Chapter 5 (1981-2018)
The Never-Ending Claim

On 21 September 1981, Belize became independent with its territory intact and a British military presence committed to the defence of Belize, but with the Guatemalan territorial claim still hanging over its head. Although Guatemala did not threaten to use force against Belize, neither did it recognise it as an independent state. It maintained its territorial claim and negotiations continued after independence. This Chapter details those negotiations, the recognition of the Belizean State by Guatemala, the decision to submit the dispute for final determination by the International Court of Justice if referenda in both countries grant the peoples' approval, and the continuing difficulties being caused by the unresolved claim.

The Defence of Belize

The Belize Defence Force

In the 1970s, with independence on the horizon and no settlement with Guatemala in sight, the government of Belize began to plan for the establishment of a Belizean army. It was thought that the nation had to demonstrate a willingness to defend itself if it was asking others to help defend it. From 1975, Belize began to press the UK to contribute towards the formation, equipping and training of such an army. As noted in

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Chapter 4, the FCO was eager to grant Price's demands to help create the Belize Defence Force (BDF), lest the Belizeans back off from the negotiations.

In April 1976, Deputy Premier C L B "Lindy" Rogers announced that "in the face of continuing threats," the government had decided to create a Defence Force on which planning was quietly proceeding, "composed of a regular element, properly trained and equipped and fully supported by a large country-wide volunteer element prepared to be quickly mobilised in case of need". "Admittedly," he remarked. "we cannot hope to be able, unaided, to defeat by force of arms an enemy aggressor many times stronger than ourselves and one that is aided by a super power. We can, however, inflict such heavy losses on him that the price he will have to pay for his victory must enter into his calculations . . . a small military force can hold up a much larger force for a time, enabling help to arrive from outside places and the pressure of an outraged world opinion, our second line of defence, to be mobilised by our friends"[1] He made it clear that Belize must ultimately bear the cost of its own defence, but noted the responsibility of Britain to help now with capital assistance, professional support and training. Beginning in 1976, therefore, the Belize budget included capital and recurrent allocations for the BDF.

The Defence Act of 1978 established the Belize Defence Force to consist of a regular force, the volunteer element and the reserve. Article 5 states that "The Force shall be charged with (a) the defence of Belize; (b) the support of the civil authorities in the maintenance of order in Belize; and (c) such other duties as may from time to time be defined by the Governor-General". Speaking on the Bill, Deputy Premier Rogers said:

> I am not saying that in the next three to four years our force will be able to replace the British forces, which are here to defend Belize in line with the UK Government's commitment

[1] Address to passing-out parade of police recruits, 30 April, 1976, *New Belize Supplement*, May 1976. It was typical of Lindy to include a passing reference to the US support for Guatemala and to leave open the question of from what "outside places" help would come.

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> and responsibility to do so. But this force will be able to play its envisaged role in defence once it's up to its projected strength and will grow in size and effectiveness as finance and other circumstances relating to its growth demands.

In 1977 the British government provided 3 million USD in capital funds and sent a British Loan Service Team, which worked closely with the Ministry of Home Affairs and instituted a recruitment and training program. The Belize government would provide funds for the recurrent costs of the force and increasingly for capital costs as well. Belize was one of the few colonies that had its own Defence Force before it became independent.

The BDF started in 1978 with 60 men drawn from the disbanded Police Special Forces and the Belize Volunteer Guard. In the first nationwide recruitment drive 30 men signed up, and in 1980 there were 285 regulars and 300 volunteers. Several Belizeans attended training courses at Sandhurst in the UK. In 1980 the first Service-women were recruited, although only for administrative posts. In 1980, the British Lt. Col. G M Longdon, Commander of the BDF, summed up the work of the BDF in the first two years: "Despite gloomy forecasts that the Belizean natures was not compatible with military service, the BDF had proved otherwise. Our young men can be compared favourably with any in the world. There is a great future ahead for the Force, and it is our privilege, as serving soldiers, to participate in it".[2] A Maritime Wing was established in 1982 and an Air Wing in 1983. In the first dozen years of its existence, the BDF was led by British commanders; the first Belizean commander was Brigadier General Alan Usher, who assumed the office in June 1990. Since 1993, after the British Forces terminated their presence as a force designed to defend Belize against Guatemalan aggression, the BDF has assumed this task and has done so with professionalism and competence, within the resources available.

In 1981 and until 1993, however, the defence of Belize rested with the British forces stationed there.

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[2] *The Belizean Soldier*, 1978, pp. 1, 20. See also "The Military of Belize," Dion E. Phillips, 2002.

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British Forces Belize

The British government and George Price had signed a secret agreement in 1981, the terms of which were personally approved by Prime Minister Thatcher,[3] under which British troops would remain in Belize for a period of 9 months after independence, and the countdown started to run immediately on 21 September 1981. Indeed, soon after the UN resolution in 1980, the British prepared a very detailed feasibility study for withdrawal after independence.[4] On 22 September 1981 the secretary to the Chiefs of Staff Committee issued a circular, noting that "to re-emphasise our determination to withdraw within the agreed time frame, we should soon make known to the Belize government our intention to make some reduction in the force level at the turn of the year. Major part of withdrawal to be phased between March-June 1982".[5]

The British meant to get out, and fast.[6] But other forces were in play, and by February 1982 the US had expressed its concern that the troops should not be withdrawn so quickly, and the British themselves felt that every effort should be made to secure a settlement first, and considered that signs that they were preparing to withdraw from Belize could undermine those efforts. They proposed to extend the withdrawal date to 21 September 1982.[7] Several documents in the British files refer to US concerns that the troops remain for a longer period. And just four months after Belize's independence, when the British defence blanket presumably had just about another five months to run, the US made it clear to Britain that it wanted the British troops to stay in Belize. Prime

[3] The secret agreement, a copy of which I have not found, is referred to in several British documents, e.g. DEFE 25/415 24 November 1981 DMG "Loose Minute"; DEFE 25/416, 7 Jan 1982. R T Jackling "Loose Minute".

[4] D A Arnott to Assistant Chief of the Defence Staff (Operations), 10 December 1980, DEFE 25/415.

[5] Brigadier J A C G Eyre, 22 September 1981, DEFE 25/415.

[6] Several papers in DEFE 25/415 and /416 insist on sticking to the agreed withdrawal date and the need to pressure the FCO accordingly.

[7] T A Boam (Wash) to Rear Admiral D W Brown, 12 February, 1982 and Meeting of Ministers of State (FCO) R Luce and (MOD) P A R Baker, 18 February 1982, both in DEFE 25/416.

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Minister Margaret Thatcher had sent officials to the US to discuss the nuclear missile program, but she notes that the US "also pressed for an extension of our armed forces' engagement in Belize, which has now become a virtually permanent commitment".[8]

The cause of keeping the troops in Belize received unexpected assistance with the outbreak of war in the Falklands.[9] The vessel LSL Sir Tristram arrived in Belize on 29 March 1982 to remove the first batch of stores, but on 2 April, just before loading, Argentina invaded the Falklands, and the Tristram joined the British Task Force in the Falklands war. On 14 April, the withdrawal date was changed to 21 September. In July, however, Thatcher decided not to withdraw in September, for as the MOD noted, "it would anyway have been difficult, practically and presentationally, to withdraw from Belize while we were heavily engaged in the South Atlantic". They suggested withdrawal by April 1983.[10]

In September 1982, Foreign Secretary Pym wrote to Thatcher admitting that "we cannot be locked into an indefinite commitment to defend a faraway independent country, nor agree to make withdrawal contingent on a definitive settlement of the dispute," but reasoned that "we cannot be seen, however unfairly, to be walking away from our obligations in Belize at a critical and tense moment". He noted that Guatemala had repudiated the Heads of Agreement and had made it clear that a settlement meant annexing southern Belize. "An announcement in these circumstances that the garrison was to be withdrawn," he reasoned, "would send precisely the wrong signals to this unstable and predatory regime, and could precipitate a Guatemalan invasion at the time of, or shortly after, our withdrawal". Such a move would be difficult to defend both domestically and internationally: "the US would be dismayed, it would undermine the respect we have gained in the Commonwealth for the firm line against aggression in the Falklands,

[8] Margaret Thatcher, *The Downing Street Years*, London,1993, p. 248

[9] The British-Argentine war in the Falklands, 2 April-14 June 1982. The death toll was 649 Argentines and 255 Britons.

[10] "Loose Minute," 26 August 1982, DEFE 25/417.

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and would make our Falklands policy more difficult to sustain". He pleaded with Thatcher not to fix any definite timescale for withdrawal.[11]

In 1984, a British newspaper reported that "a nervous American government is virtually begging Britain to postpone, indefinitely, its eventual withdrawal of the 1,800 British forces now based in Belize".[12] And as the years went by, similar pressures prevailed upon Britain to maintain its garrison in Belize, and it was not until 1993, after Guatemala had recognized the independent State of Belize and a negotiated settlement seemed likely, that Britain took the decision to withdraw.

Pursuing an End to the Claim

Guatemala: The Military Hold On to Power

The regime of President Romeo Lucas García (1978-1982) was noted for its extreme violations of human rights, its disastrous economic policies, its failure to make progress against the insurgents in an increasingly brutal civil war, and its international disrepute. When elections were held on 7 March 1982, the official candidate, General Ángel Aníbal Guevara, the outgoing Minister of Defence, was imposed in what was an obviously fraudulent election. On 23 March, before the Congress could meet to recognize Aníbal's election (since he was not given an absolute majority), a group of young army officers carried out a coup, deposed President Lucas and installed a triumvirate of two generals and a coronel. One of those generals was Efraín Ríos Montt, who had himself been robbed of an election he had won for the Christian Democrats in 1974. He had since become a member of a fundamentalist Pentecostal sect based in California, USA. Before long he got rid of the other two and named himself Head of Government and later President, and installed a reign of terror, carrying out more massacres than his predecessor and his successor.

The year before, Lucas García had established the *Patrulla de Autodefensa Civil* (PAC), or civil defence patrols, which peasants were forced to join

[11] Pym to Thatcher, 7 September 1982, DEFE 25/417.
[12] *The Sunday Times*, 20 May 1984.

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in the armed struggle against the guerrilla. Ríos Montt expanded the role of the PAC and called up civilian reservists to bring the number of the military to 37,000 men. He continued the "scorched earth" policy begun in 1981, where entire villages were destroyed, tens of thousands of non-combatants were massacred and large numbers of people sought refuge in the mountains, living in terrible conditions of hunger and terror. He instituted the "*Plan Fusiles y Frijoles*" (guns and beans), as a means of reducing popular support for the guerrilla by offering food and shelter.

At the same time, Ríos Montt sought to clean up the government's image internationally by declaring a gradual and controlled return to democracy. He created a Council of State to advise the government and prepare legislation for the democratic opening, with representation from business, universities and other social actors and including, for the first time, indigenous representation. Heading the Council was Jorge Serrano Elías, also an evangelical Christian, who would later win presidential elections and recognize Belize. Ríos Montt promised to hold elections for a Constituent Assembly to reform the Constitution. US President Reagan grasped at this straw to declare that there was a new era of relations between the two countries, and attempted to renew the military assistance that had been suspended by Carter, but Congress did not agree.

Ríos Montt's attempts to improve the serious economic problems inherited from the corrupt Lucas García regime in order to finance the war met with decided opposition from CACIF, the big business coordinating body, which refused to contribute to a special tax for the war. Less than a month later, on 8 August 1983, Ríos Montt's Minister of Defence General Oscar Humberto Mejía Víctores overthrew him and assumed the presidency.[13]

Mejía Víctores increased the PAC numbers to close to 300,000, strengthened the military command, and carried out fewer and more selective massacres. He continued the policy of winning away the population with food and housing, and refined this by creating "Model Villages" (modelled on those of the US in Vietnam) where displaced

[13] Gustavo Berganza, *Compendio de Historia de Guatemala, 1944-2000*, Asociación de Investigaciones y Estudios Sociales, Guatemala, 2004, pp. 59-65.

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persons were provided basic infrastructure in a village surrounded by barbed wire and guarded by the army.

And what about the URNG guerrilla forces that were on the upsurge a few years before? The decision by guerrilla leaders in 1981 to spread the war to new areas and mount a major offensive against the State was premature: "The inability of the URNG to sustain military operations outside its core areas of support and, more importantly still, its failure to provide protection where it possessed a long-standing base, proved to be disastrous". The military countered with a campaign of indiscriminate slaughter, especially of indigenous communities. On the ground in 1982 and after, the military implemented a scorched earth policy and 'free-fire' zones where entire villages could be wiped out, and began a strategy of prolonged military occupation, herding entire predominantly indigenous villages into strategic hamlets subject to obligatory conscription in the civil patrols (numbering some 900,000 by 1983) and total reliance on supplies provided by the army. Large numbers of peasants sought refuge in Mexico, and communities were broken and scattered. The guerrilla, deprived of their base, had to abandon territory and leave the people at the mercy of army reprisals. Although the war continued for more than a decade, the guerrilla forces had lost the initiative, and gradually also lost much popular support. The army was implacable: the government itself admitted to the destruction of 440 highland villages, and other sources estimated that between 1980 and 1985 the toll was 50,000 dead, 200,000 children losing at least one parent and well over 100,000 forced to seek refuge in Mexico.[14]

The Essential Role of Israel

During the crucial years before and after Belize became independent, when the guerrilla war in Guatemala reached its peak, from 1977 to 1985, President Carter's ban on military sales and aid to Guatemala remained in effect. So where did the Guatemalan army get all its advice, material, intelligence and other resources to threaten Belize and decisively turn the tide against the guerrilla during those years?

[14] Dunkerley, pp. 491-499.

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Some came from the dictatorships in Chile and Argentina, but the bulk of it came from a far-away country, Israel.

In a real sense, Belize played a part in Israel becoming Guatemala's major supplier in that deadly alliance. The Belize campaign for independence from 1975 to 1981 exposed Guatemala internationally as a pariah State with a grotesque human rights record. As we noted in Chapter 4, in 1975 Britain asked the US to delay the sale of patrol boats and C-47 aircraft to Guatemala while Britain was trying to negotiate a settlement. That very year Guatemalan military officials visited Israel, and "Israel filled in by delivering a number of Arava aircraft, Uzi submachine guns and a variety of heavier arms including bazookas". In 1977, after President Carter imposed the ban for Guatemala's "consistent pattern of gross violations of international human rights," Guatemala began to receive large shipments of Israeli weaponry, and the standard-issue Garand M-1 was replaced by the Israeli Galil assault rifle. We saw in Chapter 4 how in June 1977 Barbados seized a ship loaded with 65 tons of Israeli guns, and later that year British intelligence helped Barbados detect and seize an aircraft carrying 26 tons of Israeli arms and ammunitions to Guatemala.[15]

In 1983 CBC News broke mainstream US silence on this deadly trade and revealed that Israel was providing Guatemala with weapons, transport and other equipment, and "taught the Guatemalans how to build an air base. They set up their intelligence network, tried and tested on the West Bank and Gaza"[16]. *Time* magazine specified that Guatemalan army "outposts in the jungle have become near replicas of Israeli army field camps." At one of these Israeli outposts replicated in Huehuetenango (among the areas hardest hit by the genocide), *Time* magazine continues: "Colonel Gustavo Menéndez Herrera pointed out that his troops are using Israeli communications equipment, mortars, submachine guns, battle gear and helmets".[17]

[15] Unless otherwise stated, the quotes and facts in this section are from *NACLA Report on the Americas*, March/April 1987, New York.
[16] Transcript, CBS Eveniing News, 16 February 1983.
[17] *Time* magazine, 28 March 1983.

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A NACLA report in 1987 gave more details, quoting General Benedicto Lucas García, brother of the President (1978-82) as saying that Israel was "the only country that gave us military support in our battle against the guerrilla". What support? Israel provided uniforms, helmets, automatic weapons, troop transports, ARAVA aircraft—and a munitions factory. Israel helped to finance and develop Central America's only arms and munitions factory, which produced Galil rifles. General Benedicto told Israeli newspaper, *Ha'aretz* in 1986 that Israeli advisers "set up a munitions factory for us and after building it, trained us to operate it". The plant was located in Santa Cruz Verapaz, and in 1987 was producing 70% of the parts needed to manufacture Israeli-designed Galil rifles, as well as mortars and an armour-plating process for military vehicles.

Beyond all that, good and up-to-date intelligence was absolutely vital to the Guatemalan army's ability to conduct an invasion of Belize, or wage a successful counter-insurgency war, and Israel supplied it. Essential to upgrading the efficiency of the army was the use of sophisticated computer technology. The Army Transmissions and Electronics School inaugurated by President Romeo Lucas in 1981 was designed, staffed and funded by Israelis, including teaching methods, instruments, books and other things. Benedicto Lucas confirmed in 1986 that Israel set up two computer centres—"one services the Army's logistic branch and the second is the nerve centre of the armed forces, which deals with the movements of units in the field". Israeli social scientist Benjamin Beit-Hallahmi claims that in Guatemala, "utilization of computers in counterinsurgency follows Israeli experience of using the same technology to control the occupied territories [of Palestine]".

This underscores the major effect of all this Israeli influence: the mindset inculcated in the Guatemalan armed forces and intelligence personnel by their Israel trainers, the ethical principles they should abide by. Many Guatemalan military officers and technicians were trained in Israel, and Guatemalan soldiers were trained in Guatemala by Israeli personnel. According to the NACLA Report, "Indeed, Guatemalan officers have been told by their Israeli counterparts and trainers to 'treat the Indians like we treat the Palestinians—don't trust any of them'". The Guatemalan Right once spoke freely of the "Palestinization" of Guatemala's

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Indians [indigenous] who comprise more than half of the country's population". And how do the Israeli's treat the Palestinians? As one Israeli Jew, a noted historian, puts it, "the ideology that enabled the depopulation of half of Palestine's native people in 1948 [with the creation of the Israeli State] is still alive and continues to drive the inexorable, sometimes indiscernible, cleansing of those Palestinians who live there today. He notes that "there has never been an end to Israel's killing of Palestinians," and that the erection of an "apartheid wall" has made matters worse, as ethnic cleansing continues unabated.[18]

And so, "in facing a broad popular movement, the Guatemalan military has come to resemble the Israelis on the West Bank and Gaza: it is an occupying Army". Hence the repeated massacres of entire villages as well as selective killings, the forced relocation of hundreds of thousands, and other gross violations of human rights that have been described above and that continued in Guatemala throughout the first years of "democratization" and up until the end of the century. But many of the same figures are still around, and the training developed over decades does not fade away just because there are elections. Ríos Montt was a potent political force until 2011 when he faced charges of genocide in his own country; Otto Pérez Molina, accused of atrocities during the war, was President of the country until 2015 when he was forced to resign and later imprisoned; and current President Jimmy Morales owes his allegiance to a political party formed by old disaffected military men, the old guard from the civil war days of absolute military power.

Democratization and Constitutional Changes on Belize

The Mejía Víctores government began a process of democratization. It convened elections in 1984 for a Constituent Assembly, where new parties flourished and the traditional political parties lost support, although left-wing parties were not allowed to participate. Nonetheless, trade unions, peasant organizations and human rights groups proliferated and became very active. The Constituent Assembly presented its report in

[18] Ilan Pappe, "The Ethnic Cleansing of Palestine," *One World Publications*, London, pp. 257-261.

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May 1985. The new Constitution protected human rights and established the office of Ombudsman; instituted a second electoral round, substituting the function previously accorded to the Congress; established an independent Supreme Electoral Tribunal and a Constitutional Court; prohibited re-election of a president and persons who had participated in a coup were barred from seeking that office. That Constitution also changed the transitional article relating to Belize.

In 1980 George Price had told the Guatemalan negotiators: "like good politicians, go back and take this message: change the constitution". In 1985, they did just that. The debates in the Constituent Assembly on the transitional Belize provisions were not given much importance by the delegates, of which slightly more than half were present. What is most interesting, however, is the essential part played by the military. General Gramajo had written to the President advising him to ensure a moderate, flexible article in the Constitution, and told the British that the army did not want the Constitution to oblige them to retake Belize, and that the army accepts Belize's independence. Furthermore, he explained, an obligation to take Belize would jeopardize the war against the guerrilla.

The new Article 19 of the transitional provisions of the new Guatemalan Constitution reads:

> The Executive Branch is hereby empowered to take all steps and measures leading to a settlement of the situation of the rights of Guatemala in respect of Belize, in accordance with the national interests. Any definitive agreement shall be submitted by the Congress of the Republic to the procedure of popular consultation foreseen in Article 173 of the Constitution.
>
> The Government of Guatemala shall promote social, economic and cultural relations with the people of Belize.
>
> For the purposes of nationality, natives of Belize are subject to the regime which this Constitution provides for the natives of the Central American countries.

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Significantly, Eduardo Rodríguez of the Ministry of External Affairs told the British representative in Guatemala that he had drafted the sentence affording Belizeans the same treatment as nationals of other Central American States, and "volunteered the information that it was tantamount to recognition of Belize's independence".[19] (Recall that the 1965 Constitution had allowed Belizeans to be declared nationals of Guatemala, in keeping with the declaration that Belize was part of Guatemala.)

Twelve political parties competed for the elections in 1985 (first round on 3 November and second on 8 December). The Christian Democrats won, with Vinicio Cerezo Arévalo as President and Roberto Carpio Nicolle as Vice-President. In the first (limited) free election for decades, and with a large majority, Cerezo seemed poised to carry out the sweeping reforms and the social and economic policies required to begin to lift the people out of poverty and repression. But elections are one thing, government of, by and for the people quite another. Two forces prevented Cerezo from carrying out his mandate: the military and big business, who saw the Christian Democrats as communists-in-disguise, even though their policies were based on the social doctrines of the Catholic Church and were anti-communist. In addition, the government was forced to abide by the amnesty that Mejía Víctores had granted to the military for crimes committed during the counter insurgency campaign. Nor did the still all-powerful military look kindly on the government's development programme, which sought to carry out projects in the countryside that had been in the exclusive competence of the army. Most importantly, the army rejected the policy of seeking contacts with the guerrilla through the Catholic Church with a view to engaging in peace talks leading to an end of the war. This situation provoked five coup attempts during Cerezo's government and prevented him from carrying out his program, as the murders, kidnappings, disappearances and violations of human rights continued.

[19] Handley to FCO, 30 May 1985, FCO 99/2201, Federal Foreign Affairs Department (Switzerland) to British Embassy, Berne, 29 May 1985, FCO 99/2201, British Interests Section, Guatemala to FCO, 28 May 1985 and 10 April 1985, FCO 99/2201.

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Equally frustrating was the position taken by big business through its major organization, CACIF. When the government sought to implement a modest economic reform program including social programs, investments to create employment and tax reform, CACIF went on a media blitz accusing the government of taking the first step towards converting the country into a communist state. Cerezo himself relates what happened: "I had to accept 26 of the 27 amendments to the fiscal reform project, as well as abandon any political reform that would affect the interests of the economic powers. This was, in effect, a deal by which I virtually relinquished the ability to govern the country. The alternative was a coup and the end of the democratization process that had started in 1986, after more than thirty years of dictatorships and struggles".[20] The military had allowed elections and given up office, but it held on to power.

With this Guatemalan panorama in the years immediately following Belize's independence, it is understandable that very little progress was made in resolving the Belize-Guatemala dispute, although in the final years of Cerezo's presidency some important steps were taken towards its resolution.

Post-Independence Negotiations

In the four years after Belize's independence, several trilateral meetings (Belize, Britain and Guatemala, since the latter insisted on acting as if Britain still ruled the territory) were held while the military dictators Ríos Montt and Mejía Víctores were in power. At a meeting on 11 November, 1982 (following an exploratory meeting on 12 October) with Attorney General Said Musa and UN Ambassador Robert Leslie for Belize, Guatemala's UN Ambassador Mario Quiñones laid out the terms for a settlement: "beginning at the mouth of the Monkey River in its talweg[21] and upstream to the junction of its two tributaries, called Bladen

[20] Monteforte Toledo, *Vinicio*, Artemis Edinter, Guatemala, 1998.

[21] Actually spelt "thalweg," this is "the line of maximum depth along a river channel. It may also refer to the line of maximum depth along a river valley or in a lake". Handbook on the delimitation of maritime boundaries," UN publication, 2000, p. 161.

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and Trio Branch rivers". Everything to the south of that line would become Guatemalan territory.[22]

Obviously, the Guatemalans were still traumatized by how Belize had won its independence, and reverted to one of the more extreme land demands they had made of Britain when Belize was still a colony. Musa countered with a proposal to limit Belize's territorial sea in the south to three miles. He also proposed a joint development zone straddling the Sarstoon, of about two miles south and two miles north. The Guatemalans rejected that and Dr Luis Aycinena asked why not limit the proposal to above the Sarstoon. Musa said "the Sarstoon is imbedded in the hearts and souls of Belizeans"; Aycinena countered that "it was a bitter thing in the hearts of Guatemalans".

What is perhaps most interesting about that meeting, however, is the fact that from as early as a few months after independence, and despite the fact that British troops were deployed on the land and carried out border patrols, the Guatemalans had begun to make blatant incursions into Belizean land, a thing they never did while Belize was a colony. Musa indicated on a map three areas in southern Belize where roads had been cut into Belizean territory by Guatemala, and said that the military on both sides were aware of this; he asked the Guatemalans to control these incursions. The Guatemalans brushed off the complaint, stating that people on both sides of the border in that area constantly cross over for trade, but nobody really knew where the line was; the roads were probably agricultural, not aggressive.

They clarified that matters that the British and Guatemalan militaries could not resolve were forwarded to "ministries of Foreign Affairs in Guatemala City and London". Note: not the ministry of Foreign Affairs of Belize. At that time, for border issues, it was the British military and the British government that called the shots, not the BDF nor the Belize government, although the British at the meeting said the Prime Minister of Belize had agreed for the Commanders of the British forces in Belize and of the Guatemalan forces in the area to

[22] "Notes on informal discussion at Guatemalan Mission to the UN, New York, 11 Nov 1982," Embassy of Belize, New York. PF, "The Question of Belize Statement by Guatemala," 11 November 1982, PF.

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discuss the matter to ensure that the risk of any undesirable incident be avoided.

After that November 1982 meeting, the UK circulated a note through the UN Secretariat declaring that the UK government has ceased to have the obligations and rights it formerly had in relation to the administration of Belize, by virtue of any international instrument applying to Belize.[23] On 27 January 1983, Guatemala replied, affirming that the independence of Belize was a unilateral act by the UK which is not recognized by Guatemala, that the UK cannot disregard its territorial dispute with Guatemala and must make reparation for the damage done to Guatemala, and that "Guatemala will continue to press its claim to the entire territory of Belize".[24]

An inconsequential meeting was held in New York in January 1983, and at meetings on 26/27 September Guatemala proposed the cession of a coastal strip, 1,800 meters wide, from the Sarstoon to the Moho, and the southernmost Sapodilla Caye, a small island with some vegetation. Guatemala would accept the principle of equidistance between that caye and the remaining Belizean cayes.[25]

During this time other initiatives for settlement were discussed. In January 1983 UN Secretary General Pérez de Cuellar spontaneously offered his good offices, but Price said he regarded that as an option suitable for future rather than present consideration. That same month, the British FCO considered the option of recourse to the ICJ. A major obstacle, apart from having to negotiate a special agreement based strictly on law and not *ex aqueo et bono*, was that Guatemala did not recognize Belize as a State, and "Belize could not accept any second-class status before the Court".[26] As to asking for an Advisory Opinion, a useful exchange on that possibility between lawyers in the FCO revealed that it was not an advisable option.[27]

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[23] Circular Note (UN) LE 222 Belize, 17 November 1982.

[24] Circular Note from Guatemalan PR to UN, 27 January 1983.

[25] Paper by David Anderson, Legal Counsellor in the FCO, in a British paper prepared to prepare for talks in May 1984, PF.

[26] Anderson to White, 1 February 1983.

[27] David Anderson felt that an advisory opinion could be sought on whether there was a valid exercise of the right to self-determination by Belize before 21 September 1981 and whether the General Assembly and Security Council resolutions that admitted Belize to

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At talks on 9 May 1984 in Washington between Guatemala, Belize and the UK as observer, Coronel Hector Alejandro Gramajo stressed security considerations and declared that the presence of British troops was appreciated as being of benefit to Guatemala in that it brought stability and respect to the area. The Guatemalans repeated their September 1983 proposal, and Robert Leslie said Belize could not negotiate sovereignty or territorial integrity, but that it was prepared to forego extension of its territorial waters in the south to allow Guatemala unimpeded access to the high seas, and also to discuss the creation of an economic development zone straddling the Sarstoon. Belize insisted on the need for direct channels between itself and Guatemala concerning illegal Guatemalan immigrants in Jalacte; short of full relations, some kind of *modus vivendi* was required. Col. Gramajo said the commandant of Petén had direct contact with the British Commander, and Leslie asserted that the Belize government alone was responsible for the defence and security of Belize, "although the presence of British forces helped greatly". Gramajo insisted that contacts through the British were "the only permissible ones for the time being".[28]

At a further session on 6 July 1984 Guatemala repeated its Moho/Sapodilla Caye proposal, and presented a map with a straight line between the Moho and Sapodilla Caye as their suggested maritime boundary with Belize. Belize rejected any cession of territory and presented a map showing its proposed maritime boundaries.[29]

membership of the UN were valid and not contrary to any rights of Guatemala. But F D Berman felt that this would put in question Belize's rights of membership that were not being questioned, not even by Guatemala. Had there been a situation where Guatemala was threatening "to take forcible action against Belize on the basis of some legal title or another," the Security Council might be seized of it, and "it could quite legitimately seek the guidance of the Court on a legal question for the purpose of guiding its future action," but on the whole felt it would not be a productive exercise, and in any case there was no such threat from Guatemala. Anderson to White, 1 February 1983, Berman to Humfrey and Whyte, 11 February 1983, Anderson to Stevens, 25 March 1983.

[28] British notes of the meeting: "Record of talks between delegations of Guatemala, Belize and the United Kingdom held at the mission of Guatemala to the United Nations," New York, and notes by Robert Leslie, 9 May 1984, PF.

[29] Neither map found.

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Responding to three memos on border incidents presented by Leslie, the Guatemalan delegate said his government was considering establishing a group to discuss such matters consisting of the British military commander in Belize and representatives of the ministry of foreign affairs and of the police, and for Guatemala the military commander of Petén and representatives of the ministries of Foreign Affairs and the Interior. The BDF could be present at contact group meetings. He also discussed the possibility of a contact group on economic cooperation, but could not support development of an economic zone south of the Sarstoon.[30]

On 14 December 1984, general elections in Belize produced a government led by Prime Minister Manuel Esquivel, with Dean Barrow as Foreign Minister. Barrow met with Baroness Young (Minister of State for the FCO) on 28 January 1985 and told her there could be no land cession, but that the government may be prepared to look at territorial seas and perhaps lease some cayes.[31] The following day Barrow met with Undersecretary David Joy and David Anderson and discussed possibilities.[32] Joy asked about a leasing arrangement or a lookout post (on a caye) and Barrow thought a leasing arrangement might be acceptable but not an observation post in perpetuity. The British mentioned other possibilities like artificial islands, lighthouses, etc. When Barrow met Foreign Secretary Geoffrey Howe on 30 January 1985, he told him that Belize may be interested in the lease of a caye or its use as an outpost. He got assurances that British troops will not be removed without consultation.[33]

Two trilateral meetings were held at the Guatemalan mission in New York on February 12 1985.[34] The Guatemalans declared that with the triumph of the UDP they "immediately saw that there was a juncture

[30] British notes: "Record of talks between Guatemala, Belize and the United Kingdom held at the UK Mission to the UN," New York, 6 July 1984.
[31] Record by Belize High Commission, London, PF.
[32] Record by FCO's Mexico and Central American Department, PF.
[33] Record by Belize High Commission, London, PF.
[34] For Belize, Robert Leslie (PS & Amb. to UN) and Eddie Laing (Adviser MFA); for Guatemala, Alfonso Alonza (adviser to MRE) and Eduardo Palomo Escobar (Amb. to US) and Arturo Fajardo Maldonado (Amb. to UN); Joy and Anderson for the UK.

