

# Dispute between Guyana and Suriname over maritime boundaries (2000-2007)

*Litigio entre Guyana y Surinam sobre los límites marítimos (2000-2007)*

**Abstract:** This paper objective to analyze the main outlines of the dispute about the maritime limits between Guyana and Suriname and the scope of the arbitration award that delimited the maritime border between the two countries. Guyana and Suriname find themselves in a geopolitical position of fusion and meeting between the Caribbean and the Amazon region, providing a rich field of research. The methodology adopted consisted of consulting the specialized bibliography and analysis of official documents presented to the Arbitral Tribunal by both countries, as well as documents referring to the decision of the case. The main considerations about the research point out that the bilateral relationship between Guyana and Suriname was built on the basis of pendular dynamics, that is, they sometimes pointed to an approximation, sometimes to distance, in which attempts to define maritime limits were developed. The claims were arbitrated internationally, whose decision, establishing a single maritime limit, corroborates the gradual process of stability between the two countries.

**Keywords:** Guyana; Suriname; Maritime limits; Law of the Sea.

**Resumen:** Este trabajo tiene como objetivo analizar los principales delineamientos de la disputa acerca de los límites marítimos entre Guyana y Surinam y el alcance del laudo arbitral que delimitó la frontera marítima entre los dos países. Guyana y Surinam se encuentran en una posición geopolítica de fusión y encuentro entre la región del Caribe y la Amazonía, propiciando un rico campo de investigación. La metodología adoptada consistió en consulta a la bibliografía especializada y análisis de documentos oficiales presentados al Tribunal Arbitral por ambos países así como a los documentos referentes a la decisión del caso. Las principales consideraciones acerca de la investigación apuntan que la relación bilateral entre Guyana y Surinam se construyó bajo las bases de dinámicas pendulares, o sea, ora apuntaban para una aproximación ora para distanciamiento, en que las tentativas de definición de los límites marítimos se desarrollaron. Las reclamaciones fueron arbitradas internacionalmente cuya decisión, estableciendo un límite marítimo único, corrobora el proceso gradual de estabilidad entre los dos países.

**Palabras clave:** Guyana; Suriname; Límites marítimos; Derecho del Mar.

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## 1 Introduction

When we analyze the man-sea relationship we contemplate in this spectrum the evolution of humanity itself, which over time became more plural and dynamic and presented new tensions in increasingly diverse spaces. In this diverse context, the activities developed by mankind gained new meaning as their needs were projected into different spaces, and distances were shortened.

Moura Neto (2014) comments that the oceans have established themselves as a fundamental link between peoples, serving as an element of economic and cultural integration as well as establishing themselves as a new horizon of opportunities and richness, but they have also served as the stage for many conflicts, disputes, accidents, limitations, and departures, constituting, paradoxically, a natural defense for coastal states and a means of rapprochement with distant nations.

It is in this context, with the emergence of new technologies and the discovery of new oil reserves and other mineral resources, that states have undertaken efforts to delimit their sovereignty and jurisdiction over maritime space. From this effort, after years of negotiations (the first conference on the Law of the Sea was held in 1958 and the final text was signed in Montego Bay in 1982), the current Law of the Sea was crystallized, under the aegis of the United Nations (UN)<sup>1</sup>.

Guyana and Suriname signed the Convention in 1982, but only deposited their ratification deposits in 1993 and 1998, respectively. Since then, the two countries have continued to claim their sovereignty and jurisdiction over the maritime space, whose environment has been the scene of new oil reserve discoveries and where international companies are increasingly active in the region.

In this sense, the present paper seeks to analyze the main delineations of the dispute between Guyana and Suriname regarding maritime boundaries and the scope of the arbitration award that delimited the maritime boundary between the two countries. The year 2000 represented the high point in the dispute, when a new chapter, involving maritime boundaries and the CGX oil company, culminated in the internationalization of the dispute, leading Guyana to resort to an arbitration court in 2004.

In the first section of this paper, we will address some discussions with respect to perceptions in international relations and how they affect the behavior of states in order to understand how Guyana and Suriname have behaved over the years. In the second section, the claims of each country involved in the dispute will be exposed, highlighting the main historical elements and, finally, we will deal with the arbitration award, whose work defined a single line as the maritime boundary.

## 2 Perception and its role in the pattern of interaction between states

Realist theory, until the late 1950s, was dominant in the analysis of international relations. States as the main actors were seen as unitary and homogeneous agents, and subjective aspects were left out of the scope of analysis. It was from the 1960s, as Herz (1994) explains,

<sup>1</sup> See details in Sousa's (2018) text.

that international relations studies began to take a cognitive approach to international politics, including elements such as perceptions and false perceptions, psychological environment, belief systems, the role of ideas, etc. These works began to focus on the processing of information by states and how this affected relations between them.

Among these works, Robert Jervis' *Perception and misperception in international politics* highlights precisely the role of perceptions in relations between states, stating that they need to understand how they are perceived by others: whether they see them as threatening or reassuring, weak or strong (in capabilities and determination), as consistent and constant or changeable. In this sense, the author will point out that in order to understand some of the whys of the interaction patterns of states, it is necessary to analyze the decision making of the actors involved, where he focuses his discussion.

Jervis (2017) will take his approach from four levels of analysis: one is the level of decision making, the second is the level of bureaucracy (the functioning of the bureaucracy can determine policy), the third is the nature of the state and the functioning of domestic policy (states with the same internal attributes can react equally when faced with a given situation), and the fourth focuses on the international environment (how the environment affects behavior). We will not have space in this paper to analyze these four levels in detail, so we will focus on what the author himself highlights in his text: decision making.

