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International Boundary Study

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ARGENTINA-CHILE BOUNDARY PALENA SECTOR

Forwarded by
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Argentina - Chile Boundary
(Palena - California Sector)



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ARGENTINA - CHILE BOUNDARY
(Palena - California Sector)

I. HISTORICAL BACKGROUND

The Argentina - Chile boundary was first established, by an international accord, through the treaty of August 30, 1855 which provided for the maintenance of the status quo of 1810. In 1881, a new treaty delimited the state frontier as following the main cordillera of the Andes southward to 52° south latitude. To clear certain disagreements, a supplemental protocol was drafted on May 1, 1893 by which the Argentine Republic was to "hold in perpetuity all territory to the east of the line of the highest peaks which divide the waters while Chile was to hold in perpetuity all territory to the west of that line." The accords unfortunately and erroneously equated the main ridge line with the water divide. The separation of these two lines is not uncommon in high mountain areas of the world.

A new treaty was negotiated on April 17, 1896 to settle, if possible, the main problem of non-conformity of lines. Provisions of the agreement provided for the demarcation of the frontier as far south as 26° 52' 45" with the assistance of Bolivia. Should difficulties arise south of this point (to the previously defined limit of 52° south), the treaty provided for arbitration by the Queen of England. Subsequent disagreements forced the two states to submit four sectors to the British Crown:

- a) 26° 52' 45" South to 27° 02' 50" South;
- b) 40° 06' 01" South to 40° 09' 39" South;
- c) 41° 12' 18" South to 48° 53' 10" South including Palena;
- d) 50° 38' 10" South to 52° South.

All four areas involved departures from the main cordillera by the continental drainage divide.

The British arbitration commission carried out its work, and for the sector involving the Palena/California, decreed in the Award and Report of November 20, 1902:

"From Pérez Rosales Pass near the north of Lake Nahuel Huapi, to the vicinity of Lake Viedma, the boundary shall pass by Mount Tronador, and thence to the River Palena by the lines of water-parting determined by certain obligatory points which we have fixed upon the Rivers Manso, Puelo, Fetaleufú, and Palena (or Carrenleufú); awarding to Argentina the upper basins of those rivers above the points which we have fixed, including the Valleys of Villegas, Nuevo, Chollila, Colonia de 16 Octubre, Frio, Huemules, and Corcovado; and to Chile the lower basins below those points.

From the fixed point on the River Palena, the boundary shall follow the River Encuentro to the peak called Virgen, and thence to the line which we have fixed crossing Lake General Paz, and thence by the line of water-parting determined by the point which we have fixed upon the River Pico...."

The relevant passage in the Report (in paragraph 22) reads as follows:

"Crossing the Fetaleufú River at this point, it shall follow the lofty water-parting separating the upper basins of the Fetaleufú and of the Palena (or Carrenleufú or Corcovado) above a point in longitude

71° 47' W., from the lower basins of the same rivers. This water-parting belongs to the Cordillera in which are situated Cerro Cónico and Cerro Serrucho, and crosses the Cordón de las Tobas.

Crossing the Palena at this point, opposite the junction of the River Encuentro, it shall then follow the Encuentro along the course of its western branch to its source on the western slopes of Cerro Virgen. Ascending to that peak, it shall then follow the local water-parting southwards to the northern shore of Lago General Paz at a point where the Lake narrows, in longitude 71° 41' 30" W.

The boundary shall then cross the Lake by the shortest line, and from the point where it touches the southern shore it shall follow the local water-parting southwards, which conducts it to the summit of the high mountain mass indicated by Cerro Botella Oeste (1,890 metres), and from that peak shall descend to the Rio Pico by the shortest local water-parting."

There was appended to the Report a footnote stating that "All co-ordinate values expressed in terms of latitude and longitude are approximate only, and refer to the Maps attached to this Report. Altitudes quoted in the text are in metres. Where the boundary follows a river the 'thalweg' determines the line."

Demarcation pillars were established along the frontier; spaced, however, rather far apart. In the Palena-California sector, Pillar 16 (see map attached), was situated on the bank of the Rio Corcovado while Pillar 17 was erected nearly 24 miles to the south on the north bank of the Lago General Paz (Lago Palena/Lago General Winter).

In the intervening period since the original demarcation, both nations have begun to occupy the remote region although it remained essentially a frontier region, a land of subsistence agriculture and grazing. Disputes arose frequently over the boundary alignment in the sector threatening the normal, good relations between the two states. Numerous and unsuccessful attempts were made to determine an acceptable compromise on the frontier question. Eventually, the dispute brought to a standstill virtually all of the normal boundary maintenance work of demarcation and redemarcation. As conflicts increased, the two states agreed to resubmit the sector to British arbitration.

