

# **The Geopolitical Organization of Antarctica, 1900-1961: The Case for a Revisionist Analysis**

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It is well-known amongst those seeking political change that the values and attitudes of a society are in large measure shaped by that society's understanding of its past. Hence, the extent of interest in the history of gender relations; the growing field of environmental history, and the revisionist historiographical portrayal of the European invasion of Australia. But an historiographical interpretation is not conveyed solely via history texts. It is also passed on through debate on contemporary issues in other fields such as politics, economics, and law. Law, in the domestic as well as the international arena, acts as an agent of legitimation; sanctioning certain behaviours and condemning others. Law is integral to a social system, both reflecting the power structure within which it is created and functioning to stabilise that social order through its resistance to change. Thus current legal dialogue necessarily incorporates debate regarding the interpretation of past events.

Legal discussion regarding the geopolitical organisation of Antarctica affords a good example. Antarctica has generally been regarded as a peripheral issue in international politics. The literature on Antarctica as an international political issue in the first half of the century, up to ratification of the Antarctic Treaty in 1961,<sup>1</sup> remains relatively small. Even so, there is a readily distinguishable dominant historiographical interpretation of those

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<sup>1</sup> The Antarctic Treaty was signed in Washington on 1 December 1959 and entered into force on 23 June 1961 after ratification by all signatory states.

years in the English-language literature and this is, in large part, contained within political and legal accounts of the current situation in respect of national territorial rights in Antarctica.

Prior to the Antarctic Treaty, the legal situation regarding the geopolitical organisation of Antarctica and the status of asserted national territorial rights was confused. Article IV of the Antarctic Treaty "froze" this situation, by providing that

1. Nothing contained in the present Treaty shall be interpreted as:
  - (a) A renunciation by any Contracting Party of previously asserted rights of or claims to territorial sovereignty in Antarctica;
  - (b) A renunciation or diminution by any Contracting Party of any basis of claim to territorial sovereignty in Antarctica which it may have whether as a result of its activities or those of its nationals in Antarctica, or otherwise;
  - (c) Prejudicing the position of any Contracting Party as regards its recognition or non-recognition of any other State's right of or claim or basis of claim to territorial sovereignty in Antarctica.
2. No acts 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.<sup>2</sup>

Article IV did not solve the legal confusion but merely placed the issue in abeyance. This has meant that, even though the question of national sovereign rights in Antarctica since 1961 has ostensibly been dormant: it has remained, underpinning debate on all other Antarctic issues; "territorial control and sovereignty stand out as the major political problems in the Antarctic".<sup>3</sup>

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<sup>2</sup> "The Antarctic Treaty done at Washington on 1 December 1959", 1 December 1959, in *Antarctica and International Law: A collection of inter-state and international documents*, W M Bush, London, Ocean, 1982, Vol I, p 47.

<sup>3</sup> Finn Sollie, "Polar Politics: Old Games in New Territories, or new patterns in political development?" (Autumn 1984) 39, 4 *International Journal* 710.

It is in descriptions of the legal *status quo* which was frozen by the Treaty that the dominant historiographical interpretation of the pre-Treaty treatment by the international community of the issue of the geopolitical organisation of Antarctica is most frequently enunciated. The most concise exposition of what could be termed the "new imperial" interpretation of these years is to be found in simple statements such as that seven states have made Antarctic territorial claims in the twentieth century. The thinking behind the approach to the issue of the geopolitical organisation of Antarctica via the process of "claim-making" is that of nineteenth century colonialism.

During the era of the "new imperialism" from about 1870 to 1910, any territory whose inhabitants did not have an organised government capable of dealing with European governments in European terms was considered *nullius*<sup>4</sup> and so available to be "claimed" as an overseas extension of a European state. A number of European states, foremost amongst which were Britain, France, and Germany, engaged in a widespread "land grab". Territory was regarded as having been acquired when it was under the "effective occupation" of a certain state. The rule of effective occupation was confirmed in the "General Act" of the Conference of Berlin in 1885.<sup>5</sup>

Beck, whose book, *The International Politics of Antarctica*<sup>6</sup> is one of the key English-language historical works on the pre-Treaty period of Antarctic politics, provides a fuller exposition of the new imperial, colonial perspective. He recounts how the United Kingdom made the first substantial claims in 1908 and 1917. The desire on the part of the United Kingdom for control of the entire continent was thwarted in 1924 by a French claim to Adélie Land. In 1923, Britain announced British control under New Zealand administration, over the Ross Sea sector. The Australian Antarctic Territory was established in 1933 which meant that the United Kingdom now asserted

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<sup>4</sup> See John Westlake, *Chapters on the Principles of International Law*, Cambridge University Press, Cambridge, 1894, reprinted Fred B Rothman & Co, Littleton Colorado, 1982, p 141.

<sup>5</sup> The Signatory Powers of the Berlin Act agreed to "recognise the obligation to insure the establishment of authority in regions occupied by them on the coasts of the African Continent sufficient to protect existing rights, and, as the case may be, freedom of trade and of transit under the conditions agreed upon." Art. XXXV, 'General Act of the Conference of Berlin, relative to the Development of Trade and Civilisation in Africa; the free Navigation of the Rivers Congo, Niger, &; the Suppression of the Slave Trade by Sea and Land; the occupation of Territory on the African Coasts, & Signed at Berlin, 26th February, 1885', in E. Hertslet, *The Map of Africa by Treaty*, 3rd ed. rev. and completed to the end of 1908 by R W Brant & H L Sherwood, HMSO, London, 1909, p 484.

<sup>6</sup> Peter Beck, *The International Politics of Antarctica*, Croom Helm, London, 1986.

rights to some two-thirds of the Antarctic continent. Although Norway had participated in debate over claims during the 1920s and 1930s, it was not until 1939 that Norway made its own claim. The United States refused to recognise any of these territorial claims and was never to make one of its own.

In the 1940s, according to Beck, the situation became confused by the announcement of Argentine and Chilean Antarctic claims, both of which overlapped the territory claimed by the United Kingdom. Tension increased in the post-War years and various acts were undertaken designed to reinforce and publicise the sovereignty claims. The United Kingdom, anxious to avoid problems in Antarctica, proposed to Argentina and Chile in 1947 that the matter be taken to the International Court of Justice. The suggestion was refused, as it was, when repeated on several occasions. The 1940s and early 1950s witnessed a relatively serious phase in Anglo-Argentine relations during which the so-called Hope Bay incident of 1952 occurred. This involved Argentina attempting to prevent reconstruction of a British base. In 1953 an Argentine hut on Deception Island was destroyed by Britain.<sup>7</sup> It was this situation of conflicting claims that the Antarctic Treaty dealt with in such an ingenious way.<sup>8</sup>

Peterson, who has conducted a study of the international politics of Antarctica in terms of regime theory, commented that "[t]he seven states clearly felt that Antarctica was *terra nullius* open to appropriation by whatever state might find and administer territory there".<sup>9</sup> Such a lump treatment of the actions of the seven states is not valid. While it might be the case that the United Kingdom, France, and Norway approached the issue of the geopolitical organisation of Antarctica as an extension of "new imperialism", this Eurocentric perspective of events fails to acknowledge the viewpoint of Argentina and Chile. Argentina and Chile have shared a perspective on the issue of the geopolitical organisation of Antarctica fundamentally different to that of the United Kingdom, Australia, New Zealand, France and Norway. Their interest has been virtually exclusively restricted to that portion of the continent opposite the South American mainland, inclusive of the Antarctic Peninsula. Both countries have

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<sup>7</sup> Beck, above, n 6, pp 35-36.

