

# **Understanding the Venezuela-Guyana Controversy: Exploring the Geopolitical Implications**

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# **Acknowledgments**

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The analysis and views expressed herein are those of the author.



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#### Introduction

The month of December has been a consequential one in the annals of world history. For instance, it was on the 2<sup>nd</sup> of that month in 1804 that Napoleon Bonaparte was crowned Emperor of France by Pope Pius VII, and on the 30th of the month in 1922 that the USSR—Union of Soviet Socialist Republics—was established through the confederation of Russia, Byelorussia, Ukraine and the Transcaucasian Federation. It also was on the 8th of that month in 1991 that the USSR was abolished as a nation. Interestingly, too, it was on the 7<sup>th</sup> of December in 1941 that Japan declared war on the United States with an attack at Pearl Harbor, resulting in almost 3,000 American deaths and the United States entry into the Second World War.

In the Americas, it was in December of the year 1492 that Christopher Columbus happened on the island of Hispaniola; on the first of that month in 1822 that, Dom Pedro, founder of the Brazilian Empire, was crowned as the first emperor of Brazil; and that President James Monroe, during his message to the Congress on the second of the month in 1823, introduced what became known as the Monroe Doctrine. Moreover, it was on the 20<sup>th</sup> of December in 1989 that United States forces invaded Panama to capture Manuel Noriega on charges of drug trafficking. Now, President Nicolás Maduro Moros of Venezuela seems intent on placing December 2023 on the list of consequential Decembers for the Americas by taking the land that Simón Bolívar set free from Spanish colonization to near the brink of war with its smaller neighbor, Guyana, evoking sad memories of the disastrous efforts of General Leopoldo Galtieri of Argentina in 1982.

This report examines the current saga involving Venezuela and Guyana in which Maduro is creating a diplomatic furor and taking the region to the edge of the insecurity precipice. Understanding this saga requires an appreciation of the controversy's historical backdrop and a sense of the value of the Essequibo territory. Over the last few decades, Venezuela has utilized an Intimidation Playbook in its dealings with Guyana. It's important to consider some of the entries in that Playbook and explain some of the international vicissitudes, especially in relation to the International Court of Justice (ICJ). Only then are we able to fully understand Maduro's December psychological warfare and annexation threat moves and their geopolitical implications.



#### **Understanding the Historical Landscape**

As has been explained in an earlier <u>report</u> for the Center for Strategic and International Studies (CSIS), the controversy over the Essequibo dates to 1841, when Venezuela disputed the demarcation of "British Guiana's" borders, which had not been defined in the United Kingdom's 1814 treaty acquiring it from the Netherlands. In the 1930s, the British commissioned German surveyor Robert Schomburgk to delineate the boundary, which came to be known as the "Schomburgk Line." However, Venezuela claimed that its borders were established upon its independence from Spain in 1811 and that they extended east to the Essequibo River. After the discovery of gold in the disputed area in the 1850s, the United Kingdom claimed an additional 33,000 square miles west of the Schomburgk Line. Figure 1 shows the various boundary claims. Tensions continued to grow until 1887, when Caracas broke off diplomatic relations with London and appealed to the United States for assistance, recalling the 1823 Monroe Doctrine and offering it as justification for U.S. involvement.

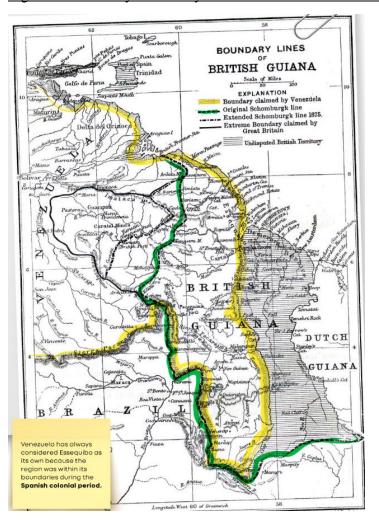


Figure 1: Boundary Claims by Venezuela and the United Kingdom

Source: Bruno Venditti and Nick Routley, "The Venezuela—Guyana Dispute Explained in 3 Maps," Visual Capitalist, December 8, 2023, available at

https://www.visualcapitalist.com/the-venezuela-



It might be recalled that President James Monroe had articulated four basic points:

(1) the United States would not interfere in the internal affairs of or the wars between European powers; (2) the United States recognized and would not interfere with existing colonies and dependencies in the Western Hemisphere; (3) the Western Hemisphere was closed to future colonization; and (4) any attempt by a European power to oppress or control any nation in the Western Hemisphere would be viewed as a hostile act against the United States. Venezuela cited the Munroe Doctrine in 1895 in courting United States support against Britain on the matter. The United States even threatened Britain with war, eventually getting an agreement on arbitration. Thus, in 1897, Britain and Venezuela signed the Treaty of Washington to facilitate arbitration as the dispute resolution mechanism. The result was the 1899 Paris Arbitral Award. Importantly, according to the 1897 Treaty of Washington, the tribunal's outcome would be "a full, perfect, and final settlement of all the questions referred to the Arbitrators." Venezuela was so enamored with United States guardianship that, as Table 1 shows, President José Andrade nominated Chief Justice Melville Western Fuller as one of his two panelists and allowed the United States to name the second one: Justice David Josiah Brewer.

The resulting October 3, 1899, Arbitral Award gave Venezuela the mouth of the Orinoco River and a 5,000-square-mile extension around Point Barima, while the United Kingdom received the land to the east, including most of the Essequibo Basin. In 1905, after a joint Anglo-Venezuelan Commission demarcated the exact boundary, British and Venezuelan commissioners affirmed the coordinates, and the matter appeared resolved. However, in its July 1949 edition, the *American Journal of International Law* published a posthumous letter by Severo Mallet-Prevost, one of the Venezuelan lawyers at the arbitration, which alleged that the Russian president of the tribunal and the British members colluded to disadvantage Venezuela. Interestingly, in 1944, Venezuela granted Mallet-Prevost its highest civilian award, the Order of the Liberator, "in testimony of the high estimation in which the Venezuelan people hold and will always hold him."

Table 1: The Paris Arbitration Who's Who

#### Tribunal Chair

Highly-reputed legal scholar Fyodor
 Fyodorovich Martens, Permanent
 Member of the Council of Russia's
 Ministry of Foreign Affairs.





#### The British Jurists

- Charles Baron Russell of Killowen, Chief Justice of England (who replaced Baron Herschell, who died shortly after his appointment to the Tribunal.)
- *Sir Richard Henn Collins*, Justice, British Supreme Court of Judicature.

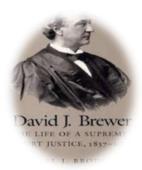




#### The Venezuelan Jurists

- Nominated by President of Venezuela José Andrade: Melville Western Fuller, Chief Justice of the United States of America.
- Nominated by the Justices of the United States Supreme Court: David Josiah Brewer, Justice of the United States Supreme Court.





Source: International Court of Justice, "Guyana Application Institution Proceedings Arbitral Award of 3 October 1899," 29 March 2018, available at <a href="https://www.icj-cij.org/sites/default/files/case-related/171/171-20180329-APP-01-00-EN.pdf">https://www.icj-cij.org/sites/default/files/case-related/171/171-20180329-APP-01-00-EN.pdf</a>.

Later, as Guyana's independence talks progressed, Venezuela informed the United Nations in February 1962 that it considered its border with soon-to-be-independent Guyana to be disputed. This begs the question: why did Venezuela wait 63 years after the 1899 Award to contest its validity?

# **Rumblings then Geneva Agreement**

The answer revolves entirely around geopolitics, as was noted in a December 21, 2023, article in the New York Times. In its application to the ICJ, Guyana explained:

Contemporaneous evidence demonstrates that Venezuela's change of position, at the same time that British Guiana was preparing for independence, was not a mere coincidence. A dispatch of 15 May 1962 from the American Ambassador in Caracas, C. Allan Stewart, to the United States Department of State concerning the "border question" reported that: 'President Betancourt [of Venezuela] professes to be greatly concerned about an independent British Guiana with Cheddi Jagan as Prime Minister. He suspects that Jagan is already too committed to communism and that his American wife exercises considerable influence over him . . . This alarm may be slightly simulated since Betancourt's solution of the border dispute presupposes a hostile Jagan. His plan: through a series of conferences with the British before Guiana is awarded independence a cordon sanitaire would be set up between the present boundary line and one mutually agreed upon by the two countries (Venezuela and Britain). Sovereignty of this slice of British Guiana would pass to Venezuela . . . .'

Beyond this, one-time Guyanese ambassador to Venezuela Geoffrey Da Silva cites the July 12, 1962 memo from U.S. Secretary of State Dean Rusk to President John F. Kennedy, which provides credible evidence that Venezuela had Cold War–related geopolitical considerations for renewing the dispute. The memo outlined contingency plans "to hamper or prevent a communist takeover in British Guiana," where the left-oriented People's Progressive Party (PPP) had won elections in 1953, 1957, and 1961 and had formed a strong friendship with Cuba. Notably, there was a Plan B: "Encourage Venezuela and possibly Brazil to pursue their territorial claims. This could result in an indefinite delay of independence."

