

**EMBARGOED**  
**1900 hrs – 20.9.08**

## **Triumph for UNCLOS**

**Sir Shridath Ramphal's Remarks at Launch**  
**Georgetown, 20.9.08**

It does not seem so long ago that we were here at the launch of another book published by HANSIB – a book about me. But that's the difference. It was a book about me; an attractive, generous book written by others as a *festschrift* on the occasion of my 80<sup>th</sup> birthday and launched at the festival of CARIFESTA.

This Launch is different. This book is not about me. It is mine, in the sense that I wrote it. It is about Guyana and Suriname and the United Nations Convention on the Law of the Sea; and, to an extent, it is more about the Convention than the Countries – that's why it is called 'Triumph for UNCLOS' But, of course, it is about Guyana and Suriname too, because it is an account of the settlement under UNCLOS of their maritime dispute; and because it is about neighbours, it is not wholly as technical as it might sound. It even contains a poem; and it is with that verse that I should like to start these remarks: It will not be unfamiliar to many of you -

*There runs a dream of perished Dutch plantations  
In these Guiana rivers to the sea  
Black waters rustling through through vegetation  
That towers and tangles banks, run silently  
Over lost stelling, where the craft once rode  
Easy before trim dwellings in the sun  
And fields of indigo would float out broad  
To lose the eye right on the horizon.*

*These rivers know that strong and quiet men  
Drove back a jungle, gave Guiana root  
Against the shock of circumstance, and then  
History moved down river, leaving free  
The forest to creep back, foot by quiet foot*

*And overhang black waters to the sea.*

Arthur Seymour's poem (*There Runs a Dream*) is about Guiana – but also . about all the Guianas; and so about Guyana and Suriname specially. It begins Chapter 1 of the Book (*Shared Legacies*) So, the Book is about commonalities: of history and geography, of peoples and cultures; of struggles and hopes; commonalities that evoke oneness – a oneness that was so evident in Suriname's magnificent contribution to CARIFESTA.

But the book is about separateness, too, and in particular the separateness that boundary issues generate between neighbours.. The issues here are those relating to the maritime boundary between Guyana and Suriname.- the boundary in the sea from the mouth of the Corentyne River outward across the Atlantic – a boundary of enhanced importance because of the prospect of oil and gas in the sea-bed beneath those waters.

That legal scholarship is involved in international litigation will be readily understood; but, its volume and quality are beyond easy grasp. They are truly astounding, with history as prominent as jurisprudence. This is as true of inter state arbitration as of cases before the International Court of Justice. But in both, much of the scholarship - the learning, the analysis, the research – generated by the process is not readily accessible. In most cases the hearings are not public and so not reported. There are good reasons for this; for one, the hearings themselves can excite passions and worsen relations; but, in the result, all that erudition remains a well kept secret. After the event, it is all in 'the public domain'; but only in a technical sense, it is still not handily available to ordinary people who wish to understand the issues beyond a simple outcome.

Guyana's Memorial, our initial submissions with which the proceedings began, occupied volumes totaling closely printed pages; but that Memorial was only one of six written presentations by Guyana and Suriname. Altogether, with the seven Annex volumes accompanying them, they fill thirteen volumes, copiously footnoted, and with 336 maps and diagrams. The documentation is voluminous. The Tribunal's Award is itself contained in a volume of 65 pages, many of which are inevitably cast in highly technical legal, geographic, and cartographic terms supported by 5 maps." Small wonder that although everything, including the verbatim transcripts of all ten days of oral arguments, are on the Registry's website ([www.pca-cpa.org](http://www.pca-cpa.org)), for most people, the story of the Arbitration remains

untold.. This book is a vignette of these Arbitral proceedings – now a part of West Indian history.

As such, it is a modest attempt to provide everyone easy access, in readable form, to the complex issues and weighty legal arguments at the heart of the Guyana-Suriname Maritime Arbitration - especially for the people of our two countries; but more generally as well. It was the danger of this intellectual treasure being lost to all but researchers that moved me to undertake this ‘compilation and commentary’. I hope you note that description; for besides commentary which is mine there is also ‘compilation’ in the interest of authenticity. This is so in two particular respects; the Arbitrators ‘Summary’ of the principal arguments of Suriname, and the Arbitrators ‘Conclusions’ in their own words. I hope the book brings to light and preserves at least some of the considerable scholarship and comprehension that has been generated.

