

of action to resolve the Cyprus problem", given its stated view that the status quo "is unacceptable". This was taken, by such analysts, to mean that if the Turkish Cypriots continued to be intransigent the Security Council would have no option but to "impose" its preferred solution. As ever when such scenarios were imagined, however, the attitude of the US Government was seen to be crucial, and there were few signs of it being any more ready now than in the past to twist the Turks' arm into accepting a settlement they did not like. Optimists among the Greek Cypriots saw the US presidential election victory of Governor Clinton as potentially beneficial for their cause. The more pessimistic thought it unlikely that there would be any major shift under Clinton from established US policy priorities in the Near East, including close alliance with Turkey.

1. Alan J. Day, editor of the Europe section of *Border and Territorial Disputes* (the third edition of which was published by Longman in November 1992), visited the divided island of Cyprus in July 1992 and here gives an account, placed in historical context, of the difficult quest for a political settlement of the Cyprus question.

The "Laguna del Desierto" Case between Argentina and Chile.

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Argentina and Chile offer a new possibility for the development of case law in boundary matters. They have decided to refer to arbitration the last problem of demarcation in the Cordillera of the Andes, an issue which the Governments were unable to solve by negotiations.

Indeed, as a result of the emergence of democracy in both of these South American countries, a new era of cooperation has fostered the resolution of twenty-three of the twenty-four pending boundary questions. Twenty-two of these were minor disputes involving demarcation along the whole Cordillera of the Andes. The twenty-third remaining question was resolved by a Treaty providing for the delimitation of the zone between Mount Fitz Roy and peak Daudet. This treaty has been signed by the Presidents of both Republics and is currently subject to ratification. Finally the Parties agreed to submit to arbitration the demarcation in the region called "Laguna del Desierto"², the last pending issue between Argentina and Chile.

Four boundary disputes between Argentina and Chile have been adjudicated since the conclusion of the Treaty of 1881, which adjusted the entire common boundary comprising 5,000 km., one of the largest in the world. On March 24, 1899, a Commission, by decision of the Umpire Mr. William Buchanan, Envoy Extraordinary and Minister Plenipotentiary of the United States in the Argentine Republic, determined the boundary line in the region known as the "Puna de Atacama"³. On November 20, 1902, King Edward VII made an Award determining certain parts of the boundary, mainly in the Southern Andes⁴. On December 9, 1966, Queen Elizabeth II gave a decision, based on the Report of the Court of Arbitration appointed by Her Majesty's Government and presided over by Lord McNair, specifying the course of the boundary in the sector between boundary posts 16 and 17 (this dispute is known as the "Rio Encuentro" in Argentina and as the "Rio Palena" in Chile)⁵. Queen Elizabeth II made a further award by Declaration of 18 April 1977, which endorsed the decision of the Court of Arbitration presided over by Sir Gerald Fitzmaurice, relating to the region of the Beagle Channel.⁶

The region of "Laguna del Desierto", approximately 530 km², is located between the southern shore of Lake San Martin and Mount Fitz Roy in Patagonia. The Treaty of 1881 stipulated that the boundary between Argentina and Chile was the Cordillera of the Andes as far as 52° South and provided further that the frontier line shall run in that extent along the most elevated crests of the mountains passing between the sources of the streams flowing down to either side. According to a Protocol to this treaty, signed on May 1, 1893, it was agreed that the Argentine Republic would hold in perpetuity all territory to the east of the line of the highest peaks which divide the waters, while the Republic of Chile would hold in perpetuity all territory to the west of that line. The assumption that the line of the highest peaks always coincided with the Atlantic/Pacific watershed was to prove an insuperable obstacle to complete agreement in zones where they did not in fact coincide. In order to achieve a result acceptable to both sides, the Arbitral Award of 1902 followed in some zones the highest peaks, in others the continental watershed, and in yet others the local watershed, without taking into account the positions of either Argentina or Chile. As far as the area now in dispute is concerned, the Report of the tribunal appointed by the Arbitrator states that the boundary shall follow the median line of Lake San Martin southwards as far as a point opposite the spur which terminates on the southern shore of the Lake in longitude 72° 47'W. (landmark No. 62), whereafter the boundary shall be drawn to the foot of this spur and ascend the local water-parting to Mount Fitz Roy and thereafter to the continental water-parting to the north-west of Lake Viedma. In 1903 British Officers were appointed to the Demarcation Commission. Captain H.L. Crosthwait, of the Royal Engineers, erected only landmark No. 62 and did not cross the zone, since, according to his report, he was able to see Mount Fitz Roy from a distance of no less than 120 km.

