COPY

(V 1941/1181/39)

No. 394.

Netherlands Legation,
London.
28th February, 1936.

Sir,

With reference to your note of the 4th July 1935 No. W 5443/5587/29 concerning the draft treaty in connexion with the boundary between Surinam and British Guiana, I have the honour, in accordance with instructions received, to inform you as follows:

art. 1. (2) - The Netherlands Government would appreciate to be informed as to the meaning of the word "itebu" after the words "where a side channel".

art. 4. (2) and art. 5. - My Government prefer the indication "a true bearing of north 20° east" or "a true bearing of 20° north by east" to "a true bearing of 20° east".

art. 4. - Her Majesty's Government does it desirable to add the words: "due to the normal recurring seasonal fluctuations in its volume" to the end of art. 4.

This definition was also used in par. 5 of your predecessor's note of the 6th February 1933 as well as in the Netherlands Minister's note to Sir John Simon of the 27th February 1933 No. 218.†

art. 5. (2). - The text of art. 5 (2) of the draft treaty seems to differ somewhat from the text proposed in par. 5 of Jonkheer van Swindene's memorandum to the Foreign Office of

The Right Honourable.
Anthony Eden, M.-G., M.P.,
est., est., est., est.

†

Diplomatic Documents
of August 4th 1821, the latter reading:

"British subjects and companies have full liberty to drive piles, construct wharves, construct houses or any other structures on the Western bank of the river so as may be required for trade or other purposes, provided however that they do not obstruct more than 50 ft. into the river, to be measured from the bottom of the river, and no such works shall not be so placed as to interfere with navigation, or free navigation and British interests in the river."

Reading the subjects of His Majesty the King shall have the power, as the text proposed in the draft treaty referred to above, which reads:

"His Majesty's Government and British interests in the river, and in no case be so placed as to interfere with the navigation of the river, or free navigation and British interests in the river."
...more than 50 metres from the lowest
recorded low watermark into the water-channel
of the river:

the Netherlands Government do not think it necessary to
divide the river into two parts. Furthermore I have the
honour to draw your attention to the following:

It is quite possible that after a prolonged
drought a large part of the Kutari should entirely dry
up. If the words "lowest recorded low watermark" were
maintained, difficulties could arise as to the sovereignty
over a temporary dry part of the river. With a view to
avoiding difficulties of such a nature the Netherlands
Government - agreeing to the thalweg being the limit up to
which structures may be built - propose to formulate art. 5
(2) as follows:

"The subjects of His Majesty The King shall have
full liberty to drive piles, construct wharves,
build houses or any other structures on the left
hand of the river always provided that such
structures do not impede navigation, and do not
project beyond the thalweg of the channel of
the river which flows by that bank and in no case
further than 50 Metres into the river, to be
measured from the low watermark".

This stipulation would apply to the whole of the
river. In case the thalweg is near the Netherlands side
of the river the provision as regards the 50 Metres limit
will apply; in case the thalweg is near the British side,
or in case the Kutari is less than 50 Metres broad, the
prohibition to go further than the thalweg will apply.

I have, etc.,

(Signed) R. Teixeira de Mattos.
Memorial of Guyana
Annex 62

Netherlands Legation,
London,

SIR,

With reference to your notes of the 26th July 1986
No. 756/21/109 and of the 20th October last No. 670/21/8452/29,
regarding the draft treaty in connexion with the boundary between
Surinam and British Guiana, I have the honour, in accordance
with instructions received, to inform you as follows.

After consideration of your note of the 26th July 1986
the Netherlands Government admit as correct and accept the
division of the river into two parts as suggested in para. 6 thereof.

In para. 7 a statement is made, which my Government consider
correct in theory, that no case could occur where a thalweg does
not exist, as thalweg is interpreted as meaning the line of
lowest level and as being independent of the presence or absence
of water. I have the honour to observe however, that it may
be impossible in practice to determine the lowest level in a
region where waterfalls and rapids of great breadth and length
are frequent. It is even considered doubtful whether the
lowest level in such conditions will be continuous, as, between
the rocks in the river-bed several channels of the same depth will
be found. It is not clear how in these circumstances a line can
be drawn beyond which works may not be constructed. It is quite
likely that the line thus drawn should have to run across the
river at several points; therefore — contrary to the intention —
the works to be erected might impede the already difficult
navigation.

