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Gulf of Venezuela: Border Dispute

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GULF OF VENEZUELA: BORDER DISPUTE

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INTRODUCTION

Two segments of the Gulf of Venezuela are the subject of serious controversy between Venezuela and Colombia. These areas represent a relatively small number of square miles, but the possibility of the existence of petroleum deposits appears to have created a *potentially* volatile situation. Efforts made by the two governments to arrive at a settlement through the traditional means of bilateral negotiations appear to have reached a stalemate.

The Gulf of Venezuela is located at the northernmost boundary of the two countries. The Paraguana Peninsula, under the sovereignty of Venezuela, is at the eastern end of the Gulf. The Guajira Peninsula, part of which is under Venezuelan sovereignty and part under Colombian sovereignty, is at the western extremity of the Gulf. The dispute centers upon the delimitation of the water boundary between the two countries, as the boundary is extended from the Guajira Peninsula. Territorial sea and continental shelf problems are involved. The other area of controversy involves Los Monges Islands, three tiny groups of three islands per group situated 18 miles off the northeast coast of Colombia. Here the major problem is the extent of territorial sea to which the islands are entitled.

This paper will provide the background of the controversy, and then suggest what will hopefully break the stalemate and prove an effective, albeit unorthodox, method of settling the dispute to the satisfaction of both parties.

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BACKGROUND OF THE DISPUTE

Under the leadership of Simón Bolívar, the present day Colombia and Venezuela secured their independence from Spain in 1820 and were united under one flag for a ten-year period. In 1830, it was decided to divide into two countries, the Republic of New Grenada (now Colombia) and the Republic of Venezuela. The first attempt to delimit the common boundaries was made in 1833 and the result was the Pombo Michelena Treaty, signed on December 14, 1833, in Bogotá.[1] The borders of the States were to be based on the Spanish maps which had, in 1810, divided the territory of New Grenada from the Captaincy General of Venezuela.[2] However, at the time the treaty was negotiated, both States lacked adequate maps plus necessary geographical and historical information on the Guajira Peninsula. Article 27 of the treaty divided the Guajira Peninsula at the Cape of Chichivacoa, which meant that Venezuela was the only State with territory bordering the Gulf of Venezuela. Colombia, anxious to reach a final settlement had been willing to refrain from claiming the Guajira believing it to be of little strategic or economic value.[3] The treaty was ratified by the Colombian Congress but rejected by the Venezuelan Congress which, despite a favorable committee report, believed Venezuela surrendered too much territory.[4]

In 1844 another attempt was made to settle the borders. Colombia submitted maps discovered after 1833 which purported to give Colombia clear title to land in the Guajira Peninsula awarded to Venezuela by the 1833 treaty.[5] Venezuela steadfastly refused to concede any territory to Colombia and the negotiations ended with Colombia proposing and Venezuela rejecting the arbitration.

In 1872, Venezuela turned down a new Colombian arbitration suggestion. Numerous border incidents occurred and due in part to the boundary controversy, diplomatic relations were broken off in 1872 and again from 1875 to 1880.[6]

Venezuela finally consented to arbitration by the King of Spain in 1881 and ten years later a judgment was rendered.[7] Venezuela was unhappy with the decision and ignored it by claiming that execution of the award required parliamentary action which was not taken.[8] In 1898, Venezuela and Colombia agreed to establish a Joint Commission to demarcate the boundary pursuant to the 1891 arbitral decision. Problems were to be submitted to the two governments for decision. However, by

1901 the difficulties were so numerous that the Commission suspended its work after fixing the limits on only part of the boundary.[9] One item that the Commission was able to settle was the amount of territory in the Guajira Peninsula that Colombia was entitled to. Colombia was awarded all of the Guijara north of the town of Castilletes, a 5,000 square kilometer difference in territory from that negotiated in 1833.

