dutch possessions, running towards the east as far as French Guayana, and on the south to the Amazon river, was the territory unoccupied by them, and only occupied by the heathen Indians and a large population of fugitive negroes, slaves of the Dutch; that Commissioners should endeavor to occupy the said lands as belonging to Spain, their first discoverer, and not thereafter ceded to nor at any time occupied by, any other power having title thereto; advancing in the operation as far as possible to the extent of reaching French Guayana; and extending also as far to the south as possible until the boundaries of the Crown of Portugal should be reached; that the occupation of the lands of all the said Colonies should be made as though they were a part of the said Province of Guayana, and in the name of the Governor and Commandant thereof, as its head and chief, by command and appointment of Her Majesty."

Therefore, it is clear that, saving the points of the seacoast where the Dutch, the French, and the Portuguese were established, Spanish Guayana was bounded on the south by the Amazon, and on the east, not only by the Atlantic, but (from the Essequibo) by the Dutch, French, and Portuguese Colonies.

It is true that by the boundary treaty of 1750 between Spain and Portugal, the former had ceded the portion which she had on the Amazon from the mouth of the Rio Negro; but as, in 1761, the parties agreed to rescind the said compact and to place things in *status quo ante*, Spain could, in 1768, declare herself riparian owner of the Amazon.

In 1777 the said parties revived the boundary treaty, and then Spain again relinquished her rights to a part of the great river of which she only retained the portion comprised from the mouth of the Jabari up to the westernmost point of the Yapura, which empties into the Amazon on its northern bank.

Although Commissioners were sent for the purpose of effecting the demarcation, in 1780 it had not been done; nor was it ever concluded, because of the obstacles which the Portuguese obstinately interposed, as may be seen in the "Historical Memorial of the Demarcation of Boundaries of the Dominions of Spain and of Portugal in America, presented in 1797 by Don Vicente Aguilar y Turado, Clerk of the Second Class of the Department of State, and Pen Francisco Requena, Brigadier Engineer of the Royal Spanish Armies."

From such a Royal Rescript it cannot be inferred, then, that British Guayana, part of the former Dutch Guayana and recognized by Spain, together with that bearing the same name today as belonging, to the Netherlands, or that French Guayana, tolerated or virtually recognized by Spain in the compacts of alliances, of guarantee, and of family as a possession of France, or that Brazilian Guayana, recognized by Spain as the property of Portugal in the treaty of October 1 of 1777, belonged to Spain.

So much value is attributed by Spain to that Royal Rescript of 1768, that upon it, above everything else, did its Government (selected as arbitrator in the boundary dispute between Venezuela and Colombia) found its declaration that the latter was joint owner of the Orinoco from the entry therein of the Mets river to the Guaviare river, in the award made on the 16th of March of 1891, and adjudicating thereto several towns founded and possessed by Venezuela.

It may be added that even (according to the Annals of Guayana, published in 1888 by the Englishmen, Messrs. James Rodway and Thomas Watt) King James, learning that the King of Spain had actual possession of Guayana in 1620, revoked the patent that he had granted in 1617 to Captain Roger North to form the Amazon Company, and ordered the immediate return of himself and his companions in adventure, who found themselves called upon to appear before the said King James and renounce all the rights to them granted by the patent.

These compilers add that the Portuguese, when subjects of Spain, succeeded in establishing themselves at the mouth of the Amazon; and it is further recorded that the Spaniards were the discoverers and first occupants thereof.

That prior to 1750 the Amazon belonged to Spain, appears from the Preamble of the boundary treat concluded between her and Portugal on the 13th of January of that year, which, in specifying the grounds therefor, says (Paragraph 2): "As the Crown of Portugal is occupying the two banks of the Maranon (or Amazon) river up-stream as far as the mouth of the Tabari river, which enters it on the southern bank, *it clearly results that it has introduced itself in the demarcations of Spain for the whole distance, from the said city [of Para] to the mouth of that river, the same being the case in the interior of Brazil by the inland advances that this Crown has made as far as Cuyaba or Matogroso.*"

Cayenne, near the Amazon, afterward a French possession, was first colonized by the Spaniards.

"1568. Gaspar de Sotelle, with 126 families from Spain, formed an establishment in Cayenne, whence he was driven out five years later by the Caribs." (Sloane, M.S., Description of Guayana.) *Passage taken from the said "Annals of Guayana."*

“But of the territories claimed and actually occupied by the Dutch, which were those acquired from them by Great Britain,” [says Lord Salisbury], “there exist the most authentic declarations. In 1739, and again in 1769, the States-General of Holland addressed formal remonstrances to the Court of Madrid against the incursions of the Spaniards into their posts and settlements in the Basin of the Cuyuni. In these remonstrances they distinctly claimed all the branches of the Essequibo river, and especially the Cuyuni river as lying within Dutch territory. They demanded immediate reparation for the proceedings of the Spaniards and reinstatement of the posts said to have been injured by them, and suggested that a proper delineation between the Colony of Essequibo and the Rio Orinoco should be laid down by authority.

“To this claim the Spanish Government never attempted to make any reply. But it is evident from the archives which are preserved in Spain, and to which, by the courtesy of the Spanish government, reference has been made, that the Council of State did not consider that they had the means of rebutting it, and that neither they nor the Governor of Cumana were prepared seriously to maintain the claims which were suggested in reports from his subordinate officer, the Commandant of Guayana. These reports were characterized by the Spanish Ministers as insufficient and unsatisfactory, as ‘professing to show the Province of Guayana under too favorable a light,’ and finally by the Council of State as appearing from other information to be very ‘improbable.’ They form, however, with a map which accompanied them, the evidence on which the Venezuelan Government appear most to rely.”

The Republic is not acquainted with all the documents here alluded to. It does know that, in 1769, the Dutch asserted the right they believed they had to fish at the entrance of the Orinoco, and that they complained of the actions of the Spaniards who were established there. Then all the data was collected with relation to the extension of the boundaries of the Dutch; which, however, was adverse to their pretensions, and the matter was laid before the Council. But the Dutch Government allowed more than fifteen years to pass without making any move in the premises; wherefore it was felt that, being better informed of the want of just grounds for their claim, they had desisted therefrom. Then came the Treaty of 1791, which decided the question, describing the Spanish as owners of the establishments of the Orinoco, and the Dutch as owners of those of the Essequibo.

Several agents of Venezuela have inspected the old archives of Spain without discovering therein aught, save proofs in every way contrary to those now, for the first time, cited in the communication of Lord Salisbury.

For instance, it appears therefrom, that in 1757 the Commandant of Guayana sent against Cuyuni detachment by which was destroyed a “post” which the Dutch had established some fifteen leagues from the mouth of this river, taking as prisoners the Dutch, the Indians and the slaves found there; that in 1758 there was also destroyed the hut that the Dutch had on the island of Caramucuro, on the same river only a short distance from the Essequibo, taking its occupants, etc., prisoners.

Lord Salisbury also asserts that:

“The fundamental principle underlying the Venezuelan argument is, in fact, that inasmuch as Spain was originally entitled of right to the whole of the American continent, any territory on

that continent which she cannot be shown to have acknowledged on positive and specific terms to have passed to another power can only have been acquired by wrongful usurpation, and if situated to the north of the Amazon and west of the Atlantic must necessarily belong to Venezuela, as her self-constituted inheritor in those regions.”

Venezuela inherited the rights which Spain had in the Captaincy-General of that name, in accordance with the cession contained in the treaty of peace, amity and recognition, concluded at Madrid on March 30, 1845; and in the second article of which it appears, that “His Catholic Majesty recognizes the Republic of Venezuela as a free, sovereign, and independent nation, composed of the Provinces and territories set forth in its Constitution and other subsequent laws, to wit: Margarita, *Guayana*, Cumana, Barcelona, Caracas, Carabobo, Barquisimeto, Barinas, Apure, Merida, Trujillo, Coro, Maracaibo, and *other territory or islands whatsoever that may belong to it.*”

Had not the territory occupied by the Dutch in Guayana constituted a part of the dominions of Spain, the mere fact of its occupation would have sufficed to confer upon them the right of property, without need of the Treaty of Munster in 1648 to perfect their title, stipulating, in Article III, that “The King of Spain and the States respectively shall remain in the possession and enjoyment of those seigniories, cities, castles, forts, commerce, and countries, of the East and West Indies, as well as in Brazil and the coast of Asia, Africa, and America, respectively, which the said King and States had and possessed.”

Without this treaty, it then believed, the Dutch occupation would not have had the effect of conferring the title which is exclusively attributed to it.

If, then, what the Dutch occupied in the Essequibo was not considered as legitimately theirs until after, by the Treaty of peace of 1648, Spain ceded it to them, it is clear that prior to this the said territory belonged to Spain. And the same is equally true of territory which was not included in the cession, and which was adjacent to the part alienated. Towards the part not transferred, the Dutch could neither trade nor navigate because they were expressly prohibited therefrom by Article VI of the said Treaty of Munster.

In like manner, Article VIII of the Spanish-British Treaty of July 18, 1670, prohibited the English from carrying their commerce and navigation to the posts or localities which the Catholic king had in the West Indies.

Moreover, Great Britain by the Treaty of July 13, 1713, concluded at Utrecht, had guaranteed to Spain the preservation of the limits of her dominions in America “as they existed in the time of Charles II.”

By the boundary Treaty that Spain and Portugal concluded on the 13th of January, 1750, Portugal obligated herself to uphold Spain in her original right to the territory which lay on the coast between the Amazon and the banks of the Orinoco; and in the interior of America the guarantee was indefinite. The same guarantee was stipulated by both powers in the treaty of March 11, 1778.

The persistent efforts of Spain to drive the Dutch away from the Orinoco, the Moroco, the Pumaron, the Cuyuni; etc., constitute as many more evidences of her intent to retain the possession of those localities, and to exclude the interlopers therefrom.

Title founded on discovery has been held generally as valid; and in their controversy with Great Britain regarding the Northwestern boundary, the United States invoked the same with re-

spect to the mouth of the Columbia river and its sources. They also alleged the acquisition by them of all the titles of Spain, which had derived the same through having discovered the coasts of the region in dispute prior to their having been seen by any other people from a civilized nation.

Another ground upon which the United States based their contention was that of contiguity, arguing that if some few English trading-posts on the shores of Hudson Bay were considered by Great Britain as conferring it a right of property up to the Rocky Mountains; if its new and more southern establishments on the Atlantic coast justified the claim from there to the southern seas, which in effect was sustained to the Mississippi, then the rights of American citizens, already touching the said seas, could not be denied without inconsistency. And, they added that the doctrine was accepted in all its amplitude by Great Britain, as appears from all the privileges it gave to colonies then established only on the shores of the Atlantic, and which extended from that ocean to the Pacific.

Even leaving aside the Bulls of the Popes, who, according to the contemporary jurisprudence, distributed the lands to be discovered between the Spanish and Portuguese, if the practices of peoples who acted independently of the Holy See is examined, it will be found that, "notwithstanding some declarations merely theoretical, occupation is effected in a fictitious manner. Any manifestation, such as the erection of a monument, of a cross, the unfolding of a flag, suffices to realize the occupation of the vast territories which provoke a thousand difficulties with the competitors as regards the exact limits of the territories belonging to each. Moreover, the religious prejudices from which Francisco Victoria could not free himself in his *Essay de Indis* (1557) make it appear that "the heathens are without any right of sovereignty, or even of *property which should be respected, and the covetous interest of colonizing countries still retains this view, when fanaticism no longer explains it.*"

"We must come down to contemporaneous times to find the condition of taking of *actual possession* of the territory practically demanded, in accordance with rational and juridical ideas of occupation, as it had been understood by the publicists of the XVIIIth century, notably Vattel."

"It is known that this new rule was formally accepted by the powers signing the last Protocol of Berlin, on February 26, 1885, Article 35, as regards *future* occupations of the coast of the African continent; and that the effective character of the taking of possessions, according to the same article, is shown by the fact of establishing or of *maintaining*, should it already exist, an authority sufficient to cause the required rights to be respected, and, should the case arise, the liberty of commerce and of transit." [*General Review of Public International Law, Paris, Nov. 2, 1894. Article on the occupation of Territories and the Process of "Hinterland," a German word which means the back territory.*]

The writer, Mr. F. Despagnet, professor of International Law in the University of Bordeaux, explains that the essence of the process consists in establishing, through an international agreement, a topographical line on this side of which each country has the right of occupation, or to establish a protectorate to the exclusion of the other contracting State; that is its *Hinterland* or territory this side of the conventional line. On the other hand, each country binds itself to make no attempt at acquisition of territory or of a protectorate, and to not assail the influence of the other State beyond the line established. In practice, the *Hinterland* is the prolongation towards

the interior of the territory first occupied on the coasts up to the limits of the possessions of the other contracting State, or of its *Hinterland*, recognized in the treaty.

The author adds that as the German Foreign Office said on the 30th of December, 1886, "the purpose is not so much to establish the frontiers in accordance with the present possession, as it is to come to an understanding to determine the sphere of reciprocal interests in the future"; that much similarity exists between the present system of the *Hinterland* and the *a priori* limitations of the spheres of influence established in the XVth and XVIth centuries between colonizing countries by the Holy See; that the famous Bull of Alexander VI, of March 4, 1493, is nothing more than the limitation of a vast *Hinterland* divided among the Spanish and the Portuguese, and when these two countries, little satisfied with the Papal decision, modified the frontiers marked by the Sovereign Pontiff in the Treaty of Tordesillas, June 3, 1494, they concluded a convention which does not differ from the modern treaties regulating the *Hinterland*, save in the scope of its application and the spirit of submission to the Pope, to which it was subordinated, since Julius II had to approve it in 1509: "that the same *Hinterland* system appears in various recent treaties made between France and England in 1847, relative to the Hebrides Islands, and those of the windward of Tahiti; that, with respect to Africa, in those concluded between England and Germany, in eastern Africa and in Zanzibar, in 1886 and 1890; between Germany and Portugal, also relating to eastern Africa in 1886; between France and England in 1889 respecting the western coast of Africa, and in 1890 with regard to the eastern coast of Zanzibar and Central Africa; between France and the Congo along the basin of the Oubangi, in 1887 and 1888; between England and Italy, touching eastern Africa, in March and April of 1891; between the Congo and Portugal regarding Guinea and the Congo, in 1886; and, lastly, between England and Portugal relative to the center of southern Africa, in August and November of 1890."