However, there was another consideration. Most international disputes are remembered in term of ‘winners’ and ‘losers’, though in fact judgments are seldom as simplistic as that. In this case, Guyana did ‘win’ in that sense on “all its core issues”; but the thesis of this book is that the real winner was the system of international law that brought the two countries to the Arbitral Tribunal and to the peaceful resolution of their maritime dispute.

Maritime delimitation, drawing the boundary between the maritime areas of adjacent States, is obviously of primary importance to the States concerned. Guyana and Suriname had much at stake in this delimitation. Even as the 20th Century was ending, the age old dream of El Dorado, with which the Guiana coast of South America will forever be associated, recurred in a new, less mythical, form - the prospect of hydrocarbon resources in the ‘Guiana basin’ offshore Guyana and Suriname: ‘black gold, Texas tea’, in more modern idioms. This had long been a hope, given the abundance of explored reserves in neighbouring Venezuela and Trinidad and Tobago; but, over nearly a century of spasmodic effort, the answer was never more positive than ‘maybe’.

As the Century drew to a close, however, a small Canadian Company operating under a Guyana concession, dramatically turned that hope to expectation.. Holding a Petroleum Prospecting Licence from the Government of Guyana, CGX identified highly promising oil and gas deposits from its seismic work in Guyana’s offshore area bordering

Suriname. Last year, in the week the Award was given, the London Economist, writing of those deposits, would recall that “The United States Geological Survey reckons that the muddy waters of the Guyana-Suriname basin may hold more undiscovered oil than the proven reserves of the North Sea”.

The point is that what was at stake for Guyana in the CGX exploration was neither small nor improbable in development terms, and knowledge of its potential was in the public domain. Those who were responsible for interrupting CGX’s operations in June 2000 certainly knew what they were seeking to deny Guyana. Suriname itself had prospects of hydrocarbon development offshore and was vigorously pursuing them. On the eve of the Oral Hearings in 2006 Suriname announced its own program for drilling exploratory wells offshore. But the strategy, it seems, both from the resort to force in 2000 and the conduct of ‘negotiations’ before 2000 - was to prevent Guyana from doing likewise.

So, this was not a maritime boundary dispute which each side wished to solve according to its views and interests. It was one which one side had no wish to resolve in itself. UNCLOS was absolutely critical to breaking the stalemate which had locked up the potential of the Guiana-Suriname Basin, depriving Guyana, the Caribbean region and the world of access to potentially vast hydrocarbon resources at a time of dire need on all three levels. Thanks to UNCLOS and to the rule of law it imposes, dispute settlement by peaceful means was mandatory, and justice and equity ultimately prevailed. “As a result of this Award”, the Tribunal said, “Guyana now has undisputed title to the area where the incident occurred” – the injury done to Guyana has been “sufficiently addressed”.<sup>1</sup> So it has.. Guyana’s patrimony has been affirmed. But the outcome, most of all, was a triumph for UNCLOS.

In securing that triumph the Arbitral process under Chapter VII of UNCLOS had to be assertive in three specially critical areas: the Tribunal’s jurisdiction to determine the maritime boundary, the primacy of the principle of ‘equidistance’ in fixing the boundary, and the issue of the threat and use of force in maritime boundary dispute settlement. I shall say a word about the first and last of these; ‘equidistance is for discussion with the lawyers’. In all three areas, however, the UNCLOS Tribunal in this case made decisions of major significance not only to the outcome of the Arbitration, but also to the development of international law as a whole.

The first Case Report on the Arbitration in the American Journal of International Law concluded: "*The Guyana/Suriname award demonstrates the efficiency and the functionality of the arbitration process under Part XV of the LOS Convention, both in the context of maritime delimitation disputes and more generally*" The Guyana-Suriname Award is likely to be an arbitral precedent of considerable authority; one much drawn upon in international jurisprudence in the years ahead.

