



The World Today

Resolving a Conflict Rooted in Colonialism

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It is well known that both Guyana and Suriname are members of the Caribbean Community. Equally well known is the fact that Venezuela claims almost two-thirds of what many recognize as Guyana's territory – the Essequibo region. What may be less well known is the longstanding dispute between Guyana and Suriname, which has its origin in the 19th Century when Suriname and Guyana were colonies of the Netherlands and Britain, respectively.

The Corentyne River which is located to the South-East of Guyana and South-West of Suriname was vaguely considered to be the boundary at a time when little was known about the origin of this great River. In the 1840s, the British sought to address the ambiguity by inviting the Dutch to jointly commission the services of the famous German explorer Schomburgk to chart the Corentyne thoroughly. The Dutch declined the British offer, but their refusal to participate in the exercise did not change the British position.

The German explorer dutifully launched his expedition and discovered the Kutari River, hitherto unknown to the Europeans. What is very significant about the Schomburgk discovery is that both Britain and the Netherlands subsequently accepted the Corentyne/Kutari as the boundary between Guyana and Suriname.

Alas! Schomburgk, unaided by today's sophisticated mapping devices, was unaware that there was a river to the west of the Kutari. His error became known in the 1870s when there was another expedition in the area, and another river, the New River, was discovered. The triangular area of land between the Kutari and the New River has been disputed by first, the British and the Dutch, and later by Guyana and Suriname.

In examining this dispute, it must be stressed that Guyana, as successor to British title, can have no better claim to the disputed territory than the British would have had at the time of its independence in 1966. Similarly, Suriname's claim is only as good as that of the Dutch prior to its attaining statehood. An evaluation of the claim of the colonial powers should now be attempted.

It should be recalled that when the British and the Dutch accepted the Corentyne/Kutari as the boundary between Suriname and Guyana, they both acted in the utmost good faith. Therefore, the question arises whether the boundary should have been shifted westward after the New River was discovered in the 1870s. It would be to

Suriname's advantage is the error is nullified and a change is made to the location of the boundary. Conversely, a shift in the boundary would work to the disadvantage of Guyana.

There is a large body of state practice which suggests that the boundary should remain the Corentyne/Kutari. On the continent of Africa, African states have adopted the position that the boundaries should remain as they existed in the colonial era, notwithstanding the fact that in several cases they were drawn in the most arbitrary manner. In this hemisphere there is the well known *uti possidetis* (as you possess) doctrine, which is very similar to the widespread practice in Africa.

It is also contended that Dutch acceptance of the Corentyne/Kutari in the 1840s did not confer on Britain a mere inchoate title. Since both parties acted on the best available information at the time, it can hardly be said that there was anything further to be done by Britain to perfect its title.

One is inclined to state that boundaries should be changed only in the most extreme circumstances. It is conceivable that error may fall within this category, but it is here argued that it should be one that is discovered immediately after it was made. This may be considered to be strict, but it is submitted that this is so for a most compelling reason. There is an old adage that good fences make good neighbours. In International Relations, safe, secure borders are an essential prerequisite for stable inter-state relations.

Now, should we not try to free ourselves from the shackles of our historical antecedents? This is a fair question and the possibility of charting a way forward needs to be explored. Priority must be to given settling the issue by peaceful means. Both CARICOM states are members of the United Nations, whose Charter imposes on members the obligation to resolve disputes through peaceful methods. These may be diplomatic or legal, but it should be appreciated that these may not yield the same results.

If the parties opt for one of the legal methods of settling their dispute, arbitration or adjudication, it would be resolved by the application of legal principles and the decision handed down would be final and binding. It should also be noted that the question of reaching a compromise would not arise. On the other hand, any of the diplomatic methods – negotiation, good offices, enquiry, mediation and conciliation – provides an opportunity for concessions to be made and ultimately for a win-win situation.

Guyana and Suriname have shown a preference for the finality of arbitration over the flexibility of diplomacy. Indeed, oral pleadings by both countries were due to commence on December 7 in Washington D.C., with presentations of their respective maritime boundaries claims before the United Nations International Arbitral Tribunal on the Law of the Sea. Although arbitration may suffer a disadvantage with respect to the expenses associated with it, it is highly commendable that both parties have been able to agree on a method. For the entire independence period the dispute has been like a Sword of Damocles, hanging over both countries as far as investment is concerned. It is believed

that the resource potential of the disputed area is great, but the stark reality is that no rational investor would invest in an area when the issue of validity of title is in doubt, and there is no agreement for cooperation between the parties to share the resources located in the disputed area.