In his letter to the editor in the January 29, 2021, edition of the Guyana daily Stabroek News, Ambassador Da Silva recalls some of the Cold War geopolitical flashpoints in the Americas at the time. In 1959, Fidel Castro succeeded in overthrowing the U.S.-backed Fulgencio Batista dictatorship and established the Cuban Revolution; in 1961, the U.S.-backed Bay of Pigs invasion of Cuba ended in disaster, and later that year, Castro declared Cuba a socialist state and announced his alliance with the USSR. Moreover, in 1962, the Cuban Missile Crisis almost witnessed the launch of a nuclear war between the United States and the USSR. Within Venezuela, the U.S.-backed Rómulo Betancourt government was losing support, and two Cuban-backed guerilla armies had tried to overthrow it. Venezuela had the largest U.S. corporate investments in Latin America, notably in petroleum and minerals.

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As Da Silva explained, "In 1961, to protect USA investments and to defeat the growing influence of Cuba and the left-center forces in Latin America, President John F. Kennedy visited Venezuela and launched the USD 20 billion Alliance for Progress (AFP) to support land reform, to deepen democracy, to develop industry and agriculture and to increase the incomes of the peoples." Meanwhile, the United States financed destabilization measures in Guyana in 1962 and 1963 to prevent the possibility of "a second Cuba." Thus, as Da Silva posits, the memo's recommendation to encourage Venezuelan territorial claims in Guyana "should put an end to the contention that there is a legitimate dispute or controversy about the Essequibo." In pondering why Venezuela raised the issue in 1962, University of the West Indies legal scholar Ronald Singh posits:" Many of us would like to believe that it was instigated by the Mallet-Prevost memorandum of 1944, posthumously published in 1949. It is my firm conviction that the driving force was the United States's geopolitical and economic concerns as well as Venezuela's greed for wealth."

In February 1966, Venezuela, the United Kingdom, and British Guiana signed an <u>agreement in Geneva</u>. This paved the way for Guyana's independence and set the stage for the pursuit of mechanisms to resolve the controversy. Interestingly, contrary to what the Geneva Agreement specifies, President Maduro has been arguing that the 1966 pact is the sole basis for the resolution of the controversy and that President Irfaan Ali has been violating it. In one September 2023 <u>social media post</u> on *X* (formerly Twitter), he declared: "President Irfaan Ali, enough of lies and of trying to hide the historical truth that weighs on the dispute over the Essequibo territory, whose only means of resolution, as you well know, is the Geneva Agreement of 1966."

It might be useful to replicate some key provisions of the Geneva Agreement:

#### Article I

A Mixed Commission shall be established with the task of seeking satisfactory solutions for the practical settlement of the controversy between Venezuela and the United Kingdom which has arisen as the result of the Venezuelan contention that the Arbitral Award of 1899 a about the frontier between British Guiana and Venezuela is null and void.

#### Article II

- (1) Within two months of the entry into force of this Agreement, two representatives shall be appointed to the Mixed Commission by the Government of British Guiana and two by the Government of Venezuela.
- (2) The Government appointing a representative may at any time replace him, and shall do so immediately should one or both of its representatives be unable to act through illness or death or any other cause.

#### Article IV

(1) If, within a period of four years from the date of this Agreement, the Mixed Commission should not have arrived at a full agreement for the solution of the



controversy it shall, in its final report, refer to the Government of Guyana and the Government of Venezuela any outstanding questions.

Those Governments shall without delay choose one of the means of peaceful settlement provided in Article 33 of the Charter of the United Nations.

(2) If, within three months of receiving the final report, the Government of Guyana and the Government of Venezuela should not have reached agreement regarding the choice of one of the means of settlement provided in Article 33 of the Charter of the United Nations, they shall refer the decision as to the means of settlement to an appropriate international organ upon which they both agree or, failing agreement on this point, to the Secretary-General of the United Nations. If the means so chosen do not lead to a solution of the controversy, the said organ or, as the case may be, the Secretary-General of the United Nations shall choose another of the means stipulated in Article 33 of the Charter of the United Nations, and so on until the controversy has been resolved or until all the means of peaceful settlement there contemplated have been exhausted.

#### Article V

- (1) In order to facilitate the greatest possible measure of cooperation and mutual understanding, nothing contained in this Agreement shall be interpreted as a renunciation or diminution by the United Kingdom, British Guiana or Venezuela of any basis of claim to territorial sovereignty in the territories of Venezuela or British Guiana, or of any previously asserted rights of or claims to such territorial sovereignty, or as prejudicing their position as regards their recognition or non-recognition of a right of, claim or basis of claim by any of them to such territorial sovereignty.
- (2) No acts or activities taking place while this Agreement is in force shall constitute a basis for asserting, supporting or denying a claim to territorial sovereignty in the territories of Venezuela or British Guiana or create any rights of sovereignty in those territories, except in so far as such acts or activities result from any agreement reached by the Mixed Commission and accepted in writing by the Government of Guyana and the Government of Venezuela. No new claim, or enlargement of an existing claim, to territorial sovereignty in those territories shall be asserted while this Agreement is in force, nor shall any claim whatsoever be asserted otherwise than in the Mixed Commission while that Commission is in being.

The Mixed Commission effort contemplated under the Geneva Agreement proved futile, as did many decades of discussions under the auspices of the United Nations Secretary General's Good Offices. Stateman-scholar Eric Williams, then Prime Minister of Trinidad and Tobago, was instrumental in securing a protocol for the Geneva Agreement in 1970. The Protocol of Port-of-Spain placed the matter in moratorium for 12 years, during which the two nations were to accentuate the positives of their relationships and not harp on the controversy.

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Among other things, the Protocol specified:

#### Article I

So long as this Protocol remains in force and subject to the following provisions the Government of Guyana and the Government of Venezuela shall explore all possibilities of better understanding between them and between their peoples and in particular shall undertake periodical reviews, through normal diplomatic channels, of their relations with a view to promoting their improvement and with the aim of producing a constructive advancement of the same.

#### Article II

- (1) So long as this Protocol remains in force no claim whatever arising out of the contention referred to in Article I of the Geneva Agreement shall be asserted by Guyana to territorial sovereignty in the territories of Venezuela or by Venezuela to territorial sovereignty in the territories of Guyana.
- (2) In this Article, the references to the territories of Guyana and the territories of Venezuela shall have the same meaning as the references to the territories of British Guiana and the territories of Venezuela respectively in the Geneva Agreement.

#### Article HI

So long as this Protocol remains in force the operation of Article IV of the Geneva Agreement shall be suspended. On the date when this Protocol ceases to be in force the functioning of that Article shall be resumed at the point at which it has been suspended, that is to say, as if the Final Report of the Mixed Commission had been submitted on that date, unless the Government of Guyana and the Government of Venezuela have first jointly declared in writing that they have reached full agreement for the solution of the controversy referred to in the Geneva Agreement or that they have agreed upon one of the means of peaceful settlement provided for in Article 33 of the Charter of the United Nations.

#### Article IV

- (1) So long as this Protocol remains in force Article V of the Geneva Agreement (without prejudice to its further operation after this Protocol ceases to be in force) shall have effect in relation to this Protocol as it has effect in relation to that Agreement, subject to the substitution for the words "British Guiana" wherever they occur in that Article of the word "Guyana", and subject to the deletion from paragraph (2) of that Article of the following phrases:
- (a) "except insofar as such acts or activities result from any agreement reached by the Mixed Commission and accepted in writing by the Government of Guyana and the Government of Venezuela" and



- (b) "nor shall any claim whatsoever be asserted otherwise than in the Mixed Commission while that Commission is in being."
- (2) The signing and the continuance of this Protocol shall not be interpreted in any way as a renunciation or diminution of any rights which any of the parties may have of the date on which this Protocol is signed or as a recognition of any situation, practice or claim existing at that date.

#### Article V

(1) This Protocol shall remain in force for an initial period of twelve years, renewable thereafter, subject to the provisions of this Article, for successive periods of twelve years each.

But what do we know about the territory at the center of the saga?

#### The Territory at the Center of the Controversy

It's important to observe that while Guyana's massive offshore oil discovery in 2015 has resulted in an accentuation of Venezuela's intimidation, their claim is not just about oil. The Bolivarian Republic claims all the territory west of the Essequibo River, which begins near the border with Brazil and runs 600 miles north to the Atlantic Ocean, making it South America's third-largest river after the Amazon and the Orinoco. Not surprisingly, the derivation of the river's name is itself disputed. One account is that the name derives from an Arawak word meaning "hearth-stones," said to be a reference to the Arawak custom of collecting stones from the river's banks for their firesides. Another explanation relates derivation with explorer Juan de Esquivel, who reputedly traveled into the Essequibo area beginning in the 16th century along the river that was later dubbed Esquivel's River.