The author will state that it is at the decision-making level that states perceive the behavior of others and form judgments about their intentions. These judgments are related to the way decision makers construct their beliefs about the world and their images of others. Jervis (2017) will state that this analysis is important for us to understand why states behave in different ways when faced with the same situations, and this is directly related to their perceptions.

These perceptions can take on an affective dimension and in these cases lend support to the proposition that when political judgments exhibit affective-cognitive consistency, the reason is that the "liking" or disliking of another State and views about its specific characteristics are linked through the actor's beliefs about the interests and intentions of others. Wendt (2013) will work with the same idea when he addresses in his paper the process of identity and interest formation.

For Wendt (2013, p. 429, translated) "[...] the distribution of power can always affect the calculations of states, but how this occurs depends on the intersubjective understanding and expectations, the 'distribution of knowledge,' that constitute the conceptions about oneself and others." In this sense, the author will address the construction of identities and interests by states.

For him identities are "[...] relatively stable understandings and expectations of the specific role about oneself [...]." These identities are relational and actors acquire them by participating in collective meanings and "[...] each identity is an inherently social definition of the actor grounded in the theories that actors collectively hold of themselves and others, and which constitutes the structure of the social world" (WENDT, 2013, p. 430, translated).

Still according to the author, these identities are the basis of interests. States define their interests in the process of defining situations, that is, within a social context that always varies according to contingencies.

The processes of identity formation under anarchy are primarily concerned with preserving the 'security' of self. Concepts of security, therefore, differ in the extent to which (and the form in which) the 'self' is cognitively identified with the other and, I want to suggest, it is on this cognitive variation that the meaning of anarchy and the distribution of power depends (WENDT, 2013, p. 433).

Based on this identification of the "self" in relation to the "other," Wendt will define three types of security systems. The way states identify with each other can constitute competitive, individualistic, or cooperative security systems, as shown in Table 1.

In this sense, the identification process between states will be marked by perceptions of the self and the other. Wendt claims that the principle of "[...] identity formation is captured by the symbolic-interactionist notion of the 'looking-self glass,' which states that the 'self' is a reflection of an actor's socialization" (WENDT, 2013, p. 439, translated). The author argues that this sense-making arises from the interaction between actors, and the conceptions and perceptions arising from these interactions are socially constructed, within a process of signaling, interpretation, and response, as Figure 1 demonstrates. It is through this interaction that identities and interests are defined.

**Table 1 – Security Systems**

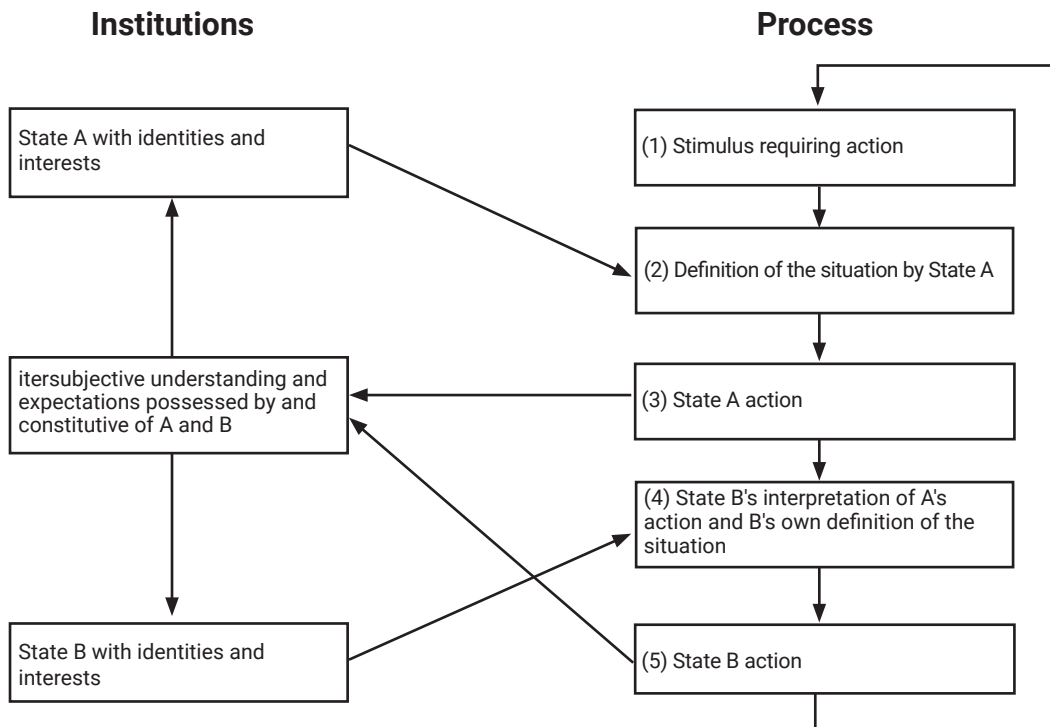
<b>COMPETITIVE</b>	Negative identification. The gains of one are seen as loss of the other. Collective action is seen as nearly impossible, given the mistrustful environment.
<b>INDIVIDUALIST</b>	The States “[...] are indifferent in regard their own safety or the others’. [...] The position of a State in the power distribution is less important and collective action is more plausible.” (WENDT, 2013, p. 433, 434, own translation).
<b>COOPERATIVE</b>	Positive identification. Security is everyone’s responsibility. The “I” is defined in terms of community. National interests are international interests.

