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INTERNATIONAL BOUNDARY STUDY.

Series A.

LIMITS IN THE SEAS.

Number 42,

STRAIGHT BASELINES: ECUADOR.

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STRAIGHT BASELINES: ECUADOR

Ecuadorean straight baselines were proclaimed most recently by Supreme Decree No. 959-A on June 28, 1971 (Official Register No. 265 of July 13, 1971).

The Decree established straight baselines adjacent to the mainland and around the Galapagos Islands (Archipelago de Colon). However, the existence of straight baselines around the Galapagos Islands has been inferred since 1950. Neither the inferred 1950 nor the 1971 straight baselines have been published on official Ecuadorean charts.

Ecuador claims a 200-nautical-mile territorial sea measured seaward from the straight baselines. The 200-nautical-mile claim was promulgated by Decree 1542 of November 10, 1966. Waters within the baselines of both the mainland and the Galapagos Islands are considered to be internal waters (see Article 2 of Decree No. 959-A).

Ecuador is not a party to the four 1958 Geneva conventions on the law of the sea. These conventions concern 1) the territorial sea and contiguous zone, 2) the high seas, 3) the continental shelf, and 4) fishing and conservation of living resources of the high seas.

Supreme Decree No. 959-A established the following system of straight baselines for continental and insular Ecuador:

SUPREME DECREE NO. 959-A
JOSE MARIA VELASCO IBARRA
President of the Republic

WHEREAS, Article 628 of the Civil Code establishes that the Ecuadorean territorial sea shall be measured, in both the continental territory of the Republic and the Galapagos Islands, from the straight base lines which will be determined for this purpose under an Executive Decree; and

WHEREAS, a Commission composed of representatives of the Ministry of Foreign Relations, the Navy and the Military Geographic Institute has studied the plotting of such lines and determined their trajectory; and

WHEREAS, such study has been approved by the Ministry of Foreign Relations and the Ministry of National Defense on the grounds that it is in the national interest and fully conforms to the rules of international law which are in force on the matter,

It is Decreed:

Article 1. The straight base lines from which the width of the territorial sea of the Republic shall be measured will be constituted by the following-described traverses:

I. ON THE CONTINENT

(a) The line will start from the point of intersection of the maritime border with Colombia with the straight line Punta Manglares (Colombia)--Punta Galera (Ecuador);

(b) From this point a straight line passing through Punta Galera and meeting the northernmost point of Isla de la Plata;

(c) From this point a straight line to Puntilla de Santa Elena;

(d) A straight line from Puntilla de Santa Elena in the direction of Cabo Blanco (Peru) to the intersection with the geographic parallel constituting the maritime border with Peru.

II. IN THE GALAPAGOS ISLANDS

- (a) From Islote Darwin a straight line to the northeastern tip of Isla Pinta;
- (b) A straight line to the northernmost point of Isla Genovesa;
- (c) A straight line passing through Punta Valdizan, Isla San Cristobal, and intersecting the northern extension of the straight line joining the southeastern tip of Isla Espanola to Punta Pitt, Isla San Cristobal;
- (d) A straight line from this intersection to the southeastern tip of Isla Espanola;
- (e) A straight line to Punta Sur, Isla Santa Maria;
- (f) A straight line passing through the southeastern tip of Isla Isabela, near Punta Essex, and intersecting the southern extension of the line joining the outermost projecting point of the western coast of Isla Fernandina, approximately in its middle, with western tip of the Southern sector of Isla Isabela, in the vicinity of Punta Cristobal;
- (g) From this point of intersection a line passing through the western tip of the Southern sector of Isla Isabela, in the vicinity of Punta Cristobal, to the outermost projecting point in the western coast of Isla Fernandina, approximately in its middle; and
- (h) A straight line to Isla Darwin.

Article 2. The sea areas lying between the lines described in Article 1 (I) and the coast line on the Continent, and within the lines described in Article 1 (II), in the Galapagos Islands, constitute interior waters.

Article 3. The Hydrographic and Oceanographic Service of the Navy, in cooperation with the Military Geographic Institute, will perform the necessary geodetic and astronomical work for determining the geographic coordinates of the reference points throughout the lines in both the continental coast and in the coast of the Galapagos Islands and the outer limits of the territorial sea, and will also establish the azimuths and extensions of the segments of each traverse described in Article 1, and any other technical data that may be essential in plotting the aforesaid straight base lines.

