# Chapter 1
# Introduction

The adoption of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) by the General Assembly in New York on 23 September 2007[1] was unanimously praised as "milestone of re-empowerment",[2] "diplomatic success",[3] "groundbreaking" moment,[4] "landmark achievement",[5] "momentous occasion"[6] and "historic event".[7] At the same time, UNDRIP was determined as the "most important development concerning the recognition and protection of the

**1** UN, "Declaration on the Rights of Indigenous Peoples (UNDRIP)", GA Resolution A/RES/61/295 (13 September 2007), pp. 1–15. The Declaration was adopted by a vote of 144 to 4, while eleven states abstained (Azerbaijan, Bangladesh, Bhutan, Burundi, Colombia, Georgia, Kenya, Nigeria, Russian Federation, Samoa and Ukraine), https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html (accessed 17 July 2018). The no-voters Australia, New Zealand, USA, and Canada, however, finally signed the Declaration in 2009 and 2010 (E. Pulitano [ed.], *Indigenous Rights in the Age of the UN Declaration*, Cambridge: Cambridge University Press, 2012, p. 2; R. Pitty and S. Smith, "The Indigenous Challenge to Westphalian Sovereignty", *Australian Journal of Political Science* 46 [2011] 1, pp. 121–122).

**2** S. Wiessner, "Indigenous Sovereignty: A Reassessment in Light of the UN Declaration on the Rights of Indigenous Peoples", *Vanderbilt Journal of Transnational Law* 41 (2008), pp. 1141–1176, at 1142; Id., "The UN Declaration on the Rights of Indigenous Peoples", 2009, https://legal.un.org/avl/ha/ga_61-295/ga_61-295.html (accessed 22 March 2021). Moreover, Samson and Gigoux declared the adoption of the Declaration as "most significant milestone" (C. Samson and C. Gigoux, *Indigenous Peoples and Colonialism. Global Perspectives*, Cambridge: Polity, 2017, chapter 5, p. 1), Rudolfo Stavenhagen as "major step" (Stavenhagen, "Making the Declaration work", in: C. Charters and R. Stavenhagen [eds.], *Making the Declaration Work. The UN Declaration on the Rights of Indigenous Peoples*, Copenhagen: IWGIA Transaction, 2009, p. 352), and Xanthaki as "major development" (A. Xanthaki, "Indigenous Rights in International Law over the last 10 Years and Future Developments", *Melbourne Journal of International Law* 10 [2009] 1, pp. 27–37, at 27).

**3** Pitty and Smith, "Indigenous Challenge", p. 121.

**4** F. Lenzerini (Rapporteur), "Rights of Indigenous Peoples under Customary International Law", in: International Law Association, *The Hague Conference (2010). Rights of Indigenous Peoples*, 2010, pp. 43–52, at 43 (pdf online available). In a similar way, Federico Lenzerini determined the UNDRIP adoption as a "landmark event" (F. Lenzerini, *Reparations for Indigenous Peoples*, Oxford: Oxford University Press, 2009, Preface) and Elvira Pulitano as "(l)andmark document" (Pulitano, *Indigenous Rights*, p. 4).

**5** Ibid., p. 1.

**6** S. Allen and A. Xanthaki, *Reflections on the UN Declaration on the Rights of Indigenous Peoples*, Oxford: Hart, 2009, p. 1.

**7** E. Daes, "An Overview of the History of Indigenous Peoples", *Cambridge Review of International Affairs*, 21 (2008) 1, p. 7. Similarly, Federico Lenzerini speaks about a "historical moment" (Lenzerini, *Reparations for Indigenous Peoples*, p. 624).

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basic rights and fundamental freedoms of the world's indigenous peoples",[8] an "important transformational moment in global politics"[9] and "significant turning point"[10] for about 476 million Indigenous Peoples around the globe.[11] Roderic Pitty and Shannara Smith even argue that the legally non-binding Declaration had significantly changed the "structure and practice" of world politics[12] and provides a fundamental "challenge to Westphalian sovereignty".[13]

And indeed, UNDRIP is granting Indigenous Peoples a set of political and jurisdictional rights, such as self-determination, political and legal institutions, their own laws, tradition and customs, free, prior and informed consent and, most notably, the control of territories, lands, and resources,[14] which Jérémie Gilbert and Cathal Doyle determine as "the real revolution behind the Declaration", as this frame of rights affirms that states "are not the only entities entitled to title to territory"[15] and these rights present a significant limitation to the control of the Westphalian

**8** E. Daes, "The Contribution of the WGIP to the Genesis and Evolution of UNDRIP", in: Charters and Stavenhagen (eds.), *Making the Declaration Work*, pp. 73–74.

**9** S. Lightfoot, *Global Indigenous Politics. A Subtle Revolution*, New York: Routledge, 2016, p. 200; S. Lightfoot, "Indigenous Mobilization and Activism in the UN System", in: D. Short and C. Lennox (eds.), *Handbook of Indigenous Peoples' Rights*, New York: Routledge, 2016, pp. 253–268.

**10** D. S. Dorough, "The Significance of the Declaration on the Rights of Indigenous Peoples", in: Charters and Stavenhagen (eds.), *Making the Declaration Work*, p. 264; D. S. Dorough, "Reflections on the UN Declaration on the Rights of Indigenous Peoples: An Arctic Perspective", in: S. Allen and A. Xanthaki (eds.), *Reflections on the UN Declaration on the Rights of Indigenous Peoples*, Oxford: Hart, 2009, pp. 507–535.

**11** Worldbank, "Indigenous Peoples", 2020, www.worldbank.org/en/topic/indigenouspeoples (accessed 20 July 2020). See D. Maybury-Lewis, "Indigenous Peoples", in: R. Maaka and C. Andersen (eds.), *The Indigenous Experience. Global Perspectives*, Toronto: Canadian Scholars, 2006, p. 22; K. Coats, *A Global History of Indigenous Peoples, Struggle and Survival*, Basingstoke: Palgrave Macmillan, 2004, pp. 42–63.

**12** Lightfoot, *Global Indigenous Politics*, p. 200; S. Allen, "UNDRIP and the Limits of the International Legal Project", in: Allen and Xanthaki (eds.), *Reflections*, p. 248.

**13** Pitty and Smith, "Indigenous Challenge", p. 121; J. Lüdert, *Conditions Apply. Non-state Actors Challenging State Sovereignty through Intergovernmental Organizations*, Vancouver: University of British Columbia, 2016, p. 281.

**14** UN, UNDRIP, Articles 3–5; 25–27; 32.

**15** J. Gilbert and C. Doyle, "A New Dawn over the Land. Shedding Light on Collective Ownership and Consent", in: Allen and Xanthaki (eds.), *Reflections*, pp. 289–328, at 326–328; C. Gigoux and C. Samson, "Globalization and Indigenous Peoples. New Old Patterns", in: B. Turner and R. Holton (eds.), *The Routledge International Handbook of Globalization Studies*, London: Routledge, 2016, pp. 287–311; C. Doyle, *Indigenous Peoples, Title to Territory, Rights and Resources: The Transformative Role of Free Prior Informed Consent*, London: Routledge, 2015; J. Gilbert, *Indigenous Peoples' Land Rights under International Law. From Victims to Actors*, Ardsley: Transnational, 2006.

state over nested indigenous territories.[16] However, the cheerful UNDRIP appraisal is masking the significant attenuation of the right to self-determination from its "fullest sense" of meaning as "a right to independent statehood"[17] to an "internal right".[18] Accordingly, the previous Declaration on the Granting of Independence to Colonial Countries and Peoples, adopted by General Assembly resolution 1514 (XV) of 14 December 1960 to promote "a speedy and unconditional end of colonialism in all its forms and manifestations"[19], has recognized the full right to self-determination, manifested either as (a) "a sovereign independent state", (b) an association with an existing independent state, based on the "free and voluntary choice by the peoples of the territory", or (c) the "freely" chosen integration "with an independent state",[20] whereas UNDRIP just enshrines a limited "right to autonomy or self-government in matters relating to their internal and local affairs",[21] without "dismember[ing] or impair[ing], totally or in part, the territorial integrity or political unity of sovereign and independent states".[22] This qualifier was inserted "last minute" during the exceptional third stage of the 25 years' long UNDRIP negotiations in 2006–2007, without a vote of Indigenous Peoples[23] and on initiative of both the African Union and an additional group of seven Westphalian

**16** See also A. Surrallés and P. Hierro, *The Land Within*, Copenhagen: IGWIA, 2005; A. Simpson, *Mohawk Interruptus*, Durham: Duke University, 2014; A. Simpson, "Paths Toward a Mohawk Nation: Narratives of Citizenship and Nationhood in Kahnawake", in: R. Maaka and C. Andersen (eds.), *The Indigenous Experience: Global Perspectives*, Toronto: Canadian Scholars, 2006, pp. 174–189.

**17** J. Anaya, *Indigenous Peoples in International Law*, Oxford: Oxford University Press, 2004, p. 103.

**18** Stavenhagen, "Making the Declaration Work", p. 364.

**19** UN, "Declaration on the Granting of Independence to Colonial Countries and Peoples (14 December 1960)", p. 1.

**20** UN, "Principle which should guide Members in determining whether or not an obligation exists to transmit the information called for under Article 73e of the Charter", GA Resolution 1541 (XV), A/RES/61/295, 15 December 1960, Annex, Principles VI–VIII. In this context, Principle IX emphasizes that the peoples' wish should have been determined "through informed and democratic processes, impartially conducted and based on universal adult suffrage", which could be "supervise[d]" by the UN, if "necessary" (Ibid., Principle IX).

**21** UN, "UNDRIP", Article 4.

**22** UN, "Declaration on the Rights of Indigenous Peoples", Article 46. However, the external right of exercising self-determination remained a possibility for those Indigenous Peoples, who are "oppressed" or "denied meaningful access to government" in order "to pursue their political, economic, social and cultural development" (Canadian Supreme Court, "Quebec Opinion", in: S. Wiessner [ed.], "Indigenous Sovereignty: A Reassessment in Light of the UN Declaration on the Rights of Indigenous Peoples", p. 1165, footnote 155).

