



WILLIAM J. PERRY CENTER FOR HEMISPHERIC DEFENSE STUDIES

# Regional Insights

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**Photo caption:** The International Court of Justice (ICJ) in the Hague, Netherlands, will adjudicate the border dispute between Guyana and Venezuela (photo courtesy of United Nations).

## The Guyana-Venezuela Waiting Game

By Ivelaw Lloyd Griffith

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.

### The Game Begins

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.”<sup>1</sup>

After decades of conversations under the auspices of the Secretary General, the dynamics of the waiting game shifted to the International Court of Justice (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. Happily in this case, there is light at the end of the waiting game tunnel; Godot will eventually arrive, in that the ICJ will ultimately deliver a judgment.

Following 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 decided that it did, indeed, have jurisdiction to consider the matter, and in March 2021 it gave Guyana until March 8, 2022, to submit its Memorial (case brief); Venezuela was given until March 8, 2023, to submit its Counter-Memorial. Barring any unforeseen circumstances, the Court should have a ruling on the substance of the case by March 2024. But this was

before Venezuela’s latest move, which is discussed below.

### Valid and Binding

One noteworthy recent development in the waiting game is Guyana’s submission of its Memorial by the specified March 8, 2022, date. Guyana is seeking the Court’s judgement in several areas. Quite importantly, among other things, it asks 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 wants 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 has asked that Venezuela be ordered to withdraw immediately from and cease its occupation of the Guyana part of the Island of Ankoko.

Guyana’s Memorial submission prompted swift action by Venezuela, not in relation to its Counter-Memorial, however. It has another nine months for that submission. In a letter dated June 6, 2022, which indicates that it recognizes the foolhardiness of paying scant regard to the importance of the proceedings, 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 Commonwealth Secretary General; and Ambassador Audrey Waddell, then director general of the Ministry of Foreign Affairs.

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<sup>1</sup> Arbitral Award of 3 October 1899 (Guyana v. Venezuela), Jurisdiction of the Court, Judgment, I.C.J. Reports December 2020, 466, available at [171\\_20201218\\_JUD\\_01-00-EN.pdf \(icj-cij.org\)](https://www.icj-cij.org/doc/Case-File/171/20201218_JUD_01-00-EN.pdf).

