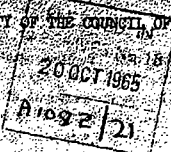


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CP(65)577

8th October, 1965



COPI NO. 22

COUNCIL OF MINISTERS

BRITISH GUYANA/SURINAM BOUNDARY

Memorandum by the Minister Without Portfolio

Council at its meeting held on 7th September, 1965 considered the question of the British Guyana/Surinam boundary and agreed that -

- (i) Her Majesty's Government should be informed that the British Guyana Government was prepared to take part in negotiations as soon as possible with a view to settling the matter once and for all; and
- (ii) The Minister without Portfolio should submit to Council a detailed paper on the problem.

Council had also at its meeting held on 17th May, 1965 considered memorandum CP(65)248 submitted by the Minister Without Portfolio, which set out in broad perspective the main features of the Surinam boundary problem up to 1962.

2. At Appendix I is a note in summary form on the British Guyana/Surinam Boundary. It is pointed out therein that there are three alternative positions as follows, which may be considered for British Guyana at this stage:-

- (i) Retain ownership of the New River Triangle while at the same time attempting to obtain Dutch agreement to a reasonable thalweg in the Corentyne and Kutari Rivers;
- (ii) Barter the New River Triangle for a reasonable thalweg in the Corentyne and New Rivers; and
- (iii) Retain ownership of the New River Triangle, agree to the left banks of the Corentyne and Kutari Rivers being regarded as the boundary, and seek to negotiate for fishing, navigation and other rights over the rivers.

3. The first of the propositions in paragraph 2 above, involves concessions to British Guyana on the part of the Dutch without providing for corresponding benefits to them. This proposal is unlikely to evoke any interest from the Dutch. The second alternative would probably not be adjudged by the Guyanese public as a fair compromise, and might very well induce Venezuela to think that the British Guyana Government is favourably disposed towards considering the question of the revision of boundaries generally. The third

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position which British Guiana might take, retains the status quo but seeks to secure for Guianese reasonable rights of use over the Corentyne River. It is recommended that the policy of the British Guiana Government should be to work for the achievement of the third alternative. (It should be pointed out that in 1967, the view of the Foreign Office was that "the Surinamers are moved to some extent by the consideration that a boundary on the bank of a river is easier to control than one in the middle of it" and that "they (the Surinamers) might be nudged in that direction.")

4. In 1962 both the United Kingdom and Netherlands Governments exchanged draft treaties - Appendices II and III. The main features of the Dutch Draft are as follows:-

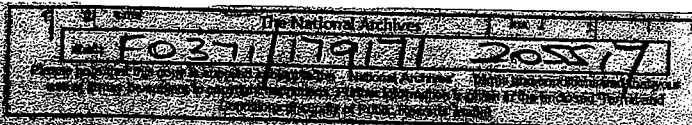
- (i) the Netherlands Government based the treaty on the recognition by the United Kingdom Government of the New River, and not the Kutari as a boundary river;
- (ii) the acceptance by the Netherlands Government of the "thalweg" principle in the boundary rivers;
- (iii) the draft was regarded as an entirely new proposal for a frontier agreement unconnected with any of the previous drafts;
- (iv) the determination of the closing line of the estuary of the Corentyne River;
- (v) the division of the territorial sea and the continental shelf;
- (vi) the use of a proportional line to determine the frontier in the boundary rivers;
- (vii) the ownership by the Dutch of all the islands in the boundary rivers; and
- (viii) provision for user rights of the rivers.

5. On the other hand the British Draft proposed a maintenance of the status quo i.e., British ownership of the New River Triangle with the left banks of the Corentyne and Kutari Rivers being the boundary between the two territories. In addition, the British draft made provision for user rights of the boundary rivers and proposed a different formula for the division of the territorial sea and the continental shelf.

COMMENTS ON DUTCH DRAFT

6. As Council is aware, (Memorandum CP(65)246 refers) there are two channels in the Corentyne River. By the definition of a thalweg used by the Dutch the frontier in the rivers would be determined on the basis that the thalweg is to be found in the western channel. Further, the Dutch proposed that the ratio in which the point of intersection of the thalweg and the closing line of the estuary divided the estuary, should be used for determining points on the frontier in the rivers. The boundary would therefore be the locus of all such points i.e., a line comprised of points which divide lines along the rivers parallel to the closing line of the estuary, in the ratio mentioned above - the proportional line.

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7. The Dutch Draft also proposed that irrespective of where the proportional line was fixed, all the islands in the rivers should be Dutch. If the boundary is to be delineated according to the thalweg principle then those islands which would fall completely on the British side of the thalweg should be British. Difficulties would arise in cases where the thalweg divides an island.

8. The general direction of the left bank of the Corentyne follows a course having a bearing of 10° East of North. The Dutch Draft proposes in Article 4, that the prolongation of a 10° East line seawards, from the end of the thalweg, should determine the frontier in the sea and on the bottom of the sea. (this line emerged during diplomatic correspondence which led up to the draft treaty of 1939 which was all but signed). Since the 10° East line is related to the direction of the left bank of the Corentyne, then clearly if the frontier is shifted to the thalweg, the 10° line loses its validity.