<sup>8</sup> The United States, the USSR, Belgium, Japan, and South Africa were also involved in the pre-Treaty negotiations and were original signatories of the Treaty.

<sup>9</sup> M J Peterson, *Managing the Frozen South: The Creation and Evolution of the Antarctic Treaty System*, University of California Press, Berkeley, 1988, p 36.

considered each other entitled to a section of the South American Antarctic, which they have at no time this century regarded as *terra nullius*. Whereas "new imperial" writers regard Argentina and Chile as having announced their "claims" in the 1940s, some understanding of the regional context within which Argentina and Chile were operating demonstrates that their actions can better be regarded in terms of proposals regarding the location of their mutual boundary in territory to which they considered themselves to have long since perfected their rights.

In order to demonstrate the need for a revisionist historiographical interpretation of the treatment by the international community of the issue of the geopolitical organisation of Antarctica in the years prior to the Antarctic Treaty, it is necessary to view the actions by Argentina and Chile in the 1940s within the context of their long-term attempt to designate a common boundary. As with the new imperial era of colonialism, this was a process that had begun well before the twentieth century.

### **Argentina and Chile as Successor States to Spain in South America**

The territory that was to become the modern states of Chile and Argentina came into contact with the European states system during the first wave of European overseas expansion of about 1400 to 1715. The first European sighting of South America appears to have been by Columbus on 1 August 1498.<sup>10</sup> At this time, there were no rules of international law governing European acquisition of overseas territory. Spain considered sanction for its expansion into the "new world" to have been provided by the Pope. By the bull, *Inter Caetera* of 3 May 1493 Pope Alexander VI declared that

we ... do ... give, grant, and assign forever to you and your heirs and successors, kings of Castile and Leon, all and singular the aforesaid countries and islands thus unknown and hitherto discovered by your envoys and to be discovered hereafter, provided however they at no time have been in the actual temporal possession of any Christian owner, together with all their dominions, cities, camps, places, and villages, and all rights, jurisdictions, and appurtenances of the same. And we invest you and your aforementioned heirs and successors

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<sup>10</sup> Gordon Ireland, *Boundaries, Possessions, and Conflicts in South America*, Octagon, New York, 1971, p 321.

with them, and make, appoint, and depute you lords of them with full and free power, authority, and jurisdiction of every kind ...<sup>11</sup>

On 4 May 1493 a revised bull specified even more clearly what territory could be claimed by Spain. It was that not under Christian rule, west of a line drawn from the Arctic pole to the Antarctic pole, one hundred leagues west of the Azores or Cape Verde Islands.<sup>12</sup> Spain and Portugal revised the line by the Treaty of Tordesillas concluded on 7 June 1494.<sup>13</sup> This moved the line 270 leagues to the west. It was agreed that all previously "undiscovered" lands west of a meridian 370 leagues west of the Cape Verde Islands would belong to Spain.<sup>14</sup>

Thus in the Americas, Spain claimed title to all territory it had discovered or that remained undiscovered within the limits specified by the papal bulls as revised by the Treaty of Tordesillas. This left no remaining land that could be regarded as *terra nullius*; it was simply up to Spain as to which land would be settled when. During the sixteenth century, Spain issued special decrees granting jurisdiction of territory to the conquerors and governors who went to the Americas. A number of these decrees specifically referred to territory south of the Strait of Magellan. On 24 January 1539 Emperor Charles V granted Pedro Sancho de la Hoy all territories to the south of the Strait of Magellan.<sup>15</sup> A Royal Edict of 29 May 1555 appointed Jeronimo de Alderete Governor of Chile; he was commanded to reconnoitre the lands around the Strait of Magellan.<sup>16</sup> Two years later, on the death of de Alderete, Francisco de Villagra was appointed Governor of Chile. He was also ordered to reconnoitre lands south of the Strait of Magellan, to inform the king of them and to consider:

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<sup>11</sup> Frances Gardiner Davenport, *European Treaties bearing on the History of the United States and its Dependencies to 1648*, Carnegie Institution of Washington, Washington, D.C., 1917, Vol 1, pp 62-63.

<sup>12</sup> "The Bull *Inter Caetera* (Alexander VI), May 4, 1493" in *European Treaties*, Davenport, Vol 1, pp 71-78.

<sup>13</sup> "Treaty between Spain and Portugal concluded at Tordesillas, June 7, 1494. Ratification by Spain, July 2, 1494". [Ratification by Portugal, September 5, 1494], in *European Treaties*, Davenport, Vol 1, pp 84-100.

<sup>14</sup> "The Bull *Inter Caetera* ... above, n 12, p 63.

<sup>15</sup> Luis H Mericq, *Antarctica: Chile's Claim*, National Defense University, Washington, D.C., 1987, p 90.

<sup>16</sup> Mericq, above, n 15, p 90.

that possession be taken in our name of the lands and provinces which fall within the demarcation of the Crown of Castille, putting there crosses and signs and making the necessary statements in witness thereof.<sup>17</sup>

Spanish rule in the colonies came under great strain following the Napoleonic invasion of Spain in 1808 and Ferdinand VII's loss of the Spanish throne. In 1810, the Spanish authorities were forced out of office in Chile and Buenos Aires. The Spanish forces in Chile were defeated by 1818; a new stable government was in place in 1833.<sup>18</sup> Its constitutional form was to last for over a generation.<sup>19</sup> The Argentine War for Independence began in Buenos Aires in May 1810 and ended with the defeat of the Spaniards in the high Andes of Peru in 1824.<sup>20</sup>

The new states in South America considered themselves to have inherited rights to the entire area of territory to which the Spanish monarch had claimed rights. Although the final political authority was no longer to be in Europe, but in the territory itself, much of the political structure was to remain. Geopolitical divisions were to derive from those of the colonial days. Chile emerged from the Captaincy-general of Chile which had existed within the Viceroyalty of Peru.<sup>21</sup> Argentina was to inherit the territorial unit that had been occupied by the Viceroyalty of the Rio de la Plata.

The successor states inherited the centralism that was so strong a feature of the Spanish Empire.<sup>22</sup> At the core of the new states were cities. Colonial society had been urban-dominated, cities having generally been located on the coast or within one hundred miles of the sea.<sup>23</sup> Distances between the urban centres and the periphery were vast. In the Argentina of 1810, less

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<sup>17</sup> Quoted in Mericq, above, n 15, p 91.

<sup>18</sup> Robert D Talbott, "The Chilean Boundary in the Strait of Magellan" (1956) 47 *The Hispanic American Historical Review* 520.

<sup>19</sup> Simon Collier, *Ideas and Politics of Chilean Independence 1808-1833*, Cambridge University Press, Cambridge, 1967, p xiii.

