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ABSTRACT

Title of Thesis: The Beagle Channel Dispute Between Argentina and Chile: An Historical Analysis

David Robert Struthers, Master of Science in Strategic Intelligence, May 1985

Thesis Committee Chairman: Lieutenant Colonel Robert J. Karrer, Jr.

This thesis examines the Beagle Channel dispute in its entirety, beginning with the initial discovery of the area, to the 1984 Treaty of Peace and Friendship which has tentatively resolved the century-long dispute. It contains an examination of the various treaties and arbitrations which have occurred over the last 100 years, and also the incidents which have occurred due to the absence of an effective treaty. Additionally, this thesis examines the numerous subsidiary issues which have affected all efforts by Argentina and Chile to being able to resolve the dispute, to include petroleum reserves in the area, fishing rights, territorial claims in Antarctica and national pride and esteem. Finally, this thesis provides that the Beagle Channel dispute is only a symptom of more important problems in the area, which include political and economic expansionism, the need to acquire valuable natural

resources, and the need to find new locations for expanding populations.

Numerous sources were utilized for this study; however, no single English-language source outlined the dispute in its entirety. Indeed, the paucity of English-language literature was a motivation in compiling this historical analysis. Consequently, the decisionmaker and analyst may be able to utilize this study in formulating future United States policy in the area.

This study concludes that, although the 1984 Treaty of Peace and Friendship is being well-received by both protagonists as the means for ending this dispute, history has shown that previous well-intended treaties have not provided a lessening of tensions in the Beagle Channel. Therefore, the Beagle Channel region continues to bear watching by the analyst, for the possibility continues to exist for future conflict in the area.

The Beagle Channel Dispute Between Argentina and Chile: An Historical Analysis

by

Cpt David R. Struthers

Thesis submitted to the Faculty of the Defense Intelligence College in partial fulfillment of the requirements for the degree of Master of Science in Strategic Intelligence.

April 1985

Dedicated to my wife, Andrea,
for her patience and support.

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INTRODUCTION

The Beagle Channel dispute between Argentina and Chile is now more than a century old and is considered to be one of the longest ongoing border problems in the world (see Maps 1, 2, and 3). Although much emphasis has been placed on the recently fought Falkland Islands War between Argentina and Great Britain as one of the most serious conflicts in South America, the Beagle Channel dispute has held just as much potential for an international crisis, as was evident by the mobilization of the respective countries for war in 1978. Despite the fact that no war has ever been fought over this small area, tensions have remained high over the past decade and only very recently has a tentative settlement been reached between the two protagonists. Although the recently signed Treaty of Peace and Friendship underscores the intention on the part of both Chile and Argentina to peacefully resolve the Beagle Channel dispute, it is conceivable that should the Treaty eventually become unworkable (as has happened with previous agreements regarding the disputed Beagle Channel area) one or the other of the two parties might decide to escalate the dispute into a full-scale military conflict. Considering that the Beagle Channel area has recently been identified as being economically important, especially regarding fishing and oil exploitation, it is not inconceivable that Chile and

Argentina could find impetus to conduct a future war over this area. Given the myriad of regional geopolitical relationships which exist today in the Western Hemisphere, any conflict involving two of the strongest powers in the hemisphere could have serious international consequences, among which could be the disruption of international shipping in areas such as the Drake Passage farther to the south, or perhaps even direct U.S. military involvement in the area.

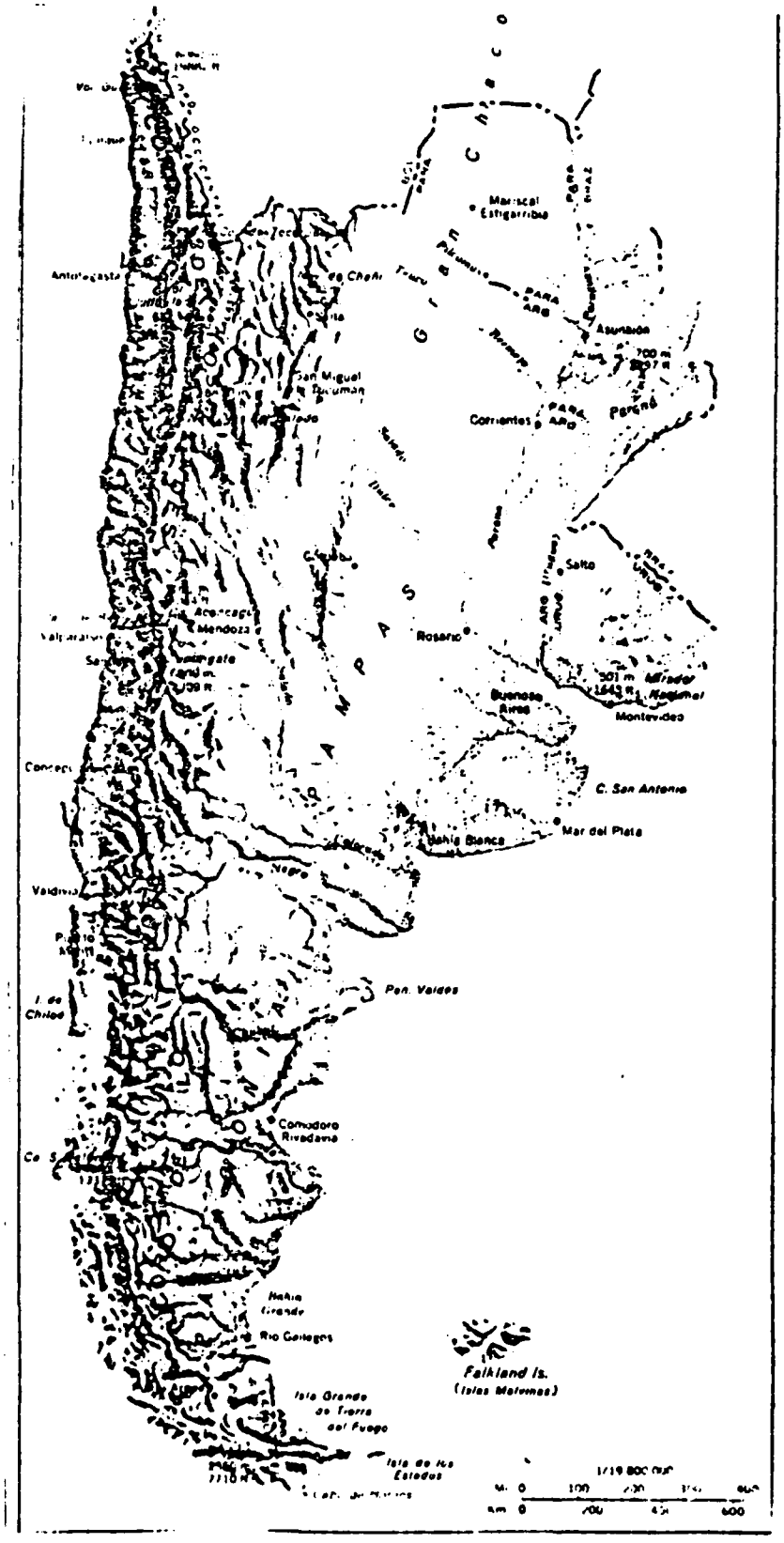
A. The Problem:

The Beagle Channel, located in the Southern Patagonian region of Argentine and Chilean territory, is a nearly horizontal waterway which connects the Atlantic and Pacific Oceans (see Map 4). It is 3.5 miles wide, 125-150 miles long (depending on whether one yields to the Chilean or Argentine point of view) and is an important passage around the tip of the continent from September to February, when it is not blocked by ice. It serves as the boundary between Chile and Argentina in the Tierra del Fuego area.

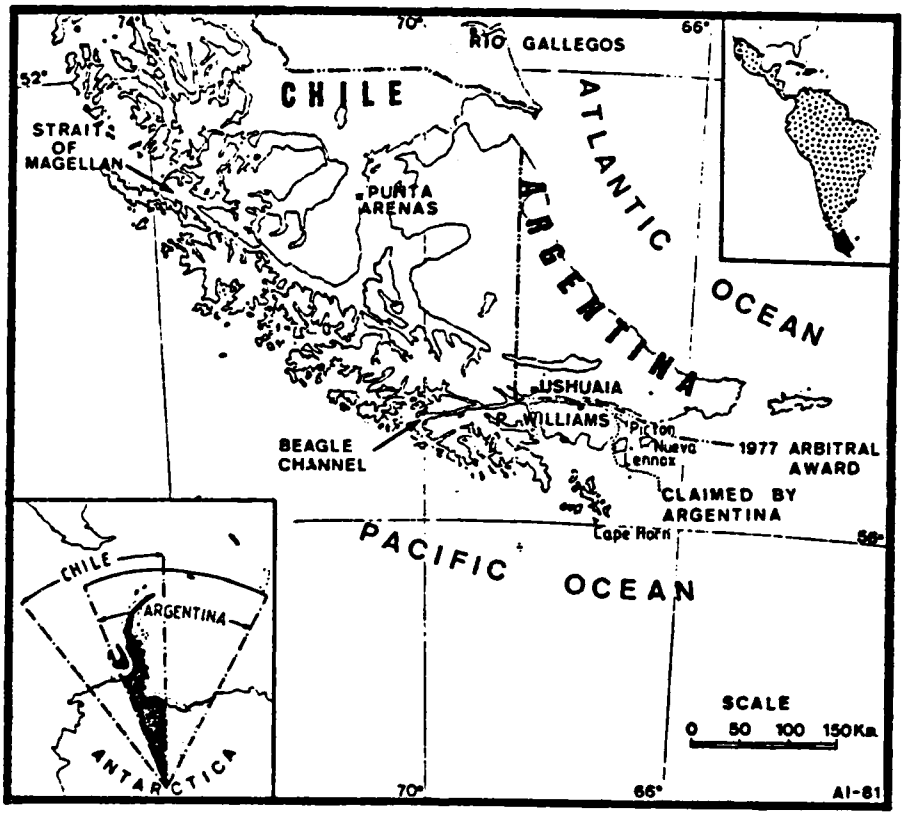
The crux of the ongoing dispute involves two interconnected problems of territorial jurisdiction. The first, which is of primary concern, is the problem of determining the eastern extremity of the Beagle Channel and the subsequent sovereignty over the three small islands of Picton, Nueva and Lennox. Because of mapping and charting errors,

Map No. 1
South America

Source: Rand McNally Atlas

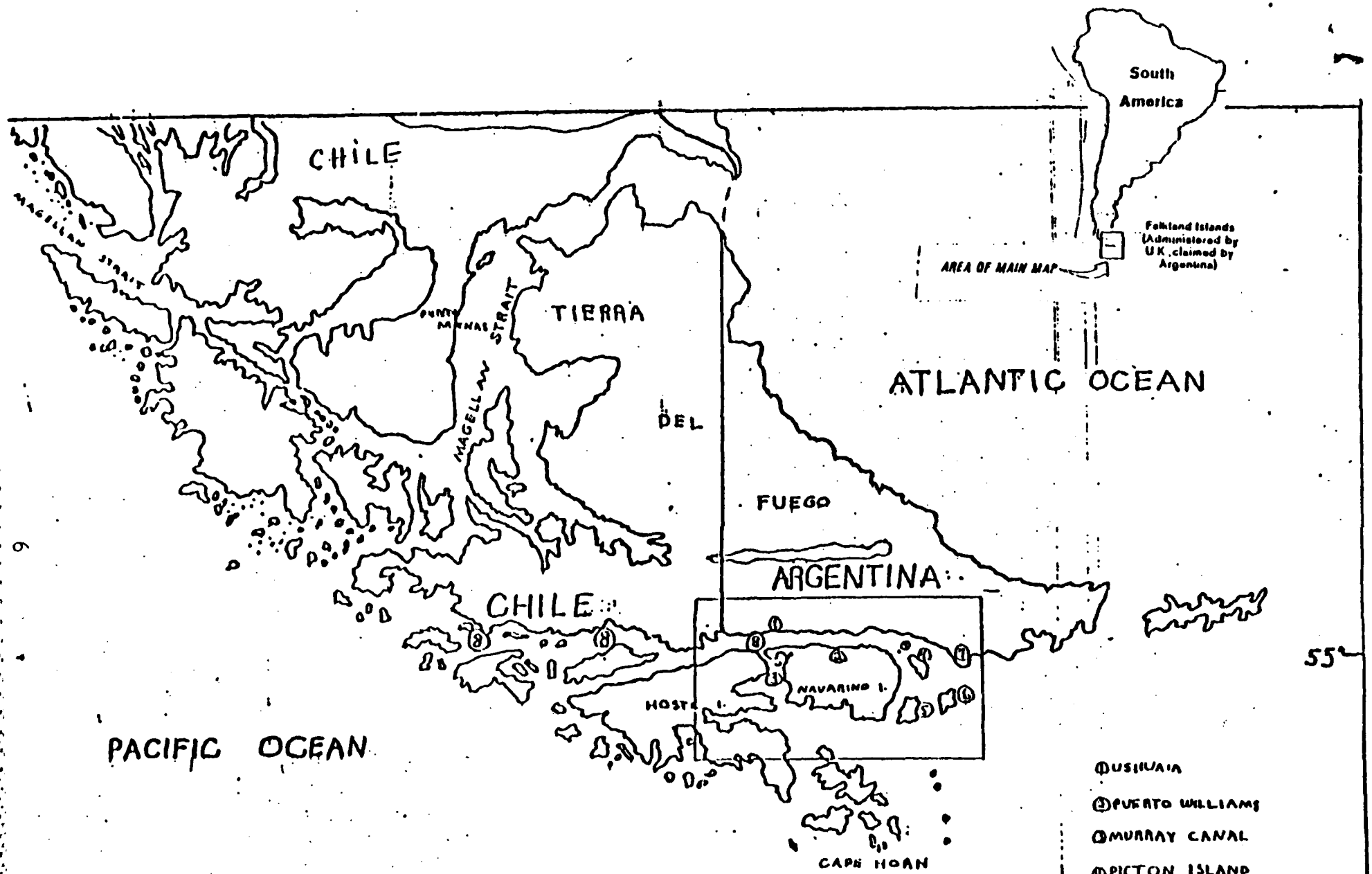


Map No. 2
Southern South America
Source: Rand McNally Atlas



Map No. 3
Tierra del Fuego Region

Source: International Institute for Study and Conflict



Map No. 4
Enlargement of the Beagle Channel Area/Tierra del Fuego Region
Source: Review of the River Plate, 1982

as well as various conflicting Argentine and Chilean interpretations of the numerous agreements and treaties involving their common border, the actual delimitation of the Channel has never been agreed upon.

The second problem associated with the dispute is a direct consequence to this delimitation dilemma; that being, accessibility to the strategic mineral, petroleum and food resources located in or adjacent to the Channel. Also related to this accessibility problem is the impact the delimitation problem of the Beagle Channel has on territorial claims by Chile and Argentina in Antarctica, which are direct reflections of their respective national coastlines. Because both Argentina and Chile espouse to the concept of a 200-mile maritime territorial limit regarding their coastal waters, the country ultimately controlling the Channel and the three islands can legally extend its sovereignty outward 200 miles into the Atlantic, thus effectively denying access to this region by other countries. Since both Chile and Argentina have vested national interests in the region, to include their respective Antarctic territorial claims, neither country is willing to accept exclusion from the area at the expense of the other. In essence, "concern is less over the islands themselves than over the difference they make to delimitation of territorial sea and economic zone areas in the South Atlantic."[1]

As a consequence of these two interconnected problems

of territorial jurisdiction a number of considerations become significant as related to any eventual settlement between the two countries. The first has already been touched upon; that being, the accessibility to and potential exploitation of, strategic natural resources in the area. A second consideration is the strategic value of the area regarding maritime traffic. Because the area is now a major maritime passage for large ocean vessels, any disruption of maritime traffic would have potentially serious repercussions. Should the Pananma Canal be closed for some reason, the South Atlantic takes on even more significance (more about this in Chapter 4).

A third consideration involves regional balance of power relationships involving various South American countries having direct and vested interests in any conflict involving Chile and Argentina. Due to historical resentment resulting from wars or other circumstances, definite balance of power relationships have formed between certain South American countries, with the result that Chile and Argentina can rely on other nations within South America for support and possible involvement in time of war. Thus, a small local dispute, such as the one in the Beagle Channel area, could conceivably expand into a conflict involving not only Chile and Argentina, but also no less than five other nations of South America as well.

Related to the above is a consideration regarding territorial claims in Antarctica. Because both Chile and Argentina claim areas of Antarctica which correspond to their national boundaries, any changes to these boundaries due to the Beagle Channel dispute may impact on these Antarctic claims. Needless to say, neither Chile nor Argentina desire a "loss" of Antarctic territory. (It is interesting to note that neither the U.S. nor the Soviet Union recognize national claims to territory in Antarctica).

Another consideration to the Beagle Channel conflict is the awareness of the role of nationalism and how this effects the respective outlooks of the protagonists. In virtually every mediation by a third party, Chile has been awarded all of the disputed territories, while Argentina has received virtually nothing. Consequently, Argentina continues to reject mediation findings, primarily due to her perception that she is being taken advantage of. Nationalism also is manifested in Argentina's perception that Great Britain, as arbitrator, has attempted to isolate Argentina and secure a stronger hold on the Falkland Islands. Indeed, Argentine nationalists have always questioned the Argentine agreement to submit the dispute to arbitration at all, and find no reason to trust England in the arbitration process.[2]

Therefore, there is a need to view any settlement of this dispute in political as well as documental terms.

Argentine obduracy to accepting arbitral decisions can be seen not necessarily as a result of a negative attitude towards resolving the dispute, but rather the natural tendency to resent decisions which have always given everything to Chile. Argentina views her position in the Atlantic as being threatened; consequently, any solution to the conflict will have to consider ameliorating Argentina's concerns.

It is important to consider that over the years, leadership elements of both Argentina and Chile have attempted to capitalize on the Beagle Channel dispute as a means of deflecting public opinion from domestic problems. Due to their flagging economies, pressure has built in these countries for the leadership to solve domestic difficulties; when unable to do so, the governments have, at times, tended to blame outside forces for their internal difficulties. "On both sides the symbolic importance of an issue of this kind (Beagle Channel dispute) acts as a useful pretext for extending their control over the national life."[3]

These considerations all play a distinct role in the Beagle Channel dispute. All are interrelated, and all have contributed to exacerbating this rather small, insignificant border problem into a very significant regional territorial dilemma.

B. Purpose and Scope:

The growing importance of areas not dominated by superpower influence has greatly expanded over the years and even areas as remote as the southern tip of South America have achieved certain strategic and commercial importance. An understanding of regional conflicts in areas such as these aids an analyst or decisionmaker in being able to make policy recommendations or choose between them. The Beagle Channel dispute is an example of a regional problem which has the potential for expanding into a significant conflict, and by understanding the various aspects related to this dispute it is possible to formulate policy regarding this region in a much more responsible manner.

Related to the above perspective is the decided paucity of English-language secondary-source material concerning the Beagle Channel. Qualifying this, there are many specific reports available; however, many deal only with certain aspects of the dispute whereas few, if any, deal with the dispute in its entirety. Consequently, an overall account of the Beagle Channel dispute has the potential for making a contribution to the secondary-source literature on the topic.

With these two perspectives in mind, the purpose of this study is to examine the interrelated and complex aspects endemic to the Beagle Channel problem with a goal toward providing the decisionmaker or analyst an opportunity

to become familiar with the dispute (and related problems) in its entirety.

Chapter One of this study examines the historical background of the dispute, beginning with the early voyages of the HMS Beagle and the initial discovery of the Channel. Next this Chapter focuses on the various treaties and agreements between Argentina and Chile regarding the Beagle Channel and the various disputes which have taken place concerning rights of free passage and fishing in the Channel region. Finally, Chapter One examines the events leading up to the 1977 Arbitral Award which resulted in all disputed areas being awarded to Chile.

Chapter Two has as its primary focus an in-depth analysis of the 1977 Arbitral Award emphasizing the numerous weaknesses of the Award and why it was ultimately rejected by Argentina in 1978. The basic theme of the Chapter intimates that the 1977 Award was a failure in judicial persuasion, in that it did not resolve the Beagle Channel problem but only made tensions in the area worse. The Award was a failure because it did not provide a political solution, but rather only a territorial one.

Chapter Three considers the post-1977 developments regarding the dispute. Specifically it outlines the period of increasing tensions between Argentina and Chile in 1978 and the developments leading up to the crisis period of December, 1978 which nearly resulted in war. This Chapter

goes on to outline the Papal mediation attempts from 1979 to 1984 and finally discusses the tentative 1984 Treaty currently undergoing the ratification process in the two countries.

Chapter Four discusses the various subsidiary issues related to the Beagle Channel conflict. These include problems with territorial claims in Antarctica, accessibility to oil, mineral, and food resources in the Beagle Channel region, and nationalistic stubbornness.

Finally, Chapter Five discusses the numerous geopolitical relationships between the countries most closely interested in the outcome of the dispute. Included in this discussion are the balance of power concepts associated with the Southern Cone and certain geopolitical trends which are becoming manifest in this region, of which the Beagle Channel problem is only one symptom.

Before commencing with a full discussion of the Beagle Channel dispute, however, it is important to understand the historical context in which it evolved. Thus, a discussion of both the Principle of Uti Possidetis and the historical background of boundary disputes in Latin America is necessary.

C. The Principle of Uti Possidetis:

In order to examine Latin American boundary disputes in general, and the Beagle Channel problem in particular, it is

important to be familiar with the Uti Possidetis Principle.

During the nineteenth century, the Latin American Republics, in the wake of their independence, adopted the criterion of Uti Possidetis for fixing their boundaries. This principle posited that the newly formed states would accept the same boundaries as the colonial territories they replaced.[4] This situation was designed to ensure that European powers would be prevented from making claims to some of the uncontrolled borderlands of the new countries. The principle is derived from the same term in Roman Law, which applied to an edict which preserved the existing state of possession of an immovable object such as a house or vineyard pending litigation.[5]

Agreed upon in 1810 by the South American states and in 1821 by the Central American countries, the Principle of Uti Possidetis has probably worsened the territorial conflicts in the various regions in that it has seldom provided a clear guide for a territorial award due to the vagueness of the old boundaries and the discordance of the military, civil and ecclesiastical authorities.[6] Furthermore, there are at least two interpretations of the Principle, and states tend to advance whichever one suits them best at the time.[7] Some states regard the limits of their boundaries as being those legally in force at the time of independence; others regard the limits of their boundaries as those which

were observed for practical administrative purposes by the colonial authorities.[8]

The method used to determine Uti Possidetis was to trace a line of division between the colonial administrative units in the light of available historical evidence. But, difficulties ensued due to ambiguities in most evidence provided by the claimants. Moreover, at the time of independence, some of the provincial units of the old regimes had advanced beyond the previously fixed territorial limits. The tribunals were therefore called upon to determine an approximate line on the basis of previous demarcations ("you retain what you had before").[9] Thus, Uti Possidetis became the basis (inexact as it was) for the current borders and border disputes in Latin America today.

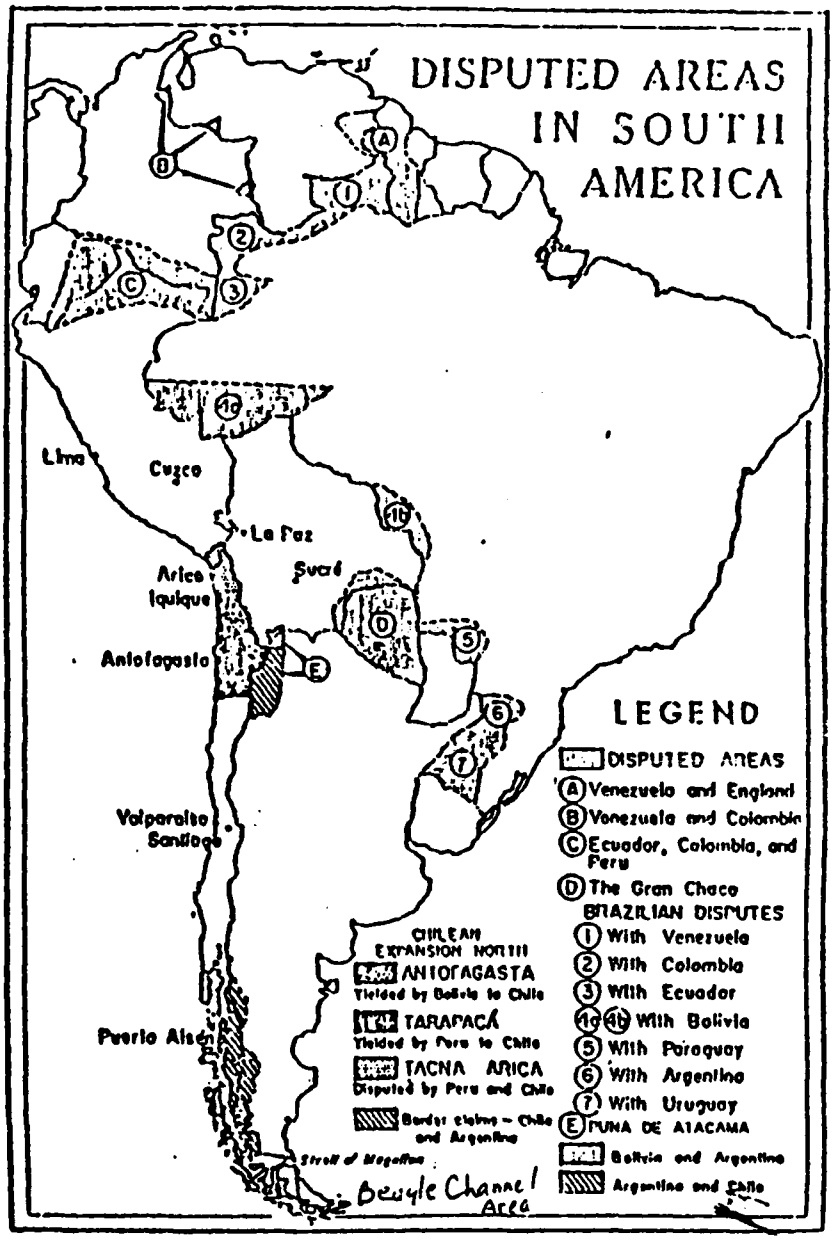
When the Principle of Uti Possidetis is applied to the Beagle Channel problem it is clear how the conflicting claims of Argentina and Chile have been determined. The boundaries left behind by the retreating Spanish Empire in the 1820's were extremely vague--in fact, some records indicate that the Captaincy General of Chile may have been assigned the whole tip of South America.[10] This puts the Beagle Channel problem at the heart of the Uti Possidetis concept, for Argentina and Chile both claimed that region at the same time. Since the concept of Uti Possidetis has as its aim "to hold on to things previously owned", Chile and

Argentina continue to grapple over the Beagle Channel area with this concept in mind.

D. Latin American Boundary Disputes:

Boundary disputes have been a major feature of international relations in Latin America following independence, for reasons rooted in colonial practice.[11] (see Map 5) Although problems of title to new lands in the Atlantic began long before Columbus, it was the collapse of the Spanish Empire in the New World due to the invasion of Spain by Napoleon which produced the impetus for future conflict in the Americas.[12] Out of the three Spanish Viceroyalties into which the major portion of the continent had been divided there arose nine states during the first decade of independence. By contrast, Brazil, where the Portuguese royal family had taken refuge from Napoleon, secured peaceful independence as a unit and became the only country to gain independence with the recognition of its former colonial power.[13] Thus, it was left to the Latin Americans to work out new rules for themselves, and in so doing, they were to play a significant role in helping to create a new climate of international law in the twentieth century.[14]

The Hispanic states started with two advantages. Not only did they share a common language in which to conduct diplomacy with a minimum of misunderstanding, but they also shared a common cultural tradition.[15] However, the



Map No. 5
Source: Burr, By Reason or Force, 1965

Spaniards had never been very precise about administrative boundaries, which were functional as well as geopolitical. Additionally, the formidable geography of South America made accurate map-making very difficult. Each new state, it seemed, had a new set of maps showing different boundaries from those of its neighbors. Consequently, all that survived from the Spanish heritage of boundary demarcation was the Roman Law belief that a title to sovereignty over an area was something that was shown in documents of title, historical arguments and written evidence.[16]

Here the Brazilians adopted a noticeably different approach. Portuguese settlement had spread well to the west and south of the initial lines of demarcation. By the early nineteenth century Portuguese title rested on the fact that they were in effective occupation of the territories in question. This doctrine of occupation was not new; early on it had been established that mere discovery without subsequent occupation was not in itself sufficient to give a right to sovereignty.[17] Consequently, these differences between Portuguese and Spanish viewpoints resulted in tensions between Brazil and the former Spanish territories bordering Brazil. These remain to the present.

Coupled with these differences in perspective between the Spanish and Portuguese a number of different types of boundary disputes in Latin America have arisen. Many, such as in the case of Brazil and Paraguay, are based on histori-

cal differences of ideology or previous conflict. Others are based on faulty geographical boundaries such as the Beagle Channel. Some Latin American disputes are based on strategic considerations, such as the Colombian desire to establish secure boundaries. Economic considerations also impact on boundary disputes, with the Chilean-Peruvian-Bolivian conflict a case in point.

Many of the boundary disputes in Latin America have been resolved by diplomacy. However, based upon the various motives for dispute or historic animosities, there remains a distinct possibility that any one of these latent disputes could erupt into a local conflict. Based on today's geopolitics in the hemisphere (Chapter Five) local disputes may potentially erupt into a more extensive regional conflict.

With this background regarding the Principle of Uti Possidetis and an overview of the origins of Latin American boundary disputes, the Beagle Channel situation can be placed in the proper perspective. Because the protagonists are both of Spanish heritage, and have inherited the Hispanic traditions of boundary demarcation, the overall historic foundations of the Beagle Channel dispute can be appreciated. Consequently, even though it is extraordinary that such a border dispute could fester for over a century between two countries, in the Latin American context this is not an aberration.

INTRODUCTION
NOTES

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(2) "Chile's Projection Concerning the Antarctic," Nacion, 14 September 1978, in U.S. Joint Publications Research Service (JPRS), p. 9

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(11) Calvert, p. 13

(12) Robert N. Burr, By Reason or Force: Chile and the

Balance of Power in South America, (Berkeley: University of California Press, 1965), p. 5

(13) Burr, p. 5

(14) Calvert, p. 4

(15) Calvert, p. 4

(16) Calvert, p. 5

(17) Calvert, p. 5

CHAPTER ONE

An Historical Perspective: Early Discovery to 1977

> "I suspect we shall pay Tierra del Fuego another visit; but of this Good Lord deliver us: it is kept very secret lest the men should desert; every one so hates the confounded country."[1]

Many people today still view the Tierra del Fuego and Beagle Channel area with the same dread that Darwin's passage above depicted 150 years ago. Indeed, the area is virtually isolated from the rest of the world due to its southern-most position at the tip of South America (see Maps 2 and 3), is bitterly cold in winter (although beautiful in spring and summer), and so underdeveloped that it is inconceivable that there could be any human interest in it apart from that of the few inhabitants whose dwellings dot the windy, mountainous stretches along the channel. But, as Chile and Argentina have looked to the south over the past century for their own benefit, whether they be for economic potential, strategic defense, or just simply national aggrandizement, the Beagle Channel has become proportionally more important over the years and is now a major element in the foreign policies of these two countries as they relate to each other.

Because the significance of the Beagle Channel has grown so much, it is important to trace the recorded history of the Channel to the present so as to establish a clearer idea of the scope of the conflict between Chile and Argentina in the region. In this regard, it is necessary to outline the early expeditions to the Tierra del Fuego area and the subsequent discovery of the Beagle Channel during an expedition to the area by Lt. FitzRoy. Later, as the area became more accessible, both Argentina and Chile began making in-roads there. Consequently, the Beagle Channel region was included in boundary treaties and official agreements between the two countries. Thus, an examination of these treaties and agreements is necessary, in that the 1881 Treaty, the 1893 Protocol, the 1902 Arbitration Agreement, and the 1977 Arbitral Award (and subsequent near-war in 1978) all have combined to set the legal and historical precedents which have led to the continuance of the conflict over the Beagle Channel to the present.

A. Discovery and Early Expeditions

On 22 May 1826, a British surveying and hydrographic expedition departed from Plymouth, England under the command of Captain Philip Parker King, Royal Navy (RN). This expedition, which was comprised of the ships HMS Adventure and HMS Beagle, had as its mission "to conduct an accurate survey of the southern coasts of South America, from the

River Plata around to the west and Chile."[2] During this time, the British overseas headquarters for British interests on the Atlantic side of South America was based in Rio de Janeiro under the command of Admiral Robert Otway. Captain King, in command of HMS Adventure, and Captain Stokes, in command of the HMS Beagle, were directly subordinate to Otway once they arrived in the South Atlantic zone. Shortly after arriving, Captain Stokes, as a result of scurvy and a mental breakdown, committed suicide, putting Lieutenant Robert FitzRoy, RN, in command of the HMS Beagle. FitzRoy was immediately ordered to begin the exploration and investigation of the Patagonian region of South America.

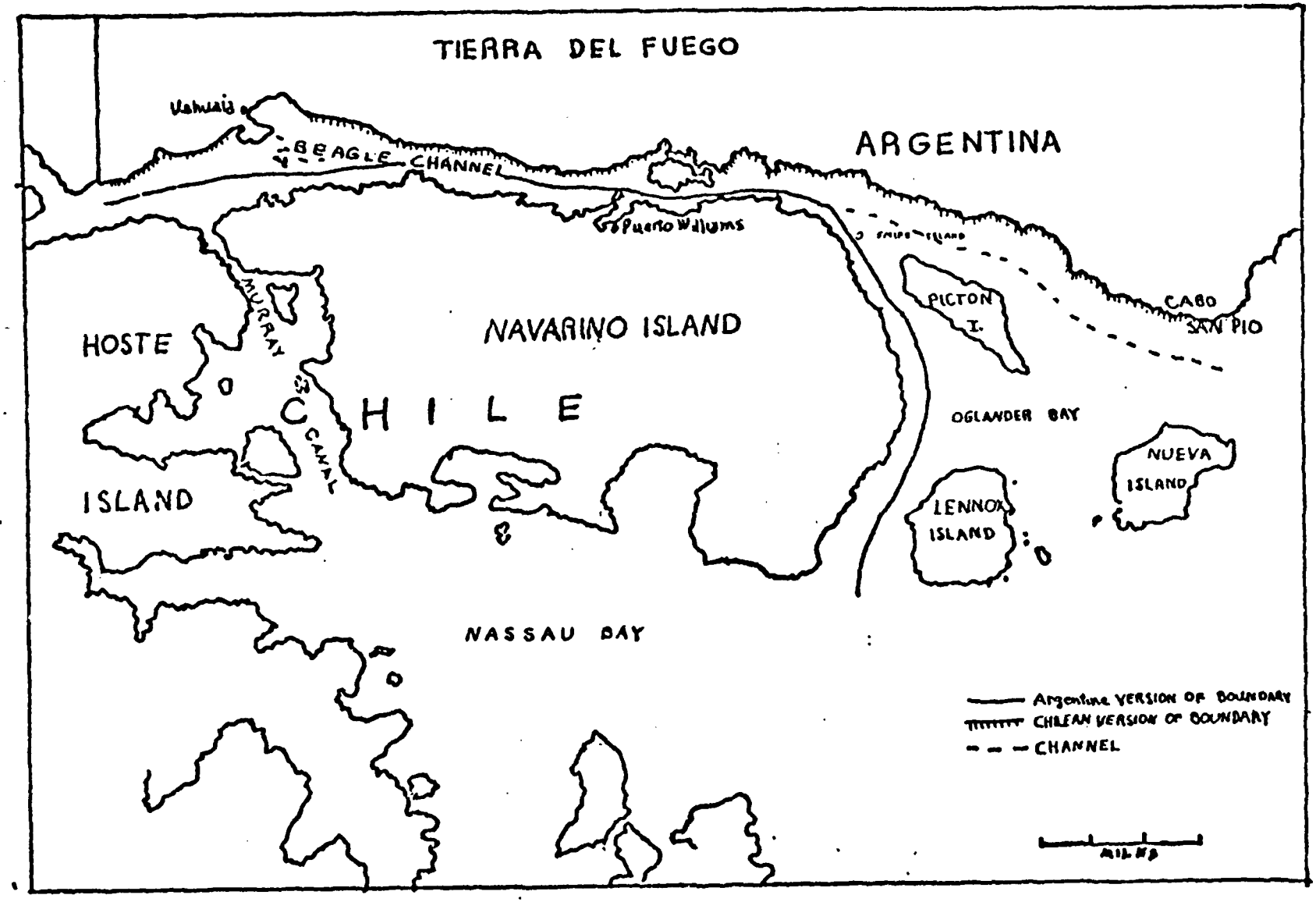
Thus, by fate and circumstance, FitzRoy assumed command of the HMS Beagle and was tasked with the responsibility to chart an extremely large area of the South American coast, some of it for the first time. Operating independently of Captain King, FitzRoy rounded Cape Horn on 14 March 1830, and proceeded up the western coast of South America.

On 12 April 1830, due to rough weather, the Beagle was forced to anchor in the vicinity of Orange Bay before proceeding further up the western coast. Prior to departure from Orange Bay, Mr. M. Murray, a civilian master, together with a small crew was dispatched in a long boat to explore the surrounding area. On 14 April 1830, Mr. Murray "passed through a narrow passage about one-third of a mile wide (later called Murray Canal) (see Map 6) which led him into a

straight channel, averaging about two miles or more in width and extending nearly east and west as far as the eye could reach."[3] What Murray did not know at the time was that he was entering the Beagle Channel, which if he had continued transitting either to the east or west, would have taken him to the Atlantic or Pacific Oceans respectively. Thus, Murray and his small accompaniment became the first Europeans to see and enter the Beagle Channel. A few weeks later FitzRoy, aboard the Beagle, also transitted the Channel. FitzRoy attached no particular significance to its discovery, since only one more mention of the Channel is recorded in the three-volume Narratives, despite the fact that he made several transits of the channel during the latter part of his first voyage.[4]

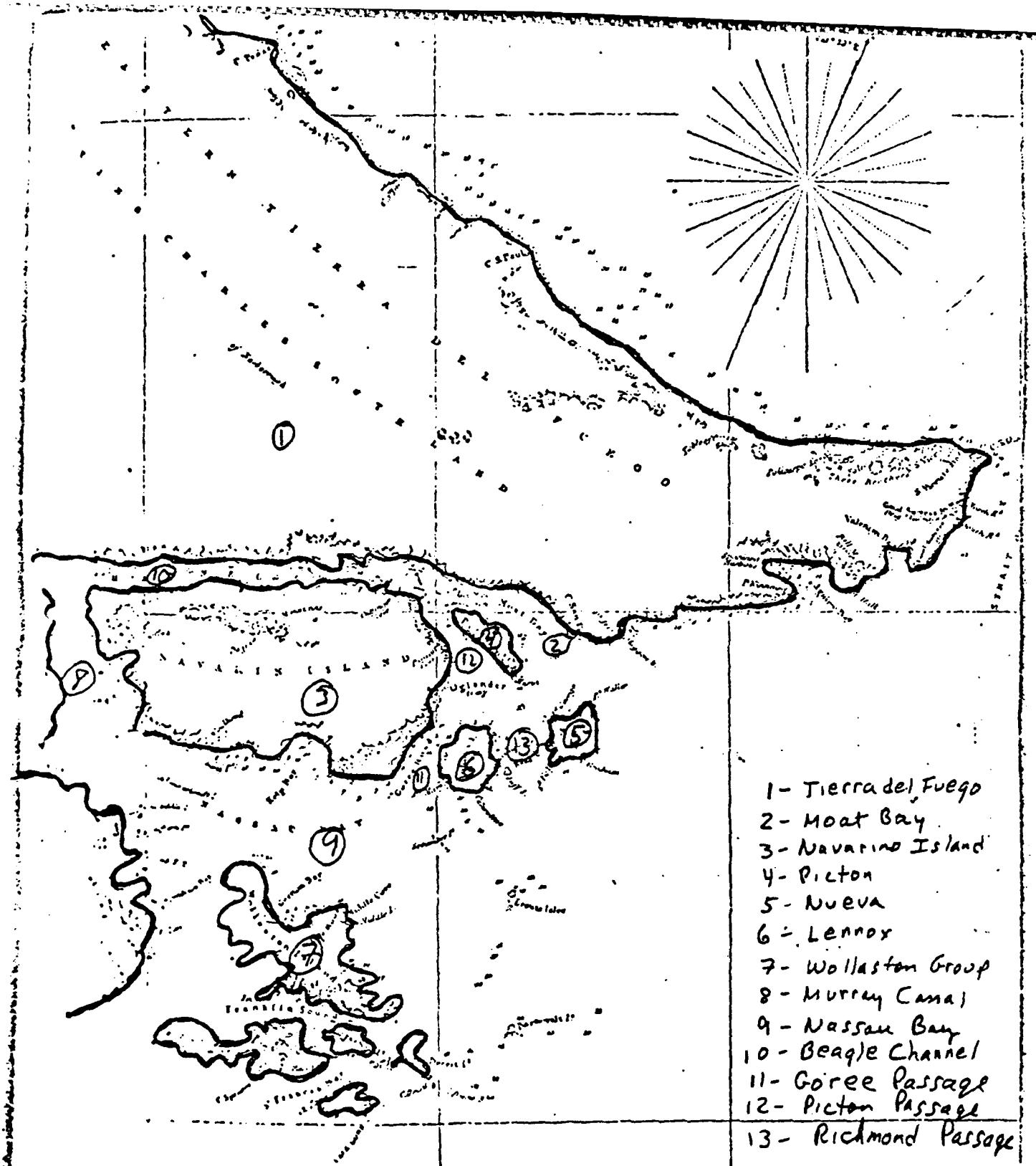
Three years later, on Beagle's second voyage in 1833, with Charles Darwin aboard, two additional transits of the Channel were made. FitzRoy's more detailed second reference to the Beagle Channel in the Narratives varied only slightly from his first description:

> "The Beagle Channel, which extends from Christmas Sound to Cape San Pio, a distance of a hundred and twenty miles, with a course so direct that no points of the opposite shore cross and intercept a free view through."[5]



Map No. 6

Enlargement of the Beagle Channel/Murray Canal Area Source: Fisher, US Naval War College



Map No. 7
Original FitzRoy Chart of the Beagle Channel Area
Source: Fisher, US Naval War College

Included in FitzRoy's description of the Beagle Channel is one chart (see Map 7) which illustrates the area of discovery.

Charles Darwin, in his account of the HMS Beagle's second voyage, has this to say about the Channel:

> "This Channel, which was discovered by Captain FitzRoy (and Mr. Murray) during the last voyage, is a most remarkable feature in the geography of this, or indeed any other country. Its length is about 120 miles with an average breadth, not subject to any great variation, of about two miles. It is throughout the greater part so extremely straight that the view bounded on each side by a line of mountains, gradually becomes indistinct in the perspective. This arm of the sea may be compared to the valley of Lochness in Scotland, with its chain of lakes and entering firths...the Beagle Channel crosses the southern part of Tierra del Fuego in an east-west line: in its middle it is joined on the south side by an irregular channel at right angles to it, which has been called Ponsonby Sound."[6]

(The irregular channel mentioned by Darwin above is the

Murray Canal named after the discoverer of the Beagle Channel).

These early descriptions of the Channel, from both FitzRoy's and Darwin's own observations, have been crucial to the main debate in the Beagle Channel dispute for over a century: where indeed does the Beagle Channel terminate on its eastern end?, and were the Beagle explorers actually looking down the Beagle Channel or down a connecting tributary? Although all references by Darwin and FitzRoy are made as having observed the Beagle Channel accurately, controversy has subsequently surfaced as to the accuracy of the charts plotted by FitzRoy compared to the magnetic measurements. Although a more detailed look at the cartography of the area will be discussed later in this chapter, suffice it to say that according to one theory, the difference between grid and magnetic azimuths in FitzRoy's charts may be in error by as much as 18^{o} magnetic east from true north.[7] Consequently, should evidence of this error be verified and officially accepted, more territory could subsequently be afforded to Argentina. However, the original descriptions and charts rendered by FitzRoy and others, and not re-surveys, have been the basis for negotiations over this territory.[8]

In summary, the following are the main points established from FitzRoy's early surveys of the Beagle Channel area:

1. The Beagle Channel is nearly straight, running east to west roughly along parallel 55° S. The word "nearly" later becomes significant for there have been varied interpretations of just what the term actually means. The Chileans equate "nearly" very narrowly, to mean "just about" or "almost completely," whereas the Argentines interpret the term almost negatively, that is, if the channel had been straight, FitzRoy would not have used the term "nearly" at all, hence the channel does not follow a straight line.[9]

2. FitzRoy's second description of the Beagle Channel, while being precise in establishing the length, that is, Christmas Sound to Cape San Pio, is not supported by his chart, which perhaps through error, shows the title of the Beagle Channel only to the point where the Channel begins to curve. Argentina claims that the Beagle Channel terminates at this point, while Chile maintains that the Beagle extends to Cape San Pio. This complication is further exacerbated by questions as to the accuracy of FitzRoy's magnetic measurements.[10]

Thus the problem of determining the precise extremity of the Beagle Channel, which has its roots in these first descriptions and charts, is the key element to all subsequent territorial disputes in the area. By not firmly establishing the true position of the Beagle Channel, and by not indicating on the map the words "Beagle Channel" along the full extent of the waterway as plotted on the map,

FitzRoy inadvertently created a situation whereby both Chile and Argentina can interpret the location of the Channel in ways advantageous to their respective national interests and thus base subsequent territorial/maritime claims on this foundation.

The next mention of the Beagle Channel, except for periodic revisions to British Sailing Directives, is the Argentine-Chilean Treaty of Limits of 1881. This Treaty is the foundation for all subsequent Argentine-Chilean involvement and conflict over the Beagle Channel.

B. The Treaty of 1881

After 1833, the Patagonian area gradually became settled by both Chileans and Argentines, the former in Puntas Arenas, and the latter at Ushuaia. By 1878, due to border problems in the north (the Puno area in the Andes), Argentina and Chile were on the verge of war over their frontiers. During this time, Chilean authorities created an incident by seizing the French vessel *Jeanne Amelie* in Argentine waters, even though it had Argentine permission to be there.[11] As a result, it was agreed in 1878 to submit the border problems to British arbitration for resolution, but the initial attempts at agreement failed. In 1880, the U.S. representatives to Santiago and Buenos Aires offered their good offices, which made possible the ratification of the landmark Irigoyen-Echeverria Treaty of Limits of 1881,

which was signed in Buenos Aires on 23 July. (see Appendix I).

The Treaty of 1881, for the first time, established a fixed boundary between the two countries. Argentina and Chile agreed to partition Patagonia and the island of Tierra del Fuego, which earlier in the nineteenth century had been regarded as Chilean territory even though Chile had not occupied it until the 1870's. The intention of the Treaty was to give Argentina both the land and a sphere of influence on the Atlantic side and to Chile territory on the Pacific side.[12] As a result, the Irigoyen-Echeverria Treaty of 1881 delineated the 2600 mile Andean border between the two countries and divided the large island of Tierra del Fuego at $68^{o}34^{o}W$, with Chile controlling the eastern mouth of the Strait of Magellan, and Argentina getting Patagonia (see Maps 3, 4 and 6).

The Treaty consists of six articles, of which numbers II and III pertain to the Beagle Channel and the Patagonian area. Article I states that the boundary between Chile and Argentina shall be the Andes Mountains, a line running "from the tops of the highest peaks, dividing the waters between the two countries, south until the 52nd parallel." Article I further states that in the event of difficulty in determining where the watershed divides the area the limits will be determined by a joint Chilean-Argentine committee composed of experts. Here it is obvious that the Treaty

designers were aware of both the short and long-range problems that would be encountered upon closer examination of the frontiers, for a general statement setting up a 2600 mile frontier based on a line drawn between tops of the highest mountains in a range is too broad.[13] It is also interesting to note that even at the time of drawing up the Treaty, both countries were aware that future problems could arise.

Article II of the Treaty established the lateral boundaries to the north of the Magellan Straits, and does not directly affect the Beagle Channel, except the last sentence which leads directly into Article III: "The territories to the north of such a line (52nd parallel of latitude) shall belong to the Argentine Republic; and to Chile those extending to the south of it, without prejudice to what is provided in Article III, respecting Tierra del Fuego and adjacent islands." The general trend, therefore, which continues throughout Chilean and Argentine arguments about who owns what territory, is that the land to the north belongs to Argentina and the land to the south belongs to Chile. This argument, however, does not specifically refer to the Beagle Channel, but in general, to the territories north of the 52nd parallel, or to the south of that latitude.[14]

Article III is the attempt to permanently establish the

boundary between Argentina and Chile in the Tierra del Fuego region. It is important to note that this Article, previously referred to in Article II, and carrying with it the sense that those lands to the north are Argentine and those to the south are Chilean, is the official determination of the frontier.[15] Article III establishes an east-west definition to Tierra del Fuego by a vertical line running from a set of specific quadrants until it touches the Beagle Channel. Everything west of this line belongs to Chile and everything east to Argentina. This is similar to the type of division in Article II, where there is reference to territory being delineated on a north-south axis. However, a number of problems arise upon closer inspection of the words in Article III. The first comes with the phrase "*until it (the line) touches* Beagle Channel." This is the core to the whole problem of determining the boundary of the Beagle Channel, in that if this phrase is interpreted literally, as the Chileans do, then Argentina has no right to any portion of the Beagle Channel whatsoever.[16]

A second problem which has its origins in Article III is the island problem: "and to Chile shall belong all the islands to the south of Beagle Channel up to Cape Horn, and those there may be to the west of Tierra del Fuego." By itself, this is a declarative statement, but depending on knowing what is, or where is "south of the Beagle Channel" is the determining factor to understanding the meaning of

this sentence. By itself, the reference to the general geographical location "all islands to the south" has no firm root. Chile claims that the Channel extends to a specific point in the Atlantic, namely Cape San Pio; however, Argentina claims that the eastern end of the Beagle Channel lies much further westward (see map 6). Therefore the islands referred to as being located south of the Beagle Channel and belonging to Chile have become the center of controversy from 1881 to the present, since their position in relation to the eastern entrance to the Beagle in the language of the Treaty is determined by their relative position to the Beagle Channel and not by geographic coordinates.[17] Chapter 2 of this study gives another brief outline to this problem in connection with establishing the basis for the respective claims filed as Arguments in the arbitration proceedings beginning in 1971 leading up to the landmark 1977 Arbitral Award.

Article IV of the Treaty establishes a joint committee to fix the boundaries outlined in Articles II and III above. Article V refers to the Straits of Magellan and the right of free navigation for all flags through these Straits. Article VI refers to the perpetuity of the territories that belong to the respective countries and allows for future negotiations on the boundary problem if and when the need arises.

Chile regards the Treaty of 1881 as an all-encompassing and complete statement, whereas Argentina regards it in more general terms. Argentina views the Treaty as lacking certain principal points, such as the concise delineation of the eastern end of the Beagle Channel. The significance of these two divergent viewpoints is that all ensuing discussions and arbitrations revert back to the various divergent interpretations of the 1881 Treaty, a situation which has prevented a mutually acceptable agreement for over 100 years. The lack of a clear delineation of the eastern end of the Beagle Channel is thus the genesis for future problems in the area.

C. The Protocol of 1893

The Case of the Cordillera of the Andes involving conflicting claims to the mutual border by Argentina and Chile had supposedly been settled by the Treaty of 1881 on the belief that the highest "crests" of the mountains were equivalent to the "water-parting" line. As this proved to be incorrect, the Protocol of 1893 sought to rectify the situation (see Appendix II).[18]

The Protocol of 1893 was established to further clarify certain border questions still not resolved by the Treaty of 1881 and to "remove the difficulties with which the 'Experts' have met or may meet in the fulfillment of their commission" to determine the actual boundaries between the

two countries.[19] Reading like a working document between two engineering firms, the Protocol is fairly specific as to how the boundaries were to be demarcated by the "Experts." Based on the foundations of the 1881 Treaty, the Protocol of 1893 begins with four articles pertaining specifically to boundary delimitation and the areas to be designated as Chilean or Argentine. As with the 1881 Treaty, no use is made of geographic coordinates except for the generalized concept of the 52nd parallel of latitude; rather, the Protocol is concerned primarily with geographic features.

Article I of the Protocol specifies that the boundary between Chile and Argentina shall be divided by the highest summits of the said cordilleras which "divide the waters, and shall pass between the sources flowing down to either side...." Additionally, Article I outlines specifically the Argentine and Chilean areas of influence based on geography:

> "Consequently, there shall be held as perpetually belonging to the Argentine Republic and as under its absolute dominion all the lands and all the waters...to the east of the line of the highest summits of the Andes, and under absolute dominion of Chile, all the lands and all the waters...lying to the west of the highest summits of the Cordillera de los Andes which divide the waters."

Further amplifying on these boundary limits, Article II goes on to delimit territories to the east and west of the Andes:

> "...the Argentine Republic retains its dominion and sovereignty over all the territory extending to the east of the main ranges of the Andes as far as the Atlantic Coast, and the Republic of Chile the territory to the west as far as the Pacific Coast; it being understood that, by the provisions of that Treaty (1881), the sovereignty of each State over the respective littoral is absolute so that Chile cannot claim any point towards the Atlantic nor can the Argentine Republic claim any point towards the Pacific."

Based on the above, Article II of the Protocol assumes significance as the foundation for one of the most important elements in the overall context of the Beagle Channel dispute: the Argentine Bi-Oceanic Principle. This principle, derived from the Uti Possidetis of 1810 which accords the Atlantic littoral to Argentina and the Pacific littoral to Chile, has become over the years the heart of the Argentine argument in favor of its claims of sovereignty to the eastern end of the Beagle Channel and the three islands of Picton, Nueva and Lennox (see Maps 2 and 3) which are located near the eastern end of the Beagle Channel and

which are included in all negotiations attempting to determine the eastern extremity of the Beagle. Due to its significance, the Bi-Oceanic Principle will be examined in more detail below. Additionally, Chapter 2 of this study also discusses the Principle in regard to the 1977 Arbitral Award.

The Bi-Oceanic Principle

The Argentine Viewpoint: The idea appears simple: Chile on the Pacific Ocean, Argentina on the Atlantic Ocean, each occupying its own place and none in the other's sphere of influence. Today, Argentines uphold the fact that they have not ceased to defend this principle since the last century; that this thesis was confirmed by the 1881 Treaty, the 1893 Protocol and the 1902 Act (to be discussed later); that it is the same as the one the 1977 Arbitral Award rejected and finally, that this is the key to the solution to the southern zone problem. In Argentina's view the Bi-Oceanic Principle is not negotiable:

> "...since there are no natural barriers in the water to distinguish one from the other (oceans) it is necessary to negotiate the delimitation; where one ends and the other begins. Argentina has maintained in official and private documents and statements that the boundary between the two

oceans is the meridian that passes through Cape Horn."[20]

According to Argentina, the Bi-Oceanic Principle, although it appears (ostensibly) in the 1893 Protocol, is a part of the 1881 Treaty, for which reason it forms (with that Protocol) a single juridical body. Ratified by Chile in 1902, the 1881 Treaty (and 1893 Protocol) established a "substantial political *norm* for the controversies which might develop in the future."[21] However, Argentina has always viewed Chile as ever pressing toward the Atlantic, and sees Chile as ignoring this Principle:

> "In the continental area, taking advantage of Argentine 'frontier neglect' Chile attempted to win space toward the east in some local areas. But its main action was to develop to the south of the Beagle Channel the last available window on the Atlantic. For this purpose, a special interpretation of the Oceanic Principle was formulated, to the effect that it was only valid in the continental sector."[22]

This Argentine concern of Chilean expansionism (discussed more fully in Chapter 4) culminates in the Argentine perception that Chile is attempting to challenge the Cape Horn meridian (67'W) as the boundary between Pacific and Atlantic. As a manifestation of this belief, Argentina has

vehemently rejected any attempts to allow Chile any access at all to the Atlantic. It is clear to Argentina that in any settlement to the Beagle Channel dispute. Chile will have to accept the Bi-Oceanic Principle and not impose itself into the Atlantic.

Chilean Viewpoint: Chile takes a decidedly contrary approach to the historical development and significance of the Bi-Oceanic Principle. Whereas Argentina views the principle as an underlying tenet of the 1881 Treaty (and additional Protocol of 1893), Chile perceives the Bi-Oceanic Principle as a relatively recent Argentine bargaining condition being vigorously imposed on the arbitration/ mediation process: "The so-called Bi-Oceanic Principle is neither old nor traditional. The Argentine government suggested it very discretely for the first time towards the beginning of the 1960's, then during the Arbitration proceedings (1970's) with growing insistence. After the 1977 Arbitral Award, it has even been stated as an essential aphorism."[23]

According to Chile, during the negotiations which led to the signing of the 1881 Treaty the distribution of territorial or oceanic spaces south of Tierra del Fuego was never mentioned in accordance with any "oceanic criteria" neither under the form of a principle the parties would have agreed upon, nor as a unilateral axiom involved by Argentina in face of a recalcitrant Chile.[24] Furthermore, in the 1881 Treaty, the Atlantic Ocean is mentioned only once; there is

no reference made to the Pacific. As to the 1893 Protocol, it contains only a limited and specific provision according to which, to the north of parallel 52 (Andes Mountains) Chile would not claim anything toward the Atlantic Ocean and Argentina would not claim anything toward the Pacific. In support of this, Argentine Admiral Ernesto Basiloco indicated that Article II of the 1893 Protocol referred to "the territory located north of the Strait of Magellan," and "...that (Bi-Oceanic) Principle confirmed in the 1893 Protocol never comprised nor intended to refer to that archipelago of Tierra del Fuego."[25]

Indeed, Chile maintains that far from converting the Oceanic Principle into an essential element of the 1881 Treaty, the manner in which the 1893 Protocol is structured confirms that the oceanic "element" taken into account in the Andean sector cannot be considered as an "omnipresent Oceanic Principle" applicable to zones not mentioned, as is the case of the islands located south of Tierra del Fuego. In other words, Article II applies to the Andean sector along the 52nd parallel only, and its provisions cannot be extended to other areas outside of the "Andean Mountains" context.[26]

Chile continues its argument by stipulating that the 1902 Arbitration Treaty acknowledged Chile's eastern frontier as the "Andes mountains from the north to the south until parallel 52, waiving rights on the whole or part of

Patagonia." As compensation, Argentina recognized as Chilean territory "the Magellan Straits, the major part of Tierra del Fuego and the islands located to the south of the latter."[27] Additionally, in the Clarifying Act dated 10 July 1902 (and discussed below), Chile dismissed the Argentine claim of an "Oceanic Principle" (as a result of terminology stating that both governments would reduce their respective naval forces to produce a discrete equivalence between them) as "having nothing related to the 1881 Treaty, *nor to the territorial distribution contained therein.*"[28]

Throughout the twentieth century, Chile has maintained that no "Oceanic Principle" was ever articulated by Argentina. Only during the course of the 1971-1977 Arbitration hearings did the Argentine defense "draw a theory which shaped in advance its present claim over the southernmost islands, namely, that the three islands did not belong to Chile but rather they belonged to Argentina due to their proximity to the Atlantic; and further, that the islands Chile may receive should also be located west of the Cape Horn meridian."[29] Thus, in Chile's eyes, Argentina had prepared an unjustified extension of the geographical scope of the dispute with a view to a claim over the islands located further south. In essence, Argentina wanted to diminish the significance of the course of the Beagle Channel as a stipulation of the 1881 Treaty and instead uphold the idea that the three islands belonged to Argentina

anyway because they were east of the alleged vertical frontier of the Cape Horn meridian (67°W).

In summary, Argentina claims that the Cape Horn meridian is the dividing line between the Atlantic and Pacific Oceans. Everything east of that line is Argentine; everything west is Chilean. This is the crux of the Bi-Oceanic Principle. Consequently, Argentina claims that the Beagle Channel runs for 120 miles, then instead of continuing straight into the Atlantic, it turns south just east of Navarino Island. Chile, on the other hand, insists that all documents point to the Beagle Channel running 150 miles to Cape San Pio, which allows Chile access to the Atlantic with the Cape then becoming its eastern frontier (plus the ultimate 200 mile extension to be discussed in Chapter 4)(see Map 6).

