

PRIORITY

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FOREIGN SERVICE DESPATCH

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DESP. NO.

March 12, 1959

TO : THE DEPARTMENT OF STATE, WASHINGTON.

DATE

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SUBJECT: Peru-Ecuador Boundary Dispute

SUMMARY

The boundary dispute between Peru and Ecuador in the Santiago-Zamora sector has for nearly a decade defied the efforts of the Guarantors states under the Rio Protocol of 1942. Nevertheless, the Guarantors are committed to assure the final demarcation of the boundary line, and it is highly important to the peace and unity of the Hemisphere that this end be achieved.

Looking back on the four years that I have participated in futile efforts to settle this dispute--one year as Ambassador in Lima and three in Brazil--I have been struck at the timidity of the four Guarantors, who seem to have operated on the theory that wishful thinking, plus polite attention to the interminable conflicting statements of the two disputants, would eventually produce a settlement. Both Peru and Ecuador have shown intransigence and have behaved truculently in their public postures. Peru, favored by the Protocol, has incessantly demanded her pound of flesh when a conciliatory gesture would have been in order; Ecuador has foolishly harped on the Marafon, which is many miles away from any boundary envisaged in the Protocol.

The present despatch undertakes to review developments in the past year and to assess the courses of action open to the Guarantors. The conclusion is reached that the best procedure is probably arbitration, which in the past has been at least partially successful, and which has the advantage of permitting each of the contending parties to accept a prior commitment to arbitration, legally unassailable, for the final results of which they could not be held directly responsible. A proposal for arbitration must, however, be carefully drafted, and presented by the four Guarantors acting in unison.

Clearly what is now needed is for the Guarantors to restate their responsibilities under the Protocol and their determination to discharge them. The declaration should include a statement as to the validity of the markers in the southern zone, north of

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the Quebrada de San Francisco (which would have the effect of re-defining the problem, namely to draw the boundary between the northernmost marker ratified by the Guarantors in the southern part of the Santiago-Zamora sector and the southernmost marker ("20 de Noviembre") in the Yaupi sector. The Guarantors should then call upon the disputants to arbitrate and should set forth the terms of reference.

Admittedly it may not be easy to galvanize the Guarantors into making a declaration along the foregoing lines, but in my opinion the effort should be made. As will be observed from the appended study and its enclosures, the Brazilian Foreign Office is already moving, albeit very cautiously, in that direction. The Argentine Government may be better disposed now than previously. We have no information concerning the attitude of Chile.

As to the prospect that Ecuador and Peru might accept, we believe the proposed declaration, if vigorously promoted by all four Guarantor governments, might stand a fair chance of success. Peru would probably be gratified by Guarantor ratification of markers (almost any markers) north of the upper end of the Quebrada de San Francisco, and Ecuador would have obtained support, via arbitration, of a determination of "geographical realities".

On the other hand, should the Guarantors continue along the indecisive line followed for the past decade, I should anticipate that a decade hence we would probably be dancing around the same maypole.

: : : : :

It is now a year since the former Foreign Minister of Brazil, Macedo Soares, made his major effort in Quito to obtain acceptance by Peru and Ecuador of a formula that would permit renewal of contact between the two countries with some prospect of progress toward a solution of the boundary dispute in the southern portion of the Zamora-Santiago area. The reasons for his failure are well known to the Department.^{1/}

Since then two further proposals have been put forward looking toward a solution of the boundary question. A proposal for arbitration was originally put forward by the Chilean representative and discussed at the Guarantors' meeting in Rio de Janeiro on March 18, 1957. The Department at first took a negative position (Department's telegram No. 864 of March 25, 1957) but later, in

^{1/} Reference Embassy telegram No. 1207, March 20, 1958 and Embassy despatch No. 809 of January 16, 1959.

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September, 1958, decided that this approach might be worth trying and suggested a draft question for arbitration. 2/

The question of arbitration has not been discussed in recent meetings of the Guarantors' representatives in Rio, pending the result of a comprehensive study of the question undertaken by the Brazilian Foreign Office. This study is now being actively pursued, including the feasibility of arbitration, and the subject will undoubtedly be considered at a future meeting of the Guarantors' representatives.

