Revista Derecho del Estado
ISSN: 0122-9893
ISSN: 2346-2051
Universidad Externado de Colombia

CABEZAS ALBÁN, VÍCTOR D.

From Scapegoats to Victims: The Case of the Isaias Brothers and some Novelties on Transnational Litigation**

Revista Derecho del Estado, no. 57, 2023, May-August, pp. 203-224
Universidad Externado de Colombia

DOI: https://doi.org/10.18601/01229893.n57.08

Available in: https://www.redalyc.org/articulo.oa?id=337676348009

VÍCTOR D. CABEZAS ALBÁN*

From Scapegoats to Victims: The Case of the Isaias Brothers and some Novelties on Transnational Litigation**

De chivos expiatorios a víctimas: el caso de los hermanos Isaías y algunas novedades en/sobre la litigación transnacional

ABSTRACT

This is a case study of a legal dispute that has shaken Ecuador for over three decades, serving as a living lab for examining how international relations, international law, politics, and comparative law influence and nurture transnational litigation strategies. In the late 1990s, the Isaías brothers went from being Ecuador's wealthiest and most powerful individuals to facing accusations as the masterminds behind the largest financial embezzlement case in history. Subsequently, The state seized billions of dollars' worth of assets belonging to the Isaías family, setting the stage for a twenty-year transnational legal battle. This study has three objectives. First, it aims to provide a comprehensive account of the procedural history of one of Ecuador's most complex and controversial trials with potential implications for Latin America. Second, it seeks to examine the impact of this case on the Act of State Doctrine. Finally, it investigates how transnational litigation in the field of human rights before the Universal System can become a highly effective path for safeguarding private assets. Ultimately, this essay narrates

* Professor of Law at Universidad San Francisco de Quito (Ecuador). Doctor of the Science of Law (S.J.D.) candidate (University of Pennsylvania Law School). Researcher at the Wharton School of Business at the University of Pennsylvania. LL.B. (Universidad San Francisco de Quito), Master in Labor Law (Universidad Externado de Colombia). Master's in Legal Research (Universidad de Los Andes). LL.M. (University of Pennsylvania Law School). Email: vcabezas@pennlaw.upenn.edu. ORCID ID: 0009-0002-4421-2964.

** Received on April 8th, 2023, approved on June 27th, 2023.

To quote the article: Cabezas Albán, V. *From Scapegoats to Victims: The Case of the Isaias Brothers and some Novelties on Transnational Litigation*. In *Revista Derecho del Estado*, Universidad Externado de Colombia. No. 57, September – December, 2023, 203-224.

DOI: https://doi.org/10.18601/01229893.n57.08

one of the most intense and intriguing transnational litigation cases in Latin America, while offering systematic insights and lessons derived from it.

KEYWORDS

Transnational litigation, international law, Act of State Doctrine, private property, constitutionality block, human rights, due process.

RESUMEN

Este es un estudio de caso sobre un litigio que ha sacudido a Ecuador por más de tres décadas. Este caso es un laboratorio vivo para estudiar cómo las estrategias de litigio transnacional se ven influenciadas y nutridas por las relaciones internacionales, el derecho internacional público, la política y el derecho comparado. A finales de la década de 1990, los hermanos Isaías pasaron de ser los hombres más ricos y poderosos de Ecuador, a ser acusados como los culpables del mayor desfalco financiero en la historia. El Estado incautó miles de millones de dólares en bienes de los Isaías y comenzó una batalla legal transnacional de veinte años. Este trabajo tiene tres objetivos. Primero, hacer un relato riguroso de la historia procesal de uno de los juicios más complejos y controversiales de la historia de Ecuador con posibles efectos en América Latina. Luego, estudiar su impacto en la Doctrina de Acto de Estado. Finalmente, estudiar cómo el litigio transnacional en el ámbito de los derechos humanos ante el Sistema Universal puede convertirse en un camino altamente efectivo para la protección de los intereses patrimoniales. Este ensayo relata uno de los casos de litigio transnacional más intensos e interesantes de América Latina y sistematiza sus lecciones.

PALABRAS CLAVE

Litigación transnacional, derechos humanos, doctrina de los actos del Estado, bloque de constitucionalidad, debido proceso.

SUMMARY

INTRODUCTION

A litigation case is like a vivid experiment to test how legal institutions work in reality and how they interact with external factors such as culture, the economy, and politics. This holds true for most litigation scenarios. However, when the factual background intertwines with a national tragedy and when the case spans several jurisdictions, involves intense political intervention, media coverage, international relations, and a transnational litigation strategy, the outcomes tend to unveil profound insights into social structures and into legal complexities. A tangled litigation case can be used to gauge the effectiveness of the rule of law. Therefore, identifying the right case and digging deeper into its intricacies could yield valuable lessons.

This paper aims to achieve precisely that by analyzing the *Isaias Brothers* issue, which stands as one of the most controversial and highly publicized transnational litigation cases in Ecuador's recent history. Despite its complexity, legal scholars have not yet discussed its implications, the novel paradigms it raises for cross-border litigation or its social impact. I argue that the Isaias brothers went from scapegoats to victims, because during most of the XXI century their image deteriorated in Ecuador, to the point of being blamed for the great evils of the country. From the government and from the public opinion there was a campaign –more or less justified– that placed them as the culprits of the financial, economic and social crisis of the country. However, due to the vicissitudes of law and the miscalculations of politics, the Isaias brothers are today considered by international law and by local law itself as victims –a quality that, analyzed five years ago, would have been almost impossible to obtain. This article precisely evaluates the interesting interactions between international law, transnational litigation and local law that led to the consolidation of this paradox. This essay asserts that the Isaias case brings two novelties to the forefront of transnational litigation: the diverse approaches employed by American Courts while applying the *Act of State Doctrine*, and the potential transformation of a soft law instrument into a binding opinion through the application of the constitutional block doctrine, which is applicable to several Latin American legal systems.

The research will start by providing background information of the Isaias litigation. In the midst of the most significant social crisis in its recent history marked by a substantial collapse of financial institutions, Roberto and William Isaias –two of Ecuador's wealthiest businessmen– were sued and prosecuted by the state, accusing them of illegally benefiting from the financial crisis. The ensuing complex litigation involved Ecuador, Florida, and the United Nations Human Rights Committee (UNHRC). The Isaias brothers aimed to clear their names and recover their assets. The state would seek to portray them as scapegoats and seize all their wealth to provide reparations to the victims of the financial crisis.

Once the factual causes of the litigation are clearly established, this paper will analyze the three major rounds in the litigation process, starting with the trials to seize the Isaias brothers' fortune in Florida. This investigation will explore how Ecuador used the *Act of State Doctrine* to confiscate assets in the United States, and how Florida courts applied it in problematic ways.