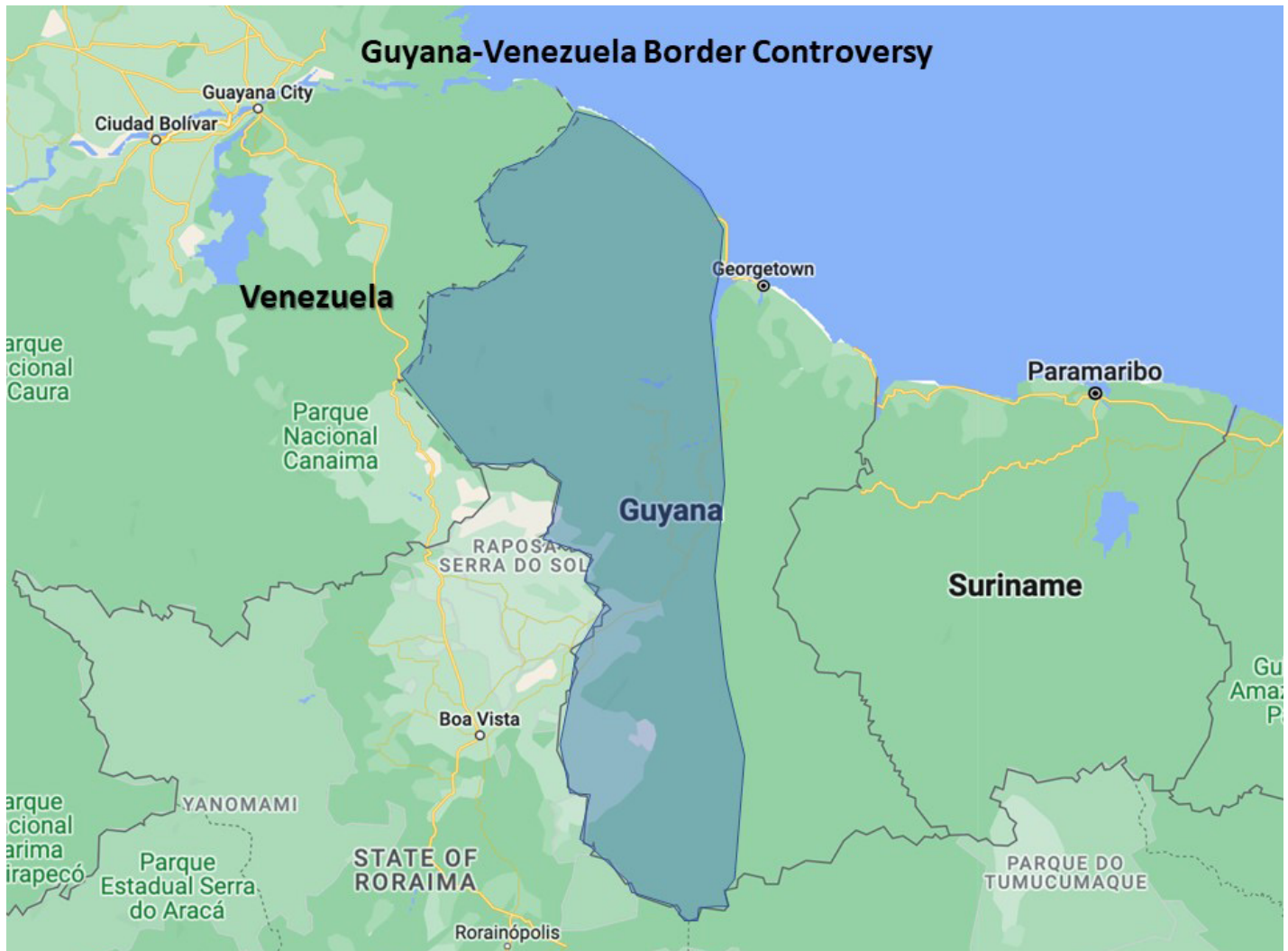


Figure 1. Portion of Guyana Claimed by Venezuela (Google map graphic by Perry Center staff)

### Venezuela’s Latest Move

More significant, though, the following day—on June 7, 2022—Venezuela filed preliminary objections to the admissibility of Guyana’s petition. Venezuela’s move has implications for the waiting game, in that under the Rules of the Court, the proceedings on the merits have been suspended and a timetable must be 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. Thus, the ICJ has fixed October 7, 2022, as the date by

which Guyana must present its written response.<sup>2</sup> This injects a new dynamic into the waiting game.

Unlike Venezuela, Guyana has been moving with alacrity and paying due deference to the authority of the ICJ because the case has existential implications for South America’s lone English-speaking republic. Venezuela claims all lands west of the Essequibo River, which they call *zona en reclamación* or Guayana Esequiba. The area is 61,600 square miles of Guyana’s 83,000 square miles, almost 75 percent of the

<sup>2</sup> Arbitral Award of 3 October 1899 (Guyana v Venezuela), ICJ Order, June 13, 2022, available at [Order fixing time-limits written statement of Guyana \(icj-cij.org\)](https://www.icj-cij.org).