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to promote the solution of the problem," and asked to hear the new government's positions. Leslie proposed to limit Belize's territorial sea in the south to three miles in the eastern coastal waters off Toledo, which would guarantee to Guatemala maritime rights, ownership and exclusive control of certain seas which would normally accrue to Belize. Alonzo Lima reiterated that Guatemala needed to have continental and island bases and referred to the map they tabled at a previous meeting showing a strip of land from the Moho to the southernmost Sapodillas. He repeated that the controversy was with Britain, since Guatemala did not accept the independence of Belize nor recognize it as a State or its borders, but rather maintained its rights over Belize.[35] In later correspondence, however, the British reaffirmed their position that Belize was a sovereign country and that they were only involved in the talks at the insistence of the Guatemalan government. Their message to the US was that "American pressure on Belize to agree to territorial cession is not in our view likely to be successful and US encouragement to the Guatemalans to demand only a minor slice of territory could be counter-productive".[36]

Independence, Sort of

No country is totally independent or has full sovereignty, as its actions will always be constrained by those of others in the world community. Belize's independence was further limited, however, by the fact that it felt under a real threat from Guatemala and that only the presence of British troops was saving it from extinction.[37] Although Belize attained its independence thanks largely to the internationalisation, the fact remains that this was achieved through negotiations. In particular, negotiations with Britain over maintaining troops in Belize for its defence made it clear that Belize was not to so pursue its foreign

[35] Record by Belize delegation: "Record of two meetings held at Guatemala mission to the UN, Feb. 12 1985," PF.

[36] Hollis to Washington Embassy, November 1985, FCO 99/2202.

[37] Recall Ridley told President General Romeo Lucas that "we would want to remove British troops as soon as possible after independence and this would give us a means of putting pressure on Price to negotiate satisfactory arrangements for his own security".

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policy as to give Guatemala cause to attack Belize. Negotiations with the USA, often through the British, carried the implied but clear understanding that Belize would follow "middle of the road" economic policies and not embark on some socialist experiment in the Americas.

The pressures, applied or self-imposed, began to be felt immediately Belize became independent. Cuba offered the new country twenty-five full university scholarships, but the Belize government felt impelled to refuse the offer for fear of offending the USA. A Cuban offer to purchase excess corn production was thwarted by the USA. Neither of these offers involved any quid pro quo. And not long after independence the British began collaborating with Guatemalan governments in terms of intelligence on guerrilla activities, and embroiled Belizean security officers in these operations. So here was the independent Belize turning its back on the first country in the Americas to support its cause and one that played a very significant role in Belize attaining independence. And here was Belize in effect helping its arch enemies, the dictatorships of Guatemala, entrap and repress the very people whose military activity against the dictatorships had made their attack on Belize unthinkable, and some of whom had publicly supported Belize's independence.

Examples of behind-the-scenes pressures from the US abound, involving Belize's foreign relations and even the composition of its Cabinet. More egregiously, and with lasting and serious consequences for the people of Belize, the US insisted that Belize follow the path of unbridled capitalism in its economic policies, and neo-liberal policies were imposed by USAID, IMF and other world institutions. This began slowly during the remaining time of the Price administration after independence, was rapidly accelerated with the first Esquivel (UDP) administration and taken to new heights by subsequent administrations, PUP and UDP. This meant that Belize was following economic policies that served US rather than Belizean interests.

At its birth, the new State was required, by the "structural adjustment" policies of the IMF and USAID, to privatize and at the same time to spend less on social programs. It was also mandated to open up much more than before to global market forces, including free trade

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and the free movement of finance and investment. The agreement with USAID in February 1985 gave the US wide powers over Belize's economic and social policies, particularly with regard to its foreign trade regime, domestic price policies, agricultural policy, levels of public sector expenditures and savings. It demanded, and achieved, the abolition of price controls and of the policy of guaranteeing prices to farmers for staple crops. The US required the dismantling of the Belize Marketing Board and the Banana Control Board, institutions that for many years had functioned to support small and medium farmers.[38]

Talks with the Cerezo Government

The new Guatemalan Constitution of 1985 opened the door for Guatemala to reach an accommodation with Belize, and in October 1986 President Cerezo, who had taken office in January, renewed commercial relations with Belize and declared his intention to establish direct talks with the Belize government. By a joint UK-Guatemala communique on 19 August, the two countries announced they were establishing consular relations immediately and planned to re-establish full diplomatic relations by the end of the year.[39]

The first ministerial level talks with the Cerezo government were held on 29 April 1987.[40] Barrow reiterated the Belize position of no land cession, and repeated the offer to make maritime adjustments. He suggested a joint Economic Commission to look at areas of cooperation and to monitor the development of relations between their private sectors. When Quiñones asked whether nationals of both countries could pass freely from one to the other without passports, Barrow said he would consult his government, although he could not think of any strong

[38] See *A History of Belize in 13 Chapters*, Ángelus Press, 2011, pp. 331-342.

[39] British High Commission, Belmopan, 14 August 1986.

[40] For Guatemala Foreign Minister Mario Quiñones, Alfonso Alonzo Lima and three others, for Belize Foreign Minister Dean Barrow, Florencio Marin (Leader of the Opposition), William Tillet, and Eddie Laing, for the British David Joy, David Anderson and their representatives in Belmopan and Guatemala.

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objection. Belize was also willing to buy Guatemalan electricity, and other things could be negotiated within the Economic Commission.

Quiñones declared his government's essential demands: the District of Toledo to become Guatemalan territory; the UK to give Guatemala 100 million pounds, which Guatemala would give to Belize for development projects. The sea boundary would be in a straight line to the east, 12 miles from Toledo so that the Ranguana and Sapodilla Cayes came under Guatemalan sovereignty; Punta Gorda (which would be Guatemalan) would be a free port for Belize and a Free Trade Zone would be developed with Guatemalan finance; Guatemala and Belize would sign a mutual security agreement including mutual military protection. If those and other matters (including joint development projects and a railway system) were agreed, Guatemala would recognize the independence of Belize. This was the minimum acceptable to the Guatemalan people.[41]

However, another change soon came about when Belize and Guatemala held a high-level meeting without the British present on 3 December 1987 in Miami. Vice-President Roberto Carpio Nicole headed the Guatemalan delegation, and Foreign Minister Dean Barrow was accompanied by Eddie Laing.[42] Carpio said that he regarded Belize as a sovereign independent nation and that land cession was not an ingredient of his proposal for a solution. Instead he proposed three elements: Belize to join the Central American Parliament, a Joint Development Zone (JDZ) and an agreement on maritime boundaries. He suggested that the two countries should agree on the amount of money the UK should be asked to contribute. The three elements were to constitute a final settlement that could

[41] British record: "Record of talks between delegations of Guatemala, Belize and the United Kingdom on April 29, 1987". PF.

[42] Edward A. Laing graduated from Cambridge University in 1964 and received Masters Degrees from Cambridge and from Columbia University. Between 1966 and 1970 he worked as a public officer and in private practice in Belize and Chicago. From 1970 to 1993 he was a Professor of law at UWI and several US universities. From 1985 to 1996 he was Belize's ambassador first to the USA and OAS and then to the UN. He was a member of the Bar in several countries and published extensively on international law and development. He was a Judge in the International Tribunal for the Law of the Sea from 1996 until his death, in Belize, on 11 September 2001.

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be put to referenda in 1988. A Joint Commission should be constituted to propose details of the JDZ and the maritime borders. He also proposed joint economic projects in several areas and a road that would give Guatemala access to the Caribbean through Belize. Barrow asked whether the British were to be observers, but Carpio preferred to deal only with Belize, a major change in Guatemala's position.[43]

At a meeting on 22 February 1988 in Miami, Belize was represented by Foreign Minister Barrow, Robert Leslie (PS/MFA), and Eddie Laing, the Guatemalans by Carpio Nicole and four others. Barrow agreed to a joint development zone south of Belize and north of Guatemala, which would include the sea. A Joint Commission would be established to study that area, as well as all matters of economic cooperation. Carpio Nicole reiterated that "in Guatemala, a political decision has been made that they will not ask for land from Belize, no territorial concessions". He presented a 5-point proposal:

- recognition of Belize as a state;
- designation of a common border (no problem of land; sea would be discussed);
- membership of Belize in the Central American Parliament;
- Guatemalan support of Belize in areas where Belize is not represented in Central America's integration scheme;
- security and related matters.[44]

At a further meeting on 2 May 1988, where Leader of the Opposition Florencio Marin joined the Belize delegation, it was agreed that a Joint Commission would prepare a comprehensive Treaty of settlement. The political issues to be discussed included the definitive resolution of the claim, the entry of Belize into the Central American Parliament and the Central American integration scheme, recognition by Guatemala of Belize as a State, the *demarcation of existing land boundaries* and the

[43] Record by Belize delegation: "Summary of meeting held on 3 December 1987 in Miami," PF.

[44] Record by Belize delegation: "Summary of meeting at the Hyatt Regency Hotel, Miami, Florida, February 22, 1988," PF.

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establishment of maritime boundaries. The economic issues included the establishment of a Joint Development Zone and the identification and implementation of multi-sectoral development programs within the zone. They would also propose the enhancement of mutual security."[45]

The Joint Commission met on 30-31 May, 12-13 July, 3-5 October 1988, and 1-3 February 1989.[46] At a ministerial meeting in April 1989 the Parties considered what had been discussed in the JC meetings and stated their positions, but before we consider those there is a position taken on the Sarstoon River in the Political Sub-Commission that met on 2 & 3 November 1988 that merits our attention.[47] For Guatemala, Edmond Mullet claimed that 95% of the waters that feed the Sarstoon River are Guatemalan, and that they needed a few meters of the north bank of the Sarstoon to have the river "stabilized". They said that the Sarstoon River belongs to Guatemala, plus a half mile on the north bank. The Belize team rejected those arguments. In a subsequent note, Eddie Laing advised the government that the so-called river supply principle, if generally followed, would change the map of the world, and that there was no reason to depart from the sensible and universally accepted mid-channel principle.[48]

The Guatemalan flip-flop on the land issue again took another turn in these meetings, with Carpio Nicolle's forswearing of any land

[45] Record by Belize delegation: "Summary of meeting at the Hyatt Regency Hotel, Miami, Florida, May 2, 1988," PF. Emphasis added.

[46] Belize was represented at most meetings by Sir Edney Cain (HC London), R. Leslie (PS/MFA), E. Laing (Amb. Washington), William Tillet (PS/ Defence), Denys Barrow (Adviser MFA) and UDP Senator Alfredo Martínez (Interpreter). For Guatemala: Ariel River (Vice-minister of Foreign Affairs) Edmond Mulet (Foreign Affairs Committee of Congress) and three others. The UK was represented by Leycester Coltman, FCO and Kevin Chamberlain, Legal advisor, FCO. The reports I consulted are by the Belize delegations, and in addition, for the meeting of 3-5 October, a record prepared by the Guatemalan delegation, PF.

[47] For Belize, Denys Barrow, Laing, Tillet and Martínez; for Guatemala, Marco Antonio Dardon, Edmund Mulette and six others; for the UK, Kevin Chamberlain and Chris Carleton.

[48] Paper prepared by Laing for December 1988 talks with Cerezo, entitled "Political Level Meetings of December 1988," undated but clearly November 1988.

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cession in February being replaced by the demand for land half a mile north of the Sarstoon in November.

At the meeting of the Joint Commission (which included a British delegate) on 1-3 February 1989[49] Guatemala declared that it established a territorial sea of twelve miles by Government Acts and Decrees from 1939 to 1976, and that it had exercised sovereignty in these waters through maritime transit to ports, fishing and patrols. These activities, they claimed, constitute a right by customary law acquired through the passage of time and respected by the other states. Against this, the British delegate declared that "the UK does not recognize any historic title or other circumstances which would invalidate [the equidistance principle] in the Gulf of Honduras, since Guatemalan claims were consistently rejected by the other state involved at the time, i.e., the UK". The Government of Great Britain, by notes of July 1940 and July 1961, vigorously protested Guatemala's claims to territorial waters in excess of three miles, particularly in so far as these encroached on Belizean rights.[50]

At the ministerial meeting held on 17-18 April 1989, Belize was represented by FM Barrow, Leslie, Laing, and UDP Senator Alfredo Martínez and Guatemala by VP Carpio Nicole, Ariel Rivera and two others. A problem arose as to the meaning of "existing land boundaries"; it became clear that the Guatemalans were trying to renege on what had been agreed in May 1988. They claimed that the markers had been moved in the 1930s, and new measurements had to be taken, while the third monument (Aguas Turbias) was never established between Belize and Guatemala. A boundary commission should be established and determine where the monuments should be according to the Treaty, before concluding the new Guatemala-Belize boundary treaty. Barrow said that Belize's position was to proceed on the basis of the existing monuments, but he would take back the Guatemalan proposal to the Prime Minister.

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[49] "Summary Record of Belize/Guatemala Joint Commission Meeting held in Miami, Florida, February 1-2-3, 1989," PF.

[50] Referred to in Belizean note to the SG/UN of 22 March 1994, UNGA A/49/112, 24 March 1994.

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On the Sarstoon, Carpio argued that 91.31 per cent of the tributary rivers of the Sarstoon lay in Guatemalan territory, and therefore the river should be the dividing line, not the middle; he produced a map showing the border on the north bank of the Sarstoon. Barrow insisted that the Sarstoon divide was defined in the 1859 Treaty and was *de facto* recognised by both sides for years and that Belize could not even consider Guatemala's proposal.

With regard to the maritime border, Carpio produced a map depicting Guatemala's conception of Belize's territorial waters east of the Sapodillas, with the three-mile limit extending as far north as Gladden Entrance. The map also contained a wedge showing Guatemala's putative EEZ. Barrow said Belize was prepared to give Guatemala access to the high seas, but not on further limiting itself to three miles to satisfy Guatemala's EEZ pretensions.

Barrow said he was "prepared to agree that Belize draws a straight baseline based on a three-mile limit beginning east of Orange Point, except in an area where Belize needs deep-water access south of the Sapodillas, and extend to six miles where necessary to give Belize such deep-water access, then revert to three miles and continue with three miles until the line reaches a point Belize considers necessary to give Guatemala access to the high seas, then extend to twelve miles. That portion of Belize's territorial sea could form the subject of an economic understanding to provide for some degree of joint exploitation".

Carpio said that the island at the midpoint of the Sarstoon was still pending (a strange admission, since he had previously insisted that the entire river belonged to Guatemala), as well as the Ranguana and Sapodilla cayes, and proposed a special status for them, a kind of condominium. Barrow said that was not consistent with full Belizean sovereignty, and so was unacceptable. He stated the categorical position of Belize: "The terms of reference governing the negotiations spoke about demarcating existing borders. The existing borders contain those cayes. It was a matter of the fundamental constitutional position of Belize."

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Much progress had been made since the Guatemalan demand for all territory south of the Monkey River in 1982. It had been agreed that the territorial issue would be based on "existing land boundaries," and although there were differences of opinion on specifics, and Guatemala had put forward a claim to the entire Sarstoon River, the principle was important. There was also a general understanding about maritime borders, based on Belize restricting its claim to territorial seas in some areas to three miles, although the specifics were yet to be agreed. And the economic and security issues did not seem to be particularly troublesome.

Elections in Belize on 4 September 1989 resulted in a return of Prime Minister Price, who named Said Musa as Foreign Minister. After an exploratory meeting of leaders in Roatán in December 1989, a meeting at the same level and on the same Honduran island was held on 9 July 1990. Representing Belize were Prime Minister George Price, Said Musa, Dean Barrow (Deputy Leader of the Opposition) and Alfredo Martínez, while Guatemala was represented by President Vinicio Cerezo. The Parties reached agreement on a document called "Points of Concurrence," which were said to be preliminary in principle. The land borders were defined as follows: "(a) from Gracias a Dios to Garbutt's Falls, and then to Aguas Turbias (on the Mexican border); (b) the southern boundary of Belize will be the mid-channel of the Sarstoon River".

On maritime areas, the Points state that "The territorial sea of Guatemala is twelve miles. The territorial sea of Belize in the south is three miles until east of Ranguana as hereinafter defined". The Points provide for an agreement to allow free navigation one and one-half miles into Guatemala's territorial sea around the Sapodilla Cayes. Belize and Guatemala will share an exclusive economic zone located from three miles east of Ranguana to twelve miles, and toward the south to the limits of Guatemala's territorial sea. There are further provisions for joint exploitation inside the zone that is situated in certain parts of the territorial seas and EEZ of Belize, and fishing and other economic benefits shall be granted to Belize in the area of Guatemala's territorial sea between Orange Point and the Sapodillas.

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These agreements built on the work done in the meetings between 1985 and 1989, although Guatemala's demands for land concessions and for engrossing the Sarstoon River were discarded and the major questions related only to maritime issues. But the point about reducing the territorial sea claim of Belize in the south to three miles would create grave difficulties for the Government and Opposition later, as we shall see.

On 26 July 1990, a Joint Commission meeting was held in Miami,[51] where it was agreed that Belizean and Guatemala officials supported by UK expertise would "identify the positions of the land borders at Gracias a Dios, Garbutt's Falls and Aguas Turbias, and plot them on a single map". The three monuments would be positioned, the lines opened and a single map produced containing the land borders. The borderline at the mid-channel of the Sarstoon River would be agreed and plotted on a single map. Baselines for the maritime boundary would be established and plotted on a single chart, with the help of UK expertise.

On economic issues, it was agreed that a parallel and simultaneous Agreement for Joint Development would be signed in conjunction with the main treaty. The specific projects would be included in the main treaty. They expected that draft treaties from each side would be ready by October. The agreements include a host of projects in many areas: economic, commercial, financial, technical & scientific, tourism, health.

The Treaty That Might Have Been

On 14 Nov 1990, PS/MFA Robert Leslie sent to George Price, Said Musa, Manuel Esquivel and Dean Barrow a draft treaty ahead of a

[51] For Belize: Foreign Minister Said Musa, Robert Leslie, Joseph Waight (PS in the Ministry of Economic Development), Lt Col. Earl Arthurs, Chief of Staff in the Ministry of Defence, Jorge Espat, advisor to the FM; for the Opposition, Dean Barrow and Fred Martínez (Chairman UDP). Guatemala was represented by Foreign Minister Ariel Rivera and eight others and the UK by Michael Hall of the FCO and two others.

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Bipartisan Committee meeting to be held on 16 November, including also a draft agreement on cooperation issues, maps and coordinates.[52]

The first two articles read as follows:

Art. 1. Guatemala shall recognize Belize as a sovereign independent State and shall renounce all territorial claims to Belize.

Art. 2. 1. Belize and Guatemala recognize as definitive the existing land boundaries between their respective countries.

2. 2. The western land boundary of Belize extends from Gracias a Dios Falls to Garbutt's Falls to Aguas Turbias, where boundary markers with the following coordinates are located: [left blank]

2. 3. The southern land boundary of Belize begins at the mouth of the River Sarstoon in the Bay of Honduras and proceeds up the southern branch of the island at the mouth of the river continuing up the deepest point thereof to Gracias a Dios Falls.

Article 3 sets out the positions on maritime areas, with Belize restricting its territorial seas to three miles in the agreed areas, and makes provisions for fishing rights and other matters. Other articles deal with the exclusive economic zones, deep sea fishing and other matters. There are also provisions relating to security and economic cooperation.

Guatemala Recognizes Belize

Serrano Takes the Plunge

By the time that draft treaty was sent to the Bi-partisan Committee, the first round of presidential elections had already been held in Guatemala. The heavily army- and business-controlled government of Vinicio Cerezo had been unable to deliver on its electoral promises nor even give a measure of hope to the people who had elected Cerezo with such a large majority, for reasons already explained. There could be no end to the war as long as the Generals continued to reject any negotiations with the guerrilla, although international demands for

[52] Leslie to Price, Musa, Esquivel and Barrow, 14 November 1990, PF.

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a negotiated peace mounted. Central America was in turmoil: the *Sandinista* government in Nicaragua was under heavy attack by a mercenary army financed by the US, using Honduras as a base; in El Salvador, the FMLN (*Frente Farabundo Martí de Liberación Nacional*) guerrilla war against the dictatorships appeared to be winning, despite heavy US backing for the Salvadoran dictatorships.

In an effort to promote dialogue for peace, Panama, Mexico, Colombia and Venezuela formed the Contadora Group (named after an island in Panama), soon reinforced by other Latin American governments in a Support Group and then by several European governments. Cerezo sought to use these moves to promote peace in Guatemala, and in May 1986 there was a meeting in the Guatemalan town of Esquipulas of all Central American Presidents, who subscribed a declaration urging a peaceful negotiated solution to the Central American crisis. This was followed up in 1987 by Esquipulas II, where another heads meeting established an International Commission made up of the Contadora Group, the UN and the OAS. The Guatemalan government formed the National Reconciliation Commission (CNR), which began conversations with the URNG in Madrid, but the military back home said that there should be no dialogue with the guerrilla unless they disarmed and accepted the government's amnesty. In this period there were two failed coup attempts, and Cerezo announced that the CNR did not have the authority to negotiate with the guerrilla.

In October 1987 the CNR convened a national dialogue with civil society, and this was given some impetus by CACIF meeting with the URNG. In 1988 there was a massacre at the village of Aguacate, an hour's drive from the capital and five miles from a major military base. The government blamed the guerrilla, but they charged the army with carrying out a "carefully orchestrated plan" to cover up its own involvement. *The New York Times* reported: "Because the Guatemalan Army's human-rights record is so poor, some critics of the Government have suggested that the army is trying to hide its own involvement in the massacre by blaming rebels. The Rev. Andrés Girón, a Roman Catholic priest who has been critical of the military,

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said he found the official explanation that guerrilla were responsible "very doubtful."[53]

In 1989 a Christian democrat leader who had urged negotiations with the guerrilla was assassinated. There was another attempted coup and the emergence of an organization in the army, "officers of the mountains," who were opposed to the peace process. More assassinations occurred in 1990, and in September the anthropologist Myrna Mack, who had been recording human rights abuses by the military, was assassinated by the Presidential guard, and in December the army carried out a massacre in Santiago Atitlán, both incidents engendering massive international denunciations.

These events, in the midst of the electoral campaign, sealed the fate of the ruling Christian Democrats. Cerezo had been powerless to restrain the military, and made concessions to its most hawkish elements, thus paralyzing the peace process. Neither was he able to improve the economy, provoking a worsening in the standard of living of the people.

In the first round of elections on 11 November 1990, Jorge Carpio Nicole of the *Unión del Centro Nacional* (UCN) narrowly won over Jorge Serrano (of the recently formed MAS, *Movimiento de Acción Solidaria*). In the second round on 6 January 1991, however, Jorge Serrano got 64.6% of the vote to Carpio's 30.3%, due largely to the support given him by a party called *Frente Revolucionario Guatemalteco* (FRG) led by Efraín Ríos Montt, who was forbidden to run as a candidate for having led a military coup (we have seen Ríos Montt before, and will again, and again). Serrano took office as President on 14 January 1991.

A few days before that, on 8 January 1991, Belize finally became a member of the Organization of American States (OAS). In 1985 the OAS had passed a Protocol of Reforms which, among other things, would eliminate, after a period of five years, Article 8 of its Charter, which had prevented Belize from becoming a member. The OAS was to play an extremely important role in attempting to settle the dispute

[53] *New York Times*, 3 December 1988.

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between Belize and Guatemala a decade later, and in helping to maintain peaceful relations along the Belize-Guatemala border.

President Serrano was another one of those rare birds in Guatemalan politics. He had no established political party, and had the patronage of Ríos Montt; both were evangelical Protestants. He didn't have a team of experienced officials he could count on. The economy was in shambles, and poverty levels were high and growing. He appointed one of his rivals for the Presidency, Álvaro Arzú of the *Partido de Avanzada Nacional* (PAN), which had contested presidential elections for the first time, as his Minister of Foreign Relations. Serrano had very few allies in the Congress, and it soon came out that he had to pay substantial sums to Congressmen to buy their votes; corruption was rampant. And the civil war continued.

Despite all this, Serrano was determined to put an end to the territorial dispute with Belize, and he built on what had been done during the previous government and moved quickly to reach a deal. In July 1991, at a meeting in Miami attended by Ambassador Robert Leslie, the Guatemalans activated the process to allow for the quick recognition of Belize and the establishment of full diplomatic relations.[54]

On 14 August 1991, the Guatemala government issued a press release stating that "it recognizes the right of the people of Belize to self-determination . . . [and] in accordance with provisional Article 19 of the Constitution, it will also continue negotiating and will pursue all civilized, legal means leading to a definitive solution to the territorial dispute."[55] On 16 August, the government of Belize, in consultation with the Opposition UDP, introduced the **Maritime Areas Bill** in the National Assembly.[56]

On 5 September 1991 the Government of Guatemala announced: "the recent decision by the State of Belize to limit its territorial sea and its

[54] See "The Guatemalan Claim: Origins, Negotiations, Solution" of January 1993 by the National Advisory Commission on Relations with Guatemala (E. Cain and A Shoman as co-chairs).

[55] See letter circulated by the Security Council of the UN, 16 August 1991, A/46/368, S/22953

[56] *The Gazette*, 31 August 1991.

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hereditary EEZ makes it clear to the government of Guatemala that [its] right to its own territorial sea on the coast of the Caribbean and to its own EEZ is guaranteed". It then declared that "the Government of Guatemala expresses its willingness to continue direct negotiations with the independent State of Belize.[57] The following day, the British Government announced "an initial contribution [of £22.5 million] to launching the joint project to renew and extend the road network linking the two countries".[58] On 11 September, the governments of Belize and Guatemala announced their decision to establish full diplomatic relations with immediate effect and to exchange Ambassadors at the earliest opportunity. On 14 September, Guatemala issued a press release stating that "taking into account that Belize has been recognized internationally as a member of numerous international organizations . . . it recognizes the right of the people of Belize to self-determination," and circulated it at the UN.[59]

On 16 September, Foreign Minister Said Musa, accompanied by Dean Barrow and Robert Leslie, High Commissioner to London, paid an official visit to Guatemala and met with President Serrano and Foreign Minister Álvaro Arzú. A Joint Communique stated that "the claim of Guatemala is not an obstacle to the recognition of the right of the people of Belize to self-determination, which, according to international law, is an inherent right," and the Guatemalan government agreed "to continue direct negotiations with the State of Belize in search of a solution to the existing differences". They agreed to form a bilateral commission to negotiate agreements in several economic, social and cultural areas, including joint exploitation of defined areas of the EEZ of Belize for mutual benefit and permanent access of Guatemala to the Caribbean Sea from its Department of El Petén and the reciprocal use of port facilities.[60]

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[57] Fax from Belize High Commission, London, 6 September 1991.

[58] The National Bi-partisan Commission explains the Maritime Areas Bill, October 1991.

[59] UN document A/46/368, S/22953, 16 August 1991.

[60] "Joint Communique of the Governments of Belize and Guatemala," signed by FM Said Musa and FM Álvaro Arzú in Guatemala City on 16 September 1991. PF.

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The Maritime Areas Act

The UN Convention on the Law of the Sea, signed in 1982,[61] allowed countries to claim 12 miles of territorial sea and a 200-mile Exclusive Economic Zone (EEZ), presenting an opportunity for Belize to make concessions to Guatemala while still not giving up anything it already had, since its territorial sea limit until then was the traditional three miles.

The Maritime Areas Bill (MAB) introduced in the House on 16 August 1991, with UDP approval, however, was deeply flawed, making more concessions than were in the national interest. Section 3 (1) of the Bill provides for a territorial sea of 12 nautical miles measured from the baseline, but 3(2) makes this important qualification: "From the Sarstoon River, south entrance, to Ranguana Caye, the territorial sea of Belize comprises those areas of the sea having as their inner limits, the baseline of the territorial sea as measured from the features listed in the Schedule to this Act, and as their outer limits, a line measured seaward from that baseline every point of which is 3 nautical miles from the nearest point of that baseline".

Nothing in the Bill gave the right to Belizeans to express their opinion on the subsequent agreement to be reached with Guatemala by means of a referendum or otherwise. However, a document published by the Bi-partisan Commission stated that the draft treaty between Belize and Guatemala to settle the dispute would be submitted to the people in a referendum before ratification.

In October 1991, PM George Price, Leader of the Opposition Manuel Esquivel, FM Said Musa and Shadow Foreign Minister Dean Barrow toured the country in support of the Bill, but they met lively opposition in many areas, particularly in Toledo and among fishermen. In October 1991, Dean Barrow published an article on the Bill.[62] He asserted that

[61] Belize ratified the Convention on 13 August 1983, Guatemala on 11 February 1997 and the UK on 25 July 1997.

[62] Article by Dean Barrow in *Amandala*, 18 October 1991. In fairness to Prime Minister Barrow, I should note that he has distanced himself from the views

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Belize had long since conceded the right to a 12-mile territorial sea, because when the 1982 Law of the Sea was promulgated, Belize did not claim a twelve mile territorial sea, and affirmed that "Belize is estopped from going back on what in 1982 was at the very least her tacit cession of territorial sea. And the Maritime Areas Bill is only giving legal expression to what is already accomplished fact". That, however, was not true, as was pointed out by Edward Laing himself: "it is incorrect to say that Belize is not otherwise entitled to claim a 12-mile territorial sea in the south . . . the right was not asserted until 1987 by the United Kingdom and until 1988 by the USA. It would be ludicrous and legally inaccurate to assert that neither Belize, the UK nor the USA were somehow prevented to assert their claim because a neighbour happened to have previously made a 12-mile claim which overlaps with their similar claim". Nonetheless, he expressed support for the Bill, arguing that Guatemala deserved this by virtue of having recognised Belize's independence and that Belize could not expect to be forever defended by the UK, hence a settlement was in its best security interests.[63]

The Society for the Promotion of Education and Research (SPEAR), however, vehemently opposed the MAB, arguing that at most Belize should offer no more than the Heads of Agreement did, i.e. "such territorial seas as shall ensure permanent and unimpeded access to the high seas, together with rights over the seabed thereunder".[64] On 1 November 1991, SPEAR made a further statement demanding that the Bill be amended to merely leave an area open for negotiations, and that the sea boundary be submitted to a referendum.

Many people were dissatisfied with the Bill despite the support given to it by the leaders of both the PUP and UDP. On 3 November, for example, the National Trade Union Council of Belize (NTUCB) passed a resolution rejecting the MAB, as did the National Garifuna Council.[65]

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expressed in that *Amandala* article. But others still make those arguments, hence the need to refute them.

[63] *Amandala*, 8 November, 1991.

[64] *Amandala*, 18 October 1991.

[65] *Wadabagei*, 21 December 1991.

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The PSU followed suit in early January.[66] The Bar Association, however, in its statement of 12 December, endorsed the Bill's proposal to cede a large area of territorial sea: "The Bar regards as both prudent and positive, the decision to forego claiming rights to new areas of territorial sea within the Gulf of Honduras and to remain within the existing three mile boundary".

