

PERU AND ECUADOR REACH AGREEMENT ON THEIR MARITIME BOUNDARY

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On May 2, 2011, the government of Peru and Ecuador exchanged diplomatic notes to reach agreement on the delimitation of their maritime boundary (the “Agreement”). The Agreement amicably settles the maritime border between the two countries, which have in the past engaged in armed conflict over their land boundary (both in 1941 and 1995). The Agreement may also impact Peru’s ongoing maritime border legal dispute with Chile before the International Court of Justice.

Terms of the Agreement

The conclusion of the Agreement was initiated by the former government of Peru under President Alan García Pérez, through a Diplomatic Note dated May 2, 2011, and sent by his Minister of Foreign Relations, José Antonio García Belaunde, to his Ecuadorian counterpart Ricardo Patiño. The government of Ecuador under current President Rafael Correa agreed to the proposed terms through its own Diplomatic Note to the government of Peru also on May 2, 2011.¹

Under the Agreement the maritime boundary extending through the water column, seabed and subsoil runs west along a geographic parallel from the coastal boundary at *Bahía Capones*.² The Agreement also provides the boundary will extend for 200 nautical miles measured from the convergence point of their respective baselines and at either side of which each country will exercise “rights of sovereignty and jurisdiction.”³ This last term of the Agreement is

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¹ The Diplomatic Notes are publicly available and related materials are publicly available. See http://www.mmree.gob.ec/pol_exterior/ecu_per_limites.asp.

² The Agreement refers to the “beginning of the land border as ratified by the Brasilia Act of October 26, 1998.” Article Eight of the Act in turn refers to *Bahía Capones*. See [http://www.rree.gob.pe/portal/pexterior.nsf/F1654058478B1DA8052574030075CAC4/\\$FILE/EcuProtPazAmis1942.pdf](http://www.rree.gob.pe/portal/pexterior.nsf/F1654058478B1DA8052574030075CAC4/$FILE/EcuProtPazAmis1942.pdf).

³ According to the Peruvian Constitution, article 54: “The maritime dominion of the State includes the sea adjacent to its coasts, as well as the seabed and subsoil thereof, extending out to a distance of 200 nautical miles measured from the baselines established by law. In its maritime dominion, the State exercises sovereignty and jurisdiction, without prejudice to the freedoms of international communication, in accordance with the law and treaties ratified by the State.” See http://www.congreso.gob.pe/ingles/CONSTITUTION_29_08_08.pdf.

controversial under international law. Under the United Nations Convention on the Law of the Sea (UNCLOS), “territorial waters” only extend for 12 nautical miles (UNCLOS, article 3). Neither Peru nor Ecuador is a party to the Convention.⁴ Finally, the Agreement indicates both countries express a willingness to carry out joint actions towards the recognition of the Gulf of Guayaquil as a historic bay.

Background

Peru and Ecuador, together with Chile, signed maritime agreements in 1952 and 1954.⁵ Through the 1952 Declaration of the Maritime Zone (Santiago Declaration) the three countries proclaimed exclusive sovereignty and jurisdiction over the water column, the seabed and subsoil extending for a minimum of 200 nautical miles. The Declaration also stated the 200 nautical mile zones around existing islands would be limited by geographic parallels running from the land frontiers between the signatory states.⁶

In turn the subsequent 1954 agreement on the Special Maritime Border Zone declared “special zones” of 12 nautical miles on either side of the noted geographic parallels in which small vessels could accidentally intrude without sanction.⁷ Together these agreements have over the years buttressed both Ecuador and Chile’s claims to an existing conventional delimitation of their maritime borders with Peru running along geographic parallels.⁸ For its part, Peru has claimed the agreements were not intended to be boundary delimitation agreements.⁹

Renewed interest in the delimitation of the maritime border seems to have been spurred in turn by Peru’s ongoing maritime border dispute with Chile which resulted in the former’s filing of an application to institute proceedings with the International Court of Justice in January 16, 2008.¹⁰ The Court, in accordance with its Statute, seems to have notified Ecuador of its right to intervene as a party to the 1952 and 1954 agreements.¹¹ Thereafter, perhaps anticipating

⁴ Chronological lists of ratifications of, accessions and successions to the Convention and the related Agreements as at 03 June 2011. See http://www.un.org/depts/los/reference_files/chronological_lists_of_ratifications.htm.

