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1. Introduction

Throughout Latin America, the exact borders of the newly-formed republics at the outset of the independence era were often a highly controversial subject. In consequence, bitter territorial disputes, often involving vast tracts of land and considerable wealth, soon developed. Many of these territorial questions were in fact boundary disputes resulting from the failure of the Spanish government to carefully delineate its administrative units during the colonial period. The boundary dispute between Ecuador and Peru, sometimes referred to as the Zarumilla-Marañón dispute, is one of the last unresolved issues dating from this period. Emotionally charged and highly involved, the boundary dispute between Peru and Ecuador has complicated and disrupted inter-American relations throughout most of the nineteenth and twentieth centuries. It remains a volatile issue today, still capable of plunging these two Andean nations into war.

2. Spanish Colonial Jurisdictions

The conflicting claims of the Ecuadorian and Peruvian governments largely arose from the uncertainty surrounding Spanish colonial administrative and territorial divisions. The Spanish government made little effort to carefully delimit the boundaries of its possessions because most of those boundaries lay in remote and sparsely inhabited areas which were of minimal importance to the Crown. As a result, colonial jurisdictions were often vague and overlapping while boundary surveys were either inadequate or non-existent. With the establishment of independent republics, boundary issues assumed a new importance because they became questions of territorial possession such as did not exist when the entire area belonged to Spain.

Consequently, even when neighbouring republics agreed that their new national boundaries should reflect those of the former colonial administrative units, they still found it difficult to delineate their frontiers. To complicate matters, the wars of independence generated or accentuated personal and regional jealousies with these rivalries hardening as states fought for political and economic advantage. In this sense, the Ecuador-Peru dispute was typical of the many territorial disputes which complicated diplomatic relations in post-independence Latin America.

The boundary dispute between Ecuador and Peru involves the three related but distinct territories of Tumbes, Jaén, and Maynas (Figure 1). Tumbes is a largely desert region of some 500 square miles situated on the Pacific seaboard between the Tumbes and Zarumilla Rivers. Jaén is an area of less than 4,000 square miles which lay on the eastern side of the Cordillera of the Andes between the Chinchipe and Huancabamba Rivers. Both Tumbes and Jaén were subject to Peruvian sovereignty after 1821, the year Peru declared independence from Spain,

[1] The author gratefully acknowledges the support provided for this research project by the highly professional staff at the Hunt Library, Carnegie Mellon University, especially Gerri Kruglak and Elizabeth Zambelli.

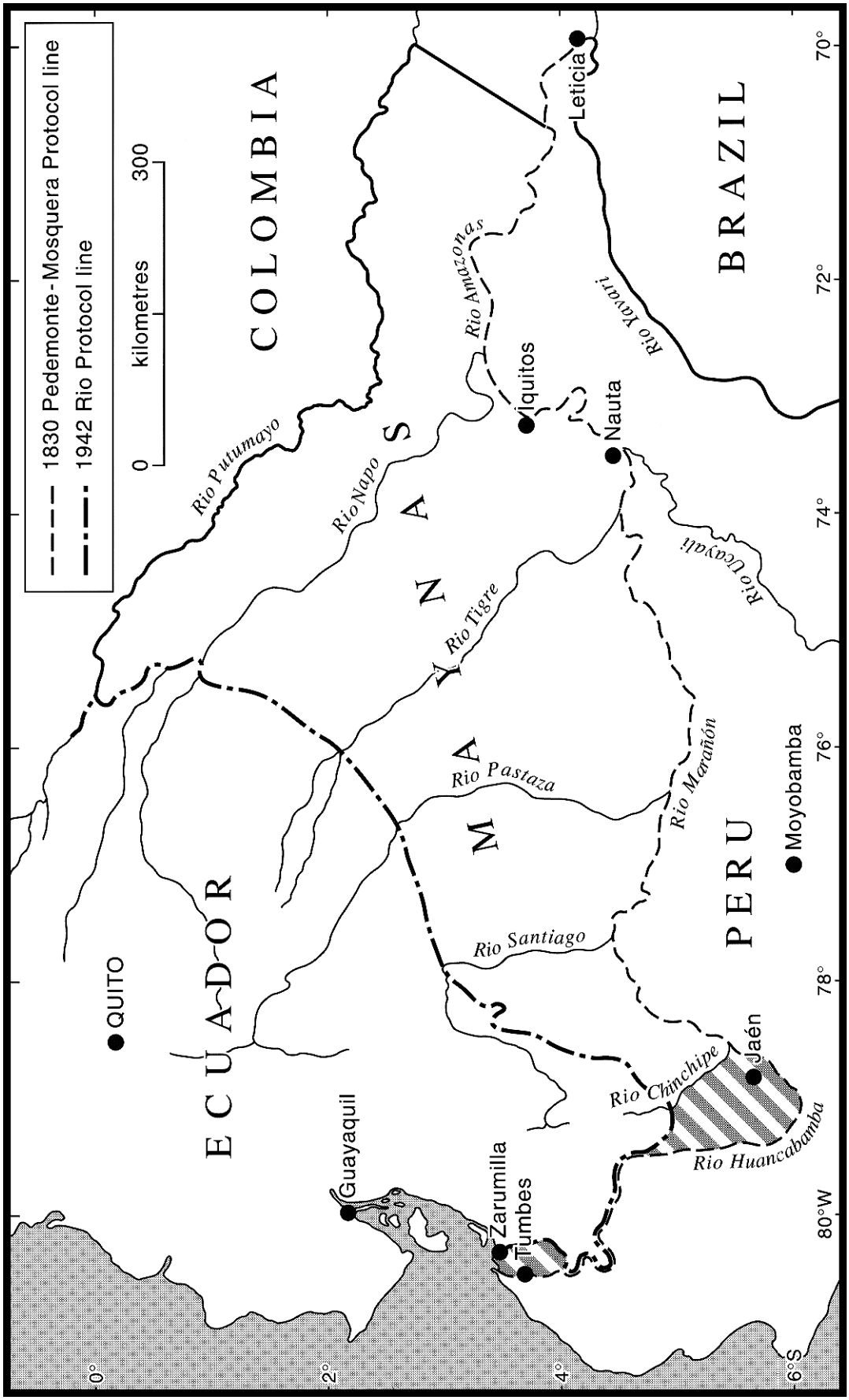
and delegates from both areas attended Peruvian congresses held in 1822, 1826, and 1827 (Maier, 1969: 28-29; Wagner de Reyna, 1962: 4).

Maynas, often referred to as the *Oriente*, is the third and largest of the disputed territories; it consisted of well over 100,000 square miles of land. Triangularly shaped, the limits of the region are defined by the headwaters of the Amazon tributaries on the west, the Yapurá or Caquetá Rivers on the north, and the Chinchipe-Marañón-Amazon Rivers on the south. Maynas was liberated from Spanish rule in 1821 but had to be reliberated in 1822. Representatives from Maynas attended the 1826 and 1827 Peruvian congresses. After independence, Peruvian nationals occupied far more of the vast area of Maynas than did Ecuador, but the inhospitable character of the terrain hampered either party's ability to exert effective jurisdiction (Wright, 1941: 253-254).

Recognising the importance of these territorial questions, many Latin American governments, including Peru, moved quickly to assert their rights to the disputed regions. On 6 July 1822 Bernardo Monteagudo, Peruvian Minister of War and Marine, and Joaquín Mosquera, the Colombian Ambassador to Peru, called for a precise demarcation of limits at an unspecified later date. An article in the 1823 Peruvian constitution called for the Peruvian congress to fix the boundaries of the republic and on 17 February 1825 Foreign Minister José Faustino Sánchez Carrión again asked congress to resolve the nation's borders. In the face of such appeals the Peruvian congress appointed a boundary commission, but the political and economic uncertainty of the times made sustained progress towards demarcation impossible (Pérez Concha, I, 1961: 53-57; Basadre, I, 1968: 67-69 and 203-206).