**23** This exceptional negotiation stage was established by the General Assembly in December 2006 (UN, "Working Group of the Commission on Human Rights to elaborate a Draft Declaration in

states, namely Guyana, Suriname, Columbia, Canada, the Russian Federation, Australia, and New Zealand, as those states had continued to press for the limitation of the right to self-determination one day after the final report of facilitator His Excellency Hilario Davide was already submitted to the President of the General Assembly on 16 July 2007 and the submission deadline had already passed,[24] as their concern about a potential secession of Indigenous Peoples[25] was dismissed during both previous negotiation stages between 1982–1993[26] and 1995–2005/2006[27] and also unconsidered in the Draft Declaration of Chairperson-Rapporteur Luis-Enrique Chávez in 2006.[28]

Moreover, the final restriction of the right to self-determination was paralleled by an increased limitation of Indigenous Peoples' participation in the UN-

Accordance with Paragraph 5 of General Assembly resolution 49/214 of 23 December 1994", GA Resolution A/RES/61/178, 20 December 2006, p. 1).

**24** HE Hilario Davide, "Supplement Report to UN President of the General Assembly (PGA)", 20 July 2007, para. 1. This report was submitted after the deadline of "not later than mid-July 2007" (PGA Her Excellency Rashed Al Khalida, "Letter to all Permanent Representatives and Permanent Observers to the UN", 6 June 2007, para 2. See also HE Hilario Davide, "Report to the PGA on the Consultations on the Draft Declaration on the Rights of Indigenous Peoples", 13 July 2007, Part II, para. 5.

**25** A. Eide, "The Indigenous Peoples, the Working Group on Indigenous Populations and the Adoption of the UN Declaration on the Rights of Indigenous Peoples", in: Charters and Stavenhagen (eds.), *Making the Declaration Work*, pp. 32–48; Daes, "The Contribution of the WGIP to the Genesis and Evolution of UNDRIP"; E. Daes, "The UN Declaration on the Rights of Indigenous Peoples: Background and Appraisal", in: Allen and Xanthaki (eds.), *Reflections*, pp. 11–41; J. Henriksen, "The UN Declaration on the Rights of Indigenous Peoples", in: Charters and Stavenhagen (eds.), *Making the Declaration Work*, pp. 78–86; L.-E. Chávez, "The Declaration on the Rights of Indigenous Peoples: Breaking the *Impasse*", ibid., pp. 96–108; A. Carmen, "International Indian Treaty Council Report from the Battle Field", ibid., pp. 86–96; M. Åhrén, "The Provisions of Lands, Territories and Natural Resources," ibid., pp. 206–207; L. A. De Alba, "The Human Rights Council's Adoption of the UN Declaration on the Rights of Indigenous Peoples", ibid., pp. 108–138. See also M. Åhrén, *Indigenous Peoples' Status in the International Legal System*, Oxford: Oxford University Press, 2016.

**26** WGIP, "Report of the Working Group on Indigenous Population on its First Session", E/CN.4/Sub.2/1982/33 (25 August 1982), paras. 1–2; WGIP, "Report of the Working Group on Indigenous Population on its Eleventh session", E/CN.4/Sub.2/1993/29, 23 August 1993, pp. 1–63; WGIP, "Report of the Working Group on Indigenous Population on its Eleventh Session", E/CN.4/Sub.2/1993/29/Add.1, 27 August 1993, pp. 1–2.

**27** UN ECOSOC Commission on Human Rights, "Report of the Working Group established in Accordance with Commission on Human Rights Resolution 1995/32", E/CN.4/1996/84, 4 January 1996.

**28** UN ECOSOC Commission on Human Rights, "Draft Declaration on the Rights of Indigenous Peoples", E/CN.4/2006/79, 22 March 2006, Annex I, pp. 8–77.

DRIP negotiations since 1995[29] and predated by a long historical pattern of Indigenous Peoples' exclusion from the United Nations since the rejection of Cayuga Chief Deskahe's claim before the UN's predecessor, the League of Nations, in 1922[30] and the dismissal of a Memorandum for "sovereign statehood" of the Haudenosaunee at the UN conference in San Francisco on 13 April 1945.[31] Indigenous Peoples in the Americas were hindered from exercising the full right of self-determination granted by the Independence Declaration of 1960, although "the direct participation of the indigenous populations in the legislative and

**29** Whereas Indigenous Peoples during the first negotiation stage in 1984 were "urged [. . .] to contribute to a deeper and more critical analysis of the issues involved so as to assist the Working Group in adopting and being able to defend certain ideas" (WGIP, "Report of the Working Group on Indigenous Population on its Third Session", E/CN.4/Sub.2/1984/20, 8 August 1984, para. 15) and the "constructive dialogue" between states and indigenous peoples was emphasized in 1985 (WGIP, "Report of the Working Group on Indigenous Population on its fourth session", E/CN.4/Sub.2/1985/22, 27 August 1985, p. 6, para. 13), the participation of Indigenous Peoples was significantly limited during the second negotiation phase since 1993, when Indigenous Peoples had several times stressed that "it must be explicitly recognized that indigenous nations and peoples were equal participants in the working group and not 'observers' and that they should have full input in the drafting of the reports of the sessions of the working group" (UN ECOSOC Commission on Human Rights, "Report of the Working Group established in Accordance with Commission on Human Rights Resolution 1995/32", E/CN.4/1997/102, 10 December 1996, para. 36. See also UN ECOSOC Commission on Human Rights, "Report of the Working Group established in Accordance with Commission on Human Rights Resolution 1995/32", E/CN.4/1998/10, 15 December 1997, paras 22–25; A. Carmen, "International Indian Treaty Council Report from the Battle Field: The Struggle for the Declaration", pp. 86–87; Davide, "Report to the PGA on the Consultations on the Draft UNDRIP", 13 July 2007, para. 9.

**30** In particular, the Chief of the Haudenosaunee represented the Oneida, Cayuga, Seneca, Mohawk, Onondaga and Tuscarora, who were known to the English as Six Nations and French as Iroquois, but had received no hearing at the League of Nations (D. Sanders, "Developing a Modern Law on the Rights of Indigenous Peoples", December 1994, http://www.anthrobase.com/Browse/home/hst/cache/Developing.doc.htm (accessed 18 September 2918); D. Sanders, *The Formation of the World Council of Indigenous Peoples*, Copenhagen: IWGIA, 1977, pp. 9–10). More precisely, at the UN Charter Conference in San Francisco in 1945, the Haudenosaunee had vainly attempted to raise historical claims based on the Halimand Treaty with the British Crown of March 1784 (J. Borrows, *Canada's Indigenous Constitution*, Toronto: University of Toronto Press, 2010, footnote 64), whereupon sovereignty claims, which were during the 1950s "sent every year from various parts of the Americas" to the UN, were likewise ignored (D. Sanders, "Developing a Modern Law on the Rights of Indigenous Peoples", December 1994; D. Sanders, *The Formation of the World Council of Indigenous Peoples*, p. 10) and Indigenous Peoples' claims voiced at the "opening proceedings for the new U.N. headquarters in New York" in 1956 remained unacknowledged (T. McCarthy, *In Divided Unity*, Tucson: University of Arizona Press, 2016, p. 7).

**31** Lüdert, *Conditions apply*, p. 170; Anaya, *Indigenous Peoples in International Law*, p. 83.

executive organs of government of those [Non-Self-Governing and Trust] Territories" in order to prepare them "for complete self-government or independence" was in December 1952 still indicated as requirement for the independence of "Colonial Countries and Peoples".[32] Instead, Indigenous Peoples entered the UN not as Westphalian states, but by detour as participants in the UNDRIP negotiations in 1982.[33]

Most commonly, the exclusion of Indigenous Peoples from exercising the right of full self-determination of the Independence Declaration of 1960 is justified either by the "saltwater thesis" or by the principle of *uti possidetis* ('as you possess'). The former was spontaneously inserted as Principles IV and V of UN General Assembly Resolution 1541 (XV) of 15 December 1960 and had determined that colonial countries and peoples are required to fulfil the condition of a "geographical and ethnic or cultural distinctiveness of a territory",[34] respectively "a

**32** UN, "The Right of Peoples and Nations to Self-Determination", 20 December 1952), GA Resolution A/RES/637 (VII), pp. 26–27, Parts A–C.

**33** Instead of being full participants at the negotiation table about independence in the context of the Declaration on the Granting of Independence to Colonial Countries and Peoples of 1960, Indigenous Peoples entered the UN in May 1982 as participants of the Working Group of Indigenous Populations (WGIP), which was established by the ECOSOC (UN, "Study of the Problem of Discrimination against Indigenous Populations", ECOSOC Resolution 1982/34 (7 May 1982), p. 26, paras 1–2). This decision was based on the eponymous study commissioned by ECOSOC resolution 1589 of May 1971 (ibid.), formally conducted in 37 states, namely Australia, Argentina, Bangladesh, Bolivia, Brazil, Burma, Canada, Chile, Colombia, Costa Rica, Greenland (Denmark), Ecuador, El Salvador, Finland, French Guyana (France), Guatemala, Guyana, Honduras, India, Indonesia, Japan, Laos, Malaysia, Mexico, New Zeeland, Nicaragua, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Sri Lanka, Surinam, Sweden, USA and Venezuela by Special Rapporteur José R. Martínez Cobo (UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, "Study of the Problem of Discrimination Against Indigenous Populations", E/CN.4/Sub.2/476 (30 July 1981), p. 2, para. 7) and de facto carried out by Augusto Willemsen Díaz (Willemsen Diaz, "How Indigenous Peoples' Rights Reached the UN", in: Charters and Stavenhagen [eds.], *Making the Declaration Work*, pp. 16–32). Thereupon, the study was published between 1981 and 1983 in 22 chapters (UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities, "Study of the Problem of Discrimination Against Indigenous Populations", E/CN.4/Sub.2/1983/21 (5 August 1983), pp. 5–6, para. 14) and urged the UN to take action with regard to the situation of Indigenous Peoples, at that point of time determined as "discrimination" problem, which resulted in the establishment of the WGIP.