Source: The author, based on Wendt (2013).

This understanding leads us to understand the very institute of sovereignty, since it exists by virtue of intersubjective understandings and expectations. Within these expectations we can glimpse that sovereignty does not exist without an "other," since identities are relational and states when interacting mutually recognize each other's right to exercise political authority within a given territory, thus generating a specific type of state—the sovereign state. This type of interaction provides the social basis for states' individuality and security, and in this sense war presents itself as a practice through which states negotiate their individuality (WENDT, 2013).

If they treat each other as if they were sovereign, then over time they will institutionalize this mode of subjectivity; otherwise, this mode will not become the norm. [...] The fact that the practices of sovereignty have been historically oriented to produce distinct territorial spaces, in other words, affects the conception of what one must 'secure' to function in that identity, a process that may help to understand the 'rigidity' of territorial boundaries across centuries (WENDT, 2013, p. 454-455, translated).

Figure 1 – Signaling, interpretation and response process



Source: Wendt (2013, p. 442).

This conception helps us to understand the behavior of Guyana and Suriname when facing their claims to territory both in terms of land borders (New River Triangle case) and maritime borders. The type of state constituted in these countries, as in most of the world, was the imported European model that became institutionalized, of sovereign states whose concern for territorial defense and security is an almost insurmountable item on the political agenda.

In this sense, the socialization reflex among these actors has corroborated to institute a security system based on competitiveness and mistrust. This relationship is clearly noticeable when we analyze Guyana and Suriname's perspectives on the delimitation of their maritime space and how the quest to preserve their interests and resources culminated in threats to use force, deteriorating bilateral relations and dialogue-building channels.

The construction of identities and interests, as well as the perception of one in relation to the other, can define whether relations between states will be closer or further apart. In the case of Guyana and Suriname, the territorial issues have defined a pendulum relationship that has been characterized by rapprochement, with attempts at agreements and the establishment of treaties, and by distancing with focuses of tension and hostility as a result of the interpretation of maneuvers by each state. In the following sections, we will unfold the set of arguments of each state faced with the claim of maritime delimitations, in which we will note the different perceptions faced with the same facts and how these perceptions corroborated to define the behavior of the states faced with the dispute.

### **3 Historical-political construction of the maritime borders between Guyana and Suriname**

The problem involving the borders of Guyana and Suriname is an inheritance from the colonial period, a pattern also followed by other former colonies that achieved their independence with territories not fully delimited. In the case of Guyana and Suriname, the delimitation was in charge of the British crown and the then Dutch government, respectively. The two countries declared their independence with several territorial disputes and this was reflected in the episode that occurred in the year 2000, which will be analyzed further on.

Therefore, for the understanding of the present study, we will highlight three important moments that were defining in the construction of the first attempts of a border delimitation agreement regarding the maritime space. However, it is important to emphasize that the establishment of maritime boundaries always needs a starting point from terrestrial space, and this starting point has been the element of greatest discussion in the whole problematic involving the present dispute.

The first moment to be highlighted goes back to the colonial period, with the agreement signed in 1799 between the British crown and the Dutch. In this agreement, the boundary that had been established in 1674 between the British and Dutch settlements, which was on the small river called Devil's Creek, was moved. This river remained for almost one hundred years the border between the colony of Suriname and Berbice, a colony in Guyana. However, in 1799

a new agreement established the west bank of the Corentyne River as the border between the two colonies (Donovan, 2003). Hoyle (2001) states that from then on this agreement made the Corentyne a Dutch river. The method adopted for this demarcation did not follow the rule of international law, which establishes a middle line in the middle of the river (called the *Thalweg*) as the line of demarcation between river borders, passing control of the entire Corentyne River to Suriname.

According to the arguments set out in the two Memoranda submitted to the Arbitral Tribunal in 2005, on the occasion of the arbitration proceedings brought by Guyana, the two countries agreed that the territorial relationship established in 1799 was legitimate, but that in the Surinamese understanding there was no specific legally binding understanding concerning the full scope of the legal implications of this cession of territory (Permanent Court of Arbitration, 2005a). Defining the land boundary would involve establishing a point where it would end so that maritime boundaries could be established from there.

The second moment that marks the delineations of this border construction reaches the year 1936, when a mixed commission was formed by British and Dutch commissioners to establish a milestone that would define the end of the land border, that is, the starting point to delimit the maritime spaces. This was the first opportunity for countries to define their territorial sea. On this occasion, the British and Dutch governments pointed to Point 61 (Point 1936 in Suriname nomenclature) as a possible landmark to reference for establishing the maritime boundary.

However, there was no consensus between the parties as to the said demarcation point. While Guyana (Permanent Court of Arbitration, 2005b) stated that in this period an agreement was reached that the maritime boundary should be a straight line emanating from the end of the land border (Point 61) at an angle of 28° to the three-mile limit of the territorial sea, which was then the customary boundary under international law, Suriname (Permanent Court of Arbitration, 2005a), on the other hand, stated that the said point was not legally binding, but acknowledged that the role of the joint commission was an attempt to define a definitive legal instrument regarding the land and maritime boundary and that it had a relevant place in the diplomacy and practice between the parties and their colonial predecessors.

