

Ecuador and Peru Discuss Border Impasses

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Representatives from Ecuador and Peru began in April to discuss the ‘border impasses’ – specific points of disagreement on their mutual boundary – that each side tabled in March 1996 for review.¹ The list of impasses covers a total of eight localities along the frontier between the two countries. This represents the first time that the two sides have sat down to discuss border alignment specifics since 1948, when a dispute emerged over the boundary set by the 1942 *Protocol of Rio de Janeiro*.

The submission of impasses and the substantive discussion of them are part of a process set in motion by the *Itamaraty Declaration* of February 1995, which was brokered by the four guarantors of the Rio Protocol: Argentina, Brazil, Chile, and the United States. The Declaration ended fighting that had broken out along the two countries’ Andean border in January 1995 and called for direct talks on the border issues. Ecuador and Peru submitted their respective lists of impasses to the guarantors in March 1996, and, in the *Santiago Agreement* of October 1996, committed themselves to direct talks.²

Both parties essentially agreed on the leading issues, which each listed in its first two impasses, although Ecuador’s submission was more vaguely worded than that of Peru.³ They cover three distinct localities along the border, comprising the two

principal areas where interpretation and implementation of the Rio Protocol have been disputed since 1948 (see map, localities EP1 and EP3), and a third area which, though first identified in 1948, was not actively contested until 1991 (map, EP2).⁴ Ecuador also included, in its first impasse, a claim to “free and sovereign access to the *Marañon-Amazonas*” (generalised as locality E4 on the map). The remaining two impasses, presented initially only by Ecuador, raise mostly technical issues: the boundary in the short Río Napo section (map, E2); places where the straight line trans-Andean sections of the boundary intersect rivers, which affect navigation in some cases (map, E3); and an issue of water management obligations along a riverine boundary on the Pacific coast (map, E1).⁵

The two sides have agreed on the order for discussing the impasses. Their April talks started with the disputes over the Río Napo and the Río Lagartococha to Río Güepí section (map, E2 and EP1). These two issues apparently are considered easier to address in that they are distant from where hostilities occurred in 1995. A May meeting was to discuss the “other two” impasses and a further meeting was reportedly held in June.⁶ It may be assumed that these “other two” issues will be the disputes over the boundary near the junction of the Ríos Santiago and Yaupi and the section in the Cordillera del Cóndor (map, EP2 and EP3). No



plans are known considering the more technical issues tabled by Ecuador in its Impasses 3 and 4.

In the Río Napo, the problem may be the shifting of the main channel from its 1940s location. The river here is braided into several channels. Though the Rio Protocol is silent on which channel the boundary is to follow, the normal procedure with navigable rivers is to select the thalweg (the line of the deepest channel), so both sides have access to shipping. If the boundary was so placed in the 1940s and this channel has subsequently moved, the technical and legal question to be resolved here is whether, and to what extent, the boundary should follow natural changes in the river channel. If the boundary is readjusted for modern hydrology, a few tiny islands, now Peruvian, could become Ecuadorian.

In the Lagartacocha–Güepí dispute, the disagreement is over the location of the source of the Río Lagartacocha, from which the boundary is to connect due northward to the Güepí.⁷ Resolution in both these cases may require an impartial geographical survey of both localities to determine the proper features to be used in each case.

In the Santiago–Yaupi case, which emerged actively in 1991, the disagreement is over the point from which a straight line segment is drawn to the confluence of the two rivers. This point is supposed to be the end of the dividing ridge specified as the boundary by Brazilian arbiter Dias de Aguiar in a 1945 decision. The two sides disagree on where the ridge ends. Peru claims continuation along a lesser ridge that arcs to the north of the 15km straight line, which Ecuador claims. Peru's interpretation gains it about 35km² of territory.⁸ Again, resolution may require an impartial geographical survey to find the true termination of the ridge.

The most intractable of the impasses, the one that has confounded peaceful relations between the two countries for decades, is the 78km undemarcated section in the Cordillera del Cóndor. The Rio Protocol specified that the boundary in this area was to follow the drainage divide between the Río Zamora and the Río Santiago. It was thought that the Cordillera del Condor was that divide, and demarcation was under way when a 1946 aerial survey by the United States revealed the drainage basin of the Río Cenepa intervening between the other two rivers (The Río Cenepa is the river to the west of the Río Santiago on the map).⁹

This discovery moved Ecuador to declare that the Rio Protocol was inexecutable in this section. In

1960, Ecuador unilaterally tried to declare the Protocol null and void. It has since attempted to parlay the claimed “*inexecutability*” of the Protocol into access to the Río Marañón and revitalisation of its claim to “*Amazonian*” status. Peru has consistently maintained that there is no dispute, that the Protocol is valid, and that all that remains is to complete the demarcation of the remaining 78km along the crest of the Cordillera. It was along the Río Cenepa side of this mountain range that fighting broke out in 1981 and 1995.¹⁰

Article VI of the Rio Protocol granted Ecuador the same rights of navigation on the Amazon and its northern tributaries as those enjoyed by Brazil and Colombia, but Peru refuses to grant sovereign access of the sort claimed by Ecuador in its Impasse 1. However, in 1991–1992, to promote confidence-building after the emergence of the dispute in the Santiago–Yaupi confluence area, Peruvian President Fujimori proposed a trade and free-navigation treaty that could grant Ecuador port facilities in the Amazon basin and include joint economic and social development projects.¹¹ A subsequent proposal for completion of the demarcation of the boundary was included within this scheme.¹² Though Ecuador never accepted Fujimori's offer, something similar might provide a framework for resolution in this area – trading acceptance of the Cordillera boundary as claimed by Peru for enhanced access to the Amazon River.

