
The Respective Claims

CHAPTER V.

THE RESPECTIVE CLAIMS.

In preceding chapters the boundary dispute has been traced historically from its inception to the present time. An attempt will now be made to state the basic arguments that have been adduced by the two nations primarily concerned and to appraise their relative worth.

The Peruvian claims appear to rest upon four main contentions. Of these the first is derived from the right of occupation. On this basis it is asserted that by the "cédula" of 1802 the territory in dispute was transferred to the viceroyalty of Peru, out of a portion of which came the present republic of that name.¹ From that time onward Peru has been in uninterrupted occupation and control of the region. Such a protracted and continuous occupation gives Peru a prescriptive ownership, sanctioned by the principles of international law.

During this period, secondly, Peru has devoted a not inconsiderable portion of its resources, both in-

¹ Cf. *supra*, p. 35.

tellectual and material, to organizing and developing the region in question. From an economic point of view the value of what was formerly an area virtually unknown and undeveloped has been enhanced immeasurably by building roads, erecting towns, establishing ports, and centers of trade and increasing facilities of transportation. These efforts on the part of Peru and the beneficent results flowing from them justify its retaining the territory that it has done so much to improve. In any case it would be manifestly unjust to transfer it to Ecuador, which has had no part in the process of betterment.¹

In the third place, Peru denies categorically that Ecuador is the legitimate heir of Colombia, and that accordingly it has no right to assert a claim to the Oriente region. A seceding state may not uphold the international claims of the parent country.²

Owing to the small size, meager resources and consequent lack of power of Ecuador, finally, the latter would be unable to administer the disputed area in any efficient fashion. Were it to be transferred to that nation, the probabilities are that it would erect itself into a separate state, adding further to the international complications from which Hispanic America has suffered, and to a degree as unnecessary as it is dangerous. In the interest, therefore, of South American peace and the future welfare and auspicious development of the

¹ Cornejo y Osma, *op. cit.*, Vol. IV, pp. 150-153.

² *Ibid.*, pp. 155-156.

Oriente region, Peru ought to be permitted to retain possession of it and continue its development.¹

The contentions of Ecuador, similarly, may be presented under five heads. The first is, that by the decree of 1563 the king of Spain awarded Mainas, Quijos and Jaén and any adjoining land that might be explored (i. e. the whole of the region in dispute), to the "audiencia" of Quito,² which in the process of time was incorporated into the Republic of Colombia, from which in turn the Republic of Ecuador emerged with roughly the same boundaries that the old "audiencia" of Quito had had.

Secondly, in accordance with the right conferred by exploration and settlement the disputed area belongs to Ecuador, because missionaries from Quito were the first to establish themselves in this region. Soon after the erection of the "audiencia" and presidency of Quito missionaries from that colonial division founded temporary stations in Mainas.³ In 1595 Jesuits endeavored to reestablish missionary centers along the Santiago, Morona, Pastaza, Napo and Marañón rivers. At the close of the seventeenth century, moreover, they had succeeded in forming a chain of towns eastward as far as the nominal frontiers of Brazil. The missions along the Marañón, in fact, were started under the direction of the president of Quito in 1638, with Borja, the capital of Mainas, as the center. In the track of these mis-

1 Cornejo y Osma, *op. cit.*, Vol. IV, p. 152.

2 Cf. *supra*, p. 34.

3 Caspar de Carvajal, *Descubrimiento del Bto de las Amazonas según la Relación hasta ahora inédita*, p. 472.

sionaries, and indeed owing to their efforts, commerce was stimulated and large amounts of cinnamon and other products were obtained from the Oriente area. By the eighteenth century the missions radiating from Quito extended to the River Negro and as far south as Cuzco and Puno.¹

These stations antedated by a considerable time any penetration into the region by Peruvian settlers. Just as the king of Spain claimed exclusive ownership of the lands first explored and occupied by his subjects, so Ecuador, as the successor of the "audiencia" of Quito, claims exclusive ownership of the Oriente territory as first explored and occupied by persons coming from this province in colonial times. Ownership based on original discovery and colonization is distinctly sanctioned by international law.

These explorations and settlements, accordingly, antedate any by Peru, since occupation by that country of the disputed territory begins with the nineteenth century. Extensive Peruvian control of the greater portion of it, indeed, may be said to date only from the twentieth century.² Peru's occupation of the territory thus was an act of aggression which on all occasions at first Colombia and then Ecuador strenuously opposed.

In the third place, after Peru had been defeated by Colombia in the war of 1829, the former signed the treaty of Guayaquil as well as the Pedemonte-

¹ E. Vaca Gabino, *Exposición sobre los Límites Ecuadoriano-Peruanos*, pp. 386-397.

² *Ibid.*, pp. 380-388; *Moncayo, op. cit.*, p. 34.

Mosquera protocol of 1830 which recognized the Tumbes-Marañón line, and there only remained to be settled whether the boundary line was to follow the Chinchipe or the Huancabamba river. It is upon this obligation that Ecuador has insisted, and one which Peru has steadily refused to perform.¹

Fourthly, when Ecuador seceded from Colombia in 1830 the former inherited the claim of the latter to the area in dispute, a claim that had been sanctioned by the treaty of 1829. Ecuador is the party interested in asserting this claim, because it directly affects its sovereignty, boundaries and sphere of influence as the modern representative of the "audiencia" of Quito to which, by the "cédula" of 1563, the area now in dispute was joined. Ecuador thus is merely affirming the historic right of its political predecessor. Moreover, by word as well as by deed, Peru has both expressly and tacitly recognized that Ecuador in claiming the area in question was not a mere intermeddler. The payment by Peru to Ecuador of the indemnity of 1830 growing out of the war of 1829, and the numerous negotiations between the two countries with regard to the boundary line, show unmistakably a recognition on the part of Peru of the validity of Ecuador's claim to be Colombia's heir and of the *bona fide* nature of Ecuador's assertion.²

Lastly, in view of the small extent of the present Ecuadorian territory compared with that of Peru,

1 A. Flores y Caamaño, *Ecuador and Perú: A Resumé of the Boundary Controversy*, pp. 11-12.

2 *Manifiesto de la Junta Patriótica Nacional*, Quito, pp. 1-13; Vázquez, *op. cit.*, p. 274.

and given also the relatively limited productive area of the former, a just and wise policy would dictate the assignment to Ecuador of the Oriente region. This would create a more even balance in strength and resources between the two countries. A contrary policy would only aggravate the present disproportionateness of power between the two countries. Indeed the acquisition of the Oriente region with its outlet to the Amazon is essential to the economic development of Ecuador. Moreover, with the Oriente forming part of Ecuador, the latter would be properly delimited by natural boundaries. Geographic homogeneity, as history shows, is a prime requisite, not only for national development but for international peace.