<sup>20</sup> J L Romero, *A History of Argentine Political Thought*, Stanford University Press, Stanford, 1963, p x.

<sup>21</sup> D Bushnell and N Macaulay, *The Emergence of Latin America in the Nineteenth Century*, OUP, New York, 1988, p 24.

<sup>22</sup> A Hennessy, *The Frontier in Latin American History*, University of New Mexico, Albuquerque, 1978, p 130.

<sup>23</sup> Jack Child, *Geopolitics and Conflict in South America: Quarrels Among Neighbours* (New York: Praeger, 1985), p. 9.

than 1 million people occupied a territory of more than 1 million square miles.<sup>24</sup>

Boundaries of the successor states as included in the national constitutions tended to be defined in terms of the previous Spanish divisions, but the limits expressed were very vague. The successor states had inherited the total area to which Spain had considered itself to have legal title, no *terra nullius* remained. There was therefore a movement to extend out from the nuclei as far as possible, to push the vague, or as yet non-existent, boundaries to their limits. It became an accepted principle that boundaries were to be determined according to their placement in 1810. This was represented by the South American legal doctrine of *uti possidetis, ita possideatis*.<sup>25</sup> The doctrine became established through its use in constitutions, treaties, and arbitral decision.<sup>26</sup> Its fundamental underlying assumption - that it was possible to determine the boundaries of the colonial administrative units as they were at the time of independence - was to prove erroneous.<sup>27</sup> Moreover, ecclesiastical and judicial administrative divisions had often overlapped, in many cases each had been of equal political importance,<sup>28</sup> and colonial authorities had often, even if not intentionally, exercised authority over territory beyond the official line of demarcation.

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<sup>24</sup> Romero, above, n 20, p xi.

<sup>25</sup> Literally, "as you possess, you may continue to possess"; generally abbreviated to *uti possidetis*. For background on usage of the term in Roman law and general international law prior to its use in South America, see Samuel Duran-Bachler, *The Latin American Doctrine of Uti Possidetis*, Thesis, The Graduate Institute of International Studies - Geneva, (1972) pp 23-29.

<sup>26</sup> This term derived from Roman law, in which it was used to refer to an edict of the *praetor* which was intended to preserve an existing state of possession, pending litigation. In its Latin American usage, though, possession was regarded as permanent. F C Fisher, "The Arbitration of the Guatemalan-Honduran Boundary Dispute" (1933) 27 *AJIL* 415. At first it was used to refer to the total inheritance of previously Spanish lands by the group of successor states, by which no *terra nullius* still existed. Duran-Bachler, *The Latin American Doctrine of Uti Possidetis*, p 157. The principle was recognised in a communication by the US Secretary of State William L Marcy to George M Dallas, United States Minister to Great Britain of 26 July 1856:

The United States regard it as an established principle of public law and of international right, that when a European Colony in America becomes independent, it succeeds to the territorial limits of the Colony as it stood in the hands of the parent country.

Quoted in Duran-Bachler, *The Latin American Doctrine of Uti Possidetis*, p 123.

<sup>27</sup> Fisher, above, n 26, p 416.

<sup>28</sup> R N Burr, *By Reason or Force: Chile and the Balancing of Power in South America, 1830-1905*, University of California Press, Berkeley, 1968, p 5.



While the lack of border definition in Spanish South America was of no immediate concern at independence it was a cause of much potential and actual conflict over the next century. During the nineteenth and early twentieth centuries, intra-South American relations were dominated by the fixing of boundary lines such that "the history of these disputes would, to a considerable extent, comprise a diplomatic history of Latin-America".<sup>29</sup>

### Determining the Argentine-Chilean Boundary

The Chilean-Argentine frontier was generally unmapped and uninhabited prior to independence.<sup>30</sup> During the nineteenth century, Argentina and Chile engaged in a series of negotiations regarding different portions of the mutual boundary. While the negotiations were often complex and the issues inter-related, some attempt will be made to deal with one section at a time. This process provides the context within which to place the actions of both states in relation to Antarctica in the 1940s.

The first section of the boundary to arouse concern was that in the Strait of Magellan. The Strait was discovered in 1521 and in colonial days there was considerable interest in gaining control of the passages to prevent disruption to trade routes by rival English, French and Dutch privateers. In 1584 Spain attempted to establish two colonies in the Straits of Magellan, but both disappeared without a trace.<sup>31</sup>

After independence, Chile and Argentina also held strong views as to the geopolitical importance of the Strait.<sup>32</sup> In the 1830s, Chile became concerned at English activity in the area, and in 1842 took formal possession of the Strait of Magellan and founded a settlement at Punta Arenas on Brunswick Peninsula. Chile also sought formal recognition by the Tehuelche tribe and signed a treaty of friendship and commerce with it on 20 March 1844.<sup>33</sup> The treaty referred to territory to which Argentina laid claim, and

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<sup>29</sup> L H Woolsey, "Boundary Disputes in Latin-America" (1931) 25, 2 *AJIL* 324.

<sup>30</sup> Claudio Véliz, *Latin America and the Caribbean: A Handbook*, Anthony Blond, London, 1968, p 405.

<sup>31</sup> H Pittman, "From O'Higgins to Pinochet: Applied Geopolitics in Chile" in *Geopolitics of the Southern Cone and Antarctica*, P Kelly and J Child (eds), Lynne Reiner, London, 1988. pp 123-183.

<sup>32</sup> N Caviedes, "The Emergence and Development of Geopolitical Doctrines in the Southern Cone Countries", in *Geopolitics of the Southern Cone and Antarctica*, P Kelly and J Child (eds), Lynne Reiner, London, 1988, pp 13-29.

<sup>33</sup> R D Talbot, "The Chilean Boundary in the Strait of Magellan" (1967) 47, 4 *Hispanic American Historical Review* 521.

when news of the remote settlement reached Argentina two years later, Argentina submitted a strong protest. In the Note of December 1847, Argentina insisted that its sovereignty extended to the eastern summit of the Andes as far as Cape Horn. It was maintained that this position was lent support by the fact that Patagonia had been placed under the jurisdiction of Buenos Aires when the Viceroyalty of Rio de la Plata was established.

During 1848 a number of Notes were exchanged regarding ownership of Patagonia, the Strait, and certain valleys in the Andes. In a Note of 30 August 1848 Chile suggested the two governments exchange proof of their titles and appoint a joint commission to mark the boundary, which would then be subject to ratification by both nations.<sup>34</sup> Argentina replied it was unable to enter into negotiations at that time but would do so as soon as possible; Argentina would at a later date send a minister to Chile with full instructions.<sup>35</sup>

In 1852 Argentina published the result of a commissioned study by Pedro de Angelis on the question. Chile then produced one of its own to refute the Argentine arguments. The response, by Amunátegui, argued not only the Strait of Magellan but Patagonia as well were Chilean possessions.<sup>36</sup> The proposed visit of the Argentine minister did not take place until 1855. No agreement was reached regarding the boundary, but the two countries did sign a Treaty of Peace, Friendship, Commerce, and Navigation. This agreement, the first Chilean-Argentine treaty to deal with their mutual border, stated the boundary should be as it was in 1810. Article XXXIX read:

Both Contracting Parties recognise as the limits of their respective territories those which they possessed as such at the time of their separation from the Spanish dominion in 1810, and they agree to reserve the questions which have arisen, or may hereafter arise upon this matter, in order to discuss them pacifically and amicably afterwards, without ever having recourse to violent measures, and in case a complete settlement should not be arrived at, to submit the decision to the arbitration of a friendly nation.<sup>37</sup>

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<sup>34</sup> Talbott, above, n 33, p 521.