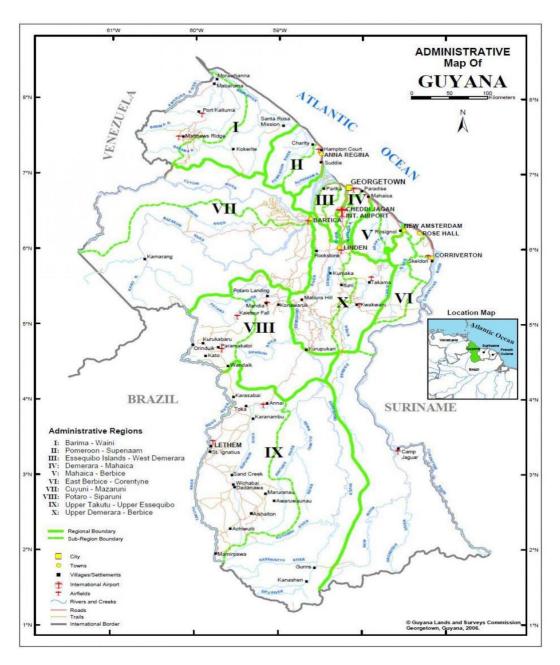
The Essequibo region comprises 61,600 square miles (160,000 square kilometers) of Guyana's 83,000 square miles (214,969 square kilometers), almost 75 percent of the country. The territory is about six times the size of the American state of Massachusetts (10,561 square miles) and a little more than the state of Georgia, which is 59,425 square miles. It could accommodate all of England (50,301 square miles) with room to spare, Jamaica (4,244 square miles) fourteen-and-a-half times, and Costa Rica (19,770 square miles) three times. The territory spans six of Guyana's ten administrative regions—the whole of regions 1 and 2 and parts of regions 3,7,8 and 9, as Figure 2 shows. Some 150,000 of the country's estimated 800,000 population live there, many of them belonging to one of the country's nine Indigenous groups: the Lokono (Arawak), Akawaio (Kapon), Arecuna (Pemon), Macusi, Warrau, Wapisiana, Wai, Patamona, and Kalina (Carib).

As <u>explained elsewhere</u>, the Essequibo is within the Guiana Shield, which extends across the Guainía department of Colombia; Venezuela, where the Orinoco River makes the northern limit of the Shield; Guyana; Suriname; and French Guiana. Thus, the zone has an abundance of biodiversity and natural resources, including oil, gold, diamond, bauxite, manganese, uranium, and other minerals. In relation to uranium, for instance, in a <u>study</u> for the Perry Center for Hemispheric Defense Studies, I explained that the Canadian uranium exploration firm, U3O8 Corporation,



confirmed the existence of a substantial deposit in the Kurupung section of the Essequibo in 2008 and reported that "Guyana's Roraima basin may one day play a significant role in feeding the world's growing appetite for clean nuclear power."

Figure 2: Guyana's Administrative Regions



Source: Microsoft Bing Images, 2023



Guyana's uranium endowment attracted the attention of Iranian officials, such that Guyana's leader, Bharrat Jagdeo, was invited to Tehran by President Mahmoud Ahmadinejad for a three-day state visit in January 2010. While in Tehran, Presidents Jagdeo and Ahmadinejad signed several agreements, and the Iranian leader also pledged to send a team of specialists to Guyana to assess the country's mineral deposits. The promised visit never materialized, and relations between the two countries soon fizzled. It is reasonable to assume that the United States played a role in this outcome.

The massive offshore oil discoveries since May 2015 raised the stakes over the Essequibo to a new high for Guyana, which is now set to become among the world's largest crude oil producers, with offshore deposits estimated at 11 billion barrels. Coincidentally, Venezuela began experiencing a meltdown in its oil industry around the same time. The Stabroek Block in Guyana, located approximately 120 miles offshore, is 6.6 million acres in size. While ExxonMobil takes the spotlight in relation to the discovery, the project involves a consortium that initially included Hess Corporation and a unit of China's National Offshore Oil Corporation. Chevron, another global oil giant, bought the Hess stake in October 2023 for a whopping USD 53 billion. Companies from the United Kingdom, Canada, France, Israel, India, Saudi Arabia, Malaysia, Ghana, Qatar, and Spain also are cashing in on Guyana's oil bounty.

The Bolivarian Republic places a high premium on the territory around which the saga revolves, which it called *zona en reclamación* (area to be reclaimed) for many decades and *Guayana Esequiba* since 2023. Writing in the February 21, 2021 edition of the *Caracas Chronicles*, analyst Reybert Carrillo explains the sizeable, economic, strategic, and other gains Venezuela would acquire with possession of the claimed territory. For instance, it would obtain an extensive hydrographic network that includes the Essequibo River and its Atlantic delta, the Cuyuni, Rupununi, Mazaruni, and Supenaam rivers, as well as the Potaro River and its 741 ft Kaieteur Falls, which has the world's largest single drop waterfall by the volume of water flowing over it.

Crucially, too, with almost 300 km of new coastland and over 40 km of ocean waters, the benefits would include customs taxes, fishing, and security, plus all the minerals in the Esequibo mentioned earlier. Indeed, the oil extraction and reserves in Guyana have led some analysts to speculate about the country's willingness to step up its aggression. Viktor Katona posed the provocative question in the January 25, 2021, edition of *Oilprice.com*: Will Venezuela go to war over oil? My sense is that although Venezuela outmatches Guyana militarily by a factor of more than 35 to one, pragmatism will prevail as the Venezuelan military and political elites realize that the geopolitical and economic losses stand to far outweigh any annexation gains.

Understandably, the stakes are high not only for the political and business leaders in Guyana and Venezuela but also for corporate executives and investors of ExxonMobil, Chevron, Anadarko, CGX Energy, Ratio Oil, Repsol, Tullow, China's National Offshore Oil Corporation, and other companies. The saga over the Essequibo has had many dimensions, including engagement by the Secretaries General of the United Nations and by the ICJ. How so, one may ask?

# GLOBAL AMERICANS

#### On to the Global Stage

The point was made <u>elsewhere</u> that the settlement of the Guyana-Venezuela territorial controversy evokes memories of the award-winning play *Waiting for Godot* by the famous Irish playwright Samuel Beckett. In the play, two characters, Didi and Gogo, engage in interminable conversations near a leafless tree while waiting for another character named Godot, who never arrived.

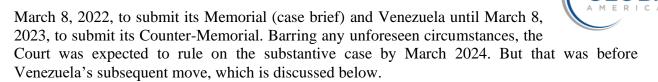
We noted earlier that the waiting game dates to February 1962, when Venezuela first formally challenged the validity of the 1899 Paris Arbitral Award, informing the United Nations Secretary-General that it considered a dispute to exist over the demarcation of the frontier with the then colony of British Guiana. Venezuela contended that "The award was the result of a political transaction carried out behind Venezuela's back and sacrificing its legitimate rights. The frontier was demarcated arbitrarily, and no account was taken of the specific rules of the arbitral agreement or of the relevant principles of international law. Venezuela cannot recognize an award made in such circumstances."

At the end of the moratorium period, Venezuela opted not to renew the 1970 Protocol of Port-of-Spain, discussed above. This reactivated Article V of the Geneva Agreement, which put Article 33 of the United Nations Charter back in play. In keeping with that Article, the dynamics of the waiting game then shifted to the ICJ in March 2018, when, with green-lighting from Secretary-General Ban Ki-moon and his successor António Guterres, Guyana took the matter to that body. Using the Beckett play analogy, the ICJ is the Godot in the Guyana-Venezuela conversation.

As noted in <u>a September 2022 edition of OilNOW</u>, in light of the high stakes involved, it is understandable that Guyana would marshal a formidable international team of experts in international law, geography, history, and allied subjects to press its case before the world court. The ICJ December 2020 decision affirming jurisdiction in the matter identified Guyana's battery of experts, which includes Mr. Paul S. Reichler of the top United States law firm Foley Hoag LLP; Alain Pellet, Emeritus Professor at the University Paris Nanterre, former Chairman of the International Law Commission, and member of the Institut de droit international; and Queens Counsel Philippe Sands, who is a professor of International Law at University College London and a barrister with Matrix Chambers of London.

Guyana's legal legion also boasts Harvard-trained Payam Akhavan, professor of International Law at McGill University, a member of the Bar of the State of New York and the Law Society of Ontario, and a member of the Permanent Court of Arbitration; Philippa Webb, Professor of Public International Law at London's King's College, who is a member of the Bars of England and Wales and the State of New York and of London's Twenty Essex Chambers, along with several local luminaries, including Ambassador and former history professor Cedric Joseph, and esteemed diplomat Rashleigh Jackson. Sadly, Jackson, who had distinguished himself as Permanent Representative to the United Nations before undertaking a marathon foreign ministerial stint from 1978 to 1991, died on September 1, 2022, at age 93. Moreover, international lawyer and statesman Sir Shridath Ramphal, a former Guyana foreign minister and Commonwealth Secretary General, is one of the two Guyanese Agents.

Acting in accordance with Court rules, the ICJ first needed to consider whether it had jurisdiction in the matter before considering the merits of the case. In December 2020, the Court ruled that it did, indeed, have jurisdiction to consider the matter. Then, in March 2021, it gave Guyana until



Guyana followed the dictum of the Court, submitted its Memorial by the specified date, and sought the Court's judgment in several areas. Among other things, it asked the Court to find the 1899 Award to be valid and binding and the boundary established in 1899 and by the 1905 boundary agreement also valid and binding. Second, Guyana wanted the Court to declare that it enjoys full sovereignty over the territory between the Essequibo River and the boundary established by the 1899 Award and the 1905 Agreement and that Venezuela enjoys full sovereignty over the territory west of that boundary. Further, Guyana asked that Venezuela be ordered to withdraw immediately from and cease its occupation of the Guyana part of the Island of Ankoko.

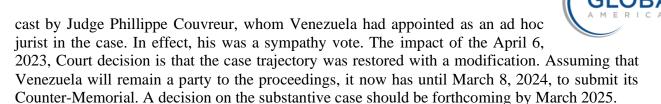
However, Guyana's Memorial submission prompted relatively swift action by Venezuela, not in relation to its Counter-Memorial. In a letter dated June 6, 2022, Venezuela named its Co-Agents for the case: Samuel Reinaldo Moncada Acosta, Permanent Representative to the United Nations; Félix Plasencia González, former foreign minister; and Elsie Rosales García, Professor at the Universidad Central de Venezuela. Incidentally, Guyana had named its Agents since March 2018 when it submitted its petition: Carl Greenidge, then foreign minister; Sir Shridath Ramphal, former foreign minister; and Ambassador Audrey Waddell, then director general of the Ministry of Foreign Affairs.