**34** UN, "Principles", GA Resolution A/RES/ 1541 (XV), 15 December 1960, Principle IV. Accordingly, the underlying assumption that there existed just one cultural and ethnic distinct people from the European colonizers in a colonial territory fails to recognize the South American reality of several distinct peoples in a colonial territory, whereas the UN definition of "Non-Self Governing Territories" as both "a territory and its peoples" recognizes several (indigenous) peoples within those territories (UN, "Principles", Principle II).

territory and its peoples" from "the country administering it"[35] to exercise the full right of self-determination and emerge as an independent Westphalian state, whereas the often cited international law principle of *uti possidetis*, which had emerged during the independence process of European colonies in South America in the nineteenth century, had stipulated that the boundaries of newly emerging Westphalian states were to be defined by the course of the *colonial* frontiers, which is why some international law scholars argue that the principle had "allowed states to neglect the decolonization of indigenous territories".[36]

However, neither the saltwater requirement nor *uti possidetis* apply to northeastern South America, as the Caribbean colonies of the Dutch, English, and French, such as Guyana, Suriname, and several Caribbean islands, were indeed still administered by European Westphalian states, which were in 1960 still situated a salty ocean apart. In addition, the principle of *uti possidetis* was not fulfilled in the area claimed by Venezuela, Guyana, and Suriname, since the territorial boundaries between both Guyana and Venezuela and Suriname and Guyana were not spatially fixed, when the Independence Declaration was implemented in (British) Guiana on 26 May 1966,[37] after Venezuela had in 1962

**35** UN, "Principles", Principles II; V.

**36** J. Gilbert, *Indigenous Peoples' Land Rights*, p. 21. This argument resonates with the explanation provided by Patrick Thornberry, who indicated that the Decolonization Declaration was implicitly grasping "a people", defined in the spatial sense of "the whole people of a territory" (P. Thornberry, Self-Determination, Minorities, Human Rights A Review of International Instruments", *International & Comparative Law Quarterly* 38 (October 1989) 4, pp. 867–889, at 875. See also P. Thornberry, *Indigenous Peoples and Human Rights*, Manchester: Manchester University Press. 2002). A similar argument is advanced by James Anaya (J. Anaya, *Indigenous Peoples in International Law*, p. 100), while Benedict Kingsbury emphasizes that the relationship between Indigenous Peoples' historic sovereignty and the international law norm *uti possidetis has* received little attention by international law scholars (B. Kingsbury, "Reconciling Five Conceptual Approaches to Indigenous Peoples' Claims", *NYU Journal of International Law and Politics* 34 (2001) 1, pp. 189–250, at 236).

**37** ICJ, "Guyana files an Application against Venezuela", Press Release No. 2018/17, 4 April 2018, www.icj-cij.org/files/case-related/171/171-20180404-PRE-01-00-EN.pdf (accessed 18 September 2018); T. Donovan, "Suriname–Guyana Maritime and Territorial Disputes", p. 61; D. Singh, "Comment on the Guyana–Suriname Boundary Dispute", *Georgia Journal of International & Comparative Law* 32 (2004), pp. 657–660. Accordingly, none of the boundaries was fixed, when the colony of British Guiana emerged as the independent Westphalian state Guyana in May 1966 and also not during the two Independence Conferences, held at Lanchester House in October 1963 and November 1965. The former was attended by Dr. C.B. Jagan for the People's Progressive Party, Mr. L.P.S. Burnham for the People's National Congress, and Mr. P.S. D' Aguiar along with the Arawak Stephen Campbell for the United Force Party and British Guiana Governor Sir Ralph Grey (The National Archives Kew (hereafter TNA), Colonial Office, British Guiana, "Re-Convened Independence Conference 1965, Outstanding Issues", CO 1031_4509_27), whereas the latter took place

declared the Paris Award of 1899 as "null and void". In result, the border between Venezuela and Guyana remained unfixed[38] and the whole area, including "Guayana Esequiba", legally disputed until today (December 2020).[39] At the same time, the boundary dispute between Guyana and Suriname was just settled by an Arbitral Award in 2007.[40] Consequently, Indigenous Peoples of northeastern South America were unlawfully deprived from the right to exercise their self-determination in its fullest meaning.

Accordingly, shortly before British Guiana's first Independence Conference took place in 1963, the Arawak Stephen Campbell had addressed the Queen of England for substantial reason, emphasizing in a Memorandum on 13 October 1963 that the Indigenous Peoples of (spatially undefined) British Guiana had "this right of self-determination".[41] Moreover, the Arawak of Moruca raised the more profound legal claim that "she [the Queen] took it [the area of British

without Dr. Jagan, who had rejected his participation due to the violent and hostile situation in British Guiana (TNA, C. B. Jagan, "Memorandum", CO 1031_4501, 1 November 1965).

**38** International Court of Justice (ICJ), "Guyana files an application against Venezuela", 4 April 2018. The annulment of the 1899 Boundary Award by Venezuela in 1962 resulted in the establishment of a Mixed Boundary Commission by the Geneva Agreement of 1966 (UN, *Geneva Agreement to resolve the Controversy over the Frontier between Venezuela and British Guiana*, 17 February 1966, No. 8192, https://treaties.un.org/doc/publication/unts/volume%20561/volume-561-i-8192-english.pdf (accessed 18 September 2018). followed by the appointment of several special UN officers (UN Secretary General (SG), "*Secretary-General Chooses International Court of Justice as Means for Peacefully Settling Long-Standing Guyana–Venezuela Border Controversy*", 30 January 2018, SG Press Release No. SG/SM/18879-ICJ/630, https://www.un.org/press/en/2018/sgsm18879.doc.htm (accessed 18 September 2018). As none of those attempts in result had settled the ongoing boundary dispute between Venezuela and Guyana, the UN Secretary-General António Guterres in January 2018 recommended a settlement before the International Court of Justice in The Hague (SG, "Secretary-General Chooses International Court of Justice as Means for Peacefully Settling Long-Standing Guyana–Venezuela Border Controversy", 30 January 2018). Consequently, Guyana brought the case before the ICJ in June 2018 (ICJ, "Guyana vs. Venezuela, Arbitral Award of 3 October 1899", 19 June 2018, Case Order No. 171, pp. 1–3), but Venezuela is not recognizing the jurisdiction of the Court (A. Gordon, "Venezuela opts out of border case at ICJ", 18 June 2018. Still in July 2020, the ICJ case remains without a decision.

**39** ICJ, "Summary of the Judgement",18 December 2020, https://www.icj-cij.org/public/files/case-related/171/171-20201218-SUM-01-00-EN.pdf (accessed 17 February 2021).

**40** UN, "Award in the Arbitration regarding the Delimitation of the Maritime Boundary between Guyana and Suriname", 17 September 2007), http://legal.un.org/riaa/cases/vol_XXX/1-144.pdf (accessed 18 September 2018), pp. 3–144.

**41** S. Campbell, "Memorandum to the Queen of England", London, 13 October 1963, CO 1031_4509, TNA.

Guiana] without our having asked her to do so",[42] which resonates with similar arguments made by participating Indigenous Peoples during the UNDRIP negotiations between 1982–2006,[43] questioning not only the disputed colonial boundaries, but the lawfulness of the European colonial appropriation in northeastern South America as a whole. Therefore, this book is dedicated to reconstructing the European colonial past in legally contested northeastern South America and provides a critical historical reappraisal of both European colonial appropriation in law and practice. Hence, the book examines the lawfulness of European colonization during the initial colonization stage between 1498 and 1817 and determines the extent of the (in)lawful appropriated indigenous territories by European colonial practices as basis for historically grounded reparation claims of Indigenous Peoples.

## UNDRIPs as "Remedial Instrument"?

The mission of the book recognizes the true novelty of the United Nations Declaration on the Rights of Indigenous Peoples, namely that Indigenous Peoples have the right to reclaim their *past* territories, lands, and resources which they "have traditionally owned or otherwise occupied or used", but were "confiscated, occupied, used or damaged without their free and informed consent".[44] Rooted in the clear acknowledgement of UNDRIP that "indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources",[45] UN Special Rapporteur James Anaya argues that by "alluding to this history at the outset, the Declaration reveals its character as essentially a remedial instrument" for European colonization.[46] However, the original wording was several times

**42** TNA, S. Campbell, "Memorandum to the Queen of England", London, 13 October 1963, CO 1031_4509, TNA.

**43** For example, Indian Law Resource Centre et al., "Draft Declaration", E/CN.4/Sub.2/1985/22, 27 August 1985, p. 1, Principles 6 and 7; WGIP, "Report of the Working Group on Indigenous Population on its Third Session", E/CN.4/Sub.2/1984/20, 8 August 1984, p. 7, para. 27.

**44** UN, "UNDRIP", Article 28.

**45** Ibid., Preamble. This preambular Article is accompanied by another Article which emphasizes "that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust".

**46** J. Anaya, "The Rights of Indigenous Peoples to Self-Determination in the Post–Declaration Era", in: C. Charters and R. Stavenhagen (eds.), *Making the Declaration Work*, pp. 184–200, at 191;

attenuated[47] and the application of UNDRIP at the progressive Inter-American Court of Human Rights (IACHR) had produced significant compromises for Indigenous Peoples in recovering their past territories, as illustrated by the Xákmok Kásek vs. Paraguay case of the IACHR in 2010.[48] Predated by the landmark decision Mayagna (Sumo) Awas Tingni vs. Nicaracgua in 2001,[49] Sawhoyamaxa vs. Paraguay (2006),[50] and Yakye Axa vs. Paraguay (2005)[51] and followed by Kaliña and Lokono (Arawak) vs. Suriname (2015),[52] Xucuru vs. Brazil (2015)[53] and

J. Anaya, "Indigenous Peoples and International Law Issues", *Proceedings of the Annual Meeting of the American Society of International Law*, 92 (1998), pp. 96–98; J. Anaya, *Indigenous Peoples in International Law*, Oxford: Oxford University Press, 2004; J. Anaya and S. Wiessner, "The UN Declaration on the Rights of Indigenous Peoples: Towards Re-empowerment", 3 October 2007, http://jurist.law.pitt.edu/forumy/2007/10/un-declaration-on-rightsof-indigenous.php (accessed 30 May 2017).