Subsequently, the essay will address the litigation before the UNHRC started by the Isaias brothers in 2012. It will then analyze an unprecedented decision that recognized the violations of several human rights committed by Ecuador and recommended remedies for the petitioners. Furthermore, the study will also explore how a simple recommendation made by a non-judicial international entity resulted in a national constitutional ruling.

Regarding the methodology, this paper is essentially a case study that compares the judicial trajectory with new developments in the field of literature on transnational litigation. To that end, this research will begin with a chronological systematization of the complex litigation cases in Ecuador, in Florida courts, and before the United Nations Human Rights Committee. Judicial documents, evidence, and pleadings from the case files will be used. Subsequently, the analysis of the lessons from this trial will be contrasted with relevant doctrine and caselaw.

The Isaias litigation presents a series of novelties for transnational litigation, including the various ways in which American courts interpret the act of state doctrine, the use of bodies not possessing jurisdictional powers, and the ability to convert recommendations into decisions. Ultimately, this research aims to outline the legal history of transnational litigation between the Ecuadorian state and the Isaias brothers for the first time and to present reflections on the new paradigms that the case presents for cross-border strategic litigation.

1. THE ORIGINS OF THE DISPUTE: THE ISAIAS FAMILY, THE MOST SIGNIFICANT FINANCIAL CRISIS IN THE HISTORY OF ECUADOR, AND THE CONSTRUCTION OF A MYTH

1999 was one of the most tragic years in Ecuador's modern history.[1] An unprecedented financial crisis left the population abandoned, without sav-

1 For a comprehensible study of the roots and effects of this major crisis, *see* Mahuad, Jamil. *Así dolarizamos al Ecuador: memorias de un acierto histórico en América Latina*. 2nd ed. (2021).; Patino, Maria Laura. *Lessons of the financial crisis in Ecuador 1999*. Law & Bus. Rev. Am. 7, 2001, 590-600. Jacome, Luis. *The late 1990s financial crisis in Ecuador: Institutional weaknesses, fiscal rigidities, and financial dollarization at work*. IMF Working Paper WP/04/12 16 (2004).; Escudero-Soliz, Jhoel. *Crisis bancaria, impunidad y verdad*. 1ST ED., 2017, 3-83.; Vera, María Pía. *Más vale pájaro en mano: crisis bancaria, ahorro y clases medias*. 1ST ED., 2013, 8-44.;); Martinez, Gabriel. *The political economy of the Ecuadorian financial crisis*. Cambridge J. Econ. 30, 2006, 567-585.

ings, with a failed state and a devastated economy. In that year, 48% of the population was left in poverty, while homelessness amongst Ecuadorians reached 34%.[2] The image of almost a quarter of the population fleeing the country due to the crisis would later define an entire generation.[3] The problem resulted from three factors: weak and corrupt financial regulation, severe impact on agriculture due to the El Niño Phenomenon, and the reduction of the international price of oil by 75%.

In the early 1990s, a frail regulatory system and corrupt financial authorities led to an uncontrolled spiral in the banking sector.[4] The fundamental problem was that former private bankers overtook financial authorities oversight on the control of banks , thus trivializing regulation, and leaving the financial institutions free to shape their own policies.[5]

Between 1997 and 1999, the El Niño phenomenon destroyed the rice plantations on the Ecuadorian coast, causing floods and devastating the agriculture sector.[6] This was added to a complex international scenario, the Government's limited capacity to process social conflict, and the reduction in the price of Ecuadorian oil –the country's main export– by up to 75% The immediate effect of this scenario was the quick devaluation of the local currency –the Sucre– and the collapse of the financial system, which the Government tried to control by imposing a 'bank holiday.' This meant that financial institutions would freeze deposits in an effort to preserve the liquidity of the system. In practice, as people could not withdraw their money from the banks and the Sucre's devaluation was unstoppable, the bank holiday meant a massive loss of assets and value for millions of Ecuadorians. When citizens could withdraw their money, its value had plummeted.[7]

A weak President, Jamil Mahuad, –who had been less than two years in office– announced that the U.S. dollar would be Ecuador's official currency, aiming to find some stability. However, converting the devalued Sucre to the robust US dollar left more than 50% of the population in extreme poverty.[8]

Only by understanding this story can we delve into the Isaias Brothers' case and the complex transnational litigation that resulted. Roberto and William Isaias owned one of the largest fortunes. The Isaias brothers were public figures

2 Vera-Toscano, *supra* 1, at 168

3 Bonilla, Adrián & Borrero, Mercedes. *Ecuador: La migración internacional en cifras*. 2008, 48.

4 Martinez, Gabriel. *The political economy of the Ecuadorian financial crisis*. Cambridge J. Econ. 30, 2006, 567-585.

5 In 1994, Congress enacted the General Statue of Financial Institutions which caused the relaxation of controls on banking and allowed loans to bank-related entities, and the absence of reserves. *See*) Correa, Rafael. *Ecuador: De la banana república a la no república*. 1st ed., 2012, 55

6 Jacome, Luis. *The late 1990s financial crisis in Ecuador: Institutional weaknesses, fiscal rigidities, and financial dollarization at work*. IMF Working Paper WP/04/12 16 (2004).)

7 Local market quoted 25.000 sucres per dollar as the exchange rate in late 1999.

8 Supra 2

in Ecuador, not only because they owned one of the largest fortunes but also because they were blamed for their alleged exploitation of financial deregulation, especially for lending Filanbanco's resources to their own companies.

When Filanbanco lent money to the Isaias Group companies, proper controls were evaded. By 1998, the Bank had a liquidity crisis and entered into a restructuring program. The State ended up taking control of Filanbanco; shareholders argued that the bank was solvent and that the Government's incorrect administration led to its failure. Public officials, on the other hand, claimed that the Isaias brothers had corruptly managed the bank and benefited their private business with the depositors' money, generating a solvency crisis. After the 1999 crisis, Roberto and William Isaias fled Ecuador and settled in Florida. The Central Bank of Ecuador claimed that the Isaias brothers had left Filanbanco and made off with 661 million dollars,[9] which they were not entitled to.

The country was shocked by the crisis. Millions of families were separated by forced migration. Half of the population lived below poverty levels, and a desperate search for the truth started. Various political groups propagated the narrative that the Isaias brothers were responsible for the crisis.[10] Political capital was generated by building this scapegoat narrative. Whoever could defeat Isaias would have the people on their side.

Rafael Correa, a charismatic leader without a political background, came to power in 2007. Correa was an economics professor with a keen interest in the 1999 crisis. One of the essential foundations of his political campaign was to deliver justice to the people affected by the financial crisis, especially those who lost their savings and assets due to the multiple bank closures. The Isaias brothers were a top priority on Rafael Correa's agenda. He framed them as scapegoats of the 1999 financial crisis, committing all efforts to seize their assets to compensate the victims of Filanbanco.

