

Rapid
Response
Analysis



THE VENEZUELA-GUYANA BOUNDARY DISPUTE OVER ESSEQUIBO

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THE VENEZUELA-GUYANA BOUNDARY DISPUTE OVER ESSEQUIBO**Executive Summary**

This Rapid Response Analysis from the Public International Law & Policy Group and Covington & Burling provides an overview of the long-standing boundary dispute between Venezuela and Guyana relating to the Essequibo region, broadly recognized as part of the territory of Guyana, to contextualize recent developments over the disputed territory.

On December 3, 2023, Venezuela held a referendum in which it asked the Venezuelan people for their views on matters related to the status of the disputed Essequibo region. Among other questions, the referendum asked voters whether they agreed with the creation of an Essequibo “state” that would be eventually incorporated into Venezuela’s territory.¹ According to Venezuela, more than 95% of voters approved this proposal, though external reporting suggested low voter turnout and possibly inflated vote counts.² Shortly thereafter, Venezuela’s President, Nicolás Maduro, announced a series of measures intended to implement the referendum’s results, raising concerns that Venezuela could be preparing to annex the disputed territory.³

Venezuela’s referendum, and its subsequent actions, dramatically escalated tensions with its neighbor, Guyana. It also refocused international attention on the States’ historic boundary dispute, already the subject of proceedings before the International Court of Justice (the “ICJ” or the “Court”).

This Rapid Response Analysis explores the history of the dispute, which pre-dates Guyana’s independence from the United Kingdom; surveys the background to the ongoing proceedings before the ICJ; sets out the current factual

¹ See Vanessa Buschschlüter, *Essequibo: Venezuelans Back Claim to Guyana-Controlled Oil Region*, BBC NEWS, Dec. 4, 2023, available at <https://www.bbc.com/news/world-latin-america-67610200>.

² See Vanessa Buschschlüter, *Essequibo: Venezuelans Back Claim to Guyana-Controlled Oil Region*, BBC NEWS, Dec. 4, 2023, available at <https://www.bbc.com/news/world-latin-america-67610200>; Regina Garcia Cano & Juan Arraez, *Venezuela’s Government Wins Vote on Claiming Part of Guyana, But Turnout Seems Lackluster*, AP NEWS, Dec. 4, 2023, available at <https://apnews.com/article/venezuela-guyana-essequibo-territory-dispute-maduro-referendum-ffce14fec0b4ee63a24a125caf2373fe>.

³ See Elias Ferrer Breda, *Unpacking Venezuela – Guyana Tensions over the Essequibo*, FORBES, Dec. 7, 2023, available at <https://www.forbes.com/sites/eliasferrerbreda/2023/12/07/unpacking-venezuelaguyana-tensions-over-the-essequibo/?sh=6ef2823d5f7d>.

context to the dispute; and concludes with reflections regarding the next stages for the Essequibo region.

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THE VENEZUELA-GUYANA BOUNDARY DISPUTE OVER ESSEQUIBO

Statement of Purpose

This Rapid Response Analysis provides an overview of the ongoing boundary dispute between Venezuela and Guyana relating to the Essequibo region, broadly recognized as part of the territory of Guyana, and addresses the central factual and legal issues that have arisen in recent years.

Introduction: The Dispute Over Title to the Essequibo Region

The Essequibo region is a contested geographic area located between the Essequibo River in the east and the Orinoco River in the west.⁴ The contested area makes up two-thirds of what is broadly recognized as Guyanese territory.⁵ The region has been the subject of a long-running dispute between Venezuela and Guyana, pre-dating Guyana's independence from the United Kingdom.⁶ In recent years, oil deposit discoveries off the shores of the Essequibo region have rekindled tensions between the States.⁷ These tensions reached a high point in December 2023 when Venezuela held a referendum regarding the region's status, and Venezuela's claims to the region.⁸

⁴ See *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, 2020 I.C.J. 455, 465, para. 31 (Dec. 18), available through <https://www.icj-cij.org/case/171>.

⁵ See Aleks Phillips, *Map Shows Region Venezuela Has Voted to Take from Guyana*, NEWSWEEK, Dec. 4, 2023, available at <https://www.newsweek.com/venezuela-guyana-essequibo-map-referendum-1849209>; Vanessa Buschschlüter, *Essequibo: Venezuelans Back Claim to Guyana-Controlled Oil Region*, BBC NEWS, Dec. 4, 2023, available at <https://www.bbc.com/news/world-latin-america-67610200>. See also Allan R. Brewer-Carías, *Guyana-Venezuela Border Dispute*, MAX PLANCK ENCYCLOPEDIAS OF PUBLIC INTERNATIONAL LAW, para. 2 (Sept. 2006).

⁶ See Allan R. Brewer-Carías, *Guyana-Venezuela Border Dispute*, MAX PLANCK ENCYCLOPEDIAS OF PUBLIC INTERNATIONAL LAW, para. 2 (Sept. 2006).

⁷ See Aleks Phillips, *Map Shows Region Venezuela Has Voted to Take from Guyana*, NEWSWEEK, Dec. 4, 2023, available at <https://www.newsweek.com/venezuela-guyana-essequibo-map-referendum-1849209>; Kevin Crowley, *The World's Newest Petrostate Isn't Ready for a Tsunami of Cash*, BLOOMBERG, Aug. 13, 2019, available at <https://www.bloomberg.com/news/features/2019-08-13/guyana-isn-t-ready-for-its-pending-oil-riches-but-exxon-is>.

⁸ See Vanessa Buschschlüter, *Essequibo: Venezuelans Back Claim to Guyana-Controlled Oil Region*, BBC NEWS, Dec. 4, 2023, available at <https://www.bbc.com/news/world-latin-america-67610200>.

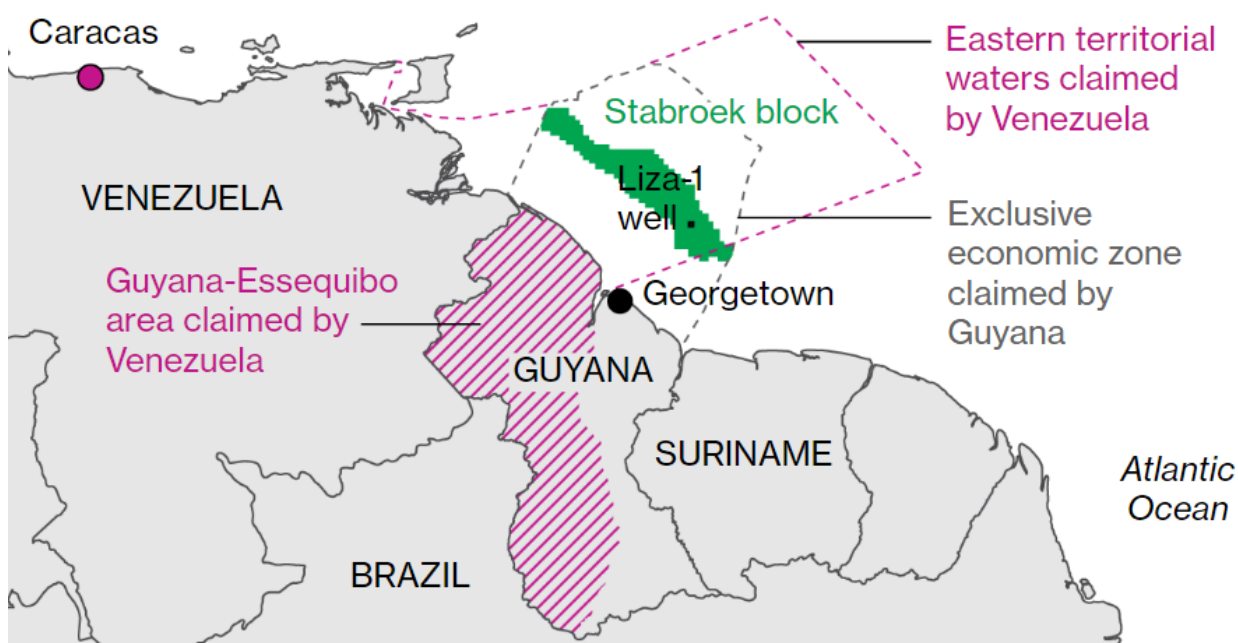


Figure SEQ Figure 1* ARABIC 1. Venezuela and Guyana's competing territorial claims west of the Essequibo River and related maritime claims, available at <https://www.bloomberg.com/news/features/2019-08-13/guyana-isn-t-ready-for-its-pending-oil-riches-but-exxon-is>.
Sources: Guyana Ministry of Foreign Affairs; Venezuela's National Organization for Rescue and Maritime Safety of the Aquatic Areas.

