

REVIEW ESSAY

The Beagle conflict

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ABSTRACT: In 1984, Argentina and Chile signed the so-called Treaty of Peace and Friendship, which ended a decades-long dispute over the sovereignty of the southernmost islands and waters of Latin-America. This agreement, which resulted through papal mediation, achieved what earlier intents did not: a definite stop to military and diplomatic threats and a clear definition of the course of the border that divides both national territories. This essay reconstructs the genesis of the Treaty and explores its impacts today. Finally, it explores why the 1984 Treaty still determines border politics in the southern region of both nations in spite of a changed political scenario.

Keywords: arbitration, Beagle Channel, Argentina, Chile, dispute, islands, war

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Introduction

In 1984, Argentina and Chile signed the so called Treaty of Peace and Friendship. This Treaty ended a decades-long dispute over the sovereignty of the southernmost islands and waters of Latin-America. It was elaborated and controlled through papal mediation, achieved what earlier intents did not: a definite ceasing of military and diplomatic threat and a clear definition of the course of the border that divides both national territories. Since that day, relations between both countries gradually eased, making way to new diplomatic perspectives while democracy was reestablished.

Today, the continent seems to have overgrown its period of dictatorships and economic malaise. For the last decades, boosted by significant economic growth, fierce efforts can be seen of regional integration, illustrated by multilateral pacts such as Mercosur, the Union of South American Nations and the Pacific Alliance. In the midst of these demonstrations of diplomatic fraternisation, the question rises how the bilateral relations in the Beagle region has evolved since the Treaty was signed, and whether the terms established in it have become outdated and replaced by new rules, replacing a focus on maintaining a division into border dynamics that proliferates integration.

The Border Treaty

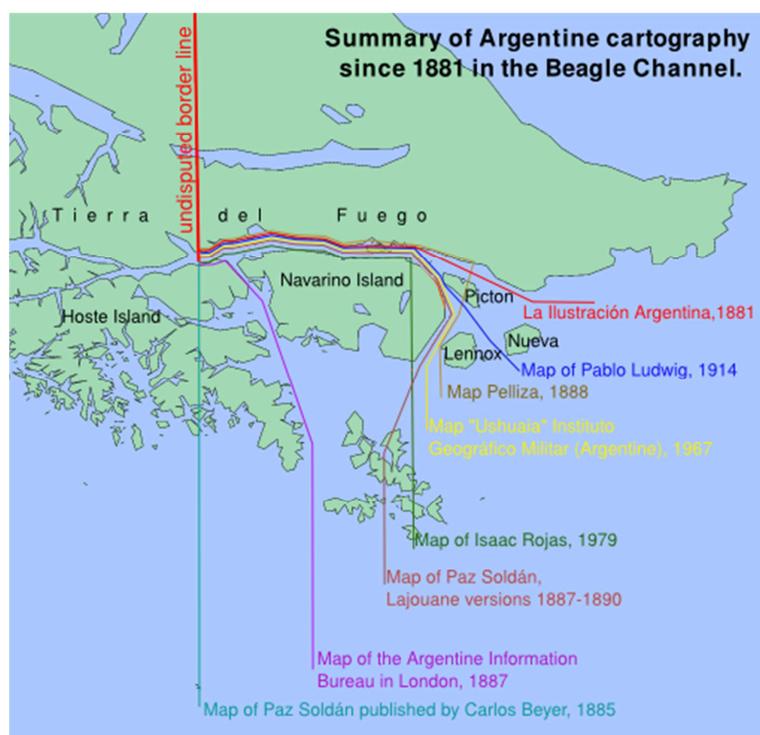
In 1881, decades before the vast territory of Patagonia was entirely explored and colonized by Argentina and Chile, a border was drawn that defined the division of the two nations. This border treaty was meant to perpetuate a *status quo* that kept the two countries from obtaining access to both oceans, while simultaneously including previous settlements within their respective national jurisdictions (Luiz & Schillat, 1998; Van Aert, 2013). Consequently, both

shores of the Strait of Magellan were assigned to Chile, due to the presence of the Chilean city of Punta Arenas at its western shore. This natural canal was of international strategic relevance, being a heavily transited inter-oceanic corridor for international commerce until the opening of the Panama Canal in 1914. Therefore, the Treaty declared its waters to be neutral to assure the free passage for ships of all flags (United Nations, 2006).