Yours faithfully,
Anthony Ross, M.C.
En. Am. Co.

Diplomatic Documents
In view of these considerations the Netherland Government propose the following text for art. 6(2):

"The subjects of His Majesty the King shall have full liberty to drive piles, construct wharves, boathouses or any other structures, on the left bank of the river, always provided that such structures do not impede navigation and do not project beyond the thalweg or the channel of the river which flows by that bank, or at any place above a point 10 miles upstream from the beacon referred to in Article 1(8) do not project further than half the breadth of that part of the river and in no case more than 50 metres from the low-water mark into the waterchannel of the river. No prescriptive rights of any kind against Her Majesty the Queen of the Netherlands shall be derived from the existence of such works either on the river or on its bed."

My Government are of opinion that this text, on the one hand accepting the division of the river into two parts and on the other hand restricting the permitted projection of works in the upper reaches of the stream, to no more than half the breadth of the river, is in conformity with the local situation and the practical exigencies.

As to par. 4 of your note of the 28th July 1936, I have the honour to inform you that my Government do not deem the addition to art. 4 of the words "due to the normal recurring seasonal fluctuations in its volume" necessary, since the British Government accept the words "low-water mark" in art. 3(8)

As a result of the observations of the Mixed Commission art. 1 (8) will have to be read as follows:

"The
"The beginning of the left bank of the River Courantyne
at the sea shall be the point at which a line drawn on
a bearing of N.10°E. from the beacon erected on the left
bank of the River Courantyne at latitude 5°29'35", W.87°08'30",
"E, W.0. intersects the shore line"

whilst art.8 should read:

"The boundary between the territorial waters of Surinam
and British Guiana is formed by the prolongation seawards
of the line drawn on a bearing of N.10°E. from the land-
mark referred to in Article 1(2) above".

The substitution of N.10° for 20° should also be
accepted in art. 1(2).

I shall be grateful if you will let me know whether His
Majesty's Government agree to the proposed text of art.8 (2) and
have the honour to remain,

With the highest consideration,

Sir,

Your obedient servant,

(K. Teixeira de Mattos).
THE SECRETARY OF STATE FOR FOREIGN AFFAIRS.

(Copy received in Colonial Office, 2nd December, 1937.)

(No. 2352.)


With reference to your notes of the 25th July 1936 No. W.6196/1212/29 and of the 20th October last No. C.7807/2452/29, regarding the draft treaty in connexion with the boundary between Surinam and British Guiana, I have the honour, in accordance with instructions received, to inform you as follows.

After consideration of your note of the 25th July 1936 the Netherlands Government admit as correct and accept the division of the river into two parts as suggested in para. 6 thereof.

In para. 7 a statement is made, which my Government consider correct in theory, that no case could occur where a thalweg does not exist, as thalweg is interpreted as meaning the line of lowest level and as being independent of the presence or absence of water. I have the honour to observe, however, that it may be impossible in practice to determine the lowest level in a region where waterfalls and rapids of great breadth and length are frequent. It is even considered doubtful whether the lowest level in such conditions will be continuous, as between the rocks in the river-bed several channels of the same depth will be found. It is not clear how in these circumstances a line can be drawn beyond which works may not be constructed. It is quite likely that the line thus drawn should have to run across the river at several points; therefore—contrary to the intention—the works to be erected might impede the already difficult navigation.

In view of these considerations the Netherlands Government propose the following text for art. 5(2):

"The subjects of His Majesty the King shall have full liberty to drive piles, construct wharves, boathouses or any other structures, on the left bank of the river, always provided that such structures do not impede navigation and do not project beyond the thalweg of the channel of the river which flows by that bank, or at any place above a point 10 miles upstream from the beacon referred to in Article 1(2) do not project further than half the breadth of that part of the river and in no case more than 50 metres from the low-water into the water-channel of the river. No prescriptive rights of any kind against Her Majesty the Queen of the Netherlands shall be derived from the existence of such works either on the river or on its bed."