The remaining articles of the 1893 Protocol specifically relate to instructions to be given to the "Experts" in demarcating the aforementioned boundaries. As a document, the 1893 Protocol only served to confuse the issue of delimitation of the southern boundaries and heighten uncertainties, thus paving the way for continued questions and disagreements. As the base document for the promulgation of the Argentine Bi-Oceanic Principle, it created more controversy than it solved.

E. Maps and Atlases

In order to understand the complexity and lack of clarification concerning the issues of the Beagle Channel dispute, one only has to consider the various Argentine and Chilean controversies surrounding the myriad of maps and atlases defining the area. In both Chile and Argentina a small group of writers, many of whom are retired naval officers, have published articles and books dealing with their respective country's rights to the Beagle Channel. As the area became progressively more surveyed, and hydrographic information became more readily available, inaccuracies in the original boundary line of the Beagle Channel became apparent. Since the original Treaty of 1881 did not precisely define the eastern extremity of the Beagle Channel, both countries have rendered their own interpretations as to where this point lies. Since the demarcation of a boundary is a precise undertaking, Chilean and Argentine experts have spent a great deal of time and effort composing their studies to back up their respective government's point of view.

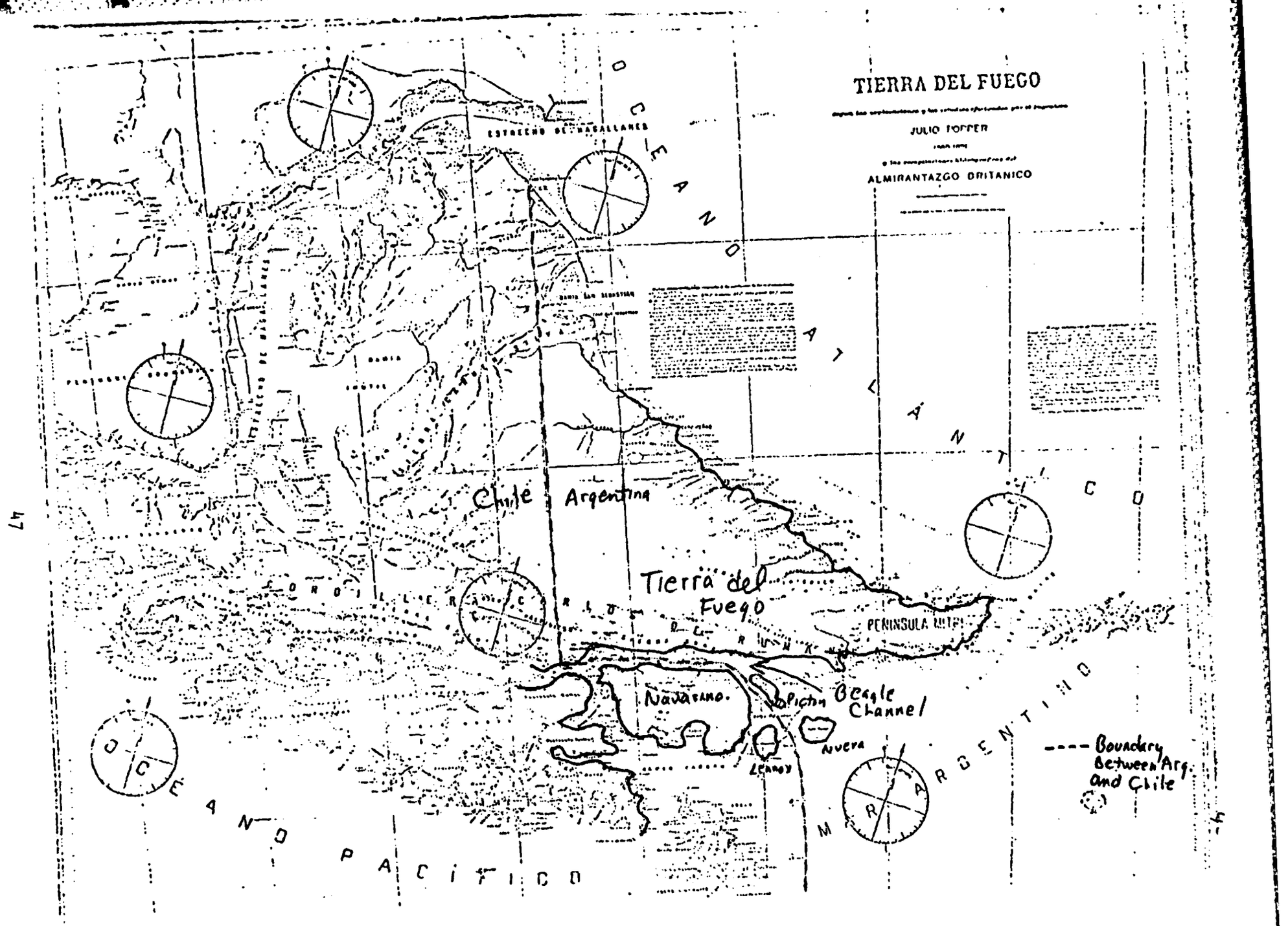
The battle of atlases, maps and wandering boundary lines commenced in 1891 with the publication of a new Argentine atlas.[30] The section of the atlas concerned with the Beagle Channel was prepared by the British explorer, Julio Popper. The Chilean hydrographic experts claimed that this was the first alteration of any map of the area since

FitzRoy's survey in 1830.[31] The Argentines, however, claimed that since the entire area had been only slightly explored, discrepencies and subsequent changes were bound to occur as more knowledge of the region was made available.

It is at this point that the Chilean and Argentine interpretation of Beagle Channel cartography embark on separate courses. The Chileans tend to hold to FitzRoy's original chart as sacrosanct, refusing to yield to any later additional information.[32] The fact that prior to the Popper map of 1891, (see Map 8) Chilean and Argentine atlases were in agreement is accorded wide acknowledgment in Chile.

The Argentine basic claim is that the early FitzRoy charts contained certain inaccuracies that were corrected as more information about the region became known.[33] Since Argentina's southern horizontal boundary depends on the line of the Beagle Channel, Argentina has always been concerned over the vital issue of where the eastern extremity to the Beagle Channel is located. Beginning with the Popper Map, and continuing down to the present, Argentina has proposed several theories, all based on the same original FitzRoy documents and other early papers, that the entrance to the Channel does not lie along the east-west axis as the Chileans so claim, but rather lies west and south of the Chilean claims.[34]

The first theory has already been discussed, that of Julio Popper, who, in 1891, placed the Channel running



Map No. 8
Popper Map--1891

Source: Fisher, US Naval War College

between the islands of Nueva and Lennox (see Map 8). Theory two, which deals with the position of Moat Channel (see Map 7), listed as Moat Bay, supports the Argentine hypothesis that since Moat is a channel, the Beagle Channel must be to the south of the Moat Channel and falling therefore south of Picton and Nueva Islands, thus favoring Argentina in its claims to the eastern extremity of water to Cape San Pio.

Argentine theories three and four are concerned with the erroneous positions of the small islands of Nueva and Picton, as originally charted by FitzRoy. These theories state that the original cartography was inaccurate and that since newer studies were made, the islands actually are in a position five to six miles west of the originally charted position. Argentine theory Five is perhaps the most detailed study undertaken. When FitzRoy originally charted the area, he did not correct for magnetic variation of azimuth relative to grid azimuth, thus his positions are in error by the difference of the magnetic variation for that zone, that is, 18 degrees. This shift of 18 degrees east from true north to magnetic north would place the main axis of the channel farther west, and thus provide support for the Argentine position.[35] Expanding on this, if one examines the original FitzRoy findings, there are numerous eastward variations of as much as 25 degrees (see Figure 1). Thus, the 18 degrees correction is not altogether unreasonable. In deference to FitzRoy, however, his voyage was in

an area in which few, if any accurate measurements had been taken previously. In addition, it was determined that certain malfunctions in equipment had taken place.[36] Indeed, FitzRoy is given much credit for his endeavors aboard the Beagle:

> "The voyage which Captain FitzRoy had to perform promised to furnish few, if any, such opportunities of examining the state of magnetism of the cylinder between the departure from and the return to England; and as it cannot but be extremely discouraging to officers to make observations which they have reason to apprehend may prove unavailing from defect in the instrument employed--it must be regarded as exceedingly creditable to Captain FitzRoy and his officers, that, with the knowledge of the change which the cylinder had undergone in the preceding voyage, they persevered in diligently observing, and carefully recording, its time of vibration, at most of the principal ports which they visited in their five year's duration."[37]

Despite the diligence applied by the HMS Adventure and HMS Beagle personnel, the relatively unknown aspects of the southern hemisphere, especially as regards magnetic fields

TABLE IV.

OUTER, OR SEA COAST, OF TIERRA DEL FUEGO.

In order to adapt the longitudes of the places mentioned in this Table to the meridians of Port Famine and St. Martin Cove, at Cape Horn, the following corrections* have been made to Captain Fitz-Roy's chronometrical results, viz:—

Townshend Harbour, Stewart Harbour, Doris Cove, March Harbour, Good Success Bay } have been placed { 0′ 11″ / 0 23 / 0 33 / 1 6 / 2 0 } to the Eastward of Captain Fitz-Roy's chronometrical deductions.

By Captain Fitz-Roy's observations St. Martin Cove would be in long. 67° 31′ 18″, which is 4′ 15″ to the Westward of the mean of upwards of thirty chronometrical results from Monte Video. The difference has, therefore, been equally divided between North Cove and St. Martin Cove; the longitude of the latter being taken at 67° 29′ 03″, and of Port Famine at 70° 54′.

Coast, &c.	Name of Place.	Name of Particular Spot.	Latitude South.	Longitude West.	Variat. East.	Tides: H. W. at F. & C.	Tides: Direction of Flood, and Rise of Tide.
			° ′ ″	° ′ ″	° ′	H. M.	
Sea Coast of Tierra del Fuego.	Dislocation Har.	Near the projecting pt.	⊙52 54 13	C. 74 33 03	23 53	1 40	4
	Week Islands.	Saturday Harbour	53 11 26	74 14 36	24 0	2 0	4
	Latitude Bay	West point of entrance	⊙53 18 40	C. 74 12 6	23 56	2 5	4
	Deepwater Snd.	.....	⊙53 34 58	C. 73 34 46			
	Laura Basin ...	North point	⊙54 06 58	C. 73 15 20		1 0	4
	Noir Roads ...	Penguin Point	54 28 15	72 56 00	24 40	2 30	4
	Cape Noir	Extremity	54 30 00	73 01 30	25 00		
	Tower Rock ...	South Easternmost ...	54 37 05	72 59 00			
	Cape Gloucester	Summit	54 30 00	73 01 30			
	Fury Harbour ..	Island in the entrance	54 28 00	72 14 00	24 30	2 30	4
	Isabella Sound	.....	⊙54 13 00				
	North Cove ...	.....	⊙54 24 26	C. 72 14 46	24 30	2 30	4
	Mount Skyring	Summit	54 24 44	72 07 40			
	St. Paul	South-east Peak	54 39 48	71 56 50			
	Townshend Har.	Islet on N. side of Harb.	⊙54 42 15	C. 71 51 49	24 34	1 30	4
	Cape Castlereagh	Extremity	54 56 40	71 25 00			
	Stewart Harbour	E. side of Shelter Island	⊙54 54 24	71 25 05	24 14	2 50	4
	Doris Cove ..	East Point entrance...	⊙54 58 45	71 05 35	24 16	3 0	4
	Cape Alikhoolip	Extremity	55 11 55	70 47 50			
	York Minster...	Summit	55 24 30	70 01 50			

continued..

* In the Appendix to the second volume these alterations are discussed.—R. F.

TABLE IV.—*continued.*

Coast, &c.	Name of Place.	Name of Particular Spot.	Latitude South.	Longitude West.	Variat. East.	Tides: H. W. at F. & C.
			° ′ ″	° ′ ″	° ′	H. M.
Sea Coast of Tierra del Fuego.	March Harbour	Entrance of the Basin	⊙55 22 35	69 53 57	24 4	3 10
	Adventure Cove	Rocky Pt. N. end of Beach	⊙55 21 12	69 50 00	24 40	3 10
	Ildefonsos	.....				
	Henderson I^d.	.....	⊙55 35 46	68 58 00	(Mount Dennby.)	
	—	.....	⊙55 35 54			
	Orange Bay.....	Middle of Bay	⊙55 30 50	C. 68 00 23	23 56	3 30
	St. Martin Cove	Head of the Cove	⊙55 51 19	C. 67 29 03		
	Cape Horn	Summit	⊙55 58 41	67 10 53		
	Lennox Harbour	Point at N. end of Beach	⊙55 17 04	66 44 03	23 40	4 40
	Evouts Island..	Centre	55 33 00	66 40 03		
	Diego Ramirez	S. or Boat Island, summit	56 26 35	68 36 20	24 0	
	—	Northernmost Rock...	56 22 25	68 36 45		
	Barnevelt Islds.	Centre	⊙55 48 54	66 39 48		
	Spaniard Harb.	Point Kinnaird	54 57 05	65 42 54		
	Good Success Bay	S. side, near Sandy Beach	⊙54 48 02	C. 65 09 18	22 42	4 15
	Cape San Diego	Extremity	54 40 35	65 01 53		

TABLE V.

COAST OF CHILE.

Coast, &c.	Name of Place.	Name of Particular Spot.	Latitude South.	Longitude West.	Variat. East.	Tides: H. W. at F. & C.
			° ′ ″	° ′ ″	° ′	H. M.
Coast of Chile.	S^{ma} Carlos. Chiloe	Sandy Point	⊙41 51 34	C. 73 50 25	18 33	11 15
	Talcahuano.....	Fort Galvez	⊙36 41 58	C. 73 03 05	16 47	
	Valparaiso.....	Cerro Alegre.....	⊙33 01 58	C. 71 34 12	15 18	
	Juan Fernandez	Fort San Juan, in Cumberland Bay...	⊙33 37 36	C. 78 46 04	17 13	

Figure No. 1 Excerpt from Table of Measurements from HMS Beagle in Tierra del Fuego Region; Narratives, 1839

and their behavior, tended to mystify experts once the data had been accumulated; and it was not until much later that magnetic fields in the southern hemisphere began to be understood. Major Sabine of the Royal Army indicates that:

> "...in regard to the changes of the variation in the southern hemisphere; namely that taking for our point of departure the meridian of 65° west in South America, we find that all stations east of that meridian to the Cape of Good Hope inclusive, the north pole of the needle has moved towards the west; and that all the stations west of the same meridian to Mauritius inclusive, the north pole of the needle has moved towards the east....it follows, from what has been said that the lines on the western side of the concentric system in the South Pacific have an eastward movement, which presents itself an apparent anomaly to the general progress of lines of variation in the southern hemisphere, which is from east to west."[38]

And to conclude, Sabine indicates that:

> "...in regard to the general distribution of magnetism in the southern hemisphere, afforded by Captain King's and FitzRoy's

> most valuable series of intensity observations no inferences in regard to the changes which this phenomenon may be supposed to undergo can be drawn, as has been done in the cases of the variation and dip, because we possess no observations of the intensity made at a sufficiently early period to afford good materials for such a comparison."[39]

Regardless of these problems of the initial survey, it has been established previously by Chile, Argentina and Britain that documents and not re-surveys of the area serve as the basis of claims of sovereignty in the area.

And finally, theory six, which periodically gains popularity with Argentina is the Thalweg Doctrine. This doctrine, which is recognized in international law as one means of defining boundary lines involving rivers and channels, stated thus: "in international law, the Thalweg principal divides river boundaries between states by the middle of the main channel or the deepest part of the body of water."[40] When Argentina conducted detailed hydrographic surveys of the area and recorded detailed bottom soundings, it was discovered that the deepest part of the Channel area did in fact run to the south of Lennox Island. The Chileans, however, never did agree to the Thalweg Doctrine,

since they have always held to the theory that the entrance to the Channel is at Cape San Pio, and that the other entrances to this body of water are called Goree Pass, Richmond Pass, and near Picton Island, Picton Passage (see Map 7). In addition, although the term "Thalweg" has a scientific flavor, it is not necessarily always the best or most easily demarcated water boundary.[41]

Despite these attempts to reconcile the area of conflict between Argentina and Chile the situation has remained basically unchanged since the early part of the twentieth century. The Argentine theories, however logical and precise they may be, are not acceptable to Chile in any way, as they inevitably involve a modification of the original FitzRoy chart of the area, which gave Chile the maximum amount of territory with the most favorable interpretation of the placement of the entrance to the Beagle Channel. Since neither country can convince the other to accept even part of any theory modifying the eastern entrance to the Beagle Channel, both sides have drawn on third party charts and interpretations as to where the Beagle Channel entrance lies. The United States hydrographic chart of the area in 1941 places the entrance to the Beagle Channel in Chile's favor. In 1956 an English chart from Her Majesty's Hydrographic Office again clearly located the entrance to the Beagle Channel in favor of Chile. These

charts, however, legally have no official authority since they were copied from earlier charts.[42]

The primary problem of not knowing where the eastern entrance to the Channel lies developed simply when cartographers carelessly placed the name 'Beagle Channel' in a certain area on the charts, similar to FitzRoy's error.[43] Had the name 'Beagle Channel' been moved two or three inches in any direction, the entire issue would have been changed. Chile maintains that over 40 maps of cartographic evidence show the name 'Beagle Channel' as the waterway which runs north of the main disputed islands. Further, if due consideration is given to the implicit definition given to the Channel by cartographers when depicting as Chilean the islands "south of the Beagle Channel" this number increases to over 150.[44]

While this issue is not important to countries other than Argentina and Chile, whenever these charts are not published in accordance with either Chilean or Argentine boundary positions, the government of the respective country infringed upon has usually sent a note or protest to the country publishing the chart.[45] Thus it is a real problem for these two countries and one not to be taken lightly.

F. The General Arbitration Treaty of 1902

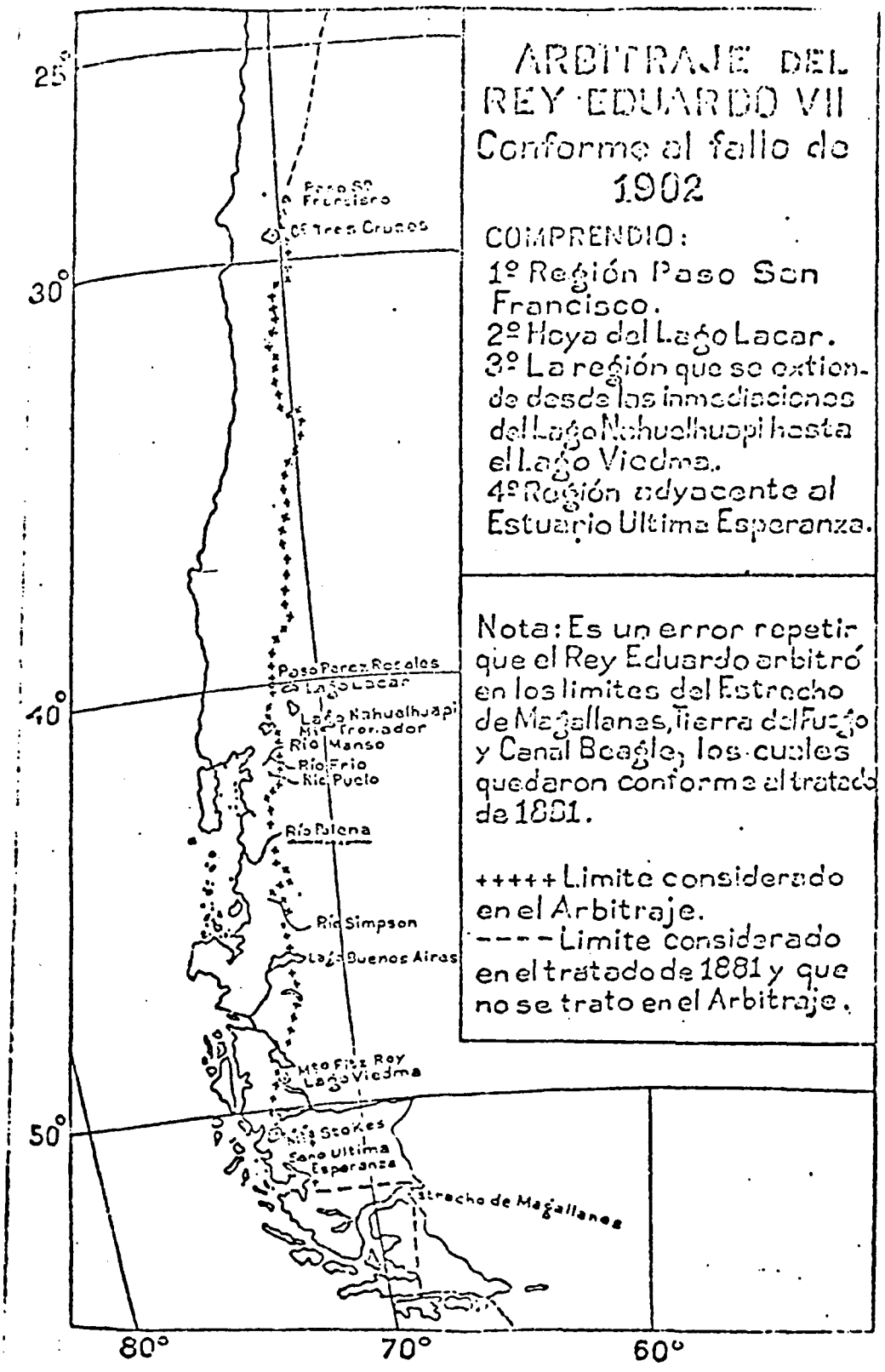
Since the Treaty of 1881 and additional Protocol of 1893 left certain areas in doubt as to where the frontier

was to be established, provision was made for a group of experts to form a joint commission to determine the placement of specific boundaries in a line following the highest peaks. On 17 April 1896, the foreign ministers of both Chile and Argentina agreed, in the Protocol of 1896, to submit the boundary questions to a British Committee for Arbitration in accordance with Article V of the Treaty of 1881. It was agreed that King Edward VII would serve as arbitrator. In 1901, the Commission completed its work and on 20 November, 1902 King Edward VII made the Award which is the foundation of the process for which the solution to the Beagle Channel Dispute is grounded today. The results of the Award were published on 17 January 1903 (see Appendix III).

The Award solved four distinct areas in dispute at the time; however, the Beagle Channel area was not investigated by this Commission. The 1881 Treaty established that a similar commission could be permitted to investigate disputed areas in the Tierra del Fuego region, yet this was not undertaken since neither country had investigated the region thoroughly enough to propose cartographic changes to existing maps.[46] The 1902 Treaty of Arbitration, however, did create the precedent of allowing a foreign nation to arbitrate disputed frontier areas between Argentina and Chile. The 1902 Treaty further stated that in the case of a dispute, either country, without the assent of the other,

could invoke an arbitration committee composed of a third country, not necessarily Her Majesty's Government. (This option was undertaken by Chilean President Frei in 1967). Thus, while the Beagle Channel dispute was not settled by the Treaty of Arbitration of 1902, all but one of the disputed areas along the north-south frontier axis of Chile and Argentina was settled at this time, and the precedent for creating a joint boundary commission under the leadership of a third country was established.[47]

After acceptance of the British Arbitration of 1902, practically all major areas of dispute of the Chilean-Argentine border were peacefully settled (see Map 9). Edward VII's Arbitration Award established a dividing line which gave 42000 square kilometers of disputed territory to Argentina and 48000 square kilometers of territory to Chile.[48] Only an eighty-mile area of the frontier surrounding the Rio Palena and the Beagle Channel was left unresolved. As a monument to the peaceful settlement and future cooperation between the two countries, the "Christ of the Andes" statue was dedicated 13 March 1904 at Uspallata pass. However, it was not until 1905-06 that Argentina and Chile began appointing "experts" in order to determine the "axis of the Beagle Channel so as to establish the respective sovereignties on the islands located in this zone."[49]



Map No. 9
Results of 1902 Treaty Delimitation

Source: Fisher, US Naval War College

In addition to the General Treaty of Arbitration of 1902, there was also a related document, called the 1902 Act. This Act was a supplement to the May 1902 final submission of the Arbitration Committee's recommendations to King Edward VII. This Act, dated 10 July 1902, sought to lessen tensions in the border areas by reducing the respective naval forces of Argentina and Chile in the areas of dispute. This Act referred to the "execution of Article I, 2nd part, of the Convention on Naval Armaments" and stated an intent to obtain an equivalence of disarmaments by insuring Chile the means for a natural defense and permanent destiny in the Pacific Ocean and Argentina the means for a natural defense and permanent destiny in the Atlantic Ocean.[50] As stated above, this clause within the 1902 Act is claimed by Argentina as another manifestation of the Bi-Oceanic Principle, which Chile denies. Despite this controversy, it is apparent that the 1902 Act intended that the parties were to come to a mutual understanding in the region without resort to military force.

G. 1904 - 1960: Argentine-Chilean Acceptance of Status Quo

During the next fifty years the actual Beagle Channel was ignored while both countries engaged in increased exploration and settlement of the Patagonian region. Ushuaia was first settled by English protestant missionaries in 1870 (with the tolerance of the Argentines), and then by

Argentines in 1887, and finally the Ushuaia Naval Base was established in 1940.[51]

Chile also extended her territorial exploration southward, yet was content to concentrate her efforts largely in the Magellan Straits and to the north of Punta Arenas because she had no reason to be concerned over any territorial expansion by Argentina south of the Straits of Magellan. However, with the establishment of the Argentine Naval Base at Ushuaia, coupled with oil and gas discoveries and overlapping territorial claims in the Antarctic (these subsidiary issues are covered in detail in Chapter 4) Chile felt she must strengthen her position south of the Straits. Consequently, in 1954, the Puerto Williams Naval Base was established approximately 20 miles from Ushuaia on the southern bank of the Beagle Channel.[52] Since the establishment of Puerto Williams, there have been other permanent settlements established in the region (see Map 10).

Despite the general lack of conflict and major interest in the region after 1904, a number of attempts at bilateral negotiations were undertaken in order to attempt to reconcile the remaining differences concerning the eastern extremity of the Beagle Channel. Because of World War I and the subsequent neutrality measures applied by Chile, the question of the sovereignty of the three islands and the eastern end of the Beagle Channel again became an issue. In

Map No. 10

Ushuaia and Puerto Williams Bases

Source: International Institute for Study and Conflict

1915, Argentina stated a formal claim of sovereignty over these three islands, basing its claim on the Channel's course flowing south and east of Navarino Island. This resulted in the Protocol of 28 June 1915. Although never ratified and put into effect, it stipulated that Great Britain again would be nominated as Arbitrator, in accordance with the Arbitration Treaty of 1902 (see Appendix IV).

A second attempt to negotiate a protocol occurred in 1938 in which the U.S. Attorney General, Homer S. Cummings, was to be nominated as the Arbitrator. Again, although the protocol was drawn up it was not ratified (see Appendix V).

A third attempt protocol took place almost twenty years later. This protocol, agreed upon in 1955 and signed in 1960, stipulated that the boundary dispute would be submitted to the International Court of Justice. In this protocol, a detailed account was given of the history of the dispute and that it was to be resolved in the spirit of the 1881 Treaty (see Appendix VI).

For various reasons, none of these protocols was ever put into force. After 1960, both countries continued to participate in fruitless discussion and negotiation. Because of the lack of any formal compromise in the area, Argentina and Chile had pragmatically worked out a gentleman's agreement for mutual conduct in the disputed territory. This involved the use of pilots, procedures for permission to enter internal waters, and the maintenance of

navigational rights.[53] Occasionally, however, this gentleman's agreement broke down and tempers flared, but rarely was a point reached where settlement by force became an issue.

H. Incidents and Conflict:

We have seen that for most of the first half of the twentieth century, the issue of the Beagle Channel basically lay dormant since both Chile and Argentina were more concerned with other issues and interests. After World War II, both countries began to take a more serious interest in the southern extremities of their territories. First, the development of Antartica became more of a reality as more nations became interested in that part of the world. Both Argentina and Chile made claims to the areas of the Continent in closest proximity to their respective coasts. Secondly, the development of Ushuaia from a small outpost into a town of more than 3,000 brought a certain level of commerce and general economic development to the region. As shipping increased the use of the Beagle Channel for commercial purposes also increased, whereas previously only hydrographic and research ships visited the area. Now passenger lines and commercial vessels made regular calls at Ushuaia.[54] To counter this, the Chileans pushed south of the Straits of Magellan and upgraded the Puerto Williams Naval Base.

Oil and mineral deposits also became a factor in the development of the area. Oil and manganese deposits (more about this in Chapter 4) were discovered in the Tierra del Fuego area in the 1950's which contributed greatly to the increasing significance of the region.

As a result of these developments which renewed interest in the Beagle Channel, it was not long before various confrontations and incidents occurred in the Beagle Channel region between Chile and Argentina. Although minor by superpower standards, these incidents are regarded by Chile and Argentina as major acts which potentially could lead to full-scale war. Most of these incidents evolved around the basic aspect of transit and fishing rights within the Channel as well as an apparent refusal by Argentina and other countries to recognize Chile's unilateral claims to the entire waterway.[55]

1. Snipe Island: 1958:

Snipe Island is a rocky, barren island in the Beagle Channel to the northwest of Picton Island. In 1958 the Chilean Navy installed a small, unmanned lighthouse there. Shortly thereafter the Argentine Navy destroyed it by naval gunfire and established a lighthouse of their own. Subsequently the Chileans destroyed the Argentine Naval lighthouse. Since news of these operations took some time to arrive in the respective capitals and was often distorted,

tensions increased to the extent that both ambassadors were recalled. The Chilean Navy sent their entire fleet south from Valparaiso to the Beagle area in a war alert condition. Only last minute direct communication between the presidents of the two countries averted a conflict. To this date the Chilean Navy considers this the most serious incident, since physical property belonging to Chile, that is, the lighthouse, was destroyed by Argentina. Argentina, however, regards Snipe Island as part of her territory as it lies within what she considers her portion of the Beagle Channel.[56]

2. The Ballenita Incident: July 1967:

In 1960, partially as a result of the Snipe Island incident, Chile and Argentina completed an agreement for navigation of warships on specified routes through the Beagle Channel as well as transits through the Straits of Magellan under the terms of international law. No mention, however, was made in the 1960 agreement regarding transit of merchant ships. While merchant ships normally are guaranteed certain rights of innocent passage through territorial waters when proceeding to ports, the problem arose as to where merchant ship pilots should embark and what nation would supply pilots for the Beagle Channel transit. In the case of a merchant ship transiting the Channel en route to Ushuaia before the Ballenita incident, ships usually took on Chilean pilots in Buenos Aires, since there are no suitable

pilot stations at the approaches to the Channel. Again a "gentleman's agreement" was established, allowing the Chilean pilot to navigate a merchant ship through the Beagle Channel, disembark just prior to the entrance to the port of Ushuaia, and an Argentine pilot would take the ship into port. Upon leaving Ushuaia, the process was reversed.

In July, 1967, the Ballenita, a merchant ship registered in Panama, en route to Valparaiso with a planned port call at Ushuaia, was stopped a considerable distance from the entrance to Ushuaia in the Beagle Channel by an Argentine Navy patrol craft and forced to take an Argentine pilot for remainder of the transit. The problem was that an Argentine Navy vessel was used to place the Argentine pilot aboard the Ballenita. When the Ballenita reached Valparaiso, the Chilean pilot, who was on board for the duration of the voyage, related the incident to the Chilean naval authorities. As a result the master of the Ballenita was fined $12,000 by the Chileans for permitting the "illegal" action to take place. As a result Argentina declared that Chilean pilots could no longer board ships bound for the Beagle Channel in Buenos Aires but rather must now board ships bound for the Beagle Channel in Montevideo. This incident proved nothing, yet it did bring to a head the issue of pilots in the Beagle Channel. As a matter of fact, Argentina still requires merchant ships to have Argentine

harbor pilots on board for entrance into the port of Ushuaia.[57]

3. Cruz del Sur Incident: August 1967:

On 14 August 1967, the Argentine fishing boat, Cruz del Sur, laid a fishing net across a large section of the Beagle Channel between Gable Island and Navarino Island which, in effect, obstructed one of the approaches to the Chilean Naval Base at Puerto Williams. The Argentines claimed that the boat had a right to fish in the Beagle Channel; however, the Chileans ordered the Cruz del Sur to retrieve her nets and leave. The following week the Cruz del Sur reappeared near the El Mercurio (Chile) in the company of an Argentine patrol craft. The Chileans again protested the Cruz del Sur's presence although nets were not laid this time. A few days later the Argentine fishing boat departed the area. While no shots were fired, protests from both sides again were issued at the highest diplomatic level.

4. The Quidora Incident:

On 29 November 1967, the Chilean PT boat Quidora, on "routine patrol" from its home port of Puerto Williams, proceeded to a small naval outpost at Wulia. The normal course from Puerto Williams to Wulia lies to the south of all the islands, islets and shoal water located near the entrance to Ushuaia Bay. It is not only the shortest route, but also, the safest. On this day Argentine Naval Air Force T-28's were conducting target practice using as a target one

of the small rocky islands adjacent to Ushuaia. The skipper of the Chilean PT boat decided to alter his course and pass close by this point to get a closer look at the Argentine aircraft. After observing Argentine exercises and being overflown, the Quidora continued on its way to Wulia and later that evening returned to Puerto Williams. Prior to arriving at Puerto Williams the Argentine patrol craft Matias Irigoyan intercepted the Quidora and fired several warning shots near her stern. The Quidora did not return the Irigoyan's fire, but fled immediately. Formal diplomatic protests were subsequently presented by the ambassadors to the respective foreign offices worded in such a manner as to make an apology of any type impossible. The real issue, however, was not the Quidora and the Irigoyan but the Argentine right to claim any part of the Beagle Channel as her territorial waters, no matter how far they were from the port of Ushuaia.[58]

The Quidora incident placed the Chilean Government in an awkward situation. The ship's commanding officer obviously had navigated his ship too close to Argentine territory without authorization, since by tacit agreement Argentina has the right to control the entrance to the port of Ushuaia. Yet, according to the strict interpretation of the Treaty of 1881, Chile owns all the water in the Beagle Channel. The problem was solved when President Frei ordered

the dismissal of the young Lieutenant without trial. This measure satisfied the Argentines and the issue was quietly forgotten except among Chilean Naval officers and a few xenophobic Chilean writers.[59]

The Quidora incident did not resolve any issues regarding sovereignty of the Beagle Channel. However, in an attempt to reconcile the issue, on 11 December 1967 President Frei unilaterally invoked Article V of the General Treaty of Arbitration of 1902 by requesting Great Britain to arbitrate the issue. Frei's action caught both Great Britain and Argentina by surprise. Neither government had been informally notified in advance that a formal request for arbitration would be requested. The British government informed the Argentine government of Chile's request and asked for their comments.

At this time British-Argentine relations were at a rather low point because of the continuing Falkland-Malvinas Islands controversy which caused considerable tension in President Ongania's government. Thus while Chile clamored for action, Argentina and Great Britain preferred to dodge the issue, claiming that now was not the proper time to arbitrate. In the eyes of her people, Chile appeared to have saved whatever face she lost over the dismissal of the young lieutenant.[60]

4. The South Wind Affair:

On 3 February 1968, the U.S. Coast Guard Ice Breaker

South Wind departed the U.S. Antarctic Station in the Palmer Peninsula with a seriously injured sailor. Ushuaia is the closest town with medical facility to the Palmer Peninsula, and accordingly South Wind headed for Ushuaia via the eastern entrance of the Beagle Channel. Due to the emergency conditions imposed, neither the Chilean government nor the command at the Puerto Williams Naval Base were officially notified, nor was Chilean permission requested for a transit of the Beagle Channel. The Argentine naval authorities at Ushuaia were, however, notified and permission was granted to enter the port. After the injured seaman was disembarked, the South Wind again transitted the Beagle Channel to the Atlantic and returned to continue research operations near Palmer Peninsula.

On 5 March 1968, the Chilean government officially protested the passage of the South Wind through the Beagle Channel because prior notification was not made to the Chilean authorities and a Chilean pilot was not on board for the transit. It was believed that the Chilean protest was merely for the record so that no unauthorized transit of the Beagle Channel would go unnoticed. Nevertheless, the United States Government was placed in an awkward position. If the U.S. acceded to Chile's protest, and declared her apologies for the transit, she would then be giving de facto recognition of Chile's claim over the Channel.[61] Furthermore,

Argentina would disapprove of U.S. acknowledgment of Chile's claim to the area. In a letter to Deputy Foreign Minister Sr. Patricio Silva, Mr. Robert V. Dean, Deputy Chief of Mission, U.S. Embassy, Santiago, stated informally that the U. S. position was to attempt to quietly close the incident without resorting to a formal declaration by the U.S. Government in response to the Chilean note:

> "The United States' position concerning innocent passage in international waterways with regard to the South Wind's passage through the Beagle Channel on her way to the port of Ushuaia in reference to your note number 4505 is as follows: The South Wind is a U.S. Coast Guard vessel under the command of a United States commissioned officer. Even though it is recognized that Chile is not a party to the Geneva Convention of the High Seas, nevertheless, the convention provides in Article 16 that the right of innocent passage may not be suspended when used for internal navigation of the high seas and the part of the high seas adjacent to territorial sea of a foreign state. The history of the convention and the International Court of Justice, dealing with the Corfu Channel case, state

> the rules and regulations which infer that the right of innocent passage, including the requirements of authorization of innocent passage, may not be applicable to the passage of war ships through international straits."[62]

When the United States did not formally answer Chile's note of protest, the Chilean government decided not to press the issue because she realized that she would be forcing the United States to officially state her position that the Beagle Channel is regarded as an international strait, thus indirectly supporting the Argentine position.

Unlike the previous incidents mentioned, the South Wind affair received but minor notice in the newspapers since a third country was involved and the issue was judicial, involving the fundamental right of innocent passage through international straits, and not an Argentine-Chilean territorial confrontation.[63]

All of these incidents present the main problem as the right of transit of the Channel and, ultimately, which country has control of the waterway. It is evident that incursions by one country in the area will be treated as a grave provocation by the other, and the sensitivity of each country to the slightest intrusion into "national waters" or installations by the other is manifest. The importance of

this to the analyst is that no incident is considered insignificant by either country, and use of military force is always a possibility as a result!

It will be revealed that on 11 December 1967, as a result of the growing number of incidents, President Frei had requested British arbitration for a final resolution to the Beagle Channel dispute. In 1971, after a number of subsequent discussions and an Argentine attempt to convince Chile to return to bilateral talks, President Lanusse of Argentina agreed to submit the dispute to official arbitration. There has always been some question in Argentina as to why the Argentine leaders allowed the dispute to be submitted to arbitration at this particular time. Many hardliners espouse the idea that President Lanusse was attempting to further his ties with Marxist Chile and ingratiate himself with Chilean President Allende.[64] (Inflation, economic stagnation and government seizures of farms, urban lots, and housing projects during the last year of President Frei's Christian Democrat government allowed for the 1970 popular election of Salvador Allende and his United Popular administration. Allende attempted to put Chile on the peaceful road to socialism and although he was met with better domestic and international resistance, Argentina initially attempted to cooperate with Allende in order to further cordial relations [Allende attempted to make numerous economic concessions to Argentina in exchange

for cooperation and recognition of his socialist government]. Allende was killed in a coup in 1973). This was seen as a sell-out of Argentine interests in he region, and to this day is still a very sore point among ardent Argentine nationalists. Despite these minority cries of alarm in Argentina, on 22 July 1971 a formal Compromiso was signed between Argentina and Chile agreeing to enlist Great Britain as Arbitrator in the Beagle Channel dispute.

H. The 1971 Agreement For Arbitration (Compromiso):

The 'Agreement for Arbitration (Compromiso) of a Controversy between the Argentine Republic and the Republic of Chile concerning the Region of the Beagle Channel' came into being within the framework provided by the General Treaty of Arbitration of 1902, a bilateral convention whereby the British Government was appointed as arbitrator to any dispute of whatever nature that might arise between the two parties (Arts. 1 and 3)(see Appendix VII).

This was not the first time that the British Government had arbitrated differences between the two countries. Once under the 1902 Treaty and once under a former agreement of 1896, the British Government had acted in that capacity. On both occasions (1965-66 and 1898-1902, respectively), the Arbitrator had appointed an all British tribunal of its own choice to hear the case and report its conclusions to the British Government. The Beagle Channel Affair, however, had

some peculiarities. Political difficulties between the United Kingdom and Argentina, particularly their dispute in respect of the Falkland (Malvinas) Islands, and other difficulties arising from positions adopted formerly by the parties in the course of the long controversy made it difficult to draft the Compromiso[65] Chile favored the arbitration of the British Government, while Argentina preferred recourse to the International Court of Justice. Finally the parties agreed on a text that included provision for a Court of Arbitration composed of five judges of the International Court of Justice (ICJ). (The judges selected were: Hardy Dillard [U.S.A.], Sir Gerald Fitzmaurice [U.K.], Andre Gros [France], Charles D. Onyeama [Nigeria], and Sture Petren [Sweden]). This Court would not merely present a report to the British Government, but would render a 'decision' as it was called in Articles II, XII paragraphs 2 and 3, and XIII of the Compromiso, which the British Government could either ratify of reject, but which it could not modify. If accepted, the 'decision' would be communicated to the parties (Article XIII) 'with a declaration that such decision constitutes the Award in accordance with the Treaty' of 1902.

As agreement could not be reached on a common question to be put to the Court, each party formulated its own question in Article I. The Argentine question read as follows:

The Argentine Republic requests the Arbitrator to determine what is the boundary-line between the respective maritime jurisdictions of the Argentine Republic and the Republic of Chile from meridian 68°36'38"5W., within the region referred to in paragraph (4) of this Article, and in consequence to declare that Picton, Nueva and Lennox Islands and adjacent islands and islets belong to the Argentine Republic.

And the Chilean question:

The Republic of Chile requests the Arbitrator to decide to the extent that they relate to the region referred to in paragraph (4) of this Article, the questions referred to in her Notes of 11th December 1967 to Her Britannic Majesty's Government and to the Government of the Argentine Republic, and to declare that Picton, Lennox and Nueva Islands, the adjacent islands and islets, as well as the other islands and islets whose entire land surface is situated wholly within the region referred to in paragraph (4) of this Article, belong to the

Republic of Chile.

The Chilean question must be read together with the Notes of December 11, 1967 which, in short, sought to establish a procedure against Argentina on the basis of Article V of the 1902 Treaty of Arbitration, i.e., a procedure which empowered the Arbitrator to draft the Compromiso without consulting the parties if the latter could not agree on a text (Art. IV of the above mentioned Treaty of 1902). On that occasion Argentina did not accept a procedure of arbitration drawn on such a basis, and new negotiations were opened in 1970 which led to the present Compromiso1. Paragraph 4 included the geographical coordinates of six points which determined the arbitration zone, often referred to as 'the hammer' on account of its shape.

It was agreed that the Court would decide the case "in accordance with the principles of International Law" (para.7) and that it "would draw the resulting boundary line on a chart" (Article XI).

If there were any advantages to this Arbitration Agreement relative to previous ones between Argentina and Chile, they stem from the fact that this is a well-conceived document which specifically outlines the questions in dispute and clarifies exactly what needs to be resolved. Juridically it is based on international law as accepted by the wo countries and there is a significant attempt to

involve the international community to ensure an impartial Court. As to disadvantages to the Agreement, it is primarily that Great Britain remained as the Arbitrating Party with vested power to "accept or reject" the Court's Decision prior to disposition to the respective Parties. Because of the Falkland Islands dispute between Argentina and Great Britain there was considerable doubt concerning Argentine acceptance of a decision negative to her viewpoint. Despite this potential complication, the Agreement was signed on 22 July 1971.

Subsequently, the members of the Court chose Geneva as their seat and both countries set up their respective Arbitral Agencies in that city. Moreover, on 5 April 1972, as a result of Argentine dissatisfaction with the Arbitration process and a subsequent denunciation of the 1902 Arbitration Treaty, both countries enacted the General Treaty on the Judicial Settlement of Disputes (see Appendix VIII). This Treaty was a bilateral agreement stating that all future conflicts between Argentina and Chile were to be submitted to the International Court of Justice for resolution, thus bypassing the Arbitrator stage.[66] In force for an initial ten year period, it was to be renewed automatically for successive ten year intervals by mutual agreement.

Beginning in 1973, the actual work of the Court in

Geneva commenced. During that year the initial Argentine and Chilean Memorials were submitted; in 1974 Counter-Memorials were submitted; and in 1975 Replies were introduced. In March 1976, the five Judges visited the Beagle Channel area. Later in July 1976, each Party submitted a volume of supplementary documents without proceedings. From September 1976, oral pleadings began, formulated in two consecutive rounds. No difficulties ensued as to the order in which these pleadings took place. Once the oral pleadings were finished the Court requested both Parties to submit additional comments concerning certain points of one of the final Argentine pleadings. After a written phase, which ended 16 November 1976, the proceedings closed. (It is important to note that these proceedings continued unabated despite the fall of President Allende of Chile in 1973 and the establishment and removal of several Argentine governments).

In his speech of 23 October 1976, the President of the Court referred to the task ahead:

> "The Court now will remain here to reach its decision...the arguments on both sides are powerful and the choice between them will be far from easy....it is one of the more somber aspects of litigation...that a decision given according to law is in principle bound, unless the circumstances

are very exceptional, to disappoint one or the other of the Parties...."[67]

A short while later the Court began its deliberations and subsequently signed its Decision on 18 February 1977, stating that the decision to award all islands south of the Beagle Channel as outlined in Chile's Memorial had been unanimously adopted by its members (see Appendix IX). Two months later, at the Court of St. James, Great Britain issued a Declaration ratifying the Court's Decision and declaring that it constituted an Award under the Treaty of 1902. On 2 May 1977, the heads of the Diplomatic Missions of Chile and Argentina in London were notified of this Royal Award. That same day Chile issued a statement that it would faithfully comply with the Award. Meanwhile, Argentina after a nine-month wait, issued on 25 January 1978, its Declaration of Nullity (see Appendix X).

Thus, the Beagle Channel dispute between Argentina and Chile apparently remained unresolved. Argentina had rejected a Decision by an international court and six years of arbitration hearings had failed. Why did this process fail? Why did Argentina declare the Arbitral Award null? What could the Court have done better to achieve a greater chance for success? Chapter 2 examines the 1977 Arbitral Award from a legal perspective in order to determine why this case was a failure in judicial persuasion.

CHAPTER ONE

NOTES

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(17) Fisher, p. 8; Boundary Treaty of 1881 (see Appendix I)

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(26) "The Myth of the Bi-Oceanic Principle," p. 4

(27) "The Myth of the Bi-Oceanic Principle," p. 4

(28) "The Myth of the Bi-Oceanic Principle," p. 6

(29) "The Myth of the Bi-Oceanic Principle," p. 6

(30) Fisher, p. 17

(31) Fisher, p. 17

(32) Fisher, p. 17

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(34) Fisher, p. 20

(35) Fisher, p. 21

(36) Edward Sabine, Major, Royal Army, as cited by Parker and FitzRoy, Vol.III, p. 502

(37) Sabine, p. 503

(38) Sabine, p. 524

(39) Sabine, p. 528

(40) Henry Campbell Black, Black's Law Dictionary, (St. Paul, Minn., West Publishing Co., 1851), p. 1626 as cited by George E. Fisher, "The Beagle Channel: Chile and Argentina's Gulf of Agaba," U.S. Naval War College, (1970)

(41) Stephen B. Jones, Boundary-Making, (Concord, N.H., Rumford Press, 1945), p. 117

(42) Fisher, p. 22

(43) Fisher, p. 23

(44) "In the Matter of the Beagle Channel Arbitration," 1977 Chilean Memorial, Vol.III, (1977), p. 81

(45) Fisher, p. 22

(46) Fisher, p. 23

(47) Fisher, p. 24

(48) JPRS, #1944, p. 27

(49) "The Myth of the Bi-Oceanic Principle," p. 5

(50) "The Myth of the Bi-Oceanic Principle," p. 5

(51) Fisher, p. 23

(52) Fisher, p. 23

(53) Fisher, p. 24

(54) Fisher, p. 25

(55) Fisher, p. 25

(56) Fisher, p. 26

(57) Fisher, p. 27

(58) Fisher, p. 30

(59) JPRS, #1944, p. 27; Fisher, p. 30

(60) Fisher, p. 30

(61) Fisher, p. 32

(62) U.S. Embassy Note in Response to Chilean Note of Protest Number 4505, 5 March 1968, as cited by George E. Fisher, p. 32

(63) Fisher, p. 34

(64) Lima, Caretas, October 2, 1978, as translated in U.S. Joint Publications Research Service, #1915, (November 29, 1978), p. 1

(65) "The Beagle Channel Affair," American Journal of International Law, Vol.71, (October, 1977), pp. 735-736

(66) "Agreement for Arbitration (Compromiso) of a Controversy Between Argentina and Chile Concerning the Region of the Beagle Channel," Chilean-Argentine Relations: The Beagle Channel Controversy:

Some Background Papers, (1978), p. 87

(67) Chilean-Argentine Relations: The Beagle Channel Controversy: Some Background Papers, (1978), pp. 5-6.

CHAPTER TWO

The 1977 Arbitral Award

The Arbitral Award of 1977 constitutes, in many ways, a failure by the Court and the Arbitrating Party (Great Britain) to realize the need to address this case not only from a legal perspective, but also from a political one. All previous arbitrations have staunchly supported the Chilean position, with the result that disputed territories have always been awarded to Chile and nothing to Argentina. This has created situations whereby Argentina sees her position in the South Atlantic as being threatened, not only from a perspective of regional influence, but also the pragmatic fear of losing access to vital resources. Thus, Argentina has always rejected decisions not in what it feels to be its national interest and which result in perceptions that its national prestige or dignity has been damaged.

This chapter will examine the respective Argentine and Chilean arguments presented to the Court; the Court's interpretations of these arguments and its conclusions; the Argentine rejection of the Decision and her reasons; an overview of the Court's inability to perceive a political connection in the Case; and a comparison of this Case to a similar one between Honduras and Nicaragua in 1906.

A. Argentina's Arguments:

The Compromise empowered the Court of Arbitration to

determine, "in accordance with the principles of international law," the boundary between Argentina and Chile within an area known as "the hammer." This area contains the three disputed islands of Picton, Nueva, and Lennox (the PNL group), as well as various uninhabited smaller islands.

Although no boundary line had ever been drawn, the general terms of the 1881 Treaty of Delimitation (Treaty) arguably covered the area. Article III of the Treaty provides:

> "In Tierra del Fuego a line shall be drawn, which starting from the point called Cape Espirito Santo, in parallel 52° 40`, shall be prolonged to the south along the meridian 68° 34` west of Greenwich until it touches Beagle Channel. Tierra del Fuego, divided in this manner, shall be Chilean on the western side and Argentine on the eastern. As for the islands, to the Argentine Republic shall belong Staten Island, the small islands next to it, and other islands there may be on the Atlantic to the east of Tierra del Fuego and of the eastern coast of Patagonia; and to Chile shall belong all the islands to the south of Beagle Channel up to Cape Horn, and those

there may be to the west of Tierra del Fuego."[1]

Argentina argued that the reference to islands "on the Atlantic" included the PNL group. Argentina admitted that the islands were neither east of Tierra del Fuego nor east of the eastern coast of Patagonia, but insisted that the islands were nonetheless on the eastern fringes of the area in question. Argentina also pointed out that the PNL group had to be included in the phrase "other islands there may be" in order for the language to have any useful effect, since there were no other islands in that area which were not already covered by other Treaty language.

Finally Argentina argued that the entire Treaty, including Article III, should be read in conjunction with an underlying "Oceanic principle" (see Chapter 1) which dictated that islands lying on the Atlantic side of this area belonged to Argentina. Argentina stated that it gave up its claim to the Straits of Magellan in 1881 in return for Chile's application of the Oceanic or Atlantic/Pacific principle to the areas in dispute. Further, Argentina argued that the principle is derived from the doctrine of Uti Possidetis juris of 1810. In accordance with this doctrine, Argentina had emphasized a claim to territory from the Atlantic coast to the peaks of the Andes since 1810, whereas Chile had emphasized claim from the peaks to the Pacific. This course of conduct, according to Argentina,

gave rise to the principle that Argentina should be an Atlantic power and Chile a Pacific one. The application of this principle to the areas in dispute in 1881 was illustrated by the attribution to Argentina of the Atlantic, or eastern, half of Tierra del Fuego and the attribution to Chile of the Pacific ones. Since the PNL group was on the Atlantic side, it was attributed to Argentina.

As further evidence of the existence of this Atlantic-Pacific principle Argentina cited the Protocol of 1893 (see Chapter 1). According to Argentina this Protocol, along with Article III of the 1881 Treaty, revealed the parties' intention to split the islands south of Tierra del Fuego along the Cape Horn meridian (67'W), which geographically divided the Atlantic and Pacific Oceans. Argentina argued that the division of Tierra del Fuego along a line to the west of the meridian and the failure to divide Navarino Island occurred because the parties intended that only islands lying wholly to the west or east of the meridian could lie completely in separated jurisdictions.

B. Chile's Argument:

Chile argued that the Treaty did not illustrate the application of an Oceanic principle, but rather embodied a trade-off of Chile's claims to Patagonia in return for Argentina's recognition of Chilean dominion over the Straits of Magellan. As a consequence of this trade-off, Chile

received the Strait and all territory south of it under Article II, except as specifically provided otherwise by Article III. Furthermore, in light of the literal meaning of the words and the Patagonia/Magellan trade-off, the interpretation of the Islands clause of Article III need not be strained. Chile pointed out the clause speaks of islands "on the Atlantic, to the east of Tierra del Fuego," and argued that the word "Atlantic" did not refer to the Atlantic/Pacific (or Oceanic) principle. Finally, Chile argued that even if the general language of Article II did not describe Chilean dominion of the islands, the following specific language of Article III awarded such dominion of the islands: "To Chile shall belong all the islands to the south of the Beagle Channel...."

C. The Court's Conclusion:

Both countries presented their case as one of interpretation of the 1881 Treaty. Each expressed the conviction that the letter of the Treaty was clearly in favor of its own thesis but nevertheless had recourse to all the means of interpretation mentioned in Article 31 of the Vienna Convention on the Law of Treaties.[2] Under those rules, which stress the subjective intent of the parties, the Court considered the text, the travaux preparatoires, and the historical context of the 1881 Treaty.

The Court decided the following:

(1) That the islands of Picton, Nueva, and Lennox, together with their immediately "appurtenant" islets and rocks, belong to the Republic of Chile;

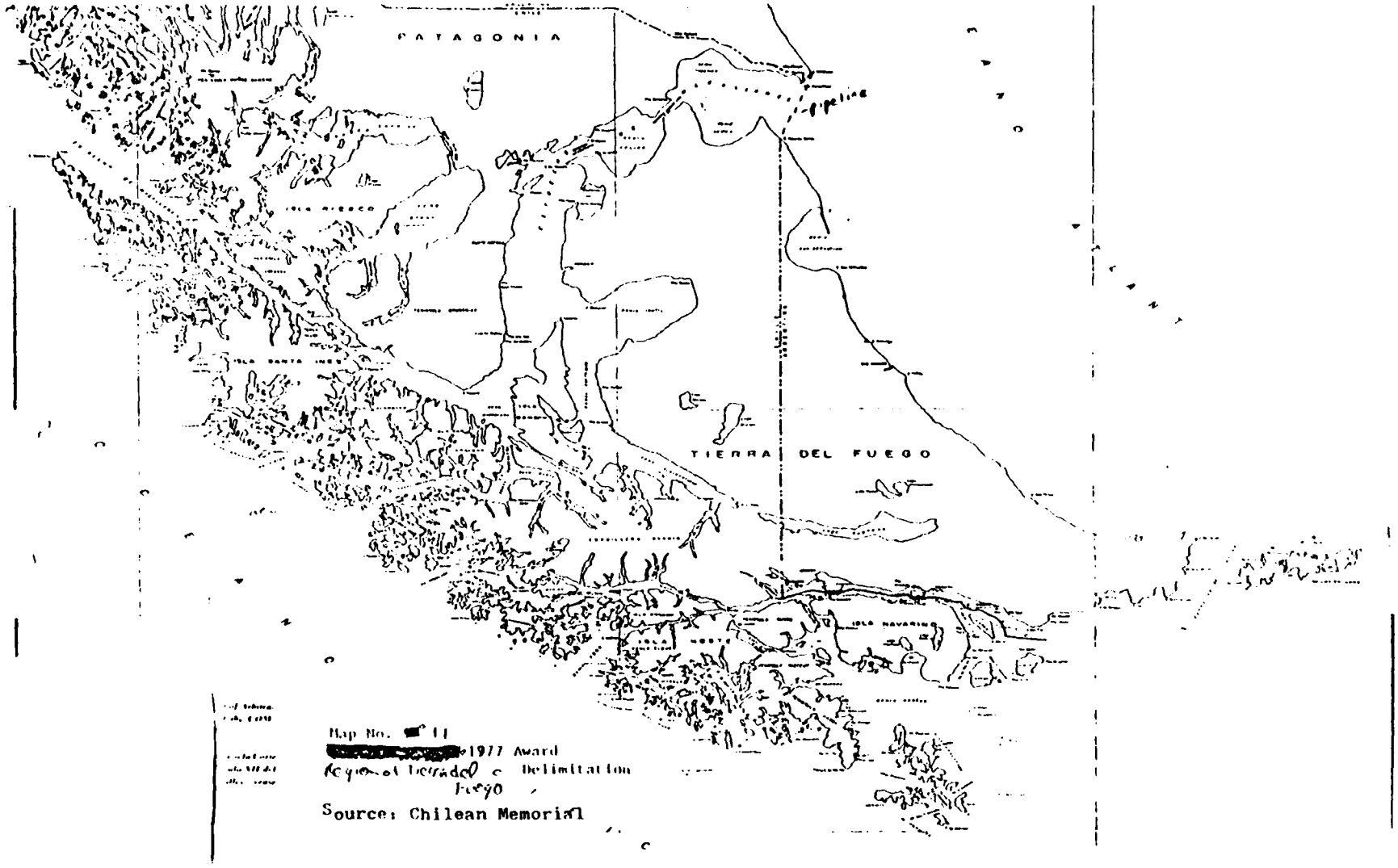
(2) That a line drawn down the middle of the Beagle Channel will constitute the boundary between the territorial and maritime jurisdictions of Argentina and Chile (see Maps 11 and 12);

(3) That, within the area of the "hammer," the title to all islands, islets, reefs, banks, and shoals is vested in Argentina if situated to the northern side, and in Chile if situated to the southern side, of that line;

(4) That insofar as any special steps need to be taken for the execution of the Decision, they shall be taken by the parties, and that the Decision shall be executed within a period of nine months from the date on which, after ratification of the British Government, it is communicated by the latter to the parties;

(5) That the Court continues in being until it has been notified that the British Government has, in its opinion, ensured that the Award has been materially and fully executed.

