

ARGENTINE-CHILE FRONTIER CASE

MEMORIAL

SUBMITTED BY THE ARGENTINE REPUBLIC

5

November 1965

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ARGENTINE-CHILE FRONTIER CASE

MEMORIAL

OF THE ARGENTINE REPUBLIC

ANNEX OF DOCUMENTS

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CHAPTER I

INTRODUCTION

1. This Memorial is filed in accordance with Order No. 1. of the Court of Arbitration, dated the 20th May, 1965, which fixed the 31st October, 1965, as the time limit for the filing of Memorials. By subsequent order of the Court, Order No. 4 dated the 9th November, 1965, the time limit was extended to 1st December, 1965.

Order No. 1. requested the Parties to include in their Memorials a statement of the relevant facts, a statement of law, annexes containing maps and documents, and their submissions.

THE QUESTION FOR THE COURT OF ARBITRATION

2. Article I(1) of the Agreement for Arbitration (Compromiso) dated the 1st April, 1965, and determined by Her Majesty's Government in the United Kingdom pursuant to Article V of the General Treaty of Arbitration signed by the Parties on the 28th May, 1902, reads as follows :-

ARTICLE I

"(1) The Court of Arbitration, acting in accordance with the provisions of the present Agreement (Compromiso) shall consider the following question and report to Her Majesty's Government its conclusions thereon :

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?"

This Article states the Question to be reported on by the Court of Arbitration.

THE FORMULATION OF THE QUESTION

3. The formulation of the Question put to the Court, although in a single sentence, logically requires the consideration of two distinct questions in a particular sequence.

The first of these questions is how far the course of the boundary in the Sector has remained unsettled since the 1902 Award. Until that primary question has been determined, it is logically impossible for the Court of Arbitration to proceed to the second question, which is the definition of the course of that part of the boundary, if any, which has remained unsettled.

4. Both these questions turn upon the effect of the 1902 Award, which is binding upon both Parties. The entire issue placed before the Court is expressed by reference to that Award, which is the focal point of the present proceedings.

THE BURDEN OF PROOF

5. Article 1 of the Agreement for Arbitration (Compromiso) states that "the formulation of the above question shall be without prejudice to any burden of proof". It may be important to note that this does not mean that there is no burden of proof but that, as there is no applicant or respondent party, the burden of proof is not prejudiced by the manner in which the Question asked of the Court is formulated. The Court will see that the Question assumes the validity and the essential relevance of the 1902 Award, and that that Award settled in principle the whole of the boundary in the Sector.

The submission of the Argentine Republic, therefore, is that it must be for the Party wishing to show that any part of the boundary in the Sector remains "unsettled" to prove the extent of the boundary, so remaining "unsettled".

PRINCIPAL ISSUES

6. Of the issues treated in this Memorial it may be of assistance to the Court to select three which are particularly important and make here some introductory comments about them.

7. The first concerns the 1902 Award itself, by which

is meant in this context all the documents which form the 1902 decision. The Court is required by the terms of Article 1(1) of the Agreement for Arbitration (Compromiso) to concentrate its attention, throughout its consideration of the Question submitted, upon the 1902 Award. Therefore it is essential throughout the proceedings to keep in view the fact that the Court is required to interpret and fulfil that Award.

8. The terms of Article 1(1) confirm the previous attitude of both Parties to this case, which showed beyond doubt that the essential legal validity of the 1902 Award is in no way in issue.

9. The Court will note that where a question has already been the subject of definite settlement, the General Treaty of 1902 (Article II) limits any subsequent Arbitration to questions respecting the validity, the interpretation and the fulfilment of such definite settlement; and that the present Agreement for Arbitration (Compromiso), as determined by the Arbitrator, refers to only two of these aspects - interpretation and fulfilment - thereby assuming the validity of the 1902 Award, which was a definite settlement, within the meaning of Article II of the 1902 Treaty, between the Parties of

the questions referred to the Arbitrator who made the Award. The 1902 Award, as will be seen from the submissions made later in this Memorial, has assumed an essential validity in the international legal relationship between the two Parties, and provides moreover an authoritative, and binding, interpretation of the earlier Treaties governing that relationship. Accordingly, it would be a wrong approach, it is submitted, to seek to disregard, or go behind, the 1902 Award or to disregard its terms and character.

10. It is the submission of the Argentine Republic that certain parts of the boundary in the north and the south of the Sector between Boundary Post 16 and 17 were finally "settled" by the 1902 Award and the 1903 demarcation and therefore no longer remain "unsettled" within the meaning of Article I(1) of the Agreement for Arbitration (Compromiso).

Even though, as will be seen, the remaining or middle part of the boundary in the Sector remains "unsettled" within the meaning of Article I(1), that part was nevertheless "settled" in principle by the 1902 Award, in the sense that it is the task of this Court to interpret and fulfil that Award as regards this part, and not to draw a new line without regard to the Award.

11. The second feature of the case which the Court will find of particular significance is the work of the Argentina-Chile Mixed Boundaries Commission, established in 1941 by a Protocol made between the Parties.

This joint body of experts worked for a number of years on the boundary in the Sector between Boundary Posts 16 and 17, as well as upon many other stretches of the frontier both north and south of the Sector. Although the Mixed Commission still exists and regularly meets it has not since 1955 made any decision about the boundary line in the Sector. However in that year the Mixed Commission reached unanimously decisions as to the course of the boundary line in the northern and southern part of the Sector between Boundary Posts 16 and 17. These decisions, it will be submitted, must, on any view, have the strongest evidential value in the present proceedings, but it is the submission of the Argentine Republic that the Mixed Commission in reaching those decisions applied the terms of the 1902 Award to parts of the boundary in the Sector, which had already been settled by the 1902 Award, and so confirmed beyond doubt that those parts of the boundary no longer remained unsettled at the date of the Agreement for Arbitration (Compromiso). A decision upon that question must, it is submitted, precede any attempt at determination of the boundary in the Sector because

until that question is decided the extent of boundary still to be determined cannot be ascertained.

In addition to the work of the Mixed Commission in the Sector, the work completed by it in other parts of the frontier also has an important relevance to the Question under consideration by this Court. The practice of the Commission established by that work will be of value in showing the interpretation placed upon the 1941 Protocol as to the competence of the Commission, which interpretation was accepted by both Parties.

12. The third matter is the question of the determination by the Court of the "course of the boundary" which it decides has remained unsettled since 1902. This Memorial describes what course is submitted by the Argentine Republic to be the correct one on the proper interpretation and fulfillment of the 1902 Award. The submissions of the Argentine Republic on the extent of the boundary calling for decision are stated in the alternative only because the Court is required by the Agreement for Arbitration (Compromiso) to consider the extent to which the boundary remains unsettled, and only then to determine it to that extent. The submission relating to the entire boundary in the Sector is not to be taken to derogate from the primary submission of the Argentine Republic that

this Court is not, on the facts of the case, required to determine the course of the boundary throughout the whole of the Sector between Boundary Posts 16 and 17.

MAPS

13. For the convenience of the Court, two Sketch Maps are included at the end of this volume. These are for general information only; for exact geographical information reference should be made to the printed maps annexed to this Memorial.

At the first mention in Chapters II and III of each relevant geographical feature in this Memorial, a grid reference to Sketch Map No. 2 is given; e.g. Cerro de la Virgen (E8).

The absence of alternative names on the Sketch Maps has no significance.

14. There is separately annexed to this Memorial a folder of maps, plans and sheets, numbered as Maps A1 to A56. Where those annexed Maps are referred to in the text of the Memorial, the appropriate annex number of each is given. The index to these Maps is included in the folder as well as at the end of this Memorial, and there will also be found in the folder a glossary of such Spanish terms on the annexed Maps as are thought to require explanation. At this point special reference is made only to Map No. A54.

Map No. A54 is a transparent overlay upon a composite map made of Maps Nos. A29, A30 and A31 annexed to this Memorial. This Map shows, with reference to the submissions in this Memorial, the parts of the boundary line finally settled by the 1902 Award, the parts of the line approved by the Argentina-Chile Mixed Boundaries Commission, and the line claimed in these proceedings on behalf of the Argentine Republic.

CHAPTER II
HOW THE QUESTION ARISES

THE 1902 AWARD

15. The 1902 Award was made on the 20th November, 1902, by King Edward VII, and it decided the matters which had been referred to arbitration under earlier Agreements (mentioned below) made between the two Parties. The Award, as is well known to this Court, dealt with a considerably larger area of disputed frontier between the two Parties than is relevant in any sense to the present case. The proceedings of the Tribunal which reported to King Edward VII were lengthy, and in particular involved the submission of a considerable body of evidence by both Parties, contained in numerous volumes accompanied by maps and photographs. It is not intended in this Memorial to analyse the proceedings of the 1902 Tribunal in detail, but, where necessary, reference will be made to such of the matters which arose in the course of those proceedings as are relevant to the present dispute.

16. The Award itself, promulgated in the English language, is annexed hereto as Annex No. 1, and the Argentine Republic draws attention to the following Articles of such Award, which are directly relevant to the present dispute:

ARTICLE III

" From Perez 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, Fetaleufu, and Palena (or Carrenleufu); awarding to Argentina the upper basins of those rivers above the points which we have fixed, including the valleys of Villegas, Nuevo, Cholila, 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, from whence it shall ascend to the principal water-parting of the South American Continent at Loma Baguales, and follow that water-parting to a summit locally known as La Galera. From this point it shall follow certain tributaries of the River Simpson (or southern River Aisen), which we have fixed, and attain the peak called Ap Ywan, from whence it shall follow the water-parting determined by a point which we have fixed on a promontory from the northern shore of Lake Buenos Aires. The upper basin of the River Pico is thus awarded to Argentina, and the lower basin to Chile. The whole basin of the River Cisnes (or Frias) is awarded to Chile, and also the whole basin of the Aisen, with the exception of a tract at the head-waters of the southern branch including a Settlement called Koslowsky, which is awarded to Argentina.

The further continuation of the boundary is determined by lines which we have fixed across Lake Buenos Aires, Lake Pueyrredon (or Cochrane), and Lake San Martin, the effect of which is to assign the western portions of the basins of these lakes to Chile, and the eastern portions to Argentina, the dividing ranges carrying the lofty peaks known as Mounts San Lorenzo and Fitzroy.

From Mount Fitzroy to Mount Stokes the line of frontier has been already determined.

.....

ARTICLE V

A more detailed definition of the line of frontier will be found in the Report submitted to Us by Our Tribunal, and upon the maps furnished by the experts of the Republics of Argentina and Chile, upon which the boundary which we have decided upon has been delineated by the members of Our Tribunal, and approved by Us".

17. The Report and the Maps referred to in the Award were made part of the Award. The Report dealt in some detail with the proceedings of the Tribunal and with the solution reached on the problems posed to it. That Report is annexed hereto as Annex No. 2. The Map forming part of the Award, which included the Sector now under consideration, was entitled "Perez Rosales to Lake Buenos Aires" - "Boundary determined by His Majesty King Edward the Seventh between the Republics of Argentina and Chile in conformity with the Arbitration Clauses of the Treaty of 1881 and the Protocol of 1893" and was signed by the three Members of the Tribunal and its Secretary; it is annexed hereto as Map No. A1. The material part of the recommendations made by the Tribunal in the Report is as follows :

"PEREZ ROSALES PASS TO LAKE VIEDMA.

22.....Crossing the Fetaleufu River at this point, it shall follow the lofty water-parting separating

the upper basins of the Fetaleufu and of the Palena (or Carrenleufu or Corcovado) above a point in longitude $71^{\circ} 47'$ W., from the lower basins of the same rivers. This water-parting belongs to the Cordillera in which are situated Cerro Conico and Cerro Serrucho, and crosses the Cordon 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 $71^{\circ} 41' 30''$ W". See Note below.

EVENTS LEADING UP TO THE 1902 AWARD

18. The territories of the Argentine Republic and of the Republic of Chile were formerly a part of the Spanish Dominions in South America. Since the sixteenth century Spain had conquered and colonized these regions for which latter purpose an administrative structure was adopted. The present territory of the Argentine Republic

Note: The River Carrenleufu has in some reaches or at some time or other been referred to as the River:

"Voiquelunque", "Corcovado", "Carrileufu", "Carrenleufu", "Palena", "Buta-Palena", "Vuta-Palena" and "Carrenleufu".

To simplify the task of the Court, on the sketch maps and in this Memorial, unless a direct quotation is being made from some original description, the name "River Carrenleufu" is used to mean the whole length of the stream which rises at the eastern end of Lake General Paz, and finally flows out westwards into the Pacific Ocean.

includes the major part of the Spanish Viceroyalty of the River Plate, and the territory of the Republic of Chile includes most of the area designated at the time of the Spanish Dominion as the Captaincy General of Chile. Both Parties to this dispute achieved their independence in the early part of the nineteenth century, and, once the wars of independence were over, they signed a Treaty of Friendship, Alliance, Commerce and Navigation on the 20th November, 1826, which provided in part as follows :

"ART.III. The contracting Republics engage themselves to guarantee the integrity of their territories, and to take action against every foreign Power which shall attempt to change by force the boundaries of the said Republics, as recognized before their Emancipation, or, subsequently, in virtue of special Treaties."

19. The southern part of the Cordillera of the Andes, historically considered as the boundary between the two countries, and the immediately surrounding regions were in 1826 remote from populated areas. During the second quarter of the nineteenth century both Argentina and Chile were engaged in the task of opening up and populating those lesser-known parts of their respective countries, and as a result questions began to arise between the Parties as to the exact position of the boundary. It was not, however, until after 1850 that the need for a definitive boundary treaty was felt. Accordingly, on the 31st

January, 1856 a further Treaty came into force between the Parties. It provided in the material respect as follows :-

"ART. XXXIX. Both the contracting parties acknowledge as boundaries of their respective territories those they possessed as such at the time of separating from the Spanish Dominion in the year 1810, and agree to postpone the questions which may have arisen, or may arise regarding this matter, in order to discuss them later on in a peaceful and amicable manner, without ever resorting to violent measures, and in the event of not arriving at a complete arrangement, to submit the decision to the arbitration of a friendly nation."

20. There followed, at intervals, considerable negotiations over the settlement of the whole boundary running from north to south between the territories of the two Parties, without any result being reached. Due to this fact the relationship between the countries steadily deteriorated until diplomatic ties were severed and public opinion in both countries feared that war was imminent. Through the mediation of the Ministers of the United States of America in Buenos Aires and in Santiago, proposals for a new agreement were exchanged and negotiations culminated in a Treaty made on the 23rd July, 1881 (Annex No. 3 hereto). The Treaty stated in Article I, the only material part for the purposes of the present Court, as follows :

"ART. I. The boundary between the Argentine Republic and Chile from north to south as far as the parallel of latitude 52° S., is the Cordillera de los Andes. The frontier line shall run in that extent along the most elevated crests of said Cordillera that may divide the waters, and shall pass between the slopes which descend one side and the other. The difficulties that might arise from the existence of certain valleys formed by the bifurcation of the Cordillera, and in which the watershed may not be apparent, shall be amicably settled by two Experts, one to be named by each party....."