9. There are two concrete markers on the left bank of the Corentyne in the vicinity of the mouth of the river. The Dutch proposal is that starting from the point on the left bank where the prolongation of the line joining these two markers intersects the shore-line (low water line), the mouth of the Corentyne shall be along a line with a bearing of 100° East of true North. It is to be noted however, that the projection of this line intersects the Surinam coast near to the Mickerie River. Further there is no reason why the 100° East line should be considered to be the mouth of the river. It appears that this line was chosen since it is at right angles to the 10° East line referred to above. The mouth of the river should be defined by specifying two points, one on each bank, the co-ordinates of the points being clearly stated.

10. Comments on the Dutch Draft made by the Foreign Office are appended as Appendix IV.

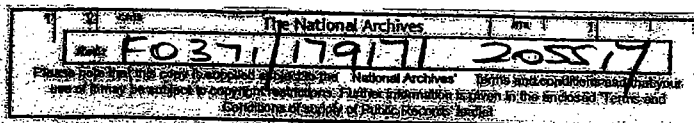
BRITISH DRAFT

11. The British Draft as stated in paragraph 5 above, by and large sought to preserve the status quo. As regards the division of the territorial sea and the continental shelf, it was proposed that the 10° East line should be prolonged for a distance of six miles from the more seaward of the concrete markers referred to in paragraph 9 above and thereafter, that the frontier be determined by the application of the principle of equidistance i.e., by using the median line. The application of this principle would mean that from the end of the 10° East line six miles from the more seaward concrete marker, the frontier would proceed as follows:-

on a bearing of 033 degrees from a distance of 35 miles,
thence on a bearing of 038 degrees for a distance of
28 miles, thence on a bearing of 028 degrees to a point
of intersection with the edges of the continental shelves.

12. Adequate provision is made for freedom of navigation, construction of wharves, etc. extraction of water from the boundary rivers, fishing rights and other user rights.

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CONCLUSION

13. As stated in paragraph 8 above, the 10° East line is related to the direction of the left bank of the Corentyne River in the vicinity of the mouth of the river. The use of the median line for the division of territorial waters and the contiguous zone, is governed by Article 12 of the Geneva Convention on Territorial Seas - see Appendix V. It is recommended that Government's policy should be that the median line should start from the more seaward of the concrete markers and not from the end of the 10° East line in the territorial sea. However, it is felt that this Government's attitude should be flexible on this point, and that if necessary, Government should, for tactical reasons, be willing to concede that the median line should commence from the end of the 10° East line in the territorial sea.

14. The Minister without Portfolio accordingly invites Council to approve of the following recommendations:-

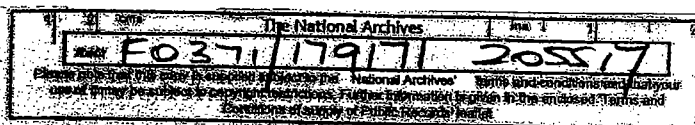
- (i) that the boundary between British Guiana and Surinam in the Corentyne and Kutari Rivers and on land should be as set out in sections (3) and (4) of Article I of the 1962 British Draft Treaty;
- (ii) that the frontier in the sea should be along the median line starting from the point on the left bank of the Corentyne where the prolongation of the line joining the two concrete markers intersects the low water-line, the more seaward of the markers having approximate position latitude 5° 59' 53.8" North, longitude 57° 08' 51.5" West of Greenwich; but that British Guiana should be prepared to concede that the median line should commence at the end of the 10° East line in the territorial sea;
- (iii) that the British Government be informed of the views of the British Guiana Government (as in (i) and (ii) above), and notified that the British Guiana Government wish negotiations to take place after the constitutional Conference in November;
- (iv) that the Draft Treaty at Appendix VI be taken as setting out the British Guiana demands.

15. The Attorney General has been consulted on the matters raised herein, and has expressed his agreement with the recommendations.

(Initialed) D.M.

DEPARTMENT OF EXTERNAL AFFAIRS
SEA 9/20/1
29th September, 1965.

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NOTE ON
THE BRITISH GULANA/SURINAME BOUNDARY

The western bank of the Corentyne River is now regarded as the eastern boundary of British Guiana. Briefly, this came to be so in the following way. Early in the 17th century the Dutch West India Company colonized the Essequibo River. In 1627 a Dutchman named Abraham van Peere established a colony on the Berbice River and a few years later under a grant from Charles II to Lord Willoughby and Lawrence Hyde the British founded a colony near the Surinam River. Just after the middle of the 17th century the Dutch took Surinam from the British, so that at this time both Berbice and Surinam were Dutch colonies. Shortly, thereafter, van Peere, the proprietor of Berbice, agreed with van Somelsdyk, the proprietor of Surinam, that Devil's Creek, a small creek on the Corentyne Coast, now dried up, should be the boundary between Berbice and Surinam.

2. It does not, however, appear that the agreement of the proprietors could legally demarcate the boundary between the two colonies, and this was indeed doubted in 1794 by van Battenburg, the Governor of Berbice, who protested that the agreement was illegal and argued that it was not to be inferred from it that the true boundary limit between Berbice and Surinam could be at Devil's Creek. He pointed out that in the grant from the English King, Charles II, the western boundary of Surinam was fixed at "one English mile west of the Coppename River", which did not bring it anywhere near the Corentyne River.

