Chapter 13
Conclusion

Inspired by the Caribbean reparation debate and the novelty of the UNDRIP right to *past* territories, this book has taken the long-standing arguments of Indigenous Peoples serious by providing a substantial re-examination of the lawfulness of European colonization in northeastern South America, Trinidad and Tobago between the sighting of Paria by Columbus in 1498 and the capture of Angostura by Simón Bolívar in 1817.

Based on extensive archival research on both sides of the Atlantic and built upon a two-tier comparative research design to examine both Spanish and Dutch colonial law (chapters 3 and 8) and the colonial appropriation practices of the Spaniards (chapters 4–7) and Dutch (chapters 9–12), the book has advanced the spatio-historical legal argument for northeastern South America that both the Spaniards and the Dutch had in the period 1498–1817 just lawfully appropriated *land as property* (and not sovereignty and jurisdiction) by the colonial practice of *occupation*, but *in violation* with the intertemporal law rule had claimed (Venezuelan Declaration of 1811) or ceded (Treaty of Amiens of 1802, London Convention of 1814) a significantly wider area as *territory*, that is land, jurisdiction and sovereignty to the succeeding English, which constitutes a violation of both the European colonial law of acquisition and the intertemporal law rule and substantiates a profound reparation claim for Indigenous Peoples.[1]

1 In general, international law scholars tend to treat the concepts of "land" and "territory" as interchangeable (J. Gilbert, "The Treatment of Territory of Indigenous Peoples in International Law", in: J. Castellino and S. Allen [eds.], *Title to Territory in International Law*, Farnham: Ashgate, 2003, pp. 199–228; J. Gilbert and C. Doyle, "A New Dawn over the Land", ibid., pp. 289–328; C. Charters, "Land Rights", in: International Law Association, *The Hague Conference. Rights of Indigenous Peoples*, 2010, pp. 20–24, at 21), whereas political philosophers and political geographers clearly distinguish between "property in land" and "the right to territory", since "the right to territory is not reducible to a property right, although territories contain property regimes in which individuals and groups have property rights" (A. Buchanan, "The Making and Unmaking of Boundaries: What Liberalism Has to Say", in: A. Buchanan and M. Moore [eds.], *States*, *Nations*, *and Borders. The Ethics of Making Boundaries*, Cambridge: Cambridge University Press, 2003, pp. 231–261, at 232). See *Terror and Territory: The Spatial Extent of Sovereignty*, Minneapolis: University of Minnesota, 2009, pp. 821–845; A. Murphy, "Territory's Continuing Allures", *Annals of the Association of American Geographers* 103 [2013] 5, pp. 1212–1226; A. Murhpy, "The Sovereign State as Political-Territorial Ideal: Historical and Contemporary Considerations", in: T. Biersteker and C. Weber [eds.], *State Sovereignty as Social Construct*, Cambridge: Cambridge University Press, 1996, pp. 81–120; J. Agnew, "The Territorial Trap: The Geographical Assumptions of International Relations Theory", *Review of International*

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Again, the violation pattern was reproduced in the Boundary Arbitration between Venezuela and (British) Guiana at the end of the nineteenth century, which aimed to solve the historical boundary dispute between the Dutch and Spanish (ongoing since 1746), as *occupation* was then determined as proof to claim an area as territory, although the European colonial law of the time had by occupation just had granted *land as property*. Accordingly, the Arbitration Treaty of Washington of 2 February 1897 to "ascertain the extent of the territories belonging to or that might lawfully be claimed" by Great Britain (United Netherlands) or Venezuela (Spain) had determined a five-member Arbitral Tribunal, was setting up the time frame for submitting cases, counter-cases and arguments and has, most notably, defined the rule that the exercise of "exclusive political control of a district, as well as actual settlement thereof" for at least "a period of 50 [sic!] years shall make a good title".[2]

In result, the Boundary Award of Paris was granted on 3 October 1899 and has, in unusual manner without any substantiation,[3] defined the boundary line as running

> from the coast at Point Playa, the line of boundary shall run in a straight line to the River Barima at its junction with the River Mururuma, and thence along the mid-stream of the