Colombia was not allowed to take formal possession of the Guajira Peninsula and in 1916 the Swiss Federal Council was asked to arbitrate. In 1922 it stated that the 1891 arbitration was binding and Colombia should immediately take possession of territory to which it was entitled. The Swiss arbitration said nothing about territorial sea rights, but since Colombia was given land bordering the Gulf, it must be understood that it was entitled to a territorial sea in the Gulf.

Bitterly disappointed with the Swiss arbitration, Venezuela waited until 1941 to formally accept the decision. The "Treaty on the Demarcation of Frontiers and Navigation of the Common Rivers between Colombia and Venezuela"[10] was thought to be a final settlement of all common boundaries. However, this treaty failed to discuss how to delimit the Gulf of Venezuela, which if settled in 1941, would not now, more than thirty years later, provide a vexing and sensitive problem for the two countries. Rights to the subsoil on the Continental Shelf and extensions of the territorial sea from three to twelve miles were of little concern in 1941, since the likelihood of petroleum in the Gulf had not been raised, and settlement should have been relatively simple.

In 1952, Colombia formally recognized the Venezuelan sovereignty over Los Monges, three groups of three tiny barren islands per group, approximately nineteen miles east of the coast of Colombia in the Gulf of Venezuela.[11] If there were any anticipated boundary problems in the Gulf of Venezuela in 1952, Colombia would not want to take any action that would create new difficulties by recognizing Venezuelan sovereignty over Los Monges and then find it necessary to worry about the extent of Los Monges' territorial sea. As recently as 1952 there simply was no concern over territorial sea problems in the Gulf.

By 1965, however, the existence of problems concerning the delimitation of the Gulf were recognized and the first meeting was held to attempt to decide the border. Factors involved in the evolution of this into a sensitive dispute are the illegal immigration of 300,000 Colombians into Venezuela; the fact that all known Venezuelan petroleum deposits were under production by 1963; and the fact that it was necessary for Colombia

to import almost all of its petroleum. In 1970, the negotiations were moved to Rome to avoid leaks to the press which might handicap the arrival at a final solution.

As mentioned earlier, the disputes are in two specific areas. The first is how to draw the imaginary boundary line into the Gulf from the town of Castilletes. The basic Venezuelan claim is that the existing boundary line should be extended directly into the Gulf. Colombia argues that the proper method of delimitation would be for the boundary to be the point equally distant from the coast of each country. The other area of disagreement involves the amount of territorial sea that Los Monges should be entitled to. Venezuela claims that Los Monges should be entitled to a territorial sea that extends to the point equally distant from the islands and the Colombian coast, while Colombia says that since the islands are tiny and are virtually uninhabited, they should be limited to a maximum territorial sea equal to approximately 7 miles, the amount of distance left after Colombia gets her full 12-mile territorial sea.

International conventions, namely the Convention on the Territorial Sea and the Contiguous Zone[12] and the Convention on the Continental Shelf[13] were negotiated at Geneva in April 1958, and each has provisions, which if applied, would settle the dispute. However, Colombia did not ratify the Territorial Sea Convention which it felt might be used against its interests with regard to Los Monges. Venezuela, although ratifying the rest of the treaty, made a reservation to Article XII stating that there may be special circumstances in the Gulf of Venezuela. Art. XII states:

> Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. The provisions of this paragraph shall not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance with this provision.[14]

The Convention on the Continental Shelf has been ratified by Colombia. Venezuela ratified with a reservation to Article VI (2) which reserves to Venezuela the right to make changes in negotiations on the demarca-

tion of intermarine and submarine areas of the Gulf of Venezuela.[15] Art. VI (2) states:

> Where the same continental shelf is adjacent to the territories of two or more States, the boundary of the continental shelf shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary shall be determined by application of the principle of equidistance from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.[16]