# Venezuela's Preliminary Objections

More significant, though, the following day—on June 7, 2022—Venezuela filed preliminary objections to the admissibility of Guyana's petition. Venezuela's objections prolonged the waiting game in that under the Rules of the Court, the proceedings on the merits had to be suspended, and a timetable was established for Guyana's formal response to the preliminary objections. The practice of the Court is to grant one party up to four months from the date any preliminary objections are filed for a response. Guyana was then granted until October 7, 2022, to file a response to the objections, following which the Court held hearings on the matter from November 17 through November 22, 2022. The essence of Venezuela's objections was that since the United Kingdom was a party to the 1899 Arbitral Award, it is, therefore, an indispensable third party to the case, and the Court cannot adjudicate the matter without its consent.

In its 29-page judgment, the 15-member judicial organ of the United Nations system noted that "the practice of the parties to the Geneva Agreement further demonstrates their agreement that the dispute could be settled without the involvement of the United Kingdom." More substantively, the decision declared: "The Court concludes that, by virtue of being a party to the Geneva Agreement, the United Kingdom accepted that the dispute between Guyana and Venezuela could be settled by one of the means set out in Article 33 of the Charter of the United Nations, and that it would have no role in that procedure. .... The preliminary objection raised by Venezuela must therefore be rejected."

By a 14-1 vote, the Court rejected Venezuela's preliminary objection, and by the same vote, it found that it could adjudicate upon the merits of Guyana's claims. The sole judicial dissent was



Unsurprisingly, the authorities in Caracas derided the decision, with Executive Vice President Delcy Rodríguez asserting that "the Bolivarian Republic of Venezuela does not recognize the judicial mechanism as a means of resolving the aforementioned dispute" and that "the 1966 Geneva Agreement is the only valid and current instrument to resolve the dispute" through "direct political negotiations for the sake of a practical and satisfactory solution." With these statements, Venezuela seemed to be setting the stage for a repudiation of the Court's final decision if it favors Guyana, which is a distinct possibility.

Their exasperation over the April 6, 2023, decision must surely be compounded by the fact that it was their second loss before the ICJ; the first was in December 2020, when the Court rejected them and affirmed having jurisdiction in the matter. Quite rightly, one-time Guyanese envoy to the United States and the OAS, Riyad Insanally, contended: "The common rejection of the ICJ ruling and the continued affirmation of Venezuela's claim should not be surprising. The claim to the Essequibo is a highly nationalistic issue in Venezuela and neither side can afford to appear to be taking a conciliatory or even a reasonable approach to resolving the controversy, least of all in these highly charged times in the country."

The ICJ president delivered the ruling on the preliminary objections on April 6, 2023, during the week when three of the world's most influential religions—Christianity, Islam, and Judaism—were either celebrating or beginning to celebrate high holy periods: Easter for the Christians, Ramadan for the Muslims, and Passover for Judaism's adherents. The observation was made elsewhere that as one listened to—and later read—the ruling by ICJ President, American-born Joan Donoghue, even though the entire drama hasn't concluded, the biblical tale of David and Goliath came to mind. The story is told in the Old Testament book of Samuel of the underdog battle between a young, diminutive shepherd, David, and giant, aggressive warrior, Goliath, in which David defeated Goliath with weapons considered to be of dubious utility given Goliath's weapons and armor. David wielded a slingshot and stones.

The elites in Venezuela must also have been frustrated that "little Guyana" is chalking up successive victories before the World Court despite their superior resources. For instance, while Guyana fielded a team of 15 legal advocates, diplomats, and political operatives led by Agent and former Foreign Minister Carl Greenidge for the April 6, 2023 judgment at The Hague, Venezuela amassed twice the number—32—of legal scholars, diplomats, and political heavyweights, led by Agents Executive Vice-President Rodríguez and Ambassador to the United Nations Samuel Moncada Acosta.

It is quite well known that Venezuela dwarfs Guyana in several crucial respects. For instance, while Guyana has a landmass of 214,969 sq km and a population of about 800,000, Venezuela boasts a size that's more than four times that of Guyana—912,050 sq km—and a population of 28 million, which is 36 times that of Guyana's. On the military front, Guyana's security establishment of barely 5,000 soldiers <u>pales in comparison</u> to that of its neighbor, which exceeds 123,000 active personnel, according to the 2023 edition of <u>The Military Balance</u>, which is published by the London-based International Institute of Strategic Studies. Moreover, with proven oil reserves of

11 billion barrels equivalent, Guyana is far out-matched in petro-power potential by Venezuela, which has proven reserves of more than 300 billion barrels equivalent and ranks as the world's number one oil reserve holder. However, when it comes to the judicial front, it appears there's a David and Goliath line-up where David is using a legal/judicial slingshot to vanquish the bigger and stronger Goliath.

Yet, as close observers of the Essequibo saga would be aware, Goliath wrote an Intimidation Playbook many years ago and has been executing chapter and verse over the years.

# Venezuela's Intimidation Playbook

Guyana exposed the Playbook in its March 2018 submission to the Court, when it apprised the Court of several instances in which Venezuela had taken or threatened action to discourage and prevent economic ventures that Guyana had authorized investors to pursue. For instance, in June 1968, Venezuela placed a notice in the *London Times* strongly objecting to and warning against any "concessions either granted or to be granted by the Guyana Government over the territory stretching to the West of the Essequibo River . . ." The following month, President Raúl Leoni issued a Decree claiming Venezuela's sovereignty over the land west of the Essequibo River and over the adjacent territorial waters.

Several years later, in June 1981, Venezuela objected to the World Bank's consideration of financing of a hydroelectric project in the Mazaruni River, a tributary of the Essequibo River. A few years later, in July 2000, Venezuela intervened with the People's Republic of China to object to the issuance of a forestry concession by Guyana to Jilin Industries, Ltd., a Chinese company, and in August 2013, the Venezuelan navy seized the *RV Teknik Perdana* research vessel while it was conducting seismic activities off Guyana's Essequibo coast for the Anadarko Petroleum Corporation. The vessel and its crew were arrested and detained in Venezuela. This resulted in the cessation of all further exploration activities in Guyana's waters by that company.

The bullying continued, with objection in April 2014 to a hydroelectric project contemplated by Guyana and Brazil and a decree issued by Maduro in July 2015, which asserted sovereignty over the entire Guyanese coast between the boundary established by the 1899 Award and the mouth of the Essequibo River and asserted exclusive jurisdiction in all the waters adjacent to that coast out to a distance beyond 200 nautical miles. Not content with this move, to which Guyana and supportive countries and groups around the world objected, the following month Venezuela objected to mining concessions issued by the Guyana Geology and Mines Commission. Further, in February 2018, Venezuela objected to the issuance of petroleum licenses to ExxonMobil in waters near the mouth of the Essequibo River, cautioning Guyana and ExxonMobil against taking any action under Guyana's license.

As if those intimidation efforts were not enough, on January 7, 2021, Venezuelan president Maduro launched a series of saber-rattling measures, most notably issuing <u>Decree No. 4.415</u>, which claimed exclusive rights in the waters and seabed extending 200 nautical miles off the Orinoco Delta. The decree created a strategic zone, the "Territory for the Development of the Atlantic Façade," that abuts Guyana's maritime space northwest of the Essequibo River—where several oil fields have been discovered—including the Atlantic façade of the Orinoco Delta up to 200 nautical miles.

GLOBAL A M E R I C A N S

According to Maduro, establishing the zone is "part of the battery of legal, diplomatic, political and State actions to defend our sacred rights of 200 years of the Republic." The decree provides for a single board of directors—comprised of representatives from the seven vice presidencies, the armed forces, and the Ministry of Foreign Affairs—to manage all aspects of the "strategic area," including revenue, taxes, and import facilities. Understandably, Guyana has rejected this attempt to encroach upon its territory and petroleum resources. In a special address to the nation on January 9, 2021, President Irfaan Ali declared that "Venezuela's attempt to claim for itself the seas and seabed adjacent to the coast west of the Essequibo River is another legal nullity, which will receive no legal regard from any other State in the world, including Guyana."

### **Latest, Desperate Playbook Moves**

Venezuela's latest bullying attempt has two aspects: one from the presidency, and the other from the legislature. The former is a statement issued by the foreign ministry on September 19, 2023, that is pregnant with arrogance and belligerence. Among other things, the statement declared: "The Bolivarian Republic of Venezuela strongly rejects the illegal bidding round for oil blocks currently being carried out by the Government of the Cooperative Republic of Guyana, since it intends to have maritime areas pending delimitation between both countries."

Pushing the envelope of arrogance further, the communique contended that "the Government of Guyana does not have sovereign rights over these maritime areas and consequently any action within their limits is in violation of international law, as long as they are not carried out through an agreement with Venezuela." Moreover, the missive asserted that Venezuela "reiterates that any illicit and arbitrary concession that Guyana grants, has granted or intends to grant in the areas in question is unacceptable and violates its sovereign rights, and warns that these actions do not generate any type of rights for third parties to participate in this process." Understandably, the Venezuelan posture evoked swift and firm repudiation by Guyana. The Organization of American States (OAS), the United States, the Caribbean Community (CARICOM), and the Commonwealth Secretariat also denounced Venezuela's position.