In the historical memorial regarding boundaries between the Republic of Colombia and the Empire of Brazil, by the national Librarian of the former, Señor José Maria Quijano Otero, there appears, in part 1st, paragraph 2 (speaking of the Bull of Pope Alexander VI, identical with that of his predecessors respecting Portugal):

"All the Christian Princes recognized the validity of these Bulls, and there is even cited the case where some English merchants desiring to carry on trade with Guinea, the King of Portugal, Don Juan II, called on the King of England, Edward VI, to prevent the same, relying on the dominion which was granted him by a Pontifical Bull over the same territory; and the prohibition was effected, the British monarch being convinced of the right of the claimant." In proof of this, he cites *Hackluyt's Navigations, Voyages and Travels of the English*, vol. 2, paragraph 2, p. 2.

Add to this, as appears in Wharton's Digest, Appendix, sec. 2, that "when any European nation takes possession of any extensive seacoast, that possession is understood as extending into the interior country to the source of the rivers emptying within that coast, to all their branches and the country they cover; and to give it a right in exclusion of all other nations to the same."

"Whenever one European nation makes a discovery and takes possession of any portion of that continent, and another afterwards does the same at some distance from it, where the boundary between them is not determined by the principle above mentioned, the middle distance becomes such, of course." "Whenever any European nation has thus acquired a right to

any portion of territory on that continent, that right can never be diminished or affected by any third Power by virtue of purchases made, by grants, or conquests of the natives within the limits thereof.

“The two rules generally, perhaps universally, recognized and consecrated by the usage of nations have followed from the nature of the subject. By virtue of the first, prior discovery gave a right to occupy, provided that occupancy took place within a reasonable time and was ultimately followed by permanent settlement and by the cultivation of the soil. *In conformity with the second, the right derived from prior discovery and settlement was not confined to the spot so discovered or first settled. The extent of territory which would attach to such first discovery or settlement, might not in every case be precisely determined. But that the first discovery and subsequent settlement, within a reasonable time, of the mouth of a river, particularly if none of its branches had been explored prior to such discovery, gave the right of occupancy, and ultimately of sovereignty, to the whole country drained by such river and its several branches, has been generally admitted. And in a question between the United States and Great Britain her acts have with propriety been appealed to as showing that the principles on which they rely accord with their own.*”

The foregoing statements and citations have been made to demonstrate that the argument upon which Venezuela relies is not as groundless as Lord Salisbury asserts, and that Spain, as the first discoverer of the coasts of Guayana, could well be considered as owner of the territories thereof, for otherwise the Dutch would not need her recognition of them to make valid their acquisitions in the said territory.

Finally, as Story says in his Commentaries on the Constitution of the United States:

“The discovery was the British title to the territory composing them. That right was held among the European nations a just and sufficient foundation on which to rest their respective claims to the American continent. Whatever controversies existed among them (and they were numerous), respecting the extent of their own acquisitions abroad, they appealed to this as the ultimate fact, by which their various and conflicting claims were to be adjusted. It may not be easy upon general reasoning to establish the doctrine that priority of discovery confers any exclusive right to territory. It was probably adopted by the European nations as a convenient and flexible rule by which to regulate their respective claims. For it was obvious that in the mutual contests for dominion in newly discovered lands, there would soon arise violent and sanguinary struggles for exclusive possession unless some common principle should be recognized by all maritime nations for the benefit of all. None more readily suggested itself than the one now under consideration; and as it was a principle of peace and repose, of perfect equality, of benefit in proportion to the actual or supposed expenditures and hazards attendant upon such enterprises, it received a universal acquiescence, if not a ready approbation. It became the basis of European polity and regulated the exercise of the rights of sovereignty and settlement of all the cis-atlantic plantations.”

It is also stated there that no one of the European powers gave its assent to this principle more unequivocally than England; that when she commissioned any one to acquire territory she limited the authority to countries “then unknown to Christian people;” that a great part of the ter-

ritory of the United States, when transferred to them by the treaty of peace and recognition of 1782, was in the possession of Indians, as was a great part of Florida when Spain ceded it to the British in 1763, as was Louisiana almost entirely when Napoleon sold it in 1803, there being there numerous tribes of Indians really independent, etc.

It is seen in the communication of Lord Salisbury that upon the return of an exploration to the interior of British Guayana made by Mr. R. Schomburgk, he suggested to the English Government the necessity of a prompt demarcation of its limits; and that he was then named special commissioner to draw the plan thereof and to temporarily establish the same, notice of which was given to the interested Governments, including that of Venezuela.

It is not strange that this Commissioner, therefore, should endeavor to please the Government that had acceded to his suggestions by presenting it a line in accord with its desires.

It is true that the British Consul-General gave this Government notice of the charge entrusted to Mr. Schomburgk, but that was on the 13th of January of 1841, when he might have already been in Guayana making the survey and demarcation. Not only was it not stated that the demarcation would be temporary, or that Venezuela was invited to take part on the operation, but the notification was coupled with the threat that there had been sent to the Governor of Demerara an order to resist the aggressions of the Republic in the territory near the frontier, up to that time inhabited by independent tribes, which signified at least that H. B. M. appropriated them to herself and defended them.

In vain did this Government urge the concluding of the boundary treaty.

That Schomburgk did not discover or invent any new boundaries, but relied on the history of the matter, and based his reports on his own explorations and *on information obtained* from the Indians and on the evidence of local remains, as at Barima, and local traditions as on the Cuyuni, and fixed the limits of the Dutch possessions and the zone from which all trace of Spanish influence was absent. That at the very outset of his mission he surveyed Point Barima, where the remains of a Dutch fort still existed, and placed there, and at the mouth of the Amacura two boundary posts, afterwards removed, at the urgent entreaty of the Government of Venezuela, but without prejudice to its (the British) rights to that position. This is what Lord Salisbury says.

Previously he asserted that from 1796, and at the time of a previous occupation of the Dutch settlements in 1781, the British authorities had marked the western limit of their possessions as beginning some distance up the Orinoco beyond Point Barima, in accordance with the limits claimed and actually held by the Dutch, and that from that time on this has always been the frontier claimed by Great Britain.

In the first place, it is not conceivable how the English, mere military occupants prior to 1814, could have made the demarcation of a territory which did not yet belong to them. In the second place, if the boundaries were already designated, what need was there to resort to the traditions of ignorant, barbarous men like the Indians? What did they know of the Dutch or Spanish occupations? There might be no Spanish settlements, but this does not mean to say that they had not founded any. There was an absence of Dutch settlements also. It is not asserted that any such were found, but only remains of those that had disappeared. Such being the case, the reason for the preference in favor of the Dutch is not announced.

In a previous passage Lord Salisbury wrote that the Dutch claimed immediate reparation for the proceedings of the Spaniards and the reinstatement of the "posts" destroyed by them in 1759, and again in 1769, by reason of the incursions of the Spaniards into the "posts" and settlements

in the basin of the Cuyuni. Therefore it is undeniable that the Spaniards did penetrate to that river and did destroy the works of the Dutch, considering them as intruders, and that the influence of the Spaniards made itself felt on the Cuyuni, as well as on the other affluents of the Essequibo.

Lord Salisbury also states that the States-General had suggested to the court of Madrid the feasibility of an authorized demarcation between the Colony of Essequibo and the Orinoco river. It is readily noticed that if this was demanded by the Dutch, their successors, the British, have carried their pretensions much further, as they have appropriated to themselves several tributaries of the Orinoco, among them the Barima and the Amacuro.

There was no Dutch fort in Barima. According to the historian cited, Netscher, such a supposition is erroneous, and grew out of the fact that in the XVIIth and XVIIIth centuries, the Commandants of the Netherlands Colonies in Guayana established small "posts" in the most distant part of the territory to trade with the natives or Indians, and that in some maps, without reason and exaggeratedly, they are called "forts." "They were made up," he says, "of a guard – two or three subaltern Europeans and some twenty soldiers as assistants, besides a few Indian or negro slaves. The frame house or guard house was almost always surrounded by an earth-wall or a palisade, as a precaution against the occasional attacks of the Indian enemy, and the holder of the post raised the flag of the West India Company."

That in the middle of the XVIIth century there existed at the mouth of the Barima a post of that kind detached from the Essequibo, appears to be true. Hartzingck, at least, makes mention of it, and we follow his example on page 92 (last line), but after more accurate investigations in the archives of the Kingdom, we have become convinced that that post no longer existed from 1683 to 1684, and therefore it must have been either destroyed by the enemy or abolished.

Netscher concludes by observing that in the very exact correspondence of the Commandants of the Essequibo and of the Pumaron, no mention is made of the said post at Barima, but there is mention of others; and that this is not to be wondered at, for already in 1685, the West India Company had decided not to carry on any more trade by the Orinoco.

It results therefrom: first, that the "posts" were not military but mercantile; second, that that of Barima, it indeed there was any in the middle of the XVIIth century, was destroyed or abandoned.

Although the Dutch subsequently endeavored to return to Barima, the Commandant-General (Centurion) ejected them therefrom forever in 1768.

Schomburgk, on submitting his maps for adoption, as Lord Salisbury states, called the attention of the Government of Her Majesty to the circumstance that it might claim the whole basin of the Cuyuni and Yuruari on the grounds that the natural boundary of the Colony included any territory through which flowed rivers which fall into the Essequibo.

Great Britain, in her discussions with the United States, rejected the said principle which she now endeavors to apply to Venezuela. But she forgets that the Dutch did not discover the coast where the Essequibo empties. It was discovered by the Spaniards from whom she derived the Dutch title conveyed in the Treaty of Munster.

At Cayena, near the Amazon, a French possession, the Spaniards began the establishment of a colony.

"In 1568, Gaspar de Sotelle, with 126 families from Spain, formed an establishment at Cayena, from which, however, he was expelled, six years afterwards, by the Carib Indians." [Sloane, M.S., "Description of Guiana." The passage is taken from the *Annals of Guayana*, etc.]

In a letter of the Duke de Lerma to the President of the Council of the Indies, dated February 2, 1615, the former reports that the Dutch General, Wilhelm Veelinex, was getting vessels ready to establish and found certain colonies upon three or four coasts in America, West Indies, the first in Wiapons, the second in Cayenne, and the third in Surinama, where there was a body from twelve to fifteen Spaniards, who tilled the soil: there to raise *cazabe*, from which bread is made, under the authority of the Governor of Trinidad and of Orinoco, Don Fernando de Borrás.

In the same cited Annals of Guayana, it is written (part I, pages 1 and 2) that Lawrence Keymis, one of the early explorers of Guayana, and a captain under Raleigh when he endeavored to go inland in search of the El Dorado, set sail on the Corentin in the direction of the Essequibo, but *hearing that there were Spaniards on that river*, he did not think his attempted explorations safe."

Page 7: "It is supposed that Alonzo de Ojeda, in 1499, entered the mouths of the Essequibo and the Orinoco, but did not see any of the inhabitants until he reached Trinidad, or its neighborhood." Ojeda was a Spaniard.

Page 41: "He (Keymis) in 1596 has something to say of the greater part of the larger rivers. On the Corentin there was an abundance of honey; the Indians of the Orinoco from the east never came this side of Berbice; *and on the Essequibo the Spaniards attempted to found a town*. The last river flowed into a lake called Roponowini, which was supposed to be the locality of the 'situation of Manoa.' The Spanish had made so many inroads *between the Orinoco and the Essequibo* that the Caribs endeavored to combine among themselves in order to oppose resistance. *The Dutch say that their establishments on the Essequibo were destroyed during this year by the Spaniards and the Aruacas. Keymis, however, either did not know anything of this Colony or purposely failed to mention it, as it might invalidate Raleigh's rights of discovery.*"

Page 117: "Leonard Berrie, who commanded the *Wat*, of Raleigh's expedition, in 1596, heard it said in Orcala, on the banks of the Corentin, that *there were three hundred Spaniards on the Essequibo*. Taking the two vessels up stream, they reached the town of Maruranano, and passing on thence in boats and canoes a part of the expedition reached the cataracts of this river, from which place they could not go on further in search of Parima Lake, which was reputed to be situated a short distance from the upper Essequibo, and which could be reached from the Corentin, owing to an affray which had occurred between the friends of Berrie, the Caribs and the Aca-rayas. Less than a month before, the latter had come down from the upper part of the cataract and killed ten of the Caribs. Not desiring to be embroiled in the fight which might bring about disturbances in the future, Berrie decided to return to the vessel. Here it was rumored that the Spaniards had left the Essequibo, and also that ten canoes filled with Spaniards had come to the Corentin, stories whose falsehood he discovered."

Schomburgk, in his description of Guayana, published in 1840, in speaking of the Essequibo river, on page 11 says, that this name comes from the surname of Don Juan Esquibel, one of the officers under Diego Colon; another proof of its discovery by Spaniards.

Great Britain also falls into another inconsistency which consists in not applying to the Orinoco the principle of which it here speaks, for if this river belongs to Venezuela, the right of property therein, perforce, includes that of its affluents, like the Barima, and the Amacura, for instance; and nevertheless H. B. M. following Schomburgk, places them within the limits of the English Colony.

To rebut the assertion of Mr. Olney, that it seems impossible to treat the Schomburgk line as being the boundary claimed by Great Britain as matter of right or as anything but a line originating in considerations of convenience and expediency, Lord Salisbury, at the same time that he characterizes this idea as correct, says that in fact that line was a great reduction of the boundary claimed by Great Britain as matter of right, and its proposal originated in a desire to come to a speedy and friendly arrangement with a weaker power with whom Great Britain was at the time and desired to remain in cordial relations.

As appears from the communication which Lord Palmerston, Secretary of State for Foreign Affairs, instructed to be sent to Lord John Russell, Colonial Minister, on the 18th of March, 1840, published in a parliamentary document, the former suggested to the latter the making of a map of British Guayana, in accordance with the limits described by Mr. Schomburgk, accompanying it with a comprehensive report of the natural features of the line, and its transmission to the Governments of Venezuela and Brazil and of Holland *as an exposition of the British claim*; the appointment of British Commissioners, who should come to establish boundaries on the land, in order to mark with permanent posts *the frontier line thus claimed by Great Britain*; and, finally, the transmission to the three Governments of the said map and report, which done, it would be proper for each of them to make known any objections that might occur to them, with the grounds therefor, to which the Government of her Majesty would make proper and just answers.