Article 4. The funds required for performing the work to which reference is made in Article 3 will be made available to the Hydrographic and Oceanographic Service of the Navy by the National Government through the proper Ministries.

Article 5. Upon completion of the work to which reference is made in Article 3, the Hydrographic and Oceanographic Service of the Navy, in cooperation with the Military Geographic Institute, will plot, on a nautical chart drawn up to a suitable scale, the straight base lines and the outer and lateral limits of the territorial sea of the Republic.

Article 6. The nautical chart, with the plottings to which reference is made in Article 4, shall be approved under an Executive Decree.

Issued at the National Palace, in Quito, on June 28, 1971.

/s/ J. M. Velasco Ibarra
President of the Republic

/s/ Vicente Burneo Burneo
Minister of Production,
Acting Minister of
Foreign Relations

/s/ Luis Robles Plaza
Minister of National Defense

ANALYSIS

A previous law, which inferred a system of straight baselines around the Galapagos Islands, and two maritime boundary delineations relate to the current system of straight baselines established by Ecuador.

Galapagos Islands, 1950

The Legislative Decree of February 21, 1951, promulgated the Law of November 6, 1950, concerning the Ecuadorean territorial sea. Article 3 of the Law specified that:

The inner sea included within the perimeter of 12 nautical miles measured from the most salient tips of the outermost islands of the Colon Archipelago is also held to be territorial waters....

This Article was interpreted by some as implying that straight baselines existed around the Galapagos Islands. One Ecuadorean interpretation was that the Galapagos Islands should be viewed as one continuous land mass, for territorial water purposes, with a marginal belt which encircles the entire archipelago. These straight baselines about the Galapagos Islands were never publicized but rather they were presumed to exist. It was not clear whether or not the outliers of Isla Darwin and Isla Wolf were considered to be geographically part of the Galapagos Islands. The Supreme Decree No. 959-A of June 28, 1971, has clarified this issue.

Ecuador-Peru Maritime Boundary

The Ecuador-Peru maritime boundary is delimited in two separate declarations emanating from two conferences of the Permanent Commission of the South Pacific. Chile, Ecuador, and Peru are members of the Commission.

Article IV of the 1952 Santiago Declaration on the Maritime Zone defines the maritime boundary between adjacent member states. The Article states that:

The zone of 200 nautical miles shall extend in every direction from any islands or group of islands forming part of the territory of the declarant country. The maritime zone of an island or group of islands belonging to one declarant country and situated less than 200 nautical miles from the general maritime zone of another declarant country shall be bounded by the parallel of latitude drawn from the point of which the land frontier between the two countries reaches the sea.

At the second conference of the Permanent Commission of the South Pacific, held in Lima in 1954, the Agreement Relating to a Special Maritime Frontier Zone was drafted. The Agreement specified that:

A special zone is hereby established, at a distance of 12 miles from the coast, extending to a breadth of 10 nautical miles on either side of the parallel which constitutes the maritime boundary between the two countries.

The attached chart shows the Ecuador-Peru maritime boundary and associated buffer zone which extends 10 nautical miles into the territorial sea of the two countries. The landward terminus of the maritime boundary is Boca Capones, the site where the Ecuador-Peru land boundary meets the sea. The seaward terminus of the boundary is the point at which the parallel extending from Boca Capones intersects the Ecuador and Peru 200-nautical-mile territorial sea claims.

The buffer zone was established to deal with inadvertent violations of the maritime zone of a member state by another member state of the Permanent Commission of the South Pacific. The Second Article of the Agreement Relating to a Special Maritime Frontier Zone states that:

The accidental presence in the said zone of a vessel of either of the adjacent countries, which is a vessel of the nature described in the paragraph beginning with the words "Experience has shown" in the preamble hereto, shall not be considered to be a violation of the waters of the maritime zone, though this provision shall not be construed as recognizing any right to engage, with deliberate intent, in hunting or fishing in the said special zone.

Colombia-Ecuador Maritime Boundary

No bilateral agreement exists which delimits the Colombia-Ecuador maritime boundary. Section 1(a) of the straight baseline legislation does note the existence of such a maritime boundary when it states that "The line will start from the point of intersection of the maritime boundary with Colombia."

To be consistent the Ecuadoreans might view the Colombia-Ecuador maritime boundary as being based on the same principle employed in delimiting the Ecuador-Peru maritime boundary; that is, a latitudinal line extending seaward for a distance of 200 nautical miles from the point where the Colombia-Ecuador land boundary meets the sea.

