

# Territorial Disputes and Their Resolution

The Case of Ecuador and Peru

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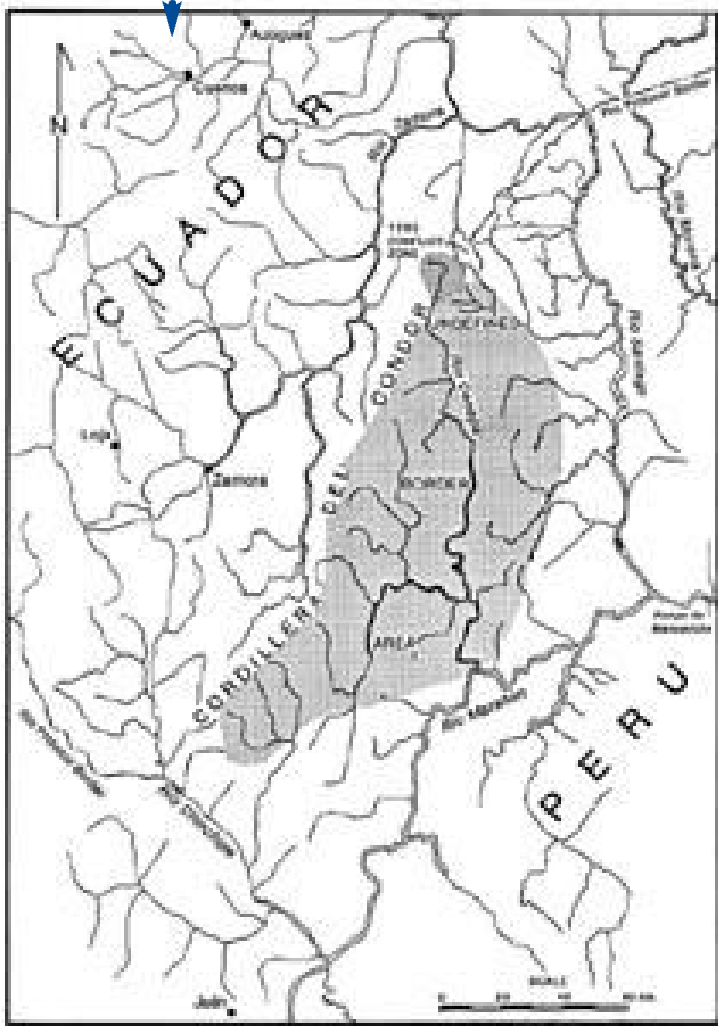
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## Key Points

- ▶ The Peru-Ecuador case is the Western Hemisphere's only territorial dispute in which deadly conflict has broken out repeatedly since World War II. Most recently, in early 1995, the two nations fought an intense nineteen-day war along a forty-nine-mile undemarcated section of their border. The October 1998 agreement between the two countries that settles the remaining issues in their border dispute provides a sharp contrast to the persistent rivalry between two countries with a history of war and seemingly perpetual border skirmishes.
- ▶ More than in other areas of the world, border disputes in the Western Hemisphere have been subject to formal legal and quasi-legal processes, such as adjudication and arbitration, in which the disputing countries request a neutral third party to make an authoritative ruling resolving the territorial question. There have been twenty-two such cases of legally binding third-party rulings on contested territorial sovereignty in Latin America. Compare these numbers to one small case in continental Europe; two among the independent states of Africa; two in the Middle East; and three in Asia, the Far East, and the Pacific.
- ▶ The Ecuador-Peru border dispute has also included extensive third-party involvement, including that provided under the 1942 Rio Protocol, a treaty framework that ended the 1941 war between the two countries. Soon thereafter, however, Ecuadoran leaders claimed that geographical information that had come to their attention after the signing of the Rio Protocol rendered the agreement invalid. The 1995 border war led to some changes that bolstered the prospects for a resolution: Ecuador's military made a strong showing, while Peru's leaders realized their country's flagging economy could not sustain similar future engagements.
- ▶ The Rio Protocol represents a special method of third-party dispute settlement. The treaty's provisions were overseen by four "Guarantor" states (Argentina, Brazil, Chile, and the United States—four of the most powerful countries in the region). The Guarantors are legally obligated to mediate—and possibly arbitrate, which they eventually did for two major remaining impasses—all aspects of the Ecuador-Peru border dispute. As such, the Rio Protocol exemplifies not only the variety of international dispute-settlement mechanisms, but the power of international law through the observance of treaty obligations.
- ▶ Several factors contributed to favorable prospects for a settlement of this border dispute: commitment by the political leadership in both Ecuador and Peru, a change in popular attitudes in both countries, and the role played by the four Guarantor nations under the Rio Protocol.

- ▶ The Guarantor states' interest in resolving this conflict, among other reasons, was to help foster the region's economic and trade integration. Both Ecuador and Peru, as well as the Guarantor states, recognized the adverse effects of the dispute on the development of regional trade.
- ▶ The Ecuador-Peru dispute also illustrates how conflict can lead to increased purchases of advanced weapons and the corresponding opportunity cost to economic development for the parties to the dispute. Settling borders eliminates a key irritant to relations, though it is not a guarantee of positive future relations. Once resolution has been reached, the portion of military expenditures that previously went toward defending the disputed territory can be used for economic development or social purposes.
- ▶ Given that resolution of such conflicts often involves highly sensitive issues with strong connections to notions of nationalism and national identity, the involvement of a third party does not guarantee resolution or compliance. The United States and the other Guarantor nations had a stake in seeing the Peru-Ecuador dispute resolved to promote regional political harmony and economic and trade integration, and to decrease the likelihood of a regional competition for advanced weapons.



Source: Gary S. Elbow, "Territorial Loss and National Image: The Case of Ecuador," *1996 Yearbook, Conference of Latin Americanist Geographers*. Vol. 22, pp. 93–105. Reprinted with permission.





## Foreword

After nearly six decades of sporadic warfare over a relatively small stretch of disputed border, Ecuador and Peru signed an accord on October 26, 1998, that provides a definitive settlement of the remaining issues in their ongoing border conflict. The accord may not spell the end to future territorial disputes in the region, but it is historic in that it involves many actors working over many decades to achieve a settlement to a long-standing dispute. In this *Peaceworks*, Beth Simmons expertly summarizes not only the history of this dispute, but also the principal institutional mechanisms in the international realm that are available to help resolve such interstate conflicts over disputed territory.

When nations clash, international society fortunately provides them with a variety of alternative ways to settle their disputes short of war. However, countries are often less amenable to resolving disputes with such pacific means when it comes to issues as fraught with national passions as territorial borders.

Even as recently as four years ago, Ecuador and Peru renewed a war they originally fought in 1941 over a long-disputed border. For nineteen days in January 1995, these two Latin American nations waged an intense border war that involved five thousand troops and all branches of both countries' armed forces. Moreover, the relatively brief border conflict gave both countries new reasons to replenish and upgrade their military arsenals, as both Ecuador and Peru announced plans to equip their air forces with sophisticated jet fighters.

As Simmons explains in this *Peaceworks*, the one component of international legal machinery that helped prevent the conflict from escalating and provided a supporting mechanism for the warring countries to settle all the issues in their dispute was the 1942 Rio Protocol, a treaty framework for third-party dispute settlement of the issues surrounding the 1941 war. Simmons, a professor of political science at the University of California, Berkeley, is an expert on the political and international legal dimensions of border conflicts. During her Jennings Randolph Program fellowship here at the Institute, Professor Simmons continued her work on a compilation and analysis of border conflicts around the world. She selected for this *Peaceworks* the Ecuador-Peru border conflict as one of a series of case studies in the variety of international third-party dispute resolution mechanisms.

Over a period of decades, both Ecuador and Peru have resorted to a range of third-party involvement to settle their border conflict. While they did not meet a May 30, 1998 deadline to reach agreement on all of the outstanding issues, the process created under the Rio Protocol at least kept the disputing nations engaged in the process of trying to settle the remaining issues. Success came a relatively brief five months later in the form of an

arbitration decision rendered by the “Guarantors”—the regional powers overseeing the protocol’s execution.

The Institute’s special interest focuses on the role of the Guarantors—Argentina, Brazil, Chile, and the United States. In examining the protocol, Professor Simmons illustrates the power of international law in treaties and the legal principles that serve as their foundation. Indeed, the treaty framework is noteworthy for the conditions it places not only on the disputing countries, but also on the Guarantors themselves: Under the protocol’s provisions, the Guarantors were treaty-bound to mediate and possibly arbitrate—which, in the end, the parties did resort to—all aspects of the dispute to the best of their ability.

Several factors contributed to favorable prospects for a settlement of this border dispute: commitment by the political leadership in both Ecuador and Peru, a change in popular attitudes in both countries, and the role played by the four Guarantor nations under the Rio Protocol. Nevertheless, there are also some serious reservations about calling the treaty framework a total success. After all, the parties had been trying to settle this dispute under the Rio Protocol for more than a half-century. Ecuador’s earlier rejection of the protocol’s basis—pointing to new geographical information that was unknown at the time of the protocol’s signing and also to the fact that it signed the treaty after its defeat in the 1941 war—probably served as the most formidable obstacle.

Yet circumstances change, as Simmons points out, and new realities created a new negotiating environment: The Fujimori government in Peru faced a poor economy and few resources to devote to similar military engagements in the future. Ecuador’s stronger showing in the 1995 war meant that any concessions it made would no longer be seen as coerced. These new realities provided the impetus for both countries to press for the May deadline and, eventually, an October agreement.

The institutionalization of such dispute-resolution mechanisms raises some issues for U.S. foreign policy toward Latin America. The growing economic integration between North and South America holds the promise that the continent will find a recourse to these more institutionalized means of dispute settlement, not only over trade and financial issues, but also over more difficult issues such as disputed territorial sovereignty. To be sure, the Free Trade of the Americas Area, slated to be established and extend the benefits of free trade throughout the Western Hemisphere by 2005, is premised on the openness of borders among all its nations.

Additionally, as Professor Simmons asks, can the success of the United States in the guarantor process serve as a model for resolving conflicts on other continents? As she points out, the circumstances that led to success in the Ecuador-Peru case may be difficult to replicate in other disputes.

This work fits into the Institute’s broader interests in the resolution of interstate conflicts. The Institute has just approved a grant to the Inter-American Dialogue for a comprehensive examination of eight to ten of the most potentially dangerous past disputes in the Western Hemisphere. The Institute is also publishing a paper on the diplomatic dynamics of the Ecuador-Peru conflict by Luigi Einaudi, U.S. special envoy to the Ecuador-Peru peace process. The paper will appear as a chapter in a book on the management of complex international mediation, edited by Chester A. Crocker, Fen Osler Hampson, and Pamela Aall, to be published by the Institute’s Press later this year. Based on these efforts

and other work of the U.S. Institute of Peace, the Institute is developing conflict resolution training programs with the Organization of American States and other organizations that will draw on the Ecuador-Peru experience.

The Institute has examined other sources of conflict in Latin America, ranging from Cynthia McClintock's examination of guerrilla insurgencies in El Salvador and Peru in her *Revolutionary Movements in Latin America*, recently published by USIP Press, to Wendy Hunter's look at the changing nature of civil-military relations on the continent in her *State and Soldier in Latin America: Redefining the Military's Role in Argentina, Brazil, and Chile* (Peaceworks No. 10, October 1996).

In this timely Peaceworks, Beth Simmons helps shed light on the source of some of Latin America's more protracted conflicts, as well as on the international legal machinery at these countries' disposal to help resolve these border disputes. In so doing, she has contributed to the significant body of literature that will obviously become more important to U.S. foreign policymakers as the growing interdependence of regional markets draws the two continents even closer.

RICHARD H. SOLOMON  
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## Introduction

As a region, Latin America has enjoyed relative political and economic success over the last decade. The post–Cold War period has seen the amelioration of ideological conflict throughout the region that exacted a high human and economic toll from the 1950s to the present decade. Virtually every country in the region is under some form of civilian and more or less democratic rule. Across the continent, there are few if any flash points of international conflict. The one issue-area that has recently contributed to militarized violence between countries in the region is a small number of unresolved territorial disputes (see table 1).

Historically, disagreements over sovereign control of territory have cost the region dearly in both human and economic terms. Yet significant progress has been made in resolving Latin American border disputes in recent years. In 1984, Argentina and Chile settled the Beagle Channel dispute, as well as a number of smaller border disputes in the 1990s, including the Laguna del Desierto settlement through arbitration in 1994; they are now in the ratification stage of an agreement on the Ice Fields in southern Patagonia. In 1992, El Salvador and Honduras settled a century-long disagreement over adjacent territory (with the exception of one small segment) through the International Court of Justice (ICJ). At the close of the twentieth century—well after more than a century of territorial disputes, border skirmishes, and full-scale wars—questions of territorial sovereignty are either largely latent or within sight of resolution throughout Latin America. Former Peruvian foreign minister Francisco Tudela enthusiastically commented on the trend: “Once we are through with these problems, Latin America will have no inherent conflict.”<sup>1</sup> While such an assessment may be overly optimistic, it is fair to say that a very small number of territorial disputes continues to plague the region. However, these disputes constitute one of the few international points of contention with the potential to erupt into mass violence at the regional level.