Political Economy 1 [1994] 1, pp. 53–80, J. Agnew, "Still trapped in Territory?", *Geopolitics* 15 [2010], pp. 779–784; J. Agnew, "Revisiting the Territorial Trap", *Nordia Geographical Publications* 44 [2015] 4, pp. 43–48; D. Newman, "Territory, Compartments and Borders: Avoiding the Trap of the Territorial Trap", *Geopolitics* 15 [2010], pp. 773–778; D. Newman and A. Paasi, "Fences and Neighbours in the Postmodern World: Boundary Narratives in Political Geography", *Progress in Human Geography* 22 [1998] 2, 186–207; J. Agnew and U. Oslender, "Overlapping Territorialities, Sovereignty in Dispute: Empirical Lessons from Latin America", in: B. Miller, J. Beaumont, and W. Nicholls [eds.], *Spaces of Contention. Spatialities and Social Movements*, London: Routledge, 2013, pp. 121–140; D. Newman, "Revisiting Good Fences and Neighbours in a Postmodern World after Twenty Years: Theoretical Reflections on the State of Contemporary Border Studies", *Nordia Geographical Publications* 44 [2015] 4, pp. 13–19; S. Elden, *The Birth of Territory*, Chicago: Chicago University Press, 2013; S. Elden, "How Should We Do the History of Territory", *Territory, Politics, Governance* 1 [2013] 1, pp. 5–20; A. Murphy, "Historical Justifications for Territorial Claims", *Annals of the Association of American Geographers* 80 [1990] 4, pp. 531–548; A. Stilz, "Nations, States, and Territory", *Ethics* 121 [2011] 3, pp. 572–601; C. Nine, "A Lockean Theory of Territory", *Political Studies* 56 [2008], pp. 148–165).

2 UN, "Washington Treaty of Arbitration", 2 February 1897, peacemaker.un.org/sites/peacemaker.un.org/files/GB–VE_970202_Treaty%20of%20Arbitration.pdf (accessed 7 October, 2018), Articles 2–4.

3 In contrast, other Boundary Awards of the time had included a precise explanation for the decision, such as the well-known *Island of Palmas (Miangas) case between the Netherlands and USA of April 1928* (UN, "Island of Palmas [Miangas] case", April 1928, http://legal.un.org/riaa/cases/vol_II/829–871.pdf, pp. 829–871 [accessed 7 October 2018]).

> latter river to its source, and from that point to the junction of the River Haiowa with the Amakuru, and thence along the mid-stream of the Amakuru to its source in the Imataka Ridge, and thence in a south-westerly direction along the highest ridge of the spur of the Imataka Mountains to the highest point of the main range of such Imataka Mountains opposite to the source of the Barima, and thence along the summit of the main ridge in a south-easterly direction of the Imataka Mountains to the source of the Acarabisi, and thence along the mid-stream of the Acarabisi to the Cuyuni, and thence along the northern bank of the River Cuyuni westward to its junction with the Wenamu, and thence following the mid-stream of the Wenamu to its westernmost source, and thence in a direct line to the summit of Mount Roraima [. . .].[4]

Hence, the proposed boundary of the Paris Award presented an unsustainable solution, since Venezuela had, just two years after the Decolonization Declaration of 1960, declared the Award as "null and void" (1962),[5] whereupon the dispute remained unresolved until the present (December 2020).[6] As this book has demonstrated, the reasons for the unresolved dispute are deeply rooted in the history of the European colonization practices, since both Dutch and Spanish had between 1498 and1817 never occupied the major part of the disputed area between the Essequibo/Cuyuni and Orinoco/Caroni junctions for a period of at least 50 years, but the Paris Award of 1899 had distributed the area as territory either to Venezuela or Great Britain, most notably the Barima, Cuyuni, and Sierra Imataca. Hence, the only Dutch settlement on the "Wild Coast" between the Orinoco and Essequibo, which fulfils the criteria of the 50 years rule of the Washington Treaty, were the Dutch posts in Wacupo (1700–1754) and Moruca (1732–1775/1796), although the Dutch were also temporarily present with a post in Barima (1683–c. 1689), short-term settlements in the mouth of the Orinoco, Amacuro and Aniavero (Amavero) between 1636–1638, a salt pit between the mouth of the Guayapiche and Curiaco, a cattle farm in Oquetay and a post in Pomeroon (1678–1710/1716, along with Nova Zeelandia 1650–1665/66, while plantations in Pomeroon were at least prohibited until 1777), although the Dutch director general since 1746 insubstantially claimed either the Waini (1746; 1759; 1759; 1762, 1767) or the Barima (1748; 1761; 1764; 1766; 1767) as boundary of the

4 UN, "Boundary Award of Paris", 3 October 1899, http://legal.un.org/riaa/cases/vol_XXVIII/331–340.pdf, pp. 331; 338 (accessed 7 September 2018). From Mount Roraima, the boundary afterwards follows "to the source of the Cotinga, and along the mid-stream of that river to its junction with the Takutu, and thence along the mid-stream of the Takutu to its source, thence in a straight line to the westernmost point of the Akarai Mountains, and thence along the ridge of the Akarai Mountains to the source of the Corentin called the Cutari River".