2. ECUADOR V. ISAIAS. FIRST ROUND: THE SEIZURE OF A FORTUNE

A legal battle in Ecuador began with a two-fold purpose: to seize around two billion dollars in assets and return them to the depositors harmed by the crisis and to capture and imprison both Isaias brothers.[11] The criminal procedures

9 Before Filanbanco closed, the Deposit Guarantee Agency hired Deloitte to evaluate the losses of Filanbanco. On December 2, 1998, Deloitte found that 661.5 million Dollars were missing. The Isaias had no opportunity to challenge this report which will be later used by Ecuador in U.S. Courts to sue the Isaias brothers. See the Republic of Ecuador (Appellant) Initial Brief. March 17, 2016. P.17

10 Calderón-Vivanco, Juan Carlos. *Editorial: Así manejó Rafael Correa la herencia del feriado bancario*. Plan V (Quito), Mar. 20, 2017, at 3. 3

11 Ronquillo, Gisella. Opinión: *Caso Filanbanco: Una historia de 23 años marcada por decisiones políticas y litigios legales en cortes locales e internacionales*. El Universo (Guayaquil), Mar. 27, 2022. 1

resulted in the conviction of the Isaias brothers and sentenced them to eight years in prison.[12]

On July 8, 2008, civil procedures commenced. The *Agencia de Garantía de Depósitos*[13] ("AGD") ordered[14] the seizure of more than two hundred companies held by the Isaias Group. While criminal and civil actions were ongoing, Ecuador was experiencing significant sociopolitical changes. In 2007, Ecuadorians embraced Rafael Correa's proposal for a new Constitution to refound the Republic and overcome the trauma of the 1999 crisis. A National Constituent Assembly (NCA) was elected to write a new Constitution. However, this body did a lot more. As there was no Congress, the NCA assumed certain legislative powers.

In this context, on July 9, 2008, the NCA passed the Constituent Mandate No. 13, which ratified the validity of the AGD's order to seize Isaias' assets, further providing that such resolution:

> is not subject to constitutional protection action or any other of a special nature, and if, in fact, it has been filed, it will be immediately filed without being able to suspend or prevent compliance with the previous resolution. The judges or magistrates who know any kind of constitutional action related to this resolution must reject them, under penalty of dismissal, and notwithstanding any criminal liability that may arise.[15]

Constituent Mandate No. 13 was issued with the sole objective of shielding the AGD's determination to seize the fortune of the Isaias's brothers in Ecuador. Thus, it prohibited them from exercising any legal defense of their assets in the country, threatening any judge who offered to hear Isaias's claims.

In this political and legal context, more than 200 companies were seized, including two major TV channels and several radio stations.[16] The image of hundreds of police officers entering TC Television and Gamavision – the two of the largest TV channels in the country– would be used as a sign of victory against the Isaias brothers and, further, as a political triumph for Rafael Correa.

Although some legal documentation supported the asset seizure, it was clear that the Isaias brothers were not facing a legal battle. The fact that Constituent Mandate No. 13 deprived them of their right to defense, canceling due process

12 Communication No. 2244/2013. Roberto Isaías Dassum and William Isaías Dassum v. Republic of Ecuador. CCPR/C/116/D/2244/2013 at 2.7

13 This Agency is similar to the U.S. Federal Deposit Insurance Corporation

14 The AGD issued Resolution AGD-UIO-GG-2008-12 on July 8, 2008, ordering the seizure of more than 200 companies from Isaias Group.

15 Article 2. Constituent Mandate No. 13 enacted by the Ecuadorian National Constituent Assembly.

16 Communication No. 2244/2013. Roberto Isaías Dassum and William Isaías Dassum v. Republic of Ecuador. CCPR/C/116/D/2244/2013 at 2.17

of law, deprived this case of being anything more than politically motivated, under the rule of power, and not the rule of law. Constituent Mandate No. 13 was enacted while a new Constitution was being written. Precisely, the fact that the old 1998 Constitution was soon to be replaced left a space where the State could arbitrarily seize the Isaias' assets in a period of three days. Despite the Constitutional uncertainty the country was experiencing, it did not exempt Ecuador from its international human rights obligations. By the time Isaias' assets were seized, and the Constituent Mandate No. 13 was enacted, Ecuador was part of several international human rights treaties[17] that expressly prohibited this conduct.

Ecuador's procedures for seizing more than 200 companies from the Isaias Group were controversial for three reasons. First, they showed perfect coordination between all the branches of the Government, which is rarely seen in Ecuador. The AGD issued the asset seizure order. The NCA issued a rare mandate destined to ban the Isaias brothers from challenging the seizure order and, thus, not allowing judicial power to intervene in the legal discussion.

The seizure was highly controversial since it included two of the main TV stations in the country and several radio stations with ample coverage and audience[18]. Seizing the media was seen as a direct threat to freedom of expression, a fundamental right that Rafael Correa constantly questioned[19]. International human rights supervisory bodies repeatedly criticized Ecuador on its freedom of expression risks. Even the Inter-American Human Rights Court condemned Ecuador for violating this right during the Correa Government[20]. The seizure of Gamavision and TC Television ended up silencing these important critical media and putting them under the orders of the State. After 2008, the Government owned the most prominent media conglomerate in the country, and both TV Stations were used as public propaganda machines[21].

17 Despite the fact that illegal seizure is against customary international law, Ecuador was part of several international human rights treaties that forbid illegal seizure, including the International Covenant on Civil and Political Rights, the American Convention of Human Rights and the International Covenant on Economic and Social Rights.

18 Creamer, Daniela. *Editorial: Ecuador embarga cuatro canales de televisión críticos*. El País (Madrid), July 8, 2008, at 2., at 2

19 The Inter-American Human Rights Commission was permanently alerting about the precarious status of freedom of expression in Ecuador. See CIDH Relatoria sobre Libertad de Expresion, Informe Especial Sobre La Situación de La Libertad de Expresión en Ecuador 5 (1 ed. 2019)

20 See Palacio Urrtia v. Ecuador. Inter-American Human Rights Court ruling issued on November 24, 2021.

21 Panchana Allen & Mena, Lorena. *El mapa de los medios públicos en Ecuador, entre el auge y la ambigüedad*. Global Media J. 17 (2021): 42-59.

3. SECOND ROUND: FLORIDA TRIALS AND THE ACT OF STATE DOCTRINE

The seizure of this fortune included the assets owned by the Isaias brothers in the United States. They were living in Florida and had several companies operating throughout the country. Thus, in April 2009, the AGD filed a claim against Roberto and William Isaias before the Circuit Court of the 11th Judicial Circuit for Miami-Dade County. AGD reclaimed around two hundred million dollars in damages derived from the failure of Filanbanco during the 1999 crisis.