The other issues raised by Ecuador in its Impasse 3 are the boundary intersections with the Ríos Curaray, Tigre, and Pastaza rivers (map, E3). These places, which serve as turning points for the straight-line boundary segments, are each located at the junction of two rivers. Near these intersections some upstream river channels wind back and forth across the straight boundary lines so that Ecuadorian vessels navigating those sections must pass through Peruvian territory.

This is a particular problem on the Río Curaray, on both the Ríos Conambo and Pintoyacu (whose confluence, forming the Río Tigre, is a boundary turning point), and on the Río Bobonaza (whose confluence with the Río Pastaza is a boundary turning point). Over five kilometres of the Río Curaray are entirely within Peruvian territory above the boundary turning point at its junction with the Río Cononaco.¹³ This problem might be resolved with some sort of “*innocent passage*” privilege similar to the concept found in the UN Convention on the Law of the Sea.

Impasse 4 concerns the Río Zarumilla, near the Pacific coast, which is the location of the boundary according to the Rio Protocol. A 1944 arbitration decision of Brazilian Foreign Minister Aranha, accepted by both countries, put part of this boundary in an old bed of the river, the Canal del Zarumilla. Under the “Aranha Formula”, Peru agreed to supply water into the Canal for Ecuadorian towns located along it. Ecuador charges that Peru has failed to live up to this agreement.¹⁴ This water supply problem should be easily remedied.

In the process of dealing with their impasses, both parties to the dispute have moved closer to each other. Ecuador, in its Impasse 1, describes the “inexecutability” of the Rio Protocol as “partial”, thus essentially admitting the authority of the Protocol in general. Peru, in agreeing to table its impasses and enter discussions on the boundary issues, is effectively conceding the existence of a dispute for the first time. The current negotiations, and the process of working gradually from the simpler and easier-to-solve impasses may yet yield a final resolution to this persistent and costly conflict.

Commission discovered the headwaters of the Cenepa River on the eastern side of the divide as early as 1943. The US map, produced in 1947, did present an accurate depiction of the Cenepa drainage basin in its entirety, with its outlet into the Marañon.

¹⁰ St. John, *op.cit.*: 81-83.

¹¹ EFE (Madrid), broadcast in Spanish, 26 November 1991 (FBIS transcription).

¹² “Propuesta específica presentada por el presidente del Peru, Ingeniero Alberto Fujimori al presidente del Ecuador, Doctor Rodrigo Borja, para proceder a culminar el proceso demarcatorio en los tramos pendientes comprendidos entre los hitos Cusumaza-Bumbuiza y Yaupi-Santiago; y Cunhuime Sur y 20 de Noviembre de la frontera peruano-ecuatoriana, delimitados por el protocolo de Rio de Janeiro de 1942 y el fallo de Braz Dias de Aguiar,” Lima, 9 January 1992.

¹³ *Ibid.*

¹⁴ McBride, G. M. (1949) *Ecuador-Peru Boundary Settlement: Report to the Secretary of State*, Washington, DC: unpublished manuscript, Chapter IV. El Universo.

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Notes

¹ El Universo (Guayaquil – Internet version, 25 March 1997) in Foreign Broadcast Information Service (FBIS)-LAT-97-059; Voz de los Andes (Quito) broadcast in Spanish, 18 April 1997, in FBIS-LAT-97-115.

² St John, R. B. (1996) ‘Conflict in the Cordillera del Cóndor: The Ecuador-Peru Dispute’, *Boundary and Security Bulletin*, 4: 1 (Spring): America Television Network (Lima), broadcast in Spanish, 7 March 1996, in FBIS-LAT-96-046; 83; Atwood, R. (1996) ‘Peru Ecuador to Begin Full-Scale Border Talks’, *Reuter*, 29 October

³ America Television, *op.cit.*

⁴ America Television, *op.cit.*; St John, *op.cit.*: 79; El Universo, *op.cit.*

⁵ America Television, *op.cit.*; El Universo, *op.cit.*

⁶ Voz de los Andes, *op.cit.*

⁷ El Universo, *op.cit.* See also, for example, Krieg, W. L. (1986) *Ecuadorian-Peruvian Rivalry in the Upper Amazon*, Second Edition Enlarged to Include the Paquisha Incident (1981), a study prepared for the Department of State under its External Research Program, Washington: Department of State: 129.

⁸ El Universo, *op.cit.* See also, for example, St John, *op.cit.*: 82.

⁹ The Peruvian Government points out that exploratory brigades of the Mixed Border Demarcation