5 International Court of Justice (ICJ), *Guyana files an application against Venezuela*, Press Release No. 2018(4 April 2018) 17.

6 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), Part B.

Dutch Essequibo colony. In contrast, the Spanish were *never* settled along the coast between the mouth of the Orinoco and the Essequibo and had also failed to conquer the Barima and Orinoco Caribs (1618/1619; 1686; 1733), Guayanos (1599) and Aruacas (1619).

Instead, the "Wild Coast" between the Orinoco and Essequibo was consistently occupied by Caribs, Warouws, Arawak, Iao, Sapoyos, and Guayanos. Hence, the historical record confirms Caribs in the Amacuro (1637–1684), Orinoco mouth (1636–1686), Waini (1660–1763), Moruca (1660–1772), Pomeroon (1684–1794, Upper), and Essequibo (1616/24–1785). Most notably, the Caribs were consistently present in the Barima during the whole period from 1591 to 1768. Furthermore, Warouws were present in the Barima (1660–1769), Waini (1660–1769), Moruca (1660–1769), Pomeroon (1769), and on the islands of the Orinoco (1660–1767), where they were accompanied by the Tivitives, Chaguanas (1595–1637) and Guayanos (1638) on the banks of the Orinoco mouth, whereas Arawak are recorded for the Amacuro (1637), Lower Orinoco (1531–1638), Waini (1769), Moruca (1763–1769), Pomeroon (1596/99–1685), Essequibo, Demerara (1520/1596/99–1750), Berbice (1596/1599–1750), the Iao in the Orinoco (1595–1637) and Essequibo (1596/99), the Chiama (Shiamacotte) in the Moruca (1745–1769) and Guarapiche (1684). Despite, during the period 1752–1794, escorted Capuchin missionaries encroached the area between the Barima and Moruca to violently carry off Indigenous Peoples to fill their missions in particular in 1769, 1774/75, and 1785, whereas the encroachment into the Cuyuni had commenced in the 1730s and peaked in 1769/70. Ordered by the Capuchin Prefect (instead of the King of Spain), those missionary practices were not considered as "conquest" by the Council of the Indies.

Moreover, Caribs, Acowaio, Cerekon, Magnauts, Wapishana, Makushi, Pariacotten, and Perhavians were well-documented for the inland area between the Orinoco and Essequibo/Demerara, since Caribs were recorded in the Lower Orinoco (1681–1753), same as the Cerekon (1769) and Carib-speaking Nepoio (1581–1595), in the Caroni/ Paragua (1754–1760), Caura (1595–1769), Guarapiche (1638–1722), Cuyuni (1686–1770/ 1779, along with Pariacotten (1686)), Mazaruni (1686–1778) and Essequibo (1616/1624–1785), whereas the Acowaio had occupied the Cuyuni (1681/1686–1765), Mazaruni (1660/80–1765), Essequibo (1660/1750–1769), and Demerara (1686–1772). Finally, the Perhavians (1750) were settled in the Upper Essequibo, while the Wapishana (1660–1769) and Makushi (1753–1669) were recorded for the Rupununi and the Magnauts for Upper Essequibo and the Maho (1724–1763/1776), whereas the Arawak had occupied the inland area between Essequibo and Orinoco (1596/1599) and the Caribs the Blue Mountains (1750).

In contrast, the Spaniards had just settled the Lower Orinoco by the establishment of Santo Thomé since 1595 (Santo Thomé de Moriquite, 1595–1637), which remained the sole Spanish settlement until 1764, after the settlement was transferred about 1637 (Santo Thomé de Usupamo) and several times attacked by Caribs, Guayanos, English, Dutch, and French (1618–1685; 1740; 1752). Thereupon, Santo Thomé was in Lower Orinoco accompanied by Angostura above the Caroni junction (1764, captured by Simón Bolívar in 1817) and both Fort Hipoqui (1769) and Barceloneta (1770) at the Paragua.