My Government are of opinion that this text, on the one hand accepting the division of the river into two parts and on the other hand restricting the permitted projection of works in the upper reaches of the stream, to no more than half the breadth of the river, is in conformity with the local situation and the practical exigencies.

As to para. 4 of your note of the 25th July 1936, I have the honour to inform you that my Government do not deem the addition to art. 4 of the words "due to the normal recurring seasonal fluctuation in its volume" necessary, since the British Government accept the words "low-water mark" in art. 5(2).

As a result of the observations of the Mixed Commission art. 1(2) will have to be read as follows:

"The beginning of the left bank of the River Courantyne at the sea shall be the point at which a line drawn on a bearing of N. 10° 0' from the beacon erected on the left bank of the River Courantyne at latitude 5° 59' 53', 8N. 57° 06' 51.5" intersects the shore line."

whilst art. 3 should read:

"The boundary between the territorial waters of Surinam and British Guiana is formed by the prolongation seaward of the line drawn on a bearing of N.10° 0' from the landmark referred to in Article 1(2) above."

The substitution of N.10° 0' for 28° should also be accepted in art. 1(2).

I shall be grateful if you will let me know whether His Majesty's Government agree to the proposed text of art. 5(2) and have the honour to remain,

E. TEIXEIRA DE MATTOS.

No. 71.

My Lord,

With reference to your note of the 26th July last No. C 9440/1910/9, regarding the draft treaty in connexion with the boundary between Surinam and British Guiana, I have the honour, under instructions received, to inform you that paragraph 8 of the original copy of the report in English concerning the erection of the beacon stated an average latitude 5°09'55.9" North, but 55.8° was altered in ink to 55.8. This alteration was initialed by Zeeuwe, Chipp and Kayser; on this ground my Government are of opinion that the copy 55.8° should be deemed correct.

For the rest the Netherlands Government entirely concur that the reduction given in your note, viz. latitude 5°09'55.9" North, longitude 57°06'51.9" West is more correct.

I shall be grateful if you will be good enough to inform me whether His Majesty's Government agree that latitude 5°09'55.8" North, longitude 57°06'51.9" West should be the exact indication and have the honour to remain,

with the highest consideration, etc.,

(Signed) E Teixeira de Mattos.

The Right Honourable Viscount Halifax

E.G., R.C.S.I.

etc., etc.
My Lord,

With reference to your note of the 21st July, No. 166, I am directed by the Government of the Netherlands to offer you my thanks for your note of the 11th July of the same year, and to inform you that the position of the line of demarcation between Suriname and British Guiana, as given in the Treaty of the 28th May, 1851, is not that of the line of demarcation. In the Treaty of 1851, the line of demarcation was described as follows: "The line of demarcation shall be the parallel of latitude 5° 15' 30" North, and the line of longitude 58° 19' 30" West."

The line of demarcation, as described in the Treaty, is not, however, the line of demarcation which has been recognized by the Governments of the Netherlands and British Guiana. The line of demarcation, as recognized by the Governments of the Netherlands and British Guiana, is the line of demarcation which was agreed upon by the Governments of the Netherlands and British Guiana in the Treaty of 1851. The line of demarcation, as described in the Treaty of 1851, is not the line of demarcation which has been recognized by the Governments of the Netherlands and British Guiana.

The line of demarcation, as recognized by the Governments of the Netherlands and British Guiana, is the line of demarcation which was agreed upon by the Governments of the Netherlands and British Guiana in the Treaty of 1851. The line of demarcation, as described in the Treaty of 1851, is not the line of demarcation which has been recognized by the Governments of the Netherlands and British Guiana.

I am, My Lord, with the highest consideration,

E. Tuxen, at St. James'.

Annex 63

Memorial of Guyana
60012/36 [No. 31]: Enclosure.