The Venezuela-Guyana territorial dispute dates back to the nineteenth century. Since Venezuela declared independence from Spain in 1810, Venezuela's Constitution has defined its territory to include the Essequibo region.⁹ The United Kingdom, and subsequently an independent Guyana, however, claim the Essequibo region was part of the Dutch colonies in South America acquired by the UK as part of the 1814 Anglo-Dutch Treaty that were later consolidated into what was then known as British Guiana.¹⁰

The dispute arose as the United Kingdom began demarcating the borders of British Guiana.¹¹ And after gold was discovered in the region in the 1880s, the UK

⁹ See Letter from the Permanent Representative of Venezuela to the Secretary-General of the United Nations (Feb. 14, 1962) (*Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, Guyana's Memorial on Jurisdiction, Vol. II, Annex 17 (Nov. 19, 2018), available through <https://www.icj-cij.org/case/171>); VENEZUELA CONST., art. 5 (1830), available at https://www.cervantesvirtual.com/obra-visor/constitucion-del-estado-de-venezuela-24-de-septiembre-1830/html/35176340-f55b-40cc-861b-65f3a0da654b_2.html; VENEZUELA CONST., art. 7 (1961), available at <http://americo.usal.es/oir/legislatina/normasyreglamentos/constituciones/Venezuela1961.pdf>.

¹⁰ See Allan R. Brewer-Carías, *Guyana-Venezuela Border Dispute*, MAX PLANCK ENCYCLOPEDIAS OF PUBLIC INTERNATIONAL LAW, para. 7 (Sept. 2006).

¹¹ Thomas W. Donovan, *Challenges to the Territorial Integrity of Guyana: A Legal Analysis*, 32 GEORGIA JOURNAL OF INTERNATIONAL & COMPARATIVE LAW 661, 672–673 (2004).

published a map in which it unconditionally claimed significant territory in the Essequibo region as part of British Guiana.¹² Venezuela protested the western boundary of British Guiana and demanded British evacuation of the area.¹³ The two States eventually broke diplomatic relations, but following diplomatic intervention by the United States, agreed to submit the boundary dispute to arbitration.¹⁴ This agreement was reflected in the Treaty of Washington dated February 2, 1897.¹⁵ Under Article XIII of the Treaty, both Venezuela and the United Kingdom agreed to consider the result of the arbitral proceedings “as a full, perfect, and final settlement” of the dispute.¹⁶

Following two years of deliberations, on October 3, 1899, the arbitral tribunal issued a decision (the “1899 Award”), granting Venezuela a small portion of the disputed area at the mouth of the Orinoco River and the United Kingdom the remaining land west of the Essequibo River (ninety percent of the disputed territory).¹⁷ From 1900 to 1904, a joint Anglo-Venezuelan Commission demarcated the boundary according to the 1899 Award and, on January 10, 1905, the commissioners from each State signed an agreement with accompanying maps, accepting the boundary as established.¹⁸

¹² See Anthony S. Reyner & Walter B. Hope, *Guyana’s Disputed Borders: A Factual Background*, 130 WORLD AFFAIRS 107, 110 (1967); Thomas W. Donovan, *Challenges to the Territorial Integrity of Guyana: A Legal Analysis*, 32 GEORGIA JOURNAL OF INTERNATIONAL & COMPARATIVE LAW 661, 672–673 (2004).

¹³ See Anthony S. Reyner & Walter B. Hope, *Guyana’s Disputed Borders: A Factual Background*, 130 WORLD AFFAIRS 107, 110 (1967); Thomas W. Donovan, *Challenges to the Territorial Integrity of Guyana: A Legal Analysis*, 32 GEORGIA JOURNAL OF INTERNATIONAL & COMPARATIVE LAW 661, 673 (2004).

¹⁴ See *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, 2020 I.C.J. 455, 465, para. 32 (Dec. 18), available through <https://www.icj-cij.org/case/171>.

¹⁵ Treaty Between Great Britain and the United States of Venezuela Respecting the Settlement of the Boundary Between the Colony of British Guiana and the United States of Venezuela (Treaty of Washington), Feb. 2, 1897, 5 U.K.T.S. 67 (1897), available at <https://treaties.fcdo.gov.uk/data/Library2/pdf/1897-TS0005.pdf>.

¹⁶ *Treaty Between Great Britain and the United States of Venezuela Respecting the Settlement of the Boundary Between the Colony of British Guiana and the United States of Venezuela* (Treaty of Washington), art. XIII, Feb. 2, 1897, 5 U.K.T.S. 67 (1897), available at <https://treaties.fcdo.gov.uk/data/Library2/pdf/1897-TS0005.pdf>.

¹⁷ United Kingdom v. Venezuela, 28 Reports of International Arbitral Awards 331, 338 (1899) (1899 Award), available at https://legal.un.org/riaa/cases/vol_XXVIII/331-340.pdf; see also Anthony S. Reyner & Walter B. Hope, *Guyana’s Disputed Borders: A Factual Background*, 130 WORLD AFFAIRS 107, 111 (1967); Thomas W. Donovan, *Challenges to the Territorial Integrity of Guyana: A Legal Analysis*, 32 GEORGIA JOURNAL OF INTERNATIONAL & COMPARATIVE LAW 661, 676–677 (2004).

¹⁸ See *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, 2020 I.C.J. 455, 465, para. 34 (Dec. 18), available through <https://www.icj-cij.org/case/171>.

The issue was considered settled until 1962 when, on the eve of Guyana's independence from the United Kingdom, Venezuela formally declared it could not recognize the validity of the 1899 Award.¹⁹ Venezuela's declaration followed the posthumous publication of a letter written by one of its counsel in the arbitration in which he claimed that the 1899 Award had been the result of a political deal and had involved improper collusion between the Russian arbitral president and the British side.²⁰

The renewal of the boundary dispute and subsequent negotiations eventually led to the conclusion of the 1966 Geneva Agreement (the "Geneva Agreement"), through which the United Kingdom and Venezuela agreed to a dispute settlement process to resolve the boundary issue.²¹ In accordance with Article VIII, Guyana acceded to the Geneva Agreement upon its independence.²²

The Geneva Agreement set out a three-stage process for the resolution of the dispute: first, a "Mixed Commission" would be established to "seek[] satisfactory solutions for a practical settlement of the controversy"; second, if the Commission failed, Venezuela and Guyana would choose a means of dispute settlement from Article 33 of the United Nations ("UN") Charter; and, third, if Venezuela and Guyana failed to agree on a means, the decision as to the means of settlement would fall to an appropriate international organ agreed upon by both States or, if they could not agree, to the UN Secretary-General.²³

¹⁹ Letter from the Permanent Representative of Venezuela to the Secretary-General of the United Nations (Feb. 14, 1962) (*Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*), Guyana's Memorial on Jurisdiction, Vol. II, Annex 17 (Nov. 19, 2018), available through <https://www.icj-cij.org/case/171>; see also *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, 2020 I.C.J. 455, 466, para. 35 (Dec. 18), available through <https://www.icj-cij.org/case/171>.

²⁰ See *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, Venezuela's Memorandum on Guyana's Application, p. 9, para. 18 (Nov. 28, 2022), available through <https://www.icj-cij.org/case/171>; *ibid.*, Guyana's Memorial on Jurisdiction, Vol. I, pp. 13–14, paras. 1.30–1.31 (Nov. 19, 2018).

²¹ See Agreement to Resolve the Controversy over the Frontier Between Venezuela and British Guiana (Geneva Agreement), Feb. 17, 1966, 561 U.N.T.S. 323 (1966), available at <https://treaties.un.org/doc/Publication/UNTS/Volume%20561/volume-561-I-8192-English.pdf>; *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, 2020 I.C.J. 455, 466–467, paras. 35–41 (Dec. 18), available through <https://www.icj-cij.org/case/171>.

²² Agreement to Resolve the Controversy over the Frontier Between Venezuela and British Guiana (Geneva Agreement), art. VIII, Feb. 17, 1966, 561 U.N.T.S. 323 (1966), available at <https://treaties.un.org/doc/Publication/UNTS/Volume%20561/volume-561-I-8192-English.pdf>; *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, 2020 I.C.J. 455, 467, para. 42 (Dec. 18), available through <https://www.icj-cij.org/case/171>.

²³ Agreement to Resolve the Controversy over the Frontier Between Venezuela and British Guiana (Geneva Agreement), arts. I, IV, Feb. 17, 1966, 561 U.N.T.S. 323 (1966), available at <https://treaties.un.org/doc/Publication/UNTS/Volume%20561/volume-561-I-8192-English.pdf>.

In the subsequent decades, Venezuela and Guyana attempted to resolve their dispute consistent with the terms of the Geneva Agreement.²⁴ But no resolution of the dispute having been found, either as part of the Mixed Commission or bilaterally, the States referred the choice of dispute settlement mechanism to the UN Secretary-General in 1983.²⁵ The Secretary-General initially chose the “good offices process” as the means of settlement²⁶ — a process whereby the Secretary-General may facilitate negotiations and mediation between the States.²⁷ Despite the efforts of the UN Secretary-General, no measurable progress was made toward resolving the dispute.