On the issue of '*jurisdiction*', Suriname's basic strategy in the Arbitration was to abort the process by mounting a major challenge to the Tribunal's authority to determine the maritime boundary. Suriname had the legal right to make such a challenge; but the right to raise an issue and the justification for doing so are entirely separate. Looked at dispassionately, the UNCLOS process - however the parties got to it - offered the certain prospect of resolving the maritime boundary dispute by peaceful and authoritative means. Aborting the process would leave the two countries in continuing dispute over their maritime spaces - and leave unexplored and unexploited the resources of those spaces.

Why then would Suriname want to pursue such a course? One possible answer is that, given that Suriname's use of force had rendered Guyana's off-shore region unattractive to foreign investment, keeping the maritime boundary in dispute would strengthen Suriname's hand in negotiating the maritime boundary and, indeed, in linking it to other boundary ambitions. Strictly, none of this mattered to the Tribunal for whom the sole question was whether under UNCLOS it had jurisdiction to determine the single maritime boundary between Guyana and Suriname. But the Parties, at least, knew what lay behind the strategy to abort the proceedings and leave the maritime boundary in dispute - whatever the spirit of UNCLOS.

And, of course, Suriname wanted the substantive Arbitration proceedings ('the merits') suspended while its Preliminary Objections on jurisdiction were being heard. It also wanted the Tribunal to rule on the Objections on Jurisdiction at that interlocutory stage, where a ruling in Suriname's favour would terminate the arbitral proceedings - without Suriname having to reply to Guyana's contentions on the merits - and, of course, without a determination of the maritime boundary.. The Tribunal declined.; the objection to jurisdiction would be determined as part of the case. The attempt to abort the Arbitration had failed.

Suriname's basic argument was that the Convention conferred jurisdiction on the Tribunal only in relation to maritime boundaries; that a maritime boundary could not be determined without first deciding where that boundary started on the coast; that there was no agreement on that point between the Parties, and that the Tribunal had no power to determine that land issue. A major question, therefore, in relation to the Tribunal's jurisdiction was whether there was an agreed boundary in the territorial sea, and so an agreed starting point for the maritime boundary. Here history came to the aid of law.

At the start of Chapter 3 of the Book (Efforts of the Metropoles:1831-1945), is an account of a major undertaking by Britain and the Netherlands during the 1930s to settle the boundary between British Guiana and Suriname. In particular, it sets out the story of the detailed surveying exercise of a Joint British-Dutch Boundary Commission to identify on the ground, and to mark, the southern land boundary terminal and the northern land boundary terminal – and to do so in a single concerted exercise. The southern land boundary terminal would be an international tri-junction point where the borders of British Guiana, Suriname and Brazil meet, and the northern terminal would be at the mouth of the Corentyne River where the land meets the sea. This latter boundary point would also be the starting point of the maritime boundary between the two countries - though in those early days the essential 'maritime' space was the territorial sea of three miles.

A related but separate task for a British-Brazilian Boundary Commission was to survey and mark the Brazil-British Guiana boundary on the ground starting from the tri-junction boundary point (on Mount Roraima) of Brazil, British Guiana and Venezuela and ending at the tri-junction boundary point of Brazil, British Guiana and Suriname. The Commissions carried out their onerous tasks, not without loss of life, and marked both boundary points: the southern tri-junction point at the headwaters of the Corentyne on the Kutari River, where they erected an impressive pillar, and at Point 61 on the west bank of the Corentyne River where they also established pillars marking the northern land boundary terminus - and in the process marking the boundary in the territorial sea.

In 2006, after the Arbitration had begun, but not too late to be of use, there was published in Guyana the diary of one of the British surveyors who was part of that Joint Team – J Arthur Hudson. It was edited by former Brigadier

Joseph Singh who had unearthed it from the Hudson family. It makes fascinating reading, and I commend it to you – even as I commend Joe for his enlightened rescue of this historical treasure. The book is called *The Mataruki Trail*, which is the name the Boundary Commission gave the line they cut and marked on foot from point to point – some 1,119 kilometers. This is today's Brazil-Guyana boundary – which speaks as well, of course, to our boundaries with Venezuela and Suriname. Guyana brought it to the notice of the Tribunal.