Both the 1799 agreement and the work of the joint commission were provisional in nature. The text of the 1799 agreement itself is configured as being “[...] some arrangements by which all the Ends wished for might be obtained without precluding the final Regulations which, on determining the future fate of the Colonies, their Sovereign or Sovereigns in time being, might judge proper to establish with respect to the Boundary” (Donovan, 2003, p. 52). This fact is proven in the powers' own behavior, in the years that followed, as they continued their attempts to find a definitive solution. However, Hoyle (2001) states that by 1936 there were already political elements in place for a final agreement to be reached and that had it not been for World War II, perhaps the powers would have finalized an agreement.

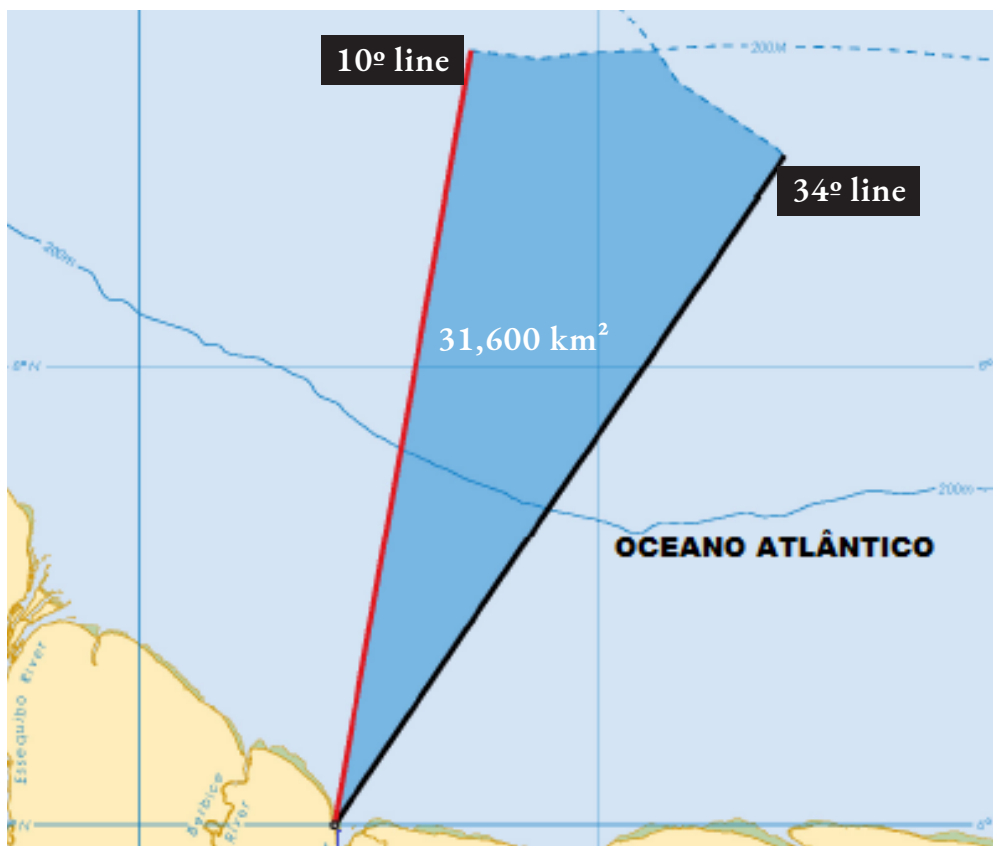
Both Guyana and Suriname agreed that the joint commission developed a line to delimit the territorial waters adjacent to the two colonies. However, the Guyanese argument pointed to a 28° line (later changed to 34° with the principle of equidistance) while Suriname pointed to a 10° line, clai-

ming that this line delimited its territorial sea as well as the maritime areas beyond it (PERMANENT COURT OF ARBITRATION, 2005a).

In the 1950s, other attempts were made by the colonies to reach a definitive solution, but none were successful. As Donovan (2003) notes, border issues between the two countries had little relevance until the discovery of important natural resources, such as the gold deposits in the New River Triangle area and the offshore oil opportunities on the continental shelf. In this sense, resolving these issues was economically expedient for both nations.

It was precisely in 1958 that the British crown formalized the first oil exploration concession on Guyana's continental shelf, and the California Oil Company (now Exxon) was awarded the contract (Donovan, 2003). It was from the 1950s that both countries began issuing concessions to foreign companies for oil exploration and these concessions or permits, when viewed against each other, clearly show an area of overlapping maritime boundaries, as shown in Figure 2. This area of overlap is the result of the different positions adopted by the parties, in which Suriname defended a 10° line (red line) to define the maritime limit and Guyana defended a line following 34° (black line), making up an area of 31,600 km<sup>2</sup> placed in dispute and rich in hydrocarbons.

Figure 2 – Concession area and overlap



Source: Adapted from Permanent Court of Arbitration (2005a).



Finally, the third formal opportunity for an agreement came at the time of the independence of the Cooperative Republic of Guyana in 1966, when the UK hosted direct negotiations between Guyana and Suriname (not yet independent). The purpose of these negotiations was to explore a formal boundary agreement once again, and they were held at Marlborough House in London. On this occasion, Guyana affirmed its position on delimiting the territorial waters from a line of equidistance, and there was no consensus on the part of Suriname, which defended other criteria for establishing the delimitation, such as the chain of geographical circumstances (Permanent Court of Arbitration, 2005b).