Furthermore, to prevent Chile from obtaining access to the Atlantic, the Tierra del Fuego Archipelago south of the Strait was split between both nations. Article three of the Treaty describes the mode by which this split was to be effected,

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

Figure 1: Map with interpretations of the Border Treaty of 1881.



Source: https://commons.wikimedia.org/wiki/File:Resume_arg.cart.en.png

It was this article that created the foundations for one of the most complex and lasting disputes that sprang from the treaty and nearly lead to armed aggression, known as the Beagle Conflict, which was resolved finally in 1984. The treaty did not express textually, nor did it include a map to visualize, the course of the border in the Beagle Channel and its Atlantic mouth, where

many islands and islets are situated, including Navarino, Picton, Lennox and Nueva Islands, as well as the Cape Horn Archipelago. This left room for interpretations by both nations, which were rapidly expressed through maps elaborated on both sides (see [Figure 1](#)).

A century-long quarrel began with many failed intentions to reach an agreement in a context of increasing mutual tensions. At stake was not only the access to the Atlantic Ocean and the sovereignty of the continent's southernmost bits of land, but also national political stability and credibility, and economic opportunities weighted heavily on these proceedings. Ultimately, due to the geographical proximity, both Argentina and Chile's Antarctic claims became enmeshed as part of the dispute regarding sovereignty on the South American continent.

Both countries found in the treaty different positions of the border. Based on article 3 that constitutes de division of the Great Island of Tierra del Fuego "until it touches the Beagle Channel," Chile argued that Argentina did not have access to any of the waters south of the island, commonly called the *dry coast principle*. Furthermore, based on the phrase "to Chile shall belong all the islands to the south of Beagle Channel up to Cape Horn", it proclaimed sovereignty of all islands located within and south of Beagle Channel.

The *dry coast principle* rapidly lost force. In a similar way, the Strait of Magellan was appointed to Chile due to human settlement; but Argentina had a strong case in favour of access to the waters of the Beagle Channel. Thomas Bridges, a British missionary and founder of the Anglican Mission in Ushuaia, Tierra del Fuego, in 1870, was the first white inhabitant of Tierra del Fuego. In 1886, two years after the opening of the sub-prefecture in Ushuaia, he was given Argentine nationality and a concession of land from the Argentine Congress, as an acknowledgement by President Julio Roca for his work with the native people and his assistant to shipwrecks in the region of Cape Horn. This land became Harberton Ranch, which is still owned and operated by descendants of the Bridges family. It comprised a vast territory at the shores of the Beagle Channel, as well as some smaller islands in the channel, of which the largest one is Gable. Also it said that the Bridges had asked and been granted permission from the Argentine government to conduct sheep ranching on Picton Island. These antecedents were brought to the discussion on the location of the border (E. Piana, personal communication, October 2015).

Argentina also appealed to the *oceanic principle* implicit in the *Border Treaty of 1856*, reasoning that since the doctrine of *uti possidetis* applied here was still active. The argument in this case was that, since Chile never had access to Atlantic waters before its independence, the country could not possess any Atlantic coast precisely on the grounds of this doctrine. Additionally, according to Argentine research, the axis of the Beagle channel, which is determined by drawing a line along its deepest points, leads towards the Picton Passage. This would mean that the eastern mouth of the channel in fact should be considered a delta that consists of two branches, whose southern arm between Navarino and Picton Islands was the deepest. Consequently, the islands north of this passage, both Nueva and Picton, should be considered Argentine territory.

The arbitration of 1977

On 22 July 1971, nine decades after de treaty, both nation's presidents – Allende in Chile and Lanusse in Argentina – signed an arbitration agreement that forced a binding decision on the course of the boundary, and as a result, the title to Picton, Lennox and Nueva Islands. This arbitration would be in hands of the British Crown, but since Great Britain was involved in a

geopolitical dispute with Argentina for the Malvinas (Falkland) Islands, it was decided that an independent and international court would be named, composed of five judges. During a time span of four years, both countries were given the opportunity to argue and counter argue in favor of their respective interests and claims. Finally, at the end of 1976, 14 volumes and 213 maps were presented by Chile, and 12 volumes and 195 maps by Argentina.