Despite their political sensitivity, these issues are often well served by international legal mechanisms. Contrary to the notion of international law as ineffective in the absence of a supranational court whose decisions can be enforced through punishments that pierce the shield of sovereignty, border disputes offer an excellent way of surveying not only the variety of such mechanisms—ranging from decisions of the ICJ to the quasi-judicial methods examined in this study—but also why states adhere to the international legal principles that support them.

This essay looks specifically at the border conflict between Peru and Ecuador. It is the only such case on the continent over which deadly conflict has broken out repeatedly since World War II and—despite the recent arbitrated settlement to resolve the outstanding issues in the dispute—has the potential to do so again. The parties have recently concluded a settlement that is the culmination of an institutionalized process involving four

**Table 1: Unresolved Territorial Boundaries in Latin America\***

| Border                 | Segment   | Status     |
|------------------------|---|------------|
| El Salvador/Honduras   | Small segment undecided by the 1994 ICJ ruling  | Indefinite |
| Ecuador/Peru           | Guepi-Lagartococha rivers segment<br>Yaupi-Santiago rivers segment<br>Cordillera del Condor segment | Settled    |
| Brazil/Uruguay         | Isla Brasileira<br>Arroyo de la Invernada segment   | Disputed   |
| Guyana/Suriname        | “New River Triangle” segment  | Disputed   |
| Guyana/Venezuela       | Entire boundary   | Disputed   |
| French Guiana/Suriname | Litani River segment  | Disputed   |
| Brazil/Paraguay        | Guaira Falls segment <sup>†</sup>   | Settled    |
| Argentina/Chile        | “Ice Fields” segment <sup>‡</sup>   | Indefinite |

\* Land boundaries or boundary segments in Latin America that the U.S. State Department considers to be in dispute or indefinite as of March 1999. The official position of the Guatemalan government is that it has a dispute over its poorly demarcated boundary with Belize, but the State Department does not list this as a dispute.

<sup>†</sup> The official position of the Brazilian government is that it has solved all of the disputes with its neighbors, but its maps still seem to show boundaries with which its neighbors disagree.

<sup>‡</sup> Awaiting ratification by the Argentine congress.

regional “Guarantor” powers (Argentina, Brazil, Chile, and the United States). Significant progress on a settlement was evident at the beginning of 1998 with the acceptance by both Ecuador and Peru of a negotiating schedule and the establishment of four bilateral technical commissions charged with addressing navigation, integration, confidence building, and, most crucially, border demarcation in the disputed area.<sup>2</sup> What factors contributed to success in resolving these issues? What challenges remain? How important has United States participation been in contributing to the peaceful resolution of this border conflict? What lessons, if any, might be applicable to other regions of the world? These are the main questions this study attempts to answer.

The willingness of Peru and Ecuador to discuss and settle the substance of their territorial dispute marks an important turning point in a long history of tense bilateral relations. As the history of such disputes in Latin America will attest, the resolution of conflicting territorial claims often involves highly sensitive issues with strong connections to notions of nationalism and national identity. While there may be good reasons to resolve border disputes, there are also often strong emotion-based political barriers to doing so. For this reason, border settlements throughout Latin America often have taken decades or more to craft and implement. Discussions can move glacially. Agreement can be elusive; ratification of international agreements highly contentious. In some cases, peaceful discussions have been preceded by full-fledged war; elsewhere threats of military confrontation or minor border clashes have punctuated diplomatic talks.

Nonetheless, the resolution of border uncertainty is important for a number of reasons. First, unresolved territorial disputes are an invitation to cross-border violence.

Uncertainty often encourages mutually suspicious governments to fortify or otherwise militarize the disputed region, creating opportunities for armed skirmishes and wider, more lethal confrontations. Unresolved borders provide a pretense for force concentrations which—intended or not—can result in violent clashes. Throughout history, territorial disputes have contributed to violent interstate conflict worldwide and continue to be a primary cause of the kind of regional instability that has manifested itself in the post-Cold War period.<sup>3</sup> Settling disputed borders on a mutually acceptable basis removes an important irritant to relations, though it is of course hardly a guarantee of harmonious relations.

Border settlement is therefore usually important for providing the security governments require as a precondition to divert a portion of their military expenditures from the task of defending a disputed border to economic and social development, as Peruvian president Alberto Fujimori himself has often noted. Persuaded by their military establishments, governments may spend more to protect their claims to a contested border through arms than to develop the underlying value of the land.<sup>4</sup>

Finally, clearly defined jurisdiction over borders is a precondition of international economic discourse and integration. Disputed borders act as barriers to bilateral and even multilateral economic relations. Mutually accepted borders are crucial in providing the confidence that investors need to make physical investments in frontier regions, in providing the certainty that exporters need to establish cross-border trade, and even in providing the confidence governments need to invest in economically productive infrastructure (as opposed to military installations) along and across the border region. Overall, mutually accepted borders are important in providing the certainty necessary for investment and economic growth.

For all these reasons—the direct human costs of violent conflict, the diversion of resources from social development to military uses, and missed opportunities for expanded trade and investment—arriving at mutually acceptable solutions to currently disputed international boundaries should be an important priority for the international community. The recent dispute between Ecuador and Peru is a sharp reminder of the costs of such festering uncertainty. The following section places this case in historical context, and examines major trends in territorial disputes and their settlement in Latin America.

## Territorial Conflicts in Latin America

Nearly every border in Latin America has been disputed at some point in its history.<sup>5</sup> Most of these claims date back to the colonial era, resulting from the uncertainty in the colonial administrative boundaries and lack of information about the continent's geography. In the early nineteenth century, it was hardly crucial where these lines fell exactly, since they usually passed through sparsely populated jungle or mountainous areas that were largely unexplored and practically beyond colonial administrative control. Since most of these areas were under the domain of the Spanish Crown, there was little reason to undertake precise border delineation on the continent.<sup>6</sup>

Upon independence, most of the emerging states in the region accepted the principle of *uti possedetis*, which provides that newly decolonized states should inherit the colonial administrative borders that they held at the time of independence.<sup>7</sup> However, there was disagreement over what constituted evidence of such "possession." According to one view, only Spanish legal documents could define borders (*uti possedetis juris*); but another view posited that lands actually held at the time of independence were the basis for continued possession (*uti possedetis facto*). For example, Brazil claimed large stretches of land beyond the borders that were stipulated in treaties between Spain and Portugal, simply because it had the strongest claim to their "control."<sup>8</sup>

For these reasons, most, but by no means all, borders in Latin America have been disputed at one point or another (see table 2). The few boundaries that apparently never have been disputed often involve countries that were very unevenly matched in terms of standard measures of power at the time, such as population and military personnel and expenditures. In highly contentious border disputes, resolution has often taken decades, in some cases more than a century. Some territorial disputes were articulated only many years after independence, and after further exploration, as well as an initial period of state consolidation—a fact that should be kept in mind when making comparisons to Africa and the newly independent states of the former Soviet Union.

A number of these disputes involve military clashes, even full-fledged war, though this method of resolving uncertain borders was much more common in the nineteenth century than in the twentieth. Peru and Colombia fought viciously over their borders early in the nineteenth century. The War of the Pacific (1879–83) resulted in the transfer of Bolivian territory to Chile, including the port city of Antofagasta, thereby depriving Bolivia of access to the Pacific Ocean. Victors in the War of the Triple Alliance (1865–70) transferred significant portions of Paraguay's territory to Brazil. In this century, the Chaco War (1932–35) over the vast grazing lands between Paraguay and Bolivia cost a quarter of a million lives, while Ecuador and Peru fought a border war in 1941 that resulted in the territorial agreement Ecuador disputed for more than half a century.



**Table 2: Status of Latin American Borders  
(by category of dispute settlement)\***

| 1. Cases of no dispute |  |  |  |                       |  |
|------------------------|--|--|--|-----------------------|--|
| Argentina/Uruguay      |  |  |  | Brazil/Guyana         |  |
| Belize/Mexico          |  |  |  | El Salvador/Guatemala |  |
| Brazil/Venezuela       |  |  |  |                       |  |

| 2. Disputes settled/handled through negotiation |            |  |  |                      |              |
|---|------------|--|--|----------------------|--------------|
| Argentina/ Bolivia                              | 1872-1925  |  |  | Guyana/Suriname      | 1975-1995    |
| Argentina/UK                                    | 1820-1995  |  |  | Belize/Guatemala     | 1939-?       |
| Bolivia/Brazil                                  | 1837-1925  |  |  | Brazil/Colombia      | 1826-1937    |
| Bolivia/Chile                                   | 1858-1995  |  |  | Colombia/Ecuador     | 1830-1916    |
| Bolivia/Paraguay                                | 1825-1938  |  |  | Colombia/Nicaragua   | 1890-present |
| Brazil/Paraguay                                 | 1860s-1932 |  |  | Colombia/Peru        | 1822-1933    |
| Brazil/Peru                                     | 1821-1913  |  |  | Dominican Rep./Haiti | 1844-1936    |
| Brazil/Uruguay                                  | 1825-1995  |  |  | Guatemala/Mexico     | 1840-1895    |
| Colombia/Panama                                 | 1903-1924  |  |  |                      |              |

| 3. Cases involving authoritative third-party rulings     |                  |                |           |             |                                     |
|--|------------------|----------------|-----------|-------------|-------------------------------------|
| ... in which the parties complied with the ruling:       |                  |                |           |             |                                     |
|  | dates of dispute | (ruling date)  | by        | “loser”     | comments                            |
| Argentina/Brazil   | 1858-1898        | (1895)         | U.S.      | Argentina   |                                     |
| Argentina/Chile  | 1872-1903        | (1899)         | U.S.      | not clear   | Los Andes                           |
| Argentina/Chile  | 1847-1966        | (1966)         | UK        | Chile       | Palena sector; 70% to Argentina     |
| Argentina/Chile  | 1847-1994        | (1994)         | regional  | Chile       | Laguna del Desierto                 |
| Argentina/Paraguay                                       | 1840-1939        | (1878)         | U.S.      | Argentina   |                                     |
| Colombia/Venezuela                                       | 1838-1932        | (1891)         | Spain     | Venezuela   | compliance delayed 25 years         |
| El Salvador/Honduras                                     | 1861-1992        | (1992)         | ICJ       | El Salvador | 80% to Honduras                     |
| Guatemala/Honduras                                       | 1842-1933        | (1933)         | CR/G/U.S. | not clear   |                                     |
| Guyana (UK)/Venezuela                                    | 1880-1899        | (1899)         | U.S.      | Venezuela   | 34K sq. mi. to UK; 8K to Venezuela  |
| Honduras/Nicaragua                                       | 1858-1960        | (1960)         | ICJ       | Nicaragua   |                                     |
| ... in which the parties did not comply with the ruling: |                  |                |           |             |                                     |
|  | dates of dispute | (ruling date): | by:       | rejecter:   | comments:                           |
| Argentina/Chile  | 1847-1984        | (1977)         | UK        | Argentina   | Beagle Channel, settled 1984.       |
| Argentina/Chile  | 1847-1994        | (1902)         | UK        | Chile       | awards in 4 sectors; 2 rejected     |
| Bolivia/Peru   | 1825-1911        | (1909)         | Arg.      | Bolivia     | resolved by Peru's concessions      |
| Chile/Peru   | 1881-1929        | (1924)         | U.S.      | Peru        | re: holding of a plebiscite         |
| Costa Rica/Nicaragua                                     | 1842-1900s       | (1888)         | U.S.      | Nicaragua   |                                     |
| Costa Rica/Nicaragua                                     | 1842-1900s       | (1916)         | CACJ      | Nicaragua   | re: validity of 1888 ruling         |
| Costa Rica/Panama  | 1903-1944        | (1900)         | France    | Costa Rica  | originally: Costa Rica and Colombia |
| Costa Rica/Panama  | 1903-1944        | (1914)         | U.S.      | Panama      |                                     |
| Ecuador/Peru   | 1842-1998        | (1910)         | Spain     | Ecuador     | noncompliance threat deters ruling  |
| Ecuador/Peru   | 1842-1998        | (1945)         | Brazil    | Ecuador     | initially accepts; rejects in 1960  |
| Guyana/Venezuela   | 1951-present     | (1899)         | U.S.      | Venezuela   | rejects UK/Venezuela arbitration    |
| Honduras/Nicaragua                                       | 1858-1960        | (1906)         | Spain     | Nicaragua   | Nicaragua claimed “null and void”   |

\* Excluding maritime and Antarctic disputes.