**47** In contrast, the Draft Declaration of June 1993 had expressed the "concern that indigenous peoples have been deprived of their human rights and fundamental freedoms, resulting inter alia, in their colonization and dispossession of their lands, territories and resources" (WGIP, "Draft Declaration on the Rights of Indigenous Peoples", E/CN.4/Sub.2/1993/26, 8 June 1993, p. 2), which was modified until August 1993 (UN WGIP, "Draft Declaration", E/CN.4/Sub.2/1993/29, 23 August 1993, p. 50) and again until March 2006 (UN ECOSOC Commission on Human Rights, "Draft Declaration on the Rights of Indigenous Peoples", E/CN.4/2006/79, 22 March 2006, p. 10).

**48** Inter-American Court of Human Rights (IACHR), "Case of the Xámok Kásek Indigenous Community vs. Paraguay", 24 August 2010, www.hrdp.org/files/2013/10/22/seriec_214_Xakmak_v_paraguay_pdf (accessed 19 September 2018), pp. 1–79. See E. Williams, "Xákmok Kásek Indigenous Community vs. Paraguay", *Loyola International & Comparative Law Review* 38 (2016), pp. 1670–1690.

**49** S. Frost, "Mayagna (Sumo) Awas Tingni Community vs. Nicaragua", *Loyola International & Comparative Law Review* 36 (2014), pp. 1113–1141; J. Anaya and R. Williams, "The Protection of Indigenous Peoples'Rights over Lands and Natural Resources Under the Inter-American Human Rights System", *Harvard Human Rights Journal* 14 (2001), pp. 33–87, at 36; F. Lenzerini, "Sovereignty Revisited: International Law and Parallel Sovereignty of Indigenous Peoples", *Texas International Law Journal* 42 (2006), pp. 155–189, at 184.

**50** M. Venanzi, "Sawhoyamaxa Indigenous Community vs. Paraguay", *Loyola of Los Angeles International & Comparative Law Review* 38 (2016), pp. 1519–1542.

**51** U. Vyas, "Yakye Axa Indigenous Community vs. Paraguay", *Loyola of Los Angeles International & Comparative Law Review* 38 (2016), pp. 1601–1626.

**52** IACHR, "Case of Kaliña and Lokono Peoples vs. Suriname", 25 November 2015, http://www.corteidh.or.cr/docs/casos/articulos/seriec_309_ing.pdf (accessed 19 September 2018), pp. 1–104. See C. Garcia-Salas, "Kaliña and Lokono Peoples vs. Suriname", *Loyola International & Comparative Law Review* 40 (2017), pp. 1213–1229.

**53** IACHR, "Report on the Merits Xucuru Indigenous Peoples vs. Brazil", 28 July 2015, http://www.corteidh.or.cr/docs/casos/articulos/seriec_309_ing.pdf (accessed 19 September 2018). pp. 1–28.

Kuna and Emberá vs. Panama (2014),[54] the IACHR had than decided that Paraguay had to return 10,700 hectares[55] of the Xákmok Kásek traditional territories,[56] even though the Court was aware that the area does not represent "the whole" of the traditional territory,[57] that the Xákmok Kásek were the only occupants and the area had never been colonized by the Spaniards, but Paraguay had "sold two-thirds of the Chaco on the London stock exchange forty years after independence to finance Paraguay's debt after the so-called War of the Triple Alliance" in the period 1885–1887 without the consent or knowledge of the Xákmok Kásek.[58] Thus, it becomes clear that the IACHR had not equated the concept of "traditional" territories with (unlawfully taken) historical territories, wherefore a true reparation based on a substantial examination of the European colonial past is still pending. In contrast, this book acknowledges the long-standing, largely unconsidered legal-historical arguments of Arawak Stephen Campbell and the participating American Indigenous Peoples of the UNDRIP negotiations, who had already in 1985 argued that European colonial legal doctrines such as "(d)iscovery, conquest, settlement [based] on *terra nullius*" had "never [been] legitimate bases for states to claim or retain the territories of indigenous nations or peoples",[59] which is increasingly supported by an emerging "new generation of [historical] scholarship" and includes research from various perspectives, such as intellectual legal history, global history, comparative legal history, and European colonial history on the basis of an excavation of "an entire bedrock of law that

**54** K. Barreto, "Kuna of Madungandí and the Emberá of Bayano Indigenous Peoples and their Members vs. Panama", *Loyola International and Comparative Law Review* 41 (2018), pp. 1009–1038.

**55** IACHR, "Case of the Xámok Kásek Indigenous Community *vs.* Paraguay", pp. 18–65, para 68; 91; 150; 170; 283.

**56** Williams, "Xákmok Kásek Indigenous Community vs. Paraguay", p. 1674.

**57** Ibid., p. 29, para. 121. By contrast, the Yakye Axa in 2005 regained "an unspecified area of ancestral lands" (Vyas, "Yakye Axa vs. Paraguay", p. 1618).

**58** IACHR, "Case of the Xámok Kásek Indigenous Community vs. Paraguay", p. 15, para. 58.

**59** Indian Law Resource Centre et al., "Draft Declaration", E/CN.4/Sub.2/1985/22, 27 August 1985, p. 1, Principle 6. In addition, Principle 7 enshrines that "(i)n cases where lands taken in violation of these principles have already been settled, the indigenous nation or people concerned is entitled to immediate restitution, including compensation for the loss of use, without extinction of original title. Indigenous peoples' desire to regain possession and control of sacred sites must always be respected" (ibid., p. 1, Principle 7). Furthermore, Indigenous Peoples have argued during the WGIP meeting in 1984 that this illegitimate "dispossession of their territorial base [. . .] and the loss of sacred lands and sites brought with them a disruption in the life and social and legal order of indigenous communities and plunged them into suffering, hunger, disease, death and moral despair" (WGIP, "Report of the Working Group on Indigenous Population on its Third Session", E/CN.4/Sub.2/1984/20, 8 August 1984, p. 7, para. 27).

has hitherto been largely ignored".[60] Despite, international law scholars are uncritically raising historically unexamined claims about the lawfulness of European colonization by asserting, for example, that "the concepts of discovery and [. . .] conquest were accepted norms under [colonial] international law", whereas "discovery" would have had presented a "key provision" and "military conquest" the "most common form of subjugation".[61]

## The "New Historical Scholarship" and the doubtful European "Conquest"

Instead, the new historical scholarship, which is built upon studies of intellectual historians in the 1990s[62] and the precious and thorough contributions of anthropologists since the 1970s and 1980s[63], has revealed exactly the opposite,

**60** A. Fitzmaurice, "The Dutch Empire in Intellectual History", *BMGN Low Countries Historical Review* 132 (2017) 2, pp. 97–109, at 107.

**61** J. Corntassel and T. H. Primeau, "Indigenous 'Sovereignty' and International Law", *Hawaiian Journal of Law & Politics* 2 (Summer 2006), pp. 52–72, at 69; 63–64.

**62** R. Williams, *The American Indian in Western Legal Thought*, New York: Oxford University Press. 1990; A. Pagden, *European Encounters*, New Haven: Yale University Press, 1993; Id., *Lords of All the Worlds*, New Haven: Oxford University Press, 1995; Id., *The Burdens of Empire*, New Haven: Yale University Press, 2015; A. Anghie, "The Evolution of International Law: Colonial and Postcolonial Realities", *Third World Quarterly* 27 (2006) 5, pp. 739–753; Id., *Imperialism, Sovereignty and the Making of International Law*, Cambridge: Cambridge University Press, 2007; A. Fitzmaurice, *Sovereignty, Property and Empire*, Cambridge: Cambridge University Press, 2014; Id., "The Genealogy of Terra Nullius?", *Australian Historical Studies* 38 (2007) 129, pp. 1–15; Id., *Humanism and America*, Cambridge: Cambridge University Press, 2009. See also L. Robertson, *Conquest by Law*, Oxford: Oxford University Press, 2005. An exception presents the landmark paper of Wilcomb Washburn, who had already in 1959 raised serious doubts about the lawfulness of European appropriation (W. Washburn, "The Moral and Legal Justifications for Dispossessing the Indians", in: J. M. Smith [ed.], *Seventeenth-Century America: Essays in Colonial History*, Chapel Hill: University of North Carolina Press, 1959, pp. 15–32). See also W. Washburn, *Red Man's Land/White Man's Law*, Norman: University of Oklahoma Press, 1995 [1971].

**63** N. Whitehead, *Lords of the Tiger Spirits*, Dordrecht: Foris, 1988; Id., *The Conquest of the Caribs of the Orinoco Basin*, Oxford: Oxford University, Ph.D. thesis, 1984; Id., "Carib Cannibalism. Historical Evidence", *Journal de La Societé des Americanistes* 1 (1984) XX, pp. 69–88; Id., "Native American Cultures among the Atlantic Littoral of South America, 1499–1650", *Proceedings of the British Academy* 81 (1993), pp. 197–231; Id., "Native Peoples Confront Colonial Regimes in Northeastern South America (c. 1500–1900)", in: F. Salomon and S. Schwartz (eds.), *The Cambridge History of the Native Peoples of the Americas*, *Vol. III. South America*, *Part 2*, Cambridge: Cambridge University Press,

namely, that "discovery" had in fact *not* presented a legally valid means of European appropriation during the initial stage of colonization (see chapter 3), while "conquest" presented a very rare exception in northeastern South America, as no trace of a lawful Spanish "conquest" is found in the ethnomethodological study of Arie Boomert between 1498-1797 for Trinidad, while John Hemming for Roraima impressively illustrates that the Portuguese had claimed the area by "persuading" a few Spaniards in the 1770s "to descend to the new Portuguese fort"[64] and Audrey Colson has excavated that the Upper Mazaruni[65] was not even explored by Europeans before the Anglo-Dutch Treaty of 13 August 1814, but instead consistently occupied by Carib-speaking Kapong (Akawaio) and Pemon (Arekuna).[66] Moreover, the "modern study of Amerindian history in the first centuries of the colonial Guianas"[67] by anthropologist Neil Whitehead had revealed that a "conquest" of the Orinoco Caribs is claimed on the basis of the

1999, pp. 382–442; J. Hemming, *Red Gold. The Conquest of the Brazilian Indians*, London: Macmillan, 1978: Id., *The Search for El Dorado*, London: Michael Joseph, 1978; Id., *Amazon Frontier*, London: Macmillan, 1987; Id., "How Brazil Acquired Roraima", *Hispanic American Historical Review* 70 (May 1990) 2, pp. 295–325; Id., "Roraima, Brazil's Northernmost Frontier", *UCL Institute of Latin American Studies Research Papers* 20 (1991), pp. 1–56); P. Rivière, *Absent-minded Imperialism*, London, Tauris, 1995; Id., *The Forgotten Frontier*, New York: Holt, Rinehart and Winston, 1972; A. Colson, *Land. The Case of the Akawaio and Arekuna of the Upper Mazaruni District*, *Guyana*, Somerset: Last Refuge, 2009; Id., "The Spatial Component in the Political Structure of the Carib Speakers of the Guiana Highlands: Kapon and Pemon", *Themes in Political Organization: Caribs and Their Neighbours. Special Issue of Antropológica* (1984), pp. 73–124; Id., "Naming, Identity and Structure: The Pemon", *Antropológica* LIII (2009) 111–112, pp. 35–114; J. Hill and F. Santos-Granero, *Comparative Arawakan Histories*, Chicago: University of Illinois Press. 2002; F. Jennings, *The Invasion of America. Indians, Colonialism and the Cant of Conquest*, Chapel Hill: University of North Carolina Press, 1975.