On 18 February 1977, the British government published the judgment of the court, which in most of the claims favoured Chile. Maritime access to Argentina ports on the Beagle Channel was guaranteed, since,

the Court considers it as amounting to an overriding general principle of law that, in the absence of express provision to the contrary, an attribution of territory must *ipso facto* carry with it the waters appurtenant to the territory attributed.

The Chilean claim that all islands located entirely in the Beagle Channel belonged to Chile was declined; the border was delimited mostly along the center of the channel, allowing both to navigate in national waters. Furthermore, both the ocean principle and the *uti possidetis* doctrine presented by the Argentine prosecutor were rejected. The court argued that the Treaty of 1881 did not define Picton, Nueva and Lennox as Atlantic islands, as Argentina claimed, but as islands south of the Beagle Channel. Consequently, they were allocated to Chile.

Chile immediately accepted the judgement published by Great Britain. Argentina, however, declared it “incurably void,” on the grounds of deformation of arguments, contradictions within the arguments, bias, historical and geographical errors, impartiality, among other motives. On 8 March 1978, the court clarified to both nations that the validity of the judgment could not be declined unilaterally and that such intentions “must themselves be regarded as nullities, devoid of all legal force or effect. They are not capable of impairing the validity of the Award, which in consequence remains fully operative and obligatory in law.” As a consequence, the border and the islands mentioned in the judgment were in fact and by law assigned to one or either country. This left both nations on the brink of war.

By the time the arbitration was published in 1977, Argentina had fallen under the dictatorship of General Jorge Videla, which began in 1976. Chile had succumbed to a similar regime in 1973 with General Augusto Pinochet seizing power. Despite of the signing of a new agreement in Puerto Montt, Chile, which permitted further negotiations on the differences, mutual trust did not leave much common ground and tensions grew. Towards the end of the year, Argentina decided to prepare for war. Under the term Operation Sovereignty, a plan was designed to take possession of Picton, Nueva and Lennox, and if necessary, invade and divide continental Chile. Thousands of infantry troops, known as *Albatros*, were sent to the Argentine portion of Tierra del Fuego Island. Army boats guarded the waters and ground weapons, such as missile launchers, were installed along the Beagle Channel’s coast, from the town of Ushuaia at the western border all the way to the Mitre Peninsula in the east. Today, many of these embattlements, abandoned and deteriorated over time, still can be found along the coastal landscape (See [Figure 2](#)).

Locally, the conflict produced an awkward situation since more than 30% of the ‘Argentine’ population was of Chilean nationality. The Industrial Promotion Law, introduced in the Tierra del Fuego National Territory by the Argentine federal government in 1972 had stimulated economic activity and immigration to the eastern part of region. As a result, the numerous Chilean inhabitants were considered a threat to Argentine sovereignty. Some

returned to Chile, while others stayed and ignored the tensions together with their Argentine neighbours, watching how the local towns were overwhelmed by military presence and national publicity (N. Nogar, personal communication, November 2015).

Both nations were prepared for battle when, on 22 December 1978, they agreed on a new mediation, this time by the Vatican.

Figure 2: This image forms part of a collection of 28 photographs¹ taken by photographer Gustavo Groh with a stenopeic (pinhole) camera along the shore of the Beagle channel, as a memorial testimony of the peaceful resolution of the border conflict of the Beagle Channel between Chile and Argentina.



Photo © 2016 Gustavo Groh. Reproduced with permission.

The Treaty of Peace and Friendship of 1984

On 8 January 1978, the *Act of Montevideo* was signed, in which both countries accepted to return to the *status quo* of 1977 and to not disturb their mutual harmony. Pope John Paul II named Cardinal Antonio Samoré to be responsible for the mediation. In 1980, a proposal was accepted by Chile and rejected by Argentina. Espionage from both sides, national economic and geopolitical interests, and political pressure on the military regimes prevented the threat of military action to become a reality. On 2 April 1982, Argentina disembarked in the Malvinas (Falkland) Islands, and re-installed its troops on the Chilean border. Chile, despite of its

¹ This collection, called *El agua que apagó el Fuego*, was shown in Argentina, Italy and the United States between 2006 and 2010, and later published as a book in 2010 by Editora Cultural Tierra del Fuego, Ushuaia, Argentina.

historic support in favor of Argentina regarding its sovereignty claims to this archipelago, refrained and refused to back the motion to apply the *Inter-American Treaty of Reciprocal Assistance*, which would have allowed military support for Argentina in the Malvinas War. Only after Argentina surrendered 74 days later, was it also known that Chile had accepted Great Britain's request to use its air space and land infrastructure.