In the end, the Tribunal found that there was an agreed boundary in the territorial sea between Guyana and Suriname with a starting point being “the intersection of the low water mark line of the west bank on the Corentyne River and the geodetic line of N10°E which passes through Marker “B”, placed by the 1936 Mixed Boundary Commission 220 meters distant on a azimuth of 190° from Marker “A”, also known as the 1936 Point/Point 61”. Note the reference to those ‘markers’. Point 61 is on the low water mark off the foreshore of 61 Village.

Suriname's basic argument had been that the 1936 exercise was never consummated; that the Commissioners had merely made some ‘recommendations’ to their respective Governments and that the matter was at large. Suriname actually cast doubt on the location, and even the existence, of the 1936 markers. In Chapter 9 of the Book (*Arbitration under UNCLOS*) is an account of a Site Visit ordered by the Tribunal to the 61 Village foreshore to verify the location of the Markers. The Tribunal's Hydrographer found “that there is no evidence that Marker ‘B’ or Pillar ‘B’ has been disturbed or moved since being constructed in 1936”. Let me read the concluding paragraphs of that Chapter for the history it speaks to and the message it seeks to send:

*And, so; on the morning of 31 May 2007, the Hydrographer and representatives of the Parties (including the Parties' technical experts) gathered on the foreshore of Guyana at Point 61, and with the most modern position finding instruments brought to the aid of old fashioned shovels, started the search for Marker ‘B’ (and Pillar ‘B’) following the directions of the Boundary Commissioners' 1936 Report. There came a moment when under the Hydrographer's direction the shovel struck ‘gold’: Marker ‘B’ – where it was supposed to be; but further identification was not visible so near the top. In an atmosphere of fused excitement and anxiety – like that at an*

*archeological dig on the verge of discovery – the Hydrographer requested that the shovels should probe deeper. They did; and to unconstrained elation all was revealed: deep down, some three feet below the surface. On the sides of the concrete block the markings 'BRITISH GUIANA' and '1936' were plainly visible.*

*Here then was Marker 'B': here, where it had stood buried since 1936, secured to the spot where it was planted by entwining roots of foreshore plants branching out over seventy years. That afternoon, the shovels revealed Pillar 'B'. The work of the Boundary Commissioners seventy years earlier had survived – confounding doubts, and doubters.*

*There they still are, like ancient sentinels in a field of old watermelon vines on Guyana's foreshore. Guyana needs to protect them; to mark the markers that had so much to do with the delimitation of its maritime boundary with Suriname. They lie close by one of Guyana's few coastal sandy beaches that many Guyanese know simply as 'sixty-three' – adjoining, of course, Point 61. These beaches, right out to low water mark are part of Guyana. It ought not to have taken a site visit to have affirmed these truths; but, in the end, the visit put to rest doubts that might have festered – or been helped to grow. For Guyanese who were part of that process of revelation that May morning, and for all who worked with them, it was a moment to savour – and remember.*

Next, a word about the Tribunal's view of Suriname's 'use of force' and its authoritative pronouncements of relevance to all countries in this vital area of maritime jurisprudence. I do not go over the events of 3 June 2000. . Chapter 6 of the Book (*The Resort to Force: 2000*) provides Guyana's account of the threat or use of force directed against the oil exploration rig *C.E. Thornton* operating within what Guyana had always claimed – and the Tribunal in its Award confirmed – to be Guyana's waters. The map on the Book's cover identifies how manifestly within Guyana's waters the CGX chartered rig was.

But, quite apart from its challenge of the facts as presented by Guyana, Suriname specifically questioned the Tribunal's jurisdiction to entertain Guyana's complaint. Guyana had stated in its third submission, *inter alia*, that Suriname was 'internationally responsible for violating its obligation



under the Convention, the Charter of the United Nations, and general international law to settle disputes by peaceful means, because of its resort to force.’

Suriname was of the view that the Tribunal had no jurisdiction to adjudicate alleged violations of the UN Charter or customary international law.<sup>ii</sup> This was a challenge to UNCLOS itself; and the Tribunal dealt with it robustly. Reviewing the Convention and the case law, the Tribunal said in its Award:

*Suriname’s contention that this Tribunal had ‘no jurisdiction to adjudicate alleged violations of the United Nations Charter and general international law’ cannot be accepted.*

This affirmation of the jurisdiction of an Annex VII Tribunal under UNCLOS to adjudicate violations of the United Nations Charter and general international law was a powerful signal of the authority of UNCLOS (and of the Dispute Settlement provisions of Part XV in particular) in relation to the obligation of Parties to the Convention “to settle disputes by peaceful means”.