THE SECRETARY OF STATE FOR FOREIGN AFFAIRS

No. PROOF.

to

THE NETHERLANDS MINISTER.

(Copy received in Colonial Office, 3rd November, 1938.)

Sir,

Foreign Office, S.W.1, 1st November, 1938.

With reference to your note No. 4341 of 27th August relating to the delimitation of the boundary between British Guiana and Surinam, I have the honour to inform you that as a result of enquiries made in British Guiana, the British authorities concerned have now confirmed that the co-ordinates of the beacon at the mouth of the River Courantyne should be as stated in your above-mentioned note, viz., latitude 5° 26' 33.8" North and Longitude 57° 00' 51.5" West.

2. His Majesty's Government therefore agree that Article 1(2) of the draft Treaty should be amended accordingly.

I have, &c.,

W. I. MALLEY.

Jenkheer E. Teixeira de Matoz, &c., &c., &c.


Memorial of Guyana
Annex 64
FOREIGN OFFICE, S.W.1.
16th September, 1969.

Your Excellency,

You may recall that on the 25th November, 1939
Lord Halifax had the honour to address to Your Excellency
a Note (No. C. 17666/76/29) about the proposals which
had been under discussion between our two Governments for
the delimitation of the boundary between British Guiana
and Suriname, together with the revised English text of the
draft of a treaty to be concluded for this purpose.

Lord Halifax enquired whether your Government concurred in
the draft treaty and whether they were prepared to proceed
to signature, in which event Lord Halifax asked whether you
would be so good as to furnish him with a Dutch text of the

2 Further negotiations were interrupted by the unhappy
events of 1940 and no action has since been taken to proceed
with the treaty. His Majesty's Government now feel that it
would be opportune to re-open this subject and, accordingly
I have the honour to transmit herewith a revised English
text of the draft of a treaty for the delimitation of the
boundary between British Guiana and Suriname. The text is
identical with the text transmitted in 1939 save for
Article 5, 1, which provides for navigation of the
Courantyne River to the High Contracting Parties.

/3.....

His Excellency
Jonasheer E. Michiels van Verduyen,
etc., etc., etc.,
Flat 12
0 Dover House,
Park Street,
W.1.

Diplomatic Documents
3. His Majesty's Government are of the opinion that any arrangement for securing freedom of navigation of the Courantyne River must be consistent with their obligations under the Barcelona Convention on the Regime of Navigable Waterways of International Concern of 1929, under the provisions of which His Majesty's Government has extended its jurisdiction to cover British Guiana. Under Article 3 of the Barcelona Convention the signatories are bound to accord free exercise of navigation to the vessels of the flag of all states parties to the convention on those parts of waterways under their sovereignty or authority.

4. Under the proposed treaty, the boundary between British Guiana and Suriname is the left bank of the Courantyne River and not the Theatre. In practice, therefore, it would appear that no part of the waterway will be under the sovereignty or authority of His Majesty's Government and the obligations of His Majesty's Government towards their fellow signatories of the Barcelona Convention would appear to be confined to assuring them the free use of any ports or landing facilities which might be constructed on that part of the left bank which is under the sovereignty and authority of His Majesty's Government.

5. His Majesty's Government realize, moreover, that there must inevitably be some control over navigation and consider that the incorporation of the Barcelona Convention for this purpose would define sufficiently precisely the extent to which freedom of navigation would be granted or withheld by the State exercising sovereignty and authority over the waterway; i.e. by the Netherlands Government.

6. .........
6. With these considerations in mind His Majesty's Government propose that Article 5, 1, should be redrafted as follows:

"1(1) There shall be freedom of navigation in accordance with the provisions of the Convention and Statute of the Regime of Navigable Waterways of International Concern signed at Barcelona on the 20th April 1921."