<sup>35</sup> Talbott, above, n 33, p 522.

<sup>36</sup> Burr, above, n 28, p 88.

<sup>37</sup> "Treaty of Peace, Friendship, Commerce, and Navigation, between the Argentine Confederation and the Republic of Chile" 49 *BFSP* 1200-1213. Ratifications were exchanged on 29 April 1856.

It was thought a peaceful commercial relationship could best be promoted if their respective positions regarding a mutual boundary were, in effect, frozen. They made no attempt to specify where the boundary was located but simply agreed to reserve the question for consideration at a later date,<sup>38</sup> presumably when the issue was of greater moment. This decision was effectively "entrenched" by Article 40,<sup>39</sup> which provided for the denunciation only of those clauses dealing with commerce and navigation.

Over the years following the conclusion of this agreement, both sides made a number of proposals and counter-proposals on the question of the boundary in the Strait. In 1866, Chile put forward a compromise by which Chile receive that portion of Patagonia lying south and west of a line running northward from Gregorio Bay to 50° latitude and along the eastern range of the cordillera to Reloncaví Inlet and all of Tierra del Fuego. Argentina rejected this compromise which involved accepting Chilean rights to some of Patagonia.<sup>40</sup> In 1872 Argentina proposed a line starting at Peckett Bay and running westward to the cordillera of the Andes. This would have given Argentina Patagonia and the eastern part of the Strait. Chile rejected the proposal which effectively would have left Chile with only the western strait area.<sup>41</sup> A Chilean counter-proposal drew the boundary along the forty-fifth parallel from the Atlantic to the Andes which would have provided for a more equitable distribution of the disputed territory, Argentina was to have most of Patagonia while Chile would receive southern Patagonia and the Strait.<sup>42</sup> The unsuccessful negotiations came to an end when Argentina agreed to a Chilean suggestion that arbitration be implemented, as had been agreed to in the Treaty of 1856.

During 1875-1876, incidents took place which led each side to accuse the other of violating the boundaries as they were in 1810. Further attempts at negotiation were made between 1876 and 1881.<sup>43</sup> In July 1876, Chilean and Argentine representatives held a series of talks to produce either a boundary or an arbitration agreement. In January 1877, diplomats of each side constructed a six-point agreement to be used as a basis for arbitration.

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<sup>38</sup> "Beagle Channel Arbitration. Report and Decision of the Court, February 18, 1977. Pt II. Decision. II: Preliminary Historical Considerations" (1978) 17 *International Legal Materials* 645-6.

<sup>39</sup> Beagle, above, n 38, p 646.

<sup>40</sup> Talbott, above, n 33, p 523.

<sup>41</sup> Talbott, above, n 33, p 523.

<sup>42</sup> Talbott, above, n 33, pp 523-4.

<sup>43</sup> "Beagle Channel ... above, n 39, p 646.

Point Six provided the principle to act as the basis for delimitation of the entire boundary: "From 50° northward the boundary of both countries shall be the summit of the Cordillera of the Andes whether the most culminating parts are selected, or the water parting line."<sup>44</sup> This was not to prove acceptable to the Chilean foreign minister because it required Chile to surrender its claim to Patagonia.

Further unsuccessful negotiations took place between 1876 and 1879. In 1881, the United States offered to mediate and by July, an agreement had been reached regarding the terms of a boundary treaty. By treaty of 23 July 1881,<sup>45</sup> Argentina accepted Chilean sovereignty over the Straits of Magellan in return for Chile giving up its claim to Patagonia. It was ratified and exchanged on 22 October 1881.<sup>46</sup> This treaty had a stabilising influence, but did not end the controversy. Further negotiation related to the interpretation of the treaty, the chief point of contention being Article I.

Article One specified that the limit between Chile and the Argentine Republic was the Cordillera of the Andes from the North to latitude 52° South:

The frontier-line shall follow the crest of the Cordillera, which divides the waters, and will pass between the sources thereof on either side. Any doubts due to the existence of valleys formed by the forking of the Andes, where the line dividing the waters is not clearly determined, shall be amicably settled by two experts, one named by either side. In case of disagreement a third expert, named by both, shall be called upon to decide.<sup>47</sup>

Article I permitted of two interpretations since the line formed by the highest peaks did not always coincide with the watershed. Nor was it clear as to the relationship between this stipulation and the phrase *divortia aquarum* used in Article II. Argentina maintained that the line was to be drawn between the highest peak in the principal chain of the Andes.<sup>48</sup> Chile, on the other hand, advocated the "*divortium aquarum*" line, arguing that the line was to be

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<sup>44</sup> Talbott, above, n 33, p 525.

<sup>45</sup> Ratifications were exchanged on 22 October 1881.

<sup>46</sup> Talbott, above, n 33, p 529.

<sup>47</sup> "Treaty between the Argentine Republic and Chile, defining the Boundaries between the two Countries (Tierra del Fuego, Neutrality of Straits of Magellan, &c.). - Signed at Buenos Ayres, July 23, 1881." 72 *BFSP* 1103-1105.

<sup>48</sup> Burr, above, n 28, p 195.

drawn between the highest peaks that divided the waters.<sup>49</sup> The difference between the two interpretations was some 94 000 square kilometres.

Articles II and III dealt with the southern section of the boundary. Neither side gained its ultimate objective of control over all of Patagonia as well as the Strait of Magellan and the islands and waterways south of the Strait, but the fact that a compromise was reached meant that a potential war was avoided. Chile was allocated control over the Strait; a narrow strip of land to its north and waterways to the south, except for a portion of Tierra del Fuego Island and adjoining areas. Argentina acquired the bulk of Patagonia.<sup>50</sup>

Article Six provided for the arbitration of any future disputes:

Any question unfortunately arising between the two countries, whether relative to this transaction or from any other cause, shall be submitted to the decision of a friendly Power.<sup>51</sup>

Negotiations for demarcation of the line according to the treaty of 1881 were inconclusive until in 1888 a convention was signed to establish a commission of experts to conduct the demarcation of the boundary line. There were to be many problems with the demarcation. The following year, Chile sought a written Argentine commitment that it would invalidate land grants in territories proven to be Chilean and:

in points which are considered near to the *divortium aquarum*, the establishment of colonies will not be permitted nor will any act of dominion be exercised by either Chile or Argentina until the experts establish to which ... these territories belong.<sup>52</sup>

Argentina refused the request.

Following a deadlock between members of the commission regarding the interpretation of the 1881 treaty, Argentina suggested in 1892 that the foreign ministers of each country meet at Mendoza to revise the treaty. Chile refused.<sup>53</sup> Tension mounted almost to the stage of military confrontation.

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<sup>49</sup> Burr, above, n 28, p 185.