**64** Hemming, "How Brazil acquired Roraima", pp. 295–318.

**65** Colson, *Land*, p. 12. The anthropologist also indicates that Europeans had named the Kapong (Akawaio) as "Waika" (English), which was based on "the term used by Pemong [Arekuna] for their Akawaio neighbours in the Cuyuni headwaters and eastwards", or "Guiaca" (Spanish). The latter is still applied by the Pemong/Pemón [Arekuna] to indicate both Akawaio and Patamona. Moreover, Audrey Colson determines that the "Serekong [Cerekons]" is the particular name for the Upper Mazaruni Akawaio (ibid.), while the Pemong/Pemón are likewise comprising the "Taurepang" of Roraima and the "Arekuna Pemong" had been situated at "the upper Kamarang river", whereas the Akawaio, situated on the "middle Kamarang River" (ibid., pp. 13–14).

**66** Ibid., p. 3.

**67** G. Oostindie and R. Hoefte, "Historiography of Suriname and the Netherlands Antilles", in: B. W. Higman (ed.), *General History of the Caribbean. Vol. VI: Methodology and Historiography of the Caribbean*, London: UNESCO/Macmillan, 1999, pp. 604–630, at 615; Whitehead, *The Conquest of the Caribs of the Orinoco Basin*, pp. 1–356; Id., *Lords of the Tiger Spirit*, pp. 1–191; Id., "Native Peoples Confront Colonial Regimes", pp. 382–442.

practices of Franciscan and Capuchin missionaries in the time period 1720–1760, whose role as agents of the Spanish Crown remains doubtful.[68] Furthermore, the application of "conquest" practices by the Dutch of the "forgotten colonies of Essequibo and Demerara" appears very unlikely.[69] Finally, the indispensable anthropological research of the early stage of the historical Caribbean confirms the spatial argument of global and comparative legal historians of the early twenty-first century[70] that European colonization was *de facto* limited to "narrow bands, or corridors" and manifested as "enclaves and irregular zones around them",[71] whereas European historians had targeted the transatlantic African slave trade with northeastern South America[72] and the time period of English colonization

**68** Whitehead, *Lords of the Tiger Spirit*, p. 19; Id., *The Conquest of the Caribs of the Orinoco Basin*, p. 218.

**69** E. W. van der Oest, "The Forgotten Colonies Essequibo and Demerara", in: J. Postma and V. Enthoven (eds.), *Riches from Atlantic Commerce. Dutch Transatlantic Trade and Shipping, 1585–1817*, Leiden: Brill, 2003, pp. 323–364, at 323–324.

**70** P. Seed, *American Pentimento*, pp. 1–190; L. Benton, *Law and Colonial Cultures*, Cambridge: Cambridge University Press, 2002; Id., *A Search for Sovereignty, Law and Geography in European Empires*, Cambridge: Cambridge University Press, 2009; Id., "Law and Empire in Global Perspective: An Introduction", *American Historical Review* 117 (October 2012) 4, pp. 1092–1100; S. Banner, *How the Indians Lost Their Lands*, Cambridge: Harvard University Press, 2007; Id., "Why Terra Nullius? Anthropology and Property Law in Early Australia", *Law and History Review* 23 (2005) 1, pp. 95–131; P. Seed, "How Globalization Invented Indians in the Caribbean", in: E. Sansavior and R. Scholar (eds.), *Caribbean Globalizations, 1492 to the Present Day*, Liverpool: Liverpool University Press, 2015, pp. 58–82; P. Seed, *Ceremonies of Possession in Europe's Conquest of the New World*, New York: Cambridge University Press, 1995; Id., "Taking Possession and Reading Texts. Establishing Authority of Overseas Empires", *The William and Mary Quarterly* 49 (April 1992) 2, pp. 183–209; L. Benton and L. Ford, *Rage for Order*, Cambridge: Harvard University Press, 2016.

**71** Benton, *Search for Sovereignty*, p. 2.

**72** See the contributions in Postma and Enthoven (eds.), *Riches from Atlantic Commerce*; W. Klooster, *The Dutch in the Americas, 1600–1800. A Narrative History with the Catalogue of an Exhibition of rare Prints, Maps and illustrated Books from the John Carter Brown Library*, Providence: The John Carter Brown Library, 1997, pp. 1–78; Van der Oest, "The Forgotten Colonies of Essequibo and Demerara (1700–1814)", pp. 323–364; S. Schwartz, "Plantations and Peripheries. c. 1580–c. 1750", in: L. Bethell (ed.), *Colonial Brazil*, Cambridge: Cambridge University Press, 1987; pp. 67–144; H. B. Johnson, "Portuguese settlement, 1500–1580", ibid., pp. 1–38; E. Sutton, "Possessing Brazil in Print, 1630–1654", *Journal of Historians of Netherlandish Art* 5 (Winter 2013) 1, pp. 1–28; G. Oostindie, *Paradise Overseas. The Dutch Caribbean. Colonialism and Transatlantic Legacies*, Oxford: Macmillan-Caribbean. 2005, pp. 1–179; R. J. van Lier, *Frontier Society. A Social Analysis of the History of Surinam*, Den Haag: Nijhoff, 1971; J. Postma, *The Dutch in the Atlantic Slave Trade, 1600–1815*, Cambridge: Cambridge University Press, 1990; H. den Heijer, *Geschiedenis van de WIC*, Zutphen: Walburg, 2011; Oostindie and Hoefte, "Historiography of Suriname", p. 615; A. Pérotin-Dumon and S. Mam-Lam-Fouch, "Historiography of the French Antilles and

in the nineteenth century[73] and in result mainly ignored the early colonization stage of the Dutch and Spanish.[74] Instead, Caribbean historians had focused on jurisdictional and legal matters, which are in line with Lauren Benton's global argument of "jurisdictional complexities".[75] Unanimously agreeing that the relation between the Dutch and Indigenous Peoples was characterized by "trade and defence"[76] and solidified through presents, postholders, treaties, and agreements,[77] both Mary Noel Menezes and Ellen-Rose Kambel and Fergus MacKay have excavated some peace treaties concluded between the Dutch in Berbice and the Arawakan Schotjes in the early 1700s,[78] or between Suriname governor Cornelis van Sommelsdijck and (most likely) Carib, Warao, and Arawak in 1684/85, following

French Guyana", in: Higman (ed.), *General History of the Caribbean. Vol. VI*, pp. 631–664; W. Marshall and B. Brereton, "Historiography of Barbados, the Windward Islands, Trinidad and Tobago and Guyana", ibid., pp. 598–603.

**73** M. N. Menezes, *British Policy towards Amerindians in British Guiana (1803–1873)*, Georgetown: Caribbean Press, 2011 [1977], pp. 19–308; G. Burnett, *Masters of All they Surveyed*, *Exploration*, *Geography*, *and a British El Dorado*, Chicago: Chicago University Press, 2000; Id., "It is Impossible to make a Step without the Indians: Nineteenth-Century Geographical Explorations and the Amerindians of British Guiana", *Ethnohistory* 49 (Winter 2002) 3, pp. 3–40; W. Rodney, *A History of the Guyanese Working People (1881–1905)*, London: Heinemann, 1981; J. Bulkan, "'Original Lords of the Soil'? The Erosion of Amerindian Territorial Rights in Guyana", *Environment and History* 22 (2016) 3, pp. 351–391; Rivière, *Absent-minded Imperialism*, pp. 1–224; Id., *The Guyana Travels of Robert Schomburgk I and II (1835–1844)*, Hakluyt Society London: Ashgate, 2006; Id., *The Forgotten Frontier: Ranchers of Northern Brazil*, New York: Holt, Rinehart and Winston, 1972; J. Forte (Bulkan) and I. Melville, *Amerindian Testimonies*, Boise: Boise State University Press, 1989.

**74** Notable exceptions from a Eurocentric perspective are C. Goslinga, *The Dutch in the Caribbean and the Wild Coast*, *1580–1680*, Assen: Van Gorcum, 1971; Id., *The Dutch in the Caribbean and in the Guianas 1680–1791*, Assen: Van Gorcum, 1985; F. Morales-Padrón, *Spanish Trinidad*, Kingston: Ian Randle, 2014.

**75** L. Benton, *Law and Colonial Cultures*, Cambridge: Cambridge University Press, 2002; See also L. Benton, "Historical Perspectives on Legal Pluralism", *Hague Journal on the Rule of Law* 3 (2011) 10, pp. 57–69.

**76** M. N. Menezes, "The Dutch and British Policy of Indian Subsidy: A System of Annual and Triennial Presents", *Caribbean Studies* 13 (October 1973) 3, pp. 64–88, at 66.

**77** C. Gravesande, "Amerindian Jurisdiction in the Guiana Territory in the Seventeenth and Eighteenth Centuries", *History Gazette* 44 (1992), pp. 2–14, at 2; Menezes, "Indian Subsidy", pp. 66–67; M. N. Menezes, *British Policy Towards Amerindians Guiana*, *1803–1873*, Georgetown: Caribbean Press, 2011 [1977], pp. 67–68; A. Benjamin, "A Preliminary Look at the Free Amerindians and the Dutch Plantation System in Guyana during the Seventeenth and Eighteenth Centuries", *Guyana Historical Journal* 4–5 (1992) 3, pp. 1–22, at 4–17.