Governments have a broad range of options in settling mutual disputes, including bilateral diplomatic negotiations; the use of a third party's "good offices" to intercede between parties for whom communication is difficult; mediation, in which a third party contributes to dispute settlement by offering concrete proposals; commissions of inquiry, which attempt to help resolve disputes through providing credible information regarding disputed facts; and arbitration and adjudication, in which the parties agree to submit their dispute to a neutral third party for an authoritative ruling.

Bilateral negotiations are the most common approach to settlement, and are sometimes augmented by various forms of non-binding third party involvement. Occasionally such efforts produce successful settlements, as when representatives of Pope John Paul II mediated a solution to Argentina and Chile's dispute over the Beagle Channel in 1984. Often, however, the efforts of third parties are rebuffed or their proposals rejected. Prior to the outbreak of the War of the Pacific, the United States tried unsuccessfully to mediate Bolivia and Chile's territorial dispute. A number of states have offered at various times to mediate—with little success—in Honduras and Nicaragua's border dispute before that case was settled by the ICJ.<sup>9</sup> And in 1965, Britain and Guatemala requested the United States to mediate in determining the boundaries of newly independent Belize, though the two sides ended up rejecting the U.S. proposal.

Arbitration and adjudication differ from mediation and good offices in a number of crucial respects. First, agreements that give rise to these procedures generally specify that a decision must respect the rule of international law, making arbitral or judicial awards (in theory) legal rather than explicitly political decisions.<sup>10</sup> Second, and most important, the decisions that result from arbitration and adjudication are legally binding (enforceability is another matter altogether), though the decision to submit to legal processes in the first place is voluntary. Except under unusual circumstances, the award of a court or an arbitral tribunal settles the dispute definitively, without the right of appeal. This effectively means that an agreement to submit a dispute to arbitration or international adjudication raises the stakes for each state by publicly committing it to the settlement of the dispute—regardless of the decision.

While adjudication typically relies on an international court (principally the ICJ), arbitration is largely an ad hoc procedure: The countries involved in the dispute agree to submit the issue to a neutral third party—either an arbitral panel (made up of representatives from other countries) or a regional power. Because arbitration does not involve international courts per se, but does result in authoritative, legally binding rulings, it is sometimes referred to as a *quasi*-judicial form of international dispute settlement.

That Latin American countries have waged wars over adjacent territory is sadly no surprise, for this has been the case the world over. What is surprising about border disputes in the Western Hemisphere is the extent to which they have been subject to legal processes of arbitration and adjudication, given the political sensitivity of territorial issues and their centrality to notions of state sovereignty and national identity.

Table 2 indicates that there have been some twenty-two instances of legally binding third-party arbitrations or adjudications with respect to sovereignty over territory in Latin America. By comparison, similar rulings apply to only one small case in continental Europe (thirty-six acres between Belgium and the Netherlands); two among independent

states in Africa; two in the Middle East; and three in Asia, the Far East, and the Pacific. Certainly, more than any other region on the globe, the Latin Western Hemisphere has a relatively strong tradition of using formal legal procedures to resolve disputes over contested territory. Arbitration was an especially popular form of dispute settlement in Latin America around and shortly after the turn of the century.<sup>11</sup> Several recent cases indicate continuing interest in this form of dispute settlement, including El Salvador and Honduras's recent use of the ICJ in 1992, and Chile and Argentina's use of arbitration to settle their contested border in the Laguna del Desierto region in 1994.

Countries vary greatly in their willingness to let third parties decide issues as important as territorial sovereignty. In Latin America, states that are more symmetrical in their military capabilities (as measured by total population and, to a lesser extent, ratios of military personnel) have been more likely to submit a territorial dispute to arbitration than highly asymmetric pairs of countries, suggesting that arbitration is viewed as useful when it is less certain which side would prevail should the dispute turn violent. Furthermore, countries that have had a history of difficulty getting territorial agreements ratified by their own national legislatures also have been more likely to agree to third-party legal rulings.<sup>12</sup> For example, Honduras failed to ratify at least two boundary conventions or demarcation agreements (1870 and 1889) with Nicaragua and one arbitral agreement (1920) before agreeing to submit the issue to the ICJ in 1960. Neither Bolivia nor Paraguay could manage to ratify a border agreement (four negotiated treaties filed for ratification between 1879 and 1907) before agreeing in 1938 to a commission of six regional powers to settle the border definitively. Colombia and Venezuela negotiated three agreements that failed to be ratified before they agreed to Swiss arbitration in 1916. These cases seem to suggest that the legal device of binding quasi-judicial procedures holds an attraction in cases where continued domestic obstruction to border settlement prevents a solution.

Prior experience with quasi-judicial procedures can often lead to their repeated use in settling border disputes, especially between countries that share long borders. Argentina has a long track record with this form of dispute settlement, accounting for seven of the twenty-two cases in table 2. The Argentine-Chilean arbitrations, in fact, account for five of these cases, giving these two countries a long history of experience with formal international quasi-adjudication. More than once, both countries have been on the "losing" end of arbitral awards, but have accepted the decisions nonetheless. One country, Honduras, has used arbitration or adjudication four times for portions of all three of its international borders, making it the one Latin American state with the most judicial rulings per border-mile (a distinction it likely holds worldwide as well).

Arbitration hardly guarantees that a border will be definitively settled once and for all. Venezuela's claim to territory currently controlled by Guyana, and Peru and Ecuador's long-time dispute, are examples of specific disagreements that have been arbitrated in the past, but for which comprehensive agreement has been elusive (at least until October 26, 1998 in the latter case). Similarly, arbitration does not guarantee compliance: Regionally, the number of awards that have not been complied with slightly exceeds the number of awards that have. Only Nicaragua and Ecuador have failed to comply with more than one arbitral award (in each case, the dispute involved noncompliance with two awards with the same neighbor).

Peru and Ecuador are long-time rivals with a history of war; seemingly perpetual border skirmishes with intermittent periods of latency; and extensive third-party involvement, including mediation, guarantor status, and specific efforts at binding arbitration, none of which resulted in a comprehensive border settlement until recently. The case thus illustrates many aspects of the dispute settlement process available to states, the enduring success of which will be tested in the coming years.

One of the unique aspects of the Ecuador-Peru case is the role of four regional powers—Argentina, Brazil, Chile, and the United States—as legal “Guarantors” of the boundary agreement reached between the parties in 1942. Guarantors have been used in a number of explosive or potentially violent international conflicts in Europe,<sup>13</sup> but this type of third-party involvement appears in Latin America only in the case of Ecuador and Peru’s dispute. In the Peruvian-Ecuadoran Protocol of Peace, Friendship, and Boundaries, signed in Rio de Janeiro in 1942 (hereafter, the “Rio Protocol”—see appendix), the four regional powers agreed that “Any doubt or disagreement which may arise in the execution of this protocol shall be settled by the parties . . . with the assistance of the representatives of the United States, Argentina, Brazil, and Chile” (Article VII).

The Rio Protocol describes an agreed-upon borderline (Article VIII), allowing for “reciprocal concessions as [the parties] may consider advisable in order to adjust aforesaid line to geographical realities” and providing that “these rectifications shall be made with the collaboration of representatives of the [four Guarantor states]” (Article IX). Article V provides that the Guarantors should continue in this role “until the definitive demarcation of the frontier line [between Peru and Ecuador].” In short, the four Guarantors are legally committed by an international treaty to ensure the execution of the 1942 Rio Protocol, a function that goes well beyond mediation and gives a certain internationally recognized legitimacy to the agreement which it otherwise might lack. Both Articles VII and IX imply a possible arbitration role for the Guarantors, but they do not specifically mandate one.

While guarantors ostensibly take on a legal obligation to ensure implementation of the terms of the treaty, there may be conditions under which they may evade the execution of a treaty without technically violating it. International law texts emphasize that the guaranteed state must request guarantors to render assistance, and that the guarantors be able to do so at that time. When the guaranteed state itself has not complied with the previous advice of the guarantors, some legal texts suggest it is no longer the guarantor’s duty to render assistance.<sup>14</sup> Thus, while third parties acting as guarantors may be expected to increase the chances of treaty implementation, this guarantee is subject to the caveats that reduce the certainty of the guarantee itself. However, the proviso that guarantors may refuse assistance if their advice has been ignored gives additional leverage to the third parties in the negotiations. In the case of the Ecuador-Peru border dispute, the fact that both sides, but especially Peru, preferred to negotiate under the auspices of the Guarantors rather than without them gave the four regional powers a measure of influence over the direction and pace of the talks.

The case of Peru and Ecuador illustrates just why many of these disputes become violent and seemingly intractable. Both sides (but most notably, Ecuador) have at times nurtured a combination of national myths and claims regarding the legality or justness of their positions that tap into deeply held notions of national identity. But as these two

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countries have matured as democracies, the role of public perceptions has become more complex. In Ecuador, an increasingly independent civilian government must balance an array of economic, political, and social issues that compete on some level with long-held territorial ambitions. In both countries, the military has an important stake in the terms of the settlement. As has been the case with many such disputes in the region's history, a regional "third party" (in this case, the Guarantor countries) has facilitated negotiations and has assisted the parties in accepting a binding solution. The resolution of the long-standing conflict between Ecuador and Peru may go far toward consolidating democracy, stimulating economic development, and solidifying peace in the region.

## Three

### Ecuador and Peru: The Search for a Border Solution

#### Background

The border dispute between Ecuador and Peru had been until recently the most persistent and seemingly most resistant to resolution of any in the Western Hemisphere. The conflict arose virtually at the birth of these two nations from the Spanish Empire. It survived World War II, outlasted the Cold War, and most recently was the locus of military conflict between Peruvian and Ecuadoran forces in 1995. Yet the natural resources of the shared Condor Mountain range—gold, uranium, and oil—do not appear to be significant, and the territory, especially from the Peruvian side, is difficult to access and has only minimal infrastructure.<sup>15</sup>

The 883-mile-long border has been in dispute intermittently since Ecuador's secession from Great Colombia in 1830.<sup>16</sup> Since 1884, Peru and Ecuador have been involved in at least thirty-four episodes of bloody military confrontation over sovereignty in the Amazon.<sup>17</sup> Major clashes broke out on the border in 1941 and continued for four months. Peru's military prevailed in that confrontation, and in early 1942 the two sides signed the Rio Protocol, the first mutually ratified treaty in more than a hundred years to attempt to establish the boundary.<sup>18</sup> That agreement generally followed what was known as the "Status Quo line of 1936," which both Peru and Ecuador had agreed to, even though it meant a territorial loss to Ecuador of some five thousand square miles.<sup>19</sup> On January 29, 1942, the governments of Brazil, Argentina, Chile, and the United States also signed the Rio Protocol, indicating their willingness to guarantee its observance and execution.

In implementing the 1942 Rio Protocol, more than 95 percent of the border was actually demarcated, under difficult topographical conditions, except for a small section. At six points along the demarcation of the border, disagreements were referred to the Guarantor countries and were managed by Brazil, acting as the lead Guarantor. One of the areas, including the contested Cordillera del Condor, was the subject of an arbitral award authorized by the Rio Protocol and rendered by a Brazilian naval officer, Captain Braz Dias de Aguiar, in July 1945. Both countries initially accepted the award unconditionally and the Binational Demarcation Commission immediately began to demarcate the border on the basis of that ruling.

Demarcation might have proceeded smoothly had Ecuador not contested what it asserted was new geographical information which, according to officials, had come to light as a result of aerial photography in 1946. As interpreted by Ecuador, this information disclosed a Cenepa River watershed far more extensive than that implied by the Rio Protocol. The newly elected government of Ecuadoran president Galo Plaza used this opportunity to halt demarcation in 1948. In 1960, Ecuador officially declared the award of Braz Dias de Aguiar and the Rio Protocol null and void, claiming the latter to be inexecutable due to the "new" geographic information. Ecuador also denied the treaty's validity, citing its

imposition on Ecuador after an armed conflict.<sup>20</sup> Following its rejection of the arbitral award and the protocol, Ecuador made a conscious effort over time to link its position to analogous cases of arbitral rejection in the region: the Argentine position on the 1977 Beagle Channel arbitrations and the Venezuelan position on the 1899 Essequibo decision regarding Guyana, for example.<sup>21</sup> Peru, with the concurrence of the four Guarantors (as spelled out in a diplomatic note of December 9, 1960), took the position that the treaty could not be unilaterally abrogated. From the Peruvian perspective, the 1942 Rio Protocol “ended a century-long bilateral boundary dispute by defining the border following the 1936 decision to declare the territorial status quo.”<sup>22</sup> Until negotiations reopened in 1995, Peru had denied that a territorial dispute between the two countries existed.

