

The art of the possible

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A Prelude to the Campaign

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EXECUTIVE SUMMARY

8 April 2024 will be the Venezuelan government's last chance to act at the International Court of Justice in defense of its rights over the Essequibo region.

Even though a clear judicial route exists for addressing the Essequibo conflict, on December 3, the Maduro government opted for calling a consultative referendum on the issue, thus politicizing it. Guyana objects the referendum and requested a protective measure from the ICJ to prevent it. The court's ruling is expected on November 30.

Apparently, Maduro needed to take back the political offensive to unite his base still disconcerted by three events: the unexpected massive voter turnout in the opposition primary election; the revelation that he has been conducting bilateral negotiations with the "imperialist" Biden administration; and the signing of the Barbados Agreement. Said Agreement, by committing Maduro to establish competitive electoral conditions, puts at risk Chavismo's continued hold on power.

Guyana experiences the strongest GDP growth in the world and has become an investment destination for Chevron, ExxonMobil and China National Offshore Oil Corporation. It does not have the right to grant concessions in the area under claim, but the logic of the "fait accompli" and the low probability that Venezuela can recover its territory in the short or medium term are incentives to invest massively in the area.

What to watch for

- The International Court of Justice response to Guyana regarding Maduro's Essequibo referendum expected on November 30.
- Results of the 3 December 2023 consultative referendum.
- The communication strategy employed by the Maduro government generally, and the Ministry of Defense in particular, on the Essequibo.
- Whether the Maduro government will appoint a team of jurists to prepare the Memoir to be presented to the International Court of Justice in April 2024.

How did we get to this point?

The historic stance of twentieth-century Venezuelan governments on the border controversy began with Venezuela's rejection of a ruling made in 1899 by the Paris Tribunal of Arbitration declaring that Great Britain could claim possession of a territory greater than 159,000 square kilometers that, according to the original borders drawn by the General Captainty, belonged to Venezuela. The legal process that led to this ruling was declared null and void by Venezuela. And, in 1962, the Venezuelan government managed to put in evidence before the United Nations the process's procedural and evidentiary defects. This achievement led Venezuela to propose and win approval of the 1966 Geneva Agreement.

In the Geneva Agreement, the steps were agreed upon for resolving the controversy: establish a bilateral Commission and, if the Commission failed to succeed, resort to an "appropriate international body" or the Secretary General of the United Nations to build a pathway to a peaceful settlement per Article 33 of the Charter of the United Nations.

Article V of the Agreement stipulates that no activity or act in the disputed territory may be alleged as a basis for claiming sovereignty over it, unless such activities have been agreed upon by both parties.

Beginning in 1989, three United Nations Secretaries-General appointed different "good officers" to continue the mandate of the Agreement, without success. In the meantime, Hugo Chávez subordinated the Essequibo claim to his geopolitical alliances in the Caribbean area, where nations are aligned with Guyana's position. In order not to harm Chavismo's foreign petropolitics, he neglected to systematically follow through on Venezuela's claim.

In January 2018, UN Secretary General Antonio Guterres chose the International Court of Justice (ICJ) as a resolution mechanism. Two months later, Guyana filed a claim before the ICJ for it to recognize the validity of the 1899 Arbitration Settlement. This claim moves the discussion back to a ruling that, through the Geneva Agreement, the two sides had already ruled invalid in recognition that a bilateral and negotiated solution was called for.

At the end of that year, Guyana submitted its Memoir to the ICJ, while Venezuela submitted a memorandum alleging that the ICJ is not competent to hear the case. At the end of 2020, the ICJ declared that it is in fact competent to judge the case, and imposed a deadline until 2022 for the parties to submit their respective reports. Following an examination of objections presented by Venezuela, the period was extended to 8 April 2024.

The opinion of expert Venezuelan jurists can be summarized as follows: Since the Arbitration Award of 1899 is null and void, the way to resolve the controversy is the path dictated by the Geneva Agreement. Since the UN Secretary General sent the case to the International Court of Justice, the Venezuelan government must litigate the case and even request that the same Court issue relief measures to prevent Guyana from continuing to illegally grant territories for oil exploitation. Venezuela has implicitly recognized the ICJ by sending agents and appointing lawyers, so its position of not recognizing the jurisdiction of that Court is incoherent and illegal.

Guyana, after long years of ideological association with the “pink tide” governments and with Chávez, broke the Geneva Agreement in 2015. Its breakup stimulated oil exploration and extraction in the disputed territory under the government of David Granger, the leader who put an end to the “cooperative socialism” policies that had been adopted by previous Guyana governments. In 2020, the emblematic party in favor of that model returned to power. Irfaan Ali took over as president and adopted a policy of populist oil rent extraction that emulates that of Chávez.

Guyana GDP growth recently has been the strongest in the world, averaging 40.4% annually since 2020. The country has become an investment destination for Chevron, ExxonMobil, and China National Offshore Oil Corporation.

The logic of *fait accompli* and the scant probability that Venezuela can, whether through a ruling by the ICJ or through some other means of dispute resolution, recover its territory in the short or medium term, are incentivizing these corporations.

