**Review of Legal Opinion, “The Belize/Guatemala Dispute” prepared by Prof. Stephen Vascianne, CD. of February 2019**

The Belize Bar Association commissioned Prof. Stephen Vascianne CD, to conduct an independent analysis of the Belize/Guatemala dispute from the standpoint of International Law. Professor Vascienne is a renown expert in International Law and Diplomacy. He has earned high honors and distinctions in his field of expertise over a long stellar career, including as President of Norman Manley Law School of the University of West Indies, as General Rapporteur and Member of the United Nations International Law Commission, among others. He received his Masters in International Law from Cambridge University and his Doctorate in International law from Oxford University.

The Professor presented his Legal Opinion to the Bar Association on 26 February 2019. The study was done in anticipation of the upcoming referendum scheduled for 10 April 2019 in Belize that will be held in accordance with the Special Agreement between Belize and Guatemala to submit Guatemala’s claim to Belize to the International Court of Justice for final settlement. The Legal Opinion incorporates the main positions that have been advanced in the legal literature on the subject of the dispute, and places emphasis on the methods and concepts used by the International Court of Justice concerning title to territory. Not surprisingly, the Legal Opinion shows that Belize has a strong case for its full title to all its territory on the basis of international law.

**Uti Possidetis and Effectivité:** The Opinion carefully reviews the history of the region around the time of Guatemala’s independence in 1821 and considers the competing claims of Guatemala and the United Kingdom in respect of title over Belizean territory. The writer concludes that strength of the evidence of that period supports the view that the United Kingdom already held title over Belize when the United Kingdom and Guatemala negotiated the 1859 Treaty.

**Was 1859 a Treaty of Cession:** The Professor reviews the 1859 Treaty and considers whether it was indeed a treaty of cession. He observes that there is force in the argument that the 1859 Treaty was not a treaty of cession, and that it was in fact a treaty confirming a pre-existing boundary between Guatemala and Belize. On weighing the arguments, he concludes that the strength of evidence supports the view that the 1859 Treaty was not contemplated as a treaty of cession.

**Article 7:** The writer attempts to exercise some charity for Guatemala’s position that the UK breached Article 7 of the 1859 Treaty. He does this even as he explains that the article is couched in such vague terms that it is difficult to identify the point at which a breach would have occurred. He explores what would be the implications of a breach of Article 7, if indeed that occurred. He assumes a worse case scenario - that the UK’s failure to fulfill Article 7 was a material breach, meaning that Guatemala was entitled to terminate the Treaty, to declare it null and void. The effect of such a termination is that the legal situation would return to what prevailed prior to the Treaty’s signature. The writer was already satisfied that the weight of evidence strongly supports British ownership of the territory of Belize prior to the 1859 Treaty. Professor Vascianne concludes therefore that Guatemala’s termination of the 1859 treaty could not affect British and later Belize’s title to its territory.

**Could the Treaty be Unilaterally Terminated:** The writer observes, however, that the Treaty could not have been terminated for two reasons. First, there was no material breach of the treaty and therefore Guatemala had no right to unilaterally terminate it. Secondly, Guatemala’s acquiescence over the passage of time would render the Treaty no longer voidable. In either case, the full content of the 1859 Treaty would remain in force, including Article 7. Any breach of Article 7 would therefore amount to nothing more than a non- material breach of the Treaty. The remedy for such a situation is that it would be open to Guatemala to take countermeasures against the United Kingdom, not against Belize, that are proportional to the UK’s prior wrong.

What Does International Law Say About Boundaries: Having concluded that a breach of Article 7, material or otherwise, could not affect British, and later Belize’s title to its full territory, the analysis turns to the boundaries of Belize today. The Opinion reviews the position in international law with respect to international boundaries and finds that it favors boundary stability in the context of treaties. It observes that the International Court of Justice is itself known to give preference to maintaining the stability of agreed boundaries. He refers to the Libya/Chad Case, which found that boundaries have a permanent status even in the face of the termination of a treaty. This supports strongly the view that even if the United Kingdom were held to have failed to meet its obligation under Article 7 of the 1859 Treaty, the boundary described in Article 1 thereof remains in place as a permanent boundary. The writer concludes that international law and ICJ case law provide strong support that Belize’s boundaries as described in the 1859 Treaty remain valid today, even if the 1859 Treaty is not in force.