The border has been the site of varying degrees of tension for the past four decades. Despite a number of cooperative agreements on the use of binational river basins and the passage of individuals and vehicles in the 1960s and 1970s, fighting broke out in 1981 (in the “Paquisha Incident”) when Ecuadoran forces attempted to take over three Peruvian military posts in the Condor area. Border violence has been sporadic ever since, usually peaking around January, which coincides with the month that the Rio Protocol was signed. By one count, confrontations between the armed forces of the two countries have occurred in thirteen of the past eighteen years since the Paquisha Incident.<sup>23</sup> Despite Peru’s proposals to complete demarcation of the border, no agreement had been possible as long as Ecuador rejected the Rio Protocol and Peru insisted on it as the framework for a settlement.

By the early 1990s, prospects for settling the border dispute seemed to improve. In Peru, the newly elected Fujimori government faced serious economic problems, including cumulative inflation of two million percent over the five-year course of the previous Garcia administration (1985–90), widespread impoverishment, and continuing problems servicing the external debt, as well as internal unrest fomented by the Maoist guerrilla group Shining Path.<sup>24</sup>

Beset by a number of urgent domestic problems, the Fujimori government judged that Peru was in no position to fight a border war with its neighbor. Consequently, his administration tried to improve relations with all of Peru’s neighbors, including Ecuador. In 1991, President Fujimori made a state visit to Ecuador, the first ever by a Peruvian chief executive. Sensing an opening to resolve the long-standing dispute that year, Bolivia, Colombia, and Venezuela offered to mediate within the framework of the Andean Pact.<sup>25</sup> For its part, Ecuador also proposed in that year to submit the whole problem to mediation by Pope John Paul II, who had successfully assisted the Argentines and Chileans in resolving their dispute over the Beagle Channel in the 1980s. However, the Peruvians refused to renegotiate the Rio Protocol and insisted that, pending demarcation, border matters be submitted to an expert as provided for in the agreement.<sup>26</sup>

In 1992, President Fujimori wrote a letter to his Ecuadoran counterpart, Rodrigo Borja, proposing to complete the demarcation of two small sections of the common border in exchange for an agreement to grant navigation rights to and through the Amazon River, so that Ecuador would have an outlet to the Atlantic Ocean, in accordance with Article VI of the Rio Protocol.<sup>27</sup> Peruvian proposals offering the use of port facilities on the Amazon and its tributaries in return for final border demarcation were reiterated in various forms

during 1992–93, but the Ecuadoran government continued in its insistence that the Rio Protocol was invalid and demanded its revision to ensure Ecuador's sovereign territorial access to the Amazon. Minor military clashes broke out near the Sabanilla River in August 1993, but the dispute remained stalemated until violent conflict erupted in early 1995.<sup>28</sup>

### The 1995 Border War and Its Diplomatic Aftermath

Mass violence between Ecuador and Peru, on a scale larger than at any other time this century, flared up on January 26, 1995, in the Cenepa Valley near the forty-nine-mile unmarked stretch of border on the Condor mountain range, 220 miles south of Quito and 590 miles north of Lima. Fighting was intense around the Tiwintza military base, which both sides claimed to be within their own territory. Although relatively brief—the major outbreak of fighting lasted only nineteen days—the conflict is estimated to have resulted in somewhere between 200 and 1,500 casualties, the loss of nine aircraft on the Peruvian side and two on Ecuador's, and an estimated cost to both sides of up to one billion dollars.<sup>29</sup> Despite the war's brief duration, its risk of escalation was thought to be significant: In a matter of days, 5,000 troops had been introduced into a fifty-five-square-mile area; six Peruvian divisions were deployed along the coastal plain, and the equivalent of four Ecuadoran brigades were brought to the immediate front. With naval fleets on alert, high-performance fighter-bombers forward-deployed, and armies from both sides engaged in combat in the Cenepa region, escalation seemed a distinct possibility in February 1995.<sup>30</sup>

Yet both sides were eager to prevent such an outcome. President Fujimori was quick to call for a demilitarized zone to be monitored by the Guarantor group, as specified in the Rio Protocol.<sup>31</sup> Within a month, the conflict had been contained and agreements were in place for a cease-fire and separation of forces. On February 17, 1995 the two sides signed the Itamaraty Agreement, which was drawn up in Brazil by representatives of the four Guarantors. The agreement did not address territorial issues, but only military and cease-fire conditions. Observers from the Guarantor nations established posts near the conflict zone to verify implementation of the cease-fire.

While neither country had made any territorial gains during the nineteen-day conflict, the war and its subsequent fatal skirmishes in March, May, and September 1995 had a fundamental impact on the resolution of the border dispute. One important consequence was that it provided an opportunity for Ecuador to take a more flexible position on its thirty-five-year opposition to the Rio Protocol. By most accounts, the Ecuadoran military had dealt a tactical blow to Peruvian forces, in sharp contrast to their engagements in 1941 and 1981. It is widely recognized, however, that the long-term balance of forces is and will remain in Peru's favor. This may have provided a window of opportunity for Ecuador's leaders to make principled rather than coerced concessions. Shortly after the cessation of hostilities, Ecuadoran officials announced their willingness to work within the Rio Protocol's framework to resolve the dispute. Arguably, this step was politically easier for President Sixto Durán-Ballén to take after a relatively strong military showing.<sup>32</sup> If it is true that Ecuadoran leaders in the 1990s have sought ways to extricate themselves from the defiant position taken on the Rio Protocol, the respectable military showing in 1995 gave them an opportunity to make these concession with their dignity intact. The acceptance



of the Rio framework was a significant concession that, in turn, opened the way for discussions of the underlying territorial issue.

The conflict led to a second and related consequence: a far more active involvement in the resolution of the dispute on the part of the four Guarantor nations. Military representatives of the Guarantors were essential to implementing the cease-fire and separation of forces, which would have been extremely difficult to achieve, given the dense terrain, the highly commingled deployment, and the absence of neutral observation, coordination, and communication.<sup>33</sup> Furthermore, the guarantor process has been central to re-establishing communications between Ecuador and Peru, at both the military and the diplomatic level.

The military chiefs of the four Guarantor countries monitored a meeting near a border garrison between high-ranking military officials from Peru and Ecuador in February 1996—the first time such officials had met face-to-face since the conflict broke out in January 1995. Also facilitated by the Guarantors was a meeting between Ecuador's foreign minister Galo Leoro and his Peruvian counterpart, Francisco Tudela, in Lima on January 17–18, 1996, the first contact of this kind in fifty-four years. Meeting again in late February, the foreign ministers signed two agreements: The first required their governments to list what they regarded as underlying “substantive impasses” in the peace process and to deliver them to the Guarantor nations. It also laid out a plan for reduction of forces at the Peruvian PV-2 observations post, where the conflict occurred, to be verified by MOMEPE (the Peru-Ecuador military observation mission). The second agreement specified the creation of a joint military working group, which was charged with crafting a confidence-building “bilateral mechanism” between the two countries that would, among other things, make future weapons purchases more transparent.<sup>34</sup>

Also in the presence of the Guarantors, the two governments signed the Santiago Agreement, on October 29, 1996, committing them to address the remaining “impasses” surrounding the dispute. The meetings, held in Brasilia during 1997 and, once again, attended by representatives of the Guarantors, were aimed at a definitive conclusion of the underlying territorial dispute, as required by the February 1995 cease-fire agreement. Both sides made major concessions as preconditions for these talks: They would be conducted in accordance with the Rio Protocol—a prime Peruvian demand—and with the acknowledgment that a territorial dispute did in fact exist between the two countries—a central concession to the Ecuadoran position.<sup>35</sup> This shift significantly increased communications between the two countries on the central territorial issue, and signaled a strong desire to reach a definitive resolution. Such a rapprochement was achieved almost exclusively in accordance with the Rio Protocol and with substantial Guarantor involvement.<sup>36</sup>

A third consequence of the recent fighting, however, still has ominous implications for the region: its potential for contributing to a local and even regional arms race, at a time when most countries are attempting to consolidate institutional transitions to civilian rule and channel excessive military spending toward development needs. In the aftermath of the fighting, each side claimed a need to rebuild its forces to maintain previous military capabilities. In December 1995, Ecuador announced its decision to buy four Kfir fighter-bombers (Israel's version of the French Mirage), despite protests from Peru.<sup>37</sup> Peru, too, began an arms replacement program. On November 26, 1996, President Fujimori

confirmed the purchase of an unspecified number of MiG-29 jet fighters from Belarus—the first Soviet-built fighters in any South American country. According to President Fujimori, the purchase was a “purely defensive measure, meant to reestablish strategic equilibrium.”<sup>38</sup> Shortly after President Fujimori announced the aircraft purchase, sources inside the Peruvian air force reported the acquisition of fourteen Sukhoi Su-25 ground-support aircraft (and a significant quantity of sophisticated air-to-surface missiles), which analysts agree could conduct ground assaults while the MiG-29s fly high cover.<sup>39</sup> Peru’s prime minister Alberto Pandolfi denied reports of the Su-25 acquisition and emphasized that the MiG purchase was to replace obsolete aircraft and those destroyed during the 1995 border war with Ecuador.<sup>40</sup> In November 1997, Ecuadoran military officials responded to Peru’s purchases by saying they were considering the acquisition of up to 50 U.S.-made F-16 or F-18 planes, also reportedly for purely defensive purposes.<sup>41</sup>

The acquisition of high-technology aircraft like the MiG-29 has highlighted the problem of a regional arms race ignited by disputes, like the one between Peru and Ecuador, at a time when Cold War militaries continue to downsize by disposing of their excess aircraft as profitably as possible. Moreover, the border conflict has strengthened the military’s claim for resources in both Ecuador and Peru, at a time when new civilian governments in both countries have tried to reduce the military’s political prominence and budget share. For example, in 1995 the Ecuadoran armed forces were slated to lose their 12–15 percent surtax on foreign oil companies’ profits. During the 1995 border war, Ecuador’s congress restored the oil surtax, which goes directly into the defense budget, for another fifteen years.<sup>42</sup>

To summarize, the 1995 border war between Ecuador and Peru has had three major consequences that influenced the settlement of the border dispute and, more broadly, regional stability. First, the conflict provided a window of opportunity for moderation on the part of Ecuador, whose leaders seemed to recognize that the correlation of military and diplomatic forces, at least in this case, was not in their long-term favor. Second, the conflict reactivated a concerted international effort to resolve it through the process spelled out in the Rio Protocol, and with the assistance of the Guarantor countries. Third, the conflict has raised the specter of rearmament and the remilitarization of politics in the region, with troubling consequences for both security and continued economic and political development.

### What Were the Remaining Impasses?

The major diplomatic accomplishment in the peace process was the enumeration of a list of “impasses” that were, until October 1998, unresolved demands that had to be addressed for a comprehensive border agreement to succeed. A commitment to create a list of impasses was secured in February 1996 and an agreement to discuss them was the heart of the October 1996 Santiago Agreement. (See table 3.)

