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PERU

by
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CHAPTER XI

FOREIGN RELATIONS

THE TERRITORIAL DISPUTE WITH ECUADOR

THROUGHOUT her history as a republic Peru has been bedevilled by a series of boundary disputes. A principle frequently invoked by Latin American states involved in such disputes is that of *uti possidetis*, that is to say that each state is entitled to all the territory formerly under the jurisdiction of the colonial administrative area out of which it was formed.¹ This doctrine has not, however, been recognized as having any validity in international law. These colonial boundaries, moreover, traversed so much country that was practically unexplored that they were very vaguely and inaccurately defined. Areas of thousands of square miles might thus be in dispute, each party being ready to support its claim with bulky dossiers of colonial documents defining jurisdiction and treaties concluded between the independent states. When Peru's dispute with Bolivia over the Acre-Madre de Dios area was submitted to Argentina early this century for an arbitral decision on the basis of *uti possidetis*, the arbitrator came to the conclusion that neither side could show sufficient proof in support of the line it claimed. The award was therefore made (in 1909) on equitable, not legal, grounds.²

For much of the nineteenth century the debatable lands in South America continued to be sparsely populated and underdeveloped. But when economic interests such as mineral rights or access to the sea or to navigable rivers were at stake, disputes could become dangerously embittered. The 'nitrate war' of 1879-84 is a case in point.³ The possibility of developing petroleum deposits in the north-west of the Amazon basin is an important factor in Ecuador's long-standing territorial

¹ On this doctrine, see R. A. Humphreys, *The Diplomatic History of British Honduras 1638-1901* (London, OUP for RIAA, 1961), pp. 179-80, and G. Ireland, *Boundaries, Possessions and Conflicts in South America* (1938), pp. 321-9.

² Ireland, pp. 104-7.

³ See above, pp. 46-49.

claim against Peru; for access to Iquitos would enable her to export petroleum without the expense of building trans-Andean pipelines. This is, however, only one of the issues in a highly complex dispute which has lasted over a hundred years.

The disputed area originally comprised most of the basin of the Marañón or upper part of the Amazon. During the colonial period this region was administered as the province of Jaén y Bracamoros and the Comandancia General of Maynas. The province of Jaén, situated in the northern part of the Peruvian Sierra and traversed by the deep valley of the upper Marañón, came under Peruvian jurisdiction from the time of independence by the wish of its inhabitants. Maynas was the vast tract of Selva extending to the western limits of Brazil, a region which is still very little developed except along the rivers. At present the area in dispute has been reduced to some thousands of square miles on the north bank of the Marañón. Apart from the rubber boom of half a century ago no discoveries of major economic importance have been made here. Why then, it may be wondered, have both countries contested sovereignty over these areas for so long? The question can be answered partly in terms of national pride, partly in terms of the complicated legal basis of the dispute, and partly in terms of economic self-interest.

Before the present Republic of Ecuador came into being, the territory which now comprises it was part of the Royal Audiencia of Quito, and, subsequent to the Wars of Independence, a part of the Confederation of Gran Colombia. In 1830 Ecuador seceded and became an independent republic. As was the case with the newly formed republics Ecuador was jealously proud of her territorial sovereignty and determined to maintain its integrity. Over the years, however, Ecuador has been obliged to cede territory to Brazil (1904) and Colombia (1832 and 1916) as well as to Peru. Her territorial area has shrunk from 272,516 square miles in 1832, after her separation from Gran Colombia, to 111,168 square miles after the Protocol of Rio de Janeiro in 1942.⁴ Ecuador's un-

⁴ See L. Linke, *Ecuador* (1955), pp. 178-80, and Rufino Marín, *Las tres bombas de tiempo en América Latina* (Guatemala, 1959), pp. 93-148. For the 1942 protocol

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successful boundary disputes with Brazil and Colombia stiffened her resistance in the dispute with Peru. Unless she held out in this case, she felt, she would be territorially confined to the Pacific coast and the mountains. In the second place, since Ecuador's losses have been in her eastern region, she has been denied access to the Amazon and hence, ultimately to the Atlantic. Thirdly, geological explorations in the Amazonas region have suggested the possibility of petroleum deposits in the disputed territory. Finally, the complexity and geographical vagueness of the colonial documents on which Peru bases her legal claim to the disputed territories have always cast doubt on the Peruvian case in Ecuadorean eyes.⁵ For her part Ecuador bases her claim on a treaty signed between Peru and Colombia in 1829, following the defeat of Peru by Colombia in a war, one of the reasons for which was Peru's alleged usurpation of Jaén and Maynas. Ecuador claims that on attaining independence in 1830 she automatically inherited Colombia's alleged rights to the disputed territories, a considerable portion of which originally formed part of the Audiencia of Quito.