Venezuelan authorities felt obliged to go further, though. So, two days after the communique was issued, the country's National Assembly approved a resolution to hold a "consultative referendum" intended to "allow the Venezuelan people to express their views on a significant territorial dispute – Venezuela's claim over the Essequibo territories." Jorge Rodríguez, president of the National Assembly, argued that the referendum would provide an opportunity for Venezuelans to "demonstrate and reiterate their commitment to defending the Essequibo in the face of attempts to violate the integrity of the national territory."

Interestingly, the legislative action was partly a response to the strong response by the United States to the September 19 statement. Indeed, in his September 23 speech to the United Nations General Assembly, Foreign Minister Yvan Gil explained: "Two days ago, Venezuela's National Assembly unanimously decided to call our people to vote in a consultative referendum to ratify the defense of our sovereign territory against the aggressions of the American empire, which wants to lead us to a war for natural resources." All this begs the question: what prompted this action by the two branches of the Venezuelan government?



#### What Explains the Latest Moves?

Truth be told, Venezuela has not been consistently hostile to Guyana. As Brazilian scholar <u>Paula Gomes Moreira</u> reminds us, "Between the 1980s and 1990s, Venezuelan foreign policy, marked by a strong integrationist project and incentives for oil exploration, allowed relations with Guyana to soften." Indeed, President Hugo Chávez visited Guyana in 2004 and <u>downplayed the claim</u>, even making Guyana a beneficiary of Petrocaribe, which he established in 2005.

Venezuela's latest bullying move comes in the wake of another recent step by Guyana in its journey along the corridors of oil power—the announcement of the winners of Guyana's first-ever auction of some of its oilfields, 14 blocks, ranging from about 1,000 square kilometers to 3,000 square kilometers, with the majority of them being close to 2,000 square kilometers. The inaugural oil auction closed on September 12, 2023. Eight of the 14 blocks received bids from six groups of companies.

Bids were submitted from individual companies and joint ventures from several countries the world over. They included Total Energies EP Guyana B.V., Qatar Energy International E&P LLC, and Petronas E&P Overseas Ventures SDN BHD (Malaysia); Delcorp Inc – Guyana, Watad Energy, Arabian Drillers (Saudia Arabia); Exxon Mobil Guyana Limited, HESS New Ventures Exploration Limited, and CNOOC Petroleum Guyana Limited; Liberty Petroleum Corporation (USA) and Cybele Energy Limited (Ghana); Sispro Inc. (Guyana); and lastly International Group Investment Inc. (Guyana), in joint venture with Montego Energy SA (London).

The announcement of the outcome of the auction bid round represented another successful step along the country's oil power journey. In September 2023, Minister Deodat Indar provided a window into the republic's oil power trajectory, indicating that, by the end of this year, the country's production will stand at 600,000 barrels of oil per day, and that by the end of 2027, it is projected to reach 1.3 million barrels per day, generated by an anticipated seven floating production, storage, and offloading (FPSO) vessels. Venezuela recognizes this progress and projection for what they are—phenomenal and incredibly lucrative—and its expansionist impulse, first publicly exposed in 1975 by the late Dr. Eric Williams, then Prime Minister of oil-and-gasrich Trinidad and Tobago, at a convention of the ruling People's National Movement, compels it to continue its campaign for the resource-rich Essequibo.

The intimidation measures have coexisted with Venezuela's calls for Guyana to strike a bilateral political deal over the matter, as well as their diplomatic overtures to other Latin American countries to "sell the case" about their Essequibo claim. They adopted a new tactic in their diplomatic toolbox on September 28, 2023, when President Maduro used the social network *X* to post the following: "I ordered the Venezuelan diplomatic team to present to the Caribbean governments precise documentation demonstrating our historical rights in the dispute over the Essequibo Territory." Thus, Venezuela is extending its diplomatic campaign to Guyana's first line of diplomacy protection, hoping to capitalize on sympathies, especially in the Eastern Caribbean, about the possible resurrection of the Petrocaribe concessionary oil deal.

So, the Intimidation Playbook remains open. Its use over the years has stymied Guyana's economic development pursuits, although the bullying has fallen far short of its overall intent, which is to stymie progress in the Essequibo—and, therefore Guyana, given the territory's size and wealth—



generally and the country's petroleum pursuits particularly. Yet, Venezuelan leaders have become so invested in their misguided patria pursuits over the last six decades that one is compelled to ask: can Venezuela be made to stop the bullying?

#### **Intermestic Factors and Dangerous December Days**

The answer to this question depends on domestic and international developments and factors. On the domestic front, several political realities spawn a healthy skepticism about the intimidation ending any time soon. For one, the country's patria pursuit has long been a key aspect of campaigns for political power, with contestants drumming up doses of jingoism they feel advantageous to their bids for power. Keep in mind that presidential elections are scheduled to be held in 2024 to choose a president for a six-year term that begins in January 2025.

Maduro is already positioning himself to retain power by hamstringing potential challengers. For instance, this past June, a leading candidate, María Corina Machado, was disqualified from participating in the vote because of alleged political crimes. Moreover, shortly after the December 3 referendum, which is discussed below, Venezuelan prosecutors ordered the arrest of a dozen opposition leaders, including former National Assembly leader Juan Guaidó and three campaign staffers of presidential candidate Maria Corina Machado, alleging that they conspired against the referendum. It should be noted, though, that use of the Essequibo as political football is not restricted to contestation for the presidency; it happens in relation to jockeying for National Assembly positions, and even some mayoral ones. Thus, it is reasonable to expect the Essequibo will also feature in the next set of National Assembly and local government elections that will be held in 2025.

On the international front, there is a multiplicity of possible influencing factors, only one of which can be addressed here. Venezuela's pursuit of membership in the BRICS (Brazil, Russia, India, China, and South Africa) group provides an opening to explore possible behavior modification. Guyana should work the BRICS diplomatic corridors to inform current BRICS members of the nature and consistency of Venezuela's intimidation and the awkwardness of embracing a nation with such overt designs to vanquish a neighbor on the way to becoming an oil powerhouse. So, in the short term, hope and happenstance are the best that could be envisaged insofar as the end of Venezuela's bullyism of its smaller and weaker neighbor is concerned, unless the international influencing factor noted above comes into play. Curiously, it's a combination of domestic and international factors that have been animating Venezuela's actions in the month of December that take the nation to the edge of the conflict precipice, with psychological warfare and threat of annexation.

December 3, 2023, was a consequential date in the saga. On October 23, 2023, one month after passage of the National Assembly Resolution, the authorities announced that the <u>five-part referendum</u> will be held on that date. Among other things, Venezuelans were invited to reject the 1899 Arbitral Award, approve of the 1966 Geneva Agreement as the sole binding mechanism to resolve the controversy, and repudiate ICJ jurisdiction in the matter. Moreover, the referendum asked for agreement about creation of a new state to be called *Guayana Esequiba*, while granting Venezuelan citizenship and identity cards to Essequibo residents, along with "accelerated social programs." In order to provide a veil of legitimacy to the pursuits, on November 1, 2023, the



country's Constitutional Chamber of the Supreme Court of Justice pronounced positively on the constitutionality of the questions for the referendum.

Expectedly, Guyana firmly rejected this move, with the ruling party and the parliamentary opposition joining in a patriotic embrace to meet this latest intimidation development. President Irfaan Ali and Opposition Leader Aubrey Norton joined by their respective delegations, met and issued a joint statement in which they condemned "the flagrant violation of the rule of law by Venezuela" and agreed to spare no effort to resist the Bolivarian Republic's "persistent endeavors to undermine Guyana's sovereignty and territorial integrity." Further, the two leaders saw the necessity for a "vigorous and comprehensive public relations program and a proactive and robust diplomatic effort aimed at blunting Venezuelan propaganda and misinformation."

Moreover, the <u>Caribbean Community (CARICOM)</u> rightly contended that Venezuela's planned plebiscite has no standing in international law, although it can serve to undermine peace and security in the region. Commonwealth Secretary-General Patricia Scotland also repudiated Venezuela's posture, restating the organization's "firm and steadfast support for the maintenance and preservation of the sovereign and territorial integrity of Guyana, and the unobstructed exercise of its rights to develop the entirety of its territory for the benefit of its people." Even so, Guyana felt compelled to go beyond issuing declarations and galvanizing the support of friends.

Thus, on November 1, 2023, the Guyana government filed an urgent <u>request for provisional measures</u> with the ICJ, asking the Court to issue an order that prevents Venezuela from taking any action to seize, acquire or encroach upon, or assert or exercise sovereignty over the Essequibo region or any other part of Guyana's national territory pending the Court's final decision of the case about the validity of the 1899 Arbitral Award that's currently before it. The urgency of the matter prompted Guyana to ask the ICJ to schedule oral hearings on its request at the earliest possible date before the referendum. The Court scheduled oral hearing on November 14, 2023, and Court rendered its decision on December 1, 2023, on the eve of the referendum.

