

2018 ESMOAS-IACHR MOOT COURT COMPETITION
HYPOTHETICAL CASE

“THE TATAINO CONFEDERACY v. THE REPUBLIC OF ATAHUALCA”

I. The Republic of Atahualca

1. The Republic of Atahualca is an independent state located in the Americas. It has a population of 9 million, and covers a surface area of 376,250 mi². Approximately 70 percent of the state is covered in dense tropical forest. As such, the vast majority of the population resides in urban areas, specifically the capital city of Uxmaio and two additional cities located on the Cuiona River—Wapida and Lelabamba. Approximately 150,000 of Atahualca’s residents are members of indigenous groups, primarily the Tatainos and the Unamboros, who live in protected preserves along the forested border with the neighboring Charcadine Republic. Atahualca is divided into five states—the largest three cities are their own state, while the other two states are made up of large amounts of unincorporated territory in the eastern half of the country.

2. According to the Economic Commission for Latin America and the Caribbean (ECLAC), in 2017 the per capita Gross Domestic Product (PPP) was US\$ 12,000. The Atahualcan economy is largely dominated by the agricultural and forestry industry, but it has seen promising growth in the eco-tourism industry over the last two decades. Although land reforms and land nationalization throughout the 20th century sought to bring more economic equality to the country, wealth concentration and inequality remains a significant issue. 1% of the population holds 60% of the nation’s wealth, and over 97% of the wealth is concentrated in urban areas, with little development along the Charcadine border and the forested interior.

3. The Republic of Atahualca is a constitutional republic with three branches of government. The executive branch is headed by the democratically elected president. The legislative branch is a unicameral national assembly with representatives democratically elected by the people of each state. The judicial branch is headed by a seven-member Supreme Court: three nominated and selected by the national assembly, one at-large magistrate selected by the President only, and

three selected by direct election. Each state has its own governor and legislative branch. The federal judiciary also has one district court in each of the states. The district courts have original jurisdiction over all matters of federal law, including issues of judicial review of legislation. Decisions of the district courts may be appealed to the Supreme Court. Decisions of the Supreme Court are final.

4. During the late 19th and into the early 20th Centuries, Atahualca began expanding its influence from the areas in the northwest immediately adjacent to the major rivers, and began a systematic annexation of territory to the east. This expansion, at times, included armed conflict with the indigenous groups who had lived in the area since at least 3000 BC. With regard to the main group in the east, the Tatainos, a treaty of armistice and goodwill was signed in 1882. The details of this treaty, known as the Treaty of Tatainico, will be outlined later.

II. The Tataino Confederation and Indigenous Groups

5. The largest two indigenous groups in the eastern half of Atahualca are the Tataino and Unamboro people, a traditional, animist tribal society that has existed using traditional slash-and-burn agriculture and carrying on ancient lifeways that have been more or less unchanged for the past millennium. These people live in small grass-hut villages and are semi-nomadic, moving among various tracts of land as they burn one section and farm another.

6. The establishment of the Tataino Confederation, which serves as the semi-autonomous tribal governing body for the Tataino, is unclear and at least partially mythical in nature. Since at least 1500, when the group was first contacted by European explorers, the Confederation has been meeting. The body includes representative chiefs from seven different tribes—the Tataino, Unamboro, Calaxi, Iti, Yunamamo, Titalpa, and Moro-Moro. As a result of their history of conflicts and subjugation of one another, only five tribes (the Tataino, Unamboro, Calaxi, Titalpa, and Moro-Moro) may vote in the assembly. The other two, the Iti and Yunamamo, are observers and are represented by the Tataino chief. This system has been in place since at least the 17th century, when the two tribes were subdued by the Tataino and acceded to the

confederation. Since the 1850s, no conflict has occurred at any scale among the seven confederated tribes.

7. After prolonged conflict with the Atahualcans, the Taino Confederation signed a land use treaty, known as the Treaty of Tainico, in 1882. The treaty was approved by the confederation in a vote of 5-0.