The Third Article of the above Agreement specifies that "Fishing or hunting within the zone of 12 nautical miles from the coast shall be reserved exclusively to the nationals of each country." This is probably the primary reason for delimiting the 12-nautical-mile coastal zone in the vicinity of the buffer zone.

Straight Baselines, 1971

The straight baseline system consists of 13 points: 5 on or near the mainland, and 8 around the Galapagos Islands. The total length of all the straight baselines is 897 nautical miles. The longest segment, 136 nautical miles, connects Punta Galera (Point 2) and Isla de la Plata (Point 3). The shortest baseline, 37 nautical miles, connects Isla Isabela (Point 12) and Isla Fernandina (Point 13). The average length of the straight baseline segments is 74.8 nautical miles.

The following point-by-point analysis of the straight baselines utilizes Chart N.O. 21036 (H.O. 5743), 2nd Edition, Feb. 1952; revised 1/12/70, published by the U.S. Navy Oceanographic Office.

1. The seaward extension of the Colombia-Ecuador land boundary into Bahia Ancon de Sardinas is not delimited. Moreover, the precise coastal terminus of the international boundary and its relationship to Cabo Manglares is unclear.

<u>Segment .</u>	<u>Distance (n.m.)</u>	<u>Comments</u>
1-2	81	Closes Bahía Ancon de Sardinas, which is neither a historical nor juridical bay, by connecting Cabo Manglares, Colombia (1) and Punta Galera, Ecuador (2). Bay closing lines are applicable only to bays which are in a single State; therefore the selection of Point 1 and the resulting baseline would not be acceptable under customary international law.
2-3	136	Connects Punta Galera (2), on the mainland, with Isla de la Plata (3). This is the longest segment of the baseline system. The extent of this section is questionable as more relevant coastal basepoints were ignored in favor of an offshore island in the construction of the baseline. Further, Isla de la Plata would be ruled out as a basepoint as it is not one of "a fringe of islands along the coast in its immediate vicinity...."
3-4	56	Connects Isla de la Plata (3) with Puntilla de Santa Elena (4). The use of the island basepoint is unacceptable as the island is not one of "a fringe of islands along the coast in its immediate vicinity...."
4-5	72	Connects Puntilla de Santa Elena (4) with a point on the Ecuador-Peru Maritime Boundary (5). Point 5 marks the site where the line connecting Puntilla de Santa Elena, Ecuador and Cabo Blanco, Peru intersects the maritime boundary. Point 5 is 46 n.m. from the nearest Ecuadorean territory, Isla de Santa Clara. Point 5 is not an acceptable basepoint because it is not a high-tide elevation, or a low-tide elevation with a permanent facility which is above high tide.
6-7	95	Connects Islote Darwin (6) and Isla Pinta (7).
7-8	54	Connects Isla Pinta (7) and Isla Genovesa (8).
8-9	77	Connects Isla Genovesa (8) and Isla San Cristobal (9).
9-10	48	Connects Isla San Cristobal (9) and Isla Espanola (10).
10-11	51	Connects Isla Espanola (10) and Isla Santa María (11).
11-12	66	Connects Isla Santa María (11) and a point offshore from Isla Isabela (12). Point 12 does not qualify as a basepoint as it is simply the site of the intersection of two baselines and is located in the water. Basepoints must be high-tide elevations or low-tide elevations which have permanent installations that are above high tide.
12-13	37	Connects the offshore point near Isla Isabela (12) and Isla Fernandina. This is the shortest baseline segment in the Ecuadorean system.
13-6	124	Connects Isla Fernandina (13) and Islote Darwin (6). This is the longest baseline around the Galapagos Islands, and the second longest in the Ecuadorean system.
Total	897	

The Ecuadorean straight baselines represent two types of baseline systems: mainland and archipelagic. Each baseline system must be viewed separately.

According to customary international law, it is permissible to construct a mainland system of straight baselines given a certain geographic configuration of the coast. The acceptance of a system of straight baselines around archipelagos is not an accepted principle of international law, even though a number of countries have drawn baselines, or modifications thereof, around island groups: the Philippines, Indonesia, and the Maldives.

Another issue is that two of the basepoints are not high-tide elevations, or low-tide elevations which have permanent facilities above high tide. Further, one of the basepoints is an island which is not one of a group of fringing islands. And, there is the use of a basepoint which is in a foreign country.

The entire system of Ecuadorean straight baselines is open to criticism because of the use of basepoints and the construction of baselines in areas where they are not justified as determined by the coastal configuration.