During the struggle for independence, the governments of Ecuador and Peru joined other Latin American states in accepting the doctrine of *uti possidetis de jure* as the principal method to establish the boundaries of newly independent states. Under this principle of regional international law, the Latin American states formerly part of the Spanish colonial empire generally agreed that each new state was entitled to the territory formerly under the jurisdiction of the colonial administrative areas from which it was formed. In the case of Peru, for example, this meant that the limits of the new republic would be defined by the previous jurisdiction of the Viceroyalty of Peru, the *Audiencia* of Lima, and the *Audiencia* of Cuzco. While *uti possidetis* was generally accepted throughout Latin America, the doctrine was of questionable validity under universal international law and, more to the point, it proved extremely difficult to apply in practice. Colonial documents were complex, and the language which the Spanish crown employed to make territorial changes often lacked clarity. As a result confusing and sometimes contradictory legal bases were often the only foundation for significant reforms to the Spanish colonial system (Checa Drouet, 1936: 137-138).

Figure 1


1830 Pedemonte-Mosquera Protocol line
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Tumbes
Jaén
Rio Putumayo
Rio Napo
Rio Amazonas
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Rio Tigre
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3. Legal Cases of Ecuador and Peru

The Ecuadorian government based its legal case for the application of *uti possidetis* on a series of Spanish decrees issued after 1563 when a *cedula* awarded Maynas, Quijos, Jaén, and any adjoining land, i.e. the whole of the disputed territory, to the *Audiencia* of Quito. Based on the doctrine of *uti possidetis* and the *cedulas* of 1563, 1717, 1739, and 1740, Ecuador argued that the disputed territories were first part of the *Audiencia* of Quito, later part of Gran Colombia, and finally part of Ecuador when the latter emerged in 1830 following the breakup of Gran Colombia (Arroyo Delgado, 1939: 44-53; Flores, 1921: 67-70).

In turn, the Peruvian government argued that the essence of independence in the Americas was the sacred and unalterable character of movements of self-determination. Within this greater principle Peru contended that *uti possidetis* served only as a guide to the demarcation of actual boundaries and not as a basic principle for the assignment of provinces or the organisation of states (Peru, 1937: 3 and 14; Tudela, 1941: 12-38). This aspect of the Peruvian legal case was based on a widely recognised corollary to the rule of *uti possidetis* which gave individual provinces the right to attach themselves to the state of their choosing. Following this line of argument, the Peruvian government concluded that all of the territories in question were Peruvian because the populations of Jaén, Tumbes, and Maynas had all voluntarily adhered to Peru at the time of Peruvian independence, which was many years before the independence of Ecuador (Porras Barrenechea, 1942: 7; Cornejo and de Osma, 1909: 16-17).

In support of its chief argument that the principle of self-determination was the most relevant to the ownership question, the Peruvian government developed two related, supporting arguments. Through a *cedula* dated 15 July 1802 the King of Spain separated from the Viceroyalty of New Granada, for ecclesiastical and military purposes, the provinces of Maynas and Quijos, excluding Papallacta, and transferred them to the Viceroyalty of Peru (Figure 2). The Peruvian government claimed that the 1802 *cedula* was also a valid guide for determining the jurisdiction of Maynas. However, it was always careful to put forward this claim as secondary to its title based on the principle of self-determination. Pressing for the applicability of the older colonial decrees, the Ecuadorian government sought to counter this Peruvian argument by contending that the 1802 *cedula* separated Maynas and Quijos for ecclesiastical and administrative ends but not in any political sense (Wagner de Reyna, I, 1964: 8-9; Zook, 1964: 28-30)[2].

In addition, the Peruvian government argued that the principle of *uti possidetis* was not applicable until the end of colonial dependence which it interpreted to be the 1824 battle of Ayacucho. Since 1810 was widely accepted throughout Latin America as the year in which *uti possidetis* was applicable, the Ecuadorian government naturally refused to accept the later date, especially since, by that time, the populations of Jaén, Tumbes, and Maynas had all expressed their determination to become part of Peru (Santamaría de Paredes, 1910: 277-280; Ulloa Sotomayor, 1941: 19-20)[3].

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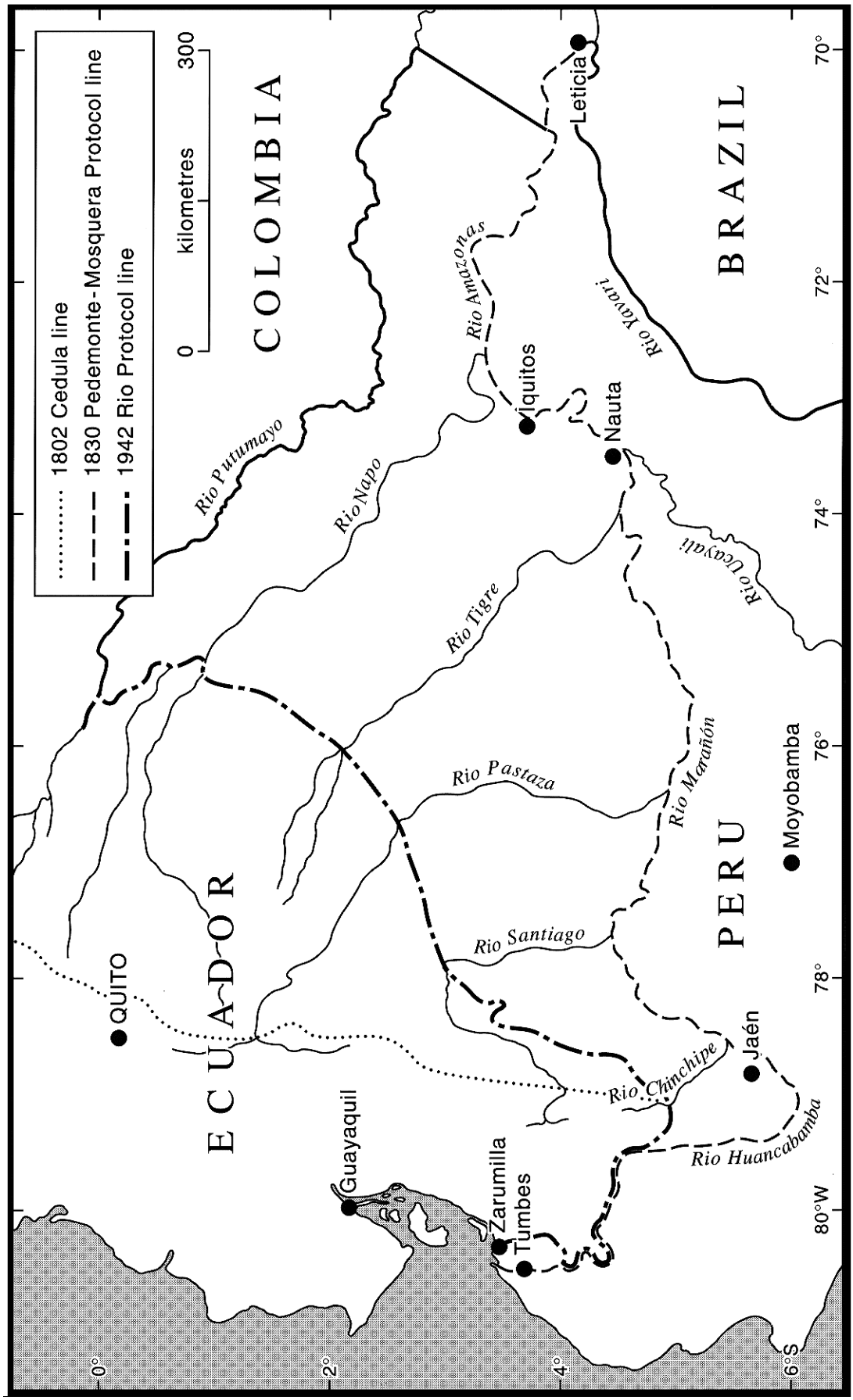
2 The available evidence does not support the contention of Maier that Peru based its legal claim on the *cedula* of 1802. On the contrary, its claim here was always secondary to title based on the principle of self-determination (Maier, 1969: 34).