This and the circumstance that in the Schomburgk map the limits were marked with the notice that they were *those claimed by Great Britain* convinces one that she then aspired to nothing further, and that no reservations were made.

Another argument favoring the same conclusion grows out of the fact that when Lord Aberdeen made the Morocco proposition to Señor Fortique, he stated "*that it involved the cession or relinquishment to the Republic of the territory comprised between the mouth of the Orinoco and that of the Amacuro, and the chain of mountains in which it had its source.*" If Great Britain had considered herself as possessing the right to more territory, that was the opportunity for stating it, in order to augment the proffered favor.

The Schomburgk line designated on the map annexed to a pamphlet on Guayana, published in 1840, and on that attached to the book in German of his travels, printed in Leipzig, in the year 1841, is very different from that claimed since 1886 and communicated to Dr. Urbaneja in 1890 by Lord Salisbury, as has been often pointed out. The new line by which it has been replaced sweeps inland much more considerably into the territory of Venezuela and reaches a point on the Cuyuni, situated in front of the mouth of the Yuruan, where for a short time past an English station has existed.

A single glance at the map of the various lines, made by order of Venezuela, will show the magnitude of the difference noted.

In no other way can be understood the increase of the territory of British Guayana, which in one year, from 1885 to 1886, grew 33,000 square miles, as the Government of the United States has itself observed, and as is evinced by the English publication, "The Statesman's Year Book," and the "British Colonial Office List."

Lord Salisbury, in referring to the negotiation initiated by Señor Fortique, and to which the Foreign Office opposed many delays, characterized his arguments as obsolete, and as having no other support than quotations, more or less vague, from the writings of travelers and geogra-

phers, but adducing no substantial evidence of actual conquest or occupation of the territory claimed as far as the Essequibo, which he demanded as the boundary of Venezuela.

Although this is a vague charge at best, it will not seem improper to recall that the discovery of America by Spain is a fact which cannot be got away from in any discussion regarding the boundaries of regions of this continent, and that it is not Venezuela alone who has advanced it, as has been before said.

Calvo observes, book 5, section 283, that the dominion of Europe over the lands and islands of the New World did not rest solely on the decisions of the Holy See and the precepts of canonical law; but that it had another basis, that of discovery, which Spain herself invoked more than once in support of her rights to the territories of which her daring navigators had succeeded in taking possession.

In his turn Lord Aberdeen made use of citations from writers and geographers, and did not adduce any proofs that the Dutch had conquered or legitimately occupied the territory claimed by Great Britain. He did say that Venezuela had no establishment whatever on the Essequibo, and that the acceptance of this river as a frontier involved the delivery of the half, more or less, of the Colony of Demerara, including Point Cartabo, and the Island of Kykoveral, where the Dutch founded their first establishment on the Mazaruni, the missions of Bartika Grove, and many settlements and establishments which existed on the Coast of the Acarabisi, up to within fifty miles of the Capital. But even though the said establishments existed today, what is important is to demonstrate that they were founded, as Lord Aberdeen said, relying on the terms of some concessions to the West India Company, before the time of the Treaty of Munster of 1648; because what is therein recognized as Dutch is limited to the possessions at the date of the agreement, and advances towards the Spanish possessions were prohibited absolutely. For that reason the Treaty of 1791 between Spain and the Netherlands refers to the colonies of "Essequibo, Demerara, Berbice, and Surinam," and does not say those of Pumaron and the Cuyuni, much less of the Orinoco, because there the Spanish colonies were in front of the Dutch.

When Lord Salisbury refers to the proposition of Lord Aberdeen of 1844, he states that "no answer to the note was ever received from the Venezuelan Government and that in 1850 Her Majesty's Government informed Her Majesty's Chargé d'Affaires in Caracas that as the proposal had remained for more than six years unaccepted, it must be considered as having lapsed, and authorized him to make a communication to the Venezuelan Government to that effect."

It is true that no immediate answer was made because Dr. Alejo Fortique, to whom it was entrusted, had died; but subsequently, upon the negotiations being renewed, the Minister of Venezuela, Dr. José Maria Rojas, in a note of February 13, 1877, informed Her Majesty's Secretary of State for Foreign Affairs (then Lord Derby) that this government had not accepted the proposal of Lord Aberdeen for such and such reasons. He repeated the same on the 19th of May, 1879, to Lord Salisbury himself, who was then exercising the same functions he now does.

As regards the assertion of having given out in 1850 for the information of the Government of Venezuela the lapsing of the proposal of Lord Aberdeen, what can be said is that the British Legation did not communicate it to the Minister of Foreign Relations of the Republic.

In 1857, on the 18th of December, Lord Clarendon wrote to Mr. Bingham, the British Chargé d'Affaires in Caracas, respecting the permission requested by English subjects to enter the gold lands which had just been discovered in El Caratal, and towards which a road was projected from Demerara; to which this Government could not consent, as entrance into Venezuela ought not to

be allowed except through ports-of-entry, nor was it lawful to open any way through territory not demarked. His Lordship then stated, without in any way mentioning the lapsing of the proposal of Lord Aberdeen, as the occasion would seem to demand, as follows: "It is not impossible that the various questions which have arisen, and that are likely to arise in connection with the gold discoveries, may call the attention of the Venezuelan Government to the advantages which might result from a final settlement of the boundary between the territory of British Guayana and that of Venezuela, and you will point out that the Venezuelan Government in returning no answer to the proposals made by Her Majesty's Government in 1844 is responsible for any inconvenience which has resulted from the question being still undetermined."

There is brought to mind the declaration made in 1850 by Great Britain that she did not propose, as had been reported, to seize Venezuelan Guayana, and that she would not view with indifference aggressions upon the disputed territory by the Republic, which territory both parties agreed not to occupy or usurp, at the suggestion of the Chargé d'Affaires, Belford Hinton Wilson. And then, to the frequent invocation of the same by Venezuela, it is objected that the Venezuelans repeatedly violated it in subsequent years.

These alleged violations were: first, the occupation of new positions to the east of their previous establishments, and the founding in 1855 of Nueva Providencia on the right bank of the Yuruary, all previous settlements being on the left bank; second, the granting of licenses in 1876 to trade and cut wood in Barima and eastward; third, the concession to General Pulgar, in 1881; which included a large portion of the territory in dispute; and fourth, two different grants made by Venezuela in 1883, which covered the whole of the territory in dispute and which were followed by actual attempts to settle there, by reasons of which the British Government could not remain longer inactive, and a British Magistrate was sent into the threatened district to assert the British rights, warning of which was given to the Venezuelan Government and to the concessionaires.

In this way it is endeavored to justify the violation of the Agreement of 1850 by the English Government, since it has occupied many places comprised within the disputed territory.

To appreciate that conduct it is very pertinent to state that the Agreement of 1850, proposed by Mr. Wilson for the acceptance of Venezuela, did not determine, as it should have done to prevent controversies, the territory in dispute by designating it with precision. Nor is there any place mentioned therein, except incidentally in a passage where the Chargé d'Affaires says he had transmitted to his Government letters from Ciudad Bolivar, in which he was informed "that orders had been communicated to the authorities of the Province of Guayana to place it in a state of defense, and to repair and arm the dismantled and abandoned forts; that the Governor; José Tomás Machado, had spoken of constructing a fort at *Port Barima, the right of possession to which is in dispute between Great Britain and Venezuela.*"

Point Barima is exactly the place where Sir Robert Ker Porter, Chargé d'Affaires of Great Britain, urgently asked the Government of Venezuela, in an official note of May 26, 1836, to locate a signal or lighthouse which should be sufficiently conspicuous. Sir Robert also spoke of the inefficiency of the pilotage of the Orinoco, recalling that a Venezuelan schooner had been detailed to go out daily from Point Barima and to cruise in aid of the vessels that might seek the entrance of the river; and he observed that the failure of the due arrangement, followed by its abandonment, caused that wise and *well known plan of the Department of Marine* to be frustrated. Then Venezuela did exercise jurisdiction over Point Barima, and could therefore order

that its vessels should depart therefrom, and locate at the proper point the lighthouse whose erection had been recommended, and grant permission to trade therewith and to cut wood.

In the Annals of Guayana already cited, volume P, part first, page 8, we find this: "1530. In this year the Spaniards who had succeeded in establishing themselves on *Terra Firma* made their initial attempt to settle in the country contiguous to Guayana. One Pedro de Acosta, with two small caravels and three hundred men, *reached Barima* probably from Cumana on *Terra Firma*. Nevertheless the party was repulsed from Barima in the same year by the Caribs, or it should be said rather, the remains of the expedition, because the cannibals had killed and ate many and the few who succeeded in escaping with their lives were compelled to abandon all their goods and the houses they had erected."

Thus it is proven that the Spaniards were the first to discover and occupy Barima, and to set up and construct houses there; forcible ejection therefrom by the native Indians not destroying the right acquired, as the English alleged in the analogous case of their expulsion from the island of Santa Lucia.

In the concessions mentioned, and especially in the Manoa concession, it was stipulated in a conclusive manner that it ran to where British Guayana began, without designating the boundary with greater precision, as the demarcation had not been made.

Even though there may have been such violations of the Agreement of 1850, the appropriation by Great Britain of the territory in dispute cannot be justified thereby.

Lord Salisbury asserts that the Government of Venezuela never replied to the proposition of Lord Granville regarding boundaries. Under date of October 15, 1883, the British Minister at Caracas, Colonel Mansfield, addressed to the Minister of Foreign Relations a note in which he solicited the simultaneous adjustment of the three questions then pending between the two countries, to wit: first, the question of limits between Venezuela and British Guayana; second, that of differential duties upon importations from British Colonies; and third, that of claims of British creditors of the Republic. "As preliminary to the taking up of the negotiations," said Mr. Mansfield, "Lord Granville considers it indispensable that a reply be made to the proposals of Her Majesty's Government in the matter of boundaries. If the reply should be in the affirmative, and if the other questions should be satisfactorily adjusted, the desires of the Government of Venezuela with respect to the island of Patos will obtain favorable consideration."

On the 15th of November following, the Government of Venezuela replied in these terms:

"The citizen President has for many years been consulting the opinion of jurisconsults and public men of great eminence, seeking light which should lead him to the solution of the Guayana boundary question in the form of a treaty; but, as all the documents and all the talent consulted have in each instance more strongly confirmed that the boundary, of right inherited by the Republic, between the former Dutch Colony, now the British Colony, is the Essequibo river, the impossibility of resorting to any other method of terminating that discussion save the decision of an arbitrator who, by the voluntary and unanimous election of both Governments, shall hear and finally determine it, has been evident.

"This is the obstacle which His Excellency the President encounters in satisfying, as he would like to do, the desire of Lord Granville to determine all cause for discussion between the two Governments through a treaty."

These words evidently involve the rejection of the proposal of Lord Granville, as it substitutes therefor the proposition to submit the whole matter to the decision of an arbitrator.

After having considered the latter proposition, Lord Granville, through Mr. Mansfield, and under date of March 29, 1884, replied thereto: "That the government of Her Majesty was not of the opinion that the boundary between this Republic and Great Britain should be submitted to arbitration, but at the same time they expressed the hope that some other method of bringing this matter to a satisfactory conclusion for both powers would be evolved."

In the first months after his arrival at London, the Minister of Venezuela, Gen. Guzman Blanco, insisted that as the fundamental law of the Republic prohibited all alienation of territory, the boundary controversy could not be decided except through arbitration, and he proposed in place of arbitration by a friendly power the judgment of a judicial tribunal, to be made up of persons designated by the parties respectively.

On February 13, 1885, Lord Granville replied in the negative, as appears from these words:

"I regret to inform you, Mr. Minister, that the said proposition presents constitutional difficulties which prevent the government of Her Majesty from acceding thereto, and it is not disposed to withdraw from the method proposed by the Government of Venezuela and accepted by the Government of Her Majesty to decide the question by adopting a conventional boundary established by mutual accord between the two Governments."

Lord Salisbury says:

"Mr. Olney is mistaken in supposing that in 1885 'a treaty was practically agreed upon containing a general arbitration clause, under which the parties might have submitted the boundary dispute to the decision of a third power, or of several powers in amity with both.' It is true that Gen. Guzman Blanco proposed that the Commercial Treaty between the two countries should contain a clause of this nature, but it had reference to future disputes only. Her Majesty's Government have always insisted on a separate discussion of the frontier question, and have considered its settlements to be a necessary preliminary to other arrangements."

It might have been added that Lord Granville agreed to it on saying to the Venezuelan Minister, under date of May 15, 1885 that: "Her Majesty's Government agreed in that the obligation was to refer to arbitration all the disagreements that might arise between the High Contracting parties, and not those only growing out of the interpretation of the treaty."

Thus the respective article remained in the following terms:

"If, as it is to be deprecated, there shall arise between the United States of Venezuela and the United Kingdom of Great Britain and Ireland any differences which cannot be adjusted through friendly negotiations, the two Contracting Parties agree to submit the decision of all such differences to the arbitration of a third power, or of several powers, in amity with both, without resorting to war; and that the result of such arbitration should be binding upon both Governments."

The article does not say "*future disputes.*" The fact is that Lord Salisbury, successor to Lord Granville, thought it applicable to the pending boundary controversy. In that understanding he retracted it on the 27th of July of the said year in these words, which under any other hypothesis, would not have been opportune:

"Her Majesty's Government are unable to concur in the assent given by their predecessors to the general arbitration article proposed by Venezuela, and they are unable to agree to the inclusion in it of matters other than those arising out of the interpretation or alleged violation of this particular treaty. To engage to refer to arbitration all disputes and controversies whatsoever would be without precedent in the treaties made by Great Britain. *Questions might arise such as those involving the title of the British Crown to territory or other rights of sovereignty which the Government of Her Majesty could not bind themselves beforehand to refer to arbitration.*"

To wean him from this opinion, vain it was to recall to Lord Salisbury examples where Great Britain herself had applied arbitration to the settlement of frontier disputes with the United States of America in 1827 and 1871, in the last case on her proposal repeated as many as six times. Mr. Olney in his note of the 20th of July last to Lord Salisbury, states that Great Britain has arbitrated the extent of her Colonial possessions, twice with the United States, twice with Portugal, once with Germany, and perhaps in other instances.