Significantly, there was considerable opposition within the UDP, which soon led to a split headed by historic leader Phillip Goldson, who formed the Patriotic Alliance for Territorial Integrity, later changed to National Alliance for Belizean Rights (NABR), which demanded that Belize's territorial sea in the south extend to the median line. On 12 January 1992 the UDP executive expelled Derek Aikman along with Hubert Elrington and B Q Pitts from the party, and Phillip Goldson resigned in protest. Because of the serious split in the party, the UDP decided not to vote for the Bill, but Barrow insisted that "we need to make it quite clear that the National Executive by its decision is not saying that the Bill is a bad thing or that the Bill is to be condemned".[67]

In the end the Bill was amended in the sense suggested by SPEAR, making no final limitation of three miles and mandating a referendum on whatever might be agreed, and it passed in the House on 17 January 1992. The Maritime Areas Act of 24 January 1992 declared a twelve-mile territorial sea for Belize except in the area between the Sarstoon and the Ranguana Cayes, where it decreed a three-mile limit, but for a limited time and purpose: "to provide a framework for the negotiation of a definitive agreement on territorial differences with the Republic of Guatemala". The law made it clear that this meant that some part, but not the whole, of that area might be allocated to Guatemala in return for abandonment of its claim. Should such an agreement be reached, it must be put to a referendum; if passed, the limitation would become definitive, but if not then the territorial sea would be delimited in accordance with international law. The EEZ was likewise declared

[66] *Amandala*, front page, 10 January 1992.
[67] *Amandala*, 17 January 1992.

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to be based on international law, but it allowed for concessions to be made to Guatemala after approval by referendum.[68]

Although the law had been materially amended and it no longer gave away any of Belize's rights and ensured the people a decisive voice in any proposed settlement, Esquivel, Barrow and the rest of the UDP (most of whom had been supporting the previous faulty Bill) chose to vote against the law.

Despite the fact that the Belize government had passed a law which differed materially from what the government and Opposition had promised to the Guatemalan government, President Serrano continued the negotiation process without a hitch, although at home he was facing opposition to his recognition of Belize, which was challenged in the Constitutional Court in 1992. On 3 November 1992, the Court declared that the President's action in recognizing Belize did not violate the Guatemalan Constitution, but it referred several matters to the Congress for ratification. On 24 November, the Congress, by a vote of 78 to 24 with 13 abstentions, approved the President's actions and authorized him "to continue negotiations, including the use of international courts, in order to validate Guatemala's territorial rights over Belize, and upon arriving at a definitive settlement, to submit same to popular consultation in accordance with Article 19 [of the Transitional Provisions] of the Guatemalan Constitution".[69]

In an act which recognized Belize's sovereignty, Foreign Minister Gonzalo Menéndez Park wrote to Foreign Minister Musa, in reply to the latter's protest against a publication by Guatemala of an international tender for petroleum exploration in an area which included Belizean waters. Menéndez said that the tender had been issued in error by the Ministry of Energy and Mines without consultation with the Foreign Ministry, and he assured Musa that "this area will not be

[68] See letter from Permanent Mission of Belize to the UN to the SG, enclosing for general circulation a statement by Belize's Minister of Foreign Affairs on the precise meaning of the MAA, 24 April, 1992, A/47?173 S/23837

[69] Quoted in "The Guatemalan Claim: Origins, Negotiations, Solution" by the National Advisory Commission on Relations with Guatemala, January 1993. Gazeta de la Corte de Constitucionalidad, Inconstitucionalidad General Expediente no. 290-91 y 292-91.

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allotted to any company that might present a tender," and further that "the next tender to be published in June will contain areas already properly delimited in order not to give rise to misinterpretations".[70] And in July 1992, in a joint statement, Belize and Guatemala agreed "to accept that any mention of their respective territory in any agreements . . . will be based on the existing reference monuments".[71]

On 19 April 1993, the Ministers of Foreign Affairs of Belize and Guatemala met in Miami "to find a solution to the problem of illegal logging and to establish mechanisms for the avoidance of similar incidents in the future". They agreed to establish "effective mechanisms to monitor and control their respective areas for the protection of their natural resources". They also agreed "to use the existing reference monuments to avoid similar incidents in the future as well as to prevent the occurrence of any illegal activity, including illegal settlements. In order to facilitate the use of the monuments for this purpose it was agreed to jointly undertake any repair work necessary, as has been done in the past, and to clear an area of 50 feet radius around each of the monuments". Both countries agreed to refrain from the threat or use of force against each other and to prevent their respective territories from being used as a base for aggression against the other or in connection with acts of insurgency or terrorism.[72]

British Announce Troop Withdrawal

The British government had originally agreed to maintain their troops in Belize for a period of nine months after independence, but circumstances and the urgings of the USA had kept them there for much longer. Now, with Guatemala having recognized the State of Belize, agreed on a basis for ending the claim and signed a non-aggression pact, Britain felt it was time to go. The Belize government, however, expressed its "grave and urgent concern," arguing that "the situation with Guatemala is still uncertain," and that the "removal of the troops and

[70] Menéndez Park to Musa, 13 February 1992, PF.
[71] "Joint Statement of the Governments of Belize and Guatemala," signed by Musa and Menéndez, 31 July 1992, PF.
[72] Belize Information Service Press Release, 19 April, 1993.

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Harriers at this point could be misinterpreted and possibly jeopardise an early resolution of the problem".[73]

But on 13 May the British government announced that it would withdraw its troops, although it would, in the event of a future military threat, "stand ready to be consulted immediately about Belize's security needs, and that all options can be considered". The British also agreed that a reduced force in Belize would "take the form of a training operation for UK troops".[74]

The fact that foreign troops that limited the sovereignty of Belize were being converted to a training operation for UK troops and that Belize would assume, like any normal country, full responsibility for its own defence, should have been cause for celebration by the nationalists that had struggled against British colonialism and for independence from Britain. But it took the British to express what should logically have come from the Belizeans: "To be responsible for one's own defence and security is one of the most significant attributes of sovereignty and independent nationhood. To have had to continue to rely on the former colonial power for defence after independence was always a second-best option forced on Belize by unavoidable circumstances".

Those circumstances had changed dramatically, both in Central America as a whole (where support for Belize's independence was unquestioned) and in Guatemala itself, where democratisation was in progress and the decades-long civil war was about to end. Most significantly, Guatemala had recognized Belize as an independent State and pledged not to use force or the threat thereof to resolve their dispute with Belize. But the Belize government's reluctance to have the British troops leave had more to do with internal politics. The people of Belize had, unfortunately, developed a "harrier mentality," an attitude of dependence on the British military presence, and would inevitably react with fear to the announcement; this would, equally inevitably, reflect a diminished support for the governing party.

[73] Musa to Hurd, 2 April 1993, PF.

[74] "Britain's Defence Cooperation with Belize," British High Commission, Belmopan, 13 May, 1993.

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The BDF officers and men themselves welcomed the new role thus thrust upon them, and generally speaking, in relation to their defence role *vis-à-vis* Guatemala, they have performed it well, with a high level of professionalism, dedication and valour that has won them the admiration of the people of Belize.

On 13 May, the UDP issued a press release regretting the British decision to withdraw its forces, and said it "would impact in a most negative way on Belize's security and Belize's economy". It declared that the government "has failed to adequately address either of these two problems," and called on the Prime Minister "to tell the nation what plans he has to reduce the impact of the loss of hundreds of jobs and the loss of millions of dollars in foreign exchange that will occur when the troops leave". The release concluded: "The United Democratic party pledges that it will carry on an intensive lobbying campaign at home and abroad to seek defence arrangements that will satisfy the defence needs of Belize".[75]

In Guatemala, meanwhile, President Serrano's attempt at an "*autogolpe*" (a violation of the Constitution by the President himself), ended in his ouster on 1 June 1993. Ramiro de León Carpio, elected as President by Congress, declared Serrano's recognition of Belize null and void, but under international pressure reversed this position on 28 June 1993.

The PUP government, for internal political reasons including its strong support in a recent by-election, had decided to call a snap early election before the British announced the troop withdrawal and before the crisis of Serrano in Guatemala. Elections were held on 30 June 1993. The UDP made a hasty coalition with the NABR, and promised that they would suspend the provisions of the Maritime Areas Act relating to Belizean territorial waters if elected; they were, but they didn't.[76]

[75] UDP Press Statement, 13 May 1993.

[76] Dr Gilda Lewis maintains that the NABR (of which she was a member) wanted to amend the Act to make the median line the maritime border: Interview, 26 February 2018.

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The Claim Revitalized

The de León presidency was a provisional one, pending elections due in 1995; he had no political party of his own, and the various political parties busied themselves preparing for the elections, seeking at every opportunity to discredit the government and advance their own cause. Legislative elections were convened on 14 August 1994, which changed the balance of forces in Congress. The FRG of Ríos Montt controlled the largest number of seats (33); the PAN won 23, while future President Alfonso Portillo won a seat for the DCG; Ríos Montt became a Congressman and later President of the Congress. A new Supreme Court of Justice was also elected, in an attempt to modernize it and regain some credibility. Two generals who had supported Serrano's autogolpe were removed, and de León announced a moderate military policy with respect for human rights. In March 1994, a global agreement on Human Rights was signed, along with a road map for a firm and durable peace (the civil war was still waging). For this, the government sought the support of the OAS and the UN, and the UN Mission of Human Rights in Guatemala (MINUGUA in Spanish) was established.

With regard to the Belize question, however, things were going from bad to worse. On 4 March 1994 Foreign Minister Marithza Ruiz de Vielman reasserted Guatemala's claim to "a land area currently occupied by Belize," rejected Belize's proclaimed maritime areas, and declared that it "does not accept the principle of equidistant lines with States with opposite or adjacent coasts that might affect its sovereign right to 12 nautical miles."[77]

Belize's Foreign Minister Dean Barrow replied on 22 March 1994,[78] asserting that Belize had never recognized Guatemala's maritime claims in excess of three miles, that in the MAA Belize exercised its right to claim a territorial sea of 12 miles, while it forbore from extending its territorial seas out from three miles to 12 miles in the specific area of intersection of Belizean and Guatemalan waters solely

[77] In UN doc. A/49/94, 14 March 1994.
[78] UNGA doc. A/49/112, 24 March 1994.

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"to provide a framework for negotiation of a definite agreement" on delimitation; and that, failing such agreement or its approval in a referendum in Belize, delimitation would be effected on the basis of international law. Equally, if negotiations do not occur or are not concluded, Belize will continue to enjoy its rights under international law. He added that "protests have been and hereby are lodged against any and all Guatemalan claims and/or acts, past, present and future, in violation of international law".

When, in October, Barrow's statement at the UN General Assembly described the land and sea borders of Belize as "universally recognized as inviolable," Guatemala circulated a note declaring that it "does not recognise the existence of either sea or land borders" with Belize. No further negotiations took place in the ensuing months.

On 27 August 1994, the Belize government, apparently in pursuit of its electoral pledge to "seek defence arrangements that will satisfy the defence needs of Belize," held a meeting with a high US official, Ambassador Brunson McKinley, to discuss the acceptance of some 10,000 Cuban refugees in return for US defence support against Guatemala. The US had enunciated a "Safe Haven Policy" to divert Cuban refugees to third countries, which it thought would stem the flow of Cuban refugees to the USA. The US suggested Price Barracks and the VOA site at PG as temporary detention centres, and GOB indicated a possible site along the Southern Highway due north of the Savannah Forest Reserve. In return, the US would "respond rapidly to the Government of Belize's request to the issues of the Guatemalan threat to Belize's territorial integrity and national sovereignty," increase its military assistance and support Belize's refugee program.

On the security issue, McKinley said "it won't take much to effect a balance in Belize's favour," but Deputy Prime Minister Dean Barrow said a long term defence guarantee was needed, although he acknowledged that this would require Congressional approval. They discussed ways of establishing a US presence, such as relocation of US jungle training from Panama and the establishment of a US military base in a sensitive

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area of Belize. McKinley undertook to consult with Washington and the Southern Command and report back.[79]

Luckily for Belize, nothing ever came of this dangerous and misguided initiative.

End of the Civil War in Guatemala

Back in Guatemala, the de León Carpio administration had not fared well. The peace process was stalled, and army repression did not cease. Jorge Carpio Nicole, who had won the first round of elections in 1990 and was a cousin of the President, was assassinated and the perpetrators were never identified. In October 1995, a military patrol assassinated 11 farmers, resulting in the resignation of the Minister of Defence. Also in October, the remains of the body of former President (1951-1954) Jacobo Arbenz were repatriated, as an act to dignify the Revolution of October of 1944 and to proclaim the popular cry for peace and national reconciliation. In the run-up to elections in December, there were charges of corruption, administrative inefficiency and failure to bring peace, and 19 candidates vied for the presidency.

In the second round on 8 January 1996, Álvaro Arzú, former Foreign Minister under Serrano, of the PAN, a party of businessmen, professionals and some sectors of the middle class, emerged as President. His Cabinet and advisors were mostly businessmen, but the all-important peace process was greatly assisted by two men associated with the left: Gustavo Porras Castejón, a former militant of the EGP (Ejercito Guerrillero de los Pueblos, that had supported Belize's independence), and Eduardo Stein Barillas, his Foreign Minister, who was important in winning international support for the peace process. Finally, on 29 December 1996 the Peace Agreements were signed, ending 36 years of civil war that had produced the deaths of over 200,000 Guatemalans, and promising to deal with the grievous economic, social, ethnic and cultural injustices that had led to the war in the first place. Unfortunately,

[79] Summary Notes of a meeting held on 27 August 1994, Conference Room, Tourist Board, Belize City. McKinley was Deputy Assistant Secretary, Bureau of Population, Refugees and Migration, Department of State.

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hardly any of those objectives have been achieved, and the former guerrilla movement, alone among the major ones in Central America, has failed miserably as a political force subsequently.

Guatemalans Favour Judicial Solution

The first "exploratory" talks with Belize, at technical level, were held in Miami on 27-28 February 1997. Guatemala's head of delegation, Luis Alberto Padilla, admitted that "within Guatemala there was no major interest on the part of the majority of the population," and that the problem was viewed as not with the government of Belize but rather as one inherited from the UK. Padilla thought that using a referendum to endorse an agreement would probably fail to win support, but one to seek a juridical solution to the dispute could work. The Belize side maintained that it could not entertain Guatemala's land claims but that it remained prepared to negotiate a maritime boundary or to submit that to juridical decision once Guatemala had recognized the land borders. They signed an "aide memoire" stating the positions of the two governments.[80]

But Foreign Minister Eduardo Stein was convinced that the best way forward was a juridical solution. He said that the idea of taking the case to the ICJ had been examined "deeply and with juridical precision by the Council on Belize," and the government was considering commissioning an international lawyer to give them an opinion on the case.[81] They did, but did not like the legal opinion he delivered, and suppressed it.[82]

Another internal development in Guatemala was to create further difficulties for the foreseeable future: in 1997, the Constitutional Court declared the 1859 Treaty void *in toto* and *ab initio*, with no validity whatsoever for the State of Guatemala.[83] All Guatemalan diplomats,

[80] Belize delegation's report of the meeting and the Aide Memoir of 28 February 1997, PF.
[81] Mike Mena (Belize's ambassador to Guatemala) to David Gibson, PS MFA, 9 April 1997, PF. He quoted from the *Siglo XXI* newspaper of 9 April 1997.
[82] See below, p. 300.
[83] "Sentencia Interpretativa" dictada por la Corte de Constitucionalidad el 27 de

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negotiators and leaders have since said that they dare not do or say anything to give that Treaty any recognition, or they would be violating the ruling of the Constitutional Court and could end up in prison.

The next meeting, also at technical level, was held on 26 September 1997 in Miami, where the Parties agreed to establish bilateral technical working groups to promote cooperation in trade and investment, tourism, environmental protection and culture. They also agreed to strengthen efforts to prevent illegal farming. On the territorial dispute, Francisco Villagran Kramer took the lead for Guatemala, stating that Guatemala prefers a juridical solution by submitting the case to arbitration, the ICJ or the SG of the UN. He declared that "whatever may be the decision of such a tribunal, Guatemala does not expect Belize to cede any territory. If the decision goes in favour of Guatemala it would merely give rise to a claim for compensation against Great Britain". The Belize delegation replied by fully refuting all of Guatemala's historico-legal assertions and reiterated its willingness to delimit the maritime boundary in accordance with the Law of the Sea, once Guatemala had recognised the land boundary as defined in the 1859 Treaty.[84]

In an interesting debate carried out in the local press between FM Stein and former President Cerezo, the latter ridiculed Stein for having said that it is possible to "recover part of the territory of Belize," and likened this to claiming to be able to recover the rest of Central America because this territory belonged to the Captaincy General of Guatemala during the days of the Spanish colony.[85]

The third in this series of talks was held on 7 November 1997 in Belmopan, where Guatemala repeated its proposal to submit the dispute to international adjudication and the Belize side rejected it.[86]

Another technical meeting was held in Miami on 20 March 1998; no progress was made on the substantive issue, but some "modus vivendi" issues were agreed on. They would jointly assess the problem

Agosto de 1997 (expediente 1129-96).

[84] Belize-Guatemala Talks. Skeleton Notes of meeting held in Miami on 26 September 1997.

[85] Mena to Gibson, 23 October 1997, PF.

[86] Gian Gandhi, "Belize-Guatemala Talks (Third Round)," undated, PF.

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created by the activities of Juan Díaz at Santa Rosa; Belize informed that it would allow illegal farmers to reap mature crops, while strengthening its preventive measures; they agreed to take steps to promote commercial and cultural exchanges.[87]

The Santa Rosa settlement was to play a major part in the relations between the two countries for the next decade, so it is useful to give some background here. The founder of Santa Rosa, one Juan Díaz, was a member of one of the civil defence patrols (PAC), and "was allegedly rewarded with the land in what became known as the Santa Rosa settlement for his contributions to operations against guerrilla forces".[88] In October 1994, Díaz wrote the Guatemalan foreign minister, claiming to represent 10 families who had resided there for over six years, i.e. since 1988. Murphy notes that the British forces were responsible for Belize's defence until January 1994, and that Díaz states in his letter that "starting in 1994 the settlers had not been able to continue their agricultural work because threats from security forces became too much".

Belizean authorities, however, did know about the Santa Rosa settlement before 1994. A police report notes that on 15 January 1993 Belizeans visited the village and served the residents, which then numbered 32 men, women and children, with an Order to Leave within 48 hours, which they refused to comply with, claiming they were in Guatemala. The police report states that Díaz and members of his family had settled the area in 1989, and that it was 150 meters inside the border. Security forces visited the area on several occasions in 1993, but did not expel the settlers.[89] The settlement was also mentioned at the technical meeting on 20 November 1998: "The Guatemalans were reminded that the Government of Belize had at the request of the GOG in 1996, held off taking action to remove the

[87] "Key points of a technical meeting Belize/Guatemala held at Miami, USA on 20th March 1998," PF.

[88] James Murphy, A Handbook on the Negotiations," Print Belize Ltd., Belmopan, 2004, pp. 85-86, footnote 186, from which this account is taken.

[89] Head of Special Branch to Commissioner of Police, 13 October 1993.

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villagers of Santa Rosa village which straddled the border. Juan Díaz continues to issue land, etc."[90]

On 27 August 1998 elections in Belize produced another change of government, with the PUP gaining 26 of the 29 seats in the House of Representatives. Said Musa, who had become the leader of the PUP on 10 November 1996 after George Price stepped down as party leader, became Prime Minister and Minister of Foreign Affairs.

The first technical meeting between Belize and Guatemala during his tenure took place in Miami on 20 November 1998. What is most interesting about that meeting is Guatemala's restructuring of its claim by Alberto Herrarte, who had been the Foreign Minister during the Webster mediation and had written extensively on the issue. He stated:

> Guatemala recognized the independence of Belize and its right to self-determination, but that right ends where its territory ends, and this can be nothing more than the Belize that was the subject of the Spanish concessions of 1783 and 1786: from the Hondo to the Sibun rivers. Although Great Britain possessed that area precariously, historical circumstances oblige us to forget about that part that belonged to the Captaincy General of Guatemala, but we cannot forget about the territory that was usurped from the Sibun to the Sarstoon rivers, which formed a part of the natural outlet [to the sea] of the province of Verapaz, as maps of the period testify. Guatemala has suffered much in its development because of that mutilation, and we are agreeable for an international tribunal to decide whether we have any rights to that territory.[91]

That position was to be officially stated in writing a year later by Foreign Minister Eduardo Stein during the final days of the Arzú government.

Meanwhile, Guatemala maintained a steady stream of letters to the Belizean MFA complaining about BDF actions against Guatemalan

[90] SORG Secretariat to NT members, 30 October, 2000.

[91] Mena to Gibson, 26 Nov. 1998, enclosing Herrarte's remarks in Spanish.

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citizens, purportedly within Guatemala. In March 1999, for example, FM Stein sent a formal protest alleging that on two occasions that month BDF soldiers had destroyed plantations in two different areas of Petén.[92] In April, Stein affirmed that "there being a territorial dispute pending between Guatemala and Belize, my government cannot accept your affirmation that the area you refer to is 'Belizean territory'".[93]

La Clarinada

On 18 October 1999, Foreign Minister Stein fully and formally set out Guatemala's position on the dispute. He would discontinue the technical meetings, since the four that had been held during the Arzú administration failed to reach agreement because of Belize's refusal to submit the dispute to an international juridical organ. He repeated his position that

> Guatemala claims a territory as its own and Belize insists in affirming that the territory belongs to it. There is nothing that ostensibly divides the two sovereignties, and in that situation the imaginary line to which we have referred on certain occasions is a completely abstract line. It is therefore evident that incidents such as have occurred can continue, and that new outrages will be committed and the Government of Belize will maintain that the deeds have occurred within its territory, which the Government of Guatemala cannot accept.

Stein explains that the independence of Belize and its right to self-determination do not *per se* give it any title to land, since that would be to recognize Britain's usurpation. But, he continues, the territory of Belize can be divided into two areas: from the Hondo to the Sibun Rivers, which had been granted in usufruct to Britain by Spain, and the area from the Sibun to the Sarstoon Rivers, which was occupied little by little after 1821, and which belonged to the province of Verapaz. The situation created by the United Nations of dealing with

[92] Stein to Musa, 17 March 1999, PF.
[93] Stein to Musa, 14 April 1999.

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two opposing principles, that of Guatemala's claim to all of Belizean territory and that of Belize's independence, he said, obliges Guatemala to restate its claim in the following manner:

> 1. The area occupied by Belize from the Hondo River to the Sibun River is within the usufruct conceded by Spain, and follows a different legal logic from the area between the Sibun and Sarstoon rivers. Guatemala has rights over that area which it can claim, but because the population of Belize was constituted therein under a different legal system, Guatemala has recognized its right to self-determination, without prejudice to the corresponding action that at the appropriate time my government can propose.
>
> 2. Guatemala claims sovereign rights over the area between the Sibun and Sarstoon Rivers, since it was an integral part of the Province of Verapaz.
>
> 3. Guatemala also claims the adjacent islands, which apart from St. George's Caye did not form part of the treaties of 1783 and 1786, and indeed were expressly excluded.

Stein insists that the controversy has an "eminently juridical character," and that "negotiating on purely political grounds, negotiations in which Guatemala has had a painful experience, will lead nowhere". Stein then formally proposes that the dispute be submitted either to international arbitration or to the International Court of Justice.

The great importance of this document, which has since been dubbed "*La Clarinada*," or bugle call, by Guatemalan officials, resides in the fact that all successive Guatemalan governments have adopted it as their position, so that it has become the State policy of that country.[94]

The government of Belize was not prepared at that time to submit the dispute to an international judicial body, because it was certain that the Belizean public would not support such a move. Belizeans felt that they should not risk going to court, no matter how strong their case

[94] It is true that some Guatemalan officials still sometimes say that the claim is for the entire territory, probably in deference to that Constitutional Court decision declaring the 1859 Treaty void, but in reality they known that would be an untenable position to take at the ICJ.

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was. But that did not get rid of the claim, and the much more powerful neighbour, whose international image was steadily improving compared to the 1970s and 1980s, was stating that there were no borders, and its people constantly invaded Belizean lands to farm, settle and pillage the resources.

Prime Minister Musa's reply to the "*Clarinada*" was delayed for almost two months and delivered days before the outgoing government left office. He disputed Stein's version of history and his interpretation of certain international instruments, and in reply to the very specific request that the matter be submitted to international adjudication, affirmed that "it would be premature to seek to define the means of solution before engaging in a frank and open discussion at the highest level," and proposed a meeting of Heads.[95]

Referendum and Elections in Guatemala

Arzú's administration, like others before it, was not popular by the time elections came around. Following the peace accords, Arzu's government made efforts to modernize the organs of State and to decentralize, giving more power to communities in education and other social areas. The several security forces were grouped into the National Civil Police, with a professional and non-military character. Efforts were made to reform the judicial system and to recognize indigenous rights. On the negative side, the government was caught favouring certain politicians in the privatization of the telephone company and practising nepotism, appointing family members to lucrative posts, etc. And despite the signing of the peace agreements, blatant repression continued, symbolized by the murder of the Catholic Monseñor Juan José Gerardi on 28 April 1998, two days after he delivered the report of the office of the Archbishop of Guatemala on human rights abuses during the war. Among those accused of the crime was the former head of President Arzú's security guard. The Commission for the Clarification of the History of the violation of human rights, established under the Oslo Agreement in 1994 delivered

[95] Musa to Stein, 14 December 1999.

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its report in February 1999, and the government hardly commented on it, and was severely criticised.

On 16 May 1999 the referendum for constitutional changes emanating from the Peace Accords was held, but in circumstances which did not bode well for the nation. The body charged with proposing the amendments recommended changes which went beyond the peace accords, such as increasing the number of members of Congress. There resulted a loss of faith by the public in the bona fides of the referendum, and also the proposed reforms were very poorly explained to the nation. In addition, conservative forces saw proposed changes like those recognising indigenous rights as inimical to their interests, and did everything possible to avoid their approval. The result: less than 20% of eligible voters went to the polls, and a majority of those rejected the proposed changes to the Constitution. Thus did the Guatemalan people lose an opportunity to reform the nation and mend the grave defects which had led to a civil war that had lasted for decades, distorted the face of the nation and claimed 200,000 lives, and they are still paying the price for that loss today.[96]

In the general elections held in 1999, the former guerrilla, the URNG, participated for the first time as a legal political force, but discredited by the dismal failure of the referendum and plagued by divisions, they suffered a miserable defeat from which they never recovered. The real contest was between the candidate for Arzù's party (PAN), Oscar Berger Perdomo, and Alfonso Portillo, for the *Frente Revolucionario Guatemalteco* (FRG), led by former dictator Efrain Ríos Montt. In the second round on 26 December 1999 Portillo, who had run an effective populist campaign promising to solve all the peoples' problems, won by a very large margin.

For Belize, the outlook for dealing with the new government of Guatemala was not good. In the first place, it was dominated by former dictator Ríos Montt, considered a hard-liner on the Belize issue. To make matters worse, he had appointed as Foreign Minister Gabriel Orellana Rojas, who as a lawyer had twice championed the case against Belize

[96] "¿Por qué el NO en la Consulta Popular?," revista *Envío*, no. 208, Guatemala, Julio 1999.

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in the Constitutional Court: in 1992 he unsuccessfully challenged Serrano's recognition of Belize's independence and in 1997 he succeeded in having the Court decide that the 1859 Treaty has no validity in the State of Guatemala and that internationally it may be treated as null and void. The Belize government braced itself for a difficult time ahead.

The Facilitation Process

Portillo invited Musa to his inauguration on 14 January 2000, and in his address promised to seek an early definitive settlement, in accordance with international law. Almost immediately thereafter, however, border incidents began to increase, involving the incursion of Guatemalan nationals into Belize, either to cut lumber, plant crops, harvest xate (an ornamental plant), or settle on Belizean land. In one such incident, on 24 January, a Guatemalan national was killed by return BDF fire. A Belizean report noted that the area "has been recently active with marijuana cultivation, hostile encounters with illegal farmers and several sightings of armed men," and that in November 1999 Belizean patrols in this area had been fired upon. The report was forwarded to Foreign Minister Orellana Rojas, inviting his government to assign an official to join in the investigation of the incident and calling for measures to be agreed to prevent such incidents and the resulting tensions along the border.[97]

The fact is that certain Guatemalan officials had secretly made known to Belizean diplomats that the hawks within the *Consejo de Belice*[98] had advised the in-coming government to create serious incidents along the border in order to raise the international profile of the dispute and bring pressure on Belize to take the case to the ICJ. They also informed that in September 1999 Judge Eric Suy, a former Under Secretary General and Legal Counsel of the UN, had delivered a legal opinion on the

[97] Musa to Orellana, 28 January 2000, with report enclosed.

[98] For the record, this long-standing unit within the Guatemalan foreign ministry was disbanded in 2013 by the Molina administration. Towards the end of 2015 the Belize portfolio was taken over by the *Unidad de Soberanía y Dominio*, a unit within the Foreign Ministry that already existed for some years and dealt with boundary problems with Mexico, principally. Its statute was then changed to incorporate the question of Belize.

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dispute at the request of the government of Guatemala, and like Judge Manley Hudson half a century before, had concluded that they had no case against Belize and no chance of getting any Belizean territory. The Guatemalan government has suppressed this Opinion, like it has the Hudson Opinion.

On 24 February, Guatemalan soldiers kidnapped four members of Belize's security forces on border patrol, marched them into Guatemalan territory, and charged them with illegal entry and possession of firearms. After strong protests by the Belize government and by the international community (in particular from the UK, US, Spain and the Vatican), the Guatemalan authorities released the men on bail and they were spirited out of the country by Ambassador Salvador Figueroa, who was later declared *persona non grata* by the Guatemalan government. Talks had been scheduled for 25 February, and delegates from both countries were already in Miami when news of the kidnapping reached them, and the Belizean delegates walked away.

Guatemala then accused Belize of using this incident as an excuse for its soldiers to harass, intimidate and put at risk the lives of inhabitants of Santa Cruz, and of violating the sovereignty and territorial integrity of Guatemala.[99]

At the same time, the Guatemalan government conducted an international campaign to seek support for its position that the dispute should be resolved by the ICJ. The Guatemalans were in fact gaining international support for that position, since numerous negotiating sessions over the years had not brought the matter any closer to resolution. Indeed, when Assad Shoman represented Belize at an EU/Central American meeting in Portugal in February 2000, many delegations, including the British, urged on him the desirability of submitting the dispute to the ICJ, and the US government had taken the same stand.

When he met Foreign Minister Gabriel Orellana at the same forum, the Guatemalan explained that they had come to the conclusion that negotiations never led anywhere because Belize remained totally

[99] Orellana to Gaviria, 3 March 2000.

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inflexible on the territorial issue, while manipulating international opinion to make Guatemala appear to be intransigent and aggressive. Clearly the only way to resolve the dispute was by some international judicial mechanism, either arbitration or the ICJ. Shoman himself believed that this was the only possible way forward, since neither country could negotiate away their respective long-held positions on territory. He knew, however, that Belize would not agree to that, so that although direct negotiations were clearly not going to work, some other mechanism would need to be found. In subsequent informal meetings in different international and regional forums, the two men finally agreed in Havana on the idea of a Panel of Facilitators, made up of one person appointed by each country along with the OAS Secretary General as a Witness of Honour. They would propose areas where negotiations could lead to agreement and those where a judicial or quasi-judicial process would be necessary. At first Orellana insisted that the recommendations of that forum be *vinculante*, or legally binding, but he finally agreed to drop that requirement[100].

The agreement was formalised at a ministerial meeting in July at the OAS headquarters. Belize appointed Shridath Ramphal, former Secretary General of the Commonwealth, as its Facilitator, and Guatemala appointed US attorney Paul Richler. They, together with the Secretary General of the OAS as a witness of honour, and in full consultation with the Parties, were charged with making proposals for the resolution of the dispute. Initially anticipated to last a year, the process continued until the facilitators presented their proposals in September 2002. There is abundant and readily available material on that process, in published papers and the web sites of both governments and of the OAS, but I want to give an idea of the context in which it developed, and how the parties conducted themselves.