⁵ In addition to these three States, Colombia acceded to the Declaration in April 1980.

⁶ Declaration on the Maritime Zone, 18 August 1952. See http://www.mindef.gob.pe/informacion/documentos/delimitacion_martima_PERU_CHILE.pdf (emphasis added).

⁷ Agreement on the Special Maritime Border Zone, 1954. See http://www.mindef.gob.pe/informacion/documentos/delimitacion_martima_PERU_CHILE.pdf.

⁸ Lara Brozzesi, Claude, “La delimitación marítima entre el Ecuador y el Perú: algunas aclaraciones,” Asociación de Funcionarios y Empleados del Servicio Exterior Ecuatoriano, fascículo 42, pp. 52-72.

⁹ “Cancillería peruana reitera posición sobre límites marítimos con Ecuador,” Ministerio de Relaciones Exteriores de la República del Perú, July 25, 2011.

¹⁰ Alan García: “Acercamiento con Ecuador no es contra Chile. ” *El Comercio*, May 20, 2011. See also International Court of Justice, Application Instituting Proceedings filed in the Registry of the Court on January 16, 2008, maritime dispute (*Peru v. Chile*). See <http://www.icj-cij.org/docket/index.php?p1=3&p2=3>.

¹¹ International Court of Justice Statute, article 63. See also “¿Por qué interviene Ecuador en el diferendo ante La Haya?,” *El Comercio*, May 25, 2010.

Ecuador's own territorial interests would lead it to support the agreements' determinative character on a maritime border along geographic parallels, Peru successfully engaged Ecuador in bilateral negotiations to conclude a maritime delimitation by treaty. Indeed, Ecuador has a historic interest in having the entire Gulf of Guayaquil, part of which lies along the Peruvian coast, recognized as part of its internal waters.¹² As far as Peru is concerned, the signing of the Agreement with Ecuador indicates that the 1952 and 1954 agreements were not determinative of its border with Ecuador.¹³

Aftermath

Following the ratification of the Agreement, Ecuador formally requested the United Nations Division for Ocean Affairs and the Law of the Sea (Office of Legal Affairs) register the Agreement's implementing government decree and corresponding nautical chart. In a letter dated March 9, 2011, Ecuador also stated the following: "Pursuant to Executive Decree No. 450, the maritime boundary between Ecuador and Peru has been drawn following the geographical parallel running from the point at which the land boundary between Ecuador and Peru reaches the sea, as the maritime boundary between the two countries, in accordance with the provisions of the Santiago Declaration of 18 August 1952 and the Agreement on the Special Maritime Border Zone of 4 December 1954."¹⁴

On May 2, 2011, the Peruvian government for its part, and referring to Ecuador's letter, indicated that indeed the geographic parallel running through *Bahía Capones* was the maritime border between the two countries in accordance with the 1952 agreement, but as a result of the presence of islands near the border.¹⁵ Peru's statement may have been an attempt to condition the relevance of the 1952 Declaration to the adjudication of its border dispute with Chile.¹⁶

¹² Article 1 of the United Nations Convention on the Law of the Sea provides, "The sovereignty of a coastal State extends, beyond its land territory and internal waters."

¹³ "Presidente vislumbra buen fin para el Perú en La Haya tras acuerdo con Ecuador ?," *El Comercio*, May 5, 2011.

¹⁴ Letter from then Ecuadorean Minister of Foreign Affairs, Trade and Integration, Ricardo Patiño, to then United Nations Secretary General Ban Ki-Moon, dated March 9, 2011. See http://www.mmree.gob.ec/pol_exterior/ecu_per_limites.asp An English language translation is available on the Division's website: www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/ecu_2010_decree_english.pdf.

¹⁵ Letter from then Minister of Foreign Affairs, José Antonio García Belaunde to then United Nations Secretary General Ban Ki-Moon, dated May 2, 2011. (emphasis added) See http://www.mmree.gob.ec/pol_exterior/ecu_per_limites.asp Indeed in contrast with the border area with Chile, the Gulf of Guayaquil, bordering both the Ecuadorean and Peruvian coast, has several islands.

¹⁶ "El Perú y Ecuador presentarán tratado de límites a la ONU," *El Comercio*, May 4, 2011.