In the background, tensions between the two States began to escalate again in May 2015, after ExxonMobil announced a “significant” discovery of oil deposits in disputed waters off the shore of the Essequibo River.²⁸ This discovery came amid Venezuela’s objections to exploratory drilling.²⁹ In response, Venezuelan President Nicolás Maduro issued a series of presidential decrees claiming sovereignty over the majority of Guyana’s maritime zone off the Essequibo coast and authorizing the Venezuelan navy to enforce Venezuela’s claims over this area.³⁰

²⁴ See *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, 2020 I.C.J. 455, 468–469, paras. 45–49 (Dec. 18), available through <https://www.icj-cij.org/case/171>.

²⁵ *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, 2020 I.C.J. 455, 469, paras. 50–52 (Dec. 18), available through <https://www.icj-cij.org/case/171>.

²⁶ *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, 2020 I.C.J. 455, 470, para. 53 (Dec. 18), available through <https://www.icj-cij.org/case/171>.

²⁷ See UN Web TV, *What Are UN’s ‘Good Offices’?* (Dec. 31, 2018), available at <https://webtv.un.org/en/asset/k1i/k1iiiexzse>; Ruth Lapidoth, *Good Offices*, MAX PLANCK ENCYCLOPEDIAS OF PUBLIC INTERNATIONAL LAW, paras. 1–2, 6 (Dec. 2006).

²⁸ BBC NEWS, *Venezuela in Spat with Guyana over Oil Exploration*, June 10, 2015, available at <https://www.bbc.com/news/world-latin-america-33078948>.

²⁹ Bert Wilkinson, *Venezuela Objects to Oil Exploration off Neighboring Guyana*, AP NEWS, Mar. 1, 2015, available at <https://apnews.com/general-news-4fe546bcdaf14211b00bc85e9d08ec33>; BBC News, *Venezuela in Spat with Guyana over Oil Exploration*, June 10, 2015, available at <https://www.bbc.com/news/world-latin-america-33078948>.

³⁰ *Presidential Decree No. 1.787 of May 26, 2015 (Venezuela, 2015)*, available in Spanish at <https://tugacetaoficial.com/leyes/decreto-no-1-787-mediante-el-cual-se-crean-y-activan-las-zonas-operativas-de-defensa-integral-maritima-e-insular-zodimain/>; *Presidential Decree No. 1.859 of July 6, 2015 (Venezuela, 2015)*, available in Spanish at <https://tugacetaoficial.com/leyes/decreto-n-1-859-mediante-el-cual-se-crean-y-activan-las-zonas-operativas-de-defensa-integral-maritimas-e-insulares-zodimain-6-de-julio-2015/>; *Presidential Decree No. 4.415 of January 7, 2021 (Venezuela, 2021)*, available in Spanish at <https://vlexvenezuela.com/vid/decreto-n-4-415-861363400>. See also Ivelaw Lloyd Griffith, *New Dynamics in Northern South America’s Geopolitical Neighborhood*, CENTER FOR

At the same time, Venezuela continued to physically assert its claims over the disputed land and maritime territory, including by having the Venezuelan navy detain oil-exploration ships and fishing vessels authorized by Guyana to operate in the contested area.³¹

With no solution to the dispute between Venezuela and Guyana having been reached through the good offices process by 2018, the Secretary-General chose the ICJ to resolve the dispute.³²

Guyana's Application to the International Court of Justice

Guyana applied to the ICJ on March 29, 2018.³³ In its Application, Guyana requested that the Court find the 1899 Award, and the boundary established pursuant to that Award, “valid and binding upon Guyana and Venezuela.”³⁴ Among other submissions, Guyana also requested the Court declare Guyana's sovereignty over the territory between the Essequibo River and the boundary established by the 1899 Award, and asked that the Court find Venezuela responsible for violating that sovereignty through various military incursions in the years since Guyana's independence in 1966.³⁵

STRATEGIC & INTERNATIONAL STUDIES (Apr. 28, 2021), *available at* <https://www.csis.org/analysis/new-dynamics-northern-south-americas-geopolitical-neighborhood>.

³¹ Clifford Krauss, *Venezuela Navy Interrupts Oil Exploration off Guyana*, THE NEW YORK TIMES, Dec. 23, 2018, *available at* <https://www.nytimes.com/2018/12/23/business/guyana-oil-venezuela-navy.html>; Neil Marks & Brian Ellsworth, *Guyana Says Venezuela Detained Two Fishing Vessels in Its Waters*, REUTERS, Jan. 24, 2021, *available at* <https://www.reuters.com/world/americas/guyana-says-venezuela-detained-two-fishing-vessels-its-waters-2021-01-24/>; Reuters, *Venezuela Says It Has Released Detained Guyanese Fishermen*, Feb. 3, 2021, *available at* <https://www.reuters.com/article/idUSL1N2K9222/>; CBS News, *Guyana Says Venezuela Lays False Claim to Gold Mine*, Oct. 22, 2015, *available at* <https://www.cbsnews.com/news/guyana-says-venezuela-lays-false-claim-to-gold-mine/>. *See also* Ivelaw Lloyd Griffith, *New Dynamics in Northern South America's Geopolitical Neighborhood*, CENTER FOR STRATEGIC & INTERNATIONAL STUDIES (Apr. 28, 2021), *available at* <https://www.csis.org/analysis/new-dynamics-northern-south-americas-geopolitical-neighborhood>.

³² Press Release, UN Secretary-General, Secretary-General Chooses International Court of Justice as Means for Peacefully Settling Long-Standing Guyana-Venezuela Border Controversy, U.N. Press Release SG/SM/18879-ICJ/630 (Jan. 30, 2018), *available at* <https://press.un.org/en/2018/sgsm18879.doc.htm>.

³³ *See Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, Guyana's Application Instituting Proceedings (Mar. 29, 2018), *available through* <https://www.icj-cij.org/case/171>.

³⁴ *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, Guyana's Application Instituting Proceedings, p. 26, para. 55(a) (Mar. 29, 2018), *available through* <https://www.icj-cij.org/case/171>.

³⁵ *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, Guyana's Application Instituting Proceedings, pp. 22–26, paras. 52, 55(b), 55(e) (Mar. 29, 2018), *available through* <https://www.icj-cij.org/case/171>.

The Jurisdiction of the Court

Shortly after Guyana's Application, Venezuela informed the Court that it would not participate in the proceedings because it considered the Court "manifestly lacked jurisdiction to hear the case"³⁶ — a position opposed by Guyana.³⁷ In the circumstances, the Court determined that it should resolve the question of its jurisdiction before consideration of the merits, and accordingly directed a separate phase of proceedings.³⁸ Though Venezuela formally declined to participate, it submitted a "Memorandum" in advance of the oral hearings in which it set out its objections to the Court's jurisdiction.³⁹

A central issue in dispute was whether, under the terms of the Geneva Agreement, the parties had consented to settlement of the controversy by the ICJ. To determine its jurisdiction, the Court therefore interpreted the terms of the Geneva Agreement, before determining whether the Secretary-General had acted consistently with the Agreement's terms in referring the dispute to the ICJ and assessing the legal effect of that decision.⁴⁰

Interpreting the terms of the Geneva Agreement, the Court held that the parties had conferred on the Secretary-General the authority to make a binding choice of the means to be used for settlement of the controversy.⁴¹ The Geneva Agreement referred to the means of settlement set out in Article 33 of the UN Charter, which expressly includes judicial settlement.⁴² Judicial settlement of the

³⁶ See *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, 2020 I.C.J. 455, 460, para. 5 (Dec. 18), available through <https://www.icj-cij.org/case/171>.

³⁷ See *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, Guyana's Memorial on Jurisdiction, Vol. I, pp. 81–86, 119–121, paras. 3.1–3.12, 3.67–3.69 (Nov. 19, 2018), available through <https://www.icj-cij.org/case/171>.

³⁸ *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, 2020 I.C.J. 455, 460–461, para. 6 (Dec. 18), available through <https://www.icj-cij.org/case/171>.

³⁹ *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, 2020 I.C.J. 455, 461, paras. 8, 12 (Dec. 18), available through <https://www.icj-cij.org/case/171>; *ibid.*, Venezuela's Memorandum on Guyana's Application (Nov. 28, 2022).

⁴⁰ See *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, 2020 I.C.J. 455, 473, para. 63 (Dec. 18), available through <https://www.icj-cij.org/case/171>.

⁴¹ *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, 2020 I.C.J. 455, 475–477, paras. 72, 74, 78 (Dec. 18), available through <https://www.icj-cij.org/case/171>.