III. The Treaty of Tainico (1882)

8. The Treaty of Tainico established two primary agreements. First, the Republic of Atahualca received lands ceded to them by the tribes of the Taino Confederation. These lands make up the majority of the two modern eastern states of Taina and Unamba.

9. The ancestral lands of the Taino Confederation tribes were ceded to Atahualca in exchange for guaranteed treaty rights, in this case known as the Covenant of Cultural Protection (CCP). The CCP grants the members of the Taino rights to self-determination and cultural survival, giving them access to farmland, forest, rivers for fishing and hunting, and the right to free passage within these lands.

IV. The Eco-Preserve Movement and the New Treaty (1987-1999)

10. In the 1980s, a movement within Atahualca to protect portions of the Atahualcan Rain Forest (the majority of the eastern states of Taina and Unamba) culminated in the creation of the Atahualcan Forest Preserve, an area protected from development by the federal government. This preserve covers approximately 48,000 square miles, roughly overlapping the traditional territories of the Taino Confederation tribes. Under the New Treaty of Tainico, signed by the tribal government and the Republic of Atahualca and entered into force in 1987, the indigenous tribes retained the rights from the original Covenant of Cultural Protection, while the federal government brought the protection of the area directly under its Interior Ministry jurisdiction.

11. In 1999, the Republic of Atahualca and the Tataino Confederation agreed to relax development restrictions on portions of the Atahualcan Preserve for the purposes of eco-tourism. These developments included several resorts and tourist attractions, maintained jointly by the Atahualcan government and the Tataino Confederation, with a portion of proceeds granted to the confederation for the purpose of infrastructure development within and between the Tataino villages. The agreement was signed on November 1, 1999, though three tribes (the Calaxi, Iti, and Yunamamo) expressed reservations about the new agreement. Nevertheless, the Confederation voted 4-1 (the Iti and Yunamamo lacking official votes) to sign the agreement.

V. The Forest Legacy Act (2013), Ameripulp & Logging Security International (LSI)

12. Following a worldwide economic crisis, the Republic of Atahualca experienced record inflation, unemployment, and a devaluation of its currency. As part of the government's recovery program, the Forest Legacy Act was passed by the legislature and signed into law in October, 2013. With the act, the Republic lifted some logging restrictions in the Atahualcan Preserve and opened portions of the area to private logging, subject to supervision by the Ministry of the Interior.

13. Beginning in 2014, outbreaks of violence erupted in Atahualca's eastern neighbor, the Charcadine Republic. An attempted coup, a significant uptick in organized gang violence, and a breakdown in internal security caused a flow of Charcadine refugees to begin spilling across the Atahualcan border, as well as an increase in criminal activity (namely, drug trafficking by the Charcadine gangs). Due to concerns over the safety of its employees, logging company Ameripulp requested from the Atahualcan government permission to employ a private security force to protect its interests.

14. In October 2014, Ameripulp obtained the security services of Logging Security International (LSI). LSI is based in Atahualca, and was incorporated specifically for the purposes of providing security to Ameripulp facilities. On December 5, 2014, LSI entered into a military contracting partnership with the government of Atahualca, in which it provided private security to logging companies and, collaterally, increased security presence along the forested border

with the Charcadine Republic. LSI was paid by Ameripulp for its services, but all weapons, surveillance equipment, and weapons training was provided free of charge from the Atahualcan military, particularly the Border Security Force, a subdivision of the Atahualcan Army of the Republic.

VI. The Iti Incident

15. On January 18, 2015, three members of the Iti tribe were shot and killed by LSI security officers. These tribe members, one male and two female adults, were carrying fish from a nearby river within the Atahualcan Forest Preserve to their village, approximately 4 miles away. While doing so, the tribesmen inadvertently crossed into a restricted area and were mistaken for armed gang members by the LSI forces. LSI officers attempted to communicate with the individuals (in the common language shared by Atahualca and the Charcadine Republic, but not in the indigenous language spoken by the Iti). When the individuals failed to stop and identify themselves, the LSI security forces opened fire, killing all three.