II. TREATIES AND OTHER AGREEMENTS

As a result of an exchange of letters, the British Government created a commission of experts to re-examine the Palena/California sector; Lord McNair assumed the presidency of the commission. Expert testimony was presented by Argentina and Chile; the region was examined, photographed and mapped. The Court issued its findings:

The Court, having reached its conclusions in accordance with the principles of international law, decides that the Question put to it in Article I (1) of the Compromiso is to be answered by stating that the course of the boundary between the territories of the Parties in the sector between Boundary Posts 16 and 17 is as follows:

From Boundary Post 16 on the north bank of the River Palena the boundary shall cross the Palena to the mouth of the River Encuentro. It shall then follow the thalweg of the Encuentro to Point A at the Confluence. The boundary shall then turn eastwards and follow the thalweg of the Encuentro for about 16 kilometres to Point B. The line shall then turn westwards and ascend by way of a small lake to the local water-parting at Point C. Thence it shall turn south and follow the local water-parting for about 2 kilometres to Point D. The boundary shall then turn west and follow the local water-parting for about 6 kilometres to Point E on the hills sometimes known as Cordón de los Morros. Turning south it shall follow the local water-parting for about 2 kilometres to Point F. It shall then turn west along the local water-parting to Point G on top of a hill just east of the River Engano. The boundary shall proceed by a straight line to Point H on a low hill west of the River Engano, and thence by a straight line to Point I, on the water-parting north of Cerro de la Virgen. Turning southwards, it shall follow the local water-parting to Point J at Cerro de la Virgen. The boundary shall then follow the local water-parting southwards to the northern shore of Lake General Paz at Boundary Post 17.

London,

24 November, 1966.

McNAIR
President

L.P. KIRWAN

K. M. PAPWORTH

DAVID H. N. JOHNSON
Registrar

By the terms of the award, approximately 30 per cent of the disputed territory was recognized as Chilean and the remainder as Argentine. The court award was incorporated into the following international act:

1. Award of Her Majesty Queen Elizabeth II, Pursuant to the Agreement for Arbitration ... of a Controversy between the Argentine Republic and the Republic of Chile concerning certain parts of the Boundary between their Territories, December 9, 1966 (United Kingdom Foreign Office, London HMSO, 1966).

WHEREAS the Argentine Republic and the Republic of Chile (hereinafter referred to as "the Parties") are parties to a General Treaty of Arbitration signed at Santiago on 28th May, 1902,⁽¹⁾ (hereinafter referred to as "the Treaty of Arbitration"),

⁽¹⁾ State Papers, Vol. 95, p. 759.

AND WHEREAS His Britannic Majesty's Government duly accepted the duty of Arbitrator conferred upon them by the Treaty of Arbitration;

AND WHEREAS in pursuance of an agreement between the Parties dated 17th April, 1896, ⁽¹⁾ His Majesty King Edward VII on 20th November, 1902, made an Award ⁽²⁾ containing decisions upon certain parts of the boundary between the territories of the Parties (hereinafter referred to as "the 1902 Award");

AND WHEREAS a controversy has arisen between the Parties concerning the interpretation and fulfilment of part of the 1902 Award;

AND WHEREAS the Parties have been unable to determine the points, questions, or differences involved in the controversy in accordance with Article IV of the Treaty of Arbitration;

AND WHEREAS the Government of the Republic of Chile by letter dated 15th September, 1964, invited Our Government in the United Kingdom of Great Britain and Northern Ireland to intervene as Arbitrator in the controversy;

AND WHEREAS the Ministers for Foreign Affairs of the Parties, by Joint Declaration made at Santiago on 6th November, 1964, agreed that the present controversy should be settled by Our Government in the United Kingdom in accordance with the provisions of the Treaty of Arbitration and without prejudice to the attitude which both Parties had adopted in the dispute;

AND WHEREAS the Government of the Argentine Republic by a letter dated 25th November, 1964, and the Memorandum enclosed therewith, assented to the settlement of the controversy by arbitration by Our Government in the United Kingdom;

AND WHEREAS Our Government in the United Kingdom, after consultation with the Parties, were satisfied that it would be appropriate for them to act as Arbitrator in the controversy and that they were empowered to give effect to Article V of the Treaty of Arbitration;

AND WHEREAS Our Government in the United Kingdom, in pursuance of Article V of the Treaty of Arbitration, determined the Agreement for Arbitration (Compromiso) at London on 1st April, 1965;

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 three members,

Lord McNair as President,
Mr. L. P. Kirwan,
Brigadier K. M. Papworth,

and appointed Professor D. H. N. Johnson as Registrar of the Court of Arbitration;

(1) State Papers, Vol. 88, p. 553.

(2) State Papers, Vol. 95, p. 162.

