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## MEMORANDUM

March 20, 1948

DISPUTE BETWEEN PERU AND ECUADOR WITH  
REGARD TO THEIR COMMON BOUNDARY IN  
THE LAGARTOCOCHA SECTOR

The Protocol of Peace, Friendship and Boundaries between Peru and Ecuador signed at Rio de Janeiro January 29, 1942 (1) provides, with respect to the boundary in the Lagartococha-Guepi sector, that the boundary line shall follow: "The Lagartococha or Zancudo River, upstream, to its sources and from there a straight line meeting the Guepi River...." (Rio Protocol Article VIII(B)6).

When conflicting interpretations of this and certain other provisions of the 1942 Protocol arose between Ecuador and Peru, it was agreed, in accordance with the "Aranha Formula", (2) to submit these differences to arbitration. The Arbitrator selected was Brazilian Navy Captain Braz Dias de Aguiar.

In adjudging the issue created by divergent opinions as to what constituted the "sources" of the Lagartococha and as to which of several branches was its principal course, the Arbitrator, with respect to the boundary in this sector, stated in an Award (3), dated July 14, 1945, that the boundary should follow what is known as the "Quebrada Norte" (North Branch) of the Lagartococha to its source and thence a straight line to the Guepi. On a map accompanying the Award, known as "Anexo 16", the Arbitrator traced, or purported to trace, the therewith awarded boundary along what he believed to be, from the then available maps (4), the course of this "North Branch" of the Lagartococha.

The present difficulty has arisen from the fact that the Quebrada Norte is itself formed by converging streams. The Award declares that the boundary shall follow the Quebrada Norte to its source, but on the accompanying map the Arbitrator traced the boundary along the easternmost of two converging streams which form the North Branch of the Lagartococha River.

Subsequent

1. Executive Agreement Series 288.
2. The "Aranha Formula" was set forth in notes from the Brazilian Foreign Minister to the Governments of Peru and Ecuador dated May 17, 1944. The formula was accepted by Ecuador and Peru in an exchange of notes dated May 22, 1944 (Embassy Quito Despatch 1589 of May 25, 1944 and Embassy Lima Despatch 276 of May 23, 1944).
3. Text of Award transmitted to Department with Embassy Rio Despatch 2070, July 16, 1945 and, in translation, with memorandum prepared by the U. S. Technical Adviser to the Ecuador-Peru Boundary Demarcation Commission, of August 30, 1945 transmitted to Department with Embassy Quito Despatch 3405 of August 31, 1945.
4. The Arbitrator used, for "Anexo 16", a map prepared by the Boundary Commission based on a survey made in 1943.

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Subsequent to the Award, in December 1945-January 1946, a mixed Peruvian-Ecuadoran field party, serving under the Boundary Demarcation Commission, surveyed the sector and demarcated the boundary--by setting up appropriate cement markers--at variance with the Arbitrator's map, along the westernmost of the two converging streams, which the field party appears to have regarded unequivocally as the principal course of the Quebrada Norte. The boundary thus demarcated would grant to Peru the 80 square kilometers of the territory in dispute.

At the time that the mixed field party were engaged in this demarcation, the Ecuadoran members of the party, as well as their immediate superior, the Ecuadoran representative on the Boundary Commission, appear to have agreed to the demarcation as carried out by the field party. Later on, however, the Ecuadoran Government refused to ratify the conclusions of the Mixed Commission on the ground that the line sketched on the map accompanying the Award of 1945 definitively established the boundary line and that this could not be altered by any subsequent survey or purported demarcation by the mixed field party.

Pursuant to a verbal understanding reached during an interview between the Ecuadoran Ambassador in Rio de Janeiro and Arbitrator Diaz de Aguiar on September 20, 1946, Diaz de Aguiar in a letter (5) to this Ambassador dated September 23, 1946 "ratified and justified" his Award of July 14, 1945 with respect to the boundary in the Lagartococha sector. In this letter the Arbitrator repeats and confirms the conclusions reached in his Award of 1945, but makes no mention of the subsequent survey of December 1945-1946 of which he had no knowledge, as is clearly indicated by the letter itself. It would seem that when the Ecuadoran Ambassador approached the Arbitrator on September 20, 1945 and solicited a reaffirmation of the Award, he made no reference to the more recent activity of the Mixed Commission, of which the Arbitrator was unaware.