Discussions on the list of substantive impasses took place in a series of meetings in April, May, and June 1997, with talks to continue until all differences were resolved. In April, discussions were held on the first two areas that were supposed to be the easiest: the Rio Napo and Lagortococha/Guepi geophysical lines, areas close to Colombia and distant from the site of the undeclared war in 1995 (which was addressed in the April and May

**Table 3: Substantive Differences in the Ecuador-Peru Border Dispute\***

| Ecuador   | Peru   |
|---|--|
| 1. Partial inexecutability of the Rio de Janiero Protocol due to the absence of a watershed between the Zamora and Santiago Rivers. Free access and Ecuadorian sovereignty to the Marañon-Amazon. | 1. In the Lagartococha sector:<br>a. the source of the Lagartococha-Güepí rivers   |
| 2. Boundary demarcation problems:<br>a. the Cuzumaza-Bambuiza sector<br>b. the Lagartococha-Güepí sector  | 2. In the Cordillera del Cóndor:<br>a. between the boundary marker “Cunhuime Sur,” noted in the Dias de Aguiar Brief (on the Cordillera del Cóndor from the point along the Zamora-Santiago height of land where the spur juts out) and the boundary marker “November 20.” |
| 3. Problems produced by the intersecting of the rivers by the survey lines [Pastaza, Tigre, and Curaray rivers]. Problem on the Napo River in the Yasuní-Aguarico sector.                         | b. between the boundary marker Cusumasa-Bumbuisa and the confluence of the Yaupi and Santiago Rivers.  |
| 4. The Zarumilla Canal.   |  |

\* Republica del Ecuador, Ministerio do Relaciones Exteriores, “Comunicado Oficial” signed by Galo Leoro F., Ministerio Relaciones Exteriores, at Quito 23 Febrero de 1996; signed by Francisco Tudela, Ministerio de Relaciones Exteriores del Peru, at Quito, 6 Marzo 1996. Faxed to the author from the Ecuadoran Embassy in Washington D.C., March 6, 1997. Translation is that of David Scott Palmer, “Missed Opportunities and Mislplaced Nationalism: Continuing Challenges to Multilateral Peacekeeping Efforts in the Peru-Ecuador Border Conflict,” Boston University, March 15, 1997, pp. 22–23.

discussions). Each side presented proposals and counterproposals, with the Guarantors making conciliatory proposals.<sup>43</sup>

Both Peru and Ecuador brought to these negotiations two fundamental impasses, originally presented as virtually non-negotiable. First, Peru insisted on complete demarcation of the border, as established by the Rio Protocol, while Ecuador continued to refer to the Protocol as partially inexecutable. Second, Ecuador insisted on “free and sovereign” access to the Marañon-Amazon, while Peru offered access through some arrangement consistent with Article VI of the Protocol, but absolutely not on the basis of Ecuador’s “territorial sovereignty.”<sup>44</sup>

In November 1997, Ecuador and Peru negotiated an agreement creating a timetable for addressing these and related issues. Signed on January 19, 1998, the agreement established four binational commissions—each composed of three members from Ecuador and three from Peru—to tackle the main areas of contention: commerce and navigation (on the basis of Article VI of the Rio Protocol), border integration, confidence-building measures, and on-site border demarcation. The agreement addressed elements that would potentially form the basis of an eventual resolution involving border demarcation (likely along the lines envisaged by the earlier Brazilian arbitration decision) in return for Ecuadoran access (on some basis short of sovereign control) to the Amazon River. The agreement called for the demarcation commission to be composed of geographers and legal experts charged with examining and attempting to resolve the outstanding territorial claims. Ecuador’s lead negotiator, Edgar Teran (former ambassador to the United States), claimed that the agreement would lead to a “final solution,”<sup>45</sup> and Foreign Minister Jose Ayala

Lasso termed the agreement “a dignified and realistic solution that satisfies the legitimate national interests” of both countries.<sup>46</sup> By February 1998, it appeared that Ecuador had finally accepted the border established by the 1942 Rio Protocol, making the conditions for navigational access to the Amazon the only, and most sensitive, remaining issue.<sup>47</sup>

Despite a flurry of diplomatic activity as the agreement’s May 30, 1998 deadline approached, the two countries could not agree on the opinions of the commissions responsible for commerce and navigation and on-site border demarcation. Nonetheless, Presidents Alarcon and Fujimori expressed their determination to resolve the remaining issues quickly.<sup>48</sup>

### Contributing Factors to a Solution

Even though the two countries were plagued with continuing disagreements over the fundamental aspects of eventually settling the underlying territorial issue, the prospects for reaching a definitive agreement on their border were probably better now than at any time this century.

First, there had never been a higher degree of commitment demonstrated by the political leadership in each country to resolve the issue, evidenced by the unprecedented level of political contact and communication by heads of state and their foreign ministries. Fujimori’s 1991 visit to Ecuador, as well as the nonofficial visits to Peru by Ecuadoran presidents Borja and Sixto Durán-Ballén, greatly facilitated rapprochement. In January 1997, President Abdala Bucaram traveled to Peru for the first official state visit in 170 years.

Bucaram’s ill-fated presidency was especially notable for its conciliatory approach to Peru. From his inauguration speech to his historic visit, Bucaram clearly subordinated nationalist claims to broader concerns. Throughout his brief administration, Bucaram frequently summoned populist themes in the cause of settling the border dispute; for example: “Bullets cost the same as books, a rifle costs the same as a school; and a war tank costs the same as a university. One prepares for violence, the other for peace and love.” Astonishingly, he even advocated before the Peruvian congress that the two governments seek “forgiveness for the teachings we gave our children.”<sup>49</sup> Before members of the Peruvian media, Bucaram distanced himself from the “war of the maps”<sup>50</sup> and once again downplayed nationalist themes: “[N]ations are increasingly less represented by their symbols; that is, the flag, coats of arms, national anthems, and the military marches of our armed forces. The concept of a nation is increasingly defined by the citizen’s power of determination and attitudes.”<sup>51</sup> Indeed, “poverty has no nationality” was a slogan used to intertwine the populist with the anti-nationalist theme.<sup>52</sup> Populism was even enlisted to counter intransigence: “Endorsing the cause of intransigence at the expense of other people’s lives is an offensive and [unworthy] attitude from those who do so.”<sup>53</sup> Far from the nationalism of the past, Bucaram used the most conciliatory language in recent Ecuadoran history to describe the need to resolve the border dispute. His successor abandoned the flowery rhetoric, but continued to call for “peace with dignity” and an immediate resolution of the dispute.

The commitment on the part of the political leadership in both countries was further evidenced by continuous efforts to establish and maintain momentum on the negotiations despite a number of opportunities to derail them. For example, while tensions were

rekindled in December 1995, when Ecuador announced its decision to buy Israeli Kfir fighter-bombers, Peru did not respond with claims of cease-fire agreement violations. Minor border incidents such as those in May 1997, involving accusations of mine-laying and Peruvian detention of Ecuadoran soldiers, were explicitly played down by both sides as subordinate to resolving the substantive territorial disagreement.<sup>54</sup>

Contrary to expectations of those who believe that national leaders have used the border issue to divert attention from domestic political and economic problems, internal crises in both countries failed to undermine discussions to resolve the border.<sup>55</sup> Peru's December 1996–March 1997 hostage crisis in the Japanese embassy, in which Foreign Minister Tudela himself was held captive for the duration, only briefly delayed discussion of the substantive issues. Even more surprisingly, politicians in Ecuador refused to seize on the economic chaos, political unrest, and institutional crisis that brought down President Bucaram in February 1997 to scuttle the border-settlement efforts. In this case, a popularly elected president whose economic policies sparked a violent national strike was removed from office by congressional vote for “mental incompetence” after serving only six months, without either a setback for the border talks or disturbances at the border.<sup>56</sup> This political crisis certainly would have been an opportunity for either the soon-to-be-deposed president, the congress, or even the military to use the territorial issue to unite the country, but none did.<sup>57</sup>

Rather, Fabian Alarcon Rivera, who had been president of the Ecuadoran congress and was selected by that body in February to become the interim president until August 1998, espoused an attitude toward the territorial dispute that was similar in content to that of the ousted president: He called for an immediate solution to the border situation, referring repeatedly to the necessity of a “dignified peace with Peru.”<sup>58</sup> Accordingly, President Alarcon continued negotiating along the lines of previous governments.<sup>59</sup> Shortly after the first round of the Brasilia talks, Alarcon declared that the territorial problem must end and not be left to future generations.<sup>60</sup> Overall, despite numerous opportunities to backtrack, political leaders on both sides maintained a commitment to settle the dispute.

A second factor favoring settlement can be found at the level of public opinion. There was a detectable change in popular attitudes toward the border dispute, especially in Ecuador, where the dispute has traditionally been felt much more deeply than in Peru. Certainly, these attitudes were influenced by government policies and public campaigns: Starting in grade school, Ecuadorans have been taught that Peru dismembered their country and that Ecuador is “an Amazon country” and always will be.<sup>61</sup>

In the decade following the 1941 war, public opinion in Ecuador was staunchly anti-Peruvian and highly supportive of a confrontational approach to territorial issues. Velasco Ibarra had just been elected president with more votes than the combined total of all his opponents when, in 1960, he declared the Rio Protocol “null and void.” Massive public demonstrations erupted in favor of this position to regain sovereign access to the Amazon. There is some evidence that these attitudes persisted into the 1980s. After the 1981 Paquisha Incident, Ecuador's Foreign Ministry conducted a national opinion survey that reportedly confirmed the popularity of nullification and sovereign access to the Amazon. In 1983, the Ecuadoran congress reaffirmed its position on the nullity of the Rio Protocol.<sup>62</sup>

However, some evidence indicated a change in Ecuador's public mood regarding territorial demands. After minor incidents on the border in 1991, Ecuador's public opinion on the territorial issue seemed to moderate considerably, compared to that in the past. Some observers detected "a certain fatigue with the issue of Amazon claims" and a crack in the national unity that had previously stood solidly behind maximalist irredentism.<sup>63</sup> In 1991, the government began to speak openly about seeking a new national consensus through some form of plebiscite on the issue, presumably allowing for alternatives that would include departures from Ecuador's traditional policy position. The foreign minister suggested that it might be possible to draw up bilateral agreements that would allow Ecuador freer access to the Amazon region and enjoyment of preferential benefits in the zone occupied by Peru, to which Ecuador laid claim.<sup>64</sup>

Opinion polls in the 1990s suggested potential popular support for resolving the dispute. In 1992, 79 percent of Ecuadorans polled thought that a solution to the border problem could contribute to the economic development of both countries, and 55 percent thought that it would be convenient to open commerce between both countries completely. Still, 49 percent of the respondents also viewed Peru as an enemy country, suggesting a good deal of remaining suspicion and hostility.

By 1995, surveys showed that 58 percent of the Peruvian population and 71 percent of the Ecuadoran public would accept the settling of their territorial dispute with mutual territorial concessions.<sup>65</sup> It was about this time that Ecuadoran president Durán-Ballén decided that demanding the absolute nullification of the Rio Protocol was no longer advisable, a position that would have been "very difficult to accept twenty years ago."<sup>66</sup> The policy shift was a major concession on the part of Ecuador, and was apparently consonant with trends in public attitudes.

Yet no major social forces or partisan organizations in Ecuadoran society have advocated accepting less than sovereign access to the Amazon.<sup>67</sup> Politicians are still likely to believe that conceding the sovereign access issue will cost them an election.<sup>68</sup> Bucaram, for example, lamented from exile that his conciliatory approach in Lima, especially his call for "forgiveness," offended his supporters and contributed to his ouster.<sup>69</sup> While the public may have wanted the issue resolved, the terms of settlement remained highly sensitive politically.

The third set of conditions that have contributed positively to the resolution of the dispute have been external regional factors, prime among them the role played by the Guarantors. Representatives from Argentina, Brazil, Chile, and the United States have taken their responsibilities seriously and were apparently interested in getting the dispute resolved for good. High-level professionals who are reasonably well respected by the parties staffed the Guarantor delegations. Yet this is not to suggest that the guarantor process has been without difficulties, particularly differences in the pace at which the Guarantors ideally wanted to see the talks proceed: The Brazilians were the most willing to allow the discussions to proceed at their own pace, and the United States was the most insistent on constant progress and rapid resolution.

Furthermore, there were particular issues on which each Guarantor was influenced by its own foreign policy, but this tendency was probably more pronounced in the past. The traditional enmity between Chile and Peru (which subsided only recently) raised issues of

how foreign policy considerations affected Chile's positions and influence as a Guarantor. More acutely, weapons sales to the parties raised questions of Guarantor impartiality. For example, when the weapons embargo against the two antagonists was lifted in September 1995, the United States government approved Israel's request to sell the Kfirs (equipped with engines manufactured in the United States, thus requiring government approval) to Ecuador, causing an irate response from Peru. Most potentially damaging for the integrity of the guarantor process was the illegal sale of weapons to Ecuador by the Argentine Defense Ministry during the conflict. The sales created an international scandal and certainly affected the image of Argentina as an impartial Guarantor.<sup>70</sup>

It was Brazil, however, that played the role of "lead Guarantor" in settling the Ecuador-Peru dispute. Acting as coordinator of the group, Brazil had a long tradition of mediating between the two antagonists. The original Rio Protocol was negotiated in the Brazilian capital, the arbitral function in the 1940s was carried out by a Brazilian arbiter, and the 1995 Itamaraty Accord was signed at the Brazilian Foreign Ministry. Perhaps more than any of the other guarantors, Brazil has provided long-term leadership that has been crucial to resolving the conflict. Warnings were heard from some quarters in both Ecuador and Peru that their national policies were being unduly pressured toward compromise by the Guarantors; United States diplomats especially had to be sensitive to perceptions of U.S. dominance of the process. But overall, the Guarantors played a positive role, primarily in their ability to facilitate communication that would have been difficult, if not impossible, in their absence.<sup>71</sup>

Despite these positive factors, the resolution of the border conflict was far from certain. One issue was the role that the military in Peru and Ecuador would play in facilitating or hampering an agreement. It is true that civilians are not automatically more peaceful than the military with respect to the border issue; after all, a 1977–78 border confrontation was defused by military governments in both countries, while both the 1981 mini-war and the 1995 war occurred under democratic regimes in both countries.<sup>72</sup> But in the 1990s, military establishments in both countries have appeared to be more skeptical of a settlement than their civilian governments. These same militaries have, on occasion, pressed for arms purchases that have been difficult for the civilian governments to resist but that have also raised serious questions regarding each government's intention to settle the dispute peacefully.<sup>73</sup> In addition, the continued dispute over the border gives the military establishment in each country an opportunity to make a case for continued privileges and priority funding, as is the case with the oil surtax in Ecuador. Overall, it is a gross exaggeration to suggest that the military dictates policy in either country, but it is fair to say that the prestige and influence of this institution gives it a virtual veto over the terms of any settlement it strongly opposes.