<sup>50</sup> Michael A Morris, *The Strait of Magellan*, Martinus Nijhoff, Dordrecht, 1989, p 60.

<sup>51</sup> "Treaty between the Argentine Republic and Chile" Signed at Buenos Ayres, 23 July 1881, 72 *BFSP* 1104.

<sup>52</sup> Quoted in Burr, above, n 28, p 186.

<sup>53</sup> Burr, above, n 28, p 197.

Then in 1893 a protocol to the treaty of 1881 was signed. This attempted to clarify the meaning of principles contained in the treaty, for example, that Argentina should have in perpetuity, all property to the east of the line of the most lofty peaks of the cordillera of the Andes which divide the waters, and Chile those to the west.<sup>54</sup> There were still to be technical difficulties involved in actually determining the line on the ground.<sup>55</sup>

A further protocol was signed at Santiago on 6 September 1895 by which a time frame was specified for the commencement of the demarcation of the boundary by mixed subcommissions of assistant experts.<sup>56</sup> But the execution of the agreement was still not possible whilst the two countries differed over the relationship of the highest peaks to the watershed. In 1896, a further boundary agreement was signed,<sup>57</sup> stipulating the boundary in the cordillera of the Andes would be extended north as far as 23° South latitude and problems in demarcating the boundary south of 26° 52'45" were to be submitted for arbitration to Her Britannic Majesty in accordance with the treaty of 23 July 1881 and the protocol of 1893. This was to take place after consideration on the spot by a commission named by the arbitrator.<sup>58</sup> On 1 October 1898 representatives from each country reached agreement on four stretches of the boundary line, while four other stretches remained in dispute.<sup>59</sup> On 23 November 1898, Chile and Argentina took formal steps to submit the dispute to Queen Victoria for arbitration. After her death on 22 January 1901, King Edward VII was accepted as arbiter in her place, and by a convention of 28 May 1902 Chile and Argentina requested that he appoint a commission to fix on the ground the boundaries that he awarded in his decision.<sup>60</sup>

Chilean-Argentine relations were extremely tense during this period, and the handing down of the award was hastened, in part, to avoid the possibility of military confrontation. By the award of 20 November 1902,<sup>61</sup> King Edward

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<sup>54</sup> Ireland, above, n 10, p 24.

<sup>55</sup> Talbott, above, n 33, p 530.

<sup>56</sup> Ireland, above, n 10, p 24.

<sup>57</sup> "Boundary Agreement between the Governments of Chile and the Argentine Republic - Signed at Santiago, April 17, 1896" 88 *BFSP* 553-554.

<sup>58</sup> S W Boggs, *International Boundaries - A study of Boundary Functions and Problems*, Columbia University Press, New York, 1940, p 87.

<sup>59</sup> Ireland, above, n 10, p 26.

<sup>60</sup> Ireland, above, n 10, p 26.

<sup>61</sup> "Award by His Majesty King Edward VII in the Argentine-Chile Boundary Arbitration. - London, November 20, 1902" (1901-2) 95 *BFSP* 162-164.

VII provided a compromise of the two state's positions. The larger part was given to Chile (54 000 square km versus 40 000 square km), but the richer to Argentina.<sup>62</sup>

Meanwhile, the Puna de Atacama portion of the boundary, in the north near Bolivia, had also been a source of tension. After the breakup of the Bolivia-Peru federation in 1839, Chile had engaged in the progressive occupation of Atacama.<sup>63</sup> In the 1879-83 war, Chile defeated Peru and Bolivia, thereby considerably extending the frontier northwards to include Antofagosta.<sup>64</sup> Chile and Argentina agreed in 1898 that a ten day international conference be held regarding the Puna de Atacama in the North. The conference was to consist of ten delegates, five designated by each country. If no agreement were to be reached within three sessions, a demarcation commission, consisting of one member from each country and the then United States Minister to Argentina would proceed within three days to trace the line.<sup>65</sup>

This conference failed to settle the dispute and in 1899 US arbitration was requested. A Demarcation Commission was appointed, consisting of one Argentine representative, one Chilean representative, and a US delegate. The award of 1899 gave most of the Puna de Atacama to Argentina: the boundary was to be a compromise line from the Bolivian frontier to 26° 52'45".<sup>66</sup> Chile and Argentina also agreed on some southern sections of the boundary but were unable to deal with a considerable section south of 40 degrees.

In 1902 the Chilean foreign minister, Vergara Donoso and the Argentine envoy, Terry, signed several agreements known as the Pactos de Mayo. These included a general treaty of arbitration<sup>67</sup> which bound the countries to submit to arbitration all controversies which it had not been possible to settle by direct negotiation provided that they did not affect the precept of the Constitution. Article Three nominated His Britannic Majesty's Government

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<sup>62</sup> Stephen Clissold and Alistair Hennessy, "Territorial Disputes", in Claudio Véliz, *Latin America and the Caribbean: A Handbook*, Anthony Blond, London, 1968, p 406.

<sup>63</sup> Pittman, above, n 31 pp 175-6.

<sup>64</sup> Clissold and Hennessy, above, n 62, pp 107-8.

<sup>65</sup> Ireland, above, n 10, p 17.

<sup>66</sup> Boggs, above, n 58, p 87. "Award of the Commissioners appointed to demarcate the Puna de Atacama Boundary between the Argentine Republic and Chile - Buenos Ayres, March 24, 1899" 96 *BFSP* 379-383.

<sup>67</sup> "General Treaty of Arbitration between the Argentine Republic and Chile - Signed at Santiago, May 28, 1902" (1901-2) 95 *BFSP* pp 759-761.

as Arbitrator but in the event that either of the Parties had broken off friendly relations with Britain, the Government of the Swiss Confederation would be nominated in its place. A supplementary Act stated their intention to submit the current disagreement to England for arbitration.

The problems were studied on the ground by a British commission.<sup>68</sup> Protocols and acts defined the boundary in several disputed sections. On 9 January 1903, Argentina and Chile requested the United Kingdom to proceed with the physical demarcation of the boundary.<sup>69</sup> This was completed in 1907.<sup>70</sup> The Chilean-Argentine boundary was now much closer to being stabilised. Areas of dispute had been narrowed to the Palena River Valley region in the North<sup>71</sup> and the Beagle Channel<sup>72</sup> and Antarctica in the south.

### The South American Antarctic

The Bull Inter Caetera (Alexander VI) of 4 May 1493 had specified a line extending from the Arctic to the Antarctic pole one hundred leagues west of the Azores or Cape Verde Islands, west of which all territory not possessed by another Christian power belonged to the Spanish monarch. This legitimated Chile and Argentina as successor states extending their area of assumed territory to the Antarctic continent.<sup>73</sup>

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<sup>68</sup> Boggs, above, n 58, p 87.

<sup>69</sup> Burr, above, n 28, p 256.

<sup>70</sup> Raye R Platt, "Present Status of International Boundaries in South America" (1924) 14 *Geographical Review* 638.

<sup>71</sup> In 1965 a request was made to Queen Elizabeth II to arbitrate. An arbitral opinion was provided in 1966. Clissold and Hennessy, above, n 62, p 406.