3. Just before the turn of the 18th century, both colonies were taken by the English - Berbice in 1796 and Surinam in 1799. The two Dutch Governors - van Battenburg in Berbice and Frederici in Surinam - however remained at their posts under the English. In 1799 the two Governors agreed that the left bank of the Corentyne should be treated as the eastern limit of Berbice, but they apparently regarded this as a provisional settlement subject to ratification or revision by the appropriate metropolitan power at the end of the European war then in progress. In 1802 the treaty of Amiens returned both colonies to the Dutch, but in the following year they were both re-taken by the English, and on this occasion the 11th Article of the Articles of Capitulation of Berbice (1803) apparently recognised the 1799 settlement between the two Governors as the then current authority for the boundary of Berbice. The war finally ended in 1815. In the territorial arrangements that followed, the British decided to keep Berbice, but returned Surinam to the Dutch. No international boundary was laid down in 1815 or after between the two territories, now under two different metropolitan powers. The boundary was not a burning question, and it would seem as if both territories were content to accept the 1799 arrangement which made the Corentyne River and all its islands Dutch territory and the western bank of the Corentyne the boundary between the two territories.

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4. Since then difficulties have arisen with respect to the use of the Corentyne by British Guianese for navigation and fishing purposes, and certain attempts have been made to settle the matter by treaty. Such a treaty was all but settled on around 1939 but the outbreak of the war prevented its signature. Since the war further attempts have been made to settle the matter by treaty, but these have been complicated by a claim which the Dutch have recently been putting forward to the sovereignty of the New River Triangle which involves shifting the boundary in the southern reaches from the Kutari River to the more westerly New River. The claim is based on the contention that the New River at its junction with what is now regarded as the Corentyne is wider than the Kutari; that therefore it is the New River and not the Kutari which is the true continuation of the Corentyne and which should form the dividing line between the two colonies.

5. In 1960, the boundary question (both as regards the left bank generally and the Kutari) was exhaustively examined by the then Solicitor General (Mr. S.S. Raphael) and his conclusions (which have formed the basis of the Government's approach since then) were that regardless as to what may be the true continuation of the Corentyne, the Dutch claim to the New River Triangle could not be substantiated. The main reason for this is that in the 1930's the Boundary Commission when marking the boundaries between Brazil and British Guiana had (with the concurrence of the Dutch authorities) fixed a point at the head of the Kutari River as the tri-junction point of British Guiana, Brazil and Surinam. In a note left at the Foreign Office by the Netherlands Minister on the 4th August, 1931, the Netherlands Government indicated that they were "prepared to recognise the left bank of the Corentyne and the Kutari as the frontier between Surinam and British Guiana, both rivers to be recognised as Netherlands territory". On the 6th February, 1932, the Foreign Office wrote to the Dutch Government stating that "His Majesty's Government are gratified to learn that the Netherlands Government are prepared to recognise the left banks of the Corentyne and Kutari Rivers as forming the boundary . . ." On the 27th June, 1933, the Foreign Office again wrote to the Dutch Government saying, "His Majesty's Government in the United Kingdom are prepared in certain circumstances to adopt the proposal put forward by the Netherlands Government for the demarcation of this boundary in the neighbourhood of the Brazilian frontier, namely, that it should follow the path Trombetas - Kutari from its extremity on the Kutari leading over a rock called W.C. Farabee "Faragle" till its point of contact with the Brazilian frontier, and that this point of contact should be the tri-junction point of the boundary". On the 14th September, 1933, the Netherlands legation in London wrote to the Foreign Secretary saying, "My Government have noted with great satisfaction that His Majesty's Government agreed to the proposals put forward in my note of 27th February, No. 218, regarding the demarcation of the Surinam-British Guiana boundary". Further, on the 6th October, 1936, the Secretary of State for the Colonies in answer to a point

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raise' by the British member of the Boundary Commission, stated "that in a communication from the Netherlands Minister, the Netherlands Government recognised in August, 1951, that 'the frontier between Surinam and British Guiana is formed by the left bank of the Corentyne and the Kutari to its source which rivers are Netherlands territory'". It appears, therefore that British Guiana has an almost unassailable claim for treating the Kutari, and not the more westerly New River, as its boundary with Surinam.

6. Under the British draft treaty (that is, the pre-war treaty) which was all but signed when its execution was prevented by the outbreak of the war, the boundary remained the left banks of the Corentyne and the Kutari. Under the Dutch draft treaty (that is, the post-war treaty) it is proposed by the Dutch that the boundary should coincide roughly with the thalweg of the Corentyne and the New River. This involves a concession in favour of British Guiana so far as the Corentyne is concerned, but at the price of ceding the New River Triangle to the Dutch. There is, however, no useful advantage in any extension of British sovereignty over the portion of the Corentyne which is west of the thalweg provided that the rights of British Guianese to make reasonable use of that river and of the Kutari for the purposes of fishing, navigation, drainage and irrigation are recognised by the Dutch. In this regard it may be pointed out that where the River Maroni constitutes Surinam's eastern boundary it has been agreed by treaty that its waters shall be shared with neighbouring French Guiana. Similar rights were, in fact, provided for under the British draft treaty although the latter involved no concession whatsoever in respect of the New River triangle or any other portion of the territory of British Guiana. It is considered that these rights are rights which may reasonably be enjoyed by any state bounded by a river which falls within the exclusive sovereignty of another state, and that since the object of the treaty was on the part of British Guiana in effect merely to seek formal recognition of these rights, the Dutch are not entitled to require any territorial concession by way of consideration for such recognition.

7. At this stage three alternative positions may be considered for British Guiana, viz:-

- (i) Retain ownership of the New River Triangle while at the same time attempting to obtain Dutch agreement to a reasonable thalweg in the Corentyne and Kutari.
- (ii) Barter the New River Triangle for a reasonable thalweg in the Corentyne and New Rivers.
- (iii) Retain ownership of the New River Triangle, agree to the left banks of the Corentyne and Kutari Rivers being regarded as the boundary, and seek to negotiate for fishing, navigation and other rights over the rivers.