3 Checa Drouet was wrong to suggest that Peru generally accepted the year 1810 for the commencement of *uti possidetis* as this was never true in the case of the Ecuadorian dispute (Checa Drouet, 1936: 31, 65 -69, and 89-91).

Figure 2


1802 Cedula line
1830 Pedemonte-Mosquera Protocol line
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COLOMBIA
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Other documents of legal importance to the dispute included the treaties of 1829 and 1832 and the highly controversial *Pedemonte-Mosquera Protocol* of 1830 (Figure 2). In the wake of an abortive Peruvian invasion of Ecuador, the two governments on 22 September 1829 concluded a peace treaty known as the *Larrea-Gual Treaty* (see Zook, 1964: 271-279 for a copy of the 1829 treaty). The 1829 agreement was a general instrument of peace and not exclusively one of frontiers. While it recognised as the boundary between the signatories the limits of the ancient Viceroyalties of New Granada and Peru, it neither settled the boundary question nor fixed a boundary line.

The pact did not even mention Jaén, Tumbes, and Maynas much less impose on Peru a specific obligation to surrender those territories. It merely established a settlement procedure to be followed. Article VI of the treaty left the final solution to a commission of limits which was to meet within forty days of treaty ratification and complete its work within six months. Treaty ratifications were exchanged on 27 October, 1829, but the assent of Gran Colombia was of doubtful validity as it ratified without congressional approval. Boundary negotiations between Gran Colombia and Peru were subsequently halted in May of 1830 when the former split into three secessionist states. Thereafter, the Peruvian government refused to be bound by the terms of the *Larrea-Gual Treaty* (Wagner de Reyna, I, 1964: 25; Pérez Concha, I, 1961: 78-86)[4].

Some two years later, on 12 July 1832 the governments of Peru and Ecuador concluded a treaty of friendship, alliance, and commerce in which they agreed to recognise and respect their present limits until a boundary convention could be negotiated. Unfortunately, the terms of the treaty did not specify whether the phrase *"present limits"* referred to the territories then in the physical possession of the signatories, or to the territories of the former viceroyalties mentioned in 1829. The Peruvian government, arguing the 1832 treaty nullified the 1829 pact, gravitated towards the first interpretation while the Ecuadorian government, arguing the 1832 treaty confirmed the 1829 treaty, advocated the second. Valid ratifications of the 1832 treaty were exchanged on 27 December, 1832 (Eguiguren, 1941: 149; Cano, 1925: 48; see Zook, 1964: 282-285 for a copy of the 1832 treaty).

The ensuing debate between Ecuador and Peru over the relevance of the 1829 and 1832 treaties involved several complicated issues. On the one hand, there was the question of the extent to which the 1829 treaty actually established a boundary. While Peru argued that the pact established only a principle of delimitation and a procedure to be followed, Ecuador maintained that the treaty actually fixed a boundary and thus resolved the controversy. In support of its position the Ecuadorian government later introduced the *Pedemonte-Mosquera Protocol* into its legal brief.

According to Ecuador, the Peruvian Foreign Minister, Carlos Pedemonte, and the Gran Colombian Minister to Peru, General Tómas C. Mosquera, agreed to a protocol on 11 August 1830 which determined the bases of departure for the border commissioners established in the 1829 treaty. In this protocol, Foreign Minister Pedemonte supposedly accepted the Marañón River as the frontier between Peru and Ecuador, leaving in doubt only the question of whether the border would be completed with the Chinchipe or Huancabamba Rivers (see Zook, 1964: 279-281 for a copy of the 1830 protocol) (Figure 2).

4 Maier was inaccurate to imply that the 1829 treaty was duly ratified by both signatories as Gran Colombia's ratification was clearly imperfect (Maier, 1969: 38)

The Colombian government was long in possession of a copy of the *Pedemonte-Mosquera Protocol* but did not mention it until 1904, and the Ecuadorian government first introduced the document in an *Exposición* filed on 20 October 1906. The Peruvian government rejected both the validity and applicability of the protocol. In support of its position, it demonstrated that General Mosquera had sailed from the port of Callao on the day before the protocol was allegedly concluded. Even if General Mosquera had reached an agreement on August 11 1830 Peruvians pointed out that he could not at that time have been considered an official representative of Gran Colombia because Venezuela had seceded at an earlier date which meant Gran Colombia had ceased to exist as a legal entity. Finally, the Peruvian government emphasised that any document of the importance of the *Pedemonte-Mosquera Protocol* would have necessitated some form of congressional approval and none was given (Ulloa Cisneros, 1911; San Cristoval, 1932: 43-83).

The second major area of disagreement centred on whether or not Ecuador was entitled to assume the legal privileges and duties of Gran Colombia after the latter disintegrated. Although Ecuador enthusiastically advocated this position, its legal case here was at best questionable. According to the doctrine of the succession of states, when a state ceases to exist, its treaty rights and obligations generally cease with it. Therefore, after Gran Colombia split into three secessionist states in 1830, there was a legitimate question in Peru, as well as internationally, as to why Ecuador should feel it was the legitimate successor to Gran Colombia. Moreover, even if Ecuador had some limited claim to the legal rights and obligations of Gran Colombia, it could hardly be the successor to the latter's southern boundary since that line had never been fixed. As a point of fact, the boundary commission provided for in the 1829 treaty never met (Brierly, 1963: 153-154; Maier, 1969: 39).

The third and final issue focused on the exact interrelationship of the 1829 and 1832 agreements. The Peruvian government took the position that the 1832 treaty both nullified the earlier pact and confirmed Peruvian possession of Jaén, Tumbes, and Maynas. In turn, the Ecuadorian government argued that the 1829 treaty fixed a final boundary which was unaffected by the later agreement. As for the Peruvian argument that the 1832 treaty rendered the 1829 pact null and void, there was certainly no clear statement to this effect in the 1832 agreement. On the other hand, as we have seen, it was far from clear that Ecuador inherited the rights and obligations of the 1829 treaty. Finally, since the 1829 agreement did not establish a boundary, it remained impossible to determine whether the *"present limits"* in the 1832 agreement referred to the Viceroyalties of Peru and New Grenada in the 1829 treaty or to those territories in the actual possession of Peru and Ecuador when they concluded the 1832 treaty (Tudela, 1941: 12-38; Zook, 1964: 23-24).