In interpreting the text, the Court found that both the title "tratado de Limites" (Boundary treaty) and the



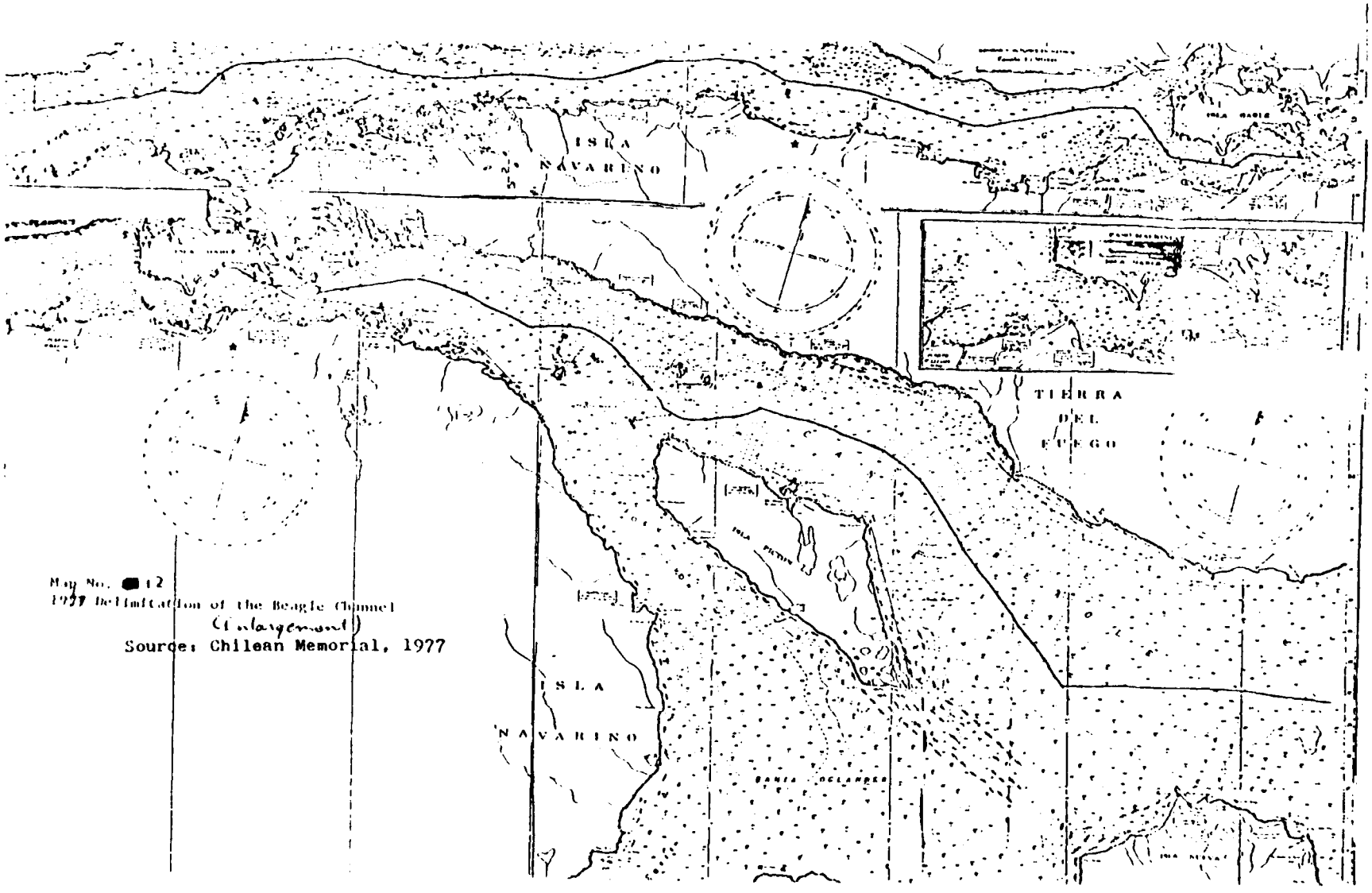
Map No. [redacted] 11

[redacted] 1977 Award

Acquiescence Delimitation

Fuego

Source: Chilean Memorial



Map No. 12
1977 Delimitation of the Beagle Channel
(Enlargement)
Source: Chilean Memorial, 1977

Preamble revealed an intent to reach a complete, permanent, and definite settlement of boundary questions. With regard to the travaux preparatoires, the Court considered the Argentine proposals known as the 'Bases of 1876" which stated the negotiations and attempted to put them into historical perspective. On the basis of these considerations, the Court concluded that the Treaty must be interpreted in such a way that would allocate all territory in dispute at the time of the Treaty. Furthermore, the Court rejected the Argentine view that the Treaty was a trade-off of Argentine interest in controlling the Straits of Magellan for the Chilean recognition of the Oceanic principle. The Court found that the wording of Article I, which attributed Patagonia to Argentina, was inconsistent with the Argentine view. The Court held that "it was the antithesis Patagonia/Magellan rather than the Magellan/Atlantic which constituted the fundamental element of the Treaty settlement."[3] Moreover, the language of the 1893 Protocol had to be interpreted in light of the delineation of the Andes boundary and could not serve as evidence of an all-prevailing "Atlantic" or Oceanic principle. Since no such principle could justify interpreting "on the Atlantic to the east of Tierra del Fuego" in Article III as meaning "on the eastern fringes of Tierra del Fuego," the Court rejected the Argentine argument for attribution of PNL under Article III.

In view of the Court's finding that the 1881 Treaty was intended to attribute all disputed territory to one party or another, it would appear that a rejection of the Argentine attribution would necessarily lead to the conclusion that the islands were attributed to Chile. The Court, however, evaluated the Chilean attribution independently.[4] The Court first examined Chile's claim of a general attribution under Article II and found it to be inconclusive. Consequently, the Court explored Chile's claimed attribution under the following language in Article III: "To Chile shall belong all the islands to the south of Beagle Channel up to Cape Horn." This language confronted the Court with the difficult task of defining the course of the Channel at its eastern end. The general course of the Channel is clear in the narrow space between Navarino Island and Tierra del Fuego, but when the coast of Navarino turns south the Channel ceases to be self-evidently defined by geography. The Channel's course had not been discussed during negotiations leading up to the Treaty.[5] If the Channel ran in an east-west direction between PNL and Tierra del Fuego, PNL would be south of the Channel and could be attributed to Chile. Conversely, if the Channel turned with the coast of Navarino and ran in a north-south line between that island and PNL, then the Treaty term "south of " would have no meaning and another provision of the Treaty would have to cover the PNL group. Since the Treaty had to be interpreted

to allocate the islands to one party, and no other Treaty provisions covered the PNL, the Court concluded that the Channel, at least for Treaty purposes, ran in an east-west line between PNL and Tierra del Fuego. The Court observed that the clause "to the south of Beagle Channel " lacked meaning when applied to a channel running north-south. Therefore, the Court held that the Treaty attributed the islands to Chile, and drew a boundary line in accordance with that finding (see Maps 11 and 12). The Court also noted that certain "confirmatory or corroborative incidents and materials," including the post-Treaty conduct of the parties, the cartography of both sides, and acts of jurisdiction, confirmed its conclusion. The Court emphasized that these materials were merely confirmatory, however, and formed no part of the basis for the decision.[6]

D. Argentina's Rejection of the Decision:

1. Legal and Political Sufficiency:

Argentina rejected the Decision of the Court despite its committment to be legally bound. In its Declaration of Nullity, Argentina listed the following grounds for invalidation of the Award under international law: (A) Distortion of Argentine Theses... (B) Opinion on disputed question that had not been submitted to arbitration.. (C) Contradictions in the reasoning of the Court... (D) Interpretation Defects... (E) Geographical and historical

errors... (F) Imbalance in the evaluation of the argumentation and evidence submitted by each Party...."[7] Since the Court's decision was made pursuant to the 1902 Arbitration Treaty, Argentina's grounds for rejecting the Award do not violate international law if they follow the rules regarding the invalidation of treaties.[8] The Vienna Convention on the Law of Treaties recognizes the following grounds for invalidating treaties: mistake, fraud, corruption or coercion of a representative of a state, and compulsion under threat of force. None of the Argentine arguments for rejection included any of these grounds.[9]

It is however, widely accepted that the decision of an international tribunal may be nullified on less stringent grounds. Although their specific nature is subject to wide disagreement, the grounds are as follows: (1) excess of power, (2) corruption of a member of the tribunal, or (3) a serious departure from a fundamental rule of procedure. The first ground, a tribunal exceeding its power by ruling beyond the scope of, or contrary to, the rules of the compromise submitted by the parties, is the most often cited ground in cases of non-compliance.[10] Argentina's Declaration of Nullity contains two examples of this first ground: opinions on questions not submitted and interpretation defects. There is some question whether a claim of nullity based on interpretation defects automatically entitles a party to a review of the arbitral award on the

merits. This appears to have been the practice in Latin America, but is not generally accepted elsewhere.[11] Furthermore, the language in the 1902 Arbitration Treaty provides that there shall be no appeal militates against the effectiveness of such an argument in this case.

Absent such an argument, only the ground of "opinions on questions not submitted" appears to have validity under international law. (This claim will be examined in more detail below). None of the remaining Argentine arguments meet the accepted criteria for invalidity of treaties or nullity of arbitral awards.[12] The alleged distortion of Argentine theses merely illustrates the result of the risk of non-persuasion that must be borne by any party to an arbitral proceeding. The advocates on each side must make their respective legal positions clear. The objections concerning logical contradictions and geographical and historical errors involve the risk of non-persuasion. Such errors may contribute to a bad decision, but the parties bargained for a legal holding and international law requires its acceptance.

Although Argentine objections are insufficient to invalidate the decision under international law, they may highlight weaknesses in the opinion that justify a political rejection.[13] The Award, like most decisions governed by international law, is not backed by any effective physical sanction. The Award, therefore, depends upon the parties'

enlightened self-interest, fear of public opinion, and fear of retaliation for implementation. The strength of these motives is to some extent outside the control of the Court, but the Court can affect them through the logic and moral force of its decision.[14] Even if a morally and logically defensible decision is reached, however, a failure to articulate clearly its grounds may deprive the decision of the persuasiveness that is especially critical in international adjudication.

2. Distortion of Argentine Theses:

The first ground alleged in the Declaration of Nullity, "distortion of Argentine theses," is primarily a reference to the dispute over the course of the Beagle Channel at its eastern end. Argentina claimed it had never argued that the Channel ran in a north-south direction between PNL and the Navarino, but that the Channel instead stopped short of PNL to the west of Picton.[15] According to Argentina, the Court had incorrectly attributed the former argument to their government and then had concluded that such an interpretation made the phrase "south of the Beagle Channel" meaningless. The Court reached this conclusion, however, after taking note of and rejecting the Argentine thesis that the Channel stopped short of PNL. This Argentine "short-channel" thesis, according to the Court, would have left the islands unallocated under the Treaty, which was "a result

that certainly could never have been intended" by the parties.[16]

3. Opinions on Questions not Submitted:

Argentina also claimed that the Court had "passed judgment on the status of islands to the south of the hammer area." In dealing with Argentina's Oceanic argument, the Court referred to islands outside the hammer. The Court noted that the division along the Cape Horn meridian, which divides the Atlantic from the Pacific:

> "...would cover the PNL group. It would also cover a number of other islands not actually in dispute in the present proceedings, the title of which it is not within the competence of the Court to pronounce upon. Yet they must be named, because it is not otherwise possible to understand the precise nature of the Argentine "Atlantic" contention, and what is meant by the claim that all islands fringing the Cape Horn meridian on its eastern side were assigned to Argentina under the Islands Clause of Article III."[17]

The Court then named and located the islands, saying that "all of them, as the Court understands it, are actually in Chilean physical possession." This statement is obviously not the same as one passing judgment. Thus, Argentina's

claim that the Court exceeded its power is unfounded.[18] Excess of power is properly applicable only to those cases in which a Court actually goes beyond the limits of its competence in making its award. It does not apply to a mere passing remark. It must be pointed out that even though the Court's reference to islands outside the hammer does not lead to nullity by reason of excess of power, there was clearly no judicial necessity for making the statement. Argentine sensitivity on this issue must have been apparent. Indeed, bias appears to be the underlying Argentine objection to this statement. Thus, the Court weakened the moral force of its decision by not carefully avoiding the appearance of prejudice.[19]

4. Contradictions and Problems of Interpretation:

The Court's unfortunate reference to islands outside the hammer occurred in response to Argentina's contention that the Islands Clause had to refer to either PNL or nothing at all. Argentina claimed in its Declaration of Nullity that the Court's conclusion that the clause does not cover PNL deprives the language of useful effect. This is an incorrect reading, however, since the Court's interpretation simply permits the language to provide certainty and completeness with regard to any islands within the specified areas that might have been overlooked. This is a reasonable interpretation, especially in light of Chile's evidence concerning the existence of certain small islands lying to

the east of Tierra del Fuego and unnamed in the Treaty. Furthermore, the placement of the clause in Article III indicates that the drafters intended to include islands to the east of Staten Island and Patagonia, but not the area in which PNL lies.[20]

Argentina's basic objection to the Court's interpretation of the Islands Clause is that the Court failed to incorporate an underlying Oceanic principle.[21] The Court held that "there is no real ground for postulating the existence of an accepted 'Oceanic' principle (ultimately deriving from the very Uti Possidetis which, as such, the Treaty was intended to supercede) figuring as something that must a priori govern the interpretation of the Treaty as a whole."[22] In other words, the Court further stated that "since it has to be assumed that the negotiators were neither ignorant of, nor indifferent to, the geography of the region, it can only be supposed that they regarded the Channel's course as too evident to need discussion or definition."[23] In view of the Court's findings concerning the confusion that existed among contemporary cartographers over the course of the Channel, this assumption is questionable. It would be more reasonable to assume that the negotiators agreed on specific attributions and an underlying Oceanic principle, but did not examine all of the details.[24] This view is supported by the provision in the

1881 Treaty and the 1893 Protocol that required experts to more specifically delineate the boundary.

Although the Court's conclusion results from a defensible method of treaty interpretation, such a broad dismissal of the Oceanic principle was not necessary to the Court's conclusion that PNL was attributed to Chile. Since the "south of the Beagle Channel" phrase of Article III, according to the Court, required attribution of the islands specifically to Chile, the existence or non-existence of a residual Oceanic principle could not affect the legal conclusion. The declaration that no such principle exists, on the other hand, dramatically affected the political acceptability of that legal conclusion.[25] It needlessly antagonized the party whose voluntary acceptance and compliance would be most difficult to secure. The Court either underestimated the symbolic importance of the principle or ignored ways of using that symbolism to advantage.

In addition to the argument that the Court ignored the Oceanic principle, Argentina claims in her Declaration of Nullity that the Court contradicted itself regarding the allocation of islands within the Channel itself in relation to the PNL group.

The islands within the Channel are numerous and important from the viewpoint of navigation. The Court concerned itself with the small islands--relatively small,

since one of them, Gable, is of some size--lying within the Beagle Channel proper and forming part of the arm that the Court found to be "the treaty arm," that is, the northern one. In fact, the Court followed the line claimed by Argentina, as drawn in a chart presented by that party, as far as a point in mid-channel somewhat to the east of Snipe Island. Then it followed a different course, allocating Snipe to Chile and the Becasses Islands to Argentina.

Here is how the Court explained the drawing of the line:

> "The boundary line itself is the resultant of construction lines drawn between opposite, shore to shore, points, sometimes to or from straight baselines. It is in principle a median line, adjusted in certain relatively unimportant respects for reasons of local configuration or of better navigability for the Parties. Over the whole course, account has been taken of sand-banks, siltings, etc., which would make a strict median line unfair, as in the case of certain islets or rocks."[26]

Argentina points out that the Court divided the small islands "lying within the Channel" between Navarino and Fuego according to the proximity to undisputed territory while refusing to do so in the case of the PNL group. The

Court rejected the Argentine division claim by appurtenance for PNL on the following grounds:

> "Since its (the Court's) terms of reference require it to decide in accordance with international law, a division (of PNL) would have to be based on a difference of a juridical character between the situation of one of the islands as compared with that of the other two. The Court cannot find any such difference."[27]

The Court then stated that the islands within the Channel were not attributed under the Treaty since, because they lie in the Beagle Channel, they obviously cannot lie to the south of it. Consequently, the Court divided the islands by "mixed factors of appurtenance, coastal configuration, equidistance and also of convenience, navigability, and the desirability of enabling each party as far as possible to navigate in its own waters."[28]

Argentina argued that the Treaty phrase "to the south of Beagle Channel" is no less ambiguous with regard to PNL than it is with regard to the small islands within the group. According to Argentina, "the Court divided the Beagle Channel, as defined by the Court itself, into two sections subject to different juridical regimes, without supplying any justification for it."[29] The Court, however, provided some justification by concluding that the Treaty's

directives ought to be measured from the northern arm of the Channel at its eastern end, thus placing the PNL group to the south of the Channel. In reaching this conclusion, the Court rejected the Argentine thesis of a short channel on the grounds that it would leave PNL unallocated.[30] Thus the Court was willing to accept a failure of allocation under the Treaty with regard to the small islands while rejecting this premise with respect to PNL. Although it could conceivably make sense to reject the premise for the larger islands and accept it for the smaller ones on the ground that the negotiators were less likely to bother with exact division of the latter, the Court should have clearly articulated its reasoning. Failure to do so set the stage for Argentina's argument.

On the other hand, Argentina's "short-channel" thesis does not necessarily leave the islands unallocated. An application of the Argentine thesis of an underlying Oceanic principle limited to territory not otherwise specifically allocated by the Treaty would cover PNL. The Court apparently did not consider this possibility, having previously terminated the principle's consideration.[31] At one point, however, the Court recognized that the 1893 Protocol lent weight to the principle's existence. The Court stated that although there is some validity to the principle, "The Court feels unable to give so wide and general a scope to a phrase that is evidently set in a

particular context,--that of an Andes boundary."[32]

5. Historical and Geographic Errors:

The Court attempted to support its conclusion regarding the eastern Treaty arm of the Beagle Channel by referring to "confirmatory" cartographical and historical evidence. In the part of the decision dealing with these aspects, the Court considered several matters, which, in its opinion, confirmed the conclusions reached previously. But it was clearly stated that the substantive conclusions were not based on such "confirmatory" or "corroborative" evidence.

The conduct of the parties during the period 1881-1888 was considered by the Court as providing an important indication of their interpretation of the Treaty.[33] Within this context, the statements by the Argentine and Chilean Foreign Ministers on the occasion of their presentation of the Boundary Treaty to the respective Congresses for consent were analyzed by the Court. The statement by Argentine Minister Irigoyen was considered at some length. Certain charts and maps issued during the period 1881-1888, the value of which had been strongly questioned by Argentina, were nevertheless deemed relevant to assess the intentions of the negotiators of the Treaty.

Additionally, regarding certain acts of jurisdiction--mostly land or mining concessions--performed by Chile from 1892 onwards, the Court said:

> "The Court does not consider it necessary to enter into detailed discussion of the probative value of acts of jurisdiction in general. It will, however, indicate the reasons for holding that the Chilean acts of jurisdiction, while in no sense a source of independent right calling for express protest on the part of Argentina in order to avoid a consolidation of title, and while not creating any situation to which the doctrines of estoppel or preclusion would apply, yet tended to confirm the correctness of the Chilean interpretation of the Islands clause of the Treaty."[34]

Both Argentina and a member of the Court criticized the use of this evidence. Judge Andre Gros drafted a declaration which was annexed to the Decision. Although he had arrived at the same conclusions as the Court regarding the interpretation of the text of Article III, he had a different appraisal of the use to be made of cartography and the acts of the Parties subsequent to the Treaty"

> "The Parties, having chosen in 1876 and 1881 not to make any map, or even a sketch of the frontier in the islands, the Treaty is therefore, a treaty without a map. After the Treaty no map at all became the subject

> of joint discussion or study during the progress of the dispute, or which could in my view be used to elucidate the meaning of the Treaty...."[35]

Regarding the Court's study of cartography of the Case, Judge Gros said:

> "Personally, while recognizing the interest and utility of that study, I would point out, on the one hand, that it was not necessary from the legal point of view...and, on the other, that the Parties themselves, at the time of the Treaty and in the years which followed, attached to that same non-concordant cartography only a minimal degree of interest....No act imputable to one of the States can compromise that frontier (established by the 1881 Treaty) whether or not with intention to modify it, and it is difficult to see what effect such a unilateral act could have on the treaty rights of the other state, if those rights exist by virtue of the Treaty--and if they do not exist...."[36]

Judge Gros also could not "follow the Court in its views concerning the conduct of the Parties after the Treaty, which is equally lacking in relevance, if account is taken

of the Treaty relations and general principles of law binding on the Parties in the period under consideration."[37]

Since the Court purported to use this material only to reinforce conclusions already reached, the inclusion of such material in the decision seems unwarranted. The Court pointed out that inferences drawn from historical and geographical sources are contradictory.[38] Furthermore, the devotion of part II of the Decision to these materials belies the Court's disclaimer of their importance. Despite the specific Argentine criticism of the Court's conclusions regarding these materials, it is clear that the Court itself laid the groundwork for such criticism.[39]

6. Imbalance and Style:

Argentina's complaint of "imbalance in the evaluation of the argumentation and evidence" is understandable in light of the nation's historical feud with the Arbitrator over the Falkland Islands. Fear of biased arbitration may have been responsible for Argentina's repeated attempts to return to bilateral negotiations.[40] It was probably at Argentina's insistence that the terms of arbitration were changed to provide for a decision by five members of the International Court of Justice, subject to ratification by the United Kingdom, rather than the United Kingdom's unilateral decision. Argentina's dissatisfaction with the arbitration was further exemplified by her denunciation, on March 11, 1972, of the 1902 Treaty of Arbitration.

Argentina's hostility to arbitration made acceptance of an unfavorable decision even less likely.[41]

Beyond its allegation of bias, Argentina attacked the Court's style. Argentina stated that the Court did not clearly favor Chile's interpretation, but merely "preferred it to the Argentine interpretation, after having weighed up the sum total of their respective weaknesses."[42] This criticism, though not literally correct, is nonetheless well-founded as the following passages demonstrate. After a consideration of Argentine and Chilean arguments for attribution under Article II of the Treaty, the Court stated the following:

> "Normally the Court would now endeavor to reach a conclusion about the extent of the Chilean allocation effected by Article II, considered in itself. But it has been seen that the rival theses are closely balanced, even if the balance does seem to tilt somewhat in favor of the Chilean view, though perhaps not with complete finality. In these circumstances the Court proposes not to reach any definite conclusion on the matter at this stage, but to defer it, and return to it if necessary when other aspects of the case have been examined."[43]

The Court then considered the question of attribution under the Islands clause of Article III. At the outset it was forced to determine whether a conclusion that PNL fell within the attribution of one party precluded the necessity for evaluating the other party's attribution. The Court decided that such an evaluation was not precluded, but proceed with its inquiry only after stating a strong argument against doing so:

> "The first preliminary question that arises is whether the Court must necessarily go into both the sets of attributions effected by the Islands clause...however, the Court does not propose to proceed in that way, if only because it may not be possible to reach a sufficiently definite conclusion in favour of the one attribution without also considering the other."[44]

The consideration of both sets of attributions did not lead to a very definite conclusion. With regard to Article III, the Court concluded that "the Chilean version, although not itself entirely free from difficulty, is the more normal and natural on the basis of the actual language of the text."[45] To clear up the question left open about Article II attribution, the Court stated that "[R]ecourse to that article is, however, unnecessary, since it is clear that independently of it, the PNL group, and the small islands

within the Channel, can be attributed under the Islands clause of Article III...."[46]

It has already been noted that the Court had previously adjudicated that the Treaty did not attribute the small islands within the Channel. If it is assumed, however, that the rival theses were closely balanced and, therefore, necessitated an independent evaluation of each side's arguments, it was inadvisable for the Court to stress logical objections to such independent evaluation. Once the decision had been reached, the Court's duty was to articulate a persuasive opinion. That job was not furthered by highlighting the understandable hesitation and qualification the Court went through prior to reaching its decision.[47]

E. Theoretical Necessity for a Concern with Politics:

Thus far, this chapter has presented the argument that the Court of Arbitration failed to pay sufficient attention to political realities bearing on compliance with the decision. It may be objected that a prospective concern on the part of the Court for the political acceptability of its Decision would be outside the proper function of the Court. One authority on the International Court of Justice has argued that the Court's proper function is:

> "to isolate, in the concrete case, the legal problem from the circumstances in which it

had its immediate origin, to consider that legal problem in an objective and even abstract way, and to articulate its Decision on the basis of that examination, to the exclusion of all political, moral, or other extra-legal considerations."[48]

After making this statement Rosenne goes on to point out the fundamental difference between international and domestic law:

"It is precisely the absence in the international sphere of any conception of superior sovereignty that distinguishes the functioning of international tribunals from that of municipal tribunals...The judgment of international tribunals does not, and cannot partake of the character of an order from the sovereign to the litigants and to the law-enforcement agencies. There is no international sovereign concerned to ensure compliance with justice administered in his name."[49]

This difference between international and municipal tribunals provides a sound basis for the proposition that a concern with the political acceptability of its decisions has added significance for an international court. International law exists only insofar as states can be said to

act within its confines, and the lack of municipal coercive power to secure such compliance therefore places a great burden upon international tribunals to write persuasive opinions. The Court's failure to meet this burden in the instant case reduced the likelihood of compliance.[50] Although the decision should not have been made primarily on a political or other non-legal basis, the opinion should have been drafted after due consideration of political reality.

F. Practical Necessity for a Concern with Politics:

Although most judgments of international tribunals have been accepted rather readily by protagonists in the past, the reason for this is due to the relatively unimportant issues which have been submitted to these tribunals for arbitration or juridical settlement.[51] The Beagle Channel differs from this trend, however, in that this dispute is primarily a manifestation or symbol of a more generalized conflict between the parties so that acceptance of an adverse decision is not likely to be disassociated from an underlying tension. In this case, the tension underlying the dispute was the national pride and prestige tied up in longstanding claims to possession of their respective coastlines. In such cases it behooves the Court to be sensitive to "political, moral, or other extra-legal considerations" in expressing its opinion. Although the

Court of Arbitration in the Beagle Channel Case was not entirely insensitive to these considerations, it nonetheless failed to deal with them effectively.[52] A better opinion might not have guaranteed implementation, but certainly would have reduced the likelihood of outright rejection.

G. Comparison of the Beagle Channel Arbitration with Honduras v. Nicaragua:

The setting of the Beagle Channel Decision is somewhat similar to the Case Concerning the Arbitral Award of December 1906 (Honduras v. Nicaragua). On October 7, 1894, Nicaragua and Honduras signed the Gomez-Bonilla Treaty which established a mixed commission to settle a longstanding boundary dispute. The Treaty provided a specific procedure to be followed for the appointment of an arbitrator to decide disputes not resolved by the mixed commission. In October, 1904, the King of Spain was appointed as Arbitrator in the dispute. On December 23, 1906, the regent rendered his decision, which was generally favorable to the Honduran position. Both parties appeared to accept the Decision at that time; however, Nicaragua challenged its validity. Nicaragua claimed that the failure to comply with the specific steps set out in the Treaty for the selection of an arbitrator, as well as defects in the award itself, rendered he award a nullity. Subsequently, in 1957, the Organization of American States took the case to the International Court

of Justice. Ultimately, the Court held that the Award was valid. Regarding Nicaraguan objections, the Court held that Nicaragua's acquiecence precluded such complaints. Nicaragua eventually complied with the decision.

Since members of the Beagle Court were all members of the International Court of Justice, their style can be aptly compared to the Honduras Court. Regarding the validity of the Award and style of the Honduras Court, the Court stated:

> "In the judgment of the Court, Nicaragua, by express declaration and by conduct, recognized the Award as valid and it is no longer open to Nicaragua to go back upon that recognition and to challenge the validity of the Award. Nicaragua's failure to raise any question with regard to the validity of the Award for several years after the full terms of the Award had become known to it further confirms the conclusion at which the Court has arrived."[53]

The style of the Honduras Court is more forceful than the conclusionary paragraphs of the Beagle opinion.[54] There is no outward hesitation in the Court's language.

The Honduras Court's position regarding Nicaragua's claims of nullity on the merits gives some indication of the validity of Argentina's Declaration of Nullity. In both cases the parties claim excess of power or jurisdiction,

essential errors of history and geography, and inadequate reasoning. Nicaragua argued that the King of Spain exceeded his authority be deciding the case without proper reliance on the rules of historical and geographical interpretation laid down in Article II of the Gomez-Bonilla Treaty. In considering this claim, the Court decided:

> "The Award is not subject to appeal and... the Court cannot approach the consideration of the objections raised by Nicaragua to the validity of the Award as a Court of Appeal. The Court is not called upon to pronounce on whether the arbitrator's decision is right or wrong. These and cognate considerations have no relevance to the function that the Court is called upon to discharge in these proceedings which is to decide whether the Award proved to be a nullity having no effect."[55]

The Court refused to second guess the Arbitrator's Award on the merits, contrary to Nicaragua's request. (Argentina also appears to demand a similar second guess in the Beagle Channel case).[56] Additionally, the Court held that the Arbitrator's Award had been based on "historical and legal consideration in accordance with paragraphs 3 and 4 of Article II" and therefore was not a nullity. The Court likewise failed to find the "essential error" ground valid:

> "The instances of 'essential error' that Nicaragua has brought to the attention of the Court amount to no more than evaluation of documents and of other evidence submitted to the Arbitrator. The appraisal of the probative value of documents and evidence appertained to the discretionary power of the Arbitrator is not open to question."[57]

This same argument could be made concerning Argentina's contention regarding historical, geographical and interpretive errors in the Beagle Channel arbitration. If the Honduras Decision was good precedent on the question of nullity, then Argentina's arguments do not appear to be convincing.[58]

H. Conclusion:

This chapter has dealt extensively with the legal aspects of the 1977 Arbitral Award and the inherent weaknesses manifest in the Decision. It has been demonstrated that although the Argentine Declaration of Nullity does not contain valid legal arguments for rejection, it does indicate weaknesses in the Court's opinion that make it vulnerable to rejection for political reasons. Specifically, the Court's remarks about Chilean possession of disputed islands outside the hammer were particularly ill-advised. In addition, the Court failed to clearly articulate the

reason for dividing the small Channel islands by appurtenance while refusing to do so for PNL. Finally, the Court's refusal to apply an Oceanic principle, even in a narrow sense, was questionable in a case in which the legal arguments based upon the Treaty text were closely balanced. Although the Court's refusal to apply the Oceanic principle was logically defensible, its total discrediting of the principle was not. The Court's adverse findings were made even more unacceptable to Argentina by virtue of such flaws in style. If the members of the International Court of Justice are to play a more important role in resolving future heated international disputes, they will have to improve their judicial style and pay much more attention to the symbolism of international politics.

The following Chapter traces the post-Arbitral Award developments between Argentina and Chile to include a failure of the subsequent bilateral discussions aimed at amicably resolving the dispute, and the war which almost broke out in 1978 but was prevented only by Papal intercession.

CHAPTER TWO

NOTES

(1) Treaty of Delimitation, Argentina-Chile, July 23, 1881, Article III (see Appendix I)

(2) "The Beagle Channel Affair," American Journal of International Law, Vol. 71, p.738

(3) David M. Himmelreich, "The Beagle Channel Affair: A Failure in Judicial Persuasion," Vanderbilt Journal of Transnational Law, Vol 12, 1979, p. 979

(4) Himmelreich, p. 979

(5) Arbitration Decision, February, 1977, para 87

(6) Arbitration Decision, para. 163

(7) Declaration of Nullity-Argentina - 1978

(8) Himmelreich, p. 981

(9) Arbitration Decision, para 645

(10) Schachter, "The Enforcement of International Judicial and Arbitral Decisions," 54 American Journal of International Law, 1960, p. 3

(11) Schachter, p. 4

(12) Himmelreich, p. 982

(13) Himmelreich, p. 982

(14) G. Hackworth, Digest of International Law, Vol. 12, 1940

(15) Himmelreich, p. 983

(16) Arbitration Decision, para 81

(17) Arbitration Decision, para 60

(18) Himmelreich, p. 984

(19) Himmelreich, p. 984

(20) Arbitration Decision, para 65

(21) Himmelreich, p. 985

(22) Arbitration Decision, para 66 and para 22

(23) Arbitration Decision, para 87

(24) Himmelreich, p. 986

(25) Himmelreich, p. 986

(26) American Journal of International Law, p. 737

(27) Arbitration Decision, para 83

(28) Arbitration Decision, para 110

(29) Declaration of Nullity

(30) Arbitration Decision, para 81

(31) Himmelreich, p. 987

(32) Arbitration Decision, para 75

(33) American Jounral of International Law, p. 739

(34) Arbitration Decision, para 194

(35) American Journal of International Law, p. 739

(36) American Journal of International Law, pp. 739-740

(37) American Journal of International Law, p. 740

(38) Himmelreich, p. 988

(39) Himmelreich, p. 988

(40) Himmelreich, p. 988

(41) Himmelreich, p. 989

(42) Declaration of Nullity

(43) Arbitration Decision, para 49

(44) Arbitration Decision, para 52

(45) Arbitration Decision, para 64

(46) Arbitration Decision, para 111

(47) Himmelreich, p. 990

(48) S. Rosenne, The Law and Practice of the International Court of Justice, 1965, p. 100

(49) Rosenne, p. 122

(50) Himmelreich, p. 991

(51) Schachter, p. 5

(52) Himmelreich, p. 992

(53) J. Gamble and D. Fisher, The International Court of Justice, 1976, p. 213

(54) Himmelreich, p. 995

(55) Gamble and Fisher, p. 214

(56) Himmelreich, p. 995

(57) Gamble and Fisher, pp. 214-215

(58) Himmelreich, p. 996

CHAPTER THREE

Post-Arbitral Award Developments: 1977-1984

Now that the inherent weaknesses of the 1977 Arbitral Award have been analyzed, attention can be focused on the various developments concerning the Beagle Channel dispute from 1977 to the present. As such, this chapter will outline the Argentine-Chilean attempts at bilateral negotiations and their subsequent failure; the build-up to war in the latter part of 1978; the subsequent Papal intercession and patient mediation proceedings which have been ongoing to the present; and an analysis of the latest compromise, the Treaty of Peace and Friendship, which is being welcomed as the long sought-after solution to the dispute. The contents of this Treaty were submitted to the Argentine people in a plebiscite in November, 1984 which resulted in overwhelming support for the Treaty; formal ratification proceedings, however have as yet not taken place. Chile, meanwhile, must await a return to democratic rule - scheduled for 1989 - before she can officially ratify the Treaty. Once this Treaty of Peace and Friendship is ratified formally by the two protagonists, one of the longest lasting border conflicts in the world will come to a peaceful end.

A. Bilateral Negotiations and Their Failure: 1977-1978:

With the rejection of the 1977 Arbitral Award by Argentina, it must have been a very frustrating period for

the negotiators on both sides. For over six years formal legal activity had been devoted to finding an ultimate solution to the dispute and yet none had been found. Despite the mutual frustration of not coming to a compromise, it did seem that both protagonists still were interested in coming to an accommodation. Although the Argentine request to enter into immediate bilateral discussions was rejected by Chile, it soon became obvious that Argentina was not going to comply with the Award. Consequently, as the nine-month implementation period drew too close without any sign of acceptance by Argentina, it became obvious that some kind of bilateral discussions were necessary, if for no other reason than to simply maintain a dialogue between the two countries.

As a result of this attitude, on 19 January 1978, General Pinochet of Chile and President Videla of Argentina met, at General Pinochet's request, at an Air Force base in Mendoza, Argentina in an effort to resolve the dispute. After the meeting, General Videla, a moderate within a right-wing dominated junta, was hopeful that the dispute could be shelved for a cooling-off period.[1] He was wrong, however, for his foreign minister a week later announced Argentina's formal rejection of the 1977 Award (Declaration of Nullity). Additionally, the Argentine Army announced that 400 Chileans without proper documentation had been expelled from the Patagonian region of Argentina.[2] Thus,

Argentina, despite attempts to settle the dispute calmly, "put the Beagle Channel dispute back on the boil."[3] Meanwhile, Videla's problems with the right-wing hardliners within the junta were only just beginning.

On 20 February 1978, the two presidents met again, this time in Puerto Montt, Chile. The result of this meeting was the "Act in Principles Agreement" by which Chile and Argentina would confer in a series of three bilateral commissions on the definitive delimitation of the Argentine and Chilean jurisdictions in the southern area.[4] The Act of Puerto Montt was particularly significant because, for the first time in many years, Chile and Argentina would negotiate bilaterally, rather than depend on third party arbitration.[5] This Act envisioned three phases for negotiations:

Phase I -- 45 days in which to define the issues;

Phase II -- Six months to suggest possible solutions;

Phase III-- Draft a treaty.

Phase I began in March 1978, and ended on 6 April with the approval of a status quo aimed at guaranteeing tranquility in the Beagle Channel zone.[6] However, by 16 April 1978, it was evident that Phase I had failed. Problems arose as to how three main points identified earlier at Puerto Montt were to be negotiated by the commission. These issues were:

1 -- The delimiting of the southern zone;

2. -- The Strait of Magellan;

3. -- The 67°W meridian and the Argentine Bi-Oceanic Principle

Chile stood adamantly on the points awarded in previous arbitrations as well as the claim of the 200-mile Exclusive Economic Zone (EEZ). Argentina, on the other hand, wanted co-riparian status for the Straits of Magellan (mutual sovereignty over areas included in the Straits of Magellan area), reiteration of the Bi-Oceanic Principle, possession of Snipe Island in the Beagle Channel, and control of Evout, Barnevelt, and Hormos Islands in the south; and a 3-mile territorial limit around each island.[7]

Despite the failure of the first commission, a Second Joint Commission, headed by retired General Etcheverry of Argentina and Special Ambassador Vicuna of Chile, began a series of Phase II meetings in Vina del Mar, Chile, with formal definitive meetings planned for Buenos Aires from 2 October to 2 November 1978. As positions again hardened, the Chileans, in a political maneuver, walked out in September 1978, but returned a week later. On 13 September the talks resumed but tensions were beginning to increase. Indeed, the Chilean delegate to the United Nations, Ernesto Cubillos, hinted he would ask the U.S. to implement the Rio Pact should Argentina attack Chile over the Beagle Channel question.[8]

By 2 November, the formal closing date of Phase II, Joint Commission Two had reached agreement on only two of five agenda items. These were:[9]

1. -- Measures for promoting policies for physical integration, economic complementarity, and the exploitation of natural resources by each state or jointly, including protection of the environment;
2. -- Consideration of joint Antarctic interests, coordination of policies pertaining to the frozen continent, juridical defense of the rights of both countries, and the planning of advances in bilateral agreements relative to their common presence in Antarctica.

The three items not agreed upon by the Commission were the same as outlined previously, those being: the final delimitation of the southern zone; the Straits of Magellan; and the Bi-oceanic Principle.

The inclusion of the above-mentioned two conciliatory points in the Act of Puerto Montt, and acted upon by the Joint Commission Two, reveals that at the time, there was a mutual interest in facilitating some kind of agreement between the two countries in order to maintain at least a semblance of dialogue. Indeed, it was predictable that agreement on those two issues would be rapidly achieved, since that was how things had been developing in recent

decades between the two countries.[10] However, because the major points endemic to the Beagle Channel dispute had not been agreed upon, Joint Commission Two was disbanded and relations again became strained.

With the failure of Phase II of the Act of Puerto Montt, the Foreign Ministers of Chile and Argentina met in Buenos Aires from 12 - 14 December 1978 to consider a return to third party mediation. Despite a public appeal by Pope John Paul II to both governments, and warnings by the Carter Administration to the Organization of American States (OAS) of the potential dangers of a conflict, 18 hours of talks proved futile.[11] Consequently, recently appointed Chilean Foreign Minister Cubillos returned to Santiago on 14 December. On his arrival, Cubillos said that Chile had accepted an Argentine proposal that Pope John Paul II act as mediator, but had rejected the demand that she accept the Cape Horn meridian as the dividing line between the Atlantic and Pacific Oceans. "These and other demands of the Argentine Government limiting the action of the mediator prevented a final agreement."[12]

Argentine reaction to this impasse was predictably negative and there was even discussion among some Argentine nationalists that should an agreement on a mediator not be reached soon, Argentina might be forced to send forces into the southern area in order to occupy Cape Horn, Barnevelt, and Evout Islands. Although uninhabited, possession of them

would serve to strengthen Argentine claims to maritime sovereignty in the area.[13] Added to this bellicosity was a comment made by former vice president Rojas who proposed that Argentina occupy the islands of Picton, Nueva and Lennox "as we did in 1958 with Snipe Island when we calculated the risk of war."[14] Countering this, however, were various Argentine moderates who pointed out that there was an irresponsible manipulation of public opinion being conducted by the Argentine media.[15] In addition, these same moderates complained that there had been no clear-cut action by the Argentine government capable of removing from the public's mind the advisability of military involvement.[16] Despite this, most analysts feel that, except for the hardliners, most Argentines did not actually want the Beagle Channel crisis to escalate into war.[17]

On 15 December 1978, Chile began preparations aimed at formally accusing Argentina before the OAS of military preparations against Chile. Chile stipulated that President Videla could no longer control right-wing elements in his own government, and thus Argentina was preparing to occupy some of the disputed areas in the south.[18] Coinciding with this, President Carter called for a special meeting of the OAS, and Deputy Secretary of State Christopher consulted with the Ambassadors of Mexico, Venezuela and Brazil to seek their good offices.[19] Secretary General Waldheim of the UN and members of the European Economic Community also urged

the two countries to continue to seek a peaceful solution.

As tensions continued to heighten, Argentina, in a note to Chile on 21 December, again rejected the Chilean proposal to submit the dispute to the Vatican.[20] Efforts by President Carter and other leaders aimed at diffusing the crisis continued to be ineffective, and as a result, Chile, on 22 December, requested an emergency meeting of the OAS to prevent an attack by Argentina. The Chileans also requested that the Rio Pact be invoked.[21]

Meanwhile, the Vatican took the initiative and offered to begin official mediation actions to contribute to the solution of the dispute. Pope John Paul II nominated Cardinal Antonio Samore, a Latin American expert and the chief librarian and archivist at the Vatican, as his official envoy. On 23 December, both Chile and Argentina accepted, in principle, Papal mediation and war was averted.

Papal mediation efforts have historical precedents. For example, Pope Alexander VI mediated the boundary problem between Portugal and Spain in 1493-1494 which resulted in the establishment of the famous Tordesillas Line. Because the prestige of the Papacy is so great in Latin America, the announcement of the Pope's intention to mediate was enough to forestall the military efforts on both sides. Samore told reporters "the two nations are Catholic; and for that reason I hope the effort of the Pope will work out."[22] On

Christmas Day 1978 Cardinal Samore and his advisors left Rome for Buenos Aires.

Cardinal Samore's initial objective was to seek a reduction in the mobilization effort of the Chilean and Argentine forces which was costing both governments millions of dollars a day, and then seek an agreement to submit the basic issues to mediation.[23] In order to accomplish these objectives, Samore, who came to be known as the Vatican Kissinger, embarked on a 15 day "shuttle diplomacy" effort, spending 56 hours in the air and 60 hours negotiating in both Buenos Aires and Santiago. Samore was successful and on 8 January 1979, a tripartite meeting between the foreign ministers of Chile and Argentina and the Cardinal took place in Montevideo to formally request mediation by the Pope to solve the Beagle Channel dispute.

The Montevideo Act, signed by Argentine Foreign Minister Pastor and Chilean Foreign Minister Cubillos (see Appendix XI) resulted in both countries pulling back their respective forces from their common border and withdrawing their warships from the southern zone. The Act formalized the intention of both countries to submit the dispute to the Vatican for mediation, and just as importantly, it provided that neither country would use force during the time it was being mediated by the Pope (see Appendix VII). "...the two states will not use force in their mutual relations and

gradually restore the military situation existing at the start of 1977."[24]

This Act lessened immediate tensions in the area and was significant because Chile, by signing it, formally rejected the British Arbitration Decision of 1977 and accepted, for the first time, the possibility of a final settlement different from the awards of previous arbitral tribunals.[25] However, a great deal of mistrust continued to exist between Argentina and Chile, but by April Samore was able to announce plans for continuing the negotiations in Rome. On 4 May 1979, Chilean Ambassador Berstein and Argentine delegates Frias and Moncayo formally opened negotiations in the Vatican.

The success of Cardinal Samore stands in sharp contrast to the failure of the 1977 Court of Arbitration to resolve the dispute after six years of legal proceedings. The long delay in rendering the 1977 Decision is highlighted when compared to the punctuality of Cardinal Samore's arbitration. Although Cardinal Samore undoubtedly had the advantage of the parties' post-award confrontation, their common faith and the high tension of the moment, he constructed an acceptable peace formula within three weeks. His formula, which provided that Chile would retain the three islands and that a "demilitarized binational zone" would be established over the Channel itself is significant in that it took into consideration the political element of

the dispute rather than simply a territorial element.[26] Despite the fact that details of an agreement had not yet been formulated, the mere fact that a solution had been presented which offered a variation on the all-or-nothing theme of entitlement reconciled Argentine concerns and offered hope for a peaceful settlement.

B. *The Military Buildup: 1977 - 1978:*

Translating the tensions resulting from complications and failures of the ongoing negotiations between Chile and Argentina prior to 22 December 1978, into action, the military forces of both countries mobilized quickly and effectively. From an analytical perspective of intelligence and warning, the time from January to December 1978 illustrates a classic intelligence and warning problem in that all three of Richard Bett's categories of military warning and surprise are evident: political, strategic and tactical warning.[27]

By definition, political warning deals with the increase in tension between two states; strategic warning with the intention to initiate hostilities; and tactical warning with the time and circumstances of an actual attack. Within these three categories certain sub-categories or indications are present which serve to illustrate specific events happening within each category. The most common indications are classified as political, economic, military

and social. In analyzing a military situation which could lead to a conflict, indications are used to determine the level of warning to be applied to that situation. A rule of thumb is that indications of political warning are normally noticed prior to indications of strategic warning; and indications of strategic warning prior to indications of tactical warning.[28] From a different perspective, indications of political warning are normally associated with actions relating to nations or heads of state, whereas indications of strategic warning are related to actions of higher-level military echelons and situations which may lead to eventual conflict. Indications of tactical warning are normally associated with the immediate on-site actions of the combatants or actual ongoing conflict.[29]

With these general definitions in mind in relation to intelligence and warning, the high-level, political developments outlined above are classic indications of political warning. Each effort at resolving the Beagle Channel problem on a bilateral level was unsuccessful, and with this lack of success, further tension and impasse resulted. Efforts at outside mediation were fruitless and the analyst can see a clear pattern of degradation of the Beagle Channel discussions at the political level. As tensions increased, so also did the manifestation of these tensions on the strategic level.

Regarding the strategic level, from September to December 1978, certain indicators became active which translated into the realm of strategic warning, and which were analyzed as potentially leading to armed conflict. The following list of indications became evident from September to December 1978 and when taken together, form a classic pattern inherent to the definition of strategic warning:

1. Political Indications:

-- Argentine and Chilean sabre-rattling which not only resulted from complications in the ongoing negotiations, but also were manifested by the continued Argentine reluctance to agree to a third party mediation;[30]

-- Argentine press comments (as outlined above) stating Argentine intent to invade the southern islands should bilateral talks fail;

-- The explusion of Chilean citizens from Argentine Patagonia;

-- Press reports that Argentine President Videla was under pressure from the right-wing junta members to "not give an inch" in negotiations with Chile, otherwise he might be replaced;[31]

-- Chilean moves to call an urgent session of the OAS.

2. Military Indications:[32]

-- Both sides mobilized their naval units and stationed them within 24 hours of the PNL group,

and Chile based her A-37 and Hawker Hunter aircraft at the Puerto Montt airfield in the far south;

-- Argentina maintained a smaller flotilla of seven to eight ships, including her aircraft carrier, within 100 miles of Nueva Island;

-- Argentine infantry units totaling over 10,000 men were deployed along the 2600-mile Andean border with Chile, and marine infantry units were reinforced in the Tierra del Fuego region;

-- Air raid and blackout drills occurred throughout September-December 1978, in major cities in Argentina and Chile;

-- Both Argentina and Chile began fuel rationing procedures;

-- In December, hospitals were put on alert in both countries;

-- The Argentine War College rushed graduation from late November to early October so officers could join their units;

-- Argentine and Chilean reservists were called up; in December Argentina recalled individuals to age 55 to combat units;

-- Chile mobilized over 45,000 men and deployed them at the northern border facing Peru and the southern area near the Straits of Magellan;

-- Argentina held full scale maneuvers in October in the mountain passes near the Chilean border; both sides conducted land and naval maneuvers in December as tensions increased.

3. Economic Indications:

Economic indications are valuable in attempting to discern a general pattern of activity with a goal of determining the capability to wage war. In the case of Argentina and Chile, 1977 was a key year in that after the Arbitral Award was announced, tensions rose between the two countries; consequently, economic indications tended to manifest this tension, especially concerning weapons purchases. Because economic indications tend to take more lead time to become apparent some indications of purchases extended over a number of years. (See Figure 2 for 20 year trends of Argentine/Chilean military expenditures).

Chile:

-- From 1977 to 1980 Chile doubled its military expenditures and imported a number of major weapons systems: 95 aircraft of different types and 30 helicopters from Brazil, Canada, France, the Netherlands, Spain, Switzerland and the United States; 16 missile-armed fast patrol boats from Brazil and Israel; two submarines from (West) Germany; two landing-ships from France; and several thousand air-to-surface, surface-to-surface and

surface-to-air missiles, mainly from France, Israel and South Africa. Chile, itself a producer of fast patrol boats (under Brazilian license), landing ships (under French license), and armored vehicles and small arms, increased domestic production in these areas as well.[33]

-- In 1977, Chile's military budget was approximately 5% of GNP and totaled nearly $400 million; in 1978, this rose to $730 million; 1979 to $770 million; and 1980 to over $1 billion.[34]

Argentina:

-- After the announcement of the 1977 Arbitral Award, Argentine arms imports rose steeply. For example, orders were placed in West Germany for four frigates, four destroyers, six corvettes and six submarines. Some of the latter were to be assembled in Argentina.[35]

-- In 1977 Argentina's military budget was approximately $800 million; in 1978 this rose to $1.7 billion; in 1979 to $2.5 billion; and in 1980 to $3.3 billion.[36]

These economic indications manifest directly the political tensions occurring during the 1977-1980 timeframe. As these numbers suggest, there is a direct relationship between the political tensions of the period and the resultant military expenditures of both countries. To

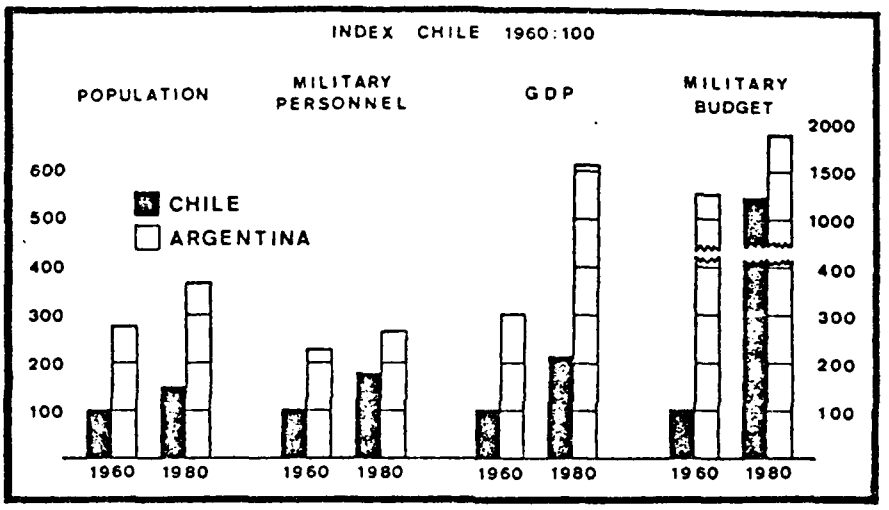


Figure No. 2
Argentina/Chile Military Expenditures; 1960-1980
Source: SIPRI Data Base: 1981

analysts, economic indications can be valuable for, as the correlation above has shown, military expenditures tended to mirror political tensions in this conflict situation.

4. Social Indications:

-- Bellicose press reporting and media propaganda blitzes occurred in both countries. These activities heightened in December as tensions began to increase.

The above indications and considerations are examples of strategic warning, for they have the characteristics of being able to portend possible future conflict. On 22 December 1978, the following indications of tactical warning occurred which served to illustrate that a conflict was imminent or already ongoing:[37]

-- Argentina began deploying armor and infantry units toward the Andes passes;

-- Argentine Air Force planes were recalled after flying over Chilean airspace enroute to targets in the south;

-- Chile had fully mobilized its border forces and prepared to defend against Argentine air attacks in the south.

As an intelligence and warning case, the Beagle Channel crisis of 1978 was a classic, for not only did it have an historic base to draw upon to accumulate past trends and indications of intent, but it also included the three

categories of warning as outlined above. Additionally, having seen the crisis unfold as it did in 1978, makes certain a valuable data base exists for analysts should tensions again heighten in that area in the future.

In considering whether there would have been an actual war, several factors were important. First, Chile had little incentive to strike the first blow since she had a solid legal foundation as a result of the 1977 Arbitral Award on which to base her claims. Secondly, Chile was militarily inferior to the Argentines, although the Chilean Navy was qualitatively superior.[38] Thirdly, Chilean officials were aware that a first-strike on their part would leave many Chilean population centers vulnerable to Argentine air attack.[39] And finally, Argentina and Chile both knew that there was the chance that other nations could enter the conflict, thus expanding the local problem into a regional one.[40]

Many officials reviewed two possible scenarios that could lead to an all-out conflict; the first was that Argentina would land a token force on one or more of the uninhabited islands of the Wollaston Archipelago, south and west of the PNL group. The second scenario envisioned Argentine forces landing on the islands of Cape Horn and Freycinet where Chile had only a few personnel. In either case, if an armed clash occurred, it was felt that a broader struggle would ensue. If the Argentines met no resistance,

there still could have been room for negotiation.[41]

As it happened, however, the Pope fortunately interceded and war was averted. Both countries, though, did keep their forces on a heightened state of alert during the initial stages of mediation. In Argentina, the military warned that the danger of war "has been pushed away momentarily but not written off completely."[42]

C. Papal Mediation: 1979 - 1984:

May 4, 1979 was an optimistic moment for Argentina and Chile. Both countries had just opened formal negotiations in Rome and both had placed their dispute in the hands of the Pope: an arbitrator they had no choice but to trust. Despite this initial optimism, mutual distrust remained and the issues remained just as complicated as before. Consequently, neither party wished to rush unwisely into concessions; yet neither would go to war while the Pope's negotiator was involved. Thus, semi-official foot-dragging seemed satisfactory to all.

The first breakthrough attributed to the Papal mediation process occurred on 12 December 1980, when John Paul II handed the Foreign Ministers of Argentina and Chile his answer to their dispute. Although never published officially, the contents have become widely known. The PNL group, along with the rest of the rocks and islets to the south were to become Chilean.[43] Argentina was to surrender her

sovereignty over seas adjacent to these islands and this area was then to become a "Sea of Peace"; no armaments or warships were to be allowed in the area. Additionally, the Cape Horn meridian was to be retained as the boundary line between the two countries, although it left vague the question of a Chilean outlet to the Atlantic or Argentina's to the Pacific.[44]

If the 1977 Award is taken as the starting point, if there was a winner it was Argentina.[45] At least Argentina retained her southern seas. Chile, on the other hand, was likely to lose all claims to Atlantic waters. The Chileans, however, accepted this Papal decision as a great triumph. The Argentines, meanwhile, did not respond immediately. Although President Videla supported the Vatican's proposal, the right-wing majority was opposed to it and subsequently the Argentines rejected the Decision. Apparently, the Argentines wanted a more specific confirmation of the Bi-Oceanic Principle.[46] As a result, the Vatican and the two protagonists went back to the drawing board.

Repudiation of the 1972 Treaty:

In January, 1982, a mild setback to the mediation proceedings occurred when Argentina formally repudiated the 1972 General Treaty on the Judicial Settlement of Disputes (see Chapter One and Appendix VIII). This Treaty was a bilateral agreement having as its main premise that all future conflicts between Argentina and Chile were to be

submitted to the International Court of Justice for resolution. Although the denunciation was expected, Argentina could have waited five more months until June, 1982 to do so (the actual ten-year deadline).

The reason for the Argentine repudiation of the 1972 Treaty was that Argentina wanted to indirectly speed up the process of negotiation at the Vatican. Additionally, this Argentine action served to restrict Chile's options and left her with no choice but to accept only Papal mediation and not allow her to resubmit her demands to the Hague Court should Papal mediation produce undesired results.[47] Thus, the hardliners in Argentina, by repudiating the 1972 Treaty, in effect made the decision to accept only Papal mediation efforts in the future.[48]

Although the news was received in Chile with considerable concern, it forced Chile to realize that any Papal settlement it may agree upon would in fact be binding and consequently unwise concessions could not be tolerated.[49]

Discussions continued throughout the rest of 1982 and 1983, with no real progress being made. Each country wanted to ensure that no conciliatory gestures were made in haste. A breakthrough, however, occurred on 23 January 1984, when a Declaration of Peace and Friendship was signed. This Declaration, although mostly symbolic, did indicate that both countries were willing to continue negotiations and that they may be getting closer to a formal agreement.

According to Argentine delegate General Etcheverry "the significance of this announcement is that we are entering into a conclusive phase in preparation for the signing of a treaty acceptable to the dignity of both countries."[50]

By February 1984, three main points still needed to be resolved. These were:

1. Navigation rights in the Channel;
2. The way in which future disputes should be resolved;
3. The maritime boundaries.[51]

Up to this point, Vatican proposals had indicated that Chile should keep the PNL group, but that she extend her jurisdiction only 12 (not 200) miles from Nueva. However, Chile had recently complicated negotiations by demanding a 15-mile border from Nueva and a commercial treaty which would give them shared fishing rights in the Atlantic.[52] Negotiations continued, however, without major problems arising.

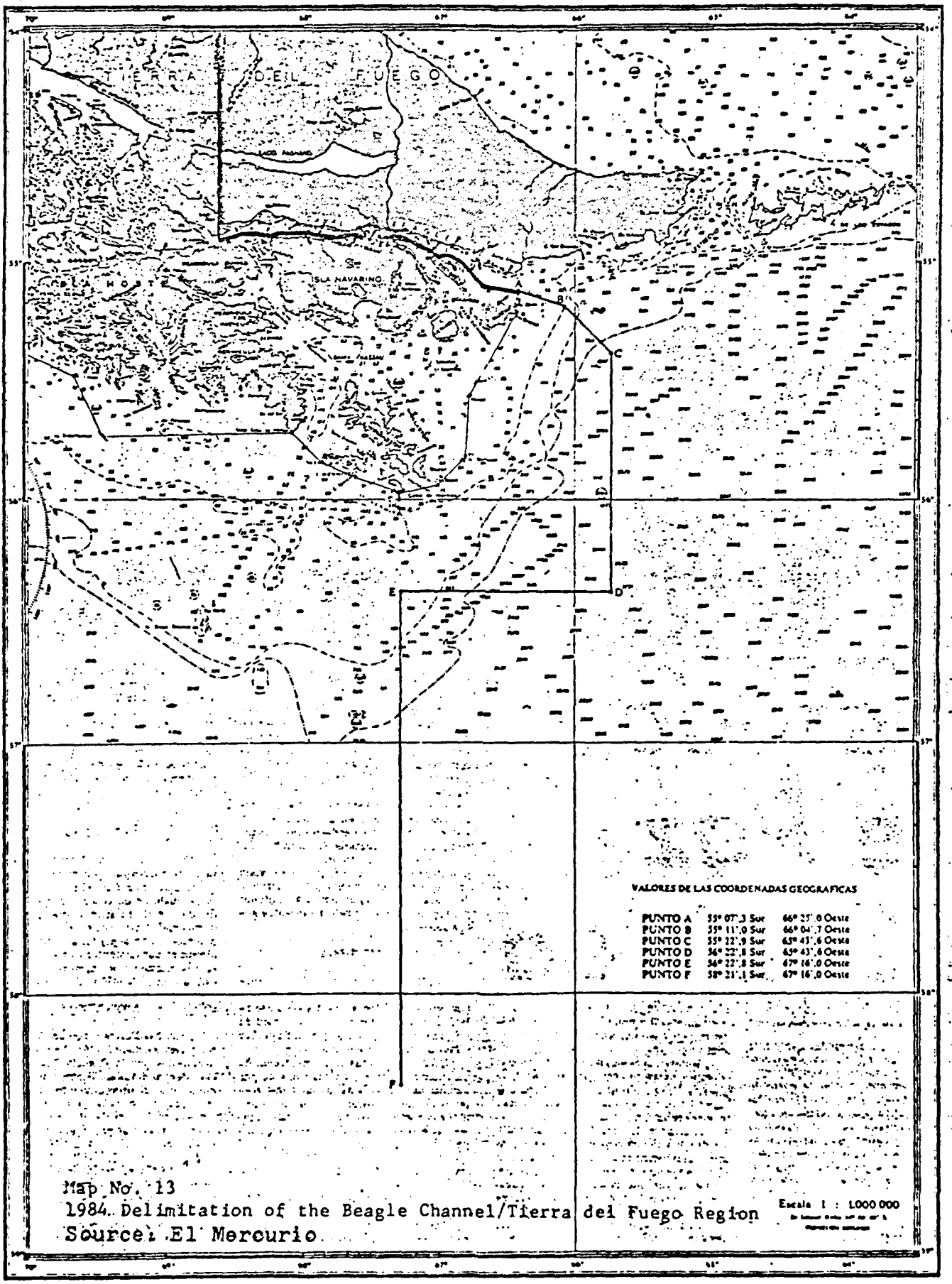
D. The 1984 Argentine-Chilean Treaty of Peace and Friendship:

The culmination of five years of Papal mediation occurred on 4 October 1984, with the announcement of a tentative accord resolving the Beagle Channel dispute. This accord, officially The Treaty of Peace and Friendship, was outlined in a protocol signed by Argentina and Chile,

agreeing on the contents of the Treaty, on 18 October 1984, at a small 16th century building behind St. Peter's Basilica. The one-page protocol gave no major details of the Treaty, which was to be made public one week later. The protocol was signed by Ambassador Del Peck of Argentina and Ambassador Videla of Chile. Vatican Secretary of State Casaroli also signed the document.