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(i) This may be a useful first stand but it offers nothing in exchange for the proposed extension of our sovereignty up to the thalweg of the Corentyne River and it would be surprising if the Dutch were to consider even discussing it.

(ii) The idea of bartering the New River Triangle for an extension of our sovereignty up to the thalweg of the Corentyne River may not seem fair to the Guianese public.

(iii) While this course gives nothing to the Dutch it takes nothing from them either. It does, however, allow Guianese reasonable rights of use over the river and is probably the course most consistent with the conduct of both parties to date.

ATTORNEY GENERAL'S CHAMBERS,
GEORGETOWN,
12th AUGUST, 1965.

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APPENDIX II

DRAFT TREATY
BRITISH GUIANA-SURINAM BOUNDARY.

Her Majesty The Queen of the United Kingdom of Great Britain and Northern Ireland and of Her other Realms and Territories, Head of the Commonwealth, and Her Majesty the Queen of the Netherlands;

Desiring that the boundary between Surinam and British Guiana and the waters and continental shelves of, or appertaining to, these territories shall be clearly defined;

And desiring that provision shall be made with regard to the exercise of rights over rivers which lie along the frontier;

Have decided to conclude a Treaty for these purposes and have accordingly appointed as their Plenipotentiaries:

Her Majesty The Queen of the United Kingdom of Great Britain and Northern Ireland and of her other Realms and Territories, Head of the Commonwealth (hereinafter referred to as "Her Britannic Majesty"):

.....

and

Her Majesty the Queen of the Netherlands:

.....

Who, having communicated to each other their Full Powers found in good and due form, have agreed as follows:-

Part I

ARTICLE I

(1) The boundary between British Guiana and Surinam shall be formed by the line of the left bank of the River Corentyne from the sea southwards to a point near its source. Where a side channel (itabu) exists, the left bank of the river is the bank of the most leftward channel which normally contains water at all seasons of the year.

(2) The beginning of the left bank of the River Corentyne at the sea shall be the point at which the prolongation of the line

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/joining....

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Joining two concrete marks, on the left bank of the River Corentyne, intersects the shore-line. On this same line which has a true bearing 10° East of true North, a large triangular wooden beacon, 10 metres high, visible from the sea, has been erected. The approximate position of the more seaward of the two concrete marks is:-

Latitude $5^{\circ}59'53.8''$ North.

Longitude $57^{\circ}08'51.5''$ West of Greenwich.

(3) The river named by Schomburgh the River Kutari shall be considered to constitute the upper reaches of the River Corentyne, and the boundary shall follow the left bank of the principal course of the River Kutari.

(4) That branch of the River Kutari which was found to be the longest by the Mixed Commission appointed for the fixing of the Southern Terminal of the boundary shall be deemed to be its principal course, irrespective of any future changes in the headwaters of the River Kutari.

ARTICLE II

(1) From a point on the principal course of the River Kutari, about 300 metres East of its source, the boundary shall leave the left bank of the River Kutari, and shall follow the centre of a tongue of rock in a general S.S.E. direction to a concrete mark erected on the watershed between the basins of the River Amazon and of the River Corentyne. This mark is distant 320 metres on a true bearing of 162° from the point of departure of the boundary from the principal course of the River Kutari.

(2) This mark is built on top of a large bare rock surface, and its approximate position is:-

Latitude $01^{\circ} 56' 58''.2$ North.

Longitude $56^{\circ} 28' 24''.5$ West of Greenwich.

Height above M.S.L. 463 metres.

(3) This mark shall continue to define the point of

/convergence...

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convergence of the frontier of British Guiana and Surinam with that of the United States of Brazil, irrespective of any future or more accurate determination of its position.

ARTICLE III

The waters of the River Corentyne (as defined in Article I above) shall, whatever the fluctuations of its volume, be considered as being within the territory of Surinam, and the land confining the territory of Surinam on the left bank as defined in Article I as being within the territory of British Guiana, and no change of sovereignty over such land shall ensue upon any rise or fall of the waters of the river.

ARTICLE IV

(1) Over the whole course of the River Corentyne the following provisions shall apply:-

- (i) Freedom of navigation shall be accorded to the vessels (other than warships) of all nations. In the exercise of such navigation the subjects, property and flags of all nations shall be treated on a footing of perfect equality. The laws and regulations of Surinam relating to customs, public health, precautions against diseases of animals and plants, emigration and immigration and to the import and export of prohibited goods shall not, without good reason, impede the freedom of navigation and shall only be applied so far as strictly necessary to vessels, passengers and goods in transit between different parts of British Guiana or between British Guiana and any country other than Surinam and then only in a manner no more onerous than in the case of vessels, passengers and goods in transit to and from Surinam; in particular customs duties (including export duties) shall not be levied under
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such laws and regulations on the aforesaid vessels, passengers and goods.

(ii) The warships of the High Contracting Parties shall enjoy freedom of navigation.

(iii) Aircraft operated by the subjects of the High Contracting Parties or registered in their territories shall enjoy freedom to make use of the waters as an alighting site and the subjects of Her Britannic Majesty shall for such purpose have full liberty to drive piles and erect structures in the river; provided always that any such pile or structure is not of such a nature as to impede navigation.