21. The Experts thus appointed began their work, and appointed Sub-commissions to assist them in the task, but the work proceeded slowly and came to a halt in 1892, mainly over the question of the proper interpretation of the Treaty of 1881. In order to get over such difficulties a Protocol, (Annex No. 4 hereto), was signed between the representatives of the Parties on the 1st May, 1893, which provided in Article I as follows :

"ART. I. Whereas Article I. of the Treaty of 23rd July 1881, provides that 'the boundary between Chile and the Argentine Republic from north to south as far as parallel of latitude 52° S. is the Cordillera de los Andes,' and that 'the frontier line shall run along the most elevated crests of said Cordillera that may divide the waters, and shall pass between the slopes which descend one side and the other,' the Experts and the Sub-Commissions shall observe this principle as an invariable rule of their proceedings. Consequently all lands and all waters, to wit: lakes, lagoons, rivers and parts of rivers, streams, slopes situated to the east of the line of the most elevated crests of the Cordillera de los Andes that may divide the waters, shall be held in perpetuity to be the property and under

the absolute dominion of the Argentine Republic; and all lands, and all waters, to wit: lakes, lagoons, rivers, and parts of rivers, streams, slopes situated to the west of the line of the most elevated crests of the Cordillera de los Andes that may divide the waters, to be the property and under the absolute dominion of Chile."

22. In spite of this Protocol, it was still not possible for agreement to be reached over the whole length of the boundary between the Parties, and consequently a further Agreement was signed on 17th April, 1896 (Annex No. 5 hereto), appointing, in case of differences, the Government of Her Britannic Majesty as Arbitrator. Article I of this Agreement referred to the Treaty of 1881 and the Protocol of 1893. It then continued:

"II. Should differences arise between the Experts when fixing in the Cordillera de los Andes the boundary marks south of parallel $26^{\circ} 52' 45''$ S., and in case they could not be amicably settled by joint accord of both Governments, they shall be submitted to the decision of the Government of Her Britannic Majesty which the contracting parties from this moment appoint in the character of Arbitrator entrusted with the strict application in such cases of the provisions of the aforesaid Treaty and Protocol, after the ground has been examined by a Commission appointed by the Arbitrator!"

23. The work of the Experts and their Sub-commissions continued in accordance with such further Agreement, but several lengths of the frontier still remained incapable of solution by the method so far agreed

between the Parties. In the years between 1896 and 1898 the relations between the two countries again deteriorated alarmingly, and so the decision was taken to have recourse to Arbitration by the Government of Her Britannic Majesty under the 1896 Agreement. Accordingly, in 1898, the authorised representatives of both Parties met at Santiago, Chile, and on 22nd September, 1898, a Record (Annex No. 6 hereto) was signed which declared, in the material part, as follows:

"In view of the foregoing contradictory declarations which raise a question that only the Arbitrator can decide, and not having been able to arrive at any direct arrangement, the Minister for Foreign Affairs of Chile and the Envoy Extraordinary and Minister Plenipotentiary of the Argentine Republic agree, in the name of their respective Governments, to remit to that of Her Britannic Majesty a copy of the present Record, of the Records of the Experts which have been read and of the Treaties and International Agreements in force, in order that, subject to base II. of the Agreement dated 17th April, 1896, said Government may decide the divergences which have been recorded above.

Finally they agreed that the above-mentioned documents shall be delivered to the Government of Her Britannic Majesty by the Diplomatic Representatives of the Argentine Republic and of the Republic of Chile accredited to the said Government, who shall manifest to same that, the case foreseen in the above-quoted base II, of the Agreement of 17th April, 1896, having arisen, they may proceed to appoint the Commission, that is to verify the previous study of the ground and solve all the divergences together and in one decision."

24. Pursuant to such reference, a Tribunal was appointed

to report upon the questions so submitted to Her Britannic Majesty's Government. The Members of the Tribunal were Lord Macnaghten, a Lord of Appeal in Ordinary, Major-General Sir John Ardagh, and Colonel Sir Thomas Holdich. This Tribunal considered the representations made by both Parties, maps submitted by them and the records of the proceedings under the Treaties and Agreements between the Parties. In the early months of 1902, during the course of the proceedings, a Technical Commission presided over by Colonel Sir Thomas Holdich, accompanied by other members of the staff of the Tribunal, proceeded to the areas in dispute and made extensive enquiries there to inform themselves of the questions which fell for decision.

Although it is not proposed in this Memorial to summarize the contentions of the Parties as regards the major part of the lengths of the boundary then in dispute, the written submissions, maps and photographs which were presented by both Parties in several volumes, will be available for the consideration of this Court should any material point arise upon any of them in the course of this Arbitration. The total length of boundary which fell to be considered by the 1902 Tribunal exceeded 2000 kilometres, of which approximately 1800 kilometres were dealt with by Article III of the Award, and it necessarily follows that many matters had to be considered

which have no relevance to the present proceedings. This Court should, however, be aware of the main thesis put forward at that time by each Party as a justification for the line which it proposed should be followed in the area now under consideration by this Court. Each side's thesis applied to many other parts of the boundary in dispute in 1902 as well, and the contentions upon which the arguments relating to the Sector in dispute were based can conveniently be stated in the form in which they are to be found in the next paragraph.

25. The general thesis maintained by the Argentine Republic before the 1902 Tribunal was that the proper line of the boundary, to be determined in accordance with the strict application of the Treaty of 1881 and the Protocol of 1893, should be the Cordillera of the Andes. The latter expression was to be understood as referring to the line of highest summits of the Andean range which runs from north to south throughout the Continent. Moreover, Article I of the 1893 Protocol between Argentina and Chile stated that "...parts of rivers" on one or the other side of the "most elevated crests of said Cordillera that may divide waters ... shall be the property" respectively of the Argentine Republic or of the Republic of Chile. It is evident from the text of that Article

that the existence of transverse rivers running across the Cordillera of the Andes had been recognised and taken into account, with the result that the continental watershed had to be rejected as a criterion, due to the fact that its location was in places extra-Andean. It follows then that the wording of the 1881 Treaty - "the most elevated crests of said Cordillera that may divide the waters" - referred to a local watershed following those most elevated Andean crests.

The Chilean claim was to a line along the continental watershed, but this would have placed long stretches of the boundary outside the Cordillera. The Tribunal, and the Award based upon the Report of the Tribunal, did not adopt generally either the Argentine thesis or the Chilean thesis.

THE MAKING OF THE AWARD

26. The basis upon which the Report of the Tribunal, (Annex No. 2 hereto), which formed part of the Award, was made, was set out in the Report itself as follows:

"9. Before setting forth the conclusions at which we have arrived, we shall briefly review the essential points upon which the two Governments were unable to arrive at an agreement.

10. The Argentine Government contended that the boundary contemplated was to be essentially an orographical frontier determined by the highest summits of the Cordillera of the Andes;

while the Chilean Government maintained that the definition found in the Treaty and Protocols could only be satisfied by a hydrographical line forming the water-parting between the Atlantic and Pacific Oceans, leaving the basins of all rivers discharging into the former within the coast-line of Argentina, to Argentina; and the basins of all rivers discharging into the Pacific within the Chilean coast-line, to Chile.

11. We recognized at an early stage of our investigations that, in the abstract, a cardinal difference existed between these two contentions. An orographical boundary may be indeterminate if the individual summits along which it passes are not fully specified; whereas a hydrographical line, from the moment that the basins are indicated, admits of delimitation upon the ground.

12. That the orographical and hydrographical lines should have been accepted as coincident over such a long section of the frontier as that which extends from the San Francisco Pass to the Perez Rosales Pass (with the exception of the basin of Lake Lacar), may not improbably have given rise to the expectation that the same result would be attained without difficulty in the more southern part of the continent, which, at the date of the Treaty of 1881, was but imperfectly explored.

13. The explorations and surveys which have later been carried out by Argentine and Chilean geographers have, however, demonstrated that the configuration of the Cordillera of the Andes between the latitudes of 41° south and 52° south, i.e., in the tract in which divergences of opinion have mainly arisen, does not present the same continuities of elevation, and coincidences of orographical and hydrographical lines, which characterise the more temperate and better known section.

14. In the southern region the number of prominent peaks is greater, they are more widely scattered, and transverse valleys through which rivers flow into the Pacific are numerous. The line of continental water-parting occasionally follows the high mountains, but frequently lies to the

eastward of the highest summits of the Andes, and is often found at comparatively low elevations in the direction of the Argentine pampas.

15. In short, the orographical and hydrographical lines are frequently irreconcilable; neither fully conforms to the spirit of the Agreements which we are called upon to interpret. It has been made clear by the investigation carried out by our Technical Commission that the terms of the Treaty and Protocols are inapplicable to the geographical conditions of the country to which they refer. We are unanimous in considering the wording of the Agreement as ambiguous, and susceptible of the diverse and antagonistic interpretations placed upon them by the Representatives of the two Republics.

16. Confronted by these divergent contentions we have, after the most careful consideration, concluded that the question submitted to us is not simply that of deciding which of the two alternative lines is right or wrong, but rather to determine - within the limits defined by the extreme claims on both sides - the precise boundary-line which, in our opinion, would best interpret the intention of the diplomatic instruments submitted to our consideration.

17. We have abstained, therefore, from pronouncing judgment upon the respective contentions which have been laid before us with so much skill and earnestness, and we confine ourselves to the pronouncement of our opinions and recommendations on the delimitation of the boundary, adding that in our view the actual demarcation should be carried out in the presence of officers deputed for that purpose by the Arbitrating Power, in the ensuing summer season in South America."

27. These conclusions of the Tribunal were based upon the enquiries of the Technical Commission and upon the considerations set out in Paragraph 15 of the Report quoted above. It is of interest to see that Colonel Sir

Thomas Holdich during his examination of the problem on the ground recognized at an early stage that the problem would have to be solved in the manner which was subsequently set out in Paragraph 16 quoted above.

This can be seen from the Interim Report of the Technical Commission to the Tribunal despatched from Puerto Montt, Chile and dated the 3rd April, 1902, covering the period 22nd February to 3rd April, 1902 (Annex No. 7 hereto), and in particular the following passage:

"I was able unofficially to ascertain that both Governments would gladly accept a decision on the part of the Tribunal which should be based on mutual compromise, provided that a decision of some sort could be given soon. A prompt and effective settlement of the whole boundary dispute was most earnestly desired. I took the opportunity to point out that so far as the Tribunal was concerned, it was absolutely impossible that we should give a decision before complete geographical information was at our disposal, and that in as much as the surveys of the disputed tracts were even now incomplete, and the surveyors still in the field, we could fairly claim that we had taken active steps towards the settlement at the very earliest opportunity possible. And I gave every assurance that nothing should be wanting on my part to bring the boundary question to a definite issue within the present year. But there was the difficulty of the approaching winter and the possibility of our being shut out of the field; and it was with this possibility before me that I decided to modify my original programme, (which was to examine the Argentine and Chilean claims in detail along their respective lines, and then look for the possible compromise) by placing the whole working strength of the Commission on a central line at once."

Examination of the work of the Technical Commission shows that this was in fact done by that Commission.

In a Report (Public Record Office No. FO.16/360 Doc. No.100) to the Tribunal made after his return from South America, summarising the conclusions to which he had arrived, Colonel Sir Thomas Holdich stated that the Tribunal was forced as much by the interpretation of the Treaties as by the structural disposition of ranges and valleys into a boundary of compromise which should combine as far as possible the conditions of an elevated watershed with geographical continuity. He added, however, that certain conditions, namely the value of the territory, its present occupation and strategic considerations, might be found to militate against the idea of a "central meridional dividing line".

28. The present dispute concerns only a short length of the total boundary established by the 1902 Award, and as will be seen below, the present differences between the Parties, which this Court is asked to resolve, find their origin in a geographical error which affected only part of that short length of boundary.

MAPS SUBMITTED TO THE 1902 TRIBUNAL

29. In 1902 many of the boundary areas then in dispute were uninhabited and relatively unexplored. Some

explorers and geographers of skill and competence had entered upon certain parts but there had been no comprehensive survey of the total area and towards the south in particular the conditions made exploration and mapping difficult. The experts appointed to consider the frontier problems in the years before the reference to arbitration had embarked upon the task to some extent but there were considerable areas, as can be seen from the maps submitted by both Parties to the 1902 Tribunal, which were still unexplored.

30. The Argentine Republic submitted two sets of maps to the 1902 Tribunal; one set with the submission of its case and a second set with its Short Reply to the Chilean Statement. The maps submitted with the Reply contained new information which had been derived from field surveys, which had been made in the interval between the submission of the original case and the Reply. The Sheet which included the Sector now under consideration incorporated the results of a survey carried out by Gunardo Lange between 1900 and 1901 in an area which included that between the River Carrenleufu and Lake General Paz. Lange drew a map which recorded the results of his survey (see paragraph 37 below).

The 1902 Tribunal chose to take the relevant Sheets (2 and 3) of one of the Maps (XVIII) included in the second set of maps submitted by Argentina, as the basis of the part of the Map upon which they marked the recommended boundary line in the Sector now under consideration by this Court. The relevant map Sheet submitted with the Chilean Statement in the 1902 proceedings (Sheet VII-annexed hereto, as Map No. A3) showed substantially the whole of the Sector as unexplored and no use was made of it by the 1902 Tribunal. An examination of the cartographic detail of the 1902 Award Map, between the River Carrenleufu (A5 - G1) and Lake General Paz (B11 - J12) and of Sheets 2 and 3 of Map XVIII submitted with the Reply of Argentina, as is exemplified by the annexed extracts from these maps (Map No. A2, extracts C and B), shows beyond doubt that the 1902 Award Map is a copy of the Argentine map. This latter map in turn is in large measure a direct copy of Lange's map. (Map No. A2, extract A). Sheets 2 and 3 of Map XVIII are not annexed as such to this Memorial, because they are, apart from the marking of the boundary line, identical with those used by the Chile-Argentine Demarcation Commission in 1903, (See Maps Nos. A4 and A5).

31. Before considering the problems raised by the adoption of those maps, it is convenient to go back in history and consider how the area containing the Sector, the subject matter of the present arbitration, was explored, so far as is known to the Argentine Republic.