The Minister of Venezuela, in London, also recalled at that juncture that the proposition for arbitration had been made to Señor Fortique on this same subject, according to his correspondence; that Lord Salisbury had declared that he could not fail to carry out the promises made by his predecessors, even though they should be contrary to his ideas; and that the same had been done with the correspondence addressed to Russia, which was precisely on the subject of boundaries with Afghanistan, although the present Minister deemed it inexpedient.

Lord Salisbury writes:

"Early in 1884 news arrived of a fourth breach of the agreement of 1850 through two different grants, which cover the whole of the territory in dispute, and as this was followed by actual attempts to settle on the disputed territory, the British Government could no longer remain inactive."

"Warning was, therefore, given to the Venezuelan Government and to the concessionaires, and a British Magistrate was sent into the threatened district to assert the British rights."

"Meanwhile, the negotiations for a settlement of the boundary had continued, but the only replies that could be obtained from Señor Guzman Blanco, the Venezuelan Minister, were proposals for arbitration in different forms, all of which Her Majesty's Government was compelled to decline as involving a submission to the arbitrator of the claim advanced by Venezuela in 1844 to all territory up to the left bank of the Essequibo."

"As the progress of settlement by British subjects made a decision of some kind absolutely necessary, and as the Venezuelan Government refused to come to any reasonable arrangement, Her Majesty's Government decided not to repeat the offer of concessions which had not been reciprocated, but to assert their undoubted right to the territory within the

Schomburgk line, while still consenting to hold open for further negotiations, and even for arbitration, the unsettled lands between that line and what they consider would be the rightful boundary, as stated in the note to Señor Rojas of the 10th of January 1880."

Lord Salisbury first said that the violations of the Agreement of 1850 had moved the British Government to remain inactive no longer; to give notice to the Government of Venezuela and to the concessionaires of 1884, and to send to the threatened district a Magistrate to assert the British rights. But in the next line his Lordship adds: "The progress of settlement by British subjects made a decision of some kind absolutely necessary, and as the Venezuelan Government refused to come to any reasonable arrangement, Her Majesty's Government decided not to repeat the offer of concessions which had not been reciprocated, but to reassert their undoubted right to the territory within the Schomburgk line."

Add to this the following paragraph from the same communication from Lord Salisbury:

"Señor Rojas's proposal was referred to the Lieutenant-Governor and Attorney-General of British Guayana, who were then in England, and they presented an elaborate report, showing that in the thirty-five years which had elapsed since Lord Aberdeen proposed concessions, natives and others had settled in the territory under the belief that they would enjoy the benefits of British rule, and that it was impossible to assent to any such concessions as Señor Rojas's line would involve. They, however, proposed an alternate line which involved considerable reductions of that laid down by Sir Robert Schomburgk."

From these citations, it results that from 1844 new settlements began to be secretly founded in the territory to which Lord Aberdeen's line referred; that the agreement of 1850 not to occupy any part of the territories in dispute, did not serve as an obstacle to the fresh occupations; that consequently the British Government and its authorities violated it, notwithstanding the emphatic assertions and promises of Mr. Wilson; and that, Venezuela, trusting, as she did, in the strict compliance with such solemn words, could not even suspect that the act which Lord Salisbury now for the first time confesses was being consummated.

Such acts cannot diminish the rights of the Republic, which, as has been said, has been protesting against them since they came to its notice.

So that even if Venezuela had committed the violations imputed to her, Great Britain, which had begun them, would not have the right to complain of her example being followed.

Let it be borne in mind that despite the alleged violations, Her Britannic Majesty considered the Agreement of 1850 to be in force, as appears from the official communication addressed on January 31, 1887, by Mr. F. R. Saint-John, Minister Resident of Her Britannic Majesty in Caracas, to the Minister of Foreign Relations of Venezuela, in which he says: "*That the intention to erect this lighthouse (at Point Barima) without the consent of the Government of Her Majesty would be a violation of the reciprocal obligation contracted by the Government of Venezuela and England in 1850 to not occupy or usurp the territory in dispute between the two countries; and that the Government of Her Majesty would have the right to oppose resistance to such a proceeding as an aggressive act on the part of Venezuela.*"

Although it is here called, and in the text, *reciprocal* agreement, Great Britain had been violating it for some time past, signally from 1884, and she was deaf to the complaints in this regard

made on July 28, 1886, by the then Minister in London, General Guzman Blanco; for she made no reply either during that year or subsequently. So that the said Agreement is valid as against Venezuela, but not in favor of Venezuela, to judge from the action of her opponent.

It was not until 1893, when replying to the proposal of Señor Thomas Michelena to revive the Agreement of 1850, that the English Government, through Lord Rosebery, alleged as a ground for its refusal what Lord Salisbury now repeats with regard to violations by Venezuela, and which no other Minister had advanced.

According to that, then, the Agreement ceased to exist and the Republic is free from the obligation imposed by it, and consequently has recovered full authority to occupy what it understands to belong to it.

But there is more. When two States have subscribed a Convention, if one of them commits a breach thereof the injured party can demand its observance through every means, including the last and most formidable – war; or in case it does not desire to go so far, it may limit itself to the declaration that, on its part, it does not consider it as binding.

Let Vattel, an old and ever-respected master of the science, Book 2, Chapter 13, section 200, state it:

“Treaties contain promises that are perfect and reciprocal. If one of the allies fails in his engagements the other may compel him to fulfill them – a perfect promise confers a right to do so. But, if the latter has no other expedient than that of arms to force his ally to the performance of his promises he would sometimes find it more eligible to cancel the promises on his own side also, and to dissolve the treaty. He has undoubted right to do this, since his promises were made only on condition that the ally should, on his part; execute everything which he had engaged to perform. The party, therefore, who is offended or injured in those particulars which constitute the basis of the treaty, is at liberty to choose the alternative of either compelling a faithless ally to fulfill his engagements or of declaring the treaty dissolved by violation of it. On such an occasion, prudence and wise policy will point out the line of conduct to be pursued.”

Nevertheless, good faith should always govern the relations between States, particularly in the patter of treaties; it is inadmissible to act in a clandestine manner, but rather with loyalty and frankness on such occasions. To maintain silence and wait until the last hour to justify acts the intention to execute which had not been announced, is not, and cannot be, permitted between nations, much less when such acts are at variance with the words of their authors.

Great Britain has never complained to Venezuela of the alleged violations of the Agreement of 1850 nor asked reparation therefor, nor given notice that in case of failure to obtain the same she would hold it as null. Nothing of this kind. It has already been seen that, in January of 1887, Lord Salisbury invoked the Agreement as valid, and still in force, in order to oppose the erection of a lighthouse at Point Barima without his acquiescence; and to assert that to attempt it would be a violation thereof, which he would have the right to resist as an aggressive act. This, long after the time when the violations attributed to Venezuela, had been consummated. It was only in 1885 that the British Legation in Caracas made known to the Government *that in certain districts the sovereignty over which was equally in dispute between the Government of her Majesty and that of Venezuela* the Manoa Company was executing acts to which its attention was called, and

requested moreover that steps be taken which should prevent the agents thereof (or of Mr. Gordon, who also had a concession for colonizing) from claiming or obstructing any part of the territory claimed by Great Britain. The Legation added that in the event of Venezuela refusing to take action, the Government of Her Majesty would feel called upon to adopt measures to prevent the usurpation of said Company, and that the Governor of Guayana would be authorized to employ police force for the purpose, and to maintain order, but that, nevertheless, the Governor would do nothing while this reference to the Government of Venezuela should be pending. So wrote the English Minister in Caracas under date of January 8, 1885. On the 25th of the same month and year, he gave notice that orders had been issued to the Governor of Guayana to send a Mr. Mac Turk, Stipendiary Magistrate, with a force of police to institute in the district on the eastern bank of the Amacuro River an inquiry as to the actions of the Manoa Company, and more especially as to the conduct of Mr. Robert Wells and others, who were accused of having tortured some persons by hanging them for a long time by their ankles, etc. The Legation stated further that Mr. Mac Turk would act pursuant to the laws in force in other parts of British Guayana, remembering that the words of the contract with the Manoa Company are specifically *as far as British Guayana*.

Without awaiting, then, the result of the measures of the Government of Venezuela to elucidate the facts, and in contradiction to its spontaneous offers, the British Government hastened to send to those localities a police force to apprehend Mr. Robert Wells, Commissary of Venezuela, and to take him to Demerara for trial; to place a guard where the Commissary was; to visit the Amacuro, Barima, Morajuana, and Guaima Rivers; to place in the principal localities thereof notices in the English language stating that they were British property; to establish posts, and to exercise the other acts of jurisdiction which have given rise to the claims of Venezuela and which since that time have been followed by other and yet other acts. The British Government was informed of the astonishment caused by its failure to apprise Venezuela of any grounds of complaint it might have, before resorting to force, and because it had not employed the measures of conciliation and good understanding practiced by nations.

There is nothing more frequent in treaties than clauses like this, to be found in those that Colombia in 1824 and Venezuela in 1836 concluded with the United States of America, and which is also to be found, substantially, in those of this Republic with the Hanseatic Republics, of 1837, with New Grenada, of 1842, with France, of 1843; with Spain, in 1845, etc.:

“If (what, indeed, cannot be expected), unfortunately, any of the articles in the present treaty shall be violated or infringed in any other way whatever, it is expressly stipulated that neither of the contracting parties will order or authorize any act of reprisal, nor declare war against the other, on complaints of injuries or damages, until the said party considering itself offended shall have presented to the other a statement of such injuries or damages verified by competent proofs, and demanded justice and satisfaction, and the same shall have been either refused or unreasonably delayed.”

This accords with what Vattel says: “If neither of the disagreeing nations finds it expedient to abandon its rights or its pretensions, natural law, which counsels peace, concord and charity, obligates them to try the most conciliatory means to terminate their controversies.”

And this accords with what G. F. de Martens lays down:

“The sovereign States themselves, when they complain of the infraction of their original or derivative rights, and the same is not apparent, must produce the evidence before the party of whom they demand satisfaction before resorting to force; that is to say, they should make the fact on which their complaint rests so clear (not only that on which their right is based, if an acquired one, but also that which constitutes the injury for which reparation is asked) that no reasonable cause for doubt may exist.”

But, suppose that Venezuela did violate the Agreement of 1850, would such an offense justify the appropriation of the territory which Great Britain herself had declared in dispute? Nowhere has it been found that such a violation constitutes a method of acquisition among nations. The violation of a treaty, it has already been said, may lead to war, if satisfaction for the offense be denied; or to the invalidation of the compact, if the party injured considers it more in keeping with the circumstances. In case war is adopted, the outcome thereof may be conquests occasioning the loss of territory, when confirmed in the treaty of peace; but during the progress of the war, occupancy gives no right to the territory taken by force. Much less when that is done against the will of the owner, and in spite of oft-repeated protests, as in the present case.

From the first time that this Government knew what was occurring, besides sending Commissioners to the localities occupied to ascertain the truth of the usurpation, it seriously complained of the offenses of the invader, through the British Representative in Caracas, taking a firm stand on that of the imprisonment and carrying off of the Venezuelan Commissary at the mouth of the Amacuro, and claiming satisfaction therefor. Immediately thereafter the Minister of the Republic in London, after stating the facts, demanded: first, the removal of all the evidences of British sovereignty located on the territory in dispute; second, the withdrawal of the public officials and force stationed there; third, satisfactory explanations for the failure to carry out the Agreement of 1850, and the violation of the laws of the Republic with respect to ports not open to foreign vessels; fourth, a dismissal of the case brought against the Venezuelan Commissary, his liberation and indemnity for the injuries to him caused by his arrest and imprisonment, subjection to trial and punishment, charged with an offense on Venezuelan territory; and fifth, complete restoration of things to their status in 1850, date of the said Agreement, and written orders to the Governor of British Guayana to scrupulously observe the said treaty while the two Governments settled the question of their boundaries.

The English Government paid not the slightest attention to this demand – quite the reverse of what took place in 1842, when Dr. Fortique, with great reason, demanded the removal of posts and other signs of dominion located by the Engineer Schomburgk in Barima and Amacuro. Lord Aberdeen ordered these removed, being no doubt convinced by the ‘arguments of the Plenipotentiary of Venezuela. The British

Minister apologetically explained that the marks did not signify sovereignty, but only a presumption of what were considered the English boundaries. Like explanations were given by the Governor of Demerara to the Commissioners, Señores Juan José Romero and José Santiago Rodríguez, sent there for the purpose of requesting them, and to protest in case they were refused.

Towards the end of 1886, after the visit of the new Commissioners, Señores Dr. Jesus Muñoz Tébar and General Santiago Rodil, information was had of the acts of jurisdiction which British authorities were exercising in Amacuro, Barima, Aruca, Cuabana, and Guaramuri, and of the working of gold mines situated between the Cuyuni, Mazaruni and Puruni rivers. For this

reason (and the Governor of Demerara having written to the Commissioners that the said localities were included within the boundaries established by resolution of the Government of Her Majesty, dated on the 21st of October, 1886, which declares them to be British, because they are in dispute with Venezuela) explanations were requested of the English Minister in Caracas, who gave no satisfaction. Then the evacuation of the territory occupied from the Orinoco to the Pumarón, and the submission to arbitration of the whole boundary question was demanded. As the British Government refused this, the Venezuelan Government on the 20th of January, 1887, declared the diplomatic relations between the two countries suspended, and protested against the acts of spoliation, which, to the prejudice of the Republic, Great Britain had consummated; declaring before her and before the whole world that at no time and for no reason would it recognize such acts as capable of altering to the slightest degree the rights that it had inherited from Spain, and which it was ready to submit to the decision of a third power.

It again protested on the 15th of June, 1888, by reason of the Governor of Demerara having created the new District of the Northwest in which he included Barima, and of having sent there as Commissary Mr. Bartholomew A. Day.

It again protested on the 29th of October, 1888, when it learned that the English had established in Barima a Custom House, an inspector and corps of police, a barrack and a coast-guard, which would not permit the Venezuelan pilots to cut wood, or the guard-ship (*Ponton*) to anchor within a mile from shore, and who had also occupied Amacuro.

It again protested on the 16th of December, 1889, on seeing the decree of the Colonial Government of Demerara, dated the 4th of that month, declaring Barima an English port; and also against the pretension, by that Colony, to exercise dominion over Venezuelan territory by the proposed construction of a road through the federal domain of the Republic in Yuruary.