## Four

### Conclusion

In August 1998, Ecuador elected a new president, Jamil Mahuad, who pledged to continue negotiations with his Peruvian counterpart on the findings of the binational commissions. While the two presidents' personal relationship encouraged progress in resolving the more nettlesome issues of the border dispute, they soon realized that they were at an impasse. Their frustration at not being able to agree on mutually acceptable solutions was accompanied by apprehension over another outbreak of fighting—just before Ecuador's presidential election, both countries had mobilized troops on their respective sides of the border.

The mounting tension seemed to call for a breakthrough in the approach toward a settlement. On October 8, 1998, Presidents Mahuad and Fujimori sent a letter to Brazilian president Fernando Henrique Cardoso, chairman of the Guarantors, requesting the Guarantors' legally binding arbitration of all issues in the dispute. After more than a half-century in existence, the Rio Protocol would finally be relied upon to exercise perhaps its most authoritative—and most ambiguous—powers.

On October 26, 1998, Ecuadoran president Jamil Mahuad and Peruvian president Alberto Fujimori—in the presence of the four Guarantor powers' representatives—signed the Brasilia Presidential Act, definitively resolving the remaining impasses to their countries' border dispute. That both Ecuador and Peru eventually resorted to the Guarantors' binding arbitration for a package settlement of all the issues addressed by the four binational commissions—but particularly the two intractable issues of commerce and navigation and border demarcation—testifies to the crucial role of the Guarantors and the formidability of the 1942 Rio Protocol.

The Guarantors' decision has been described by one informed observer as “one of the most creative if not unusual transmissions of authority by sovereign legislatures to foreign states.”<sup>74</sup> Under the Guarantors' plan, the disputed stretch of border will be demarcated according to the Rio Protocol's line of division—a major concession from the Ecuadoran side. In return, Ecuador will be given a square kilometer of private—but not sovereign—property across the Peruvian side of the border, extending to Tiwintza. Both countries will establish an ecological park on either side of the border, where unimpeded transit will be guaranteed and no military forces will be allowed. Regarding the second major impasse in the dispute, the plan gives Ecuador navigation rights—but, again, no sovereign access—to the Amazon and its tributaries in Peru and allows Ecuador to establish two trading centers along the river.

The most obvious incentives to settle the territorial issue arose from a desire to avoid the kinds of costs incurred in the 1995 war. But aside from the obvious toll in human lives and national resources used to pursue territorial claims, an increased awareness of the indirect opportunity costs of territorial conflict finally persuaded the parties of the need to



settle the conflict. For example, while regional trade is growing, the dispute stunted bilateral economic relations significantly: Peru exports more to Bolivia than to Ecuador (\$166 million compared with \$147 million between 1992 and 1994), despite the fact that Ecuador's gross domestic product is almost three times the size of Bolivia's. Moreover, Ecuador bought \$684 million worth of exports from Colombia between 1992 and 1994, and only \$147 million from Peru, even though Peru's economy is only slightly smaller than Colombia's.<sup>75</sup> The territorial dispute between these two states likely contributed to this distorted trade relationship. As a modern and internationally oriented commercial sector develops in both countries, demands for resolving the economically disruptive conflict continued to rise.

In addition to the four major regional powers' commitment to seeing the conflict resolved, there were other regional incentives to settle as well. One incentive dovetailed with the economic aspect mentioned previously: As economic and trade integration in the region proceeded, Ecuador and Peru were increasingly aware of the opportunity costs that their border dispute exacted in denying them the benefits of regional integration. Cooperative trade arrangements with Mercosur (a free-trade area and customs union established by Argentina, Brazil, Paraguay, and Uruguay), for example, were unlikely unless the dispute were on its way toward settlement.<sup>76</sup> Furthermore, with Argentina and Chile close to peacefully settling their last remaining dispute in southern Patagonia, leaders in Ecuador and Peru were increasingly aware that theirs would be one of the last active disputes on the continent. Pressure from the international community lent weight to the arguments for settlement.

Nonetheless, the true obstacles to settlement arose from domestic politics and institutions. Public support for settlement in both countries was fragile and highly sensitive to the terms of any proposed settlement. Much depended on the governments' willingness and ability to prepare the public to accept a settlement involving significant concessions. Even more uncertain was the role that the military would play in each country. Again, while they do not dictate policy, it is unrealistic to expect military leaders in each country to accept settlements that they vehemently oppose. In Peru, the National Security Council (which includes the commanders of the three armed forces as well as the powerful chairman of the Joint Chiefs of Staff) unanimously endorsed the January 1998 agreement, though important military figures in both countries have been reluctant to embrace the accord fully.<sup>77</sup> In Ecuador, influential officers in the armed forces, such as General Moncayo, continue to be reluctant to accept any agreement based on the 1942 Rio Protocol.<sup>78</sup> Nonetheless, military leaders in both Ecuador and Peru appear to have accepted the Brasilia Presidential Act.

While the risk that either country will choose to use military force to achieve territorial objectives appears to be significantly reduced, it is far from eliminated. If both countries decide to re-occupy their respective parts of the demilitarized area, military clashes could resume. It is not obvious how the two militaries might respond to perceived border provocations in the future, but the Guarantors have considered the possibility that hostilities could spread beyond the immediate border area. Indeed, informed observers continue to predict that should military clashes resume at the border, Peru would be unlikely to

confine its military operations to the disputed area alone.<sup>79</sup> Thus it is important to realize there is still the potential for violent confrontation.

While every case has its unique characteristics, the dispute between Ecuador and Peru should be understood in the broader Latin American context. Progress appeared slow to contemporary anxious observers, but most disputes in the region have taken decades to resolve—a fact that Brazil seemed to understand well, less so the United States. This case, like a number of other conflicts throughout history, benefited greatly from the involvement of “neutral” regional powers. But while the role played by regional actors in other disputes has been that of mediator or arbitrator, that of “guarantor” is unique. In the case of Ecuador and Peru, the four Guarantor nations took on a legal *obligation* to facilitate the execution of an international agreement—the Rio Protocol of 1942. This obligation entailed both quasi-military and diplomatic functions, the coordination of which was crucial to the operation’s success. Like diplomatic mediators, the Guarantors made suggestions and conciliatory recommendations, but it was up to the parties to accept, reject, or amend the Guarantors’ proposals. However, the Guarantors had no *explicit* power under the protocol to render a legally binding decision on how the dispute was to be resolved. Nevertheless, both Ecuador and Peru eventually relied on the treaty framework’s authority to settle “[a]ny doubt or disagreement which may arise in the execution of this protocol . . . with the assistance of the representatives of the [Guarantors]” (Article VII).

As noted throughout this study, Ecuadoran access to the Amazon and the final territorial division of Ecuador and Peru’s border were the issues on which both countries had been the most intransigent. Relying on the Guarantors to function in the capacity of arbitrators and actually make a decision—within carefully outlined conditions which the parties specify—regarding the access and territorial issues seemed to be the only way to break the impasses. Latin America’s experience with arbitration and adjudication is extensive, though it was reasonable to wonder whether the experience of these two countries in particular could bring them to accept a binding decision in this case; the disposition of the abortive 1910 arbitration by the King of Spain and the ultimate rejection of the Brazilian arbitration in 1945 gave cause for skepticism. However, two of the most crucial aspects of any such arbitration would be its perceived legitimacy as well as its power to strengthen the parties’ ability to make a decision they would like to make in any case, but find it politically difficult to reach agreement on a diplomatic basis alone. In both of these respects, it is important to keep in mind how different 1998 is from 1945. In the earlier case, arbitration took place when one party, Ecuador, accepted an agreement after a military defeat. In the recent agreement, neither party was militarily coerced into settlement. The Guarantors’ arbitral decision about the border should now carry much greater legitimacy than previous rulings.

The Guarantors’ binding arbitration is also supported by a much more conducive climate of public opinion today. In the 1950s, public opinion (most likely informed by government pronouncements and somewhat tendentious histories of the region presented in the countries’ schools) was rampantly opposed to conciliation on the border issue. Available evidence suggests a softening on the issue in the 1990s. In the case of an ongoing stalemate, one of the advantages of arbitration is to strengthen each government’s ability to accept a decision that may be in the public interest, but which is very difficult to

propose or accede to in a diplomatic context because of powerful political opposition. As long as the terms of the agreement to accept arbitration are carefully established so that each government could envision defending a worst-case outcome to its public, there are reasons to believe that arbitration might be a viable alternative in case of stalemate. The Brasilia Presidential Act is no exception, supported by numerous regional precedents in the 1990s—for example, Chile and Argentina, El Salvador and Honduras—that persuaded domestic critics of committed national governments of the advantages of abiding by a legally binding decision.

Regarding U.S. policy, what conclusions can be drawn about the guarantor role the United States played in this conflict? Can these lessons be applied to territorial conflicts in other regions of the world? Specifically, can the United States replicate its guarantor role to move the negotiating process along in other territorial conflicts?

For a number of reasons, prudence cautions against advocating such a role more generally. For one thing, the United States has too little experience with the guarantor function to draw conclusions about its general applicability. This fact alone should caution against its taking on a legal obligation—as opposed to a political role—to assure the implementation of a particular interstate territorial agreement. Consider the special circumstances that gave rise to the U.S. commitment in this case in the first place: During the height of World War II, the United States and the other Guarantors placed a high premium on hemispheric peace and thus were willing to underwrite this agreement with an obligation to see it implemented. Today, few border agreements justifiably command such a commitment from the United States. Furthermore, the conditions that serve to maintain the U.S. obligation in the Ecuador-Peru case may be difficult to replicate in other contexts. The United States has a long tradition of working toward the resolution of territorial and other conflicts in Latin America. Despite (or because of) the Spanish colonial role and extensive European involvement, the United States has contributed more to the negotiation, mediation, and arbitration of border disputes in this region than any other single power. Such a level of involvement is much less true for other regions in the world, and it gives the United States a degree of legitimacy and credibility that may not readily apply to disputes in other regions.

In such a role, credibility is crucial. The United States must be viewed by the disputing parties as willing to commit the resources (economic, diplomatic, and possibly even military) to ensure the agreement's implementation. Where the costs of ensuring the agreement are obviously out of proportion to U.S. foreign policy goals, as would be the case in many regions of the world, taking on the role of guarantor would most likely result in ineffectual responses to violations of the agreement and ultimately damage the reputation of the United States as a global power. Nor should it be forgotten that one of the conditions contributing to the constructive role of the United States in the Ecuador-Peru case is the multilateral character of the third-party arrangement. Would such a role be possible or even desirable in the African or Asian context? It has proven difficult enough to secure regional cooperation among European allies where conflicting territorial demands in the Balkans were at stake.

Finally, it should be emphasized that the function of a guarantor is to help ensure that an agreement is implemented. The role thus assumes the contending parties can agree on

the basic contours of their border area, though not perhaps on every detail. Guarantors cannot create agreement; where the disputing states are far apart, a more appropriate role to assume is that of mediator or provider of good offices. This raises questions about how useful a guarantor role would be in situations of widespread violent conflict.

Despite these caveats, the role of the United States in the resolution of the Ecuador-Peru border conflict has been productive in general. The United States has had an important stake in the resolution of this incendiary regional issue and will undoubtedly continue to play a significant supporting role, along with the other Guarantor powers, as the agreement is implemented. Allowed to fester and escalate to the level of organized violence, territorial conflict in Latin America poses a threat to broader U.S. goals in the region, which are predicated on an economically vibrant region of open borders that is free from interstate violence. Political consolidation of civilian rule remains precarious as long as peace is not secure along national borders and the region's militaries are able to parlay such a situation into special privileges and prodigious budget allocations.

While settling a border dispute is hardly a panacea for democratic peace and development, it is certainly a step in the right direction. Involvement in the guarantor process gives the United States an opportunity to participate in the resolution of these conflicts at relatively low cost (Ecuador and Peru have picked up most of the bill for the military observers). Active involvement also gives the United States the opportunity to cooperate with regional efforts to solve the problem without the risk of being perceived as dominating the process or dictating the outcome. Clearly, the U.S. policy of prodding the parties to settle while hinting at withdrawal in the absence of progress made good sense. The United States needs to continue to be sensitive, however, to the pace at which it can expect other such enduring conflicts to be settled.