Basepoints

Whether or not the Ecuadorean straight baselines are acceptable under customary international law, there is still the question of the usage of basepoints which are not in accord with the 1958 Geneva Convention on the Territorial Sea and Contiguous Zone. However, it should be remembered that Ecuador is not a party to any of the 1958 conventions.

The selection of Cabo Manglares (Point 1) as a basepoint is unique because it is in Colombia and not Ecuador. The precise alignment of the seaward extension of the international land boundary is not known in the area of Bahia Ancon de Sardinas. However, there is no question that Cabo Manglares is in Colombia. There is no evidence to support Colombia's concurrence in the use of Cabo Manglares as a basepoint in the Ecuadorean straight baseline system. The selection of Point 1 may have been a unilateral Ecuadorean decision.

The use of Isla de la Plata (Point 3) as a basepoint is also questionable. The island is not closely associated with the mainland as in the case of many fringing islands such as exist in Norway; therefore the use of this island basepoint is invalid under accepted practices of international law. Further, the use of Point 3 does make the baseline depart from the general direction of the coast which is contrary to Article 4 (2) of the 1958 Geneva Convention on the Territorial Sea and Contiguous Zone.

Point 5 on the Ecuador-Peru Maritime Boundary is again a rather unique basepoint on which to base a system of straight baselines. First, the use of Point 5 does result in a radical departure of the baseline from the general direction of the coast. Second, the basepoint is contrary to Article 4 (3) of the aforementioned convention in that the basepoint is not a high-tide elevation or a low-tide elevation possessing a permanent facility that is above high tide. Rather, Point 5 is nothing more than a point on the ocean surface.

Point 12, on the southwest corner of Isla Isabela in the Galapagos Islands, fails to qualify as a basepoint for the same reasons as does Point 5.

Baselines-Mainland

The mainland portion of the Ecuadorean baseline system brings forth issues of the acceptability of the system. Article 4 (1) of the 1958 Geneva Convention on the Territorial Sea and Contiguous Zone states that:

1. In localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, the method of straight baselines joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measured.

The Ecuadorean coastline can hardly be construed to be representative of a coastline which is "deeply indented and cut into." Therefore, the question arises as to Ecuador's right, under customary international law, to construct baselines along its rather regular coastline.

Even if it is agreed that Ecuador has the right to construct straight baselines along its regular coastline, the basepoints that have been used along the mainland are not reasonable given the configuration of the coast.

If the mainland baselines are to conform to the 1958 Geneva Convention on the Territorial Sea and Contiguous Zone, then, Article 4 (2) requires that:

2. The drawing of such baselines must not depart to any appreciable extent from the general direction of the coast....

All segments of the mainland portion of the baseline system deviate, to some degree, from the general direction of the coast because basepoints that relate more to the general configuration of the coastline have not been used to delimit the baselines. Therefore, the result is inordinately long baselines in areas where shorter segments would be much more reasonable.

The question about using a basepoint in a foreign country, i.e., Cabo Manglares, Colombia, has been discussed above. However, assuming that Point 1 is valid for whatever the reason, the system of baselines degenerates proceeding southward.

Between Points 1 and 2, the baseline should have utilized Punta Coquito and possibly the unnamed point (the dark circle) just to the northeast of Coquito.

The next reasonable segment would begin at Cabo de San Francisco and not Punta Galera. Punta Galera would be connected to Punta Coquita, but not Cabo de San Francisco. In this area, the baseline could pass from Cabo de San Francisco to Cabo Pasado, then onto Cabo San Lorenzo.

Isla de la Plata (Point 3) would be completely eliminated as a basepoint in the revised baseline system. Instead, the baseline would pass from Cabo San Lorenzo to Punta Illote and then to Puntilla Santa Elena.

The Golfo de Guayaquil would not be closed by the elaborate baseline currently connecting Puntilla Santa Elena (Point 4) with Point 5 on the Ecuador-Peru Maritime Boundary. There would be no continuation of the baseline from Puntilla Santa Elena, but rather under the revised scheme, a baseline could be constructed in the Golfo de Guayaquil by using Punta del Morro and Boca Capones as basepoints.

The above revised Ecuadorean baseline system would more reasonably conform to the general direction of the coastline.

