

Rival Governments in Venezuela: Democracy and the Question of Recognition

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On January 23rd, 2019, a [multitudinous crowd](#) occupied the streets of Caracas, demanding President Nicolas Maduro's resignation and the formation of a new Government. Opposition Leader and President of the National Assembly [Juan Guaidó](#) was sworn in as Interim President of the Republic. Guaidó invokes Article 233 of the [Venezuelan Constitution](#), according to which the President of the National Assembly may assume presidential functions in the case of an 'absolute absence of the President elect'. He also relies on Article 333, which addresses the protection of the constitutional order from acts of force. Guaidó's Proclamation and his promise of fresh elections sowed hope among many Venezuelans who are suffering the consequences of an unprecedented economic crisis, with the inflation rate reaching 1.300.000% in [2018](#).

Venezuela is divided into two opposite sets of institutions with competing claims to power. On the one side of the spectrum, there is Guaidó. He enjoys support from the National Assembly, which has been under control of opposition parties since the [2015](#) parliamentary elections. The Supreme Court [in exile](#), whose members were appointed in [July 2017](#) by the National Assembly, also backs [Guaidó](#). On the other side of the spectrum there is the Maduro regime. Maduro claims that he was elected President for the 2019-2025 term in the [May 2018](#) elections, which opposition leaders and numerous States consider illegitimate because of the absence of a fair and free democratic election (cf. OAS [Resolution 2929/18](#)). The [Supreme Court in exile](#) declared the 2018 election null and void. Maduro has nonetheless received support from the Constituent Assembly he convened in [2017](#), the [Supreme Court in situ](#) and the [military](#).

States all over the world face now a choice between two parallel regimes. Only one can be recognized as legitimate. As expressed by U.S. Secretary of State [Pompeo](#) at the UN Security Council, 'now it's time for every other nation to pick a side'. In principle, international law does not require States to establish a democratic political organization. A Government's recognition most typically depends on political reality and, particularly, on its ability to exercise effective control (cf. [Roth](#), pp. 137 *et seq.*). This article argues that, against the backdrop of a split society and rival institutions, coupled with massive protests and widespread civic resistance, democratic legitimation provides a solid criterion for recognition (cf. [Herdegen](#), pp. 207 *et seq.*). In the case of Venezuela, the National Assembly is the only institution whose democratic legitimacy remains unchallenged. Guaidó is thus a reasonable choice.

The race for recognition

The race for recognition already started. Shortly after Guaidó's Proclamation, the Governments of the [Lima Group](#) (Argentina, Brazil, Canada, Chile, Colombia, Costa Rica, Guatemala, Honduras, Panamá and Perú) and the [United States](#) recognized him as Interim President. The Secretary-General of the Organization of American States [OAS], [Luis Almagro](#), welcomed Guaidó's Proclamation as a fundamental step in bringing Venezuela back to the path of Democracy. Almagro's declaration is consistent with OAS Permanent Council's decision 'to not recognize the legitimacy of Nicolas Maduro's new term' ([Resolution 1117/19](#)).

Still, Maduro secured support from a few Latin American States, such as [Bolivia](#), [Cuba](#) and [Nicaragua](#), as well as from [Russia](#) and [Turkey](#). Moreover, the [UN Security Council](#) was unable to reach an agreement on the Venezuelan crisis. [Russia](#) characterized U.S. recognition of Guaidó as 'another demonstration of its total disregard for the norms and principles of international law and an attempt to pose as the self-imposed master of another nation's future'. [China](#) has also opposed recognition of Guaidó, underscoring '[the principle of] non-interference in each other's internal affairs'.

Other States remain cautious. The EU issued a [Declaration](#) stating that 'in the absence of an announcement on the organization of fresh elections with the necessary guarantees over the next days, the EU will take further actions, including on the issue of recognition'. The [Mexican Government](#) expressed concern for the political situation of Venezuela without recognizing Guaidó as Head of State. The [Mexican President](#) invoked Mexico's strict policy of non-intervention in the internal affairs of other States. This policy is in line with the [Estrada Doctrine](#) (1930).