It again protested before the Government of Demerara on the 2nd of May, 1890, through the Consul of Venezuela there, and through Señor Rafael F. Seijas, Special Commissioner, sent to examine the condition of things in the neighboring territory, against all the official acts authorized by the Government of the Colony to the prejudice of the rights of Venezuela, of which a long list was made as a result of that agent's trip of investigation.

It again protested on the 1st of September, 1890, against the ordinance of the Government of Demerara, published on the 19th of July previous, which, under pretext of establishing an additional District under the name of Pumarón, and of 'changing the delineation of the district of the northwest, provided limits showing the design of incorporating another portion of Venezuelan territory into that occupied by England.

It again protested on the 30th of September, 1890, declaring, through its Confidential Agent in London, Señor Dr. Lucio Pulido, to the Government of Great Britain, that Venezuela would never recognize the territories of Guayana, declared to be in dispute and neutral in 1850, nor any steps that might be taken by the Colonial authorities of the Government of Her Britannic Majesty looking towards their permanent occupancy, reserving for all time its right to repossess them.

It again protested on the 30th of December, 1891, against a speech read by the Governor of Demerara before the Joint Court of that Colony, in which he spoke of the advisability of establishing on the upper Cuyuni a Station and police government, and against the authorization of the said court to apply a sum of money to that end.

It again protested to Lord Rosebery, Secretary of State for Foreign Affairs of Her Britannic Majesty on the 6th of October, 1893, against the actions of the Colony of Demerara; and against

the reply of the said official, in which he asserted that the acts denounced by Venezuela as offending the sovereignty thereof were only measures of an administrative character, in his judgment in no wise antagonistic to the rights of the Republic, as was replied to Señor Michelena, who had made the complaint.

It protested again on the 15th November, 1894, when information was received that a project was before the Legislature of Demerara looking to the construction of a road from the sources of the Barima to the upper Cuyuni or to the Yuruan. The Government of the Republic looked upon that act as a direct aggression upon its territorial rights, in that it contemplated jurisdiction over lands which, in virtue of indisputable historical titles and natural geographical position, Venezuela considered her own exclusive property. That protest, as also the renewal and reaffirmation of all former ones, was communicated to the Government of the Colony of Demerara through the Venezuelan Consul at Georgetown.

It protested, finally, on the 3rd of January last, before the Government of Demerara, through the Consul of Venezuela there, against two bills authorizing several persons to construct, maintain, and operate two railway lines from the right bank of the Barima river to the interior; against the concession to Messrs. Garnett and Company, to gather *purguos* at certain points on the right bank of the Cuyuni; and against the concession of lands situated on the right bank of the Cuyuni, for the organizing of the so-called "British Guayana Chartered Company."

With respect to maps lately published in which there is attributed to the Colony of Demerara more territory than belongs thereto, the Executive has taken the necessary steps to object to them, and to prohibit their introduction, sale and circulation in the country, as containing false notions regarding the frontier of Venezuela, and as having been drawn without the slightest idea of the antecedents, which the authors should have studied. And he is untiring in his efforts.

It has likewise, since 1876, addressed itself to the Government of the United States of America, stating its complaint and requesting its aid, as the great Republic of this continent, thereby; and because of its antecedents, called upon to lend support to its sisters against the extravagant demands of the powerful.

And the cause of all the Republics of the New World being one, Venezuela took care also to inform them of the situation in which she had been placed, and to ask their moral support for the purpose of inclining Great Britain to agree to submit to arbitration the boundary controversy. Its aspirations have been limited to this.

Finally, Venezuela has never failed to declare that she rejects the imposition of force, and will continue to consider as hers the territories of which she has been dispossessed thereby, no case having arisen in which there could be attributed to her an assent to the cession or abandonment of her territorial rights.

As complementary to the measures taken at all times to oppose the publication and introduction into Venezuela of maps antagonistic to the rights thereof, on December 27, 1893, the Government urgently demanded the correction of certain data concerning British Guayana, published by the International Bureau of Washington, which an association of Republics of the Western Hemisphere created and maintains, and which was principally intended for the compilation, arrangement and circulation of statistical data regarding the wealth and commerce thereof. It had published a series of notices relative to the so-called mines of British Guayana. Nevertheless it treated of mines situated in regions which, being Venezuelan, are unlawfully held by the authorities of Demerara. Therefore this government deemed such data not only erroneous, but also an-

tagonistic to the rights of the Republic, which served as a basis for the instructions communicated to the Minister of this country in Washington to make the proper complaint and demand in the premises.

Finally the result aimed at was secured. To one of the subsequent bulletins it was explained that in the November number, 1893 – the cause of the complaint – it was not intended to express any judgment regarding the merits of the controversy existing between Venezuela and Great Britain, nor to advance an opinion respecting the right of either Government, but to give out notices deemed important for commerce. So that from nothing written could there ever be drawn any conclusion or argument unfavorable to Venezuela.

Previously Mr. Secretary Blaine had been requested to order the correction of a map issued by the International American Company, the errors in which had given rise to just observations by the Government of this Republic.

All this series of acts, the result of a plan thoughtfully conceived and firmly and perseveringly carried out, prove the intention of the Government of the Republic to never recognize on any ground whatever the forcible possession which the British have taken of places over which Venezuela asserts dominion, and to the evacuation of which they have tenaciously objected.

These are precisely the resources to be employed by States to prevent the effects of force as an element of prescription in the judgment of publicists.

It must be borne in mind that several of them hold opinions against prescription as between States; others admit, at the most, immemorial prescription; and others assert that uninterrupted possession of territory or other property for a certain time excludes the claim of any one else. It seems that the last case identifies itself with the second.

Eugène Ortolan has treated the subject *ex professo* in his work “On the Methods of Acquiring International Dominion or State Property between Nations according to Public International Law, compared with the methods of acquiring property between individuals according to private law, followed by an examination of the principles of political equilibrium.”

He was a Doctor of Laws and an attaché of the Ministry of Foreign Relations of France.

He says that such methods are:

“1. The occupation of things belonging to no one through possession, and the intent to appropriate them and hold them as one’s own.

“2. Effects of the changes arising in bordering waters and the springing up of islands or islets.

“3. Agreement to transfer international dominion and taking of possession; for example: treaties of cession in general, treaties of sale, of compromise, of exchange, of settlement of limits, or partition.

“4. Arbitration decisions, not in general; for they would be only the recognition, the declaration, in favor of the winning party, of the pre-existing right of property; but only in cases in which disputing nations may have wished to conclude a compromise and had consented to reciprocally exchange, cede, or abandon territorial property rights and had left the arbitrators at liberty to establish the bases and sacrifices of the compromise, obligating themselves beforehand to submit to the result of the arbitration; a case in which the arbitrator may, without overstepping the authority conferred on him, not only recognize this or that pre-existing right, but may even create a new right of international property, by deciding in the compro-

mise that such a power abandons the sovereignty of such a Province to transfer the same to the other State; and his decision becomes the source of the acquisition of the ceded territories.

“It may also be supposed that the dispute has for object, a partition of land or a settlement of boundaries between the two States, and that they have referred the operation to arbitral decision, giving the arbitrators, in case of partition, authority to make the adjudications of the necessary parcels, or, in case of a settlement of boundaries, the power to effect reciprocal cessions between the two States, in order to establish the limits in a more convenient manner.”

“Nevertheless those cases will not be frequently met in practice with such amplitude of powers conferred on the arbitrators. It is rare that two nations consent to confer, without any limitations, upon a third power the authority to decide, and much less to definitely settle, their territorial property rights. Nearly always disputants reserve the right to change the agreements that may be proposed to them, and, consequently, the compromise offered them is only a *promise* which begets no obligation or right except insofar as it is ratified. The right grows out of the acceptance of these conditions, and not of the decision of the arbitrators.”

Pradier-Fodere recognizes that the arbitrator determines disagreements *according to law*; he seeks out on what side it is to be found; examines in what way international law should be applied to the particular case forming the subject of the disagreement between the parties. To state the law; that is his trust. He is not charged with reconciling the parties – the office of the mediator – but with causing the disagreements to disappear through a friendly decision which he draws from the principles of law, and which is conventional, but morally binding upon the parties. This does not prevent them (it all depends on their will) from granting him the authority of a law arbitrator (*arbitrador amigable componedor*).

The most recent case of this kind occurred in the year 1890, between France and the Netherlands. Being engaged in determining the limits of their respective Guyanas, they decided on the 20th of November, 1888, to resort to arbitration in the premises. They entrusted it afterwards to the Czar of Russia with the understanding that he was to decide the question of law, that is, whose was the territory comprised between the Lava and Tapaná rivers.

The Czar did not consent to accept a trust so limited and asked for an extension of authority. Whence it resulted that the same parties signed in Paris on the 28th of April, 1890, a new convention in which it was stipulated that in case the arbitrator, after examination, should not succeed in designating as a boundary one of the two rivers mentioned in the Convention of 1888, he was authorized, as a compromise solution, to adopt and determine another limit that should pass through the disputed territory.

Some are of the opinion that this precedent should not be followed, because it distorts the nature of arbitration, which it confuses with mediation; since every one will wish to follow the example of the Czar of Russia, and because, if the parties interested are disposed to compromise, they could do it directly without the necessity of calling in a third party.

5th. Conquests, but only when they have been confirmed in the treaty of peace which brings the war to a close: This is understood with reference to real estate, for personal property is acquired as booty in determinate cases, or as the result of a formal judgment when treating of maritime prizes.

The author maintains that the principles observed by ancient countries and in subsequent barbaric times, according to which war and conquest were the methods of acquiring property among nations, have been completely changed. That in civilized countries war ought not to be considered as a means of extending power or of enlarging dominions, but only as a fatal necessity, inevitable consequence of the right of independence, a necessity which would disappear were it possible to place over States a collective and common authority, and, consequently, taking from among the rights of nations the right of absolute independence which now exists. That it can only be undertaken when it is forced upon a State through the violation or serious questioning of an essential right, and when all the pacific means for preventing it have been vainly exhausted.

He attributes certain consequences to military occupation, which he does not consider forcible and contrary to law, but valid, and producing the same effects as possession in good faith, so that the possessor may collect imposts, exercise authority and jurisdiction. He also believes that military occupation may serve as a just ground, in international law, for the transfer of property effected in the convention which brings an end to the war; and, lastly, that, according to several publications, it may also serve as the foundation of prescription.

Although the author does not say it, it is to be admitted, with others, that not only does the treaty of peace confirm the conquests, but also the fact of complete subjection of one State to another as the result of war, because the former, becoming extinct, it is no longer admissible for it to retain territory.

6th. Finally, Ortolan includes prescriptive acquisition among the methods of acquiring international property. After justifying the application thereof among individuals, he asserts that it should be equally extended to States, but with certain requirements.

The first is that it should be held in the capacity of owner and sovereign of the territory, and that therefore it would not suffice for some individuals belonging to the nation to have in their own name performed acts of private ownership of that territory, because the possession must be in the name of the State through acts of enjoyment, command, and jurisdiction, which constitute the exercise of international dominion.

The second is that the possession in the capacity of owner shall be public; would be manifested by open acts, visible to all, because in furtive and clandestine acts, which the true proprietor has been unable to see, there is wanting the fundamental fact of prescription, the role of proprietor assumed by one, and surrendered by another.

The third requisite is that the possession shall be continuous, as is always the essence, the character, of the role of proprietor which passing, transitory, intermittent acts cannot constitute.

So that if the possession be begun with the intention of continuity and it is abandoned and subsequently recovered, each interruption irrevocably destroys, as regards the unfinished course of prescription, the effect of the previous possession; the separate fragments of those several possessions not being unitable to form a whole. Each new entry into possession constituting a new starting point, the time being only reckoned from this new point. Ortolan lays down the rule that these three conditions of publicity, continuity, and absence of interruption, necessary in private law to prescriptive acquisition, are equally necessary in international law. Although he considers that between country and country clandestine territorial possession is barely possible, he finds cases of uninterrupted possession more feasible.

Passing on afterwards to examine the acts which give rise to possession or the maintenance thereof, he finds that field full of difficulties. But he judges that force, during its continuance, cannot become legitimate and convert itself into a right; and that the longer it lasts the graver becomes the fault and the greater the offense against right. He adds that the possession which is only maintained through forcible means cannot be advantageously relied on, and that it is inadmissible to say that one who finds himself expelled and driven away therefrom by force abandons the role of proprietor.

Nevertheless, speaking of usurpations, of violent invasions, he says that they may serve as the origin of territorial occupation for the invading country which may retain the possession, and that even in this last case (and saving then the extension of the time required for prescription) it must be logically recognized that the force once terminated, and the dispossessed State being at liberty to claim, if it has not done so and has remained passive, prescription will have commenced to run in favor of the State possessing the territory, and by this means the possession will finally be changed into international dominion.

He also maintains that military occupation of a territory resulting from a formal war, although insufficient to convey the title to that territory, gives a possession thereof, which international usages liken to a possession in good faith.

He then passes on to study the question of the time necessary to prescription, and, recalling that the civil law distinguishes between cases of real and personal property, of presence or absence of good or bad faith, and that it establishes terms of 10, 20 or 30 years, proportionate to the life and the action of individuals, asserts that they are not applicable to cases of States; and that without determining the precise terms, and leaving the influence they should have to the circumstances of each case, it is thought that a long series of years is necessary to transfer the right of dominion and territorial sovereignty over a country, from one country to another.

What method there may be to arrest the course of the prescription already begun, originating in the passiveness of the owner – the failure to exercise the rights and functions of ownership – Ortolan sets forth by suggesting that it is to emerge from the inertia to prosecute, or at least to claim, the exercise of his role of owner before the completion of the course thereof; and the realization of acquisition by the possessor. The civil law requires resorting to the judicial authority, extra-judicial claims, protests or even exhibiting of documents being insufficient, and only then is he considered as in fact replaced in possession; the delays in confirming the existence of his right depending only on the imperfections and slowness of human justice.

The same rule not being applicable in international law, owing to the absence of a common judge, States find themselves limited to claiming their rights one from the other through the channel of diplomatic negotiations, and, if necessary, do justice to themselves through their own strength. But he adds that in order to interrupt prescription war is not necessary; that a weak country or one placed temporarily in a difficult situation may find itself forced to await other resources or other times to take up arms, and until then to resort to diplomatic demands. That such demand interrupts prescription, because once made, the State in possession should satisfy, if it be just, and immediately restore the proprietor State to power.