In September, 1958 Argentine Foreign Minister Florit while in Washington discussed a proposal calling for a meeting of the Peruvian and Ecuadoran Presidents of the Mixed Boundary Commission with the Brazilian boundary expert, General Bandeira Coelho, acting as "expert arbitrator", "to establish the bases for a continuation of the interrupted demarcation." (Text furnished by the Argentine Ambassador in Rio is attached as Enclosure No. 2.) This proposal resembles that put forward by the Brazilian Foreign Minister a year ago, except that the latter carefully limited the rôle of General Bandeira Coelho to serving, "not as an arbitrator nor as a mediator, but simply as a collaborator, by reason of his high authority and well-recognized competence." 3/

As the Department is aware, this Argentine initiative has never been presented to the Guarantors as a formal proposal (the Brazilian Foreign Office learned of it only indirectly through this Embassy and later through a communication from the Peruvian Embassy).

It may be observed that the Florit proposal is drafted along lines reflecting the Peruvian position and the Government of Lima has made every effort to push for its adoption by the Guarantors. In a confidential memorandum given the Brazilian Foreign Office by the Peruvian Ambassador late in January (with text of Florit proposal attached) reference is made to President Frondizi's discussion of the subject with President Prado in Lima, en route to the United States. The memorandum states that "the Foreign Minister of Peru has recently expressed to the American Ambassador in Lima the necessity for the United States of America to modify its abstentionist policy which favors the plans of Ecuador, and has reiterated to him that unless an agreement is reached on this question it will not be possible for Peru to attend the next Inter-American Conference which will meet in Quito." A copy of this memorandum has been made available to the Embassy by the Foreign Office and is transmitted herewith (Enclosure No. 3).

2/ Department's telegram No. 305, September 10, 1958 and instruction No. CA-4443 of November 17, 1958.

3/ Embassy telegram No. 1207, March 20, 1958 and despatch No. 809, January 16, 1959.

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President Frondizi did not discuss the boundary question with President Peron, whom he met in Guayaquil on February 1, although he had previously indicated in Washington his intention to do so. It now appears that the Argentine Government has decided to drop this proposal, although it has indicated to our Embassy in Buenos Aires its interest in some joint initiative with the United States (not including the other Guarantors, Brazil and Chile) to engage the two disputants in direct conversation (Buenos Aires' despatch No. 1253 of February 20, 1959).

The basic points at issue are, of course, well known by now to all concerned, having been stated and restated at length by both Peru and Ecuador in successive diplomatic documents. In essence, Peru maintains that all that remains to be done is to complete demarcation of the frontier in an 80 kilometer stretch, "following the line indicated by the Protocol (of Rio, 1942) and detailed by the award of the technical arbitrator, Braz Dias de Aguiar.... What Peru seeks and demands is that the matter be kept within the spirit and the letter of the Protocol of Rio de Janeiro, of the Aranha Formula and of the award of Dias de Aguiar which were accepted by the two Governments (Peru and Ecuador)." A corollary of this position is that Peru maintains that the boundary markers placed and ratified by the Mixed Boundary Demarcation Commission in the southern part of the area (north from the Quebrado de San Francisco along the Cordillera del Condor) are definitive.

In support of this position Peru rejects any "mediation" outside the terms of reference of the Protocol--i.e., not limited strictly to the resolution of "any doubt or disagreement" (Article VII of Protocol) that may arise in the execution of the Protocol on the ground. Peru also stresses the sanctity of treaties, citing the U.S. position on Berlin, and especially with respect to boundary treaties. It charges that the real purpose of Ecuador in the present controversy is to force revision of the Rio Protocol. 4/

The Ecuadoran position, in essence, is that the "discovery" of the greater extent of the river Cenepa, between the Zamora and Santiago rivers, revealed in an aerial survey made by a U.S. Army team in 1946, makes it impossible to implement Article VIII of the Rio Protocol because the watershed between the Zamora and Santiago rivers specified therein as the line to be followed does not exist. Ecuador therefore insists upon the necessity of "a prior study for the exact knowledge of the Zamora-Santiago area that may make it possible in the future to reach an adequate and just settlement

4/ The Peruvian case is set forth, inter alia, in the Peruvian Foreign Minister's telegram to the Brazilian Foreign Minister dated May 24, 1956, in reply to the Guarantors' proposal of an aerial and ground survey of the Zamora-Santiago area; Peruvian Ambassador in Rio's memorandum of March 20, 1957 (Embassy despatch No. 1118 of April 5, 1957); Peruvian aide-memoire of August 29, 1958; and Peruvian memorandum of February 11, 1959.