**78** Menezes, *British Policy*, p. 68; Menezes, "Indian Subsidy", p. 66. The conclusion of this treaty also entailed the transfer of presents, clothes and furnishings to the Arawak (Gravesande, "Amerindian Jurisdiction", p. 8).

several joint attacks in 1678 in response to the incursion of Dutch colonists into indigenous territories.[79] Nevertheless, the content of those treaties remains unknown, despite Dutch "promises that the Indians would not be reduced to slavery".[80] Moreover, Alvin Thompson argues that the Dutch in Essequibo "had very little jurisdiction over the areas beyond the plantations",[81] which is complemented by Caesar Gravesande's comparative argument that Dutch jurisdiction was "far more widespread than that of the Spanish, at least up to the beginning of the eighteenth century",[82] whereas Indigenous Peoples' territories in Suriname were, "at least for the first 200 years", never considered as being situated within Dutch jurisdiction.[83] In contrast, legally relevant research about Spanish colonial practices in northeastern South America is marginalized to the debate on Carib cannibalism and related historical documents, such as the logbook (*diario*) of Christopher Columbus (1492/1493),[84] the decree of Queen Isabella I (1503),[85] and the report of Rodrigo de Figueroa (1520),[86] since cannibalism presented a "just cause" for conquest practices in the legal writings of both Spaniard Francisco de Vitoria (1537/1539)[87] and

**79** Kambel and MacKay, *The Rights of Indigenous Peoples and Maroons in Suriname*, Copenhagen: IWGIA, 1999, pp. 51–52. Those treaties were ratified by both "the colonial government as well as by the Minister of Colonies in the Netherlands". However, the treaties are "reported lost". Moreover, dissent remains about the contracting indigenous parties, which are indicated either as "Caribs, Arawaks and Waraus" or as "(different groups of) Caribs", including the Coppename (Condie) Maroons, representing a "group of escaped slaves [. . .] intermarried with Caribs of the Coppename river". The latter are also determined as "Karbugers or Black Caribs" (ibid., pp. 51–52).

**80** Menezes, "Indian Subsidy", p. 66; Menezes, *British Policy*, p. 68; Kambel and MacKay, *Rights of Indigenous Peoples in Suriname*, pp. 51–52.

**81** A. Thompson, "Amerindian-European Relations in Dutch Guyana", in: V. Shepherd and H. Beckles (eds.), *Caribbean Slavery in the Atlantic World*, Kingston: Ian Randle, 1999, pp. 13–27.

**82** Gravesande, "Amerindian Jurisdiction", p. 11.

**83** Kambel and MacKay, *Rights of Indigenous Peoples in Suriname*, p. 54.

**84** P. Hulme, *Colonial Encounters*, p. 10. For the first time, the cannibalism claims emerged in Columbus' logbook entry of 23 November 1492 (ibid., pp. 16–17). See Arens, *The Man-Eating Myth*, p. 44.

**85** Queen Isabella I, "Proclamation", 30 October 1503, in: E. Williams (ed.), *Documents of West Indian History Vol. 1, 1492–1655. From the Spanish Discovery to the British Conquest of Jamaica*, Port-of-Spain: PNM, 1963, No. 62, pp. 62–63; Whitehead, *Lords of the Tiger Spirit*, pp. 172–173; Arens, *The Men-Eating Myth*, p. 50; Seed, *American Pentimento*, pp. 62–67; 104; Whitehead, *Conquest of the Caribs*, p. 310, C. O. Sauer, *Early Spanish Main*, Berkeley: University of California, 1966, pp. 161–162; N. Whitehead, "Carib Cannibalism. Historical Evidence", *Journal de La Societé des Americanistes* 1 (1984) XX, pp. 69–88, at 70; Boomert, *Indigenous Peoples of Trinidad and Tobago*, p. 85.

**86** Whitehead, "Carib Cannibalism", p. 71; Whitehead, *Lords of the Tiger Spirit*, p. 11; Boomert, *Indigenous Peoples of Trinidad and Tobago*, pp. 85–86.

**87** F. Vitoria, "On the Indians Lately Discovered (1537/1539)", in: A. Pagden and J. Lawrance (eds.), *The Political Writings of Francisco de Vitoria*, Cambridge: Cambridge University Press, 2010, pp. 231–292, at 288, para 15. Accordingly, the Spaniard indicated that Spaniards "in

Dutchman Hugo Grotius (1609/1625),[88] whereas anthropologists agree that the Spanish claims of Carib cannibalism (*caribes)* are either exacerbated or were completely invented to justify enslavement,[89] since "all evidence is weak, circumstantial and largely second-hand",[90] "remarkably sparse",[91] and mainly evidenced by sources of Catholic colonizers (Portuguese, French and Spanish), but almost completely absent from Protestant accounts (Dutch and English).[92] Consequently, the term *caribes* does not equate with Carib-speaking groups, but determines Indigenous Peoples, whom the Spaniards were unable to conquer,[93] respectively "who fiercely opposed the Spanish"[94] or were "prepared to defend their territory".[95] In line with Lauren Benton's global argument that there exists just an "incomplete knowledge about the connections between the writings of early modern jurists [and the] law [. . .] applied by imperial agents",[96] this book closes the research gap for northeastern South America by providing a comprehensive and substantial study that comparatively examines both the actual valid European colonial law of the time and the European colonial practices of the Dutch and Spanish to determine the lawfulness of European

lawful defence of the innocent from unjust death, even without the pope's authority, [. . .] may prohibit the barbarians from practising any nefarious custom or rite" (ibid.).

**88** H. Grotius, *The Law of War and Peace [De Jure Belli ac Pacis]* (1625), Book 1, chapters 1–5, Book 2, chapters 1–26, Book 3, chapters 1–25, https://lonang.com/library/reference/grotius-law-war-and-peace/gro-101/ (accessed 7 October 2018); *H. Grotius, The Free Sea [Mare Liberum] (1609)*, in: D. Armitage (ed.), *The Free Sea*, Indianapolis: Liberty Fund, 2004, https://scholar.harvard.edu/files/armitage/files/free_sea_ebook.pdf (accessed 18 July 2018).

**89** Whitehead, *Lords of the Tiger Sprit*, pp. 5; 59; 172–188; N. Whitehead, "Carib Cannibalism. Historical Evidence", *Journal de La Societé des Americanistes* 1 (1984) XX, pp. 69–88, at 74–80; W. Arens, *The Man-Eating Myth. Anthropology and Anthropophagy*, New York: Oxford University Press, p. 27; R. Myers, "Island Carib Cannibalism", *Nieuwe West-Indische Gids* 58 (1984) 3/4, pp. 147–184; Boomert, *Indigenous Peoples of Trinidad and Tobago*, p. 84; Hulme, *Colonial Encounters*, p. 71. See also Seed, *American Pentimento*, pp. 94–101; R. Aldrich, *Greater France. A History of French Overseas Expansion*, New York: Palgrave Macmillan, 1996, p. 201.

**90** Myers, "Island Carib Cannibalism", pp. 177–178.

**91** Ibid., p. 177.

**92** Whitehead, *Lords of the Tiger Sprit*, pp. 5; 59; 172–188; Whitehead, "Carib Cannibalism", pp. 74–80; Seed, *American Pentimento*, pp. 94–101, Boomert, *Indigenous Peoples of Trinidad and Tobago*, p. 84–86; R. Aldrich, *Greater France. A History of French Overseas Expansion*, New York: Palgrave Macmillan, 1996, p. 201; W. Arens, *The Man-Eating Myth. Anthropology and Anthropophagy*, New York: Oxford University Press, p. 27.

**93** Arens, *The Man-Eating Myth*, p. 49, Boomert, *Indigenous Peoples of Trinidad and Tobago*, pp. 84–86; Myers, "Island Carib Cannibalism", pp. 147–184; Whitehead, "Carib Cannibalism", p. 78.

**94** Boomert, *Indigenous Peoples of Trinidad and Tobago*, pp. 85–86.

**95** Hulme, *Colonial Encounters*, p. 71.

**96** Benton, *Search for Sovereignty*, p. 55.

colonial appropriation practices in northeastern South America between 1498 and 1817.

Moreover, the book invokes the *intertemporal law rule*, implying that "juridical" facts had to be examined "in the light of the law contemporary with it",[97] while "the effect of an act is to be determined by the law of the time when it was done",[98] to present a spatio-legal argument for the restitution of unlawfully taken historical territories during Dutch and Spanish colonization in northeastern South America as reparation for Indigenous Peoples, which stands in stark contrast to the claims of international law scholar Stephen Allen, who refers to the same rule and UNDRIP Article 28 of Indigenous Peoples' rights to *past* territories to claim, on unsubstantial historical grounds, that "if many indigenous peoples were subjugated and dispossessed by European colonial powers without [sic!] offending the principle of intertemporal law, as was the (self-serving) view adopted by the international law of the time, the argument of reparations is substantially weakened".[99] This resonates with the tendency of a general departure of international law scholars from historical arguments since the UNDRIP adoption in 2007 by switching from historical-political

**97** UN, "Award in the Island of Palmas (Miangas) Case (Netherlands vs. USA)", 4 April 1928, http://legal.un.org/riaa/cases/vol_II/829-871.pdf pp. 829–871, at 845 (accessed 7 October 2018). At the same time, some human rights-based arguments of international law scholars are challenging the applicability of the rule, as the right to self-determination would forge "exceptions to or alters the doctrines of effectiveness and intertemporal law, since pursuant to the principle of self-determination, the international community has deemed illegitimate historical patterns giving rise to colonial rule and has promoted corresponding remedial measures, irrespective of the effective control exercised by the colonial power and notwithstanding the law contemporaneous with the historical colonial patterns" (Anaya, *Indigenous Peoples in International Law*, p. 107). In addition, Jérémie Gilbert argues that "(b)ecause the consequences of such a legacy are still at the centre of indigenous peoples' dispossession, it is possible to maintain that such rules of dispossession should be put in perspective with contemporary human rights law in the sense that international law deals with past wrongs, as long as they have current, ongoing effects" (J. Gilbert, "Historical Indigenous Peoples' Land Claims: A Comparative and International Approach to the Common Law Doctrine on Indigenous Title", *International and Comparative Law Quarterly* 56 (July 2007), pp. 583–612, at 592).