AGD argued that in late 1998, Filanbanco was nationalized and, therefore, entered a restructuring program to solve what regulators believed was a simple liquidity issue. However, after digging into its actual financial status, Ecuadorian regulators found Filanbanco was insolvent. In December 2000, the AGD requested Deloitte & Touche to audit the bank . The report was released in May 2001, determining that depositors' losses in Filanbanco were at least USD$ 661.5 million.

Years later, on February 26, 2008, the Ecuadorian Banking Board issued Resolution 1084 approving the Deloitte Report on Filanbanco and established that the AGD should recover USD$ 661.5 million. Soon after, AGD started several actions aimed at seizing Isaias' assets to recover Filanbanco's deficiency. Article 29 of the Law of Reorganizing Economic Matters in the Tax and Financial Systems ("Article 29") provided that administrators who have declared false technical equity and altered the amounts on their balance sheets "*shall guarantee deposits in the financial institution with their personal equity*"[22]. After a series of confiscations, two hundred million dollars were still owed.

AGD made its case claiming that Isaias' liability for the losses of Filanbanco was established by Resolution 1084 and Article 29, which were *Acts of State*. As such, the acts of the Republic of Ecuador "represent governmental actions taken within Ecuador to which "the courts of Florida and the United States will presumptively defer"[23]. AGD argued that Florida Courts must adhere to the conclusions set forth in Resolution 1084 and Article 29, therefore, accepting that the Isaias were jointly and severally liable to pay two hundred million dollars to cover Filanbanco's losses. The AGD's legislative authorization expired in 2010. The Republic of Ecuador, acting as its successor, was substituted as a party of the trial with the defendant's consent.

The Act of State Doctrine is a principle of federal common law that precludes American courts from ruling on the validity of another Government's

22 Article 29 of the Ecuadorian Economic Matters Restructuring Law in the Tax-Financial Area ("AGD Law")

23 The Republic of Ecuador (Appellant) Initial Brief. March 17, 2016. P.10, citing Republic of Ecuador v. Dassum, 146 So.3d 58, 63 (Fla. 3d DCA 2014).

sovereign acts; it directs American courts to decide cases on the assumption that acts of foreign governments taken within their sovereign territory have the legal effect they purport to have[24]. The doctrine is an expression of judicial deference. It is grounded in respect for sovereignty and national immunity

> […] *conduct of one independent government cannot be successfully questioned in the courts of another is as applicable to a case involving the title to property brought within the custody of a court […] To permit the validity of the acts of one sovereign State to be reexamined and perhaps condemned by the courts of another would very certainly "imperil the amicable relations between governments and vex the peace of nationss*"[25]

In the seminal case Banco Nacional de Cuba v. Sabbatino[26], the U.S. Supreme Court held that the American judiciary must recognize the legal validity of government acts, even if they contravene international law. Sabbatino was a receiver of sugar owned by C.A.V., a Cuban corporation principally owned by U.S. citizens. While the cargo of sugar was in Cuba, the government issued a decree nationalizing it. Banco Nacional de Cuba –an official entity that administered the nationalized assets– requested ownership of the sugar based on that decree. Both, Sabbatino, and the Cuban Bank claimed rights to the property of said sugar. The Supreme Court established that there could be no inquiry into the validity of Cuba's acts of state and, thus, Cuba's nationalization was valid.[27] The doctrine was widely used and in a 1990 decision, the Supreme Court made three further clarifications. The act of state doctrine is a rule of decision, not a bar to decision[28] and it applies when the case's question relies on the validity of an act of state[29].

Just as Banco Nacional de Cuba claimed private assets based on a nationalizing decree, the AGD requested that Florida Courts recognize three acts of state that involved the Isaias brothers' liability. Article 29 permitted the seizure of the brothers' assets, as a consequence of being former shareholders of Filanbanco.[30] Further, Resolution 1084 established the amount of the debt. Yet, applying the act of state doctrine was just as paradigmatical as it was when the U.S. Supreme Court validated Cuban expropriation acts.

First, Article 29 allowed the AGD to seize the assets of companies affiliated with Filanbanco's shareholders without any due process, without piercing the

24 Harrison, John. The American Act of State Doctrine. Geo. J. Int'l L. 47, 2016, 507.)
25 Oetjen v. Cent. Leather Co., 246 U.S. 297 (1918) at 303
26 Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398 (1964)
27 Ibid.
28 W.S. Kirkpatrick, 493 U.S. at 403-04. The Third Circuit's decision is Envtl. Tectonics Corp. v. W.S. Kirkpatrick & Co., 847 F.2d 1052 (3d Cir. 1988) at 409
29 Ibid at 406
30 Complaint Page 9

corporate veil, and without any trial that could have determined the amount of the debt and the proportion which each related company had to assume. Article 29 essentially authorized an 'all-inclusive seize'. Second, at that moment Constituent Mandate No. 13 was in force and, thus, the Isaias brothers had no chance of exercising any defense in Ecuador. This was particularly important since Resolution 1084 validated the Deloitte Report and established that the amount of the debt could not be challenged nor even discussed in local courts. The act of state doctrine presumes that a foreign government-issued decision overseas is valid, provided that such acts be subject to judiciary control and be dictated under minimum due process of law standards.[31] This was certainly not the case for Roberto and William Isaias.

Defendants argued that Resolution 1084 was exclusively based on the Deloitte Report, which they were not allowed to challenge. Apart from this, without a judgment establishing responsibilities, the application of Article 29 would be confiscatory. Based on the substitution of the AGD by the Republic of Ecuador in 2010 as a party, the Isaias brothers also alleged that the Republic had no standing under Florida law since even if any liability existed, only the AGD would be entitled to claim it. Moreover, the defendants argued that the lawsuit was barred by the statute of limitations[32].

The trial court granted the defendant's summary judgment based on the extraterritoriality exception[33] to the act of state doctrine since Ecuador was attempting to summarily confiscate their property in Miami-Dade County.[34] The U.S. Court of Appeals reversed the decision and remanded it for further proceedings on the grounds that "there are genuine issues of material fact that remain in dispute regarding (1) the Isaiases' allegedly-remaining indebtedness to the Republic, and (2) the entitlement of the Republic to the entry of a judgment here against the Isaiases for money damages"[35]. On October 15, 2015, Judge John W. Thornton dismissed Ecuador's claim accepting the defendant's arguments that Article 29 only authorized the AGD to sue. The Republic of Ecuador –which succeeded the AGD as a party in 2010– had no

31 In Bandes v. Harlow & Jones, *Inc*., 852 F.2d 661, 666 (2d Cir. 1988), the Court held However, when a foreign sovereign tries to seize property in the U.S., our jurisdiction controls because the foreign sovereign is acting beyond its enforcement capacity. *Id*. Still, an exception to the exception exists: U.S. courts will enforce a foreign act that tries to seize property in the U.S. if the act is consistent with the policy and law of the U.S. *Id*. at 667.