32. Early Explorers: It seems that the first explorer to reach and report on the basin of the River Carrenleufu was an English Captain, G.C. Musters, who visited the zone in 1869. In his book "At Home with the Patagonians" (London, 1871), he describes (pp. 148-149) a river, which can only be the River Carrenleufu, which appeared to strike west through the Patagonian Andes and to empty into the Pacific Ocean. In following years other explorers reached the region both from the east and from the west. Among the Chilean explorations there was that of R. Serrano Montaner (1886-7), who explored the River Carrenleufu from the Pacific coast. From the Argentine side, Colonel J.L. Fontana led two expeditions in 1885 and in 1887-8, reconnoitring the upper courses of the Rivers he called "Staleufu" (Futaleufu) and "Carren-Leufu". His reports were published in the "Boletín del Instituto Geografico Argentino" (Vol. VII, 1886, pp. 148-158; 223-239; 242-254; 265-284, and Vol. IX, 1888, pp. 309-318). In 1888 C.V. Burmeister and A.P. Bell also explored

the upper valley of the River Carrenleufu (C.V. Burmeister: "Ultimas Exploraciones en Patagonia", "Revista Geográfica Argentina", Vol. VI (1888) p.251; also in "Anales" of the National Museum, Buenos Aires, Vol. III (Part 15)). These explorers showed that the River Carrenleufu had its source in Lake General Paz, ran first eastwards, then northwards and finally westwards, making its way right through the Andes. Information gathered from the native Indians led to the assumption that the River Carrenleufu was the same as that called Palena in Chile, and that this River did indeed run through the Cordillera to empty into the Pacific Ocean.

33. Another Argentine explorer, P. Ezcurra, who studied the region in the same period, produced two maps published in Buenos Aires in 1893 (Map Nos. A6 and A7).

A further cartographer of the region was Norberto Cobos, who produced a map of the Territory of Chubut in 1895 (Map No. A8).

These three maps show with reasonable accuracy the course of the River Carrenleufu from Lake General Paz to the Pacific. All three maps show, with varying precision, mountains called Cerro Central and Cerro Herrero in the position in which they appear in more modern maps. The two maps of Ezcurra (Maps A6 and A7)

depict an unnamed watercourse flowing south to north from some small unnamed lakes north of Lake General Paz to join the River Carrenleufu at about $71^{\circ}40'$ as shown on those maps. The map made in 1895 by Cobos shows a "R. Encuentro" flowing northward into the River Carrenleufu. The course of this river as depicted upon Cobos' map appears to be the same as that called Rio del Encuentro on the map made in 1894 by Dr. H. Steffen, which is considered in the following paragraph, but Cobos shows the whole course of this river whereas Steffen depicts only its lowest, east to west, reach.

34. Steffen's Map. Between December 1893 and March 1894, Hans Steffen, a German expert advising the Chilean Government, organised an expedition in the region of the River Carrenleufu. The results of the expedition were reported in the "Anales" of the University of Chile (Volumes LXXXIII, LXXXVIII and XC) and subsequently published in a book under the title "Memorias e Informes relativos a la Expedicion Exploradora del Rio Palena" (Informative Accounts and Reports relative to the Exploratory Expedition along the River Palena), Santiago, 1895. The relevant part of this book is annexed as Annex No. 8. The map of the River "Vuta-Palena", on a scale of 1:250,000, produced by this explorer, is annexed

hereto as Map No. A9. It shows the course of the River Carrenleufu but does not show any geographical details beyond the immediate neighbourhood of that river, since Steffen's expedition was primarily concerned with following the course of the river. Steffen's report shows that he met with enormous difficulties requiring great physical efforts in following the course of the river, because the river is only navigable in stretches due to the many rapids and the swiftness of the current; in addition its banks are so steep and covered with trees, bushes and dense undergrowth that they are difficult and almost impossible to traverse. In the course of his expedition, Steffen came upon a south bank tributary of the River Carrenleufu, which he named the "Rio del Encuentro". The reason why the river was given this name was that it was at about this spot that Steffen's expedition met or encountered (in Spanish "encuentro") an expedition coming from the north which was part of Steffen's exploratory team, and which had been expected to be encountered at about this place. The map shows the routes taken by each party.

From his observation point on Cuesta ("Ridge") 3, at 352 m. (see Map No. A9 and Annex No. 8 p.14) he was able to see not only the confluence of these two rivers, but also the final stretch of the River Encuentro running

into the River Carrenleufu (E3). Both of these observations he recorded on his map. Steffen also made a calculation of the height of the River Carrenleufu at a point some 2 km. downstream from the confluence of the River Encuentro; this he showed on his map as being 242 m. above sea-level. Having made these observations, Steffen continued on foot to the north-east.

35. The difficulties experienced by Steffen and emphasised in his report show that the natural conditions met in a journey from the western coast and seaboard of the Andes to this area are extremely hazardous. On the other hand the approach from the eastern side is much more level and easy, suggesting that the immediate neighbourhood of the mouth of the River Encuentro should be considered as belonging naturally and geographically to the eastern area rather than to the western area.

36. Steffen himself records this contrast in his book -

"Patagonia Occidental - Las Cordilleras Patagónicas y sus Regiones Circundantes" (Western Patagonia - The Patagonian Cordilleras and their Surrounding Regions) (1919) p.17:

"On the other hand, we cannot deny that the Argentine surveys in the area of the divortium aquarum and in the sub-Andean valleys were generally speaking carried out more completely and with a higher standard of technique than the corresponding Chilean surveys. Since this area is easily accessible from the east to vehicles and beasts of burden, the Argentine commissions were able to carry out their work with great ease and, indeed, with a certain degree of comfort. Chilean expeditions, however, always met with serious obstacles from the west to the progress of exploration and to the transport of provisions and equipment. This explains the substantial differences in the accuracy and extent of the surveys effected by the two working parties. For certain parts of the eastern area of Western Patagonia, detailed plans were drawn up by means of plane tables: the map prepared on the basis of the Argentine surveys is so complete that the Swedish scientific expedition of Skottsberg, Quensel and Halle, in the summer of 1908-9, was able to undertake the long journey from Nahuelhuapi to Ultima Esperanza with no other guide than the Argentine maps."

37. Lange's Map. The next expert to make a survey of a large part of the zone which contains the Sector now under consideration by this Court was a Norwegian advising the Argentine Government, Gunardo Lange. As part of the Argentine Republic's preparation of its case before the 1902 Tribunal, and in particular for the proper mapping of relevant zones, Lange was sent in 1900 to survey the area from the River Carrenleufu south to Lake General Paz, Lange's commission also included a far larger area to the south of Lake General Paz, which is not relevant to the present proceedings. As his report shows, Lange observed that there was a great deal of snow on the high peaks in the region south of Lake General Paz, and he decided first to make a survey of the relatively unknown area between Lake General Paz and the River Carrenleufu, at the same time allowing his assistants to familiarise themselves with field conditions.

This survey occupied the time between his arrival at his base camp on the River Pico on the 18th December, 1900 and the 20th January, 1901. Lange and his team were in the field between the 29th December, 1900, and the 28th April, 1901, and his report with photographs and plans was submitted to the Government of the Argentine Republic in August 1901. As a result of his survey he drew a map which as has been shown above in paragraph 30 was the basis for Sheet No. 3 of Map XVIII submitted

to the 1902 Tribunal with the Reply of the Argentine Republic, and as described above formed the basis of the map used by the Tribunal for the delimitation in the Award.

38. For reasons given below, Lange's travels must be dealt with in detail, and in particular the Court is referred to the relevant extract from his Report (annexed hereto and marked 9) and the map which he drew (Map No. A 10). It should be noted that the broken red crossed line appearing on Lange's Map, portraying the course of the boundary decided upon by the 1902 Award, must have been added to Lange's original map at some date subsequent to the Award. This map has been used for many years as a working document in the Argentine Ministry of Foreign Affairs. It is not known when that boundary line was marked upon the Map; it was not marked on it for the purpose of the present proceedings. That this line did not feature on Lange's original can be deduced from the facts that such a broken red crossed line does not appear in the detailed key shown at the lower right margin of the map and that the red line is superimposed on the original drawing, from the date, 15th August 1901, above Lange's signature and from the formal date 1900-1901 on the map itself. Lange's linear symbols refer only to his mode of travel and method of field observation.

39. From his main camp at the eastern end of Lake General Paz, Lange began by surveying the northern bank of the Lake. He first reconnoitred the small lakes not far north of the Lake. He was able to show, contrary to what had previously been thought to be the case, that these small lakes did not discharge into Lake General Paz, but flowed to the northwest into an extensive river system. As an allusion to the mistake thus corrected, Lange named them the "Lagunas del Engaño" (H 11) ("Engaño" means "deception") and he gave the same name ("Engaño") to the outlet river. (H10 - C7). His expedition then continued down this river, to the northwest, along its wide rock-strewn valley. He recorded the features of the river valley which he in due course transferred to the map which he drew; these included the tributaries of the River Engaño, running respectively from the valley called "Valle Norte" (G8) from the east and the valley called "Valle Hondo" (F9) on the west. He also marked on the map with suitable abbreviations the names of the following features as appearing on the western flank of the valley of the River Engaño, namely, Cerro del Salto, Pico del Valle Hondo, Cerro de la Virgen (E8), and further to the north-west of the Rio del Encuentro as marked on his map, Cerro Colorado or El Morro (B6). Lange in making his topographical

survey of these features made altimetric calculations; he showed the existence of a group of very small lakes, "Lagunitas", (E7) to the north of Cerro de la Virgen at an altitude of some 1250 metres. The report of Lange contains references to a number of features of the mountain complex which Lange called in his report the "Complex of the Virgen" ("Complejo de la Virgen") (See Sketch Map No. 2). He refers particularly to its massive forms, its signs of surface flattening and its tree covered slopes.

40. A short distance north of the Complex of the Virgen, Lange was able to identify one of the unusual features of the local river system, a place where the River Engaño describes a bend, changing its direction from north-west to south-west. From the northern slopes of the "Complex of the Virgen", probably from the point at a height of 1260 metres as shown on his map, Lange said (Annex No. 9 p.8.) that he was afforded a view, through a wide gap in the mountains, of the valley of the lower River Carrenleufu, at the foot of the Cordon de las Tobas, but he observed that the River Engaño did not, as one might have thought, pass through this gap, but turned to the south-west. His report makes no reference to any river in the straight broad valley which he could see beyond the gap, and it is

reasonable to assume that he could not see the course, through this wide valley, of the river which, as is now known, flows through it. This oversight may be reasonably explained by the fact that the broad valley beyond the gap was occupied by dense forest which hid the bed of the meandering river and made it difficult to see from the south. Today the view is somewhat different, as in 1944 the forest in part of the gap itself was destroyed by fire, and settlers have also cleared sections of the valley. Consequently Lange failed to recognise what was in fact the valley of Steffen's "Rio del Encuentro". Correctly, Lange noted and marked on his map the bend to the southwest of the River Engaño, and its course to a point some 7 kilometres downstream where it joined a river flowing from the south. Their combined waters flowed north, and were mistakenly identified by Lange as Steffen's "Rio del Encuentro", when they are in fact the River El Salto*.

41. As Lange says in his report (Annex No. 9 p.8.) he studied the basin of this river as far as the eastern slope of Cerro Colorado or El Morro, from which point on his map he draws in the course of his supposed "Rio

*NOTE: The name River El Salto is used on the Sketch Maps and in this Memorial to signify the whole river from its confluence with the River Carrenleufu (A5) to the source on the western slopes of Cerro de la Virgen (E8), even though in some maps it is given the alternative names of del Salto or El Tigre.

Encuentro", in three different forms of broken line: from south to north, first in thick long dashes, then thick short dashes and finally in thin long dashes, suggesting his increasing doubt about the accuracy of the line he was mapping. Running short of supplies, Lange was unable to visit this area on foot, and was forced to return to his base camp. A further difficulty experienced by Lange was the adverse weather conditions in the area at the time of his exploration. He had only one clear day (13th January, 1901) whilst in the vicinity of Cerro de la Virgen. For much of the time, as his report shows, there was dense cloud, and on the day he ascended Cerro de la Virgen he recorded complete cloud cover and snow. If conditions had permitted and he had traced his "Rio Encuentro" to its junction with the River Carrenleufu, he would have found it to be at a geographical location further west than that established by Steffen for the mouth of his "Rio del Encuentro" and also at a lower height, at approximately 185 m., above sea level. Lange had thus mapped in a river system with two principal branches; first the eastern branch, a tributary to which he gave the name "Rio Engaño", and, secondly, a western branch, which rose on the western slopes of Cerro de la Virgen.

42. The fact that Lange's map, as well as that of the 1902

Tribunal, showed the single river (marked "Rio Encuentro") as having one eastern branch which rose in the Lagunas del Engaño and a western branch which rose on the western slopes of Cerro de la Virgen is in no way open to doubt as an examination of both maps will clearly demonstrate. What was not appreciated by Lange or by the 1902 Tribunal was that there were in fact two distinct river systems in the area north of the confluence of Lange's River Engaño branch and the unnamed western branch. Precisely at the point where Lange began to show that he could not clearly see the course of the river he was marking on his map (see his dashed line on Map No. A10), the true course of this river (now recognised as the River El Salto) changes its direction abruptly to the west, entering the River Carrenleufu at a point (A5) some kilometres west of the point shown on Lange's map. This is one of the two river systems referred to above.

43. The other river system is that of the river which is now known to be the River Encuentro itself, whose course and tributaries were not adequately known at the time that the 1902 Tribunal had to consider its findings. It is now known, of course, that in fact the River Encuentro rises to the north of the Portezuelo de las Raices (E6), in the region outside the areas explored by either Steffen or Lange. In fairness to Lange it

should be stated that his map only showed the northerly continuation of the river he called "Encuentro" by a system of broken lines, thereby signifying that he was not putting this line forward as a definitive representation of a river course. However, a broken line in the same position as that shown on Lange's map was accepted by the 1902 Tribunal as being sufficiently authoritative to indicate that there was there a river course which could properly be followed, and which could be made part of the boundary between the territories of the two Parties. This river course was accepted on the Map forming part of the 1902 Award, and was referred to in Article III of the Award as "the River Encuentro", and in the Tribunal's Report as "the Encuentro along the course of its western branch to its source on the western slopes of Cerro Virgen".

44. The attention of this Court is drawn to the reasonable accuracy of Lange's map in the areas which he studied, and in particular to the identification in his report and on his map of various prominent features, which can be clearly identified from subsequent surveys and maps of the district. Reference is made in Chapter III of this Memorial to the manner in which those identifying features have been adopted in maps prepared

officially by both Parties in the ensuing years; and indeed maps prepared by disinterested parties also have made use of the same identifications. There can be little doubt that Lange's map indirectly played an important part in the determination of the Tribunal, and insofar as it portrayed areas in fact explored by Lange himself it was, in the circumstances, within reasonable limits of accuracy.

45. The importance of the expedition and the report and map produced by Lange cannot be overestimated in the consideration of the question put to this Court, because if his report and map are accepted as showing accurately the features that he had observed, and if (as was the case) the 1902 Tribunal recorded its decision upon a map which was itself founded upon Lange's report and map, the Tribunal was using the nomenclature, identifications and locations of features used by Lange. It is only by this approach to the problem, in the submission of the Argentine Republic, that a sensible explanation can be given of the geographical mistake which has led to the present dispute.

46. Where the Arbitrator in the 1902 Award and the 1902 Tribunal in their Report described certain features by name, the reference must have been to those features as

portrayed on the Map forming part of the Award, on the map submitted to the Tribunal by the Argentine Republic in its Reply, and, before that, on Lange's map.

47. Part of the task of this Court is to consider how far those features may be identified today. The Argentine Republic submits that on a proper analysis there can be no doubt as to the identity of the relevant features referred to by the 1902 Tribunal and the Arbitrator, and the reasons for so submitting are set out in detail in Chapter III.