The Territorial Sea Convention and the Continental Shelf Convention thus may not be applied in this case since relevant articles of those instruments have not been accepted unequivocally by either Venezuela or Colombia. Furthermore, in the North Sea Continental Shelf Cases *(Federal Republic of Germany v. Denmark and the Netherlands)*, the International Court of Justice rejected contentions that Art. VI of the Convention on the Continental Shelf had acquired sufficient worldwide acceptance to make it a rule of international law binding on states which had not accepted the Convention or that particular article.[17]

The situation as it exists today is a stalemate. Bilateral negotiations have failed to lead to a solution; applicable treaties may not be employed because of reservations or nonratifications; there is no accepted customary international law formula to apply; and Venezuela refuses to accept arbitration because of the distasteful decisions of 1891 and 1922. There has been at least one very serious border incident in the past few years and some action should be taken before the situation becomes worse. The balance of this paper will explore the advisability of establishing a binational authority as a means of breaking the stalemate and reaching an amicable solution.

THE BINATIONAL AND THE GOVERNMENT-OWNED DOMESTIC AUTHORITY

There are a number of government-owned domestic, binational and multinational authorities, commissions and corporations in existence today. It should be useful to examine certain aspects of the composition, powers and duties of some of these as a guide in forming a binational authority in Venezuela and Colombia.

A. *River Authorities*

Navigation of the Rhine, Danube, Scheldt, Oder, Elbe, Po and Pruth rivers have at different times during the past century and a half been administered by international bodies,[18] made up of both littoral and user states. Frequently these bodies have been able to settle disputes among the littoral states or between the littoral states and the nonriparian users.[19]

The Central Commission of the Rhine, with headquarters in Strassbourg, has authority to act in all matters relating to navigation of the Rhine. It consists of an unequal number of representatives of each member state with each representative allotted one vote[20] (France has five votes and five representatives, Germany four votes and four representatives, Netherlands, Switzerland, Great Britain, Italy and Belgium have two each).[21] Majority vote governs, but for a decision to be binding upon a riparian member, consent of the riparian must be obtained. Decisions are enforced by inspectors with disputes among inspectors submitted to the Commission.[22] The Rhine Commission is still in operation.

The European Commission of the Danube, also concerned primarily with navigation, has lost much vitality since the end of World War II when the bulk of the Danube came under Russian control. Prior to that time, it was composed of one representative from France, Great Britain, Italy and Roumania. In routine matters, decisions were made by majority rule, while important questions required unanimity.[23]

B. *Domestic Government-Owned Corporation*

The Tennessee Valley Authority was established by the United States Congress in 1933,[24] to administer public works and their byproducts (electricity, fertilizers) in the Tennessee River Region. Certain aspects of this Authority will be discussed here because of their possible application in Venezuela and Colombia. Unlike the river commissions, the TVA does not operate on a break-even theory; it is allowed to make a profit. It is set up along the lines of a corporation with a three-man Board of Directors appointed by the President, with the consent of the Senate, to nine-year terms. The directors are required to refrain from participation in any other business, and they may not have an interest in a business that may be adversely affected by the success of the corporation.[25] Capital may be raised through the issuance of United States Government guaranteed bonds.[26]

However, the structure of the Authority created many organizational problems. The directors were given broad leeway by Congress with regard

to the delegation of power. Originally, the Chairman of the Board was given the duties of chief administrator in charge of day-to-day operations. This lasted exactly two months when the other directors demanded a greater participation in day-to-day affairs. Next was a division of responsibility among the three directors of each phase of the TVA program, each making recommendations as to policy, personnel and budget in his area to the other directors.[27] This structure also failed, finally giving way to a General Manager, appointed by the Board of Directors, in charge of day-to-day operations while the Board of Directors was left to formulate general policy.[28]