<sup>72</sup> The 1881 Boundary Treaty had been ambiguous regarding sovereignty over the Beagle Channel. For an account of this issue as it has been dealt with within the bilateral relationship, see Michael A Morris, *The Strait of Magellan*, Martinus Nijhoff, Dordrecht, 1989, pp 76-101.

<sup>73</sup> Both Chile and Argentina had demonstrated their interest in the Antarctic continent well before negotiations began regarding their common boundary. On 31 December 1902, for example, Chile granted a fishing concession within an area extending south to undefined limits: "Supreme Decree No. 3 granting a fishing concession to Pedro Pablo Benavides (extract)", 31 December 1902, in *Antarctica*, Bush, Vol II, pp 289-291. On 2 January 1904, Argentina authorised the Argentine Meteorological Office to establish a meteorological and magnetic observatory on the South Orkney Islands and designated an Argentinian Postmaster for the South Orkneys: "Decree No. 3,073 authorising the Argentine Meteorological Office to take over the meteorological station on the South Orkney Islands", 2 January 1904, in *Antarctica*, Bush, Vol I, pp 550-552. On 27 February 1906, Chile granted a concession "to occupy certain Austral islands and territories" including Graham's Land, "in order to develop agriculture and fishing": "Supreme Decree No. 260 granting a concession for sealing and other purposes to Enrique Fabry and Domingo de Toro Herrera", 27 February 1906, in *Antarctica*, Bush, Vol II, pp 295-297.



An Argentine letter to Chile of 10 June 1906 presented what may have been the first joint Antarctic boundary proposal.<sup>74</sup> The Argentine letter protested a Chilean decree,<sup>75</sup> authorising the occupation of "a substantial part of Antarctica"<sup>76</sup> and proposed a mutual boundary of 67° West:

[T]he reference ... to the islands and lands situated to the south of Cape Horn, must be considered an oversight ... all the more so considering that they lie to the east of meridian 67°W of Greenwich, which passes through the Cape [Horn] ...<sup>77</sup>

Both states regarded the issue as no more than the last remaining steps in the completion of "the demarcation of the dividing line between the two Republics".<sup>78</sup> Bilateral discussions were held over the following two years and it was thought, at least on the part of Chile, that it would not be difficult to reach agreement on the matter.<sup>79</sup>

In 1906, the Chilean don Antonio Huneeus Gana initiated discussions with the Argentine Minister in Santiago, Dr Lorenzo Anadón. Dr Federico Puga Borne, the Minister for External Affairs and Colonialism, continued the conversations. In June 1907, Anadón proposed negotiations for a treaty of Defence and one of Commerce and this led to a series of bilateral correspondence. On 6 July 1907, Chile proposed that the treaty also deal with the question of Antarctic delimitation.<sup>80</sup>

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<sup>74</sup> This statement is made on the basis of available documents. It does not preclude the possibility that an earlier starting date might be discernible were more evidence available.

<sup>75</sup> The Decree referred to was presumably "Supreme Decree No. 260 granting a concession for sealing and other purposes to Enrique Fabry and Domingo de Toro Herrera", 27 February 1906, in *Antarctica*, Bush, Vol II, pp 295-297. Notes to "Argentine letter protesting to Chile at a Chilean decree authorising the occupation of certain Antarctic territories (extracts)", 10 June 1906, in *Antarctica*, Bush, Vol II, pp 299-300.

<sup>76</sup> These are the words found in the Argentine pleadings in the Beagle Channel dispute. Notes to "Argentine letter protesting to Chile at a Chilean decree authorising the occupation of certain Antarctic territories (extracts)", 10 June 1906, in *Antarctica*, Bush, Vol II, pp 299-300.

<sup>77</sup> These are the words ... above, n 76, pp 299-300.

<sup>78</sup> "Chilean draft of a complementary boundary treaty", 7 September 1907, in *Antarctica*, Bush, Vol II, pp 303-304.

<sup>79</sup> "Memorial of the Chilean Ministry of Foreign Affairs reporting discussions with Argentina on Antarctic territories", 18 September 1906, in *Antarctica*, Bush, Vol II, pp 301-302.

<sup>80</sup> Oscar Pinochet de la Barra, "Antecedentes Historicos de la Politica internacional de Chile en la Antartica negogiaciones Chileno-Argentinas de 1906, 1907 Y 1908", in *Politica Antartica de Chile*, Francisco Orrego Vicuña, María Teresa Infante Caffi and Pilar Armanet, (eds) Editorial Universitaria, Santiago, 1984, p 74.

Both countries sought recognition of sovereignty over the eleven South Shetland Islands and the Antarctic Peninsula.<sup>81</sup> In a meeting of 29 August 1907, Anadón proposed that the meridian of Cape Horn (67°17") be a suitable divide. This would have made the boundary a line traced from a point equidistant from the South Orkneys and the South Shetlands at longitude 50°West, running to the extreme north of the Antarctic Peninsula, dividing it in two.<sup>82</sup> The Chilean Foreign Minister, Dr Frederico Puga Borne, then submitted a draft treaty for Argentina's consideration. Article Two of the "Tratado complementario de Demarcacion de Limites" read:

Both Governments, being particularly desirous of avoiding problems arising out of acts of actual occupation of the islands and mainland of American Antarctica, have agreed to draw the boundary of division in that zone along a line which, passing between Islas Clarence and South Orkney, goes to the northernmost projection of Mount Bransfield and continues across the mainland equidistant between the two coasts. The lands and islands situated to the East of this line shall belong to the Argentine Republic, and those situated to the West shall belong to Chile.<sup>83</sup>

Argentina was not prepared to accept the division suggested by Chile. Further proposals were made by each party. On 18 June 1908 Argentina proposed establishing a line of demarcation mid-way between that favoured by Santiago, 50°West meridian and 67° 17" as favoured by Buenos Aires. Chile responded with what it said was a final proposal of 59° 30" West, a difference of almost one degree.<sup>84</sup> No agreement had been reached by the time of the resignation of the Argentine Foreign Minister, Dr Estanislao Zeballos, and the talks came to an end in 1908.<sup>85</sup> Negotiations had failed, but the precise location of the joint Antarctic boundary was not of sufficient perceived importance to prompt further bilateral action on the issue for three decades.

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<sup>81</sup> P de la Barra, above, n 80, p 75.

<sup>82</sup> P de la Barra, above, n 80, p 75.

<sup>83</sup> "Chilean Draft of a Complementary Boundary Treaty", 7 September 1907, in *Antarctica*, Bush, Vol II, p 303. P de la Barra dates this Treaty 6 September 1907. P de la Barra, above, n 80, p 75.

<sup>84</sup> P de la Barra, above, n 80, p 78.

<sup>85</sup> "Subsequently, Dr Puga Borne also resigned from the Ministry and the negotiations were not continued." "Speech concerning the grounds of Chile's claim to Antarctica delivered to the Senate by the Minister for Foreign Affairs, Raúl Juliet Gómez", 21 January 1947, in *Antarctica*, Bush, Vol II, p 352. It does appear, though, that Zeballos had been prepared to concede the degree Chile had demanded. P de la Barra, above, n 80, pp 78-79.