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of the existing disagreement" (draft Ecuadoran reply to Macedo Soares' proposal in March, 1958--Enclosure No. 3 to Embassy despatch No. 309 of January 16, 1959). A corollary of this position is the contention that none of the boundary markers placed in the southern part of the area (north from the Quebrado de San Francisco along the Cordillera del Condor) are valid. 5/

The question of the validity of the boundary markers in the southern part of the Zamora-Santiago area is thus clearly fundamental to the existing boundary dispute. If they are legally valid the Peruvian position is sustained and there remains only the matter of demarcation of the remaining stretch of some 80 kilometers (in connection with which the Peruvian Government has declared its readiness to accept a new survey of the area to determine the "geographical realities"). Even if only the markers up to "Trinidad" are held valid, on the basis of their final ratification by the Peruvian and Ecuadoran Governments in a formal document in 1944, the Peruvian position would appear to be sustained. If, on the other hand, the validity of these boundary markers would be affected by the new geographical factors alleged by Ecuador, then some procedure must be adopted to determine the extent of the modification required to draw the boundary line in accordance with the intent of the Rio Protocol and in the light of those new factors.

A further important element in the existing dispute is the conflicting position of Peru and Ecuador with respect to the applicability of the Días de Aguilar award to the southern portion of the Zamora-Santiago area, now in question. Peru claims that the award applies to the entire area between the Quebrado de San Francisco and the confluence of the Yaupi with the Santiago. Ecuador claims that the award applies only to the northern portion of this area, near the Yaupi, where a disagreement arose in 1943 which became the subject of the Días de Aguilar arbitration. The matter has a direct bearing on the whole boundary question, for if the Aguilar award is applicable to the whole Zamora-Santiago area the Peruvian position is considerably fortified, whereas if it is not the Peruvian argument is weakened.

It may be recalled in this connection that a year ago the Guarantors' representatives in Rio requested their respective Foreign Offices to obtain the opinions of their Legal Advisers regarding the validity of the boundary markers already emplaced and ratified by the Mixed Boundary Commission in the disputed Zamora-Santiago area. The Department of State concluded at that time that it would be preferable not to express an opinion because of inadequate evidence, adding that complete evidence was being sought (Dept's telegram No. 864 of March 25, 1958). The Chilean Foreign Office

5/ Reference Ecuadoran memorandum of August 3, 1956 for detailed statement of Ecuadoran position.

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preferred not to express a legal opinion in order to retain greater flexibility of action. The Legal Adviser of the Brazilian Foreign Office, Ambassador Accioly, considered that the problem called for a technical rather than a legal opinion. The Legal Adviser of the Argentine Foreign Office is understood to have written an opinion, the tenor of which, however, has not been divulged to the other Guarantors.

It is suggested that a legal opinion on this point, agreed by the four Guarantors, would contribute greatly to a solution of the current impasse, since it is fundamental to the whole boundary controversy. If the Department now has the full evidence it undertook to obtain a year ago a legal opinion might be presented to the other Guarantors in an effort to reach agreement thereon.

As reported some time ago, the Brazilian Foreign Office has been studying various aspects of the boundary problem with a view to providing a factual and reasoned basis upon which to determine a suitable course of action by the Guarantors at this juncture. There is enclosed (Enclosure No. 1) a portion of this study made available to the Embassy in draft form by Minister Bastian Pinto, Chief of the Political Division, who is in charge of the project. The paper includes a review of available means of pacific settlement of international disputes, with comments as to their applicability in the present case, and two Annexes.

It will be noted that reference is made to two instances of arbitration in the long history of the Peru-Ecuador boundary dispute. The conclusion is reached that despite the failure of one and the only relative success of the other (Días de Aguiar arbitration), the arbitration procedure deserves to be given consideration, in view particularly of the political aspects of the problem in both Ecuador and Peru. The report observes that an arbitral solution "has the advantage of permitting the two governments to assume merely a prior commitment, legally unassailable, for the final results of which they can not be held directly responsible." It wisely warns, however, that "it is advisable not to forget that the difficulties in attaining this solution are great, especially with respect to drafting the agreement for arbitration."

A special study of an arbitration procedure applicable to the present case is being made in the Foreign Office, which will constitute Annex No. 2 to the paper transmitted herewith.

Annex No. 1 (Enclosure No. 1) is a record of the various efforts made to resolve the current boundary dispute since 1949 (including some proposals never actually considered or acted upon by the Guarantors, or by the two countries involved).

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Annex No. 3 (Enclosure No. 1) is a study of points of agreement and disagreement between Peru and Ecuador, intended to assist in the formulation of an arbitral agreement.