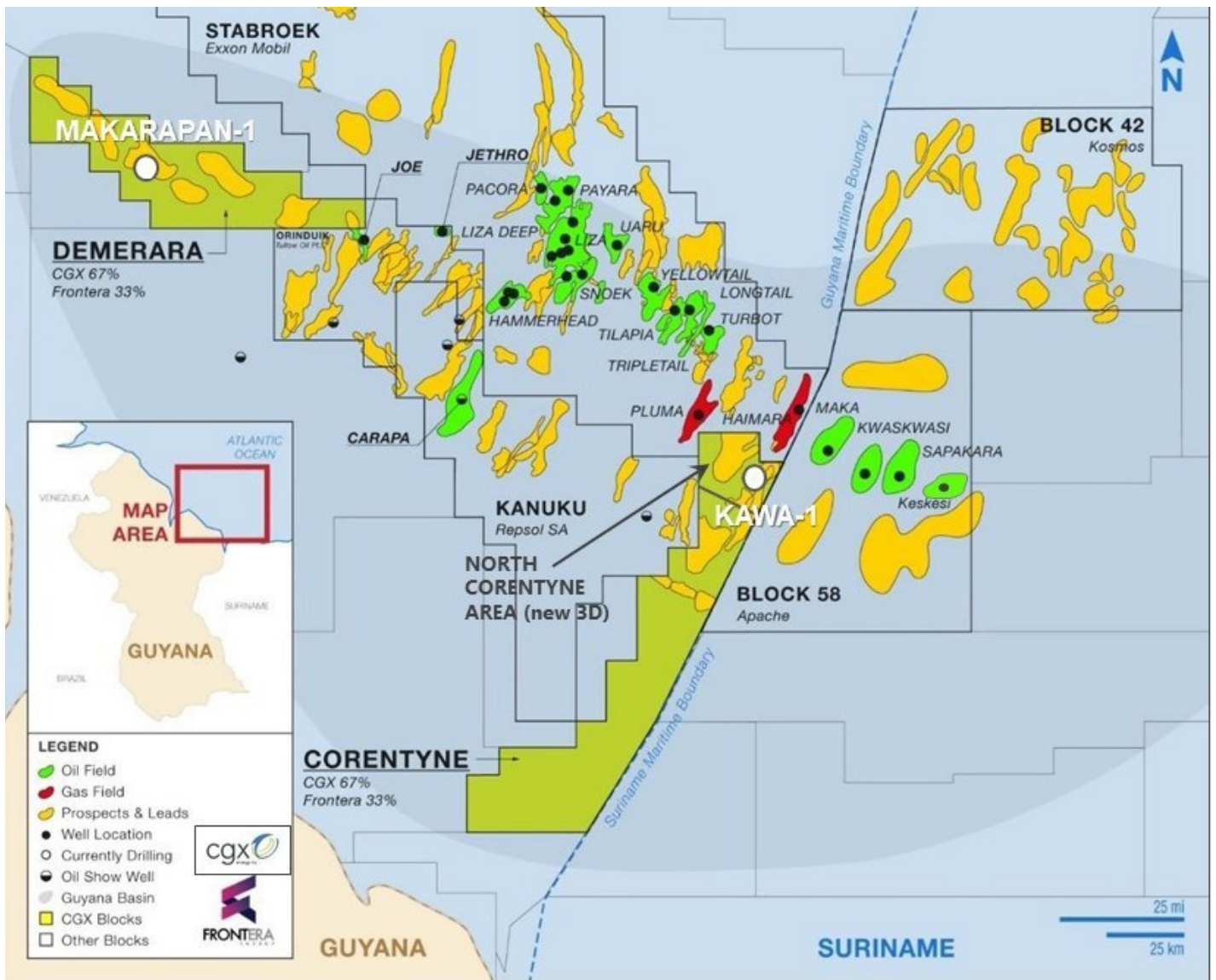


Figure 2. Guyana-Suriname Basin showing Oil Operations (map courtesy of Frontera Energy, with permission).

country, as Figure 1 shows. Essequibo, which could accommodate the island of Jamaica fourteen times, with room to spare, holds six of Guyana’s 10 administrative regions, the equivalent of states or provinces in other countries, with 300,000 of the country’s population of just under 800,000 living there.

The area has an abundance of natural resources, including oil, gold, diamond, bauxite, manganese, uranium, other minerals, and timber. It also is part of 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. Consequently, it is rich in biodiversity. Guyana’s massive offshore oil discoveries since May 2015, and its now twelve billion barrels equivalent of oil reserves, have raised the stakes to an all-time high, as much of the oil lies beneath the maritime zone claimed by Venezuela, as Figure 2 shows. Indeed, just this past July 26, two new discoveries were announced. This brings the total discoveries within the Stabroek Block to 33, with the overall

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Figure 3 New River Triangle along the Guyana-Suriname border (map compliments of Sovereign Limits, with permission)

discoveries totaling 38.<sup>3</sup>

New discoveries increase Guyana’s existential anxiety

<sup>3</sup> See “Guyana makes 33 viable oil discoveries to date, Gov’t happy with continued success,” News Room, July 26, 2022, available at [Guyana makes 33 viable oil discoveries to date, Gov’t happy with continued success – News Room Guyana](#).

and hopefulness that the waiting game will end sooner rather than later, even though Guyana has no control over the resolution timeline. Needless to say, Guyana’s existential anxieties are exacerbated by the other territorial claim it faces; from Suriname for the

resource-rich New River Triangle, which involves 15,540 square kilometers of territory, as Figure 3 shows.<sup>4</sup>

New oil discoveries in Guyana also have an anxiety impact on Venezuela, which also lacks direct influence on the World Court timeline, but can affect it indirectly through legal maneuvers, such as the one pulled this past June. There is not existential anxiety, though, but geopolitical desperation because of domestic and international political vicissitudes. Venezuela long has wanted a bilateral political solution to the controversy. In the context of anxieties, it is important to know the movers and shakers in this waiting game that involves petro giant Venezuela and petro-power-in-the-making Guyana.