**THE RIO PROTOCOL**  
**PEACE, FRIENDSHIP, AND BOUNDARIES**  
**BETWEEN PERU AND ECUADOR**  
**PROTOCOL BETWEEN PERU AND ECUADOR**  
**(SIGNED ALSO BY REPRESENTATIVES OF THE UNITED STATES OF AMERICA,**  
**ARGENTINA, BRAZIL, AND CHILE)**

**Signed at Rio de Janeiro, January 29, 1942.**  
**Approved by the Congress of Ecuador, February 26, 1942.**  
**Approved by the Congress of Peru, February 26, 1942.**

(Translation)

**PROTOCOL OF PEACE, FRIENDSHIP, AND BOUNDARIES**  
**BETWEEN PERU AND ECUADOR**

The Governments of Peru and Ecuador, desiring to settle the boundary dispute which, over a long period of time, has separated them, and taking into consideration the offer which was made to them by the Governments of the United States of America, of the Argentine Republic, of the United States of Brazil, and of Chile, of their friendly services to seek a prompt and honorable solution to the program, and moved by the American spirit which prevails in the Third Consultative Meeting of the Ministers of Foreign Affairs of the American Republics, have resolved to conclude a protocol of peace, friendship, and boundaries in the presence of the representatives of those four friendly Governments. To this end, the following plenipotentiaries take part:

For the Republic of Peru, Doctor Alfredo Solf y Muro, Minister of Foreign Affairs; and

For the Republic of Ecuador, Doctor Julio Tobar Donoso, Minister of Foreign Affairs;

Who, after having exhibited the respective full powers of the parties, and having found them in good and due form, agree to the signing of the following protocol:

### ARTICLE I

The Governments of Peru and Ecuador solemnly affirm their resolute intention of maintaining between the two peoples relations of peace and friendship, of understanding and good faith and of abstaining, the one with respect to the other, from any action capable of disturbing such relations.

### ARTICLE II

The Government of Peru shall, within a period of 15 days from this date, withdraw its military forces to the line described in article VIII of this protocol.

### ARTICLE III

The United States of America, Argentina, Brazil, and Chile shall cooperate, by means of military observers, in order to adjust to circumstances this evacuation and retirement of troops, according to the terms of the preceding article.

#### ARTICLE IV

The military forces of the two countries shall remain in their new positions until the definitive demarcation of the frontier line. Until then, Ecuador shall have only civil jurisdiction in the zones evacuated by Peru, which remain in the same status as the demilitarized zone of the Talara Act.

#### ARTICLE V

The activity of the United States, Argentina, Brazil, and Chile shall continue until the definitive demarcation of frontiers between Peru and Ecuador has been completed, this protocol and the execution thereof being under the guaranty of the four countries mentioned at the beginning of this article.

#### ARTICLE VI

Ecuador shall enjoy, for purposes of navigation on the Amazon and its northern tributaries, the same concessions which Brazil and Colombia enjoy, in addition to those which may be agreed upon in a Treaty of Commerce and Navigation designed to facilitate free and untaxed navigation on the aforesaid rivers.

#### ARTICLE VII

Any doubt or disagreement which may arise in the execution of this protocol shall be settled by the parties concerned, with the assistance of the representatives of the United States, Argentina, Brazil, and Chile, in the shortest possible time.

#### ARTICLE VIII

The boundary line shall follow the points named below:

A)–In the west:

- 1)–The mouth of the Capones in the ocean;
- 2)–The Zarumilla River and the Balsamal or Lajas Quebrada;
- 3)–The Puyango or Tumbes River to the Quebrada de Cazaderos;
- 4)–Cazaderos;
- 5)–The Quebrada de Pilares y del Alamor to the Chira River;
- 6)–The Chira River, upstream;
- 7)–The Macará, Calvas, and Espíndola Rivers, upstream, to the sources of the last mentioned in the Nudo de Sabanillas;
- 8)–From the Nudo de Sabanillas to the Canchis River;
- 9)–Along the whole course of the Canchis River, downstream;
- 10)–The Chinchipe River, downstream, to the point at which it receives the San Francisco River.

B)–In the east:

- 1)–From the Quebrada de San Francisco, the watershed between the Zamora and Santiago Rivers, to the confluence of the Santiago River with the Yaupi;
- 2)–A line to the outlet of the Bobonaza into the Pastaza. The confluence of the Conambo River with the Pintoyacu in the Tigre River;
- 3)–Outlet of the Cononaco into the Curaray, downstream, to Bellavista;

- 4)–A line to the outlet of the Yasuní into the Napo River. Along the Napo, downstream, to the mouth of the Aguarico;
- 5)–Along the latter, upstream, to the confluence of the Lagartococha or Zancudo River with the Aguarico;
- 6)–The Lagartococha or Zancudo River, upstream, to its sources and from there a straight line meeting the Güepí River and along this river to its outlet into the Putumayo, and along the Putumayo upstream to the boundary of Ecuador and Colombia.

#### ARTICLE IX

It is understood that the line above described shall be accepted by Peru and Ecuador for the demarcation of the boundary between the two countries, by technical experts, on the ground. The parties may, however, when the line is being laid out on the ground, grant such reciprocal concessions as they may consider advisable in order to adjust the aforesaid line to geographical realities. These rectifications shall be made with the collaboration of the representatives of the United States of America, the Argentine Republic, Brazil, and Chile.

The Governments of Peru and Ecuador shall submit this protocol to their respective Congresses and the corresponding approval is to be obtained within a period of not more than 30 days.

In witness thereof, the plenipotentiaries mentioned above sign and seal the present protocol, in two copies, in Spanish, in the city of Rio de Janeiro, at one o'clock, the twenty-ninth day of January, of the year nineteen hundred and forty-two, under the auspices of His Excellency the President of Brazil and in the presence of the Ministers of Foreign Affairs of the Argentine Republic, Brazil, and Chile and of the Under Secretary of State of the United States of America.

(L.S.) Alfredo Solf y Muro

(L.S.) J. Tobar Donoso

Signed) Sumner Welles

Signed) E. Ruiz Guiñazú

Signed) Juan B. Rossetti

Signed) Oswaldo Aranha





## Notes

1. "Peru-Ecuador: Accord Said to Set First Springboard for Talks," Inter-Press Service, February 17, 1995.
2. Santiago Accord, November 1997; Brasilia Declaration, January 1998.
3. Studies include Gary Geertz and Paul F. Diehl, *Territorial Changes and International Conflict*. (New York: Routledge, 1992); Paul Huth, *Standing Your Ground*. (Ann Arbor: University of Michigan Press, 1996); S. Kocs, "Territorial Disputes and Interstate War, 1945–1987," *Journal of Politics* (1995); John Vasquez, *The War Puzzle* (New York: Cambridge University Press, 1993); and Edward Kolodziej and I. William Zartman, "Coping with Conflict: A Global Approach" in Edward Kolodziej and Roger Kanet, eds., *Coping with Conflict after the Cold War* (Baltimore: Johns Hopkins University Press, 1996), 3–32.
4. In the 1970s, for example, when the Pastaza-Marañón basin near the border with Ecuador seemed to promise future oil revenues, the Peruvian government obligated its anticipated oil revenues for several years in advance through the purchase of military equipment to secure the territory. William L. Krieg, *Ecuadoran-Peruvian Rivalry in the Upper Amazon*, 2d ed. (Washington D.C.: Department of State, 1986), 251.
5. The classic sources on the history of territorial conflicts in the region are Gordon Ireland's *Boundaries, Possessions, and Conflicts in South America* (Cambridge, Mass.: Harvard University Press, 1938) and *Boundaries, Possessions, and Conflicts in Central and North America and the Caribbean* (Cambridge, Mass.: Harvard University Press, 1941).
6. Preston James, *Latin America*, 3d ed. (New York: Odyssey Press, 1959).
7. Steven R. Ratner, "Drawing a Better Line: *Uti Possedetis* and the Borders of New States," *American Journal of International Law* 90, no. 4 (1996): 590–624.
8. *Ibid.*, 595.
9. The United States and Mexico during border clashes in 1907; Salvador in 1933; and Costa Rica, Venezuela, and the United States in 1937.
10. Equity and fairness may also be criteria for the decision. In the case of arbitration, the parties can establish other parameters for the decision in the *compromis*, an agreement between the parties that defines the issue to be arbitrated and the details for selecting arbitrators and establishing the arbitral tribunal.
11. At the First International Conference of American States, held in Washington D.C. in 1889–90, a comprehensive Plan of Arbitration was elaborated but not ratified. Wide-scale acceptance of arbitration came at the Hague Peace Conference of 1899.
12. Beth A. Simmons, "See You in 'Court'? The Appeal to Quasi-Judicial Legal Processes in the Settlement of Territorial Disputes," in Paul F. Diehl, ed., *A Roadmap to War* (Nashville, Tenn.: Vanderbilt University Press, forthcoming).
13. For example, the Treaty of Berlin guaranteed the territorial integrity of Turkey in 1878; a number of treaties have included guarantee clauses regarding the neutrality of Belgium (1831,

1839, and 1867). Guarantees are also written into parts of the Locarno Pact (the Treaty of Mutual Guarantee of October 16, 1925) in which Britain, France, Belgium, and Italy guaranteed the maintenance of status-quo boundaries between Germany and Belgium and Germany and France.

14. L. Oppenheim, *International Law*, 2d ed., vol. 1 (London: Longmans, Green, & Co., 1912), 599–601.

15. EFE News Agency, Madrid, February 6, 1995. This is according to British and U.S. studies. Reports of the Peruvian National Mining and Oil Society have confirmed that there is a productive open-pit gold mine at Yanacocha, near the region in conflict. In Ecuadoran territory, the Pachicutza gold mine was discovered within the past few years and is being exploited by the Canadian company Tux Gold. Peruvian sources assert there are uranium resources, although their number and importance are still unknown. The presence of oil in the area has never been confirmed; no company has ever conducted serious oil prospecting work in the Condor Mountains range.

16. A number of proposals for definitive lines have been made over time, including those contained in the Pedemont-Mosquera Protocol (1830), the Garcia-Herrera Treaty (1890), the Mendez-Pidal Line (1908) and the Spanish Council of State Line (1909), the “Status Quo” Line (1936) and the Rio Protocol Line (1942). See Krieg, *Ecuadoran-Peruvian Rivalry in the Upper Amazon*, insert following p. 36.

17. Figures cited by David R. Mares, “Deterrence Bargaining in the Ecuador-Peru Enduring Rivalry: Designing Strategies around Military Weakness,” *Security Studies* 6, no. 2 (Winter 1996/97): 99.

18. The treaty was ratified in Peru as Legislative Resolution No. 9574 of the Peruvian Congress Approving the Rio de Janeiro Protocol, February 26, 1942. The Ecuadoran Congress approved the Rio Protocol 26 votes in favor, 3 against, and 5 abstentions in the Senate, and by 43 in favor, 3 against, and 3 abstentions in the House of Representatives. The only other bilateral treaty in force prior to 1942 was the Treaty of Alliance and Friendship of 1932 (the Pando-Novoa Treaty), which defined Peruvian rights with respect to Tumbes, Jaen, and Maynas, leaving a comprehensive boundary agreement for a later date.

19. Gabriel Marcella, *War and Peace in the Amazon: Strategic Implications for the United States and Latin America of the 1995 Ecuador-Peru War* (Carlisle, Pa.: Strategic Studies Institute, November 24, 1995).

20. Embassy of Ecuador, “The Ecuadoran-Peruvian Territorial Problem” (Washington D.C.: Embassy of Ecuador, 1995). Despite Peru’s decisive victory in 1941, the 1942 treaty seems to have envisaged the transfer of very little territory (perhaps some 5,392 square miles net) from Ecuador to Peru, compared to the 1936 line. See also Marcella, *War and Peace in the Amazon*.

21. Jack Child, *Geopolitics and Conflict in South America* (New York: Praeger, 1985), 97.

22. Eduardo Rivoldi, Commercial Attaché, Embassy of Peru, “Letter to the Editor,” *Journal of Commerce*, April 26, 1995; see also EFE News Agency, Madrid, March 3, 1995. In March 1995, President Sixto Durán-Ballén continued to demand that the 1942 Rio Protocol must be changed, while Peru’s president continued to insist that “the clauses of the Rio Protocol are clear, and . . . bilateral treaties cannot be revised on a unilateral basis.”