**98** R. Jennings, *The Acquisition of Territory in International Law*, Manchester: Manchester University Press, 1963, p. 28; A. d'Amato, "International Law, Intertemporal Problems", *Encyclopedia of Public International Law* 2 (1992), pp. 1234–1236, at 1234; Corntassel and Primeau, "Indigenous 'Sovereignty'", p. 69; Gilbert, *Indigenous Peoples' Land Rights*, pp. 40. In this context, Jennings identifies two aspects of the intertemporal law rule, namely that first of all "acts must be assessed against the law of the time they were performed" and "secondly that the claimant must, if one may so express it, keep up with the law, in order to maintain his title" (Jennings, *Acquisition of Territory*, p. 29).

**99** Allen, "Limits", pp. 240–241; F. Lenzerini (Rapporteur), "Reparations, Redress and Remedies", in: International Law Association, *The Hague Conference (2010). Rights of Indigenous Peoples*, 2010, pp. 39–43, at 41.

conceptualizations of "parallel sovereignty"[100] to "authentic sovereignty",[101] disconnected definitions of Indigenous Peoples from the experience of European colonization[102] and advanced general human rights-based arguments.[103]

**100** F. Lenzerini, "Sovereignty Revisited", pp. 163–175; J. Gilbert, *Indigenous Peoples' Land Rights*, pp. 171–245; P. Macklem, "Indigenous Recognition in International Law: Theoretical Observations", *Michigan Journal of International Law* 30 (2008) 1, pp. 177–210, at 202–203; 209; P. Macklem, "Distributing Sovereignty: Indian Nations and Equality of Peoples", *Stanford Law Review* 45 (May 1993), pp. 1311–1367.

**101** S. Wiessner, "The Cultural Rights of Indigenous Peoples: Achievements and Continuing Challenges", *The European Journal of International Law* 22 (February 2011) 1, pp. 121–139; Id., "Indigenous Sovereignty", pp. 1174–1175; Id., "Indigenous Self-Determination, Culture, and Land: A Reassessment in Light of the 2007 UN Declaration on the Rights of Indigenous Peoples", in: Pulitano (ed.), *Indigenous Rights*, pp. 31–64; S. Wiessner, "Rights and Status of Indigenous Peoples: A Global Comparative and International Legal Perspective", *Harvard Human Rights Journal* 12 (1999), pp. 57–128. In general, Siegfried Wiessner uncritically assumes that "(c)olonial conquest" was applied as practice and successfully carried out by Europeans (Wiessner, "UNDRIP", pp. 1–7). For a differentiation of Indigenous Peoples, Minorities and Indigenous Sovereignty, see the thoughtful contributions of J. Castellino and J. Gilbert, "Self-Determination, Indigenous Peoples and Minorities", *Macquarie Law Journal* 3 (2003), pp. 155–178; M. Åhrén, "The Provisions on Lands, Territories and Natural Resources in the UN Declaration", pp. 201–202; T. Alfred, "Sovereignty – An Inappropriate Concept", in: R. Maaka and C. Andersen (eds.), *Indigenous Experience: Global Perspectives*, Toronto: Canadian Scholars, 2006, pp. 322–337; P. Wheatley, "Conceptualizing the Authority of the Sovereign State over Indigenous Peoples", *Leiden Journal of International Law* 27 (June 2014), pp. 371–396; J. Corntassel and T. H. Primeau, "Indigenous 'Sovereignty'", pp. 52–72; P. Keal, "Indigenous Sovereignty", in: T. Jacobsen, C. Sampford, and R. C. Thakur (eds.), *Re-Envisioning Sovereignty. The End of Westphalia?*, Hampshire: Ashgate, 2008, pp. 315–330; P. Keal, *European Conquest and the Rights of Indigenous Peoples*, Cambridge: Cambridge University Press, 2003; Pitty and Smith, "Indigenous Challenge", pp. 121–139; T. Moore, "Indivisible Sovereignty: A Reply to Pitty and Smith", *Australian Journal of Political Science* 46 (September 2011) 3, pp. 551–553.

**102** J. Anaya, "Indigenous Peoples and International Law Issues", p. 96; C. Iorns Magallane, "Understanding the Term Indigenous Peoples", in: International Law Association, *The Hague Conference (2010). Rights of Indigenous Peoples*, 2010, pp. 7–8. Instead, the well-known definition of the UN Cobo Report of 1983 had determined Indigenous Peoples' occupation of "precolonial" territories and "historical continuity" as essential criteria for grasping the contemporary reality of Indigenous Peoples (UN, "Jose R. Martinez Cobo Report III: Conclusions, Proposals and Recommendations", 30 September 1983, E/Cn.4/Sub.2/1983/21/Add.8, para. 381). For a differentiation between Indigenous Peoples and "indigenism", see R. Niezen, *The Origins of Indigenism*, Berkeley: University of California Press, 2008; R. Niezen, "The New Politics of Resistance", in: R. Maaka and C. Andersen (eds.), *Indigenous Experience: Global Perspectives*, Toronto: Canadian Scholars, 2006, pp. 286–307.

**103** Instead, the debate before the adoption of UNDRIP was equally structured by arguments, which were (1) based on historical sovereignty by invoking the prior sovereignty of Indigenous Peoples as a source to "posit indigenous peoples as states, or something like states, within a

## Unlawfully Taken Historical Territories and the Caribbean Reparation Debate

Finally, the book aims to bring the argument of the historically unlawfully taken indigenous territories into the Caribbean reparations debate that was initiated by 14 CARICOM states in October 2013 and had tabled reparations claims for slavery and colonial genocide against former European colonizers of the United Kingdom, France, the Netherlands, Sweden, Norway, Denmark, Spain, and Portugal,[104] after counter-arguments of the lapse of time[105] or vanished responsibility[106] were denied by Courts in London and The Hague in the cases of Mau Mau in Kenia (Mutua & Others vs. Foreign and Commonwealth Office of

perceived post-Westphalian world", claiming "reparations for historical injustices" and consulting "(t)he rules of international law relating to the appropriation and transfer of territory by and among states [. . .] to demonstrate the illegitimacy of the assault on indigenous sovereignty and derivative rights over lands and natural resources" and (2) historically informed arguments, which apply historical narratives in order to emphasize "the origins and historical continuity of present day oppression" to raise subsequent claims for remedies (historically informed human rights-based arguments) (J. Anaya, "Divergent Discourses About International Law, Indigenous Peoples, and Rights over Lands and Natural Resources", *Colorado Journal of International Environmental Law and Policy* 16 [2005] 2, pp. 237–258, at 241; J. Anaya, "Self-Determination in the Post-Declaration Era", pp. 189–190; B. Kingsbury, "Reconciling Five Conceptual Approaches to Indigenous Peoples' Claims in International and Comparative Law", *NYU Journal of International Law and Politics* 34 [2001] 1, pp. 189–250). For human rights-based arguments, see Stavenhagen, "Making the Declaration Work", p. 352; Id., *The Emergence of Indigenous Peoples*, Berlin: Springer, 2013; J. Gilbert, "Land Rights as Human Rights: The Case for a Specific Right to Land", *SUR International Journal On Human Rights* 10 (June 2013) 18, pp. 115–135.

**104** T. Leonard and S. Tomlinson, "Fourteen Caribbean nations sue Britain, Holland and France for Slavery Reparations that could cost Hundreds of Billions of Pounds", *Daily Mail*, 10 October 2013.

**105** Agence France-Press (AFP) "Dutch Apology for Indonesian Colonial Atrocities opens old Wounds", *Straits Times*, 1 May 2014; M. Garschagen "In Rawagede was de Rivier rood (The River was Red in Rawagede)", www.nrc.nl/nieuws/2016/03/26/in-rawagede-was-de-rivier-rood-1601456-a1328666, 26 March 2016.

**106** Accordingly, the Swedish Ambassador to the Caribbean, Claes Hammar, stated that "the question is what sort of compensation could be offered", as "[t]here are no survivors from that period, only their descendants" ("Sweden open to possibilities reparations claim", *Jamaica Observer*, 18 December 2013). By contrast, the Netherlands Minister Lodewijk Asscher in December 2013 asserted "that people today cannot be held responsible for what their forefathers did, and that the Dutch Government views the 'stain of shame on its history with deep regret'" (ibid.).

5 October 2012)[107] and Rawagedeh in Indonesia (Wisah Binti Silan et al. vs. The Netherlands of 14 September 2011),[108] which instead held the Netherlands and United Kingdom responsible for the committed colonial crimes, although former UK Prime Minster David Cameron had still in 2015 repeated the United Kingdom's "long-standing position"[109] that "we do not believe reparations is the right approach".[110] Thereupon, the Caribbean states in November 2015 brought their claims before the Permanent Council of the Organization of American States (OAS),[111] which were renewed by the CARICOM Reparations Commission in June 2020.[112] While former European colonizers continue to cite the intertemporal law rule, such as in the case of Nama and Ovaherero vs. Germany at the New York Southern District Court in January 2017,[113] and argue with "impracticability" and "denial"[114]

**107** In result, the United Kingdom was sentenced to pay £ 19.9 million "in costs and compensation to more than 5,000 elderly Kenyans who suffered torture and abuse" in the Mau Mau uprising between 1952–1963, including the Hola Massacre of 1959 during British colonization (Press Association, "UK to compensate Kenya's MauMau torture victims", *The Guardian*, 6 June 2013). See also Leigh Day, "Mutua & Others v Foreign and Commonwealth Office (Mau Mau case)", 5 October 2012.

**108** The Hague District Court had convicted the Dutch government to pay compensation to the widows of those killed in the Rawagedeh massacre of 1947 in Java, based on the reasoning that the former colonizer was responsible for the killing of 431 Indonesians during the Dutch colonial operations (AFP, "Dutch Apology for Indonesian Colonial Atrocities opens old Wounds", 1 May 2014).