[100] As it turned out, this was unfortunate for Belize, because the recommendations of the facilitators, as the nominees of the parties came to be called, were very favourable to Belize. At the time, however, Belizean officials as well as the people in general were very sceptical of the OAS, and would not have agreed to a binding resolution. Indeed, it was hard enough to convince the Belize government to accept the OAS Facilitation Process without that condition. See Musa to Orellana, 25 April 2000, where the essence of the agreed process is set out, PF.

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First of all, the border incidents continued throughout. There were dozens of episodes of peasants crossing the border, setting up temporary housing and planting crops. On many occasions the BDF's treatment of the invaders, who sometimes shot at BDF soldiers, was bitterly criticized in the Guatemalan press, and was the subject of strong protests from the Guatemalan government. The incidents took up much of the time of the facilitators and the OAS and sometimes threatened to derail the process.

Belize organized for the process by establishing a negotiating team[101] that prepared and carried out all the negotiations, a Secretariat on Relations with Guatemala (SORG) within the Foreign Ministry to conduct research and service the meetings, and a National Advisory Commission (NAC) with wide representation from Belizean society. Throughout the entire process, the team leader kept the Leader of the Opposition, Dean Barrow, closely informed and took no major decision that was not endorsed by him as well as by the Prime Minister. Belize also carried out a wide-ranging and continuous campaign to maintain international support, and won full membership of SICA, the Central America Integration System.[102]

In late 2000 Belize engaged four eminent international lawyers[103] to write a legal opinion on Guatemala's claim, which when delivered in late 2001 became a powerful tool in presenting Belize's case. Guatemala

[101] Assad Shoman was appointed Head of the team, and led the process in different guises and from different parts of the world until its final phases in 2007. He worked in close consultation with all its members, but especially with Alfredo Martínez, the delegate appointed by the Opposition. Indeed, in an unprecedented and still unique move, Martínez, a major UDP leader, was made Ambassador to Guatemala by the PUP government in 2003, and he continued there until his untimely death in 2015. After Martínez was appointed Ambassador to Guatemala, the Leader of the Opposition appointed Diane Haylock as his representative on the NT. Other members of the team included, at various times, Moises Cal, Eamon Courtenay, Salvador Figueroa, David Gibson, Stuart Leslie, James Murphy, Néstor Méndez, Alexis Rosado, Lisa Shoman, Godfrey Smith and Alan Usher. Some of these were at times ambassadors or ministers of government, one a Brigadier General.

[102] It was admitted as an observer in 1994 and to membership in 2000.

[103] Sir Elihu Lauterpacht (British), Judge Stephen Schwebel (US), Professor Shabtai Rosenne (Israeli) and Professor Francisco Orrego Vicuña (Chilean).

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also became active on the international front to seek support, and this time it was not the pariah State that it had been in the 1970s, since the military dictatorships had ceased to exist and formal democratic governments were in place.

With regard to Britain, there was a problem that began to develop early on and that still prevails: it suddenly took it upon itself to be "even-handed" with regard to the territorial claim, which it had itself allowed to fester and had bequeathed to Belize. In August 2000, for example, John Battle, Minister of State in the FCO, was reported by the Guatemalan press as saying that Britain had no "favouritism toward the ex-colony," and that Belize would have to "support its own defence systems in the future".[104] Foreign Secretary Robin Cook assured PM Musa that "the UK remains no less committed than in the past to the territorial integrity of Belize," but insisted that "if we were simply to denounce Guatemala publicly at every turn, we would compromise our ability to play such a helpful role".[105]

Belize wrote to and met with many parliamentarians of both parties, including those involved in the independence process like Ted Rowlands and Ivor Richard, with members of the British parliament's Black Caucus and sought support at other mechanisms like the UK/Caribbean Forum. The Belize High Commission in London developed a mechanism called the "Belize Group of Friends" with parliamentarians from both the Lords and Commons, and met and communicated with the group in support of Belize's cause. The UK was helping Belize with the BDF and with support on mapping, etc. from the Hydrographic Office, but what Belize wanted were clearer signals from Britain to Guatemala that it would not tolerate violations of Belize's territorial integrity. The British, however, argued that they had to be "careful not to get too tough on the Guatemalans . . . there is a danger of being shut out by the Guatemalans if Britain is perceived as being too biased in favour of Belize".[106] The difference of opinion was never resolved.

[104] Shoman to Battle, 24 August 2000, PF. The British alleged that he had been misquoted.
[105] Cook to Musa, 26 June 2000, PF
[106] Meeting between Prime Minister Said Musa and John Battle, Minister of State for Latin American Affairs, FCO, London, 14 June 2000, PF.

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Surprisingly, and after a slow start, the US State Department was extremely open to, and helpful towards, the Belize position, especially during the Facilitation Process and after, when Guatemala reneged on the agreements. Indeed, the US often took stronger positions in favour of Belize than did Britain, as Shoman had occasion to tell the British at a meeting in London in 2003.[107]

The Facilitation Process proceeded through various mechanisms. Since it was not a bilateral negotiation, the Parties never met formally except in the presence of the facilitators, although there were many informal meetings, especially of the heads of delegation, where important advances were made. The facilitators often met on their own, with advice from the countries they represented, and came up with proposals which would then be debated by the two countries either separately with one or both facilitators or in plenary meetings. Belize and Guatemala presented documentation substantiating their respective positions to the facilitators and made oral presentations to them in May 2001.[108] There followed regular meetings where the two countries argued over suggestions made by the facilitators, and little by little a mass of agreed points began to be established.

What helped enormously, what indeed could be described as definitive in terms of the final proposals, was the decision to bring Honduras into the process, in so far as maritime areas were involved. Honduras shared maritime borders with both countries; it was having problems with Guatemala on the definition of their maritime border, and a clause in its constitution claimed sovereignty over Belize's Sapodilla Cayes. Its attitude in the negotiations, however, was extremely positive and generous, and the Facilitators could not have arrived at a formula acceptable to Belize and Guatemala without the participation of Honduras.

The hands of the Guatemalan negotiators were tied by the excessively active role claimed by, and conceded to, the Comisión de Belice, many

[107] Meeting with Donald Anderson, chair of the UK's parliamentary select committee for foreign affairs, 2 December 2003, House of Commons, London, PF.

[108] For the Belize presentations, see "Belize Refutes Guatemala's Claim," Government Printer, Belize, undated. The Guatemalans did not provide a written copy of their presentation.

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of whose members were old "dinosaurs" that held very hawkish positions on the matter. In addition, local politicians and businessmen, and even a priest in Petén, often provoked situations, either for political or monetary gain, that complicated the negotiations. The negotiations were extremely arduous, especially at the very end, when it became clear that Guatemala would not be awarded sovereignty over any territory, neither land nor island nor sea, but it must be emphasised that before the Facilitators presented their final proposals both governments agreed to every word in the document.

But arriving at agreed proposals was only part of the facilitators' work; as the process developed, much of their attention, and that of the OAS, had to turn to resolving problems caused by Guatemalan incursions and settlements on Belizean land. Apart from the big problem posed by the long-standing settlement of Santa Rosa (whose inhabitants claimed to be located in Guatemalan territory, where they had a school administered by Guatemalan authorities and flew the Guatemalan flag), throughout the Facilitation Process and after new settlements would spring up and means had to be found to deal with them. This was done by what were called "Confidence Building Measures," first agreed in 2000 and amended in 2003 and 2005, and still in force at time of writing.

Establishing the Facilitation Process

A ceremony to install the Panel of Facilitators was held at the OAS on 31 August, where the two governments agreed that "all issues related to the territorial referendum will be addressed by both Parties solely within the framework of this process while it is underway, to the exclusion of any other political, diplomatic or judicial forum," and that "the Facilitators will be responsible for guiding the process and shall have the broadest freedom to interpret the documents signed on July 20, 2000 and to make recommendations".[109]

The Facilitators visited the two countries from 18 to 21 September, met separately with representatives of the two governments and flew

[109] "Belize-Guatemala Joint Communiqué," 31 August 2000.

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with them by helicopter over the border area, checking out Santa Rosa and other sites where Guatemalan settlements within Belize would appear, and landed near the Gracias a Dios and Garbutt's Falls monuments. The principal result of the visit by the Facilitators was that they persuaded the Parties, who after months of trying had failed to agree to CBMs, to give that task to the Facilitators. In order to make the CBMs effective, they would have to get the Parties to agree to a line that for the purposes of the CBMs divided the ground that on one side would be Guatemalan and on the other Belizean controlled, not an easy matter when Guatemala continued its policy of refusing to recognize any borders.

The Confidence Building Measures of 8 November 2000[110]

Why did Belize agree to Confidence Building Measures (CBMs) and what were their purpose? The Facilitation Process had one major goal: to resolve the territorial dispute and so end Guatemala's claim. But the facilitators quickly found out that their job would be impossible to fulfil as long as there were constant conflicts between the two countries caused by Guatemalan citizens crossing into Belize, some to create illegal settlements near the border, others to carry out various acts of pillage. Such incursions had become commonplace, and the BDF's efforts to contain them were never sufficient. They had limited resources to patrol such a large wooded zone, often having to walk for hours to reach certain areas. They would remove illegal settlers, destroy their huts and crops, and in a short time there would be the same and others in the same location or elsewhere. For Belize, the incursions and illegal settlements represented invasions of its territory which must be stopped and removed. For Guatemalans, the actions of the BDF were regarded as hostile acts against ordinary people who claimed to be within their country. The Guatemalan press reported these incidents as aggression against their people by brutal Belizean soldiers, and the government issued constant protests to the Belize government. It was a potentially explosive situation, and there could be no peace along

[110] See Appendix 10 for the CBMs.

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the border, and no normal relations between the two States, until that situation was brought under some control.

The CBMs, therefore, were designed to regulate and control the Guatemalans who had entered Belize and established a presence near the border, keep the peace along the border and create a climate favourable to the process of conciliation that would lead to a final settlement, which was expected to take a year or two at most. The first CBMs became the model for subsequent CBMs which are still in force at time of writing, so it is useful to explain them in some detail.

The first indispensable thing that had to be done was to define a line that separated the two countries for the purposes of the CBMs. This was the most difficult thing for Guatemala to accept, since its official policy, having declared the 1859 Treaty null and void, was that there was no recognized border. In the end it accepted what was exactly the borderline used by Belize in accordance with that Treaty, but it was called an *Adjacency Line (AL)*. It was agreed that the use of this line did not constitute an agreement of the Parties that it represents the international boundary between Belize and Guatemala. With regard to the improvised settlements, an area of one kilometre from the AL on both sides of the border was identified for a special regime to apply to the illegal settlements within that area, which was called the *Adjacency Zone* (AZ).

The Parties further agreed to work together to locate and identify all reference markers along or in the vicinity of the Adjacency Line, and to cooperate in clearing areas around the reference markers so that they can easily be seen, although these too, like the AL, were not being recognized by Guatemala as defining a border. They would jointly prepare a map of the entire Adjacency Line, utilizing available technical assistance from friendly countries, identifying all reference markers and all settlements located within one kilometre of the Adjacency Line (either to the east or to the west).

It was agreed that all human settlements established within the AZ up to 1 October 2000 shall remain undisturbed during the pendency

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of this negotiation process,[111] and that there shall be no new settlers joining any such settlement, and no extension of any existing settlement. Any settlement established within the Zone to the east of the Adjacency Line after 1 October 2000 may be removed at the option of the Government of Belize. For settlements beyond the AZ, i.e. more than one kilometre from the border, the Parties were to agree a protocol to cooperate for their removal. Guatemala agreed to take effective measures to dissuade its citizens from establishing new settlements or joining existing settlements, and to implement a program to identify land in Guatemala for those who would otherwise be likely to attempt to settle inside Belize.

Most importantly, Article 6 (B) declared: "Without prejudice to each party's claims of sovereignty over any part of the Adjacency Zone, all persons residing to the west of the Adjacency Line shall be required to abide by and respect the laws and law enforcement authorities of Guatemala, and all persons residing to the east of the Adjacency Line shall be required to abide by and respect the laws and law enforcement authorities of Belize". Guatemala thereby acknowledged that Belizean law and its authorities prevailed to the east of the Line, that is, within the limits defined by the 1859 Treaty as being Belizean territory.

The Parties agreed that military and police patrols in the Zone be coordinated, with close communication between the security forces of both countries, including regular military to military (or police) contact throughout the Zone, and at the highest national level.

This "special regime" within the Zone was the most difficult and delicate of the CBMs, and conflicting interpretations of them would bedevil the entire Process. The other CBMs dealt with issues like the promotion of community to community contact across the Adjacency Line to improve relations and understanding and other matters. Incidents on the ground conducive to tension were to be avoided, and in the event of such an incident, the Parties would cooperate to contain it and prevent its recurrence.

[111] But any settlement established to cultivate any illicit drug shall be removed.

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Article 12 called on the Parties to "monitor the implementation of these confidence-building measures, and work together to resolve any problems or issues that might arise. Any problems or issues that cannot be resolved by the Parties themselves, in the first instance, should be referred to the facilitators for their assistance in helping the Parties reach agreement. The facilitators shall be able to request the Secretary General of the Organization of American States to appoint a fact-finding mission in the event of an incident or if they consider it desirable".

One of the first positive and practical results of the CBMs was the agreement on military cooperation signed in Guatemala on 15 November 2000.[112] Military attaches were appointed, a military patrol program by each State in the Adjacency Zone was established, and it was agreed that a monthly plan of operations in the Zone would be exchanged, as well as the patrol reports of the previous month. It was agreed that "Any patrol contact within the Adjacency Zone will be friendly. Therefore, for no reason whatsoever will there be use of force and no detentions or arrests shall be made. To the contrary, they will cooperate in order to prevent incidents and confrontation".

But as would happen throughout the Facilitation Process and beyond, one thing was what the Guatemalan government would agree on paper and another very different thing was what was happening on the ground. Even as these agreements were being reached and solemnly signed, incursions by Guatemalans across the border were making a mockery of these accords and leading to heated confrontations. Any serious treatment of these border incidents would require an entire book, but it is necessary to understand that throughout all these years there have been incidents along the border involving incursions by Guatemalan civilians plundering Belize's resources, establishing settlements and otherwise violating Belize's sovereignty. It was clear that these incidents were instigated by Guatemalans with the object of establishing "facts on the ground," and with the knowledge and support of the government of Guatemala.

[112] Joint Declaration, PS Ministry of National Security of Belize and Vice Minister of National Defence of Guatemala, Guatemala City, 15 November 2000.

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New Year Crisis and The Miami Plan of Action

Border incidents had reached such a pitch by December 2000 that there was a real possibility of confrontation between the BDF and GAF, and Shoman went to Guatemala on 28 December, where he met with President Portillo and Foreign Minister Orellana and they agreed that measures must be taken to remove tensions at the border.[113] The Guatemalans refused to agree, however, that a new settlement beyond the AZ be removed unilaterally by Belize, and insisted that the matter be referred to the Facilitators, and in a spirit of conciliation Shoman agreed to do so, warning that if the removals were not carried out within a reasonable time Belize would act on its rights and expel them itself.

Shoman wrote to the Facilitators on 1 January 2001 detailing the prevarications of the Guatemalans and asking them to rule on those interpretations of the CBMs where the Parties differed. He also noted that on that very afternoon the BDF had discovered a new settlement of 221 persons, with 28 thatched houses and seven acres of cleared land, at Machaquilá, 1.8 km. east of the AL, and informed the Facilitators that Belize would expel these illegal settlers. There were other incidents; just in the first half of January there were over a dozen protest notes, letters and declarations from both sides of the border. On the Guatemalan side, the Ombudsman issued a report alleging human rights abuses by BDF personnel against Guatemalan villagers in Tres Puentes, Poptún, in Petén.[114]

The tense and even hostile atmosphere at the border impelled the Facilitators to call an emergency ministerial meeting in Miami on 16 January. Five key decisions were taken in the Miami Plan of Action. First, it was agreed to ask the Pan American Institute of Geography and History (PAIGH) to determine the coordinates of the markers at Gracias a Dios, Garbutt's Falls and Aguas Turbias, identify the Adjacency Line between these points and prepare a map of the Adjacency Zone. Second, the Parties were to prepare a census of all settlers and settlements in the AZ. Third, the PAIGH was to determine the positions of Río

[113] Record of meetings in Guatemala City, 28 December 2000 (prepared by Belize delegation), PF.

[114] *Procurador de los Derechos Humanos*, Guatemala, 12 de enero del 2001.

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Blanco, Machaquilá and Valentin Camp, on the basis of which the Facilitators would determine their status under the CBMs. Fourth, the Facilitators prepared two Protocols, which were agreed to by the Parties, for the removal of settlers inside the AZ but not entitled to remain there under the CBMs, and for the removal of settlers located outside the AZ. Fifth, the Parties agreed that the existing reference markers at Gracias a Dios, Garbutt's Falls and Aguas Turbias constitute reference markers within the meaning of CBM 3, and that they would commence clearing the areas around them to a radius of 7.5 meters. Belize was to furnish the coordinates of other markers which it considered reference markers, and the Facilitators would determine whether they were so under the CBMs. Thereafter, either or both Parties may proceed to clear around any reference marker in accordance with CBM 4.[115]

In a letter delivered to the Parties in Miami, the Facilitators replied to the seven questions addressed to them by Shoman in his letter of 1 January, and for the most part agreed with Belize's interpretations. In particular, they found that the special regime in paragraph 6 of the CBMs applied only to those settlers or settlements within the Adjacency Zone and not to those further into Belize as the Guatemalans had claimed. Two days later, Belizean and Guatemalan representatives from their OAS Missions in Washington met with OAS Deputy Secretary General Luigi Einaudi and several USA representatives, including one from the National Imagery and Mapping Agency (NIMA, offered by the US government to help the PAIGH). Mr Paul Peeler of NIMA was assigned to perform the task and procedures were agreed.[116]

At a ministerial meeting at the OAS on 5-7 February,[117] Mr Peeler presented the report on the coordinates of the reference markers and on the precise distances between the settlements and the Adjacency Line, and in a further letter on 7 February he provided the distance

[115] Plan of Action to implement the November 8, 2000 Agreement on Confidence Building Measures, 17 January 2001.

[116] "Summary Notes of Meeting of representatives of NIMA,OAS, US, DOS, Belize and Guatemala January 19, 2001, Office of Luigi Einaudi, OAS Headquarters, Washington, D.C," 19 January 2001.

[117] Minutes of the Ministerial Meeting Between Belize and Guatemala February 5-7, 2001. Prepared by the OAS.

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of each survey point from the AL.[118] Peeler presented the map requested, and the Facilitators ruled that the settlements and associated dwellings at Río Blanco and Machaquilá, and all but one dwelling at Valentin Camp, were more than one kilometre to the east of the AL, and therefore subject to the Protocol for the Removal of Settlements outside of the AZ. The Parties formally accepted these recommendations and agreed to issue a joint request to the International Organization for Migration (IOM) to undertake the census required under the Plan of Action.

There was also agreement on the procedure for addressing the merits of the territorial differendum, with the first written presentation to be made by Guatemala by 30 March 2001.[119] The Facilitators provided a Guideline for Public Statements to be made by representatives of either Party, designed to keep tensions down.[120]

The Facilitators also responded to the queries made by Belize earlier.[121] They declared that the nationals of both countries, including ministers or officials, "should respect the Adjacency Line . . . and should refrain from going beyond it, except by mutual agreement". This determination by the Facilitators helped to set the parameters early in the process, making it clear that the Adjacency Line was like a border that could not be crossed without permission.

A serious initial crisis had been overcome and the Parties had agreed on a path to pursue the resolution of the dispute. Belize had made important gains, but they were to be contested occasionally by a frustrated Guatemala. For example, the Guatemalan Foreign Minister wrote the Facilitators that they cannot accept or implement the determination by the Facilitators that Guatemalan officials must get permission from Belize to cross the Adjacency Line, because the

[118] Peeler to Gaviria, Orellana and Shoman, 7 February 2001.
[119] "Agreement on procedure for addressing the merits of the territorial differendum and other procedural matters," 7 February 2001.
[120] Ramphal/Reichler to Orellana and Shoman, "Guidelines for Public Statements," 7 February 2001.
[121] "A Note of Procedural Recommendations by the Facilitators," 7 February 2001.

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Constitution of the Republic of Guatemala prevents it from so doing".[122] The Foreign Minister was negotiating in good faith, but hawks in Guatemala kept obstructing his attempts. This became a continuous occurrence throughout the process, and Belize complained that "it appears that the position of the government of Guatemala is that it can invoke that country's constitution in order to reject already accepted recommendations of the Facilitators. This renders uncertain all agreements and understandings reached in this process".[123]

In the meantime, however, Belize was in a good place. The Adjacency Line, which faithfully replicated the borderline traditionally used by Belize, was recognized as a line marking the respective jurisdictions of Belize and Guatemala; the illegal settlers were to be removed, and a procedure had been agreed for considering the merits of Guatemala's territorial claims. The removals were not easy, as Guatemala tried all sorts of manoeuvres to avoid them, but in due course the settlers were removed.

Belize kept its allies closely informed. Already by 16 February, for example, the Heads of Government of CARICOM called on both governments "to implement fully and in good faith all agreements reached between them in the current process under the auspices of the OAS, and in particular the measures designed to avoid tension along their common border or in the territory of Belize caused by unauthorised settlers".[124] Guatemala was especially peeved that the words "common border" were used, but the statement served to put the international community on alert and on side with Belize.

Reactions of Maya Peoples

The Guatemalan government had resorted to a manoeuvre it had tried previously, before and after independence: to pretend that the indigenous inhabitants in southern Belize needed the help of and owed allegiance

[122] Orellana to Ramphal, Reichler and Gaviria, 13 February 2001.
[123] Shoman to Ramphal/Reichler, 21 February 2001.
[124] Statement on Belize/Guatemala Relations, CARICOM Heads of Government, Bridgetown, Barbados 16 February 2001.

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to the Guatemalan government. In January 2001, the Maya of southern Belize issued a "Millennium Declaration" that declared their rights as indigenous peoples and further stated:

> We have become aware that certain elements in the neighbouring State of Guatemala have attempted to use our Maya Communities in their unfounded and unjust claim to territory belonging to our State of Belize, pretending to be concerned for the welfare of Maya communities living in Belize. We categorically disassociate from those manoeuvres. We do not seek, we do not welcome, and indeed we emphatically reject, any such offer of assistance from the State of Guatemala.
>
> The Maya Peoples of Belize for themselves consider and affirm that the borders between our State of Belize and the neighbouring State of Guatemala are those which were agreed to by Treaty in 1859 by Britain and Guatemala and we pledge our full and unconditional support to the State of Belize in preserving the integrity of its territory and in rejecting all attempts by the State of Guatemala to claim any part of its territory or to encroach upon it.

The Maya leaders also gave their full support to the Facilitation Process, and called on the government of Belize "to ensure that in arriving at a settlement it maintain the territorial integrity of our State and ensure its full sovereignty".[125]

On the Guatemalan side, on 14 February 2001 a "Maya Forum of Guatemala," issued a "Mayan Declaration regarding the territorial differendum Guatemala-Belize," declaring that the Adjacency Zone is ancestral land of the Maya people, and that it is inadmissible to take decisions on a borderline without consulting the indigenous people in that area. They therefore do not recognize the agreements reached at the OAS and demand that they be voided and renegotiated

[125] "Maya People of Southern Belize Millennium Declaration" signed on 12 January 2001 by "The Maya Leaders of Southern Belize, on behalf of the Maya Mopan and Maya Q'eqchi People of Toledo, Belize," issued by the Press Office, Belize, Belmopan, 12 January 2001.

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with the Maya peoples to reach more humane accords. Most significantly, the declaration called on people in the communities who were to be removed from Belize to "resist and defend what is historically theirs". The declaration asked for support from Maya communities in both countries and the UN, OAS, ILO, and MINUGUA (UN Mission in Guatemala), but no-one reacted, as it was clearly a spurious exercise.

Arguing the Case

Guatemala delivered its written statement of claim and supporting documents to the Facilitators on 30 March 2001.[126] Belize delivered its reply on 30 April[127] and Guatemala made a final submission on 15 May 2001.[128]

Guatemala claimed that through the 1859 Treaty Guatemala ceded land between the Sibun and Sarstoon Rivers to Great Britain in exchange for a compensation, and the Treaty is invalid for failure to pay the compensation. Furthermore, the treaties with Spain which gave Britain certain rights of usufruct from the Rivers Hondo to Sibun did not include the sea nor the islands, save for St George's Caye. With regard to maritime areas, the line projected from the mouth of the Sibun River would be the northern maritime frontier.

The Belize reply went directly to the effect of the boundary provisions of the 1859 Treaty and their ratification by the 1931 Exchange of Notes relating to the identification of two cardinal points in the boundary. The ICJ would decide the matter on those treaties alone, and not follow Guatemala into "the complicated, controversial and now manifestly irrelevant and illusory historical web that it has chosen to weave". Additionally, the reply noted the fact of Britain and Belize's actual occupation and administration of the disputed area and the absence of any evidence of competing Guatemalan occupation or administration of the area. Finally, in 1981 the people of Belize exercised their right of self-determination throughout the whole territory

[126] Orellana to Ramphal/Reichler/Gaviria, 30 March 2001.
[127] Shoman to Ramphal/Reichler/Gaviria, 30 April 2001.
[128] Orellana to Ramphal/Reichler/Gaviria, 15 May 2001.

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of Belize, with the unanimous approval of the members of the United Nations (except Guatemala).[129]

The issues were joined on paper. The Facilitators had the written arguments from both sides to use as a basis "to find formulae for a peaceful and definitive resolution of the territorial differendum between the two countries". From 21 to 23 May at OAS Headquarters both governments presented their case orally to the Facilitators and the SG of the OAS.[130] In the meantime, the situation on the ground continued to take up much of the time of the Facilitators.

Riding the waves

On 24 April 2001, the ministerial meeting at the OAS began with the good news that Belize had cleaned around the markers at Garbutt's Falls and Gracias a Dios without incident. Belize presented evidence of Guatemala's contemporaneous knowledge of the British placement of another 30-odd markers; Guatemala would respond and the Facilitators would decide. They discussed pending border issues and Guatemala claimed to have begun a campaign to discourage families from moving to the east of the AL.

At a ministerial level meeting held in Washington 16-18 July 2001, the Facilitators made the following recommendations, which both countries accepted: The Parties will pursue a definitive solution via this facilitation process. The Facilitators, taking due account of all factors (e.g. legal, historical, political, etc.) will present proposals for an honourable and permanent resolution of the territorial differendum. In preparing the proposals the Facilitators will act in consultation with the Parties and with all others whose cooperation might facilitate progress. The various elements of the proposals will form a single undertaking and nothing will

[129] A fuller account of the legal arguments of both sides is in Chapter 6.

[130] For a verbatim record of the sessions where each country presented its case and replied to the other, see "Belice-Guatemala Ministerial Meeting, 21 de mayo de 2001, Washington, D.C." prepared by the OAS Secretariat.

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be regarded as agreed and binding until all elements are approved by the Parties in accordance with their respective constitutional processes.[131]

Groping Towards the Proposals: Honduras Holds the Key

By February 2002 the two Facilitators were already hard at work to come up with final proposals to resolve the dispute. They thought that a three-pronged approach would lead to a solution: an agreed land boundary, an arrangement on maritime areas, and a "development fund" that would offer considerable financial resources to both Parties. On the latter, in Washington in mid-March 2001 Ramphal met Enrique Iglesias (not the singer, the President of the Inter-American Development Bank, IDB) and got his assurances of support from the Bank for the development fund, including managing it if desired. The one issue that was bound to prove essential in reaching a solution was the sea. Belize had always made it known that while it would never cede land, it was prepared to accommodate Guatemala with an outlet to the sea and maritime areas. Honduras was key in devising a package that would be attractive to Guatemala.

The Constitution of Honduras of 1982 includes Belize's Sapodilla Cayes as part of Honduran territory—for the first time. Indeed, the earliest official note making Honduras' claim occurred on 19 March 1981, eight days after the publication of the Heads of Agreement that spoke of Guatemala's use and enjoyment of the Sapodilla Cayes and rights in adjacent seas. The Hondurans presented a formal protest to the British claiming that the Cayes belonged to Honduras, and demanded that the delimitation of the seas in the area be accomplished with its participation".[132] The British reply, while affirming sovereignty over the Cayes, agreed that the matter of delimitation would be discussed with Honduras should any question of delimitation arise in waters between Belize and Honduras.

[131] "Belize-Guatemala Negotiations. Recommendations by the Facilitators," Washington, D.C., 18 July 2001.

[132] Honduran note of 19 March 1981, in "Research Department note 26/82 The Sapodilla Cayes," American Section, Research Department, FCO, November 1982.

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Honduras had done little to pursue its claim to the Sapodillas, and had indeed in multiple ways recognized Belize's sovereignty over the cayes. In September 1996, at a time when it seemed a Belize-Guatemala agreement was imminent, Honduran Foreign Minister Urbizo-Panting told Belize Foreign Minister Dean Barrow that although the Sapodillas were in both their constitutions, he did not wish to dispute their ownership then, but rather propose the establishment of a Marine Park. Immediately after the land issue is settled, Barrow said, three-way discussions on maritime delimitation could take place.[133]

As we have seen, that never happened, but in 2000 it looked as if it might, and the Belize NT wanted to make sure that Honduras would play a positive role in helping to resolve the dispute. On 21 March 2000, the government of Honduras issued a decree defining straight baseline systems on both the Atlantic and Pacific oceans for delimiting its maritime areas.[134] Guatemala sent a note to Honduras rejecting its unilateral fixing of straight baselines and its proposal of maritime areas, and reiterating that the inclusion of the Sapodilla Cayes in its Constitution did not produce any juridical effects in detriment of the sovereign rights of Guatemala.[135] In August, on the occasion of Portillo's visit to that country, Honduras stated it was willing to "suspend temporarily and exceptionally with respect to Guatemala the application of the Decree, while consultations on the matter are undertaken".[136]

It was time to talk to the Hondurans. On 3 July Ambassadors Salvador Figueroa and Fred Martínez met with Foreign Minister Roberto Flores and special adviser Carlos Lopez Contreras, Honduras' top lawyer on maritime law. Martínez asked pointedly whether Honduras' newly proclaimed baselines included any area around the Sapodilla cayes, to which the minister replied: "the Belize Constitution predates

[133] C. Peyrefitte, "Minute to File, Belize-Honduras Bilat at the UN 27 September 1996".
[134] *La Gaceta*, (*diario oficial de la República de Honduras*), 29 March 2000.
[135] Orellana to Flores, 2 June 2000. Somewhat belatedly, on 7 December 2000, the Belize MFA replied to the Guatemalan note to Honduras of 2 June, stating that Belize cannot accept the contents of the letter in so far as they lay claim to sovereignty by Guatemala of any territory, including waters, islands and cayes over which Belize has sovereignty
[136] Press release of 11 August 2000.

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the Honduras Constitution by one year," and that no references or baselines originate in or encircle the Sapodilla cayes.[137]

In October 2001, the Honduran government indicated its desire to have its legal representative, Phillipe Sands of a London firm, discuss maritime boundary issues with the Facilitators. Both facilitators wanted their own legal adviser, and the OAS asked the USA to provide a lawyer free of cost, which it did: Mr J Ashley Roach of the US Department of State (DOS). Belize then undertook to employ Carl Dundas (of the Commonwealth) to advise its Facilitator, but the Guatemalan Facilitator thought this would not look good, and in the end both the Belize and Guatemalan governments agreed to share that cost.