The Treaty of Peace and Friendship, which is based on the Papal proposal of 12 December 1980, stipulates certain key points (see Appendix XII):[53]

1. The three islands of Picton, Nueva and Lennox will belong to Chile, along with some islets and islands, as well as maritime jurisdiction of up to 30 miles in certain areas of the Atlantic (see Maps 13, 14, 15);
2. Argentina receives recognition of the Bi-Oceanic Principle, with the Cape Horn meridian as the southern dividing line between Chile and Argentina;
3. Argentina's and Chile's Antarctic claims are ensured;
4. The Straits of Magellan is to be demarcated at its eastern mouth, thus assuring Argentina co-riparian status (see Maps 16 and 17). Argentine sources indicated that if this provision had not been included, the Treaty would have been unacceptable to Argentina;[54]

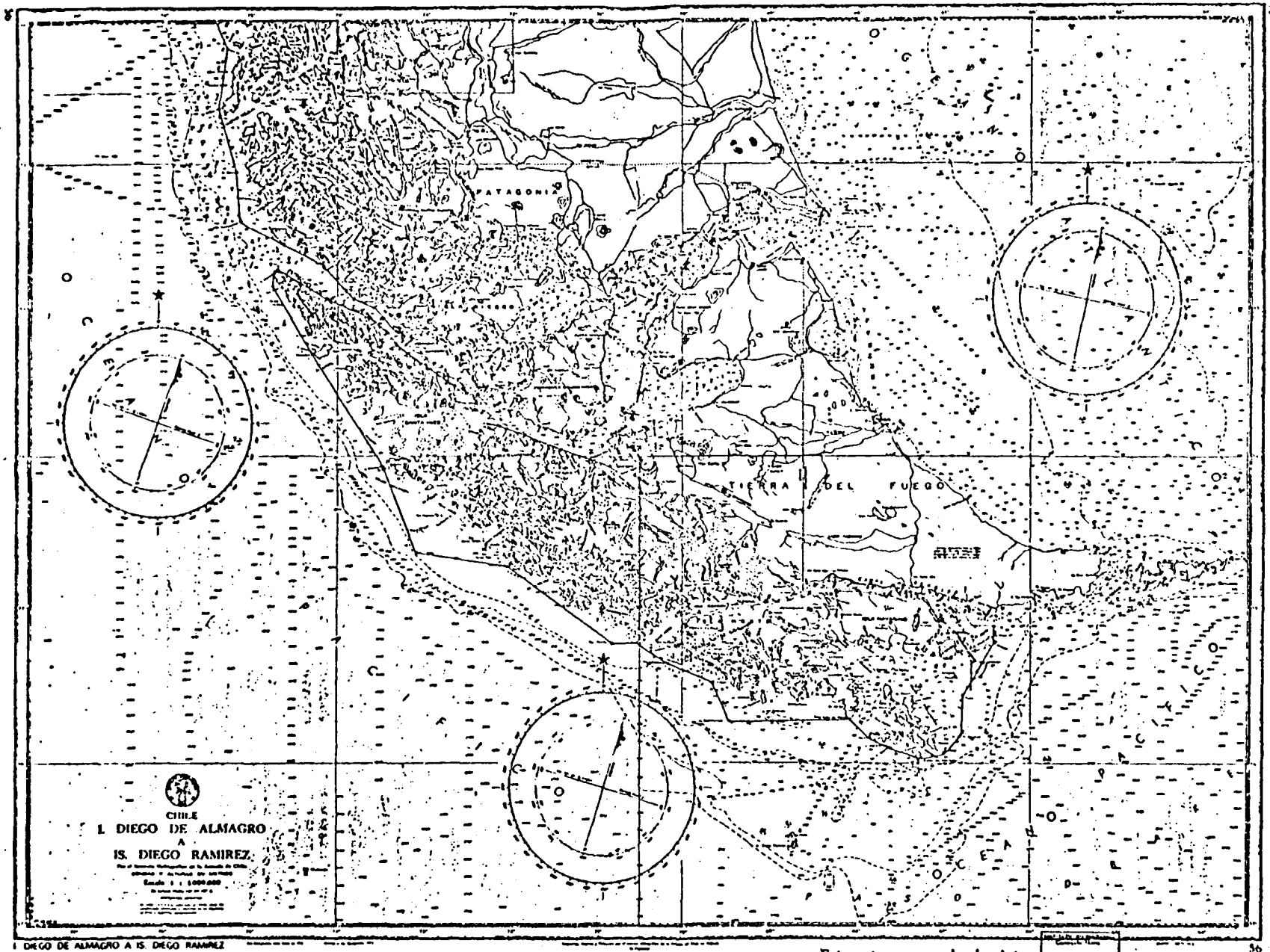


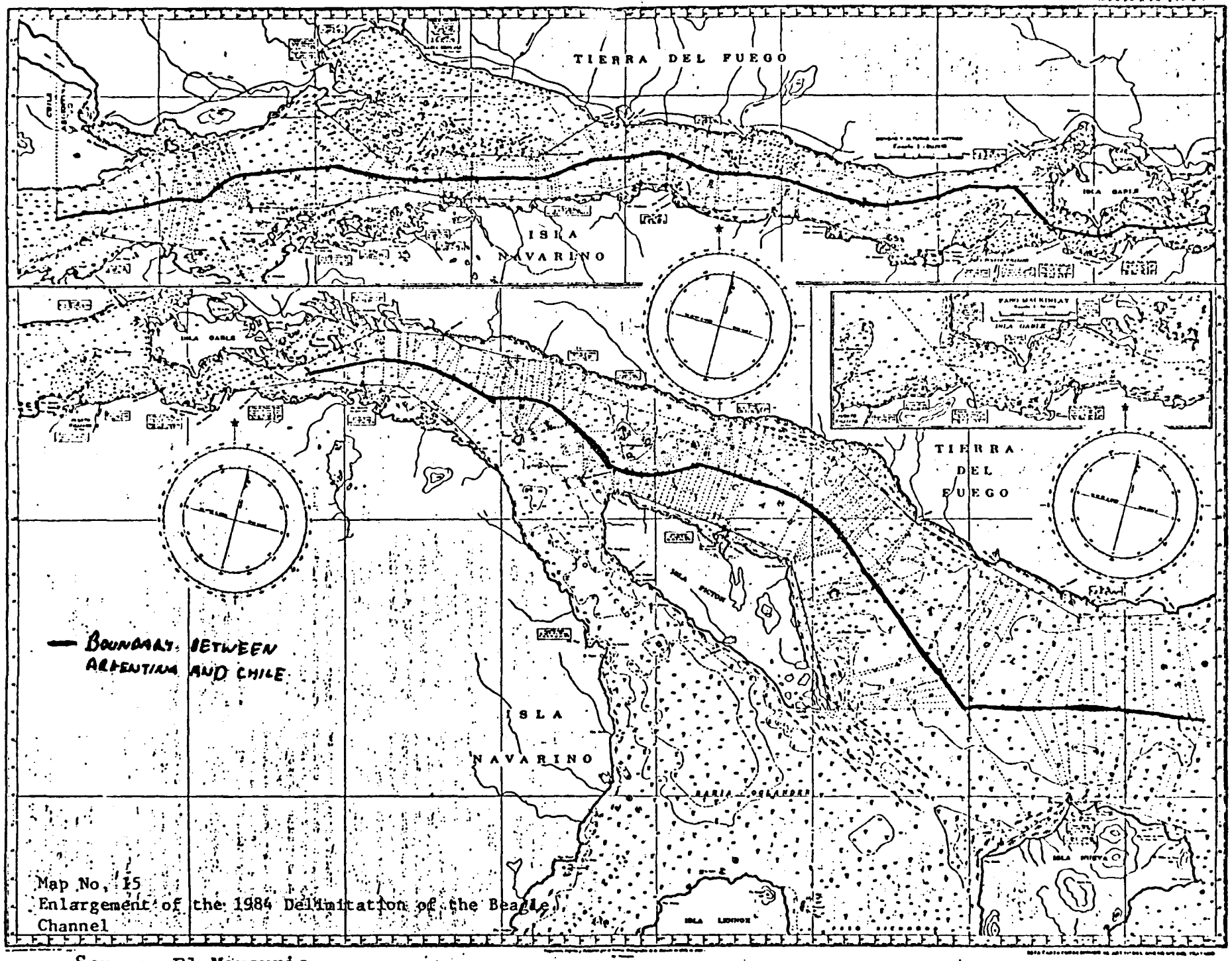
Map No. 13
1984. Delimitation of the Beagle Channel/Tierra del Fuego Region
Source: El Mercurio

Zona entre los paralelos 54° S y 57° S según Carta N°16 del Instituto Hidrográfico de la Armada de Chile.

Esta carta corresponde al Art. 7° del Tratado

Map No. 14
1984 Delimitation of the Tierra del Fuego Region
Source: El Mercurio

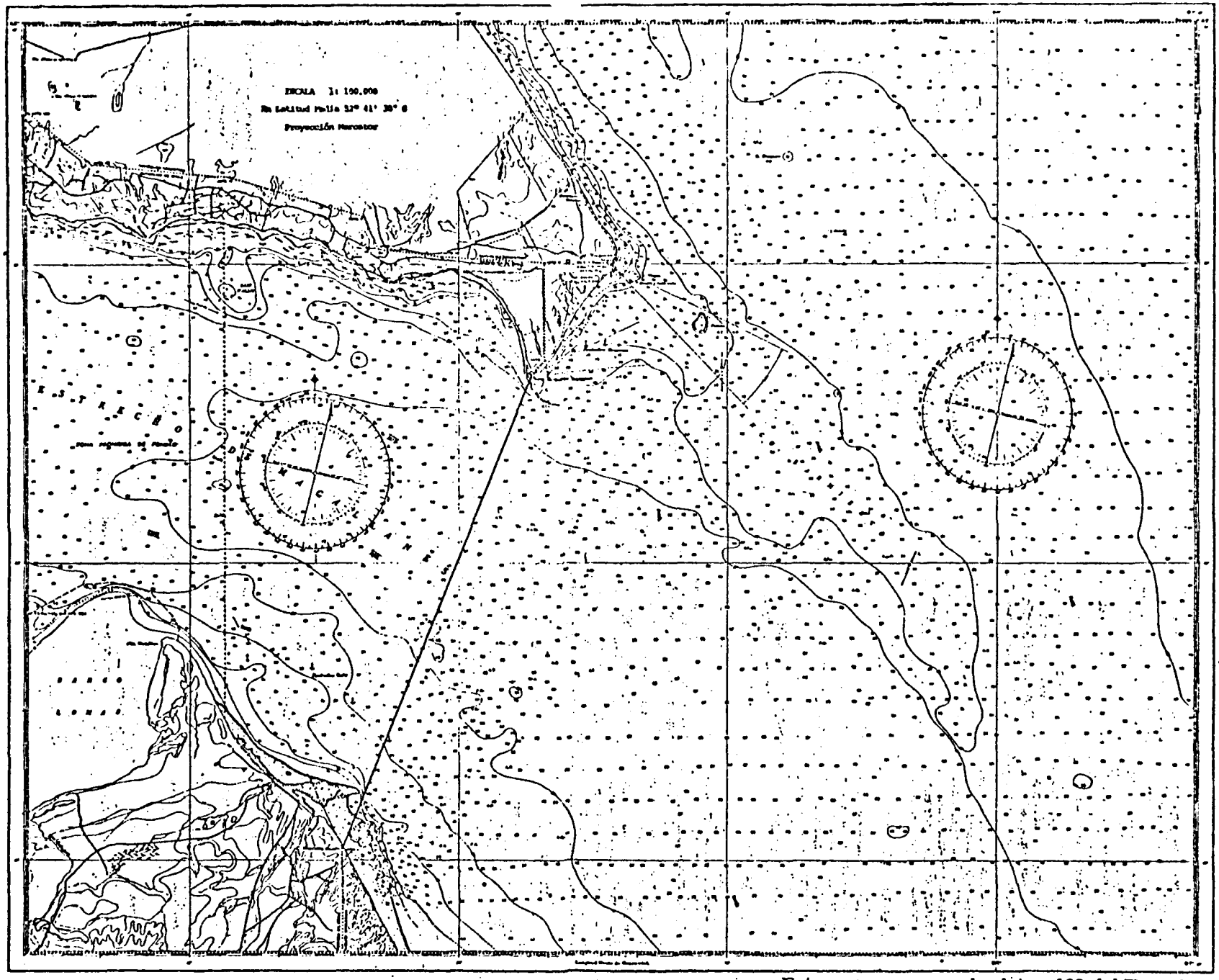




Map No. 15
Enlargement of the 1984 Delimitation of the Beagle Channel

Source: El Mercurio

CARTA Nº II



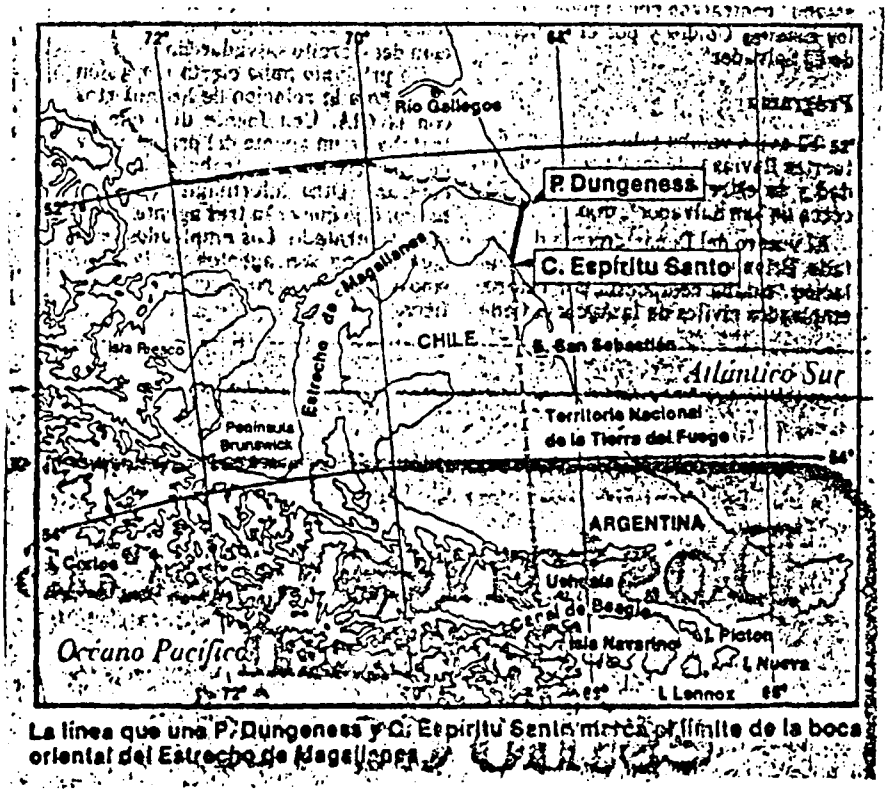
Zona entre los paralelos 52° 12' S y 52° 43' S según Carta Nº H-424 del Servicio de Hidrografía Naval de la Armada Argentina

Esta carta corresponde al Art. 10º del Tratado

Source: El Mercurio

Map No. 16
1984 Delimitation of the Straits of Magellan

Delimitación marítima de las respectivas soberanías sobre el mar, suelo y subsuelo en el Mar de la Zona Austral



La línea que une P. Dungeness y C. Espíritu Santo marca el límite de la boca oriental del Estrecho de Magallanes

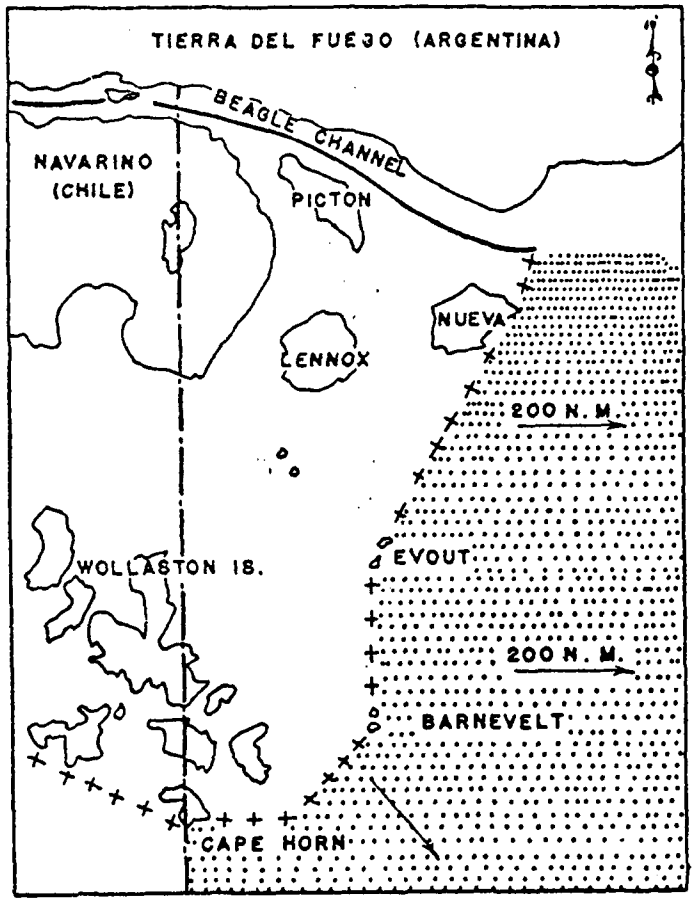
Map No. 17
Source: El Mercurio

5. The Treaty prohibits armed conflicts and establishes an obligatory mechanism of peaceful resolution of controversies and includes a complex system of navigation concessions.

Based on the large number of juridical reasons that Chile has produced and on the 1977 arbitration ruling Pope John Paul II recognized that "all the islands to the south of the Beagle Channel" are Chilean. Among the 12 islands and islets are Picton, Lennox, and Nueva Islands, as well as the Wollastron Archipelago, Evoult, and Barnevelt Islets, and the Decit and Hornos Islands. The Pope drew the "borderstrip" from north to south, 12 miles east of the easternmost islands. The "polygonal surrounding line" goes around Nueva Island, the Evoult and Barnevelt Islets, Deceit Island, and Hornos Island. The Pope proposed that Argentina should have a "nonsovereign presence" in the maritime area between the islands by placing navigational and meteorological devices there. In his 12 December 1980 proposal, John Paul II suggested that the Cape Horn meridian should serve as the southern limit.

Since Chile claimed to have a 200-mile sovereignty, (see Map 18) the Pope's proposal included a so-called "zone of shared and agreed activities." The Argentine negotiators immediately considered this a dangerous proposal that would give rise to a "gray area of sovereignty." Thus, the final agreement does not contain this "zone." Chile will now have

BEAGLE CHANNEL DISPUTE



Map No. 18

Chile's 200-Mile Extension into the Atlantic

Source: Review of the River Plate, 1982

Chile will now have three maritime areas: a "territorial sea" from its coastline to the three-mile line; a "jurisdictional sea" between the six- and 12-mile lines, (an area where the Argentines have special maritime and air navigation rights); and a "patrimonial sea" from the 12- to the 30-mile lines, where Chile has economic exploitation rights.

From Argentina's standpoint, the agreement was a welcome triumph. President Alfonsin's government, burdened with acute economic problems, is known to have wanted to reach a settlement on the issue in order to halt arms purchases and to promote needed regional economic integration. Officials also indicated that a compromise by the Argentines on the Beagle issue would help them in their continuing dispute with Britain over the Falklands. Alfonsin had made signing an agreement a key issue in the 1983 Presidential race. Although work on the agreement had been nearly completed before Argentina's military rulers left office on 10 December 1983, right-wing nationalist officers had prevented a final accord.[55]

In order for the Treaty to take effect, it requires ratification by the respective governments. The Argentines must ratify the Treaty through their National Congress while Chile, according to its Constitution, must have a Congressional ratification. This cannot, however, take place until the present military government returns the

country to civilian rule which is currently scheduled for 1989. Additionally, Argentina put the Treaty to a national referendum (plebiscite) at the end of November 1984, in which it was overwhelmingly approved. Although the referendum was non-binding, it was designed to curb any reaction against the Treaty from nationalists who opposed the compromises it contained.[56]

The Treaty is expected to be formally ratified in both countries. In Argentina, Alfonsin is taking no chances. There have been numerous reports of a major propaganda campaign designed to counter the opposition Peronist party and to downplay Argentine compromises in order that the Treaty will be approved.[57] The Treaty is expected to pass easily in the Argentine Congress' lower house, where Alfonsin's Radical Civic Union Party holds a majority, but may run into trouble in the upper house where six senators from small provincial parties have the deciding votes.[58] On the other hand, Chile expects no difficulties in ratifying the Treaty. Chilean Navy Chief Merino considers the boundary agreement with Argentina as "equitable in all manners."[59] Former Chilean Foreign Minister Donoso indicates the agreement is "just, equitable and honorable and offers full protection for Chilean interests in the Southern Zone."[60] The Chilean Minister of Defense added that the agreement "serves everyones interests and does not

weaken national defense."[61] He also said it would permit defense cuts. Those opposing the Treaty, although in the minority, did criticize it to a certain extent. One of the most outspoken critics of the Treaty, former Undersecretary of Foreign Relations Oscar Pinochet de la Barra, said, "It seems unacceptable to me that the Chilean/ Argentine maritime boundary should run from the Cape Horn dividing line...thus creating overnight an Argentine territorial sea that should have been divided with Chile."[62] He added: "Chilean diplomacy and the military government have gone awry in permitting demarcation of the eastern mouth of the Straits of Magellan which is a true gateway and which Chile renounces."[63]

At the time of this writing, the above Treaty had not yet been ratified by the two protagonists. Both countries are confident as to its utility and are hopeful it will become a permanent agreement. Because the significance of the area has increased so much over the last 20-25 years, a viable agreement is necessary to ensure peaceful development of the region. In order to appreciate the significance of the region to the two protagonists, as well as to other countries in the area, Chapter Four will discuss the myriad of subsidiary issues directly related to the dispute.

CHAPTER THREE

NOTES

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(3) "Southern Seas: Clearer, But Still Watery," p. 96

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(5) Buenos Aires, "Confirmado," JPRS, #1944, p. 21

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(11) "Argentina and Chile Break Off Talks Over Islands, New York Times, (December 14, 1978), p. 7

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(29) Jeremiah O'Leary, "No War Seen Despite Failure of Talks by Chile, Argentina," Washington Star, (December 16, 1978)

(30) "Argentine Armed Push Against Chile Feared," Washington Star, (December 16, 1978)

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(32) Stockholm International Peace Research Institute (SIPRI), World Armaments and Disarmament, (Cambridge, MA: Oelgesch-lager, Gunn and Hain, Ind., 1982), p. 410

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(34) PIPRI, 1982, p. 410

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(36) These tactical indications were outlined in both the New York Times, and Washington Times, December 1979 and October, 1984 respectively. Also, the Economist, December 15, 1979

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(43) "Southern Seas: Clearer But Still Watery," p. 95

(44) "Southern Seas: Clearer But Still Watery," p. 85

(45) "Southern Seas: Clearer But Still Watery," pp. 95-96

(46) Peace Closer with Chile and UK," Latin American Regional Reports, Southern Cone, (84-01, February 3, 1984), p. 3

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(60) Santiago, El Mercurio, translations provided by Chilean Embassy to the U.S., Washington, D.C., December 1984

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(63) Santiago, El Mercurio, translations provided by Chilean Embassy to the U.S., Washington, D.C., December 1984

CHAPTER FOUR

The Subsidiary Issues

The previous three chapters of this study have outlined the various fundamental aspects of the Beagle Channel dispute primarily from the chronological and legal points of view. These chapters have dealt with the events involved in the conflict and the various actions and reactions of the protagonists. This chapter, however, expands on the events outlined in the previous chapters and addresses the various subsidiary issues endemic to the dispute--issues which over the past 25-30 years have added great significance to what otherwise should have been a minor problem of delimiting the Beagle Channel and deciding who would be sovereign over the three islands. These underlying and subsidiary issues and concerns result directly from what is essentially the main point of conflict within the entire Beagle Channel dispute: the expansion of Chile eastward into the Atlantic at the expense of Argentina and its territorial waters. In essence, all of these subsidiary issues, outside of the actual delimitation of the Beagle Channel, are a result of the Chilean challenge (albeit legally as a result of past arbitral awards) to the Argentine perception that the Cape Horn meridian (67^{o}W) is the boundary between the Atlantic and Pacific Oceans, and thus between Argentina and Chile. By allowing Chile access

to coastal territories and Atlantic waters, the problem becomes not one of who actually owns the Beagle Channel and the three little islands, which are of little significance in and of themselves, but rather to what extent Chile is able to expand its influence into South Atlantic waters heretofore claimed as Argentine. "Concern seems to be less over the islands themselves than over the difference they make to delimitation of territorial sea and economic zone areas in the South Atlantic."[1]

When this philosophical point of claiming territorial and maritime zones into the Atlantic is carried to its extreme, it is obvious that Chile, which espouses to the 200-mile Exclusive Economic Zone (EEZ) concept (which is rapidly gaining additional adherents in the international community), can expand its territorial seas 200 miles into the Atlantic and legitimately control all seabed mineral resources, fishing resources, and passage rights throughout this area. Argentine reaction to this realization is strongly, and not surprisingly negative:

> "And if, on the basis of these geopolitical speculations, we (Argentina) trace on the map the circles indicating the 200-mile limit surrounding every island between Staten Island and Cape Horn and then repeat the operation from South Shetland Island in Antarctica, we find ourselves facing a

> panorama in which Chilean expansion into the waters and seabeds that have always been considered part of the Atlantic turns out to be inadmissible to Argentina, since it would mean not only the appropriation of a maritime space east of the Cape Horn meridian but also the extension of Chilean territory on the seabed to the point that it would once more leave Argentina on the outside."[2]

With the crux of the Beagle Channel dispute in mind--the incursion of Chile into the Atlantic at the expense of Argentina--it is necessary to identify and discuss the major subsidiary issues which result from this Chilean expansion. These subsidiary, but significant, issues range in scope from internal to international; internal in the sense that nationalism is a major factor regarding the volatility of the dispute and a potential for war; international in the sense that the disputed area is valuable for strategic maritime passage around Cape Horn and through the Drake Passage as well as access to fishing areas, especially for krill; access to sectors of Antarctica; and access to vital strategic mineral and petroleum resources. All of these issues are interrelated and all are important in the context of why the dispute has become so volatile in the last 25-30 years. In essence, there is more at stake in this dispute

than just the Beagle Channel and the three little islands at the bottom of the world.

Before a discussion of the individual subsidiary issues concerning the Beagle Channel dispute is presented, it is necessary to identify the importance of the South Atlantic as it relates to the dispute and also to present an overview of the geopolitical perceptions of Chile and Argentina, with emphasis on the historical roots and motives for Argentine and Chilean animosities in the area.

A. Importance of the southern area of the South Atlantic:

The importance of the southern South Atlantic has increased notably over the past decade. Not only is it important from a maritime traffic perspective but it is also important from an economic and military perspective as well.[3] The southern South Atlantic is defined as beginning with the 50th parallel south and being limited on the east by the 20th meridian west; on the west by the Cape Horn meridian, and on the south by the Argentine Antarctic.[4] This area, unfortunately, includes the area involving the Argentine/Chilean Beagle Channel dispute which lends added significance to the area.

1. Maritime Traffic: Regarding maritime traffic, the southern sector of the South Atlantic is important because it is the necessary passage to or from the North Atlantic for large ships (oil tankers, grain cargo vessels and aircraft carriers) which because of their size, cannot use

the Suez or Panama Canals.[5] Because industrial nations on both sides of the North Atlantic have become increasingly dependent on emerging nations in Africa, Asia, and the Middle East for raw materials vital to national defense and their economies, the great majority of the raw materials for the U.S. and European markets can only be delivered via routes through the southern area of the South Atlantic.[6] This is manifest by the dramatic increase in free world shipping through the South Atlantic involving the transport of petroleum"

> "Sea lanes in the South Atlantic began to grow in importance with the closure of the Suez Canal in 1954. This action gave shippers the push needed to convince them that the wave of the future was large, deep draft tankers. These craft, too deep for passage of the Suez Canal, have grown steadily in size and number until it is quite evident that with the enormous size of tankers, the haulage of quantities of crude oil around the Cape will continue."[7]

2. Economic and Military Importance: In addition to the transitting of raw materials throughuout the southern South Atlantic, the area is important because of its fishing and hydrocarbon resources and the possibility of future exploitation of mineral deposits, in particular, manganese

nodules. As new economic resources are discovered in these waters, and as the economies of the various countries in the region require greater exploitation of these resources, accessibility becomes of utmost importance. Thus, both Argentina and Chile continuously emphasize the need to secure advantages for the access to these resources.

From the military strategic viewpoint, if this area is of basic importance to the countries of the South Atlantic (local conflicts), it is no less so from the point of view of a possible confrontation between two world powers, in either its nuclear of conventional variation. This is the case because of its value as a logistic transit area, which would be even greater in view of the possible closing of the Suez or Panama Canals, and also because it constitutes a theater of maritime and aerospace operations subsidiary to those in the North Atlantic and the Indian Oceans. Regionally, the southern South Atlantic represents a zone of great military value, and control of the access routes, both from the Pacific and from the Indian Oceans, is of great importance.[8] This area controls the access from the Pacific (Straits of Magellan, Drake Passage, and Beagle Channel) to the Antarctic Islands. From the south it flanks the maritime traffic between the Cape of Good Hope and the Bahia Blanca-Rio de Janeiro sector.[9]

From the Argentine perspective alone, this area constitutes the extreme southern flank of the Patagonian-Buenos

Aires maritime coast, and as such, takes on an important defensive role. Currently, Argentine military power in the area is represented on the continental coast by weak and exposed points of support (aeronaval) on the main Tierra del Fuego islands. Argentine military vulnerability, according to their analysis, is a product of the following factors:

1. British presence in the Falkland Islands. This affects Argentine potential for economic exploitation of the area. Militarily, the presence of a strong foreign power in the area continues to absorb Argentine resources and diverts attention from other areas of concern.
2. The Antarctic Treaty. By this Treaty there can exist no military bases or fortifications in the areas of the Antarctic covered by the Treaty.
3. Lack of integral development of Argentine Patagonia, in particular, south of the 42nd parallel. This constitutes a weakness since this territory is a potential operational platform for Antarctic development and military bases.[10]

It is obvious that, from an examination of maritime traffic, economic and military perspectives, the southern South Atlantic is of extreme regional and international importance. Consequently, Chilean incursions into the area due to the Beagle Channel controversy brings about an extremely unstable situation vis-a-vis Argentina. With this

in mind it is necessary to understand the Chilean viewpoint regarding geopolitical concerns in the region, especially in light of her ambitions in the Atlantic.

B. Chilean Geopolitics in the South Atlantic:

Chile, although traditionally a Pacific power, has historically had a great interest in areas adjacent to the Atlantic. This tradition has its inception in the influence of Bernardo O'Higgins, the precursor of Chilean geopolitical thinking. O'Higgins envisioned Chile as the determining presence in the southern hemisphere to include expansion into the Atlantic, traditionally the domain of Argentina:

> "Since independence has been won by our Fatherland, no happy event could give me greater satisfaction than witnessing the civilization of all the sons of Chile on both sides of the mountain chain and their union in one great family...the old and new Chile extends along the Pacific from Mejillones Bay--23 latitude south--to the New South Shetland Islands, at a latitude of 65 south; and along the Atlantic, from the San Jose Peninsula at a latitude of 42 to the New South Shetland Islands, which added to the 42 along the Pacific gives us (Chile) 3900 geographic miles with a superabundance of excellent ports on both oceans, all

> healthful in all seasons....a simple glance at the map of South America suffices to show that Chile, as described, holds the keys to this vast portion of the South Atlantic."[11]

It is not difficult to envision the intentions of O'Higgins' expansionistic philosophy, especially when one considers the endemic geographical isolation of Chile. "In relative geographic position, it is eccentric with respect to the western hemisphere and generally isolated from other continental masses, particularly, those of the North Atlantic, a situation which has since been alleviated somewhat by the opening of the Panama Canal."[12] Additionally,

> "it cannot therefore seem strange that, since the beginning of its independent life, Chile has felt a basic concern 'to break out of the geopolitical confinement.' an attitude which was to be intensified with the passage of years. Underlying this goal, two constant factors have been present in its action. On the one hand, control and hegemony in the South American Pacific Ocean, and on the other, the expansionist trend, which also has two variants: that in the north, at the expense of Peru and

Bolivia, and that in the south, which could only be realized in Argentina."[13]

1. The Seesaw Strategy: As Chile has pursued its north-south strategy (Seesaw Strategy), certain geopolitical goals become apparent in each geographical region. Of interest at the present are the southern goals, for these are the ones of utmost concern to Argentina. Chile's goals, as perceived by Argentina in the southern area include:[14]

1. Dominion over the South Pacific;
2. Projection into the South Atlantic (either through Patagonia, the Beagle Channel or the Straits of Magellan; or all three;
3. Dominion over the Drake Passage;
4. Sovereignty over areas in the Antarctic claimed by both Chile and Argentina.

In order to achieve these goals, various stages of hegemony have occurred throughout Chilean history. The first stage brought Chilean interests into the Straits of Magellan and Patagonian areas (1843-1878). Additionally, the War of the Pacific (1878-1883) helped secure Chile's northern border. The second stage of Chilean aggrandizement was characterized by attempts to move toward the Atlantic and involved the initial treaties and agreements regarding the Beagle Channel and the Straits of Magellan. The third stage (current) can be seen as including Chilean efforts to expand directly (again as a result of the Beagle Channel

conflict) into the Atlantic, the Drake Passage and the Antarctic.

These three stages illustrate an almost relentless Chilean expansionist policy. As can be expected, Argentine concerns are paramount regarding these expansionistic tendencies. Indeed, Argentine concerns border on the paranoic:

> "In the case that concerns us (Argentina) the claims of the former Captaincy General of Chile have followed one after the other almost without interruption throughout the various eras. Their expansion northward and southward is obvious. If Chile achieves control over the maritime spaces in the South Atlantic that concern Argentina, either on the principle of the median line or by some similar means, there will be no stopping it."[15]

And, "that is the geopolitical scope of Chile's claim, which is inspired perhaps by the dreams of O'Higgins or by Chile's iron motto: "By reason or by force."[16]

Further exacerbating Argentine concerns of Chilean aggrandizement and reinforcing the current stage of this Chilean expansionism, the following relatively recent Chilean policy declarations have surfaced which only serve

to heighten tensions between the two countries in the region.

2. The New Atlantic-Pacific Ocean Boundary: Despite virtual unanimous international recognition that the Atlantic and Pacific Oceans are demarcated at the Cape Horn meridian (67°W), Chile has put forth the thesis that the Pacific Ocean penetrates eastward as far as the arc of the Southern Antilles (Staten Island, the South Georgia, South Sandwich and Orcada Islands, and the Antarctic peninsula). This assertion was considered justified by oceanographic and geological considerations and its concept was first set forth on an informative basis by the International Oceanographic Physics Association.[17] In essence, it seems that at one time the Cordillera of the Andes continued farther south than it currently does, but millions of years ago a tectonic plate of Pacific origin apparently broke through by moving eastward and established a wedge that gave rise to the present structure. Furthermore, it was discovered that the general movement of water is from west to east through the Drake Passage due to the rotation of currents around Antarctica.[18] Chile thus claims there is a geological basis for the Pacific Ocean to be demarcated further eastward, thus making an incursion into perceived Argentine areas which she claims are Atlantic waters.

3. The Sea of Chile: In June, 1974, Chile established the Chilean Sea by Decree #346. It did not delimit the

territory, although it defined the area as "those waters bathing or surrounding the national territory."[19] It added that this term "in no way prejudices or alters the legal regime, domestic or international, governing the waters" on the basis of the established definition.[20] In addition, it should be noted that Chile, in accordance with the "Declaration on the Maritime Zone" formulated by that country, Ecuador and Peru (18 August 1952), recognizes as under its exclusive jurisdiction and sovereignty an area extending for a distance of 200 nautical miles across the seas bathing its coasts, as well as the soil and subsoil pertaining thereto. Where the insular territory is concerned, "the 200-mile zone will be applied all along the outline of the island or group of islands."[21]

Later, Chile defined more definitively the "Chilean Sea": "On eastern limit should initially follow the natural boundary between the Pacific and the South Atlantic Oceans. It will therefore extend along the first portion of the so-called arc of the Southern Antilles....From Cape San Pio, a line will be traced to the south of the Burwood Bank and Cormorones Rocks, as far as the 53° meridian west,and forming a right angle with that line. From there, the line will follow the boundary to the 53° W meridian, crossing the Weddel Sea to the point where it touches the Antarctic continent."[22] Further, Chile explained that "the Sea of Chile is solely a geographic appellation and does not mean

that Chilean sovereignty and jurisdiction will be exercised throughout it, for Chile's 'norms and laws' only and exclusively apply up to the 200-mile limit."[23]

Thus, Chile's establishment of a Chilean Sea and its emphasis on a 200-mile limit from points therein gave further impetus for Argentine concerns regarding Chilean Atlantic claims.

4. Decree #416 on Straight Baselines (August 1977): Shortly after Chile accepted the Beagle Channel Arbitral Award she promulgated the above decree which, on the one hand, incorporated "internal waters" and on the other, measured the "territorial seas" and the Exclusive Economic Zone from them. According to Chilean sources, straight baselines were established which linked Cape Horn, Deception Island, Barnevelt and Evout Islands, Nueva Island and Chico Islet and Punto XX, all in relation to the eastern end of the Beagle Channel. Chile not only defined this insular sector as her own, but also projected her jurisdiction over a 200-mile arc from these baselines.[24] (see Map 18).

This Decree on Straight Baselines was the "straw that broke the camel's back" as far as Argentina was concerned. Allowing Chile to officially declare its influence into the Atlantic, in a wedge extending 200 miles into heretofore Argentine waters, was totally anathema to Argentina and her interests. In deference to Chile, this was only a natural extension of territory afforded it by the 1977 Award and

which Chile could, under international law, extend its 200 mile EEZ. Argentina, as the aggrieved party, however, could not accept an incursion into its territory in such a manner (and without compensation). Coupled with the above two previous manifestations at exerting herself toward the east, Chile had given Argentina ample cause for nullifying the 1977 Award and making eventual preparations for war. Argentina, in essence, viewed the straight baseline concept emanating out of the Arbitral Award of 1977 as the culminating manifestation of the third stage of Chilean expansionism. "It is to the south of the Beagle Channel that Chile hopes to break out of its confinements to the west of the Andes and thus to assume its long sought Atlantic role."[25]

5. Results of Chilean Incursions into the Atlantic: With the crux of the Beagle Channel dispute firmly established and manifested by the Chilean Decree on Straight Baselines, there are certain advantages in which Chile can claim relative to its pre-1977 position:[26]

A. Chile gains a tri-oceanic position: the South Atlantic, South Pacific and Antarctic;

B. Sovereignty is gained over Atlantic territory to include the strategic Drake Passage and areas to establish bases;

C. Greater influence on air-naval traffic in the region;

D. Argentina's Antarctic claims would be reduced;

E. Argentina would be encircled (her perception) both from the north (Brazil) and the soutn (Chile);

F. Chile would have the right to participate in any alliance concerning the South Atlantic;

G. Physical contact would be established between Chile and Great Britain, thus further isolating Argentina in the region.

These Chilean advantages thus translate into Argentine disadvantages. Due to the significance of the southern South Atlantic outlined previously, the Chilean baseline concept and 200-mile EEZ gains added importance. In essence, access to the Drake Passage, Straits of Magellan, Antarctica, krill fisheries, and petroleum and mineral deposits all become central to the issue of the Beagle Channel dispute even though they were all relatively unimportant or unfounded 25-30 years ago. Because these subsidiary issues have gained such considerable importance in this dispute, any attempt at finding an equitable solution to the delimitation of the Beagle Channel area must consider the respective countries' positions regarding these issues, otherwise future problems, especially in light of the above concerns, will become manifest.

C. The Drake Passage:

As previously cited, the Drake Passage is one of the

most important waterways for maritime traffic in the world. Because of the growing size of bulk carriers such as oil tankers, and because inter-ocean travel by large, long-range submarines is routine, the Drake Passage necessarily becomes the primary route for these ships between the Atlantic and the Pacific Oceans. Additionally, should the Panama Canal close for some reason, the Drake Passage would become an increasingly important communication and transportation route.[27] And should this area be blockaded due to regional conflict, it is possible that other powers could become involved as their shipping is disrupted: "...since Chilean maps show the claim to total appropriation of Drake Passage, it is easy to imagine the number of conflicts that would arise if such a position were accepted."[23] Economically, because manganese nodules have been found within the Passage, it now has the potential for becoming a prime mineral reservoir.

Thus, the Drake Passage, should it ever become a center of conflict between Argentina and Chile, could produce adverse ramifications not only on a regional scale, but also on an international scale as well.

D. The Straits of Magellan:

Although it has been relatively overshadowed by the dispute over the Beagle Channel, the controversy over the eastern mouth of the Straits of Magellan is just as old and

has received new momentum as an indirect effect of the Beagle case.[29] During the last century the two countries engaged in lengthy polemics over ownership of the Straits. Chile currently claims that it has jurisdiction over a triangle that juts out into the Atlantic. The area involved is small, but it would accentuate the discontinuity of Argentine territory. The three corners of the Chilean triangle are Point Dungenes, Cape Espirito Santo, and a point in the Atlantic at the entrance to the Straits, but outside it (see Maps 11 and 16). Regarding Argentine claims, "Argentina upholds the thesis that it is a co-riparian state on the Straits, and it bases its position on that fact.[30]

The issue of the eastern mouth of the Straits would have remained latent if it had not been for the increasing development of petroleum activity in the Straits and the evolution of the Beagle conflict. The growth of the Argentine Republic's fuel transportation network had for some time been requiring a connection between Tierra del Fuego and the mainland. The result was a plan for the San Sebastian-El Condor gas pipeline. One of its sections would cross the Atlantic underwater at the Straits of Magellan, with a 37 kilometer-long stretch between Cape Espirito Santo and Cape Virgenes, from which points it would continue its route onshore (see Map 11). The construction project, which was partially funded by the Inter American Development Bank,

was contracted in 1978. On June 8, 1978, the Chileans and Argentines exchanged notes which in effect, disputed the ownership of the territory in the eastern mouth of the Straits. The issue has remained relatively latent since.[31]

Thus, the stage was set for an additional conflict of territorial rights over a waterway between Argentina and Chile. Because the Straits of Magellan is a major entity within the South Atlantic, the Straits' status was included in the 1978-1984 Papal Mediation proceedings; indeed, had the mediation not addressed the Straits to Argentine satisfaction (Chapter 3), it is doubtful whether the mediation would have been successful.[32]

E. Antarctica:

Of all the subsidiary issues which are directly related to the Beagle Channel delimitation controversy and the subsequent Chilean 1977 Straight Baselines Decree, the issue of Argentine and Chilean Antarctic territorial claims looms as one of the most significant. Antarctica is important in the overall context of the Beagle Channel dispute because territorial claims resulting from the dispute impact directly on Argentine and Chilean claims in Antarctica. "Should Chilean claims in the Beagle Channel area be formalized, Argentine territorial claims in Antarctica will be substantially reduced because Chile's and Argentina's

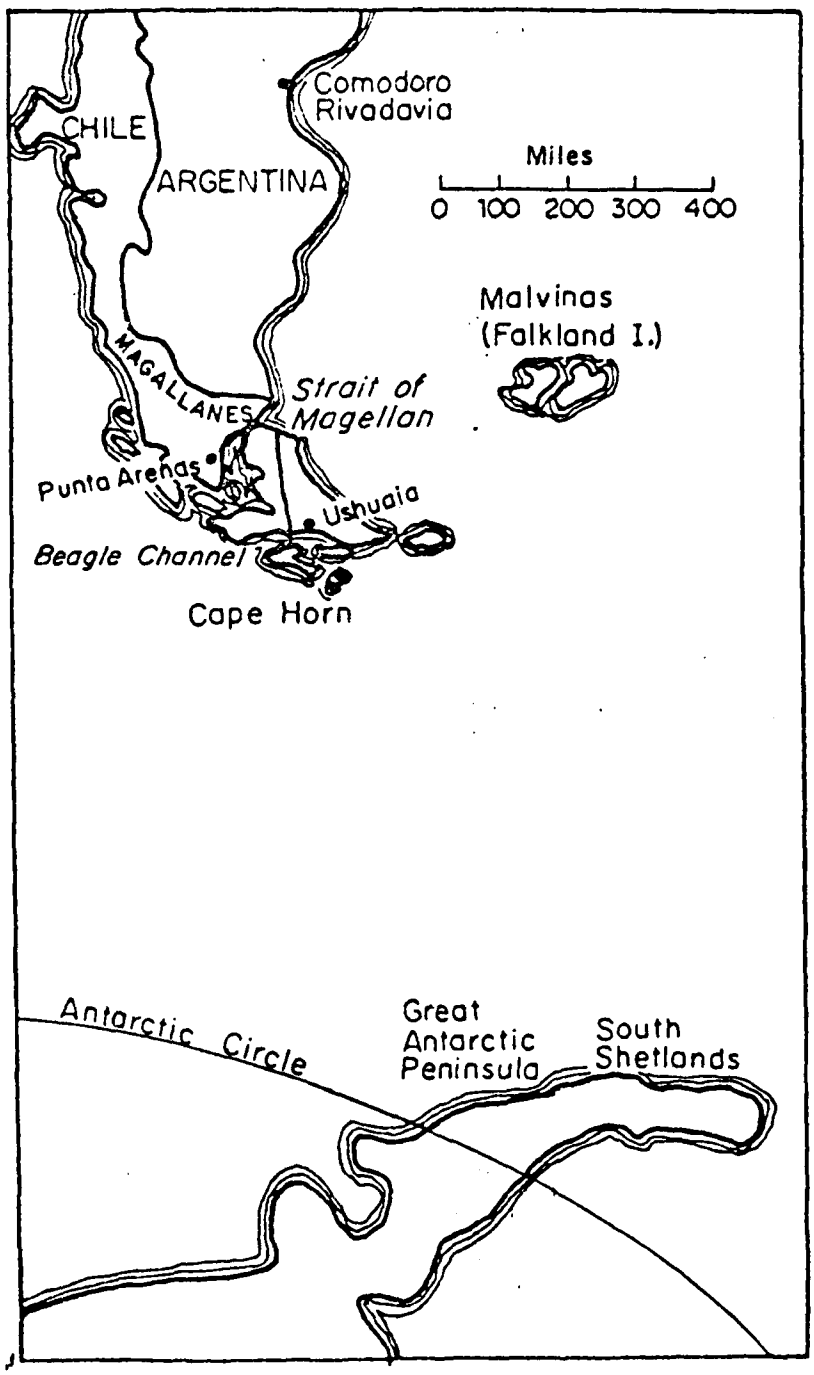
justification for Antarctic territories mirror their claims for Beagle Channel territory."[33] (see Map 19).

Not only is the issue of territorial claims at stake, but connected with this issue is the related one regarding legitimate access to strategic maritime resources of krill and oil (to be discussed separately in this Chapter) in the Antarctic region. If Argentina acquiesces to Chilean territorial advances into the Atlantic, then Chile would be able to extend itself into Argentine Antarctic territories, thus effectively depriving Argentina of established bases, access to oil and krill, and perhaps even weakening Argentina's resolve against Britain over the Falkland Islands dispute.

1. Antarctic Claims: An Historical Perspective: The Antarctic claims which directly relate to the Beagle Channel dispute are the overlapping claims of Great Britain, Argentina and Chile (see Map 20). Each of these countries bases their claims on somewhat different historical parameters and although all three recognize each others rights in the area at present, future conflict over these claims can be expected: "...the Antarctic situation is ripe for conflict, and it would seem that early regulation on an international scale is warranted."[34]

A. Great Britain:

Great Britain's claims in Antarctica have a long history. Beginning with the annexation of South Georgia Island by Cook in 1775, British sailors and naval officers



Map No. 19

The Proximity of Antarctica to the southern South America Region

Source: Review of the River Plate, 1982-1983

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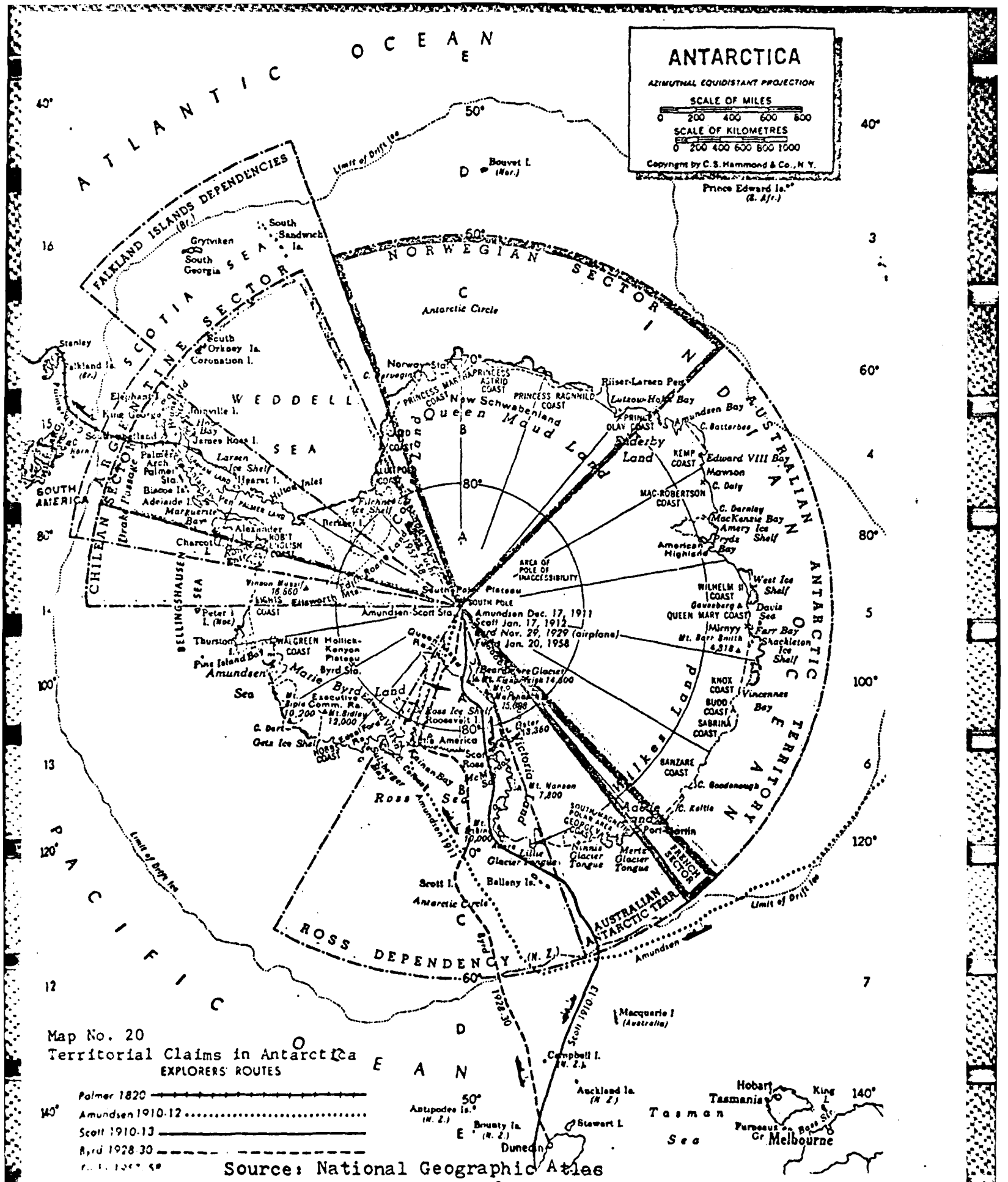


Map No. 20
Territorial Claims in Antarctica

EXPLORERS' ROUTES

Palmer 1820
Amundsen 1910-12
Scott 1910-13
Byrd 1928-30

Source: National Geographic Atlas

carried out acts of formal possession on a number of islands. Such acts purported to extend to undefined contiguous lands, although the islands themselves were located in the northern reaches of the Antarctic peninsula and the sub-Antarctic.[35] Letters of Patent of 1908 and 1917 were eventually put forward as boundary delimitations for the Falkland Islands Dependencies, and between the period 1901-1930 British magistrates resided at South Georgia and Deception Island.[36] Permanent scientific bases date from 1944 in the Antarctic areas, and Britain's current claims are in a sector extending between 20°W-80°W longitude.

British claims in Antarctica also have as a basis its sovereignty over the Falkland Islands (disputed by Argentina) 400 miles east of Argentina. By extending baselines from these islands, Great Britain can thus claim in its Antarctic sector an eastern limit of 20°W longitude. Argentina disputes Britain's claim to the Falklands and consequently Britain's claims to any Antarctic territory resulting therefrom. According to the Argentine view, Article 8 of the Treaty of Utrecht (1713) guaranteed Spanish possessions in the Americas against further British action.[37] In 1770 Spain compelled British settlers on the Falkland Island's to leave. The crisis was resolved in 1771 by a secret agreement by Britain to abandon the Islands, but a plaque was left behind purporting to preserve British rights. In 1833, the British expelled an Argentine garrison

and since then Argentina has never regained the Islands, despite continuous protestations.

As long as the dispute related to only a group of distant islands with a small population and little economic attraction, a gradual settlement appeared feasible; however, by 1974, considerable interest had developed in the potential hydrocarbon reserves on the continental shelf between mainland Argentina and the Falklands. There were rumors of an important oil field being located in this area, and not surprisingly, when the British assessed the offshore potential as substantial, Argentina took this to be an indication of British moves to solidify its sovereignty over the Islands.[38] As a consequence, tensions rose over the next few years, culminating with the 1982 War.

Disputed sovereignty in the Falklands is directly related to Antarctica in that Argentina regards the islands as situated on its contiguous continental shelf which, by parity of reasoning, extends to South Georgia, the South Sandwich and the South Orkney Island groups. Argentina puts forward a legal argument that these islands are a geological continuation of the Andes reappearing as the Antarctic Andes. In geopolitical terms the Southern Atlantic and Antarctic are seen as a single region. Within a year of the Antarctic Treaty coming into force (discussed later in this chapter) the United Kingdom detached the area south of 60'S from the Falkland Islands Dependencies to form the British

Antarctic Territory, thus insulating its Antarctic claim from the effect of any future settlement with Argentina in the Falklands. In practice a transfer of sovereignty over the Islands would tend to weaken Britain's position in South Georgia, and lead to a ripple effect. Much of the United Kingdom's case for the Antarctic depends on administrative acts carried out in the Falklands.[39]

Complicating the dispute between Argentina and Great Britain over their Falkland Islands and Antarctic claims is the Argentine/Chilean doctrine of an "American Antarctic." Despite the overlapping claims of Argentina and Chile, and their animosity over the Beagle Channel dispute, these two countries have repeatedly put forward a united front against British claims in the Antarctic.[40] Beginning in 1906 Chile and Argentina began Antarctic delimitation discussions, and after the Chilean Antarctic claim of 1940, both countries agreed that a South American Antarctic existed and only their two countries had exclusive rights of sovereignty over it. A communique in 1947 in a similar vein led to the Donoso-La Rosa Declaration of 1948. Each country recognized the other's indisputable rights of sovereignty and common accord was to govern action for the juridicial protection and defense of rights. demarcation of boundaries in the Antarctic was to be negotiated. An indication of the strength of this joint front is the Act of Puerto Montt of February 1978, by which the Presidents of both countries

reaffirmed their defense of legal rights in Antarctica.[41] Even more recently, Argentine writers have expressed this mutual concern over British Antarctic claims: ""It is obvious that Argentina and Chile should form a united front--and to some extent they are doing so--in order to prevent indiscriminate penetration for exploitation of the Antarctic's resources."[42]

Additionally, Argentina and Chile feel threatened by other countries making claims in Antarctica as well:

> "Argentina and Chile have issued several joint declarations concerning defense of the sector included between longitudes 25°W and 90°W. This has been necessary not only because of the British claim but also because of the claims by the four other countries (Norway, France, Australia, and New Zealand) which have signed agreements with Great Britain granting mutual recognition. The sector between 20°W and 80°W is therefore regarded as British by those four, but not by the other signers of the Antarctic Treaty (the United States, the USSR, Japan, Belgium, Poland, and South Africa), which do not recognize any claims to sovereignty in the area, or by any other

country, whether acceding to the Antarctic Treaty or not."[43]

The presence of British interests in Antarctica also presents a problem from a hemispheric perspective. The Rio Treaty, consummated in 1947 and including the United States, has the added affect of covering the Antarctic, thus putting it at odds with British interests there. Article III of the Treaty stipulates that an armed attack by any state against an American state should be considered an attack against all American states. Article IV defined the region covered by the Treaty as extending to the South Pole.