C. *Boundary Commissions*

The International Boundary Commission was created to carry out the provisions of the treaties of 1848, 1853, 1882, 1884, and 1905 between the United States and Mexico.[29] Each country appoints one commissioner and each commissioner has equal authority.[30] "The Commission has exclusive jurisdiction between the United States and Mexico . . . (and) is empowered: to suspend the construction of works of any character along the Rio Grande and Colorado rivers that contravene existing treaties; to erect and maintain monuments along the boundary; to make necessary surveys of changes brought by force of the current in both rivers."[31] If the Commissioners concur on a decision, it is binding on both the United States and Mexico unless either country shall disapprove it expressly within thirty days. If a decision is disapproved the Governments shall decide the question amicably. When the Commissioners are unable to agree, the Governments may attempt to solve the problem in any manner they choose.[32]

The Commission operates on an ad hoc basis with meetings held when needed. There is no specific timetable. Each country has its own organization which it controls and pays for. "The Commission as such may be said to have an organization only in the sense that there are joint meetings and often joint activities such as surveys in the field. . . . There are not even any joint offices."[33]

In the Chamizal dispute, the Rio Grande changed course so that six hundred acres that had been on the Mexican side of the river shifted to the United States, placing in issue the ownership of the land. The Commissioners were unable to decide, and neither of the two Governments would concede the land. The United States rejected a Mexican proposal to draft a treaty on the subject, but eventually accepted a Mexican sug-

gestion to expand the International Boundary Commission to include a third member. The suggestion also sought to expand the Commission's powers by making its decisions binding and not subject to rejection within the thirty days by either Government. The United States refused to accept a decision rendered in favor of Mexico, claiming it went beyond the compromise. However, this was a useful example, for purposes of this paper, of altering existing machinery to fit altered circumstances. The dispute was finally settled in 1963.

The Boundary Waters Treaty of 1909 established the International Joint Commission between Canada and the United States. The Commission is run by six Commissioners (three from each country)[34] who meet a minimum of two times per year, once in Washington and once in Ottawa. Decisions are made by majority vote and when the Commissioners cannot agree, the dispute is submitted to each Government for further attempts to settle the controversy.[35]

One important function of the Commission is to decide questions involving the use of boundary waters and rivers flowing across the boundary.[36]

Under Art. IX of the 1909 Treaty, differences involving the rights, obligations or interests of either country or their inhabitants along the common frontier between the United States and Canada, shall be referred to the International Joint Commission whenever *either* the United States or Canada so requests.[37] When requests under Art. IX are made, the Commission is empowered to examine the facts, reach a conclusion, report upon the facts, and make whatever recommendations are deemed appropriate.[38] The powers granted by Art. IX are exclusively powers of investigation and recommendation, and not of arbitration.

Art. X states that any questions between Canada and the United States involving their rights, obligations, or interests either in relation to each other or to their respective inhabitants may be referred to the International Joint Commission if there is consent by *both* parties.[39] Art. X goes beyond Art. IX, for once a conclusion is reached, "it is made for decision and not *only*, as in the case of Art. IX, for examination and report."[40] Permission to arbitrate must be given by the United States Senate.[41] Art. X may encompass more problems than Art. IX for it is not limited, as is Art. IX, to disputes along the common frontier. Theoretically, Art. X may be used in any bilateral dispute, however, it has never been employed.

Day-to-day handling of various projects supervised by the Commission have led to the creation of International Boards of Control consisting of two engineers (one from each country). The Boards report directly to the Commission and in the event of disagreement between the members, problems are referred back to the Commission.[42]

A discussion of the St. Lawrence Seaway was not included in the subsection on River Authorities because its relationship to the International Joint Commission is of such a close nature that its study should accompany the examination of the International Joint Commission. "The International Joint Commission . . . is responsible for all matters concerning the boundary waters between Canada and the United States. . . . It was the medium through which the Seaway and Power Projects were launched."[43]

In 1932, the United States Senate rejected a treaty between Canada and the United States to pay for the construction of a St. Lawrence Seaway. Canada eventually authorized its agencies to build the Seaway itself, if necessary. If Canada built the entire Seaway it would have had complete control of the waterway and the amount to be charged for tolls, despite the fact that the United States would provide the bulk of the shipping. The Canadian action spurred Congress to pass the Wiley-Dondero Act of 1954, creating the St. Lawrence Seaway Development Corporation to construct and operate the works needed on the United States side of the river. The Canadian-operated St. Lawrence Seaway Authority built the works needed on the Canadian side. What now exists is a unique situation, namely two national authorities with coordinated activities, operating distinct sections of the St. Lawrence Seaway in cooperation with each other.