**109** This was articulated by former Premier David Cameroon during a visit in Jamaica in 2015 (R. Mason, "'Jamaica should 'move on from Painful Legacy of Slavery', says Cameron", 30 September 2015).

**110** By contrast, the Chairman of the Caribbean Reparation Commission and UWI Vice-President had revealed that an ancestor of Cameron was a slave-owner in Jamaica, who had benefited from the compensation paid by the UK for 202 freed African slaves after the abolition of slavery in English colonies in 1833 (ibid.).

**111** OAS, "OAS Heard Claim for Native Genocide and African Slave Trade", 6 November 2015, Press Release No. E-334/15, www.oas.org/en/media_center/press_release.asp?sCodigo=E-334/15 (accessed 18 September 2018).

**112** J. Duncley, "Caribbean renew reparations call", 26 June 2020, Caricom Today.

**113** W. Kaleck, "Worauf wartest Du, Deutschland?", *Der Spiegel*, 28 August 2018; B. Ziegs, "Die juristische Auseinandersetzung mit dem Kolonialismus", *Deutschlandfunk Kultur*, 27 August 2018. In this case, the Nama and Herero claim reparation from Germany for the "first Genocide in the twentieth century" (J. Zimmerer, "Habitus der Kolonialherren", *Süddeutsche Zeitung*, 24 January 2018). See H. Taylor, "US Court hears Case against Germany over Namibia Genocide", *Al Jazeera*, 31 July 2018; R. Noack "The German Government still refuses to recognize one of its 'genocides'", *The Washington Post*, 9 June 2016.

**114** J. MacKenzie, "Reparations for Britain's Atlantic Slave Trade Would be Impracticable", *New York Times*, 8 October 2015.

to counter substantial reparation arguments of unjust enrichment[115] and unjust impoverishment,[116] this book moves out of denial by facing the "difficult questions" about the European colonial past that "Europeans prefer to avoid".[117] Instead, it aims to shed light on the European colonial shadow of the past by providing an innovative and substantial historical examination of the lawfulness of Spanish and Dutch colonial practices in the "historical Caribbean"[118] (see Figure 1) that provides a foundation for the precise determination of reparation claims for

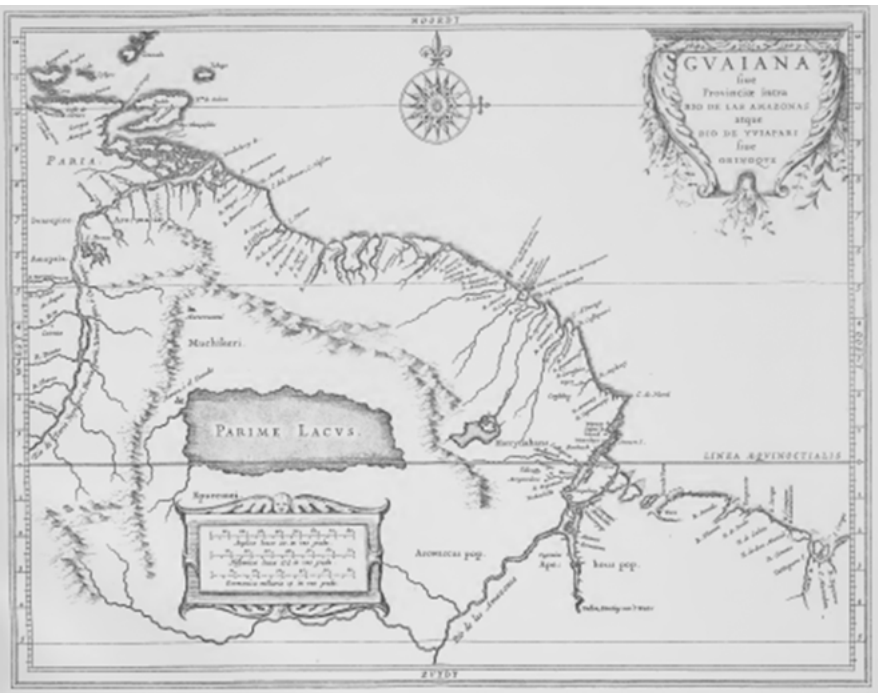


**Figure 1:** Sketch-map of the Research Area in the Historical Caribbean (Johannes De Laet, 1630).

**115** S. Tharoor, "Britain Does Owe Reparations", *Oxford Union*, 28 May 2015.
**116** J. Feagin, "A Legal and Moral Basis for Reparations", *Time*, 28 May 2014; G. Collste, "Caribbean colony may seek reparations for Swedish slavery", 12 March 2014.
**117** J. Hickel, "Enough of Aid – Let's Talk Reparations", *The Guardian*, 27 November 2015.
**118** I. Wallerstein, "The Caribbean and the World-System", *Caribbean Dialogue* 8 (2002) 3, pp. 15–30, at 15; P. Hulme, *Colonial Encounters*, *Europe and the Native Caribbean*, *1492–1797*, London: Methuen, 1986, p. 3; G. Lewis, *Main Currents in Caribbean Thought*. *The Historical Evolution of Caribbean Society in its Ideological Aspects*. *1492–1900*, Baltimore: John Hopkins University Press, 1983, p. 2.

the unlawfully taken historical territories of the Indigenous Peoples of northeastern South America in the time period 1498–1817.

Hence, this book advances an innovative global spatio-legal history approach in a double comparative manner,[119] namely as a comparison of the European colonial laws of the time, as provided by several Papal Bulls[120] and the two most-influential legal colonial writings during the initial European colonization in the Americas, penned by the Spaniard Francisco Vitoria ("On the Indians Lately Discovered", 1537/39[121] and "On the Law of War", 1539) (chapter 3) and Dutchman Hugo Grotius (*Mare Liberum*, 1609 and *De Jure Belli ac Pacis*, 1625) (chapter 8), and a comparative examination of the European colonial appropriation practices of the Spanish (chapters 4–7) and Dutch (chapters 9–12) in northeastern South America.

Therefore, this book is built upon an extensive and voluminous historical record, containing more than 1,700 documents and 76 historical maps, which were compiled for the Boundary Arbitration between Venezuela and British Guiana (Award of October 1899),[122] covering the time period 1593–1892 (BC, BRC, VEN, BB3), whose main body was discovered at the Stellenbosch University Library in 2014, after an exploratory fieldwork in northeastern South America in 2013. To close spatial and timely gaps, these sources are complemented by historical records of the National Archive of Trinidad and Tobago (NATT), which were excavated during archival work in Port-of-Spain in 2017, the Archivo General de Indias in Seville (AGI), the Nationaal Archief in The Hague (HaNA), the Lilian Goldman Law Library in New Haven (Avalon), Bibliotheca Albertina in Leipzig (UBL), the National Archives of Kew (TNA), and the British Library in London (BL). With an historical narrative from the Indigenous Peoples perspective (oral traditions) on the European colonial past still pending,[123] these European colonial sources have been studied mindfully, vigilantly, and critically, and the

**119** J. Zollmann, "German Colonial Law and Comparative Law", in: T. Duve (ed.), *Entanglements in Legal History: Conceptual Approaches*, *Global Perspectives on Legal History*, Frankfurt/Main: Max Planck Institute for European Legal History, 2014, pp. 253–294, at 255.

**120** *Inter Caetera I*, *Inter Caetera II*, *Eximinae devotionis* and *Dudum siquidem* (chapter 3).

**121** According to Anthony Pagden and Jeremy Lawrence, the lecture was held between 1537–1538, "but was not delivered until 1539" (A. Pagden and J. Lawrence, "Introduction", in: A. Pagden and J. Lawrance (eds.), *The Political Writings of Francisco de Vitoria*, Cambridge: Cambridge University Press, 2010, p. 231). Alternative titles are "On the American Indians" or "De Indis".

**122** UN, *Award regarding the Boundary between the Colony of British Guiana and the United States of Venezuela*, 3 October 1899, http://legal.un.org/riaa/cases/vol_XXVIII/331-340.pdf (accessed 19 August 2018).

**123** Hulme, *Colonial Encounters*, pp. 15; 57; P. Seed, "On Caribbean Shores: Problems of Writing History of the First Contact", *Radical History Review* 53 (1992), pp. 5–11, at 5.

results presented in a chronological spatial manner to examine European colonial practices in interaction with the various Indigenous Peoples of northeastern South America to avoid a Eurocentric perspective, as the historical sources are comprising Spanish and Dutch diplomatic dispatches and correspondences, journal entries, letters, reports, minutes of juridical proceedings, royal orders, decrees, and resolutions, penned by various actors, such as the King of Spain, the Prince of Orange, the States-General of the United Provinces, the Council of the Indies, the West India Company in Zeeland and Amsterdam, WIC Shareholders (The Ten), Spanish and Dutch ambassadors and envoys, Spanish governors of Cumaná, Caracás, Santo Tomé and San Joseph, marqués, treasurers, captains, cabildos, prefects of missions, the Dutch director-general of Essequibo, Courts of Policy and Justice, commanders of Essequibo and Demerara, councillors, fiscals, colonists, plantation managers and postholders and also includes relevant bilateral treaties, such as Münster (1648), Utrecht (1713), Madrid (1750), and London (1814).

Focused on the lawfulness of European colonial practices in the historical Caribbean, the spatio-legal argument of the book is built upon the comparison of both the European colonial laws of the time and the colonial appropriation practices of the Spanish and Dutch in northeastern South America in the time period 1498–1817. Hence, the book opens with an extensive literature review about European colonial laws and practices in the Americas (chapter 2). Based on the dispel of several persistent myths about the valid European colonial laws during the initial stage of European colonization, the book then unfolds as a double comparative study of both Spanish and Dutch colonial laws (chapters 3 and 8) and a chronologically and spatially ordered examination of the colonial practices of the Spanish (chapters 4–7) and Dutch (chapters 9–12) from 1498 until 1817 in northeastern South America. The final chapter 13 presents the research results in the context of the still unresolved historical boundary dispute between Venezuela and Guyana and demands the establishment of an effective mechanism to return Indigenous Peoples' historical territories as reparation for unlawful European colonial practices within the frameworks of the CARICOM reparation claims and UNDRIP-based practices at the Inter-American Court of Human Rights (IACHR).