32º Fla. Stat. § 95.11(3)(f), (p) (four-year limitations period for an action founded on a statutory liability" or "any action not specifically provided for in these statutes").

33 The extraterritoriality exception requires American Courts to analyze if the foreign act requires exercising jurisdiction to determine if the claim against the assets amounts to a taking contrary to United States policy and the fifth and fourteenth amendments. *Bandes v. Harlow & Jones, Inc*., 852 F.2d 661, 667 (2d Cir. 1988); *Republic of Iraq v. First Nat'l City Bank*, 353 F.2d 47, 51 (2d Cir. 1965).

34 *Republic of Ecuador v. Dassum*, 146 So. 3d 58 (Fla. Dist. Ct. App. 2014)

35 *Republic of Ecuador v. Dassum*, 146 So. 3d 58, 63 (Fla. Dist. Ct. App. 2014)

standing on which to sue. Furthermore, the Court found that the lawsuit was barred by the statute of limitations, since "There is no evidence that the Defendants are alleged to have committed any relevant act after December 2, 1998"[36]. Given that the complaint was filed in 2009, the four-year statute of limitations would apply.

The decision of the trial court was problematic for the act of state doctrine since it rejected the validity of Resolution 1084 and Article 29 by applying the state statute of limitation standard. Hence, the validity of the act of a foreign country was banned based on local law, which is, precisely, what the doctrine precludes doing.

The Court of Appeals of Florida for the Third District delivered the opinion on December 27, 2017, confirming that Article 29 and Resolution 1084 were acts of state and, therefore "neither the trial court nor the appellate court may inquire into the validity of the Republic's July 8, 2008, determination of liability as set forth"[37]. The Court of Appeals overturned the judgment and established that Isaias' liability was already determined in several acts of state, but damages are still pending. Thus, remand should be limited to this aspect[38]. Although the Court of Appeals partially accepted Ecuador's acts of state argument, the Judges emphasized that the decision "does not mean that the Republic is entitled to seize the Isaiases' property in Miami-Dade County automatically. The Republic's claims that the Isaiases still owe money to the Republic are "subject to proof as in any claim by a foreign sovereign against one of its citizens residing in the United States."[39]

In the meantime, the criminal case in Ecuador took a surprising turn. The National Court accepted a review appeal filed by the defense of William and Roberto Isaias. The Court found no grounds for their conviction since there was no proof that the defendants had incurred in bank embezzlement, fraud, or abuse in Filanbanco's funds during the 1999 crisis. Therefore, the National Court reversed conviction.[40] This impacted the litigation in Florida. The Isaias brothers argued that this resolution ratified that they had not owed anything to the Ecuadorian Government. Thus, based on collateral estoppel and res judicata, the Florida trial regarding damages for Filanbanco's failure had to be dismissed. The trial court granted summary judgment in favor of the defendants, which was affirmed by the Court of Appeals for the Third

36 Republic of Ecuador v. Dassum, 2015 Fla. Cir. LEXIS 70537

37 *Republic of Ecuador v. Dassum*, 255 So. 3d 390, 396 (Fla. Dist. Ct. App. 2017)

38 The Court stated "the Isaiases' liability for the losses to Filanbanco has been established in the Republic's act of state—AGD-12—and pursuant to the act of state doctrine, no court in this country may find otherwise". *Republic of Ecuador v. Dassum*, 255 So. 3d 390, 396 (Fla. Dist. Ct. App. 2017)

39 *Id*.

40 National Court of Justice. Criminal Chamber. Judgment No. 17721-2010-0414B. May 19, 2021

District on August 3, 2022. This decision ended a large, timely, and complex discussion on the extent of the act of state doctrine, its extraterritorial effects, and, for now, Ecuador's attempt to seize the Isaias fortune in Florida.

4. THIRD ROUND: THE ISAIAS ATTACK: LITIGATION BEFORE THE HUMAN RIGHTS COMMITTEE

Without a defense option in Ecuador, Roberto and William Isaias designed a complex international litigation strategy that would allow them to recover their assets and clear their names. They had two options: the Inter-American Human Rights System ("IAHRS") or the Universal System of Human Rights. The first had the advantage of having a judicial body, the Inter-American Human Rights Court. A court ruling will be directly enforced and have strong authority. They submitted a petition in 2005, but the Commission rejected it in 2008, arguing local remedies were not exhausted. Still, the IAHRS was not attractive since the Court could take up to fifteen years to issue a ruling / reach a decision.

On the other hand, Ecuador was part of the International Covenant on Civil and Political Rights, having signed its optional protocol. Although the Universal System does not have a Court entitled / empowered to issue rulings, the Isaias brothers could file their case before the UN Human Rights Committee ("UNHRC") regarding a violation of the rights outlined in the Covenant[41]. Indeed, the UNHRC could deliver an independent assessment of the case. However, the legal value of the resolution was questionable due to its nature as a mere recommendation. The UNHCR provides *views of the case*, which is a soft law document without binding language. The Isaias brothers opted for this alternative, aiming to benefit from the comparatively shorter timeline of approximately four years, added to the prestige of the UNHCR and its influence at the national level. In addition to this, even though the opinion of the UNHRC was not binding, there were alternatives under local Ecuadorian law to transform it into a constitutional ruling.

On March 12, 2012, Roberto and William Isaias presented a communication before the UNHRC[42] arguing the violation of their human rights to freedom, due process, non-retroactive application of less favorable criminal law,

41 Article 1 of the Optional Protocol to the International Covenant on Civil and Political Rights establishes "A State Party to the Covenant that becomes a Party to the present Protocol recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant. No communication shall be received by the Committee if it concerns a State Party to the Covenant which is not a Party to the present Protocol"

42 Communication No. 2244/2013. Roberto Isaías Dassum and William Isaías Dassum v. Republic of Ecuador. CCPR/C/116/D/2244/2013

equality, and non-discrimination.[43] Essentially, their complainants argued that they were condemned for the offenses of fraud and bank embezzlement by retroactive application of less favorable criminal laws. [44] Further, the Isaias brothers claimed that the Ecuadorian judiciary violated the *non reformatio in pejus* principle by imposing more onerous sanctions for offenses other than those set out in the appeal court ruling.[45] Additionally, the authors accused Ecuador of illegally seizing its property and canceling due process and their right to access justice by issuing Constitutional Mandate No. 13, which legalized the seizure of assets and prohibited any Judge from hearing any challenge to such process.

