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Mr. D.C. Gordon-Smith's Memo of 18/6/57.

The boundaries set out in (3) for the area for which it is proposed to grant an exploration licence seem to be open to objection in the maritime areas in the north-west and south-east, i.e. in the areas bordering on the territorial waters and continental shelves of Venezuela and Surinam respectively. The International Law Commission's Draft Articles on the Law of the Sea provide as follows -

Article 14

The boundary of the territorial sea between two adjacent states shall be determined by agreement between them. In the absence of such agreement and unless another boundary line is justified by special circumstances, the boundary is drawn by application of the principle of equidistance from the nearest point on the baseline from which the breadth of the territorial sea of each country is measured.

Article 72(2)

Where the same continental shelf is adjacent to the territories of two adjacent states, the boundary of the continental shelf shall be determined by agreement between them. In the absence of agreement and unless another boundary line is justified by special circumstances, the boundary shall be determined by application of the principle of equidistance from the baseline from which the breadth of the territorial sea of each of the two countries is measured.

The baseline referred to in these Articles is of course normally the line of low water mark on the coast. These articles lay down principles acceptable to I.L.C. and they have considerable authority although the principles they contain may not yet have acquired the status of customary international law and the articles have not been embodied in any multilateral convention. We think that it would be quite wrong for British Guiana to purport to grant licences over an area which fell the wrong side of a line drawn in accordance with these articles, and indeed, in case the other states concerned could show existence of special circumstances it would probably be wise to err on the side of caution in determining the area to be covered by the licence.

The line in the north-west runs due north and south and appears to extend well into the area which Venezuela could claim as its territorial waters and continental shelf in accordance with the principle of equidistance from the baseline. That in the south-east appears at first sight to be more reasonable but will require looking at more carefully on Admiralty charts since the projection of the international land boundary is not the correct principle to apply.

I suggest that we ask Commander Kennedy at the Admiralty (copying to the Foreign Office) to suggest lines which would be in accordance with the I.L.C.'s principles. In the meantime we could reply to British Guiana saying that the lines are not acceptable in the areas in question for the reasons set out this minute and that we will suggest alternative lines as soon as possible.

/I see....

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I see from the penultimate sentence of paragraph 7 of (2) that a general reference to British Guiana territorial waters might be acceptable. This would only cover the area within three miles of low water mark (or baselines across bays and estuaries where such baselines are permissible). If this is acceptable the need to specify maritime boundaries in the license disappears, but British Guiana should nevertheless be instructed to see that the license does not operate beyond a boundary line for territorial waters drawn in accordance with the I.L.C.'s articles.

(Sgd.) D. A. Gordon-Smith
18th June, 1957.

Mr. E. W. A. Scarlett's Memo of 18/6/57.

There are two main questions here.

- (1) Whether we should virtually sell out the whole of British Guiana's oil potential to the Americans.
- (2) How we can in present circumstances define the area over which the license should run.

As regards (1) I think our course is quite clear if this prospecting is to be done at all. The suggestion in Mr. Burt's draft that some smaller area should be proposed to the Applicants is very sound in helping to provide an answer to any charge of the granting of an absolute monopoly: although, if the Applicants should agree to this it would probably mean that a middle section (when the prospect of oil is more remote than anywhere else) would be omitted.

As regards (2) I am most grateful for Mr. Gordon-Smith's advice on which I have drawn so fully in my additions to the draft. I discussed the matter of boundaries at some length earlier today with Mr. Cambridge (Foreign Office) and I subsequently read over the draft to him. After consulting F.O. Legal Advisers he asked that the last section of the draft should be modified so as to limit our present agreement to the territorial waters (which according to No. 2 would be acceptable to the Applicant) and at the same time to ask that operations should be kept back about five miles from the boundary lines while the Foreign Office work out the effects of all this on the Venezuelans and the Dutch. He said that this would not take more than a few days and, on that understanding I undertook to try it in British Guiana.

It is, of course, quite consistent with the note of caution sounded in para. 5 of the draft.

(Sgd.) E. W. A. Scarlett
18th June, 1957.

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