He thinks that, as regards protests and exhibitions of documents, taking into account the difficult situation and the impossibility to act in an efficacious manner in which a power may find itself, it may be said in general that they will not produce the interruptive effect, save in so far as they may assume the character of a true diplomatic demand addressed to the adverse power; and

that notifications to other States are only means of greater publicity, as though to make them witnesses to the violation of its rights for which the demand is made.

It appears to him that with greater reason attempts to recover in fact the possession of the disputed territory would be cause for its interruption, even though they should have been unsuccessful; but provided they are made in the name of the State, as a public undertaking, and by it so recognized, and not by mere individuals who act without authority and in a private capacity.

Finally, that the recognition the State in possession may grant to the rights of the adverse power, or even the mere desire to submit the controversy to examination, to diplomatic discussion will likewise interrupt the course of the unfinished prescription.

The doctrines of the author named being once known (and they are the most favorable to the method of acquisition by prescription, since it is desired to place the matter in the furthest extreme), it is advisable to examine, whether in the light thereof the appropriation by Great Britain, either from the year 1884, or from a previous date, more or less unknown, of territory in dispute with Venezuela, is justified.

It is unnecessary to dwell longer on the other means of acquisition before specified. Prescription will be spoken of principally for the reasons which will be set forth.

Not occupation, because the subject in hand is not things that were originally acquired, since the titles of Venezuela as well as of Great Britain are exclusively derivative.

Not the changes in bordering waters or the appearance of island – changes which can only occur between regions definitively delineated, which the Republic and the English Colony of Demerara are not.

Not agreements to transfer dominion, which in this case are the treaty of recognition of the independence of Venezuela by Spain on March 30, 1845, and that of 1814, in which Holland ceded to Great Britain its Colonies of Essequibo, Demerara and Berbice. The question does not rest on the act of transfer itself, but on the extent of the territories therein included, which was absolutely not defined in either of the conventions.

Not the result of an arbitration decision where the arbitrator receives the authority of a friendly adjuster, and pursuant thereto adjudicates territories to one of the litigants or to both. Venezuela has urged arbitration, but judicial, as the only one compatible with the constitutional provisions which prohibit the alienation of any part of her territory, and Great Britain has not accepted it, except under conditions evidently inadmissible.

Not conquests, which do not now constitute acquisition of international property, save when confirmed by the treaty of peace which puts an end to the war. Fortunately, there has been none between Venezuela and Great Britain, so it can have no bearing here, however much it may be endeavored to widen the sphere of conquests.

Therefore, there remains nothing but prescription, and in effect the English assert it. In an article in the London *Times*, of January 18, of this year, a paper which follows the footsteps of the Foreign Office, appears the following:

“It should be borne in mind, in the first place, that neither this country nor Venezuela have an original title to the territory or can show the history of a very long possession. We derive ours from the Dutch, from whom we took the establishments of Demerara, Essequibo, and Berbice almost a century ago. Venezuela derives hers from the Spaniards, whose yoke she threw off at the beginning of this century. In 1796, as on another previous occasion in

which the Dutch Colonies were occupied, this country claimed a boundary which began at Barima, on the banks of the Orinoco, and included practically all the basin of the Essequibo river. By the treaty of 1814, the results were finally sanctioned, *the Spanish Government having been a party to the negotiations and not having raised any objection against the boundary claimed by Great Britain*. At that time Venezuela was in rebellion against Spain, but had not obtained the recognition of her independence. Neither in 1814 or in 1819 when Venezuela was incorporated into the *United States of Colombia*, was any question raised by the former or latter with respect to the validity of the frontier that the Spanish tacitly accepted. On the contrary, the *United States of Colombia* frankly recognized what they owed to the friendly attitude of Great Britain, and when, in 1830, Venezuela, on her own account, made herself an independent Republic, she also manifested her friendship with warm expressions, and likewise preserved silence on the boundary question.

At that time therefore we had a prescription of twenty-five years in favor of our claims, of fifty years, if we reckon from the first British occupation of the Dutch establishments in 1781. In the Venezuelan Constitution, promulgated in 1830, it was not endeavored to attack the frontier arrangements which the British Government had laid down. The Constitution merely defined the territory of Venezuela as the extent of what the Spaniards had denominated the Captaincy-General of Venezuela. Naturally such a Declaration has no binding force unless it be formally accepted by other interested nations. It is not an international instrument, but it is interesting because it gives the extreme measure of what Venezuela then claims."

Leaving aside the errors contained in that editorial of the *Times*, such as that in the treaty of London of 1814, relating to the cession of the Dutch Colonies of Demerara, Essequibo and Berbice to Great Britain, the latter determined the boundaries she claimed therefor, and that no objection was made by Spain, a party to the negotiation of the treaty; that neither Venezuela nor Colombia said anything against those boundaries which Great Britain attributed to herself about 1830 when neither one nor the other ever knew them, and the former claimed the Essequibo in 1822; the only thing that will be refuted will be the allegation of prescription of twenty-five or fifty years, applying the rules laid down by Ortolan:

1st. Great Britain could not possess as owner territories not specified as belonging to the grantor, nor included expressly in the transfer made to her by Holland.

2nd. Her possession has not been public, but clandestine, and therefore has not reached the knowledge of Venezuela; only since 1884, and with regard to places near her, has she given notice of her taking possession, against which there began then and there has been carried on uninterruptedly, a series of complaints, claims, protests and the establishment of posts and other measures of defense.

3rd. Neither has there been continuity in the possession, because it must be considered as having been interrupted, by the tenacious opposition of Venezuela.

4th. The English possession has been and is forcible, which renders it impossible of being converted into lawful origin, however long it may last; and it only serves to aggravate by its duration the offense against the proprietor.

England has herself maintained this doctrine. When her dispute with France touching the Island of Santa Lucia was referred, after the treaty of Aquisgran, to the decision of certain Commissioners, and gave rise to State Papers in 1751 and 1752, the French negotiators maintained that though the English had established themselves there in 1639 they had been driven out or massacred by the Caribs in 1640, and they had, *anima et facto* and *sine spe redeundi* (with the intention and in fact, and without hope of returning), abandoned the island. That Santa Lucia being vacant, the French had again seized it in 1650, when it became immediately, and without the necessity of prescriptive aid, their property. The English negotiators contended that their dereliction had been the result of violence, that they had *not abandoned* the island, *sine spe redeundi*, and that it was not competent to France to profit by this act of violence and surreptitiously obtain the territory of another State; and that by such a proceeding no *dominium* could accrue to them. [See Phillimore, *International Law*, "Prescription."]

It is not stated there what the Commissioners decided, but as the English are seen ceding the island to France in 1763, it is to be inferred that the decision was in their favor.

If we go on to the requirement of time, which is to consist of a long series of years, saving the influence of special circumstances, it could not be aspired to consider as sufficient the term of eleven years which elapsed since the beginning of the last invasions, which was in 1884. As regards the previous invasions they met with the obstacles that they were clandestine, as has been already observed. Aside from the fact that its course would have been arrested by the accumulation of claims, protests and the creation of posts and other measures of forcible defense.

Consequently, even though twenty or fifty years may have elapsed since the occupation, it signifies nothing, because the requirements necessary to confirm it are wanting; and it is pertinent to reiterate with Heffter "that a century of unjust possession does not suffice to take therefrom the defects of its origin."

The doctrine implied in the assertion of Lord Salisbury means that Venezuela cannot claim as hers places colonized by natives and others in the belief that they would enjoy the benefits of British rule during the thirty-five years which have elapsed from the date of the proposed concession offered by Lord Aberdeen in 1844.

The claim seems to be indefensible, not only because it is incompetent to apply thereto the cited rules of international prescription, but also for the following reasons:

1st. Because Venezuela has not been able to colonize the said regions by reason of her deference to the proposal of the British Government to not occupy them during the boundary controversy, in the understanding that the obligation was reciprocal, and very especially in view of the credit it ought to give the solemn protestations of Mr. Wilson, Chargé d'Affaires in Caracas, that Great Britain had no intention to usurp Venezuela Guayana, and would not authorize or sanction acts of occupation by her authorities whom it would order, reiteratedly if necessary, to abstain from acts which the Venezuelan authorities might justly consider as aggressions.

2nd. Because, as Calvo says: "if the right of States to incorporate into themselves a larger extent of still savage regions than those that they can civilize or administer is disputed, this can only be applied to recent acquisitions or occupations," and not to old possessions, sanctioned at once by time and by historical right, which form, properly speaking, a generally admitted exception to the preceding rule. When a State finds itself in possession of a country all that that country includes becomes its property, even when the occupation shall be actual only in a portion of the country. If it should leave therein uncultivated or deserted places, no one has the right to take

possession thereof without its consent. Even though the possessing State may not actually use them, those places belong to it; depend upon its sovereignty; it has interest in retaining them for ulterior uses, and to no one has it to give account of how it uses its property. Such is the special position of the United States of North America, of the States of South America, which possess several unpopulated territories, or inhabited by savage tribes.”

3rd. Because this same is the opinion of Vattel, from whom Calvo took it almost intact.

4th. Because the Colombian publicist, Doctor Madiedo, professes, like principles, and maintains them thus: “There is no nation of the earth which possesses absolutely and materially and through actual and constant occupation all the territory that its geographical dimensions determine. The most populated nations of the earth have uncultivated wastes and deserts where not a single human habitation is to be found.”

If we were to lay it down as a principle that a nation has no territorial sovereignty save over the soil it corporally and actually occupies, which is the principle which prevails among the savage hordes, according to the original *Jus Gentium*, there would result the admissible absurdity that no nation would have the right to all the territory marked for it on the map as an entity of international law.

“And not only that, but by a logical deduction from such a doctrine, it would have to recognize in any other foreign power the right to occupy those vacant portions, even within the national territorial boundaries, with the obligatory addition of recognizing in that foreign occupant the still stranger right to establish himself there under the jurisdiction of laws foreign to the sovereign on whose soil such vacant territories should exist, which includes all the sovereigns of the world.”

“And what would then become of the sovereignty and independence of nations obliged to recognize such absurd solutions of continuity in the exercise of their own power? Would not this be like sowing confusion to reap ceaseless discord and anarchy?”

5th. Because the English historian, Macaulay, on condemning the attempt by a Scotch expedition, headed by Patterson, to take possession, in 1699, of the Isthmus of Darien, which had been discovered and occupied by the Spaniards, but from which they withdrew afterwards to Panama, owing to the unhealthfulness of its climate, leaving the Indians there found to continue living after their own manner, says that regions of other countries are in like condition. He names as an example some mountainous districts situated not more than one hundred miles from Edinburgh where there lived clans who paid as little attention to the authority of the King, of Parliament, of the Privy Council, and of the Court of Sessions, as did the aboriginal population of Darien of the authority of the Spanish Viceroy and of Audiencias. The enlightened historian, statesman, minister, and Member of Parliament, concludes with these words: “It is safe to say that the taking possession of Appin and Lochaber by the King of Spain would not have been considered a less atrocious violation of the public law than that the Scotch should take possession of a Province situated in the very center of his possession under the pretext that it was in the same condition that Appin and Lochaber had been for centuries.” – [*History of England.*]

6th. Because in recent cases the validity of the titles invoked by Venezuela has been admitted, as may be seen in the history of the question of the Caroline islands between Germany and Spain. Having been submitted to the mediation of the Pope, he made the following proposition to the parties: “The discovery by Spain in the XVIth century of the Caroline and Palen Islands, which formed part of the Archipelago, and a series of acts performed at different periods by the

Spanish Government on the same Islands for the welfare of the natives, in the opinion of that Government and of that nation, have created for it title to the sovereignty, founded on the maxims of international law invoked and followed at that time in similar disputes. In truth, when the history of the said acts is examined, the authenticity of which is confirmed by several documents in the Archives of the Propaganda, the beneficent work of Spain in those Islands cannot but be recognized. . . On the other hand, Germany and England, in 1875, expressly informed the Spanish Government that they did not recognize the sovereignty of Spain over those Islands. On the contrary the Imperial Government thought that actual occupation of a territory is what creates sovereignty, an occupation which was never carried into effect on the part of Spain on the Caroline Islands. In accordance with this principle it acted on the Island of Yap and in that, as well as in what the Spanish Government has done on its part, the Mediator is pleased to recognize the complete *loyalty* of the Imperial Government.”

In consequence, the Pope suggested the advisability of confirming the sovereignty of Spain over the Caroline and Palen Islands; of Spain making her sovereignty effective by establishing a regular administration, with force sufficient to guarantee order and the rights acquired; of offering Germany complete liberty of commerce, navigation and fishing, and the right to establish a naval and coaling station, and the liberty to found on the Islands agricultural establishments.

It was so agreed in a protocol signed in Rome on the 17th of December 1885, by the Ministers of Spain and Prussia before the Holy See – a protocol which the respective governments approved. In 1886 the article V, regarding Germany’s right to establish on the islands a naval and coaling station was rescinded, whereby the sovereignty of Spain therein was restored.

7th. Because, according to the Monroe Doctrine, “the American continents, by the free and independent condition which they have assumed and maintain, are henceforth not to be considered as subjects for future colonization by any European powers.”

Says Lord Salisbury: “As regards the rest, that which lies within the so-called Schomburgk line, the Government of Great Britain do not consider her rights open to question. Even within that line they have, on various occasions, offered to Venezuela considerable concessions as a matter of friendship and conciliation and for the purpose of securing an amicable settlement of the dispute. *If, as time has gone on, the concessions thus offered diminished in extent, and have now been withdrawn, this has been the necessary consequence of the gradual spread over the country of British settlements, which Her Majesty’s Government cannot, in justice to the inhabitants, offer to surrender to foreign rule;*” and he considers such *withdrawal is amply borne out by the researches* in the national Archives of Holland and Spain, which have furnished further and more convincing evidence in support of the British claims.

Here it is seen repeatedly placed beyond doubt that the last settlements of Great Britain in the disputed territory are of recent date, and this explains the system of delay followed by her since 1841, in which year Venezuela urgently requested her to conclude the boundary treaty, of which the Agreement to her proposed, with an admixture of threats, by Mr. Wilson in 1850, appears to have been a part.