4. Abortive Negotiations

For much of the next fifty years the boundary dispute dominated diplomatic relations between Peru and Ecuador. In late 1839 the Quito government proposed to Chile an abortive plan which included the cession of northern Peru to Ecuador and, in early 1842, Ecuador threatened to occupy Jaén and Maynas by force if Peru refused to cede them voluntarily. Two decades later, an Ecuadorian attempt to cede to English creditors land claimed by Peru in the Amazon region of Canelos led to a Peruvian invasion of Ecuador. The *Treaty of Mapasingue*, dated 25 January 1860, concluded with only one of the Ecuadorian chieftains attempting to set up a

unified government, ended the Peruvian invasion and reestablished diplomatic relations between the two states (Pérez Concha, I, 1961: 109-127 and 152-181).

In the agreement, the Ecuadorian regime agreed to nullify the cession of Amazonian lands and to provisionally accept Peruvian claims to the disputed territories on the basis of *uti possidetis* and the *cedula* of 1802. At the same time it reserved the right to present, within two years, new documents in support of its territorial claims. On the other hand, if it failed to present documents annulling Peru's right of ownership within the specified period, it would lose its rights and a mixed commission would fix the border based on Peruvian pretensions. Highly favourable to Peru, the *Treaty of Mapasingue* proved a pyrrhic victory as a unified Ecuadorian government later established itself in Quito and declared the 1860 treaty null and void (García Salazar, 1928: 112-118 and 134-142).

In the second half of the 1860's, the Ecuador-Peru dispute was temporarily set aside in the face of the Spanish intervention in the Americas. Nevertheless, it again surfaced at the end of the following decade. In the build-up to the War of the Pacific, the Chilean government in March 1879 sent an emissary to Quito with instructions to bring Ecuador into the conflict on the side of Chile. The Chilean envoy was told to suggest to the Ecuadorian government that the time was ripe to resolve its dispute with Peru by occupying the contested territory. If Ecuador rejected this proposal the Chilean diplomat was instructed to negotiate an offensive and defensive alliance (St John, 1992: 111-112).

While the Ecuadorian government eventually elected to remain neutral, regional diplomacy in this period exemplified the extent to which bilateral boundary disputes in Latin America often assumed multilateral dimensions as neighbouring states formed alliances to attain their foreign policy objectives. In the Amazon region, three separate but related disputes over the ownership of the Amazon Basin involved Peru and Ecuador, Peru and Colombia, and Colombia and Ecuador. Towards the end of the nineteenth century, the Chilean government further complicated matters by encouraging the Amazonian claims of Colombia and Ecuador in an effort to distract Peru from the Tacna-Arica question which resulted from the War of the Pacific (Soder, 1970: 64-65; Burr, 1965: 146-147).

5. Spanish Arbitration

In 1887 the Ecuadorian government again tried to cancel foreign debts by granting land concessions in a section of the Amazon Basin claimed by Peru. As a result, the two governments opened new negotiations which led, on 1 August 1887, to an agreement known as the *Espinosa-Bonifaz Convention*. Under its terms, the signatories agreed to submit their territorial dispute to an arbitration by the King of Spain. The agreement provided for an arbitration so complete that even the points in contention were left to the arbiter with no principles for their definition specified. Ecuadorian critics of the convention later argued it was null and void because the open-ended procedure offered no securities for the weaker party. The agreement also provided for direct negotiations to continue concurrently with the aribtral process and, if the former were successful, their results would be brought to the knowledge of the arbitrator. Both Ecuador and Peru had more faith in direct negotiations than in the Spanish arbitration, and serious talks aimed at a comprehensive settlement soon produced an agreement (Peru, Memoria, 1890: 79-80; Tobar Donoso and Luna Tobar, 1961: 147-151; see Peru, I, 1936b: 271-273 for a copy of the 1887 convention).

The *García-Herrera Treaty,* dated 2 May 1890, granted Ecuador extensive concessions in the *Oriente*, including access to the Marañón River from the Santiago River to the Pastaza River (Figure 3). Since the Peruvian government had long opposed making Ecuador an Amazonian power, the terms of the treaty marked a high watermark of compromise for Peru. Faced with a very favourable settlement the Ecuadorian congress quickly approved the pact on 19 July 1890. The congress of Peru conditionally approved the treaty on 25 October 1891, but refused to grant final approval until modifications were made to several articles. The changes demanded would have given Peru a much larger share of the disputed territory while restricting Ecuador's Marañón River access to the mouth of the Santiago River. In 1893 the Peruvian congress reconsidered the terms of the *García-Herrera Treaty* but continued to insist on either treaty modifications or a full arbitration by the King of Spain. Ecuador refused to accept the Peruvian proposals and on 25 July 1894 the Ecuadorian congress withdrew its approval of the pact. At the same time, it directed the Ecuadorian government to open new talks (Wood, 1978: 3-4; see Zook, 1964: 295-299 for a copy of the 1890 treaty).

Several considerations helped to explain the Peruvian government's agreement to the *García-Herrera Treaty*, a pact through which it would have lost some 310,000 square kilometres of Amazon jungle. First, Peru had not recovered economically or politically from the consequences of the War of the Pacific and, in just four years, it was scheduled to participate in the Tacna-Arica plebiscite. Needing all available resources to protect its southern interests, the García-Herrera Treaty was a means to neutralise Ecuador while Peru focused on its struggle with Chile. Second, the Peruvian government lacked the necessary legal documents to prove conclusively its ownership of the disputed territories. Peruvian scholars had been searching feverishly for new documents in Seville and other Spanish archives but they had yet to discover anything which decisively proved the Peruvian case. A third consideration, not always mentioned, related to the relative value of the *Oriente*. When compared to Tacna and Arica, the Amazon territory was geographically larger and of greater potential wealth but it was also situated in a remote area, less known to Peruvians. In addition, it had not been the theatre of a long, bloody war. The boom in rubber prices had not yet occurred and, at the time, little or no thought was given to the possibility of oil deposits in the region. Consequently, there were both economic and political reasons for the Peruvian government to assign a higher priority to a successful resolution of the Tacna and Arica dispute even if it meant granting concessions in the *Oriente* (Wagner de Reyna, I, 1964: 34-35; Ulloa Sotomayor, 1941: 67-71).