48. The river which both Lange and the Tribunal called the River Encuentro, clearly does not exist in the place and with the course depicted on Lange's Map and on the Tribunal's Map. However, it is submitted that the river system believed to exist at that time was certainly accepted without hesitation as being that marked out by Lange. It must follow that where the Report of the 1902 Tribunal refers to the western branch of the River Encuentro, it is doing so by reference to the Map upon which the Award was marked, which referred to only one River Encuentro, and depicted its course. The reference to the western branch and to the source thereof makes it clear that reference was being made to that

watercourse which rises on the western slopes of Cerro de la Virgen. Furthermore the maps submitted by the Argentine Republic to the Tribunal with its Reply and the Tribunal's Map make this clear. The geographical mistake was not recognised by the British Demarcators who carried out the demarcation of the 1902 Award.

THE DEMARCATION OF THE 1902 AWARD

49. The demarcation of the 1902 Award was carried out in the first part of 1903 by the Chile-Argentine Boundary Commission, a Commission appointed by His Britannic Majesty's Government and composed of a Commissioner, Colonel Sir Thomas Holdich, and Assistant Commissioners, of whom Captain B. Dickson R.A. was one, assisted by experts designated by the two Governments. Although this method of demarcation had been suggested by the Report of the 1902 Tribunal there had been in fact a prior inter-governmental Agreement to that effect between Argentina and Chile, signed on the 28th May, 1902 (see Annex No. 10).

50. Before the work of demarcation started, the Commissioner, Colonel Sir Thomas Holdich, and the Argentine and Chilean experts assisting him and his staff agreed upon certain matters relating to the

demarcation. This agreement was communicated to the Argentine Minister for Foreign Affairs by a letter dated the 29th December, 1902, signed by Colonel Sir Thomas Holdich, from which it will be seen that the function of the Demarcating Officers was to erect the necessary pillars and boundary marks at points referred to in the Award. The relevant parts of this letter (annexed hereto as Annex No. 11) are as follows :

"I have the honour to state that the following arrangements in anticipation of the demarcation of the frontier between Argentina and Chile were agreed upon between the Argentine Expert, - Dr. F.P. Moreno - the Chilean Expert - Sr. A. Bertrand-and myself, before leaving London.

.....

3. It was agreed that wherever the boundary is defined by strong, well-marked, and unmistakable topographical features no demarcation is necessary. Pillars and boundary marks need only be erected at certain obligatory points in the line indicated by the crossings of rivers and lakes, the summits of passes, and open stretches of country where the topographical features which support the boundary are weak.

.....

5. It was also agreed that each British Officer should be accompanied by one or more representatives from each Republic, who would be responsible for the surveying necessary in order to determine the position of the pillar on the boundary map and for such engineering assistance as may be necessary in transporting and erecting the pillars.

6. The British Officer in charge will be in absolute command of the party, and the final referee in cases of dispute. He is also to be responsible for the correctness of the final records of the boundary, which will include :- (1) The Final Map. (2) A synopsis, or list of pillars giving their

co-ordinate positions in Latitude and Longitude to the nearest ten seconds on that map, and their bearings from contiguous pillars, and surrounding points fixed by triangulation.

7. The boundary has been divided into convenient sections, and the Officers composing the Commission have been placed in charge of the demarcation party for each section as follows :

- (1) Lago Lacar and the section from Lago Nahuel Huapi to Colonia de 16 de Octubre (Captain Dickson, R.A.)
- (2) From Colonia de 16 de Octubre to Lago Buenos Aires (Captain Thompson R.E.).

....."

It is to be noted that the Demarcating Officers were not required to travel along the whole of the line of the boundary decided upon by the 1902 Award; in many cases this would have been a task of very great difficulty owing to the height and remoteness of the areas concerned. In any event, paragraph 3 of the letter of Colonel Sir Thomas Holdich referred to above, exonerated the Demarcating Officers from any need to place boundary posts where the frontier was defined by identifiable topographical features.

51. A summary of the work so carried out is contained in a letter from Colonel Sir Thomas Holdich to the Under Secretary of State at the British Foreign Office dated the 30th June, 1903 (annexed hereto as Annex No. 12) the relevant part of which is as follows :

"5....Farther south, between Lakes Nahuel Huapi and General Paz, Captain Dickson encountered many difficulties. The points he had to reach are remote and difficult of access. Dense forests had to be cut through and clearings made for pillar sites. He found it was by no means easy to identify the River Encuentro (an important feature in demarcation) so buried is it in the midst of wild untrodden mountain solitudes, and so difficult to reach. He succeeded however in placing all the pillars included in the terms of the Award, and was finally able to render some assistance to Captain Thompson...."

52. Captain Dickson's Report, dated the 1st June, 1903 (annexed hereto as Annex No. 13) shows that these comments were well founded. The relevant parts of his Report are as follows :

"March 1st. - Continued march, and arrived at Steincamps (G1) in Corcovado Valley, and found my depot of stores, also Senors Goulbourn and Barrios. Senor Soot was in camp, at the junction of the Rios Encuentro and Palena, where he informed me everything was ready to place the pillar the next day.

March 2nd. - Left camp at Steincamps, and with Senor Barrios and some peons rode down to what we then supposed was Rio Encuentro and met Senor Soot. The country we passed through was full of short thick bush and bamboo and very broken; we had to cross the Rio Palena twice, at rather dangerous fords. The reputed Rio Encuentro proved to be a small stream, but they told me all streams were "Rio" to the Chilotes, by whom they were named. None of the Engineers or peons knew the country and Steincamp maintained that it was the Rio Encuentro. Anyhow, both Senors Soot (Argentine) and Barrios (Chili) were quite in accord that it was the proper place and no one suspected that it was not. It was not marked in the maps that I had with me, and so I placed the pillar on the north bank of the Palena and opposite to the junction of this supposed Rio Encuentro.

I took bearings, etc., and then returned to camp.....

When at the 16 October Valley on February 25th, in expectation of completing my section soon, I had sent a messenger to Captain Thompson, asking him to send me plans, etc., to Lago Paz so that I might assist him. I now sent Senors Goulbourn (Chili) and Soot (Argentine) to Lake General Paz with orders to carry two pillars and a canvas boat there, also to build a wooden boat if necessary and prepare everything to set up the pillars, and await my arrival.....

March 8th, - Continued march and arrived at Lago General Paz and found Senors Soot and Goulbourn in camp at the east end of lake, where they had done nothing since arriving. I here found two pillars, a few stores which had been left here by some of Captain Thompson's men and also a very fine Berthon boat brought here last year by Dr. Moreno's men. I could arrange nothing as I had not received the plans, etc., from Captain Thompson.

March 9th, - Made suit of sails for boat and rigged up mast and went a preliminary cruise; also explored coast of lake. In evening messenger arrived from Captain Thompson with plans, etc. From these I found that the Rio Encuentro pillar was probably placed wrong, so I despatched Senor Soot with men and a canvas boat to the Rio Palena with orders to cut a road along the river to the west and explore for another river and continue making the road till I came to him; also he was to find Senor Barrios, who was at the valley Corcovado, and take him with him.

March 10th, - At 3. a.m. started off in boat with Senors Goulbourn and Frey and peons to place the pillars on lake. We had a very exciting and fatiguing day. After nine hours rowing against wind we reached a point on the north shore, where I placed the pillar, and took a few bearings and photos, but the weather was very unfavourable. I then crossed the lake to a small and very conspicuous promontory on the south shore, and here found an excellent harbour where I passed the night.

March 11th, - I placed the pillar on south shore, and took photos and bearings, and then returned to

camp on the east shore of lake.

March 12th, - Set out to get back to Rio Encuentro and camped at Casa Vargas.

March 13th, - Arrived Casa Steincamps, in Valley Corcovado, found that Soot was down the river working hard at cutting a road through the forest and undergrowth, but had not reached any river yet.

March 14th, - Went down river with Senor Frey and overtook Soot, and worked on road cutting. In the evening we hit on a large river several miles further west than first Rio Encuentro. This both Barrios and myself were convinced must be the Rio Encuentro; but Senor Frey (Argentine) thought there might be another river (which would, in his estimation, be the Rio Encuentro) at the eastern foot of a ridge of high peaks, which he reckoned to be some three or four miles away, but which Barrios and myself placed at 15 to 20 miles; so that I sent Senor Frey with some peons to find out if they could reach this ridge of peaks, while I myself returned to camp at Steincamps.

March 15th, - Went down to Rio Encuentro II, and made a bivouac, and prepared to place the pillar there next day. In the evening Senor Frey returned, and said he had been unable to reach the ridge of peaks (the peons with him declared it was 20 miles away); also that he believed that after all, this river must be the Rio Encuentro. The maps of this region were found to be useless for the purpose of identifying any point, as they were only made up from a hurried report, and none of the minor features were shown. However, there can be no doubt whatever that this river is the true River Encuentro, as there is no room for the basin of any other river, or even for any small stream (as can be seen from the map of the Lago Paz region) between the turn of the Rio Palena at Steincamps and any other Rio Encuentro farther west, supposing it existed.

March 16th, - Crossed the Rio Palena and placed the pillar on a steep slope of a large "Morro" opposite the "Thalweg" of the Rio Encuentro; then climbed to the summit of "Morro" and took photos and bearings before returning to the general camp at Steincamps."

53. A Tabular Statement of Boundary Pillars erected on the boundary by the British Demarcating Commission, pursuant to the arrangement set out in the letter to the

TABULAR STATEMENT of BOUNDARY PILLARS erected on the CHILE-ARGENTINE

Name and Number.	Serial Number.	Date of Erection.	Geographical Co-ordinates.		Stone or Iron.	Magnetic Bearing of adjoining Pillars or Points.	
			Longitude.	Latitude.		Pillars.	
						Name of Object.	Bearing.
"Rio Encuentro" - (These bearings are taken from a point 400 yards distant from pillar and about 1,000 feet higher.)	16	16.3.03	71° 47' 30" W.	43° 36' 12" S.	Iron	Pillar No. 16 -	72° 15' E. of N. (72° 15')
"Lago General Paz" north shore.	17	9.3.03	71° 41' 30" W.	43° 56' 15" S.	Iron	Pillar No. 18 -	20° E. of S. (160°)

"Lago General Paz" -
cont.

BOUNDARY by the BRITISH DELIMITATION COMMISSION, 1903, &c.—continued.

Magnetic Bearing of adjoining Pillars or Points.	Subsidiary Pillars or adjoining Points.	Reference Number of Photographs.	Description of Pillar and Site.	Remarks.		
					Name of Object.	Bearing.
					"Cordon de las Tobas." Triang. point E. end (Argt.). Cerro Cucho 2,020 m. (Argt.). Cerro Colorado	10° 10' E. of N. (10° 10') 37° E. of N. (37°) 8° 30' E. of S. (171° 30')
Pico Morro	18° W. of S. (198°)					
Intersection of lake and N. point of small island in lake.	89° 20' E. of S. (90° 40')	44	Erected on rock sparsely covered with earth and moss with stones piled round on a ledge of rock 100 feet sheer above lake, the pillar is 2 yards from edge of ledge. This ledge juts out from a high steep ridge which descends from a sharp pointed mountain which carries the local water parting mentioned in the award.	The map of this region is very bad and is only useful as a rough general sketch of the country.		
Intersection of N.E. slope of Cerro Colorado and lake.	73° 10' E. of S. (106° 59')					
Intersection of N.E. slope of Cerro Ventisquero and lake.	25° 15' E. of S. (154° 45')	—	The whole of these slopes are densely wooded. This pillar is directly opposite a small but very conspicuous promontory on the south shore of lake, on which the other pillar is placed.			
Intersection of N.W. slope of Cerro Ventisquero with lake.	22° 45' W. of S. (202° 45')					

Argentine Foreign Minister dated the 29th December, 1902 referred to above, was forwarded to the Governments of the Republics of Argentina and of Chile. This document constitutes a statement of the Boundary Pillars (Posts) placed by the British Demarcating Commission including a description of the pillars and sites, and remarks about the geographical features of the area in which each Boundary Post was placed.

54. The relevant parts of the Tabular Statement concerning the description and site of Boundary Posts 16 and 17 and the information concerning these Posts, are as follows :-

55. As has already been stated in paragraph 50, the British Officers were concerned at this time only with placing the Boundary Posts along the line described in the 1902 Award, and were not concerned with traversing the whole frontier line. Such a course would have been useless and exhausting for them, and it was considered that at that time the erection of Boundary Posts at intervals was sufficient for the demarcation of the frontier. Boundary Posts 16 and 17 so erected have remained ever since and were eventually accepted by both Parties as being definitively located. That fact is shown by the form of the Question in the present Agreement for Arbitration (Compromiso) determined by Her Majesty's Government of the United Kingdom, in which Boundary Posts 16 and 17 are taken as the limits of the Sector referred to the Court.

56. This limitation leads to one important difference between the legal framework within which the Tribunal of 1902 had to carry out its task, and the legal framework within which this Court has to carry out its task. In 1902 the Arbitrator had to decide upon the course of the boundary along the whole distance from Perez Rosales Pass at $41^{\circ} 04'$ S. to Mount Fitzroy in the vicinity of Lake Viedma at $49^{\circ} 16'$ S. He was therefore free to decide upon such course, within a proper interpretation of the

earlier Treaties, without there having been previously placed any boundary posts at all within that area. As has been seen in paragraph 27 above, this freedom permitted him to take into account certain external considerations which, it is submitted, have no relevance to the task of the present Court. For example, it could be speculated that if the 1902 Tribunal had known the true geographical facts, and in particular the river systems, they might possibly have recommended that the boundary should run northwards from Cerro de la Virgen down the course of the whole of the River El Salto to its confluence with the River Carrenleufu. Such a decision would have involved the placing of what is now Boundary Post 16 at this confluence, and the continuance of the boundary northwards from that point crossing directly the Cordon de las Tobas, to join up with the boundary north of the range as it was in fact decided upon by the 1902 Award.

Such a decision would not be open to this Court, because its task is not to decide what the 1902 Tribunal would have recommended to the Arbitrator if they had then had the true geographical facts before them. The wording of the Question put to this Court makes that clear, but in addition this conclusion is reinforced by the considerations relating to the fixed position of Boundary

Post 16 set out in paragraph 54 above. The Argentine Republic therefore accepts that it cannot now argue that Boundary Post 16 is wrongly located, even though such an argument, if it had been successful, would have caused a considerable re-adjustment of territory in its favour.