The years that followed saw little dialogue around a definitive agreement between the two countries, and the other negotiations that did take place had no practical effect, such as the 1991 Memorandum of Understanding (Donovan, 2004). Both continued with their oil exploration concessions to foreign companies and Suriname founded its own national oil company (Staatsolie) in the 1980s. In June 1998, Guyana issued a prospecting license to the company CGX Resources Inc. and it was from the year 2000 that CGX's activities were challenged by the Surinamese government. According to Moreira (2012), Suriname carried out maneuvers with armed ships to expel the CGX drilling vessel, as it claimed that it was developing activities in space belonging to its territory. According to statements from the CGX crew to the Arbitral Tribunal (United Nations, 2007), they feared violent action and withdrew from the concession area.

Bharrat Jagdeo, then president at the time of Guyana in an address to the nation, thus spoke about the relationship between the two countries and the events concerning the border issues:

You are familiar with all our differences with neighboring Suriname on border issues. One of them - the one concerning our maritime border - has been the object of current controversy in a context that has a bearing on our development prospects. [...] Suriname has taken aggressive measures to frustrate the prospection and exploration of hydrocarbons in our territory (Lima, 2011, p. 118, translated).

In the same month of the event, Guyana and Suriname held a ministerial meeting in Trinidad and Tobago, under the good offices of the Prime Minister of the host country, in order to broker a negotiation. On another occasion, at the 21st Meeting of CARICOM Heads of Government, held in St. Lucia, the country's capital. Vincent and the Grenadines on July 2-5, 2000, the CARICOM Presidents and Prime Ministers issued a statement on Guyana and Suriname, reaffirming the importance of resolving the dispute by peaceful means.

However, in late 2003, Guyana stated that there was no prospect of resolving the separate dispute that arose with Suriname over the threat of the use of force in June 2000. It understood that further attempts to negotiate a maritime delimitation agreement would be futile and fruitless. The only viable option, according to Guyana's argument, would be to invoke its rights under the 1982 Convention and initiate the arbitration process (Permanent Court of Arbitration, 2005b).

#### 4 The 2007 arbitration award

As seen in the arguments of Guyana and Suriname, both had different claims regarding the delimitation of the Territorial Sea, the Exclusive Economic Zone and the Continental Shelf. However, the issue involving the Territorial Sea was the one with the greatest inflection, since this directly involves the baseline, i.e., the land starting point at which the maritime zones are established and, according to the previous arguments, both parties disagreed on the location of this point, since it involved another border pendency on the Corentyne River, as seen.

In light of this, the Court was faced with four questions to be elucidated. The first concerned the Court's own legitimacy to deal with the case, as Suriname in its argument stated that there were no jurisdictional prerogatives for the Court under the Convention, as it involved land border issues. The second question concerned the delimitation of the Territorial Sea in light of the evolution of the Law of the Sea and the domestic legislations of both contending parties. The third, similar to the second, also concerned the delimitations of the Exclusive Economic Zone and Continental Shelf, and finally, the Tribunal would have to verify whether Guyana's accusation of the threatened use of force by Suriname on June 3, 2000 constituted a violation of international rules.

Of these four agendas, we will specifically address the issues related to the definition of maritime boundaries in order to clarify the position of the Court as well as the jurisprudence developed to resolve disputes of this nature.

##### 4.1 Territorial Sea Limits

Antônio Augusto Cançado Trindade (2014) in his text analyzes the indications for fixing the maritime lateral limits and highlights the principle of equidistance (which would be the rule according to Article 15 of the Convention)<sup>2</sup> and special circumstances (which would be the exception, given its indeterminate character) and states that there are those who intend to establish a hierarchy between them: "[...] thus, the equidistance method would apply, in the absence of agreement, unless there were special circumstances" (Trindade, 2014, p. 169, translated). This vagueness or lack of a specific method has translated into several conflicts of interest on the part of the states, including Guyana and Suriname, as each has used a method adopted in the jurisprudence that best suits their claims. In this sense, the arduous task of the courts is to establish the most equitable method possible that meets the political and economic welfare of the nations involved.

In this sense, the Arbitral Tribunal responsible for judging the case object of this study interpreted the special circumstances principle in a combined manner, that is, it stated that "[...] the function of the 'special circumstances' conditioned in Article 15 is to ensure an equitable delimitation; and the combined 'equidistance-special circumstances' rule, in effect, gives particular expression to a general rule [...]" (United Nations, 2007, p. 95, translated). The Court agreed that

2 Article 15: Delimitation of the territorial sea between states with adjacent or opposite coasts: When the coasts of two states are adjacent or opposite each other, neither state has the right, unless otherwise agreed by both, to extend its territorial sea beyond the median line, the points of which are equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each of these states is measured. However, this article shall not apply when, by reason of the existence of historical titles or other special circumstances, it is necessary to delimit the territorial sea of the two states differently.

special circumstances that may affect a delimitation must be evaluated on a case-by-case basis and stated that "international courts and tribunals are not restricted by a finite list of circumstances" (United Nations, 2007, p. 95, translated).

In the Guiana-Suriname case the arbitration found that navigational interests constituted such special circumstances. In this regard, the Court referred to the work of the 1936 Joint Commission which adopted the 10° line as the boundary between the 3-mile territorial sea of both countries and which at the time took into account the navigational circumstances and Suriname's sovereignty over the entire Corentyne River.