The <u>ICJ decision</u> was noteworthy in several respects. Among other things, it stated:

- 40. In the present case, having considered the terms of the provisional measures requested by Guyana and the circumstances of the case, the Court finds that the measures to be indicated need not be identical to those requested.
- 41. The Court observes that the situation that currently prevails in the territory in dispute is that Guyana administers and exercises control over that area. The Court considers that, pending the final decision in the case, Venezuela must refrain from taking any action which would modify that situation.
- 42. The Court emphasizes that the question of the validity of the 1899 Award and the related question of the definitive settlement of the land boundary dispute between Guyana and Venezuela are matters for the Court to decide at the merits stage.
- 43. The Court recalls that Guyana has requested it to indicate measures aimed at ensuring the non-aggravation of the dispute with Venezuela. When indicating provisional measures for the purpose of preserving specific rights, the Court may also indicate provisional measures with a view to preventing the aggravation or



extension of a dispute whenever it considers that the circumstances so require (see Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), Provisional Measures, Order of 16 March 2022, I.C.J. Reports 2022 (I), pp. 229-230, para. 82). In the current case, having considered all the circumstances, in addition to the specific measure it has decided to take, the Court deems it necessary to indicate an additional measure directed to both Parties and aimed at ensuring the non-aggravation of the dispute between them.

44. The Court recalls that its orders indicating provisional measures under Article 41 of the Statute have binding effect and thus create international legal obligations for any party to whom the provisional measures are addressed (Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), Provisional Measures, Order of 16 March 2022, I.C.J. Reports 2022 (I), p. 230, para. 84.)

45. For these reasons,

THE COURT indicates the following provisional measures:

(1) Unanimously,

Pending a final decision in the case, the Bolivarian Republic of Venezuela shall refrain from taking any action which would modify the situation that currently prevails in the territory in dispute, whereby the Co-operative Republic of Guyana administers and exercises control over that area;

(2) Unanimously,

Both Parties shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve.

Although the ICJ warned Venezuela not to pursue any action that would alter the status quo in the situation, it did not directly prohibit the holding of the referendum, which was among the requests made by Guyana. Consequently, the elites in Venezuela deemed the decision a victory. According to <u>Vice President Delcy Rodriguez</u>: "The Cooperative Republic of Guyana has expressly asked for the referendum not to be held or that questions one, three and five be modified. In its decision, the court tossed aside this unprecedented and baseless request that involves a matter that is of the exclusive domain of Venezuela. ... Nothing will prevent the Venezuelan people from expressing themselves freely on December 3."



The Bolivarian Republic proceeded with the referendum, which posed <u>five</u> questions:

- 1: Do you agree to reject, by all means in accordance with the Law, the line fraudulently imposed by the 1899 Paris Arbitral Award, that seeks to strip us of our Guayana Esequiba?
- 2: Do you support the 1966 Geneva Agreement as the only valid legal instrument for reaching a practical solution satisfactory to Venezuela and Guyana, in relation to the controversy over the Guayana Esequiba territory?
- 3: Are you in agreement with the historic position of Venezuela of not recognizing the jurisdiction of the International Court of Justice to resolve the Guayana Esequiba territorial controversy?
- 4: Do you agree to oppose, by all means, in conformity with the Law, Guyana's pretension of unilaterally making use of a sea pending delimitation, illegally and in violation of international law?
- 5: Are you in agreement with the creation of a Guayana Esequiba State and for an accelerated plan to be developed for comprehensive attention to the present and future population of that territory that would include, among other things, the granting of Venezuelan citizenship and identity cards, in conformity with the Geneva Agreement and International Law, consequently incorporating said State on the map of Venezuelan territory?

Caracas claimed a massive victory, alleging that 10.55 million votes, or 97.8 percent of the total cast, were favorable, although the reported participation did not match the empty voting stations seen the day of polling and was about twice as high as reported in independent exit polls. Feeling empowered by the plebiscite and clearly driven by domestic political vicissitudes, Maduro made another consequential decree on December 5, 2023, that outlined several <u>far-reaching steps</u>, that, considered together, portend virtual annexation. Maduro declared: "I create a new High Commission for the Defense of Guyana Esequiba, broad and made up of the National Defense Council, the Federal Council of Government, the National Security Council and all political, religious and academic sectors, especially the country's universities. It will be coordinated by Dr. Delcy Rodríguez."

The Venezuelan leader also delivered to National Assembly President Jorge Rodríguez the draft of the bill to facilitate passage of the Organic Law for the Defense of Guayana Esequiba, in order to formally create the new—and 24<sup>th</sup>—state, to be called Guayana Esequiba. Rodriguez promised to convene the National Assembly on December 6 to secure the desired outcome. Maduro also announced the creation of the Guayana Esequiba Integral Defense Zone (ZODI) with three integral development areas and 28 integral development sectors, dependent militarily and administratively on the Guayana Integral Defense Region (REDI). He designated Major General Alexis Rodríguez Cabello as the Sole Authority of Guayana Esequiba, whose political-administrative headquarters will be in Tumeremo, located in Bolívar state, a mere 75 kilometers from the border with Guyana Essequibo.

ong the nd CVG-Esequiba

There were other significant announcements on that fateful December day. Among other things, Maduro ordered Petróleos de Venezuela (PDVSA) and the Corporación Venezolana de Guayana (CVG) to create the PDVSA-Esequiba and CVG-Esequiba divisions, and to proceed immediately to grant operating licenses for the exploration of oil, gas, and minerals throughout the new state. Quite significantly, too, he unveiled a new national map, shown in Figure 3 below, and ordered that it be displayed in all schools and universities in the nation. The map was unveiled in the National Assembly on December 8, 2023. Indeed, were Venezuela to have its way, the Cooperative Republic of Guyana would be a mere 21,400 square miles—about half the size of Cuba—and be cartographically represented as shown in Figure 4.

Figure 3: New Map of the Bolivarian Republic



Source: "Estas son las nueve acciones anunciadas por el Presidente Maduro para la recuperación de la Guayana Esequiba," Alba Cuidad 96.3 FM, December 5, 2023, available at <u>Estas son las nueve acciones anunciadas por el Presidente Maduro para la recuperación de la Guayana Esequiba (+Video) – Alba Ciudad 96.3 FM</u>



Figure 4: Guyana without the Essequibo



Source: Microsoft Bing Images, 2023.

Furthermore, Maduro ordered the development of a Social Care Plan for residents of the new state, the carrying out of a census in the Essequibo, the beginning of the delivery of identity cards, and the opening of an office of the SAIME (Administrative Service for Identification, Migration, and Foreigners) in Tumeremo to direct the efforts of identity for the inhabitants. Preparation for the distribution of identity cards began on December 9, 2023. In addition, the Venezuelan leader proposed legislation that would prohibit the hiring of companies that operate or collaborate in the delimited areas and gave oil and mining companies operating in the delimited area three months to withdraw from the zone. Maduro also addressed the issue of the environment, proposing a special law and declaring protected areas with national parks that would be centers of tourism and biodiversity.

There is little doubt that Maduro's referendum and subsequent actions crossed a line of international legality. One legal scholar, Nicholas Tsagourias, Professor of International Law at the University of Sheffield and Director of the Sheffield Centre of International and European Law, explained that "Venezuela's actions following the referendum but also the referendum itself constitute an unlawful threat of force. They demonstrate Venezuela's readiness to use force to annex the region if its claim over the territory is not met. These actions include the military preparations, the creation of the state of Guayana Esequiba and the granting of exploitation licenses to companies." Writing in a December 18 blog post for the European Journal of International Law, he indicated that although holding a referendum falls within the country's domestic jurisdiction, its timing, and the questions asked, confirm the assessment that annexation was

contemplated, especially when one recalls official statements such as "We are absolutely determined to recover our Guayana Esequiba." Tsagourias made the further point that: "Since the forcible annexation of territory is unlawful, the threat to do so is also unlawful."

The declarations made on December 5 reflect deep thinking, planning, and action over several preceding months and they suggest that Venezuelan political elites are in full delusional mode. Undoubtedly, the psychological warfare and positioning for annexation have a broad range of geopolitical and other implications, only a few of which can be addressed here. Believe it or not, the implications are not only geopolitical; they have international business ramifications, one of which was the December 18 announcement by global insurance giant <u>Lloyd's of London</u> that their Market Association's Joint War Committee was adding Guyana to its list of the riskiest shipping zones because of escalating environment. This decision likely will increase the cost of shipping crude from Guyana's offshore installations.

#### **Geopolitical Implications**

The point was made <u>elsewhere</u> that the referendum and construction of military bases present just as many security-geopolitics red flags as a Chinese Communist Party people's parade. The danger signals are glaring about Venezuela's stage-setting in three inter-connected areas: whipping up nationalist sentiment to position President Nicolás Maduro to retain power when presidential elections are held next year; skepticism about prevailing at the ICJ and, therefore, positioning the country to repudiate the Court's decision; and psychological and security preparation for the possible annexation of the Essequibo, perhaps to induce Guyana to come to the bilateral negotiation table, a long-held aim.

The audacity of annexation would be a death-knell for Guyana as a nation and would create geopolitical ripples involving Brazil, the United States, China, Colombia, Britain, CARICOM, the Commonwealth, the Organization of American States (OAS), and the United Nations, among other state and international entities. Brazil is a key factor in the geopolitical matrix. First, a revision of the frontier between Guyana and Venezuela would require revision of Brazil's borders with both Guyana and Venezuela, as the Brazil-Guyana-Venezuela trijunction point was settled in 1932 as a result of the 1899 Award. Remember, too, that Brazil, which has the world's third longest land border, behind China and Russia, has borders with every country in South America except Chile and Ecuador, some of which have dispute elements. Significant, too, is that the state of Roraima in Brazil is one of the two overland access points from Venezuela to Guyana, and Brazil has been unambiguous that Venezuelan forces will not be allowed to transit through its territory. As a matter of fact, in November 2023, Brazil placed its security forces on heightened alert, and shortly after the referendum, it deployed additional forces to Roraima to deter any deployment through that state.