⁴² See *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, 2020 I.C.J. 455, 478, para. 82 (Dec. 18), available through <https://www.icj-cij.org/case/171>; Agreement to Resolve the Controversy over the Frontier Between Venezuela and British Guiana (Geneva Agreement), art. IV, Feb. 17, 1966, 561 U.N.T.S. 323 (1966), available at <https://treaties.un.org/doc/Publication/UNTS/Volume%20561/volume-561-I-8192-English.pdf>; U.N. Charter, art. 33, available at <https://www.un.org/en/about-us/un-charter/full-text>.

dispute was therefore one of several means of dispute settlement at the disposal of the Secretary-General.⁴³ Nothing in the Geneva Agreement required the Secretary-General to apply the means of dispute resolution listed in Article 33 successively (i.e., negotiation, enquiry, mediation, conciliation, arbitration, and only then judicial settlement).⁴⁴

In the Court's view, the parties had accordingly consented to judicial settlement of the dispute, and the Secretary-General had acted in conformity with the terms of the Geneva Agreement in referring the dispute to the ICJ.⁴⁵ In the circumstances, Guyana had validly brought the case to the Court.⁴⁶

The Court then considered the scope of its jurisdiction, which also required interpretation of the Geneva Agreement's terms.⁴⁷ The Court found that it had jurisdiction to entertain Guyana's Application in so far as it concerned the validity of the 1899 Award and the "definitive settlement" of the land boundary dispute between the parties.⁴⁸ Based on the terms of the Geneva Agreement, the Court further held that its jurisdiction was limited to claims that existed at the time the Agreement was signed.⁴⁹ The Court therefore had no jurisdiction to entertain the claims of Guyana related to matters arising after the signature of the Geneva Agreement.⁵⁰

⁴³ *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, 2020 I.C.J. 455, 478, para. 82 (Dec. 18), available through <https://www.icj-cij.org/case/171>.

⁴⁴ *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, 2020 I.C.J. 455, 481–482, paras. 97, 101 (Dec. 18), available through <https://www.icj-cij.org/case/171>.

⁴⁵ *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, 2020 I.C.J. 455, 486, para. 108 (Dec. 18), available through <https://www.icj-cij.org/case/171>.

⁴⁶ *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, 2020 I.C.J. 455, 488, paras. 120–121 (Dec. 18), available through <https://www.icj-cij.org/case/171>.

⁴⁷ *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, 2020 I.C.J. 455, 488, 490, paras. 122, 128 (Dec. 18), available through <https://www.icj-cij.org/case/171>.

⁴⁸ *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, 2020 I.C.J. 455, 492–493, paras. 135, 137 (Dec. 18), available through <https://www.icj-cij.org/case/171>.

⁴⁹ *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, 2020 I.C.J. 455, 492, para. 136 (Dec. 18), available through <https://www.icj-cij.org/case/171>.

⁵⁰ *See Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, 2020 I.C.J. 455, 492, para. 136 (Dec. 18), available through <https://www.icj-cij.org/case/171>.

Venezuela's Admissibility Objection

The Court having found jurisdiction, Guyana next filed its Memorial on the Merits, a *document that sets out the substance of its claims in greater detail*.⁵¹ On June 7, 2022, however, Venezuela raised a preliminary objection to the admissibility of Guyana's claims.⁵² According to Venezuela, the United Kingdom was an "indispensable third party" to the ICJ proceedings, and the Court could not determine the validity of the 1899 Award in the UK's absence.⁵³ The essence of Venezuela's argument was that the Court's determination on the merits of the case "would necessarily involve, as a prerequisite, an evaluation of the lawfulness of certain 'fraudulent conduct' allegedly attributable to the United Kingdom in respect of the 1899 Award."⁵⁴

Guyana objected both to the admissibility of Venezuela's objection, and to the substance of the objection. On admissibility, Guyana claimed that Venezuela's objection was, in reality, a jurisdictional one and was therefore precluded by the Court's judgment on jurisdiction, or otherwise was time-barred.⁵⁵ On substance, Guyana argued that the UK did not have "legal interests" that could be affected by the Court's determination of the validity of the 1899 Award and that, in any case, the UK had consented to the Court's jurisdiction by signing the Geneva Agreement.⁵⁶

The Court rendered its judgment on April 6, 2023.⁵⁷ While the Court held Venezuela's objection to be admissible, it ultimately rejected the objection.⁵⁸ In

⁵¹ See *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, Guyana's Memorial on the Merits (Mar. 8, 2022), available through <https://www.icj-cij.org/case/171>.

⁵² See *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, Venezuela's Preliminary Objections to Admissibility (June 7, 2022).

⁵³ *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, Judgment on Admissibility, p. 20, para. 75 (Apr. 6, 2023), available through <https://www.icj-cij.org/case/171>.

⁵⁴ *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, Judgment on Admissibility, p. 20, para. 75 (Apr. 6, 2023), available through <https://www.icj-cij.org/case/171>.

⁵⁵ *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, Judgment on Admissibility, pp. 16–17, paras. 53–56 (Apr. 6, 2023), available through <https://www.icj-cij.org/case/171>.

⁵⁶ *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, Judgment on Admissibility, pp. 21–22, paras. 81–84 (Apr. 6, 2023), available through <https://www.icj-cij.org/case/171>.

⁵⁷ See *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, Judgment on Admissibility (Apr. 6, 2023), available through <https://www.icj-cij.org/case/171>.

⁵⁸ *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, Judgment on Admissibility, pp. 20, 27, paras. 74, 107 (Apr. 6, 2023), available through <https://www.icj-cij.org/case/171>.

reaching its decision, the Court was again called upon to interpret the terms of the Geneva Agreement.⁵⁹ The Court observed that, while the United Kingdom was a party to the Geneva Agreement, that Agreement did not provide any role for the UK in the dispute resolution process.⁶⁰ Rather, the Geneva Agreement “reflect[ed] a common understanding” among the parties to that Agreement that the dispute which existed between the UK and Venezuela as of the date of its signing would be settled by Guyana and Venezuela through the channels provided therein.⁶¹

The Court also noted that the United Kingdom had participated in the negotiation of the Geneva Agreement and was aware that the scope of the dispute concerned the 1899 Award, including the allegations Venezuela was making against the UK in that respect.⁶² The UK had, nonetheless, accepted that the dispute could be resolved without its involvement.⁶³ The Court found that its conclusion was confirmed by the subsequent practice of the parties, and by the UK.⁶⁴ Accordingly, the UK was not an indispensable party to the dispute and the Court could therefore consider the merits of Guyana’s Application.⁶⁵

Venezuela’s Referendum Concerning Its Claim to the Essequibo Region

Renewed Tensions over Territorial Claims to the Essequibo Region

The dispute between Guyana and Venezuela sparked again in September 2023, after Guyana auctioned exploration licenses to oil companies for exploration

⁵⁹ *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, Judgment on Admissibility, p. 22, para. 86 (Apr. 6, 2023), available through <https://www.icj-cij.org/case/171>.

⁶⁰ *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, Judgment on Admissibility, pp. 23–24, paras. 91, 95 (Apr. 6, 2023), available through <https://www.icj-cij.org/case/171>.

⁶¹ *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, Judgment on Admissibility, p. 24, para. 96 (Apr. 6, 2023), available through <https://www.icj-cij.org/case/171>.

⁶² *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, Judgment on Admissibility, p. 26, para. 102 (Apr. 6, 2023), available through <https://www.icj-cij.org/case/171>.

⁶³ *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, Judgment on Admissibility, p. 26, para. 102 (Apr. 6, 2023), available through <https://www.icj-cij.org/case/171>.

⁶⁴ *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, Judgment on Admissibility, pp. 26–27, paras. 104–106 (Apr. 6, 2023), available through <https://www.icj-cij.org/case/171>.

⁶⁵ *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, Judgment on Admissibility, pp. 27–28, paras. 107–108 (Apr. 6, 2023), available through <https://www.icj-cij.org/case/171>.

and development off the shores of the Essequibo region.⁶⁶ On September 23, 2023, Venezuela's National Assembly announced it would hold a referendum "so that the people strengthen the defense" and the "inalienable rights of Venezuela" in relation to its dispute with Guyana over the Essequibo region.⁶⁷ The proposed referendum was quickly criticized by the Organization of American States ("OAS") and the Caribbean Community ("CARICOM"), both of whom support Guyana's sovereignty over the region.⁶⁸

On October 20, 2023, Venezuela's National Electoral Council published a list of five questions to be put to the Venezuelan people in the referendum due to be held on December 3, 2023.⁶⁹ Voters were to be asked, among other questions, whether they agreed to reject the boundary established by the 1899 Award and whether they agreed with Venezuela's historic position not to recognize the ICJ's jurisdiction over the dispute.⁷⁰ The questions also asked whether voters agreed with the creation of an Essequibo "state."⁷¹ The question was posed in the following terms:

⁶⁶ Regina Garcia Cano & Dánica Coto, *Tensions Are Soaring Between Guyana and Venezuela over a Territorial Dispute. Here's What to Know*, AP NEWS, Dec. 9, 2023, available at <https://apnews.com/article/venezuela-guyana-essequibo-territory-dispute-maduro-referendum-d956cc4d5d2a70e3a1e762b744e397de>; Rachele Krygier & Vanessa Buschschlüter, *Essequibo: Venezuela Votes on Claim to Guyana-Controlled Oil Region*, BBC NEWS, Dec. 2, 2023, available at <https://www.bbc.com/news/world-latin-america-67583582>.