"The St. Lawrence Seaway Development Corporation is a public corporation, managed by an Administrator appointed by the President."[44] General policies, however, and the fixing of tolls, is the responsibility of the U.S. Secretary of Commerce.[45] The corresponding Canadian institution, the St. Lawrence Seaway Authority, consists of three members with total control over navigation, tolls and maintenance.[46]

Involvement of the International Joint Commission has occurred, not where there were improvements made on either side of the river for that was not covered by the 1909 Convention, but rather where facilities were needed for generation of hydroelectric power.

PROPOSAL FOR SETTLEMENT OF THE DISPUTE

The border dispute between Colombia and Venezuela concerning the Gulf of Venezuela has been discussed since 1965 by representatives of the two Governments. Negotiations over a seven-year period have not produced a settlement. Existing pertinent international conventions have not been ratified, or else have been ratified with reservations to key provisions. Arbitration has been, and is likely to continue to be, rejected by Venezuela because of the unfavorable results of past arbitrations and the fear that history will repeat itself. If the controversy is going to be settled, a new approach is needed. There is precedent in Venezuela and Colombia for establishing a bilateral authority to settle disputes. A short lived mixed boundary commission was set up in 1898 to enforce the 1891 arbitration of the King of Spain. Furthermore, as the entire second part of this paper demonstrated, there exists a variety of binational, multinational and domestic government controlled bodies charged with settling problems between countries, or improving the lot of persons on its borders. These bodies may serve as models for settlement of this controversy. Many of these authorities have operated for long periods of time with great success. The author believes that the creation of the two binational bodies which will be explained in detail shortly, provides a realistic and practical method of ending the current dispute and dealing with problems which may arise in the future.

One reasonable assumption must be made, namely, that the disposition of the petroleum which may exist in the area of controversy is the key to the problem. Colombia lacks substantial petroleum deposits and must import most of its oil needs. It greatly desires a new accessible source of petroleum and also the revenue which comes from leasing oil rights. Venezuelan citizens were incensed at the 1941 treaty with Colombia which saw Venezuela relinquish its claims to the entire Guajira Peninsula, and there appears to be apprehension within the government that a further surrender of territorial claims to land which might contain petroleum would arouse public feeling to such a frenzied pitch that the government might lose the next election. There was no problem about ownership of the Gulf until the possibility of the existence of petroleum was raised. Therefore, it will be necessary to deal with the petroleum problem in a manner acceptable to both countries.

The first Authority that the author suggests be created is a Border Commission similar to the International Joint Commission and the International Boundary Commission. The Border Commission would be charged

with settling all boundary problems that arise between the two countries. In the present dispute, the Commission would seek to define the specific demands of each country and attempt to persuade each to make territorial concessions. When the point is reached where both Venezuela and Colombia are totally inflexible and there are still areas where the claims of each country overlap, the two countries should, at least temporarily, agree to disagree as to the sovereignty of the areas claimed by both countries. Any concessions should be finalized so that at least some sections of the Gulf, whose sovereignty is in doubt, may be settled.

The areas where the parties agreed to disagree should then be brought under the control of a binational, government controlled corporation whose business would be to administer oil leasing in that area, and to divide profits. If no oil was found by those who purchased exploration rights, the corporation would dissolve and the Border Commission might then be able to settle the sovereignty of contested areas of the Gulf inasmuch as the existing strong emotions the controversy (petroleum) engenders would have dissipated.

The type of organization chosen would, if adopted, be simple, equitable and inexpensive. Simplicity is a very important element on the premise that the more complex the organizations, the greater the possibility of disputes which could wreck them.