The Rio Treaty was a considerable achievement for Argentina and Chile and their interest in it as a shield continues. President Videla of Argentina made it clear that it covered the Antarctic, and that Britain's conduct there constituted aggression against all the Americas within the meaning of the Treaty. Clearly, the South American countries had laid the basis for an American Antarctic doctrine involving the United States.[44] Although a collective security agreement, the Rio Treaty applied to the Antarctic in terms intended to allow Argentina and Chile to invoke it against Britain. At least, the Treaty was supposed to prevent the United States from supporting Britain in any confrontation with the South American countries.[45]

B. Argentina and Chile:

Both Argentina and Chile trace their Antarctic rights to the Bull Inter Caetera of Pope Alexander VI of 1493 demarcating the sphere of influence between Portugal and Spain, and the Treaty of Tordesillas of 1494 between the two countries which moved the boundary 270 leagues farther west. Since the Papal Bull and Treaty of Tordesillas are generally considered as a part of international law, Chile and Argentina contend that they inherited the rights of Spain on attaining independence; that is, the concept of Uti Possidetis (see Introduction). The Uti Possidetis concept is particularly helpful to South American Antarctic claims in that it is viewed as a valid rule of intra-American customary international law, although its extension to the Antarctic has some doubtful application--no more doubtful, however, than the sector principle which it resembles in a number of ways (to be discussed below).[46]

Chile's sector of the Antarctic is based, in part, on the concept of Uti Possidetis in that her claims of 53°W-90°W correspond to the meridians established in the Treaty of Tordesillas in 1494 which designated as Spanish all lands situated west of the meridian located 370 leagues west of the Cape Verde Islands and east of longitude 90°W, the limit of the South American sector, and also the limit of the American security zone established in the Rio Treaty.[47] Chile's claims were formulated more exactly when whaling and

fishing concessions were granted between 1902 and 1914.[48] Later, in 1940, a Presidential Decree established Chile's limits as stated above, although no northern boundary was mentioned. This, in effect, gave Chile a perceived claim to the Drake Passage.[49] As a manifestation of the 1940 Decree, Chile's first permanent station, Soberania, was established in 1947 on Greenwich Island in the Southern Shetland Islands. Since then, Chile has established six permanent bases, which due to the overlap of territorial claims with Argentina, are all located within the mutual Argentine-Chilean sectors. Of the six bases, three are permanently occupied (Frei, O'Higgins, and Pratts) while the other three (Aguirre Cerda, Gonzalez Videla, and Yelcho) are occupied only infrequently. These bases are located either in the South Shetland Islands or on the western side of the Palmer Peninsula; Chile has not been able to move farther south, primarily due to a lack of icebreakers and polar transportation.[50]

Chile also bases its claims to its Antarctic sector on the geological continuity of the Andes south into the Antarctic:

> "Here one can clearly appreciate the Chilean theory that the Pacific Ocean reaches as far as the so-called chain of the Southern Antilles, constituted by Staten Island, Burdwood Bank, Black Rock, Shag Rocks, and

> the islands of South Georgia, South Sandwich, South Orkney, and South Shetland. These certainly constitute an extension of the Andean Cordillera that reappears on the Antarctic Peninsula under the name of the Antarctic Andes."[51]

Although this argument of geological continuity is used by both Argentina and Chile as one supporting their Antarctic titles, some Chileans also use it to claim that it forms the Argentine-Chilean frontier, and that the dividing line in Antarctica should therefore be the median line on the Peninsula, with the area west of that line being Chilean, and the area east of the line being Argentine. In that case, the Argentine bases at Potter, Camra, Deception, Melchior, Primavera, Brown, and San Martin would come under Chilean jurisdiction.[52] As a further manifestation of this argument, the Chilean delegate to the Antarctic Conference in 1959 stated:

> "From a geographic standpoint, I wish to state the well known fact: my country is the closest one to the Antarctic Continent, for between the Antarctic Continent and the southernmost insular position in the Americas the distance is hardly more than 488 miles, clear proof that the southern extreme of the American Hemisphere and the

Antarctic Continent of today were joined in another age.

The government of Chile considers that the Chilean sector, the limits of which were fixed by supreme decree number 1747 of 6 November 1940...and forms an integral part of the territory of the nation and constitutes a natural extension toward the south pole. The Chilean Antarctic territory does not have the character of a colonial possession but is part of its metropolitan territory and forms part of its southernmost province."[53]

Argentina's claims are also rooted in the concept of Uti Possidetis (see Introduction) in that she claims her presence in Antarctica first:

"The area that the discussion will cover includes a sector forming the subject of an Argentine-Chilean declaration of recognition to rights, which, as a natural extension of the Argentine Republic, has, for many decades, been an integral part of its territory. Argentina installed in Antarctica a permanent observatory in 1904. Since then, not to mention activities prior to that year, it has been establishing

bases, stations, refuges, lighthouses, buoys, post offices, and radio-telegraph stations. Argentine military men of science have performed many deeds of heroism in the Antarctic wilderness; some have given their lives in the unceasing process of their outstanding technical and scientific work. Under those circumstances, Mr. Chairman, it can be a surprise to no one that Antarctica has taken root and established an awareness in the soul of the Argentine nation.

The Argentine Republic, the first actual and continual occupant of the area, which has been incorporated administratively for some time into the Tierra del Fuego government district, which is only a few hundred miles from the Antarctic, is attending this conference with all these rights."[54]

Argentina's occupation of the observatory at Laurie Island in 1904 was not followed by any further settlement, although there were early negotiations with Chile, discussions with the United Kingdom, and some formal protests. An expedition by the vessel Primero de Mayo in 1942 set up plaques on islands off the northern Antarctic Peninsula proclaiming the boundaries of the Argentine territory to be 25 °W and 68°34W, south of 60°S. In 1947, 74° was adopted

as the western boundary, and since then a number of stations have been established. Recently though, concern has arisen as to these Argentine bases becoming less scientific and more military in nature. "Its (Argentina's) bases are now mainly military - and now do very little science."[55]

Argentina's claims, more than Chile's, tend to rest in the argument of the sector theory of jurisdiction. "Our (Argentina's) sector extends from longitude 25°W to 74°W following the sector theory applied in the northern hemisphere to delimit jurisdiction in the Arctic."[56] However, the sector theory has received very little support as a basis for claims, especially in the Antarctic. The sector theory was first recognized in modern usage in 1907, when Canada employed it to justify its claim to lands and islands lying between its northern border and the North Pole. The sector theory as applied by Canada rested on the notion that the area claimed adjoined existing Canadian borders. Such is not the case, however, in Antarctica.[57] Additionally, this theory, which embodies a means of sovereignty acquisition over yet undiscovered areas, has not gone unchallenged by the commentators and, in fact, has never been incorporated into customary international law. The practices of the states adjacent to the Arctic regarding their sector claims have varied widely, and no country has interpreted the sector theory in its broadest application. Since there appears to be no consensus among the adjacent

Arctic states regarding the application of the sector theory to Arctic territories, it would be overly ambitious to suggest that the sector theory is an accepted theory of international law. Furthermore, since the sector theory, as developed in the Arctic, is predicated on the state's proximity to the lands claimed, it is even less applicable in the Antarctic than the Arctic. No country has physical boundaries which extend below the southern polar circle, nor is there a physical connection between any of the claimant states and the sectors which they claim. Reliance on proximity to Antarctica by Chile and Argentina, which are about six hundred miles away, is unpersuasive.[58]

2. The Antarctic Treaty: Currently there are 25 nations ascribing to the premises of the Antarctic Treaty signed into force in 1961 and running until 1991. The Antarctic Treaty is the inheritance of over a century of international collaboration, the highlights of which included two major International Polar Years as well as the seminal contributions from voyages of research ships such as the Challenger in 1876 and the Discovery in the 1920's. A third polar year was to have been convened in 1957/58 but instead it developed into the renowned International Geophysical Year (IGY). The Antarctic segment of the IGY was judged a considerable success, involving as it did many nations in collaborative research in the geophysical sciences. Its success led to the formation of an interna-

tional Scientific Committee for Antarctic Research (SCAR), as part of the International Council of Scientific Unions, and which in turn paved the way for the Antarctic Treaty.

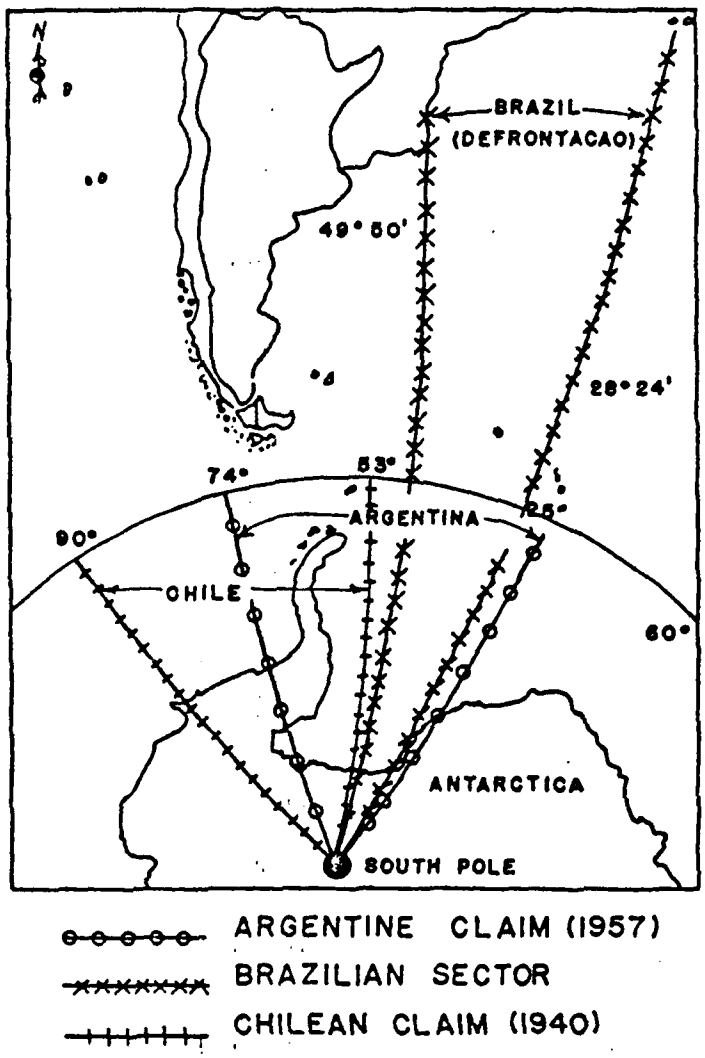
One important set of rules connected with the Treaty concerns Antarctic plants and animals. In effect, it made the whole of Antarctic a conservation area. Additionally Article IV of the Treaty concerns territorial claims in Antarctica, and stipulates that all bases heretofore established are to become permanent: in essence, a maintenance of the status quo. Article IV of the Treaty indicates that:

> "no act or activities taking place while the present treaty is in force shall constitute a basis for asserting, supporting or denying a claim to territorial sovereignty in Antarctica or create any rights of sovereignty in Antarctica. No new claim or enlargement of an existing claim to territorial sovereignty in Antarctica shall be asserted while the present Treaty is in force."[59]

What Article IV does, essentially, is to place a freeze on existing claims. While the Treaty is in effect no conflicting territorial claims can arise. Thus, although signatories to the Treaty will not challenge existing claims to Antarctic territory at present, the year 1991 is

important for it is then that changes to the Treaty may take place. This will then provide an opportunity for tensions to arise between Chile, Argentina and Great Britain concerning their overlapping claims.

3. Brazil: Any discussion of Antarctic sovereignty rights would not be complete without recognizing Brazilian interests in the region. Although the Antarctic Treaty was ratified in 1961, Brazil only signed the Treaty in 1975. Expressions of interest in the continent by a major rival, such as Brazil, is seen as a serious political issue by Chile and Argentina, for any claims by Brazil serve to complicate further the overlapping claims of others in the area. In 1958, Brazil reserved its right to formulate a claim and refused to recognize existing claims. According to Brazilian geopolitical thought, a claim to an Antarctic sector is based on the theory of defrontacao which argues that countries facing the Antarctic should have a claim to the opposite coast therein. Under this concept, Brazil could claim a sector based on meridians of 28°24'W to 49°50'W extended to Antarctica--an area which would impinge on the territory claimed by Argentina, but not that of Chile.[60] (see Map 21). No formal claim has yet been made by Brazil, but the government, in adhering to the Antarctic Treaty stated, in part, that "Brazil has direct and substantial interests in Antarctica" and also pointed out that



Map No. 21
Brazilian Claims in Antarctica

Source: Pittman, Latin American Foreign Policies: An Analysis

Brazil was co-responsible for its defense. This would seem to leave the door open to a formal claim in the future.[61]

Given the rivalry between Argentina and Brazil there was cause for concern from Argentina once Brazil began demonstrating actual interest in Antarctic affairs. In 1972, a group of private citizens established the Brazilian Institute for Antarctic Studies. It was also reported that an engineering club was planning a thirty man expedition to the area. In response to these Brazilian developments, Argentine President Lastiri and his Cabinet flew to Marambio Air Base, which was then proclaimed the temporary capital of Argentina as an affirmation of sovereignty over its Antarctic sector.[62] Thus, Argentina takes a very serious view of the potential claims of Brazil in Antarctica, and it is possible any future Antarctic crisis in the South American sector may now implicate Brazil.[63]

Summary:

Both Argentine and Chilean commentators regard any Antarctic delimitation as linked with the Beagle Channel boundary.[64] Introduction of 200-mile Exclusive Economic Zones (EEZ), development of krill trawling, and potential offshore oil resources are all politically volatile issues. Argentina sees Chile as aspiring to extend the Pacific Ocean to South Georgia and the South Sandwich, South Orkney and South Shetland Islands, and to utilize the demarcation to

expand her Antarctic territory at Argentina's expense. As Argentina is well aware, Chile places emphasis on a handwritten note of O'Higgins dated 1831, which indicated Chile has the key to the Atlantic extending to the South Pole and the Pacific, raising the prospect of a bi-oceanic projection of Chile.[65]

Examining the comparative stance of the claimants in Antarctica, the disadvantaged position of the United Kingdom becomes apparent. Its Antarctic Territory was claimed in 1908 at a time when British naval power and concomitant resolve to use it if necessary were at their height. The voyage of the Argentine ship Primero de Mayo in 1942 and the subsequent establishment of rival stations in the Palmer Peninsula area directly challenged Britain's claims. Thirty years ago British commentators pointed out that every year the Argentine and Chilean bases were maintained saw a progressive weakening of the British position.[66] Since then, there has been a considerable acceleration in the process. An influential former British diplomat suggested in 1977 that the United Kingdom should look upon itself as a non-claimant "in all but name" for resources.[67]

Chile and Argentina see Antarctica as a major issue close to home. This is not the case for the United Kingdom. Chile's effort is enterprising and sustained, but it is overshadowed by Argentina. Argentina is the key to the South American sector. Argentina has the resources and the

power, and the determination to use them if needed. In he 1977 Antarctic winter season Argentina had seven stations open (more than any other country), while the United Kingdom had four and Chile had three.[68] In 1978, Argentina took delivery of a very costly icebreaker and also reached agreement with New Zealand for the operation of a regular polar air service. Additionally, in recent years, the Argentine government has even gone to the length of shipping pregnant women to its Antarctic bases to have children there just to support its claims on the territory.[69]

Behind all of these actions is an Argentine view of the Antarctic as having geopolitical and strategic relevance on a global scale. Argentina holds a type of 'manifest destiny' attitude toward he Antarctic, coupled with a feeling of historic tradition in the area.[70] Consequently, any resolution to the Beagle Channel conflict which does not fully please Argentina regarding its Antarctic claims is sure to contribute to a future conflict in the area.

F. Krill:

The Antarctic Treaty, as outlined above, was based on the assumption that the area did not hold resources likely to be exploited in the near future. However, current exploration and research demonstrate that the Southern Ocean contains the world's largest krill fishery stock.[71] This holds extreme importance in view of the resolution to the

Beagle Channel dispute in that Argentina's access to this resource could be severely restricted should an unfavorable agreement be reached. Most of the prime fishing areas for krill are at latitude 60°S and above, and a Chilean 200-mile EEZ into the Atlantic could have a profound effect on Argentina's ability to fish those areas, especially should Chile attempt to enforce its 200-mile EEZ and unilaterally disregard the Antarctic Treaty.

Antarctic krill, Euphausia Superba, are crustaceans with a maximum length of 6 cm. They are found in swarms in the upper 200 meters of water and are a high source of protein. Although scientific investigation with a view toward ultimate exploitation has been carried out for the past 20 years, it is only in the last five that the emergence of large-scale commercial fishing has become apparent. Indeed, several countries have been fishing for krill on an experimental basis to determine more about its nutritional and biological characteristics. Two countries--Japan and the Soviet Union--actually market krill for human consumption, and the Poles and West Germans are also highly advanced in the utilization of krill to feed livestock. Some experts have speculated that the annual harvest of krill could quite easily match the nutritional value of the combined world harvest of all of other species of fish.[72]

Due in part to the extreme variability in the density of krill swarms, estimates of the standing stock cover a

wide range. On the low side the total population is put at 180 million tons. At the other extreme a figure of 1.3 billion tons has been proposed. The First International Biomass Experiment yielded 650 million tons as its estimate.[73] With such differences in standing stock estimates, suggestions as to yearly harvest have ranged from 10 million tons to 150 million tons.[74] Regardless of the numbers, because of the growing interest in the harvesting of krill, and the fact that there is such a wide divergence of opinion as to how much to harvest, krill fishing has the potential for becoming the object of intense regional tension in Antarctica among both signatories and non-signatories of the Antarctic Treaty. This is complicated by the fact that several nations are espousing 200-mile Exclusive Economic Zones (EEZ's) emanating from their Antarctic claims, and this undercuts other nations' opportunities to fish in those areas if the claimants are determined to defend these EEZ's.

As a result of the increasing importance of krill harvesting, the Consultative Parties to the Antarctic Treaty convened in Canberra in 1980 at the Conference on the Conservation of Antarctic Marine Living Resources and agreed on the Convention for the Conservation of Antarctic Marine Living Resources, which went into effect in 1982. The purpose of the Convention is to preserve life in Antarctic seas. It is a far-sighted Convention in that it is designed

to regulate the harvesting and commercialization of krill before this resource has actually arrived at the commercial exploitation stage. *The Convention* is also important because it involved both the exploiter nations such as Japan, the USSR and Poland, and the conservationist states such as the United States in the formulation of the Convention. Because large-scale trawling is well within the capability of current technology, the size of the permissible yearly harvest was clearly a vital issue at the conference and gave an urgency to the Consultative Parties to draw up the Convention.[75]

In regard to the formulation of the Convention, the Consultative Parties had to deal with several political and legal difficulties. These can be grouped into three issues: the territorial waters issue, the ability of non-signatory states to operate in the area without constraints, and the efforts of the Group of 77 (see below) to internationalize the Antarctic. Regarding the first of these problems, the Antarctic Treaty holds all territorial claims in the region by signatories in abeyance for 30 years. While they are permitted to extend their jurisdictional authority within a 200-mile territorial waters limit, they are in theory prohibited from invoking sovereign rights beyond the more conventional limit of 12 miles. In the case of Argentina and Chile, this means that although they claim territory on the Antarctic Continent which is paralleled by the southern

borders of their own countries, they cannot in theory exclude other nations from fishing activities within this combined 400 miles of territorial waters. Thus, only by ignoring the Treaty provisions can they allocate to themselves exclusive fishing rights, as Peru has done in its own coastal waters. The danger is that, without restrictions, the fishing fleets of Chile and Argentina will face unfair competition when and if the Japanese and Soviets begin full-scale exploitation of krill.[76]

Another problem results from the absence of restrictions on non-signatories of the Antarctic Treaty. Sigantories of the Treaty may fish for krill only with due regard to the environment, but others are not similarly constrained. An environmental concern is that krill forms an important link in the food chain for the entire network of world oceans. Decayed krill are carried by northward-flowing bottom currents to all areas of the ocean and contribute to marine life cycles. The overharvesting of krill, therefore, could precipitate a worldwide ecological imbalance. Treaty states are obliged to pay due regard to this threat, but others are not. Consequently, countries like Peru--which formerly based its economy, (rather disproportionately to say the least) on fishmeal production, only to overfish native anchovetas to the point of extinction--may be expected to harvest an unfair share of krill.[77]

Peru is also of particular interest in the regional military balance as well. There are real possibilities for open conflict between Peru and Chile over territorial claims in the Atacama Desert, which makes up their common border (see Chapter 5).

A final legal problem is created by the efforts of the Group of 77, a caucus of underdeveloped states acting within the United Nations Conference on the Law of the Sea, to internationalize Antarctica. Were this to occur, the special prerogatives of the "Antarctic Club," and the territorial claims of some of its members, would be superseded by an international management of the region. To date, the efforts of the Group of 77 have been effectively blocked by the diplomacy of the great powers who are members of the Antarctic Club. The goal of the Group of 77 is to place Antarctica under the supervision of the International Seabed Authority. This is envisioned in a draft treaty produced by the Sixth Session of the United Nations Conference on the Law of the Sea as an agency with regulative and licensing authority over resource exploration in the international sea-bed area. Disputes over the exploitation of those resources would be adjudicated by an International Tribunal of the Sea. But if Argentina has refused to abide by legal decisions in the past concerning the Beagle Channel and the islands, it is unlikely that it would accept the jurisdiction of the International Tribunal of the Sea concerning its

broader claims; nor would the other states likely accept any such international jurisdiction.[78]

Apart from these legal and political difficulties, there are other problems with krill harvesting. First, locations of maximum commercial krill harvesting are in the vicinity of South Georgia, South Orkney, South Sandwich (claimed by both Argentina and Great Britain) and South Shetland Islands (claimed by Chile, Great Britain and Argentina). Also, Polish and West German land stations were established in the area. Thus, the major concentration of the resource is to be found within 200 miles of islands in he most disputed portion of Antarctica.[79]

Secondly, a number of technical difficulties have to be overcome. Once caught, krill spoil rapidly. In theory, the best solution to this problem is to hold the krill live; however, current technology can only freeze the krill and process them at sea. This reduces the amount which can be taken. Additionally, the extraction of high amounts of fluorine from the krill is necessary in order for them to be fit for human consumption. This requires a higher level of technology than is known at present.

The remaining obstacle is economic. Vessels will have to be built in large numbers, long distances are involved, and fuel and processing are expensive. A large intitial investment will be required, and during the Antarctic winters fishing will cease almost totally. Thus, profit-

ability will ultimately depend on the end-use of the product. As such, considerable research has been carried out on the processing and marketing of krill and its biproducts. Whole krill has been sold in Japan on an experimental basis. Chile has test-marketed breaded krillsticks. Krill meal and protein concentrate have been produced for possible use in food aid programs and for sale to developing countries. Krill meal has also been utilized for animal feed. Thus, the long-term viability of krill harvesting, despite its economic costs, does suggest a likelihood for success.

In regard to the three main political and legal problems above, the 1980 Convention on the Conservation of Marine Living Resources stipulated the following: Regarding the territorial waters issue, all areas previously assigned to signatories of the Antarctic Treaty will remain unchanged, that is, no threat will ensue to the sectors and territorial limits of nations currently making claims in the area.[80] Regarding restrictions on non-signatories of the Treaty, all non-signatories are required to be bound by the limits of the Treaty and acknowledge the special obligations and responsibilities of the Consultative Parties for the protection and preservation of the environment. Regarding international management of the Antarctic area, this has not occurred and did not become an issue at the Conference;

however, as pointed out previously, 1991 will be an important year as it relates to the future of the area.

As a result of this 1980 Convention, signed by both Argentina and Chile, krill fishing does not appear overly controversial at present. Both Argentina and Chile recognize each other's rights in the area, and despite the Beagle Channel problem the harvesting of krill will be conducted in accordance with Article IV of the Antarctic Treaty and Article IV of the 1980 Convention.

G. Oil, Gas and Manganese:

The exploitation of oil, gas and manganese nodules also has the potential for exacerbating the regional tensions between Chile and Argentina, already strained due to the Beagle Channel dispute and the establishment of Chile's straight baseline concept and resultant 200-mile Exclusive Economic Zone. These resources are of intense interest not only because they are strategically important to each country in the region, but also are potentially commercially important to the economies of these countries in the future. With the economies of Chile and Argentina wallowing in debt, increased exports would enable a lessening of the foreign debts of these countries and domestic production would have the benefit of bringing down prices for these resources.

Oil and Gas: If the krill is an issue of immediate concern, oil is lurking around the corner as a potentially large

casus belli.[81] Although oil is a lesser (albeit significant) factor in the Beagle Channel controversy, it has become somewhat more important in view of the greatly increased prices both countries must pay for imported oil. The region surrounding Tierra del Fuego and the Beagle Channel is already a significant source of oil and gas.[82]

Tierra del Fuego and the Straits of Magellan account for most of Chile's petroleum production, and the greater part of the country's exploration and development efforts are concentrated in that area. Chile's first discovery of oil in Tierra del Fuego dates back to 1945. In the past five years, the expansion of the oil exploration budget and activities of the state oil company, Empresa Nacional de Petroleo, and the granting of exploration concessions to foreign firms have yielded considerable benefits. New offshore discoveries in the Straits of Magellan increased Chile's total oil reserves by 200 million barrels to 400 million barrels; in addition, some 80-100 million cubic meters of natural gas have been identified.[83] In 1978, Chilean state and private oil firms and foreign companies formed a joint venture to construct a U.S. $400 million facility in the Straits of Magellan. Two other international joint ventures worth over $250 million are also in the planning stages involving the use of gas deposits in the Straits of Magellan to produce methanol and ethylene.[84]

Authorities in Argentina have assigned high priority to oil exploration and development. Their granting of exploration rights and incentives to domestic as well as foreign firms has paid off in increasing oil and gas discoveries and production. As a result, the country could achieve its 1985 target of self-sufficiency.[85] Argentina's oil discoveries in Tierra del Fuego date from 1959, and the government has recently provided substantial onshore and offshore exploration concessions to foreign and domestic firms. A U.S. $450 million gas pipeline, including a connection between Tierra del Fuego and areas north, should permit greater exploitation of gas resources in the area. However, the debate over sovereignty has certainly complicated Argentina's quest for new petroleum resources.

Britain has yet to address itself to the development of oil and gas resources in the Falklands, preferring first to resolve outstanding disputes with Argentina. There appears, however, to be a favorable opinion in the current Thatcher government to take advantage of these oil reserves at some point in the future. Britain feels it can exploit the South Atlantic oil because there is the possibility that the technology which has been developed for the North Sea may be usable in the Southwest Atlantic. If this is the case, the oil reserves presumed to exist in the area take on more than just academic interest:

> "The U.S. Geological Survey has identified the seas off Southern Argentina and around the Falkland Islands as offering outstanding possibilities for oil recovery. It put the potential at 40-250 billion barrels of oil, that is to say, at least four times as great as the U.S. Atlantic Continental Shelf potential and possibly nine times the proven North Sea reserves."[86]

Argentina is also concerned regarding its right to cross the eastern mouth of the Straits of Magellan as a co-riparian state. This problem is directly related to Argentina's construction, with InterAmerican Bank funds, of a natural gas pipeline which crosses the Straits underwater for 37 km. Construction contracts were awarded in 1978, and as of this writing, this project is almost completed. As pointed out in Chapter 3, the issue of sovereignty over the eastern mouth of the Straits was a key point to Argentine acceptance of the Papal Mediation. According to Argentine sources, the gas pipeline was of central importance in the Straits of Magellan sovereignty issue.[87]

Actual oil drilling in and south of the Beagle Channel has been prevented by the Argentine-Chilean dispute. However, officials in both countries believe sizeable petroleum deposits exist south and east of the Channel. It is probable that at least some small commercially viable

fields exist. Even if relatively minor deposits were found, Argentina and Chile would both be eager to secure ownership rights in order to reduce their dependence on imported oil.[88] Any confirmation of major oil deposits in or south of the Beagle Channel would serve to add greater significance to the Beagle Channel dispute.

Manganese: The world's oceans are enormous untapped repositories for a large number of minerals. Aside from hydrocarbons located in the submerged portions of the continents, greatest interest has centered on manganese nodules--deep seabed mineral deposits containing nickel, copper, cobalt, and manganese--which lie virtually uncovered on the ocean floor, anywhere from 1000 feet to 20,000 feet deep. Nodules are unique insofar as they are ubiquitous to the deep seabed and are generally located, at least in concentrations which are attractive for commercial mining, in international ocean areas in which no state has clearly defined rights of (or prohibitions against) mineral exploitation.[89] Although the existence of manganese nodules has been known since 1876, it is only in the past decade that advances in ocean mining technology have catapulted their exploitation into the realm of commercial possibility, and concomitantly placed the question of seabed mining rights into the fulcrum of the international negotiations in the Law of the Sea Conference.

Recently a number of mining companies from the industrialized states have spent almost $200 million to

develop a new deep-ocean mining technology to obtain manganese nodules from the deep seabed and the chemical process needed to extract specific metals.[90] Investigations have shown that there are a large number of nodule deposits of commercial interest. For example, mining in one 1000 square-mile area of the Pacific could provide a million tons of nodules annually for twenty-two years. There are said to be hundreds of prime sites and the Pacific Ocean alone is estimated to contain 1.6 trillion tons of nodules.[91]

These figures represent great potential mineral wealth. Owing to the proximity of some of these manganese nodule beds off the islands of Tierra del Fuego and the Beagle Channel gives added impetus by both Argentina and Chile to control the 200-mile EEZ and the seabed contained therein where these nodules are found. Consequently, although the nodule beds have been heretofore untapped, the technology is present should Argentina or Chile decide to begin nodule exploitation. Thus, the problem arises as to who will own the territory (seabed), and this is affected directly by the Beagle Channel conflict and the controversy over the Chilean straight baselines decree which projects them into the Atlantic.

As can be seen, petroleum and manganese nodule exploitation affords great potential mineral wealth in the South Atlantic in the proximity of the Beagle Channel. Without an equitable solution to the Beagle dispute, both

Chile and Argentina will be forced to undertake future projects with the understanding that incidents between them may arise. Although there have been various bilateral agreements designed to mutually exploit gas fields, the initial exploitation of off-shore oil has generally been undertaken unilaterally. Due to harsh environmental conditions, the financial costs involved, and the need to refine the technology for extraction, oil and manganese nodule exploitation is not a near-term tenet of the dispute over the Beagle Channel. However, oil and manganese nodule exploitation may generate conflicts in the future unless the dispute is resolved equitably.

H. Nationalism and Other Domestic Issues:

Many individuals who become familiar with the Beagle Channel dispute for the first time often wonder how such a relatively minor dispute could assume such massive proportions within Argentina and Chile. The issues previously discussed notwithstanding, it is difficult to envision how a dispute of such obscurity and of such minor importance in and of itself could fester for over 100 years unless something more were at stake which continued to motivate the two countries. As it stands, there is such a factor--nationalism--and with it the overriding perception is that any concession involving loss of sovereignty must be considered a weakness and thus a victory for the other side. "In both countries, the most vociferous lobbyists who are

against any bargaining because bargaining means giving something up are setting the tone."[92] And, ". . . Every Argentine understands that the 1977 Arbitral Award seriously compromises our national sovereignty...and the Argentine government in no way has to encourage such statements."[93] Chile indicates that any backing down from previous awards will set a precedent for losing sovereignty over areas legally expressed as belonging to Chile through the international judicial system. Indeed Chile indicates it might even have a reverse impact in that Argentina may attempt to acquire a port on the Pacific (see next section, this chapter).

Coupled with the sovereignty issue and nationalistic manifestations, economic problems within Argentina and Chile have had an impact on the emphasis placed on the Beagle Channel conflict. In order to deflect public opinion from the always potentially turbulent domestic issues such as the economy, this author believes that Argentina and Chile over the past 20 years have made conscious attempts to bolster public consciousness of outside problems such as the Beagle Channel dispute. This allows the government to attempt to blame "the enemy from without" as the root of all problems within the country. Additionally, the military in both countries have contributed to the upwelling of nationalistic ferment over the Beagle Channel issue, not only for

political purposes in order to stay in power, but also for military pride:

> "The generals have not acquitted themselves well in the management of their societies, and the usually high esteem of the armed forces as an institution is declining in their publics. Latin America has had its share of military adventures designed to divert public attention away from domestic policy failures. In the past, these have tended to be minor conflicts, but history has shown that in the cases of the War of the Pacific (1879-1884) and the Chaco War (1932-1935) that full-scale hostilities are possible where mineral resources exist or are thought to exist. Consequently, domestic considerations figure prominently in calculating likely international developments in the area."[94]

Argentina: Argentines have long been characterized by a very marked degree of national pride. People of the neighboring countries have often regarded the Argentines as overbearing and almost supercilious in their assumption that, in all ways, Argentina is superior to the rest of Latin America. Heightened national pride is nothing new in Argentina. The passage of time and the arrival of millions

of immigrants have not changed this facet of Argentine character.

The nature of Argentine pride is similar to that of his North American counterpart. He is proud of the size of his capital city, of his nation's richness, and particularly of its natural resources. He is convinced of the manifest destiny of his country in the hemisphere and perhaps in the world.[95]

The spirit of nationalism, although a major force in recent Argentine political history, came late to the area. Loyalty and patriotism were first felt for the local region or the provincial caudillo. Even in the late nineteenth century authorities in Buenos Aires still had difficulty in enforcing the concept of nationhood meaningful beyond the limits of the coastal provinces. In international affairs considerations of nationalism were equally absent. From independence until World War I Argentina could, with considerable justice, be considered a Spanish-speaking appendage of the British Empire.[96] The oligarchy became a creditor and a supporter of British interests rather than the defender of Argentine nationalism or hegemony in Latin America. Beyond some scattered disputes, Argentina shared few interests with its neighbors, which hardened into an Argentine belief that the country's principal bonds were with Europe, not with Latin America.[97]

Nationalism, therefore, became a product of the twentieth century and recent events in Argentine growth. Much of it sprang from the uprooting process initially connected with the era of massive immigration and continued after 1930 by internal migration. Traditional social and psychological values were being undermined. As a result, nationalism developed largely from the deliberate efforts in the schools to foster patriotism, the military service demanded of all young men, the unifying force of railroads, highways, newspapers, and radios, and the intellectual and middle-class concern with the Argentine ethos.[98] Nationalism also had an economic basis: the rejection of what came to be viewed in the popular mind as foreign exploitation of the country's resources and wealth.

Nationalism developed primarily from the middle and lower classes.[99] But at the same time that this nationalistic spirit had a broad base and formed an integral part of modern Argentina, its manifestations were largely negative. It railed against foreign development of the nation's oil resources. It toppled leaders who became too closely associated with foreign groups. It was against British possession of the Falkland Islands. In essence, its failure to develop as a constructive force reflects part of Argentina's contemporary crisis.

Since the fall of Peron in 1955, pride in Argentina's achievements has tended to be somewhat muted. Even today

nationalism leads few to tighten their belts or to work harder. Patriotism has not blocked the periodic flights of domestic capital abroad, and Argentine technical and professional men still migrate in astonishing numbers to other countries where their talents are better rewarded. Many sensitive Argentines have been both puzzled and ashamed at the apparent failure of their country to find a way out of the alternation between military dictatorship and near-chaos which has been the nation's lot for more than a generation.[100] They have also become increasingly upset by Argentina's inability to develop its economy adequately. This is particularly true since some other Latin American countries have shown an ability to combine rapid economic development with a considerable political stability. As a result, many Argentines have become less convinced of the superiority of their nation's achievements over those of their neighbors.[101]

In response to the economic and social conditions in Argentina over the past few decades, this writer is of the opinion that Argentina has deliberately attempted to exaggerate the significance of the Beagle Channel dispute with Chile in an effort to deflect public attention from the domestic problems within the country. "The issues (the Beagle Channel dispute and the Falkland Islands problem) obviously have political uses for an Argentine government plagued by chronic domestic instability which has kept the

dispute simmering on the borderline of conflict."[102] Although there is a great deal at stake as far as Argentina is concerned regarding the Beagle Channel dispute, ample opportunity has presented itself over the years to resolve the conflict peacefully. Some would disagree that Argentina has deliberately over-publicized the Beagle Channel conflict due to internal domestic problems. Gorman, while admitting Argentina has major economic difficulties, indicated, in 1978, that:

> "Some observers note moderate social and economic gains on the Argentine domestic front. These gains are reflected in a reduction of the inflation rate, but at the same time the economic policies of the regime appear to lack coherence. These factors reduce the likelihood that Argentina might adopt a militant foreign policy in an effort to conceal internal problems."[103]

In addition to economic considerations, the military in Argentina has contributed to the exacerbation of tensions surrounding the Beagle Channel. This is best exemplified in the 1977-78 timeframe when tensions were highest. During this time Argentina was ruled by a military junta led by moderate President Videla. Although Videla had the support of other members of the junta he had to concern himself with the manipulations of Navy Chief of Staff Massera, who might

have used a war with Chile as a stepping-stone to the Presidency:

> "Unlike other Latin American juntas in the 1970's in which the army normally dominated over the other services, in Argentina the navy acquired greater influence in decision making. Foreign policy rested almost entirely with the navy, and Admiral Massera elected to take a hardline with Chile over the Beagle Channel Islands. The navy's lead in resisting Chilean territorial aspirations attempted to enhance its influence in domestic policy."[104]

Videla had to worry that these Navy hardliners might have forced him into war--and unseated him if he failed to either win the war or if he continued peaceful negotiations with Chile.

In 1980, the situation was similar to 1978, for when Pope John Paul II reached his initial decision concerning the solution to the Beagle Channel, the Navy hardliners in Argentina attempted to obstruct Argentine acceptance of the decision. President Videla initially agreed to the Papal solution; however, military hardliners such as General Galtieri and Foreign Minister Mendez both publicly rejected the Papal decision.[105] The solution was subsequently not accepted in Argentina. Beginning in 1984, however,

Argentina returned to civilian rule with the assumption of the Presidency by Raul Alfonsin. Alfonsin moved quickly to resolve the Beagle Channel dispute with a major consideration being to weaken the military's influence in the civilian government for he well realized that so long as there was a potential for armed conflict between Argentina and Chile, the generals could claim an influential role in deciding security policy.[106]

The Argentine government, especially the military juntas of the 1970's, has also played extensively upon the problem of historical animosity between the British and Argentines in arousing public nationalistic sentiment over the Beagle Channel. In essence, many Argentine hardliners think it was a mistake to even allow the dispute to be arbitrated by Great Britain at all, especially with the Falkland Islands problem festering for so long. Argentine General Leal indicates:

> "much of the blame in the Beagle Channel matter belongs to Argentines...the Argentines who accepted the second arbitration; and those who allowed the first arbitration and accepted Great Britain as a judge are also responsible...that (the arbitration) was a tremendous mistake. You can't be a judge and a party too (Great Britain). We have a problem close at hand

with that country, the Falkland Islands issue. That's why the last country in the world to which Argentines should have turned in 1902 and 1971 was Great Britain."[107]

Chile: Chile, like Argentina has a long history of national pride and achievement. Much of this is rooted in the geographic isolation of Chile, which has given rise to the "Chilean man, endowed with a particular character, motivated by a profound nationalism."[108] Additionally, beginning in the late nineteenth century, Chilean natural resources were being exploited by foreign corporations, and foreign nationals held many of the power positions within these corporations, causing animosity among the Chilean middle and upper classes. Foreign immigration was considerable as well. Consequently, a trend began against this perceived foreign exploitation of Chile which has been manifested in the policies of Chile throughout the 20th century.

Foreign immigration in the late nineteenth century provoked a nationalist reaction in the early 1900's. Chile, like Argentina, was feeling the effects of foreign exploitation of the country, but Chile differed in its nationalistic reaction. In Argentina the brand of nationalism which arose was nostalgic, based on the good life of the nineteenth century, whereas in Chile it was middle-class and economic.[109] The intellectual exponents of the resentment toward foreign exploitation attacked foreign capitalist

penetration as well as foreign immigration. As early as the first decade of the 20th century, writers such as Palacios and Encina were demanding that the government take action to prevent a foreign economic conquest of Chile.[110]

This sentiment prevails today and coupled with Chilean historical tendencies of geopolitical expansionism (as previously discussed) has produced an extremely patriotic and self-made people. Indeed, their feelings of regional superiority are manifested in their conduct internationally, especially against Argentina over the boundary problems from the late nineteenth century to the present:

> "By early 1898, the Argentine minister in Santiago was warning his government that 'these people are fed up.' That was no exaggeration ...the great bulk of the Chilean army, navy, and civilian population were saying: 'Enough of conversations and documents, prepare for action, cross the Andes, revive the historic expeditions of 1879, and don't stop until we are in Buenos Aires.' Their hope was to dictate peace to the Argentines in their own capital, as happened to the Peruvians at the end of the War of the Pacific. As it turned out, war was avoided and a a lasting peace agreed on in 1902 in the Pactos de Mayo. Once again

> though, a feeling of frustration lingered on among the Chileans. Their dreams of glory faded and became every day more fantastic as Argentina continued to increase its lead over Chile in population, wealth and power."[111]

Chile, since 1973, has been ruled by a military junta led by General Pinochet. Although Chile's military regime is characteristically more centralized than the Argentine regimes of the 1960's and 1970's, General Pinochet has had to contend with a liberal wing within the junta opposed to the continuation of his more rightist policies. Due to economic problems and the effects of various factions attempting to undermine his government, General Pinochet has had certain difficulties maintaining power. In response to these pressures, the same argument previously articulated regarding Argentine leaders holds true: in both of these countries the leadership has had to periodically deflect public attention from domestic difficulties by using external problems to aid in maintaining power. Gorman has indicated that "they (Argentina and Chile) are all governed by their militaries (1977) and all face severe economic ills and deteriorating domestic political situations. Under these conditions, their leaders may possibly adopt the strategy of the 'enemy from without that unites'."[112]

To summarize, the issues of nationalism, economics, and military rule have all played a role to some extent in the continuation of the Beagle Channel dispute. At no point should an analyst discount these somewhat intangible factors as being catalysts to an enlargement of the scope of the dispute into a possible armed conflict. Indeed, short of any legal justification, armed conflict on grounds of simple nationalistic perceptions could involve Chile and Argentina into beginning a war in the area over the Beagle Channel, as almost happened in 1978.

I. Additional Subsidiary Issues:

In addition to the above cited subsidiary issues connected with the Beagle Channel dispute, it is interesting to note two other underlying concerns which have surfaced over the years in both Chile and Argentina. These two issues have received very little press outside of these two countries, but both are well-established as possible underlying causes to further expanding the existing tensions. The first concern is Chile's longstanding fear of Argentina's desire for a port on the Pacific Ocean (in direct contrast to constant Argentine cries of Chilean expansionism toward the east); the second concern is the Argentine fear of Chile's becoming dominated by Marxists and a resultant attempt to export it to Argentina.

1. Chile's Fear of Argentina's Desire for a Pacific Port: An almost universal belief in Chile even today is that while she was occupied fighting Peru and Bolivia simultaneously in the War of the Pacific, Argentina was engaged in annexing what was then Chile's southern territory due to her inability to protect or defend her southern flank. However, Argentina was unable to obtain a seaport on the Pacific Ocean. Chile continues to believe that Argentina desires to obtain a Pacific port and therefore fears that any concession she might make regarding the Beagle Channel will merely open the door to further Argentine expansion toward the Pacific.[113] Chile believes Argentina is attempting to secure its longstanding goal of a port on the Pacific by achieving access to the Straits of Magellan and nearby Chilean ports. Admiral Anaya, former Director of the Chilean Navy, indicated that Argentina has had an obsession to reach the Pacific since the turn of the century, and that now "Argentina, without doubt, is designing its expansion to the Pacific at the cost of Chilean road and port infrastructures."[114] Former Admiral McIntyre of the Chilean Navy also had this to say:

> "...before 1881 Argentina had no land on Tierra del Fuego. What is today Argentine Patagonia, during Spanish colonial times, was part of Chile. Until 1881 Patagonia was claimed by Chile and Argentina and while we

were still at war with Peru and Bolivia we signed, in 1881, a treaty with Argentina by which she took possession of all southern Patagonia and the eastern half of Tierra del Fuego. This treaty of 1881 gave them no part of the Beagle Channel: the southern limit of the Argentine territory was stipulated to be the northern shore of the Beagle Channel."[115]

Any movement on the part of Argentina toward the Pacific is interpreted by Chile as a disruption of the balance of power. Since Argentina possesses a quantitative and possibly qualitative military superiority of ships and aircraft, Chile feels that any territorial acquisition by Argentina in the Beagle Channel is a manifestation of her desires to change the existing balance of power by becoming a Pacific power. It is this concern over the Argentine goal of a Pacific port that has driven the Chilean government's campaign to colonize the south and the drawing up of a Regionalization Plan to strengthen both the extreme north and south of the country.[116] Although the exact location of Argentina's future port on the Pacific is undetermined, Chile views its southern area as most vulnerable due to its close proximity to the Argentine frontier and its being largely uninhabited.

2. Argentina's Fear of Chile Being Dominated by Communism: One of Argentina's greater fears in regard to Chile is political. Argentina views Chile as a country with a legal and important communist party. Although Argentina sees the Chilean leftist parties not as a direct threat against her sovereignty, especially since Pinochet has been in power, it is an element which must be watched in the event the Chilean left-wing might be able to aggravate the government to such an extent that they might feel compelled to provoke a border incident in order to distract attention from internal domestic problems.[117] Therefore, Argentina believes she must continually manifest her interests along the frontier with Chile to preemptively discourage Chilean leftist elements from staging a border incident.

Conclusion:

This chapter has outlined the various conflicting and subsidiary issues involved in the Beagle Channel dispute. All of these issues contribute to the fostering of tensions among the protagonists and serve to complicate what might normally be seen as a rather small and minor border delimitation problem. As a result of Chilean establishment of the Straight Baseline Decree in 1977 and the 200-mile Exclusive Economic Zone into the Atlantic, in direct violation of Argentina's perceived Bi-Oceanic Principle, the Beagle Channel dispute has taken on much greater geopoliti-

cal significance as the ramifications of these actions became realized. Thus, the subsidiary issues described above become, in many ways, more important than the original problem, and although rectification of the original problem is necessary to mitigating these other concerns, too many times these other issues assume vastly greater importance than is warranted.

Perhaps it can be said that the Beagle Channel problem is simply an outward manifestation of the greater problems which loom within the two countries of Chile and Argentina. *Perhaps the Beagle Channel is just a reason, or catalyst for* bringing up other important issues . . . such as the desire to establish offshore oilfields and embark on krill harvesting in order to shore up the respective economies. *Perhaps the Beagle Channel problem is just a symptom of the* failure of Argentina and Chile to come to grips with modernization and the responsibilities of modernization. "In political terms, the Beagle conflict has come to illustrate, 100 years after the first Argentine-Chilean border agreements, the real limits to the powers exercised from Santiago and Buenos Aires."[118]

Regardless of the attention allotted to these underlying and subsidiary issues, there is another major area which deserves attention as it relates to the Beagle Channel problem. Because the South Atlantic has vital strategic importance, not only to the local protagonists but also the

Western Hemisphere, it is necessary to outline the regional balance of power issues which were to influence the actions of Chile and Argentina, especially if either should desire to resort to armed conflict. Chapter Five addresses the balance of power issues connected with the Beagle Channel dispute.

CHAPTER FOUR

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CHAPTER FIVE

Regional Geopolitical Implications of the Beagle Channel Dispute

Up to now, this paper has presented the Beagle Channel dispute primarily as a conflict confined to the original protagonists: Argentina and Chile. Although some emphasis has been placed on the involvement of Great Britain as a result of her interests in the Falklands and Antarctica, and to general concerns of other countries as a result of potential disruptions of maritime traffic around Cape Horn and the Straits of Magellan, no attempt has yet been made to identify the regional geopolitical implications involved in this dispute. Because of the various complicated historical rivalries which have evolved over the past 150 years between many Latin American states (especially the ABC countries--Argentina, Brazil and Chile--and two of the Andean states - Peru and Bolivia) territorial disputes between any two of these countries may lead to regional tensions involving numerous nations not directly related to the original dispute. Regarding the Beagle Channel dispute, not only are Argentina and Chile involved directly, but due to the myriad of volatile issues (economic/political) in the region, Brazil, Peru and Bolivia may be considered as being indirectly involved in the dispute, primarily from a regional balance of power standpoint. In other words, due

to previously formulated agreements, or simply plain old national interests or historical resentment, Brazil, Peru and Bolivia all could conceivably be drawn into an Argentine-Chilean military conflict.

Because of the complex balance of power system operating in Latin America, certain geopolitical relationships exist among the five above-mentioned countries. Argentina, because of her traditional power and preeminence among Latin American countries has always opposed Brazilian power and expansionist tendencies, not only in the Rio de la Plata region, but also throughout the entire hemisphere. Chile, due to her historical animosities with Peru and Bolivia in the north, has tended to ally herself with Brazil against these countries, as well as against Argentina. Peru and Bolivia, on the other hand, have tended to shy away from Brazil, especially due to increased Brazilian incursions into eastern Bolivia and continued interest in Bolivian oilfields, and instead support Argentina against Chile.

Thus, should a future military conflict arise over the Beagle Channel, Argentina could ostensibly rely on Peru and Bolivia as allies; Chile, on the other hand, could be reasonably assured of Brazilian support. Thus, a five-nation (and possibly more) regional struggle could very well ensue should the Beagle Channel dispute deteriorate into an armed conflict.

This chapter will initially present the various historical trends and factors which have influenced the foreign policies of these countries and how they have come to participate in their respective balance of power relationships in the Southern Cone region. Next, the respective military capabilities of these countries will be examined in order to determine a general trend for potentialities of conflict in the region. And finally, this chapter will outline certain observable trends of geopolitical significance now becoming manifest in the Southern Cone (of which the Beagle Channel dispute is one) which will have a great impact on the respective foreign policies of these countries in the future.

I. Trends and Factors Affecting Foreign Policies: Argentina

A. Evolution of Foreign Policy and Current Trends:

> "Argentina's history of economic boom and bust, complicated by political instability, imposes important complications on its foreign policy. State building and the maintenance of internal security and unity become prime considerations. International activity is used to demonstrate the leadership's capacity to act and its internal political orientation. The

> hostility of domestic opposition groups may be directed toward foreign targets. External success may also overcome the damage to self-image and international reputation caused by internal upheaval. In brief, the conduct of the foreign policy is tied to domestic political development and decay, a linkage which a high degree of vulnerability to external forces exacerbates. Argentine foreign policy, then, is made with an acute sense of external and internal vulnerability in mind. Political and economic factors also erase many of the conventional distinctions between foreign and domestic policy and internal and external factors. Therefore, the national situation directs policymakers toward actions which promise to restore or to enhance their ability to reduce weaknesses and to enhance freedom of action to pursue more substantive objectives." [1]

Many of the present elements of Argentine foreign policy originate in her historical experience. Lacking both important mineral resources and a large productive Indian population, the Viceroyalty of La Plata did not have an important place in Spanish imperial concerns until the last

quarter of the eighteenth century. Then, in response to a Portugese expansionist threat southward from Brazil and the growth of commerce in the area, Spain began to give more serious attention to the colony. Until Buenos Aires became the capital of the Viceroyalty in 1776, it was an insignificant port, unlike the great viceregal centers at Lima and Mexico City. Therefore, in the long view, the colonial tradition, so important in the Mexican and Peruvian exp ience, is much less important as a formative factor in Argentine policy.[2]

Just as the Rio de la Plata region came late to a position of colonial worth, after independence Argentine development as a nation was also retarded. Largely because of severe disagreements among the provinces of the country, no national constitution was brought into being until 1853, and even then secessionist movements prevented effective union until the early 1860's. During most of this unorganized period after independence the country had no central government, and the majority of her foreign relations were conducted by the most important province, Buenos Aires. Because of the autonomy that the provinces enjoyed at this time, it would not have been surprising if several of them, including Buenos Aires, had either become independent nation states or joined in a larger federation with Uruguay or Paraguay.[3]

After 1862, the principal concern of the leadership was economic growth, which was tied to European immigration, trade, and capital. From the beginning, however, Argentine policymakers were determined not to allow these relationships to undermine the nation's sovereignty. The Tejedor Doctrine, set forth by Foreign Minister Tejedor in 1872, declared that foreigners within a country are not entitled to any protection that nationals do not have. The principle was extended to foreign corporations in 1876.[4]

During the second half of the nineteenth century, English commercial interests invested so heavily in Argentina that the Argentine economy became tied to that of Great Britain. By the beginning of the twentieth century, almost half of British investment in Latin America was in Argentina.[5] British capital built the railroads and communications systems, its purebred livestock contributed to the growth of one of the world's great agricultural industries, and its exports filled the shops of Buenos Aires. Trade was also extensive with France, Germany, and other European countries.

In 1933, Argentina abandoned its policy of free trade and signed a bilateral trading pact--the Roca-Runciman Agreement--with Great Britain. The agreement, by establishing quotas for exports, was designed to regulate foreign commerce and set up an automatic exchange system to pay for imports from each country. This attempt to make Argentine

agriculture and British industry complementary had important political overtones. The decision favoring government intervention in trade had its source in the world depression and the subsequent freezing of credits, import quotas, and unemployment. There was, however, a strong public reaction against the treaty as a form of imperialism and an infringement on Argentine sovereignty, however, it remained in effect.[6]

Foreign policy became more ambitious after the 1946 election of Peron. He dreamed of making Argentina a great nation and a first-rate world power. His policy, proclaimed as the "third position," proposed an alternative between capitalism and communism and incorporated strong feelings of anti-Americanism (as a focus against the perceived extremes of capitalism). Peron saw the future as an era not of states but of continents and followed a policy designed to place South America among the world powers and to make Argentina the leader of the continent. Foreign economic influence was to be minimized, weaker neighbors were to be brought into Argentina's orbit, and pressure was to be applied on Brazil in order to counter Brazilian interests in the Rio de la Plata region. Before Peron was deposed, however, a decline in the Argentine economy, coinciding with European concentration on recovery after World War II and the expansion of United States power, left Argentina with few options. Thereafter the country accepted economic

assistance from both the United States and international organizations. Over the next twenty years, the various leaders campaigned on platforms of economic nationalism and greater independence from the United States in foreign policy matters. But in the face of strong opposition from the armed forces and powerful economic interest groups, none of these leaders were really able to follow through on these campaign statements.

Despite the continuation of important commercial relations with European countries and, during the 1960's expansion of trade with the socialist countries, other Latin American countries and Japan, Argentina drew increasingly closer to the United States, reaching a peak of amity during the government of General Ongania. Some observers believe that popular rejection of this close relationship and the desire for a more independent foreign policy contributed significantly to the overwhelming electoral victories of the Peronists in 1973.[7] During the mid to late 70's, Argentina seemed headed for a more stable and prosperous future, however, under the military junta, by the early 1980's, Argentina's economy was marked by extremely high inflation and overwhelming national debt. The Falkland's War left her diplomatically isolated and in a state of economic reconstruction. Despite these setbacks, Argentina continues to view itself as the rightful leader of all of South America.

There have been a number of continuities in Argentine foreign policy over the years. First, Argentina has been interested in defining and securing the boundaries with Chile. This is manifested by the Beagle Channel dispute. A second continuity is her concern in preventing foreign domination or control of the neighboring countries of the former viceroyalty: Bolivia, Paraguay and Uruguay. During the movements for independence, Argentina tried unsuccessfully to maintain these states as part of a united independent republic. Subsequently, during the 1830's, it was the policy of the Rosas regime not to recognize the independence of Paraguay, to seek to impose pro-Argentine governments in Uruguay and to prevent by force the union of Bolivia with Peru (1839). These policies changed after Rosas's fall, when Paraguay was recognized (1852) and active meddling in Uruguayan affairs ended.

A third continuity is an overriding concern to with maintaining a balance of power with Brazil. Especially distinctive has been Argentina's role in asserting doctrines of sovereignty, juridical equality, and non-intervention on behalf of other Latin American states. Also, whether in assertion of her own continental leadership or in an attempt to reduce the hemispheric influence of the United States, she has on the whole resisted the development since the 1930's of Pan Americanism under United States (and Brazilian) hegenomy. Finally, Argentina has demonstrated

extraordinary, and often defiant steadfastness in detaching herself from involvement in the conflicts of the great powers in World War I, World War II and the cold war.

B. Relations with Neighboring Countries:

The factors which condition Argentina's behavior toward Latin America are quite distinct from those which shape its diplomacy toward the rest of the world. In comparison to its global situation in which it is one of a score of middle powers, the nation believes that it is assured an independent role in Latin America due to its size and economic potential as compared to its neighbors, coupled with its distance from the United States. Local security requirements and economic opportunities, combined with the imperatives of diplomatic tradition, make a bid for leadership of a Latin American bloc on intraregional and extraregional matters appear necessary and desirable. As a result, Argentina has come to act more vigorously and independently within the region.

Latin America's importance has increased dramatically since World War II. Prior to this time, Argentina was attentive to only the local balance of power with Chile and Brazil, and the occasional mobilization of diplomatic support against the United States which Argentina perceived as trying to undermine her stature as the preeminent power in the region. Now, serious political and economic challenges come from within the area. Brazil's dramatic

economic and demographic gains have caused it to overshadow Argentina, thus intensifying the traditional rivalry. Venezuela's oil wealth has made it into a viable competitor for bloc leadership, along with Peru and diplomatically activist Mexico. Cuba's alliance with the Soviet Union and active support for revolutionary movements introduced new security factors and another plane of ideological polarization.[8] The Vietnam trauma, detente with the Soviet Union, and preoccupation with internal problems caused the United States to assume a lower hemispheric profile after the Alliance for Progress of the 1960's failed to institutionalize reformist democratic governments and bring about social justice.

Argentina responded by shifting its attention to a more regional balance of power.[9] Traditionally, it had sought out Peru to balance Chile, but now its attention was much broader. By 1974 officers from Honduras, Guatemala, Nicaragua, Panama, and others had received training in Argentine military institutions.[10] By May 1975, the Peronists had extended a total of $1.3 billion in long-term import financing credits to other Latin American countries as part of an aggressive promotion of trade and investment.[11] In addition, Argentina adopted a policy of ideological pluralism under which it sought out friendly relations with all governments regardless of political

coloration--in contrast to Brazil's rightist, pro-United States image.[12]

Chile

In contrast to all of Argentina's neighbors in the Southern Cone, Chile has been an independent force in the local and continental balance of power, generally aligning itself with Brazil to restrain its larger and occasionally menacing neighbor, Argentina.[13] Until Pinochet overthrew Allende, Argentina assumed that ideological incompatibility would assure continued Chilean independence from Brazil. During the Allende era conservative Argentine governments faced their own ideological contamination and incompatibility problems. However, regardless of the period and the particular administrations in power, both Argentina and Chile have faced the problems associated with one of the longest land frontiers in the world, their history of boundary disputes, and the ill feelings caused by the occasional armed clashes.

Chile is also important economically to the Argentines. It has long been her second best customer in Latin America not only for manufactured products but for all goods in general. Next to Brazil, Argentina has concluded more complementary agreements with Chile than with any other country. As a member of the Andean Common Market, the country has also been a key to an emerging economic region

and a group of Pacific coast countries potentially available to offset Brazil.[14]

Argentina's first diplomatic relations were established with Chile in 1810. The two cooperated in the wars of independence and later signed the first naval parity agreement in the Western Hemisphere. They were parties to the Argentina-Brazil-Chile Treaty in 1915, through which the three countries attempted to establish a forum to mediate disputes in the hemisphere, and they pursued similar policies of neutrality during World War I and most of World War II.

As Chile has been too powerful to be dominated like the countries of the Rio de la Plata basin, yet not powerful enough to be considered a serious rival like Brazil, relations between Argentina and Chile have generally been marked by peaceful though not necessarily friendly coexistence throughout much of the twentieth century. Relations with Chile were complicated by the violent change in the Chilean government in September 1973. The death of Allende and the replacement of Chile's elected civilian government four months later by a right-wing military junta evoked three days of mourning in Argentina, primarily because Allende had established considerable economic and political credibility with Argentina which overshadowed Argentina's initial fears of communist-inspired movements emanating from Chile after Allende's rise to power. Peron

even voiced the opinion that the coup had been abetted by the United States[15] Peron, nevertheless, recognized the new Chilean government and they reached agreements concerning the connection of the electric power grids of the two countries and the joint exploration of natural gas fields. Chilean citizens fleeing the junta were offered political asylum, but exiles from other Latin American countries who had taken refuge in Chile before the coup were not allowed to settle in Argentina.[16]

Once the Pinochet government had become established, Argentina faced the need to prevent the "Brazilianization" of Chile: the growth of similar policies and close relations between like-minded regimes.[17] Coups in Bolivia, Uruguay, and now Chile, had created the threat of encirclement by military governments likely to be ideologically compatible with Brazil.[17]

The larger balance of power aspect also entered into Chile's concern over recent large Soviet arms shipments to Peru. It was felt in some quarters that the centennial of the War of the Pacific, in which Peru lost a province to Chile, might provoke a move to recoup the national honor.[18] However, too close an association with a pariah regime would endanger potential relations with Cuba. The Peronists' response to the problem was a low-key development of economic and political ties designed to establish communications and a useful sense of indebtedness, assure cooperation

in the control of extremists, and normalize frontier problems.

Relations during the middle seventies between the two countries were cordial but cautious. By 1977, Chile and Argentina shared strong common interests in developing such trade relations as could assist in the recovery of their respectively ailing economies. Common security concerns, however, took on sinister dimensions regarding the Beagle Channel, and since that time relations have been cool, but proper. Indeed, even though Chile tended to lean toward Britain in the Falklands War, trade has remained strong and now that Alfonsin has come to power, Argentina has become more amenable to the solving of their mutual problems.

Uruguay, Paraguay and Bolivia

Argentina has traditionally regarded Uruguay, Paraguay and Bolivia as buffers against Brazil. Uruguay has always been the key to the eastern bank of the Rio de la Plata estuary which is the main channel of access to the port of Buenos Aires.[19] Paraguay has passed from Argentine to Brazilian domination, due to the Itaipu Dam and other Brazilian-sponsored projects, and Bolivia lures both Argentina and Brazil with her extensive supplies of iron ore, natural gas and oil.