In December 1946 the Peruvian Government submitted to Diaz de Aguiar, through the Brazilian Foreign Office, a written clarification (6) of the Peruvian view of the matter which contained a detailed account of the survey and demarcation carried out by the field party in December 1945-January 1946.

Cognizant of the more recent findings, Diaz de Aguiar issued a new opinion ("Parecer") which he communicated to both the Peruvian and Ecuadoran Ambassadors in Rio de Janeiro with letters dated January 13, 1947.(7) In this opinion he explains that the more recent findings of the mixed field party have led him to "modify" the opinion he expressed in the letter of September 23, 1946 to the Ecuadoran Ambassador and to conclude that the "principal source of the Lagartococha River is that which was determined by the mixed Peruvian-Ecuadoran Commission during the work performed in 1945-1946".

On April 7, 1947

5. The text of this letter and of subsequent correspondence of Diaz de Aguiar was delivered to the U. S. Embassy in Rio by the Brazilian Ministry of Foreign Relations and transmitted to the Department with Embassy Rio Despatch 2106 of April 22, 1947.

6. The text of this exposition is set forth as Anexo No. 10 of the statement of the Peruvian case which was delivered to the Department with a note from the Peruvian Embassy No. 5-3-M/127 of June 9, 1947.

7. Copies of these letters were delivered to the U. S. Embassy in Rio by the Brazilian Ministry of Foreign Relations and were transmitted to the Department with Embassy Rio despatch No. 2105 of April 22, 1947.

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On April 7, 1947 the Government of Ecuador delivered a note (8) to the Governments of the United States, Brazil, Argentina and Chile dated March 14, 1947 announcing that Ecuador would not accept this new opinion of Diaz de Aguiar and requesting the intervention of these governments, as Guarantors under the Rio Protocol, in order to establish the boundary in accordance with Ecuador's contention, namely, along the line traced on "Anexo 16" of the Award of 1945. Notice of this demarche having been given to the Press, it was followed up by an official communique setting forth Ecuador's contentions. Meanwhile, the Peruvian Foreign Office issued a statement on April 9, 1947 which characterized the representations made by the Ecuadoran Government as "inexplicable and improper" and presented the Peruvian contention as to the proceedings. (9)

On April 16, 1947 the Brazilian Government proposed to the other Guarantors that a meeting of their representatives be held to consider their problem. (10) This proposal was approved by the Guarantors who designated their respective Chiefs of Mission in Rio de Janeiro for this purpose. The Brazilian Foreign Minister called a meeting of the representatives on June 18, 1947 and distributed documents relating to the case to the participants. It was decided that the representatives would study the documents, report to their governments and request instructions thereon. The general consensus of the meeting was that Ecuador's case was very weak and that the conclusion of the Guarantors would be that the boundary marked by the field party in 1945-1946 was the correct one. It was felt, however, that from the viewpoint of Inter-American friendship as well as a matter of equity, it would be highly desirable for Peru to waive its claim to this small area. (11) When the Peruvian Government was informed of this suggestion, its immediate reaction was to reject it emphatically, by informing the Guarantor governments that their task was to guarantee "the execution of the treaty without regard to considerations that may detract from it or produce anti-judicial effects". (12)

It was then decided to suspend further meetings of the Guarantors representatives until after the Rio Conference, and no further meetings have been called since. The question has been held in abeyance as far as the Guarantors are concerned. The former Arbitrator, Captain Diaz de Aguiar, died on December 17, 1947.

In October 1947 and again in January 1948, on the occasion of the visit of the Ecuadoran Foreign Minister to Washington (13) the Ecuadoran Government has requested the Department to promote a resumption of these discussions with a view to a speedy solution of the dispute. Pursuant to the request of the Ecuadoran Foreign Minister, the Department instructed the United States Chargé d'Affaires in Rio de Janeiro to take steps with a view to the resumption of the Guarantors' discussions. When this suggestion was made to the Brazilian Foreign Minister, he informed our representative that he had deferred calling a meeting because he was of the impression that there was no urgency in the matter, since the governments of Peru and Ecuador had never expressed to him any interest in achieving a speedy solution. (14)

#### The Peruvian

8. The note was delivered by Ambassador Yllescas of Ecuador to Under Secretary of State Acheson on April 7, 1947.

9. The text of this statement was delivered to the Department with a note from the Peruvian Embassy No. 5-3-M/84, April 10, 1947.