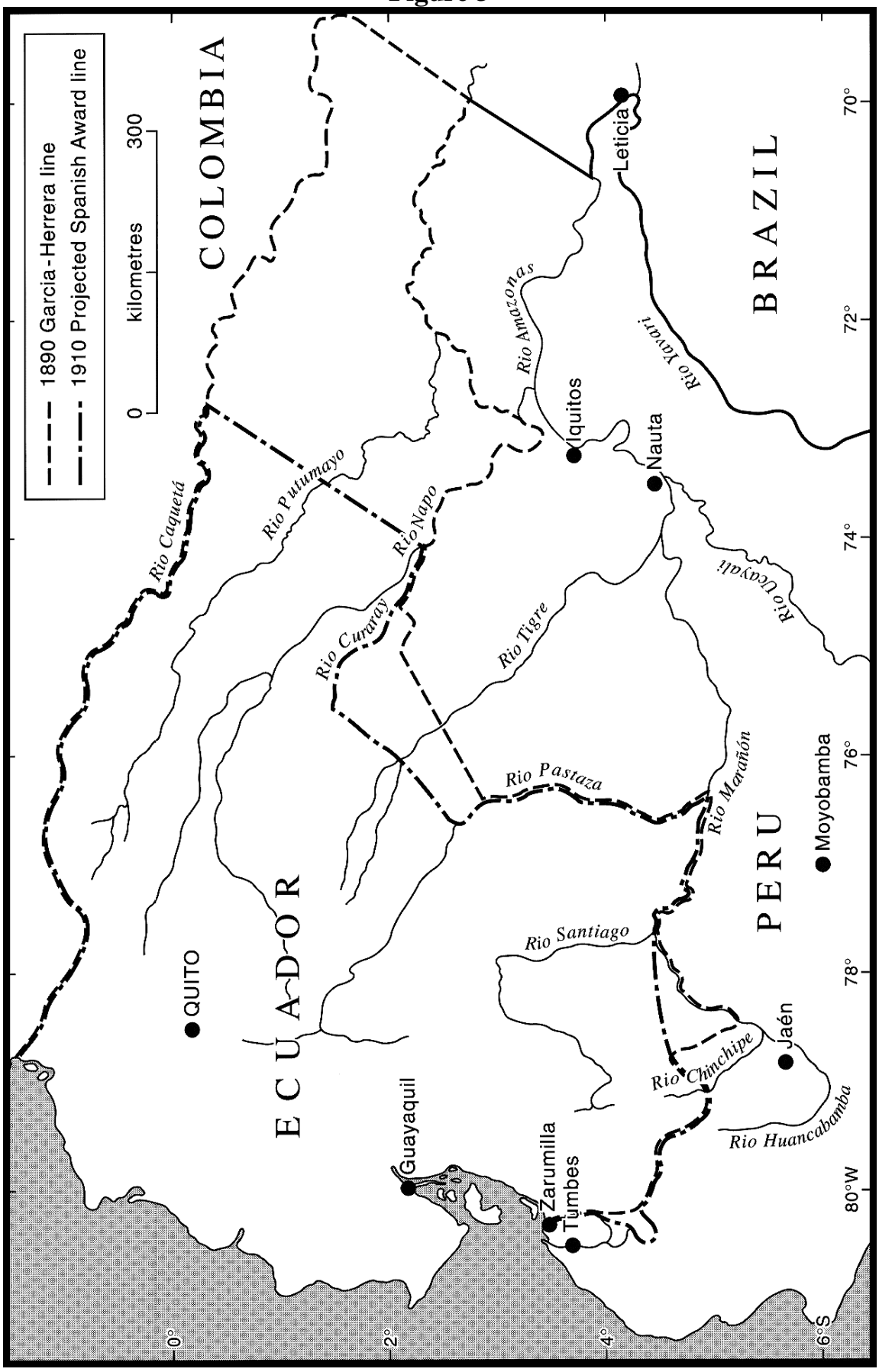
In 1890 and again in 1891 the Colombian government protested that the terms of the *García-Herrera Treaty* violated its territorial rights. Faced with continuing Colombian opposition, the governments of Peru and Ecuador eventually agreed to broaden the 1887 arbitral convention to include Colombia. The Tripartite Additional Arbitration Convention, dated 15 December 1894, provided for Colombian adherence to the arbitration provisions of the 1887 *Espinosa-Bonifaz Convention*. It also provided for an arbitral decision based on legal title as well as equity and convenience. As it turned out, the tripartite convention never came into effect because the Ecuadorian congress rejected the pact. Ecuadorian critics rightly feared a tripartite settlement might lead to Peru and Colombia dividing the *Oriente* between them at Ecuador's expense. When it became clear that Ecuador would not ratify the 1894 convention, the Peruvian congress revoked its approval of the Tripartite Additional Arbitration Convention. This cleared the way for a resumption of the Spanish arbitration; and, in March 1904, both governments asked the King of Spain to continue this procedure (Peru, Memoria, 1896: 153-161; Pérez Concha, I, 1961: 256-262 and 270-284).

The 1887 Spanish arbitration led to a projected award in 1910 which largely accepted Peru's juridical theses. Rejecting Ecuador's attempt to reconstitute Viceroyalties and *Audiencias* dating back to 1563, the projected award agreed with the central Peruvian argument that the real issue was one of fixing the boundaries between provinces which had chosen at the time of independence to join one state or the other. Accepting the rule of *uti possidetis*, the award agreed that all of Spain's administrative acts up to the very moment of independence were applicable and thus accepted the validity of the royal *cedula* of 1802 as well as older decrees (Figure 3). As to the documents pivotal to the Ecuadorian case, the award rejected the 1829 treaty on the grounds that Ecuador lost its rights as a successor to Gran Colombia when it concluded the 1832 treaty. It also ruled that the *Pedemonte-Mosquera Protocol* lacked authenticity as well as the requisite approval of the Peruvian and Ecuadorian congresses. Finally, the projected award agreed that the 1832 treaty had been ratified and that the ratifications had been duly exchanged (Peru, 1936a: 12-18; Flores, 1921: 56-62).

When the provisions of the projected award became known in Ecuador, they produced violent demonstrations against Peru in Quito and Guayaquil. When news of these riots reached Peru, they led to reprisals in Lima and Callao and both countries assumed a war footing. The mobilisation in Peru alone put 23,000 men in arms. The Ecuadorian government suggested direct negotiations in Washington but Peru refused to consider a solution other than arbitration. While war appeared imminent a tripartite mediation by Argentina, Brazil, and the United States eventually restored the peace. After Peru and Ecuador agreed to return to a peacetime footing the King of Spain in November 1910 resolved not to pronounce his award. With the end of the Spanish arbitration, the mediating powers advised Peru and Ecuador to bring the dispute before the Permanent Court of Arbitration at the Hague. The Peruvian government accepted this proposal but Ecuador continued to insist on direct negotiations (Basadre, XII, 1968: 94-102: Pérez Concha, I, 1961: 341-393).

In retrospect, the Ecuadorian government made a serious mistake when it encouraged public demonstrations against the pending Spanish judgement. While the projected award was favourable to Peru, the King of Spain awarded Ecuador much more territory than it was to receive in the final settlement three decades later. Moreover, the abortive arbitration presented Peru with a major diplomatic victory both because of the favourable terms of the projected award and because Ecuador's reaction cast it in an unfavourable light. Finally, in the negotiations with Ecuador, time was on the side of Peru. With the breakdown in negotiations Peru continued in *de facto* control of most of the disputed territory, a control buttressed by a screen of armed force. The Spanish arbitration gave both sides a day in court before the mother country and, since the award was not unkind to Ecuador, the Quito government would have been wise to accept it (St John, 1977: 328-329; Ulloa Sotomayor, 1942: 68).

Figure 3


1890 Garcia-Herrera line
1910 Projected Spanish Award line
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Nauta
Moyobamba
Jaén
QUITO
Guayaquil
Zarumilla
Tumbes
Rio Amazonas
Rio Yavari
Rio Caquetá
Rio Putumayo
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6. The Solomón-Lozano Treaty