Ecuador objected the communication on the grounds of jurisdiction and merits.. Essentially, the defendant argued that the Isaias brothers were misusing the system to protect private enterprises, not their human rights. The state alleged that the rationale of the criminal courts was not subject to international review. Further, Ecuador claimed the seizure process was legal and that the Constituent Mandate No. 13 was justified as "The Assembly considered the complex financial and administrative situation of Filanbanco and stressed the importance of the work of those institutions of State, such as the Deposit Guarantee Agency, which is considered an expression of the authorities' desire to eradicate all forms of impunity".[46]

The Committee delivered its views on March 30, 2016, partially accepting the Isaias brothers arguments. A violation of Article 14 (1) of the Covenant was identified since Roberto and William Isaias were not granted a fair hearing in determining their rights and obligations as a consequence of Constitutional Mandate No. 13[47]. Thus, the Committee recognized that

> The State party is obliged to provide the authors with an effective remedy. In implementation of this obligation, the State party should make full reparation to the persons whose rights under the Covenant have been violated. Consequently, the State party should ensure that due process is followed in the relevant suits at law, in accordance with article 14 (1) of the Covenant and the present Views.[48]

This was an undisputable victory for the Isaias brothers. Although the Committee did not accept their major complaints regarding the criminal process, recognizing that Ecuador violated their right to equal access to justice and

43 These rights are described on articles 2 (1) and 3 (a), 9, 14 (1), (2) and (3) (c), 15 and 26 of the International Covenant on Civil and Political Rights

44 Supra 47 at 2.15

45 Ibid

46 Communication No. 2244/2013. Roberto Isaías Dassum and William Isaías Dassum v. Republic of Ecuador. CCPR/C/116/D/2244/2013 at 4.11

47 *Ibid*. at 8

48 *Ibid*. at 9

to a fair and public trial revived their prospects to recover their assets. At that point, the essential question was how to judicially enforce this document which was not a formal resolution but simply 'the view of the Committee'.

For years the states have been reluctant to accept the jurisdiction of international bodies. Organizations like the UNHCR were intentionally left with limited attributions to consider a case against a state party. The Optional Protocol did not establish a court but acknowledged a limited mandate to the UNHRC to express its views on a particular case. The Committee was not entitled to issue a judgment or to order compensation or remedies.

Having clearly demonstrated that the Optional Protocol did not recognize binding force to the UNHRC view, the Isaias brothers had to find a mechanism to strengthen the conclusive nature of this document with the objective of forcing the Government to comply with it. There were two methods to do this. The Isaias brothers could appear before the Ministry of Justice with the international document and persuade them to comply with it as a sign of good faith and compliance with their international commitments.

If Ecuador had ratified the International Covenant on Civil and Political Rights and its Optional Protocol, how could it not obey the recommendations that a specialized body issued once it found a clear human rights violation? However, assuming the state would directly and without question comply with the non-binding views of the UNHRC was, to some extent, wishful thinking. The reputation of the brothers suffered significantly as they were perceived as public enemies, and no government would take the vast political cost of complying with the UNHCR views, which, at the end of the day, had to lead to the reinstatement of the nearly 190 companies that were seized in 2008.

By the time these efforts were made, an essential political event had occurred. After ten years in office, Rafael Correa left the presidency, and Lenin Moreno assumed the role. Moreno was a moderated center-oriented leader that progressively separated his regime from Rafael Correa and his circle. The rise of Lenin Moreno lowered the intensity of the national debate on the Isaias' case, as the brothers were not Moreno's public enemy. Still, as expected, the new presidential office did not comply voluntarily with the UNHCR view[49].

Once the Isaias brothers realized they needed to find a different way other than politics, the other alternative to strengthen the force of the UNHCR document was to somehow incorporate it into the Ecuadorian legal sphere and then require its enforcement before the government. The Isaias' defense team had to find a strategy to transform the view of the Committee into a national ruling.

49 On November 24, 2016, Roberto and William Isaias requested the Ecuadorian Central bank to comply with the UNHRC decision. On December 13, 2016 the Central bank denied the request issuing Resolution BCE-CGJ-2016-011-RESOL

Paradoxically, the legal mechanism for this would be found in the 2008 Constitution, which was framed by the same assembly members who issued the Constituent Mandate No. 13, allowing the massive seizure of the brother's assets.

5. FOURTH ROUND CHECKMATE? RECOGNITION IN ECUADOR OF THE VIEWS OF THE UN HUMAN RIGHTS COMMITTEE

In 2008, a National Constituent Assembly enacted a new Constitution that was positively regarded[50] as it incorporated the most recent advances in modern constitutionalism. This text provided unprecedented protections for fundamental rights and even gave rights to nature. In what can be seen as relevant to this paper, the 2008 Constitution recognized enormous force to the state's international human rights obligations. Thus, international treaties that contain more favorable provisions than the Constitution are applied even above and beyond its scope[51]. Furthermore, the system of legal sources was altered as of 2008. The Constitution recognized that fundamental rights could come from not only that text or the legislative body but also international treaties and interpretations of specialized human rights bodies.

As an effect of the new system of sources, the *constitutionality block doctrine* was developed.[52] According to this doctrine, fundamental rights are established in the Constitution and in a more complex block composed of international treaties on human rights, advisory opinions, and the Inter-American Court of Human Rights rulings. In a broad sense, the *constitutionality block* is also made up of those non-binding opinions, recommendations and views that supervisory bodies make concerning an obligation of the Ecuadorian State in the field of human rights. In other words, the 2008 Constitution opens the door so that non-binding recommendations issued by human rights monitoring bodies can transform into actual obligations of the Ecuadorian State based on the constitutionality block.

This made clear that the doctrine includes advisory opinions or judgments issued by jurisdictional bodies such as the Inter-American Court of Human Rights. However, when it comes to the view of the UNHRC, this becomes more complex. The Constitutional Control Act created a specific action to ensure

50 See, among others Gargarella, Roberto. *Cambiar la letra, cambiar el mundo*. Ecuador Debate 75, 2008, 95-98.; Fits-Henrt, Erin. *The natural contract: From Levi-Strauss to the Ecuadorian Constitution*. Oceania 82, 2012, 264-277.

51 Article 424 of the Ecuadorian Constitution provides: "The Constitution and international human rights treaties ratified by the State that recognize more favorable rights than those contained in the Constitution shall prevail over any other legal rule or act of public power."

52 See Caicedo, Danilo. *El bloque de constitucionalidad en el Ecuador. Derechos humanos más allá de la Constitución*. Rev. de Der. 12, 2009, 10-25.)

compliance with international decisions in human rights matters[53]. Yet, it conditions the validity of the action to the fact that the decision contains clear and actual obligations. The UNHRC will never meet this standard since it does not incorporate binding language or clear obligations.