The next boundary proposal came in the form of a Chilean Decree, No. 1747, of 6 November 1940, which defined the "Chilean Antarctic Territory" as consisting of "[a]ll lands, islands, islets, reefs of rocks, glaciers (pack-ice), already known, or to be discovered, and their respective territorial waters, in the sector between longitudes 53° and 90° West,<sup>86</sup> thereby declaring the joint boundary to be at 53° West. The tone of this announcement was softened somewhat by a Note to Argentina of the same date which proposed competent authorities of both countries enter into discussions to agree upon a common border for their Antarctic claims.<sup>87</sup> The Note included an assurance that the delimitation of the Chilean Antarctic Territory was, in no way, intended to violate Argentine rights.

Argentina replied to Chile's Note on 12 November 1940.<sup>88</sup> Although accepting the Chilean proposal to negotiate, Argentina also wished to affirm its own interests regarding the matter. The Note reaffirmed Argentina's acceptance of the fact that Chile was entitled to a portion of the South American Antarctic. Argentina did not intend to deny Chile the right "to invoke rights over a sector of the zone in question", but reserved its own rights regarding delimitation of the boundaries of that territory. The Argentinian Note stressed that the title of Argentina could "scarcely be disputed" if the question were "to be solved on the basis of the sector which is a prolongation of the American continent".

Chile replied to this Note on 3 December 1940, inviting Argentina for discussions in Santiago de Chile.<sup>89</sup> Further correspondence of 17 December 1940 and 4 January 1941 arranged that Dr Isidoro Ruiz Moreno, Legal Counsel of the Ministry of Foreign Affairs and Worship and President of the Argentine Antarctic Commission and Professor Julio Escudero Guzman, Professor of International Law and member of the Chilean Antarctic Commission, should meet in Santiago for technical discussions with a view

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<sup>86</sup> "Decree No. 1,747 declaring the limits of the Chilean Antarctic Territory", 6 November 1940, in *Antarctica*, Bush, Vol II, pp 310-312.

<sup>87</sup> Notes to "Chilean Note to the United States communicating the Chilean decree of 6 November 1940", 6 November 1940, in *Antarctica*, Bush, Vol II, pp 313-315.

<sup>88</sup> "Argentine Note to Chile in response to the notification of Chilean claims to Antarctica", 12 November 1940, in *Antarctica*, Bush, Vol I, pp 606-610.

<sup>89</sup> "Chilean Note to Argentina giving further details of the bases of Chilean claims and inviting Argentine authorities to take part in discussions in Santiago de Chile", 3 December 1940, in *Antarctica*, Bush, Vol II, pp 319-321.

to their submitting to their two governments certain bases of understanding.<sup>90</sup>

Between 14 and 26 March 1941, Julio Escudero for Chile and Isidor Ruiz Moreno for Argentina met for discussions. The meetings produced nine "minutes" and an agreement to meet later in Buenos Aires. It appears that the minutes once again confirmed that each party accepted the other's unquestionable rights to sovereignty in the polar region known as the American Antarctic.<sup>91</sup> Both recognised the intention of the other party to bring about a friendly political arrangement and stated their commitment to its defence.<sup>92</sup> At the end of the discussions, both nations issued separate press statements in which they expressly stipulated their recognition of the fact that the polar territorial rights of the other party were unquestionable.<sup>93</sup>

Argentina followed Chile's explicit boundary proposal with the publication of a map in 1941 setting the Argentine Antarctic boundaries at 25° and 75° longitude West.<sup>94</sup> This placed the common boundary 22 degrees further west than that which had been specified by Chile. Chile reserved its rights in relation to the map,<sup>95</sup> thereby asserting its right to reject the proposed boundary and propose an alternative one at a later date should it so wish. An Argentine map of 1946 depicting the Argentine Antarctic boundaries at 25° and 74° longitude West represented but a slight concession on the part of

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<sup>90</sup> Notes to "Chilean Note to Argentina giving further details of the bases of Chilean claims and inviting Argentine authorities to take part in discussions in Santiago de Chile", 3 December 1940, in *Antarctica*, Bush, Vol II, pp 319-321.

<sup>91</sup> Notes to "Chilean Note to Argentina giving further details of the bases of Chilean claims and inviting Argentine authorities to take part in discussions in Santiago de Chile", 3 December 1940, in *Antarctica*, Bush, Vol II, pp 319-320.

<sup>92</sup> Notes to "Chilean Note to Argentina giving further details of the bases of Chilean claims and inviting Argentine authorities to take part in discussions in Santiago de Chile", 3 December 1940, in *Antarctica*, Bush, Vol II, pp 319-321.

<sup>93</sup> Notes to "Chilean Note to Argentina giving further details of the bases of Chilean claims and inviting Argentine authorities to take part in discussions in Santiago de Chile", 3 December 1940, in *Antarctica*, Bush, Vol II, pp 319-321.

<sup>94</sup> "Chilean Memorandum to Argentina reserving Chilean rights with regard to an Argentine map showing territory claimed by Chile as belonging to Argentina", 3 March 1942, in *Antarctica*, Bush, Vol I, p 610.

<sup>95</sup> "Chilean memorandum to Argentina reserving Chilean rights with regard to an Argentine map showing territory claimed by Chile as belonging to Argentina", 3 March 1942, in *Antarctica*, Bush, Vol I, p 610.

Argentina.<sup>96</sup> On 29 January 1947, the Chilean Embassy in Buenos Aires presented the Government of Argentina with a Memorandum containing a reservation of rights, once again not advancing bilateral negotiations but effectively preserving the *status quo*.

In the meantime, the bilateral talks that had been abandoned in 1941 were resumed in 1946.<sup>97</sup> A joint declaration was finally issued on 12 July 1947.<sup>98</sup> This stated the two parties' intention of settling the question of boundary delimitation in a friendly manner, a treaty was to be concluded as soon as possible. Both were "convinced of the unquestionable rights of Argentina and Chile over the South American Antarctic". They now wished to pursue "a harmonious plan of action for the better scientific knowledge of the Antarctic zone by means of explorations and technical investigations."<sup>99</sup> In May 1948, the Minister for Foreign Affairs of Chile, Mr German Vergara Donoso, and the Special Ambassador of Argentina, Mr Pascual La Rosa, signed a further joint statement expressing a desire to reach, as soon as possible, agreement as to a joint Antarctic boundary.<sup>100</sup>

This was confirmed by the so-called Donoso-La Rosa declaration of March 1948, by which the two parties agreed they would pursue their negotiations aimed at the conclusion of a Chileno-Argentine treaty of boundary delimitation within the present year.<sup>101</sup> No agreement was reached in 1948. The issue was not resolved before the Washington Treaty of 1959.

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<sup>96</sup> "Report of a Chilean memorandum to Argentina reserving Chilean rights with regard to an Argentine map delimiting Argentine claims to an Antarctic sector", 29 January 1947, in *Antarctica*, Bush, Vol I, pp 627-631.

<sup>97</sup> This was reportedly due to war and the political conditions in Argentina. See "The Ambassador in Chile (Bowers) to the Secretary of State", a telegram from Santiago of 18 December 1946 which contained a summary of the memorandum, *FRUS* (1946/I), pp 1 498 - 1 499.