**Self-Determination:** The Legal Opinion analyses the principle of self-determination as an established norm of international law. The writer concludes that Belize is on firm legal ground when it invokes self-determination, especially when emphasis is placed on the territorial integrity of Belize and the substantial support for the Resolutions in favor of Belize at the United Nations. He concludes that the UN Resolutions in favor of Belize reflect a solid core of support within the United Nations for Belizean title to territory within the country’s current borders.

Moreover, Prof. Vascianne concludes that the United Nations has already accepted the position that Belize’s entitlement to the unity of its territory trumps any and all of Guatemala’s assertions to the contrary. Thus, in UN Resolution 35/20 of 1980, the General Assembly assumed that the territorial integrity to be preserved was NOT that of Guatemala, but that of Belize. Resolution 35/20 presupposed that Belizean independence would not have disrupted the integrity and national unity of Guatemala and emphasized, instead, the importance of preserving the territorial integrity of Belize.

The Professor underlines the point that the strength of Belize’s position gained tremendous weight by the recent ICJ’s Advisory Opinion on the Chagos Case of February 2019, which found that territorial integrity is a corollary to the principle of self-determination. The writer concludes that the case for Belizean title to its entire territory is considerably strengthened by the General Assembly’s insistence that the territorial integrity of Belize was to be respected in the decolonization process. This insistence serves as affirmation by the international community that, at the time of its independence from the United Kingdom, Belize succeeded to the entire area within its jurisdiction and control.

**Aggression in the Sarstoon:** Finally, the Legal Opinion considers recent Guatemalan activities in the Sarstoon River and Belize’s position based on the 1859 Treaty and state practice. The writer observes that the Government of Belize’s response to Guatemalan aggression in the area has been aimed at preventing the use of force and at the same time to protest Guatemala’s violations of Belize’s sovereignty and territorial integrity.

Clearly, diplomatic protests are necessary and they are being done, but the Professor wonders if this is sufficient to preserve Belize’s position. His unequivocal response is that in the circumstances of the Belize/Guatemala dispute, the answer to the question is yes. To be sure, the strength of the Belizean protests have been reinforced by the presence of Belize’s military forces in the Sarstoon River, and this underlines the seriousness that Belize attaches to the situation. He concludes that the peaceful approach taken by the Government of Belize cannot weaken Belize’s position in the Sarstoon as a matter of International Law.

**Research:** The Legal Opinion correctly comments on the importance of ensuring that the British and Guatemalan archives are fully searched to ensure there are no surprises if the matter is taken to litigation. Thankfully, previous governments of Belize as well as the current Administration have held the resolution of Guatemala’s claim foremost among their foreign policy priorities, so that tremendous research and resources have gone and continue to go into this effort.

**Conclusion:** In a careful examination of all the arguments measured against the weight of the law and evidence, including case law of the International Court of Justice, the writer concludes that Belize’s position is strong and rests on any one of several pillars of international law. Even against a charitable view of Guatemala’s legal arguments, the Professor concludes that international law and the evidence leans strongly in favor of British ownership of Belizean territory prior to the signature of the 1859 Treaty. Further, he concludes that even if we take the view that the British breached Article 7 of the 1859 Treaty by leaving unfulfilled its provisions, international law provides that such a breach does not have an impact on the drawing of Belize’s boundaries. In other words even if, for argument’s sake, we assume potential weaknesses in Belize’s position, under international law the boundaries of Belize would not be redrawn, i.e. our boundaries cannot change.

In the tradition of all serious writers who have studied the Belize/Guatemala dispute, Professor Vascianne’s Legal Opinion makes a strong case for Belize’s full title to all its territory on the basis of international law. The Bar Association deserves to be commended for commissioning such a study from an eminent independent expert in international law on a subject that is of such national importance to Belize. Professor Vascienne’s contribution is a welcome analysis and scholarship that should contribute to a better understanding of the Belize/Guatemala dispute.

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