Moreover, the independent Catalonian Capuchins had established several missions in the vicinity of the Caroni and Orinoco junction during the period 1724–1788, which were particularly attacked by Caribs during the 1730s and 1750s. Hereby, Suay was the first Capuchin mission (1724–1766), whereas Alta Gracia (1734–1817) and Cupapuy (1733–1817) in the vicinity of the Caroni junction were the most durable missions, while Guazipati (1757), Anjel Custodi at the Yuruari (1785) and Tumeremo/Cantuario at the Mamo and Yuruari junction (1788, temporarily abandoned in 1790/91 and 1794) presented the furthest missions towards the Cuyuni, which fulfilled the 50 years' criteria of the Washington Treaty of 1897.

Instead, the Dutch had settled in Essequibo from 1616/1624–1665 and again since 1670 with Fort Kikjoveral in Lower Mazaruni (established in 1628; named as such since 1644) and accompanied by plantations at the Essequibo junction since 1681, which remained spatially limited to the Cuyuni mouth (since 1681) and the first falls of both Upper Essequibo (1699–1771) and Lower Mazaruni (WIC plantation Poelwijk, 1700–1754) and were increasingly abandoned in 1773 in favour of plantations in the Essequibo mouth, such as in Itteribici (1730–1769), Suppenaam (1727–1763), Oene (1744–1768), Capoeij (1745–1766; 1770/71) and upon the islands of Wacquenam (1741–1768) and Leguaan (1744–1762), where Fort Zeelandia was established (Bonnesique 1730; Flag island 1739). However, all plantations above Fort Zeelandia were virtually abandoned for plantations in Demerara in June 1777, where a first plantation was pioneered in 1725 and a post maintained from 1691–1745, before a governor was appointed in 1755. In contrast, the most stable (WIC) plantation in Lower Cuyuni presented (Old) Duynenburg in the Cuyuni mouth (1710–c. 1759), although a temporary WIC coffee and cocoa plantation was also in place in the years 1724–1760. Furthermore, the Dutch had established two inland posts, namely Arinda in Upper Essequibo (1737–1790, above Siparuni and Rupununi) and another post in Cuyuni, which was temporarily established in the periods 1755–1758 (Island of Curamueuru) and 1767–1771 on the Island Toenameto (Dutch source) or Cramacúra (Spanish source), whereas neither the coffee plantation nor any of the two Dutch posts in Lower Cuyuni had met the 50 years criteria of occupation of the Washington Treaty of Arbitration of

1897. Furthermore, the Dutch had neither lawfully acquired jurisdiction or sovereignty by conquest or treaty.

Consequently, the Boundary Award of Paris of 1899 had in breach with the Arbitration rules of the Treaty of Washington of 1897 and the European colonial law of the time of appropriation granted the whole area as territory either to Venezuela (Spain) or Great Britain (United Netherlands), most notably the Barima to both Venezuela and Great Britain, the (Lower) Cuyuni to Great Britain and the Imataca to Venezuela. Thus, the Boundary Award of Paris has reproduced the violation pattern of European colonial law and the intertemporal law rule, which was predated by the violating occupation rule of the Washington Treaty (1897), the London Convention (1814), the Venezuelan Declaration of Independence (1811) and the Treaty of Amiens (1802), whereas violations of Indigenous Peoples' jurisdiction took already place by the grants of WIC Zeeland to Abraham van Pere (1678, Berbice) and the Walcheren cities (1657, Pomeroon), since both Dutch and Spanish had just lawfully acquired land as property by occupation, but not jurisdiction and sovereignty, which had remained with the Indigenous Peoples of northeastern South America, even for areas occupied by Europeans. In result, those findings are extending the arguments of Alvin Thompson, Caesar Gravesande and Ellen-Rose Kambel and Fergus MacKay that the Dutch had not exercised jurisdiction beyond their plantations. Strictly speaking, it was, therefore, not the European colonial law of the time of appropriation, but instead Indigenous Peoples' laws, which were also valid for Europeans and confirms Lauren Benton's global argument of "jurisdictional complexities" for the area of northeastern South America.