It would not be feasible to attempt to model an organization after the St. Lawrence Seaway Corporation, for while it is desirable for each country to administer its own territory, there would be no way of determining which country owns what territory. The method chosen by-passes the question of ownership, yet it allows any existing petroleum to be extracted with profits accruing to each country. The fear that territory relinquished might prove valuable has been a major obstacle to settlement, but this problem can be avoided by having both countries share in the profits if any petroleum is found.

In all the entities previously examined, with the exception of the Central Commission of the Rhine, there has been equality of the members in representation and in voting. Neither Venezuela nor Colombia would consent to being the junior member of a binational authority; total equality of parties must exist. There is no apparent reason why either country would demand control over either the Border Commission, which would seek to define areas of agreement and disagreement, or of the Corporation, which would merely grant leases to the highest bidder in

defined territory. Equality would also be maintained in matters of profits and expenses.

Unlike the Authorities discussed previously (with the exception of the TVA), the Corporation would be a profit making enterprise. Resorting to a newly created government-run corporation, rather than existing government-owned oil companies, would avoid possible conflicts between competitive oil companies with regard to the grant of exploration rights. The government-owned companies may have an interest in reserving sections of the territory in controversy for themselves, and their impartiality would be open to question. Also, it would be preferable to keep the government-owned companies of Venezuela and Colombia outside of the Corporation and not let them bid for exploration rights due to the speculative nature of oil exploration. If one company had a lease and struck oil, it could lead to a rekindling of ill feelings, and destroy the corporation.

The idea of creating a corporation with ownership by both governments to conduct its own explorations and its own drilling was rejected because the amount of capital needed would be very high, and the possibility that oil would be discovered was not assured. Also, such a company would entail the creation of a complex organization and generate numerous problems which could destroy the chances of a settlement. It is believed to be more desirable to sell the exploration rights to existing oil companies and enjoy a guaranteed profit, than to take a chance with exploration and possibly make nothing. The prospect of having to furnish large amounts of capital for exploration does not appear to be an incentive to settle the dispute, especially since lending institutions are reluctant, at best, to grant loans for something as speculative as wildcatting, and expenses would all have to be out of pocket.

The costs and expenses of the organizations suggested would be minimal. The Border Commissioners would receive a salary, but would need only small staffs, with technical information provided either by the respective governments themselves, or by consultants hired by the Commission. The Corporation's expenses would also be quite low, for the most expensive items would probably be salaries. The Corporation would be virtually assured of being a profit making enterprise, even if oil was not discovered, for the amounts paid for exploration rights should more than cover operating expenses. It would not be necessary for the Corporation to receive a loan to operate, and some profits could even be used to pay the expenses of the Border Commission.

If the dispute was settled by a means other than the establishment of a Corporation to control oil exploration, namely through negotiations or arbitration, and oil was later discovered, this could create much unnecessary friction between the two governments. A corporation would avoid ill feeling because all profits would be shared. Half a loaf is better than no bread at all, and this should be recognized by both Colombia and Venezuela.

The Border Commission should consist of two Commissioners, one from Colombia and one from Venezuela, rather than have many representatives from each country. There does not seem to be a good reason for having three representatives as there are on the International Joint Commission. Countries normally vote as a bloc, and whether the vote is three to three, or one to one, the effect is the same. Furthermore, it is cheaper to operate with only one representative.

The Border Commission should be given automatic jurisdiction over all boundary controversies and the power to make binding decisions, unless specifically rejected by either country within a set period of time as is done by the International Boundary Commission. There should be no objection to this since the Commissioners may be expected to reflect the positions of their respective governments, and unlikely to take positions not acceptable to them. If a Commissioner did act contra to the wishes of his government, the country would have a set period of time to remedy the situation.

It may also be desirable for the Border Commission to be given the power to arbitrate, at the request of *both* parties, any dispute which may arise between the two countries as per Art. X of the International Joint Commission's implementing legislation. As long as consent to each arbitration is mandatory, this should not be objectionable to Venezuela, which is adverse to arbitration.