Recognition and the consent of the governed

There has been much debate as to whether recognition shall solely depend on a Government's ability to exercise actual control over a territory and its population, or whether legitimacy – democratic or otherwise – should play a role in this regard (cf. [Roth](#), pp. 136 *et seq.*). It is beyond doubt, however, that policies of recognition have traditionally taken into consideration the people's consent or, at least, passive obedience or acquiescence to the rule of those who yield power (cf. [Lauterpacht](#), pp. 115 *et seq.*). The existence of democratic institutions facilitates the ascertainment of such consent or, using [Thomas Jefferson's](#) formula on recognition, the presence of '[a Government] which is formed by the will of the nation, substantially declared'. Active opposition against Maduro's Government sheds doubts on the existence of consent by the governed. Open civic disobedience to a Government moreover indicates an absence of effective control over the population (cf. [Lauterpacht](#), p. 115).

The role of democratic legitimation

General international law does not prescribe the political organization of States. In the [Western Sahara Advisory Opinion](#) (1975), the ICJ held that ‘no rule of international law [...] requires the structure of a State to follow any particular pattern’ (ICJ Rep 12 [1975] para 94). Still, where neither of two rival governments exercises territorial control or there is active resistance against their authority, democratic legitimation is a solid criterion to make a choice. Democracy has sometimes even taken precedence over naked military force. It is not uncommon for States to withhold recognition of Governments established through a *Coup d’État* which overthrows a democratically-legitimated Government. Moreover, the UN Security Council has adopted measures against regimes established by military force against elected Governments (cf. Resolutions [1132/97](#) and [841/93](#)). [Herdegen](#) observes ‘a shift of accent from a fixation in effectiveness and protection of the *status quo* to a democratically and constitutionally-based legitimacy’ (author’s translation, p. 204.).

Democracy has a particularly prominent role in the American continent. Many States have historically followed the [Tobar Doctrine](#) (1907), which posits the non-recognition of revolutionary governments established in violation of the constitution. In the 1960s Venezuela itself adopted a strict policy of non-recognition of regimes established against the authority of elected Governments (*Betancourt Doctrine*; see Document 27 [here](#)).

In the [Inter-American Democratic Charter](#), OAS Member States elevated democracy to a *sine qua non* condition for the legitimate exercise of sovereign authority in the region by recognizing that ‘[t]he peoples of the Americas have a right to democracy and their governments have an obligation to promote and defend it’ (Article 1). The Charter addresses cases involving ‘an unconstitutional interruption of the democratic order or an unconstitutional alteration of the constitutional regime that seriously impairs the democratic order in a member state’ (Article 19). Those situations are considered as ‘an insurmountable obstacle’ to participation in the OAS and carry suspension from the Organization (Articles 19-21).

The OAS Permanent Council declared the existence of an interruption of the constitutional order in Venezuela in 2017, after an attempt by the Supreme Court to assume the National Assembly’s legislative functions ([Resolution 1078/17](#)). Later on, the OAS General Assembly asserted that the 2018 election ‘lacks legitimacy’ ([Resolution 2929/18](#)). Thus, even before Guaidó’s Proclamation, the [OAS](#) only recognized the National Assembly and the Supreme Court in exile as ‘democratic institutions’ in Venezuela. In a recent statement, the [EU](#) declared, too, that the National Assembly is ‘the democratic legitimate body of Venezuela’.

These statements indicate that the National Assembly is the only organ whose democratic legitimacy is beyond dispute. The fact that Guaidó enjoys express support from the National Assembly provides a strong argument in favor of his recognition as Interim President of Venezuela.

The time is ripe for recognition

Contending Governments have *per se* incompatible legitimacy claims. No State can therefore simultaneously grant *de jure* recognition to more than one rival Government (cf. [Talmon](#), p. 105). Recognition of Guaidó as *de jure* President of Venezuela necessary implies denying *de jure* recognition to Maduro, and vice-versa. States stand now before a choice. Neither Maduro nor Guaidó are in full control of the country. Still, as a result of the National Assembly's support, only Guaidó has a credible legitimacy claim. As Interim President, Guaidó's mission is to organize a new and fair Presidential election. Democracy is on his side.

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