23. Mares, “Deterrence Bargaining,” 99.

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24. David Scott Palmer, "Peru's Persistent Problems," *Current History* 90 (January 1990).
25. EFE News Agency, Madrid, October 8, 1991.
26. Radio Programas del Peru, January 11, 1991; translated in *Summary of World Broadcasts* AL/1192, September 3, 1991; *Latin America Weekly Report*, January 9, 1992; EFE News Agency, Madrid, October 16, 1991.
27. Radio Programas del Peru, January 10, 1992.
28. The Ecuadoran foreign minister described the incident as "a minor scuffle," and not an "unmanageable situation." *Voz de los Andes* (Quito), August 13, 1993.
29. Official figures are toward the low end, while "reliable sources" place estimates toward the high end; see Mares, "Deterrence Bargaining." See also Marcella, *War and Peace in the Amazon*, 21.
30. Glenn Weidner, "Operation Safe Border: The Ecuadoran-Peru Crisis," *Joint Force Quarterly* 53 (Spring 1996): 52–58.
31. Radio Programas del Peru, February 2, 1995.
32. This agreement was not without criticism in Ecuador. Former Ecuadoran president Rodrigo Borja (1988–1992) called the agreement "a step backward, which for me is unacceptable"; "Ecuador, Peru Agree to End Three-Week Border War; Former President Criticizes Pact," *Chicago Tribune*, February 18, 1995, 16. The proposal, which Peru had supported earlier, was not previously acceptable to Ecuador. The agreement has been criticized by opposition forces in both nations as diplomatically weak.
33. Weidner, "Operation Safe Border."
34. *Voz de los Andes* (Quito), February 24, 1996.
35. Roger Atwood, "Peru, Ecuador to Begin Full-Scale Border Talks," Reuters, October 29, 1996. "Ecuadoran Defense Minister on Peace Process: Relations with Peru," *Expreso* (Guayaquil), November 4, 1996. According to Ecuadoran defense minister Gen. Victor Manuel Bayas (ret.), Ecuador got two things from the Santiago Agreement: a tacit admission that a dispute did in fact exist, and a way to reach the Amazon (though agreement on how such access is to be obtained remained an "impasse").
36. Other third parties have played a persuasive role in accepting and complying with the cease-fire but have urged cooperation with the Guarantors. For example, Pope John Paul II sent envoy Cardinal Carlo Furno to persuade leaders to respect the cease-fire and peace agreement. The envoy also expressed support for the work of the four Guarantor countries that were monitoring the cease-fire. The envoy's visit did not amount to a full-fledged mediation mission, because only Ecuador had officially asked for the Vatican's intervention; "Pope Sends Peace Envoy to Ecuador and Peru," Reuters, February 27, 1995. In June 1995, OAS Secretary-General Cesar Gaviria said that he was willing "to contribute to a definitive solution" to the border dispute between Ecuador and Peru, but made it clear that this offer was subject to efforts by the Guarantors; "OAS Willing to Mediate between Ecuador, Peru," Xinhua News Agency, June 6, 1995.
37. *Voz de Los Andes* (Quito), December 15, 1995 in *Foreign Broadcast Information Service* (hereafter "FBIS") *Daily Report/Latin America*, December 18, 1995, 242.
38. Sally Bowen, "Peru Deal on MiG Jets Confirmed," *Financial Times* (London), November 26, 1996, 8. The order amounted to probably eighteen fighters.

39. "Arms Race to Threaten Talks." *Jane's Intelligence Review* 4, no. 2 (February 1, 1997): 16.

40. *Ibid.*

41. According to the BBC, General Paco Moncayo confirmed in November 1997 that Ecuador was considering the purchase of more jet fighters; *BBC Summary of World Broadcasts*, November 8, 1997 (original source: American Television, Lima, November 6, 1997) and November 12, 1997 (original source: *Voz de los Andes* [Quito], November 10, 1997). See also *Latin America Regional Reports, Andean Group*, December 9, 1997, 6. In addition, Peru's traditional rival in the region, Chile, announced its intention to purchase advanced fighters, particularly the U.S. F-16, the Swedish JAS-39 Grippen, or the French Mirage 2000-5; see "Some in Latin America Fear End of U.S. Ban Will Stir Arms Race," *New York Times*, August 3, 1997, 11.

42. See Marcella, *War and Peace in the Amazon*, 13.

43. *Voz de Los Andes* (Quito) in *FBIS Daily Report/Latin America*, April 18, 1997.

44. For Article 6, see Mares, "Deterrence Bargaining," 99. EFE News Agency, Madrid, May 2, 5, and 15, 1995. On May 2, for example, Fujimori categorically rejected the possibility of giving Ecuador a sovereign outlet to the Amazon River through Peruvian territory.

45. *International Herald Tribune*, January 21, 1998, 3.

46. Agence France-Presse, January 20, 1998.

47. Inter-Press Service, February 23, 1998.

48. See "President Alarcon Confirms Decision to Continue Peace Talks," *Voz de Los Andes* (Quito) in *FBIS Daily Report/Latin America*, June 10, 1998.

49. Lima Panamerica Television Network broadcast in *FBIS Daily Report/Latin America*, January 13, 1997.

50. As recently as 1992, an official map of Ecuador showed more than one hundred thousand square miles of Peru's territory in the Amazon Basin as belonging to Ecuador. For a discussion of the iconography of territorial loss, see Gary S. Elbow. "Territorial Loss and National Image: The Case of Ecuador," *Conference of Latin Americanist Geographers Yearbook, 1996* (Austin, Texas: Conference of Latin Americanist Geographers, 1996).

51. Summary of Lima Radio Programas del Peru Network broadcast in *FBIS Daily Report/Latin America*, January 14, 1997.

52. *Ibid.*

53. *Ibid.*

54. On May 13, Peruvian forces captured seven Ecuadoran soldiers who were allegedly laying mines in what was claimed as Peruvian territory. Both heads of state and their foreign ministers reiterated their commitment to continue the talks and settle the dispute, and that talks should continue in the most normal and cordial way possible. For comments by Fujimori, see summary of Lima America Television Network broadcast in *FBIS Daily Report/Latin America*, May 16, 1997. See also the statement of Peru's acting foreign minister Jorge Gonzalez Izquierdo on Lima Radio Programas del Peru Network, May 15, 1997; see also statements by Ecuadoran foreign minister Jose Ayala Lasso, EFE News Agency, Madrid, May 15, 1997. Similar statements were

made by the Ecuadoran military representative to MOMEPE, *Voz de Los Andes* (Quito), May 15, 1997.

55. See especially William P. Avery, "Origins and Consequences of the Border Dispute Between Ecuador and Peru," *InterAmerican Economic Affairs* 38, no. 1 (Summer 1984): 65–77. See also Ronald Bruce St. John, "Conflict in the Cordillera del Condor: The Ecuador-Peru Dispute," *IBRU Boundary and Security Bulletin* 4, no. 1 (Spring 1996): 78–85.

56. A nationwide strike was announced for February 5, and violent street demonstrations took place to protest large increases in telephone and electric bills, a 344-percent rise in the cost of cooking gas, increases in public transportation fares, and reductions in state assistance for national medical services. EFE News Agency, Madrid, in *FBIS Daily Report/Latin America*, January 29, 1997. Representatives of different economic sectors also called for Bucaram's constitutional removal and the resignation of several ministers. EFE News Agency, Madrid, in *FBIS Daily Report/Latin America*, February 5, 1997. See also *Voz de Los Andes* (Quito) in *FBIS Daily Report/Latin America*, February 9, 1997.

57. The popular Peruvian press was evidently quite surprised at this. *Lima Gestion* (Internet version) in *FBIS Daily Report/Latin America*, February 13, 1997.

58. Inaugural address, *FBIS Daily Report/Latin America*, February 12, 1997; Quito Radio Network, press interview, February 16, 1997. *Santa Fe de Bogota El Tiempo*, February 19, 1997, Mexico City Notimex. President Alarcon, national address, February 18, 1997, *Lima Expreso*.

59. *FBIS Daily Report/Latin America*, February 17 and 18, 1997; *Voz de Los Andes* (Quito) in *FBIS Daily Report/Latin America*, April 28, 1997. La Paz TVB Television Network, April 28, 1997.

60. *Voz de Los Andes* (Quito) in *FBIS Daily Report/Latin America*, March 1, 1997.

61. Ecuador has continued to insist that "One half of Ecuador was taken by Peru through 120 years. . . ." Embassy of Ecuador, "The Ecuadoran-Peruvian Territorial Problem."

62. E. Ferrero Costa, "Peruvian Foreign Policy: Current Trends, Constraints, and Opportunities," *Journal of InterAmerican Studies and World Affairs* 29, no. 2 (Summer 1987): 64–65.

63. Fernando Bustamante, "Ecuador: Putting an End to the Ghosts of the Past?" *Journal of InterAmerican Studies and World Affairs* 34, no. 4 (Winter 1992–93): 204.

64. *Ibid.*, 208–9.

65. "Ecuador-Peru: Citizens of Both Nations Open to Compromise," Inter-Press Service, February 20, 1996.

66. Lima Radio Programas del Peru Network in *FBIS Daily Report/Latin America*, January 14, 1997.

67. Mares, "Deterrence Bargaining," 103, 109.

68. *Ibid.*, 120.

69. Agence France-Press, February 23, 1997, and Panama City TVN, in *FBIS Daily Report/Latin America*, February 9, 1997. The territorial issue probably had little to do with Bucaram's downfall, though it may have dampened the military's enthusiasm for supporting him in an ambiguous constitutional situation.

70. These examples are noted in Enrique Obando, "Peace Operations in the Ecuadoran-Peruvian Border: The Coordination Efforts between the Guarantors of the Rio Treaty," United States Institute of Peace, Washington, D.C., 1996. U.S. pressure helped persuade Ecuador to renounce huge territorial claims in the Amazon Basin in 1942, at a time when the United States was eager to settle the dispute and focus on the World War.

71. In Peru, for example, some voices warned about the Guarantors' pressuring Peru into making territorial concessions it should not make in the name of reaching agreement. *Si* (Lima) in *FBIS Daily Report/Latin America*, April 27, 1997.

72. Mares, "Deterrence Bargaining," 115. In fact, all three previous wars between Peru and Ecuador over the past two centuries occurred in periods of partial democratization. Edward Mansfield and Jack Snyder, "Democratization and War," *Foreign Affairs* (May/June 1995): 89, 95.

73. With reference to Peru, see "Arms Race to Threaten Talks." *Jane's Intelligence Review* 4, no. 2 (February 1, 1997): 16. While Bucaram was telling the Peruvians during his January 1997 state visit that there would be no arms race, Ecuadoran defense minister Victor Bayas was issuing statements that Ecuador would purchase defensive weapons as needed. *Voz de los Andes* (Quito) in *FBIS Daily Report/Latin America*, January 14, 1997. The Ecuadoran military justified these purchases as merely compensating for the "enormous amount of arms" that have gone far beyond renovation of capabilities devastated by the 1995 conflict, and that they amount to reinforcement of Peru's military position; Lima Radio Programas del Peru in *FBIS Daily Report/Latin America*, January 14, 1997. While defense ministers do this all the time, in Ecuador the defense minister is traditionally identified with the military, so that when he speaks he tends to do so in the name of the armed forces as well.

74. For an excellent summary of the events leading up to the signing of the Brasilia Presidential Act, particularly Ecuador and Peru's request to the Guarantors for binding arbitration of the issues in the border dispute, see Richard Downes's epilogue to *Security Cooperation in the Western Hemisphere: Resolving the Ecuador-Peru Conflict*, ed. Gabriel Marcella and Richard Downes (Boulder, Colo.: Lynne Rienner, in press).

75. All figures are from the Inter-American Development Bank.

76. Mercosur's November 11, 1997 decision to raise external tariffs from 20 to 23 percent may provide yet another reminder of the disadvantages of exclusion from integrating market agreements on the continent. Reuters World Service, *Facts on File News Digest*, December 18, 1997.

77. Statements by members of Peru's military were reportedly what prompted patriotic marches in October 1997 that were hostile to an accord with Ecuador. *The Guardian* (London), November 5, 1997, 17.

78. *Latin America Weekly Report*, February 10, 1998, 64.

79. *Latin America Regional Reports, Andean Group*, November 4, 1997, 3.

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**Beth A. Simmons** is a professor of political science at the University of California, Berkeley, specializing in international relations and international law and institutions. *Territorial Disputes and Their Resolution: The Case of Ecuador and Peru* is a case study Professor Simmons selected from a much larger project on border disputes around the world that she was researching as a senior fellow at the United States Institute of Peace during 1996–97. Formerly on the faculty of Duke University, she was also a visiting international affairs fellow at the International Monetary Fund under the auspices of the Council on Foreign Relations. She was a Fulbright scholar at the London School of Economics and Political Science during 1983–84. In recognition of her 1994 book *Who Adjusts? Domestic Sources of Foreign Economic Policy During the Interwar Years, 1923–1938*, Simmons was awarded the American Political Science Association’s Woodrow Wilson Award in 1995 for the best book published in the United States on government, politics, or international affairs, and the APSA’s Section on Political Economy Award for the best book or article published in the past three years. She received her Ph.D. from Harvard University.





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