In the midst of all these tensions, another issue arose when at the 1982 UN Convention on the Law of the Sea, nations were allotted an Exclusive Economic Zone of 200 nautical miles (320 km) from their coastal baselines. Chile had already anticipated this international agreement in 1977, which changed the maritime map considerably, making all waters between the islands into Chilean internal waters, which left Chile with a political advantage over Argentina, in terms of economic, logistic and military potential in the region.

On 19 October 1984, the Treaty's contents were published. Like previous verdicts, this Treaty also recognized the legitimacy of the *Border Treaty of 1881*. Also, it held on to the border determined by the *Arbitration of 1977*. From its eastern extreme, it extended the limit by connecting six coordinates, establishing the maritime border between both countries. While the islands were recognized as Chilean, this line actually allots to Argentina most of the archipelago's Exclusive Economic Zone to the east of Cape Horn (see [Figure 3](#)).

Figure 3: Border and navigation rights as defined by the Treaty of Peace and Friendship.



Source: <https://commons.wikimedia.org/wiki/File:Beagle.1984.en.png>

The treaty furthermore established that all maritime traffic would be permitted to navigate from the Strait of Magellan to the Argentine ports on the Beagle Channel, following a predetermined route, with the presence of a Chilean pilot and when previously informed to the Chilean authorities. From these Argentine ports in the direction of Cape Horn, the treaty also

stipulated a course for foreign vessels, and can be taken without a Chilean pilot and without previous notice.

On 25 November 1984, the Treaty was approved by the Argentinian population through a plebiscite. Four days later, it was signed in Vatican City by the ministers of foreign affairs of both nations and has been respected ever since.

Bilateral relations today

The Treaty created a Bi-National Commission; a permanent organ that aims at “strengthening economic co-operation and physical integration”. Over the years, this Commission has never altered the contents of the Treaty, while local state functionaries observe that in some points this might be desirable from a commercial or bureaucratic point of view (L. Perez, personal communication, January 2016).

In the early nineties, the three most southern provinces of Argentina, together with the two most southern Regions in Chile, constituted The Committee of Southern Integration (*Comité de Integración Austral*), in order to encourage bilateral relations of the Southern Patagonian region through regional efforts. This Committee still meets once a year, and elaborates a formal act of developments in, and challenges to, regional integration. However, despite all institutional formalities, effective initiatives towards integration have been scarce; both terrestrial and maritime borders are still strictly guarded. Pilots of both nations still fulfill their maritime duty as described in the Treaty over thirty years ago, while commercial trade between both regions is still insignificant (G. Martínez, personal communication, January 2016). Although the conflict has slowly moves towards the pages of history, there does not yet appear to be sufficient ground for real regional integration.

The future of Antarctica

In times of concrete political will and a felt need to strengthen integration between both countries, it is remarkable that the Treaty of Peace and Friendship, that stems from and incentivizes a division, is maintained today. Informants from different fields but all professionally related to this noteworthy situation unequivocally believe that the explanation for this paradox has to be found on a broader geopolitical level. In both countries, Tierra del Fuego is located in the same political jurisdiction as Antarctica and the Atlantic waters in between². Since its geopolitical future remains undefined, and given the fact that both countries claim overlapping parts of the Antarctic continent, dividing border politics in Tierra del Fuego are unlikely to subside. Only after separating the Fuegian condition from the larger geopolitical picture of the Antarctic sovereignty, could both regions act according to their expressed wishes to mutually cooperate in regional development. However, so far, federal priorities seem to drown these local aspirations, holding on to the rules that determine border dynamics designed more than thirty years ago.

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² In Chile, both the *Province of Tierra del Fuego* and the *Province of Chilean Antarctica* integrate the XII Region of Magallanes and Chilean Antarctica. In Argentina, Tierra del Fuego is part of the *Province of Tierra del Fuego, Antarctica and the Southern Atlantic Islands*.

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