(2) The subjects of Her Britannic Majesty have always had and shall continue to have full liberty to drive piles and construct wharves, boathouses and other structures on or adjacent to the left bank of the River Corentyne: provided always that such piles and structures do not impede navigation and do not project -

(i) beyond the deepest part of the channel of the river which flows by the left bank;

(ii) at any place above a point ten miles upstream from the beacon referred to in Article I(2), either further than half the breadth of that part of the river or more than fifty metres from low-water mark into the water-channel of the river.

(3) All piles, wharves, boathouses and other structures driven or erected (whether before or after the coming into operation of this Treaty) in pursuance of paragraphs 1 (iii) and (2) of this Article, and any craft or other thing moored thereto or to the left bank, shall be deemed to be within the territory of British Guiana: provided always that no prescriptive rights of any kind against Her Majesty the Queen
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of the Netherlands shall be derived from the existence of such piles or structures, either in the river or on its bank, or from the fact that they or anything moored to them are deemed to be within the territory of British Guiana.

(4) Subjects of Her Britannic Majesty shall be permitted to draw water from the River Corentyne for irrigation and other purposes, provided that the navigability of the river is not impeded and that no works employing the waters of the river for the generation of power shall be constructed without the explicit and written authorisation of the Government of Surinam.

(5) Subjects of Her Britannic Majesty shall have the right to fish in the river but that right shall not be exercised so as to impede navigation. They shall have the right, when travelling by boat along the river, to camp with their passengers and goods on islands in the river or on the Surinam bank and to transport the same along such islands or that bank in so far as this is necessary to facilitate such travel.

(6) Her Majesty The Queen of the Netherlands will not permit the navigability of the River Corentyne to be impeded by the withdrawal of water from the right bank of the river for irrigation or for the generation of power or for any other purpose, or by the driving of piles, or the erection of any structures in the river or on its right bank, or by any other means.

(7) The rights secured under the previous paragraphs of this Article for the benefit of the subjects of either High Contracting Party shall be enjoyed also by persons under the protection of, companies incorporated in any part of the territories of, and by any Government or administration of, such High Contracting Party.

(8) No charges or dues shall be levied in respect of the enjoyment of the rights secured under the previous paragraphs of this Article otherwise than by agreement between the
Secret /Governments.....

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Governments of Surinam and British Guiana.

ARTICLE V

The High Contracting Parties agree that if in the future it should be found necessary to take steps with a view to the conservancy, improvement, or lighting of the River Corentyne and its estuaries, for the establishment of buoys, the erection, inspection and maintenance of beacons, the provision or improvement of portage facilities on its banks or islands or for the levying of dues or charges, the Governments of British Guiana and Surinam shall appoint representatives to meet in order that the share of the cost to be borne by each of the above Governments in proportion to their respective interests and the apportionment of the proceeds of dues or charges levied on navigation may be determined by agreement, and that proposals with regard to any of these matters may be made by either Government to the other.

ARTICLE VI

Any member of the Police Force or Customs and Excise Department of British Guiana may, on any part of the River Corentyne, arrest and convey to the left bank of the river any person who is suspected of having committed any offence against the laws of British Guiana and who is believed to be a subject of Her Britannic Majesty, and may, on any part of the River Corentyne, convey to the left bank any person arrested on any structure, craft or other thing referred to in paragraph (3) of Article IV on suspicion of having committed within the territory of British Guiana any offence against the laws of British Guiana, whether or not he is a subject of Her Britannic Majesty.

PART II

ARTICLE VII

The boundary between the territorial seas and contiguous zones (so far as they respectively extend) and the continental /shelves....

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shelves of British Guiana and Surinam shall be formed by the prolongation seawards of the line drawn on a bearing of 010 degrees referred to in Article I (2) to a distance of 6 miles from the more seaward of the concrete marks referred to, thence on a bearing of 033 degrees for a distance of 35 miles, thence on a bearing of 038 degrees for a distance of 28 miles, thence on a bearing of 028 degrees to a point of intersection with the edge of the continental shelves as defined by international law.

ARTICLE VIII

In the preceding Article -

- (i) bearings are given by the true compass reckoned clockwise from 000 degrees (North) to 359 degrees, and
- (ii) miles are sea miles, each comprising one-sixtieth of a degree of latitude.

PART III

ARTICLE IX

The present Treaty shall be ratified and the instruments or ratification shall be exchanged at as soon as possible. It shall come into force on the date of exchange of ratifications.

In witness whereof the above named Plenipotentiaries have signed the present Treaty

Done at _____ this _____ day of _____ 196 _____ in duplicate in the English and Dutch languages, both texts being equally authentic.

SECRET

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APPENDIX III

Draft

F 11331b/62⁽¹⁾

Treaty between the Kingdom of the Netherlands and the
United Kingdom of Great Britain and Northern
Ireland establishing the frontier between
Surinam and British Guiana

Her Majesty the Queen of the Netherlands
and

Her Majesty the Queen of the United Kingdom of Great
Britain and Northern Ireland and of Her other Realms and
Territories, Head of the Commonwealth;

Desiring that the frontier between Surinam and British Guiana
on land, in the rivers between the two countries and in the
sea be clearly established;

Desiring to make the necessary arrangements in connection with
establishing that frontier;

Have decided to conclude a Treaty for the purpose and have
appointed as their Plenipotentiaries,

Her Majesty the Queen of the Netherlands:

His Excellency Dr. S. D. Emanuels,

Prime Minister of Surinam,

and

Her Majesty the Queen of the United Kingdom of Great Britain
and Northern Ireland, etc.:

His Excellency Dr. C. B. Jagan,

Prime Minister of British Guiana;

Who, having exchanged their credentials found in due and
proper form,

Have agreed as follows.