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, by means of a Field Mission appointed by it, in December, 1965 and January and February, 1966 examined the area in dispute and arranged for an aerial survey of that area to be made under the guidance of the Court of Arbitration;

AND WHEREAS representatives of the Parties took part in oral hearings before the Court of Arbitration between 19th September and 21st October, 1966;

AND WHEREAS the Court of Arbitration has considered the question put before it by Article I of the Agreement for Arbitration (Compromiso) and has reported to Our Government in the United Kingdom its conclusions thereon, which it has reached in accordance with the principles of international law;

AND WHEREAS Our Government in the United Kingdom have fully and carefully studied the Report of the Court of Arbitration (a copy of which Report is annexed to, and constitutes an integral part of, this Award);

Now, in pursuance of Articles VIII and IX of the Agreement for Arbitration (Compromiso) and in the name of Our Government in the United Kingdom, WE, ELIZABETH THE SECOND, by the Grance 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., make the following Award upon the question which has been the subject of this Arbitration, namely:

To the extent, if any, that the course of the boundary between the territories of the Parties in the Sector between boundary posts 16 and 17 has remained unsettled since the 1902 Award, what, on the proper interpretation and fulfilment of that Award, is the course of the boundary in that Sector?

1. From Boundary Post 16 on the north bank of the River Palena the boundary shall cross the Palena to the mouth of the River Encuentro. It shall then follow the thalweg of the Encuentro to Point A at the Confluence. The boundary shall then turn eastwards and follow the thalweg of the Encuentro for about 16 kilometres to Point B. The line shall then turn westwards and ascend by way of a small lake to the local water-parting at Point C. Thence it shall turn south and follow the local water-parting for about 2 kilometres to Point D. The boundary shall then turn west and follow the local water-parting for about 6 kilometres to Point E on the hills sometimes known as Cordon de los Morros. Turning south it shall follow the local water-parting to Point G on top of a hill just east of the River Engano. The boundary shall proceed by a straight line to Point H on a low hill west of the River Engano, and thence by a straight line to Point I, on the water-parting north of Cerro de la Virgen. Turning southwards, it shall follow the local water-parting to Point J at Cerro de la Virgen. The boundary shall then follow the local water-parting southwards to the northern shore of Lake General Paz at Boundary Post 17.

2. This Award shall be executed by the demarcation of the course of the boundary in the sector between Boundary Posts 16 and 17 as established in paragraph 1 above, and by each of the Parties taking such other steps as may be necessary to carry out the Award.

3. The Director of Military Survey at Our Ministry of Defence in the United Kingdom (hereinafter referred to as "the Director") is appointed as the authority responsible for carrying out the demarcation in accordance with this Award and such further directions as may be given by or on behalf of Our Principal Secretary of State for Foreign Affairs. The Director shall appoint a Demarcation Mission for this purpose.

4. The Demarcation Mission shall consist of

- (i) an Officer of Our Land Forces, who shall be in charge of the Mission and
- (ii) such Officers or Non-Commissioned Officers (not exceeding 3 in number) of Our Land Forces as may be appointed by the Director.

The Director shall in writing notify the Agents of the Parties of the names of all such Officers and Non-Commissioned Officers, indicating which is the Officer in charge.

5. Each of the Parties shall appoint a Liaison Officer to accompany the Mission, and shall in writing notify the Director of the name of its Liaison Officer.

6. The official language of the Mission shall be English.

7. The Mission shall, so far as weather permits, begin the demarcation of the boundary not later than 7th January, 1967. It shall so arrange its work as to complete the demarcation of the boundary during the Southern summer of 1966-67, weather permitting.

8. The Mission shall erect a boundary post at each point identified in paragraph 1 of this Award, or, if necessary in order to take account of geographical realities, as close as possible to each such point within a distance of not more than 300 metres therefrom. If any such displacement occurs, the course of the boundary shall, if required, be revised by the Officer in charge of the Mission to the extent necessary for it to pass through the actual location of the boundary posts. Where it is not possible to erect a boundary post on the actual site on which it is otherwise desirable to place it, the post may be erected to one side of that site. In that case, a suitable inscription shall be made on the boundary post.

9. The Director shall, as soon as possible after the completion of the demarcation, submit to Our Government in the United Kingdom a report on the work of the Mission.

10. Each of the Parties shall as soon as possible within a period of six months from the date of the present Award notify in writing Our Principal Secretary of State for Foreign Affairs that it has taken all steps necessary to carry out the Award.

GIVEN in triplicate under Our hand and seal, at Our Court of St. James's, this Ninth day of December, One thousand Nine hundred and Sixty-six, in the Fifteenth year of Our Reign.

ELIZABETH R.

L.S.

III. SUMMARY

The award boundary measures 44.97 statute miles. The demarcation commission established by the Award established 21 intermediate pillars along the award boundary early in 1967. The pillars numbered from B.P. VII-2A through B.P. VII-2W (I and O being omitted) stretch from south to north. The markers have been plotted on the large-scale map which should serve as the principal compilation document for U.S. maps:

Series GSGS 5021 ARGENTINA - CHILE FRONTIER CASE,
Edition 1-GSGS, Argentina-Chile Frontier Case Sector between
B.P. 16 and B.P. 17, 1:50,000, Published by D. Survey,
Ministry of Defence, London, 1967.

Both Argentina and Chile have accepted the award and the subsequent demarcation. The boundary segment, as a result, should now be shown on official maps as an accepted international boundary.