In addition to these specific studies, as already noted, a detailed analysis is being made in the Foreign Office of the conflicting positions of Peru and Ecuador regarding the arbitral award of Braz Dias de Aguiar in 1945. This study is being prepared by General Bandeira Coelho, Chief of the Brazilian Frontier Demarcation Service, who originally served with Dias de Aguiar and is familiar with the background and details of his arbitration.

In recent weeks there has been an appreciable increase of tension in relations between Peru and Ecuador, with each side charging the other with provocative statements and actions. (Thus, Peru has charged violation of its territory by Ecuadoran military planes, has protested to Ecuador against modifications of boundary lines shown on recent official Ecuadoran maps, has pressed hard for action by the Guarantors to "force" Ecuador to agree to reactivation of the Mixed Boundary Commission to resume demarcation of the remaining unmarked stretch of boundary line, to this end has energetically pushed the Argentine (Florit) proposal, and finally has threatened to boycott the forthcoming Inter-American Conference in Quito unless the work of demarcation is renewed in advance.) Ecuador for its part charges Peru with border violations and the intention of creating border incidents to bring pressure for settlement on its terms.

There are, nevertheless, indications that both the Peruvian and Ecuadoran Governments are becoming weary over this interminable dispute and concerned over the consequences of further inflaming public opinion. According to Brazilian Foreign Office sources both President Ponce and Foreign Minister Tovar have privately expressed a strong desire to terminate the dispute if some face-saving way can be found to do so. On the Peruvian side, the Brazilian Foreign Office was recently informed that Hoyos Osoros, technical adviser to the Peruvian Foreign Office and close to President Prado, would come to Rio to discuss the boundary problem (his visit is postponed because of an accident suffered early this month). From remarks made by Osoros to the Brazilian Ambassador in Lima, the Foreign Office believes his visit might offer an opportunity for a fresh approach.

Regardless of the degree of Peruvian and Ecuadoran inflexibility, however, it would appear that the Guarantors are bound to make a renewed effort to coordinate and intensify their action to promote a final settlement of this vexatious problem, in the interest of

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hemispheric peace and unity. Dr. McBride, U.S. Technical Adviser on the Mixed Boundary Commission, emphasizes the special character of the commitment in this respect undertaken by the Guarantors, in his Final Report quoted in the study prepared by the Legal Adviser's office of the Department in 1953:

"...The four mediators also signed the document (Rio Protocol), as guarantors that it would be faithfully executed, obliging themselves to continue their mediation until the entire new boundary should be demarcated, and binding themselves to aid in settling any disagreements that might arise in the interpretation of the Protocol and its application on the land. The obligation was more than the 'moral guaranty' indicated in the Chaco peace treaty between Bolivia and Paraguay. In fact the Protocol seems to be unique in the degree of responsibility assumed by the mediators...".

The Embassy is of the opinion that the best procedure, all things considered, would be to adopt the arbitration method, assuming that the Brazilian Government supports that proposal on the basis of its current studies. In that event it will be necessary to agree upon the terms of the arbitration agreement to be proposed to Peru and Ecuador, and upon the arbitrator. Moreover, the arbitration proposal should be made by the four Guarantors acting in unison (and not through the individual initiative of any one of them, as was the case in the Días de Aguiar arbitration because of war-time conditions making Argentine participation with the other Guarantors at that time difficult if not impossible).

Finally, the Embassy believes that either prior to or coinciding with the transmission of the Guarantors' arbitration proposal to Peru and Ecuador, the Guarantors should make an official declaration reaffirming their intention to fulfill their responsibilities under the Protocol (Article V) until the definitive demarcation of the frontier between the two countries in accordance with the letter and spirit of the Protocol. Some such declaration seems increasingly needed to dispel any idea--notably in Ecuador--that by indefinite procrastination it may eventually be possible to force a revision of the Protocol. If the Guarantors can in addition agree on a legal interpretation of the validity of the boundary markers already emplaced and approved by the Mixed Boundary Demarcation Commission, a declaration to that effect would tend to delimit the area in dispute and conceivably hasten a final settlement.


Ellis O. Briggs
American Ambassador

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Enclosures:

1. **Brazilian Foreign Office study of aspects of Peru-Ecuador boundary dispute, with two Annexes.**
2. **Text of proposal of Argentine Foreign Minister Florit as made available by Argentine Embassy in Rio.**
3. **Text of Peruvian memorandum to Brazilian Foreign Office in late January, 1959.**

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**TRANSLATION OF BRAZILIAN FOREIGN OFFICE STUDY OF
CERTAIN ASPECTS OF PERU-ECUADOR BOUNDARY
DISPUTE**

**Means of Pacific Settlement of International
Disputes**

There are enumerated below the usual means of pacific settlement, with reference to their applicability to the Peru-Ecuador question:

Direct Negotiations between the Parties, or Consultation (Consulta); do not appear applicable in this case in view of the inflexibility of the two parties; since 1949 Ecuador has proposed direct negotiations which have been rejected by Peru; everything indicates that negotiations should be conducted through the Guarantors.