However, more is needed to continue this discussion. The constitutionality block doctrine has other internal judicial mechanisms to be discussed. The *protection action* is a legal recourse[54] through which a citizen can sue a public authority for violating a constitutional right, seeking reparations. The protection action proceeds whenever an act or omission of a non-judicial public authority violates a constitutional or human right.

This was the action chosen by the Isaias brothers to strengthen and enforce the UNHRC view. According to the plaintiffs, an international decision recognized the violation of a human right by the Ecuadorian state. As the Government did not address or repair the offense defined by the UNHRC, its violation persisted over time. The strategy of the Isaias brothers was bold and unprecedented in Ecuador.

Initially, they requested that the Central Bank of Ecuador comply with the UNHRC decision reversing the seizure processes carried out in 2008. As a result of a series of regulatory changes, the Central Bank assumed the powers of the AGD and, therefore, was the agency legally bound to comply with the decision of the UNHRC. As expected, the Central Bank did not comply, and thus a continued violation of the brothers' human rights was configured within the national legal framework. In other words, the refusal of the Central Bank created a different a breach that was linked to the UNHRC decision but it then opened the doors to a protection action in Ecuadorian courts.

Indeed, faced with the refusal of the Central Bank and the Government in general to comply and given the risk that some seized assets would be auctioned off, the Isaias brothers filed a protection action in which they included a precautionary measure. This action had two objectives. On the one hand, to prevent the assets seized through the application of Constituent Mandate No. 13 from being auctioned off or disposed of. On the other hand, the defense of Isaias wanted the judges to apply the constitutionality block and order the fulfillment of the views of the UNHRC. To strengthen the innovative position of the plaintiffs regarding Ecuador's obligation to enforce the UNHRC view, the defense was complemented by several *amicus curiae* that were very influential, including former members of the Inter-American

53 Article 52 of the Constitutional Control Act [Ley Orgánica de Garantías Jurisdiccionales y Control Constitucional] contingent to the language used in the decision and its binding nature established a special action for non-compliance of international decisions.

54 Article 39 of the Constitutional Control Act develops the protection action establishing that its mission is "the direct and effective protection of the rights recognized in the Constitution and international treaties on human rights"

Commission on Human Rights and a former Judge of the Inter-American Court of Human Rights.[55]

The case reached a District Family Court[56] in Guayaquil, the city of the Isaias brothers. Judge Johnny Lituma accepted the precautionary measures and ordered that the assets subject to the 2008 seizure could not be sold or auctioned off. Subsequently, the judge had to determine whether the decision of the UNHRC could be enforced as a judicial obligation at the national level. The judge found that the system of sources in Ecuador, as established by the 2008 Constitution, was dynamic and allowed the application of international treaties on Human Rights even above the Constitution. Thus, if the UNHRC had interpreted the International Covenant on Civil and Political Rights in a more favorable manner to the Isaias brothers, such an interpretation should be binding. The court used the constitutionality block doctrine as the primary justification for granting legal binding force to the decision of the UNHRC. The ruling stated:

> The UN Human Rights Committee resolutions are legal instruments of immediate compliance and directly applicable in Ecuador, […] opinion No. CCPR/C/116/D/2244/2013, issued on March 30, 2016, by the UN Human Rights Committee in the "Isaias case" (Case No. 2244/2013), is an international human rights instrument that is binding, immediately enforceable, and directly applicable in Ecuador, by its administrative or judicial authorities[57].

Faced with this surprising decision, the Ecuadorian government filed an appeal that was heard by the Provincial Court of Guayas, which essentially maintained the position of Judge Lituma and ordered the decision of the UNHRC to be observed. The Appeals Court ratified the doctrine of the constitutional block in accordance with some recent rulings from the Constitutional Court.[58] The Appeals Judges included the decisions of the UNHCR as it is a human rights instrument, noting that in Ecuador, "the distinction made by international doctrine between treaties and other international instruments, to recognize

55 Professors Héctor Faúndez Ledesma and Allan Brewer-Carías, as well as the former Presidents of the Inter-American Commission on Human Rights, Robert Galdman, Felipe González, and Juan Mendez, presented amicus curiae. Manuel Ventura, former Vice President of the Inter-American Court of Human Rights, also supported the plaintiffs.

56 Guayaquil District Family Court. Judgment No. 09201-2018-02826. May 13, 2022

57 *Ibid*. at Section 7

58 The Ecuadorian Constitutional Court fully recognized the constitutional block doctrine in judgment No. 11-18-CN/19 stating "Due to the constitutionality block, the rights enumerated in the Constitution are not exhaustive and its recognition is enunciative. The rights that are not included in the Constitution are incorporated into the text in two ways: referral to international instruments or recognition of the unnamed rights, among the latter are "the other rights derived of the dignity of persons, communities, peoples, and nationalities, which are necessary for their full development" Ecuadorian Constitutional Court. Judgment No. 11-18-CN/19 at 140

rights and develop their content, is irrelevant; since all the rights recognized in international instruments are part of the Ecuadorian legal system".[59]

CONCLUSION

This paper has systematized the story of the Isaias brothers demonstrating that strategic international litigation transformed these brothers from scapegoats to victims. This case shows how the biggest political, social and economic crisis in recent Ecuadorian history created the conditions for a complex transnational litigation case. It brought questions on the possibility of directly seizing U.S.-based assets by employing the acts of the state doctrine, the legality of a constituent mandate that canceled the due process, and the right to a legal defense, among others. All these questions were addressed in multiple ways by courts in Ecuador and Florida and, ultimately, by an international non-judicial body.

The use of the *Act of State Doctrine* in this case is innovative and interesting, as it confronted the Florida courts with the question of whether its act of the Republic of Ecuador issued in a highly convusive political and social context involving the seizure of assets, could be enforced, directly in the territory of the United States. In other words, up to that point, this doctrine did not question the formal validity of normative acts issued by another sovereign State, but from here on the distinction is made that such act is not directly and fully enforceable, it does not have full faith and credit before the jurisdiction of the United States. In sum, although it is formally valid, it is not a title to seize assets.

The Ecuadorian Family Court decision in the Isaias case is paradigmatic since it transforms a *soft law* instrument into a *hard law* document. Thus, a door for new possibilities for transnational litigation in South America has emerged. Several countries of the region –including Ecuador, Colombia, Peru, Bolivia, Argentina, and Mexico– adhere to the constitutional block doctrine. Although there are distinctions among each legal system, the essence of the doctrine is the same: it permits the incorporation of international human rights norms, which may derive from the *views of committees*, into the national sphere.