Since Uruguay was created as a buffer state in 1828, it has managed to maintain its independence by countering the pressures of one neighbor by leaning toward the other.

During the 1930's diplomatic relations with Argentina were suspended for a short time because of the issue created when Argentine political exiles crossed the Rio de la Plata into Uruguay. The most serious problems between the two countries arose during the initial era of Peron, who attempted to dominate Uruguay through political and economic measures. Uruguay successfully defended its interests and its institutions, and since that time has generally maintained harmonious relations with Argentina. Disputes over boundaries, water rights, and similar problems in the Rio de la Plata region have been mitigated by a multilateral treaty signed in 1969 by Argentina, Brazil, Uruguay, Paraguay and Bolivia for the joint development of the region.

Trade, security, hydroelectric development, and the struggle to match Brazilian influence continue to be themes in Argentina's relations with Uruguay. However, the country's more strategic location on the eastern bank of the Rio de la Plata estuary and its assured access to the outside world make it less vulnerable to power politics.[20] Uruguay is Argentina's third most important market in Latin America, and a long history of population exchanges, similar ethnic backgrounds and common interests in world beef and wool markets link the two.

Until the 1973 coup, Uruguay's democratic heritage and tradition of sanctuary for political dissidents and exiles, particularly from Argentina, provided the basis for substantial philosophical differences with Argentina. Peron, like other dictators before him, exerted intense pressure on the country due to her harboring of political opponents during the early 1950's. However, the disintegration of Uruguay's liberal climate, the stress of progressive economic collapse and the Tupamaro leftist insurgency mounted a different sort of challenge to Argentine foreign policy. Argentina sent small quantities of arms to the Uruguayan military government, denied the Tupamaros sanctuary, and agreed with Brazil that a leftist victory would be prevented --by force if necessary.

Argentine and Brazilian economic competition in Uruguay intensified in the 1970's. The Argentines funded the Salto Grande hydroelectric project, among others, and the Brazilians funded the Laguna Merin project to develop the coastal frontier. By the late 1970's and early 1980's, Brazil's superior resources had upstaged Argentina.[21] In addition to an increased number of economic projects being undertaken by Brazil in Uruguay, Uruguay had turned to Brazil instead of Argentina for needed economic assistance.[22]

Paraguay, though regarded by Argentine leaders until 1852 as a part of their country, has managed to maintain its

independence. The five-year War of the Triple Alliance (1865-1870), however, left the manpower of Paraguay drastically depleted and the victorious allies (Argentina, Brazil and Uruguay) formed a provisional government and literally ran the country until 1876. Argentine influence in Paraguay was further enhanced by Paraguayan bankruptcy after the war. In order to maintain the day-to-day workings of the government, the Paraguayan government undertook a massive sale of public lands, and by 1904 absentee Argentine landlords owned half of the country's arable land. Another aspect of Paraguay's dependence on Argentina was that, even though Paraguay had acquired a rail outlet to the Atlantic through Brazil, some 90 percent of its exports continued to pass through Argentine ports on the Paraguay River in the early 1970's (although somewhat less today, it is still substantial).[23]

Argentine diplomacy toward Paraguay in the 1970's and 1980's has involved attempts to reverse the tide of Brazilian influence and to bid for a share of the hydroelectric dam sites along their mutual Parana River frontier (which has caused considerable controversy--see below). Argentina still had at its disposal Paraguay's dependence on its market and its preference for the cheaper river transportation despite new road connections to Brazilian ports on the Atlantic. At various times Argentina has not hesitated to harass these lifelines with red tape.

From its own perspective, Paraguay continues to maintain at least the outlines of a "pendulum policy" toward its two large neighbors, especially in the wake of the powerful economic links forged in the Itaipu Treaty.[24]

Bolivia's traditional attraction to Argentina is due in part to lingering resentment against Chile over the coastal territory it lost in the War of the Pacific, but trade complementation has also been important. Bolivia has long been a consumer of Argentine wheat, and in turn, sells oil nd natural gas to Argentina. In 1963, Argentina offered Bolivia a free shipping zone on the Parana River. Additionally, the seasonal migration of Bolivian workers to Mendoz and Cordoba, which has caused temporary problems, is looked upon with equanimity by both governments. Finally well-to-do Bolivians who live near Argentina often send their children to Argentine schools. Nevertheless, there has been a persistent uneasiness in Bolivia over possible Argentine territorial ambitions directed toward the southern part of the country.[25]

During the Chaco War (1932-1935) between Bolivia and Paraguay, the United States and five Latin American countries formed the Commission of Neutrals, which tried to impose a peace. Feeling that their own interests were more directly involved, Argentina, Brazil, Chile and Peru, tried to counter the work of the Commission by forming their own group. After much negotiating, a cooperative effort by the

Argentine foreign minister and the United States succeeded in getting Bolivia and Paraguay to sign an agreement ending hostilities.

In the 1940's and 1950's, the Peron government gave assistance to the Revolutionary National Movement of Victor Paz Estenssoro in Bolivia. In the mid-1960's, cooperation continued as changes in government in both countries brought more conservative leaders to power. Bolivia's iron ore, tin, petroleum, natural gas and mineral wealth made it an even more tempting target for Argentina's repertoire of joint ventures, aid, covert intervention and trade deals. An Argentine guarantee for the financing of a crucial pipeline from the nationalized facilities of Bolivian Gulf Oil in 1969 contributed further to cordial ties. Relations between the two countries were somewhat uneasy while the leftist government of General Torres was in power in Bolivia from October 1970 to August 1971. They improved considerably after Torres was deposed and replaced by General Banzer, although from the beginning the Banzer government was more closely aligned with Brazil than with Argentina.[26]

As was the case with the other buffer states, Brazil formed the third side of the triangular relationship. Bolivia's drive to acquire an outlet to the sea through Chile could extend Brazilian influence to the Pacific through the planned transcontinental railway. However, because any resolution to that problem also involved Peru,

which had residual rights over the proposed transfer under the Treaty of Ancon, that area still remains under contention.

Peru

Since the Peruvian military established a revolutionary government in 1968, Argentina has felt conflicting pressures from that direction. General Alvarado, President until August 1975, established a militantly Third World, nonaligned foreign policy which was often far too radical for Argentine interests and asserted a powerful ideological claim to bloc leadership in Latin America. However, Peru has traditionally served as a balance to Brazil and is a key member of the Andean Common Market to which Argentina has sought access. As a result, Argentina has sought a judicious mix of political and economic objectives.

During the 1970's, Argentine-Peruvian relations fluctuated from cool to warm. Numerous economic and commercial projects were entered into, especially during the Peronist regime. By 1977, mutual economic interests were important enough to overcome otherwise deep ideological gaps between the two countries, and thus helped shore up their traditional mutual reliance regarding balance of power in the region.[27] Today this balance of power realization continues to exist, which was manifested by Peru's outward support of Argentina during the Falklands' War.

Brazil

A. Evolution of Foreign Policy and Current Trends:

In international politics, the historical Brazilian position has not been as impressive as its geopolitical attributes might seem to warrant. Beginning as a wilderness in the sixteenth century, Brazil required a particularly lengthy period of growth and consolidation. This proved to be a halting and slow process, raising doubts as to whether she would ever realize her undeniable potential.[28] However, in the years immediately following her independence, Brazil's foreign policy consisted primarily of attempts to preserve her territorial integrity and to promote the social elite's economic interests. During this period, Brazil was heavily dependent on the great trading nations, particularly Great Britain. This enabled these countries to exercise great influence and provided license for considerable interference in the young nation's domestic affairs. Not until the twentieth century did the social trends and economic capabilities that give world dominion to the powers of the North Atlantic make themselves felt in Brazil.[29]

Because of this initial orientation toward Western Europe, and subsequently the United States, Brazil has historically remained relatively isolated from her fellow Latin American neighbors. The only real exception to this historical trend was her involvement in the Rio de la Plata region, where, in a situation which began during colonial

times, Brazil waged a continual struggle against an increasingly assertive Argentina. A territorial dispute over the eastern bank of the Rio de la Plata sparked open warfare from 1825 to 1828, and the border state of Uruguay emerged as a compromise. Competition did not cease, however, and renewed tension generated by the struggle for influence in the Rio de la Plata region culminated in a second conflict (1850-1851). Competition over Uruguay continues to be one of the main problems areas between Brazil and Argentina today.[30]

As Brazilian foreign policy matured in the late nineteenth and early twentieth centuries, Brazil was able to initiate a new direction in its orientation as an adjunct to its ties with Western Europe--that being, a closer orientation with the United States in order to bring about increased hemispheric security and wider international prestige.[31] On many important hemispheric and international issues, Brazil openly deferred to United States policy precepts and cooperated closely in their implementation. In exchange, Washington supported Brazil vis-a-vis her South American neighbors and in her relations with extrahemispheric states. Adherence to this policy line allowed Brazil to achieve a good measure of diplomatic success during the early and middle twentieth century. However, despite her obvious geopolitical potential, Brazil did not enjoy any notable advantages over her more important neighbors, and

instead, Brazil's long history is marked by her position as a peer state in the South American subsystem.[32]

Virtually without exception, Brazilian elites view the achievement of great power status as the nation's number one long-range policy goal.[33] At a minimum this goal would encompass the attainment of full economic development, the possession of an adequate and independent national security capability, and the recognition of Brazil as a political peer by other world powers. Many Brazilians feel the goal of great power candidacy can be achieved by the late twentieth century.[34]

To achieve this goal of great-power status, Brazil has embarked upon an increasingly opportunistic political policy that is solidly grounded in Brazilian self-interest. In essence, the achievement of Brazilian national goals is seen as demanding a more flexible and broad political policy aimed at increasingly asserting her national interests, both regionally and internationally. Consequently, Brazil, although still oriented toward Western Europe and the United States in many ways, is now attempting to use its multilateral diplomatic and economic development efforts to pave the way for upgrading its heretofore poor bilateral relations in Latin America, as well as tending to stump for an increasing number of Third World concerns.[35] Indeed, concerns over Brazil's hegemonic designs within South America which still persisted in the early 1980's, had been

greatly alleviated by a series of bilateral agreements signed in the wake of the creation of the Amazon Pact. Although perhaps overstated, one author has termed Brazil's 1978 Amazon Pact initiative as "the opening salvo in a campaign to transform (for the better) its relations with Latin America."[36]

As yet, however, Brazilian policymakers have revealed no comprehensive design for the use of their newfound power. Brazil has neither sought to lead Latin America through cooperative means, nor has she attempted to establish hegemony over the region through a strategy based on power politics. Indeed, Brazil's relations with her Latin American neighbors have still taken a position secondary to pressing domestic issues and to such economically consequential matters as her ties with the United States and the other developed nations of the Western world.[37] Nevertheless, Brazil's geographic position ensures that her relations with the other Latin American states will remain of vital interest to national policymakers.

For the present, Brazilian aims in the Western Hemisphere seem to run along two lines. In the first place, Latin America in general and South America in particular are the only areas that have any immediate relevance to Brazilian security. At the broadest level, Brazil opposes the penetration of the hemisphere by potentially hostile forces. The Brazilian government also has an intense

interest in the balance of power among the regional actors, notably the balance within the increasingly active South American subsystem. This concern is especially applicable to the affairs of Argentina, Brazil's traditional rival and only South American state capable of challenging Brazilian power. Because of this interest and to prevent "subversion," Brazil has also evidenced a decided interest in political conditions within the small nations along her borders.[38]

Secondly, Brazil has a real and growing economic interest in Latin American affairs. Admittedly, Brazil's trade with her regional neighbors is modest. Moreover, Brazilian products often duplicate those of her neighbors, and the protectionist barriers that have been erected to promote manufacturing in most Latin American countries will continue to inhibit the development of Brazilian trade within the region. Economic affairs naturally feed back onto political and security matters, and economic rivalries are a distinct probability in view of the industrialization strategies being pursued simultaneously by the major Latin American nations.[39]

The enormous increase in Brazilian capabilities has notably upset the regional balance of power and has produced an unsettling effect on adjacent actors. In light of traditional fears and rivalries, it is hardly surprising that neighboring states are not fully reassured by Brazilian

statements of good intentions. But in fact, the Brazilian course of action within Latin America has thus far been relatively restrained. Although Brazilian penetration of the border states (Uruguay, Paraguay and Bolivia) has assumed virtually hegemonial proportions, the more important political entities of the region have been left scrupulously untouched. In fact, by 1980, a more favorable image of Brazil's role on the continent emerged as systematic opposition to Brazil dwindled to narrow Marxist or nationalistic sectors which professed to see a "Trojan Horse" in her apparently cooperative policies.[40]

Due to Brazil's aloofness and in spite of her restraint, there is evolving in Latin America a dangerous consensus oriented toward the isolation and containment of Brazil. The expansionist tendency on the part of Brazil has long been an object of concern in South America. Although since the early years of this century there has been little ground for serious complaint, there exists a widespread fear that if Brazil comes to dominate the continent, she will adopt an attitude not unlike that of other great powers toward their respective spheres of influence.[41]. To this concern over Brazil's national capabilities can be added the fear that the success of the Brazilian politico-economic model will inspire like-minded military leaderships in other countries to follow her lead (although Brazil has recently adopted civilian rule once again). And finally, in many

Spanish American minds there is some alarm with regard to the historic connection between Brazil and the United States

In recent years, then, Brazil's position in the hemisphere has changed radically. Political stability and rapid socioeconomic development have raised Brazil above simple peer status, and she seems to be in the process of institutionalizing an enduring regional primacy. In aggregate terms, Brazilian capabilities are now superior to those of any single neighbor, and in the future they may come to surpass those of all the other South American states combined.[42]

B. Relations with Neighboring Countries:

Thus far, the most obvious external manifestation of Brazil's expanded capabilities, both economically and politically, is a dramatically increased presence in the affairs of her diminutive southern and western neighbors. Bolivia, Paraguay and Uruguay have long been arenas of political competition among the regions more important actors, and the achievement of a predominant Brazilian influence in these nations is only one symptom of the upset in the traditional balance of power.[43] Within these countries Brazil is seen as attempting to construct a "security perimeter" by trying to insure the cooperation and support of these nations for Brazilian interests. Additionally, Brazil is trying to establish a "privileged zone" for Brazilian economic exploitation; one which would provide a

market for Brazil's manufactured products and serve as a supplier of needed raw materials.

At present, Bolivia is the border state hosting the highest level of direct Brazilian activity.[44] La Paz collaborates directly in the implementation of Brazilian policy and receives in return considerable amounts of political and economic support. A program of military assistance has already been extended to Bolivia, and a rapidly growing Brazilian economic presence is even more in evidence.[45] After widespread though unsubstantiated reports of Brazilian collaboration in the 1971 coup in Bolivia that returned conservative military elements to power, Brazil was careful to project a low profile in its political relations with Bolivia. Economic relations soared, however, particularly in the areas of tin, iron ore, oil, and gas production after the signing of the Agreement on Industrial Trade Completion in 1974.[46] Considerable Bolivian development, particularly in its eastern lowlands around the city of Santa Cruz, was financed by the Bank of Brazil while Bolivia sold natural gas and other raw materials to Brazil. An impressive degree of prosperity has been stimulated but there is fear in some Bolivian circles that La Paz is progressively losing control of the region to Brazil.[47]

The Brazilian position in Uruguay is, for the present, one of indirect influence rather than active involvement. During the 1971 Uruguayan presidential elections, the

Brazilian government feared a victory by the Frente Amplia (Broad Front, an Allende-style alliance of leftist parties), and rumors circulated that the Brazilian army would intervene if this occurred. As it turned out, a more conservative faction narrowly won the contest, and no blatant Brazilian intervention actually occurred. Nevertheless, Brazilian officers were actively involved in "anti-subversive" operations in Uruguay during the campaign, and conspicuous maneuvers of Brazilian forces were reported along the Uruguayan border during the voting.[48]

Since then, continuing instability in Uruguay and the increased role of conservative military elements have heightened Brazilian influence there. Uruguay's leadership until its most recent election has looked to Brasilia both to guarantee the nation against domestic subversion and to support her claims in the perennial border dispute with Argentina in the Rio de la Plata region (despite agreements, tension still exists between the three countries over the region). In addition, the two governments have shown a growing tendency to collaborate on projects such as the development of the Laguna Merin Basin and the harnessing of the Rio de la Plata basin for electric power. Despite increased trade and substantial land holdings by Brazilians in Uruguay, Brazil has not outstripped the influence of Argentina in this buffer state.[49]

In spite of Paraguay's well-known sensitivity to outside interference and a traditionally strong Argentine position, here again Brazil has increased her influence. The 1973 signature of an agreement calling for joint construction of an enormous new hydroelectric complex at Itaipu is the best known of a host of arrangements that are drawing Paraguay into the Brazilian economic orbit. Brazil's strong position in this venture will give her a good deal of diplomatic leverage in what will eventually become the diminutive Paraguayan economy's most significant area of activity.[50] The initial significance of the dam transcends its economic importance in that it will supply Sao Paulo with a large percentage of its future energy needs and Paraguay with an estimated $130 million annually in foreign exchange from the sale of electricity. The project (financed entirely by Brazilian money) has led to the settlement of Brazilians and their buying of a considerable amount of land in Paraguay. In addition to increasing trade and financial dependence, analysts have pointed out that the security of the dam could be a motive for Brazilian intervention in Paraguay in the case of future civil disorders there.[51]

Brazil's relations with Chile and Peru have been somewhat different than with the above-mentioned states in that Brazilian policy is based on cautious, bilateral dealings aimed at a limited number of particular economic

interests without providing grounds for undue alarm over Brazilian expansionism.[52]

In the case of Peru, there are concerns in Lima and other Andean capitals regarding potential Brazilian incursions into the area as a result of the Trans-Amazon Highway network.[53] Peru remains difficult for Brazil due to the socialist regime in Lima which causes a fundamental philosophical rift which tends to limit the bases for bilateral understanding.[54] Concern is heightened by the Peruvian disdain for Brazil's "collaborationist" policy toward the United States and the potential for closer Brazilian involvement with Peru's historical rivals, Chile and Ecuador. The independent-minded and extremely security-conscious government in Lima is highly unlikely to accept with equanimity any signs of blatant Brazilian expansionism; nevertheless, correct diplomatic relations have been maintained thus far, and a mutual desire for development has allowed for modest expansion of trade ties. This is manifest by the 1981 visit of Brazilian President Figueredo to Lima to affect trade agreements.[55]

The position of Chile and Ecuador are different from that of the other Spanish American states in the sense that they have something to gain from Brazil's emergence as the premier power on the continent. Neither state borders Brazil, and each could potentially use Brazil's strength to keep traditional rivals off balance (Peru in both cases and

Argentina in the case of Chile).[56] Chile is Brazil's traditional ally, not only because she doesn't border Brazil and consequently fear her expansionist tendencies, but also because of the Beagle Channel dispute. Although Brazil has said it is officially neutral in the dispute, unofficially it has tilted toward Chile (the enemy of my enemy is my friend).[57] Due, however, to the recent events in Chile, this relationship has been considerably muddied. Although Brazil maintained correct relations with the Allende regime and preserved economic ties with Chile, behind the scenes it worked against the Marxist government.[58] In contrast, the Pinochet regime was viewed hopefully, and substantial economic credits were quickly advanced to it during the consolidation process. Close collaborative ties, however, have not materialized. A public display of too close a friendship has been prevented primarily due to Chile's pariah image in the United States and Europe and by its difficulties with Peru, Bolivia and Argentina. Though sympathetic to the ostensible goals of the Pinochet regime and willing to cooperate in mutually beneficial economic endeavors, Brazil has been loath to share the international odium of the Santiago regime that close support would undoubtedly entail. Despite this, however, there have been successes in the bilateral Chile/Brazil relationship. Growth in trade has approached $1 billion, with Brazil

exporting manufactured goods (including a growing amount of military hardware) while Chile exported numerous raw materials.[59] Brazil also has invested heavily in Chile in the last decade. Although superficially successful, the October 1980 visit by Brazilian President Figueredo to Santiago revealed some mutual uneasiness between the two governments as Brazil proceeded on the path of political liberalization while Chile continued under right-wing dictatorship. Ideology, which brought Chile and Brazil together during the 1970's, could ironically undermine that friendship in the 1980's.[60]

Argentine-Brazilian Relations:

Rivalry between Brazil and Argentina, the two most powerful nations in South America, has traditionally been one of the most salient features of the region's diplomacy. Because the two countries compete intensely and relations involve not only strictly bilateral but also broader balance of power factors, Argentina's and Brazil's mutual policies toward each other tend to color their dealings with the rest of Latin America. The bases for both rivalry and cooperation are strategic, political, economic and psychological. In some respects the two nations are locked into what Brazilian political scientist Jaquaribe calls "conflictive cooperation," and interdependence involving strong mutual suspicions and points of conflict intertwined with undeniable common needs and mutual dangers calling for a

joint response.[61] However, the bases for historic and long-lasting antipathies and confrontation are also present.

Historically, Argentina has been able to balance Brazil's geopolitical stature because of a more highly developed social and economic structure. Specific institutions reflected this pattern, and the Argentine armed forces, although notably smaller than their Brazilian counterparts, were well enough trained and equipped to make them at least an even match. In addition, Argentina possessed cultural advantages in a predominantly Spanish-American regional environment, and the prestige of her economic, military and educational institutions bolstered the Argentine position. Argentina also reflected regional aspirations in its tendency to assume an international position critical of and independent from the United States. Until the past decade, Brazil could only aspire to parity in her regional political position, particularly with regard to countering Argentine influence in the states along their borders.[62]

There is though, a strong and long-standing tendency toward the improvement of Brazil's geopolitical power-position vis-a-vis that of Argentina. It is only in recent years, however, that events within both countries have favored this realization. The marked expansion of Brazilian capabilities stands in stark contrast to the social and economic stagnation of Argentina and the paralyzing effects

of her chronic political crises. The result has been a substantial shift in the balance of power, although in certain respects--such as military capabilities and sophisticated technology--Argentina has thus far maintained broad parity with Brazil.[63]

The Argentine-Brazilian rivalry has intensified and broadened from the original confrontation of two successor states to the old European colonies over the Rio de la Plata estuary and ill-defined former imperial boundaries. Many Argentines identify their country's original boundaries with the old Viceroyalty of La Plata, which included all of the buffer states, and make unfavorable comparisons between their subsequent "losses" and Brazil's expansion through a series of astute negotiations with neighbors over ill-defined jungle boundaries. These perceptions continue in the competition over the buffer states and frequent charges that Brazil is "imperialist."[64] A more recent variation on the imperial theme places Argentine-Brazilian competition in the context of relations with the United States. The advantages Brazil gained from wartime cooperation with the United States were a traumatic experience for Argentina as well as a substantial alteration in the local balance of power. Brazil is often accused of becoming the key country for the United States in Latin America at Argentina's expense, or in radical versions, its subimperial deputy.[65]

The military rivalry dates from the 1920's, and has been decisively influenced by United States economic and military aid over the years as well as the participation of Brazilian forces in World War II and the United Nation's peace-keeping forces, which have allowed her to maintain parity with Argentina in war-making potential. (see Figure 3). Brazil's demographic expansion into remote regions, which increases Argentina's sensitivity to its own poorly controlled frontier areas, overall population growth, and the steady movement of its population center to the south are also regarded as potential military threats. These attitudes now extend to suspicions concerning each others' nuclear energy programs, with some in Argentina calling for an atomic "equalizer."[66]

Both sides believe that relative wealth and economcic growth help to determine international status. Argentines uneasily compare their prolonged internal crisis with Brazil's economic "miracle," but point to the vast difference in per capita income, the declining position of the Brazilian lower classes, and the harsn, dictatorial methods of the Brazilian military government. Argentine analysts has also noted Brazil's injurious dependence on foreign oil and the loss of national sovereignty associated with reliance on foreign investment, as compared to their own bid for greater economic independence. However, they do accept as plausible the program of Brazil's Second National

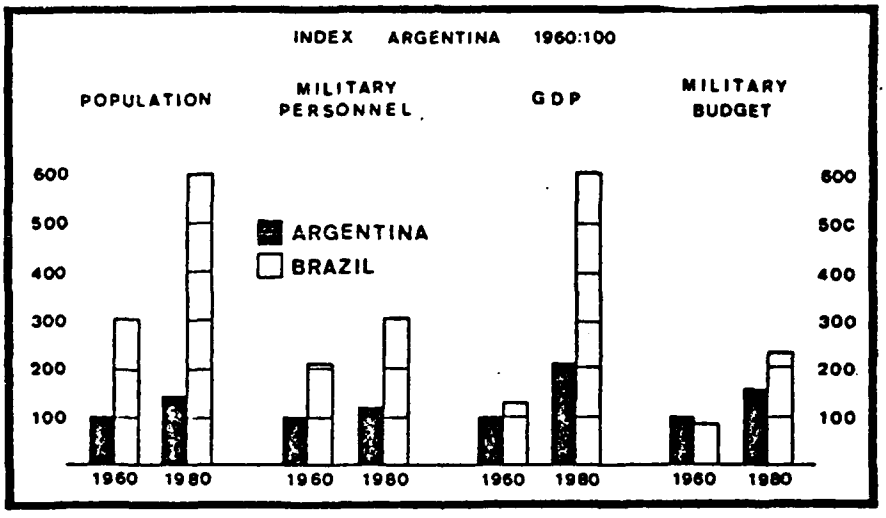

Figure No. 3
Brazil/Argentina Military Expenditures: 1960-1980
Source: SIPRI Data Base: 1981

Development Plan to make the country into the world's eighth largest market and to become "developed." On balance, Brazil's economic performance is viewed with a mixture of admiration, envy, and fear. However, Brazil is often scorned as a racially mixed society, in pointed contrast to a European-descended Argentina.[67]

Despite these strong bases for intense rivalry and even dislike, Argentina does recognize common interests with Brazil. The two countries are each other's best customers within Latin America. They share a common desire to obtain external resources for national development, a need to renegotiate their respective foreign debts, and to improve the international positions of developing countries in the world arena. Both governments oppose the establishment of radical regimes in the buffer states and cooperate in controlling guerrillas and terrorists. These political, strategic, and economic concerns may assist Argentina in adjusting to a permanently unequal local power situation.[68]

Naturally enough, these developments have had a very unsettling effect on Argentine public opinion. The danger of losing parity is recognized as the relevant question, and this becomes a concern over how the dangerous effects of this escalating imbalance can be overcome. The return of the Peronists in 1973 might have seemed the precursor of the "caudillo's" traditional self-assertive efforts to mobilize Argentina's capabilities; however, the Peronist government

proved to be a mere shadow of its former self.[69] Even present Argentine policy toward Brazil gives the appearance of ineffectual temporizing in the face of an unpleasant but immutable reality.[70]

From the Brazilian side, there seems to be an inclination to let well enough alone. Vague rhetoric about the need for cooperation is belied by the absence of concrete initiatives, but on the other hand no steps have been taken that directly aggress on vital Argentine interests. The Brazilian government has, nevertheless, taken advantage of Argentina's weakness and has consolidated a position of unprecedented influence in the border states. In short, Brasilia seems satisfied with the current trajectory of events, and Buenos Aires appears unable to do anything to alter it.[71]

Argentine-Brazilian nuclear competition and mutual suspicion have potentially more ominous and enduring implications than any other problem. Until 1964, Argentina had a clear lead in nuclear technology; however, after the 1964 coup, the new Brazilian regime undertook a sustained effort to rectify this imbalance.[72] With the current economic gains made by Brazil, Argentine nuclear technology advantages have been all but negated, thus producing a continuous tension and competition between the two countries in the field of nuclear technology development.

Since Brazil is more or less satisfied with the current situation, and continues extensive nuclear technology research, the future of the relationship probably depends on the domestic situation within Argentina and the attitude ultimately adopted by the Argentines. Pressure exists to adopt a more positive attitude toward redressing the growing power imbalance, and this tendency would probably be intensified if political stability could be established in Buenos Aires and an effective program of social and economic recovery launched. Logical initiatives would include concentration on recouping national economic and military power, a search for allies within Latin America, renewed competition for influence in the border states, and the timely exercise of Argentina's nuclear option. With regard to the last-mentioned step. In 1975 there was an unprecedented demand within the Argentine Congress to consider constructing nuclear weapons in order to guarantee national security.[73]

Chile

A. Evaluation of Foreign Policy and Current Trends:

The fact that Chile's contemporary internal economic development is primarily dependent upon the export of copper as a means to earn foreign exchange is an example of domestic and international "linkage." Until 1971, much of Chile's copper industry was owned by private foreign interests, a situation that subjected the nation's political

system to foreign penetration and influence. Even with the total nationalization of the copper industry, Chile remains dependent upon the vagaries in the price of copper on the world market and upon her ability to negotiate needed credits and assistance from international agencies and a number of nations in the Western Hemisphere, Europe and Asia.[74]

Historically, Chilean foreign policies have promoted territorial expansion primarily as a result of her continuous efforts at discovering and exploiting areas rich in nitrates and copper. Never was this more manifest than during the period 1879-1883 when Chile became involved in the War of the Pacific.

The War of the Pacific: The period 1850-1880 was a very confident period in Chilean history due in great part to its soaring economy. In the decades after 1850, Chile clearly had enough of the economic abundance or the illusion of it to support the concept of laissez-faire capitalism.[75]

The nitrate industry was the backbone of the Chilean economy during the final decades of the nineteenth century, just as copper is today. But when nitrates first began to loom so large in the Chilean economy the primary deposits belonged to other countries. Chilean capitalists were quick to exploit the nitrate regions of Antofagasta and Tarapaca. Jose Santos Ossa and Francisco Puelma received a concession from Bolivia in 1866 for their "Compania Explortadora del

Desierto de Atacama," established to exploit Bolivian nitrates and borax. The company soon became larger and more powerful with the addition of the important Chilean capitalist Augustin Edwards and the British-Peruvian-Chilean firm of Gibbs y Cia., already a significant financial force in the nitrate industry of Tarapaca. Additional nitrate deposits were being discovered and brought into operation all the time, and by 1872 Chilean capital was producing a little less nitrate than Peruvian capital and more than English and German capital.[76] Chilean capitalism had developed to such a degree that the country was now an exporter of capital to foreign countries, and much of this capital was actually generated and exported by Chilean nationals.

Before long the Bolivian and Peruvian nitrate industries became essentially a Chilean affair. Chilean capitalists and workers explored, established and operated the nitrate districts of Antofagasta. They built the roads, railroads, and even the port of Antofagasta. A census of 1878 showed that the municipality of Antofagasta contained 8,507 inhabitants, of whom 6,554 were Chilean and 1,226 were Bolivian.[77]

The Chilean domination of the Peruvian and Bolivian nitrate industries led to tensions. Chilean explorers had also earlier discovered Bolivian's rich guano deposits. In 1866 Bolivia and Chile signed a boundary treaty in which the

latter recognized the former's sovereignty over the guano territory and agreed to a northern boundary at 24 degrees latitude. In addition, revenues produced from guano and other minerals found between 23 and 25 degrees would be shared equally between the two countries. Shortly after the treaty was signed Chilean explorers discovered the rich nitrate deposits near Antofagasta and then the silver mines of Caracoles. The Chileans requested and were granted permission from the Bolivian government to exploit these finds and were granted it. However, they were permitted to carry out their mining operations only under the financial arrangements stipulated in the 1866 treaty. Chilean capital and manpower literally invaded the region and soon Peru's Tarapaca mining district also.[78] In 1873 Peru and Bolivia signed a secret offensive and defensive military treaty to protect against the loss of their mining territories to the Chilean flag. The following year Bolivia and Chile signed another treaty in which Chile gave up all rights north of 24 degrees in return for a promise that the Chilean capitalists in that region would not be confronted with new taxes. Just about this time the Peruvian government began nationalizing the nitrate industry in the province of Tarapaca, and Chileans lost mines, machinery, and income. In 1878 the Bolivian government, contrary to the provisions of the 1874 treaty, levied new taxes on the Chilean producers at Antofagasta. The Chileans refused to pay and the Bolivian

government determined to embargo their products and auction off their facilities. On the day in February 1879 when the auction was scheduled to take place, a small Chilean expeditionary force occupied the port of Antofagasta. Thus the famous War of the Pacific began between Chile on one side and Peru and Bolivia on the other.

The allies outmanned Chile four to one at first in troops and two to one in population. However, Antofagasta had fallen quickly, and Arica, although defended heroically by a few Peruvians and Bolivians, fell soon thereafter and the active hostilities between Chile and Bolivia were over. The War with Peru was considerably longer, involved significant naval battles, and left Lima occupied by the Chileans for an extensive period.[79]

Acquiescence by the vanquished did not come easily and negotiations for a peace settlement took considerable time. Because of continued animosity between Chile, Peru and Bolivia, separate treaties were pursued. Chile and Peru reached an accord with the Treaty of Ancon in 1883, but the best agreement that could be negotiated between Santiago and La Paz was a truce signed in April 1884. This formal end to hostilities secured Chilean occupation of former Bolivian territory and established commercial relations between the two countries. In a complicated agreement Chile promised to consider Bolivia's claims for an outlet to the sea, but failed to provide that outlet because of the provisions in

the negotiated Treaty of Ancon. Through the accord with Chile, Bolivian goods were permitted duty-free passage through several ports (including Antofagasta), but not through the most important coastal port, Arica, which had previously been Peruvian territory. All commercial itmes traversing through Arica were charged standard Chilean tariffs. The Chilean requirements for any change in terms were harsh: upon liquidation of all war debts to Chile--including a postwar loan--the port of Arica would also assume duty-free status.[80]

It was not until 1929, when Peru and Chile signed the Tacna and Arica Treaty (both of which had been Peruvian ports before the war) by which Tacna was to be returned to Peru and Chilean control of Arica was formalized. While Bolivia sought inclusion in the negotiations, such entreaties were to no avail. The final peace agreement signed between Peru and Chile eliminated any immediate hope for Bolivian aspirations for the return of a Pacific coastline, because in a protocol accompanying the Treaty, both Peru and Chile agreed that neither country could cede territory to a third party without first obtaining agreement from the other.[81]

Since that time, all governments of Bolivia have desired an outlet to the Pacific, but into the 1970's efforts to renegotiate the treaty with Chile had never materialized. Furthermore, relations with Chile continued

to deteriorate until the early 1960's when Bolivia broke formal relations with Chile in a dispute concerning Chile's unilateral decision to divert the headwaters of the Rio Lauca, a major source of water in the Bolivian altiplano. Changing circumstances during the 1970's, however, including (1) the willingness of the Chilean military government to improve its relations with neighboring states and to improve its general international image; (2) the approaching centennial of the War of the Pacific; and (3) the astute maneuvering of Bolivian President Hugo Banzer Suarez, led to a concerted effort on the part of Bolivians to pursue negotiations with Chile to secure an outlet to the sea.[82]

The Banzer government's efforts to secure an outlet to the sea covered a period of approximately three years, with the most intense negotiations and interaction occurring during 1976. Formal negotiations between Bolivia and Chile over the issue of Bolivia's acquiring access to the Pacific were intensive, detailed and, in accordance with the treaties of the War of the Pacific, involved Peru for a period. In December, 1975 Chile proposed to exchange part of its coastal territory for part of the Bolivian altiplano as tripartite negotiations began between Chile, Peru and Bolivia in the following year.

The major provisions of the Chilean proposal granted Bolivia access to the sea by providing a narrow strip of land along the Chile-Peru border to the Pacific at a spot

north of Arica. This strip extended into the Pacific, although the shoreline waters were not sufficiently deep to facilitate most ocean-going vessels. In the proposal Chile demanded that several stringent conditions be met in exchange for this concession. Territorially, Chile wanted a section of Bolivian land equal in area to the corridor and the 200 mile extension into territorial waters. As for the historical issues, Bolivia was to give up all claim to the territory lost during the War of the Pacific, and to grant Chile exclusive rights to the headwaters of the Rio Lauca--the issue which caused the suspension of diplomatic relations between the two nations thirteen years earlier. Chile additionally sought between 100 and 200 million dollars in compensation for the concession of the Arica-La Paz railway. A final provision of the proposal was that the corridor along the Chile-Peru border be demilitarized. As this area was to include the territorial sea, and the Bolivian Navy would thus be left without a military function in the Pacific.[83]

The concessions demanded by the Chilean proposal created chaos on the Bolivian political scene. Both the military and civilian elements of the government were against the proposal. While Bolivia was embroiled in these internal political difficulties, Peru announced that if the Chilean proposal involved territory that was formerly Peruvian, Peru would have to ratify any agreement. Both

Bolivia and Chile agreed that talks between Peru and Chile were necessary, and shortly thereafter bilateral talks commenced.

The nature of the Chilean proposal required active involvement by Peru in the negotiations to protect what were considered to be vital national interests. On November 9, 1976 Peru attempted to take the initiative by convening a third round of negotiations in Lima to discuss the situation, but Chile requested a delay. In response, the Peruvian foreign ministry publicly released its own formula for resolving the issue on November 19, 1976, which served to undercut completely the 1975 Chilean initiative.[84] The Peruvian proposal called for the creation of a corridor and port in northern Chile over which Bolivia would exercise absolute sovereignty, and joint Peruvian-Chilean-Bolivian sovereignty over the territory between the Bolivian corridor and the present Peruvian-Chilean frontier to the north (essentially the province of Arica). Negotiations stalemated after Chile refused to even discuss the Peruvian proposal, and tensions gradually mounted between Peru and Chile during the following year. Although the situation remained critical throughout 1978, conflict was avoided and both Chile and Peru actively sought a reduction in tensions (insisting that relations between them were cordial and that rumors of war were the fabrication of the foreign press). But at the end of the year the discovery of an extensive

Chilean espionage network directed at the most sensitive Peruvian military installations and coordinated through the Chilean Embassy produced an open split between the two countries.[85] By early 1979, however, the configuration of regional forces that had appeared to favor conflict during the previous year no longer existed. Specifically, Papal mediation had achieved a reduction in tensions between Chile and Argentina, Bolivia found itself effectively preoccupied with internal political problems, and Chile had partially overcome its international isolation. Today, Bolivia still seeks an outlet to the sea and Peru still continues its bitter resentment against Chile for territories lost over a century ago.

Despite the preoccupation of Chile with Peru and Bolivia in the north and continuous, slow-moving boundary discussions with Argentina in the south. Chilean involvement in international affairs during the early decades of the twentieth century was limited. Between World Wars I and II, however, Chile began seeking greater ties with other nations in the Western Hemisphere. After World War II, Chile participated in numerous regional and international organizations and began displaying a trend toward a more flexible approach to dealing with other countries (as opposed to simple capitalistic aggrandizement typical of the late nineteenth century) internationally by consummating a number of aid and trade agreements.[86]

Chilean foreign policy in the 1960's became much more extracontinental as Chile increased her frequency of contact with Western and Eastern European countries, the Soviet Union, Africa and China. Although Chile was greatly dependent upon the United States for public and private economic aid and technical assistance, particularly during the early years of the Frei administration (1964-1970), the election of a Marxist administration in 1970 initiated a foreign policy orientation increasingly independent of the United States yet increasingly dependent on other nations and international agencies as sources of credit and assistance. However, the violent coup of September 1973, which brought the Chilean military to power, initiated a revision of Chilean foreign policy. Chilean extracontinentalism was modified as diplomatic relations were broken between Chile and a number of Communist nations, including the Soviet Union and Cuba, and the military junta sought to improve relations with the United States. In essence, Chile's progression toward greater involvement in international affairs during this century has been determined by political leaders and diplomats who are conditioned by their own domestic economic and political situations and by international perspectives and objectives.[87]

The prime objective of Chile's current foreign policy is to influence the structure of the international system to assist her own economic development. The resources and the

structural problems of Chile's domestic economy play a decisive role in the development of her foreign policy. In her effort to secure external economic and technical assistance through the extension of trade, Chile is confronted by her limited economic capabilities. As a consequence of these limitations, Chile's importance in the world market is based on her capacity to produce copper, copper products, nitrates, iron ore, and fishmeal. Although possessing the world's largest copper reserves, Chile ranks third, behind the United States and the Soviet Union, in copper production. Her copper exports represent one-third of all the copper exported in the world and attract considerable foreign exchange. This in turn determines Chile's capacity to import goods and to meet international payments. Hence, copper alone is capable of accounting for approximately 75 percent of export earnings annually and of aiding in financing public expenditures.[88] Copper exports as a capability, however, are limited; the use of copper to earn foreign exchange depends not only on increased production but also on the demand from importing countries.

During the 1960's, Chilean foreign policy was effective in acquiring specific international objectives that would assist internal economic development, suggesting, perhaps, that such a democratic political system and its resultant political and diplomatic leaders served as prime capabilities to enable Chile to maintain as much influence as she

did in international politics. On the other hand, the military coup of 1973 came at a time when the traditional political system and its leaders could not reconcile the political conflicts of an increasingly polarized society. In addition, Chilean foreign policy has become less effective because of her internal political crises, the deterioration of the nation's economic capability, and the negative reactions of certain nations and international financial agencies in the international political system to its right-wing junta.[89]

Today, the Chilean economic system suffers from periodic and often intense inflation, a variety of infrastructural problems and a lack of indigenous capital investment. Under the Pinochet regime, the control of the production, refining and marketing of Chilean copper will remain a matter of governmental decision-making. It remains to be seen what may happen in 1989 when democratic government will return to Chile regarding the linkage of Chilean domestic and foreign policies.

B. Relations with Neighboring Countries

As has been mentioned, relations between Bolivia and Peru in the north have historically been based on the ramifications of the War of the Pacific. Consequently, resentment and periodic tension has characterized relations with these northern border states. Argentina, due to

reasons previously outlined, has cultivated the friendship of Peru and Bolivia and has used their animosity against Chile to her (Argentina's) advantage. Meanwhile, because Brazil does not border Chile, and is a major rival of Argentina, Chile has cultivated friendly relations with Brazil (although it has been more formal than cordial). This has also helped to offset the Peru/Bolivia "alliance" with Argentina.

II. Military Balance of Power in the Southern Cone Region

Now that the various trends and factors affecting the foreign policies of the countries located in or near the Southern Cone have been discussed, it is necessary to take cognizance of the generally recognized qualitative and quantitative differences in the military strengths of these countries, including such important aspects as military expenditures and armaments. By comparing these differences in military capability it is possible to discern certain trends and patterns of military strengths and weaknesses, and thus possibly be able to determine future potentialities for conflict. However, due to the volatility of the region and the issues endemic to it, no prediction of military conflict can adequately be levied simply based on accumulated data. Indeed, as Knorr has suggested, "the presence of qualitative factors makes quantitative comparisons often inconclusive."[90]

Brazil

Brazil, the largest and most populated country in Latin America, has become the leading regional economic power. In 1980, Brazil's GNP accounted for 42 percent of the total for Latin America and Brazil's growth rate has also been higher than most of the continent as a whole.[91] Similarly, Brazilian armed forces are the largest in Latin America, larger than the armed forces of Argentina, Venezuela and Chile combined.[92] Military spending has been growing fast during the past two decades, while other public expenditures have been heavily suppressed owing to tough anti-inflationary measures. As a percent of GNP, however, since 1972 Brazil's military spending has actually decreased by 50%.

On the other hand, the value of Brazilian arms purchases abroad (mainly from the United States) has been rather low as compared to those of other large countries of South America, such as Venezuela and Colombia (as opposed to 1978 when Brazil was importing 35% of the Latin American total).[93] (See Figure 4). One reason for this is that Brazil is an arms-producing and exporting country, and 60 percent of its military equipment is produced internally.[94] Over 350 companies are directly involved in defense production, employing over 100,000 persons. Annual production is valued at almost $5 billion which is over 3 percent of the GNP.[95]

The most important arms-producing company in Brazil is EMBRAER which produces military aircraft. EMBRAER manufactures jet-powered military aircraft, propeller and jet trainers, transports and maritime patrol aircraft.[96] Brazil sells aircraft to the United States, Chile, Paraguay, Uruguay and Togo among others.

Brazil is planning to build a fleet of 150 modern naval units equipped with surface-to-air and surface-to-surface missiles. Brazilian shipyards currently produce frigates, destroyers, corvettes, fast patrol boats, landing ships, submarines and coastal patrol craft.[97] The Brazilian Navy has been traditionally anti-submarine-oriented (it played an important anti-submarine role in World Wars I and II).

Brazil exports arms to Third World countries and also to France, Belgium and the Soviet Union, and between 1977-80 was the world's leading Third World weapons exporter (see Figure 5). The major recipients in the Third World are Libya, Iraq, Uruguay, Chile, Gabon, Togo and Tunisia. The supplies to these countries range from armored vehicles and missiles to aircraft. In 1981 Brazil supplied missiles and other gear to Iraq (in return for oil) and concluded negotiations with Malaysia for the supply of as many as 700 armoured vehicles.[98] France and Belgium import Brazilian trainer aircraft (EMB-121 Xingu), which are generally recognized to be of very high quality, while the USSR imports armored vehicles of the EE-9-Cascavel model.

Importing region	SIPRI value of imports (1975 $ million)	Percentage of Third World total	Five largest recipient countries	SIPRI value of imports (1975 $ million)	Percentage of region's total
Middle East	6 583	47	Iraq	1 423	22
			Iran	1 393	21
			Israel	1 377	21
			Saudi Arabia	1 081	16
			Syria	626	10
Far East	2 366	17	S. Korea	1 357	57
			Viet Nam	262	11
			Taiwan	209	9
			Thailand	129	5
			Indonesia	74	3
Sub-Saharan Africa	1 600	12	Ethiopia	365	23
			S. Africa	330	21
			Sudan	160	10
			Rhodesia	92	6
			Nigeria	91	6
North Africa	1 158	8	Libya	694	60
			Algeria	223	19
			Morocco	213	18
			Tunisia	29	3
South America	1 069	8	Brazil	371	35
			Argentina	265	25
			Peru	152	14
			Venezuela	151	14
			Ecuador	68	6
South Asia	1 019	7	India	750	74
			Pakistan	118	12
			Afghanistan	77	8
			Bangladesh	73	7
			Sri Lanka	2	0.2
Central America	192	1.3	Cuba	98	51
			Bahamas	48	25
			Mexico	20	10
			El Salvador	8	4
			Panama	6	3
Total Third World imports	**13 948**				

Figure No. 4
Rank Order of Third World Weapons Importing Countries
Source: SIPRI Data Base: 1980

This enormous program of the Brazilian military industry has been carried out with considerable governmental support. Significantly, the overall spending for science and technology in Brazil, which in 1979 represented 2.3 percent of the federal budget, rose in 1981 to 5.3 percent. The 1979 government appropriation for R&D for military purposes increased in real prices by 135 percent as compared to 1975.[99] In terms of industrial and military potential, Brazil has emerged as a power; one whose influence extends beyond the Latin American region.

Argentina

For many years Argentina has been Brazil's main competitor for economic and political influence. It is also the second largest military power in the sub-region. In the period 1970-80 the armed forces of Argentina increased by 35 percent.[100] At the same time, its police and para-military forces doubled. This latter development must be seen in light of the political and social convulsions suffered by Argentina during the past decade. Military expenditures increased by 51 percent from 1970 to 1980. In 1981, military spending was 2 percent of GNP and 15 percent of the national budget.[101]

Argentina's arms purchases abroad are larger than those of Brazil. Between 1977-80, she ranked 19th compared to Brazil's 20th as a Third World weapons importer (see Figure 6). It imports aircraft and helicopters from Canada,

Rank order of the 12 largest Third World major-weapon exporting countries, 1977–80

Figures are SIPRI trend indicator values, as expressed in US $ million, at constant (1975) prices.

Exporting country	Total value	Percentage of total Third World exports	Largest importer per exporter
1. Brazil	421	*33.1*	Chile
2. Israel	367	*28.9*	South Africa
3. South Africa	116	*9.1*	Zimbabwe
4. Libya	98	*7.7*	Syria
5. Egypt	72	*5.7*	Somalia
6. South Korea	38	*3.0*	Indonesia
7. Argentina	35	*2.8*	Chile
8. Saudi Arabia	31	*2.4*	Somalia
9. Singapore	17	*1.3*	Thailand
10. Indonesia	16	*1.3*	Benin
11. Cuba	15	*1.2*	Peru
12. India	12	*0.9*	South Africa[a]
Others	33	*2.6*	–
Total	**1 271**	**100.0**	

Figure No. 5
Source: SIPRI Computer-based data base.

Rank order of the 25 largest Third World major-weapon importing countries, 1977–80

Figures are SIPRI trend indicator values, as expressed in US $ million, at constant (1975) prices.

Importing country	Total value[a]	Percentage of Third World total	Largest exporter per importer
1. Iran	3 446	*8.7*	USA
2. Saudi Arabia	3 133	*8.0*	USA
3. Jordan	2 558	*6.5*	USA
4. Syria	2 311	*5.9*	USSR
5. Iraq	2 172	*5.5*	USSR
6. Libya	2 107	*5.4*	USSR
7. South Korea	1 987	*5.0*	USA
8. India	1 931	*4.9*	USSR
9. Israel	1 778	*4.5*	USA
10. Viet Nam	1 220	*3.1*	USSR
11. Morocco	1 121	*2.9*	France
12. Ethiopia	1 086	*2.7*	USSR
13. Peru	995	*2.5*	USSR
14. South Yemen	964	*2.4*	USSR
15. South Africa	950	*2.4*	Italy
16. Algeria	882	*2.2*	USSR
17. Taiwan	737	*1.9*	USA
18. Kuwait	664	*1.7*	USSR
19. Argentina	642	*1.6*	FR Germany
20. Brazil	641	*1.6*	United Kingdom
21. Egypt	594	*1.5*	USA
22. Indonesia	522	*1.3*	USA
23. Pakistan	512	*1.3*	France
24. Chile	482	*1.2*	France
25. Thailand	412	*1.0*	USA
Others	5 657	*14.3*	–
Total	**39 504**	**100.0**	

[a] The values include licensed production.

Source: SIPRI computer-stored data base.

Figure No. 6

Ten largest Third World producers of major weapons, by weapon category

Figures are numbers of weapon types produced.

Producing country	Aircraft	Armoured vehicles	Missiles	Warships	Total
Brazil	19	4	3	1	27
Israel	9	4	4	5	22
Argentina	7	2	2	9	20
India	15[a]	1[a]	3	5	19
North Korea	1[a]	–	–	(10)[a]	11
Taiwan	5	–	4	1	10
South Africa	3[a]	1	1[a]	–	5
Pakistan	4[a]		1[a]	–	5
Peru	1[a]			4	5
Indonesia	4[a]			1[a]	5

[a] Most of these types are produced under licence.

Source: SIPRI computer-stored data base.

Figure 7

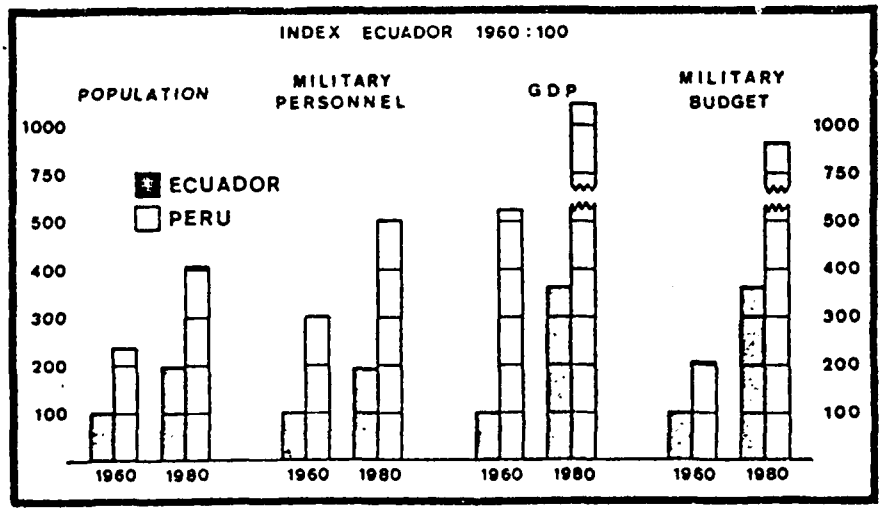

Figure 8
Ecuador/Peru Military Expenditures: 1960-1980
Source: SIPRI Data Base

countries (notably, for Peru and Pakistan). It has a 105-mm cannon, a machine-gun and smoke-screen equipment, and a maximum range of 900 kilometers.

Argentina's shipyards build a wide variety of warships. In 1981 they were constructing or assembling a destroyer and frigates equipped with missiles, attack submarines, corvettes and a transport ship. Argentina possesses one of the strongest navies in Latin America and is one of only two countries in the region and one of three countries in the entire Third World (together with Brazil and India) to possess an aircraft carrier.

Argentine industry also turns out missiles and rockets developed by Argentina's Armed Forces Scientific and Technological Research Center (CITEFA), notably, a supersonic radio-guided Naval missile, a wire-guided anti-tank missile and a fire-and-forget rocket. Sixty-eight percent of the anti-tank missile's components are produced in Argentina.[103]

The range of small arms manufactured in Argentina is wider than that in Brazil: from pistols, hand grenades and mortars, to automatic rifles and machine-guns, to all sorts of ammunition.

The largest government-owned armaments production conglomerate, Fabricaciones Militares Argentina (FMA), runs 12 military plants and has a majority or significant share-holding in the petro-chemical, steel, timber and construc-

tion industries. It employs an estimated 40,000 people directly, while a further 15,000 work in associated companies.[104]

Argentina occupies seventh place among the Third World arms exporters (See Figure 5), but since its arms industry is smaller than that of Brazil, it ranks lower than Brazil as a weapon exporter. Argentina sells aircraft to Bolivia, Chile, the Dominican Republic, Iraq, Paraguay, Uruguay and Venezuela, and armored vehicles to China, Pakistan and Peru.

In May 1980 important agreements were signed by Argentina and Brazil. The agreements covered scientific and technological cooperation, joint exploitation of hydroelectric resources and a permanent mechanism for political consultation. The most dramatic of these agreements was related to nuclear co-operation, with the aim of achieving independence of both countries in the field of nuclear energy. In particular, Argentina was to supply Brazil with uranium concentrate and zircalloy tubes for nuclear fuel elements, while Brazil was to provide some of the pressure vessels and other components for an Argentine reactor. Moreover, both sides have established a program of industrial co-operation in the field of aeronautics. These agreements may serve to moderate the traditional rivalry between Argentina and Brazil.[105]

In 1981, total military spending was over $3 billion, which capped a trend of greater increases in military

spending for a three year period than normally seen previously.[106] In 1982, Argentina had received over 90% of her import contracts, which was fortuitous in that these weapons were utilized during the 1982 Falklands War. Due to losses incurred during this War, Argentina has embarked on a rebuilding and replenishment phase of military spending which became apparent in 1983. Due, however, to the poor economic situation, as well as the moderate Alfonsin government's coming to power, spending on the military has subsequently dropped to $2.7 billion (16.5% of GNP). Although still high, it does signal an intent by Alfonsin to direct more monies toward the sagging domestic sector.[107]

Chile

Chile, ranked as the region's third largest arms importer in the first half of the 1970's and as the fourth largest in the second half of the decade (see Figure 5), had some difficulty in purchasing armaments following the fall of the Allende regime. This situation, however, has somewhat abated in the early 1980's.

Sweden sold the cruiser Gota Lejon to Allende's government, at a time when Chile was classified as a non-tension area with a democratic government. This illustrates a supplier's dilemma--namely, that conditions in purchasing countries do tend to change. Although the fall of Allende in 1973 prompted the United States Congress to cancel arms deliveries to Chile in late 1974, commercial sales by

private companies were still allowed. This enabled Pinochet's regime, strengthened economically by United States loans and investments in the country, to purchase riot control agents and $1.2 million worth of ammunition before this loophole was closed by Congress in 1976.[108] The United States embargo still allowed delivery of the $120 million backlog of arms orders placed before 30 June 1976, and so Chile received more than $50 million worth of arms in FY 1977; including the Cessna A-37 Dragonfly fighter. In FY 1978, arms worth more than $10 million were delivered. (Traditional business practice, normally observed in all embargo cases, is that orders already contracted for must be fulfilled.)[109]

The Chilean regime, however, did experience difficulties in obtaining arms in the latter part of the 1970's. An attempt to buy the entire fleet of obsolete Hawker-Hunter aircraft from India failed. France entered the market, however, and delivered AMX-13 armored light tanks, the AMX-30 main battle tank, and AS-11 and AS-12 anti-tank missiles; and Israel sold its own design, the Shafrir-2 air-to-air missile. France continues to be Chile's main supplier, and between 1978-1983 she conducted $650 million worth of arms transactions with Chile. Israel, also important as a supplier furnished over $200 million in the same period.[110] In 1981, Chile ranked 18th as a Third World weapons importer (see Figure 6). By 1982, Chile had been able to increase

her military spending and purchases, raising its percentage of military spending to 5.2 percent of GNP. In 1983, Chile had increased her military budget to well over $1 billion which equated to 10% of her budget and 7% of GNP.[111]

From a number of perspectives, Chile would appear to maintain an important qualitative edge on her neighbors.[112] In addition to the relatively high manpower strength, the military institutions of Chile are well-organized, well trained, and well-disciplined. Chile possesses a very well-developed infrastructure for mobilizing, transporting, and supplying military units, and Chile clearly has a reputation in the region for the effective application of this power. Although Argentina and Peru together hold a better than four-to-one advantage over Chilean military spending in real numbers, this does not measure the military strength derived from that spending.[113]

Added to this military imbalance are strategic considerations working to the disadvantage of Chile. Chile could prove a difficult country to defend against a joint action by Argentina and Peru. The Chilean military must simultaneously defend almost 3000 miles of coastline and more than 2000 miles of frontier with Argentina. Although the Andes are a formidable obstacle, Argentina could conceivably cut Chile in two at several different points. If a war involved both Argentina and Peru, the territory in dispute in the Beagle Channel and the Atacama Desert would

be difficult to hold. These two troubled frontiers are at the extreme opposite limits of the national territory, preventing a concentration of Chilean forces unless the loss of one is to be corrected at a later point. A division of forces between the two disputed frontiers, moreover, would leave the heartland of the Santiago-Concepcion district exposed.

Chile is also disadvantaged somewhat in terms of an air war, (one in Mendoza, the other in Cordoba) within easy reach of the Santiago-Concepcion district. Conversely, the closest Chilean military airfield to Buenos Aires is well over 700 miles distant. The vast expanse of sparsely inhabited territory between the Chilean frontier and Buenos Aires provides Argentina with a deep and flexible defense zone compared to the Chilean situation in which the major industrial and population centers are just over the frontier.

Given the strategic and quantitative disadvantages of Chile, there may exist a motivation to launch a potentially decisive first strike should war seem inevitable. In this connection, it is significant that the Chilean military has for the past several years received military advisors from Israel, a country with similar defense requirements. Israel, along with France and Brazil, is becoming the major sources of arms transfers in the aftermath of United States-

Chilean tensions over human rights and the cutoff of United States military assistance.[114]

Peru and Bolivia

Peru and Bolivia constitute a real threat to the Chilean northern frontier. Due to the great influx of Soviet arms shipments, Peru has become the largest arms importer in Latin America (see figure 6). Between 1968 and 1977, Peru increased her troop strength 75% and its per capita military spending went up 82%, with most of the expansion between 1974-1977.[115] (See Figure 9). In recent years, however, military spending has declined; one reason for this is that Peru tends to borrow heavily from the International Monetary Fund (IMF) and is consequently enjoined by the IMF to cut total public spending as a condition to receiving a loan. Through this policy the military may have received some cuts as well as the other domestic sectors.[116] This is borne out by the fact that Peruvian military spending was 3.6 percent of GNP in 1981 as compared to a high of 7.3 percent in 1976.[117]

The predominant role of Soviet arms transfers in Peru's military buildup caused considerable alarm in neighboring countries. The question of Soviet motives in supplying Peru with advanced military hardware first surfaced in March 1974, and began to receive extensive coverage in the Chilean press in August of the same year. Finally, after United Press International (UPI) picked up a story from Aviation

Peruvian Armed Forces

	Active Troops	Number of Troops per Thousand Population	Per Capita Military Expenditure (Constant Dollars)
1968	75,000	5.86	$28
1973	75,000	5.10	$31
1977	125,000	7.62	$51

Source: U.S. Arms Control and Disarmament Agency, World Military Expenditures and Arms Transfers, 1968-1977 (Washington, D.C.: U.S. Government Printing Office, 1979), p. 100.