57. As can be seen from the contents of this Chapter the Arbitrator, in making the 1902 Award, carried out the task which had been set. A boundary was delimited for all the lengths of frontier which had been submitted for arbitration in 1898, and the 1902 Award was an interpretation of the earlier Treaties between the Parties. The 1902 Award was drafted in sufficient detail so that the whole course of the boundary in the various parts of the frontier could be identified from reference to the Award, the Tribunal's Report and the Map which formed it. Whatever may have been the proper meaning of the earlier Treaties, from the making of the 1902 Award it was clear that this Award was in future to govern the frontier line between the territories of the two Parties. Since 1902 neither Party has attempted to depart from this position, and this Court will have no difficulty in appreciating that such a departure would not be contemplated by either Party. Accordingly it is submitted that this Court, in

conducting its enquiry into the present dispute, must base its enquiry fairly and squarely upon the 1902 Award, and that it will be able to find within that Award and the documents which form part of it, taken together with the surrounding circumstances at the time and the subsequent behaviour of the Parties, a complete solution for the Question which is put to this Court. The manner in which such a solution is to be found is set out in detail in Chapter IX of this Memorial.

CHAPTER III

GEOGRAPHICAL DESCRIPTION OF THE AREA

58. This Chapter contains, first, a geographical description of the relevant area of country, and secondly, a consideration of the identity of various features within that area which were referred to in the 1902 decision. It is desired to emphasise that this description is included for the general information of this Court and serves as a background to the arguments put forward in this Memorial. The contents of this Chapter are not put forward to support any alternative argument to that presented upon the basis that the function of this Court is to interpret and fulfil the 1902 Award as regards the Sector between Boundary Posts 16 and 17. As already stated, it is submitted that it would be beyond the jurisdiction of this Court to go outside that Award and to prescribe a new boundary throughout the Sector without regard to the terms of the 1902 Award. Neither Party to this dispute has shown any desire that that function should be undertaken by this Court, and indeed the form of the Question put to this Court would preclude such a course. The description given below is merely to assist the Court in arriving at its decision within the terms of the Question.

GENERAL CHARACTERISTICS

59. The "Carrenleufu Quadrilateral". The part of the Cordillera of the Andes which lies between latitudes 43° and 44° S. belongs to a structurally and morphologically transitional zone of the great South American Cordillera. Whereas to the north the Andes are characterised by wide longitudinal valleys associated with extensive north-south fractures, in the latitudes mentioned above the Andean mass is cleft by transverse gaps which become progressively wider to the south. The River Futaleufu and the River Carrenleufu are the first examples of such west-east breaks. That at Lake General Paz is on a larger scale. The joint basin of Lake La Plata and Lake Fontana is even wider and in Lake Buenos Aires the transverse depressions attain their maximum size.

60. The area bounded by the lines of latitude mentioned above has other very characteristic features which justify its recognition as a distinctive part of the Patagonian Cordillera. First, between the gaps are a series of longitudinal, parallel, mountain ridges and valleys. Secondly, the area is distinguished by a distinctive drainage pattern within which an almost complete quadrilateral is described by Lake General Paz, its outlet the River Carrenleufu, and the River Claro, a tributary

which rises in Lake Rosselot and closes the perimeter. This area is referred to hereafter as the Quadrilateral. The Quadrilateral is some 50 km. from north to south, and 80 km. from east to west. On its north-south axis there are two dominant geographical features which are the River Encuentro and the mountain called Cerro de la Virgen.

Very little is known of the geology of this part of the Cordillera. It is generally believed to be basically a Jurassic porphyritic complex probably with remains of a Tertiary andesitic series, and outcrops of a crystalline massif in the southern part. The sharp mountain crests have been etched by glacial erosion and frost weathering. At lower elevations in the intermontane valleys and on the piedmont plains, accumulations of glacial morainic material, smooth rocky walls displaying the features of recent intense glacial erosion, "U"-shaped valleys, broad benches and complexes of glaciolacustrine deposits characterise the landforms.

61. The magnitude of the glacial phenomena in the area enclosed by the Quadrilateral has been of great consequence in the formation of its present aspect. The north-south orientated mountain ranges, probably associated with major fractures, in the glacial period guided rivers of ice

that furrowed the interior of the mountain mass. Thus the main lines of the internal valleys to which the inter - and post - glacial fluvial networks conformed, although basically structural valleys, were substantially refashioned by ice. The transverse gaps of the River Futaleufu and the River Carrenleufu do not conform to the north-south grain of the valleys; they are the result of another - probably older - process and are regarded as "antecedent" valleys. That is to say that the rivers which flowed in them have cut these valleys as the Andean mountains were uplifted across their courses. Consequently, where these two valley systems intersect in the interior of the mountains there are a number of relatively flat areas, such intersections being as a rule places upon which glaciers converged. Such a flat area is that called Portezuelo de las Raices in the central depression of the Quadrilateral to which frequent reference will be made later.

62. The whole river network of the area has a juvenile appearance, although there are considerable differences between one river and another. The base level is generally low, since the transverse antecedent rivers, the principal example of which is the River Carrenleufu, are very close to the general oceanic base level, which penetrates far up the fjords of this island-

fringed Pacific littoral. Thus the longitudinal valleys lying at the foot of the western ranges have very low altitudes. This is so in the case of the depression carrying the River Claro and the lower River Carrenleufu; the latter river falls to only 53 m. above sea level only 30 km. from the mouth of the River Carrenleufu at the very foot of the western range of the Andean mass, which has peaks of over 2,100 m. The post glacial rivers, discharging their waters to the drowned coastline of the Pacific, may by headward erosion have advanced eastwards and "captured" streams which formerly had had a much longer run into the Atlantic.

63. In the general geographical panorama of the Quadrilateral an outstanding role is played by the mountain ranges whose direction conforms to that of the Andes. Within the strictly Andean environment, they extend from the westernmost line of crests flanking the longitudinal valley occupied by the River Frio and lower River Carrenleufu to the eastern range that culminates in Cerro Herrero (I4), Cerro Central (I6) and Cerro Condor (H9).

64. The Western Range. The western range is the highest in the whole area; its highest peaks, Cerro

Blanco, Cerro Serrano, Cerro Maldonado and Cerro Barros Luco, all exceed 2,000 m. and are thickly covered with snow all the year round. Cerro Barros Arana, somewhat further to the east, at a height of approximately 2,286 m. would appear to be the highest in the entire Quadrilateral. This imposing, continuous mountain ridge is a natural barrier, difficult to cross, which cuts off the Chilean longitudinal valley of the River Frio and the lower River Carrenleufu from the internal districts of the Quadrilateral. The only natural route for communications in a west to east direction is the valley of the Carrenleufu, but from the point of view of a practical communications system it is useless, since rapids and steep-walled defiles make navigation impossible, and overland travel through the valley is extremely laborious. Moreover, the higher valleys and wind gaps through the range are impassable in winter because of the deep covering of snow, to which natural obstacle must be added the density of the forest, the undergrowth and the frequently encountered marshy areas.

65. The Central Mountain Complex. Towards the east of the western range described, and before reaching the second or central orographic line, there are interposed between other minor ranges the basins of the River

Tranquilo and the River Torrente, which drain portions of the Cordillera towards the north into the transverse gorge of the River Carrenleufu.

The central mountain complex for its part rises at some 50 km. to the east of the western range. It is not continuous in its northern part as it is interrupted by a water gap, the valley of the River Engaño. Immediately north of this gap the central mountain complex is represented by Cerro Diaz, 1,502 m.(E5), and by an unnamed peak, 1729 m. (D6). In the northern section is the massif of the Cerro Colorado (or El Morro) (B6), which is estimated to have height of 2,040 m. South of the bend of the River Engaño and continuing the central mountain complex of the Quadrilateral, there rises the massif that Lange described as "the Complex of the Virgen". Its main peaks are Cerro Mera (D8) in the north and Cerro de la Virgen in the south; these are bounded abruptly to the east by the wide valley of the River Engaño, and to the west by the system of the River El Salto. Cerro Mera reaches a height of 1,885 m., whilst the highest peak, Cerro de la Virgen is slightly higher at 1,901 m. The complex is high, massive and, in part, plateau like. It includes an area known since Lange's time as "Lagunitas" (E7), which is characterised by a number of small lakes occupying cirques, the result of

erosion by ice, at an altitude of between 1,220 and 1,280 m. This unmistakable feature is unique in the morphology of the mountains within the Quadrilateral. Elsewhere domed peaks, which are numerous, are developed upon the predominant porphyritic rock. Since the district of Lagunitas was included in Lange's map and also on the Map annexed to the 1902 Award, it is an unmistakable means of identification for Cerro de la Virgen and its environs. From Cerro de la Virgen towards the south, the central mountain complex of the Quadrilateral stretches to the shore of Lake General Paz, and constitutes a distinct and continuous "water-parting" between the drainage system of the River Engaño to the east, and the system of the River El Salto towards the west. This water-parting drops, within a distance of 3 km., from an unnamed peak with an altitude of 1,850 m. to Boundary Post 17 on the shore of the Lake, the surface of which is at 922 m. The heights of the mountain crests along the water-parting are fairly regular, and it maintains a median level of some 1,700 - 1,800 m.

66. The Eastern Range. Some 20 km. to the east of the central mountain complex there rises the third longitudinal range which is marked on the Map forming part of the 1902 Award with the description "Nevados" (trans. "snowcovered"). This has its own particular morphology and is

characterised by the predominance of Jurassic, porphyritic rocks. This lithology and glacial erosion of the high mountains, have produced a striking morphology of steep-sided, sharp-pointed crests and a succession of knife-edged ridges; an aspect that is repeated countless times in the Patagonian Andes. Cerro Herrero, 1,867 m., is prominent in the north, Cerro Central, 2,070 m., in the middle and Cerro Condor, 2,010 m., in the south.

The range forms a watershed between the River Falso Engaño (G4) to the west and minor tributaries of the River Carrenleufu to the east. South of Cerro Condor, the mountain range appears to have its continuation in a peak at 1930 m. (H10) and in Cerro Llano, 1776 m. (H11), but the continuity of the crests is interrupted by the wide deep valley of the River Engaño (H10), the floor of which is over 1,000 m. below the crest of Cerro Condor. The watershed thus changes direction and is displaced to the south-east, along the spur between Lake Guacho (J9) and the Lakes of the Engaño (H11). It descends to an elevation of less than 1150 m.

In order to reach Boundary Post 17 from this elevation along a watershed, it is necessary to follow a circuitous route: at first east to west, over the crest of Cerro Llano, then describing a semi-circle to the west in order to reach a final north-south section descending to Boundary Post 17 on the north

shore of Lake General Paz.

67. The Centre of the Quadrilateral. The centre of the Quadrilateral consists of numerous river valleys, some of which are so wide and extensive as to form low-altitude plains, reaching to the innermost parts of the Andes, which offer ample possibilities for settlement, permanent or temporary according to the location. The forests are dense, but form a considerable resource. Precipitation is very substantial and includes heavy snowfalls in winter. The landscape is a wild one, its relief broken, not only by ranges, ridges and isolated peaks, but also by deep valleys. The valleys are strewn with blocks brought down by glaciers, whilst their sides are broken by sloping benches. The ground is generally covered with forest vegetation which imparts an intense green to the colour of the landscape and hides certain geographical features, such as the courses of rivers and streams when these are viewed from afar. Settlement has been easy in the lower valleys and plains, e.g. in the vicinity of the transverse course of the River Carrenleufu, which is 650 m, lower than Lake General Paz. The natural communications of this part of the Quadrilateral are along the valleys which extend eastwards from the

foot of the Andes, and inevitably a close connection has grown up between the Quadrilateral and the towns of Corcovado (G1), Trevelin and Esquel in those valleys, which are all Argentine.

68. It was from the above mentioned valleys that the first inhabitants of the interior of the area within the Sector arrived, after 1903. A number of them arrived from earlier settlements around Corcovado, Trevelin and Esquel, while others came from Rio Pico, an Argentine zone south of Lake General Paz. Due to the geographical affinities already mentioned in the above paragraph, as well as greater development of the regions to the east of the River Encuentro area, this settlement has traditionally been economically dependent on the populated centres of the Province of Chubut in southern Argentina. Furthermore, this fact has been expressly acknowledged in the Report of the Bicameral Commission set up by the Chilean Congress in 1955 (See paragraph 181 below and Annex No. 24 p. 5) when it emphasized that the development of this zone had been slowed down on account of the non-existence of roads towards the Pacific; thus, it went on to explain, "most of the trade is with Argentina".

The region between Boundary Posts 16 and 17 is

populated today by settlers of both Argentine and Chilean nationality. The presence of Chilean nationals in any particular part of Argentine territory in the south is of no particular significance. Many thousands of foreign nationals, mostly Chileans, live in the southern provinces of Argentina. Economic and social circumstances have occasioned sizeable migrations from neighbouring countries to this part of Argentina.

69. River System of the River Encuentro. By reason of its central position in the Quadrilateral, and above all because of the outstanding role assigned to it in the delimitation of the international frontier, the River Encuentro is of great interest and calls for a detailed study of all its characteristics. Although the main south to north valley of the River Encuentro is of a modest length, 17.5 km., it is broad and open and the river bed is well defined. In these respects the River Encuentro stands out amongst all the river valleys of the region whose courses are winding and to a great extent transverse. The only valley to match it is that of the River El Salto. As can be seen from the Geomorphological Map of Palena (Map No. A28) the River Encuentro forms a clear-cut morphological feature from its headwaters to the north of

the Portezuelo de las Raices to its final reach which starts some 3 km. from its mouth where it has cut into bedrock in a narrow gorge with rapids. The abrupt change of direction to the west made by the lowest reach is a feature common to other tributaries of the River Carrenleufu.

70. The origin of this valley system appears, from the evidence, to have resulted from the activity of two glaciers. One advanced from the south-west along the wide valley now occupied by the lower River Engaño, in a direction opposite to that which the river now follows; the other moved directly from the south-east, down the upper valley of the River Engaño. They met in the region of the Portezuelo de las Raices and moved down the valley of the River Encuentro as a single glacier. The raised floor of the gap between the bend of the River Engaño at Portezuelo de las Raices and the sources of the River Encuentro has a flat surface and is made of fine to medium grain deposits, probably of glaciolacustrine origin. The valley now occupied by the River Encuentro is clearly related to structures formed at the time of the Andean mountain building. Its present morphological features are, however, attributable in large degree to the process of glaciation, which probably occurred repeatedly

during Quaternary times. Among the features attributable to glaciation are (i) a broad flat bottomed valley, (ii) terraced valley slopes falling in steps down to the river which occupies only a minimal part of the valley cross-profile, (iii) accumulations of blocks in the river bed and a scatter of blocks over the terraced hillsides and (iv) an overall "U"- shaped cross-profile. The terraces may have resulted from the erosion by a sequence of glaciers cutting to deeper and deeper levels.

71. The River Encuentro starts at the confluence of a series of small permanent springs, locally called "mallines", which flow from the permeable deposits previously mentioned. Several such "mallines" coalesce within a short distance and the bed of the River Encuentro becomes a definite entity. Rivers which originate exclusively in springs are uncommon in this area. They provide a regular flow of water throughout the year, in contrast to the irregular seasonal flow of rivers which rise high on mountain slopes, and are fed from melting snow and ice.

There are no tributaries of any note to the west of the River Encuentro; on the east, the principal tributary is the River Falso Engaño.