Special Congress or Conference: a usual procedure when various states are involved or when a solution is sought for a number of related questions; this is not, therefore, applicable to the present case.

Good Offices and Mediation: these functions are now being exercised by the Guarantors.

Commission of Inquiry and Conciliation: is normally intended to verify disputed acts or facts, or to clarify points of fact on which there are differences of interpretation, in an effort to facilitate a settlement of international contentions.

In 1949, alleging that the aerial survey showed that the Zamora-Santiago "divortium aquarum" (to which the Rio Protocol refers) did not exist, Ecuador proposed to Peru the creation of a Special Mixed Commission in order to determine on the ground the existence or non-existence of the "divortium aquarum". Peru did not accept the proposal, because it considered the creation of a Special Commission to be unnecessary in view of the existence of the Mixed Boundary Demarcation Commission (Peruvian memorandum of November 30, 1956). Peru has remained adamant in this position and will probably reject any proposal of the Guarantors in the sense of creating a Special Commission for a similar purpose.

It is worth noting that Peru more than once has declared that it does not question the accuracy of the aerial photometric survey of 1947 (telegram of the Peruvian Foreign Minister of May 24, 1956, item 1, and memorandum of the Peruvian Embassy of November 30, 1956, page 5). Now, the verification of the geographical facts, that is, the accuracy of the survey, would be the principal objective of any special commission that might be sent to the area, and which it accordingly appears can be dispensed with at the present stage.

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Arbitration: The (boundary) question has already been submitted to arbitration on two occasions. By an agreement of 1887 the two countries submitted the whole question to the arbitration of the King of Spain. Various reasons led the latter to delay for years in handing down his award. Finally this was completed in 1908 but before being officially transmitted to the parties it became known publicly, through an indiscretion. The award established a dividing line similar to that which was later fixed by the Protocol of 1942 (although somewhat more favorable to Ecuador) but did not satisfy Ecuadoran aspirations. Public opinion in Ecuador became inflamed and there were hostile demonstrations in Quito. In view of this reaction the King of Spain did not officially transmit the award and renounced the rôle of arbitrator.

After the signature of the Protocol of 1942 and upon initiating the demarcation of the boundary line, there were certain differences between the Demarcation Commissions. Some were resolved through the intervention of the Itamaraty. With reference to the disagreement which we are considering today, the Itamaraty proposed that it should be submitted to the arbitration of (Brazilian) Commander Braz de Aguiar, in the following terms (note of May 17, 1944): "Sector of the Cordilheira do Condor: this difference shall be settled in accordance with the solution that may be proposed by Commander Braz de Aguiar, after inspection 'in loco'".

The two governments accepted the proposal and Commander Braz de Aguiar made an arbitral award on July 14, 1945, which was accepted by both. However, after the aerial survey had been made (in 1947), Ecuador alleged (in 1949) and still maintains today that the Braz de Aguiar award refers, not to the entire San Francisco-Yaupi area, but only to the northern part of the area, in the region near the Yaupi, and that the rest of the area is still not defined. Peru, on the contrary, maintains that the award refers to this whole stretch of frontier.

The Braz de Aguiar award and the position of the two countries with respect thereto will be the subject of a separate study.

The complete failure of the first arbitration and the only relative success of the second, as well as the inflexibility of the parties on the smallest details, are factors that offer little encouragement for a new arbitration proposal. Nevertheless, the numerous efforts made in recent years, enumerated in Annex No. 1, including the major effort of Foreign Minister Macedo Soares, did not achieve success, which would seem to suggest that this possibility (new arbitration proposal) should also be examined.

To this end, Annex No. 2 represents a first study of an arbitration applicable to the present case, together with (Annex No. 3) a study of the points of agreement and disagreement between

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the parties, as a basis for the formulation of an arbitral agreement.

There is one important factor that makes a solution by arbitration desirable. The question has assumed an extremely emotional aspect in Ecuador, where political exploitation of the subject is continuous. It appears certain that no government will have sufficient strength to accept and to impose upon the people a solution that does not satisfy the national dream of access to the Amazon. Any such attempt would certainly bring about the downfall of the government. Something similar, although to a lesser extent, exists in Peru. Accordingly, an arbitral solution has the advantage of permitting the two governments to assume merely a prior commitment, legally unassailable, for the final results of which they can not be held directly responsible. However, it is advisable not to forget that the difficulties in attaining this solution are great, especially with respect to drafting the agreement for arbitration.