⁶⁷ Desiree Marbelys Rengifo González, *AN Convoca a Referéndum Consultivo para que el Pueblo Refuerce Defensa del Esequibo*, Asamblea Nacional: Noticias, Sept. 21, 2023, available in Spanish at <https://www.asambleanacional.gob.ve/noticias/an-convoca-a-referendum-consultivo-para-que-el-pueblo-refuerce-defensa-del-essequibo>; see also Press Release, Organization of American States, Statement by OAS General Secretariat on Recent Events Regarding the Guyana-Venezuela Dispute, OAS Press Release E-056/23 (Sept. 23, 2023), available at https://www.oas.org/en/media_center/press_release.asp?sCodigo=E-056/23.

⁶⁸ Press Release, Organization of American States, Statement by OAS General Secretariat on Recent Events Regarding the Guyana-Venezuela Dispute, OAS Press Release E-056/23 (Sept. 23, 2023), available at https://www.oas.org/en/media_center/press_release.asp?sCodigo=E-056/23; CARICOM, *Statement by the Caribbean Community (CARICOM) on the Guyana-Venezuela Border Controversy* (Sept. 22, 2023), reproduced at <https://www.minfor.gov.gy/newsroom/statement-caribbean-community-caricom-guyana-venezuela-border-controversy>.

⁶⁹ See *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, Provisional Measures Order, p. 6, para. 15 (Dec. 1, 2023), available through <https://www.icj-cij.org/case/171>.

⁷⁰ See *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, Provisional Measures Order, p. 6, para. 15 (Dec. 1, 2023), available through <https://www.icj-cij.org/case/171>.

⁷¹ See *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, Provisional Measures Order, p. 6, para. 15 (Dec. 1, 2023), available through <https://www.icj-cij.org/case/171>.

Do you agree with the creation of the Guayana Esequiba State and that an accelerated and comprehensive plan be developed for the present and future population of that territory, including, inter alia, the granting of Venezuelan citizenship and identity cards, in accordance with the Geneva Agreement and International Law, consequently incorporating that State into the map of Venezuelan territory?⁷²

All questions were subsequently approved by Venezuela's Supreme Tribunal of Justice.⁷³

Guyana's Application for Provisional Measures

In response to Venezuela's call for a referendum on the status of the Essequibo region, Guyana sought an urgent order from the ICJ on October 30, 2023.⁷⁴ Guyana asked the Court to indicate provisional measures prohibiting Venezuela from proceeding with the referendum as planned.⁷⁵ In addition, among other requests, Guyana requested the Court prohibit Venezuela from taking any action intended to prepare or allow the exercise of sovereignty or de facto control over the disputed territory while Guyana's ongoing case before the Court was pending.⁷⁶

In its response to Guyana's request, Venezuela argued that it was holding a "consultative referendum" which was an exercise of its sovereignty, and asserted that "[n]one of the outcomes of the referendum will have any adverse impact on Guyana's alleged title over the disputed territory and even less create a risk of

⁷² *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, Provisional Measures Order, p. 6, para. 15 (Dec. 1, 2023), available through <https://www.icj-cij.org/case/171>.

⁷³ See *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, Provisional Measures Order, p. 10, para. 35 (Dec. 1, 2023), available through <https://www.icj-cij.org/case/171>.

⁷⁴ See *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, Guyana's Request for Provisional Measures (Oct. 30, 2023), available through <https://www.icj-cij.org/case/171>.

⁷⁵ *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, Guyana's Request for Provisional Measures, p. 6, para. 16 (Oct. 30, 2023), available through <https://www.icj-cij.org/case/171>.

⁷⁶ *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, Guyana's Request for Provisional Measures, p. 7, para. 16 (Oct. 30, 2023), available through <https://www.icj-cij.org/case/171>.

irreparable harm to Guyana.”⁷⁷ Venezuela also claimed Guyana had been aware of its decision to call the referendum for more than two years.⁷⁸

The Court held a hearing on Guyana’s request on November 14 and 15, 2023.⁷⁹ And two days before Venezuela’s referendum was scheduled to take place, on December 1, 2023, the Court issued its order on Guyana’s request.⁸⁰ The Court indicated two provisional measures, neither of which were in identical terms to the measures requested by Guyana.⁸¹

First, the Court ordered Venezuela to “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.”⁸² The Court did not, however, explicitly order Venezuela to refrain from holding the referendum, as Guyana had requested.⁸³ Second, the Court ordered both Guyana and Venezuela to refrain from any action that could aggravate or extend the dispute before the Court or make it more difficult to resolve.⁸⁴

In making this order, the Court recalled that Venezuela’s proposed referendum questions referred explicitly to the “creation of the Guyana Esequiba State,” and pointed to statements by Venezuelan officials indicating an intent to exercise control over the disputed area.⁸⁵ In this context, the Court held that there was a “serious risk of Venezuela acquiring and exercising control and

⁷⁷ *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, Provisional Measures Order, p. 9, para. 32 (Dec. 1, 2023), available through <https://www.icj-cij.org/case/171>.

⁷⁸ *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, Provisional Measures Order, p. 9, para. 32 (Dec. 1, 2023), available through <https://www.icj-cij.org/case/171>.

⁷⁹ See *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, Provisional Measures Order, p. 4, para. 10 (Dec. 1, 2023), available through <https://www.icj-cij.org/case/171>.

⁸⁰ See *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, Provisional Measures Order (Dec. 1, 2023), available through <https://www.icj-cij.org/case/171>.

⁸¹ See *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, Provisional Measures Order, pp. 11–12, paras. 40, 45 (Dec. 1, 2023), available through <https://www.icj-cij.org/case/171>.

⁸² *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, Provisional Measures Order, p. 12, para. 45(1) (Dec. 1, 2023), available through <https://www.icj-cij.org/case/171>.

⁸³ See *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, Provisional Measures Order, pp. 4, 12, paras. 11, 45 (Dec. 1, 2023), available through <https://www.icj-cij.org/case/171>.

⁸⁴ *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, Provisional Measures Order, p. 12, para. 45(2) (Dec. 1, 2023), available through <https://www.icj-cij.org/case/171>.

⁸⁵ *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, Provisional Measures Order, p. 10, paras. 34–37 (Dec. 1, 2023), available through <https://www.icj-cij.org/case/171>.

administration of the territory in dispute in the present case.”⁸⁶ Accordingly, in the Court’s view, there was a “real and imminent risk” to Guyana’s plausible right to sovereignty over the territory in question.⁸⁷

Venezuela’s Referendum and Its Implications

Venezuela held its referendum as planned on December 3, 2023.⁸⁸ Venezuela reported that voters had resoundingly agreed with the questions asked, including by voting in favor of the creation of an Essequibo “state.”⁸⁹ Several media outlets, however, reported low voter turnout and potentially inflated vote counts.⁹⁰

Shortly after the referendum, on December 5, 2023, Venezuela’s President announced several steps aimed at carrying out the results.⁹¹ These steps included the planned enactment of legislation formally incorporating the Essequibo region into Venezuela, as well as issuing Venezuelan identity cards to the local

⁸⁶ *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, Provisional Measures Order, p. 10, para. 37 (Dec. 1, 2023), available through <https://www.icj-cij.org/case/171>.

⁸⁷ *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, Provisional Measures Order, p. 10, para. 37 (Dec. 1, 2023), available through <https://www.icj-cij.org/case/171>; see also *ibid.*, p. 8, para. 23.

⁸⁸ See Rachele Krygier & Vanessa Buschschlüter, *Essequibo: Venezuela Votes on Claim to Guyana-Controlled Oil Region*, BBC NEWS, Dec. 2, 2023, available at <https://www.bbc.com/news/world-latin-america-67583582>.

⁸⁹ See Regina Garcia Cano & Juan Arraez, *Venezuela’s Government Wins Vote on Claiming Part of Guyana, But Turnout Seems Lackluster*, AP NEWS, Dec. 4, 2023, available at <https://apnews.com/article/venezuela-guyana-essequibo-territory-dispute-maduro-referendum-ffce14fec0b4ee63a24a125caf2373fe>.

⁹⁰ Associated Press, *Venezuelans Approve Referendum to Claim Territory in Neighboring Guyana*, NPR, Dec. 3, 2023, available at <https://www.npr.org/2023/12/03/1216832467/venezuelans-to-vote-in-referendum-over-large-territory-under-dispute-with-guyana>; Reuters, *Guyana Will Stay Alert After Venezuela Vote on Territorial Dispute – VP*, Dec. 4, 2023, available at <https://www.reuters.com/world/americas/guyana-will-stay-alert-after-venezuela-vote-territorial-dispute-vp-2023-12-04/>; Regina Garcia Cano & Juan Arraez, *Venezuela’s Government Wins Vote on Claiming Part of Guyana, But Turnout Seems Lackluster*, AP NEWS, Dec. 4, 2023, available at <https://apnews.com/article/venezuela-guyana-essequibo-territory-dispute-maduro-referendum-ffce14fec0b4ee63a24a125caf2373fe>.