Ramphal, Reichler, Dundas, Roach and Chris Roy of the OAS met on 13 October with Sands, who said he wanted to explore the possibilities of Honduras being helpful in the maritime delimitation between the three countries. Sands indicated that Honduras would be willing to reduce its entitled share of maritime areas so that Belize and Guatemala could reach a solution to their dispute, but suggested that Belize would be expected to contribute more than Honduras. It was agreed that Roach and Dundas, along with Sands, would prepare a proposal and submit it to a meeting of the group in London on 9 December.[138]

On 17 October, Shoman, accompanied by Belize's ambassador to Guatemala Moises Cal and Ambassador Fred Martínez, met with Honduran Foreign Minister Roberto Flores in Tegucigalpa. At a later meeting with experts, including Carlos Lopez, Shoman clarified that there will not be any agreement with Guatemala which would include ceding any mainland or island territory, so the discussion must proceed with that as a given. On the Sapodilla Cayes, Lopez said it was not their intention to affect the *status quo*: leave the sovereignty issue out of this, he suggested, keep it frozen, and with time Belize will forever end up with the Cayes. They can be declared an Ecological park managed and conserved by three countries. This would save face for both Honduras and Guatemala.

[137] Summary of meeting at the Honduras Foreign Ministry, Monday July 3, 2000.
[138] "Record of meeting between the Facilitator and a Representative of Honduras at OAS HQ to discuss maritime boundary issues," 13 October 2001.

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Shoman said that Belize could not consider Guatemalan involvement in joint administration of an ecological park over the Sapodillas, but that Honduras and Belize should devise a bilateral approach, and that Belize could reach agreement with Honduras over fishing rights. He also insisted that there should be no idea that Belize should give up more than Honduras because of any claim, since Guatemala would have to accept Belize's present boundaries. The question should be approached purely on the basis of the geography of the area.[139]

But back in Washington, mischief was brewing. At the 13 October meeting, Mr Roach (DOS) had been asked to prepare a map with lines on it for discussion at the London meeting in December. He got another DOS man, geographer Bob Smith, to assist, and followed instructions from Reichler, who claimed to be acting for both Facilitators, which Ramphal later denied.[140] A map and a paper explaining it was prepared by Roach and Smith and sent to Dundas and Sands for comments.[141] That "Concept Paper" of 20 November contained suggestions unacceptable to Belize, such as that Belize maintain its 3-mile territorial sea in the area, that the area of Guatemala's EEZ should approximate the area of the land to which Guatemala would be giving up its claim, which they put at about 3,580 sq. nm., and that the three countries should set aside their competing claims to the Sapodilla cayes or agree to share sovereignty.

On 3 December in Honduras, Shoman along with Cal, Martínez and UK maritime expert Chris Carleton met with Carlos Lopez, who suggested a number of guidelines for determining the maritime delimitation, including that the Honduras contribution should be substantially less than that of Belize. He mentioned the Concept Paper, which Belize had not seen and knew nothing about. Carleton, on behalf of Belize, presented several maps to show possibilities, and the Hondurans noted that their own ideas were similar. At a meeting in London with Ramphal and Dundas, Alexis Rosado, Belize's High Commissioner, convinced Ramphal to present the Belize position to

[139] "Minutes of meeting Ministry of Foreign Affairs Tegucigalpa, Honduras, October 17, 2001".

[140] Alexis Rosado, "Draft notes on non-meeting with Sonny," 7 December 2001.

[141] Néstor Méndez to Assad Shoman, 7 December 2001.

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the meeting with Roach et. al. and resist the concept paper and attendant proposals prepared by the group of experts in Washington.[142] He prepared a proposal which Ramphal was able to use successfully at the experts' meeting, sidestepping the offensive "Concept Paper" and its attendant maps.[143]

Much work was done on maritime areas before the final proposals of the Facilitators saw the light. There were a lot of meetings, discussions, exchanges by email, between the three countries involved, the Facilitators, and Honduras' lawyer. Belize sought the expert opinions of different lawyers (Chamberlain, provided by the FCO, Eli Lauterpacht, Francisco Orrego Vicuña, Carl Dundas, Eddie Laing) and cartographers (UK Hydrographic Office and David Grey from Canada) on all aspects of the maritime discussions. On the thorny question of the Sapodilla Cayes, where Belize was being asked to take the claims of Honduras and Guatemala into account, a breakthrough came when Honduras, in a bilateral meeting, looked positively at Belize's proposal of a Marine park which would not only encompass the Sapodilla Cayes, but also parts of Honduran and Guatemalan territorial seas and coastal lands.[144] At the same meeting Ambassador Carlos Lopez said that Phillipe Sands' instructions were to be as generous as Belize is prepared to be, rather than insist that Belize give more than Honduras.

Ramphal's suggestion to Reichler and Sands on 8 May, after consultation with Belize's NT, was: from the equidistant point of Belize-Guatemala-Honduras in the Gulf of Honduras, the Guatemala Maritime Area will be 4 nautical miles wide (2 on each side of the Belize-Honduras equidistance line) until it reaches the $16^{0}30'$ latitude north point, and thence widen to 8 miles (4 on each side) until it reaches 17^{0} latitude north point and thence widen further to 16 miles (8 on each side) until it reaches a point 10 miles from the equidistant tripoint of the Exclusive Economic Zones of Mexico-Belize-Honduras.[145] The area would not be EEZ of

[142] Alexis Rosado, "Draft notes on non-meeting with Sonny," 7 December 2001.
[143] Alexis Rosado, "Proposal for a solution to the delimitation exercise (non-paper)," 7 December 2010; Rosado to Shoman, 10 December 2001.
[144] "Maritime areas Belize/Honduras 1 March 2002, Radisson Fort George Hotel". 1 March 2002.
[145] Ramphal to Reichler and Sands, 8 May 2002.

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Guatemala, but it would have administrative control over it and its juridical nature would be *sui generis*, or unique. Belize and Honduras would have fishing and seabed rights in their areas. The issue was not finally resolved until the last hours of bargaining before the Proposals were finalised, but by May the general lines along which they would be made were clear.

The Land Problem: Swaps, Bulges and Snakes

Not so clear was how Guatemala's stated need for some face-saving formula on land was to be satisfied. It soon became clear that they were hoping to use the settlements of Guatemalans along the border within Belize to be able to have some Belizean land transferred to Guatemala, if even in exchange for Guatemalan land—what came to be known as the "land swap" idea.

Beginning in March 2002, at Guatemala's instigation, the Facilitators considered the idea of a land-swap to accommodate Guatemalan squatters in settlements to the east of the adjacency line. Belize would lose no land, in the sense that it would end up with the same area, down to the last centimetre, but Guatemala would be able to say it had protected its citizens and gotten some Belizean land. One idea was of "bulges" on either side of the AL, i.e. if a settlement of Guatemalans was to the east of the AL, the border would be adjusted in that area to bring that settlement within Guatemala, while an area the same size in Guatemala would become a part of Belize. Another idea was more along the lines of a "snake," i.e. the boundary line would meander along, taking in the several Guatemalan settlements to become part of Guatemala while equivalent lands in Guatemala would become part of Belize.

At a meeting on 3 June 2002 it was decided to send an OAS ad hoc Mission to "determine the location and character of any Guatemalan settlers on the East side of the Adjacency Line, in the Adjacency Zone, between Garbutt's Falls and Gracias a Dios". In the meantime, the Guatemalans were still desperately trying to create new "facts on the ground". Belize had to alert the Facilitators to the fact that after it was agreed to send an OAS team, "we are witnessing an unusually

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large number of new incursions by persons in many cases occupying previously abandoned illegal settlements. They have apparently been trained to say that they have been there for years".[146]

The Mission took place between 18 and 21 June, and its findings were submitted on 9 July.[147] The Mission concluded that "save for the Santa Rosa settlement, all other villages visited are essentially Belizean . . . and the residents are part of, and participate in, the political and administrative structures of Belize". And: "In the case of Santa Rosa, the OAS Mission concludes that the settlement is 'primarily composed of Guatemalans', [and] these residents are equally active in their desire to be part of Guatemala".[148] There were 19 families at Santa Rosa, comprising 134 people. This information effectively killed the Guatemalan idea of a land swap, whether as bulges or as a snake. There simply weren't enough people to go to all that trouble for, and the idea was dropped.

The general outline of the Facilitators' Proposals was agreed between Foreign Ministers Gabriel Orellana and Assad Shoman at an informal meeting in Spain. Belize proposed a 5-piece package: first, ensuring that the borderline accorded with the 1859 Treaty from Garbutt's Falls to the Mexican frontier, which would give Guatemala a slice of land. Second, that the envisaged Development Fund be used to purchase a large area of land in Petén, Guatemala, and establish there a Peace Village with modern infrastructure. Those Guatemalans living in very poor conditions in illegal settlements within Belize could then be moved to this model village which would guarantee them a much safer and higher standard of living and be a showcase of conflict resolution. Third, a generous maritime area would be accorded to Guatemala, in collaboration with Honduras. Fourth, there would be established an Ecological Park encompassing the Sapodilla Cayes and areas of land and sea of Guatemala and Honduras, which would have funds for sound ecological development projects in the three countries. Finally, there would be other development projects supported by the Development Fund, which the United Kingdom would contribute to generously and which Guatemala could

[146] Shoman to Facilitators, 13 June 2002.

[147] "Report of the OAS Mission to the Belize-Guatemala Adjacency Zone June 18-21 2002".

[148] The TORs are in a letter from the Facilitators to the SG/OAS of 17 June 2002.

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therefore point to as compensation at last for the failure to implement Article 7 of the Treaty.[149]

Attempts to Change the Boundary

The problem with the three main boundary points for Belize's western border with Guatemala mentioned in the 1859 Treaty is that only two are named, Gracias a Dios Falls and Garbutt's Falls. The other point is only said to be the point reached when you draw a line from Garbutt's Falls due north until it strikes the Mexican frontier. The location of the two "Falls" named are too general for anyone to pinpoint on the ground, which is why the Treaty specifies how the precise border points are to be ascertained:

> [The Parties shall] appoint each a Commissioner for the purpose of designating and marking out of the boundary described in the preceding Article. Such Commissioners shall ascertain the latitude and longitude of Gracias a Dios Falls and of Garbutt's Falls and shall cause the line of boundary between Garbutt's Falls and the Mexican territory to be opened and marked where necessary, as a protection against future trespass.

Attached to the Treaty in the British archives is a map signed by both Commissioners on 13 May 1861, showing the coordinates of the two boundary markers. In 1929 commissioners from both countries inspected the boundary markers placed in 1860/61 at Gracias a Dios and Garbutt's Falls and replaced them with concrete monuments, and in 1931 by an exchange of notes between the two countries Guatemala acknowledged that those monuments "form part of the border line between Belize and the Republic of Guatemala". There is no room for doubt, therefore, as to the positioning of those two boundary markers; they belong where representatives of both countries said they belonged.

[149] "Madrid/Belize 2002 Belize Office, Palacio Municipal de Congresos, II EU/LAC Summit, May 17 2002".

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The same cannot be said about the third reference in the 1859 Treaty that defines the northernmost point of the frontier, i.e. "from Garbutt's Falls due north until it strikes the Mexican frontier". At that time there was no agreed boundary between Mexico and Guatemala nor between Mexico and Britain. In 1882, Guatemala and Mexico agreed their boundaries by treaty, and although it did not mention Belize, it fixed their border at 17°49', and that it should run "indefinitely towards the east," which would cut across northern Belize. The Anglo-Mexican treaty of 1893 states that, having gone along the Hondo River, the border continues up Blue Creek "until the said creek crosses the meridian of Garbutt's Falls at a point due north of the point where the Boundary lines of Mexico, Guatemala, and British Honduras intersect; and from that point it runs due south to latitude 17°49' north, the boundary–line between the republics of Mexico and Guatemala". But these points were never marked by Mexico and Britain, and over time the three countries began to use the Aguas Turbias marker, which had been placed by Mexican and Guatemalan officials, as the tripoint for the three countries. According to both Mexican and Guatemalan officials, the Aguas Turbias marker was deliberately placed some distance west of the Garbutt's Falls meridian so as not to presume to mark the British Honduras frontier, because they did not want to involve the British in the demarcation exercise.[150]

According to the PAIGH exercise carried out in 2001 by Mr Peeler, if the Aguas Turbias marker was moved to a point where it would have the same longitude as Garbutt's Falls, as the 1859 Treaty required, it would be some 210 meters east, and if a line were then drawn from Garbutt's Falls to that point, some 2.4 square miles of land within Belize would pass to Guatemala.[151] The Facilitator for Guatemala argued that this was too paltry a piece of land and would not be saleable in Guatemala, and he argued that the most logical reading of the treaty is that the boundary turns northward at the first rapids at Gracias a Dios, in which case the boundary point would be, according

[150] "Límites y ríos México-Guatemala," leg. 330 exp.3, SRE Archives, Mexico City, Interviews Salvador Figueroa with Carlos Santibáñez (Mexico) and Moises Cal with Efraín Aguilera.

[151] Peeler to Gaviria, 6 February 2001.

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to him, about 260 meters east of the current reference marker at Gracias a Dios. The point the Belize side made, however, and the logic that ultimately prevailed with regard to those two border points, was that it was useless to look for physical clues (rapids, falls) or check coordinates or otherwise try to guess where it was that the border should be at those two points, since the Treaty specified that the two Commissioners were to decide, and they did, and put markers at the two points, and those points were confirmed and reinforced and acknowledged by Guatemala in 1931.

Last Hurdles Before the Proposals

Other actions by the Guatemalans were threatening to wreck the Facilitation Process, or at least to delay it considerably. Just between January and May 2002 the BDF encountered twelve incidents of Guatemalan incursions between Gracias a Dios and Garbutt's Falls. Brigadier General C A Borland, reported that "an increase of activities along the western border has been identified since January 2002. These activities include settlements, massive land clearing, trafficking of Guatemalans to cut chate and bay leaves, logging and hunting". He noted that this increase had become more marked after the agreement to have joint patrolling in the Adjacency Zone, since there were fewer patrols because the GAF claimed they had manpower and resource problems. He also noted that some Guatemalans found inside Belize said the GAF knew of their presence but never told them they were inside Belize.[152] There appeared to be a conspiracy among at least some elements of Guatemalan officialdom designed to thwart the Facilitation Process. Shoman therefore informed Orellana that "Belize will no longer abide by the agreement that "all military patrols in the Adjacency Zone should be joint patrols". Coordinated patrols should continue, but "without prejudice to the right of our military patrols to enter the Adjacency Zone in our respective sides of the Adjacency Line at any time in accordance with the Constitutional obligations of our respective military forces".[153]

[152] Commandant BDF to CEO Ministry of Defence, 10 June 2002.
[153] Shoman to Orellana, 10 June 2002.

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The perception of a Guatemalan government tactic to increase encroachments was strengthened when on 17 June a new development was discovered in the border area, between Benque Viejo del Carmen (Belize) and Melchor de Mencos (Guatemala). Eleven buildings had been erected inside Belize by Guatemalans, and eight families were already in occupation in an area they called "Nueva Juda". This incident was particularly serious for several reasons: there had never been such an encroachment north of Garbutt's Falls; the activity was not hidden in the bush but in plain view of everyone near the border; it occurred just when the Facilitation process was nearing the point of presenting proposals and while the OAS Mission on settlements was in the field; and most significantly it was implemented by a local government body, the municipality of Melchor de Mencos.

Belize sent a note to Guatemala on 4 July, and followed up with a strong protest after it conducted a verification visit on 11 July and found that the Mayor's office was issuing lots on lands within Belize's territory, as part of a development involving at least 60 lots along the border for residents of the municipality. The recipients were told that all the lots were within Guatemala and that no-one could take it away from them.[154]

On 6 August when the Foreign Ministers met in Washington, Orellana said he was aware of the situation, that he had spoken to the Minister of the Interior about it and that something would be done to stop the building on the Belize side. But on 21 August, one week before the Proposals were due, Belize had to inform the Facilitators that the Municipality continues to violate the border, that "we cannot proceed with any meeting while our border is being so flagrantly and officially violated".[155] Guatemala replied the following day, affirming that the Ministry of Home Affairs had ordered an inspection *in situ* to determine on what side of the Adjacency Line the works were being done and eventually ask that they be stopped.

[154] CEO Defence to CEO Foreign Affairs and Note 419 of 31 July 2002 from MFA Belize to MRE Guatemala, 31 July 2002.
[155] Shoman to Facilitators, 21 August 2002.

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The last few days before the presentation of the Proposals, from 25 to 29 August, saw the most arduous negotiations between the two delegations, and the most intensive lobbying, particularly with the State Department, to use its good offices to influence the decisions of the Parties. The issues had not changed; foremost was the insistent demand by Guatemala to be given some token piece of land. Belize's representatives met with officials in London and Washington, and finally on 27 August, in a meeting of FM Shoman with Dan Fisk at the State Department, Belize was assured that "as of today, the talks would proceed on the basis that the land issues in the south are 'off the table'". State had conveyed to Guatemala that Belize "had reached its bottom line on the land issue," and that just as there were political implications in Guatemala, Belize too had its own political dynamic.[156]

Another major area of contention was the Guatemalan Maritime Area (GMA) to be afforded by Belize and Honduras. How large must it be? What qualities should it have: a full EEZ or a limited one, what rights if any should Belize and Honduras have in those areas, what legal and administrative regimes should apply? Every little detail was fought over to expand or limit the benefit each party would get from this or that formulation.

The Proposals of the Facilitators[157]

The Proposals represent a "comprehensive, definitive, honourable and permanent resolution to the territorial differendum". The proposals in outline:

Land: The border is defined by using the mid-channel of the Sarstoon River and the real existing coordinates for the Gracias a Dios and Garbutt's Falls markers, then due north to the point where the line meets the 17^{0}49'north latitude, and specifically states that any islands in the Sarstoon belong "to the Party on whose side of the main navigable channel they are situated".

[156] Meeting at State Department: August 27th 2002, with Deputy Assistant Secretary Daniel Fisk, FM Assad Shoman and Ambassadors Alfredo Martínez and Lisa Shoman.

[157] See Appendix 11 for full text.

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Territorial Sea: Belize's Straight Baseline System will be recognized and the width of its territorial sea measured from the outer reefs and islands. This gets Belize over 3000 square nautical miles of sea recognized as "internal waters," over which it will have full sovereignty, the same as if it were land. Belize will have territorial sea to the full extent allowed by international law—12 miles or the median line. From the Territorial Sea Tripoint between Belize, Guatemala and Honduras and extending north-eastward to the 12 nautical mile intersection of the territorial sea limits of Belize and Honduras there shall be granted to Guatemala an access corridor of unrestricted navigational rights extending for two miles on either side of the Belize-Honduras territorial sea equidistance line boundary. In other words, Belize was to give up NO territorial sea.

Exclusive Economic Zones (EEZ) and Continental Shelves: The Exclusive Economic Zone and Continental Shelf of Guatemala in the Gulf of Honduras (the Guatemala Maritime Area) shall be an area of 2000 square nautical miles as set forth in the indicative Map [2]. Belize and Honduras would contribute equally to this area from their respective EEZs. A Tripartite Regional Fisheries Management Commission for the Gulf of Honduras under the rotating chairmanship of Belize, Guatemala and Honduras will be established. The exploration and exploitation of any natural resources on the seabed or in the subsoil shall be carried out jointly by Belize and Guatemala, in the area of the GMA allocated from Belize's EEZ. Furthermore, in the Exclusive Economic Zone of Honduras the nationals of Guatemala should be granted, in accordance with the law of Honduras, appropriate access to fisheries rights. No such provision was made for Guatemalan rights in Belize's EEZ.

The Belize-Guatemala-Honduras Ecological Park: There shall be established an Ecological Park in respect of three areas comprising the coastal, insular and maritime areas of Belize, Guatemala and Honduras as delineated with reference to this paragraph on the attached map marked [4]. Honduras' internal waters in that sector should also be included in the Ecological Park. The Park shall constitute a single area and be subject to a special regime to be adopted by the three Governments without prejudice to their sovereignty and/or sovereign rights in the prescribed area at the time of the coming into force of the

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Treaties of Settlement. The essential character of the regime for the Ecological Park shall be for the conservation of the resources of the area, including in particular the marine resources, and the development of sustainable eco-tourism.

The Development Trust Fund: A Development Trust Fund to be devoted to development purposes in both countries and, specifically, for the alleviation of extreme poverty and landlessness in the border provinces of Guatemala, the establishment of a special Human Settlement in Guatemala; the establishment, development and protection of the Belize-Guatemala-Honduras Ecological Park; and the implementation of these Proposals and the Treaties of Settlement. The Fund should be at least US$ 200 million.

Santa Rosa: With regard to the Community of Santa Rosa, a new village would be built within Guatemala and the Santa Rosa residents invited to live there. If any do not, the Government of Belize can offer them land elsewhere within Belize. And if any of the 19 families want to stay where they are, they can remain, subject to the rights and obligations of Belizean law.

The parties agreed to submit the Proposals to the people of their respective countries for approval in national referenda, and also agreed to hold the referenda on the same day and within seventy-five days from the presentation of the Proposals. The recommended question was "Do you approve the Proposals made through the Facilitation Process of the Organization of American States for the peaceful, honourable and permanent resolution of the Territorial Differendum between Belize and Guatemala?"

Along with the Proposals, the Facilitators wrote a side-letter to the parties, which they both accepted and signed, stating that "in the unfortunate and unlikely event that the Proposals are rejected by the people of Belize, or the people of Guatemala, or both—and only in that event—the Parties agree to submit the Territorial Differendum to the International Court of Justice for final and binding determination, or such other international arbitral tribunal as they might agree".[158]

[158] Ramphal Reichler to Orellana and Shoman, 30 August 2002.

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One issue that dragged through the presentation of the Proposals and thereafter was the affair of the Melchor municipality building houses inside Belize, which caused Belizeans to feel a lot of hostility towards Guatemala. The issue dragged on for much too long, and was not finally put to rest until the OAS financed the removal of the structures on the Belize side of the border and the building of new houses on the Guatemalan side, a process involving the re-settlement of a total of 186 persons benefitting 31 families, carried out in phases and completed in August 2005.[159]

The Fate of the Proposals

In a ceremony at the OAS headquarters on September 17, 2002 celebrating the signing of the Proposals, the Secretary General of the UN and that of the OAS, along with the spokespersons of many countries around the world expressed their congratulations and support. US Secretary of State Colin Powell declared that "the approval of these proposals by the peoples of Belize and Guatemala will be a milestone, an example for the region." Foreign Ministers of Mexico, Honduras, and others were effusive in their praise for the proposed settlement and an end to an age-old dispute. British minister Dennis Macshane announced that his government would make a substantial contribution to the Development Trust Fund and added that "Great Britain and the European Union will do their part to do everything possible to support the peoples of Guatemala and Belize once they have voted in favour of these proposals."

Guatemalan Foreign Minister Gabriel Orellana reaffirmed his "conviction that having entrusted the issue to the panel of Facilitators, under the auspices of the OAS, was most appropriate in the spirit of the pacifist spirit of the Inter-American System." He announced that the government had initiated the necessary consultations and that they had already generated all kinds of reactions, and warned that the government was short of financial resources. Belizean Foreign Minister Assad Shoman said that the Proposals not only represent the best

[159] Ficha Técnica: Proyecto de Reasentamiento "Nueva Juda, Melchor de Mencos, Petén, Guatemala, OAS Office at the Adjacency Zone".

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opportunity to resolve forever a dispute that has kept two peoples apart for too long, but also solves problems of greater scope.

The Proposals were first explained to the nation in Belize at a meeting attended by both the Prime Minister and the Leader of the Opposition, and by Belize's Facilitator, Shridath Ramphal, where the large gathering gave them a careful and respectful hearing. Although Barrow had been fully informed of the Proposals before they were finalized, and had agreed to them, the UDP demanded that certain clarifications and conditions be met within 30 days for it to support a yes vote in the referendum. In a detailed letter, the Head of the Negotiating Team wrote Barrow explaining how all the UDP's concerns were met or being met.[160] The government pressed ahead with preparations for the referendum, with members of the team meeting groups throughout the country and the Elections Commission preparing the conditions for the vote. Not everyone was in agreement with the Proposals, and some were strongly opposed to them, but in country-wide tours explaining them by members of the NT and others, there seemed to be a groundswell of support and a sense of hope that at last this albatross around the country's neck would be banished forever.

Far from that expectation, what was delivered was disappointment, bitterness, and the weight, which now felt heavier, of an unresolved dispute, with the border conflicts and the negative ecological consequences growing each year. The rejection came in stages. First, a few weeks after the delivery of the Proposals, Guatemala informed that it could not meet the 75-day deadline for the referendum. The Facilitators called on the Parties to agree on new Confidence Building Measures, the 2000 one having expired, and the OAS circulated proposals which the two governments commented on. Another technical meeting was held on 2-3 December, but it was unable to reach consensus on a few key provisions of the draft document.[161]

A ministerial meeting set for 17 January 2003 to finalise the document was postponed because the day before Foreign Minister

[160] Shoman to Barrow, 21 September 2002.

[161] Einaudi to Ambassador Lisa Shoman, 4 December 2002.

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Gabriel Orellana had resigned for "personal reasons" and Edgar Gutiérrez, a confidante of Portillo and his Secretary of Strategic Analysis, became Foreign Minister. He took the decision not to pursue what had been agreed in Washington, partly because Portillo was very unpopular and a "punishment" vote was feared, partly in order to distance himself from Orellana.[162] Orellana had pursued the Facilitation Process to the end, with honesty and courage, and with the support of the government, winning praise from the international community, but the results had caused grave problems with certain elites in the country, and the government decided to distance itself from him.

The "Transition Process" and CBMs[163]

The "Agreement to Establish a Transition Process and Confidence Building Measures between Belize and Guatemala" was signed by the Foreign Ministers in Washington on 7 February, 2003. A transition is from one thing to another; this was explained as fulfilling "the need for a mechanism to manage their relations and the situation in the Adjacency Zone until the referenda are held". The Agreement noted that "The constitutional processes in both countries require that, prior to ratification, the Proposals be approved by referenda, which should be held simultaneously in both countries, as recommended by the Facilitators".

New CBMs were agreed, valid for a period of one year. The most important new element was the provision for the establishment of a permanent OAS Office in the Adjacency Zone. Its functions included "to verify incidents which may occur in the Adjacency Zone" and "to verify any transgression by the Parties of the confidence-building measures contained in this Agreement". It was also mandated to carry out "activities designed to improve relations, confidence and cooperation among the inhabitants of the Adjacency Zone". The first

[162] Interview with Orellana.

[163] Full text at Appendix 12.

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Director of the OAS Office was Matthias Kruger, from July 2003 to June 30, 2004, but the longest serving Director was Miguel Ángel Trinidad, an Argentine national, from September 2004 to September 2010. He did an excellent job, with studious impartiality and fairness, but for that very reason he attracted the animosity of Guatemalan officials.

The other major initiative of the 2003 Transition Agreement was to establish a "Group of Friends": an advisory body to the Secretary General to provide political and operational support for undertaking the various activities contemplated under the Agreement, assist the Parties in holding the referenda on the Proposals, and provide financial assistance by means of contributions to the Belize-Guatemala sub-fund of the Fund for Peace.[164]

It was good to have the OAS presence to see to the implementation of the CBMs and help avoid conflict, but they too had to be constantly monitored to ensure they did not exceed their brief or take actions detrimental to Belize's interests—or simply follow their own agenda. In the new CBMs the OAS Secretariat was given an expanded role: to convene meetings between representatives of the two States, monitor the implementation and execution of the CBMs, conduct *in situ* visits in either of the two States when necessary for the verification of incidents in the Adjacency Zone, appoint fact finding missions in the event of an incident or if it is considered desirable.

Belize and Guatemala agreed not to use force, or the threat of force, to pursue their positions with respect to the territorial differendum. They agreed to cooperate in clearing the areas around the three reference markers, to avoid incidents on the ground conducive to tension between them. In addition, "all military and police patrols in the Adjacency Zone will be coordinated by both countries".

The new CBMs maintained the structure of the old, with the Adjacency Line and Adjacency Zone having the same characteristics as before, i.e. Belize rules to the east of the Line, Guatemala to the west. It was

[164] The original members, from 7 October 2003, were Argentina, Brazil, Canada, Ecuador, El Salvador, Jamaica, Mexico, Nicaragua, Spain, Sweden, United Kingdom, United States of America.

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agreed that "The community of Santa Rosa, including homes, farms, roads, buildings and other infrastructure established before October 1, 2000, shall remain undisturbed during the pendency of the Confidence Building Measures and the Transition Process". It was still the case that "There shall be no new Guatemalan settlers joining any settlement to the East of the Adjacency Line, and no extension of any existing settlement after October 2000". It had already been decided that the only such settlement was Santa Rosa, and the new CBMs provided detailed protocols for the removal of all other settlers.

But what about the "transition" to holding the referenda? The truth is that the Guatemala government never intended to submit the Proposals to referendum. They were afraid that the terms, which ceded no territory to Guatemala, would be unacceptable to the ruling classes, and also that the people would vote no just to punish the government. In August, the new Minister of Foreign Affairs Edgar Gutiérrez alleged that the two governments had verbally agreed to defer the possible submission of the Proposals to referendum until after elections in both countries. That was a lie, a total invention of Gutiérrez.[165] Later that month the truth came out, from the Vice-Minister, who wrote that after a careful analysis of the Proposals,

> My government has concluded that the proposals and recommendations do not respect a balance that allows us to identify the interests and claims of Guatemala, which make them unacceptable. Apart from that, the proposals include stipulations that go against the juridical order of Guatemala. The Government of Guatemala, therefore, does not consider that the political and legal conditions exist for submitting them to popular consultation, and consequently declares that it does not accept, in the form presented, the "Proposals of the Panel of Facilitators".[166]

The diplomatic corps in Guatemala reacted strongly against the government's scuttling of the Proposals, but no amount of protests moved the Guatemalan government. They had decided that the

[165] Edgar Gutiérrez to Musa, 6 August 2003.

[166] Gabriel Aguilera to Gaviria, 25 August 2003. Author's translation.

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proposals were not politically acceptable, and nobody could persuade them otherwise.[167]

And that was the end of the Proposals of the Facilitators, which had been accepted by both governments and applauded by the international community. The "transition process" to a referendum was likewise aborted; it became clear then, and has been reaffirmed in action several times since, that the government of Guatemala was prepared to sign agreements, even witnessed by the international community in major public acts, and then simply refuse to carry them out and give fanciful arguments based on legal sophistry to justify its duplicity.

Guatemala: New Government, No Change

Guatemalan elections in November and December 2003 were won by Oscar Berger for the GANA party. The new government was installed in January 2004, and during the inauguration Prime Minister Said Musa met with Berger, his Vice-President Eduardo Stein (the ex-Foreign Minister who had written that letter to Musa in 1999), and Foreign Minister Jorge Briz. They promised that the matter would be treated more responsibly and that with some time to inform the Guatemalan people, the Proposals would be put to referendum, perhaps within the next two years. But by 24 February, Briz officially adopted the position of the previous government, rejecting the Proposals and declaring that the Transition Agreement does not oblige Guatemala to take the Proposals to referendum. After that, in meetings with Belize's Ambassador to Guatemala, the Guatemalan government made it clear that it did not want to submit the case to the ICJ, but rather to conduct "informal talks" with Belize to create a new package of proposals for a settlement, which must include cession of land, sea and islands.

Commenting on this reversal, Shoman suggested to the NT that Belize should insist on keeping the Proposals alive, while providing a flexible but finite time-frame of six months, and if by then Guatemala still refuses to submit the Proposals to referendum, Belize should move toward taking the matter to the ICJ, and should

[167] Fred Martínez to NT, 29 August 2003.