16. Upon the discovery that these individuals were not, in fact, criminals, the incident immediately was reported to the state police, who ruled it an accidental shooting. No arrests were made, and LSI has continued to operate as the government-trained private security force for all Ameripulp logging facilities in Atahualca since the incident. The two security officials responsible for the deaths of the Iti were placed on paid administrative leave and have since taken positions within other companies.

17. One month after the incident, the Iti chief presented a case to the Tataino Confederacy Tribal Council, through the chief of the Tataino tribe as custom dictates. The Tataino chief agreed that the matter should be brought before the entire council. The voting chiefs agreed unanimously to file a civil case against LSI for damages, asking for \$750,000 (\$250,000 for each family).

18. On August 9, 2015, the state court found in favor of the Tataino Confederacy and levied a judgment of US\$350,000 against LSI, payable to the Iti tribe as a whole, and the families of those killed in the incident. The court refused the motion to find LSI solely responsible for the

deaths, only ruling that the company did not perform due diligence in identifying the trespassers, but acted according to protocol otherwise.

18. Upon the ruling, the Tataino Confederacy filed a second case against the government of Atahualca, suggesting that the security forces of LSI were trained and armed by the Atahualcan government, and that the Republic of Atahualca bore at least partial responsibility for the deaths of the three Iti tribesmen. The Tataino Confederacy also cited the Covenant of Cultural Protection and the Treaty of Tatainico, in that the right to migrate and the right to use traditional lands have been denied to the people of the confederated tribes by the presence of government-trained security forces.

19. The second civil case filed against Atahualca progressed to the Supreme Court of Atahualca, who ruled on February 5, 2017 that no violations have occurred that would nullify the spirit of the original treaty or be considered a systemic violation of the CCP, that the Tataino Confederacy was still bound by its original treaty agreement, and that sufficient financial restitution had already been made by LSI.

20. The Tribal Council of the Tataino Confederacy presented its case to the Inter-American Human Rights Commission on March 1, 2017.

VI. Proceedings before the Inter-American Human Rights System

21. On May 5, 2017, the Commission issued its report on admissibility and merits (Report 101/2018). The IACHR found the State of Atahualca in violation of articles 8, 9, and 23 of the American Declaration of the Rights and Duties of Man. Further, the IACHR warned the Tataino Confederation that it may also be in violation of articles 2 and 20 with regard to the Iti people. Nonetheless, it recommended the invalidation of the original Treaty of Tatainico and suggested a formal renegotiation of the treaty, with emphasis placed on the unilateral decisions of the Atahualcan government through the Forest Legacy Act.

22. Once the period for compliance with the recommendations had elapsed, pursuant to Article 35 of the Regulations of the Inter-American Court, the Inter-American Commission on Human Rights brought the Case of The Taino Confederation v. the Republic of Atahualpa before the Inter-American Court on May 5, 2018.

23. In May 2018, the Court admitted the Commission's report and forwarded it to the parties for them to submit their arguments. It set the hearing date for November 2018, during its Extraordinary Session in San Marcos, TX, to hear the arguments of the representatives of the victims and the State regarding the merits and reparations in the instant case.

24. With its Constitution of 1992, the Republic of Atahualpa ratified the main regional and universal instruments on the subject. It is a founding Member State of the Organization of American States (OAS), having ratified the OAS Charter on April 30, 1948. On January 10, 1994, the Republic of Atahualpa ratified the American Convention on Human Rights and accepted the contentious jurisdiction of the Inter-American Court of Human Rights (Inter-American Court or Court). Additionally, Atahualpa approved and ratified the OAS American Declaration on the Rights of Indigenous Peoples and voted in affirmation during the June 15, 2016 adoption of the declaration. In 2017, an amendment to the Constitution conferred constitutional status on the human rights treaties to which the Republic is a party.