One could question to what extent the progress of the Guayaquil Family Court will imply a structural advance for transnational litigation or if it is an isolated event influenced by external factors which go beyond what is legal. Although this is purely speculative, we maintain that there is a reasonable possibility that this will open the door for a new litigation trend to impact the region for the following reasons. First, because the proposed theory is grounded on solid foundations. The transformation from soft law to hard

59 Guayas Provincial Court. Judgment No. 09201-2018-02826. September 12, 2022, at 98

law is not a superfluous interpretation, but a derivation of the hierarchical structure of the normative system –which places the most favorable human rights norms even above the Constitution. Second, the application comes from an already consolidated theory in Latin American Law, the constitutionality block. This has been established by the Constitutions and jurisprudence of at least eight countries in the region. Finally, this case is based on the decision of at least four judges. The Constitutional Court could intervene by selecting the trial for an ex officio review; however, considering that the decision is in line with the Court's jurisprudential line on the hierarchical value of human rights decisions and given the progressive conformation of the Court, the chances that the Guayaquil Court will be seconded are very high.

Opening this door for litigation is relevant for several reasons. Firstly, because Latin America is one of the regions of the world with the highest rate of ratification of human rights treaties that grant jurisdiction to various non-judiciary bodies[60] such as the UNHCR, the United Nations Committee on Economic and Social Rights, United Nations Committee on the Elimination of Discrimination against Women, among others. Therefore, any non-binding opinions of these bodies could be used to advance strategic transnational litigation through the constitutional block doctrine. This also positively impacts currently backlashed international human rights litigation in the region. The Inter-American Human Rights System is working, but as mentioned before, it can take as long as fifteen years to reach the Court. Thus, litigators think of this system as an *ultima ratio* resource. For a long time, counsels were skeptical of the Universal System as it was regarded as ineffective. Today, ongoing litigation practices are rapidly changing this paradigm, thus transforming an ineffective system into a promising opportunity to experiment with novel litigation strategies.

REFERENCES

Allen, P., & Mena L. *El mapa de los medios públicos en Ecuador, entre el auge y la ambigüedad*. Global Media J. 17,2021, 42-59.

Ávila-Santamaria, Ramiro. *Neoconstitucionalismo andino*. 2nd ed., 2016, 35-79.

Bonilla, A., & Borrero, M. *Ecuador: La migración internacional en cifras*. 2008, 48.

Calderón-Vivanco, J. *Editorial: Así manejó Rafael Correa la herencia del feriado bancario*. Plan V (Quito), Mar. 20, 2017, at 3.

Caicedo, D. *El bloque de constitucionalidad en el Ecuador. Derechos humanos más allá de la Constitución*. Rev. de Der. 12, 2009, 10-25.

60 For an updated list of treaties ratification status see https://treaties.un.org/pages/Treaties.aspx?id=4&subid=A&lang=en

CIDH Relatoría sobre Libertad de Expresión. *Informe especial sobre la situación de la libertad de expresión en Ecuador*. 1st ed., 2019, 5.

Correa, R. *Ecuador: De la banana república a la no república*. 1st ed., 2012, 55

Creamer, D. *Editorial: Ecuador embarga cuatro canales de televisión críticos*. El País (Madrid), July 8, 2008, at 2.

Escudero-Soliz, J. *Crisis bancaria, impunidad y verdad*. 1st ed., 2017, 3-83.

Fits-Henrt, E. *The natural contract: From Levi-Strauss to the Ecuadorian Constitution*. Oceania 82, 2012, 264-277.

Gargarella, R. *Cambiar la letra, cambiar el mundo*. Ecuador Debate 75, 2008, 95-98.

Gongor Mera, M. *La difusión del bloque de constitucionalidad en la jurisprudencia latinoamericana y su potencial en la construcción del ius constitutionale commune latinoamericano*. 2014, 301-326.

Harrison, J. *The American Act of State Doctrine*. Geo. J. Int'l L. 47, 2016, 507.

Jacome, L. *The late 1990s financial crisis in Ecuador: Institutional weaknesses, fiscal rigidities, and financial dollarization at work*. IMF Working Paper WP/04/12 16 2004.

Mahuad, J. *Así dolarizamos al Ecuador: memorias de un acierto histórico en América Latina*. 2nd ed., 2021.

Martinez, G. *The political economy of the Ecuadorian financial crisis*. Cambridge J. Econ. 30, 2006, 567-585.

Patino, M. *Lessons of the financial crisis in Ecuador 1999*. Law & Bus. Rev. Am. 7, 2001, 590-600.

Ronquillo, G. *Opinión: Caso Filanbanco: Una historia de 23 años marcada por decisiones políticas y litigios legales en cortes locales e internacionales*. El Universo (Guayaquil), Mar. 27, 2022.

Vera, M. *Más vale pájaro en mano: crisis bancaria, ahorro y clases medias*. 1st ed., 2013, 8-44.

Caselaw

The Republic of Ecuador (Appellant) Initial Brief. March 17, 2016, p. 17

Communication No. 2244/2013. Roberto Isaías Dassum and William Isaías Dassum v. Republic of Ecuador. CCPR/C/116/D/2244/2013 at 2.7

Agency of Deposits Guarantee. Resolution AGD-UIO-GG-2008-12 on July 8, 2008, ordering the seizure of more than 200 companies from Isaias Group.

Palacio Urrtia v. Ecuador. Inter-American Human Rights Court ruling issued on November 24, 2021.

The Republic of Ecuador (Appellant) Initial Brief. March 17, 2016. P.10, citing Republic of Ecuador v. Dassum, 146 So.3d 58, 63 (Fla. 3d DCA 2014).

Oetjen v. Cent. Leather Co., 246 U.S. 297 (1918) at 303

Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398 (1964)

Bandes v. Harlow & Jones, Inc., 852 F.2d 661, 666 (2d Cir. 1988),

Bandes v. Harlow & Jones, Inc., 852 F.2d 661, 667 (2d Cir. 1988); *Republic of Iraq v. First Nat'l City Bank*, 353 F.2d 47, 51 (2d Cir. 1965).

Republic of Ecuador v. Dassum, 146 So. 3d 58 (Fla. Dist. Ct. App. 2014)

Republic of Ecuador v. Dassum, 146 So. 3d 58, 63 (Fla. Dist. Ct. App. 2014)

Republic of Ecuador v. Dassum, 2015 Fla. Cir. LEXIS 70537

Republic of Ecuador v. Dassum, 255 So. 3d 390, 396 (Fla. Dist. Ct. App. 2017)

Ecuadorian National Court of Justice. Criminal Chamber. Judgment No. 17721-2010-0414B. May 19, 2021

Guayas Provincial Court. Judgment No. 09201-2018-02826. September 12, 2022

W.S. Kirkpatrick, 493 U.S. at 403-04. The Third Circuit's decision is Envtl. Tectonics Corp. v. W.S. Kirkpatrick & Co., 847 F.2d 1052 (3d Cir. 1988) at 409