7. His Majesty's Government are also of the opinion that in the view of their obligations under the Brussels Treaty and the Atlantic Pact the treaty should provide for the freedom of navigation for the warships of the High Contracting Parties at all times, and for the warships of the Allies of either of them in time of war. His Majesty's Government therefore propose that a second sub-clause should be inserted as follows:

"1(11) The warships of the High Contracting parties shall enjoy freedom of navigation and in time of war the warships of the Allies of either of them."

With regard to the provisions for the use of the river for aircraft, His Majesty's Government are of the opinion that, in view of the development of civil aviation since 1939, it is necessary to define the extent to which the rights of the Parties should be limited in order, on the one hand, to ensure that aircraft may be provided with adequate facilities for alighting and taking off and, on the other hand, to ensure that such facilities should not become an obstacle to navigation.

6. His Majesty's Government therefore propose a third sub-clause to article 5, 1, as follows:

"1(111)"
"[111] Aircraft registered in the territories of the
High Contracting Parties shall enjoy freedom
of use of the waters of the river as an
allotting area, provided always that the
allotting area marked for the purpose and any
ancillary buildings are not of such a nature as
to affect the navigability of the river, nor
the free passage of shipping as stipulated in
Article 5 (1) above."

Q. His Majesty's Government believe that it would be of
advantage if the draft treaty were discussed by the
Governors of British Guiana and Surinam before any further
steps are taken by the two metropolitan Governments in
regard to the delimitation of the boundaries between the
two dependent territories. I have the honour, therefore,
to enquire whether your Government concur that the draft
treaty, as amended, should now form the basis for discussions
between the two Governments as a preliminary to signature,
either in the Hague or London, by the Royal Netherlands
Government and His Majesty's Government. In this event I
shall be glad if you would be so good as to furnish me with
a Dutch text of the treaty.

I have the honour to be, with the highest
consideration,
Your Excellency's obedient Servant,
(For Mr. Attorneys)
The Government of Surinam have requested the Netherlands Government to take steps to determine clearly and precisely the line dividing the continental shelf adjacent to Surinam and British Guiana. This matter has lately become of practical importance with a view to determining the areas covered by oil exploration concessions granted by the Surinam Government.

The Convention on the Continental Shelf adopted this spring by the Geneva Conference on the Law of the Sea, although not yet signed by the Netherlands or the United Kingdom, is considered to lay down acceptable general principles of international law concerning the delimitation of continental shelves.

According to Article 5, par. 2, of that Convention, the boundary of a continental shelf adjacent to the territory of two adjacent States shall be determined by agreement between them.

It is deemed desirable that such an agreement be concluded between the Netherlands and the United Kingdom by an exchange of notes in which the principle of "equidistance", mentioned in the same article of the Convention, would be adopted as the determinant of the line dividing the continental shelf adjacent to Surinam and British Guiana. The actual dividing line resulting from the equidistance principle would be charted on a map to be annexed to the notes.

The Netherlands Naval Authorities have been asked to prepare such a map.

FOREIGN OFFICE, S.W.1.
November, 1958.

Your Excellency,

I have the honour to refer to the Aide Memoire on the subject of the boundary dividing the Continental Shelf of British Guiana from that of Surinam, which was left at the Foreign Office by a member of your Embassy on August 6.

Her Majesty's Government learn with pleasure that the Netherlands Government would welcome an agreement on this question, based on the principles of equidistance.

As the Netherlands Ministry of Foreign Affairs will be aware from their discussions with Her Majesty's Embassy in The Hague, my Government is at present preparing a Draft Treaty for the delimitation of the boundary between British Guiana and Surinam. It is intended that the Draft Treaty should contain provisions for the delimitation of the Continental Shelf, based on the accepted principle mentioned above.

I understand that the Netherlands Ministry of Foreign Affairs have expressed a preference for the negotiations connected with this treaty to take place in The Hague; I hope soon therefore to be able to instruct H.M. Embassy in The Hague to present my Government's proposals to the Netherlands authorities.