The United States, China, and Britain are among countries that have massive investments in petroleum and other pursuits in both Guyana and Venezuela and would be significantly impacted by any annexation action. Moreover, annexation would activate Article 4 of the <u>treaty</u> of the Regional Security System (RSS), which Guyana joined in 2022. Article 4 specifies:

The Member States agree that an armed attack against one of them by a third State or from any other source is an armed attack against them all, and consequently agree that in the event of such an attack, each of them, in the exercise of the inherent right of individual or collective self-defense recognized by Article 51 of the Charter of the United Nations, will determine the measures to be taken to assist the State so attacked by taking forthwith, individually or collectively, any necessary action, including the use of armed force, to restore and maintain the peace and security of the Member State.

Annexation would also trigger action by the United Nations Security Council. Quite importantly, in terms of the posture of global and hemispheric powers, both the United States and Brazil restated their staunch support for Guyana at the November 1, 2023 meeting of the OAS Permanent Council. Notable, too, Alistair Routledge, president of ExxonMobil Guyana, has stated plainly that the oil giant is not intimidated by the Venezuelan moves, and he has assured Guyana and the world that ExxonMobil will continue its business dealings with the Guyana government once the terms are favorable to them. In after the referendum, ExxonMobil made it clear that: "We are not going anywhere – our focus remains on developing the resources efficiently and responsibly, per our agreement with the Guyanese government."

All things considered, annexation is not probable. Yet, Maduro has been known to act irrationally or erratically. As such, it is not beyond the realm of possibility, especially considering the following observations. First, it would not be the first time that Guyana was a victim of annexation, although the first episode was miniscule compared to a grab of the entire Essequibo. Recall that one of the earlier bullying actions reported by Guyana in its March 2018 submission to the ICJ was the action in October 1966, when the Venezuelan military seized the eastern half of Ankoko Island in the Cuyuni River, on the Guyana side of the boundary created by the 1899 Award and the subsequent 1905 Agreement. Later, they built military installations and an airstrip there. Guyana has not been able to evict them.

Second, Maduro has been a staunch supporter of annexation efforts elsewhere. Indeed, he was one of the first—and few—world leaders to embrace the Russian invasion of Ukraine, viewing Vladimir Putin's action as justified to right a historic wrong. Third, the world's preoccupation with Russia's Ukraine foray and the Israeli-Hamas conflict could well embolden Maduro to consider those as sufficient distractions for him to move into the Essequibo. Finally, there's the migrant factor. Since 2015, some 7.4 million Venezuelans—about nine times Guyana's entire population—have been displaced from the Bolivarian Republic. Thousands have fled across the border to Guyana, with between 24,000 and 30,000 men, women, children, and elderly seeking refuge in the neighbor to the east, not just in border areas, but also along the country's Atlantic coast.

As could be imagined, this is causing myriad difficulties for the Guyanese authorities and citizenry. Although one doubts that the migrants constitute a planned Trojan Horse by the Venezuelan political and military elites, their presence might well inspire confidence in Maduro that he has a natural—and national—constituency that could accommodate, if not actively assist, any annexation designs. For all this, one hopes that Maduro sees the annexation cost-benefit scales as balancing against him.



It is noteworthy that the government of Guyana has been adopting a holistic approach to basic security, prioritizing both the acquisition of physical assets and the establishment of strategic partnerships. The growing security partnerships are with countries as different as Brazil and India. The security partnership with the United States continues to be strengthened. Notable was the three-day visits by SOUTHCOM Commander Admiral Craig Faller in January 2021 and August 2022, and in July 2023 by his successor, General Laura Richardson, to meet with political, military, and civic leaders about enhancing security ties between the two nations. Guyana also hosted the SOUTHCOM-sponsored Tradewinds 2021 and Tradewinds 2023. Tradewinds is a training exercise with ground, air, sea, and cyber aspects that brings together forces from the United States and Caribbean and other nations.

Moreover, in the wake of the referendum and the declarations mentioned above, the <u>U.S. Embassy in Georgetown announced</u> that in collaboration with the Guyana Defence Force (GDF), the U.S. Southern Command will begin conducting flight operations within Guyana on December 7, 2023 to "build on routine engagement and operations to enhance security partnership between the United States and Guyana, and to strengthen regional cooperation." The embassy explained that the Southern Command will continue its collaboration with Guyana's military establishment in the areas of disaster preparedness, aerial and maritime security, and countering transnational criminal organizations, and stressed that the United States will continue its commitment as Guyana's trusted security partner in promoting regional cooperation and interoperability.

Noteworthy, too, as mentioned earlier, Guyana has joined the Barbados-based RSS. In March 2022, President Ali signed the RSS protocol while in Belize for a meeting of CARICOM leaders, and the following September Guyana formally became the eighth member when President Ali signed the instrument acceding to the RSS Treaty—joining Antigua and Barbuda, Barbados, Dominica, Grenada, St. Kitts and Nevis, St. Lucia, and St. Vincent and the Grenadines in the alliance that dates to 1982 and becoming the member with the largest army. Incidentally, both the GDF and the Guyana Police Force (GPF) participate in the RSS, as is the case with the other RSS members that have both defense and police forces.

RSS members are all small and subordinate states by every measure of national power—physical size, economic profile, security assets, and international clout. Yet one of those small states, St. Vincent and the Grenadines, turned out to play an out-sized role in the political-diplomatic vicissitudes of the saga. How so, one might ask?

# **Small State Leader, Big Time Interlocutor**

December 14, 2023 proved to be another consequential day in the unfolding drama. It witnessed the facilitation of meetings of the saga's key stakeholders by the leader of St. Vincent and the Grenadines, a 389-square-mile plural-island nation that is twice the size of Washington, DC. Operating under a parliamentary system of government with a unicameral legislature, the former British colony secured independence in 1979, although it has retained the monarch in London as head of state. With a 2023 population of just over 101,000, its economy revolves mainly around agriculture and tourism, and it boasts a 2021 GDP per capita of USD 13,700. The main island is volcanic, with the La Soufrière volcano erupting last in 2021. The country has no standing army.



Dr. Ralph Everard Gonsalves, the country's 77-year-old Prime Minister (now in his fifth term), is the elder statesman of CARICOM, being the longest continuously serving prime minister in the group. A scholar-statesman with a doctorate in government from the University of Manchester, the former University of the West Indies professor has several books to his credit, including *A Time of Respair*, *Our Caribbean Civilization*, and *Our Caribbean and Global Insecurity*. The left-leaning leader had long developed a close personal and political friendship with Maduro (and Chávez before him), with his nation being a beneficiary of Venezuelan largesse, notably Petrocaribe. Indeed, in 2022, he was able to obtain a 100 percent forgiveness of his nation's oil debt of Eastern Caribbean \$189 million (USD 69.4 million) to Venezuela under Petrocaribe.

Gonsalves leveraged his respect within CARICOM, the reservoir of trust by Maduro, and his role as President *Pro Tempore* of the Community of Latin American and Caribbean States (CELAC) to secure the agreement of presidents Ali and Maduro to meet, with him as interlocutor. Other key stakeholders would be present. The letter of invitation explained that "Both Prime Minister Roosevelt Skerrit, chair of CARICOM, and I, as Pro-Tempore President of CELAC, are available to assist in whatever constructive way each of you may suggest or require." It observed that "Given the recent events and circumstances attendant upon the border controversy, the leaderships of CELAC and CARICOM have assessed, in the interest of all concerned, including our Caribbean and Latin American civilizations, the urgent need to de-escalate the conflict and institute an appropriate dialogue, face-to-face, between the Presidents of Guyana and Venezuela," noting: "Clearly, each of you has to summon the proverbial wisdom of Solomon, the patience of Job, and the foresight of all the ancient prophets to engender good neighborliness in peace, justice, security, and prosperity for all concerned."

Maduro's bellicosity and skewed expectations prior to the meeting almost derailed it. In his December 11 acceptance letter to Gonsalves, he made several <u>tendentious assertions</u>. Among other things, he declared his intent to "directly address the territorial dispute between Venezuela and Guyana," contending that the mandate to annex the Essequibo was given to him by the Venezuelan people in the December 3, 2023 referendum. The Venezuela leader also cited the outcome of the referendum as his nation's rejection of the ICJ as an appropriate mechanism to resolve the controversy, declaring the Geneva Agreement as the sole basis for the resolution. Moreover, he declaimed against "the arrogant and illegal attitude of the U.S. oil transnational Exxon Mobil, which has been the recipient of concessions in a maritime area yet to be delimited."

Needless to say, Ali rejected Maduro's contentions firmly. In his December 12, 2023 acceptance missive to Gonsalves, he asserted "it is incumbent upon me to respond to certain inaccuracies in President Maduro's letter to you of December 11, 2023. Particularly his statement that the 'highlevel dialogue' is intended to "directly to address the territorial dispute between Guyana and Guyana." Guyana's leader also was adamant that: "the land boundary is not a matter for bilateral discussions and the settlement of the matter is properly in the International Court of Justice where it must remain until the Court gives its final ruling on the merits of the case which, Guyana has always said, and I repeat, will be fully respected by Guyana." He also made it clear that "Contrary to that misleading assertion, all of the oil blocks are located well within Guyanese waters under international law, including the United Nations Convention on the Law of the Sea, which guarantees coastal States the exclusive rights to the resources in the sea and seabed within 200 nautical miles of their coasts. The oil blocks are all located adjacent to Guyana's coast and within 200 nautical miles of it."