Nevertheless, the voluminous European colonial record from both sides of the Atlantic provides just limited insights about the valid indigenous laws of appropriation during the initial stage of European colonization. Most notably, the marriage practice is standing out to establish trust and alliance, as the practice was applied across the Americas, such as in 1510 on the coast of São Vicente (shipwrecked Portuguese with the daughter of Goianá Tupinikin Chief Tibirića of the Piratininga plateau), in 1613 on the Island of the Virginian James river (English colonist of Jamestown and Algonquian daughter Pocahontas), in 1631 on the Essequibo (Zeeland trader Aert Groenewegen and Carib woman) and 1684/85 on the Suriname (Governor Cornelis van Sommelsdijck and daughter of an indigenous Chief) to save the Dutch from being expelled. Furthermore, the hostage practice was commonly applied to manifest and secure alliances, which was applied in 1595 in the Orinoco (Chief Moriquito's son and two Englishmen of Walter Raleigh), in 1636 in Trinidad (women, children, and old men of Nepoio Chief Hierreima offered to the Dutch during a joint attack against the Spanish) and in 1640 in Dominica (Carib Chief Baron and French governor of Guadeloupe

Jean Aubert to cement their alliance). Finally, the narrative of Walter Raleigh's companion Lawrence Keymis at the Caw River (French Guiana) in 1596 about the Yao Cacique Warao indicates the burning of his settlement and fields, before the Chief and his people had left for the Amazon in response to two attacks by Arawak (among them Cazique Aramaia) in 1593, who had also kidnapped some Yao women and children. To close this research gap and gain deeper knowledge about the valid indigenous laws of appropriation during the initial stage of European colonization, a complementary research project on oral traditions appears to be appropriated and rewarding.

Meanwhile, in March 2018, Guyana has submitted the still unresolved historical boundary dispute (ongoing since 1746) to the International Court of Justice (ICJ) to decide about "the legal validity and binding effect" of the Paris Award of 1899,[7] after Venezuela had nullified the Award in 1962[8] and the peaceful settlement practices of the Geneva Agreement of 26 May 1966,[9] namely the Mixed Commission (1966–1970), the Protocol of Port of Spain (1970) and the good office process (1990–2014; 2017), had all failed[10] and UN Secretary-General António Guterres had in January 2018 chosen the ICJ as means to solve the controversy.[11] In result, the ICJ had on 18 December 2020 ruled so far that the ICJ has jurisdiction to decide the case,[12] after Venezuela had in June 2018 refused to recognize the jurisdiction of the Court.[13] Ironically, Indigenous Peoples are again excluded from the jurisdiction of the ICJ, although this book had demonstrated that both the Dutch and Spanish had *just lawfully acquired land* as property, but – in breach with both the intertemporal law rule and the European colonial law of the time of appropriation – transferred the area *as territory*, that is land as property, jurisdiction, and sovereignty, although they had never lawfully acquired either jurisdiction or sovereignty, which had lawfully remained with the Indigenous

7 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).

8 ICJ, *Guyana files an Application against Venezuela*, Press Release No. 2018 (4 April 2018) 17.

9 UN, "Geneva Agreement to resolve the Controversy over the Frontier between Venezuela and British Guiana", 17 February 1966.

10 ICJ, "Judgment: Arbitral Award of 3 October 1899 (Guyana v. Venezuela)", 18 December 2020, https://www.icj–cij.org/public/files/case–related/171/171–20201218–JUD–01–00–EN.pdf (accessed 7 January 2021).

11 UN, "Secretary General Chooses International Court of Justice as Means for Peacefully Settling Long-Standing Guyana-Venezuela Border Controversy", 18 January 2018, SG/SM/18879–ICJ/630, www.un.org/press/en/2018/sgsm18879.doc.htm (accessed 7 January 2021).

12 UN, "Geneva Agreement to Resolve the Controversy over the Frontier between Venezuela and British Guiana", 17 February 1966.

13 A. Gordon, "Venezuela opts out of Border case at ICJ", *Guyana Chronicle*, 18 June 2018.

Peoples of northeastern South America. In consequence, the legal-historical argument of this book calls for the recognition of the unlawfulness of the acquisition of indigenous territories in the initial phase of European colonization and prompts the conceptually revision of the novel UNDRIP right to Indigenous Peoples' past territories and the establishment of an effective reparation mechanism to return Indigenous Peoples' unlawfully taken historical territories in the context of both the CARICOM reparation claims and the legal practices of the Inter-American Court of Human Rights (IACHR); it remains to be seen whether the ICJ will continue to reproduce the pattern of violation of the intertemporal law rule and European colonial law from the initial stage of European colonization in northeastern South America.