The name used for this river in 1920 was "Rio Engaño". Between 1945 and 1948 the Argentina - Chile Mixed Boundaries Commission used the name "Rio Engaño" for this river, as is shown on the Hydrographic Sketch of the Lake General Paz - Rio Palena Zone (annexed hereto as Map No. All) bearing the stamp of the Chilean element of the Mixed Commission. This was a misnaming of the river as was recognised in later years, for on Field Sheet 4372 -28-4 (annexed hereto as Map No. A 49) the river is named "Rio Engaño (falso)". The Mixed Commission used the name Rio Falso Engaño, as is shown on Map No. A31, with the agreement of both the Argentine and Chilean representatives.

The valley of the River Falso Engaño has a "V"-shaped cross-profile markedly different from the "U" shape of that of the River Encuentro. This indicates that river erosion rather than ice erosion was the principal force shaping the valley of the River Falso Engaño. Because the River Falso Engaño is principally fed by melting snow and ice, its volume varies from season to season, and no valid deductions may be made from its volume at any given time in the year. The only other tributary of the River Encuentro south of the River Falso Engaño is the Arroyo Lopez (F5), the headwaters of which only extend to the high mountains forming the

eastern slope of the Encuentro valley.

72. The accumulation of the deposits in the Portezuelo de las Raices previously mentioned has probably deflected the River Engaño to the south-west from its south-east to north-west course so that it flows in a direction opposite to that taken by the glacier which shaped the lower valley. The surface of the deposits is comparatively flat and little more than 700 m. above sea level. The northern and southern margins (locally described as "subidas") are relatively steep, giving the area the appearance of a tableland. The springs at the source of the River Encuentro have scalloped its northern edge, giving this part the appearance of an amphitheatre, clearly observable when viewed from the north.

73. The River Engaño. The River Engaño marks the division between the central mountain complex and the eastern range of the Carrenleufu Quadrilateral. Its course is divided into two parts; the upper has a south-east to north-west direction which follows the axis of a glacial trough; the other, the lower River Engaño, has a north-east to south-west course and ends where it joins the River El Salto. The total length

of the River Engaño, 35 km., makes it one of the longest watercourses of the Cuadrilateral. It is more extensive than the River El Salto, whose tributary it is, but has retained its own traditional name and separate identity. Like many other Patagonian rivers, this river achieved the fusion of its various stretches in recent geological times, following the melting of the ice in the last ice age. Today the River Engaño is a major water-course with a regime dominated by summer snow melt, since it is fed by waters draining from the high central mountain complex and the eastern range of the Cuadrilateral. No hydrological data on flow are available for any of the rivers in the Cuadrilateral; but, as the catchment and length of the River Engaño are greater than those of the River El Salto, the former's volume is also likely to be greater, although it is nevertheless clearly a tributary of the latter.

74. The Complex of the Virgen. In the centre of the Carrenleufu Cuadrilateral, the "Complex of the Virgen" - to use Lange's phrase - forms a massif, whose principal component is Cerro de la Virgen. The massif forms the northern promontory of a chain stretching southwards towards Lake General Paz. It includes

flattened surfaces of considerable altitude such as those in the district known as "Lagunitas". Other notable characteristics are the rugged sides, especially those that face east into the River Engaño valley and the valley known as the Valle Hondo, and those facing west into the headwaters of the River El Salto. The actual Cerro de la Virgen, some 4 km. in extent from north to south, has a distinctive shape. It includes two principal peaks, one to the east at 1,832 m. and another to the west at 1,901 m. These are linked by a ridge whose sides drop precipitously to north and south. Some of the steep walls are more than 400 m high.

75. The mountains between Cerro de la Virgen and Lake General Paz.

From Cerro de la Virgen southwards to Lake General Paz, there stretches a continuous mountain range which forms a well defined local water-parting. Orographically the range forms an element of great uniformity, despite the fact that it divides in its southern part into two parallel ridges 4 km. apart. The easternmost of these ridges extends to the Lake at $71^{\circ} 41' 30''$, where Boundary Post 17 is located.

IDENTITY OF FEATURES REFERRED TO IN THE 1902 AWARD
REPORT AND MAP

76. There follows an analysis of the characteristics of the features of the region referred to in the 1902 Award, Report and Map, and the Demarcators' Report of 1903. This analysis is made with the object that this Court may be able to identify such features and appreciate their importance to the issues in this dispute.

These features are :

1. Cerro de la Virgen.
2. The local water-parting between Cerro de la Virgen and Bounday Post 17.
3. The western slopes of Cerro de la Virgen.
4. The western branch of the River Encuentro.
5. The course of the River Encuentro.
6. The source of the River Encuentro.

77. The first problem to be faced is the manner in which the identification in the 1902 Award, Report and Map of those features should be treated by this Court.

The legal criteria applicable are discussed later in this Memorial, and it is only intended at this point to consider the location and names of these features.

The task of this Court is to interpret and fulfil

the 1902 Award, and consequently it must be an important preliminary part of that task to identify the features named in the 1902 Award and Report and depicted on the Map made part of the Award, and to recognise the role given to each of them in that Award, the Report and the Map.

Consideration of the influence which any errors made at that time had upon the Award must depend upon the extent to which prominent features were correctly indentified and named. These prominent features are therefore considered separately below.

78 Cerro de la Virgen. From before the time of the 1902 Award there has been no doubt as to the exact location and identification of this mountain. Its position is shown with precision on all maps of the region from Lange's onwards, with the exception of those described in paragraphs 84 to 90 below. The facts are as follows :

(a) Cerro de la Virgen was placed on a map for the first time by Lange in 1901, in association with a number of other clearly identifiable features - the valley of the River Engaño, the valley called Valle Hondo, Cerro Colorado (or El Morro), and Lagunitas.

This association of geographical features fixes the position of Cerro de la Virgen beyond doubt (see annexed Map No. A2, A).

(b) Cerro de la Virgen appears again on the map presented to the Arbitrator in 1902 in the Reply of Argentina, the location and identity being the same as that given by Lange. The Chilean map presented to the Arbitrator in 1902 (annexed as Map No. A3) did not represent Cerro de la Virgen at all, and the whole of the area was left blank, being marked as unexplored.

(c) The Map forming part of the 1902 Award (Map No. A1) also shows the same location and identity as appears on Lange's map referred to in (a) and the Argentine map referred to in (b) above.

(d) The map of the Chile-Argentine Boundary Commission used and signed by the Demarcating Officer, Captain B. Dickson, R.A., showed the same location and identity as the Map referred to in (c) above (Map No. A5. annexed).

(e) Among other important maps giving the exact location of Cerro de la Virgen there should be noticed in particular the map (Map No. A12 annexed) of the area between latitudes 43° and 44° S, annexed to the Memorandum prepared by Alejandro Bertrand, the Chilean expert, which was presented to the Chilean Government in 1903, and published in 1903 by the Imprenta Nacional at

Santiago de Chile under the title "Memoria Sobre la Demarcacion Arbitral de Limites entre Chile i la Republica Arjentain" (Report on the Arbitral Demarcation of the Argentina-Chile Frontier).

(f) The same location and identity of Cerro de la Virgen is given in a large number of maps, drawn to an adequate scale, whether of Argentine, Chilean, or other national origin which show the Cordillera between latitudes 43° abd 44° South. By way of example the following maps are annexed to this Memorial:

<u>Map No.</u>	<u>Title or Description</u>	<u>Author.</u>
A13	Llanquihue	Chilean Boundaries Commission
A14	La Linea de Frontera con la Republica Argentina	Boundaries Office, Santiago.
A15	Chile between 43° and 45° S.	(Chilean Land Measurement Office)
A16	Map of part of Chile	Chilean Land Measurement Office
A17	Chile between 43° and 45° S.	Chilean Lands and Colonization Office
A18	Lago Nahuel-Huapi	American Geographical Society of New York
A19	El Valle del Palena-Carrenleufu	From the book "Patagonia Occidental" by Dr. H. Steffen

A20	Quellon-Palena- Futaleufu	Chilean Military Geographic Institute
A21	Air Navigation Map - (Castro-Aisen)	Chilean Military Geographic Institute
A22	Puerto Montt-Rio Chubut	U.S. Army Map Service
A23	Puerto Montt -Rio Chubut	U.S. Army Map Service
A24	San Carlos de Bariloche	I.C.A.O.(Argentina)
A30	Cerro de la Virgen	Argentina - Chile Mixed Boundaries Commission
A56	Chile between 43° and 49° S.	Chilean Military Geographic Institute in accordance with official Decree C.I. No 2090

The following maps are annexed hereto which show the international frontier line passing through the position of Cerro de la Virgen described elsewhere in this paragraph:

<u>Map No.</u>	<u>Title or Description</u>	<u>Author</u>
A 25	Monte Maca	U.S. Coast and Geodetic Survey
A26	Las Cordilleras Patagonicas	From the book "Patagonia Occidental" by Dr.H. Steffen
A27	Wall map of Chile	Professor Alejandro Rios V. and Rene Auguita F.

(g) In 1948 the Mixed Commission considered two tables of calculations of geographical coordinates and altitudes of boundary posts in Section VII of the frontier, one prepared by each national Delegation. The Commission in Act No. 37 (Annex No. 20,p.24), approved a comparison of these tables. In this comparison (Annex No. 20, p.26) there appeared an entry relating to Cerro de la Virgen; this was followed by the abbreviation "(nat)", an abbreviation used in the table to indicate natural boundary posts. In Act No. 43 (1950) (Annex No. 20, p.38) the Mixed Commission definitively approved the comparison, and two tables, giving the technical and legal values of the coordinates and altitudes, were annexed to that Act of the Commission (Annex No 20, pp 41-44). Similarly in the Commission's Informative Report 1941-1947 (Annex No. 21), it is stated that Cerro de la Virgen mentioned in the Report "must be considered as a natural boundary mark", (in Spanish "Hito Natural") . Whenever Cerro de la Virgen was considered by the Commission the location of the mountain was accepted without question, and its geographical co-ordinates and altitude confirmed as being those given under (h) below (including the confirmation in Act No. 55, see

paragraph 159 below), until 1955 when the present dispute broke out and Chilean maps began to show a variety of locations for Cerro de la Virgen (see paragraphs 84 - 90 below).

(h) The following Table gives co-ordinates established for Cerro de la Virgen by various authorities.

	LATITUDE	LONGITUDE	ALTITUDE	DISTANCE FROM B.P.17.
1. Lange's Map 1901	43°46' 50"S	71°42' 50"W	1820 m.	20.5 kms.
2. 1902 Award Map	43°46' 13"S	71°42' 46"W	1820 m.	20. kms.
3. "Report on the Arbit- ral Demar- cation of the Argentina- Chile Frontier", Chilean Official publication (1903)	43°47' 02"S	71°42' 40"W	1820 m.	21. 5 kms.
4. "The Argen- tine Chile Frontier", Argentine Official publica- tion (1908)	43°46' 40"S	71°43'W	1820 m.	-

5. Argentin-Chile Mixed Boundaries Commission, Act No. 43 (1950)	43°46'43.08"S.	71°44'09.08"W	1901 m.	24. kms
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NOTE:- Under 1, 2,3 and 4 above the calculations have been made from the maps involved, and in 5 the calculations are as measured in the field.

Although allowance must be made for the fact that the calculations of latitude and longitude were obtained at different times and under different conditions, the geographical co-ordinates obtained clearly refer to a single feature. The distances between Boundary Post 17 and Cerro de la Virgen, measured on the maps involved in the above calculations, and shown in the Table above, also substantiate this conclusion.

The 1902 Award states that the boundary shall pass through the "peak called Virgen". The Report forming part of the Award amplifies this and states that the boundary shall pass through the peak of "Cerro Virgen". The Map forming part of the 1902 Award shows the boundary passing

through a peak marked "C.d.l. Virgen". There can be no doubt that all three descriptions refer to one and the same mountain and that it was clearly intended that the boundary should pass through it.

79. The local water-parting between Cerro de la Virgen and Boundary Post 17: From Cerro de la Virgen to Boundary Post 17 there exists a clearly defined local water-parting, as may be seen on Sheets VII - I and VII - 2 of the map of the Argentina-Chile Mixed Boundaries Commission (annexed as Maps Nos A29 and A30), which has been described in paragraph 65 above. This same feature is identifiable over most of its course on the Map forming part of the 1902 Award, particularly where the water-parting crosses the col between Valle Hondo and an unnamed stream draining to the western half of Lake General Paz. On the 1902 Award Map the boundary is shown as following this local water-parting, exactly as the terms of the 1902 Report state that it should. It was clearly the meaning of the 1902 Award that the boundary should follow this line between Cerro de la Virgen and Boundary Post 17, as is indicated on the 1902 Award Map.

80. The western slopes of Cerro de la Virgen. The precise location of Cerro de la Virgen has already been established and accordingly there can be no difficulty in locating with certainty the limited area of this mountain, called in the 1902 Report "the western slopes". The 1902 Report states that the boundary should ascend those slopes to Cerro de la Virgen, and there are indeed various ridges of resistant rock which may be followed to the summit of Cerro de la Virgen, thus according with that term of the 1902 Report.

81. The western branch of the River Encuentro. The 1902 Report referred to "the Encuentro along the course of its western branch". On the 1902 Award Map the "western branch" of the river there named "Rio Encuentro" is identifiable. It has its source on "the western slopes of Cerro Virgen" and flows northwards to the point where it is joined by the "Rio Engaño" marked on the 1902 Map, which, by analogy with the "western branch", may be regarded as the eastern branch of the "Rio Encuentro". These two watercourses are also identifiable on the modern map: on the Argentina-Chile Mixed Boundaries Commission Map (Map No. A30) they can be seen in association with the same geographical features as on the 1902 Award Map. Today the watercourse referred to in the 1902 Report as the "western branch" of the River Encuentro is known to be a part of the River El Salto. The mistake made by Lange and

described above in paragraph 40 does not however prevent the correct identification of the watercourse which the 1902 Report referred to as the "western branch", and which was shown in the 1902 Award Map.

82. The course of the River Encuentro. On the 1902 Award Map the river named "Rio Encuentro" and the part of its course marked by a continuous black line on that Map is now known to be part of the course of the River El Salto. The reasons for the incorrect identification of this river on the 1902 Award Map have been dealt with in paragraph 40 above.

On modern maps such as Sheets VII-2 and VII-3 of the Mixed Boundaries Commission Map (see Maps Nos. A30 and A31), the River Encuentro is shown as a well defined geographical feature along the whole of its course from its source in the "mallines" which rise to the north of the Portezuelo de las Raices. Its areal significance is strikingly brought out by the Geomorphological Map of Palena (Map No. A28). The confluence of the River Encuentro with the River Carrenleufu was, as far as can be ascertained, first identified and named by Steffen in 1894. Captain B. Dickson R.A. in 1903 erected Boundary Post 16 opposite this confluence, thus establishing a frontier point which has remained undisturbed ever since.