### Players and Payment

Considering 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's 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; Queens Counsel Philippe Sands, who is a professor of International Law at University College London and a barrister with Matrix Chambers of London; and 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.

Also part of the Guyana's legal legion are: Pierre d'Argent, professeur ordinaire, Catholic University of Louvain, member of the Institut de droit international, Foley Hoag LLP, and a member of Brussels Bar; Christina L. Beharry of Foley Hoag LLP, who is a member of the Bars of the State of New York and the District of Columbia, and of the Law Society of Ontario; Edward Craven of London's Matrix Chambers; and Ludovic Legrand, a researcher with the Centre de droit international de Nanterre, France and Adviser in international law. Guyana's team also boasts 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.

Key, too, are 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, as noted earlier, international lawyer Sir Shridath Ramphal, a former Guyana foreign minister and Commonwealth Secretary General, is one of Guyana's Agents.<sup>5</sup>

Needless to say, the pursuits before the ICJ are costly. At one stage Guyana had difficulty in settling obligations related to the case. In December 2017, for in-

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<sup>4</sup> For a discussion of the historical antecedents and legal and political dynamics of this dispute, see Thomas Donovan, "Suriname-Guyana Maritime and Territorial Disputes: A Legal and Historical Analysis," *Journal of Transnational Law and Policy*, Vol. 23 Spring, 2003, 41-98; Duke E.E. Pollard, "The Guyana/Suriname Boundary Dispute in International Law," in Kenneth Hall and Myrtle Chuck-A-Sang, eds., *Intervention, Border and Maritime Issues in CARICOM*. Kingston, Jamaica: Ian Randle Publishers, 2007; and Ivelaw Lloyd Griffith, "Political Acumen and Geopolitical Anxiety in Suriname," *Security and Defense Studies Review*, Vol. 12 Nos. 1 & 2, 2011: 47-72, available at [SDSR Vol12 No12.pdf](https://www.sdsr.org/Vol12_No12.pdf) ([williamjperrycenter.org](http://williamjperrycenter.org)).

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<sup>5</sup> For the full Guyana team, see *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, Jurisdiction of the Court, Judgment, I.C.J. Reports December 2020, 458-459, available at [171\\_20201218\\_JUD\\_01-00-EN.pdf](https://www.icj-cij.org/doc/Compendium/2020/20201218_JUD_01-00-EN.pdf) ([icj-cij.org](http://icj-cij.org)). As regards the death of Rashleigh Jackson, see "Former Foreign Affairs Minister Rashleigh Jackson dies," *INews Guyana*, September 2, 2022, available at [Former Foreign Affairs Minister Rashleigh Jackson dies | INews Guyana](https://www.inews.gy/news/former-foreign-affairs-minister-rashleigh-jackson-dies).

stance, Foreign Minister Carl Greenidge explained to the National Assembly that there were times in 2016 and 2017 when the government was unable to make timely payments to the legal team. This situation prompted him to recommend to President David Granger that \$15 million of the \$18 million that had been received from Exxon Mobil in 2016 as a signing bonus for the oil exploration contract be assigned to cover the legal expenses. This decision caused a political firestorm, with questions raised by the political opposition and civil society groups, not so much about the use of the funds, but about how the entire episode was managed by the government.<sup>6</sup>

Much has changed since 2017. Thanks to the oil revenues that began accumulating since March 2020, the government no longer is cash strapped. The country's sovereign wealth fund, called the Natural Resource Fund, shows this clearly. The initial Natural Resource Fund law, passed by the National Assembly in January 2019, was replaced by updated legislation in December 2021. According to the Fund's report for the second quarter of 2022, inflows for the reporting period amounted to US\$232.16 million. Since its inception, the Fund has received US\$849.63 million from twelve oil lifts and US\$102.06 million from royalties. Also noteworthy is that Guyana is expected to collect US\$150 billion in oil and gas revenues over the ensuing three decades.<sup>7</sup>

In a sense, then, money is no object, although how it is managed could be objectionable. Prudent management of the oil revenue—in relation to the ICJ case

and all things—is not just desirable, but necessary. Foreign Minister Hugh Todd took pains this past February to signal prudence in the National Assembly, in defending his Ministry's 2022 allocation, especially the GUY\$ 660 million (US\$ 3,168,332) earmarked for the legal fees for the case. This allocation seems inadequate. Quite likely, Foreign Minister Todd will need to secure a supplemental allocation from the National Assembly later this year, especially in light of Venezuela's delaying tactics with its preliminary objections, which will impact both the waiting game's timeline and the costs incurred.