⁹¹ See Luke Taylor, *Guyana Appeals to US and UN as Maduro Advances Annexation of Territory*, THE GUARDIAN, Dec. 6, 2023, available at <https://www.theguardian.com/world/2023/dec/06/venezuela-annex-guyana-maduro>.

population.⁹² President Maduro also announced the creation of the “Integral Defense Zone of Guyana Esequiba.”⁹³

In relation to business interests in the region, President Maduro announced the termination of all Guyana-issued concessions in the contested territory and adjacent maritime area, directed Venezuelan State-owned entities to issue new licenses for oil, gas, and mining exploration and exploitation, and announced the creation of an “Essequibo branch” of two State-owned entities, including *Petróleos de Venezuela, S.A.* (“PDVSA”), Venezuela’s national oil company.⁹⁴

Guyana perceived these measures as a clear indication that Venezuela planned to “formally annex, and incorporate into Venezuelan territory” the Essequibo region.⁹⁵ At the same time, Guyana declared it was taking precautionary measures to defend itself from Venezuela’s “threat” to encroach on Guyana’s rights in the Essequibo region.⁹⁶ Key allies of Guyana — the United States and the United Kingdom — also expressed concern over Venezuela’s actions while reaffirming support for Guyana’s territorial sovereignty.⁹⁷

⁹² See Letters dated Dec. 6, 2023 from the Permanent Representative of Guyana to the United Nations Secretary-General and the President of the Security Council, p. 2, U.N. Doc. S/2023/961 (Dec. 6, 2023), available at <https://digitallibrary.un.org/record/4029883>. See also Luke Taylor, *Guyana Appeals to US and UN as Maduro Advances Annexation of Territory*, THE GUARDIAN, Dec. 6, 2023, available at <https://www.theguardian.com/world/2023/dec/06/venezuela-annex-guyana-maduro>.

⁹³ See Luke Taylor, *Guyana Appeals to US and UN as Maduro Advances Annexation of Territory*, THE GUARDIAN, Dec. 6, 2023, available at <https://www.theguardian.com/world/2023/dec/06/venezuela-annex-guyana-maduro>; Nicolas Tsagourias, *Essequibo Referendum: An Unlawful Threat of Force?*, EJIL TALK!, Dec. 18, 2023, available at <https://www.ejiltalk.org/essequibo-referendum-an-unlawful-threat-of-force/>.

⁹⁴ See Elias Ferrer Breda, *Unpacking Venezuela – Guyana Tensions over the Essequibo*, FORBES, Dec. 7, 2023, available at <https://www.forbes.com/sites/eliasferrerbreda/2023/12/07/unpacking-venezuelaguyana-tensions-over-the-essequibo/?sh=6ef2823d5f7d>.

⁹⁵ Letters dated Dec. 6, 2023 from the Permanent Representative of Guyana to the United Nations Secretary-General and the President of the Security Council, p. 2, U.N. Doc. S/2023/961 (Dec. 6, 2023), available at <https://digitallibrary.un.org/record/4029883>.

⁹⁶ See Dánica Coto, *Guyana’s President Says His Country Is Preparing to Defend Itself from Venezuela over Disputed Area*, AP NEWS, Dec. 6, 2023, available at <https://apnews.com/article/guyana-president-venezuela-essequibo-dispute-3340b813aad91049ac4ff9aa53706471>.

⁹⁷ Reuters, *US to Conduct Flights Within Guyana Amid Venezuela Territorial Dispute*, THE GUARDIAN, Dec. 7, 2023, available at <https://www.theguardian.com/world/2023/dec/07/guyana-venezuela-land-dispute-us-britain-support>; see also White House, Press Briefing by Press Secretary Karine Jean-Pierre and NSC Coordinator for Strategic Communications John Kirby, White House Briefing Room (Dec. 7, 2023), available at <https://www.whitehouse.gov/briefing-room/press-briefings/2023/12/08/press-briefing-by-press-secretary-karine-jean-pierre-and-nsc-coordinator-for-strategic-communications-john-kirby-december-7-2023/>; Press Release, Foreign, Commonwealth & Development Office, United Kingdom, *Americas Minister Visits Guyana to Demonstrate UK*

After weeks of increased tension, on December 14, 2023, Venezuela and Guyana jointly declared that they had agreed “not to threaten or use force against one another in any circumstances, including those consequential to any existing controversies between the two States.”⁹⁸ The declaration, known as the Argyle Declaration, followed a meeting between the Presidents of both States.⁹⁹ The terms of the Argyle Declaration are addressed further in the next section.

On December 24, 2023, however, the United Kingdom announced — without reference to Venezuela or the Essequibo dispute — that it would deploy a naval ship off the coast of Guyana in a move characterized by the press as a show of support for Guyana.¹⁰⁰ Venezuela called the deployment a violation of the Argyle Declaration and ordered 6,000 troops to conduct exercises near the Guyana border.¹⁰¹ Guyana claimed the ship’s visit was a “planned activity” to improve Guyana’s defense capabilities and was not a threat to Venezuela, but Venezuela asserted it would not withdraw its troops until the vessel left the disputed waters.¹⁰²

In January 2024, it was reported that Guyana was seeking help from the United States to improve its defense capabilities, and that the U.S. had agreed to

Support for Its Territorial Integrity (Dec. 18, 2023), *available at* <https://www.gov.uk/government/news/americas-minister-visits-guyana-to-demonstrate-uk-support-for-its-territorial-integrity>.

⁹⁸ The Joint Declaration of Argyle for Dialogue and Peace between Guyana and Venezuela (Argyle Declaration), para. 1, Dec. 14, 2023, *reproduced at* <https://mola.gov.gy/joint-statement-approved-all-those-present-high-level-dialogue-st-vincent-and-grenadines>.

⁹⁹ See Kiana Wilburg et al., *Guyana, Venezuela Agree to Not Use Force or Escalate Tensions in Essequibo Dispute*, REUTERS, Dec. 14, 2023, *available at* <https://www.reuters.com/world/americas/venezuela-guyana-presidents-meet-amid-territorial-dispute-2023-12-14/>; Ruth Comerford & Leonardo Rocha, *Essequibo Dispute: Venezuela and Guyana Agree Not to Use Force*, BBC NEWS, Dec. 14, 2023, *available at* <https://www.bbc.com/news/world-latin-america-67723936>.

¹⁰⁰ Reuters, *UK to Send Naval Ship to Guyana Amid Venezuela Border Dispute*, Dec. 24, 2023, *available at* <https://www.reuters.com/world/americas/uk-send-naval-ship-guyana-amid-venezuela-border-dispute-2023-12-24/>; James Landale, *Guyana: UK to Send Warship to South America Amid Venezuela Tensions*, BBC NEWS, Dec. 24, 2023, *available at* <https://www.bbc.com/news/uk-67806227>; Jim Pickard, *UK to Deploy Naval Ship to Guyana After Venezuela Territory Claim*, FINANCIAL TIMES, Dec. 24, 2023, *available at* <https://www.ft.com/content/c1f619d0-15c3-4abd-adf4-25ce6ac179e3>.

¹⁰¹ Associated Press, *Venezuela Plans Military Exercises in Caribbean as a British Warship Heads to Guyana*, NPR, Dec. 28, 2023, *available at* <https://www.npr.org/2023/12/28/1222062633/venezuela-military-exercises-guyana-british-warship>.

¹⁰² Megan Janetsky, *Venezuela Says Troops Will Stay Deployed Until British Military Vessel Leaves Waters off Guyana*, AP NEWS, Dec. 30, 2023, *available at* <https://apnews.com/article/venezuela-guyana-british-ship-essequibo-6eb48713a2d6b8716a2c6a836ad93361>.

help Guyana in the coming months.¹⁰³ Guyana quickly assured Venezuela that there was no plan for the United States to establish a military base in its territory, reportedly a concern of Venezuela's President Maduro.¹⁰⁴ It had also been reported earlier in December that the United States conducted flight operations with the Guyanese military, though again these activities were claimed to be building on "routine engagement and operations to enhance [the] security partnership between the United States and Guyana, and to strengthen regional cooperation."¹⁰⁵

Potential Next Stages in the Dispute Over the Essequibo Region

The Use of Force or the Threat of the Use of Force

Venezuela's actions in the immediate aftermath of the referendum, as described above, suggested Venezuela was preparing — or was at least contemplating — possible military intervention to secure control over the Essequibo region.

The UN Charter reflects the fundamental principles that Member States "shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered."¹⁰⁶ Further, Article 2(4) of the UN Charter prohibits both the "threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."¹⁰⁷ Under the Charter, the Security Council determines the "existence of any threat to the peace, breach of the peace, or act of aggression" and decides on the measures to "maintain or restore international peace and security."¹⁰⁸

¹⁰³ See Bert Wilkinson, *Guyana Turns to US to Help Boost Its Military as Territorial Dispute with Venezuela Deepens*, AP NEWS, Jan. 10, 2024, available at <https://apnews.com/article/guyana-us-military-aid-venezuela-essequibo-cdb2b1ac1e469c7324d1be8f18c507c6>.