Article 1

1. The High Contracting Parties designate the New River from
its source to its confluence with the Corentyne and the

- Corentyne -

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- Corentyne from its confluence with the New River to the sea as the boundary rivers between Surinam and British Guiana.
2. The source of the New River shall be deemed to be the source located nearest point B/BG 54/84 indicated on the map compiled by the Cartographic Section of the Department of Lands and Mines, Georgetown, British Guiana, Scale 1: 500,000.
 - 3a. The Corentyne shall be deemed to end at the line with a true bearing 100° East of true North from the point on the left bank where the river debouches into the sea.
 - b. The point on the left bank where the river debouches into the sea shall be the point at which the prolongation of the line joining two concrete marks on the left bank of the Corentyne intersects the shoreline. On this same line which has a true bearing 10° East of true North a triangular wooden beacon 10 metres high, visible from the sea has been erected. The position of the seaward of the two concrete marks is:

Latitude $5^{\circ}59'53.8''$ North,
Longitude $57^{\circ}08'51.5''$ West of Greenwich.

Article 2

1. The frontier in the boundary rivers shall commence at the point where the line with a true bearing 100° East of true North referred to in Article 1, Paragraph 3a, is intersected by the present "thalweg".
2. From the end of the Corentyne's "thalweg" thus established to the source of the New River referred to in Article 1, Paragraph 2, the frontier shall follow the proportional line which is the locus of points whose position bears the same ratio relative to either bank as the end of the "thalweg" bears to the banks at the moment this Treaty enters into force. The method by which that proportional line shall be plotted is described in the Appendix A to this Treaty.
3. The islands in the boundary rivers shall be Surinam territory.

- Article 3 -

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Article 3

On land the frontier between the two countries shall follow a straight line from the source referred to in Article 1, Paragraph 2, to the point mentioned in said Paragraph.

Article 4

In the sea and on the bottom of the sea the frontier shall follow the line with a true bearing 10° East of true North from the end of the "thalweg" mentioned in Article 2, Paragraph 1.

Article 5

At the moment this Treaty enters into force a commission for the implementation of the foregoing Articles appointed by the Governments of Surinam and British Guiana shall establish the actual frontier and make the necessary demarcations. The commission shall draw up an official report on their work, which report shall constitute Appendix B of this Treaty.

Article 6

1. If the Government of Surinam or the Government of British Guiana should desire to carry out maintenance work or improvements or to place buoys, beacons or lighting in the boundary rivers and in the sea approaches to the Coarctation, the other Government shall be given timely notice of such intentions. The two Governments shall consult together to regulate such matters without delay.

The expense entailed shall be apportioned according to the interest that either country has in the work and according to the share of the work that either country has done.

2. Either Government shall undertake to grant facilities to the other for the making of hydrographic surveys.

Article 7

1. Ships of all nations except warships shall have the right of free navigation on the boundary rivers. When exercising that

- right -

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right the subjects of all States, their property and their goods shall be treated with complete equality and without any flag-discrimination.

2. The warships of the High Contracting Parties shall have the right of free navigation on the boundary rivers. No admission shall be granted to warships of other States without the permission of both High Contracting Parties.
3. Aircraft owned or operated by nationals of the High Contracting Parties may use the water of the boundary rivers to land on or to take off from. The provisions concerning warships in Paragraph 2 of this Article shall also apply to military aircraft.

Article 8

1. Nationals of the High Contracting Parties shall have the right to fish in the boundary rivers, provided it does not interfere with shipping on those rivers.
2. When travelling by boat on the boundary rivers, British nationals shall have the right to camp on the islands with their passengers and goods and to transport same along the islands in so far as it is necessary to facilitate such travel.

Article 9

1. The exercise of the rights and freedoms laid down in Articles 7, Paragraphs 1 and 3, and 8 shall be subject only to such taxes, duties and fees as have been agreed upon by the Governments of Surinam and British Guiana.
2. The rights and freedoms laid down in Articles 7, Paragraphs 1 and 3, and 8 shall be enjoyed also by enterprises registered in any territory of, and by the Governments and authorities of the High Contracting Parties.

Article 10

Joint regulations concerning the safety of shipping, public health, the prevention of animal and plant diseases, migration, imports and exports and concerning other spheres of co-operation

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with respect to the boundary rivers shall be agreed upon by the Governments of Surinam and British Guiana in the spirit of the present Treaty.

Article 11

1. The Parties shall give each other timely notice of any plans to abstract water from the boundary rivers for irrigation and other purposes which may be expected to result in an appreciable change in the territory's water economy or unreasonably to harm the interests of the other Party. They shall carry out such plans only after mutual agreement.
2. The same shall apply to plans for artificial changes in the course of the boundary rivers.