Baselines-Archipelagos

There is the question of the acceptability of constructing baselines around archipelagos or island groups. If the practice of drawing baselines around archipelagos and island groups were permitted, then the Galapagos Islands system would have to qualify as a reasonable system given the geographical configuration of the island group and the historicity aspect which considers all the islands to be Ecuadorean territory. Administratively the Galapagos Islands are a Ecuadorean insular territory (territorio insular).

However, there would still be the question of the excessive length of the baselines. Alterations in the length of the baselines could be affected by not considering Islote Darwin and Isla Wolf as part of the Galapagos Islands because of their distance from the principal island group. However, evidence would seem to confirm that Darwin and Wolf have been considered historically to be a part of the Galapagos Islands.

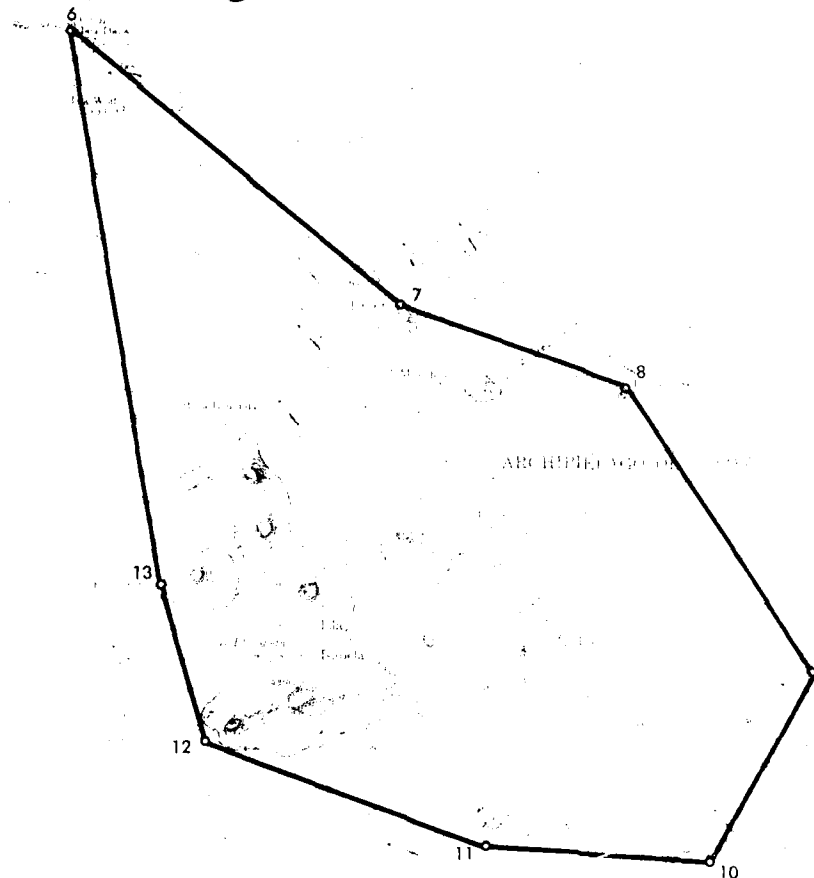
SUMMARY

The entire system of Ecuadorean straight baselines is questionable, based upon accepted international legal practices and on criteria established at the 1958 Geneva Law of the Sea Conference. The mainland coast is not "deeply indented and cut into," and it is not an accepted principle of customary international law that baselines can be constructed around archipelagos.

The foregoing analysis points out that Ecuador has no right to construct the mainland baselines as it has, because the system deviates from the "general direction of the coast."

Of the 12 segments of the Ecuadorean straight baselines, all but one exceed the length of the longest baseline approved by the International Court of Justice (ICJ) in the Anglo-Norwegian Fisheries Case. The ICJ, on December 18, 1951, approved a Norwegian straight baseline 44 nautical miles in length. However, the length of the Norwegian baselines was directly related to the decision that much of the water enclosed by the baselines was indeed Norwegian historic waters. The issue of historic waters is irrelevant when considering the Ecuadorean straight baselines, as the coastal waters are not viewed to be historically within the domain of Ecuador because of long usage of the coastal regime.

Ecuador Straight Baselines and Maritime Boundaries



PACIFIC OCEAN
CENTRAL AND SOUTH AMERICA
WEST COAST

**GOLFO DULCE
TO
PUERTO PAITA
INCLUDING
ARCHIPIÉLAGO DE COLÓN
(GALAPAGOS ISLANDS)**

From HO 5743 (NO 21036), 2nd Edition, Feb. 1952, Revised 1/12/70

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Colombia-Ecuador Maritime Bound