83. The source of the River Encuentro. The 1902 Report refers to the source of the River Encuentro as being on the western slopes of Cerro Virgen; its source is not there; as is now known, it is the River El Salto that has its source there. However on modern maps the River Encuentro, which has its confluence with the River Carrenleufu opposite Boundary Post 16, has a well defined origin. This is the point at which a number of rivulets which rise in the water-bearing strata of the northern slopes of the Portezuelo de las Raices converge. The confluence of these rivulets forms the River Encuentro at a point which is well defined and close to the northern foot of the Portezuelo de las Raices at an altitude of 650 m. above sea level. This is clearly indicated in Map No. A30., from which it can be seen that the origin of the River Encuentro is to be found at only 1300 m. from the northernmost bend of the River Engaño. As will be seen, the Mixed Boundaries Commission gave (in Act No. 55, Annex No. 23 p. 4) the graphic co-ordinates of the River Encuentro's point of origin as $X = 5163550$
 $Y = 1523670$ on Map No. A30.

84. Place Names. It is desired to draw attention to the fact that in Chilean statements and publications, both official and private, there has been in recent years an

inconsistency in the naming and identification of prominent features of the Sector between Boundary Posts 16 and 17 and in the surrounding area. The following paragraphs have been included in this Memorial to avoid any possible confusion which might otherwise arise from the employment of such names and locations.

On Lange's map (Map No. A10), on Sheet 3 of the map submitted by Argentina to the 1902 Tribunal, on the 1902 Award Map (Map No. A1) and on the map used by Captain Dickson (Map No. A5) certain mountain features are clearly and identically named in the area immediately south of the River Carrenleufu. These are from east to west Co. Herrero, Co. Central, Nevados, Co.d.l. Virgen 1820, and C. Colorado O El Morro. In addition, on all but the 1902 Award Map, which does not extend so far west, Pico Morro and Co. Serrano are shown. The positions of these mountains are clearly shown on these maps with relationship to the courses of the Rivers Carrenleufu and Engaño. The courses of these two rivers are also well known from modern maps and therefore it is possible to recognise which of the mountains shown on modern maps are those named on the earlier maps. Thus C.d.l. Virgen is without doubt the Cerro de la Virgen of the Mixed Commission Map Sheet VII-2 (Map No.A30), and similarly the other mountains can be identified.

Until 1955 Chilean maps for the most part employed these names for the same mountains. Thus on the map annexed to this Memorial as Map No. A13, dated 1906, Co. Herrero, Co. Central, Nevados, Co. de la Virgen, Co. Colorado and Co. Serrano are named and located as on the 1902 Award map and on the map used by Captain Dickson.

Again, on the Chilean map of 1945, prepared by the Chilean Military Geographic Institute (Map No. A20), the same names are applied to the same mountains, with the exception of Pico Morro which this map places east of the Rio del Salto, as that map names the River El Salto.

85. From 1952 onwards, some drastic changes began to be made in the names and positions of these mountains. On the Chilean Carta Preliminar 1952, Sheet 4372 - Palena (Map No. A32), what is clearly C. Colorado O El Morro on the 1902 Award Map is labelled Cerro Pico Morro. Thus the name Colorado has been removed and the name Pico Morro substituted although the original alternative title was simply El Morro, and not Pico Morro.

The name Colorado on the Chilean Carta Preliminar 1952 (Map No. A32) is applied to a mountain on the opposite, i.e. eastern, side of the valley of the River El Salto, where a mountain with a height of 1860 metres

is labelled Co. Colorado O Diaz. On the 1959 edition of the Chilean Carta Preliminar (Map No. A33) Cerro Pico Morro and Co. Colorado O Diaz remain in the same positions as on the 1952 Map. However on the 1965 edition of the same map (the uncoloured northern sheet of the composite map submitted by Chile pursuant to Order No. 1 of the Court), whilst Co. Pico Morro is still located west of the valley of the River El Salto, the mountain called Cerro Colorado O Diaz on the two earlier maps is in 1965 left blank and the name Trig. Co. Diaz applied to a mountain at 1502 metres at the eastern end of a range of mountains, the westernmost peak of which in 1959 had been labelled Co. Colorado O Diaz.

Thus over a period of 13 years and 3 maps the name Colorado, the primary name of the feature marked on the Map forming part of the 1902 Award, has disappeared from the Chilean maps and the name Pico Morro, which in 1902 was given to a peak much further west, has been substituted. During the same time Cerro Diaz has shifted its position from one end of the mountain range in which it is located to the other. It will be noted that the general direction of the movement of the names has been from west to east.

86. On Lange's Map, on the map submitted by Argentina with its Reply to the 1902 Tribunal, on the 1902 Award

Map and on the Map used by Captain Dickson there is never any doubt as to which feature is C.d.l. Virgen. But on the 1952 Chilean Carta Preliminar (Map No. A32) the feature which is clearly C.d.l. Virgen is unnamed although the nearby Cerro Mera is correctly labelled. North-east across the valley of the River Engaño on this map there is however a peak labelled Co. de la Virgen which is given a height of 1890 m. It will be noted that this supposed Co. de la Virgen would, if it existed, accord with the terms of the 1902 Award and the Report in that it would lie at the head of the western branch of the River Encuentro, assuming that the River Falso Engaño (which on this map is unnamed) is an eastern branch of the River Encuentro. On the 1959 Chilean Carta Preliminar (Map No. A33) the true Cerro de la Virgen is again unmarked and Cerro Mera has been reduced to Co. Mera and its height deleted. But the most remarkable change is the removal of the title of the supposed Co. de la Virgen of the 1952 Chilean Carta Preliminar and the insertion of the words Pico Virgen some 10 kilometres to the north-east. The words Pico Virgen are written exactly over the place where on the 1952 map the printed words Cerro Herrero appear. It should be noted that the words Pico Virgen have not been drawn with the aid of a stencil, as have all the other mountain names on this

1959 Chilean Map, but were very evidently written in in freehand. The non-professional quality of this freehand lettering is readily apparent with the aid of a magnifying glass. Of course the words Cerro Herrero had to be removed to enable the term Pico Virgen to be written in the same place. It will not pass unnoticed that there has been a significant change of name; it is no longer Cerro Virgen (or one of several possible slight abbreviations of this) as was employed in the 1902 Report, but is a free translation into Spanish of the words "peak called Virgen" as in the 1902 Award. It would appear that a new attempt was being made in 1959 to re-locate a mountain called Virgen to accord with a particular view of the terms of the 1902 Award on the assumption that the River Falso Engaño was the River Encuentro. In this connection it should be further noted that on the 1952 Chilean map the words Rio Encuentro were stencilled, but on the 1959 Chilean map the words Rio Encuentro of the 1952 have been deleted and the words Rio Encuentro written in in freehand in a position so that the words extend from the River Encuentro up and along the River Falso Engaño.

On the northern sheet (1965 edition) of the map submitted by Chile pursuant to Order No. 1 of this Court, the Pico Virgen has again been moved, now southwards some 6 kilometres. Its name is now printed on the map. In

addition the term "Cordon de las Virgenes" appears for the first time along the length of the north-south mountain range of which this supposed "Pico Virgen" forms a part. It will also be noted that on this 1965 Chilean map the words Rio Encuentro have been printed in the position in which they were first placed on the 1959 map in freehand. As the "Pico Virgen" has had to be moved southward to accord with a new and elaborated delineation of the shape of the ground, made in the interval between 1959 and 1965, it became possible for the cartographers to bring back the name Cerro Herrero, and on the 1965 map this has been done under the title Trig. Co. Herrero 1867 m., but for it to be inserted in this position it has been necessary for the cartographers to remove from the 1959 map two names, Cerro Sangriento and Cerro Coffin.

87. Further discrepancies in the naming and location of features are to be found on maps appended to the Report of the Chilean Bicameral Commission (Annex No.24). Map No. 4 (at p 16.) shows as Co. de la Virgen the feature which the 1959 Carta Preliminar (Map No. A33) was later to call the "Pico Virgen". On the same map the continuation of the Rio Encuentro towards the Portezuelo de las Raices is labelled Falso Engaño, and the name

Rio Encuentro is written along what on the Argentina-Chile Mixed Boundaries Commission's map (Map No.A31) is called Rio Falso Engaño. On Map No.7 of the Bicameral Commission's Report (at p.162) the term Pico Virgen is employed and the upper River Encuentro is labelled Estero Lopez and Estero Mallines. On both these maps of the Bicameral Commission's Report the true Cerro de la Virgen is indicated; on Map No. 4 it is called Trig. de la Virgen and on Map. No. 7 Co. de la Virgen. It is interesting to note that on these two maps the term Co. de la Virgen is employed for two different peaks in quite separate locations.

88. One of the latest manifestation of changes of names on Chilean maps is to be seen on the Geomorphological Map of Palena,(published in "Revista Geográfica", Vols. IV and V. Nos 11, 12 and 13, 1963 - 1964 University of Mérida, Venezuela) (annexed as Map No.28),compiled by Professor Reynaldo Börgel of the Institute of Geography of the University of Chile, and stated by him to be based upon the maps of the Argentina-Chile Mixed Boundaries Commission. This map shows a Pico Virgen in the same position as on the 1965 Chilean Carta Preliminar. In addition, two short headwaters of the River Falso Engaño are depicted, the eastern of which is labelled A. Brazo

Oriental (trans: Arroyo Eastern Branch), and the western, unnamed, rises on the western slopes of the supposed Pico Virgen.

89. It may further be shown that these inconsistencies in the naming and identification of prominent features of the Sector between Boundary Posts 16 and 17 have apparently been carried out with a definite purpose in mind. On the 1952 Chilean Carta Preliminar the terms of the 1902 Report, which states that the boundary shall "follow the Encuentro along the course of its western branch to its source on the western slopes of Cerro Virgen", have been met by moving the name Co. de la Virgen and applying it to a summit east of the River Engaño. It will be noted that this relocation of the Co. de la Virgen does not apparently meet the terms of the 1902 Award, which states that "the boundary shall follow the River Encuentro to the peak called Virgen" (emphasis added).

On the 1959 Chilean Carta Preliminar an attempt is made to correct this discrepancy, by identifying "Pico Virgen" at the source of what is now labelled the "Rio Encuentro", but which on the 1952 map was unnamed, Thus the terms of the 1902 Award are now met, and the boundary is made to follow "the River

Encuentro to the peak called Virgen". But, in making it do so, the boundary on the 1959 Chilean Carta Preliminar no longer meets the terms of the 1902 Report, in that it is made to follow what is in fact the eastern branch, not the "western branch", of the River Encuentro. It will be noted that the changes shown on the 1959 Chilean Carta Preliminar are the principal ones, which were proposed by the Chilean representatives at the meeting of the Mixed Boundaries Commission in Buenos Aires on the 20th October, 1955 referred to in chapter VI.

This situation is substantially depicted on the 1965 Chilean Carta Preliminar, but in addition three terms first appearing in the Chilean proposal to the meeting of the Mixed Boundaries Commission in Buenos Aires on the 20th October, 1955 are added to what appeared on the 1959 Map. These are Arroyo Lopez and Arroyo Mallines for the upper River Encuentro, and Cordon de las Virgenes for the range which include Cerro Herrero and Cerro Central. However on the Geomorphological Map of Palena (Map No. A28), as has been indicated in paragraph 88 above, a small stream has been selected and named the eastern branch of the supposed River Encuentro, and by implication there is an unnamed western branch.

90. Thus, over a period of years, mountains and rivers have been selectively identified and named until a

combination of mountains, rivers and names has now been arrived at which supposedly corresponds to the words employed in the 1902 Award and Report. However, the inaccuracies introduced do not in any way match cartographically the course of the boundary as it relates to the geographical features shown on the Map made part of the 1902 Award.

CHAPTER IV

HISTORICAL BACKGROUND: 1902 to 1941

91. The Parties entered into a General Treaty of Arbitration, signed on the 28th May, 1902. This Treaty and one of the two related Protocols are annexed hereto as Annex No. 14. The material portions of the Treaty of which the Spanish text is the authentic text, were as follows :-

TRATADO GENERAL DE ARBITRAJE

Firmado: Santiago 28 de mayo
de 1902

"Artículo 1^o - Las Altas Partes Contratantes se obligan a someter a juicio arbitral, todas las controversias de cualquier naturaleza que por cualquier causa surjieren entre ellas, en cuanto no afecten a los preceptos de la Constitución de uno u otro país i siempre que no puedan ser solucionadas mediante negociaciones directas.

Artículo 2^o - No pueden renovarse en virtud de este Tratado, las cuestiones que hayan sido objeto de arreglos definitivos entre las Partes. En tales casos, el arbitraje se limitara exclusivamente a las

GENERAL TREATY OF ARBITRATION

Signed in Santiago on the
28th May, 1902
(translation contained in
British State Papers
Vol. 95 p.759.)

"Article I. - The High Contracting Parties bind themselves to submit to arbitration all controversies between them, of whatsoever nature they may be, and from whatever cause they may have arisen, except when they affect the principles of the Constitution of either country, and when no other settlement is possible by direct negotiations.

Article II. - Questions which have already been the subject of definite settlement between the High Contracting Parties cannot, in virtue of this Treaty, be reopened. In such cases arbitration will be limited exclusively to the

cuestiones que se susciten sobre validez, interpretacion i cumplimiento de dichos arreglos.

questions which may arise respecting the validity, the interpretation, and the fulfilment of such agreements.*

.....
Articulo 4^o. - Los puntos, cuestiones o diverjencias comprometidos se fijaran por los Gobiernos Contratantes, quienes podran determinar la amplitud de los poderes del Arbitro i cualquiera otra circunstancia relativa al procedimiento.

.....
Article IV. - The points, questions, or differences involved shall be determined by the Contracting Governments, who shall be able to define the scope of the Arbiter's powers and any other circumstance relating to the procedure.

Articulo 5^o - En defecto de acuerdo, cualquiera de las Partes podra solicitar la intervencion del Arbitro, a quien correspondera fijar el compromiso, la epoca, lugar i formalidades del procedimiento, asi como resolver todas las dificultades procesales que pudieren surgir en el curso del debate. Los comprometidos se obligan a poner a disposicion del Arbitro todos los medios de informacion que de ellos dependan.

Article V. - In default of agreement either of the Parties shall be empowered to invite the intervention of the Arbiter, whose duty it will be to determine the Agreement, the time, place, and formalities of the proceedings, as also to settle any difficulties of procedure as to which disputes may arise in the course of the arbitration. The Contracting Parties undertake to place all the information in their power at the disposal of the Arbiter.

*The word "arreglo(s)", which appears twice in the authentic text of Article 2^o, is usually translated into English in this context by the word "settlement (s)" as it has been in the translation of the first sentence of Article II.

Articulo 13º - La sentencia es inapelable i su cumplimiento esta confiado al honor de las Naciones signatarias de este pacto. Sin embargo, se admitira el recurso de revision ante el mismo Arbitro que la pronunció, siempre que se deduzca antes de vencido el plazo señalado para su ejecución, i en los siguientes casos:

1º Si se ha dictado sentencia en virtud de un documento falso o adulterado;

2º Si la sentencia ha sido en todo o en parte la consecuencia de un error de hecho, que resulte de las actuaciones o documentos de la causa. "

.....