The Border Commission would provide ongoing machinery to settle disputes of any type which may arise and thus avoid the necessity of creating ad hoc entities to resolve conflicts. If the Border Commission could not arrive at a satisfactory solution, as could be the case in the Gulf of Venezuela, the dispute would be referred back to the respective governments for action, as is done in the International Joint Commission and the International Boundary Commission.

It is said that the border dispute in the Gulf of Venezuela is the last boundary difference between Venezuela and Colombia. If that is the case,

it may be argued that a Permanent Border Commission is unnecessary. However, when the treaty of 1941 was signed, it was believed that there were no more boundary problems, but in 1952, Colombia found it necessary to recognize, formally, Venezuelan sovereignty over Los Monges, and in 1965 this dispute came into prominence. It is very possible that once this boundary is settled, another dispute will arise and it will be helpful to have existing machinery to deal with it.

The Corporation should be run by a Board of Trustees to formulate the general policies of the Corporation. This would be similar to the structure of the TVA. There should be an equal number of Colombians and Venezuelans, and the trustees should be experts in petroleum and financial matters. The presiding officer at the meetings of the Corporation should be alternatively from Venezuela and Colombia. Similarly to the TVA, the trustees should have no other positions, and should have no interests contrary to the interests of the Corporation. This is necessary to assure that actions taken will be beneficial to the Corporation and that the possibility of personal gain will not influence the decisions of the trustees.

The structure of the Corporation should not resemble the composition of the St. Lawrence Seaway Development Corporation where the Administrator is responsible to the U.S. Secretary of Commerce. Here two countries are involved in the same corporation and the corporation would function more smoothly with individuals rather than branches of two governments setting the policy of the corporation.

As mentioned earlier, profits would come from exploration rights and from royalties if petroleum is discovered. Inasmuch as Venezuela and Colombia have different levels of taxation on petroleum products it is suggested that the Venezuelan tax levels be employed. Venezuela's experience in the petroleum industry has resulted in a sophisticated petroleum tax structure which would undoubtedly also benefit Colombia.

Colombia has an unemployment problem, and many of its citizens are willing to work for less money than Venezuelans. Venezuelans are more skilled in certain aspects of the petroleum industry. The Corporation should consist of an equal number of Venezuelans and Colombians, receiving equal compensation. If oil is discovered, the oil companies should employ equal numbers of Venezuelans and Colombians in comparable positions. If it is discovered that there are not enough skilled Colombians, positions should go to Venezuelans and a training program

established for Colombians, and only Colombians hired until there is an equal number of Venezuelans and Colombians in corresponding positions. The cost of the training program should be borne equally, because Venezuela would be benefiting by having more of its citizens employed during the period Colombians were being trained. Wages paid by the oil companies should be monitored by the Corporation, and should be equal to salaries paid in either Venezuela or Colombia—wherever they are higher. Making the salaries equal to the largest amount paid in Venezuela or in Colombia would raise the standards of living of employees.

The Corporation should also have an official in charge of its day-to-day operations in full managerial control of the administration of the Corporation if oil is discovered. The administrator would be chosen by the trustees, as is done by the TVA, and his term of office would be limited to a fixed number of years, at which time a representative of the other country would be chosen as administrator.

CONCLUSION

Venezuela and Colombia are engaged in a serious border dispute. It would be to the advantage of both countries to reach a quick settlement, and the sooner a settlement is reached, the sooner exploration and drilling may begin. Both countries are now reluctant to make concessions for fear of losing substantial revenues. Negotiations have been going on for more than seven years without a breakthrough. This paper suggests the creation of a binational commission to settle as much of the controversy as possible, and thereafter the establishment of a binational corporation to lease exploration rights to foreign oil companies. If oil is found, the corporation would grant drilling rights to interested companies. It is submitted that each country should be willing to share profits made by selling drilling rights, when the alternative might be to get nothing while the dispute rages on. Even if no oil is found, the corporation will be profitable because revenue from drilling rights should be greater than expenses. If oil is discovered, profits will be even greater; if not, it should prove fairly simple to settle the dispute for the emotions raised by oil expectations will dissipate.