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consult now with Sir Eli Lauterpacht about how best to achieve that goal.[168]

For the next year and a half there were meetings of Guatemalans and Belizeans at levels of Heads, Foreign Ministers and officials, between themselves and with the OAS, but throughout that time Guatemala pursued its plan of wasting time on useless negotiations and blocking Belize's attempts to refer the matter to the ICJ. Guatemala wanted to postpone the resolution of the dispute indefinitely while getting greater assurances of soft treatment for illegal Guatemalan settlers, through CBMs that would emphasize their human rights and call for joint action to repatriate them, which they would continue to sabotage and delay. Belize insisted that any new CBMs must be tied to a process for the final determination of the claim.

The British sided with Guatemala, urging Belize to reopen negotiations, although PM Musa told PM Tony Blair that "any such opening can only lead to a demand for territory," and warned him that this will mean that Guatemala can count on Britain whenever they themselves renege on agreements".[169]

The US government was more consistent than the British. They made it clear that "the US position was unchanged, that they still considered the Proposals of the Facilitators to be the best possible solution". When Belize noted that it was seriously considering opting to go to the ICJ, the State Department revealed that Guatemala believed that the Proposals provided it a better deal than what the ICJ would award, but that the government does not have the popularity to win a referendum, and Guatemala did not want to go to the ICJ.[170]

Border incidents continued, aggravated by Guatemalan officials turning the tables on Belize and accusing the BDF of entering Guatemala and

[168] Shoman to NT, "How to respond to the Guatemalan position of 24 Feb. 2004," 29 February 2004.

[169] Musa to Blair, 13 May 2004.

[170] The meetings in Washington included Deputy Assistant Secretary (State) Daniel Fisk, Director for Central American Affairs David Lindwall and Belize/Guatemala Desk Officer Alex Daniels for the USA and for Belize Ambassador Lisa Shoman and Minister-Counsellor Néstor Méndez, 14 and 17 May 2004.

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abusing Guatemalans. And in April 2004 Guatemalans, with the support of their local authorities, were illegally constructing a road across the border near the village of Jalacte, to access a quarry within Belize and take materials across to Guatemala, and Belize had to go to some trouble and expense to stop the activity.[171]

Briz was not shy about making preposterous positions known to the international community. In a briefing session he called for the diplomatic corps in Guatemala, he told them that the border markers would have to be "adjusted," but also that Belize had to cede to Guatemala a strip of land from the Sarstoon northward, measuring around 500 square kilometres.[172]

Don Luigi's *Démarche*

OAS Deputy Secretary General Luigi Einaudi, a very experienced US diplomat who had worked on Guatemala among other countries before he took up his post at the OAS, had been entrusted by OAS Secretary General César Gaviria to handle the Belize-Guatemala issue. Recognizing that the Guatemalan government was deliberately blocking all bilateral attempts to move the process forward, he made a proposal on 7 October 2004 without first consulting the parties. It was designed to narrow down the issues that would be submitted to the ICJ for final determination. The objectives of the proposed package were to preserve the territorial integrity of Belize; provide Guatemala an uninterrupted maritime area, consisting of territorial sea and EEZ in which Guatemala would enjoy full rights under UNCLOS; advance development of the border area and of Central American integration generally.

The Einaudi proposals were a worthy and balanced attempt to bring the parties closer together and define the issues on which they could reach agreement, with the built-in safeguard to submit those matters which could not be resolved to the ICJ for final determination, including referenda for the people to decide whether to submit the case to the

[171] Lisa Shoman to Lawrence Sylvester, 12 May 2004, with attachments.
[172] Alfredo Martínez to Assad Shoman, 10 August 2004.

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ICJ. Belize accepted them as a basis for negotiation and final resolution, and worked in good faith to bring them to fruition.

The Guatemalan government was unhappy with Einaudi's proposals, and spun around the subject for months, proposing that the two countries agree "projects and programs of cooperation between the two countries aimed at strengthening friendship between the people of Belize and Guatemala,"[173] but they were in no hurry to resolve the dispute and end the claim. Belize, by then more convinced than ever that it would forever be impossible to negotiate an end to the claim with Guatemala, pressed for submitting the case to the ICJ, but Guatemala kept finding ways to evade the issue. Belize sought and got the support of the US State Department in this endeavour, and most especially of Mexico's Foreign Minister, Luis Derbez, who was instrumental in getting Guatemala to agree to a new framework agreement which, although it called for continued negotiations, enabled the Secretary General of the OAS to propose that the matter be submitted to international adjudication.

Gaviria's term as SG of the OAS ended in 2005, and after a brief interregnum José Miguel Insulza became the Secretary General and appointed Uruguayan Raúl Lago as his personal representative on the Belize issue, a position he held until March 2016.

Heading Towards the ICJ

The Framework Agreement of September 2005

The Framework Agreement signed on 7 September 2005 called on the Parties to identify their positions on those issues of law and fact that shall be the subject of negotiations, seek to resolve their differences, and pinpoint those issues upon which they are unable to agree. Belize had tried to get a clause in the agreement that would automatically trigger submission to the ICJ after a short time, but the best it was able to get Guatemala to agree to was the following:

[173] Guatemalan proposal on CBMs, July 2005.

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> While the Territorial Differendum is being negotiated with the assistance of the OAS, if the Secretary General determines that it is not possible to arrive at an agreement on some of the issues, he shall recommend that the Parties submit those to either the International Court of Justice or an International Court of Arbitration, Juridical bodies established under International Law for the solution of controversies. The Parties agree to submit the recommendation of the Secretary General to the appropriate authorities of their respective countries for their consideration and decision.[174]

The OAS would provide technical support and seek funding for the process in its different phases until the differendum is resolved, convene meetings, develop mechanisms to prevent or resolve problems between the parties, monitor the implementation of the CBMs, verify incidents, carry out an information campaign about the CBMs and promote activities aimed at fostering good bilateral relations. The Office of the General Secretariat in the Adjacency Zone, established near the border in July 2003, was to remain there and continue its work. The Group of Friends was reaffirmed and other countries joined over the years.[175]

The CBMs were reaffirmed, for the most part in the same terms as before, but this time there was a specific arrangement for the removal of the troublesome Santa Rosa settlement:

> 9. a. Those settlers of the community known as Santa Rosa who individually and voluntarily wish to change their place of residence shall be offered the option of relocating to a new settlement in Guatemala, where the OAS General Secretariat, with the help of international cooperation, shall provide them with houses and land in accordance with Guatemalan law.

[174] Agreement on a Framework for negotiations and confidence building measures between Belize and Guatemala, Washington, 7 September 2005. Full text at Appendix 13.

[175] New members: Costa Rica, European Union, Germany, Honduras, Japan, Norway, Panama, Uruguay.

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The "Peace Village" that Ramphal had proposed during the negotiations in the Facilitation Process was provided for at last. There was a long list of proposed cooperation projects that a Joint Commission was charged to consider. Three annexes dealt with human rights in the AZ, procedures to deal with certain persons in the AZ, and guidelines for public statements requiring both sides to be moderate in their public pronouncements.

The Belize government reorganized its bodies to deal more effectively with the evolving situation. Prime Minister Said Musa tasked Assad Shoman "to prepare and conduct all the negotiations and correspondence with the Government of Guatemala relating to the territorial claim to Belize". The NT would include Eamon Courtenay, Fred Martínez (who in April 2003 was confirmed as Ambassador to Guatemala), Ambassador Lisa Shoman, Diane Haylock (representative of the Leader of the Opposition), Salvador Figueroa and Alexis Rosado. The PM also named advisors to the NT and the members of a new Advisory Council on the Guatemalan Claim (ACGC).[176] Dylan Vernon, as chair of the ACGC, attended some negotiating sessions. And, as was done throughout the Facilitation Process, Opposition Leader Dean Barrow was kept informed at all times and shared in the decision-making.

Dancing Around the Moon

Belize sought to get through the process of going through the motions of negotiations quickly, knowing no settlement was possible, and getting the SG/OAS to recommend that the matter should be sent

[176] Cabinet Secretary to Shoman, 4 October 2005. The advisers and assistants were: MFA CEO Lawrence Sylvestre, Néstor Méndez (Belize Embassy, Washington), Oliver del Cid (Belize Embassy, Guatemala), Alfonso Gahona and Gianni Avila (MFA) and Ms Rocío Zaiden (Santa Elena Office). The ACGC was comprised of institutional and individual members. The institutions: trade unions, religious organizations, the business community, political parties in the House, association of mayors, association of village council chairs, alcaldes association, Belize Fishermen Cooperative Association, WIN Belize (a woman's group), ANDA, BACONGO, CVSS (jointly to name 1 person), University of Belize and the Belize Defence Force. Individual members were Lindsay Belisle, Herman Byrd, Imani Fairweather, David Gibson, James Hyde, Noel Jacobs, Gilda Lewis, James Murphy, Dylan Vernon.

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to the ICJ, while Guatemala kept dragging out the process, putting up obstacles to progress while constantly refusing to allow the SG to make that recommendation. Belize had purposely framed the SG's power to recommend as discretionary, without his having to get the support of either Party, but Insulza decided that until both Parties agreed to his recommending going to Court, he would not do so, in spite of Belize's pleas that he make the call.

And so it went; it turned out that Briz was a consummate dancer, he spun around the subject for months and just got everybody dizzy. On 17 October 2005 Raúl Lago suggested to Shoman that the Parties might agree to negotiate over maritime areas. Shoman told him it didn't make sense: how could you negotiate maritime areas when the claim to land remained unresolved, seeing that maritime rights depended on land territory?[177] But the OAS was anxious to have it appear that some progress was being made in negotiations, and kept pressing that agenda.

At the second ministerial meeting in February 2006, Insulza proposed to begin a process of negotiation on the maritime area of the differendum, to appoint a recognized expert on the Law of the Sea to provide technical assistance, and to invite the Government of Honduras to participate in the negotiation process.[178] The Honduran Foreign Minister joined the third ministerial meeting in March, and it was decided to establish a technical group of representatives of the three countries to discuss base lines, territorial waters, the exclusive economic zone and the continental shelf.[179]

By July, three technical meetings had been held, but of course no progress was possible because the technicians were claiming (rightly so) that since Guatemala claimed Belizean land, a sea boundary could not be agreed until that claim was resolved.[180] And Briz refused to hold another ministerial meeting until there was progress in the technical level talks. Catch 22.

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[177] Note to file. Phone call from Raúl Lago, 17 October 2005.

[178] Minutes of meeting prepared by the OAS, 10 February 2006.

[179] Declaration issued by the 3rd Belize-Guatemala Ministerial Meeting, 23 March 2006.

[180] Notes on meeting between Assad Shoman and José Miguel Insulza, Washington, 4 May 2006.

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A Crucial Change in Guatemala

Nothing done by Belize could move Briz to agree to move the process forward, end the useless and meaningless "negotiation" and go to Court. And then, out of the blue, Briz resigned and Gert Rosenthal was appointed as Foreign Minister.

Gert Rosenthal had distinguished himself in several posts in the government of Guatemala, and was also a highly respected international public officer, having served as Executive Secretary of the United Nations Economic Commission for Latin America and the Caribbean (ECLAC). In 1999 he was appointed Permanent Representative of Guatemala to the United Nations, where he remained until 2004. While there, he lobbied to get Guatemala elected as a non-permanent member of the Security Council for 2006, but he faced the serious obstacle of Belize, and therefore CARICOM, not supporting the candidacy.

At the very first meeting Shoman and Fred Martínez had with Rosenthal on 17 August 2006 the atmosphere changed, the clouds lifted. Shoman explained what had been happening since the 2005 Framework Agreement, and suggested that the letter from Eduardo Stein was the key to moving forward: settle the dispute by juridical means. Rosenthal readily agreed, and confided that he was already at work with various sectors of society to try to convince them of the wisdom of going to Court, although he was meeting opposition, as some people felt that going to the ICJ would be tantamount to delivering the entire territory to Belize, since Belize had a stronger legal case. He told them that it was necessary to resolve the dispute because it was causing Guatemala to lose face in the international community. Rosenthal was equally helpful on the issue of Santa Rosa, which despite all efforts by Belize and the OAS remained implanted in Belize, and agreed to implement the OAS mandate to proceed with the removal of Santa Rosa.

Rosenthal then asked Shoman to please explain what had occurred in St. Kitts & Nevis, where a CARICOM Summit had been held. Guatemala had tried to get a hearing to lobby for its candidature to the Security Council of the UN. He said that it had been a complete

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disaster for Guatemala, which he felt was unfairly treated.[181] The CARICOM countries knew that Guatemala was refusing to move the Santa Rosa settlers and was obstructing the negotiations. Without the green light from Belize, Guatemala lost its chance to get on the Security Council, and in August Briz resigned and Rosenthal became the Foreign Minister, determined to clean up Guatemala's international image and win friends, especially in CARICOM.

In September 2006, when Rosenthal and Shoman met with Insulza at the OAS, the illegal settlers were still at Santa Rosa, maritime negotiations were still slouching along, and the OAS Secretary General was still withholding his recommendation to go to court.[182] A meeting of officials of Belize, Guatemala and Honduras in Panama had taken place earlier that month, where Guatemalan intransigence caused the meeting to break up without agreement, much to the chagrin of the Hondurans, who denounced Guatemala for going back on matters previously agreed.[183]

At yet another technical meeting in November between Belize, Guatemala and Honduras, Guatemala again rejected proposals it had earlier agreed to, such as the Ecological Park. Fred Martínez suggested that if Guatemala couldn't accept the park idea, then the entire claim, including maritime issues, should be sent to a juridical solution. The Honduran delegate, visibly upset, said that if a solution was not found to the park issue, Honduras would withdraw from the negotiations. Again, the meeting broke up without any agreement.[184]

Chief Negotiator Assad Shoman was clearly fed up. He told Prime Minister Musa that "we seem to have entered that well-known Guatemalan zone, that stultifying mixture of prevarication and procrastination that could only result in once again relegating the dispute to the limbo of its familiar abode". Raúl Lago, the SG's

[181] Report of meeting with Gert Rosenthal, Guatemala City, 17 August 2006.
[182] Communique by the Secretary General of the OAS on the ministerial meeting between Belize and Guatemala, 26 September, 2006.
[183] Minutes of the dialogue on maritime issues Belize-Guatemala-Honduras, Panama City, Panama, 31 August-1 September 2006.
[184] Meeting of the 6th Belize-Guatemala-Honduras Technical Meeting on Maritime Issues. San Pedro Sula, Honduras, 20th and 21st November, 2006.

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representative, kept insisting on the viability of a maritime agreement, and the SG, who had first assured Belize that he would make the recommendation to go to court before the end of 2006, was pulled into the Lago hole of illusory expectations, waiting for an agreement on maritime issues that everyone knew could never come.[185] Shoman proposed that every effort be made to bring matters to a head by early April through a démarche to Rosenthal and Insulza, so that the Santa Rosa settlement could be moved and the SG recommend that the entire dispute be submitted to the ICJ.[186]

But while Rosenthal was convinced that the dispute could only be resolved by a judicial process, by March 2007 he said that since it was an electoral year it wouldn't be convenient to hold the referendum.[187] At the ministerial meeting in April, the OAS Secretariat presented to Foreign Ministers Eamon Courtenay and Gert Rosenthal a proposal for the OAS to purchase property in Guatemala for the Santa Rosa settlers and for them to be moved expeditiously.[188]

During the OAS General Assembly in Panama, FM Courtenay was replaced by Lisa Shoman, who represented Belize at the meeting on 5 June with Rosenthal and Insulza. Like the April meeting, this one was also a waste of time because of the stalling tactics of Guatemala and the inefficiency of the OAS. An interesting aside is that Rosenthal mentioned a problem brewing on the Sarstoon River, which was out of the Adjacency Zone, and that the Parties were trying to deal with it but if they needed help they would come to the OAS.[189]

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[185] Memorandum no. 9 of 2007 from Chief negotiator to Prime Minister, 22 February 2007.

[186] Unfortunately, the government, against the Chief Negotiator's advice, had adopted the position that it would not accept a recommendation to go to the ICJ until the Santa Rosa community had been removed. Since Guatemala wanted to delay the removal of Santa Rosa, and was not keen on going to Curt, that policy made no sense. Memo to PM Musa from Shoman, 13 April 2007.

[187] *La Hora* newspaper, Guatemala, 20 March 2007.

[188] Aide-Memoir on the Belize-Guatemala ministerial meeting at OAS Headquarters on 16 April 2007. Minister Eamon Courtenay was accompanied by Ambassadors Lisa Shoman and Fred Martínez, Diane Haylock, Néstor Méndez and Dylan Vernon.

[189] Notes on the Belize/Guatemala meeting in the presence of the OAS SG, Panama, 5 June 2007. See below for further information on the Sarstoon issue.

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How Belize Achieved the ICJ Option

At that time, almost five years had passed since the Guatemalan government had rejected the Proposals from the Facilitators, four since the Transition Agreement and two since the Framework Agreement that allowed for the SG/OAS to recommend submission to the ICJ. Guatemala had developed a strategy: continue negotiations that clearly would lead nowhere, avoid putting forward concrete proposals and allow time to pass so that there would never be an end to their claim, while there were ever greater incursions across Belize's borders and depredation of its resources. Maintaining the claim was useful to the military, as a further justification for bigger budgets, to politicos who could use it to divert attention from serious national crises, to those who had spent their life working on the dispute, which gave them an income.

Besides, as long as the claim was alive and not in adjudication they could not only continue to proclaim that there were no borders between the two countries, thus leaving the door open for further encroachments, but they could also try to push the frontier further little by little, starting at the Sarstoon. Submitting the case to the ICJ, a case they were bound to lose according to all international lawyers whose opinion they sought, would make them lose all these advantages, and they were determined to avoid that as much as possible.

This was the scenario that the Negotiating Team faced as 2007 drew to a close. The term of President Berger was coming to an end, and with it the presence of Gert Rosenthal as Foreign Minister. The NT decided that it must use the opportunity of the last meetings in October to create a situation that would trigger the recommendation of the SG/OAS to submit the dispute to the ICJ. The technical level meeting was set for 18 and 19 October and the ministerial for 21 October at the OAS headquarters in Washington.

The objective of Raúl Lago, representing the Secretary General, was to get the technical level meetings to submit a progress report to the ministers showing what progress had been made, and asking for the

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negotiations to continue. The Guatemalans had the same objective. The Belize side, led by Assad Shoman and including Ambassador Fred Martínez and Diane Haylock representing the Leader of the Opposition, were able to show that all these meetings were useless, as nothing was ever fully agreed. Shoman asked Lago to declare a paper presented by Guatemalan out of order, since it did not address the matters mandated to the Technical Group but rather proposed to agree on not agreeing while at the same time adopting the extreme positions of Guatemala, and to report to the ministers that the working group had worked hard but they could not arrive at any agreement. Guatemala objected.

The discussions were heated, and went on until late evening, when it was agreed to adjourn for the night. The following day, after hours of empty arguments, Shoman told the Guatemalans that their conceptual problem was that Guatemala claimed all of Belize, and the delegates didn't want to officially reduce that claim, hence Guatemala is now trying to reach a non-agreement because it cannot agree on anything. Ambassador Martínez declared that after too many meetings and after tremendous efforts by Belize, the parties find themselves back at square one with a proposal from Guatemala that is calling for a non-agreement.

The paper that Belize prepared was then circulated, and the Guatemalans protested that they were not "abandoning" the process as Belize alleged, but only asking the parties to keep talking. Chairman Lago then declared that the Belize paper is a review of what has transpired over the last eighteen months, from which he could conclude that continuing to analyse Guatemala's proposal would not lead anywhere. It was already late evening and the talks were getting nowhere, and the Guatemalans refused to continue meeting over the weekend so that something solid could be presented to the ministerial meeting on Monday.

In accordance with a strategy suggested by the Head of the NT during a recess, Diane Haylock explained how the nine meetings of the Technical Group had developed over the last 18 months, and showed that in every material point Guatemala had shown an incapacity to agree or to budge from its pre-established positions. Belize had been extremely conciliatory and patient, but her patience had run out, and

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she intended to report to her Leader that she did not see any prospect of reaching agreement and therefore that there was no point in continuing to meet. Shoman followed up by showing how Guatemala had consistently refused to put its positions forward; how it had on several occasions taken back agreements it had made in previous meetings; how now at this 11th hour it came with proposals which it knew were totally unacceptable to Belize as well as to Honduras; and finally it was refusing to meet any more before the ministerial meeting. He said that this was being *intransigent and obstructionist*, and in the course of the next few minutes used that phrase three times. He concluded that the Belize delegation would recommend to the government that the meetings be discontinued and that the ministers agree to send the entire matter to judicial determination. Loud protestations followed from the Guatemalans, who declared that they had been insulted by being called intransigent and obstructionist. The meeting was adjourned amid high tension.

The following Monday, with Foreign Minister Lisa Shoman representing Belize, and SG Insulza for the OAS, Foreign Minister Rosenthal said he was very upset and angry that his delegation had been wrongly accused of being intransigent and obstructionist. Lisa expressed her sorrow that Gert was upset and angry, but the paper prepared by Belize and approved by consensus in the Technical Group made it clear that there was no movement toward agreement and it was not likely that there would be. Gert complained that it was a very negative document, highlighting only the things that we could not agree on, and ignoring the positive things. He eventually suggested, however, that one option was to send the matter to court but agree on a *modus vivendi* at the same time.

Assad Shoman stated that if his delegation had known all along that what the Guatemalans had meant to say was that we should send the entire issue to court and agree on a *modus vivendi* for the period until the court ruled, it would have been happy to do so, and were happy to do so now. Lisa confirmed this, and Gert followed in agreement, and it was decided that the SG would make the required recommendation at the appropriate time, and would be consulting with the parties before he did so.

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On 19 November Insulza issued his recommendation to that effect. Both governments indicated their willingness to accept the recommendation and proceed to referendums, and, if both peoples agree, to submit the case to the ICJ.[190] In Belize, the Leader of the Opposition, Dean Barrow, also gave his approval.[191] Sir Eli Lauterpacht was asked to advise Belize on the matter; he wanted to have an experienced firm help with managing the case file should it go to the ICJ, and he recommended employing Jan Paulsson of the Freshfields Brukhaus Deringer legal firm. After securing the approval of both Musa and Barrow, Shoman, accompanied by Fred Martínez, met Paulsson in Washington in January 2008 and agreed the way forward, based on a memorandum written by Sir Eli.[192]

In early 2008 new governments took office in both Guatemala (January), led by President Álvaro Colom, and Belize (9 February), led by Prime Minister Dean Barrow. Álvaro Colom was the first left-leaning person to win the Guatemalan presidency in 58 years. He was the nephew of the popular Guatemala City mayor, Manuel Colom Argueta, who had been murdered by the Lucas regime in 1979, and headed the social-democratic party UNE. Colom expanded social programs and access to health, education, and social security, and generally pursued policies that contributed to a rise in the living standards of the Guatemalan poor. The high hopes for moving forward during Colom's mandate only reached the point, early on, of signing the Special Agreement to submit the case to the ICJ, but it was a very important point.

The Special Agreement to Go to the ICJ

On 8 December 2008 Foreign Ministers Wilfred Elrington and Haroldo Rodas signed the "Special Agreement between Belize and Guatemala to Submit Guatemala's Territorial, Insular and Maritime

[190] Government of Guatemala note to Secretary General OAS, 17 December 2007.
[191] The new UDP government officially accepted the recommendation on 29 May 2008.
[192] Sir Elihu Lauterpacht, Belize ICJ Proceedings Memorandum, 11 December 2007, Paulsson to Assad Shoman, Belize/Guatemala Border Question: Budget for 2008, 4 February 2008.

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Claim to the International Court of Justice".[193] Article 1 commits Belize and Guatemala to submit their dispute to the ICJ, and Article 2 defines the dispute—any and all legal claims of Guatemala against Belize to land and insular territories and to any maritime areas pertaining to these territories—and states what law is to be applied—rules of international law as specified in Article 38(1) of the Statute of the Court.

The definition of the dispute ensures that once the Court hands down its judgment, Guatemala cannot raise any other kind of territorial claim at any other time. The Special Agreement excludes the operation of subsection (2) of Article 38 of the ICJ Statute, which allows the Court to decide a case *ex aequo et bono*, if the Parties agree thereto. Belize refused to agree to that, and Guatemala finally abandoned its decades-held position that any submission to judicial settlement must be on the basis of *ex aqueo et bono* (that is to say, by taking extra-legal matters into consideration).

Articles 3 and 4 deal with procedural matters, and Article 5 states that both countries shall accept the decision of the Court as final and binding, and undertake to comply with and implement it in full and in good faith. It then sets out the procedure for demarcating the boundaries in accordance with the decision of the Court. Article 7 requires the parties to submit to simultaneous referenda the decision to send the dispute to the ICJ, and sets out the question to be put to referenda:

> Do you agree that any legal claim of Guatemala against Belize relating to land and insular territories and to any maritime areas pertaining to these territories should be submitted to the International Court of Justice for final settlement and that it determine finally the boundaries of the respective territories and areas of the Parties?[194]

[193] See Appendix 14 for text.

[194] Special Agreement between Belize and Guatemala to submit Guatemala's territorial, insular and maritime claim to the International Court of Justice, Washington, 8 December 2008. Signed by FMs Wilfred Elrington and Haroldo Rodas and OAS SG José Miguel Insulza.

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Trouble at the Sarstoon

Things did not move as swiftly as originally anticipated. All the while, there were constant incursions by Guatemalans along the border, involving illegal logging, farming and harvesting, causing great harm to the environment and eliciting the reaction of Belize's defence forces, which in turn caused outcries in Guatemala.

In October 2009 Guatemala sent a protest note complaining about three military posts Belize had erected along the border and its intention to build another near the Sarstoon. Ambassador Martínez countered that Belize took a sovereign decision to open new military observation posts because Guatemalan authorities had failed to live up to their agreement to dissuade its people from illegally entering Belize and causing massive damage to its environment and indulging in illegal actions. He added that the base to be built close to the Sarstoon was a direct reaction to the increased traffic of drugs in the area. The Guatemalan officials complained that Belize was trying to effect a show of sovereignty, as a big Belize flag was planted on the Sarstoon Island a few days before, as a sign of provocation.[195]

Martínez informed Foreign Minister Rodas that on 3 November 2009, a BDF patrol on the Sarstoon saw a Guatemalan flag flying on Sarstoon Island and removed it, whereupon two Guatemalan patrol boats accosted them, the officer commanding affirming that he had been instructed to hoist the flag. A heated discussion took place regarding jurisdiction over the island and the waters of the Sarstoon. Belize was gravely concerned about this open and purposeful incursion into its national territory, said Martínez, and requested the Minister to put a stop to it. Rodas said he had no knowledge of this "total nonsense," and in Martínez's presence he telephoned the Minister of Defence and asked that the GAF patrol boats stop that behaviour immediately. Rodas reiterated his government's commitment to stop

[195] Report on the meeting with Ambassadors Antonio Castellanos and Gustavo Orellana Comisión de Belice, Guatemalan Foreign Ministry, Friday, October 16th, 2009.

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the incidents along the Sarstoon immediately and asked that this be conveyed to Minister Elrington.[196]

Only five days later, however, Rodas himself signed a diplomatic note to Belize, declaring categorically that "Sarstoon Island is Guatemalan territory that has never been in dispute," and reiterating that the government recognizes no frontiers whatsoever with Belize, and requested the early removal of any military outpost in the AZ and near the River Sarstoon.[197] The Belize government replied to the offensive note, protesting the raising of the Guatemalan flag on Sarstoon Island and asserting that Belize has sovereignty over the island and the river up to the mid channel and will continue to enforce the laws of Belize throughout its territory.[198] The BDF itself was very concerned about the GAF's aggressive acts in the Sarstoon, and noted that in December 2006 and in March and April 2007 BDF vessels had been challenged by the GAF near Sarstoon Island and told that they cannot use the channel south of the Sarstoon Island. Similar provocations occurred in February 2010.[199]

On 9 September 2010, the Guatemalan Congress passed the Special Agreement without debate, but the government continued to place obstacles in the way of moving the process forward and preparing for the referendums which would trigger submission of the case to the ICJ.

The Guatemalan government also reactivated its bid for non-permanent membership of the UN Security Council, and this time Belize did not seek to negotiate its support in return for real progress in the solution of the dispute, but rather gave its, and therefore CARICOM's, support to Guatemala, whose candidacy was consequently endorsed by the Latin American and Caribbean Group (GRULAC) and supported by 191 of the 193 member countries, and it became a member of the UNSC on 1 January 2012.

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[196] Report of the meeting between Ambassador Martínez and Foreign Minister Haroldo Rodas, Guatemala City, November 4th, 2009.
[197] Haroldo Rodas to Elrington, 9 November 2009.
[198] Diplomatic Note no. 598, 25 November 2009.
[199] Diplomatic Note no. 62, MFA to Guatemala's MRE, 2 February 2010

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The Otto Pérez Molina Government

Otto Pérez Molina became President on 14 January 2012, the first former military man to take that office since the democratization began. He has quite a long and chequered history. He graduated from the infamous US-run School of the Americas, served as Guatemala's Director of Military Intelligence and as inspector-general of the army. In 2011, according to US National Security Archives, he was accused of involvement in the scorched earth campaigns of the 1980s under the military dictator Efraín Ríos Montt, ordering the mass murder of civilians, destruction of villages and resettlement of the remaining population in army-controlled areas. The indigenous organization Waqib Kej presented a letter to the United Nations accusing Pérez of involvement in genocide and torture committed in Quiché during the civil war. He has also been accused of involvement in the 1998 murder of Juan José Gerardi, a Roman Catholic bishop.

During his term of office, Pérez was often accused, like others before him, of corruption, but towards the end of his term the corruption became more blatant and popular denunciation more marked. In April 2015, the International Commission against Impunity in Guatemala (CICIG in Spanish) exposed a customs corruption ring and in August Guatemalan prosecutors presented evidence of Pérez's involvement. Congress stripped Pérez Molina of his immunity on 1 September 2015; the following day he resigned, and the next he was arrested and sent to prison. Vice President Alejandro Maldonado Aguirre (who was the ambassador at the UN during Belize's independence bid) was appointed to serve the remainder of Pérez's term, until 14 January 2016.

Pérez Molina had a brilliant strategy for dealing with the Belize issue: keep talking, keep making promises, and above all push ahead with various cooperation agreements with Belize to give the impression internationally that Guatemala was conducting itself honourably in relation to Belize and that relations with its government were excellent and worthy of international commendation.

As for the Special Agreement, on 27 April 2012 the Parties agreed that the simultaneous referenda would take place on 6 October 2013. Long before that date, however, the Guatemalan government began

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to show signs of backtracking. In January 2013 the President of the Supreme Electoral Tribunal said that the referendum might have to be postponed until Belize amended its Referendum law. The allegation was that Belize had purposely changed the law so that unless 60% of the persons registered to vote actually voted, the referendum was invalid. This, they argued, would result in an inequality of conditions for the referenda, which would be unfair to Guatemala and designed to frustrate the process.[200] Belize explained that the change in the referendum law had nothing to do with the agreed referenda with Guatemala, and was passed long before negotiations began on the Special Agreement.[201]

Still, in April, Guatemala gave official notice to both Belize and the Organization of American States that the Guatemalan government had decided not to proceed with the referendum on 6 October 2013 and proposed that the same be postponed *sine die*. In reporting this to the UN General Assembly later that year, Foreign Minister Elrington warned that the claim "poses an existential threat to our nation," and painted a grim picture of the border area:

> Both our territorial and our maritime border regions have been suffering from depredation and environment degradation in consequence of the wanton and sustained illegal activities of Guatemalan campesinos, fishermen and other criminal elements engaged in narco-trafficking, human trafficking, smuggling, illegal panning for gold, the extraction of Xate and other exotic plants and animals, the illegal felling of timber and the pillaging of our ancient Mayan ruins . . . Additionally, the increasing trespassing by the Guatemalans into our country has given rise to more frequent violent encounters between Guatemalans and members of our Belize Defence Force resulting in fatalities in some instances. These incidents put a heavy strain on the relations

[200] *Prensa Libre*, 23 January 2013.