Against this background and based on the international courts' own jurisprudence, the Court concluded that the special circumstances of navigation could justify the adjustment to the median line of equidistance (which is the rule under the aforementioned Article 15) and that the historical record amply supports the conclusion that the predecessors of the parties agreed to the 10° boundary line because at the time the Corentyne River belonged to the territory of Suriname and the said line provided adequate access across the territorial sea to the western channel of the said river (United Nations, 2007).

When defining the question of special circumstances, from the starting point to follow the 10° line (Point 1936/61) the Court proceeded in the extension and proportion of the line that would follow delimiting the territorial sea, considering that in the works of the Joint Commission of 1936 there was only a territorial sea of 3 miles, whose expansion to 12 miles occurred much later in light of the development of the Law of the Sea itself. When Guyana and Suriname expanded their territorial waters, they did not make any effort as to how this space would be delimited, which would even affect the delimitation of the exclusive economic zone and the continental shelf.

According to Suriname's argument, the Court should establish that the 10° line, which served for the 3 miles, automatically be extended to the current 12 miles. However, the Court considered two issues: the first concerned the fact that Guyana objected to the 10° line in the 1960s, long before countries extended their territorial seas, and there was no reason to now claim that a 10° line should extend to 12 miles as a result of a change in the law. The second question concerned the Court's own position on the issue of navigation. An automatic extension of the line would no longer be relevant in the case of special circumstances, and Guyana's position on establishing the equidistance line would also affect historical navigation arrangements (Tanaka, 2007; United Nations, 2007).

Faced with these issues, the Tribunal would have to find a method that met the 10° line up to a distance of 3 miles but that contemplated a line through the 12-mile extension and connected with the line that would uniquely delimit the exclusive economic zone and the continental shelf. In this regard, as mentioned earlier, the Court adopted a mixed method of equidistance and special circumstances in order to produce an equitable result for both parties.

The Court established that the line of delimitation in the territorial sea would be drawn from the point where the 10° line intersects the 3-mile limit, at which point the equidistance line drawn intersects the 12-mile limit, as shown in Figure 3. In the judgment of the Court, this delimitation prevents a sudden passage of the Corentyne River access area and interposes a gra-

dual transition from the 3-mile point to the 12-mile point ensuring, in this sense, navigational conveniences (United Nations, 2007).

Figure 3 – Court Decision on the Territorial Sea



Source: Adapted from United Nations (2007).

In this regard, the Tribunal took into account the work of the 1936 Joint Commission, the conduct of the parties in relation to the 10° line, and the special circumstances concerning the issues of navigation and Suriname's sovereignty over the Corentyne River. By not following the customary law norm (the *thalweg*), which defines the boundary delimitation when it is rivers, Guyana and Suriname made historical arrangements of an unusual nature in Law where they established, by agreement even if provisional as Guyana argued, that the 10° line would be the boundary between the territorial seas of both countries and that Point 61/1936 would be the starting point for that purpose. Therefore, the Court made use of all these elements to justify its jurisdiction over the case, within the provisions of the Convention itself.

## 4.2 Delimitation of the Exclusive Economic Zone and Continental Shelf

According to article 74 of the Convention, the delimitation of the exclusive economic zone between states with adjacent coasts or facing each other must be made by agreement between the interested parties in order to reach an equitable solution. If an agreement is not reached within a reasonable time, the states concerned must resort to the procedures seen above, namely the International Tribunal for the Law of the Sea, the International Court of Justice, arbitral tribunal, and special arbitral tribunal.

In South America we have interesting examples of countries that have used bilateral agreements to delimit their respective adjacent maritime areas. Brazil established agreements with France (French Guyana) in 1981 and with Uruguay in 1975, contributing to friendly relations in the maritime space. Argentina and Uruguay also established the practice of bilateral agreement between their maritime borders, with the signing of a treaty in 1973 (Trindade, 2014). Article 74 further spells out that until an agreement is reached, the states concerned, in a spirit of understanding and cooperation, shall make every effort to reach provisional arrangements of a practical nature and, during this transitional period, they shall do nothing that might compromise or hinder the conclusion of a definitive agreement and such arrangements shall not prejudice the definitive delimitation.

These same provisions also accompany the delimitation of the continental shelf. What differs between these two legal regimes are the rights and duties that the coastal state has with respect to these spaces. In this sense, Menezes (2015) explains that the exclusive economic zone is under the set of the "surface space", which covers the territorial sea, the contiguous zone and the high seas, and that the continental shelf is circumscribed in the "submerged space", which disciplines about the care of marine life, the bed and subsoil and the area of the seabed.

In relation to the continental shelf, this was subject to regulation by the Geneva Convention<sup>3</sup> of 1958, but only gained practical attention by the States after the declarations of the United States, recognizing the extension of the land mass towards the sea as belonging to the territory of the coastal State. The North American declarations pushed Mexico (1945), Argentina (1946), Chile (1947) and Brazil (1950) to claim rights over this space as well. The Geneva Convention had adopted a double criterion of depth and exploitability for the definition of the continental shelf, however, the 1982 Convention enshrined the criterion of definition following the geological sense of this space (MENEZES, 2015).

It is interesting to note that the work carried out to define the extent of the continental shelf included the economic possibilities of exploiting minerals in the seabed, especially hydrocarbons. The importance given to the resources found in the maritime space finds in the case between Guyana and Suriname a great precedent, given that the interest in this space gained volume on the agenda of these states as the discovery of oil in the region gained visibility, as we have seen in previous arguments. In this sense, the delimitation of the

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<sup>3</sup> This Convention refers to the four texts that were signed at the First United Nations Conference on the Law of the Sea.