American Treaty of Pacific Settlement (1948)
Pact of Bogotá

Both Peru and Ecuador signed the Treaty, both with reservations, but neither has ratified it.

The Pact of Bogotá specifies the following means of pacific settlement:

- Good offices and mediation: already discussed.
- Process of investigation and conciliation by a Commission to be constituted by the Council of the OAS, which is empowered to clarify the facts in dispute and seek to bring the parties into agreement. This procedure would only be advisable if the Guarantors should decide to renounce their responsibility in the matter.
- Legal procedure and arbitration: these are considered separately.

OAS

The Charter of the OAS specifies the same specific procedures for the settlement of disputes.

It should be noted that early in 1960 the XI Inter-American Conference will meet in Quito and that Peru has already declared (memoranda of August 1958 and January 1959) that it will not attend the Conference if the boundary question is not at that time in process of solution.

1/ Reference should be to Peruvian memorandum of February 11, 1959.

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The Government of Ecuador has stated verbally (memorandum No. D70/505 of November 8, 1957, pages 4 and 5) on a number of occasions that it will not officially raise the boundary question during the Conference but that it will not be able to prevent the press, private institutions and the Ecuadoran people from doing so.

The possibility should be kept in mind that the Conference may consider the matter, particularly if at that time the differences have become more serious or if border incidents or other incidents should have occurred.

UN

The Security Council may, under certain conditions, take cognizance of a matter of this kind, but the parties are obligated by the Charter of the United Nations as well as by the Charter of the OAS to have recourse in the first instance to the regional organization. In this sense Brazil has a concrete point of view which it has already maintained in the case of Guatemala.

The Charter of the United Nations further refers to recourse to the International Court of Justice, which is examined in considering the question of arbitration.

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ANNEX NO. 1Efforts at Solution

1. Special Mixed Commission to determine on the ground the existence or non-existence of a "divortium aquarum":

Proposed by Ecuador in 1949; rejected by Peru.

2. Boundary Demarcation Commission with the presence of a Brazilian technician who would collaborate with the Commission in the work of demarcation:

Proposed by Peru in 1949; rejected by Ecuador.

3. Direct negotiations:

Proposed by Ecuador as a solution for the impasse; rejected by Peru.

4. New aerial photometric survey:

Proposed by the Guarantors in a telegram of May 16, 1956 to the two governments; accepted by Ecuador; rejected by Peru, in telegram of May 24, 1956; Guarantors did not reply.

5. Compromise boundary lines:

Suggestions of Colonel Renato: there is no record that they were brought to the attention of the Guarantors or of the two governments (memorandum of April 29, 1953).

Suggestion of (Brazilian Foreign Office Secretary General) Décio de Moura in the middle of 1957: Peru did not express an opinion; Ecuador rejected the suggestion, alleging that it had been rejected by Peru.

6. Determination of position of Guarantors through opinions of their legal advisers:

This possibility was considered at a meeting of the Guarantors on March 13, 1957; (Brazilian Foreign Office Legal Adviser) Ambassador Accioly considered that it was a matter for a technical rather than a legal opinion; the Foreign Offices of the United States and Chile considered it preferable not to establish a position in this way in order not to lose freedom of action (oral statements by their Ambassadors in Rio de Janeiro to Minister Luiz Bastian Pinto); the Argentine legal adviser prepared an opinion (contents unknown-- never made available to Guarantors).

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7. Prior intensification of relations between the two countries in order to create an atmosphere propitious to solution of boundary question:

Informal proposal of Department of State through its Embassy in Rio and later at the time of the visit of Mr. Bernbaum to Rio, Lima and Quito in the middle of 1957; no progress was made until proposal was taken up again by (Brazilian) Foreign Minister Macedo Soares.

8. First proposal of Macedo Soares during his visit to Quito in March 1958:

Proposal consisted in signature of commercial, border transit and cultural agreements and simultaneously the reactivation of the Mixed Boundary Demarcation Commission with broad functions and the presence of a Brazilian technician, General Bandeira Coelho,-- Minister Macedo Soares expected to be able to exercise, through the presence of the Brazilian technician, sufficient influence on the Mixed Commission to achieve a final settlement in the near future. After laborious negotiations Ecuador accepted the proposal with a reservation, set forth in its (undated) draft note of March 1958. ^{2/} Peru rejected the proposal because it had already declared in advance that it would only accept it if Ecuador made no reservations.