[201] Belize Embassy of Guatemala note to the embassies and international organizations accredited in Guatemala, 4 February 2013.

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> between our country and Guatemala and the peace of our region as a whole.[202]

Clearly, Guatemalan governments were not acting in good faith, and they were forcefully denounced in a government-sponsored forum as "serial killers of international agreements, with no intention whatsoever of ever resolving their claim by submitting it to the ICJ or in any other way," and it was proposed that we "put ourselves on a diplomatic war footing: as we did to achieve our sovereignty and territorial integrity 40 years ago, so must we do to preserve those things today".[203]

The government of Belize decided that it was in Belize's interest to preserve the Special Agreement, and to make good faith efforts to have it implemented. In January 2014, the Parties signed a "Road Map" which postponed *sine die* the holding of the referenda, deeming it necessary to create "a climate of confidence conducive to the fixing of a date" for the referenda. The Road Map provides for the expansion and strengthening of cooperation mechanisms, including coordinated operations among security agencies to combat illegal activities and transnational crime. They agreed to establish a Joint Commission to develop cooperation projects aimed at strengthening friendship and cooperation. The Plan of Action for 2014 listed 27 items, and the ministers agreed to meet in December to evaluate progress and to review the *possibility* of setting a date in 2015 for the referenda.[204] No such date was set, but in December 2014, in the village of Placencia in southern Belize, in the presence of all of the Heads of State and Government of Central America and the Secretary General of the OAS, the Parties signed 13 agreements on everything from energy to culture, tourism to migrant workers. Prime Minister Barrow declared that the agreements "bring us a great distance closer to the long overdue settlement of the dispute". Clearly this was wishful thinking. The Guatemalans were succeeding in getting Belize to concentrate on "creating a climate of confidence conducive to," which

[202] Wilfred Elrington, Statement to the UNGA, 30 September 2013.
[203] Assad Shoman, Forum on the Referral of the Belize/Guatemala territorial dispute to the ICJ, Bliss Centre for the Performing Arts, 18 September 2013.
[204] Road Map for the strengthening of the bilateral relations in 2014, Washington, 24 January 2014.

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was leading nowhere, and certainly not to a resolution of the dispute; if anything, it was conducive to the international community thinking that all was going well and that Guatemala was a reasonable country abiding by its agreements.[205] But this was an illusion.

As early as March 2013, Guatemala had recommended that the Special Agreement be amended to allow for separate referenda, but the Belize delegation had rejected that proposal. Then, on 25 May 2015, while the government of Otto Pérez Molina was imploding, the Parties signed a Protocol amending the Special Agreement to allow for the referenda to be held "simultaneously or separately on the dates most convenient to the parties".[206]

While all this diplomatic activity was going on, the Guatemalan military was flexing its muscles along the Sarstoon River, Belize's southern boundary with its neighbour.

The River Becomes Centrepiece of Conflict

When the CBMs were signed in 2000, 2003 and 2005, all the incursions were occurring along the western border. There were no problems along the Sarstoon, and therefore no mention was made of that area. Although Guatemalan officials often hankered after the Island or the entire River during negotiations, the River itself was quiet and no formal notes specifically claimed sovereignty over the River. That began to change in 2007, when Belize's military entered into an ill-advised "Gentleman's Agreement".

In June 2007 a meeting between BDF Commander, Brigadier General Lloyd Gillett and Chief of Staff of the GAF, General de Brigada Mario Aguilar Bran, was held "to dialogue and explore alternatives" because of recent confrontations between the two forces at the mouth of the Sarstoon. The Guatemalan Navy was insisting that the BDF, when relieving and resupplying its Operating Base at Cadenas up the Sarstoon, should refrain from using the southern channel, and had

[205] This applies also to Insulza's views on the Placencia ceremony, when he says that the agreements "reflect the significant strides made in the process over the last ten years". José Miguel Insulza, *Democratic Governance*, OAS, 2017.
[206] Full text in Appendix 15.

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physically denied access to that channel to BDF patrols. Gillett argued that Belizean forces had always used that approach from the time that Belize took independent control of its security issues, that the 1859 Treaty defines the border as using the deepest channel (the southern) to the Gracias a Dios monument and that accordingly the Sarstoon Island was in Belize.

The two positions were clearly irreconcilable, but "after some intense deliberations on each other positions it was agreed as a GENTLEMAN'S AGREEMENT that the following actions will be carried between both Armed Forces:

> a. Both approaches in to the Sarstoon will be used alternately commencing next week, i.e. week of 11 June 2007.
>
> b. BDF/BNCG will meet with the Guatemalan counterparts at the mouth of the Sarstoon River and conduct joint patrol up the Sarstoon River; this action being an act of Confidence Building Measure to the peoples living in the area.
>
> c. Sharing of information with regards illegal activities in the area will also be done on a weekly basis.
>
> d. There will be no more blocking of the Sarstoon or belligerent actions".[207]

However, the military chiefs had no authority to engage in this unorthodox diplomacy. There is no written agreement nor agreed minutes of such a meeting and neither government ever sought to formalise it, although their officials have variously referred to it as "Gentleman's Agreement" or "Protocol". There is in fact no such protocol and no such agreement between governments. The Guatemalan government knows this perfectly well, but it perversely persists in using that meeting of generals and their verbal communication as an excuse to claim a "*status quo*" in which Belize recognized Guatemala's sovereignty over the River. Clearly it was not a good idea for soldiers to take it on themselves to come to agreements, gentlemen's or otherwise, on matters relating to the sovereignty and territorial integrity of nations.

[207] BDF memorandum of 7 June 2007.

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There were further confrontations in 2009 and 2010, and then Belize had followed Guatemala into concentrating on reaching cooperation agreements, and had not pressed for clarity on the southern frontier. The consequences were not long coming. The ink was hardly dry on the agreements signed at Placencia when incidents at the Sarstoon became more frequent and more threatening.

On the morning of 28 May 2015 a Belize Coast Guard (BCG) patrol camped on the Sarstoon Island was challenged by a GAF patrol and told to leave, claiming it was on Guatemalan territory. When the BCG refused, the GAF increased their numbers until by evening there were three vessels and 27 men. Quite early the next morning a GAF patrol returned and asked the BCG to leave. By noon the BCG received instructions from Belize to leave the island, and they retreated in order. A note from the Belize MFA protested the GAF incursions and hostile behaviour and reiterated its sovereignty over the Sarstoon Island and the River north of the mid channel. It called on the government to agree on "a modus operandi that will maintain the peace and conduce to better relations and understanding along the Sarstoon River".[208]

At a forum in Belize City two months later, Guatemalan Foreign Minister Carlos Raúl Morales, in complaining about Belize building a Forward Operating base at the Sarstoon, declared that the two governments had agreed in the Confidence Building Measures "to not increase the military bases in the vicinity of both countries" and "to not increase the military presence in the area in the vicinity of the both countries".[209] This was untrue, a complete fabrication by the Minister, and he had said this in public in the presence of the Belize Foreign Minister and functionaries of the Ministry and had not been publicly corrected. This led five former Foreign Ministers of the period to correct the picture and explain that that none of the CBM agreements in any way contemplate any restriction on Belize creating as many military bases as it wishes to, and that no decision or agreement was ever made with Guatemala, in the years 1998 to February

[208] MFA Diplomatic Note no. 368, 3 June 2015.
[209] As reported by Channel 7.

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2008 by the Government of Belize with regard to increasing or removing military bases in either Belize or Guatemala.[210]

Wil Maheia and the BTV

A fisherman living in Punta Gorda, Toledo, had become obsessed with the need to assert Belizean sovereignty over its part of the Sarstoon River and along the western border. Wil Maheia had formed the Belize Territorial Volunteers (BTV), a loose organization of people who would join him on different expeditions to assert sovereignty. Over time he has taken over 1,000 Belizeans to the Sarstoon to protest the increase in illegal logging and fishing in Belizean territory. He claims that the Belize government on numerous occasions has asked him to desist from his actions, and that the US Embassy's political officer in Belize has made phone calls to advise him not to go to the island.[211]

On 30 July 2015 Wil Maheia announced that the BTV and others would be going to the Sarstoon Island on 16 August to erect a monument with the Belizean flag. On 4 August Foreign Minister Carlos Raúl Morales wrote to OAS SG Luis Almargo (who had assumed office on 26 May 2015) and asked him to have the OAS Office in the Adjacency Zone verify the action.[212] On 14 August the National Security Council of Belize published a press release calling for the expedition to be cancelled because of the potential risks and consequences of the activity. The same day Almargo wrote to President Otto Pérez Molina requesting his assistance to ensure coordination of the Navy with the SG's Representative "in order to avoid unnecessary friction, errors, accidents, or misunderstandings that could harm the important work completed thus far".

Early on 16 August the OAS mission led by the SG's Special Representative Raúl Lago headed for the Sarstoon. The OAS boat was intercepted by the Guatemalan Navy, but after the OAS representatives produced a copy of the note from the Minister of Foreign Affairs they

[210] Channel 7, 30 July 2015.
[211] Interview with Wil Maheia, 2016.
[212] Morales to Almargo, 4 August 2015

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were unmolested.[213] Later, about seven vessels from the Belizean NGO arrived in the area, and were joined by a larger vessel around midday; by then there were over a hundred men, women and children gathered. When five Belizean vessels began to sail toward the Sarstoon Island they were intercepted by two Guatemalan Navy vessels and told to withdraw. One of the Guatemalan vessels prevented the larger Belizean boat from approaching the river and the island. Despite attempts by the Guatemalan Navy to stop them, four smaller vessels advanced toward the river and circled the island, entering through the northern channel and returning through the southern channel; at all times they were accompanied by a Guatemalan Navy vessel, the OAS boat, and the boat carrying the Guatemalan journalists, and there were no further incidents.

The OAS report recommended that "confrontational attitudes and situations between the civilian population and the armed forces should be avoided, since they could endanger human lives and cause a military escalation between two sister countries," and acknowledged that "governments cannot prohibit their citizens' freedom of movement".

MFA's note to MRE over the incident first reemphasised that the government did not support the activities of those who went to the Sarstoon, then stated its concern over the GAF behaviour and reaffirmed its rights in the area, and repeated its call for the countries to agree on "clear mechanisms of confidence building along the Sarstoon River".[214] The reply a few days later reiterated that Guatemala owned the River and the Island, and that they had been allowing the passage of BDF vessels to and from the Cadenas outpost, escorted by a GAF vessel, but this generous act of good faith cooperation had been distorted by the Belize government to portray the passage as an inexistent act of sovereignty.[215]

Guatemala's plan was to falsify history by changing the "facts on the ground" and imposing what it would later call the "*status quo*". Thus in a diplomatic note in December 2015, it states: "we will continue the

[213] This account is taken from the OAS "Report on the Sarstoon River Special Observation/Peacekeeping Mission (Belize–Guatemala) August 16, 2015".
[214] MFA Diplomatic Note no. 551, 19 August 2015.
[215] MRE to Elrington, 24 August 2015.

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practice of allowing the access of Belizean military vessels into the waters of the River Sarstoon in order to provision the Cadenas Observation Post, once the established protocols are complied with to that effect, and will continue to provide an escort for those voyages in the customary manner".[216] The words chosen, "the practice," "allowing," "established protocols," "customary," are all heavily loaded to establish that there is in place an agreed pattern of behaviour that confirms Guatemalan sovereignty of the River and the Island. All of that was untrue, completely made up in order to create a "*status quo*" that Guatemala could then call upon to justify its behaviour.

The Staying Power of the Military

Jimmy Morales, who became President on the ticket of the *Frente de Convergencia Nacional* (FCN) on 14 January 2016, always had a fixation with the military. His presidential heroes were Rafael Carrera (1844-65) and Jorge Ubico (1931-44), two notorious Guatemalan dictators. The FCN party was established in January 2008 by a group of retired army officers, including veterans of the Guatemalan Civil War. Edgar Ovalle was considered to be Jimmy Morales' "right-hand man". He commanded counter-insurgency operations in the Ixil Community in the early 1980s when several massacres against the Ixil Mayas took place and in which Pérez Molina is implicated.[217] The violence against the Ixil was acknowledged as a genocide by the Supreme Court of Guatemala, but is denied by Jimmy Morales. In the run-up to the 2015 elections, he surrounded himself with military men and pulled off a surprise victory.[218]

President Jimmy Morales decided to maintain Carlos Raúl Morales as his Foreign Minister. He had served as Executive Secretary of the Comisión de Belice and was made Foreign Minister in September

[216] MRE to Embassy of Belize, Guatemala, 8 December 2015.

[217] Ovalle was elected to Congress, but in March 2017 the Supreme Court withdrew his immunity. He went into hiding and is wanted by Interpol, accused of crimes against humanity for his participation in 88 massacres commmited during the civil war between 1981 and 1986.

[218] José Rubén Zamora, *El Periódico*, August 2016.

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2014 by Otto Pérez Molina. He was a particularly crafty and smooth operator, not bashful of deliberately making false statements while projecting a veneer of friendship and reasonableness.

Whose *Status Quo?*

On February 27th 2016 the BTV attempted to go back into the Sarstoon River, but they were blocked by the Guatemalan military. Belize's MFA note on 1 March protested the illegal incursion of GAF into Belizean waters and again called for "a set of confidence building measures that are specific to the Sarstoon River".[219] On 12 March, a GAF patrol boat hovered around the Sarstoon FOB (Forward Operating Base), clearly within Belizean waters, and taunted the BDF contingent there, the Commander stating through a loudspeaker that it was violating the protocol that was established long ago, that whenever there is a change-over at the Cadenas CP, the BDF should ask permission of the GAF to traverse the Sarstoon River, presumably under that 2007 "Gentleman's Agreement".[220]

Belize sent a protest note on 14 March and affirmed that the borderline was along the mid-channel and south of the Sarstoon Island, and insisted that the Government of Guatemala "respect the long established *status quo* based on the aforementioned agreed line"[221] Guatemala's reply on the same day declared that the only thing the GAF forces wanted was "to ask the crew of the Belizean vessel to follow the customary security protocols utilised in the Sarstoon River (*statu quo*)". The note uses the underlined phrase four times, and reaffirms that the Sarstoon River belongs to Guatemala, and until the matter is resolved at the ICJ "the Government of the Republic will continue to exercise and defend its sovereignty as it has done until now".[222] By repeating its own constructed version of the "*status quo*," the government of Guatemala was reiterating its assertion, which it would take to international forums, that its

[219] MFA note to MRE, 1 March 2016.
[220] BDF note, 13 April 2016.
[221] MFA note 142, 14 March 2016.
[222] MRE note to MFA, 14 March 2016.

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ownership of the Sarstoon River was recognised by Belize, which followed a supposed "protocol" to ask permission before using the River, since that was the *status quo*.[223] This would obviously be a critical factor were an international tribunal ever have to decide on the matter.

This exchange, and the extremely tense situation at the southern border created by the provocations of the GAF, occurred in the context of a previously scheduled ministerial meeting in Washington set for Tuesday 15 March. The Guatemalan Ministry of Foreign affairs was insisting that the only topic to be discussed was raising funds for the OAS Office in the AZ, and strenuously objected to any discussion of the Sarstoon situation. Opposition leader John Briceño had been invited to name a representative to attend those talks, and Assad Shoman had agreed to do so. When he learnt of Guatemala's insistence on not discussing Sarstoon he alerted Briceño, who urged the Prime Minister to rectify that situation. Barrow called President Morales, and insisted that at the Washington meeting the Belize delegation will bring up the Sarstoon and the importance of setting new protocols and CBMs for the region. Morales replied that he will instruct his Foreign Minister to allow the topic to be brought up in the Washington meeting. The President also indicated that he will send word to the military to stand down in the Sarstoon".[224]

At the meeting at OAS Headquarters on 15 March 2016 with OAS Secretary General Almargo, the Guatemalan FM spoke at length about how good relations were between the two ministers and how this had led to the avoidance of conflict. Belize's FM Elrington concurred about the excellent relations, but then referred to the problems in the Sarstoon, and suggested that the CBMs be extended to the Sarstoon. Morales said he had instructions not to discuss that, but he related at length his version of the history of the "*status quo* and long established protocol" that the BDF would register their entry with the GAF before proceeding upriver. Shoman's attempts to put on record the real *status quo* were suppressed, and the meeting agreed that the two sides meet in private immediately after the meeting to

[223] The Latin phrase means "the existing state of affairs," the way things are and have been.
[224] Briceño to Shoman & others, email dated 13 March 2016 at 15:15.

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discuss the Sarstoon and then inform the Secretary General what they have agreed.

At that private meeting, which was not attended by Shoman, Morales suggested that a future meeting could come up with some sort of understanding for the Sarstoon, and in the meantime there will be peace and tranquillity if only the BDF were simply to follow the protocol for the Sarstoon. After some discussion about what that 'protocol' was, Morales said that all the GAF really wanted was for the BDF to register their presence by greeting the GAF when they pass by the base, as a sign of courtesy. Elrington said he could work with that for now, and proposed to reduce this accord to writing, but Morales said that he cannot publicly declare that they are letting the BDF pass unimpeded and without restrictions, as that would get him in deep trouble with his government. They therefore agreed on this formulation: "Both Foreign Ministers emphasised that they only want peace and will continue to take all necessary measures to diffuse tensions and avoid confrontations in the Sarstoon". Morales recommended that General Jones and General Pérez get together and come up with some sort of arrangement for the area. It was agreed that the two soldiers, along with Ambassadors Rosado and Roldan, would work on a draft protocol that would be considered by the ministers after the Easter break.

On 8 April there was another ministerial meeting at the OAS Office in the AZ, near the border in Cayo, also attended by Generals Jones and Pérez. The Belize side presented a draft MOU for a modus vivendi for the Sarstoon River, elaborated jointly by Rosado and Shoman, which stated that "the channels of the Sarstoon River shall continue to be freely navigable by vessels and boats of each of the two countries without any interference or trailing by the other," which was in keeping with Article VI of the 1859 Treaty.[225] It elaborated a series of measures to improve friendly relations and cooperation, such as that the law enforcement and armed forces of both parties shall refrain from any threatening, abusive or unfriendly actions, words or behaviour of any kind with respect to

[225] "Article VI. It is a further agreed that the channels in the water-line of boundary described in Article I of the present Convention, shall be equally free and open to the vessels and boats of both Parties; and that any islands which may be found therein shall belong to that Party on whose side of the main navigable channel they are situated".

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each other in and around the said River, and also respect the right of the citizens of each other to make lawful and environmentally sustainable use of the river for fishing and recreation. If there were any differences which the parties could not resolve by negotiation, "either of the Parties may request the Secretary General of the OAS to use his good offices to propose a solution to the dispute and the other Party hereby agrees to accept such offices and to comply in good faith with the recommendations of the Secretary General".[226]

At a separate meeting before the plenary session, Ambassador Rosado, accompanied by General Jones, briefed Guatemalan Ambassador to Belize Estuardo Roldan and General Pérez on the proposed text and responded to their queries and doubts about three of the 11 articles; they did not present any insurmountable objections to any. It was reported to the Plenary that Belize had presented and explained its proposals, and that the Guatemalans received the proposed draft with the undertaking that they would study them and get back to Belize.

On 13 April, the MRE addressed a diplomatic note to the Belize Embassy in Guatemala City stating that it could not accept certain parts of Belize's draft proposals, and instead submitted its own draft of eight articles, the first of which read as follows:

> The *status quo* of navigation of official Belizean vessels in the Sarstoon River will be maintained for the purpose of restocking the observation post in Cadenas, with prior authorization issued by the Guatemalan Sarstoon Naval Base. Navigation by private vessels may take place with a "zarpe" (set sail authorization) issued by the Belize authorities and must enter the river through the Harbourmaster's office in Livingston, in order to get its authority to navigate in Guatemalan waters.

The diplomatic note was hand-delivered to Ambassador Rosado at the MRE in Guatemala City on 15 April, where the Foreign Minister

[226] "Memorandum of Understanding for a Modus Vivendi for the Sarstoon River (Belize Draft), 8 April 2016. The fact that at a press briefing Minister Elrington later revealed the terms of the proposal and the request that the matter be settled by December did not sit well with Guatemala's foreign ministry.

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expressed his concern that the Wil Maheia group was planning to return to the Sarstoon, and asked that the Belize government do something to keep these NGOs from the area. As we shall see, it did.

Meanwhile, on 6 April, conservation group SATIIM reported that they were stopped and questioned by the Guatemalan Navy on a river patrol on the Belize side of the Sarstoon. On 20 April the Belize Government opened the Sarstoon Forward Operating Base, while Guatemalan gunboats were on Belize's side of the river closely observing, and a Guatemalan drone monitored Belizean officials from above. A few hours later, a 13-year-old Guatemalan, Julio Alvarado, was fatally shot in the Cebada area of the Chiquibul.

Guatemala Raises the Ante

A Guatemalan minor was killed and his father and brother wounded by gunfire during a confrontation with a BDF patrol in Belize on 20 April 2016. Two days later the OAS issued a release condemnatory of Belize and said it would investigate the incident at the request of both parties.[227] An independent investigative commission by the OAS reported on19 August 2016 that the incident occurred 562 meters east of the border, that the Belizean patrol responded to shotgun fire after it had ordered the individuals to stop, and that none of the shots fired by the BDF caused any harm to the Guatemalan nationals.[228]

The Guatemalan government reaction was extreme and disproportionate. President Morales described the "attack" as cowardly and extreme, recalled his ambassador to Belize, made a formal complaint to the Inter-American Court of Human Rights and promised a "strict exercise

[227] OAS Press Release, 22 April 2016.

[228] The report further stated that the eight shots received by the deceased were produced by bullets from a .22 calibre rifle and pellets from a 12-gauge shotgun; the calibre 5.56 M4 carbine used by the BDF did not produce any injury on the deceased nor any of the wounds in the father and brother of the deceased. The father confirmed that he had been entering Belize for many years and that he was fully aware that he was engaging in illegal activities in Belize and he encouraged his children to accompany him and also engage in illegal activities.

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to protect the sovereignty of the Sarstoon River and the entire Adjacency Line, to ensure that there be no more abuses by the Belize Defence Force".

That same day a press release from the Office of the Prime Minister refuted President Morales' version of the events, and affirmed that "our patrol in Belizean national territory came under attack to which they responded in justifiable self defence". It added that the patrol included civilian personnel from the NGO group, FCD, and those personnel confirm the fact that the patrol simply responded after they were fired upon and were in fear for their lives. This latest shooting attack on Belizean officials, the release alleged, is part of a continued pattern of aggression by Guatemalan civilians engaged in illegal activities on Belize's side of the Adjacency Zone. It added that "we find the statements made and position taken by President Morales to be unhelpful and inflammatory. The current amassing of Guatemalan troops in the border areas, including the Sarstoon River, only adds volatility to the tensions already created by illicit activities in these areas".[229]

International media reports noted both versions of the incident, and stated that the President had ordered troop mobilizations. Minister of Defence Williams Mansilla told Agence France Press that in order to prevent new incidents the military force along the border had been increased from 400 to 3,000 soldiers, but that this was a preventive measure, not a declaration of war".[230] This situation naturally caused grave concern in Belize, but was soon deescalated. Both leaders were at a UN meeting on 22 April, and PM Barrow told Morales he would ask for an impartial inquiry from the OAS supported by US expertise, and they agreed to take measures to reduce tension.[231] A few days later FM Morales denied that the President had ordered the movement of 3,000 troops to the border, and in fact that never occurred.[232]

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[229] Press release Reaction to Statement Issued by the Guatemalan President, Belmopan, April 21st, 2016.

[230] From the Spanish news agency EFE.

[231] "Prime Minister Barrow Convenes National Security Council Meeting, Belize Press Office, Belmopan. April 22, 2016.

[232] *Canal Antigua*, Guatemala, 26 April 2016.

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Just at the time this crisis was unfolding, Belize was comforted by the knowledge that the Commonwealth still had its back, when Baroness Patricia Scotland, the newly elected Secretary General of the Commonwealth, visited Belize and promised to call a meeting of the special Commonwealth Ministerial Committee on Belize. She told the media that

> I also understand the tension and the worry and the anxiety that is now starting to arise as a result of recent incidents. And it's clear the integrity and sovereignty of Belize is something which must be upheld . . . the Commonwealth's position on the integrity and the sovereignty of Belize remains absolutely unchanged. The 1859 line is a line that has been maintained and will be maintained going forward.

And then, on 28 April, a startling piece of news shook the country: what the Guatemalans had failed to do by force the Belize government itself did by law. It passed a regulation making it a criminal offence for any Belizean to go to the Sarstoon River for one month. The Government explained that it did so for two reasons: "One was to avoid the possibility of any harm coming to Belizeans going to the Sarstoon in organized numbers to make a political point, given that tensions had reached a fever pitch with Guatemala. The latter's armed forces, especially its navy at the Sarstoon, were on a declared hair-trigger mobilization". The second reason was "to allow an opportunity for Belizean diplomacy to work".[233]

The Regulation stated that for a period of one month no person, without lawful authority, shall enter into, move within, or exit from the prescribed area or any part thereof, nor operate any vehicle or vessel within that area, on penalty of two thousand dollars and/or twelve months imprisonment. The area prescribed was the area of the Sarstoon River within the territory of Belize, including the Sarstoon Island, starting from the mouth of the river at coordinates BN95006000 to BN96006000 and BN95005860 to BN96005860, and ending at the western end of the river at grid reference BN61805780.[234]

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[233] GOB Press Release, 9 May 2016.

[234] Public Safety (Prescribed Area) (Movement) (Restriction) Regulations 2016,

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It had been passed because the BTV had announced that it would lead a large delegation to the Sarstoon to assert Belizean sovereignty on Saturday 30 April, anniversary of the 1859 Treaty. The BTV went ahead with its plans, attempting to defy the regulation, but when dozens of volunteers, including members of trade unions and NGOs and Senators, converged on the Barranco Pier to board the boats, they learned that the security forces had detained several of the boat captains, and when Wil Maheia said they just wanted to go towards the Sarstoon, not inside the river, the Police Southern Regional Commander told him "this is the furthest that you are allowed to go". The Coast Guard had impounded the boats hired for the trip, claiming that this was "for maritime safety offences".

The government was heavily criticised for this action, but the Prime Minister stated that the Foreign Minister was in Washington meeting with the SG of the OAS and the Guatemalan FM to negotiate a peace-keeping protocol for the Sarstoon. The prohibition would come to an end if a protocol is agreed, and in any case at the expiration of one month, whereupon "we revert to the position that the island is in our territory, on our side of the river, and Belizeans will be free to go anywhere that constitutes our territory, including the Sarstoon Island". He also said that persons from Toledo who are on legitimate business will be allowed to traverse the Sarstoon, and only those with incendiary political statements of patriotism will be blocked.[235]

At the meeting at OAS Headquarters on 4 May 2016, with SG Almargo and FMs Elrington and Morales, the unusual step was taken to include the USA's Ambassador Fitzpatrick. It was a fiery meeting. Elrington was, this time, firm in defending the real *status quo* and proclaiming that the boundary has always been the mid-channel of the river, that Guatemala invented a protocol that never existed, and that the proposal for the Sarstoon made by Belize in April was fair and balanced. Referring to President Morales' military actions, he said that "as far as I know, a neighbour only amasses troops when they are preparing to invade," and affirmed that the actions Guatemala

S.I. 42 of 2016, Gazetted 28 April 2016.

[235] Channel 7 News, 3 May 2016.

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was taking and attempting to do were "analogous to annexing our river". This has to do with a show of force and might by a neighbour, he declared, and it is the Guatemalans who come into Belize and despoil our natural resources.

FM Morales claimed that the President had sent troops to the border because he had word that the people in the communities wanted to take the law into their own hands and take revenge for the killing of the child, and he had to do something fast to ensure law and order. But when Almargo tried to get him to say that Guatemala will not interfere with the BDF's passage in the Sarstoon, Morales said he could not commit to that in public. Morales resisted attempts by both the SG and the US representative to get him to make a commitment to not interfere with the BDF's passage, and successfully (and cunningly) shifted the issue to one of saying "hello": "it used to be that the BDF used to pass and say hello at our base. Our people might have taken it as seeking permission, the BDF maybe took it as simply saying hello". Almargo seemed happy with that, and the Belize delegation agreed.

On May 9, rejecting calls for the immediate rescission of the Sarstoon Prohibition regulation, PM Barrow said that since the parties had agreed to meet soon to resolve the issue, government would allow limited access to the Sarstoon: "all non-political, legitimate Belizean civilian traffic into the restricted area will immediately be given lawful authority, under the Regulation, to proceed. The only requirement for this is that they check in at our Sarstoon Forward Operating Base (FOB) so that our military can confirm the legitimate nature of their use of the river".[236]

The promised talks took place in Turkey on 23 May between the two Foreign Ministers; Eamon Courtenay represented the Opposition. It was agreed that Ambassadors Rosado and Roldan would meet soon to establish a schedule of meetings for the negotiation of a protocol for the Sarstoon and hopefully conclude by December. When Elrington asked for an undertaking that in the interim there would be free navigation in the Sarstoon, Morales said the Generals should meet and agree the modalities for this to happen.

[236] Press Release Government announces limited access to Sarstoon May 9, 2016.

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On May 24, GOB announced it was revoking the Sarstoon Prohibition regulation "as a consequence of the agreement reached in Turkey between Belize and Guatemala" that commits them "to start work now on a formal cooperation mechanism that will respect Belize's and Guatemala's respective use and navigation of the Sarstoon". Meanwhile, "the two sides have informally accepted a situation in which there will be untrammelled traffic for Belize's military and civilians along the Sarstoon".[237] This was good news: not only had Guatemala agreed to negotiate a formal mechanism for the Sarstoon, but in the meantime was agreeing to unimpeded movement on the Sarstoon even for Belizean civilians. True, one immediately wondered what the meaning of "informally accepted" was; was this another "Gentleman's Agreement"? Would it be open to different interpretations as well? In any case, the news seemed too good to be true. It was.

Four days later the Embassy of Guatemala in Belize sent a sharply worded note to the MFA refuting the Belize government claim that any such informal agreement had taken place, and affirming that the entirety of what was agreed was contained in a joint statement issued in Istanbul, which says nothing about untrammelled traffic.[238] Indeed, when FM Morales heard about the Belize statement of 24 May he immediately expressed his concern to FM Elrington, "because such statement did not reflect the content of the conversation".[239] Morales was thereby asserting that the Belize government had lied, and he further alleged that Guatemala had emphasised in Istanbul that "the Heads of both Armed Forces will have to define the procedures to be enacted in the river until the final mechanism is reached".

In the meantime, other attempts by the Guatemalan government to violate Belize's sovereignty and territorial integrity continued to surface. In December 2016, eight persons from the Barranco fishing cooperative attended a meeting in Puerto Barrios, Guatemala, sponsored by a US NGO headquartered in Guatemala. They were given a map showing fishing zones subject to Guatemalan regulations,

[237] GOB press release, Belmopan, 24 May 2016

[238] See GOB press release, Istanbul, Turkey, May 24, 2016, containing the joint Belize/Guatemala statement.

[239] Embassy of Guatemala in Belize to MFA, Note 201/2016, 28 May 2016.