The above is a novel approach to the settlement of this particular boundary problem. Its uniqueness should not be a deterrent, for unique solutions have frequently been used to settle boundary problems, as shown by the success of the International Joint Commission, the International

Boundary Commission, the St. Lawrence Seaway Authorities, and the Rhine and Danube River Commissions. The author believes that traditional settlement devices of arbitration and negotiation are leading nowhere, and that the two authorities suggested represent a realistic, rational, relatively simple and acceptable basis for breaking the deadlock, and moving towards the settlement of a most serious border dispute.

NOTES

[1]El Espectador (Bogotá), 18 Dec. 1970, Translated by Joint Publication Research Service.

[2]Ireland, BOUNDARIES, POSSESSIONS AND CONFLICTS IN SOUTH AMERICA, 206 (1938).

[3]Id.

[4]Id. at 208.

[5]El Espectador, supra.

[6]Ireland, supra 209.

[7]1 Hackworth 736.

[8]Id.

[9]Id. at 737.

[10]Signed, Cucuta April 5, 1941. Ratifications exchanged Caracas September 12, 1941. Art. I stated that "The Republic of Colombia and the United States of Venezuela . . . recognize as definite and irrevocable the work of demarcation which has been effected by the Boundary Commission in 1901, and by the Commission of Swiss experts."

[11]New York Times, 26 Nov. 1970.

[12]15 U.S.T. 1607, T.I.A.S. 5639, 516 U.N.T.S. 205.

[13]15 U.S.T. 471, T.I.A.S. 5578, 450 U.N.T.S. 11.

[14]U.S.T. 1607, T.I.A.S. 5639, 516 U.N.T.S. 205.

[15]Carpio Castillo; EL GOLFO DE VENEZUELA, 100, 1970. Translated by Robert Berry and Arthur Birken.

[16]15 U.S.T. 472, T.I.A.S. 5579, 450 U.N.T.S. 312.

[17]1969 ICJ 45.

[18]Baxter, THE LAW OF INTERNATIONAL WATERWAYS, 96 (1964).

[19]Id.

[20]Timm, INTERNATIONAL BOUNDARY COMMISSION—UNITED STATES AND MEXICO, 230 (1941).

[21]Id.

[22]Id.

[23]Id.

[24]43 Stat. 58 (1933).

[25]Id. §2(e)(f).

[26]Id. §15(a).

[27]Pritchett, THE TVA—A STUDY IN PUBLIC ADMINISTRATION, 153 (1943).

[28]Id. at 165.

[29]U.S. G.P.O. "International Boundary Commission (United States and Mexico) Treaties, Joint Rules: Governing the Commission, Personnel" (1929).

[30]Timm, supra at 230.

[31]U.S. G.P.O., supra at 1.

[32]Id. at 14.

[33]Timm, supra at 30.

[34]INTERNATIONAL JOINT COMMISSION—RULES OF PROCEDURE TEXT OF TREATY AND LEGISLATION, 13 (1932).

[35]Id.

[36]FUNCTIONS, POWERS AND DUTIES OF THE INTERNATIONAL JOINT COMMISSION, 3 (1935).

[37]*International Joint Commission*, supra at 13.

[38]Id.

[39]Functions, Powers, supra 7 (1935).

[40]Bloomfield and Fitzgerald, BOUNDARY WATER PROBLEMS—CANADA AND THE UNITED STATES, 56 (1958).

[41]Id. at 55.

[42]Functions, Powers, supra 7 (1935).

[43]Hills, THE ST. LAWRENCE SEAWAY, 88 (1959).

[44]Baxter, supra at 94.

[45]Id.

[46]Id.