Strange, at least, seems the desire to insist on the Schomburgk line after it was abandoned by Lord Aberdeen in 1844, by Lord Granville in 1881, and by Lord Rosebery in 1886; it being particularly noticeable that the latter not only laid that line aside, but he furthermore proposed arbitration of a Joint Commission to divide equally what he denominated the territory in dispute, or be it that situated between the lines of Dr. I. M. Rojas and of Lord Granville, presented in 1881,

and that Schomburgk himself characterized his map as incomplete, as many of its details were based on information obtained from the natives.

Lord Salisbury writes: "The discrepancies in the frontiers assigned to the British Colony in various maps published in England and erroneously assumed to be founded on official information are easily accounted for by the circumstances which I have mentioned. Her Majesty's Government cannot, of course, be responsible for such publications made without her authority."

Without doubt this paragraph is intended to meet the objection presented in the official communication of the Acting Secretary of State, of the US, who, as complimentary to the communication of Mr. Olney of July 20, wrote to Mr. Bayard on the 24th following regarding the sudden increase of the area of British Guayana from 1884 to 1886, and which was 33,000 square miles, thereafter asserting that such settlement was made on the authority of the British publication entitled the *Statesman's Year Book*. He observes that it is corroborated by the British Colonial Office List, a Government publication, citing the proper passages, and he concludes by saying that the official maps in the two volumes mentioned (of 1885 and 1886) are identical; so that the increase claimed for British Guayana is not thereby explained; but that the latter map of the Colonial Office List show a varying sweep of the boundary westward into what previously figured as "Venezuelan Territory," while no change is noted on the Brazilian frontier.

If Lord Salisbury were referring to the *Statesman's Year Book*, perhaps his explanation will have some weight, but it will not do to extend it to works issued from the Colonial Office. And there is no reason for denying a fact which agrees with the previous assertions of the Minister in which he says that the size of the concessions of his Government has diminished as a necessary consequence of the gradual spread of British settlements.

Attention has been called already to another point of his note in which he asserts that the progress of those settlements made a decision absolutely necessary, and that therefore the Government of Her Majesty resolved to make no more concessions and to assert its undoubted right to the territory comprised within the Schomburgk line.

As is notorious, such new settlements are due to the existence of gold mines in the regions where they have been founded, and it appears reasonable to suppose that they, and not the alleged breaches by Venezuela of the Agreement of 1850, constitute the true motive of its disregard in 1893 by Great Britain; the fact being that even in 1887, that is, after the said breaches, she relied on it to oppose the erection of a lighthouse at Barima.

Lord Salisbury concludes with these words:

"They (the Government of Her Majesty) have, on the contrary, repeatedly expressed their readiness to submit to arbitration the conflicting claims of Great Britain and Venezuela to large tracts of territory which from their auriferous nature are known to be of almost untold value. But they cannot consent to entertain, or to submit to the arbitration of another power or of foreign jurists, however eminent, claims based on the extravagant pretensions of Spanish officials in the last century, and involving the transfer of large numbers of British subjects, who have for many years enjoyed the settled rule of a British Colony; to a nation of different race and language, whose political system is subject to frequent disturbance, and whose institutions as yet too often afford very inadequate protection to life and property."

The arbitration to which Great Britain will lend herself relates to the territory situated to the west of the extended Schomburgk line, to pretensions which, owing to their novelty and unjustifiable nature, Venezuela ought to have rejected as often as they were advanced in 1890, 1891, and 1892.

The pretensions which the Republic upholds, it inherited, not from the Spanish officials, if by this it is desired to designate subordinates, but from the very Government itself of Her Catholic Majesty, as appears from several acts emanating from herself.

The argument of the injuries which will befall British subjects in being transferred from the settled rule of a British Colony to a nation of different race and language whose political system is subject to frequent disturbances, has no connection whatever with the matter under discussion. The purpose is to discuss the right of Venezuela and of Great Britain to certain portions of territory, not to put on trial the institutions of the Republic; neither in this nor in her other domestic matters is it proper for foreign nations to intervene, much less to characterize them offensively. In their infancy all have met obstacles more or less similar to those which have presented themselves to Venezuela in the path of her effort to consolidate herself, insuring the benefits of a permanent peace and order. But even States, the oldest, most populous, cultivated, and apt in the science of politics, do not succeed in overcoming the difficulties of the Government, and it can be asserted with the book of history in hand, that there is not in the universal world, even one capable of flattering itself as being unassailable and having carried out the ends of its establishment.

Very near the beginning of his reply to Mr. Olney, Lord Salisbury writes:

“The definite cession of the Dutch settlements to England was placed on record by the treaty of 1814, and although the Spanish Government were parties to the negotiations which led to that treaty, they did not at any stage of them raise objection to the frontiers claimed by Great Britain, though those were perfectly well known to them. At that time the Government of Venezuela had not been recognized even by the United States, though the province was already in revolt against the Spanish Government, and had declared its independence. No question of frontier was raised with Great Britain either by it or by the Government of the United States of Colombia in which it became merged in 1819. That Government, indeed, in repeated occasions, acknowledged its indebtedness to Great Britain for its friendly attitude. When in 1830 the Republic of Venezuela assumed a separate existence, its Government was equally warm in its expressions of gratitude and friendship, and there was not at the time any indication of an intention to raise such claims as have been urged by it during the latter part of this century.”

With respect to the participation of Spain in the treaty, or in the negotiations for the treaty of 1814 regarding the transfer of Essequibo, Berbice, and Demerara to Great Britain, it has already been noted that there is no document proving it.

Regarding Colombia, it has been recalled that in the instructions issued in 1822 to the agent appointed in London, Señor José Rafael Revenga, he was authorized to propose the delineations with British Guayana and to claim the Essequibo.

Dr. José Manuel Restrepo, Minister of the Interior of Colombia, in his history of the Revolution of that Republic, printed for the first time in 1827, established the same frontier.

As regards Venezuela, she had no opportunity to ventilate the subject till 1840, when she was informed of the appointment of the Engineer Schomburgk to survey British Guayana by himself, without the concurrence of this country. She at once urged a boundary treaty, and later on requested the removal of the posts and other signs of dominion, located at Barima and Amacuro. Thus advised of the danger which threatened the Republic in its essential part bathed by the Orinoco, except in some intervals, it has used its best efforts to seek the settlement of the question, and has claimed what it believes to be its rights; and it believes that the right of preservation and progress of sovereignty and independence, and that of property lay upon it the obligation to maintain them manfully. The English Government through its Ministers, Lord Aberdeen, Lord Granville, and Lord Rosebery, have recognized the importance to Venezuela of the free possession of the mouths of that its principal, river. She understands that it will not be complete until the boundary shall be established according to law. Wherefore, Great Britain, which in every way seeks her own advantage, ought not to think it ill that Venezuela should in her turn work to secure the same object. By claiming the said boundaries she proposes to herself to perform a duty, not to be wanting in any duty of friendship or of gratitude with respect to Great Britain, towards whom during all the period of her existence she has endeavored to prove such sentiment.

She has not forgotten that she subserved the ends of justice declining to enter into the Holy Alliance and in opposing the plans to aid Spain in reconquering her American colonies, acting in this in accord with the United States, whence was born the Monroe Doctrine; and in recognizing, following their example in 1825, the independence of Colombia.

In the treaty referring thereto, British commerce was placed on the footing of the most favored nation unconditionally; the equality of the flag was stipulated; the English were placed on a par with the Colombians with respect to the acquiring of personal property of all kinds and classes, through sale, donation, exchange, or will; and with respect to the administration of justice they were granted several exemptions; and British and Colombian vessels were defined in like terms, demanding for the latter that they should have been actually constructed in Colombia, which was in the cradle. Finally her concurrence was promised for the abolition of the slave trade, which ever since 1810 the Supreme Junta of Caracas had spontaneously ordered suppressed. There was such a haste in the signing of the treaty that there was omitted therefrom the clause relating to its duration, which is so indispensable, and others which have not been added to it to complete it, as it was therein stipulated to do in a short time, for which reason it still exists without change, after seventy years, which have rendered it antiquated, as Lord Granville judged on negotiating its amendment in 1884 and 1885.

Venezuela, adopting it in 1834, left it as it was.

Since that time, she has accepted other conventions which Great Britain has proposed relating to postal arrangements, the extradition of fugitive offenders with several English islands, pecuniary claims, and above all the convention of 1839, referring to the abolition of the slave trade. In it the Republic bound herself to preserve in force the Colombian law of 1825, which declares it to be piracy, and punishes it with the penalty of death; and moreover, with a reciprocity notably illusory, she granted her the right of search in time of peace of merchant vessels, which in vain was requested of France and of the United States, and the arrogation of which even in the absence of a convention she had to renounce. Neither was any term established therefor. But that accords with the Constitutions established by Venezuela since 1864, which have proscribed slavery forever, and assured liberty to slaves who tread her soil.

It also condescended to subscribe the Agreement of 1850, the origin of so many difficulties.

Venezuela has duly appreciated, as did Colombia in her turn, the personal cooperation which brave Britons, the friends of liberty, rendered them in the war of independence, generously shedding their blood for her cause, such as O'Leary, MacGregor, D'Everaux, Minchin, Chitty, Wilson, Fergusson, etc., and some of them occupy a place in the Pantheon of our national glories.

On decreeing thanks and honors to the victims in the battle of Carabobo, the Congress of Colombia in 1821 ordered them "to be especially extended to the valiant British battalion which could be even distinguished among so many brave men, and suffered the lamentable loss of many of its worthy officers, thereby contributing to the glory and existence of their adopted country."

Colombia and the Republics succeeding her carried their magnanimity to the extent of admitting without the inspection made necessary by the multifarious and enormous abuses committed by usury under the contemporaneous circumstances, the supplies of money, arms, munition, clothing and other articles obtained in England to meet the necessities of the struggle with Spain. Venezuela is still paying today, with great punctuality, the balance of that debt, augmented, it is true, by subsequent loans; and the present government takes such great interest in the matter that it not only satisfies the current dividends, but moreover, at the same time, is paying off a large installment, the back payment growing out of the revolution of 1892. It also satisfies, month by month, the quota apportioned for the British credits growing out of diplomatic arrangements.

Behold numerous proofs of the gratitude of Venezuela and of her earnest desire to preserve the friendly character which has always distinguished her relations with Great Britain, notwithstanding the inconsiderate attitude she has assumed in some of her claims.

In defending the integrity of the most valuable part of her territory, Venezuela carries out solemn obligations, without diminishing her sentiments of gratitude, without ceasing to preserve her desire to agree to the honorable and amicable settlement of the disputes which have divided the two countries, and for the settlement of which she has been perseveringly pressing.

Caracas, March 25, 1896

[**Note: "Guayana" is the Venezuelan spelling for "Guiana", the preferred and accepted spelling used by the British. Thus, for example, "British Guayana", in this Venezuelan-translated text, should be read as "British Guiana". Geographically, "Guayana" is a Venezuelan state located on its eastern frontier west of the Barima River.]

971. AMERICAN SECRETARY OF STATE, MR. RICHARD OLNEY, TO SIR JULIAN PAUNCEFOTE, BRITISH AMBASSADOR IN WASHINGTON, GIVING A RESPONSE TO THE LORD SALISBURY PROPOSALS FOR THE PROPOSED ARBITRATION TREATY

[11 April 1896]

*Department of State,
Washington, April 11, 1896.*

(Extract)

IV. Arbitration under this treaty shall also be obligatory. In respect of all questions now pending or hereafter arising, involving territorial rights, boundaries, sovereignty, or jurisdiction, or any pecuniary claim or group or claims aggregating a sum larger than £100,000, and in respect of all controversies not in this treaty specially described, provided, however, that either the Congress of the United States, on the one hand, or the Parliament of Great Britain, on the other, at any time before the arbitral tribunal shall have convened for the consideration of any particular subject matter, may by act or resolution declaring such particular subject matter to involve the National honor or integrity, withdraw the same from the operation of this treaty; and, providing further, that if a controversy shall arise when either the Congress of the United States or the Parliament of Great Britain shall not be in session, and such controversy shall be deemed by Her Britannic Majesty's Government, or by that of the United States, acting through the President, to be of such nature that the National honor or integrity may be involved, such difference or controversy shall not be submitted to arbitration under this treaty until the Congress and the Parliament shall have had opportunity to take action thereon.

In the case of controversies provided for by this article the award shall be final, if concurred in by all the arbitrators. If assented to by a majority only, the award shall be final unless one of the parties, within three months from its promulgation, shall protest in writing to the other that the award is erroneous in respect of some issue of fact or of law. In every such case, the award shall be reviewed by a court composed of three of the Judges of the Supreme Court of Great Britain and three of Judges of the Supreme Court of the United States, who, before entering upon their duties, shall agree upon three learned and impartial jurists, to be added to said court in case they shall be equally divided upon the award to be made. To said court there shall be submitted a record in full of all the proceedings of the original arbitral tribunal, which record, as part thereof, shall include the evidence adduced to such tribunal. Thereupon said court shall proceed to consider said award upon said record, and may either affirm the same or make such other award as the principles of law applicable to the facts appearing by aid record shall warrant and require, and the award so affirmed or so rendered by said court, whether unanimously or by a majority vote, shall be final. If, however, the court shall be equally divided upon the subject of the award to be made, the three jurists agreed upon as hereinbefore provided shall be added to the said court, and the award of the court so constituted, whether rendered unanimously or by a majority vote, shall be final. . . .

It only remains to observe that is Article 4, as amended, should prove acceptable, no reason is perceived why the pending Venezuelan boundary dispute should not be brought within the treaty by express words of inclusion. If however, no treaty for general arbitration can be now expected, it cannot be improper to add that the Venezuelan boundary dispute seems to offer a good opportunity for one of these tentative experiments at arbitration which, as Lord Salisbury justly intimates, would be of decided advantage, as tending to indicate the lines upon which a scheme for general arbitration can be judiciously drawn.

972. LORD SALISBURY, BRITISH PRIME MINISTER AND SECRETARY OF STATE FOR FOREIGN AFFAIRS, TO SIR JULIAN PAUNCEFOTE, BRITISH AMBASSADOR IN WASHINGTON

[3 July 1896]

Foreign Office, London, July 3, 1896.

Sir:

I have to acknowledge your Excellency's dispatch of 15th June, inclosing a note from Mr. Olney, in which he explains the reasons that induce the Government of the United States to withhold their assent from the proposals with respect to the Venezuelan frontier contained in my dispatch of the 22d May.