¹⁰⁴ See Bert Wilkinson, *Guyana Rejects Quest for US Military Base as Territorial Dispute with Venezuela Deepens*, AP NEWS, Jan. 11, 2024, available at <https://apnews.com/article/guyana-us-base-venezuela-dispute-essequibo-80963a3b9a44085dac29244727ba42f3>.

¹⁰⁵ See Press Release, U.S. Embassy Georgetown, SOUTHCOM to Conduct Flight over Guyana (Dec. 7, 2023), available at <https://gy.usembassy.gov/southcom-to-conduct-flight-over-guyana/>.

¹⁰⁶ U.N. Charter, art. 2(3), available at <https://www.un.org/en/about-us/un-charter/full-text>.

¹⁰⁷ U.N. Charter, art. 2(4), available at <https://www.un.org/en/about-us/un-charter/full-text>.

¹⁰⁸ U.N. Charter, art. 39, available at <https://www.un.org/en/about-us/un-charter/full-text>.

Venezuela's actions may arguably already amount to an improper threat of force,¹⁰⁹ and any armed intervention in Essequibo would likely violate the UN Charter, in addition to the ICJ's provisional measures order. Guyana has condemned Venezuela's actions and made clear that it will defend itself.¹¹⁰ Article 51 of the UN Charter recognizes the "inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations."¹¹¹

In addition, following President Maduro's announcement, on December 6, 2023, Guyana appealed directly to the Security Council requesting an urgent meeting to determine whether the conflict with Venezuela "is likely to endanger the maintenance of international peace and security."¹¹² Guyana made this request pursuant to the UN Charter's provisions regarding the pacific settlement of disputes.¹¹³ The Security Council met on December 8, 2023 for closed consultations regarding the dispute between Venezuela and Guyana, though no official statement or action was issued or taken.¹¹⁴

The Security Council has been the subject of recent criticism for its failure to act following the Russian Federation's full-scale invasion of Ukraine.¹¹⁵ Russia —

¹⁰⁹ See Nicolas Tsagourias, *Essequibo Referendum: An Unlawful Threat of Force?*, EJIL TALK!, Dec. 18, 2023, available at <https://www.ejiltalk.org/essequibo-referendum-an-unlawful-threat-of-force/>.

¹¹⁰ See Joe Daniels, *Guyana Vows to Defend Itself 'By All and Any Means' from Venezuela Threat*, FINANCIAL TIMES, Dec. 13, 2023, available at <https://www.ft.com/content/061c41ab-c1ce-40af-885d-5f2528eb8f03>.

¹¹¹ U.N. Charter, art. 51, available at <https://www.un.org/en/about-us/un-charter/full-text>.

¹¹² Letters dated Dec. 6, 2023 from the Permanent Representative of Guyana to the United Nations Secretary-General and the President of the Security Council, p. 3, U.N. Doc. S/2023/961 (Dec. 6, 2023), available at <https://digitallibrary.un.org/record/4029883>.

¹¹³ See U.N. Charter, art. 35, available at <https://www.un.org/en/about-us/un-charter/full-text>; Letters dated Dec. 6, 2023 from the Permanent Representative of Guyana to the United Nations Secretary-General and the President of the Security Council, p. 3, U.N. Doc. S/2023/961 (Dec. 6, 2023), available at <https://digitallibrary.un.org/record/4029883>.

¹¹⁴ See U.N. Secretary-General, Daily Press Briefing by the Office of the Spokesperson for the Secretary-General (Dec. 8, 2023), available at <https://press.un.org/en/2023/db231208.doc.htm>; Security Council Report, *Closed Consultations on the Territorial Dispute Between Guyana and Venezuela*, Dec. 8, 2023, available at <https://www.securitycouncilreport.org/whatsinblue/2023/12/closed-consultations-on-the-territorial-dispute-between-guyana-and-venezuela.php>; Associated Press, *No Immediate Action at UN Emergency Meeting on Guyana-Venezuela Dispute*, VOICE OF AMERICA, Dec. 9, 2023, available at <https://www.voanews.com/a/no-immediate-action-at-un-emergency-meeting-on-guyana-venezuela-dispute/7391131.html>.

¹¹⁵ See UN News, *Russia Blocks Security Council Action on Ukraine*, Feb. 26, 2022, available at <https://news.un.org/en/story/2022/02/1112802>; Ashley Semler, *Why Isn't the UN Doing More to Stop What's Happening in Ukraine?*, CNN, Apr. 15, 2022, available at <https://www.cnn.com/2022/04/15/politics/united-nations-ukraine-russia/index.html>; Nadine El-Bawab, *UN Security*

historically a Venezuelan ally¹¹⁶ — is a permanent member of the 15-member Security Council.¹¹⁷ Notably, in January 2024, Guyana began a two-year term as a non-permanent member of the Security Council.¹¹⁸

Continued Diplomatic Efforts to Resolve the Dispute

While the long-standing historical context of the boundary dispute between the parties suggests a diplomatic solution may be unlikely, the Argyle Declaration of December 2023 demonstrates that international diplomacy can still play an important role in de-escalating tension between the two States.¹¹⁹ And as both the Secretary-General and the ICJ have noted, the parties may continue to attempt to settle the dispute by diplomatic means, including with the support of the UN's good offices process.¹²⁰

The Argyle Declaration was the result of diplomatic intervention by the President of Brazil, the Community of Latin American and Caribbean States (“CELAC”), and CARICOM, who urged Guyana and Venezuela to meet and discuss de-escalation.¹²¹ Under the Declaration's terms, in addition to resolving not to threaten or use force against one another, Guyana and Venezuela agreed to

Council's Inaction on Ukraine Prompts Questions on Reform, ABC NEWS, Apr. 26, 2022, available at <https://abcnews.go.com/International/security-councils-inaction-ukraine-prompts-questions-reform/story?id=84222703>.

¹¹⁶ See Vladimir Soldatkin & Olesya Astakhova, *Russia Expects Venezuela's Maduro to Visit as Relations Deepen* — Novak, REUTERS, Oct. 16, 2023, available at <https://www.reuters.com/world/venezuelas-maduro-expected-visit-russia-putins-oil-point-man-says-2023-10-16/>.

¹¹⁷ United Nations Security Council, *Current Members*, UNITED NATIONS, available at <https://www.un.org/securitycouncil/content/current-members>.

¹¹⁸ See United Nations Security Council, *Current Members*, UNITED NATIONS, available at <https://www.un.org/securitycouncil/content/current-members>; United Nations, *Guyana Elected to Join UN Security Council as Non-Permanent Member*, UNITED NATIONS GUYANA, June 6, 2023, available at <https://guyana.un.org/en/235119-guyana-elected-join-un-security-council-non-permanent-member>.

¹¹⁹ See The Joint Declaration of Argyle for Dialogue and Peace between Guyana and Venezuela (Argyle Declaration), Dec. 14, 2023, reproduced at <https://mola.gov.gy/joint-statement-approved-all-those-present-high-level-dialogue-st-vincent-and-grenadines>.

¹²⁰ *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, 2020 I.C.J. 455, 486, para. 109 (Dec. 18), available through <https://www.icj-cij.org/case/171>; Press Release, U.N. Secretary-General, Secretary-General Chooses International Court of Justice as Means for Peacefully Settling Long-Standing Guyana-Venezuela Border Controversy, U.N. Press Release SG/SM/18879-ICJ/630 (Jan. 30, 2018).

¹²¹ See TeleSUR, *Presidents of Venezuela and Guyana to Meet in St. Vincent*, Dec. 11, 2023, available at <https://www.telesurenglish.net/news/Presidents-of-Venezuela-and-Guyana-to-Meet-in-St.-Vincent-20231211-0001.html>.

resolve all controversies between them in accordance with international law, including the Geneva Agreement.¹²² The two States each noted their respective positions regarding the proceedings before the ICJ.¹²³

Among other commitments, Venezuela and Guyana agreed to avoid escalating any conflict and “to cooperate to avoid incidents on the ground conducive to tension between them.”¹²⁴ In the event of such an incident, Venezuela and Guyana agreed to communicate with one another, as well as the CARICOM, CELAC, and the President of Brazil, “to contain, reverse and prevent its occurrence.”¹²⁵ Both States also committed to the creation of a “joint commission” of the Foreign Ministers and technical persons from their respective governments to “address matters as mutually agreed.”¹²⁶ They agreed to meet again in Brazil, within three months from the Declaration’s date, unless otherwise agreed, “to consider any matter with implications for the territory in dispute,” including the joint commission.¹²⁷

The Argyle Declaration includes many ambitious provisions. Whether Venezuela and Guyana commit to the terms of the Argyle Declaration remains to be seen.

¹²² The Joint Declaration of Argyle for Dialogue and Peace between Guyana and Venezuela (Argyle Declaration), paras. 1–2, Dec. 14, 2023, *reproduced at* <https://mola.gov.gy/joint-statement-approved-all-those-present-high-level-dialogue-st-vincent-and-grenadines>.