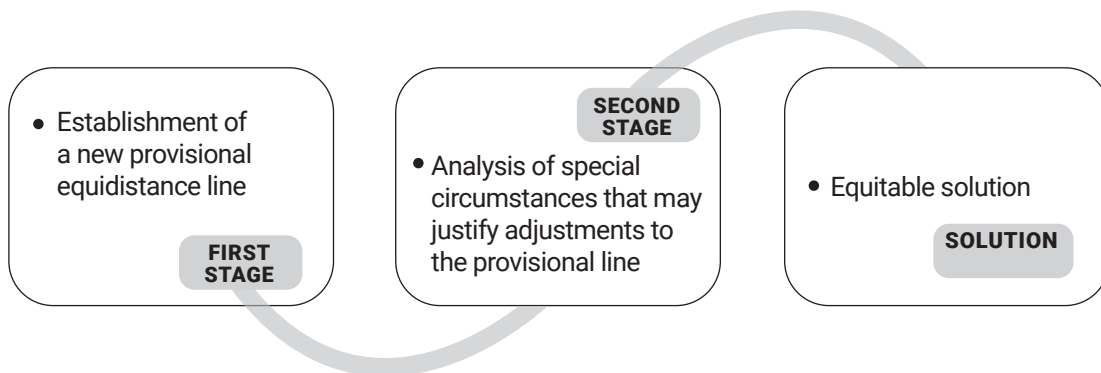
maritime areas between the two countries has become a priority in bilateral relations that have not been able to reach an agreement, therefore resorting to international arbitration.

When we analyze the decision of the Arbitral Tribunal concerning the exclusive economic zone and the continental shelf of Guyana and Suriname we can see that it followed the delineations of the jurisprudence in similar cases. In this sense, the Court's great desire was not merely to establish a satisfactory method of delimitation, but to seek an equitable solution that would take into account the factors relevant to the case.

In this regard, the Court assessed that the drawing of a single maritime boundary would be the most feasible solution, although this does not have its origin in the Convention "[...] but is based directly on state practice and law as developed by international courts and tribunals" (United Nations, 2007, p. 108, translated). According to the view of the arbitration, such a decision would avoid possible future conflicts concerning practical issues in relation to the rights of each state in these areas. Given this, the Court's position followed the jurisprudence of international courts and tribunals that establish two phases when proceeding to delimit the exclusive economic zone (EEZ) and the continental shelf (CS). The scheme shown in table 2 demonstrates the process adopted by the court.

Tanaka (2012) lists what these special circumstances would be, dividing them into two groups: those related to geographical factors and those that are independent of geography. The special circumstances relating to geographical factors are: configuration of the coastline; proportionality; baselines; presence of islands; geological and geomorphological factors; and presence of third states. Those that are not imbricated with geographical aspects are: economic factors; conduct of the parties; historical rights; security interests; navigational factors, and environmental factors.

Table 2 – EEZ and CS delimitation process



Source: The author (2021).

Regarding the case of Guyana and Suriname the Court evaluated both geographical and non-geographical aspects, as it reflected on the configuration of the coastline and the conduct of

the parties in relation to the EEZ and CS. In this regard, since the equidistance line is the line where each point is equidistant from the closest point to the baselines, the Court considered assessing the relevant coasts from which the provisional equidistance line would be drawn. In the Court's opinion, the relevant coastline for determining Guyana's provisional equidistance line extends from Devonshire Castle Flats to the vicinity of Point 61/1936 and the relevant coastline for Suriname extends from Bluff Point, the point on the east bank of the Corentyne River used in 1936 as the mouth of the river, to a point on Vissers Bank (United Nations, 2007), as Figure 4 points out.

When we evaluate the arguments of the parties, both agree that the geography of the coast is of fundamental importance in the process. However, Suriname believes that the dispute should be resolved solely on the basis of the coastal geography of the delimitation area. Guyana, on the other hand, claims that the resolution of the dispute depends not only on coastal geography, but on history, including the conduct of activities by the parties.

Thus, the Court held that the peculiarities of the maritime areas to be delimited can be taken into consideration, however, they are only relevant circumstances that may or may not be considered pertinent to adjust or shift the provisional delimitation line. After evaluating this item, the Court concluded that the geographical configuration of Guyana and Suriname does not represent a circumstance that justifies adjusting or shifting the provisional equidistance line in order to obtain an equitable solution (United Nations, 2007). This is justified by the fact that there are no large promontories, islands, peninsulas, bays or other features of this nature on the coasts of the parties, configuring a relatively regular coastline as shown in Figure 4.

Figure 4 – Configuration of the coast of Guyana and Suriname



Source: Adapted from Google Maps (2021).

After considering the geographical aspects, the Court proceeded in the analysis with respect to the conduct of the parties. It is worth remembering that these two special circumstances were pointed out by the parties and the latter had special emphasis in Guyana's arguments. In this regard, the arbitration examined the conduct of activities in the disputed area by Guyana and Suriname, especially the practice of oil.

Tanaka (2012) comments that the influence of the parties' conduct is very limited in case law regarding maritime delimitation. He states that the only exception is the Tunisia/Libya judgment, which clearly took this conduct into account. In this case, the International Court of Justice (ICJ) attached great importance to a line of fact drawn as a result of concessions for oil and gas exploration granted by both parties.