The arguments by which Mr. Olney supports this view will receive the careful consideration of Her Majesty's Government. I am not now writing to you for the purpose of discussing them. My object in addressing your Excellency is to point out, that in a matter of some importance, Mr. Olney – owing doubtless to the inadequacy of my own explanation – has misapprehended the purport of the proposal which I had the honor to make to him – he states that “it appears to be a fundamental condition that the boundary line, decided to be the true one by the arbitrators, shall not operate upon territory bona fide occupied by a British subject – shall be deflected in every such case so as to make such territory part of British Guiana.”

This was not the intention of my proposals, and the language of my dispatch of 22d May does not, I think, fairly bear this construction. I proposed that ‘the tribunal should not have power to include such districts as the territory of Venezuela,’ but I did not propose that they should necessarily be assumed, without further proof, to be part of British Guiana. I only stipulated that the ownership of them was not to be decided by the tribunal, which, in our judgement, was inadequate for this purpose, though it was adequate for the assignment of the unsettled districts. The settled districts shown to be in dispute by the inquiries of the commission were to be disposed of by subsequent negotiation. The claim of Venezuela is so far-reaching that it brings into question interests and rights which cannot properly be disposed of by an unrestricted arbitration. It extends as far as the Essequibo: it covers two-thirds of the Colony of British Guiana; it impeaches titles which have been unquestioned for many generations. These districts must be treated separately, and until further inquiry has thrown more light upon the matter, it is only by reserving the settled districts generally that this can be done.

The view of Her Majesty's Government is that, where the matter in issue is of great importance and involves rights which belong to a considerable population, and are deeply cherished by them, special precautions against any miscarriage of justice are required, of which I have indicated the general character in this correspondence, but which are not required where a little unoccupied territory is alone in question. It is for this reason that Her Majesty's Government proposed to except these districts from the jurisdiction of the arbitral tribunal, though it could deal adequately with the disputed claims to territory that is not occupied. But they did not intend by that stipulation to ask the Government of the United States to prejudge any questions which had been raised, or might be raised, with respect to the ownership of settled districts. This part of the subject, confessedly the most difficult part, would have been reserved for separate examination.

I should wish you to offer this explanation to Mr. Olney when you have an opportunity, and if he desires it, give him a copy of this dispatch. I will reserve for another occasion the observations which, after consideration, I may have to make in reply to the general argument of his note.

(Signed) SALISBURY

973. AMERICAN SECRETARY OF STATE, MR. RICHARD OLNEY, TO SIR JULIAN PAUNCEFOTE, BRITISH AMBASSADOR IN WASHINGTON
[13 July 1896]

*Department of State,
Washington, July 13, 1896.*

Your Excellency:

I have the honor to acknowledge the receipt from you of a copy of Lord Salisbury's dispatch to you of the 3d inst. Its object is to explain that his Lordship, in his previous dispatch of May 22, did not intend that the boundary line fixed by the proposed arbitral tribunal should include in British Guiana any territory bona fide occupied by a British subject January 1, 1887. But as such territory must fall upon one side or the other of any complete boundary line, and was certainly not in any event to be assigned to Venezuela, all the present explanation would seem to show is that Lord Salisbury's proposals of May 22 contemplated not a complete boundary line, but a part or parts of such line – namely, such part or parts as might divide uninhabited or unsettled territory. Such a conclusion requires a heroic construction of a paper which, in terms, "proposes the following basis of settlement of the Venezuelan boundary dispute," by which the two Governments are to endeavor to agree "to a boundary line" upon the basis of a certain report, and by which, in absence of such an agreement, an arbitral tribunal is to "fix the boundary line upon the basis of such report."

Nothing in this language intimates that anything less than a complete boundary line, is to be the outcome of the plan suggested.

The discussion, however, is hardly worth pursuing. If Lord Salisbury did not make us meaning clear in the dispatch of May 22, he certainly is entitled to make it clear now. There is another part of the dispatch which seems in me of more importance and upon which I wish to base an inquiry.

"The claim of Venezuela," it is claimed, "is so far-reaching that it brings into question interests and rights which cannot properly be disposed of by an unrestricted arbitration. It extends as far as the Essequibo; it covers two-thirds of the colony of British Guiana; it impeaches titles which have been unquestioned for many generations." That Venezuela claims territory extending to the Essequibo or covering two-thirds of the colony of British Guiana cannot be regarded as being of itself an insuperable obstacle to unrestricted arbitration. But the objection that the Venezuelan claim "impeaches titles which have been unquestioned for many generations" is undoubtedly of the most weighty character. The inquiry I desire to put, therefore, is this. Can it be assumed that Her Majesty's Government would submit to unrestricted arbitration the whole of the territory in dispute, provided it be a rule of the arbitration, embodied in the arbitral agreement, that territory which has been in the exclusive, notorious, and actual use and occupation of either party for even two generations, or, say, for sixty years, shall be held by the arbitrators to be the territory of such party? In other words, will Her Majesty's Government assent to unrestricted ar-

bitration of all the territory in controversy with the period for the acquisition of title by prescription fixed by agreement of the parties in advance at sixty years?

I inclose copy of the dispatch for Lord Salisbury's use. I should be glad to have its substance transmitted by cable, that it may be published with the other correspondence on the 18 inst.

(Signed) RICHARD OLNEY

974. "STRICTLY PERSONAL" LETTER FROM MR. RICHARD OLNEY, SECRETARY OF STATE, TO SIR JULIAN PAUNCEFOTE, BRITISH AMBASSADOR IN WASHINGTON

[29 October 1896]

(Extract)

It is most desirable, I think, not to give the Agreement of 1850 any status on the face of the Convention even by reference – much less by an attempt to define its scope and meaning. An attempt to construe it will involve us in protracted debate and indefinitely postpone the attainment of the object we now have in view. The Agreement will come, and should come, before the arbitral Tribunal in the natural course of things and will be interpreted by that Tribunal by the aid of facts, documents and considerations of which we cannot now know anything.

[Source: Public Record Office (London) F.O. 80/375]

975. AMERICAN SECRETARY OF STATE, MR. RICHARD OLNEY, TO JUSTICE DAVID BREWER, PRESIDENT OF THE UNITED STATES VENEZUELAN BORDER COMMISSION

[10 November 1896]

*Department of State,
Washington, November 10, 1896.*

My dear Judge:

You will see by the morning papers that this happened which at our last interview I said was likely to happen within three or four days.

The United States and Great Britain are in entire accord as to the provisions of a proposed treaty between Great Britain and Venezuela. The treaty is so eminently just and fair as respects both parties – so thoroughly protects the rights and claims of Venezuela – that I cannot conceive of its not being approved by Venezuelan President and Congress. It is thoroughly approved by the counsel of Venezuela here and by the Venezuelan Minister at this capital.

In view of this situation it is extremely improbable that the Commission of which you are president will be called upon to make a report. In the view of the President and myself it is also desirable that the deliberations of the Commission should be suspended – for reasons which I stated to you at our last interview and which I need not repeat – until further notice. There need

be no ostentation about the suspension nor any special publicity given to it, but I wish to be in a position to assure all parties concerned that such is the fact.

Please treat this as strictly confidential. . .

(Signed) RICHARD OLNEY

976. AGREEMENT BETWEEN VENEZUELA AND GREAT BRITAIN AND THE UNITED STATES OF AMERICA ON A PROPOSED TREATY OF ARBITRATION BETWEEN GREAT BRITAIN AND VENEZUELA

[12 November 1896]

(Extract)

The Agreement

1. An arbitral tribunal shall be immediately appointed, to determine the boundary line between the colony of British Guiana and the Republic of Venezuela.

2. The tribunal shall consist of two members nominated by the Judges of the Supreme Court of the United States and two members nominated by the Judges of the British High Court of Justice, and a fifth selected by the four persons so nominated; or in the event of their failure to agree within three months from the time of their nomination, selected by the King of Sweden. The person so selected shall be the President of the tribunal. The persons nominated by the Judges of the United States and the British High Court of Justice, respectively, may be judges of either of said courts.

3. The tribunal shall investigate and ascertain the extent of the territories belonging to, or that might be lawfully claimed by the United Netherlands or by the Kingdom of Spain, respectively, at the time of the acquisition by Great Britain of the colony of British Guiana, and shall determine the boundary line between the colony of British Guiana and the Republic of Venezuela.

4. In deciding the matter submitted, the arbitrators shall ascertain all facts which they deem necessary to a decision of the controversy, and shall be governed by the following rules, which are agreed upon by the high contracting parties as rules to be taken as applicable to the case, and by such principles of international law not inconsistent therewith as the arbitrators shall determine to be applicable to the case.

Rules of the Tribunal

[The rules which are to govern the tribunal are]:

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

2. The arbitrators may recognize and give effect to rights and claims resting upon any other ground whatever valid according to existing international law and on any principle of interna-

tional law which the arbitrators may deem to be applicable to the case and are not in contravention to the foregoing rules.

3. In determining the boundary line, if the territory of one party be found by the tribunal to have been in the occupation of the subjects or citizens of the other party, such effect shall be given to such occupation as reason, justice, the principles of international law, and the equities of the case shall, in the opinion of the tribunal, require. . .

[Signed] RICHARD OLNEY,
Secretary of State

JULIAN PAUNCEFOTE,
British Ambassador to the United States of America

[Dated November 12, 1896]

977. US PRESIDENT GROVER CLEVELAND'S ANNUAL MESSAGE TO CONGRESS
[7 December 1896]

(Extract)

The Venezuelan boundary question has ceased to be a matter of difference between Great Britain and the United States, their respective Governments having agreed upon the substantial provisions of a treaty between Great Britain and Venezuela submitting the whole controversy to arbitration. The provisions of the treaty are so eminently just and fair that the assent of Venezuela thereto may confidently be anticipated.

Negotiations for a treaty of general arbitration for all differences between Great Britain and the United States are far advanced and promise to reach a successful consummation at an early date. . .

978. REPORT BY AMERICAN SECRETARY OF STATE, MR. RICHARD OLNEY, TO THE UNITED STATES CONGRESS
[December 1896]

[Extract]

. . . The relations of the United States with foreign powers continue upon that footing of harmony and friendliness which has been their fortunate characteristic for so many years. . .

The long-protracted dispute between Great Britain and Venezuela in regard to the boundary between the latter republic and British Guiana has, for a number of years past, attracted the earnest attention of this Government and enlisted its often renewed friendly offices to bring about an adjustment of the question in the best interests of right and justice, as determinable by the his-

torical record and the actual facts. The extended discussion of the subject culminated in July of last year, in an elaborate presentation to the British Government of the views of the United States touching the opportune-ness and necessity of a final disposition of the points at issue by the pacific resort of an equitable arbitration.

The entire correspondence having been laid before Congress by the President with his message of Dec. 17, 1895, that body provided for the appointment of a commission of eminent jurists to examine and report touching the ascertainable facts of the controversy, with a view to enable this Government to determine the further course in the matter. That commission has pursued its labors unremittingly during the present year, its researches being greatly aided by the elaborate statements placed at its disposal by both the interested Governments, together with a mass of documentary evidence furnished from the archives of the European countries that shared in the early discoveries and settlement of South America.

Pending this arduous investigation, however, the Governments of the United States and Great Britain have omitted no endeavor to reach a friendly understanding upon the main issue of principle through diplomatic negotiation, and it is most gratifying to announce that amicable counsels have prevailed to induce a satisfactory result, whereby the boundary question and its associated phases have been at last eliminated as between this country and England. A complete accord has been reached between them, by which the substantial terms of a treaty of arbitration to be concluded by Great Britain and Venezuela have been agreed upon, the provisions of which embrace a full arbitration of the whole controversy upon bases alike just and honorable to both the contestants. It only remains for the two parties directly concerned to complete this equitable arrangement by signing the proposed formal treaty, and no doubt is entertained that Venezuela, which has so earnestly sought the friendly assistance of the United States toward the settlement of the vexatious contention, and which has so unreservedly confided its interests to the impartial judgment of this Government, will assent to the formal adjustment thus attained, thus forever ending a dispute involving far-reaching consequences to the peace and welfare of the Western Continent.

Coincidentally with the consideration of the Venezuela boundary question, the two Governments have continued negotiations for a general convention, in the line of the recommendations of the British House of Commons, to which previous messages of the President have adverted, that all differences hereafter arising between the two countries and not amenable to ordinary diplomatic treatment should be referred to arbitration. The United States and Great Britain, having given repeated proof of their acquiescence in the great principle involved, not only by treaties between themselves by severally by concluding like adjustments with other powers for the adjudication of disputes resting on law and fact, the subject was naturally approached in a benevolent spirit of agreement, and the negotiations have so satisfactorily progressed as to foreshadow a practical agreement at an early date upon the text of a convention to the desired end.

979. AMERICAN SECRETARY OF STATE, MR. RICHARD OLNEY, TO JUSTICE DAVID BREWER, PRESIDENT OF THE UNITED STATES VENEZUELAN BORDER COMMISSION

[28 December 1896]

*Department of State,
Washington, 28 December 1896.*

Sir:

I had the honor to inform you about the 10th of November last that Great Britain and the United States had reached a complete understanding between themselves respecting the Venezuelan boundary question; that they had agreed upon the provisions of a treaty for the arbitration of the question as between Great Britain and Venezuela; that there was little, if any, doubt that the arrangement would be acceptable to Venezuela; that in these circumstances a report from the Commission would probably not be required, and accordingly that suspension of the labors of the Commission until further notice would not be out of place.

I have now the honor to apprise you that the expectations entertained when my communication was made in November last have been realized. The substantial provisions of the treaty referred to have been approved by the Venezuelan Government, so that when matters of detail and form are arranged nothing will remain but the customary signatures to the treaty and the submission of the same to the Venezuelan Congress for its ratification. There would therefore seem to be no reason why the Commission should not at once proceed to close up its work, which would seem to involve nothing more than putting the material it has accumulated into such shape as to make it easily available for the purposes of the arbitral tribunal to be constituted under the proposed treaty. . .

In thus notifying the Commission that there has ceased to be any occasion for the further prosecution of its labors, I am directed by the President to express his high appreciation of the diligence, skill, and effectiveness with which those labors have been conducted. That they have been instrumental in bringing about results of great and permanent value to the peoples of the three countries concerned can not be questioned. . .

(Signed) RICHARD OLNEY