The Peruvian case is based on five main points. (1) The initial formation and constitution of the Peruvian state conforms to the principle legally recognized as applying to the other South American states at the time of gaining independence, i.e. *uti possidetis*. (2) Peru has maintained uninterruptedly her constitutional existence since 1821. (3) Throughout this period she has had territorial possession of the areas in dispute. (4) Peru first recognized the independent existence of the Ecuadorean Republic in a treaty signed by the two countries in 1832, in which Ecuador confirmed the Peruvian possession of Jaén and Maynas. (5) Ecuador has failed to produce any acceptable legal evidence which denies Peruvian sovereignty.

Throughout the nineteenth century relations between the two countries were poor. War broke out in 1858, and an un-

see World Peace Foundation, *Documents on American Foreign Relations, 1941-1942* (Boston, WPF, 1942).

⁵ Doubt, for instance, exists as to the validity of the Royal Cédula of 15 July 1802, one of the key documents on which Peru bases her claim. (See Ireland, p. 189.)

easy peace was once more threatened in 1887, when, in an attempt to settle the dispute once and for all, both countries submitted it to the King of Spain for arbitration. Proceedings dragged along slowly, and when it became apparent that the award would probably be in favour of Peru, Ecuador started a movement against arbitration. Relations again deteriorated and a war was averted only by the mediation of the United States, Argentina, and Brazil. The King of Spain withdrew from the dispute in 1910, for fear of precipitating armed conflict between the two countries, and the mediating powers unsuccessfully tried to persuade Ecuador to submit the question to the International Court at The Hague. A further long-drawn-out attempt to settle the matter by arbitration, this time with the President of the United States as arbitrator, failed finally in 1938, and relations between the two countries again deteriorated to the point where border skirmishes took place. Fighting had already broken out in 1935 over the tobacco-growing land on the Pacific coast where a shift in the course of the Zarumilla river had altered the former frontier. Tension was still high when the Second World War broke out; and once again the United States, Argentina, and Brazil offered their 'friendly services'. The frontier incidents continued, however, and in 1941 Peru crossed the border and occupied Ecuadorean territory, remaining there until 1942 when the mediating powers drew up an agreement—the Protocol of Rio de Janeiro—whereby Ecuador accepted a new frontier by which Peru gained some 70,000 square miles of the disputed territory, and agreed to the setting up of a mixed commission to mark the frontier boundaries. There is little doubt that pressure was brought to bear on Ecuador to sign the Protocol of Rio. The United States was anxious not to have a separate war raging within the hemisphere at a time of major conflict in Europe.

After the boundary commission had marked 900 of the 947 miles of boundary, work was stopped by an Ecuadorean claim that the agreed line from the San Francisco cañón along the watershed between the Zamorra and Santiago rivers to the confluence of the Santiago and the Yaupi did not correspond to the real topography and was impossible to apply. Peru re-

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refused to listen to the various proposals put forward by Ecuador and the guarantor states to resolve this latest delay. Her case is that there is no problem any more, since everything was finally settled either in 1942, or by the special arbitrator then appointed to decide on minor differences that might arise in marking the frontier.

In the autumn of 1959 the then newly elected President Velasco Ibarra of Ecuador unilaterally denounced the Rio Protocol and revived his country's claim to all territory occupied by Peru which lay north of the upper Amazon and east of the Andes. Thus, after more than a century of negotiation, the boundary dispute seems as far from solution as ever.

RELATIONS WITH OTHER LATIN AMERICAN STATES

The border dispute with Ecuador, and a certain coldness felt towards Chile since the days of the Pacific War, did not prevent Peru from entering into an agreement with these neighbouring countries in 1952 on a matter of common interest, their maritime resources. Under the terms of this agreement the three countries claim territorial rights over coastal waters to a distance of 200 miles. Peru argues that the traditional 'three-mile' rule has never had any international validity, and that each Government has the power freely to determine the nature and extent of its maritime dominion. The fishing grounds off the Peruvian coast are exceedingly rich and provide a natural food resource for Peru's undernourished population. Therefore, the Government claims, the conservation and protection of these fishing grounds is its obvious duty.

So far there has been no serious test of this large claim and, in fact, permission to fish in 'Peruvian' waters is fairly readily granted to foreign-flag vessels. It is difficult to see how such a large stretch of water could ever be patrolled adequately by the Peruvian fleet.

Relations with Brazil are friendly, and an attempt has been made to increase trade between the two countries by developing their Amazon border regions. Under an agreement signed in 1957 a special commission is considering ways to increase trade and stimulate economic development in the region by

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