9. Second proposal of Macedo Soares:

A meeting in Rio de Janeiro of the Chiefs of the Mixed Boundary Demarcation Commission with the presence of the Brazilian technician, General Bandeira Coelho,--transmitted to the two Foreign Offices by telegram in March, 1958; rejected by Ecuador.

10. Meeting in Rio de Janeiro of the Chiefs of the Boundary Departments of the two Foreign Offices (Peru and Ecuador):

Proposed by Ecuador and rejected by Peru (March, 1958).

11. Florit proposal:

Presented in Washington in a memorandum of September 29, 1958--meeting of the two Presidents of the Mixed Boundary Commission with the presence of the Brazilian technician, General Bandeira Coelho.

^{2/} Shown Brazilian Foreign Minister during his negotiations in Quito in March, 1958.

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PERU-ECUADOR

Points of Agreement and Disagreement

The position of the two Governments with respect to basic aspects of the boundary question may be summarized as follows:

1. Validity of Protocol of 1942 as a whole:

Peru has constantly maintained its validity and Ecuador does not deny it; nevertheless, there is in Ecuador a strong current of opinion in favor of denunciation, disregarding or complete revision of the Protocol.

2. Settlement of doubtful points of differences with the assistance of the Guarantors (Article VII of Protocol):

Both agree.

3. Demarcation completed on rest of frontier:

Both agree in recognizing it as valid and definitive, but it would be desirable at an opportune time to obtain a formal declaration in this sense by the Ecuadoran Government.

4. Geographical characteristics of the San Francisco-Yaupi area:

Both agree with basic aspects of the map resulting from the aerial survey; Ecuador makes this the basis of its claims; and Peru recognizes its accuracy (telegram of the Peruvian Foreign Minister of May 24, 1956 and memorandum of the Peruvian Embassy (in Rio) of November 30, 1956).

5. Boundary markers already emplaced in the northern section, near the Yaupi:

Both recognize their validity; Peru because it maintains the definitive character of all markers already placed; Ecuador because it accepted in this specific instance the conclusions of the Braz de Aguiar award.

On the above points the two governments are thus in agreement. The disagreements appear in the points listed below.

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6. Nature of dispute:

Peru maintains that the boundary question is fully resolved by the Protocol of 1942 and the Braz de Aguiar award, there remaining only a stretch of 80 kilometers of frontier to demarcate; Ecuador maintains that it is not possible to demarcate this stretch because "there is no boundary line" (memorandum of August 3, 1956, p.2), since the geographical feature mentioned in the Protocol does not exist, and that the parties with the assistance of the Guarantors should agree on a new boundary line that should subsequently be demarcated (idem, p. 12). In summary, for Peru there remains only a task of demarcation, and for Ecuador there exists a legal problem that should be resolved.

7. Execution of Article VIII, B, 1 of the Protocol (boundary between the San Francisco and the Yaupi):

Ecuador maintains that the aerial survey showed that the "divortium aquarum" between the Zamora and Santiago to which this paragraph refers does not exist, wherefore this cannot be carried out by demarcation on the ground; Peru maintains that the matter is resolved by the Braz de Aguiar award.

8. Braz de Aguiar award:

Peru maintains that this arbitral award definitely determined the boundary line in the entire San Francisco-Yaupi area; Ecuador asserts that the award refers only to the northern part of this area, near the Yaupi.

9. Boundary markers in the southern part of this area:

Peru maintains their definitive character ("the immovability of the markers"); Ecuador questions their validity, asserting that their placement did not follow the "law of demarcation" because Article VIII, B, 1 of the Protocol cannot be implemented.

10. Continuation of the work of the Mixed Boundary Demarcation Commission:

In accordance with its point of view Peru insists on the reactivation of the Demarcation Commission; while Ecuador maintains that there is nothing for the Commission to do because its duties relate exclusively to demarcation and so long as the basic legal problem is not resolved there will be no line to demarcate.

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11. **Lagartococha area:**

This involves a disagreement over a small stretch in another part of the frontier which should be considered when consideration is given to a final settlement.

12. **Final demarcation agreements (Actas):**

There is also a disagreement over the interpretation of paragraphs 9 and 10 of the Regulations of the Mixed Boundary Demarcation Commission with respect to the final demarcation agreements (Actas).

These are, in preliminary outline, the points that should receive careful study with a view to a possible arbitration proposal.