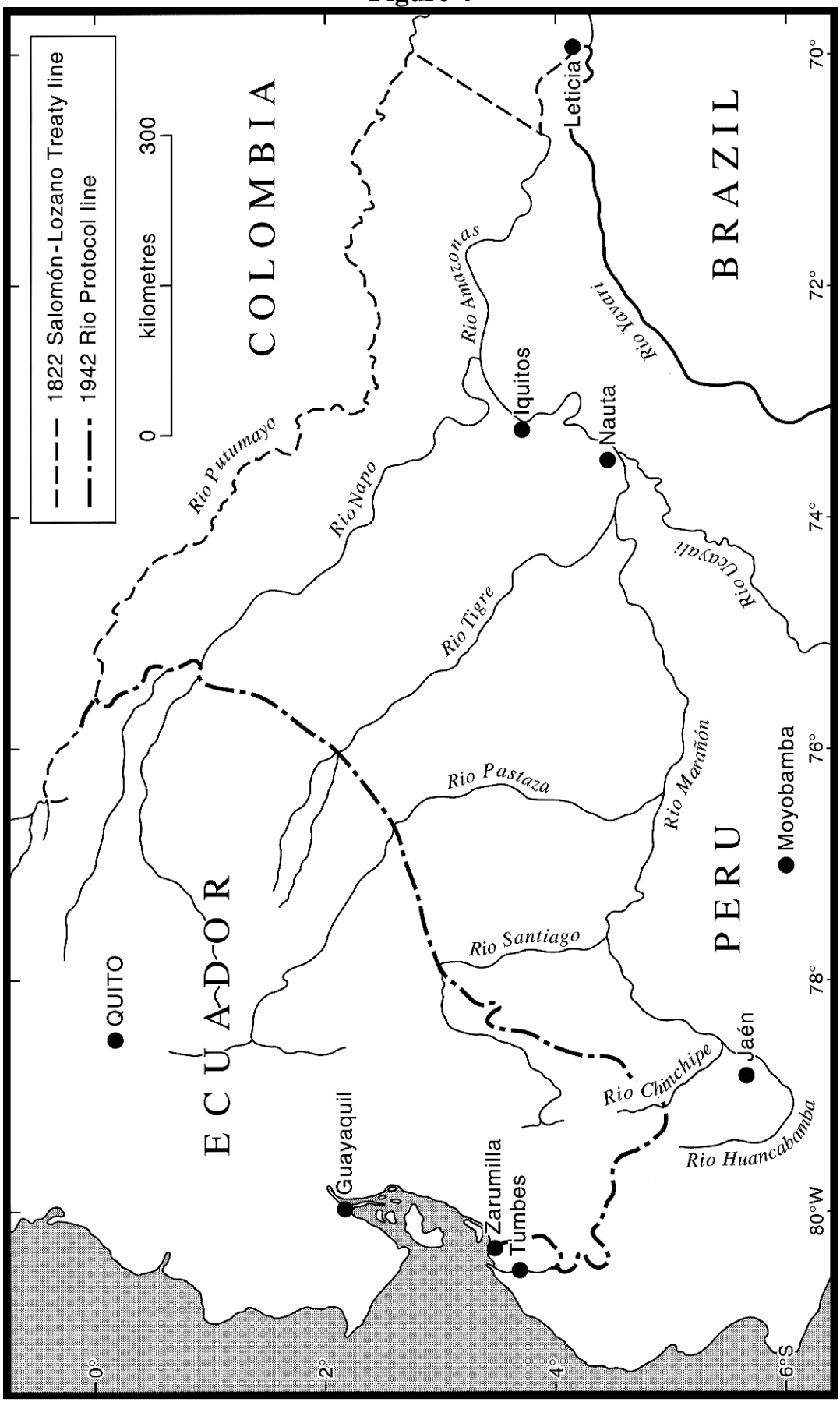
On 24 March 1922 the governments of Peru and Colombia concluded a Treaty of Frontiers and Free Inland Navigation. Generally referred to as the *Salomón-Lozano Treaty*, the agreement granted Colombia frontage on the Amazon River in return for ceding Peru territory south of the Putumayo River which Colombia had received from Ecuador in 1916 (Figure 4). It also provided for a mixed commission to mark the boundary and granted the signatories freedom of transit by land as well as the right of navigation on common rivers and their tributaries. The 1922 treaty generated considerable public interest but its terms were not well understood. Debate in Peru focused on the decision to give Colombia frontage on the Amazon River when a more significant consideration was the extent to which the treaty undermined Ecuadorian claims in the *Oriente* (St John, 1976: 328-332; see Peru, I, 1936b: 251-254 for a copy of the 1922 treaty).

The territory south of the Putumayo River, ceded by Colombia to Peru, penetrated to the heart of the area disputed by Peru and Ecuador. Its acquisition by Peru greatly enhanced the Peruvian government's position in the region *vis-a-vis* Ecuador. Overnight, the Ecuadorian government found itself confronted by an antagonist (Peru) where previously it had an ally (Colombia). From the San Miguel River eastward Ecuador was now enclosed on the north, east, and south by Peruvian territory. In addition to destroying any legal support which the 1916 Colombia-Ecuador treaty had given Ecuadorian claims, the 1922 treaty eliminated the possibility of Colombian support, either military or diplomatic, for Ecuador in its dispute with Peru. While few Peruvians acknowledged the importance of this new geographical and political reality, the violent reaction that news of the agreement produced in Ecuador testified to its strategic importance. When the provisions of the 1922 treaty finally became public knowledge in 1925, the Ecuadorian government protested loudly and after Colombia ratified the pact later in the year, Quito severed diplomatic relations with the government in Bogotá (Muñoz Vernaza, 1928: 90-92 and 101; Bákula, 1988: 223-281).

In early 1913 the Peruvian government had proposed to Ecuador what later came to be known as the *"mixed formula"* because it consisted of both a direct settlement and a limited arbitration. Eventually talks renewed in 1919 led to the conclusion on 21 June 1924 of a new agreement known as the *Ponce-Castro Oyanguren Protocol*. It provided for the implementation of the mixed formula as soon as the Tacna and Arica dispute between Chile and Peru was resolved. With the prior assent of the United States government, the signatories agreed to convene in Washington to negotiate a definitive boundary and, where they were unable to settle, they agreed to submit the unresolved segments to the arbitral decision of the United States (see Peru, I, 1936b: 278-279 for a copy of the 1924 protocol).

The *Ponce-Castro Oyanguren Protocol* attempted to reconcile Peruvian insistence on a juridical arbitration with Ecuadorian insistence on an equitable arbitration or direct negotiations. Unfortunately, the agreement was neither clear nor satisfactory. In consequence, the positions of both Peru and Ecuador after 1924 continued to reflect the projected award of the Spanish arbitration. Confident in its legal title, Peru emphasized a juridical arbitration of the dispute while Ecuador, now certain that its legal arguments would not give it frontage on the Amazon River, insisted on an equitable arbitration or direct negotiations. Initially proclaimed a diplomatic victory in both countries, the 1924 agreement soon attracted growing criticism in

Figure 4


1822 Salomón-Lozano Treaty line
1942 Rio Protocol line
0
kilometres
300
COLOMBIA
BRAZIL
PERU
E C U A D O R
QUITO
Guayaquil
Zarumilla
Tumbes
Leticia
Iquitos
Nauta
Moyobamba
Jaén
Rio Putumayo
Rio Napo
Rio Amazonas
Rio Yavari
Rio Ucayali
Rio Tigre
Rio Pastaza
Rio Marañón
Rio Santiago
Rio Chinchipe
Rio Huancabamba
70°
72°
74°
76°
78°
80°W
0°
2°
4°
6°S

Ecuador where detractors challenged its ambiguous provisions as well as the delay in settlement which resulted from tying the Ecuador-Peru dispute to a resolution of the Tacna-Arica question (Tudela, 1941: 38-43; Pérez Concha, II, 1961: 9-11 and 61-63).

In late 1933 the Peruvian government invited Ecuador to open negotiations in Lima in accordance with the terms of the 1924 *Ponce-Castro Oyanguren Protocol*. In the belief that the United States government would support its claims, Ecuador reluctantly accepted the Peruvian proposal and, in April 1934, a series of desultory talks opened in the Peruvian capital. Unable to find common ground, the negotiations broke down completely in August 1935 with Ecuador withdrawing its delegation in November. For the next eighteen months the two governments argued over the nature of the dispute and the form future proceedings should take. Finally, on 6 July 1936, they agreed to take the dispute to Washington for a *de jure* arbitration during which both states would maintain their existing territorial positions. The Washington Conference lasted two long years and, more than anything else, it proved a test of patience and an exercise in futility. Both the sessions and the proposals were long, repetitious, boring, and unproductive. At the same time, they did produce a clear statement of the seemingly irreconcilable positions of Peru and Ecuador (St John, 1970: 429-454).