Guyana's position is essentially that of a tenant who stops paying rent and, although he knows that he's in the wrong, enters into an endless lawsuit with the landlord who, meanwhile, is shut out of its own property.

The political offensive: the 3 December 2023 referendum

Given the existence of a clear judicial route for addressing the Essequibo issue, what is the Maduro government trying to achieve in calling a consultative referendum bound to politicize the issue?

Several things.

The most obvious is that Maduro needs to take back the political offensive to unite his base, still disconcerted by the unexpected massive voter turnout in the opposition primary election and by the revelation of the bilateral negotiations he has been conducting with the “imperial” administration of Biden; and its outcome, the Barbados Agreement. By their thinking, the Agreement is unacceptably generous to the opposition given that, if electoral conditions are put in place that are truly competitive, he could lose power.

Second, the referendum is a way to mobilize his base, take stock of his United Socialist Party of Venezuela electoral machine's baseline capacity to bring out and win votes. The government campaign has been lavish in terms of money and entertainment (a signal that ample funds have been “saved” for next year's election campaign). The “rehearsal” or simulation carried out on November 19 produced a turnout of 3.5 million people, according to Maduro (there are no official figures from the National Electoral Council, or CNE).

Third, the secrecy and clear subordination of the CNE to the dictates of the Executive in organizing the referendum contribute to reinforcing the distrust of the opposition voter in any electoral process and to provoke the abstention that Maduro desperately needs for the presidential elections.

Moreover, the mobilizing of his base is not solely about getting out the vote but is also an appeal to people's emotional sides, to their patriotism. It is a way to engineer a new arena of conflict where “traitors” can be pitched against “patriots”. The ideological and narrative erosion of Chavismo requires renewal, a recovery of the nationalist streak it had back when it was born. This theme of renewal will be the leitmotiv for the presidential campaign as well.

The immediate challenge for the Maduro government will be to craft a credible narrative to explain the turnout for the day after the referendum. He has already let it be known through the “rehearsal” that the turnout will not fall below 3.5 million—more than the 2.3 million who voted in the opposition primary—but that it will be less than the 4 million obtained by Chavismo in the 2021 regional elections.

No recent poll data as to voting intentions for the referendum are available. Some sources suggest that 40 percent of voters would be willing to vote. This does not guarantee that they will do so. In any case, it seems that, given Maduro's disapproval readings of around 80 percent will not directly influence turnout. The issue of Essequibo does not polarize, because among Venezuelan there is a tacit historic consensus as to Venezuela's rights in this dispute. What Maduro is hoping for is precisely to *generate* polarization where none today exists.

The consequences

Following the announcement of the referendum, Guyana requested a protective measure from the ICJ to prevent it. Vice President Delcy Rodríguez appeared before the hearing called by the ICJ on November 15 to justify the referendum. The ICJ ruling is expected on November 30.

Meanwhile, Guyana has made hostile gestures against Venezuela. Its president Ali has toured part of Essequibo and planted a flag on the border with Venezuela. The Venezuelan minister of Defense, Vladimir Padrino, has multiplied his public appearances, pointing out that the Essequibo issue is of interest to the military corporation. And the government of Venezuela has announced civil works on the island of Anacoco, bordering Essequibo.

Some analysts fear an escalation of war after the referendum. However, experience shows that, with war adventures, unpopular regimes like Maduro's generally fail to win back popularity. Additionally, Guyana has strong alliances with the US, Cuba, Caricom, and China. For Venezuela, these alliances raise what would be the cost of a war. It is, however, possible that episodes of “warming” of the border will occur.

Opinions are circulating in Venezuelan public opinion that maintain that, by starting a border incident and a war with Guyana, the Maduro government could declare a state of emergency allowing him to suspend the presidential elections. This, they argue, would supply Maduro with more oxygen. These opinions are based on the false idea that the Maduro government is currently weakened given what it anticipates will be a defeat in the presidential elections. In fact, for now, Maduro holds political control, is taking back the offensive, is rallying his most radical critics around him, and has ample room for negotiating electoral conditions—including the disqualification of Machado.

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Under the Barbados Agreement, the Maduro government committed to establishing some type of mechanism for disqualifications to be legally resolved. This commitment perhaps means that disqualified candidates could recover their political rights after some type of trial. Or it could mean that that, in a trial, their administrative guilt would be determined as maintained by the Comptroller General's Office, and a final ruling would be issued disqualifying them as per the Constitution.

The underlying issue is that the five questions asked by the referendum are calls to action: ignore the jurisdiction of the ICJ, support “any action” that leads to the recovery of sovereignty over Essequibo, and even annex the territory by declaring it Venezuela’s twenty-fifth state as per question 5.

Although the results of the referendum might be held up as a license to ignore the ICJ, Venezuela probably will end up preparing the Memoir that it must deliver in April 2024.

We cannot rule out the possibility that the Venezuelan government is intending to launch legal proceedings against the oil companies operating in Essequibo or will try to exert some other type of pressure on them. For now, however, the effects of the referendum will be fundamentally narrative and electoral. A prelude to Maduro's re-election campaign.

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