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His Excellency Mr. Ban Ki-moon  
Secretary General of the United Nations  
United Nations Headquarters  
New York

Excellency,

I have the honour to refer to the correspondence of March 9, 2012 addressed to you by His Excellency Nicolas Maduro Moros, Foreign Minister of the Bolivarian Republic of Venezuela, a copy of which is posted on the webpage of the Division for Ocean Affairs and the Law of the Sea of the United Nations, in order to correct certain fundamental inaccuracies and misleading information contained in that correspondence.

In his communication, the Foreign Minister of the Bolivarian Republic of Venezuela stated that "...the territory west of the Essequibo river ...is the subject of a territorial sovereignty dispute under the Geneva Agreement..." In the view of Venezuela, this is a matter to be addressed under the Good Offices Process of the United Nations Secretary General. Both positions are incorrect. The fact is there is a legally binding Arbitral Award that has established the boundary between Guyana and Venezuela. What exists between Guyana and the Bolivarian Republic of Venezuela is, as stated in Article 1 of the Geneva Agreement of February 17, 1966, a "controversy...which has arisen from the Venezuelan contention that the Arbitral Award of 1899 about the frontier between British Guiana and Venezuela is null and void." The Arbitral Award of 1899 that was handed down on October 3, 1899 pursuant to the provisions of the Treaty of Washington of February 2, 1897, definitively established the land boundary between Guyana and Venezuela. Venezuela accepted that Award and the boundary thus established as full, perfect and final for over sixty years and acted in accordance with its decision for those years.

It was not until the 1960s that Venezuela sought to question the validity of the Award by seeking to impugn the integrity of some of the Arbitrators. The Government of Guyana has noted that while Venezuela, in its letter, sought to invoke customary international law in defence of its purported "rights" to a continental shelf "corresponding to the Atlantic region", its Government has decided to disregard customary international law and indeed the international jurisprudence in relation to settled land boundaries. The International Court of Justice (ICJ), whenever it has had to address matters similar to the case being developed by the Bolivarian Republic of Venezuela, has maintained the legal principle that "once agreed, the boundary stands, for any other approach would vitiate the fundamental principle of the stability of boundaries."

The ICJ's jurisprudence is applicable to the declarations of Venezuela and is even more instructively stated in the case between Libya and Chad as is stated in the ICJ Reports, 1994 para 6, page 37:

"The establishment of this boundary is a fact which, from the outset, has had a legal life of its own, independent of the fate of the 1955 Treaty....A boundary established by Treaty thus achieves a permanence which the treaty itself does not necessarily enjoy. The Treaty can cease to be in force without in any way affecting the continuance of the boundary"

There is therefore no doubt that in spite of the statements by the Bolivarian Republic of Venezuela to the contrary, the territory of the Essequibo, and the maritime spaces appurtenant to it, are only under the jurisdiction of one State, the Republic of Guyana. This is based not only on the Arbitral Award of 1899, but also international law, including customary international law.

The simple fact is that there is no "territorial dispute" between the Republic of Guyana and the Bolivarian Republic of Venezuela. That has been the position adopted since the early 1960s and it is what informed the language used in the Geneva Agreement of 1966 where the word "controversy" (about the Venezuelan contention that the Award is null and void) is used and not "dispute". To be clear, as stated in the Geneva Agreement, the controversy is not about territory, but about the unilateral claim that the Award of 1899 is null and void. The jurisprudence dictates that even if the claim of invalidity is upheld, that does not change the permanence of the boundary established by that Award.

It is therefore quite clear that Guyana's statement, in the Executive Summary of its Submission to the Commission on the Limits of the Continental Shelf (CLCS), that there are no disputes relevant to its submission of data and information, is accurate, supported by the definitive nature of the Arbitral Award of 1899 and customary international law – including the relevant case law.