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ENCLOSURE NO. 1
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6. Nature of dispute:

Peru maintains that the boundary question is fully resolved by the Protocol of 1942 and the Braz de Aguiar award, there remaining only a stretch of 80 kilometers of frontier to demarcate; Ecuador maintains that it is not possible to demarcate this stretch because "there is no boundary line" (memorandum of August 3, 1956, p.2), since the geographical feature mentioned in the Protocol does not exist, and that the parties with the assistance of the Guarantors should agree on a new boundary line that should subsequently be demarcated (idem, p. 12). In summary, for Peru there remains only a task of demarcation, and for Ecuador there exists a legal problem that should be resolved.

7. Execution of Article VIII, B, 1 of the Protocol (boundary between the San Francisco and the Yaupi):

Ecuador maintains that the aerial survey showed that the "divortium aquarum" between the Zamora and Santiago to which this paragraph refers does not exist, wherefore this cannot be carried out by demarcation on the ground; Peru maintains that the matter is resolved by the Braz de Aguiar award.

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Argentine Memorandum Stating Proposal of
Foreign Minister Florit
in September, 1958.

El día 29 de setiembre, en una entrevista mantenida por el Señor Ministro de Relaciones Exteriores y Culto y el Señor Embajador de la República Argentina con el Secretario Asistente de Estado para Asuntos Latinoamericanos, el Ministro expresó el interés de su Gobierno en su calidad de garante del Protocolo de paz, amistad y límites firmado en Rio de Janeiro en el año 1922, de dar, en la medida de lo posible, una solución práctica al diferendo de límites existentes entre las naciones hermanas del Perú y Ecuador.

Aún haciéndose cargo de las dificultades que presenta el problema en vías de solución, el Ministro sostuvo la conveniencia de que el mismo constituya un foco de perturbación dentro del conjunto de relaciones de los Estados americanos cuya solución era del interés de todos los países.

En tal sentido y fundado en el texto del artículo noveno de dicho Protocolo, el Ministro sugirió al señor Secretario Asistente la conveniencia de que el perito brasileño señor Bandeira Coelho, profundo conocedor del problema, en reunión con los dos presidentes de la Comisión Demarcadora de Límites y con carácter de perito arbitrador, siempre de acuerdo al texto del mismo artículo noveno ya citado, diera las bases para una

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continuación de la demarcación interrumpida, bases que por supuesto constituirían, también, la continuación del cumplimiento del Protocolo del que su país es garante, al igual que los Estados Unidos.

La competencia reconocida del perito arbitrador propuesto al que la Argentina otorga su confianza, permite prever, previas las conversaciones que deben seguir-se ante los demás países interesados, tanto garantes como partes en el conflicto, una solución definitiva del mismo.

Dejó también aclarado que la sugerencia formulada no implicaba que no se recibiría con interés cualquier otra que tendiera al mismo fin.

Washington, 29 de setiembre de 1958.

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Confidential Memorandum Given Brazilian Foreign
Ministry by Peruvian Ambassador in
January, 1959.

Embajada del Perú

Rio de Janeiro

MEMORANDUM CONFIDENCIAL

Durante su breve permanencia en Lima, en viaje a los Estados Unidos de América, el Presidente Frondizi declaró al Presidente Prado que la Argentina mantendrá su política de apoyo al cumplimiento del Protocolo de Río de Janeiro y que reclamará del Gobierno americano una acción inmediata y más efectiva de los Garantes, de acuerdo con el Brasil y apoyando el Memorandum que el Canciller Florit entregó en Washington, el 29 de setiembre último, al Gobierno americano sugiriendo la reunión de la Comisión Mixta Peruano-Ecuatoriana Demarcadora de Límites para que, en cooperación con el árbitro brasileño General Bandeira Coelho, dé las bases para la continuación de la demarcación de la frontera.

2.- El apresamiento, en el mar fronterizo, de pescadores peruanos por las autoridades ecuatorianas, es nueva prueba de la posición inamistosa del Ecuador que hay que conjurar mediante el definitivo cumplimiento del Protocolo.

3.- El Ministerio de Relaciones Exteriores del Perú ha expresado últimamente al Embajador americano en Lima la necesidad de que los Estados Unidos de América modifiquen su política

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abstencionista que favorece a los planes del Ecuador, y le ha reiterado que de no llegar a un acuerdo sobre esta cuestión, no le será posible al Perú concurrir a la próxima Conferencia Interamericana que se reunirá en Quito.

Río de Janeiro, enero de 1959.

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