Article 12

1. Either of the Governments of Surinam and British Guiana shall have the right to construct civil engineering and hydraulic works in the boundary rivers, with due observance of the provisions of Paragraphs 2 and 3 of this Article, and after the frontier has been fixed locally in accordance with the situation in the rivers prevailing at the time.
2. If the Governments of either Surinam or British Guiana intend to construct such works they shall give timely notice of their intention to the other Government.
Both Governments shall thereupon as soon as possible conclude agreements concerning the preparation, construction and operation of such works and co-operation in same.
Such agreements shall also cover inundation and its possible consequences.
The Governments shall also consult each other on the effect of the construction of such works on the navigability of the river in question.
3. In apportioning the energy to be generated and the water to be impounded the ratio between the areas of the Corentyne and New River basins lying in Surinam and British Guiana respectively, shall be taken into account.

Article 13

(Arbitration clause)

- Article 14 -

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Article 14

This Treaty shall be ratified and the instruments of ratification shall be exchanged as soon as possible at.....

This Treaty shall enter into force on the day of the exchange of the instruments of ratification.

In witness whereof the above-mentioned Plenipotentiaries have signed this Treaty.

Done at The Hague on..... in two copies, each in the Netherlands and English languages, both texts being equally authentic.

For the Kingdom of the
Netherlands:

For the United Kingdom of
Great Britain and Northern
Ireland:

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APPENDIX A.

DEFINITIONS

- Parallel - A line with a bearing of 100° East of true North.
- Parallel section - Section of line that is part of a parallel joining the left and right banks without intersecting a radial line.
- Radial line - Section of line joining a nodal point with a point on the opposite bank without intersecting a parallel.
- Nodal point - Point where a parallel or radial line touches a bank.
- Fixed proportion - Ratio between distances from the beginning of the "thalweg" to either bank of the Corentyne measured along a parallel.

Method of plotting points along the proportional line.

The locus of a point is obtained by dividing a parallel or a radial line in the fixed ratio.

Radial lines shall be used in sharp bends where parallels do not intersect both banks.

Frontier line

The frontier line is obtained by joining all the points plotted by the foregoing method. Therefore it is the line joining points dividing the parallels and radial lines in the fixed ratio.

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Aide Mémoire

Previous attempts to determine the frontier between Surinam and British Guiana having all ended in a deadlock and the British proposal of December 1961 also having met with serious objections on the part of the Government of Surinam, the Government of the Kingdom of the Netherlands has reviewed the entire problem anew in consultation with the Government of Surinam. Following up a British suggestion the Government of the Kingdom of the Netherlands has based the present draft Treaty on recognition by the United Kingdom of the New River as a boundary river between Surinam and British Guiana and on acceptance by the Kingdom of the Netherlands of the "thalweg" principle in the boundary rivers.

The present draft Treaty should therefore be regarded as an entirely new proposal for a frontier agreement unconnected with any of the previous drafts.

The present draft Treaty falls into four parts:

- I. the designation of the boundary rivers;
- II. the determination of the frontier in those rivers and on the land south of them;
- III. the determination of the frontier in the adjoining sea and on the bottom of the sea;
- IV. the establishment of the régime in the boundary rivers.

In view of the fact that geographically the New River constitutes the true origin of the river Corentyne it would seem logical to designate the New River as a boundary river.

Acceptance of the "thalweg" principle as the basis for the frontier in the river Corentyne is a concession on the part of Surinam, since Surinam possesses sovereign rights over the entire Corentyne. The manner in which the frontier line in the boundary rivers is determined in the draft is inspired by the desire of Surinam that the frontier should follow a predetermined line relative to the banks.

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- 2 -

As the starting point of the frontier the end of the present "thalweg" in the sea has been adopted, the "thalweg" being the line joining the deepest points in the western channel, which channel possesses the greatest average depth throughout its length.

In order to realise the foregoing, it is proposed to determine the frontier in such a way that the position of all points along this frontier bears the same ratio relative to either bank as does the said starting point relative to either bank. This results in a line which can best be described as a proportionate line following a definite course relative to either bank from the end of the "thalweg" in the sea to the source of the New River. Thus

the following advantages can be obtained:

1. Along much of the river the proposed line practically follows the course of the "thalweg";
2. The Proposed line holds good for the entire river from source to mouth, so also where there is no "thalweg" or where the "thalweg" is difficult to locate, as for instance in long stretches of the upper reaches, in many rapids, waterfalls, etc.;
3. The proposed line is easy to determine by simple means;
4. In the case of natural changes in the course of the boundary rivers the frontier continues to run in those rivers in the established proportion.

The proposal concerning the frontier in the sea and on the seabed is based on the principle accepted by Surinam and British Guiana that the frontier in the sea is a line with a true bearing of 10° East of true North, a principle which since its acceptance has been consistently observed in practice. The direction of the frontier in the sea was fixed in 1936 at 10° East of true North by a combined Netherlands British frontier commission.

In addition to a number of rights which British subjects will enjoy on the boundary rivers, e.g. the right of free navigation and fishing every where in the boundary rivers, the draft Treaty contains provisions establishing the mutual rights and obligations of the two countries as good neighbour States for the benefit of the future social and economic development of the two countries.

London, 17th September, 1962.

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APPENDIX III

Preliminary comments on the draft Treaty

1. Proportional Line.

This system of river-boundary delimitation is, apparently, unprecedented. Its principal advantages are: that it requires one comparatively simple calculation to be made to ~~so that, thereafter~~, the position of the boundary anywhere along the river could be defined by measurement from the banks; and that it may be preferable to the ordinary thalweg principle in parts of the river where the thalweg is difficult to determine.

The principal disadvantage of the system is that, being an arbitrary and notional line, it takes no account of natural features - sandbanks, islands etc. in the boundary rivers. Also, the line is to be drawn relative to the "banks" of the river. This and other elements of the system would have to be clarified considerably.