A key element of the United Nations Convention on the Law of the Sea (the Convention) is "predictability". States are able to predict what their rights, entitlements and obligations are once they meet established criteria for the exercise of jurisdiction. That includes title over the territory that generates jurisdiction. This essential facet of the value of that Convention must be considered eroded, if a State's ability to invoke its rights under the Convention's provisions can be denied by objections that are not based on legal principles, or worse are based on disregarding the tenets of international law, including the sanctity of established boundaries.

While the Bolivarian Republic of Venezuela maintains in its correspondence that "sovereignty" over the Essequibo is the matter which the Good Offices of the Secretary General of the United Nations is addressing, the Government of the Republic of Guyana wishes to state that that is a statement not supported by the Geneva Agreement from which the Good Offices Process gains its mandate. The mandate of the Good Offices Process is derived from Article I of that



Agreement which I have quoted, in part, above and Article IV (2). That mandate is quite clear: to search for a solution to the controversy which "has arisen from the Venezuelan contention that the Arbitral Award of 1899 about the frontier between British Guiana and Venezuela is null and void" and a means by which a solution can be achieved. The mandate is therefore quite circumscribed. It is for that reason that Guyana maintains that it is inappropriate to address the matter of Venezuela's contentions about Guyana's Submission within that Process which would in effect be a discussion about sovereign rights which the Geneva Agreement does not empower the Good Offices Process to do.

The Bolivarian Republic of Venezuela has stated that the Government of the Republic of Guyana did not seek to enter into consultations with it about Guyana's Submission, on September 6, 2011, to the Commission on the Limits of the Continental Shelf. I wish to clarify that under cover of a Note Verbale dated May 13, 2009, Guyana provided to Venezuela a copy of the Preliminary Information and Data which was submitted to the Secretary General of the United Nations in accordance with the decisions adopted at the Eleventh Meeting of States Parties (SPLOS/72). That Note Verbale constituted the Executive Summary of Guyana's full Submission to the CLCS on September 6, 2011, except for some data acquired after May 2009. Venezuela therefore had data and information, formally provided by the Government of the Republic of Guyana, some two years prior to the Submission made to the CLCS. There was no reaction from the Government of the Bolivarian Republic of Venezuela until after Guyana's Submission to the CLCS in September 2011, the Executive Summary of which was also directly provided by the Government of the Republic of Guyana to the Government of the Bolivarian Republic of Venezuela on September 7, 2011.

At a meeting in Port of Spain on September 30, 2011, Guyana did explain its position to the delegation led by Venezuela's Foreign Minister. Guyana emphasized at that meeting that its Submission expressly declared that it was made without prejudice to maritime delimitations with neighbouring States and that Article 76(10) of the Convention states that Submissions must be so considered. Guyana also acknowledged that Venezuela had the right to make its reservations about Guyana's Submission known to the United Nations in the same scope and manner in which that State had registered its reservations in relation to another Submission by a State in the Subregion.

The Government of Guyana is advised that the mandates of the CLCS are provided by the provisions of Article 76 of, and Annex II to the Convention. It is of significance that while the CLCS had adopted its own internal Rules of Procedure, it is clear that those Rules do not prevail over nor oppose the Convention. In fact, the Rules must be and are consistent with the provisions of the Convention. The Convention establishes that the provisions of Article 76 are without prejudice to the question of delimitation of the continental shelf between States with opposite or adjacent coasts. Guyana has made it abundantly clear that its Submission is made under this fundamental principle of international law, with respect to neighbouring States.

Guyana has taken careful note of the fact that the Bolivarian Republic of Venezuela has not explicitly invoked Annex I of the CLCS's Rules of Procedure. The CLCS is therefore being invited by the Bolivarian Republic of Venezuela to:



- determine whether the statement “the rules governing the work of the Commission” refers to either the Convention or an official document of the Commission. and
- make an error in law by considering the 1899 Award, which is in force and remained unchallenged for over six decades, as null and void (based on a State’s unilateral declaration) and thus create the false interpretation that a land or maritime dispute exists.