### Defense Diplomacy

Guyana continues to be mindful of the dangers of putting all its waiting game eggs in one basket, so to speak. The judicial basket is necessary, but not sufficient. The country continues to practice a strategy called Defense Diplomacy that dates to the Forbes Burnham era, which ran from 1964, when he was elected as Premier of the then colony of British Guiana, to 1985, when he died as president of the Republic of Guyana. It places a premium on diplomacy as the nation's first line of defense, with a view to mobilizing support from CARICOM, the United States, Britain, the Commonwealth, and other stakeholders.<sup>8</sup>

It was no coincidence, for example, that the Commonwealth leaders at their Summit held in Rwanda this past June reaffirmed their “firm and unwavering support for the maintenance and preservation of the sovereignty and territorial integrity of Guyana.” Neither was it happenstance that the CARICOM summit

<sup>6</sup> See “Statement to the National Assembly on Thursday December 14th, 2017, by the Hon. Vice President and Minister of Foreign Affairs, Mr. Carl B. Greenidge on the Exxon ‘signing bonus,’” available at [Statement to the National Assembly on Thursday December 14th, 2017 by the Hon. Vice President and Minister of Foreign Affairs, Mr. Carl B. Greenidge on the Exxon ‘signing bonus’ | Parliament of Guyana](#).

<sup>7</sup> Bank of Guyana, [Natural Resource Fund Quarterly Report April 1 – June 30, 2022](#), available at [nrf-june2022-quarterly.pdf \(bankofguyana.org.gy\)](#), 8; and Tulsi Dyal Singh, “I expect Guyana to earn around US\$150B over the next thirty years in O&G revenues,” [Stabroek News](#), April 23, 2022, available at [I expect Guyana to earn around US\\$150B over the next thirty years in O&G revenues - Stabroek News](#).

<sup>8</sup> For a discussion on Guyana's foreign policy pursuits, see “Aspects of Guyana's foreign policy during 1966-1970,” January 29, 2007, available at [http://www.guyana.org/features/postindependence/chapter19.html](#); Georges Fauriol, [Foreign Policy Behavior of Caribbean States: Guyana, Haiti, and Jamaica](#). Washington, DC, University Press of America, 1984; Festus Brotherson, Jr., “The Foreign Policy of Guyana, 1970-1985: Forbes Burnham's Search for Legitimacy,” [Journal of Interamerican Studies and World Affairs](#), Vol. 31 (Fall 1989), 9-36; and Peter Clegg, “Guyana, its Foreign Policy, and the Path to Development,” [The Round Table](#), 103:4, 2014: 399-410.

a few weeks later also pledged continuing support of Guyana, although leaders were partial to Venezuela's desire to resurrect PetroCaribe, the concessionary oil financing scheme that was a key plank of its foreign policy and alliance-building strategy. Also comporting with Defense Diplomacy is the visit to Washington, DC by President Irfaan Ali and a high-level team in late July 2022, where they met virtually and in person with Vice President Kamala Harris, Secretary of State Antony Blinken, and Department of Commerce and other officials. They also conferred with Congressional leaders and interacted with officials at the Atlantic Council, the Center for Strategic and International Studies, and the Wilson Center, influential think tanks.

All things considered, much like Samuel Beckett's characters in *Waiting for Godot*, Guyana is obliged to play the long game, a waiting game, holding relevant conversations, confident that, while the precise hour of Godot's arrival is unknown, he surely will arrive. And, hopefully, this Godot—the ICJ—will deliver the final settlement of a controversy that dates to the 19<sup>th</sup> century and is creating existential anxiety in Guyana and geopolitical desperation in Venezuela. But will the arrival of Godot witness the end of this waiting game? There is good reason to believe that such is merely wishful thinking; a new game likely will begin.

Note: A version of this Regional Insight appeared as a two-part series in *OilNOW* in September 2022.

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