Both Parties agree that from landmark No. 62 the boundary line runs between the rivers Obstáculo and Ortíz de Rosas, following a watershed of 10 km of extension, to a height of 1707 m. Here discrepancies arose in 1957, when Chile produced new maps which challenged the status quo.

Argentina maintains that the local water-parting - which coincides in this area with the continental one, passes the peak Gorra Blanca and thereafter follows the Cordon Marconi to Mount Fitz Roy. From this point, the line follows another local water-parting until reaching the continental watershed in latitude 49°12', which represents a point of the boundary already agreed by the experts of both sides in 1898.

Chile, on the other hand, considers that the local water-parting cannot coincide with the continental one. It argues that the boundary line should follow another local water-parting in Cordon del Bosque, east of Laguna del Desierto. Thereafter it should cross the river known as De Las Vueltas in Argentina and the Gatica in Chile, as well as a tributary thereof, the River Eléctrico, in order to reach Mount Fitz Roy.

Laguna del Desierto



According to the Agreement for Arbitration signed by both Foreign Ministers in Santiago on October 31, 1991, the Parties have requested that the arbitral tribunal decide the course of the boundary line in the zone between the landmark No. 62 and Mount Fitz Roy, through “*the interpretation and fulfilment of the 1902 Award, in accordance with international law*”.

The similarities of this case with the *Encuentro/Palena Case* need not be detailed here. Nevertheless, some distinctions do exist. In 1966, the Arbitrator was also directed to decide on the basis of the 1903 Award, but was required first to determine whether the course of the boundary in the zone then in dispute remained unsettled since the aforesaid Award. Additionally, as regards the disputed zone of Encuentro/Palena, it was a shared belief that a geographical error was made in 1902-1903, although by 1966 the Parties did not agree on what the error was; whereas in the area now in dispute no error was made either by the Award or by the Commissioners charged to demarcate the boundary.

This agreement for arbitration was pursuant the Treaty of Peace and Friendship signed on November 29, 1984, which resulted from the mediation by the Holy See, which in turn arose after the rejection by Argentina of the 1977 Award on the Beagle Channel. The 1984 Treaty set up a complete machinery for the settlement of all type of disputes, through conciliation and arbitration procedures.

The Arbitral Tribunal is composed of Reynaldo Galindo Pohl (El Salvador), Rafael Nieto Navia (Colombia), Pedro Nikken (Venezuela), Julio Barberis (Argentina) and Santiago Benadava (Chile). The tribunal elected Mr. Nieto Navia as its President. The Registrar is Minister Rubem

Amaral Jr., from Brazil. This is the first time that the Parties will submit a dispute to an entire Latin-American Court. The seat of the arbitration is Rio de Janeiro, at the headquarters of the Inter-American Juridical Committee. The working language is Spanish, although pleadings might be possible in another language. The written proceedings will consist of Memorials and Counter-Memorials, the time-limits of which have been fixed for September 1, 1992 and June 1, 1993 respectively. Oral proceedings shall commence on October 1, 1993 and the tribunal will endeavour to make its decision no later than March 1, 1994. The Award shall fix by whom, in what manner and the time within which it shall be executed, including any demarcation which the Award may direct, and the Arbitral Tribunal shall not be *functus officio* until it has approved any such demarcation and has notified the Parties that in its opinion the Award has been executed.

Argentina is represented by Ambassadors Susana Ruiz Cerrutti, Federico Mirré and Horacio Basabe. Its counsel are Judge José María Ruda (former President of the International Court of Justice), Professor Daniel Bardonnet (University of Paris) and Professor Julio González Campos (University of Madrid). The Chilean Agents are Ambassadors Javier Illanes and Eduardo Vio, and Counsel for Chile are Professor Prosper Weil (University of Paris) and Elihu Lauterpacht (C.B.E., Q.C.; Fellow of Trinity College, Cambridge). Chilean Foreign Ministry has also appointed a national commission of jurists, to provide advice for the elaboration of the Chilean case.

Although appearing to be a rather minor dispute, there have occurred various incidents of different kinds in the zone of Laguna del Desierto since the sixties, one of which ended by an exchange of fire which caused the death of a Chilean carabinero in 1965. Since this kind of dispute can lead easily to a threat to the peace and international security, it is to be hoped that the Argentine-Chilean example of peaceful settlement of disputes, as signalled by these recent agreements, will be the trend not only between these Countries but for the settlement of the increasing boundary and territorial disputes all over the world.

1. Assistant Professor, University of Geneva.
2. "Presidential Declaration on Limits", Buenos Aires, 2 August, 1991.
3. British and Foreign State Papers, Vol. 96: 379.
4. United Nations, Report of International Arbitral Awards, Vol. IX: 29.
5. Ibid, Vol. XVI: 109.
6. Award of Her Britannic Majesty's Government, London, H.M.S.O., 1977.