But it is a signal of wider import - that the threat and use of force in disputes between states is beyond the pale of lawful conduct. In this regard, the Tribunal’s Award is a boost for the rule of international law. And it is a boost for UNCLOS as well; because Suriname disappreciated ‘that State responsibility was engaged by its acts and assert(ed) that there has been no case in the context of a territorial dispute where a State found not to have title to territory has been held responsible for its actions in an area which had been the subject of dispute.

The Tribunal was not persuaded by the appeal to novelty. It concluded in language that will advance the purpose of UNCLOS to settle maritime disputes by peaceful means:

*A claim relating to the threat or use of force arising from a dispute under the Convention does not, by virtue of Article 2(3) of the UN Charter, have to be “against the territorial integrity or political independence” of a State to constitute a compensable violation. ...if the law recognised such an incompatibility, it would significantly weaken the fundamental rule of international law prohibiting the use of force:*

The Guyana- Suriname Arbitral Award has conclusively blocked the emergence of any 'large and dangerous hole' in 'the fundamental rule of international law prohibiting the use of force'- in maritime no less than territorial areas. The Award in this respect serves the peace of the world

The Caribbean region, and indeed others, are fortunate that UNCLOS offered a facility to pronounce on the illegality and provide a warning against similar temptations. This unlawful resort to force in Caribbean waters jarred a region that was developing the structures of Community against a backdrop of a well established system of the rule of law. The Caribbean Community made efforts which are described in Chapter 5 (*Post-Independence Conduct: 1966-2000*) to restore a peaceful environment and arrangements conducive to *development*; but these efforts were not allowed their potential. UNCLOS came to the rescue of the Parties and their Region.

Perhaps this is a dimension of its dispute settlement provisions not fully recognised – that there will be situations in which States find it easier politically to accept the binding award of an UNCLOS Tribunal than to take responsibility for a negotiated settlement. A few months before the Guyana-Suriname Award was handed down a similar Annex VII Tribunal had made an Award in another maritime boundary dispute in the Caribbean between Barbados and Trinidad and Tobago. In the archipelagic environment of the Caribbean the Region is better off now that the maritime boundary between them has been established. It is a costly alternative to negotiation; but costlier still could be an unresolved dispute.

There were other elements of the Guyana-Suriname Arbitration that deserve attention and receive it in Chapter 9 of the Book (*Arbitration under UNCLOS*). They concern the arbitral process itself – how it evolved, and how the Oral Hearings came to be held in Washington; the issue of 'access to archives' which played a unique role in the arbitration arising from Suriname's refusal to allow Guyana access to archives in the Netherlands despite the unhindered access that Suriname was given to British archives; and the matter of the 'site visit' – the visit of the Tribunal's Hydrographer to Point 61, to which I have already referred -: a visit which was not without its quota of drama when the seventy year old pillars came to light. These accounts come appropriately at the beginning of Part 2: 'Settlement – Arbitration and Award'.

The arbitral process took three and a half years - from February 2004 to September 2007 - and over that time held the destiny of some 31,000 square kilometers of maritime space in suspense. But for the UN Convention on the Law of the Sea its development would have remained frozen. Hence the title of the book –‘Triumph for UNCLOS’: triumph for the rule of law in the Caribbean Sea; triumph for the rule of law in the world’s maritime areas. The outcome of the Arbitration is vitally important to both Guyana and Suriname; but it is important also in strengthening the “Constitution for the Oceans’ that the Convention on the Law of the Sea is.

The Convention was agreed in 1982 after fourteen years of dedicated work by its framers from over 150 countries. It was a rare moment of international consensus in our time – despite the few abstentions (the United States of America and Venezuela did not sign). UNCLOS was signed by 117 countries the day it opened for signature at Montego Bay in Jamaica. It was Guyana’s ratification that ultimately brought the Convention into force. It seems somehow appropriate that Caribbean countries, through this important arbitration - Barbados and Trinidad & Tobago had done so earlier - should offer UNCLOS the opportunity of another ‘triumph’.