Guyana respectfully submits that it is critically important that whatever decision is made by the Commission in this regard, it must be made not only in accordance with the Convention, but must also be consistent with international law.

Guyana agrees that it is a truism that “land dominates the sea”. All claims to maritime spaces under national jurisdiction derive under international law from sovereignty over land territory by a State. However, the claim by Venezuela “that the coast whose projection is used by the Republic of Guyana in its attempt to extend the limits forms part of the disputed territory” is a falsehood. While it is a fact that the territory being referred to by the Bolivarian Republic of Venezuela is not disputed because of the 1899 Award, the falseness of the claim is made pellucid by several self-evident facts:

First, entitlement to determine the outer limit of the continental shelf beyond 200 nautical miles under the Convention, and the Scientific and Technical Guidelines of the CLCS, stems from the ability of a State to demonstrate that the foot of the continental slope plus 60 nautical miles and/or the 1% sediment thickness line, both determined from the foot of the continental slope, extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured. For as long as there is any portion of the coastline of a State facing the region of the submission, the length of such coastline is irrelevant to the entitlement gained by any State to extend its continental shelf beyond 200 nautical miles.

Second, the statement made above is substantiated by precisely the extant submissions in the region where the Submission of Guyana is made. The Submissions made by Barbados, Guyana, Trinidad and Tobago and Suriname actually overlap regardless of the precise amount and variable length of the coastlines supporting each of the entitlements.

Third, an overlap of maritime claims, or more specifically, an overlap of continental shelves created by different States, is not equivalent to the existence of a dispute. An overlap of maritime claims simply means that the parties have work ahead in the determination of their maritime or continental shelf boundaries. Guyana has always recognised the entitlement of Venezuela to a continental shelf and recently agreed to engage in bilateral negotiations to determine international maritime boundaries.

Fourth, the Government of Guyana finds the conduct of Venezuela vis-à-vis its Submission to be inconsistent since Guyana has been singled out notwithstanding the fact that the Submissions made by other States have been made from different directions overlapping the same region beyond 200 nautical miles where Guyana made its Submission. Only in one other case has the

Government of Venezuela expressed its reservations but filed no objections to the consideration of any other Submission in the region.

If the Venezuelan proposition were to succeed the implications for the future of the Commission would be grave. It amounts to the proposition that any challenge to a territorial boundary, sanctified by treaty and acknowledged by international law, however flimsy or spurious that challenge may be, could be misrepresented as a 'dispute' within the meaning of Article 76 of the Convention and thereby undermine the authority and jurisdiction of the Commission over a vast area of the world. It would endanger the very purposes for which the Commission was established under the Convention, and ironically at the instance of a country that has itself refused to be a signatory to the Convention.

Guyana made its Submission:

- to fulfill its obligations pursuant to paragraph 8 of Article 76 of, and Article 4 of Annex II to the United Nations Convention on the Law of the Sea;
- in accordance with the methodology contained in paragraphs 1 to 7 of Article 76 of the Convention, and the Scientific and Technical Guidelines of the CLCS; and
- without prejudice to questions relating to the delimitation of international boundaries of the continental shelf among States in accordance with international law and paragraph 10 of Article 76.

The preparation of Guyana's Submission to the CLCS was done utilising very large economic and human resource investments over a period of more than five years to comply with obligations set out under the Convention. The Government of Guyana expects, in light of the explanations and clarifications provided above, that the Commission would ignore the objection made by the Bolivarian Republic of Venezuela in its communication dated March 9, 2012, since it has no foundation under the Convention, international law or the official documents of the CLCS.

I wish to request Secretary General, that this communication be given due publicity to Member States and to the Commission on the Limits of the Continental Shelf.

Please accept, Excellency, the assurances my highest consideration.

  
Carolyn Rodrigues-Birkett  
Minister of Foreign Affairs