¹²³ The Joint Declaration of Argyle for Dialogue and Peace between Guyana and Venezuela (Argyle Declaration), para. 4, Dec. 14, 2023, *reproduced at* <https://mola.gov.gy/joint-statement-approved-all-those-present-high-level-dialogue-st-vincent-and-grenadines>.

¹²⁴ The Joint Declaration of Argyle for Dialogue and Peace between Guyana and Venezuela (Argyle Declaration), para. 6, Dec. 14, 2023, *reproduced at* <https://mola.gov.gy/joint-statement-approved-all-those-present-high-level-dialogue-st-vincent-and-grenadines>.

¹²⁵ The Joint Declaration of Argyle for Dialogue and Peace between Guyana and Venezuela (Argyle Declaration), para. 6, Dec. 14, 2023, *reproduced at* <https://mola.gov.gy/joint-statement-approved-all-those-present-high-level-dialogue-st-vincent-and-grenadines>.

¹²⁶ The Joint Declaration of Argyle for Dialogue and Peace between Guyana and Venezuela (Argyle Declaration), para. 7, Dec. 14, 2023, *reproduced at* <https://mola.gov.gy/joint-statement-approved-all-those-present-high-level-dialogue-st-vincent-and-grenadines>.

¹²⁷ The Joint Declaration of Argyle for Dialogue and Peace between Guyana and Venezuela (Argyle Declaration), para. 9, Dec. 14, 2023, *reproduced at* <https://mola.gov.gy/joint-statement-approved-all-those-present-high-level-dialogue-st-vincent-and-grenadines>.

Next Steps in the Case Before the International Court of Justice

The case before the International Court of Justice is ongoing and will now proceed to the merits phase, where the Court will determine Guyana's claims.¹²⁸ Venezuela has until April 8, 2024 to submit a counter-memorial on the merits, at which time the Court will provide further procedural directions.¹²⁹

The ICJ proceedings provide both parties an opportunity to set out the legal and factual basis for their claims related to the Essequibo region. The Court's judgment will be binding on both Venezuela and Guyana and will definitively resolve, as a matter of international law, the validity of the 1899 Award and the land boundary dispute between Venezuela and Guyana.¹³⁰

Either or both parties may also choose to argue in the context of these proceedings that the other has violated the Court's provisional measures order, in particular by aggravating or extending the dispute between them. The Court's provisional measures orders similarly create binding obligations that the parties are required to respect.¹³¹ Guyana may point to Venezuela's holding the referendum, as well as Venezuela's post-referendum actions. Venezuela may point to the United Kingdom's presence in the region, for example, which it has already argued constitutes a violation of the Argyle Declaration.¹³²

Notwithstanding the Court's judgments confirming its jurisdiction and the admissibility of Guyana's claims, Venezuela continues to oppose the Court's jurisdiction to hear its boundary dispute with Guyana.¹³³ Venezuela's continued

¹²⁸ See *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, Judgment on Admissibility, p. 28, para. 108(3) (Apr. 6, 2023), available through <https://www.icj-cij.org/case/171>.

¹²⁹ See *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, Order Fixing Time-Limit for Counter-Memorial (Apr. 6, 2023); I.C.J., Rules of the Court, arts. 45, 49, 54, available at <https://icj-cij.org/rules>.

¹³⁰ See *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, 2020 I.C.J. 455, 493, para. 138 (Dec. 18), available through <https://www.icj-cij.org/case/171>; Statute of the Court, art. 59, available at <https://icj-cij.org/statute>; Rules of the Court, art. 94(2), available at <https://icj-cij.org/rules>.

¹³¹ See *LaGrand (Germany v. United States)*, 2001 I.C.J. 466, 506, para. 109 (June 27), available through <https://icj-cij.org/case/104>.

¹³² See Associated Press, *Venezuela Plans Military Exercises in Caribbean as a British Warship Heads to Guyana*, NPR, Dec. 28, 2023, available at <https://www.npr.org/2023/12/28/1222062633/venezuela-military-exercises-guyana-british-warship>.

¹³³ See Florantonia Singer, *With Its Referendum on Essequibo, Venezuela's Government Opens a New Front to Ensure Absolute Control Until the 2024 Presidential Elections*, EL PAÍS, Dec. 5, 2023, available at <https://english.elpais.com/international/2023-12-05/with-its-referendum-on-essequibo-venezuelas-government-open-s-a-new-front-to-ensure-absolute-control-until-the-2024-presidential-elections.html>; Alba Ciudad, *President*

opposition to the Court's jurisdiction suggests that Venezuela may decline to comply with any unfavorable judgment. Though binding, the enforceability of the Court's judgments and orders is primarily left to the discretion of the Security Council, posing political obstacles to ensuring State compliance.¹³⁴

Further, the Court has specified its jurisdiction regarding the boundary dispute between the parties relates to the "land boundary."¹³⁵ There are rules under international law for the delimitation of maritime boundaries, based upon a settled land boundary.¹³⁶ But, given the significance of the maritime rights in the Essequibo region, in light of the substantial oil deposits there, the delimitation of the maritime boundary is likely to be strongly contested between the parties. Often such disputes would be resolved by specialist tribunals, such as the International Tribunal of the Law of the Sea, under the terms of the UN Convention of the Law of the Sea ("UNCLOS").¹³⁷ But Venezuela does not recognize the Tribunal's jurisdiction over maritime territorial disputes and has not acceded to the UNCLOS.¹³⁸

Maduro: Essequibo Referendum Is Binding and I Will Enforce People's Decision, Orinoco Tribune, Dec. 5, 2023, available at <https://orinocotribune.com/president-maduro-essequibo-referendum-is-binding-and-i-will-enforce-peoples-decision/>; TeleSUR, *President Maduro: Landslide Referendum Victory Is Binding*, Dec. 4, 2023, available at <https://www.telesurenglish.net/news/President-Maduro-Landslide-Referendum-Victory-Is-Biding-20231204-0010.html>.

¹³⁴ See U.N. Charter, art. 94(2), available at <https://www.un.org/en/about-us/un-charter/full-text>; Aloysius P. Llamzon, *Jurisdiction and Compliance in Recent Decisions of the International Court of Justice*, 18 EUROPEAN JOURNAL OF INTERNATIONAL LAW 815, 822 (2007); S. Gozie Ogbodo, *An Overview of the Challenges Facing the International Court of Justice in the 21st Century*, 18 ANNUAL SURVEY OF INTERNATIONAL & COMPARATIVE LAW 93, 106–107 (2012). See also I.C.J. Statute, art. 61(3), available at <https://www.icj-cij.org/statute>; I.C.J. Rules of the Court, art. 99(5), available at <https://www.icj-cij.org/rules>.

¹³⁵ *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, 2020 I.C.J. 455, 493, para. 138 (Dec. 18), available through <https://www.icj-cij.org/case/171>.

¹³⁶ See Stephen Fietta & Robin Cleverly, *A Commentary on the Modern International Law of Maritime Boundary Delimitation: Context*, in A PRACTITIONER'S GUIDE TO MARITIME BOUNDARY DELIMITATION, 27–28 (Mar. 24, 2016). See also *North Sea Continental Shelf (Germany v. Netherlands)*, 1969 I.C.J. 3, 51, para. 96 (Feb. 20), available through <https://icj-cij.org/case/52>.

¹³⁷ See United Nations Convention on the Law of the Sea (UNCLOS), arts. 287–288, Dec. 10, 1982, 1833 U.N.T.S. 397 (1982), available at <https://treaties.un.org/doc/Publication/UNTS/Volume%201833/volume-1833-A-31363-English.pdf>; *ibid.*, Annex VI (Statute of the International Tribunal for the Law of the Sea).

¹³⁸ See United Nations Convention on the Law of the Sea (UNCLOS), Dec. 10, 1982, 1833 U.N.T.S. 397, 397–398 (1982), available at <https://treaties.un.org/doc/Publication/UNTS/Volume%201833/volume-1833-A-31363-English.pdf>.

Conclusion

Venezuela and Guyana's historic dispute over title to the Essequibo region is unlikely to be easily resolved. In the immediate term, both parties, and their allies, would be well-served to continue efforts to de-escalate tension and avoid any military operations. The Argyle Declaration by the Presidents of both States represents a positive step in this direction.

It is also important that both Venezuela and Guyana comply with the ICJ's provisional measures order, and that Venezuela continues to engage with the proceedings before the Court. The Court's binding judgment determining the disputed land boundary should provide an important clarification to the parties as a matter of international law.

In the meantime, continued diplomatic negotiations between Venezuela and Guyana are also to be encouraged, particularly as Venezuela's continued statements denying the Court's jurisdiction suggest it may decline to comply with the Court's judgment. Negotiations are also likely to be important for the resolution of any outstanding disputes between the two States related to their respective maritime borders. The discovery of significant oil deposits off the shores of the Essequibo region, however, has rendered the likelihood of a negotiated solution even more challenging.