At the opening meeting in Washington, the Ecuadorian delegation maintained that the central issues were territorial as they involved the ownership of large areas of the *Oriente*. In short, Quito hoped to negotiate the possession of the entire territory north of the Tumbes, Huancabamba, and Marañón Rivers. According to the Ecuadorian delegate, the two governments had come to Washington to negotiate a comprehensive direct settlement or a partial settlement to be followed by a limited arbitration by the president of the United States. Later, Ecuador proposed a complete juridical arbitration of the dispute. While this proposal suggested a shift in its attitude towards arbitration, it was largely an attempt to precipitate a Solomon-like judgement by the United States government (Ecuador, 1937: xiii-xv, 5-6 and 43; Ecuador, 1938: 219-276).

In contrast, the opening statement of the Peruvian delegation emphasized that the dispute was not one of organic sovereignty but rather one of frontiers. According to Peru, the issue at hand was the exact location of the boundary line between the three Peruvian provinces of Tumbes, Jaén, and Maynas and adjacent Ecuadorian territories. This was the same position the Peruvian government had taken in the Spanish arbitration four decades earlier. When Peruvian Foreign Minister Carlos Concha eventually announced the termination of the Washington Conference, he explained that it was impossible for Peru to continue because Ecuador's proposal for total arbitration was outside the spirit and letter of the 1924 protocol, a pact which contemplated only an eventual and partial arbitration by the president of the United States. He added that the only legitimate areas for discussion remained the exact limits separating Tumbes, Jaén, and Maynas from adjacent Ecuadorian territory (Peru, 1938: v-xiv, 10-11, 25-81, and 229-232).

From 1940 to 1941 border incidents along the unmarked jungle frontier increased as both Peru and Ecuador asserted their territorial claims in the disputed region. Ecuadorian probes, returned in kind by Peruvian units, were accompanied by an aggressive press campaign in Quito which charged that Peru was preparing for war. As both the political and military situation deteriorated, the governments of Argentina, Brazil, and the United States offered their good offices in an effort to contain the conflict. While the Peruvian government accepted the offer, it was with the understanding that Peru intended to retain Tumbes, Jaén, and Maynas. Willing to accept good offices to reduce the possibility of war, Lima rejected an Ecuadorian suggestion

that this procedure be employed as the basis to negotiate a final solution (Peru, Memoria, 1940-1941: xcv-cxiv).

Hostilities opened in early July 1941 in the Zarumilla sector with both sides claiming the other fired the first shot. The conflict spread quickly as Ecuador launched new attacks in the eastern sector along the Tigre and Pastaza Rivers. After intense fighting on several fronts, Peruvian forces blocked the Ecuadorian advance and successfully counter-attacked. Peru's swift and overwhelming defeat of the Ecuadorian army was the result of a military reorganisation the Peruvian armed forces had undergone in the 1930's as well as the vast superiority of forces it achieved in the main theatre north of Tumbes. In contrast, the Ecuadorian army, which was largely unprepared for war, suffered from a lack of war material as well as limited civilian support for the war effort. By the end of July Peru had advanced some 65 kilometres and occupied 1,000 square kilometres of the disputed territory (Peru, 1961: 71-72; Pérez Concha, III, 1961).

7. The Rio Protocol

With the outbreak of hostilities, the governments of Argentina, Brazil, and the United States, later joined by Chile, worked to organise a peaceful settlement. Their efforts were rewarded on 2 October 1941 when representatives of Peru and Ecuador signed an armistice at Talara. Peace negotiations held in Rio de Janeiro in early 1942 produced a *Protocol of Peace, Friendship, and Boundaries* (Figure 4). Within fifteen days Peru agreed to withdraw its forces to a designated area after which technical experts would mark the boundary outlined in the protocol. Under the terms of the settlement the governments of Argentina, Brazil, Chile, and the United States agreed to guarantee both the protocol and its execution. On 26 February 1942 the Peruvian congress unanimously approved the *Rio Protocol* and ratifications were exchanged on 1 April 1943 (see Peru, 1967: 27-30 for a copy of the *Rio Protocol*).

The mixed Ecuador-Peru demarcation commission was installed in Puerto Bolívar on 1 June 1942 but while the border was soon marked in the west, the demarcation of the *Oriente* was never completed. A small stretch of the boundary, approximately 78 km in length and located in a remote sector of the Cordillera del Cóndor, was never marked because the Ecuadorian government after 1951 argued the *"impracticality"* of the Rio Treaty. Nonetheless the *Rio Protocol* was a major diplomatic victory for Peru as it confirmed Peruvian ownership of most of the disputed territory. In Ecuador the settlement was widely condemned and successive Ecuadorian governments repeatedly asserted that Ecuador had been and remained an Amazonian state (Peru, Memoria, 1941-1942, xxxi-lxii; Pérez Concha, III, 1961: 112-394: García Sayán, 1988: 38-40).

In 1960, José María Velasco Ibarra, a three-time president of Ecuador, initiated a critical and destructive campaign for re-election in which he asserted the *Rio Protocol* could not be executed. Velasco's arguments focused on a geographical flaw in the 1942 agreement. In the Cordillera del Cóndor region, the protocol defined the border as the *divortium aquarum* between the Zamora and Santiago Rivers; however, aerial surveys subsequently placed the Cenepa River where the watershed was originally thought to be. Once the size and location of the Cenepa River were known, the Ecuadorian government concluded the execution of the protocol in that sector was impossible (FBIS-LAT-91-189, 30 September 1991: 36).

In 1951 Ecuadorian President Galo Plaza had used this discrepancy as a justification for declaring that Ecuador could never accept a final boundary which did not recognise its rights to a sovereign outlet to the Amazon through the Marañón River. A decade later the Velasco administration seized on the misunderstanding to declare the entire border in doubt and the protocol incapable of execution. In August 1960, after winning a major popular victory in the June presidential elections, President Velasco declared the *Rio Protocol* null and void. One month later the Ecuadorian foreign minister argued that Peru and Ecuador must return to the terms of the 1829 treaty which had fixed the Amazon River as their natural boundary. At the same time he repeated allegations that the *Rio Protocol* was unjust, imposed by force, and incapable of execution (Zarate Lescano, 1960: 61-79; Chirinos Soto, 1968: 7-29; St John and Gorman, 1982: 188-189).

In October 1976 the Ecuadorian ambassador to the United Nations demanded a renegotiation of the 1942 Rio Protocol on the grounds that Peruvian occupation of the *Oriente* blocked Ecuadorian access to the Amazon River network and thus severely limited its participation in the economic development of the region. At about the same time the United States government complicated the dispute by suggesting that the Peruvian position was too radical, thus encouraging Ecuador to think that a compromise solution in its favour might be possible. Mounting tension between Peru and Ecuador eventually led to skirmishes in and around Paquisha in the Cordillera del Cóndor region in January 1981 from which Peru emerged militarily triumphant. Even though the Peruvian government took decisive action to defend the national patrimony, the terms of the subsequent cease-fire were criticised by many in Peru on the grounds they did not provide for a demarcation of the boundary, refer to the legal principle of respect for international agreements, or involve the guarantors of the 1942 *Rio Protocol* (St John, 1984: 302). Peruvian critics expressed special concern that the character of the dispute appeared to be shifting from the long-term Peruvian focus on respect for the sanctity of international treaties. This concern resurfaced in October 1983 when the Ecuadorian congress again declared the 1942 protocol null and void and reaffirmed Ecuadorian rights in the Amazon Basin (Mercado Jarrín, 1981: 22-106; Ferrero Costa, 1987: 64-65; Luna Vegas, 1986: 167-201).