There would be no book without the Arbitration; and Guyana’s wise internationalism in initiating it deserves particular credit. Both political Parties in Guyana supported the arbitral process and both declared their satisfaction with its outcome. All who were associated with developing and presenting Guyana’s claim would want to specially acknowledge the consistent involvement and unswerving support of President Bharat Jagdeo over the three and a half years of unremitting effort.

So too the commitment to that effort of CGX Resources Inc., - now CGX Energy.Inc. - the Canadian oil exploration Company which was the first direct victim of the events that led to arbitration under UNCLOS. CGX never lost faith in the rightness of this recourse to law. Suriname’s resort to force in 2000, held up development of Guyana’s marine resources, and CGX’s work of exploration, for seven years; but, throughout, CGX remained steadfast and committed . Their steadfastness was crucial to Guyana’s cause. One day, I know, those seven years will be as nothing compared with the fruits of waiting. Already, one year from the Award’s vindication of their commercial and ethical judgment, their work has already resumed with enhanced assurance – thanks to UNCLOS. Remember those all important words of the Award as you heard them last year: ‘....as a result of this

Award, Guyana now has undisputed title to the area where the incident occurred’.

And, of course, there would be neither book, nor Arbitration, nor triumph for UNCLOS without the Arbitrators. Judge Dolliver Nelson, Professor Thomas Franck, Professor Hans Smit, Dr. Kamal Hoosein and Professor Ivan Shearer. At the conclusion of the Oral Hearings both sides paid warm encomiums to our Arbitrators whom Counsel who addressed them during that time, and engaged with them through the Registry over the entire process, had come to respect for their learning and impartiality – and unflinching patience. Their Award is the best testimony to these virtues.. They were a truly eminent Arbitral Tribunal. Their Award has contributed to the evolution of maritime jurisprudence – especially under UNCLOS. And tribute in due too to the the excellence of the Registry – provided by the Permanent Court of Arbitration.

It takes two to tango, and an arbitral process is certainly not a sedate waltz. A successful arbitration. owes as much to one side as to the other. I, and other members of our Legal Team, pay respect to the cordiality, forensic skill and overall professionalism of Suriname’s Legal Team; and I personally to my long standing Surinamese colleague, Dr Hans Lim A Po.

A great many people have helped to make the book possible - too many for me to mention all. Foremost among them are my colleagues on Guyana’s legal team: Paul Reichler, and Professors Payam Akhavan, Philippe Sands QC and Nico Schriver, our Scientific/Technical Expert Dr.Galo Carrera and Scott Edmonds of International Mapping Associates. This book is in major part a ‘compilation’ and, as the Introduction explains, much of the Chapters of ‘Part 1: Dispute – The Path to Arbitration’, is based on corresponding sections from Guyana’s ‘Memorial’ and ‘Reply’ submitted to the Arbitrators. The entire legal team contributed to the preparation of those ‘Pleadings’. Their contribution to the book is therefore substantial.

My thanks are due as well to Guyana’s Ministry of Foreign Affairs and specially so to its Director General, Ambassador Elizabeth Harper, and the Director of its Frontiers Division, Keith George, for innumerable services. Without their personal assistance and encouragement the book would not have been assured. I am indebted also to many persons for reviewing the manuscript: to Sir Ronald Sanders, my overall reviewer, to Rudolph Collins

and Elsa Mansell and to others who read particular sections. All saved me from many a mishap.

And, finally, to my Publishers. Hansib Publications Limited, and its indefatigable Chairman, Arif Ali, without whose manifold skills and unsparing cooperation this book could not now be on the launch pad.

Despite all this varied involvement, it is right that I should acknowledge personal responsibility for the final outcome, and absolve all others. This is in no sense an official book; it is mine, And I say that with humility for it was a privilege to both participate in and now record the story of how UNCLOS triumphed in the maritime space of Guyana and Suriname.

And the most tangible triumph of all is that Guyana and Suriname have entered a new era of neighbourliness and cooperation. I hope this book helps to secure that environment forever so that a future Seymour can write with conviction:

*There runs a dream of peace and harmony  
In these Guiana rivers to the sea.*