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which included areas of Belize's territorial seas all the way up to Punta Gorda. It turned out that the relevant Guatemalan law and regulations were passed in 2002 and 2005, but the Belizean government at the time was not aware of them.[240] When these facts were published in local newspapers, the government issued a press release stating that "there can be no validity to, or international or Belizean recognition of, any law or regulation in Guatemala or any other country that purports to infringe on the sovereignty and territorial integrity of Belize. Government further clarifies that nothing has ever been done by Guatemala, at time of passage and certainly not now, to seek to apply any zoning or administration regulation to Belize's internal and territorial sea or Exclusive Economic Zone. Nevertheless, Belize absolutely repudiates any and all aspects of the Guatemalan legislation and regulations that, even if only on paper, attempt to interfere with our territorial integrity".[241]

Time went by, and by late 2017 there was still no word about the commitment made in Turkey to negotiate a mechanism for the Sarstoon. In August 2017 Alexis Rosado and Pat Andrews (CEO, Foreign Affairs) told local media that Guatemala continued to refuse to discuss that mechanism.[242] In December 2017, referring to his meeting with the new Guatemalan Foreign Minister, Sandra Jovel, FM Elrington reported that "We also discussed a safety protocol in the Sarstoon, and that is something that she also pushed against, pushed against. She was not ready to commit to that . . . and she's, of course, adopting the same position as the last foreign minister. There is the resistance to committing to anything formal, but I think that she understood the need for us to continue to discuss the issue".[243] More than 18 months after Guatemala had formally agreed to negotiate a mechanism for the Sarstoon, that was the most that could be got out of the Foreign Minister.

Meanwhile, on 16 September 2017, after a period of relative quiet, the Guatemalan navy intervened to try to prevent Belizeans from using

[240] *Amandala*, 22 December 2016.
[241] Press Release, GOB, 22 December 2016.
[242] TV7 News, 4 August 2017. Verbatim.
[243] TV7 News, 20 December 2017.

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Sarstoon Island and its surrounds. The Belize Territorial Volunteers led some 30 volunteers in canoes and kayaks around the Sarstoon Island. The Guatemalan Navy then swooped in to come alongside the canoes and stopped another Belizean NGO vessel from joining them. The Belize Network of NGO's condemned the violation of Belize's territorial integrity and sovereignty and called on the Government of Belize to immediately send a strong protest note to the Government of Guatemala, and to inform the world community and international organizations about these continued acts of aggression by the Guatemalan Armed Forces.[244]

Heading for the Referendum?

Everybody knows that Guatemala will continue to find ways to assert its position that there are no established boundaries between it and Belize, and that such problems will persist until the dispute is finally settled, and for now it seems that the only way to settle is by submission to the ICJ. How much closer are we to that now?

Belize has been carrying out a National Public Awareness Campaign in preparation for the Referendum, officially launched on January 23, 2013 with the participation of the Governor General, the Prime Minister, the Leader of the Opposition, members of the Cabinet, the Parliament, Government Ministries and political parties, representatives in the Referendum Commission appointed by the government to guide and conduct the Campaign, the Diplomatic and Consular Corps, the media and citizens in general. By the end of 2017, the Referendum Unit, by its own account, had made over 500 presentations to schools, civil society, all 193 village councils, various Councils and churches, held debates and forums, published papers, placed ads on TV and radio, even provided schools with teaching kits so that high school teachers of history and social studies can teach the subject matter in their classes.[245]

[244] Channel 7 News, 18 September 2017, *Prensa Libre*, 16 September 2017.

[245] Email communication of 25 October 2017 from the head of the Referendum Unit, Ambassador Stuart Leslie. Many question the effectiveness of the Unit's work.

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Belize has been keeping its allies informed throughout, and received resolutions of support from CARICOM, the Commonwealth and others for its sovereignty and territorial integrity. The most recent and useful was the resolution of the ACP Council of Ministers on 6 December 2017, which in addition "Urges the Government of Guatemala to comply with its formal agreements to design confidence building measures for the Sarstoon River that will enable the two countries to enjoy the peace and harmony they had been accustomed to on this waterway for a century and a half before Guatemala's recent aggressive behaviour".[246]

Belize amended the Referendum Act to remove the sixty percent threshold and enable a referendum to be valid with a simple majority of voter turnout.[247] In January 2017 PM Barrow decided to conduct the many-times postponed voter registration exercise before holding the referendum—a wise move, since many were wary of having such an essential issue decided with a voters' list that had lost the confidence of many.[248] Upon conclusion of that exercise, Belize will be ready to hold the referendum at any time of its choosing.

In August 2017 the Guatemalan Congress approved the holding of the referendum, by a vote of 102 to 14. The exercise is expected to cost three hundred million Quetzales (over 40 million USD), and the Minister of Finance said that amount had been included in the budget for 2017 for the constitutional referendum, but that it could be used for the one on Belize.

The Guatemalan government announced an information campaign to sensitize people on the need to refer the dispute to the ICJ, involving an "army" of 227,000 teachers in 50,000 public and private educational institutions. The campaign would include conferences, training, essay

[246] Resolution of the 106th session of the ACP Council of Ministers, Brussels, 6th December 2017. The ACP is the group of African, Caribbean and Pacific countries that interact with the European Community, based in Brussels, where Dylan Vernon is Belize's ambassador.

[247] Referendum (Amendment) Act, 2017. The Act simply states "For greater certainty, it is declared that the issue or matter submitted to a referendum shall be decided by a simple majority of the votes cast."

[248] The PM confirmed this in a letter dated 7 March 2017 to the NTUCB.

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contests, mock referendums to groom students on how to develop critical judgments and take decisions and to encourage their participation in the referendum. In addition, there will be videos and publications in newspapers and social media to foment multiculturalism, justice and peace. A commission will be formed to analyse the pedagogical material to include in the curriculum.[249]

Six days after FM Carlos Raúl Morales made that announcement, however, he had been booted out of office by the President. The CICIG, the International Commission against Impunity in Guatemala, had signalled that it would be investigating the President on charges of corruption. On 27 August Jimmy declared the head of CICIG *persona non grata* and instructed Morales to sign the executive order for his expulsion from the country, and when he refused he was fired.[250] The Constitutional Court, however, quickly blocked the expulsion order. Thousands took to the streets of Guatemala City to protest, but Morales and his military did not intend to accept the same fate as Otto Pérez Molina, the President before him who was jailed after being impeached in 2015. Although the Supreme Court ruled that he could be investigated for alleged illegal campaign financing, Congress has the final decision, and on 11 September that body voted by 104 out of 129 present (of a total of 158) to keep his immunity. A two-thirds majority need to vote to remove his immunity, and although this was not even close in September, there may well be further moves to impeach him, leaving the field wide open for legislators to demand bribes in order to maintain his immunity, opening up to further charges of corruption. In other words, what we have here is a very unstable regime, a very unpredictable situation.

But that's Guatemala. A beautiful country with an ugly, racist history of not recognizing the majority indigenous people as worthy of being treated the same as everyone else, with rights to power, dignity and a good life. And that history is also the history of the present, with a small elite propped up by the military exercising a brutal hold on the majorities, living lives of opulence while the vast majorities live in misery.

[249] Agencia Guatemalteca de Noticias, 21 August 2017.
[250] *The Guardian*, 27 August 2017.

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Guatemala thus straddles the past of ignominy and a potentially radiant future, where, with its vast wealth and huge potential, it could be a regional leader, a beacon of democracy and equitably shared prosperity in solidarity with its neighbours.

In the meantime, and for our own survival, we need to figure out how to end Guatemala's claim to our territory and begin to live in true peace and harmony with our beautiful neighbour.

The Story So Far: What Does It Mean?

Belize became an independent nation on 21 September 1981, but with Guatemala's claim to its territory still threatening its security. Independence is never complete, that is the nature of living in an interdependent world, but the Guatemalan claim to Belize's territory impacts on its independence even further. That was clear in the years just after independence, when the British openly boasted that their military presence gave them a say over our foreign relations. After Guatemala had recognised Belize as a State and the British forces abandoned their defence role, the government was still very much concerned about a possible Guatemalan attack—so much so that it was talking to the US government about establishing a military base "in a sensitive area of Belize". Everybody knows what a US base in a small country does for its independence. Until Belize gets rid of the claim, therefore, that extra limitation on its sovereignty will always curtail its independence more than it is already limited by the nature of the world system.

In the years immediately after independence, Guatemala was still ruled by military dictators and there was no real possibility of arriving at an acceptable settlement of the claim. After the "democratization" began, and after the Constitution was changed and no longer declared that Belize was a part of Guatemala, a settlement began to look possible. But the so-called democratization was far away from making Guatemala a democratic State even by the least minimum definition of the term. As President Vinicio Cerezo stated, "I virtually relinquished

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the ability to govern the country. The alternative was a coup and the end of the democratization process that had started in 1986, after more than thirty years of dictatorships and struggles".

Still, in 1987 Vice-President Roberto Carpio Nicole proposed a settlement not involving land cession, and in meetings in 1988 the parties had reached an understanding that was later expressed in the Points of Concurrence of Roatán in December 1989: the existing land borders would be recognised, and Belize would restrict its territorial sea claim to three miles in the south. It is this agreement that was pursued with Cerezo's successor, Jorge Serrano, in 1991. Guatemala recognised Belize as an independent State and the parties exchanged ambassadors, and although the Maritime Areas Act was radically amended to condition that restriction by making any agreement dependent on a referendum, Serrano was willing to continue negotiations on those terms. Before the two governments could finalise a treaty to put to referendum, however, the process was aborted by the resignation of President Serrano on 1 June 1993 following an "autogolpe" (a violation of the Constitution by the President himself). Ramiro de León Carpio, elected as President by Congress, declared Serrano's recognition of Belize null and void, but under international pressure reversed this position on 28 June 1993.

At the same time, British Forces Belize abandoned its defence character and the Belize Defence Force assumed its rightful role as defender of the sovereignty and territorial integrity of Belize. Soon after this, the incursions by Guatemalan citizens, and occasionally by the army, began to intensify, with whole settlements being established and various depredations of Belize's natural resources occurring. The civil war ended in Guatemala in 1996, but the causes of the war—the impoverishment and powerlessness of the majorities, the institutional racism against the majority indigenous people, the prevalence of the worst manifestations of unfettered capitalism and neo-liberal economics—were never properly addressed and still have not been. The consequence was and is that Guatemalan governments tend to be unstable, undemocratic and authoritarian, with the majorities poor and landless and with the military still having a dominant voice in the political economy of the State.

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These have not been the best of times, therefore, for achieving a negotiated solution to the claim. After Serrano, there was a radical restatement of the territorial claim in March 1994, and since then successive Guatemalan governments have stated categorically that they do not recognise the existence of either sea or land borders with Belize. During the term of President Álvaro Arzú, negotiations made no significant progress, and in 1999 Foreign Minister Eduardo Stein enunciated the Guatemalan position: the effective territorial claim of Guatemala would be limited to the area south of the Sibun in addition to islands and seas, and the claim should be resolved by recourse to international adjudication. This so-called "*Clarinada*" was later to be adopted by successive governments as State policy.

The government of President Alfonso Portillo (2000-2005) represented the political party *Frente Revolucionario Guatemalteco* (FRG), headed by former dictator and born-again evangelical Efraín Ríos Montt, whose party had become dominant since the late 1980s. At the very beginning of that administration, there were increased peasant incursions and settlements, and an attention-getting arrest of four Belizean security officers, ostensibly found on the Guatemalan side of the border. In the ensuing talks, the Guatemalan government insisted that the dispute was basically juridical and must be solved by juridical means, and its international campaign with that objective was gaining ground. In further negotiations, however, the two governments agreed to seek a final resolution of the claim by means of a specially designed Facilitation Process, by which each party named a Facilitator and the Secretary General of the OAS would act as the witness of honour and provide institutional support.

Much time had to be spent by the Facilitators in putting out fires caused by continuous encroachments from Guatemala, and they designed a set of Confidence Building Measures (CBMs) which included drawing a line on a map along the actual border, calling it an Adjacency Line, and getting both Parties to agree that Belize reigned to the east of that Line and Guatemala to the west. The OAS was authorised to investigate complaints regarding the implementation of the CBMs and make recommendations.

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The conduct of that Facilitation Process became a model for conflict resolution that was praised by major leaders of the hemisphere and beyond. In Belize, it became the only process of negotiation with Guatemala where the two main political parties were totally united from start to finish, with the leaders of both parties signing off on every major decision before it was finalised. The invitation to Honduras to join the process was crucial to the success of the exercise, since it allowed Guatemala to have a large enough maritime area without Belize giving up too much, because Honduras offered to provide Guatemala as much as Belize. After almost two years of intensive negotiations, the Proposals were presented in August 2002: the land territory of Belize would remain as described in the 1859 Treaty, Belize would retain all the territorial seas to which it was entitled under international law, and together with Honduras it would offer equal areas of Exclusive Economic Zone waters for Guatemala to have a maritime area of 2,000 square nautical miles, although Belize would retain significant rights in the area it provided. Guatemala would have an access corridor of unrestricted navigational rights four miles wide—two miles on each side of the median line boundary between Belize and Honduras, but those seas would remain territorial seas of Belize and of Honduras. An Ecological Park with land and waters from the three countries and a larger sea area for the management of straddling fish stocks and highly migratory fish would be established. In no way would Belize's sovereignty of the Sapodilla Cayes be affected by these arrangements.

The Parties signed a side-letter stating that if the people of either country rejected the Proposals, then the dispute would be submitted to international adjudication. They agreed to submit the Proposals to referenda within 75 days, but the Guatemalan government began to backtrack, saying it needed more time to prepare the necessary constitutional measures, then that the political situation was not propitious, and finally that the proposals went against fundamental tenets of the Constitution and therefore could not even be put to the electorate.

A Transition Agreement including CBMs was signed on 7 February 2003, to establish a process until the Proposals were put to referenda

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in both countries, but shortly afterwards the Guatemalan government declared it would never put the Proposals to referendum. The Agreement established a permanent OAS Office in the Adjacency Zone to verify any transgression by the Parties of the CBMs and to carry out activities to improve relations among the inhabitants of the Adjacency Zone. It also established a "Group of Friends" to provide financial, political and operational support, and to assist the Parties in holding the referenda on the Proposals.

President Oscar Berger, who succeeded Portillo, at first said his administration would honour the agreement to put the Proposals to referendum, but barely a month later refused to do so. The new government also said that it wanted to renegotiate a settlement of the dispute and was not minded to submit the case to the ICJ, as the side-letter of 2002 had agreed they should do if the referenda were to fail. It is from that moment in 2004, when Guatemala began to show its intention to avoid submitting the case to Court, that the Belize side began to plan and strategize to ensure that, sooner rather than later, an agreement could be reached to go to the ICJ.

Negotiations seemed to be going nowhere, but with the help of key officials in the OAS and the Foreign Minister of Mexico, on 7 September 2005 the Parties finally signed the Agreement on a Framework for Negotiations and Confidence Building Measures between Belize and Guatemala. Most importantly, the agreement required the Secretary General of the OAS, once satisfied that it is not possible to arrive at an agreement, to recommend that the Parties submit the dispute to international adjudication. But the agreement also called for negotiations to try to resolve the dispute, and the SG/OAS recommended that the parties begin discussing maritime issues. This was clearly a waste of time, since maritime delimitation depends on land borders, but Belize had no choice but to go along with the charade, all the while arguing that the time had come for the SG to recommend that the parties could not reach any agreement. But Secretary General Insulza had decided that he would not make the call unless both countries agreed, so that many months were wasted waiting for that to happen, until it finally occurred in November 2007.

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After several months of intense negotiations, the Special Agreement required to submit the dispute to the ICJ was signed on 8 December 2008 by Foreign Ministers Wilfred Elrington and Haroldo Rodas. The Special Agreement commits Belize and Guatemala to submit their dispute to the ICJ, and both countries agree to accept the decision of the Court as final and binding and to implement it in full and in good faith, and there are provisions for demarcation of the land boundaries. The submission to the ICJ is made dependent on the electorates of both countries signifying their agreement by referendum.

After 46 years of attempts, using all available means in international relations to reach an agreement with Guatemala that would finally put an end to its territorial claim to Belize, all of which led inevitably to failure and would continue to do so, here at last was a sure way to end the claim.

But new obstacles to closure immediately sprang up. Guatemala kept delaying the decision to implement the Special Agreement, finding ever new excuses. In April 2012 it was agreed that the referenda would be held on 6 October 2013, but in April 2013 the Guatemalan government postponed it *sine die*. On 25 May 2015, the Parties signed a Protocol amending the Special Agreement to allow for the referenda to be held "simultaneously or separately on the dates most convenient to the parties". Guatemala first suggested early 2015 for the referendum, then September, then October, but none came to fruition. Guatemala continued to dawdle, and Belize had formed the policy of not being the first to hold the referendum. Then, in October 2017, the Guatemalan government announced that the referendum in Guatemala would be held on 18 March 2018.[251] Soon after, they changed the date to 15 April.

During all the years since independence, Belizean governments have been active in the international arena, their few ambassadors constantly lobbying the diplomatic community and getting regular resolutions from CARICOM, the Commonwealth, the ACP, fully supporting Belize's sovereignty and territorial integrity and calling on Guatemala to abide by agreements and move forward to a definitive settlement. The same appeals are made during the yearly addresses to the General

[251] *Prensa Libre*, 23 October 2017.

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Assembly of the United Nations, where the depredations of our natural resources caused by Guatemala are exposed.

Steps have been taken to prepare for the holding of the referendum in Belize, including the amendment of the law in 2017 to make a referendum effective without a minimum number of persons voting. For years now, a "Referendum Unit" has been conducting an awareness campaign to inform people about the consequences of submitting the dispute to the ICJ. But we seem to be no closer to reaching a national consensus on how to put an end to the claim.

The (UDP) government and the ruling United Democratic Party, after dillydallying some, have both come out in favour of submitting the dispute to the ICJ. Incredibly, however, the People's United Party, under whose mandate all the work was done, in partnership with the UDP, to deliberately guide the process to enable the dispute to be submitted to the ICJ, has now refused to endorse that path, and many of its leaders have spoken openly and strongly against so doing. This is pure party politics, what I have called elsewhere "tangled up in blue".[252] It is as irresponsible and harmful to national interests as was the UDP refusal to endorse independence because the PUP was in office.

History shows, and everybody knows, that when a people are divided they are easily defeated. The Facilitation Process was successfully conducted by Belize because institutional mechanisms were put in place to ensure that all parties were fully informed and fully involved in decision making and in pursuing the policy arrived at by consensus. There is an urgent need for Belizeans to engage in a meaningful and transparent national dialogue to formulate and execute a policy to implement a process that will result in putting an end once for all to the Guatemalan claim to its territory. The government of the day has the primary, constitutional responsibility to seek to achieve this, and it should do everything necessary to ensure that the Opposition is fully included in the decision making and the implementation of policy, as

[252] In "2000: A Guatemalan Odyssey. ¿Hasta Cuándo?," Paper presented to the Belize Bar Association Conference "The Belize-Guatemala Differendum: When and how do we draw the lines?," Belize City, 19 February 2016. Blue is the colour identifying the PUP.

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it so effectively and thoroughly was done during the whole Facilitation Process and its aftermath up to 2008. Civil society organizations must also play an essential role in ensuring the success of this endeavour. It has been done, it can be done, it can succeed.

And the sooner the better, because while all this waiting was going on since 2008, things have not been static. The peasant incursions and depredations along the western border and especially affecting the Chiquibul, which is on the road to becoming a barren land if the plunder doesn't stop, continue. The occasional confrontations between the BDF patrolling the border and armed intruders, sometimes resulting in deaths or injuries, have not ceased. Divisions within both societies, but more visceral in Belize, have continued to blight the scenario. All this seemed par for the course, as politicians on both sides negotiated or manipulated the waiting period, waiting for a decision on whether to settle the dispute by submitting it to the ICJ or just letting it fester on.

To make matters worse, and more urgent, things are happening along the southern border that had never happened before. The Guatemalan military tries to stop the BDF from transiting the Belize side of the Sarstoon freely, claiming that the entire River belongs to Guatemala. It confronts and threatens Belizean civilians. And for the first time in the history of this dispute, the Guatemalan government has been consistently stating, in official correspondence, that the entire Sarstoon River belongs to it. Yes, of course it claimed the entire country for years, and now from the Sibun down, which includes the Sarstoon, but this is different: it is saying that the Sarstoon is not even "territory in dispute" like the rest, it is simply a part of Guatemala, period, no question and no dispute, and it intends to enforce its rights.

So what *is* Guatemala's strategy? It would seem to be two-fold: First, create the impression internationally that we are getting along just fine, by reaching agreements on a number of issues and declaring friendship, and that there is no need for concern. Secondly, a lesson learnt from their most loyal supporter, Israel, it means changing the facts on the ground, so that the new reality becomes difficult if not impossible to change. Guatemala's recent recognition of Jerusalem as

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the capital of Israel is no accident. It fits in with Israel's constant support for them over all these years, and is consistent with Guatemala's attempts to take over Belize.

Belize was put in a difficult position by the first limb of Guatemala's strategy. We all want to have good relations with our neighbours, a laudable goal that nobody would discourage. Indeed, from the 1950s when Belizean leaders first became involved, they have always maintained that position. And the confidence building measures entailed, as the name implies, taking steps to create a climate of confidence between the parties in order to make agreement on a final settlement more likely. There were many attempts in the first decade of this century to reach agreements on matters of mutual interest and to improve people-to-people relations. When in 2012 Guatemala refused to move forward with the ICJ process and the parties agreed a "Road Map," which indefinitely postponed the holding of the referenda, in order to create "a climate of confidence conducive to the fixing of a date" for the referenda, Belize was put in a difficult position. It could not appear to *not* want to improve relations, and in addition Belize relied heavily on the OAS presence at the border to control Guatemalan incursions, and in the absence of movement on the referendum it needed to show the international community that some progress was being made to maintain support for the AZ Office of the OAS.

Indeed it is good to improve relations, even while Guatemala maintains its claim to Belize's territory, as long as there is a working process in place to resolve the dispute and Guatemala is not taking advantage of the interim to aggressively seek to enforce its claim. That is why, since independence and through different administrations, Belize has kept its international partners informed of any acts by Guatemala that threaten its sovereignty and territorial integrity. And Belize did not allow Guatemala to benefit from its support in the international arena if it was engaged in deliberately obstructing a peaceful resolution to the dispute. That is why, for example, Belize did not support Guatemala's bid to be a member of the UN Security Council in 2006, why Guatemala therefore failed to win the seat, and why after that it improved its behaviour and soon agreed to submit the dispute to the ICJ.

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Belize needs to pursue that kind of behaviour consistently, and more aggressively. It is not enough to obtain resolutions from our friends and to denounce the effects of Guatemala's incursions at the UN and elsewhere. More has to be done, in a well-planned and intensive international campaign, to pressure Guatemala to stop the depredations of Belizean resources and to desist from perpetuating its totally unacceptable behaviour on the Sarstoon.

The other, more dangerous limb of Guatemala's strategy, is a work in progress. The Guatemalan military had tried, from at least 2006, to stop the BDF from using the southern channel in the Sarstoon. In June 2007, a BDF Commander entered into a "Gentleman's Agreement" with a Guatemalan General which has no official standing and no legal effect, but which the Guatemalan government has since used to claim that there is an agreed protocol giving them control of the river. In 2009 the Guatemalan Foreign Ministry sent an official diplomatic note to Belize stating categorically that "Sarstoon Island is Guatemalan territory that has never been in dispute". Finally, on 14 March 2016 came the ultimate claim with respect to the River: "the Sarstoon River belongs to Guatemala"—the whole River, not just north of the Island—and "the Government of the Republic will continue to exercise and defend its sovereignty as it has done so far".

The Belize government has on multiple occasions protested against this position and sought to reach agreement on a *modus vivendi* for the Sarstoon, but the proposals put forward by each country in 2016 were so far apart that no agreement was possible. In May 2016 at Istanbul the parties did formally agree to negotiate a mechanism for the Sarstoon. But this has still not been done.

Guatemala, then, is seeking to create new facts. It's insistence on a historically false and non-existent "*status quo*" that makes it sovereign over the Sarstoon River must be contested at all costs and at every opportunity. We cannot pretend that we are great friends when they continue to take measures to enforce their warped view of history, of the *status quo*. Every time they *status quo* us with that fake reality and we remain silent we are endangering our territorial integrity. We want to be friends with Guatemala, sure, and we feel nothing but friendship and solidarity for the great mass of Guatemalan people. But the Guatemalan powers are not being friendly

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when they continue to enforce prohibitions against our using territory that has traditionally been respected as ours, that represents the real *status quo*. They are not being friendly when they promise in international agreements to work out a mechanism for the Sarstoon and cynically refuse to do so.

The danger is that, little by little, piece by piece, despacito, suavecito, if they can get away with it the Guatemalan powers will take what belongs to Belize, and if the dispute ever gets to Court, they will say: look, we have been exercising dominion here, this is the *status quo*. First they take Sarstoon, then they take Temash, then what?

It is true that at different times since independence Guatemala seemed to offer in negotiations to settle the dispute without demanding land, but as those negotiations progressed they always backtracked, and many times since have made it clear that they simply cannot settle without getting territory, because of their Constitution and because their Constitutional Court has ruled the 1859 treaty void. Many things are uncertain about this Guatemalan claim, but one thing is certain: they can never, will never, settle without a cession of territory.

During this period then, as we wait to hear the decision of both peoples as to whether we go to court or not, it is the duty of our government to do everything necessary to maintain our real control over every part of the territory that was assigned to Belize by the 1859 Treaty, and which has been respected by Guatemala until the past dozen years. Certainly the government should not pass laws prohibiting Belizeans from using any part of that territory, and it should recognize rather than criticize the actions of citizens who brave the ire of the Guatemalan military to assert Belize's ownership of any part of that territory.

As Belizeans prepare to take that fateful decision that will affect the future of their country for generations to come, perhaps it would help to understand the history of how and why each country's government decided to agree to submit the dispute to the ICJ.

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Understanding the Positions of Guatemala and Belize on the ICJ

Guatemala's territorial claim to Belizean territory has traditionally been known as "the Anglo-Guatemalan dispute," and rightly so, since it stems from a Guatemalan allegation that Britain failed to comply with an article in a treaty of 1859 signed between those two parties which Guatemala alleges provided compensation for the territory ceded to Britain in that treaty, an allegation that is patently false. Still, the two countries attempted for decades to resolve their differences by negotiations, without success. Since 1945, Britain has been willing to submit the dispute to the ICJ, but Guatemala refused to do so unless the Court were authorised to take extra-legal matters into account, which Britain naturally refused to do.

By that time, anyhow, the Belizean people were demanding their right to self-determination and Britain had no right to resolve its dispute with Guatemala at the expense of Belizean territory or sovereignty, although it tried very hard to do so. Britain failed in its duty to resolve the dispute before Belize became independent, and the new Belizean State inherited the dispute.

While Belize was still a colony, in the 70s, its leaders refused to allow the dispute to be submitted to the ICJ for an Advisory Opinion, as some were suggesting, as this would merely have delayed independence for years, and still not resolved anything, as such opinions are not binding, and may well have compromised Belize's independence, as has occurred with Western Sahara. And Guatemala's position was still that it would only go to the ICJ for a binding judgment if it were allowed to decide *ex aequio et bono*, not an acceptable option for Belize.

Belize was able to gain independence because it won UN support for territorial integrity, unfettered independence and British responsibility for the continued defence of Belize. The UN General Assembly resolutions, however, which are not binding although they have a strong moral force, did not remove Guatemala's claim to Belizean territory. Indeed, all the resolutions called on the parties to continue their efforts to resolve the claim. After independence, and with British pressure to settle the claim, negotiations continued, but Belize maintained its position of no land cession, and Guatemala insisted that it could not settle without gaining territory.

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On several occasions between 1984 and 1993, it appeared that the claim could be resolved by negotiations without land cession, but always, in the end, Guatemala reverted to some level of territorial demands. Up to 1999, Belize was still holding the line, and Guatemala became frustrated with negotiations in which it was only made to look like a greedy country pressing an anachronistic century-old claim against a small new nation. It therefore adopted the policy of stopping negotiations and demanding that the dispute be submitted to international adjudication. The foreign minister then was Eduardo Stein, a distinguished international public officer (UNDP, OAS), who like Gert Rosenthal later, recognized that Guatemala was getting a bad face internationally because of its claim on Belize, and that the accepted civilized way of solving such intractable disputes was by international adjudication, even if he knew, like Rosenthal after him, that Guatemala did not have a good case. Other power brokers in Guatemala, however, were against going to court because they considered that tantamount to losing Belize. Over the years, therefore, they have acted in a contradictory fashion, sometimes saying they want to go to court and other times insisting on continuing negotiations while encouraging incursions, maintaining all the while that the 1859 treaty is void and that therefore there are no borders between the two countries.

In 1999, when Guatemala insisted on submitting the case to the ICJ, Belize was not willing to do so, believing that all other means of ending the claim had not yet been exhausted, and it embarked on the Facilitation Process which after two years of highly intense negotiations produced proposals for ending the claim without land cession. Both the Belizean and the Guatemalan governments had signed off on the exact terms of the Proposals before they were finalised, with the commitment that they would be put to simultaneous referenda in both countries and, if approved, they would be implemented and the claim would finally end. Guatemala first postponed the referendum, then refused to put the Proposals to referendum, then unilaterally rejected them, then refused to submit the dispute to the ICJ as had been agreed if the referenda were to fail, then insisted that negotiations to resolve the claim continue.

By then Belize was convinced that Guatemala would never agree in negotiations to end the claim without gaining territory, but it could not force Guatemala to go to court, and had to continue negotiations until it was able

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to get the international community to pressure Guatemala into submitting the dispute to the ICJ upon both peoples' agreeing to do so by referendum.

The Belize governments, of both the PUP and UDP, agreed to go to the ICJ for three fundamental reasons:

> 1. It had become absolutely certain without the least shadow of doubt that Guatemala would never, ever, agree to drop its territorial claim unless Belize were to cede territory, something no Belize government was prepared to do. Guatemalan officials had themselves made it clear that they were bound to this position both by their Constitution and by their Constitutional Court.
>
> 2. It had become equally certain that as long as the claim was not resolved, the Guatemalan government would continue to maintain that there are no borders between the two countries, with the result that there would be continuous invasions of Belizean land by Guatemalans, continuous despoliation of Belize's natural resources, and, increasingly, military as well as diplomatic challenges to Belize's sovereignty at strategic points such as the Sarstoon.
>
> 3. It is beyond doubt that if the ICJ applies international law as it is bound to do and has done since its inception, there is no way that Belize can lose any territory of any kind, and the Guatemalan claim would finally be brought to an end.

One might ask, but if the dispute cannot be solved by negotiations, can't Guatemala be made to end its claim by some other way other than going to court? Can't the United Nations or some other body compel it to end the claim? The answer is no. Any appeal to the United Nations would result in a recommendation to send the case to the ICJ, which is actually an organ of the United Nations mandated to settle such disputes.

The choice, in other words, is clear: end the claim or keep the claim alive, at the cost of progressively losing precious resources and living under threat. Both PUP and UDP governments, faced with that choice, chose to submit the dispute to the ICJ, but only if the people of Belize agree to do so.

Whether the Guatemalan claim to all or any part of Belize's territory becomes "the never ending claim" is up to what the two peoples decide in the referendum. They are free to vote whichever way they want. Many

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Belizeans say they do not want the dispute to be submitted to the ICJ, and they can back up that decision with reasoned arguments. One particularly final argument, in the sense that you really can't argue against it, is that whether we are sure to win or not, we simply refuse to go to Court because we know that this land is ours, so why should we ask 15 old men thousands of miles away to tell us that this land is ours?

But for those who would like to know what are the legal facts and principles that the Court will have to use to arrive at a decision, I have written the next and final Chapter of this book.

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