Figure 9

and Technology in December 1974 attributing the buildup of Soviet arms in Peru to a plan to attack the copper deposits in northern Chile, the Peruvian foreign ministry called for a conference on arms limitations in the region.[118] The conference of Andean Pact countries that eventually convened in Lima in September 1975, however, failed to produce any workable formula for ending what by that point had evolved into an arms race between Peru on one side, and Chile and Ecuador on the other. In the meantime, Peru's preference for Soviet military equipment was strengthened in February 1975, when the United States suspended military assistance to Peru to counterbalance the cutoff in aid to Chile for human rights violations. Although the United States decision was reversed a few days later, the political damage had already been done.[119] The Soviet Union then became Peru's chief arms supplier after 1973, and Peru completely outdistanced its two primary military rivals (Chile and Ecuador) in foreign arms acquisitions. Peru continued to increase its purchases of Soviet weaponry and had achieved a temporary regional military superiority.[120]

Perhaps the most plausible explanation for the Peruvian arms buildup is that Peru's military leaders do not appear to have been motivated in their actions by any serious territorial ambitions, but rather by a determination to accomplish a complete modernization of the armed forces before any eventual transition of the government to back

civilian rule. Additionally, the border problems with Chile and Ecuador are basic reasons for a buildup as well, especially in light of the 1981 Peruvian-Ecuadoran conflict and their continuous mini-arms race.

Regarding this Peruvian-Ecuadorian arms race, Peru has some 120 combat aircraft of Soviet and French make, while Ecuador has only 55 combat aircraft of French and British make. The balance of naval forces is also in favor of Peru, which has nine submarines (three recently delivered by West Germany, and others from the United States), three cruisers (two from the Netherlands and 1 from Britain), and nine destroyers (two from Britain with surface-to-surface missiles, two from the United States and five from the Netherlands). Moreover, Peru has two Italian Lupo-class frigates, one with surface-to-surface and another with surface-to-air missiles, as well as six fast patrol boats with surface-to-surface missiles (from France), 11 patrol boats, 13 ships and 20 helicopters for anti-submarine warfare (from the United States and France). Ecuador has four submarines (from West Germany and the U.S.A.), one frigate (from the United States), six fast patrol boats with surface-to-surface missiles (from West Germany), nine patrol boats (from the United States) and four support ships (from the United States).[121]

The Peru-Ecuador conflict has fueled the arms race between the two countries.(See Figure 8) In the case of

Peru the arms buildup was also justified by its century-old territorial dispute with Chile. During the past 20 years, the military budgets of Ecuador and Peru have doubled (see Figure 8), and recently Peru ordered 14 fighter aircraft from Italy, 50 tanks from the United States, two missile frigates from Italy and three missile-armed fast patrol boats from France.[122]

Although Peru is relatively strong hardware-wise, the critical questions are whether the Peruvians have built up the support systems and training programs needed to maximize the advantages provided by these weapons, and whether they could realistically expect to receive replacement supplies from the Soviet Union in time of war. Additionally, the quality of training in the Peruvian armed forces is not as high as neighboring Chile, and the Peruvian military does not have a distinguished fighting history.[122] The organizational structure creates more interservice rivalry than either Chile or Argentina, especially between the army and navy. While Chilean officers are considered a hybrid of middle class and elites, and its recruits tend to be more educated than those in other countries, the Peruvian officer corps is less homogeneous, with the middle and lower classes predominantly in the army and the upper class predominantly in the navy. Finally, the Peruvian recruit is frequently separated from the commander by a cultural gulf stemming from Peru's sizable Indian component.[123]

Bolivia, in contrast to Chile and Peru, is clearly handicapped by qualitative concerns--so much so that her military forces will only be considered as an adjunct to Peru's, should a war with Chile ensue.

The military considerations outlined above offer the analyst an opportunity to realize the great potential for conflict in the region and the ability of each country to wage a very destructive campaign. Due to the interrelationships of the various protagonists and the inherent volatility in the region due to the issues at stake, it would not take too much impetus for a conflict to begin should the situation lend itself to conflict. With this in mind, the next section outlines three geopolitical trends becoming more prevalent in the Southern Cone which, when combined with the military power of the protagonists, makes the area worth watching in the future.

III. The Beagle Channel Conflict as a Manifestation of Southern Cone Geopolitics

The Beagle Channel conflict is significant in the overall context of geopolitics and foreign policy in the Southern Cone primarily because it is a manifestation of much deeper and more complex issues and trends within the region. Although appearing as a relatively local conflict the previous discussion lends itself to the realization that the dispute may precipitate actions and reactions throughout

the region involving as many as half a dozen countries. However, it is not enough that these countries should only be reacting to the Beagle Channel dispute in and of itself, but rather, that their involvement is symptomatic of much broader and more disturbing issues within the region which the Beagle Channel dispute only happens to manifest.

This section will identify certain observable geopolitical trends in the Southern Cone and analyze their effect on the applied geopolitical policies of the countries within the region. As will be shown, the Beagle Channel dispute is only one symptom of rather recent geopolitical concepts now being articulated and acted upon by many Latin American nations, especially the ABC countries.

> "Geopolitics is enjoying a renaissance in South America, especially in Argentina, Brazil, and Chile (the ABC countries), where military regimes are applying locally developed indigenous geopolitical theories (summarized in Child, 1979) to both foreign and domestic policies in an effort to solve national problems. The reasons for the current popularity of geopolitics in South America are not entirely clear, but the difficult geography of the continent, posing severe challenges to man--some of which have yet to be overcome by modern technology--is

> a probable cause as are the growing population pressures and the demands of development which result in increasing competition for scarce resources in both land and maritime areas."[125]

Pittman has described three contemporary geopolitical trends which are relevant to present as well as future foreign and domestic policy concerns in the ABC countries. These trends are:

1. The translation of old territorial disputes into new conflicts over control, possession, exploitation, and integration of offshore areas in the sea and in Antarctica;
2. The trend toward new conflicts over valuable resources, such as energy, food, and minerals, in both land and sea areas; and
3. The new expansionism which subsumes the above-listed trends as well as economic and cultural penetration, and informal, but real colonization of desirable areas, through emigration in search of jobs or through the purchase and exploitation of desirable land by citizens of one country in another.[126]

These trends represent new applications or variations of geopolitical ideas already well-documented, to include the "law of valuable areas" which holds that if a given nation does not utilize or exploit land or resources in a

territory, other nations will.[127] Applied to South America in the current era, this means that the growing needs of modern development and expanding populations lead to increased competition for scarce resources. This situation would lead one to expect continuing and extended conflict among the geopolitically oriented governments of the region who are competing for these scarce resources, both inside and outside their respective boundaries in both land and sea areas claimed by one or more nations but whose possession, control or sovereignty are disputed by others.

A. New Territorial Dispute in Offshore Areas

Trend 1 postulates the translation of old territorial disputes on the continent into new conflicts over control, possession, and integration of offshore areas in the sea and the Antarctic.

A striking trend is evident in conflict over maritime space. What characterizes this trend is nothing less than the extension of geopolitical land territorial concepts into maritime space heretofore regarded as open sea. This involves a concept of the sea as national territory, to be demarcated with boundaries and over which control and sovereignty is exercised by a given state. An accompanying concept involves equating maritime territorial space with land space; territorial transfers once limited to the land now apply to maritime space as well.

As a component of this trend, geopolitical thinking

views maritime space within the 200 mile limit as sovereign territory. This view is perhaps the most advanced in Chile, but it is accepted in Argentina and even in Brazil.[128]

The Sea as Territory:

Laws or national policies of all three ABC countries claim sovereignty over a territorial sea. In Argentina and Brazil the territorial sea extends out to 200 miles. In Chile, the Chilean Sea includes waters as far west as Easter Island. Thus, the geopolitical concept of the sea as national sovereign territory has been translated into government policy and action by all three nations.

Acceptance of this concept as a basis for foreign policy is illustrated by two incidents, both involving Argentina. In the first, a precedent was set for establishing maritime boundaries between nations by the 1973 treaty with Uruguay which established a sea boundary between Argentina and Uruguay out to the 200 mile limit at the mouth of the Rio de la Plata. The second illustration is the Beagle Channel dispute.

The Beagle Channel:

The Beagle Channel dispute further illustrates both the acceptance of the idea of maritime space as territory as well as the trend toward extending an old dispute into new areas. The dispute indicates that geopolitical theorists and officials of both nations are viewing the sea as territory, as sovereign space to be delineated, defended,

and recognized as belonging to one nation or another, just as land territory.[129] This is the new geopolitical trend: the concept of equating land and maritime space subject to the same rules of occupation and possession. This idea is not limited to Argentina and Chile, but is also accepted in Brazil and Uruguay as noted above. Disputes over possession of these offshore areas also extends to Antarctica, where both land and sea areas are involved. Here the primary disputes are between Argentina, Chile and possibly, in the future, Brazil.

B. The Trend Toward New Conflicts over Valuable Resources

The problems of growing populations coupled with limited resources are not limited to South America, but the needs of development and of population growth seem to have intensified the competition for energy, food, and mineral resources in the region. This competition for resources affects underpopulated, underdeveloped areas on the continent and is one of the causes of the new intensified geopolitical disputes over maritime and offshore areas. As has already been discussed in Chapter 4 above, energy resources, food resources and mineral wealth are all matters of dispute in the Beagle Channel conflict. Not only is this a matter not confined to the Beagle Channel area, but rather it also extends throughout the Southern Cone and Antarctica as well. As the needs for growing populations and development continue to expand, new conflicts will consequently

develop for resources wherever they may be found or become available.[130]

C. The New Expansionism

Perceptions of the new expansionism are fed by historical memories of all three of the ABC countries as expansionist powers in the past. The new expansionism takes two forms: first, as discussed above, attempts to extend territoriality into offshore areas in the sea and Antarctica; and secondly, on the South American continent, various forms of economic and cultural penetration are accompanied by some type of colonization through emigration, search for work or purchase, occupation and exploitation of agricultural land by citizens of one country in another. Countries with large areas of unexploited, underpopulated land and relatively small population growth fear being overrun by either more prosperous or more populous neighbors.

Reports of Brazilian penetration, based on past Luso-Brazilian expansionism and the study of contemporary Brazilian geopolitical concepts, are the most numerous. Perceptions of Brazilian economic and cultural penetration, ranging from Venezuela on the north to Uruguay on the south, are widely circulated in Argentina. Additionally, as discussed previously, Argentine fears of Chilean penetration in Patagonia are matched by Chilean perceptions of Argentine designs on Chile's key positions in the Straits of Magellan.

This concern has been heightened as a result of the Beagle Channel dispute.

The manifestation of the new expansionism in the ABC countries is a concern for the development, populating, and exploitation of "vacant" areas in each nation: the Amazon in Brazil, the Patagonia in Argentina, and the southern regions of Chile. Each government has plans and policies to populate and integrate these areas, but contrary to government plans and desires, their populations are seeking what to them are more valuable areas instead. Brazilians are moving into Argentina, Bolivia, Paraguay, and Uruguay in search of good farmland; Argentines are penetrating Uruguay and Chileans migrating to Patagonia in search of work. The process is complicated not only by the fear of loss of control of the areas being occupied by foreigners, but also by the fact that many of these areas are on the frontiers in areas which have been the subject of historical disputes and conflicts. Argentines see the emigration of Chileans into Patagonia as efforts to regain territory claimed prior to the treaty of 1881. Chileans, remembering the loss of Patagonia, perceive Argentine attempts to seize southern Chile. All of these memories and perceptions involved conflict in the past. Now new penetrations, migrations, and occupations of valuable areas heighten geopolitical perceptions while the competition for desirable lands and resources goes on--a trend which does not argue for a

decrease in future conflict, especially when the competition extends beyond the continent into offshore areas and to Antarctica as well.[131]

These three contemporary geopolitical trends now evident in the ABC countries impact directly on the respective foreign and domestic policy orientations of these countries. None of these countries can afford to neglect these geopolitical trends, for to do so would seriously jeopardize their individual abilities to carry out their national domestic and foreign policy goals and requirements. The Beagle Channel dispute, as evidenced above, is nothing more than a sample of the types of conflicts which may arise in the Southern Cone as a result of these new geopolitical trends. It is certain that as the pressures for territorial expansion and resources increase, conflicts between the various South American countries will increase as well.

CHAPTER FIVE

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CONCLUSION

The Beagle Channel dispute between Argentina and Chile, one of the longest lasting disputes in the world, was finally resolved in October, 1984 by the Treaty of Peace and Friendship. This Treaty, made possible through the mediation efforts of Pope John Paul II, has been overwhelmingly accepted both in Argentina (as a result of a November, 1984 national, non-binding referendum) and Chile. Although there is a great amount of optimism among the governments and peoples of both Argentina and Chile toward abiding by the new treaty, the Beagle Channel area still remains a potential hot-spot in the Southern Cone. History has shown that previous agreements, although well-intended at the time, have not provided the means to lessen tensions in the area, and only a great amount of cooperation between Argentina and Chile will ensure the Treaty's success. Thus, the decisionmaker and analyst must continue to watch this area for any renewed tensions as the euphoria regarding the new treaty begins to wear off.

This thesis has examined the Beagle Channel dispute in its entirety, beginning with the early voyages to the area and the discovery of the Channel by Mr. Murray, to the various and complex attempts to delimit the area, and finally to the 1984 Treaty of Peace and Friendship. This thesis has also presented an analysis of the various and

complex factors which have affected every attempt to resolve the Beagle Channel dispute. Not only have the various treaties, arbitrations and incidents been examined, but also the myriad of complicating subsidiary issues which have been accorded so much emphasis and importance by both Argentina and Chile: petroleum reserves, fishing rights, territorial claims in Antarctica, and national pride and esteem. It has been emphasized throughout this study that in order for United States policy in the area to be formulated most effectively, the decisionmaker and analyst must be aware of these various issues which are endemic to this Beagle Channel dispute.

Finally, this study has emphasized that the Beagle Channel dispute is but only a symptom of the far greater and more important problems in the region (as well as Latin America, in general, and other areas of the world). These problems include political and economic expansionism and a need to acquire valuable raw materials, food and energy resources. By simply resolving the Beagle Channel dispute in no way diminishes the extent of these deeper problems within the area. Hopefully, however, the recent resolution to the century-long Beagle Channel dispute, through the 1984 Treaty of Peace and Friendship, can serve as a model for resolving current and future conflicts in Latin America and the world.

APPENDICES

APPENDIX I

BOUNDARY TREATY OF 1881

(Informal translation)

In the name of Almighty God. The Governments of the Republic of Chile and of the Argentine Republic, desirous of terminating in a friendly and dignified manner the boundary controversy existing between the two countries, and giving effect to Article 39 of the Treaty of April, 1856, have decided to conclude a Boundary Treaty, and have for this purpose named their Plenipotentiaries as follows:

His Excellency the President of the Republic of Chile, Don Francisco de B. Echeverria, Consul-General of that Republic;

His Excellency the President of the Argentine Republic, Dr. Don Bernardo de Irigoyen, Secretary of State for Foreign Affairs.

These Representatives, after exchanging their full powers, and finding the same sufficient for the purpose of this act, have agreed upon the following Articles:

ARTICLE I

The boundary between Chile and the Argentine Republic is from north to south, as far as the 52nd parallel of latitude, the Cordillera de los Andes. The boundary-line shall run in that extent over the highest summits of the said Cordilleras which divide the waters, and shall pass between the sources (of streams) flowing down to either side. The difficulties that might arise owing to the existence of certain valleys formed by the bifurcation of the Cordillera, and where the water divide should not be clear, shall be amicably solved by two Experts, appointed one by each party. Should these fail to agree, a third Expert, selected by both Governments, will be called in to decide them. A Minute of their proceedings shall be drawn up in duplicate, signed by the two Experts on those points upon which they should be in accord, and also by the third Expert on the points decided by the latter. This Minute shall have full force from the moment it is signed by the Experts, and it shall be considered stable and valid without the necessity of further formalities or proceedings. A copy of such Minute shall be forwarded to each of the Governments.

ARTICLE II

In the southern part of the Continent, and to the north of the Straits of Magellan, the boundary between the two countries shall be a line which, starting from Point

Dungeness, shall be prolonged by land as far as Monte Dinero; from this point it shall continue to the west, following the greatest altitudes of the range of hillocks existing there, until it touches the hill-top of Mount Aymond. From this point the line shall be prolonged up to the intersection of the 70th meridian with the 52nd parallel of latitude, and thence it shall continue to the west coinciding with this latter parallel, as far as the *divortia aquarum* of the Andes. The territories to the north of such a line shall belong to the Argentine Republic; and to Chile those extending to the south of it, without prejudice to what is provided in Article III, respecting Tierra del Fuego and adjacent islands.

ARTICLE III

In Tierra del Fuego a line shall be drawn, which starting from the point called Cape Espíritu Santo, in parallel 52°40′, shall be prolonged to the south along the meridian 68°34′ west of Greenwich until it touches Beagle Channel. Tierra del Fuego, divided in this manner, shall be Chilean on the western side and Argentine on the eastern. As for the islands, to the Argentine Republic shall belong Staten Island, the small islands next to it, and the other islands there may be on the Atlantic to the east of Tierra del Fuego and off the eastern coast of Patagonia; and to Chile shall belong all the islands to the south of Beagle Channel up to Cape Horn, and those there may be to the west of Tierra del Fuego.

ARTICLE IV

The Experts referred to in Article I shall mark out on the ground the lines indicated in the two preceding Articles, and shall proceed in the manner therein indicated.

ARTICLE V

The Straits of Magellan shall be neutralized for ever, and free navigation assured to the flags of all nations. In order to assure this freedom and neutrality, no fortifications or military defences shall be constructed on the coasts that might be contrary to this purpose.

ARTICLE VI

The Governments of Chile and the Argentine Republic shall perpetually exercise full dominion over the territories which respectively belong to them according to the present arrangement.

Any question which may unhappily arise between the two countries, be it on account of the present Arrangement, or be it from any other cause whatsoever, shall be submitted to the decision of a friendly Power; but, in any case, the boundary specified in the present Agreement will remain as the immovable one between the two countries.

ARTICLE VII

The ratifications of the present Treaty shall be exchanged within the period of sixty days, or sooner if possible, and such exchange shall take place in the city of Buenos Aires or in that of Santiago de Chile.

In testimony of which the Plenipotentiaries of the Republic of Chile and of the Argentine Republic have signed and sealed with their respective seals, and in duplicate, the present Treaty, in the city of Buenos Ayres, on the 23rd day of the month of July, in the year of our Lord 1881.

FRANCISCO DE B. ECHEVERRIA (L.S.)
BERNARDO DE IRIGOYEN (L.S.)

PROTOCOL BETWEEN CHILE AND ARGENTINA, 1893

(Informal translation)

In the City of Santiago de Chile, on the 1st May, 1893, at a meeting at which there were present in the Office of the Ministry of Foreign Affairs, the Minister of War and Marine, Don Isidoro Errázuriz, in his capacity of Plenipotentiary *ad hoc,* and Don Norberto Quirno Costa, Envoy Extraordinary and Minister Plenipotentiary of the Argentine Republic, after considering the actual state of the work of the Experts who are to carry out the boundary demarcation between Chile and the Argentine Republic, in conformity with the Boundary Treaty of 1881, and being both desirous of removing the difficulties with which the Experts have met or may meet in the fulfilment of their commission, and to establish between both countries a complete and sincere accord corresponding to their antecedents of confraternity and common glory, and to the intense aspirations of the opinion on both sides of the Andes; have agreed upon the following:—

I

It being provided by Article I of the Treaty of the 23rd July, 1881, that "the boundary between Chile and the Argentine Republic is from north to south as far as the 52nd parallel of latitude, the Cordillera de los Andes," and that "the boundary line shall run over the highest summits of the said Cordilleras which divide the waters, and shall pass between the sources flowing down to either side," the Experts and the Sub-Commissions shall hold this principle as the invariable rule in their proceedings.

Consequently, there shall be held as perpetually belonging to the Argentine Republic and as under its absolute dominion all the lands and all the waters, to wit: lakes, lagoons, rivers and parts of rivers, brooks, springs lying to the east of the line of the highest summits of the Cordillera de los Andes which divide the waters; and, as the property and under the absolute dominion of Chile, all the lands and all the waters, to wit: lakes, lagoons, rivers, and parts of rivers, brooks, springs lying to the west of the highest summits of the Cordillera de los Andes which divide the waters.

II

The Undersigned declare that, in the judgement of their respective Governments, and according to the spirit of the Boundary Treaty, the Argentine Republic retains its dominion and sovereignty over all the territory extending to the east of the main range of the Andes as far as the Atlantic Coast, and the Republic of Chile the territory to the

west as far as the Pacific Coast; it being understood that, by the provisions of that Treaty, the sovereignty of each State over the respective littoral is absolute so that Chile cannot claim any point towards the Atlantic nor can the Argentine Republic claim any point towards the Pacific. If, in the peninsular district in the south nearing the 52nd parallel, the Cordillera should be found to penetrate between the inlets of the Pacific which exist there, the Experts shall dispose that a survey of the ground be made in order to fix a boundary line which shall leave to Chile the coasts of these inlets; in view of which survey both Governments shall determine the line amicably.

III

In the case foreseen in the second part of Article I of the Treaty of 1881, of difficulties that might arise "owing to the existence of certain valleys formed by the bifurcation of the Cordillera, and where the water-divide should not be clear," the Experts shall endeavour to settle them amicably, causing this geographical condition of the demarcation to be searched for on the ground. To this end they shall dispose by mutual agreement that a survey be made by the Assistant Engineers which may serve them to solve the difficulty.

IV

The demarcation of Tierra del Fuego shall begin simultaneously with that of the Cordillera, and shall start from the point called Cape Espiritu Santo. There being in sight from the sea at that point three hillocks of moderate height, the middle one, which is the highest, shall be taken as the starting point, and on its summit shall be placed the first landmark of the boundary line which shall continue southward along the meridian.

V

The demarcation upon the ground shall begin next spring simultaneously in the Cordillera de los Andes, and in Tierra del Fuego, in the direction previously arranged by the Experts, that is to say, starting from the northern region of the former, and from Cape Espiritu Santo in the latter. To that effect, the Commissions of Assistant Engineers shall be ready to start work on the 15th of October. On that date the Experts shall have arranged and signed the instructions which, according to the fourth clause of the Convention of the 20th August, 1888, must be given to said Commissions. These instructions shall be drawn up in conformity with the stipulations of this Protocol.

VI

For the effects of the demarcation, the Experts, or, in their place, the Commissions of Assistant Engineers, acting on the Instructions given to them by the former, shall seek the boundary-line on the ground and carry out the demarcation by means of iron landmarks of

the kind already agreed upon, pla ng one on each pass or accessible part of the mountain which is situated on the boundary-line, and drawing up a Minute of the operation, in which shall be stated the grounds for it and the topographical data necessary to recognize the point fixed at any time, even in case the boundary mark should disappear by the action of time or weather.

VII

The Experts shall instruct the Commissions of Assistant Engineers to collect all the necessary data, to draw on paper by joint accord, and with all possible accuracy, the dividing line which they should be marking out on the ground. To this effect they shall indicate the changes of altitude and azimuth experienced by the dividing line in its course; the origin of the brooks or the ravines running down to either side of it, taking note, whenever possible, of their names; and they shall fix distinctly the points on which the boundary marks are to be placed. These maps may contain other geographical features that, although not precisely necessary for the demarcation of the boundary—such as the visible course of the rivers descending to the neighbouring valleys and the high peaks which rise on one or the other side of the boundary-line—may be easily located on the ground as references for its ubication. The Experts shall indicate in the instructions they give to their Assistant Engineers, the geographical data which it may be useful to collect, provided it does not interrupt or delay the demarcation of the boundary, which is the principal object of the Experts' Commission, to the prompt and amicable carrying out of which the two Governments are pledged.

VIII

The Argentine Expert, having stated that, in order to sign, with full knowledge of the circumstances, the Minute of 15th of April, 1892, by which a Chilean-Argentine Sub-Commission marked on the ground the starting-point of the demarcation of the frontier in the Cordillera de los Andes, he thought it indispensable to make a fresh survey of the place to confirm or correct that operation, adding that that survey would not delay the continuation of the work which could be carried on simultaneously by another Sub-Commission; and the Chilean Expert, having, on his part, declared that, although he believed the operation had been carried out strictly according to the Treaties, he had no objection to assent to the wishes of his colleague as a proof of the cordiality with which the work was being carried out; the Undersigned have agreed that a revision of the operation shall take place, and that in case any error is discovered, the boundary-mark shall be removed to the spot where it ought to be placed, according to the terms of the Boundary Treaty.

IX

Wishing to accelerate the work of demarcation, and believing that this can be secured by employing three Sub-Commissions, instead of two, which have been working up till

now, without its being necessary to increase the number of Assistant Engineers, the Undersigned agree that for the future, and until it is determined to create others, there shall be three Sub-Commissions composed of four members each, two for Chile and two for the Argentine Republic, and of the assistants which, by joint accord, may be considered necessary.

X

The preceding stipulations do not impair in the very least the spirit of the Boundary Treaty of 1881, and it is therefore declared that there subsist in their full strength the conciliatory means for settling any difficulty which Articles I and VI of that Treaty prescribe.

XI

The undersigned Ministers understand, and hereby declare that on account of the nature of the preceding stipulations, and in order to invest the solutions arrived at with a permanent character, this Protocol must be previously laid before the Congresses of both countries, which will be done in the next ordinary sessions, keeping it in private in the meantime.

The undersigned Ministers, in the name of their respective Governments, and duly authorized, sign and seal the present Protocol in two copies—one for each party.

(L.S.) ISIDORO ERRÁZURIZ
(L.S.) N. QUIRNO COSTA

APPENDIX III

GENERAL TREATY OF ARBITRATION

28 May 1902

(Informal translation)

The Governments of the Argentine Republic and of Chile, animated by a mutual desire of solving, by friendly means, any question which may arise between the two countries, have agreed to conclude a General Treaty of Arbitration, for which purpose they have constituted as their Ministers Plenipotentiary, namely:

His Excellency the President of the Republic of Chile, Señor Don José Francisco Vergara Donoso, Minister of State in the Department of Foreign Affairs; and,

His Excellency the President of the Argentine Republic, Señor Don José Antonio Terry, Envoy Extraordinary and Minister Plenipotentiary of that country:

Who, after having exchanged their full powers, which they found in good and due form, have agreed to the stipulations contained in the following Articles:—

ARTICLES I

The High Contracting Parties bind themselves to submit to arbitration all controversies between them, of whatever nature they may be, or from whatever cause they may have arisen, except when they affect the precepts of the Constitution of either country, and when it has not been possible to settle them through direct negotiations.

ARTICLE II

Questions which have already been the subject of definitive arrangements between the Parties may not be reopened under this Treaty. In such cases arbitration will be limited exclusively to the questions which may arise concerning the validity, the interpretation, and the fulfilment of such arrangements.

ARTICLE III

The High Contracting Parties nominate as Arbitrator His Britannic Majesty's Government. If either of the Parties should break off friendly relations with His Britannic

Majesty's Government for that event both Parties nominate as Arbitrator the Government of the Swiss Confederation.

Within the period of sixty days, dating from the exchange of ratifications, both Parties shall, jointly or separately, request His Britannic Majesty's Government, the Arbitrator in the first instance, and the Government of the Swiss Confederation, the Arbitrator in the second instance, to consent to accept the duty of Arbitrators conferred upon them by this Treaty.

ARTICLE IV

The points, questions, or divergencies involved shall be determined by the Contracting Governments, who may define the scope of the Arbitrator's powers and any other circumstance relating to the procedure.

ARTICLE V

In default of agreement, either of the Parties may invite the intervention of the Arbitrator, whose duty it will be to determine the *compromis*, the time, place, and formalities of the proceedings, as also to settle any difficulties of procedure which may arise in the course of the arbitration.

The Contracting Parties undertake to place all the information in their power at the disposal of the Arbitrator.

ARTICLE VI

Each of the Parties may appoint one or more Delegates to represent it before the Arbitrator.

ARTICLE VII

The Arbitrator is competent to decide upon the validity and interpretation of the *compromis*, as also to settle the disputes which may arise between the Contracting Parties as to whether certain questions have or have not been submitted to the arbitral jurisdiction in the *compromis*.

ARTICLE VIII

The Arbitrator shall decide in accordance with the principles of international law, unless the *compromis* calls for the application of special rules or authorizes the Arbitrator to decide in the character of a friendly mediator *(amiable compositeur)*.

ARTICLE IX

The Award shall decide definitively each point in dispute, and the reasons for the same shall be stated.

ARTICLE X

The Award shall be drawn up in duplicate, and shall be notified to each of the Parties by means of its Representative.

ARTICLE XI

The Award legally pronounced decides, within the limits of its scope, the dispute between the Parties.

ARTICLE XII

The Arbitrator shall fix in the Award the time within which it shall be executed, and be competent to settle any questions which may arise with respect to its execution.

ARTICLE XIII

There is no appeal against the Award, and its fulfilment is intrusted to the honour of the nations who have signed this Agreement. Nevertheless, recourse to revision shall be allowed before the same Arbitrator who pronounced it, provided such action be taken within the time allotted for the execution and in the following cases:

1. If the Award has been given on the basis of a document which has been falsified or tampered with; and

2. If the Award has been, in whole or in part, the consequence of an error of fact resulting from the proceedings or documents of the case.

ARTICLE XIV

Each one of the Parties shall defray its own expenses and half of the general expenses of the Arbitrator.

ARTICLE XV

The present Treaty shall remain in force ten years, dating from the exchange of ratifications; and if it shall not have been denounced six months before the date of its expiry, it shall be considered renewed for another ten years, and so on.

The present Treaty shall be ratified and the ratifications shall be exchanged in Santiago de Chile within six months of its date.

In witness whereof the Plenipotentiaries of the Republic of Chile and of the Argentine Republic have respectively signed and sealed the present Treaty in duplicate, in the city of Santiago, on the 28th day of May, 1902.

(Signed) J. F. VERGARA DONOSO
JOSÉ A. TERRY

PROTOCOL FOR ARBITRATION BETWEEN CHILE AND THE ARGENTINE REPUBLIC, 28 JUNE 1915*

(Informal translation)

In Buenos Aires on the twenty-eighth day of June, nineteen hundred and fifteen, at a meeting held in the office of the Minister for Foreign Affairs, the Envoy Extraordinary and Minister Plenipotentiary of Chile, Señor don Emiliano Figueroa and the Minister for Foreign Affairs of Argentine, Dr. Jose Luis Murature, stated:

That their respective Governments are anxious to avoid any grounds for misunderstanding between them, in order to strengthen even more the bonds of fraternal friendship which fortunately link Chile and the Argentine Republic.

That the only controversy existing at present between the two countries is the question of deciding to which of them corresponds sovereignty over the Islands Picton, Nueva, Lennox and adjacent islets and islands lying in the Beagle Channel between Tierra del Fuego and Dumas Peninsula and Navarino Island.

The undersigned Plenipotentiaries, on behalf of their respective Governments, duly authorized to this effect, have agreed to submit the controversy to arbitration in accordance with the following terms:

ARTICLE

The Government of His Britannic Majesty, as the Arbitrator appointed by the Treaties of April 17th 1896, and May 28th 1902, between Chile and the Argentine Republic, will proceed to determine, in accordance with the Treaties at present in force, to which of the High Contracting Parties belongs sovereignty over the Islands of Picton, Nueva, Lennox and adjacent islets, and over islands lying in the Beagle Channel between Tierra del Fuego to the north and Dumas Peninsula and Navarino Island to the south.

The question shall be submitted to the Arbitrator by a Note signed jointly by the diplomatic representatives of both countries to the Government of His Britannic Majesty. The Arbitrator himself shall lay down the rules to be followed for the procedure and adjudication of the aforementioned question.

In witness whereof, the Plenipotentiaries of Chile and of the Argentine Republic signed and put their seal to this Agreement in duplicate.

(signed) EMILIANO FIGUEROA
(signed) JOSE LUIS MURATURE

* This Protocol was not ratified.

APPENDIX V

PROTOCOL FOR ARBITRATION BETWEEN CHILE AND ARGENTINA*
4 May 1938

(Informal translation)

The Government of the Republic of Chile and the Government of the Argentine Republic, with the purpose of settling the only controversy at present pending between the two countries, i.e. the dispute concerning the determination as to which of them corresponds sovereignty over Picton, Nueva, and Lennox Islands, and adjacent islets, and over the islands lying within the Beagle Channel in the area comprised between Tierra del Fuego, Dumas Peninsula and Navarino Island;

Considering that, given the amicable links which through history have bound and continue to bind both Republics, the arbitral solution is that which corresponds to their spirit of true international brotherhood;

That from this point of view it is desirable that recourse be had to an arbitral solution of this matter and to that end both Governments agree that the functions of arbitrator are to be exercised by an American jurist of a record that may assure competence and impartiality;

That the solution of this matter will reaffirm the friendly and peaceful relations existing between both countries;

Have decided to appoint the following Plenipotentiaries for this purpose:

His Excellency The President of the Republic of Chile, Don Arturo Alessandri, His Excellency Don Jose Ramon Gutierrez, Minister for Foreign Affairs and Trade; and His Excellency The President of the Argentine Republic, Dr. Roberto M. Ortiz, His Excellency Don Jose Maria Cantilo, Minister for Foreign Affairs and Public Worship;

Who, duly authorised, have agreed to submit the controversy in question to arbitration in conformity with the following terms:

ARTICLE 1

Both Governments appoint as Arbitrator the Honorable Homer Cummings, Attorney General of the United States of America, who shall proceed to determine in accordance with the treaties now in force, to which of the High Contracting Parties corresponds the sovereignty over Picton, Nueva, and Lennox Islands and adjacent islets, and over the islands lying within the Beagle Channel between Tierra del Fuego to the North, the Dumas Peninsula and Navarino Island to the South.

* This Protocol was not ratified.

ARTICLE 2

The question shall be submitted to the arbitrator by means of a Note signed jointly by the Ambassadors of both countries accredited to the Government of the United States of America.

ARTICLE 3

The Arbitrator designated shall be able to dictate his decision once he has received a brief or written statement from each of the Parties, although he is authorized prior thereto to request from the same Parties further information.

ARTICLE 4

This Protocol shall be submitted as rapidly as possible to the necessary ratification and once that has been obtained, the instruments of ratification shall be exchanged in the city of Buenos Aires within thirty days from the final approval by both countries.

In witness whereof the undersigned sign and seal two copies of the present Protocol in the City of Santiago on the fourth day of the month of May, 1938.

(Signed) J. RAMON GUTIERREZ
(Signed) JOSE MARIA CANTILO

PROTOCOL FOR ARBITRATION BETWEEN CHILE AND THE ARGENTINE REPUBLIC. 12 JUNE 1960*

(Informal translation)

At a meeting held in the City of Buenos Aires on 12 June 1960, in the office of the Minister for Foreign Affairs and Public Worship of the Argentine Republic, the Ambassador Extraordinary and Plenipotentiary of the Republic of Chile, H.E. Señor Don Sergio Gutierrez Olivos, and the Minister for Foreign Affairs and Public Worship of the Argentina Republic, H.E. Señor Don Diogenes Taboada, both invested with Full Special Powers from their respective Governments, which after examination were found to be in proper order, stated:

(I) That the Governments they represent are inspired by the desire to avoid any grounds for misunderstanding between them in order to strengthen even more the bonds of fraternal friendship which fortunately link Chile and the Argentine Republic;

(II) That the only controversy in relation to the interpretation of the 1881 Boundary Treaty is that of determining to which of the two countries corresponds sovereignty over certain islands and islets which are mentioned in Article 5 of this Protocol;

(III) That the aforesaid Treaty and other commitments in force establish the obligation of both countries to submit their boundary differences to a peaceful settlement and their traditional policy has been to honour scrupulously their commitments;

(IV) That on 2 February 1959, a Joint Declaration was signed by the Presidents of the two Republics at Los Cerrillos, Chile, in which they expressed their willingness to initiate immediate negotiations that would enable them to find formulae for the solution of differences pending and to prevent questions of this kind disturbing in the future their friendly co-existence. They also expressed their intention to facilitate at once the progress of these negotiations by eliminating eventual causes of friction;

(V) That the Chancelleries of the two Republics have entered into negotiations at diplomatic level which led to the signature on 19 March of the present year of an agreement on the immovable terms in accordance to which the afore-mentioned controversy should be resolved by means of direct settlement, on one part, and the remainder, by recourse to the International Court of Justice of The Hague.

The undersigned Plenipotentiaries, on behalf of their respective Governments, have agreed to enter into the present Treaty:

ARTICLE ONE

In the sector of the Beagle Channel between the Meridian 68° 36′ 38,5″ west of Greenwich and the Meridian of Punta Navarro (approximately 67° 13,5′ west of Greenwich) the boundary line between the two countries will run along the midline of the Channel.

* This Protocol was not ratified.

Considering that geographical accidents obstruct free navigation in certain stretches, the boundary line will deviate from the midline and will have the necessary inflexions so that each country may have, throughout the whole length of the sector thus divided, its own navigable waters.

This dividing line shall be an imaginary line from the Meridian 68° 36′ 38.5″ west of Greenwich and shall start on the midline of the Channel, deviating sufficiently to give to each of the two countries navigable waters off the rocks situated approximately on a longitude of 68° 34,5′ west of Greenwich and on a latitude of 54° 54.5′ south, and shall continue along the midline of the Channel up to the height of Murray Channel; it shall pass through a line equidistant from the Bridges group of islands and the Bartlett islet, and from the Eclaireurs islets and the north coast of Navarino; it shall continue along the midline of the Channel up to Herradura Bank, where it will deviate sufficiently to run parallel to the five metre isobath of the aforesaid Bank and at an equal distance from this isobath and the south coast of Tierra del Fuego and the West coast of Gable Island; it shall continue along a line equidistant from the five metre isobath of Gable Bank and the north coast of Navarino Island, thence through the midline of Mackinlay Pass and along the midline between Martillo Island and the Gemelos islets, thence returning to the midline of the Channel up to the Punta Navarro meridian (approximately 67° 13.5′ west of Greenwich).

ARTICLE TWO

It is declared that the islands and islets lying north of the above-mentioned dividing line belong to the Argentine Republic and that the islands and islets lying south of the same line belong to Chile.

ARTICLE THREE

It is declared that Lennox Island and adjacent islets belong to Chile and therefore they are excluded from the legal proceedings herein stipulated.

It is also declared that the two Becasses Islands belong to the Argentine Republic and are therefore excluded from the said legal procedure.

With the sole object of better identifying Lennox Island and adjacent islets and Becasses Islands, the Parties refer to the following Nautical Charts: Chilean Chart Sheet XL Canal Beagle e Islas Hermite, 1954 edition; and Argentine Chart No. 86 Islas de Tierra del Fuego, 1937 edition, without implying acceptance of the toponymy of the said charts when they do not agree.

ARTICLE FOUR

It is established that the reciprocal recognition of their respective sovereignties made by both Parties, as stated in Article Three, does not imply in any way the intention to indicate a criterion to the International Court of Justice of The Hague for adjudication of the controversy submitted to its decision.

ARTICLE FIVE

As a consequence of what has been said above, the two Parties agree to submit to the judgment of the International Court of Justice of The Hague the sole question pending in relation to the interpretation of the Boundary Treaty of 1881, referred to in the second paragraph of the preamble, related to determining to which of the two Parties corresponds sovereignty east of the Meridian 67° 13,5′ west of Greenwich, over Picton and Nueva islands and islets Snipe, Solitario, Hermanos, Gardiner, Reparo, Packsaddle, Jorge, Augustus and the rocky islet to the south of the two Becasses islands.

ARTICLE SIX

Within the term of ninety days from the date of the exchange of ratifications of this Protocol, the Parties shall have recourse jointly to the International Court of Justice to commence the proceedings in accordance with the provisions of Article 40 of its Statute.

ARTICLE SEVEN

The representation of both Parties before the Court and the proceedings and adjudication shall be governed by the Rules established to this effect in the Court's Statute and in the Rules approved by the Court on 6 May 1946, in compliance with Article 30 of the said Statute.

ARTICLE EIGHT

The High Contracting Parties agree that until the Court delivers to them its Judgment, the disputed area shall continue to be under the present "status quo".

Both Parties declare that the only object of the "status quo" referred to above is to avoid incidents that could disturb the relations between the two countries, and therefore it is established that for its interpretation and application both Governments and their civil and military authorities must take into account and strictly adhere to Provision No. 2 of the Joint Presidential Declaration issued at Los Cerrillos on 2 February, 1959, and to the letter and spirit of the simultaneous Presidential Instructions dated 5 October 1959, which for all effects shall be deemed to be a part of this Treaty.

ARTICLE NINE

Any doubt or difficulty which may arise from the interpretation or execution of the Court's sentence shall be resolved by the Court itself in the shortest possible time.

The same shall apply to any doubts or difficulties that may arise from the interpretation or implementation of the "status quo" referred to in the previous Article, and the Court shall act summarily in order to resolve them and be enabled to adopt provisional measures in order to put an end to the causes of disturbances in the zone.

ARTICLE TEN

There shall be no appeal against the Court's judgment and the Parties hereby solemnly agree to fulfil it from the moment of its delivery to the Parties.

ARTICLE ELEVEN

It is established that with the signature of this Protocol and of the other Protocols of the same date, regarding the submission to the arbitration of Her Britannic Majesty of the interpretation of the Arbitral Award of 1902 for the determination of the boundary line between posts 16 and 17 in accordance with the said Award, the High Contracting Parties peacefully settle the only boundary questions pending between the two countries, with the sole exception of the Antarctic dispute.

ARTICLE TWELVE

This Protocol shall be ratified in accordance with the constitutional procedure of both Contracting Parties. It shall be submitted simultaneously by both Governments to the approval of their respective Parliaments within thirty days after its signature, and as soon as either of them informs the other about its intentions thus to proceed.

The instrument for ratification of the present Treaty shall be exchanged simultaneously in the City of Santiago of Chile.

In witness whereof the above-mentioned plenipotentiaries put their signature and seal to two copies of the present Protocol, at the City of Buenos Aires, on 12 June 1960.

On behalf of the Government of the Republic of Chile:

(Sgd.) SERGIO GUTIERREZ OLIVOS
Ambassador Extraordinary and
Plenipotentiary (L.S.)

On behalf of the Government of the Argentine Republic:

(Sgd.) DIOGENES TABOADA
Minister of Foreign Affairs
and Worship (L.S.)

AGREEMENT FOR ARBITRATION (COMPROMISO) OF A CONTROVERSY BETWEEN THE ARGENTINE REPUBLIC AND THE REPUBLIC OF CHILE CONCERNING THE REGION OF THE BEAGLE CHANNEL

22 July 1971

WHEREAS the Argentine Republic and the Republic of Chile (hereinafter referred to as "the Parties", named in alphabetical order in this instrument) are parties to a General Treaty of Arbitration signed at Santiago on 28th May 1902 (hereinafter referred to as "the Treaty");

AND WHEREAS His Britannic Majesty's Government duly accepted the duty of Arbitrator conferred upon them by the Treaty;

AND WHEREAS a controversy has arisen between the Parties concerning the region of the Beagle Channel;

AND WHEREAS, on this occasion, the Parties have concurred with regard to the applicability of the Treaty to this controversy, and have requested the intervention of Her Britannic Majesty's Government as Arbitrator;

AND WHEREAS Her Britannic Majesty's Government, after hearing the Parties, are satisfied that it would be appropriate for them to act as Arbitrator in the controversy;

AND WHEREAS for the purpose of fulfilling their duties as Arbitrator, Her Britannic Majesty's Government have appointed a Court of Arbitration composed of the following members:

Mr. Hardy C. Dillard (United States of America)
Sir Gerald Fitzmaurice (United Kingdom)
Mr. André Gros (France)
Mr. Charles D. Onyeama (Nigeria) and
Mr. Sture Petrén (Sweden);

Her Britannic Majesty's Government, in accordance with the Treaty and after consulting the Parties separately, have determined the Arbitration Agreement (Compromiso) as follows:

ARTICLE I

(1) The Argentine Republic requests the Arbitrator to determine what is the boundary-line between the respective maritime jurisdictions of the Argentine Republic and of the Republic of Chile from meridian 68°36'38.5" W., within the region referred

to in paragraph (4) of this Article, and in consequence to declare that Picton, Nueva and Lennox Islands and adjacent islands and islets belong to the Argentine Republic.

(2) The Republic of Chile requests the Arbitrator to decide, to the extent that they relate to the region referred to in paragraph (4) of this Article, the questions referred to in her Notes of 11th December 1967 to Her Britannic Majesty's Government and to the Government of the Argentine Republic and to declare that Picton, Lennox and Nueva Islands, the adjacent islands and islets, as well as the other islands and islets whose entire land surface is situated wholly within the region referred to in paragraph (4) of this Article, belong to the Republic of Chile.

(3) The questions specified in the two foregoing paragraphs express the will of the Parties as to the points in dispute which are to be decided by the Court of Arbitration.

(4) The region referred to in paragraphs (1) and (2) of this Article is determined by six points the geographical co-ordinates of which are the following:

		Latitude (S)	*Longitude (W)*
A	— —	54° 45′	68° 36′ 38.5″
B	— —	54° 57′	68° 36′ 38.5″
C	— —	54° 57′	67° 13′
D	— —	55° 24′	67° 13′
E	— —	55° 24′	66° 25′
F	— —	54° 45′	66° 25′

(5) The order in which the questions appear in this Agreement (Compromiso) shall not imply any precedence of the one over the other with regard to their consideration by the Court of Arbitration, and shall be without prejudice to any burden of proof.

(6) The submissions in paragraphs (1) and (2) of this Article which the Argentine Republic and the Republic of Chile respectively have presented shall not constitute for the other Party, either directly or indirectly, acceptance of the assertions of law or fact contained in those submissions.

(7) The Court of Arbitration shall reach its conclusions in accordance with the principles of international law.

ARTICLE II

The Court of Arbitration, acting in accordance with the provisions of this Agreement (Compromiso), shall consider the questions specified in paragraphs (1) and (2) of Article I and transmit to Her Britannic Majesty's Government its decision thereon.

ARTICLE III

(1) The Court of Arbitration shall elect one of its members as President. It shall also appoint a Registrar.

(2) The Court of Arbitration shall establish its seat at a place not objected to by either Party.

ARTICLE IV

(1) Each of the Parties shall, within one month after the date of the signature of this Agreement (Compromiso), appoint an Agent or Agents for the purposes of the Arbitration, who shall establish an address in the vicinity of the seat of the Court of Arbitration. The Parties shall communicate the names and addresses of their Agents to Her Britannic Majesty's Government, to the Court of Arbitration and to the other Party.

(2) If either of the Parties appoints more than one Agent, they shall be authorised to act jointly or severally.

ARTICLE V

(1) The Court of Arbitration shall, subject to the provisions of this Agreement (Compromiso) and after consultation with the Parties, settle its own Rules of Procedure and determine the order and dates of delivery of written pleadings and maps and all other questions of procedure, written and oral, that may arise. The fixing of the order in which these documents shall be presented shall be without prejudice to any question of any burden of proof.

(2) The Registrar shall notify to the Parties an address for the filing of their written pleadings and other documents.

ARTICLE VI

The Court of Arbitration may, at the expense of the Parties, appoint such experts as it may wish to assist it.

ARTICLE VII

The Parties shall give to any members of the Court of Arbitration and to any members of its staff, and to any authorised representatives of either Party who have been requested by the Court of Arbitration to accompany the members of the Court or its staff, free access

to their territories, including any disputed territory, on the understanding that the grant of such access shall in no way prejudice the rights of either Party as to the ownership of any territory to, on, through or over which such access is granted.

ARTICLE VIII

In the event of the Parties jointly or the Court of Arbitration desiring a survey, by air or otherwise, for the purposes of the Arbitration, such survey shall be made under the guidance of the Court of Arbitration and at the expense of the Parties.

ARTICLE IX

The Court of Arbitration shall be competent to decide upon the interpretation and application of this Agreement (Compromiso).

ARTICLE X

Each of the Parties shall defray its own expenses and one half of the expenses of the Court of Arbitration and of Her Britannic Majesty's Government in relation to the Arbitration.

ARTICLE XI

(1) Should any member of the Court of Arbitration die or become unable to act, the vacancy shall not be filled unless the Parties agree otherwise, and the proceedings shall continue as if such vacancy had not occurred.

(2) Should the Registrar die or become unable to act, the vacancy shall be filled by the Court of Arbitration, and the proceedings shall continue as if such vacancy had not occurred.

ARTICLE XII

(1) When the proceedings before the Court of Arbitration have been completed, it shall transmit its decision to Her Britannic Majesty's Government, which shall include the drawing of the boundary-line on a chart.

(2) The decision shall decide definitively each point in dispute and shall state the reasons for the decision on each point.

(3) The decision shall determine by whom, in what manner and within what time limit is shall be executed.

ARTICLE XIII

(1) If the decision referred to in Article XII is ratified by Her Britannic Majesty's Government, they shall communicate it to the Parties with a declaration that such decision constitutes the Award in accordance with the Treaty, and that Award shall be final in accordance with Articles XI and XIII of the Treaty.

(2) The Award shall be communicated to each of the Parties by delivery to the London address of the Head of its Diplomatic Mission.

ARTICLE XIV

The Award shall be legally binding upon both the Parties and there shall be no appeal from it, except as provided in Article XIII of the Treaty.

ARTICLE XV

The Court of Arbitration shall not be *functus officio* until it has notified Her Britannic Majesty's Government that in the opinion of the Court of Arbitration the Award has been materially and fully executed.

ARTICLE XVI

The references to the Parties in alphabetical order in this Agreement (Compromiso) shall not imply precedence for any purpose whatsoever.

ARTICLE XVII

The Parties have informed Her Britannic Majesty's Government that they have accepted the terms of this Agreement (Compromiso).

In witness whereof this Agreement (Compromiso) has been signed by the duly authorised representatives of the Government of the United Kingdom of Great Britain and Northern Ireland, the Government of the Argentine Republic and the Government of the Republic of Chile.

Done at London the 22nd day of July, 1971, in the English and Spanish languages, both texts being equally authoritative, in a single original which shall be deposited in

the archives of the Government of the United Kingdom, who shall transmit certified true copies to the Government of the Argentine Republic, to the Government of the Republic of Chile and to the Court of Arbitration.

For the Government of the United Kingdom of Great Britain and Northern Ireland:

JOSEPH GODBER

For the Government of the Argentine Republic:

G. MARTINEZ-ZUVIRIA

For the Government of the Republic of of Chile:

ALVARO BUNSTER

APPENDIX VIII

GENERAL TREATY ON THE JUDICIAL SETTLEMENT OF DISPUTES BETWEEN THE REPUBLIC OF CHILE AND THE ARGENTINE REPUBLIC

5 April 1972

(Informal translation)

The Governments of the Republic of Chile and the Argentine Republic:

Inspired by a common desire to settle by amicable means any question that might arise between the two countries, imbued with the spirit of the Pacts of May; and

Recognizing the significant part played by the General Treaty on Arbitration of 1902 in settling their differences;

Have resolved to conclude a General Treaty on the Judicial Settlement of Disputes with a view to submitting them to the International Court of Justice, the principal judicial organ of the United Nations.

For that purpose His Excellency Señor Clodomiro Almeyda Medina, Minister for Foreign Affairs of the Republic of Chile, and His Excellency Dr. Luis Maria A. de Pablo Pardo, Minister for Foreign Affairs and Public Worship of the Argentine Republic, held a special meeting in the city of Buenos Aires and have agreed on the provisions contained in the following articles:

Article I

The High Contracting Parties undertake to submit to the jurisdiction of the International Court of Justice all controversies between them of whatever nature they may be or from whatever cause they may arise, in so far as they do not affect the precepts of the Constitution of either country, and when it has not been possible to settle them through direct negotiations.

Article II

Questions that have already been the subject of definitive arrangements between the Parties may not be reopened under this Treaty. In such cases, the proceedings before the International Court of Justice shall be confined exclusively to questions that may arise concerning the validity, the interpretation and the fulfilment of such arrangements.

Article III

In cases brought before the International Court of Justice under this Treaty, the relevant rules of the Statute of the Court shall apply.

Article IV

The points, questions or divergences shall be determined by the two Governments by agreement in a *compromis.*

Article V

In default of the agreement referred to in the foregoing article, either Party may submit the matter to the Court by a written application addressed to its Registrar.

Article VI

This Treaty shall remain in force for ten years with effect from the date of the exchange of instruments of ratification. In the event that such exchange should take place before 22 September 1972, the Treaty shall enter into force on that date. Unless denounced six months before the expiry of the current term, it shall be automatically renewed for successive periods of ten years.

The exchange of instruments of ratification shall take place in the city of Santiago. The Treaty shall be registered with the United Nations Secretariat, in accordance with Article 102 of the Charter.

In witness whereof, His Excellency the Minister for Foreign Affairs of the Republic of Chile and His Excellency the Minister for Foreign Affairs and Public Worship of the Argentine Republic signed this Treaty in the city of Buenos Aires on 5 April 1972.

For the Government of the Argentine Republic
[Sgd.] LUIS MARIA A. DE PABLO PARDO
Minister for Foreign Affairs and Worship
[Seal]

For the Government of the Republic of Chile
[Sgd.] CLODOMIRO ALMEYDA MEDINA
Minister for Foreign Affairs
[Seal]

DECLARATION OF HER MAJESTY QUEEN ELIZABETH II, PURSUANT TO THE AGREEMENT FOR ARBITRATION (COMPROMISO) DETERMINED BY THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND SIGNED ON BEHALF OF THAT GOVERNMENT AND THE GOVERNMENTS OF THE ARGENTINE REPUBLIC AND THE REPUBLIC OF CHILE ON 22 JULY 1971 FOR THE ARBITRATION OF A CONTROVERSY BETWEEN THE ARGENTINE REPUBLIC AND THE REPUBLIC OF CHILE CONCERNING THE REGION OF THE BEAGLE CHANNEL[1]

WHEREAS the Argentine Republic and the Republic of Chile (hereinafter referred to as "the Parties") became parties to a General Treaty of Arbitration signed at Santiago on 28th May 1902[2] (hereinafter referred to as "the Treaty");

AND WHEREAS His Britannic Majesty's Government duly accepted the duty of Arbitrator conferred upon them by the Treaty;

AND WHEREAS a controversy has arisen between the Parties concerning the region of the Beagle Channel;

AND WHEREAS, on this occasion, the Parties concurred with regard to the applicability of the Treaty to this controversy and requested the intervention of Our Government in the United Kingdom of Great Britain and Northern Ireland as Arbitrator;

AND WHEREAS Our Government in the United Kingdom, after hearing the Parties, were satisfied that it would be appropriate for them to act as Arbitrator in the controversy;

AND WHEREAS Our Government in the United Kingdom, in accordance with the Treaty and after consulting the Parties separately, determined the Agreement for Arbitration *(Compromiso)* which was signed on behalf of Our said Government and the Parties at London on 22nd July 1971[3];

[1] In accordance with Article XIII of the Agreement for Arbitration (Compromiso), the decision of the Court of Arbitration with this declaration that such decision constitutes the Award in accordance with the General Treaty of Arbitration signed at Santiago on 28th May 1902 was communicated to the Argentine Republic and the Republic of Chile by delivery to the London addresses of the Heads of their Diplomatic Missions on 2 May 1977.

[2] British and Foreign State Papers vol. 95, p. 759.

[3] Miscellaneous No. 23 (1971), Cmmd. 4781.

AND WHEREAS for the purpose of fulfilling their duties as Arbitrator Our Government in the United Kingdom appointed a Court of Arbitration composed of the following members:

Mr. Hardy C. Dillard (United States of America)
Sir Gerald Fitzmaurice (United Kingdom)
Mr. André Gros (France)
Mr. Charles D. Onyeama (Nigeria) and
Mr. Sture Petrén (Sweden);

AND WHEREAS, the Government of the Argentine Republic having on 11th March 1972 denounced the Treaty with effect from 22nd September 1972, both Parties stated their understanding, which was shared by Our Government in the United Kingdom, that this would in no way affect the arbitration proceedings in the present case and that the Treaty and the Agreement for Arbitration *(Compromiso)* would continue in force with respect to those proceedings until their final conclusion;

AND WHEREAS the Parties have presented to the Court of Arbitration written pleadings and maps and other documents;

AND WHEREAS, having heard representatives of the Parties, the Court of Arbitration, accompanied by the Registrar and representatives of the Parties, visited the Beagle Channel region in March 1976;

AND WHEREAS representatives of the Parties took part in oral hearings before the Court of Arbitration between 7th September and 23rd October 1976;

AND WHEREAS the Court of Arbitration, acting in accordance with the provisions of the Agreement for Arbitration *(Compromiso)*, has considered the questions specified in paragraphs (1) and (2) of Article I of that Agreement, reaching its conclusions in accordance with the principles of international law, and has transmitted to Our Government in the United Kingdom its Decision thereon (a copy of which Decision is annexed to this Declaration), including the drawing of the boundary line on a chart;

AND WHEREAS Our Government in the United Kingdom have fully and carefully studied the Decision of the Court of Arbitration, which decides definitively each point in dispute and states the reasons for the decision on each point;

Now, in pursuance of Article XIII of the Agreement for Arbitration *(Compromiso)* and in the name of Our Government in the United Kingdom, WE, ELIZABETH THE SECOND, by the Grace of God of the United Kingdom of Great Britain and Northern Ireland and of Our other Realms and Territories Queen, Head of the Commonwealth, Defender of the

Faith, etc., etc., etc. hereby ratify the Decision of the Court of Arbitration and declare that the said Decision constitutes the Award in accordance with the Treaty.

GIVEN in triplicate under Our hand and seal, at Our Court of St. James's this eighteenth day of April, One thousand Nine hundred and Seventy-seven in the Twenty-sixth year of Our Reign.

(L.S.)

ELIZABETH R.

DISPOSITIF OF THE DECISION OF THE COURT OF ARBITRATION

V

DISPOSITIF

176. Accordingly,

THE COURT OF ARBITRATION,—

Taking into account the foregoing considerations, and more particularly for the reasons given in paragraphs 55-111,—

UNANIMOUSLY[a]

1. **Decides**

(i) that Picton, Nueva and Lennox Islands, together with their immediately appurtenant islets and rocks belong to the Republic of Chile[b];

(ii) that the red line drawn on the attached chart, entitled "Boundary-Line Chart" —which forms an integral part of the present Decision (***Compromiso*** of 22 July 1971, Article XII(1))—constitutes the boundary between the territorial and maritime jurisdictions of the Republics of Argentina and Chile respectively, within the limits of the area bounded by the straight lines joining the co-ordinate points ABCDEF specified in Article I(4) of the said ***Compromiso***, and known as the "Hammer" (DECISION, paragraph 1);

(iii) that within this area the title to all islands, islets, reefs, banks and shoals, if situated on the northern side of the said red line, is vested in the Republic of Argentina; and if situated on the southern, in the Republic of Chile:

2. **Determines**—(***Compromiso***, Article XII(3))—that in so far as any special steps are necessary to be taken for the execution of the present Decision, they shall be taken by the Parties, and the Decision shall be executed, within a period of 9 months from the date

[a] See Section F of PART I (REPORT of the Court).

[b] This wording corresponds to that of the Parties' Requests—PART I (REPORT), Section C, Articles 1(1) and (2).

on which, after ratification by Her Britannic Majesty's Government, it is communicated by the latter to the Parties, together with the Declaration constituting it the Award specified in Article XIII(1) of the ***Compromiso***:

3. **Directs** the Parties

(i) to inform it, through the Registrar of the Court, of the steps, legislative, administrative, technical, or other, which they deem it necessary to be taken by either or both of them, in order to execute the present Decision;

(ii) to inform the Court in due course, and in any event within the period specified in paragraph 2 of this Dispositif, of the steps actually taken by them, respectively, for the execution of the Decision:

4. **Declares**, having regard to Article XV of the ***Compromiso***, that the Court

(i) continues in being for the purposes specified in paragraph 3 of his Dispositif, until it has notified Her Britannic Majesty's Government that, in the opinion of the Court, the Award specified in Article XIII(1) of the ***Compromiso*** has been materially and fully executed;

(ii) remains at the disposal of the Parties for the purpose of giving them such guidance or instructions as they may require in order duly to implement the Award.