In the mentioned case, the ICJ itself analyzed that oil concessions are generally not in themselves considered as relevant circumstances justifying adjustment or shifting of the provisional delimitation line. This would only be possible through an express or tacit agreement between the parties (United Nations, 2007). In this regard, the Arbitral Tribunal stated that it found no evidence of any agreement between Guyana and Suriname relating to such a practice and that the conduct of activities concerning oil concessions cannot be taken into account as a factor in adjusting the provisional equidistance line.

In examining the configuration of the coastline and the conduct of the parties, the Court decided that it does not consider that there are any circumstances on the continental shelf or in the exclusive economic zone that would require an adjustment to the provisional equidistance line and that there would be no factors that could make the equidistance line determined by the Court unequal. Because the parties did not choose to argue the relative distribution of living and non-living natural resources across these zones, the Court did not take these issues into account (United Nations, 2007).

After the judgment issued by the Court, Suriname in 2007 showed displeasure in an emergency session of the Surinamese Parliament, instituting an opposition motion in which it urged the government to establish a national review commission to examine the judgment and challenge it. According to Surinamese officials, the decision was not fair and equitable, as Guyana was granted 65% of the 31,600 square kilometers, while Suriname received the remaining 35% (CGX Energy, 2007).

Also according to CGX Energy (2007), the opposition consulted several experts by creating a panel in order to challenge the calculations made by the Court. This panel had the objective of listing several legal arguments with which the government of Suriname could challenge the arbitration award. However, President Venetiaan at the time consulted several other local and international experts and universities in the Netherlands and the UK to comment on the panel's arguments, and the government was advised not to challenge the report based on its findings.

This was the thirteenth international trial in the field of maritime delimitation under the auspices of the International Tribunal for the Law of the Sea. Tanaka (2007) comments on the arbitration award in the following terms:

Overall it appears that the Guyana/Suriname arbitration ensures the continuity of case law in the field of maritime delimitation. At the same time, the Guyana/Suriname



arbitration sheds some light on several issues which have not been adequately addressed by international courts and tribunals in this field. For instance, it is worth noting that the Tribunal explicitly regarded navigation as a special circumstance in the delimitation of the territorial seas.<sup>31</sup> It is also notable that the Tribunal addressed the question of whether and how, in the absence of an agreement to do so, a delimitation should be extended from the previous limit of territorial sea (3 nm) to a newly established limit (12 nm) (Tanaka, 2007, p. 33).

In light of these issues, arbitration in the present case makes significant contributions and sheds light on disputes that have not yet been properly addressed by the countries involved. This concerns the countries north of South America and as Chaves (2016, p. 52, translated) concludes, "the Guianas Plateau has a multidimensional geopolitics, and that in these possibilities, its Amazon-Caribbean nexus represents enormous potential for South America-Caribbean integration." In this sense, the current developments in relation to the political crisis in Venezuela draw attention to border disputes that remain frozen, both with respect to land space and, especially, to maritime space, since the latter is intertwined with the issues of oil exploration, a much-disputed resource in the region.

These frozen disputes concern the issues in the Essequibo between Guyana and Venezuela, whose dispute is both land and maritime, and pendencies between Venezuela and Colombia in the Gulf region, whose implications are also focused on oil prospecting areas.

## 5 Concluding remarks

In light of the above, we can see that the Court decided with the intention of achieving an equitable result between the parties, based on the long-standing jurisprudence of international courts and tribunals, producing a solution that, as seen in the previous sections, would probably not have been achieved by other means, given the degree of deterioration in bilateral relations between Guyana and Suriname.

In 2017, the award turned 10 years old, and according to the events related to the opposition's motion in 2007 and the evaluation of it by experts from renowned institutions, it is unlikely that Suriname will yet intend to challenge the Arbitral Tribunal's decision. In a region whose scenario is still unstable in terms of territorial integrity, if we take into account the litigations still pending solution, we will verify that the best path to be followed by these two small centers of power is to intensify a cohesive regionalization process that allows the construction of more open and transparent dialogues, consolidating development policies in a more favorable, integrated environment that breathes more security when it comes to its borders, be they maritime or land borders.

Another point that deserves attention is the oil industry, which, with respect to the maritime space between Guyana and Suriname, presented itself as the central issue in the claims, as demonstrated throughout the discussions presented. Treves (2007) comments that since the Convention regulates most aspects of the Law of the Sea, its relevance is obvious to the oil and gas industry, since its spectrum is wide, from the discovery of new wells around

the world with the application of new technologies, to exploration, refining, and transportation issues that directly impact navigation issues and the protection and preservation of the marine environment. In this sense, the Court could be used more, presenting today an idle potential that, however, can act to the benefit of the states in settling questions concerning such important activities in the maritime space and those concerning border delimitations.

The resolution of the maritime dispute between Guyana and Suriname may have potentially influenced the Guyana government's November 19, 2018 submission to the International Court of Justice of a memorial concerning the Essequibo dispute with Venezuela. This conflict has both a land and a sea dimension and, in this sense, Guyana has chosen the Court to settle the matter, since Venezuela is not a signatory to the Convention on the Law of the Sea. The case studied in this paper took three years in trial process until the final decision (2004-2007), however, between Venezuela and Guyana the time lapse may be longer, because it will be necessary to work on both fronts: land and sea. The resolution of this long-standing dispute in the Essequibo region can contribute significantly to the region's development process, which is plastered by border conflicts, and the case analyzed here can serve as a parameter in issues concerning the maritime space.

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