<sup>98</sup> "Joint declaration of Argentina and Chile concerning the South American Antarctic", 12 July 1947, in *Antarctica*, Bush, Vol I, pp 639-640.

<sup>99</sup> "Joint declaration of Argentina and Chile concerning the South American Antarctica", 12 July 1947, in *Antarctica*, Bush, Vol I, pp 639-640.

<sup>100</sup> Oscar Pinochet de la Barra, *Chilean Sovereignty in Antarctica*, Editorial del Pacifico, Santiago de Chile, 1955, p 57.

<sup>101</sup> Both Governments were in agreement "upon continuing their administrative action, consisting of exploration, preservation of security and development in the undefined frontier region of their respective Antarctic zones ..." "Joint Declaration of Argentina and Chile concerning the South American Antarctic", 4 March 1948, in *Antarctica*, Bush, Vol I, p 661.

## Conclusion

This paper has attempted to give an historical outline of the regional context within which Argentina and Chile viewed the issue of the geopolitical organisation of the South American Antarctic in the years prior to the signing of the Antarctic Treaty. At independence Argentina and Chile considered themselves inheritors of the entire area that had been assigned to Spain by the fifteenth century papal bulls, as modified by the Treaty of Tordesillas. This area extended south as far as the South Pole. During the nineteenth century, Argentina and Chile had exerted much effort in determining the precise location of their joint boundary on the South American mainland. The southernmost section of their boundary, in Antarctica, had not been an issue of great relative salience. Some effort was directed towards determining a mutually satisfactory Antarctic boundary between 1906 and 1908, but talks ended without resolution of the issue. In the early 1940s, both sides made unilateral declarations as to the location of the mutual boundary. Talks aimed at mediating the discrepancy between the boundary proposals were, though, unsuccessful.

It is this regional context within which Chile and Argentina were operating, that is widely ignored in the English language literature on the pre-Treaty international politics of Antarctica, which widely regards the two states as being amongst seven twentieth century Antarctic "claimants". Where reference is made to such matters as papal bulls and geographic contiguity, these are usually presented from a "new imperial" colonial perspective, as the rather quaint, if not outlandish, "bases" of 1940s' South American Antarctic "claims". Myhre flatly dismissed all but effective occupation as a criterion for the claim of Argentina, and pronounced that the "basis of Chile's claim is identical to that of Argentina, and therefore, just as suspect."<sup>102</sup> Ronning believed there is only:

questionable evidence that the Spanish were even certain of the existence of what we today know as the Antarctica, [so that] [e]ven assuming the reality of Spanish discovery, ... it provides a hopelessly weak foundation for a claim.<sup>103</sup>

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<sup>102</sup> Jeffrey D Myhre, *The Antarctic Treaty System: Politics, Law, and Diplomacy* Westview Press, Boulder, 1986, p 13.

<sup>103</sup> C Neale Ronning, *Law and Politics in Inter-American Diplomacy*, John Wiley, New York, 1963, p 147.

Of course, the South American perspective does not require that the Spanish had been aware of the existence of Antarctica, nor were the announcements made in the 1940s primarily the notification of "claims", but unilateral boundary declarations.

Quigg discusses "historic right", "contiguity/proximity", and "geological affinity" in terms of bases of Antarctic "claims". Even so, the only actions of Chile and Argentina Quigg includes in a general overview of the territorial issue are those that could be used to support a case for "effective occupation":

Despite later protestations to the contrary, neither country had been much involved in the Antarctic during the first four decades of the century .... Chile, in November 1940, delimited a broad sector that it claimed had been national territory all along. Argentina took the same position and much of the same territory.<sup>104</sup>

The chief problem in illuminating the dominance of the "new imperial" historiographical interpretation of the pre-Treaty international politics of Antarctica is that its very prevalence renders difficult its detached analysis. The case for a revisionist analysis is perhaps best made by pointing to the lack of attention paid in the English-language literature to the history of Chilean-Argentine boundary negotiations as presented in this paper, and the paucity of effort made to relate the actions of the UK, Norway, and France to those negotiations.

This is not to deny that the series of colonial Antarctic claims may have been the catalyst for renewed attention in the 1940s to their Antarctic boundary on the part of Argentina and Chile. In particular, the Chilean Decree No. 1747 of 1941 appears to have been issued in response to a Norwegian invitation to attend an International Polar Exhibition and Congress that was to be held in Bergen from May to September 1940.<sup>105</sup> It may well have been to affirm their interests to the Europeans that both parties pursued the matter in the public arena - by national decree and the publication of a map - rather than solely in the bilateral forum.

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<sup>104</sup> P W Quigg, *A Pole Apart. The Emerging Issue of Antarctica*, New Press, New York, 1983, pp 112-113.

<sup>105</sup> Bush comments that the Note inviting Chile to participate in the Exhibition "prompted a resurgence of Chilean interest in Antarctic matters". Notes to "Decree No. 1,541 appointing Professor Excudero Guzmán to study Antarctic questions bearing upon Chilean interests", 7 September 1939, in *Antarctica*, Bush, Vol II, p 308.

It is also true Argentina and Chile have sometimes sought to justify their positions in terms of the acquisition of title by occupation.<sup>106</sup> This has been done without abandoning their own perspective on the issue; "occupation" is a meaningful term, both in the context of colonialism, and in that of South American boundary delimitation. To the South Americans, "occupation" has been a principle used in connection with the *uti possidetis* principle to establish where a boundary had existed in practice, even if that boundary had not been formally defined in Spanish Royal Decrees.<sup>107</sup> To the Europeans, effective occupation has been the means of initially establishing rights to an area of *terra nullius*. This difference reflects what was an essential distinction between the outlooks of the two sets of states: whereas the European states, Australia, and New Zealand assumed each other to have the right to acquire Antarctic territory, as *terra nullius*, if they should wish to do so; Argentina and Chile believed each other to have long enjoyed rights to a portion of the South American Antarctic.

The fact Argentina and Chile sometimes attempted to justify their positions in "new imperial" colonial terms indicates their recognition of the ongoing dominance of the colonial perspective, sustained through the system of international law. Whereas the legal structure through which nineteenth century colonial expansion took place in Africa, Asia and the Pacific is now widely recognised as being historically relative and long-since out-moded, the freezing of the Antarctic legal *status quo* of 1959 appears to have had the effect of prolonging the dominance of the European perspective on the broad question of the geopolitical organisation of Antarctica from 1900 to 1959. While colonial powers have now accepted new principles, such as self-determination, to replace those they had applied to the government of other continents, the very tenuous relevance to the uninhabited Antarctic continent of the fundamental colonial concept of *terra nullius*, a concept relating to the political organisation of a nation's inhabitants, may well have rendered Antarctic colonial history less susceptible to revisionist analysis. Such an analysis is no less necessary.

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<sup>106</sup> See, for example, "Argentine Note to the United Kingdom reasserting the grounds for the Argentine claim to Antarctica", 15 February 1947, in *Antarctica*, Bush, Vol I, p 632.

<sup>107</sup> Ireland, above, n 10, p 329.