Done in Geneva this 18th day of February 1977 in a single copy for transmission to Her Britannic Majesty's Government in the United Kingdom in accordance with Article XII(1) of the ***Compromiso***, accompanied by the original of the Dispositif dated 31 January 1977 bearing the signature of the four then Members of the Court.

(Signed) ***G. G. Fitzmaurice***
President

(Signed) ***Philippe Cahier***
Registrar

DECLARATION OF NULLITY

(Informal translation)

The Argentine Government was notified on the 2nd May 1977 of the Award made by Her Britannic Majesty in the dispute between the Argentine Republic and the Republic of Chile concerning the region of the Beagle Channel in virtue of the Arbitration "Compromiso" of the 22nd July 1971.

In accordance with this "Compromiso" the study of this controversy and a solution to it were entrusted to a special Court of Arbitration, composed of five practising members of the International Court of Justice.

The decision of this Special Court could only be approved or rejected by Her Britannic Majesty, as official Arbitrator, according to the General Treaty of Arbitration of 1902. Her role was thus limited to these two alternatives, without any possibility whatsoever of modifying any aspect of the Special Court's Decision.

The Argentine Government has carried out a mature study of this Decision in the light of the international rules which regulate the aspects of procedure and main issues of this controversy.

These rules are to be found in the General Treaty of Arbitration of 1902 and in the Arbitration "Compromiso" signed in July 1971.

These juridical instruments laid down certain requirements which the Decision of the Special Court had to meet. Thus, the Arbitration "Compromiso" points out that the Court was to limit itself to the geographical area specifically submitted to Arbitration (Art. 1 para. 1-4), and outside this area the Court was not longer competent. Likewise, the Treaty of 1902 (Article IX) and the Arbitration "Compromiso" (Art. XII para. 2) lay down that the Decision was to find a solution to every point in dispute and state its grounds.

Moreover both agreements provide that the dispute was to be settled according to the principles of International Law (Art. VIII of the Treaty of 1902 and Art. 1 para. 7 of the Arbitration "Compromiso"). This implies that the Special Court had to apply the general rules of the Law of Nations both as regards aspects of procedures as well as of the main issue in so far as these were not specifically mentioned in the above mentioned agreements.

The analysis carried out has enabled the Argentinian Government to confirm that the Decision of the Special Court suffers from serious and numerous deffects and this

had led it to conclude that this Decision has been formulated in violation of the international rules to which the Court had to adjust is assignment. Therefore, the Decision and Her Britannic Majesty's Award, issued accordingly, are null and void, since they do not contain the conditions of validity which the Law of Nations demands, in order to be considered such as fulfilling them.

The defects which vitiate the Arbitral Decision are quite clear cut, but they are closely linked, and their relationship is such that they damage the principal arguments in which the Dispositif part is based on.

These defects can be listed under the following six headings:

A) *Distortion of the Argentinian thesis.*

In several places, the Decision describes as being the Argentinian thesis something that the Republic never upheld before the Court of Arbitration and then the Court decides according to this distorted version. This method, whereby a claim is distorted, and a decision is taken, not on what has actually been said, but on what the Court says has been claimed by the Republic, is used even in the examination of one of the principal Argentinian argumentations.

The fact is that the Republic upheld that the eastern mouth of the Channel—and to a large extent the solution to the dispute depends on determining this mouth—lies in accordance with the documentation originating from the discoverers and first explorers of the Channel, to the north of Lennox island, between Picton and Navarino islands. Instead, the Court of Arbitration asserts that Argentina upheld as "the true eastern course" one which "departs from the latter's previous general west-east direction and describes what gradually grows into almost a right-angled turn to pass south and west of Picton Island, between it and Navarino Island, *and thence between the latter and Lennox Island,* in what has become a general north-south direction, or even (when abreast of Lennox Island) a south-westerly one, *reaching the sea between Punta María on that island and Punta Guanaco on Navarino.*" (The underlining has been added.) (Paragraph 4 on the Decision).

This serious distortion of the Argentinian thesis which leads to a misreading of the true argumentation on this subject, is used again elsewhere in the Decision (Paragraphs 51 and 93). It has repercussions on the whole reasoning of the Court of Arbitration and it affects its conclusions on the meaning of the term "Beagle Channel", in the Boundaries Treaty of 1881.

The most serious consequence of this distortion can be encountered in paragraphs 93 and 96 of the Award, where the Court, after discarding other methods as being insufficient, tries to determine what is the Beagle Channel of the 1881 Treaty, through an exclusive analysis of the terms of this Treaty.

In this part of the Decision, the Court rejects the idea of the channel which the Court itself has attributed to Argentina because it deems it impossible that the Treaty would use the phrase: "To the South of the Beagle Channel" in order to refer to a channel which at some given point in its course swerves southward and continues along an extensive north-south direction.

The Court then bases the whole might of its conclusion by holding the Argentinian thesis to ridicule, which it could only do through the prior distortion that the Court makes of it.

It is difficult to think of a more serious error than that of an erroneous adjudication to one of the Parties of an argument on the main issue.

The Court also distorts the Argentinian position when it attributes to the Republic, an argument which it never upheld concerning the wide sense of the term "Tierra del Fuego", disregarding the arguments that were actually used (Paragraph 57), as when it asserts that Argentina considered that Picton, Nueva and Lennox islands are an indivisible whole. (Paragraph 7.c).

These examples, among others, represent the most glaring cases of this type of error incurred by the Court, that makes the Court come to a decision according to its own version which is a distorted form of what was alleged by the Parties in dispute, and not according to what was really put forward as arguments by them.

B) *Opinion on questions in dispute not submitted to arbitration.*

The Court gives its opinion on questions in dispute which were not submitted to arbitration, and which do not fall within the competence of the Court. Thus during the arbitral proceedings it became clear that a controversy existed between Chile and Argentina over the islands to the south of the "Hammer", that is to the south of the zone submitted to arbitration (Terhalten, Sesambre, Evout, Barnevelt, etc.) and the study of this matter did not fall within the competence of the Court. Nevertheless, it makes several declarations on the status of these islands in several passages of its Decision. For example, in para. 60-2(bis), when it denies that the Atlantic-Pacific principle can be applied to the "Islands" clause of Article 3 of the Treaty of 1881, the Court says that the Treaty assigned to Chile all the islands to the south of the Beagle Channel, whether they lie to the east or to the west of Cape Horn, and this includes the islands to the south of the "Hammer". Likewise in Paragraph 96, when it rejects the concept of the Beagle Channel which it attributes erroneously to Argentina it adds a sentence which implicity condemns the Republic's claims over the Southern islands.

It also became clear during the arbitral proceedings that another controversy existed concerning the eastern mouth of the Strait of Magellan. Chile upholds that it has jurisdiction over the whole of the Strait, whereas Argentina asserts that the eastern limit

of the Strait is formed by a line which links Cabo Vírgenes with Cabo Espíritu Santo; that Punta Dungeness lies within the Straits, and that, consequently a part of the eastern mouth belongs to it. The Court of Arbitration asserts, in paragraph 31 of the Decision, that the 1881 Treaty gave Chile the exclusive control of the Magellan Straits and in paragraph 24, that Punta Dungeness is on the Atlantic, and in this way it makes a declaration on a question which falls outside its competence.

C) *Contradictions in the reasonings*

Another defect from which the Arbitral Award suffers lies in the contradictions which it incurs. It is an elementary principle that one cannot both simultaneously assert and deny something about someone or something. This is a contradiction in itself, and any contradiction is perforce faulty. It is also one of the rules of formal logic that a contradiction cannot be included between the premises of a logical argument, since as a result of this, any conclusion could be drawn, however absurd it may seem.

These principles regulate the validity of any form of human reasoning, which includes, as is natural, juridical thinking. Nevertheless the Court seems to be unaware of these elementary rules and it incurs in repeated contradictions which enable it to reach baseless conclusions.

Thus, in the first place, the Award contains a most serious logical and juridical contradiction in the way it deals with the question of the islands in the Channel. With regard to the stretch of the Channel which extends from Lapataia to Snipe, the Court considers that the islands situated there are "within the Channel" (and not to the South of the Channel). It says that the Treaty of 1881 did not attribute them to either of the two countries and therefore they should be divided between these two. As regards the "exterior" section of the Channel, and the various possibilities that exist, the Court merely considers that the Channel possesses two arms: the "Chilean" as far as Cape San Pío and even further, the "Argentinian", along Picton and Goree passages (It has been seen above—para. (a) that this is a distortion of the Argentinian thesis). Consequently Picton, Nueva, and Lennox, are also within the Channel. The question should therefore be asked why, in this case, the Court did not share them out according to the principle of appurtenance which it applied to the other islands of the Channel.

The answer is that the Court does not recognise the possibility of applying this rule to Picton, Lennox and Nueva, because—*prima facie*—so it says—all the territories in dispute should be considered as having been allocated in a definite clause of the Treaty under pain of a total failure of the Treaty (Paragraph 92). We have here, a contradiction in the approach to the problem of the islands within the Channel, which, as said above, the Court asserts do not fall within any specific attribution (Para. 98c and 106). As a consequence of this contradiction the Court divides the Beagle Channel, such as the Court defined it, into two sections both subject to two different juridical regimes, without supplying any justification for this action.

Other examples are worthy of note:

In paragraph 66 (3), concerning the interpretation of the Treaty of 1881, the Decision considers that Bernardo de Irigoyen's "discurso" of 1881, and the Melquiades Valderrama's "mensaje", insofar as they refer to the islands in dispute, are diametrically opposed, and it decides to ignore them as they cancel each other out. Yet, in paragraph 130, when dealing with the confirmatory material subsequent to this treaty, whereas it discards this speech of Irigoyen's it accepts Valderrama's "mensaje" as a clear proof of the Chilean interpretation of the Treaty.

In paragraphs 14 and 24, the Arbitral Decision includes the whole of the Tierra del Fuego archipelago in the regions in dispute prior to 1881, and which were the subject matter of the Boundaries Treaty. Yet in paragraph 101, in order to avoid the problem of interpretation posed by the islands to the west of Tierra del Fuego, the Court decides to consider that part of the archipelago as outside the "controversia de límites" prior to 1881, and therefore, not governed by the Treaty.

D) *Faulty interpretations.*

Every judge to whose judgement a dispute is submitted is expected to interpret the juridical rules that he must apply. The interpretation of the Law is a task which is regulated by juridical rules. The person interpreting possesses a scope within which he can define the content of the juridical rule that he is interpreting. Moreover the Law tells him what methods he has to use when it comes to interpreting.

In this sense, the Vienna Convention on the Law of Treaties has codified some of the rules of customary law and has even laid down a certain order of priority among them.

Interpretation, therefore, is a task determined and regulated by International Law, and it is not a task left to the entire discretion or the whims of the judge. He is not allowed to go beyond the bounds laid down, for then his function would not be to interpret the Law, but to revise it. "The Court is expected to interpret the Treaties, not to revise them", as the International Court of Justice clearly states, in a well known passage on its consultative opinion on the interpretation of peace treaties (C.I.J. Recueil 1950, p. 229).

The Arbitral Decision is entirely based on the text of the Treaty of 1881. This being so, in its interpretation the Court had to follow among other rules, those known as "reference to context", and "useful effect". The Court is not aware of these rules, particularly the second, with the result, that instead of being "interpreted", the Treaty is submitted to some kind of reform and adaptation of its text, which contradicts both the letter and the spirit of the Treaty.

Therefore, when in paragraph 101 it decides that the islands to the west of Tierra del Fuego do not constitute a part of the boundaries controversy prior to 1881, and were

not accordingly included in the subject matter of the Treaty, the Decision deprives a precise term in Article 3 of this agreement, of its useful effect.

Likewise it deprives Article I of the Treaty of its useful effect when it refers to zones, which according to the Decision were not included in the "controversia de límites".

In the same way in para. 65 the Court rejects the Argentinian thesis according to which the clause "the other islands there may be on the Atlantic", Article 3 of the Treaty attributed to Argentina the islands of Picton, Nueva and Lennox, among others; but, having ruled out this interpretation, the Court, in violation of the rule of useful effect, fails to explain which could in fact be the islands that the Treaty assigned to Argentina, through this clause, if these were not Nueva, Picton, and Lennox.

In the same manner, the wording: "up to Cape Horn", in Article 3 of this Treaty is deprived of any meaning and the clause which assigns islands to Chile is interpreted as if it laid down as an only condition, that they be "to the south of the Beagle Channel".

When it interprets Article 2 of the Boundaries Treaty the Decision asserts that its provisions assigned to Argentina the whole of Patagonia as far as the Rio Negro, a conclusion which is not supported by the text of the agreement, which there neither mentions Patagonia nor the Rio Negro. Moreover it leaves without useful effect, or it makes a fairly large portion of the scope of Article I redundant, where the north-south frontier is defined as far as the 52nd parallel of latitude south.

In addition, when it interprets the text of Article 3 of the Treaty the Court creates, as an element for demarcation purposes, the concept of the southern coast of Isla Grande, thus effecting a revision, since this concept does not figure in the text of the Treaty, nor in preliminary texts, neither was it upheld by either Party.

E) *Geographical and historical errors.*

In addition to these defects, the Decision contains erroneous assertions concerning facts which affect either its motives or the Dispositif part, or both at the same time.

Some of the errors are of a geographical nature. For example, in paragraphs 100 and 101 it is said that the Stewart, O'Brien, and Londonderry islands lie to the south of the North west arm of the Beagle Channel. In fact these islands have no connection with the Channel. They lie outside, and, what is more, to the north of its general direction.

In paragraph 14, the Decision invents a "Cape Horn archipelago", which is supposed to extend to the south, south west and west of Isla Grande, as something quite apart from the Tierra del Fuego archipelago.

It should also be pointed out that the drawing of the maritime boundary carried out by the Court on the Chart annexed to the Award suffers from inexactitudes and technical errors that render it totally untrustworthy.

Other errors are of a historical nature. The Court of Arbitration makes several assertions in this matter which do not conform to the truth nor tally with the proofs produced, nor do they appear to have been deduced from those investigations that were carried out by the Court. In connection with this, reference should be made to the assertions that, during the whole of the boundaries controversy prior to 1881, Chile always claimed the whole of Patagonia as far as Rio Negro (Paragraph 13); that the islands to the west of the archipelago were not in dispute, nor were they the subject matter of the Boundary Treaty (para. 101); that documents exist on the discovery and first explorations of the Beagle Channel which indicate that its true eastern course is the southern arm, which the Court itself clearly defined as including Goree Passage between Lennox and Navarino island (para. 87 and 4); that for the 1876-1881 negotiators the Atlantic Ocean went only as far as Staten Island (para. 65.c).

The final stand taken by the Court is linked to the assertion produced by the Court that the Atlantic principle is not applicable to the Argentinian clause which attributes to Argentina islands "on the Atlantic", and which figures in Article 3 of the Treaty (para. 66-2b), and thereby it incurs in another obvious contradiction.

This limitation of the validity of the Atlantic principle is a further geographical error, especially as it ignores the opinion of the international community (Bureau Hydrographique International 1919). which has defined Cape Horn as being the determinant point between the Atlantic and the Pacific oceans.

Thus, by ignoring the question of the division of the oceans which is related to the traditional boundary between the two countries (Cape Horn), the Award disregards the standard principle which guided the division of jurisdictions between Argentina and Chile, even since before their independence, subsequently laid down in various instruments, in particular in the Treaty of 1881, the Protocol of 1893, and the Explanatory Act concerning Pacts on Arbitration and the Limitation of Armaments of 1902.

In connection with this, it should be pointed out also that in the way in which the Court deals with the Argentinian argument in defence of that principle, the Court incurs in a serious historical error when it examines the scope of the Protocol of 1893 (para. 73 to 78). Argentina upheld that owing to its "additional and explanatory" character of the 1881 Treaty, this protocol constituted an authentic interpretation of this Treaty.

Specially as the sentence in Article II of the protocol reads:

> "it being understood that, by the provisions of that Treaty (that of 1881), the sovereignty of each State over the respective littoral is absolute so that Chile cannot

claim any point towards the Atlantic nor can the Argentine Republic claim any point towards the Pacific,"

this is therefore a confirmation of the Atlantic-Pacific principle contained in the Treaty of 1881, and as such it is applicable to the present controversy. Argentina also upheld that the Protocol modified the Treaty with regard to two physical sections of the frontier where, up till then, certain demarcation difficulties had arisen, and it was acting thus in order to apply the general principle which is the respect of each state's sovereignty over its respective littoral. As against that, the Court asserts that the subject of the Protocol of 1893, "falls outside the Treaty as such both in date and content" which constitutes a fundamental error in law, since the Protocol of 1893 was always considered by both parties—without prejudice to the divergences in its scope—as a treaty which specifically modified and interpreted the Treaty of 1881, as appears from its text, objective, and purpose. But the Court inmediately incurs in a contradiction when it admits in subsequent paragraphs that the Protocol did refer to the Treaty of 1881.

Besides this fundamental error, the Court incurs in other equally serious errors, when it qualifies the Protocol as a mere instrument for demarcation purposes, and asserts that it bore no relation whatever with the Beagle Channel region and the islands in dispute, nor could it bear any because the Treaty of 1881 had not provided for any demarcation of that region.

The Court is mistaken concerning the nature of the Protocol since the Protocol, besides indicating the demarcation process—contained fundamental provisions for delimitations which even modified the boundary laid down in the Treaty of 1881.

F) *Lack of balance in the appraisal of arguments and proofs brought forward by each Party.*

The Award does not judge the case and the proof of each Parties on an equal footing. It does not contain an objective examination of all the important points of the controversy on the interpretation of the Treaty, which are liable to carry weight in the result. It ignores antecedents with a bearing on the case, which constitute concrete elements relevant to the situation under judgement, and in particular that part which deals with the subsequent conduct of affairs, the factual historical context of the dispute, basing itself on guide lines or general viewpoints derived from a modern reconstruction of this conduct of affairs. The consequences of this lack of balance are particularly serious, for the Court does not in fact draw a clear cut conclusion in favour of the Chilean interpretation. It merely prefers it to the Argentinian interpretation, after having weighed up the sum total of their respective weaknesses. But the scales thus lean in favour of the Chilean interpretation, through to prior silence over, or distortion of, the Argentinian thesis, the ignorance of important proof, factual errors, etc.

This attitude of systematic one-sidedness on the part of the Court in favour of Chile and against Argentina is present throughout the Award, but it is particularly obvious

in Part II Chapter III—An analysis of the provisions of the Treaty of 1881—and Chapter IV—Considerations on the Confirmatory or Corroborative Incidents and Material—and especially when it decides on what is the true Beagle Channel, also on the meaning of the Atlantic Ocean concept, or on the respective value of the documents and declarations of the negotiators of the Treaty of 1881.

This lack of balance is also evident when the Court omits to consider important Argentinian lines of arguments while at the same time it is unaware of the proof that goes with this line of arguments. This is particularly noticeable on the subject of the attitude of the Parties with regard to cartography, the wide sense of "Tierra del Fuego", in the "Islands" clause of Article 3, and the official recognition by both parties of a pending demarcation in the region in dispute.

This statement of defects is by no means exhaustive. Even so, those indicated here are sufficient to show how the Court exceeded its powers, the glaring errors, and the violation of fundamental juridical rules which the Court of Arbitration has incurred, both as regards the main issue and the procedure.

On this account, and in view of what has been stated above, the Government of the Argentine Republic declares that, in view of the obvious nullity of the Decision of the Court of Arbitration and of Her Britannic Majesty's Award, which is its consequence, it does not consider itself bound to implement it.

Buenos Aires, 25 January 1978.

ARGENTINA

APPENDIX XI

see page 33

MONTEVIDEO ACT RELEASED BY PRESS

Buenos Aires LA PRENSA in Spanish 25 Jan 79 p 1

8 Jan 79

[Text] The decision by the governments of Argentina and Chile to ask the Holy See to act as a mediator "in order to guide them in their negotiations and to assist them in the search for a solution to the dispute" over their southern borders, is contained in the document signed on the 8th of this month in Montevideo by the foreign ministers of the two countries, retired Maj Gen Carlos Washington Pastor and Dr Hernan Cubillos, respectively. We feel that it is timely to reprint the text of this document, which reads as follows:

1—On an invitation from His Eminence, Cardinal Antonio Samore, His Holiness Pope John Paul II's special representative to fulfill a mission of peace that has been accepted by the governments of the Argentine Republic and the Republic of Chile, the foreign ministers of the two republics, His Excellency Mr Carlos W. Pastor and His Excellency Mr Hernan Cubillos Sallato, have met in Montevideo and after analyzing the dispute, taking into consideration:

2—That in his message to the presidents of the two countries on 11 December 1978, His Holiness John Paul II expressed his conviction that a calm and responsible examination of the problem will enable "the demands of justice, equity and prudence as a secure and stable foundation for the fraternal coexistence" of the two nations to prevail;

3—That in his address to the College of Cardinals on 22 December 1978, the Holy Father recalled the concerns and hopes that he had already expressed in connection with the search for a way to safeguard peace, which the peoples of both countries keenly desire;

4—That His Holiness Pope John Paul II voiced a desire to send a special representative to the capitals of the two countries to obtain more direct and specific information on their respective positions and to help achieve a peaceful settlement of the controversy;

5—That this noble initiative was accepted by the two governments;

6—That His Eminence Cardinal Antonio Samore, who was appointed to carry out this peace mission, has since 26 December 1978 held talks with the highest authorities of both countries and with their closest collaborators;

7—That on 1 January, on which World Peace Day was celebrated at the behest of the pope, His Holiness John Paul II referred to this delicate situation and expressed the hope that with a forward-looking, balanced and courageous outlook, the authorities of the two countries would proceed along the path of peace and achieve the goal of a just and honorable solution as soon as possible;

8—Hereby declare that the two governments reaffirm herein their gratitude to the Supreme Pontiff, John Paul II, for having sent a special representative; resolve to avail themselves of the Apostolic See's offer to undertake this effort and, attaching every significance to the Holy See's proposal, agree to ask him to act as a mediator in order to guide them in their negotiations and assist them in the search for a solution to the dispute, for which the two governments have agreed to seek the means they regarded as most appropriate for a peaceful solution. To this end, careful consideration will be given to the positions maintained and developed by the parties during the negotiations that have already been held in connection with the Puerto Montt Act and the studies to which this act gave rise;

9—The two governments will inform the Holy See as to both the terms of the dispute and the background material and criteria that they deem pertinent, especially those that were considered during the course of the various negotiations, the acts, instruments and proposals of which will be made available to him;

10—The two governments declare that they will not object to the Holy See, during the course of this effort, expressing any ideas that might occur to him from his thorough studies of all the controversial aspects of the southern zone problem, in the desire to contribute to a peaceful settlement that is acceptable to both parties. They declare their willingness to consider the ideas that the Holy See might express;

11—Therefore, by means of this agreement, which is in keeping with the spirit of the norms contained in international instruments designed to preserve peace, the two governments add their concern to that of His Holiness John Paul II and consequently reaffirm their determination to resolve the pending matter through mediation.

Issued in Montevideo on 8 January 1979 and signed in six identical copies.

Commitment Not to Resort to Force

The following official communique was released simultaneously with the above document:

"Upon receiving the mediation request formulated by the governments of the Argentine Republic and the Republic of Chile, Cardinal Antonio Samore, the special envoy of His Holiness John Paul II, asks that this request be accompanied by a commitment that the two states will not resort to the use of force in their mutual relations, will gradually return to the military situation that existed in early 1977 and will refrain from taking measures that might disturb harmony in any sector.

"The foreign ministers of the two republics, His Excellency Mr Carlos Washington Pastor and His Excellency Mr Hernan Cubillos Sallato, extend their consent and together with the cardinal sign six identical copies.

"Done in Montevideo on 8 January 1979."

8743
CSO: 3010

TRATADO DE PAZ Y AMISTAD

Texto completo del acuerdo alcanzado entre Chile y Argentina, con la Mediación de la Santa Sede, para la solución del diferendo austral.

El Tratado de Paz y Amistad, de ser ratificado por los gobernantes de ambos países, pondrá término a siete años de negociaciones, desde que el Gobierno argentino rechazara la sentencia arbitral de Su Majestad Británica, invitando a Chile a intercambiar puntos de vista acerca de las respectivas jurisdicciones en el área austral.

APPENDIX XII

Tratado De Paz Y Amistad

En nombre de Dios Todopoderoso.

El Gobierno de la República de Chile y el Gobierno de la República de Argentina,

Recordando que el ocho de enero de mil novecientos setenta y nueve solicitaron a la Santa Sede que actuara como Mediador en el diferendo suscitado en la zona austral, con la finalidad de guiarlos en las negociaciones y asistirlos en la búsqueda de una solución; y que requirieron su valiosa ayuda para fijar una línea de delimitación, que determinara las respectivas jurisdicciones al Oriente y al Occidente de esa línea, a partir del término de la delimitación existente;

Convencidos que es deber ineludible de ambos gobiernos dar expresión a las aspiraciones de paz de sus Pueblos;

Teniendo presente el Tratado de Límites de 1881, fundamento inconmovible de las relaciones entre la República Argentina y la República de Chile, y sus instrumentos complementarios y declaratorios;

Reiterando la obligación de solucionar siempre todas sus controversias por medios pacíficos y de no recurrir jamás a la amenaza o al uso de la fuerza en sus relaciones mutuas;

Animados del propósito de intensificar la cooperación económica y la integración física de sus respectivos países;

Teniendo especialmente en consideración la "Propuesta del Mediador, sugerencia y consejos", de doce de diciembre de mil novecientos ochenta;

Testimoniando, en nombre de sus Pueblos, los agradecimientos a su Santidad el Papa Juan Pablo II por sus esclarecidos esfuerzos para lograr la solución del diferendo y fortalecer la amistad y el entendimiento entre ambas Naciones,

Han resuelto celebrar el siguiente Tratado, que constituye una transacción:

Paz y amistad

ARTICULO 1°

Las Altas Partes contratantes, respondiendo a los intereses fundamentales de sus Pueblos, reiteran solemnemente su compromiso de preservar, reforzar y desarrollar sus vínculos de paz inalterable y amistad perpetua.

Las Partes celebrarán reuniones periódicas de consulta en las cuales examinarán especialmente todo hecho o situación que sea susceptible de alterar la armonía entre ellas, procurarán evitar que una discrepancia de sus puntos de vista origine una controversia y sugerirán o adoptarán medidas tendientes a mantener y afianzar las buenas relaciones entre ambos países.

ARTICULO 2°

Las Partes confirman su obligación de abstenerse de recurrir directa o indirectamente a toda forma de amenaza o uso de la fuerza y de adoptar toda otra medida que pueda alterar la armonía en cualquier sector de sus relaciones mutuas.

Confirman asimismo su obligación de solucionar siempre y exclusivamente por medios pacíficos todas las controversias, de cualquier naturaleza, que por cualquier causa hayan surgido o puedan surgir entre ellas, en conformidad con las disposiciones siguientes.

ARTICULO 3°

Si surgiere una controversia, las Partes adoptarán las medidas adecuadas para mantener las mejores condiciones generales de convivencia en todos los ámbitos de sus relaciones y para evitar que la controversia se agrave o se prolongue.

ARTICULO 4°

Las Partes se esforzarán por lograr la solución de toda controversia entre ellas mediante negociaciones directas, realizadas de buena fe y con espíritu de cooperación.

Si, a juicio de ambas Partes o de una de ellas, las negociaciones directas no alcanzaren un resultado satisfactorio, cualquiera de las Partes podrá invitar a la otra a someter la controversia a un medio de arreglo pacífico elegido de común acuerdo.

ARTICULO 5°

En caso de que las Partes, dentro del plazo de cuatro meses a partir de la invitación a que se refiere el artículo anterior, no se pusieren de acuerdo sobre otro medio de arreglo pacífico y sobre el plazo y demás modalidades de su aplicación, o que obtenido dicho acuerdo la solución no se alcanzare por cualquier causa, se aplicará el procedimiento de reconciliación que se estipula en el Capítulo I del Anexo N° 1.

ARTICULO 6°

Si ambas Partes o alguna de ellas no hubieren aceptado los términos de arreglo propuestas por la Comisión de Conciliación dentro del plazo fijado por su Presidente, o si el procedimiento de conciliación fracasare por cualquier causa, ambas partes o cualquiera de ellas podrá someter la controversia al procedimiento arbitral establecido en el Capítulo II del anexo N° 1.

El mismo procedimiento se aplicará cuando las Partes, en conformidad al artículo 4°, elijan el arbitraje como medio de solución de la controversia, a menos que ellas convengan otras reglas.

No podrán renovarse en virtud del presente artículo las cuestiones que hayan sido objeto de arreglos definitivos entre las partes. En tales casos, el arbitraje se limitará exclusivamente a las cuestiones que se susciten sobre la validez, interpretación y cumplimiento de dichos arreglos.

Delimitación marítima

ARTICULO 7°

El límite entre las respectivas soberanías sobre el mar, suelo y subsuelo de la República Argentina y de la República de Chile en el Mar de la Zona Austral a partir del término de la delimitación existente en el Canal Beagle, esto es, el punto fijado por las coordenadas 55° 07',3 de latitud Sur y 66° 25',0 de longitud Oeste, será la línea que una los puntos que a continuación se indican:

A partir del punto fijado por las coordenadas 55° 07',3 de latitud Sur y 66° 25',0 de longitud Oeste (punto A), la delimitación seguirá hacia el Sudeste por una línea loxodrómica hasta un punto situado entre las costas de la Isla Nueva y de la Isla Grande de Tierra del Fuego, cuyas coordenadas son 55° 11',0 de latitud Sur y 66° 04',7 de longitud Oeste (punto B); desde allí continuará en dirección Sudeste en un ángulo de cuarenta y cinco grados, medido en dicho punto B, y se prolongará hasta el punto cuyas coordenadas son 55° 22',9 de latitud Sur y 65° 43',6 de longitud Oeste (punto C); seguirá directamente hacia el Sur por dicho meridiano hasta el paralelo 56° 22',8 de latitud Sur (punto D); desde allí continuará por ese paralelo situado veinticuatro millas marinas al Sur del extremo más austral de la Isla Hornos, hacia el oeste hasta su intersección con el meridiano correspondiente al punto más austral de dicha Isla Hornos en las coordenadas 56° 22',8 de latitud Sur y 67° 16',0 de longitud Oeste (punto E); desde allí el límite continuará hacia el Sur hasta el punto cuyas coordenadas son 58° 21',[illegible] de latitud Sur y 67° 16',0 de longitud Oeste (punto F).

La línea de delimitación marítima anteriormente descrita queda representada en la Carta N° I anexa.

Las Zonas Económicas Exclusivas de la República Argentina y de la República de Chile se extenderán respectivamente al Oriente y al Occidente del límite así descrito.

Al Sur del punto final del límite (punto F), la Zona Económica Exclusiva de la República de Chile se prolongará, hasta la distancia permitida por el derecho internacional, al occidente del meridiano 67° 16',0 de longitud Oeste, deslindando al oriente con el alta mar.

ARTICULO 8°

Las partes acuerdan que en el espacio comprendido entre el cabo de Hornos y el punto más oriental de la Isla de los Estados, los efectos jurídicos del mar territorial quedan limitados, en sus relaciones mutuas, a una franja de tres millas marinas medidas desde sus respectivas líneas de base.

En el espacio indicado en el inciso anterior, cada Parte podrá invocar frente a terceros Estados la anchura máxima de mar territorial que le permita el derecho internacional.

ARTICULO 9°

Las Partes acuerdan denominar "Mar de la Zona Austral" el espacio marítimo que ha sido objeto de delimitación en los dos artículos anteriores.

ARTICULO 10°

La República Argentina y la República de Chile acuerdan que en el término oriental del Estrecho de Magallanes, determinado por Punta Dungenes en el Norte y Cabo del Espíritu Santo en el Sur, el límite entre sus respectivas soberanías será la línea recta que una el "hito Ex-Baliza Punta Dungenes", situado en el extremo de dicho accidente geográfico, y el "Hito I Cabo del Espíritu Santo" en Tierra del Fuego.

La línea de delimitación anteriormente descrita queda representada en la Carta N° II anexa.

La soberanía de la República Argentina y la soberanía de la República de Chile sobre el mar, suelo y subsuelo se extenderán, respectivamente, al oriente y al Occidente de dicho límite.

La delimitación aquí convenida en nada altera lo establecido en el Tratado de Límites de 1881, de acuerdo con el cual el Estrecho de Magallanes está neutralizado a perpetuidad y asegurada su libre navegación para las banderas de todas las naciones en los términos que señala su artículo V.

La República Argentina se obliga a mantener, en cualquier tiempo y circunstancias, el derecho de los buques de todas las banderas a navegar en forma expedita y sin obstáculo a través de sus aguas jurisdiccionales hacia y desde el Estrecho de Magallanes.

ARTICULO 11°

Las Partes se reconocen mutuamente las líneas de base rectas que han trazado en sus respectivos territorios.

Cooperación económica e integración física

ARTICULO 12°

Las Partes acuerdan crear una Comisión Binacional de carácter permanente, con el objeto de intensificar la cooperación económica y la integración física. La Comisión Binacional estará encargada de promover y desarrollar iniciativas, entre otros, sobre los siguientes temas: sistema global de enlaces terrestres, habilitación mutua de puertos y zonas francas, transporte terrestre, aeronavegación, interconexiones eléctricas y telecomunicaciones, explotación de recursos naturales, protección del medio ambiente y complementación turística.

Dentro de los seis meses de la entrada en vigor del presente Tratado, las Partes constituirán la Comisión Binacional y establecerán su reglamento.

ARTICULO 13°

La República de Chile, en ejercicio de sus derechos soberanos, otorga a la República Argentina las facilidades de navegación que se especifican en los artículos 1° al 9° del Anexo n° 2.

La República de Chile declara que los buques de terceras banderas podrán navegar sin obstáculos por las rutas indicadas en los artículos 1° y 8° del Anexo n°2, sujetándose a la reglamentación chilena pertinente.

Ambas Partes acuerdan el régimen de Navegación, Practicaje y Pilotaje en el Canal Beagle que se especifica en el referido Anexo N°2, artículos 11° al 16°.

Las estipulaciones sobre navegación en la zona austral contenidas en este Tratado sustituyen cualquier acuerdo anterior sobre la materia que existiere entre las Partes.

Cláusulas finales

ARTICULO 14°

Las Partes declaran solemnemente que el presente Tratado constituye la solución completa y definitiva de las cuestiones a que él se refiere.

Los límites señalados en este Tratado constituyen un confín definitivo e inconmovible entre las soberanías de la República Argentina y de la República de Chile.

Las partes se comprometen a no presentar reivindicaciones ni interpretaciones que sean incompatibles con lo establecido con este Tratado.

ARTICULO 15°

Serán aplicables en el territorio antártico los artículos 1° al 8° del presente Tratado. Las demás disposiciones no afectarán de modo alguno ni podrán ser interpretadas en el sentido de que puedan afectar, directa o indirectamente, la soberanía, los derechos, las posiciones jurídicas de las Partes, o las delimitaciones en la Antártida o en sus espacios marítimos adyacentes, comprendiendo el suelo y el subsuelo.

ARTICULO 16°

Acogiendo el generoso ofrecimiento del Santo Padre, las Altas Partes Contratantes colocan el presente Tratado bajo el amparo moral de la Santa Sede.

ARTICULO 17°

Forman parte integrante del presente Tratado:

a) el Anexo N° 1 sobre procedimientos de Conciliación y Arbitraje, que consta de 41 artículos;

b) el Anexo N° 2 relativo a Navegación, que consta de 16 artículos; y

c) las Cartas referidas en los artículos 7° y 10° del Tratado y en los artículos 1°, 8° y 11° del Anexo N° 2.

Las referencias al presente Tratado se entienden también hechas a sus respectivos Anexos y Cartas.

ARTICULO 18°

El presente Tratado está sujeto a ratificación y entrará en vigor en la fecha del canje de los instrumentos de ratificación.

ARTICULO 19°

El presente Tratado será registrado de conformidad con el Artículo 102 de la Carta de las Naciones Unidas.

Anexo N°1

Capítulo I

Procedimiento de conciliación previsto en el artículo 5° del Tratado de Paz y Amistad

ARTICULO 1°

Dentro del plazo de seis meses contados desde la entrada en vigor del presente Tratado las Partes constituirán una Comisión Permanente de Conciliación argentino-chilena, en adelante "la Comisión".

La Comisión se comprondrá de tres miembros. Cada una de las Partes nombrará un miembro, el cual podrá ser elegido entre sus nacionales. El tercer miembro, quien actuará como Presidente de la Comisión, será elegido por ambas Partes entre nacionales de terceros Estados que no tengan su residencia habitual en el territorio de alguna de ellas ni se encuentren a su servicio.

Los miembros serán nombrados por un plazo de tres años y podrán ser reelegidos. Cada una de las Partes podrá proceder en cualquier tiempo al reemplazo del miembro nombrado por ella. El tercer miembro podrá ser reemplazado durante su mandato por acuerdo entre las Partes.

Las vacantes producidas por fallecimiento o por cualquier otra razón se proveerán en la misma forma que los nombramientos iniciales, dentro de un plazo no superior a tres meses.

Si el nombramiento del tercer miembro de la Comisión no pudiere efectuarse dentro del plazo de seis meses desde la entrada en vigor de este Tratado o dentro del plazo de tres meses de producida su vacante, según el caso, cualquiera de las Partes podrá solicitar a la Santa Sede que efectúe la designación.

ARTICULO 2°

En la situación prevista en el artículo 5° del Tratado de Paz y Amistad la controversia será sometida a la Comisión por solicitud escrita, ya sea conjunta o separada de las Partes, o de una de ellas, dirigida al Presidente de la Comisión. En la solicitud se indicará sumariamente el objeto de la controversia.

Si la solicitud no fuere conjunta, la Parte recurrente notificará de inmediato a la otra Parte.

ARTICULO 3°

La solicitud o solicitudes escritas por medio de las cuales la controversia se someta a la Comisión contendrán, en la medida de lo posible, la designación del Delegado o de los Delegados por quienes la Parte o las Partes de que emanan las solicitudes serán representadas en la Comisión.

Corresponderá al Presidente de la Comisión invitar a la Parte o a las Partes que no hayan designado Delegado o que procedan a su pronta designación.

ARTICULO 4°

Sometida una controversia a la Comisión, y para el solo efecto de aquella, las Partes podrán designar, de común acuerdo, dos miembros más que la integren. La presidencia de la Comisión seguirá siendo ejercida por el tercer miembro anteriormente designado.

ARTICULO 5°

Si al tiempo de someterse la controversia a la Comisión alguno de los miembros nombrados por una Parte no estuviere en condiciones de participar plenamente en el procedimiento de conciliación, esa Parte deberá sustituirlo a la mayor brevedad al solo efecto de dicha conciliación.

A solicitud de cualquiera de las Partes, o por propia iniciativa, el Presidente podrá requerir a la otra que proceda a esa sustitución.

Si el Presidente de la Comisión no estuviere en condiciones de participar plenamente en el procedimiento de conciliación, las Partes deberán sustituirlo de común acuerdo, a la mayor brevedad, por otra persona al solo efecto de dicha conciliación. A falta de acuerdo cualquiera de las Partes podrá pedir a la Santa Sede que efectúe la designación.

ARTICULO 6°

Recibida una solicitud, el Presidente fijará el lugar y la fecha de la primera reunión y convocará a ella a los miembros de la Comisión y a los Delegados de las Partes.

En la primera reunión la Comisión *nombrará su Secretario, quien no podrá* ser nacional de alguna de las Partes ni tener en el territorio de ellas residencia permanente o encontrarse a su servicio. El Secretario permanecerá en funciones mientras dure la conciliación.

En la misma reunión la Comisión determinará el procedimiento a que habrá de ajustarse la conciliación. Salvo acuerdo de las Partes, tal procedimiento será contradictorio.

ARTICULO 7°

Las Partes estarán representadas en la Comisión por sus Delegados; podrán, además, hacerse asistir por consejeros y expertos nombrados por ellas a estos efectos y solicitar los testimonios que consideraren convenientes.

La Comisión tendrá la facultad de solicitar explicaciones a los Delegados, consejeros y expertos de las Partes, así como a las demás personas que estimare útil.

ARTICULO 8°

La Comisión se reunirá en el lugar que las Partes acuerden y, a falta de acuerdo, en el lugar designado por su Presidente.

ARTICULO 9°

La Comisión podrá recomendar a las Partes medidas tendientes a evitar que la controversia se agrave o que la conciliación se dificulte.

ARTICULO 10°

La Comisión no podrá sesionar sin la presencia de todos sus miembros.

Salvo acuerdo en contrario de las Partes todas las decisiones de la Comisión se tomarán por mayoría de votos de sus miembros. En las actas respectivas no se *hará constar si las decisiones han sido tomadas* por unanimidad o por mayoría.

ARTICULO 11°

Las Partes facilitarán los trabajos de la Comisión y le procurarán, en la medida más amplia posible, todos los documentos o informaciones útiles. Asimismo, le permitirán que proceda en sus respectivos territorios a la citación y audiencia de testigos o peritos y a la práctica de inspecciones oculares.

ARTICULO 12°

Al finalizar el examen de la controversia la Comisión se esforzará por definir los términos de un arreglo susceptible de ser aceptado por ambas Partes. La Comisión puede, a este efecto, proceder a intercambiar puntos de vista con los Delegados de las Partes, a quienes podrá oír conjunta o separadamente.

Los términos propuestos por la Comisión sólo revestirán el carácter de recomendaciones sometidas a la consideración de las Partes para facilitar un arreglo recíprocamente aceptable.

Los términos de dicho arreglo serán comunicados, por escrito, por el Presidente a los Delegados de las Partes, a quienes invitará a hacerle saber, en el plazo que fije, si los Gobiernos respectivos aceptan o no el arreglo propuesto.

Al efectuar la comunicación antedicha el Presidente expondrá personalmente las razones que, en opinión de la Comisión, aconsejan a las Partes aceptar el arreglo.

Si la controversia versare exclusivamente sobre cuestiones de hecho, la Comisión se limitará a la investigación de ellas y consignará sus conclusiones en un acta.

ARTICULO 13°

Si ambas Partes aceptan el arreglo propuesto por la Comisión, se levantará un acta en que constará dicho arreglo, la cual será firmada por el Presidente, el Secretario de la Comisión y los Delegados. Una copia del acta, firmada por el Presidente y el Secretario, será enviada a cada una de las Partes.

ARTICULO 14°

Si ambas Partes o una de ellas no aceptan el arreglo propuesto y la Comisión juzga superfluo tratar de obtener acuerdo sobre términos de arreglo diferentes, se levantará acta firmada por el Presidente y el Secretario, en la cual, sin reproducir los términos del arreglo propuesto, se expresará que las Partes no pudieron ser conciliadas.

ARTICULO 15°

Los trabajos de la Comisión deberán terminar en el plazo de seis meses contados desde el día en que la controversia haya sido sometida a su conocimiento, a menos que las Partes acuerden otra cosa.

ARTICULO 16°

Ninguna declaración o comunicación de los Delegados o de los miembos de la Comisión sobre el fondo de la controversia será consignada en las actas de sesiones, a menos que consientan en ello el Delegado o el miembro de quien emana. Por el contrario, serán anexados a las actas de sesiones los informes periciales escritos u orales y las actas relativas a las inspecciones oculares y a las declaraciones de testigos, a menos que la Comisión decida otra cosa.

ARTICULO 17°

Se enviará copias autenticadas de las actas de sesiones y de sus anexos a los Delegados de las Partes por intermedio del Secretario de la Comisión, a menos que la *Comisión decida otra cosa.*

ARTICULO 18°

Los trabajos de la Comisión no serán públicos sino en virtud de una decisión tomada por la Comisión con el asentimiento de ambas Partes.

ARTICULO 19°

Ninguna admisión y proposición formulada durante el curso del procedimiento de conciliación, sea por una de las Partes o por la Comisión, podrá prejuzgar o afectar, en manera alguna, los derechos o pretensiones de una u otra Parte en caso que no prosperare el procedimiento de conciliación. En igual forma, la aceptación por una Parte de un Proyecto de arreglo formulado por la Comisión no implicará, *en manera alguna, aceptar las consideraciones* de hecho o de derecho en las cuales podría basarse tal arreglo.

ARTICULO 20°

Terminados los trabajos de la Comisión, las Partes considerarán si autorizan la publicación total o parcial de la documentación relativa a ellos. La Comisión podrá dirigirles una recomendación a este efecto.

ARTICULO 21°

Durante los trabajos de la Comisión, cada uno de sus miembros percibirá una compensación pecuniaria cuya cuantía se fijará de común acuerdo por las Partes, las cuales la sufragarán por mitades.

Cada una de las Partes pagará sus propios gastos y la mitad de las expensas comunes de la Comisión.

ARTICULO 22°

Al término de la conciliación, el Presidente de la Comisión depositará toda la documentación relativa a ella en los archivos de la Santa Sede, manteniéndose el carácter reservado de dicha documentación, dentro de los límites indicados en los artículos 18° y 20° del presente anexo.

Capítulo II

Procedimiento Arbitral previsto en el Artículo 6° del Tratado de Paz y Amistad

ARTICULO 23°

La Parte que intente recurrir al arbitraje lo hará saber a la otra por notificación escrita. En la misma comunicación solicitará la constitución del Tribunal Arbitral, indicará sumariamente el objeto de la controversia, mencionará el nombre del árbitro elegido por ella para integrar el Tribunal e invitará a la otra Parte a celebrar un compromiso o acuerdo arbitral.

La parte requerida deberá cooperar en la constitución del Tribunal y en la celebración del compromiso.

ARTICULO 24°

Salvo acuerdo en contrario de las Partes, el Tribunal Arbitral se compondrá de cinco miembros designados a título personal. Cada una de las Partes nombrará un miembro, que podrá ser nacional suyo. Los otros tres miembros, uno de los cuales será Presidente del Tribunal, serán elegidos de común acuerdo entre nacionales de terceros Estados. Estos tres árbitros deberán ser de nacionalidad diferente, no tener residencia habitual en el territorio de alguna de las Partes ni encontrarse a su servicio.

ARTICULO 25°

Si todos los miembros del Tribunal Arbitral no estuvieren nombrados dentro del plazo de tres meses a contar de la recepción de la comunicación prevista en el artículo 23°, el nombramiento de los miembros que falten será hecho por el Gobierno de la Confederación Suiza a solicitud de cualquiera de las Partes.

El Presidente del Tribunal será designado de común acuerdo por las Partes dentro del plazo previsto en el inciso anterior. A falta de acuerdo tal designación será hecha por el Gobierno de la Confederación Suiza a solicitud de cualquiera de las Partes.

Designados todos los miembros, el Presidente los convocará a una sesión a fin de declarar constituido el Tribunal y adoptar las demás acuerdos que sean necesarios para su funcionamiento. La sesión se celebrará en el lugar, día y hora que el Presidente señale y en ella será aplicable lo *dispuesto en el artículo 34° del* presente anexo.

ARTICULO 26°

Las vacantes que puedan producirse por muerte, renuncia o cualquier otra causa serán cubiertas en la siguiente forma:

Si la vacante fuera la de un miembro del Tribunal nombrado por una sola de las Partes, dicha Parte la llenará a la brevedad posible y, en todo caso, dentro del plazo de treinta días desde que la otra Parte le invite por escrito a hacerlo.

Si la vacante fuera la de uno de los miembros del Tribunal nombrado de común acuerdo, la vacante se llenará dentro del plazo de sesenta días desde que una de las Partes invite por escrito a la otra a hacerlo.

Si dentro de los plazos indicados en los incisos anteriores no se hubiesen llenado las vacantes referidas, cualquiera de las Partes podrá solicitar al Gobierno de la Confederación Suiza que proceda a hacerlo.

ARTICULO 27°

En caso de no llegarse a celebrar el compromiso para someter la controversia al Tribunal Arbitral dentro del plazo de tres meses contados desde su constitución, cualquiera de las Partes podrá someterle la controversia por solicitud escrita.

ARTICULO 28°

El Tribunal adoptará sus propias reglas de procedimiento, sin perjuicio de aquellas que las Partes pudieren haber convenido en el compromiso.

ARTICULO 29°

El Tribunal Arbitral tendrá facultades para interpretar el compromiso y pronunciarse sobre su propia competencia.

ARTICULO 30°

Las Partes brindarán su colaboración a la labor del Tribunal Arbitral y le procurarán todos los documentos, facilidades e informaciones útiles. Asimismo, le permitirán que proceda en sus respectivos territorios a la citación y audiencia de testigos o peritos y a la práctica de inspecciones oculares.

ARTICULO 31°

El Tribunal Arbitral tendrá la facultad de ordenar medidas provisionales tendientes a salvaguardar los derechos de las Partes.

ARTICULO 32°

Cuando una de las Partes en la controversia no comparezca ante el Tribunal o se abstenga de hacer la defensa de su caso, la otra Parte podrá pedir al Tribunal que prosiga las actuaciones y dicte sentencia. Las circunstancias de que una de las Partes se encuentre ausente o no comparezca no será obstáculo para llevar adelante las actuaciones ni para dictar setencia.

ARTICULO 33°

El tribunal Arbitral decidirá conforme al derecho internacional, a menos que las Partes hubieren dispuesto otra cosa en el compromiso.

ARTICULO 34°

Las decisiones del Tribunal Arbitral se adoptarán por mayoría de sus miembros. La ausencia o abstención de uno o dos de sus miembros no será impedimento para que el Tribunal sesione o llegue a una decisión. En caso de empate, decidirá el voto del Presidente.

ARTICULO 35°

La Sentencia del Tribunal será motivada. Mencionará los nombres de los miembros del Tribunal Arbitral que hayan participado en su adopción y la fecha en que se haya dictado. Todo miembro del Tribunal tendrá derecho a que se agregue a la sentencia su opinión separada o disidente.

ARTICULO 36°

La sentencia será obligatoria para las Partes, definitiva e inapelable. Su cumplimiento está entregado al honor de las Naciones signatarias del Tratado de Paz y Amistad.

ARTICULO 37°

La sentencia deberá ser ejecutada sin demora en la forma y dentro de los plazos que el Tribunal señale.

ARTICULO 38°

El Tribunal no cesará en sus funciones hasta que haya declarado que, en su opinión, se ha dado ejecución material y completa a la sentencia.

ARTICULO 39°

A menos que las Partes convengan otra cosa, los desacuerdos que surjan entre las Partes acerca de la interpretación o el modo de ejecución de la sentencia arbitral podrán ser sometidos por cualquiera de las partes a la decisión del Tribunal que la haya dictado.

A tal efecto, toda vacante ocurrida en el Tribunal será cubierta en la forma establecida en el artículo 26° del presente anexo.

ARTICULO 40°

Cualquiera de las Partes podrá pedir la revisión de la sentencia ante el Tribunal que la dictó siempre que se deduzca antes de haber vencido el plazo señalado para su ejecución, y en los siguientes casos:

1.— Si se ha dictado sentencia en virtud de un documento falso o adulterado.

2.— Si la sentencia ha sido en todo o en parte la consecuencia de un error de hecho, que resulte de las actuaciones o documentos de la causa.

A tal efecto, toda vacante ocurrida en el Tribunal será cubierta en la forma establecida en el artículo 26° del presente anexo.

ARTICULO 41°

Cada uno de los miembros del Tribunal Arbitral recibirá una compensación pecuniaria cuya cuantía será fijada de común acuerdo con las Partes, las cuales la sufragarán por mitades.

Cada una de las partes pagará sus propios gastos y la mitad de las expensas comunes del Tribunal.

Anexo N° 2

Navegación

Navegación entre el Estrecho de Magallanes y Puertos Argentinos en el Canal Beagle, y viceversa

ARTICULO 1°

Para el tráfico marítimo entre el Estrecho de Magallanes y puertos argentinos en el Canal Beagle, y viceversa, a través de aguas interiores chilenas, los buques argentinos gozarán de facilidades de navegación exclusivamente para el paso por la siguiente ruta:

Canal Magdalena, Canal Cockburn, Paso Brecknock o Canal Ocasión, Canal Ballenero, Canal O'Brien, Paso Timbales, Brazo Noroeste del Canal Beagle y Canal Beagle hasta el meridiano 68° 36' 38",5 longitud Oeste y viceversa.

La descripción de la ruta mencionada se señala en la Carta N° III adjunta.

ARTICULO 2°

El paso se realizará con piloto chileno, quien actuará como asesor técnico del Comandante o Capitán del buque.

Para la oportuna designación y embarque del piloto, la autoridad argentina comunicará al Comandante en Jefe de la Tercera Zona Naval chilena, por lo menos con cuarenta y ocho horas de anticipación, la fecha en que el buque iniciará la navegación.

El piloto ejercerá su función entre el punto cuyas coordenadas geográficas son: 54° 02',8 de latitud Sur y 70° 57',9 de longitud Oeste y el meridiano 68° 36' 38",5 de longitud Oeste en el Canal Beagle.

En la navegación desde o hacia la boca oriental del Estrecho de Magallanes, el piloto embarcará o desembarcará en el Puesto de Pilotos de Bahía Posesión en el Estrecho de Magallanes. En la navegación hacia o desde la boca occidental del Estrecho de Magallanes, embarcará o desembarcará en el punto correspondiente señalado en el inciso anterior. Será conducido hacia y desde los puntos citados anteriormente por un medio de transporte chileno.

En la navegación desde o hacia puertos argentinos en el Canal Beagle, el piloto embarcará o desembarcará en Ushuaia, y será conducido desde Puerto Williams hacia Ushuaia o desde este último puerto hacia Puerto Williams por un medio de transporte argentino.

Los buques mercantes deberán cancelar los gastos de pilotaje establecidos en el Reglamento de Tarifas de la Dirección General del Territorio Marítimo y de Marina Mercante de Chile.

ARTICULO 3°

El paso de los buques argentinos se hará en forma continua e ininterrumpida. En caso de detención o fondeo por causa de fuerza mayor en la ruta indicada en el artículo 1°, el Comandante o Capitán del buque argentino informará del hecho a la autoridad naval chilena más próxima.

ARTICULO 4°

En los casos no previstos en el presente Tratado, los buques argentinos se sujetarán a las normas del derecho internacional. Durante el paso dichos buques se abstendrán de realizar cualquier actividad que no esté directamente relacionada con el paso, como las siguientes: ejercicios o prácticas con armas de cualquier clase; lanzamiento, aterrizaje o recepción de aeronaves o dispositivos militares a bordo; embarco o desembarco de personas, actividades de pesca; investigaciones, levantamientos hidrográficos, y actividades que puedan perturbar la seguridad y los sistemas de comunicación de la República de Chile.

ARTICULO 5°

Los submarinos y cualesquiera otros vehículos sumergibles deberán navegar en la superficie. Todos los buques navegarán con luces encendidas y enarbolando su pabellón.

ARTICULO 6°

La República de Chile podrá suspender temporalmente el paso de buques en casos de impedimento a la navegación por causa de fuerza mayor y únicamente por el tiempo que tal impedimento dure. Tal suspensión tendrá efecto una vez comunicada a la autoridad argentina.

ARTICULO 7°

El número de buques de guerra argentinos que naveguen simultáneamente en la ruta descrita en el artículo primero no podrá exceder de tres. Los buques no podrán llevar unidades de desembarco a bordo.

Navegación entre Puertos Argentinos en el Canal Beagle y la Antártida, y viceversa; o entre Puertos Argentinos en el Canal Beagle y la zona económica exclusiva argentina adyacente al Límite Marítimo entre la República de Chile y la República Argentina, y viceversa

ARTICULO 8°

Para el tráfico marítimo entre puertos argentinos en el Canal Beagle y la Antártida, y viceversa; o entre puertos argentinos en el Canal Beagle y la Zona Económica Exclusiva argentina adyacente al límite marítimo entre la República de Chile y la República Argentina, y viceversa, los buques argentinos gozarán de facilidades de navegación para el paso a través de aguas interiores chilenas exclusivamente por la siguiente ruta:

Pasos Picton y Richmond siguiendo luego, a partir del punto fijado por las coordenadas 55° 21,0 de latitud Sur y 66° 41,0 de longitud Oeste, la dirección general del arco comprendido entre 090° y 180° geográficos verdaderos, para salir al mar territorial chileno; o cruzando el mar territorial chileno en dirección general del arco comprendido entre el 270° y 000° geográficos verdaderos, y continuando por los pasos Richmond y Picton.

El paso se realizará sin piloto chileno ni aviso.

La descripción de la mencionada ruta se señala en la carta N° III adjunta.

ARTICULO 9°

Se aplicarán al paso por la ruta indicada en el artículo anterior las disposiciones contenidas en los artículos 3°, 4° y 5° del presente Anexo.

Navegación hacia y desde el Norte por el Estrecho de Le Maire

ARTICULO 10°

Para el tráfico marítimo hacia y desde el norte por el Estrecho de Le Maire, los buques chilenos gozarán de facilidades de navegación para el paso por dicho Estrecho, sin piloto argentino ni aviso.

Se aplicarán al paso por esta ruta mutatis mutandis, las disposiciones contenidas en los artículos 3°, 4° y 5° del presente Anexo.

Régimen de Navegación, practicaje y pilotaje en el Canal Beagle

ARTICULO 11°

En el Canal Beagle, a ambos lados del límite existente entre el meridiano 68° 36' 38", 5 de longitud Oeste y el meridiano 66°, 25',0 de longitud Oeste señalado en la Carta N° IV adjunta, se establece el régimen de navegación, practicaje y pilotaje que se define en los artículos siguientes.

ARTICULO 12°

Las Partes acuerdan libertad de navegación para los buques chilenos y argentinos en el tramo indicado en el artículo anterior.

En el tramo indicado los buques mercantes de terceras banderas gozarán del derecho de paso con sujeción a las reglas que se establecen en el presente Anexo.

ARTICULO 13°

Los buques de guerra de terceras banderas que se dirijan a un puerto de alguna de las Partes, situado dentro del tramo indicado en el artículo 11° del presente Anexo, deberán contar con la previa autorización de dicha Parte. Esta informará a la otra del arribo o zarpe de un buque de guerra extranjero.

ARTICULO 14°

Las Partes se obligan recíprocamente a desarrollar, en el tramo indicado en el artículo 11° del presente Anexo, en las zonas que están bajo sus respectivas jurisdicciones, las ayudas a la navegación y a coordinar entre sí tales ayudas a fin de facilitar la navegación y garantizar su seguridad.

Las derrotas usuales de navegación se mantendrán permanentemente despejadas de todo obstáculo o actividad que pueda afectar la navegación.

Las Partes convendrán sistemas de ordenamiento de tráfico para la seguridad de la navegación en las áreas geográficas de difícil paso.

ARTICULO 15°

Los buques chilenos y argentinos no están obligados a tomar piloto en el tramo indicado en el Artículo 11° del presente Anexo.

Los buques de terceras banderas que naveguen desde o hacia un puerto situado en dicho tramo, deberán cumplir el Reglamento de Pilotaje y Practicaje del país del puerto de zarpe o de destino.

Cuando dichos buques naveguen entre puertos de una u otra parte cumplirán el Reglamento de Pilotaje de la Parte del puerto de zarpe y el Reglamento de Practicaje de la Parte del puerto de arribo.

ARTICULO 16°

Las partes aplicarán sus propias reglamentaciones en materia de Practicaje en los puertos ubicados en sus respectivas jurisdicciones.

Los buques que utilicen pilotos izarán la bandera del país cuyo reglamento estén aplicando.

Todo buque que utilice los servicios de pilotaje y practicaje deberá pagar los derechos correspondientes a ese servicio y todo otro gravámen que exista a este respecto en la reglamentación de la Parte que efectúe el pilotaje y practicaje.

Las Partes brindarán a los pilotos y prácticos las máximas facilidades en el cumplimiento de su misión. Dichos pilotos o prácticos podrán desembarcar libremente en los puertos de una u otra parte.

Las Partes procurarán establecer normas concordantes y uniformes para el pilotaje.

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