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Nonetheless, Gonsalves' diplomatic overture was consummated, with six hours of meetings held at Argyle International Airport. As regards attendance, in addition to the presidential delegations from Guyana and Venezuela, the prime ministers of The Bahamas, Barbados, Dominica, Grenada, St. Kitts and Nevis, St. Lucia, and Trinidad and Tobago were also present. So, too, was Celso Amorim, special adviser to the president of Brazil. In addition, Alvaro Leyva Durán, Minister of Foreign Affairs of the Republic of Colombia and Mr. Gerardo Torres Zelaya, Vice-Minister of Foreign Affairs of the Republic of Honduras, who are part of the CELAC Troika, Courtenay Rattray, the chief of staff for United Nations Secretary-General António Guterres, and Miroslav Jenča, the assistant secretary-general for Europe, Central Asia, and the Americas, also participated as observers.

#### The Argyle Declaration

The meetings were held in <u>three phases</u>, the first involving the Guyanese team and the CARICOM leaders. The second involved the CARICOM leaders and the Venezuelan delegation, and the third was the meeting of the Guyanese and Venezuelan teams. All parties attending the meetings reiterated their commitment to Latin America and the Caribbean remaining a Zone of Peace. Importantly, the leaders of Guyana and Venezuela issued a document called "The Joint Declaration of Argyle for Dialogue and Peace between Guyana and Venezuela" (or <u>Argyle Declaration</u>).

## According to the 11-point statement:

Guyana and Venezuela declared as follows:

- 1. Agreed that Guyana and Venezuela, directly or indirectly, will not threaten or use force against one another in any circumstances, including those consequential to any existing controversies between the two States.
- 2. Agreed that any controversies between the two States will be resolved in accordance with international law, including the Geneva Agreement dated February 17, 1966.
- 3. Committed to the pursuance of good neighborliness, peaceful coexistence, and the unity of Latin America and the Caribbean.
- 4. Noted Guyana's assertion that it is committed to the process and procedures of the International Court of Justice for the resolution of the border controversy. Noted Venezuela's assertion of its lack of consent and lack of recognition of the International Court of Justice and its jurisdiction in the border controversy.
- 5. Agreed to continue dialogue on any other pending matters of mutual importance to the two countries.
- 6. Agreed that both States will refrain, whether by words or deeds, from escalating any conflict or disagreement arising from any controversy between them. The two States will cooperate to avoid incidents on the ground conducive to tension between them. In the event of such an incident the two States will immediately communicate with one another, the Caribbean Community (CARICOM), the Community of Latin America and the Caribbean (CELAC), and the President of Brazil to contain, reverse and prevent its recurrence.
- 7. Agreed to establish immediately a joint commission of the Foreign Ministers and technical persons from the two States to address matters as mutually agreed. An update from this joint commission will be submitted to the Presidents of Guyana and Venezuela within three months.



- 8. Both States agreed that Prime Minister Ralph E. Gonsalves, the Pro-Tempore President of CELAC, Prime Minister Roosevelt Skerrit, the incumbent CARICOM Chairman, and President Luiz Inacio Lula da Silva of Brazil will remain seized of the matter as Interlocutors and the UN Secretary-General, Antonio Guterres as Observer, with the ongoing concurrence of Presidents Irfaan Ali and Nicolas Maduro. For the avoidance of doubt, Prime Minister Gonsalves' role will continue even after Saint Vincent and the Grenadines ceases to be the Pro-Tempore President of CELAC, within the framework of the CELAC Troika plus one; and Prime Minister Skerrit's role will continue as a member of the CARICOM Bureau.
- 9. Both States agreed to meet again in Brazil, within the next three months, or at another agreed time, to consider any matter with implications for the territory in dispute, including the above-mentioned update of the joint commission.
- 10. We express our appreciation to Prime Ministers Gonsalves and Skerrit, to President Lula and his Personal Envoy Celso Amorim, to all other CARICOM Prime Ministers present, to the officials of the CARICOM Secretariat, to the CELAC Troika and to the Head of the CELAC PTP Secretariat in Saint Vincent and the Grenadines, His Excellency Dr. Douglas Slater, for their respective roles in making this meeting a success.
- 11. We express our appreciation to the Government and people of Saint Vincent and the Grenadines for their kind facilitation and hospitality at this meeting.

The December 14 dialogues witnessed a lowering of the hostility decibel and allowed the Americas to breathe a sigh of relief that conflict now seems unlikely. Thus, the Declaration represents "wins" by the Caribbean and the Americas as a whole. Yet, the statement contains some curious—and worrying—aspects. For instance, it leads with a mischaracterization of the circumstances involved; that the two parties "will not threaten or use force against one another in any circumstances, including those consequential to any existing controversies between the two States." In fact, Guyana has never threatened to use or actually used force; Venezuela has had the dubious distinction of being the sole practitioner in this regard.

One wonders why, after principled insistence that the controversy needed to work its way through the ICJ process, Ali gave Maduro a clear "win" with the Declaration's mention of the Geneva Agreement as one of the dispute resolution mechanisms, which, according to Maduro, was "mandated" by the December referendum. This opens the prospect for Venezuela to ignore the ICJ if it affirms the validity of the 1899 Award or to continue to reject the Court's jurisdiction and demand that the parties use the Geneva Agreement. The Geneva Agreement would, thus, legitimize the pursuit of the long-held desire for a bilateral deal.

Also troubling is that while the Geneva Agreement made the United Nations Secretary General the principal actor regarding the mechanism for resolution of the controversy, the Argyle Declaration confers that role on Gonsalves and Lula, with the Secretary General relegated to the position of Observer. Moreover, I share the anxiety of one regional editorial: "What remains troubling, though, is the fact that there was no consensus on the proper global jurisdiction to settle the dispute, because while Guyana maintains that the International Court of Justice (ICJ) is the appropriate authority to rule on this matter, Venezuela has rejected the court's jurisdiction over the issue." Curiously, too, by agreeing to inclusion of "to consider any matter with implications for the territory in dispute" in Point 9, Guyana seems to have varied from—hopefully, not



abandoned—its decades-long position that there existed no "dispute" over the Essequibo; that what existed was a controversy over the contention by Venezuela that the 1899 Arbitral Award is null and void.

Finally, one wonders about the expected utility of the Argyle Joint Commission when neither the Geneva Agreement Mixed Commission nor the decades-long U.N. Secretary General's Good Offices was able to resolve the matter. Actually, it was the exhaustion of Geneva Agreement measures that led the Secretary General to green-light the referral of the matter to the ICJ. Indeed, in his December 12, 2023 letter to Gonsalves, his second one related to the meeting, Ali himself explained that "during the entire period of the existence of the Geneva Agreement, there have been several tools utilized. These include four (4) years (1966 -1970) of meetings through a Mixed Commission involving bilateral talks between Guyana and Venezuela, a twelve (12) year moratorium followed by twenty-eight (28) years (1989 – 2017) of the Good Offices Process under the aegis of the United Nations Secretary General."

Needless to say, although the political and security temperatures have been lowered with the meeting in St. Vincent and the Grenadines, the controversy has not been resolved. Plus, Maduro's political desire to retain power come next year's presidential elections remains intact. Thus, curiosity about the likelihood that he will honor the Argyle Declaration calls to mind the maxim attributed to French philosopher René Descartes: "To know what people really think, pay attention to what they do, rather than what they say." It is noteworthy that the Argyle Declaration did not commit Venezuela to demolishing its annexation architecture—the new map shown at Figure 3, the arrangements for identification cards, appointment of an administrator for the new state, etc.

As a matter of fact, as if to rub Bolivarian salt in Guyana's petro-power-in-the-making wounds, Maduro even arrived for the Argyle dialogue in a presidential jet on which his new map was emblazoned, and he has made provisions for the new state in the national budget for 2024. Believe it or not, Vice President Rodríguez presented the <u>budget</u>, which totaled 729 billion bolívars (USD 20.5 billion), to the National Assembly on the very day of the Argyle meeting—December 14, 2023—and she took pride in explaining that "for the first time, the defense of Guayana Esequiba was included in the nation's budget, in compliance with the mandate issued by the Venezuelan people in the consultative referendum."



#### Conclusion

Even as Venezuela was reaching into its Intimidation Playbook in planning the consequential December 3 referendum, it was rolling out elements of psychological warfare, with a massive propaganda campaign, military maneuvers near Guyana's border, and construction, beginning the previous October, of a military airstrip in the La Comorra section of Bolívar state in southeast Venezuela, which abuts Guyana to its west. Needless to say, in the long term, behavior modification by Venezuela will depend on the decision of the ICJ on the validity of the 1899 Arbitral Award, the Bolivarian Republic's reaction to it, and whether the U.N. Security Council becomes engaged as a compliance mechanism if the ICJ declares the 1899 Award as valid.

Whatever the trajectory of the saga as December 2023 gives way to January 2024, the month of December will occupy a prominent page in the annals of the history of both Guyana and Venezuela, if not the Americas writ large, although narratives will likely be presented differently by varying statesmen and scholars. Without a doubt, though, the unfolding events clearly show the danger of being taken to the brink of war and the myriad, all-consuming implications involved. The saga obliges one to recall the words of distinguished Caribbean lyricist Martin Carter in his epic 1954 poem, "You are involved:"

This I have learnt:

today a speck

tomorrow a hero

hero or monster

you are consumed!

Like a jig
shakes the loom;
like a web
is spun the pattern
all are involved!
all are consumed!



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