10. Memorandum of conversation between Brazilian Ambassador and Mr. Braden, April 17, 1947.

11. Embassy Rio Telegram No. 748 of June 18, 1947.

12. Aide Memoire presented by the Peruvian Ambassador to the Department June 20, 1947

13. Memorandum of conversation between Foreign Minister Parra and Mr. Armour,  
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The Peruvian Ambassador in Washington has also approached the Department, in March 1948, on instructions from his government, expressing Peru's desire to reach an early settlement, and terminate the boundary question once and for all.

Thus, both Ecuador and Peru have officially expressed, to the Department, their desire to achieve a speedy solution of the dispute. Briefly, the conflicting contentions may be stated as follows:

Ecuador contends that the line traced on the Arbitrator's map, "Anexo 16", definitively established the boundary since this map was attached to the Award of July 14, 1945. Peru maintains that the wording of the Award as applied to now known "geographical reality" determines the boundary.

From the viewpoint of the United States, speedy solution of this dispute is desirable. The dispute, which in itself involves an insignificant segment of territory, keeps the whole boundary issue alive, and perpetuates the possibility that Ecuadoran leaders, in the interest of internal political considerations, may seek to exploit this particular dispute in the hope of achieving a sweeping revision of the whole boundary as established by the Protocol of Rio de Janeiro of 1942. It is in the interest of the United States to reach a definitive settlement of this element of discord in the Inter-American system. A final solution of the problem, accomplished by the cooperative efforts of the four Guarantors, would be regarded as an Inter-American achievement in the elimination of causes of international disputes.

Close examination of the contending claims reveals that Ecuador's position is rather weak. On the other hand, a decision by the Guarantors wholly in accord with the Peruvian contention would inevitably cause profound disillusionment and resentment in Ecuador, readily subject to exploitation by political factions.

There are a few possible compromise solutions to the problem, to which the guarantor governments may give consideration in future discussions, should the meetings in Rio de Janeiro be resumed or should the issue be presented in a different form on the occasion of the Bogota Conference.

A discussion of these possible compromise alternatives is presented herewith as follows:

A. Renunciation of Peru: The Guarantors might recommend that Peru relinquish its claim in the Lagartococha area in exchange for compensation in another sector of the boundary. It does not appear that the question of such compensation to Peru was discussed in connection with the tentative suggestion that Peru waive its claim made in 1947. It is extremely doubtful, however, that such a plan for solution could be found. The Protocol of 1942 was so overwhelmingly in favor of Peru's contentions, that it would be difficult to find any parcel of land now Ecuadoran, that Ecuador would cede with the slightest good grace without obtaining something more than recognition of its colorable claim in the Lagartococha sector.

B. Division of the Territory: The Guarantors might recommend that the parties in dispute reach an agreement dividing the contested territory. This territory is a rough quadrangle whose sides are the Güepi River, the West Branch of the Quebrada Norte (surveyed by the Mixed Commission, December 1945 to January 1946), and two Meridians, the latter being approximately 10 kilometers apart. Of these, the location of the Western Meridian, as surveyed and marked by the Mixed Field Commission in January 1946 and which constitutes the boundary as claimed by Peru, is 75° 36' 40.12" W. Longitude; the location of the eastern Meridian,

which

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which constitutes the boundary as claimed by Ecuador, is, as it appears on the arbitrator's now inopportune map, "Anexo 16" of his Award of June 1945, approximately 75° 32' 15" W. Longitude. A successful recommendation might be made that the two disputants agree to a new boundary beginning at a point on the Güepi River, located between the Meridians described above, thence southward along a Meridian, to the west branch of the Quebrada Norte and thence downstream along the Quebrada Norte. In this connection, use might be made of the fact that a non-recognized marker has at one time been placed on a point on the Güepi River almost half-way between the two described Meridians, at 75° 33' 58.05" W. Longitude, which appears on the maps and which might be approved as the starting point of this compromise boundary. It is likewise extremely doubtful that this solution would be accepted by either of the parties. The United States representative at the Guarantors' meeting of June 1947, Ambassador Pawley, has reported that the possibility of dividing the territory was discussed last year and appeared to be impossible.