8. Recent Developments

After almost a decade of relative quiet, the Ecuador-Peru dispute again made international headlines in the late summer of 1991. Tension increased markedly along the border after reports appeared in August 1991 that Ecuadorian troops had crossed into Peruvian territory the previous month in a remote sector of the frontier (FBIS-LAT-91-165, 26 August 1991: 40). Armed conflict was only avoided after representatives of Peru and Ecuador reached a so-called gentleman's agreement to establish a common security zone in the disputed area. The agreement called for troops from both countries to withdraw approximately 2km from their existing positions which were in some cases no more than 50-100 meters apart (FBIS-LAT-91-167, 28 August 1991: 56).

The Peruvian government took advantage of the incident to reiterate its long standing commitment to the terms of the 1942 *Rio Protocol*. In a communiqué issued on 15 September 1991 the Foreign Ministry of Peru announced that it had officially informed representatives of Argentina, Brazil, Chile, and the United States, the guarantors of the *Rio Protocol*, of its agreement with Ecuador and asked for their intervention to find a peaceful solution to the

present difficulties. The Peruvian government later accepted the good offices of the four guarantor states to find a peaceful solution to the most recent crisis on the Peru-Ecuador border within the framework of the terms established in the *Rio Protocol* (FBIS-LAT-91-180, 17 September 1991: 29-30).

The Ecuadorian government, on the other hand, attempted to use the incident to challenge the very essence of the Rio agreement both as a definitive settlement and as a process to demarcate the actual boundary. In an address before the United Nations, Ecuadorian President Rodrigo Borja proposed an arbitration by Pope John Paul II of what he referred to as *"our old territorial dispute with Peru"*. In so doing the Ecuadorian leader left the impression that the issue at hand was really an unresolved territorial dispute as opposed to simply a question of delimiting an agreed upon international boundary (FBIS-LAT-91-190, 1 October 1991: 28). The Peruvian government swiftly rejected the Ecuadorian proposal on the grounds that there was no need for papal arbitration of a territorial dispute which had been definitely settled almost five decades earlier through the conclusion of the *Rio Protocol*. In a rejoinder before the United Nations the Foreign Minister of Peru emphasized that there was no territorial problem between Ecuador and Peru since the issue had been resolved in 1942 through a bilateral treaty guaranteed by four American nations. (FBIS-LAT-91-191, 2 October 1991: 39).

A few weeks later, the Ecuadorean government publicly explored mediation of the dispute first by the Chilean government and later by Brazil. When neither initiative proved fruitful, the government in Quito repeated its call for papal mediation arguing that it was time to find a peaceful solution, based on international law, to this perpetual disagreement (FBIS-LAT-91-225, 21 November 1991: 32). As Ecuador struggled to find a new venue to press its claims, Peruvian officials continued to affirm their respect for the legal framework embodied in the *Rio Protocol* and guaranteed by the governments of Argentina, Brazil, Chile, and the United States (FBIS-LAT-91-225, 21 November 1991: 39).

At the end of the year Peru seized the initiative in a proposal intended to resolve the dispute peacefully within the confines of the Rio Protocol. The Peruvian government proposed to Ecuador a treaty for commerce and free navigation in the Amazon region which would also be designed to create common interests and promote regional unity. Based on Article 6 of the *Rio Protocol*, which called for Ecuador to enjoy free and untrammelled navigation on the Amazon River and its northern tributaries, the Peruvian initiative held out the possibility that an agreement could be reached which granted Ecuador the benefits of port facilities on the Amazon and its tributaries. In turn Ecuador would agree to complete the demarcation of the remaining 78 km of the border area as provided for in the *Rio Protocol*. Peru added that this innovative new initiative was also based on the need to ensure reciprocal security measures and arms limitation objectives along the common border. Conclusion of a broad agreement on border integration, together with an economic and social development plan for the entire border area, offered intriguing prospects for binational development projects and joint investments together with the creation of binational and multinational ventures. (FBIS-LAT-91-228, 26 November 1991: 22-23; FBIS-LAT-91-231, 2 December 1991: 40-41).

In early January 1992 Peruvian President Alberto Fujimori, in the course of a three day trip to Ecuador, repeated in more detail his proposal to conclude with Ecuador a treaty for commerce and free navigation in the Amazon Basin. He also expressed a willingness to submit what he termed matters pending in the territorial dispute to arbitration by an expert which the two states and the four guarantors of the Rio Protocol would ask the Vatican to appoint. While this new

response to the Ecuadorian proposal for papal arbitration displayed some willingness to compromise, it still fell far short of Ecuadorian insistence on papal arbitration of the complete territorial issue. The Ecuadorian government gave the Peruvian suggestion a very guarded welcome indicating it would study it with care and attention (FBIS-LAT-92-014, 22 January 1992:53).

While the governments of Ecuador and Peru later concluded a trade agreement eliminating tariffs on a joint list of some 500 products, Quito failed to respond officially to the latest Peruvian proposal (FBIS-LAT-92-231, 1 December 1992: 50). In the interim the Foreign Minister of Ecuador, in an interview outlining the foreign policy of the new Ecuadorian government, indicated that the outstanding territorial dispute with Peru would continue (FBIS-LAT-92-171, 2 September 1992: 34). In late January 1993 President Fujimori repeated his proposal to consider granting Ecuador an outlet on the Amazon in return for demarcation of the remaining 78 km of the border area (FBIS-LAT-93-011, 19 January 1993: 51). The Ecuadorian government again failed to respond immediately although the Ecuadorian Foreign Minister did remark some weeks later that his government considered the subject an important one and that the spirit of dialogue was fully engaged (FBIS-LAT-93-053, 22 March 1993: 42-43). Such remarks did not prevent the Defence Minister of Ecuador from charging, in the summer of 1993, that Peruvian troops had failed to fulfil the terms of the withdrawal agreement reached in 1991.

9. Prospects

The boundary dispute between Ecuador and Peru has persisted for more than a century and a half. Over that period the Peruvian government has generally possessed the stronger *de facto* case as it occupied and developed Tumbes and Jaén after 1822 as well as much of Maynas. In addition Peru also developed over time the superior *de jure* case to the contested territories. This was confirmed by the projected award of the Spanish arbitration in 1910. Recognising its tenuous position the Ecuadorian government thereafter insisted on an equitable solution to the dispute through arbitration or direct negotiations. Thought to have been resolved in 1942 the question remains a major issue on the contemporary foreign policy agenda of both states. At the same time the character of the dispute has changed completely in the last half century. With the conclusion of the *Rio Protocol* the case from a legal standpoint was closed. In seeking to void unilaterally a recognised treaty of limits, the Ecuadorian government is challenging a rule of international law whose overthrow would signal chaos for a region where dozens of such treaties have been negotiated since independence. Consequently, it is more as a political issue that the dispute has lived on since Ecuador, after 1942, remained determined to satisfy what it considered to be its moral rights in the Amazon Basin. To this extent the Ecuador-Peru boundary dispute will likely continue as a lively issue in the foreseeable future disturbing sub-regional relations until a compromise solution can be found.

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