My Government are pleased to learn that the Netherlands Naval authorities are to prepare a map of the relevant area of Continental Shelf.
NOTE VERBALE

The Netherlands Ambassador presents his compliments to Her Majesty’s Principal Secretary of State for Foreign Affairs and, while acknowledging with thanks the receipt of the draft treaty for the definition of the boundary between British Guiana and Surinam enclosed with the Foreign Secretary’s Note No. A 1082/21 of 29th November, 1965, has the honour to inform him as follows:

1. For negotiations on the subject of the land-boundary between Surinam and British Guiana, the Government of the Kingdom of the Netherlands base themselves on the West bank (left bank) of the Corentyne, which river, in accordance with the agreement between the Governors Batenburg and Frederici of 1799, and subsequently, in accordance with the Treaty of London of 1815, is entirely Surinam territory, as has also been mentioned in the British draft treaty.

2. The land-boundary between Surinam and British Guiana thus having been established, the whole Corentyne from its source to its mouth is by right Surinam territory. Only the demarcation thereof still has to take place.

3. By virtue of the foregoing, the Government of Surinam have, by territorial decree of 5th May, 1965, published in the Government Journal (“Gouvernementsblad”) No. 45 of that year, named officially and correctly the part of the Corentyne, indicated by the United Kingdom as “New River”, as Upper Corentyne (“Boven Corentyne”).

4. The Government of the United Kingdom, in a note from the British Ambassador at The Hague, dated 9th March, 1965, No. 65, have protested against this, and have declared that they wish to reserve their rights on this subject. The Government of the Kingdom of the Netherlands find themselves in a position of being unable to accept this protest.
5. The aforementioned position of the Government of the United Kingdom has resulted in this question being discussed by the Parliament of Surinam ("de Staten"), leading to the unanimous adoption on 7th October, 1965 of a motion supporting the position adopted by their Government.

6. According to information received from the British Foreign Office, the Government of the United Kingdom have decided to grant independence to British Guiana in May, 1966. The Government of the Kingdom of the Netherlands are of the opinion that, in granting such independence, the foregoing should be taken into account.

7. The Government of the Kingdom of the Netherlands propose to the Government of the United Kingdom that an official boundary register be drawn up by a committee of experts from the United Kingdom and from the Kingdom of the Netherlands, embodying all technical data concerning the course of the West bank (left bank) of the Corentyne from its source to its mouth, describing this course in a manner consistent with scientific and technical requirements and giving the exact geographical position of special or specially marked points of the riparian boundary-line.

8. Contrary to what was stated on this subject in the draft treaty submitted by the United Kingdom, the Government of the Kingdom of the Netherlands consider that the sea-boundary between Surinam and British Guiana should run from the West bank (left bank) of the Corentyne at its mouth, across the territorial sea and the continental shelf with a bearing 10° East of the true North.

9. The Government of the United Kingdom have invited the Government of the Kingdom of the Netherlands to start negotiations at an early date about the final definition of the boundary between Surinam and British Guiana, for which purpose a draft treaty was submitted.
In view of the forthcoming transfer of sovereignty to British Guiana, the Government of the Kingdom of the Netherlands are indeed prepared to start at an early date negotiations about the final definition of the boundary between Surinam and British Guiana.

10. As follows from the considerations stated in paragraphs 1 to 8 above the Government of the Kingdom of the Netherlands cannot, however, accept the draft treaty submitted by the United Kingdom as a basis for such negotiations.

11. The Government of the Kingdom of the Netherlands for their part propose that negotiations be based solely on those legal facts which are recognised by both countries concerned as mentioned under paragraph 1 above.

12. The Government of the Kingdom of the Netherlands therefore propose that preliminary negotiations between experts of both parties be started as soon as possible at The Hague on the basis of the following agenda:

a) the establishment of the Western sea-boundary of Surinam across the territorial sea and the continental shelf;
b) the principles for the demarcation of the Western land-boundary of Surinam, i.e. the West bank (left bank) of the Corentyne;
c) the composition of a mixed committee for the demarcation of the boundaries in question.

The text of the motion of the Parliament of Surinam, referred to in paragraph 5, is enclosed herewith.