In addition, it is apparent that the suitability of the line depends to a considerable extent on the way in which the "ratio" is determined and, in particular, the determination of the thalweg and the "mouth of the river".

2. Thalweg.

The draft Treaty makes use of the thalweg of the river to determine the point at which the frontier begins at its seaward end and hence to determine the position of the proportional line relative to the banks of the river throughout its course. The location of the thalweg is, therefore, the key to the system proposed in the draft Treaty, and yet the draft Treaty is silent as to where the thalweg is to be located. In the Netherlands Embassy's Aide Memoire accompanying the draft Treaty, the thalweg is said to be "the line joining the deepest points in the eastern Channel" of the Corentyne. Now, the thalweg, as it is more generally understood in international practice, is the deepest navigable channel which permits free and safe navigation. A boundary based on a thalweg should ensure that the channel in fact used for navigation is not wholly within the territory of either of the riparian states. In the case of the Corentyne river, it is the eastern channel which is buoyed and is normally used by all but local shipping and which in fact has greater average depth along its length and across its bar than the western channel. The western channel, on the other hand, is narrower over a greater length, not so well marked and is composed of shoals of hard sand, stones and rock as opposed to the soft mud of the eastern channels.

A treaty making use of the concept of the thalweg should state in express terms where the thalweg of the river is located and, in the case of the Corentyne river, should recognise the centre of the eastern channel as the thalweg.

3. The Mouth of the River.

This line, according to the draft Treaty, is to be used in determining the relative position of the thalweg to the banks of the river and hence determines the location of the "proportional line."

There is no reason why the 100° East line should be considered to be the mouth of the river. The point on the left bank where the river is deemed to end is taken from the previous draft Treaty. In fact, examination of a large scale chart shows that the river proper ends at about Bluff Point, where it widens into the estuary.

If the thalweg were adopted as the boundary throughout the navigable part of the river, it might not be necessary to provide for a notional "mouth of the river" (provided that the boundary in territorial waters could also follow the thalweg). However, if it is necessary to define such a line, it should be described in relation to permanent fixed marks situated on both banks of the river.

4. The Shore Line

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4. The shore-line.

Article 1 (3) of the draft Treaty uses the "shore line" in determining the mouth of the Corentyne. The previous draft, Article 1(2), used the same word. Its meaning should, however, be made clear, particularly as, under the scheme proposed in the new draft, so much would depend on its precise meaning. It might be as well to make use of the formula contained in the Geneva Convention on the Territorial Sea and to refer to specific charts.

5. Division of Territorial Waters.

It is not clear from the draft Treaty whether Article 4 is intended to dispose of the question of the boundary in the territorial sea. Article VII of the previous draft contained provisions on this matter. If, however, the boundary were to be moved away from the left bank of the river, these provisions and the 010°E. line in general would lose their validity. The 010°E. line emerged in the course of the diplomatic correspondence which led up to the draft Treaty which was ready for signature in 1939. It was intended to be a line continuing the general direction of the left bank of the river, but avoiding the main navigation channel.

There would seem to be a choice, so far as the division of territorial waters is concerned, between continuing the thalweg as far as the three-mile limit or drawing a median line, as provided for in Article 12 of the Geneva Convention on the Territorial Sea.

6. Division of the Continental Shelf and Contiguous Zones.

Once again Article 4 of the draft Treaty does not make it clear how the Continental Shelf and Contiguous Zones are to be divided. There would seem to be no reason why the median line, or a simplified line based on the median line, should not be adopted here as the dividing line.

7. Islands.

The draft Treaty provides that islands in the boundary rivers shall be Surinam territory. Sovereignty over the islands in the river should be determined by reference to the position of each island in relation to the boundary. Where the boundary passes through an island, it will be necessary to agree on a method of determining sovereignty over that island.

8. Charts.

There would be considerable advantage in agreeing during the course of negotiations on a chart, or charts, which would be treated as having validity for the purpose of the Treaty. Such chart, or charts, could in fact be annexed to the Treaty and referred to in it.

9. Arbitration

The United Kingdom has not ratified the 1907 Hague Convention on the Pacific Settlement of Disputes. The reason for this is that it is considered that legislation is required to give effect to certain of its provisions, particularly those concerning the attendance of witnesses and the production of documents (Article 23 and 76) and providing privileges for members of the arbitration tribunals (Article 46). The Convention, however, provides an improved procedure as compared with the 1899 Convention and the United Kingdom has taken part in arbitration under it. The 1907 Convention might therefore be used in the present context on the understanding that the United Kingdom would not be able to give effect to those provisions which require legislation.

Of the two modifications to 1907 Convention procedure suggested in the new draft Treaty, it is not easy to see what advantage there is in having the Secretary-General of the Permanent Court of Arbitration choose two arbitrators and, if he were of the nationality of one of the parties, such a provision would be difficult to accept. The other modification, as to the settling of the compromise, if it means that a dispute could be put before the tribunal in a unilateral petition, does not seem satisfactory. If it means that a petition merely sets in motion the 1907 Convention procedure, with cases from both parties, this may be an improvement.

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APPENDIX V

Article 12 of Geneva Convention on the Territorial Sea and
the Contiguous Zone.

Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. The provisions of this paragraph shall not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance with this provision.

2. The line of delimitation between the territorial seas of the two States lying opposite to each other or adjacent to each other shall be marked on large scale charts officially recognised by the coastal States.

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