C. Renunciation by Ecuador: The Guarantors might recommend that Ecuador relinquish its claims in the Lagartococha area, in exchange for adjustments in Ecuador's favor in another sector of the boundary, to wit, where the straight line of the boundary crosses the meandering courses of the Bobonaza-Pastana, the Cunambo-Pintoyscu and the Cononac-Cursray. This recommendation could be bolstered, if necessary, in order to contend with Ecuador's objections, by an indication that the Guarantors are ready to decide in favor of Peru's contention of the ground of its legal validity. Compensation to Ecuador along the stream meanders has already been suggested by the United States Technical Adviser to the Ecuador-Peru Boundary Demarcation Commission, in belief that Peru might be disposed to yield the small sections of territory in the angles of these meandering rivers, (approximately 4 1/2 square kilometers in all) thereby obtaining what is recognized as a better boundary, and at the same time leaving Ecuador less dissatisfied with the adverse decision on the Lagartococha dispute.

D. Judicial Settlement: There remains the possibility of the Guarantors relieving themselves of the burden of deciding by referring the issue to some competent juridical authority for a strictly judicial settlement. It should be borne in mind that a decision of the Guarantors is necessarily a political decision rather than a judicial sentence, since the Guarantors act as mediators and are not required, under the Rio Protocol of 1942, to act in a judicial capacity. It is believed that expert judicial opinion on the matter would be in favor of Peru. On the other hand, this course would preclude Ecuadoran resentment being directed specifically against the Guarantor countries.

Objections may be made to this suggestion on the grounds that Peru contends that there is no "juridical" question involved and that it is a matter of "technical" application of the Protocol of 1942. The latter contention is specious, since it is beyond question that this Peruvian contention is itself susceptible of adjudication, namely, whether, as a matter of international law applied to the circumstances of the case (the Protocol, the adoption of the Aranha formula, the Award, the subsequent demarcation of geographic reality, the "reaffirmation" and subsequent "modification" by the arbitrator), there is or is not a juridical question and, if so, whether there is an international law right of one or the other party which must prevail.

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The question is, in essence, whether, as a matter of international law, the parties are bound by the boundary shown on the map annexed to the Arbitrator's Award of July 1945 (as claimed by Ecuador), or by the language of both the Protocol of 1942 and the Award of 1945 as applied to "geographical reality" (as claimed by Peru).

Relegation of the issues to a competent authority for judicial determination might be accomplished by one of several procedures:

- 1) The Guarantors could undoubtedly submit any question susceptible to one or more recognized juridical experts for what may be termed as "advisory opinion". These experts would be selected by the Guarantors who would adopt the ensuing judicial determination as their own recommendation. The Guarantors might each appoint a jurist of their own nationality, or it might be found more expedient to call in outsiders, preferably Europeans.
- 2) The Guarantors could recommend that the parties refer the issue to some impartial juridical authority, which might be one of the following:
  - a) An ad hoc tribunal, set up by agreement between Ecuador and Peru. Here again, it might be best to call upon European jurists.
  - b) An arbitral tribunal organized under the General Treaty of Inter-American Arbitration, signed at Washington on January 5, 1929. Under this treaty, the arbitrators may be of any nationality, except that there may be no more than one of each of the nationalities of the parties. Both Ecuador and Peru are parties to this treaty.
  - c) The International Court of Justice. Neither Peru nor Ecuador have accepted compulsory jurisdiction of the court under Article 36 of the Statute of the Court. It would therefore be necessary for both parties to agree to the submission of this case to the Court. The Court has not had much business in recent times, and this facility should be used. Determination by the International Court, composed mainly of European jurists, would also have the advantage of a decision by a body that cannot be suspected of partiality as regards this particular dispute.

Nevertheless, the objections that may validly be made to settlement of the Guarantors' problem by referring the dispute to a judicial determination are pointed out, as follows:

First, in calling upon a new arbitral tribunal or the International Court, the Guarantors would in effect be abdicating from their functions. It is argued that under the Protocol of 1942 the Guarantors have the power to render a final decision, binding on both parties. In a sense, the Guarantors also have an obligation to decide.

Second, the impartiality of such a tribunal would be sought by involving European jurists or the International Court. This is objectionable on the ground that it is better to preserve the Inter-American character of the settlement.

Third, the principal objection lies in the fact that any transfer of the problem to a new authority will cause considerable delay, possibly a few years, in finding a settlement. It will therefore provide an opportunity for political factions of both parties, especially in Ecuador, to further publicize the question and stir up public excitement and resentment on every preceding in preparation for the