Article XIII. - There is no appeal against the Award, and its fulfilment is intrusted to the honour of the nations who have signed this Agreement. Nevertheless, recourse to revision shall be allowed before the same Arbiter who pronounced it, provided such action be taken within the time fixed for its execution and in the following cases:-

1. If the Award has been given on the strength of a document which has been falsified or tampered with; or

2. If the Award has been, in whole or part, the consequence of an error of fact resulting from the arguments or documents of the case."

.....

92. At the time of the signature of the Treaty, a Protocol was signed on behalf of both Governments, in which the Minister for Foreign Affairs of Chile, declared, among other things, (see Annex No 14, p.3), that "happily, the question of the delimitation of frontier between Chile and the Argentine Republic had ceased to be a danger to peace, since both Nations were awaiting the arbitral decision of His Britannic Majesty". This statement confirmed that

the 1902 Award was in no way connected with the General Treaty of Arbitration of 1902, and also that the 1902 Award was intended by both Parties to be a definite and final settlement of the frontier.

93. The 1902 Award was accepted by both Parties, both as a welcome relief and ending to the dissensions and difficulties which had previously existed over the question of the boundary between their respective territories, and as a definite settlement of the boundary. To an almost universal extent, the decision embodied in the 1902 Award has ever since been accepted and observed by both Parties. Certain adjustments were subsequently approved by the Argentina-Chile Mixed Boundaries Commission and accepted by the Parties as shown in Chapter VI of this Memorial.

94. No application to revise, alter or otherwise vary the 1902 Award has ever been made by either Party, whether under the Award itself, or by any other means. The present submission to arbitration by both Parties, in consequence of the Agreement for Arbitration (Compromiso) determined by the United Kingdom Government, is, as stated in that Agreement, made under Article V of the 1902 Treaty. No question of the application of Article

XIII of that Treaty arises in the present dispute for the consideration of this Court, because the 1902 Award was not made under the General Treaty of Arbitration of 1902, but under the Agreements set out in paragraphs 20 to 23 above. These Agreements made no provision for the revision of Awards given under them.

95. As stated above in Chapter II of this Memorial, the position of Boundary Post 16 was settled by Captain B. Dickson, R.A., an Assistant Commissioner of the Chile-Argentine Boundary Commission, in March 1903, after having decided, as he was empowered to do (see paragraph 50 above), upon its location, in spite of misgivings on the part of the Argentine expert, Señor Emilio Frey, who had been appointed to assist him. Neither Party subsequently challenged in a formal manner to the Arbitrator the placing of Boundary Post 16 after the decision had been taken by Captain Dickson.

96. Nevertheless the error in the Map which formed part of the 1902 Award (Map No A1) and in the map used by Captain Dickson (Map No A5) was in fact very shortly afterwards discovered by Senor Eilert Sundt.

He was an assistant to the Argentine Expert attached to the Boundary Commission who accompanied the party led by Captain W.M. Thompson R.E., another Assistant Commissioner engaged in demarcating the boundary decided upon by the 1902 Award. Senor Frey, as stated above, had been uncertain about the correctness of the decision of Captain Dickson as to the placing of Boundary Post 16 and in April, 1903, Senor Sundt was instructed

"to explore the region between Lake General Paz and the northerly course of the River Carrenleufu where the River turns back and flows to the west and the Pacific."

As he continues in his Statutory Declaration (annexed hereto as Annex No 15):

"My instructions were to go to the Lagoons of the Engano and from there to follow the River Engano to where it was believed to join the River Encuentro and then to follow that river to its confluence with the River Carrenleufu in order to see if that confluence was the same as the one apposite which Captain Dickson had placed his second boundary post."

97. After experiencing considerable difficulties Senor Sundt did in fact follow the river and discovered that it came out at a place which was not marked by any boundary post, and which indeed was well downstream from the location of the boundary post (16) placed by Captain Dickson. He had in fact followed the course of the

River El Salto, which as is now well known joins the River Carrenleufu at a lower altitude and well downstream to the west of the position of Boundary Post 16. The report of Señor Sundt was not acted upon because, by the time it was received, Captain Dickson had left the area.

98. On the 2nd May, 1904 an Agreement was made between the Parties to provide for their respective Boundary Commissions to determine in a clearer and more precise manner the geographical positions of all the Boundary Posts placed on the ground by the Chile-Argentine Boundary Commission appointed by His Britannic Majesty's Government. The relevant parts of the Agreement were as follows:

"The Boundaries Commissions will establish the said geographical positions with the geodetic data which each of them may possess or, in default thereof, which they may obtain on the ground, and they will draw up a table and a joint plan in which they shall state the averages as definite co-ordinates.

The same Commissions are hereby empowered to increase the number of boundary posts, where they may consider it expedient to do so, in order to indicate the frontier line more clearly and accurately".

99. Some action was taken under this Agreement with regard to the exchange between the Parties of technical data relating to the geographical position of the boundary posts placed on the ground by the Chile-Argentine Boundary Commission in 1903. To this end the Argentine Government from 1906 onwards sent experts to work in the field with a view to obtaining data about the boundary posts. This work was finished in April 1913.

100. On the 9th December, 1913, the Argentine Government sent a Memorandum to the Chilean Government suggesting that some action should be taken in order to work out the joint plan and the averages referred to in the 1904 Agreement. This Memorandum referred also to the location of Boundary Post 16, which at that time the Argentine Government believed was not properly placed, and suggested that a commission of two engineers, one from each country, should verify on the ground the siting of that Boundary Post.

101. In a Memorandum dated the 26th December, 1913, the Government of Chile replied that Boundary Post 16 was, in its opinion, well placed, and by a Note dated the 24th January, 1914, it re-affirmed this statement, adding

that nevertheless it saw no inconvenience in the verification on the ground of the location of Boundary Post 16 by a commission of two engineers to be appointed by the two Governments. But the Chilean Government, unlike the Argentine Government, made no appointment of an engineer for this purpose. The 1904 Agreement was never carried out, although the Argentine Government raised the matter from time to time in subsequent years.

CHAPTER V

THE ESTABLISHMENT OF THE ARGENTINA-CHILE MIXED BOUNDARIES COMMISSION

102. In the years immediately preceding 1941, the need for a more accurate demarcation of the boundary between Argentina and Chile was particularly felt and commented upon in both countries. In recognition of growing concern about this aspect of the relationship between the two countries, the two Governments appointed representatives to consider what should be done. The conclusion was reached that there ought to be an international body charged with the final demarcation of the boundary in order to remove once and for all any uncertainties which existed.

103. Expert representatives of both Parties were appointed in March 1941 to prepare a draft Protocol to establish the international body thus proposed. Preliminary meetings, the results of which were formally recorded, were held. The body eventually was called the "Mixed Boundaries Commission of the Republics of Argentina and Chile". The representatives who had thus been concerned with drawing up the Protocol were later the first members of the

Commission.

104. The Protocol (annexed hereto as Annex No. 17) was signed at Buenos Aires on the 16th April, 1941.

The Preamble and Article 1 read as follows:-

" His Excellency Doctor Guillermo Rothe, Secretary of State in the Department of Justice and Public Education, temporarily in charge of the Portfolio of Foreign Affairs and Worship of the Argentine Republic and His Excellency Doctor Conrado Rios Gallardo, Ambassador Extraordinary and Plenipotentiary of the Republic of Chile;

Having met in the 'sala de Publico Despacho' of the Ministry of Foreign Affairs and Worship of the Argentine Republic with the object of providing means for replacing the boundary posts which have disappeared, erecting new ones on those stretches of the Argentine-Chilean frontier where they are necessary and determining the exact geographical co-ordinates of all of them, have agreed as follows:

Article 1

These works shall be the responsibility of a Mixed Commission consisting of technicians appointed by the Republics of Argentina and Chile, which will proceed to replace the boundary posts which have disappeared or are in a bad condition, to erect new intermediate boundary posts where it considers it necessary to do so, in order to indicate the frontier line more clearly and accurately, and to determine the exact geographical co-ordinates of all the existing boundary posts and of those which it shall erect."

The objective of the work of the Mixed Commission was thus referred to in Article 1 of the Protocol: to

carry out its tasks

"in order to indicate the frontier line more clearly and accurately."

105. Four other Articles of the Protocol are relevant to a consideration of the work of the Mixed Commission. The first is Article 3:-

" The Mixed Commission will meet in Buenos Aires within one month following the exchange of the documents of ratification of this Protocol to decide by mutual agreement upon the works plan and begin the inherent operations involved forthwith; this plan is to include as the first operation, in the cases in which the Commission thinks fit, a detailed survey levantamiento en detalle for an official map corresponding to a strip of territory of sufficient width on both sides of the boundary."

As the surveying in detail and the preparation of official maps based on such surveys played a large part in the Mixed Commission's activities material to the purposes of this Memorial, attention is drawn to the proper translation of the Spanish expression "levantamiento en detalle". This expression connotes not only the making of a detailed survey, but also preparing a map from the results: see Castilla's Spanish and English Technical Dictionary (1958) sub nom. "levantamiento", which gives this meaning under the heading "levantamiento de detalle".

The other relevant Articles are Articles 5, 6 and 8 :-

"Article 5

The Mixed Commission will agree upon the works plan and simply for information will communicate it to the respective Governments.

Article 6

Acts will be drawn up in two copies both being of the same tenor, attesting the location and other descriptive data of each of the boundary posts erected, which Acts will be signed by the Commissioners in charge of the demarcation and sent to the contracting Governments. The said Acts will have full effect and are to be considered binding and valid, and each of the countries will exercise thenceforth full dominion in perpetuity over the territories respectively belonging to them without further procedure.

The respective Governments undertake to withdraw, within a period not exceeding six months from any territories which, pursuant to the provisions of the foregoing paragraph, shall pass from the jurisdiction of one nation to that of the other, and they will notify their withdrawal for the purposes of the corresponding occupation.

Article 8

When in the course of placing boundary posts disagreement arises as to the location of the dividing line, the Commissioners will jointly carry out a survey for a plan on a large scale of the zone under discussion and will attach thereto a report by each of the parties. With these data the Foreign Ministries of the two countries shall make an appropriate decision. In the event of disagreement between the Ministries, the Governments will submit the same to arbitration by an expert of a third State, who will be appointed by mutual agreement within a period of one month of such disagreement being known."

106. The instruments of ratification of the above

Protocol were exchanged at Santiago, on the 28th August, 1941, and the representatives appointed by both sides to form the Mixed Boundaries Commission at once set to work. In accordance with Article 3 of the Protocol a Works Plan was drawn up by the Commission. It was entitled "Works Plan and General Provisions for the Mixed Boundaries Commission of the Republics of Argentina and Chile", and is subsequently referred to in this Memorial as "the Works Plan". It was divided into four parts dealing respectively with the procedure of the Mixed Commission, with Demarcation, with Measurements and with Administration - 67 Articles in all. It was communicated to both Governments in accordance with Article 5 of the Protocol. The Works Plan was from time to time amended by the unanimous agreement of the representatives of both Parties, and the amendments made were duly communicated to both Governments. There is annexed to this Memorial (as Annex No. 18) the version of the Works Plan in force in 1955, which, as will appear below, was a year of particular significance in the work of the Mixed Commission for the purposes of this Memorial. After 1955 the Works Plan was also amended in minor respects of no relevance to this Memorial. With a view "to

obtaining a consistent scheme of action during the whole operation of demarcating the boundary" Article 16 of the Works Plan provided for "Regulations, supplementary to this Plan" to be drawn up, to govern all the activities of the Commission. Such Regulations were in five parts containing 116 Regulations, of which Part I as in force in 1955 is annexed to this Memorial as Annex No. 19.

107. The preamble of the Works Plan read as follows:-

"In accordance with the terms of the Protocol signed in Buenos Aires on 16th April 1941, documents of ratification for which were exchanged in Santiago on 28th August of the same year, the technical Delegates, appointed by the respective Governments, have approved the following WORKS PLAN AND GENERAL PROVISIONS (W.P. & G.P.) to be implemented for the replacement of boundary posts which have disappeared or are in bad condition, the setting up of new intermediate boundary posts, the determination of the geographical co-ordinates and exact altitudes of all existing boundary posts and those subsequently set up, and the making of a detailed survey for an official map corresponding to a strip of sufficient width territory on both sides of the boundary (Article 3 of the Protocol)."

108. Composition of the Mixed Commission. By Article 1 of the Protocol, the Mixed Commission consists of technicians appointed by the Republics of Argentina and of Chile. Article 1 of the Works Plan provided that one of the technical delegates of each country should

act as Chairman of his Delegation. By Article 2 of the Works Plan, the quorum for a meeting was one delegate from each country; by Article 3 one delegate was to be elected Chairman of the Mixed Commission at the first session of each annual season. The representatives appointed by each Government were referred to collectively as a Delegation, the two Delegations composing the Mixed Commission. Each country, however, designated its Delegation as its national boundaries commission: the Argentine Boundaries Commission and the Chilean Boundaries Commission.

Each Delegation has responsibilities to its own Government, either by virtue of instructions received from such Government through its Ministry of Foreign Affairs or by virtue of provisions governing the work of the Mixed Commission. An example of the latter was Article 15 of the Works Plan which provided that, for the purposes of Article 6 of the Protocol, each Delegation was to inform its Government of any changes in territorial jurisdiction resulting from demarcation, and was to forward a certified true copy of the relevant Acts of the Mixed Commission

(referred to in paragraph 117 below) and of the survey map prepared to show the frontier line plotted on it and approved by the Mixed Commission. Similarly, each Delegation sent to its own Government the confidential Annual Informative Report of the Mixed Commission (see paragraph 115 below).

109. Division of the Frontier. Article 19 of the Works Plan stated that for the purposes of the work of the Mixed Commission the frontier was to be divided into sixteen Sections from south to north, each comprising two degrees of latitude. Only the Mixed Commission's work in Sections V, VI and VII of the frontier will be referred to in the present Memorial. Their descriptions were as follows:-

Section V: From 48°S to 46°S

Section VI; From 46°S to 44°S

Section VII: From 44°S to 42°S

110. Official Documents to be used by the Commission.

Article 20 of the Works Plan is of particular importance in that it set out the official documents which the Commission was to use in its work. The listed documents are:-

a) Boundaries Treaty of 23rd July, 1881;

- b) Additional and Explanatory Protocol to the 1881 Boundaries Treaty, dated 1st May, 1893;
- c) Report on the boundary of the Atacama territory, by H.E. Mr. William I. Buchanan, Envoy Extraordinary and Minister Plenipotentiary of the United States of America, dated 24th March, 1899;
- d) Reports (sic) and maps of the Arbitration Tribunal, dated 19th November, 1902;
- e) Award by His Britannic Majesty, Edward VII, dated 20th November, 1902;
- f) Demarcation maps and list of the boundary posts erected by the Holdich Commission in 1903;
- g) Agreement on the boundary to the north of the 23rd parallel south, dated 2nd May, 1904;
- h) Acts of erection of boundary posts signed by the Delegates of both countries; and
- i) Surveys carried out by the Mixed Commission.

111. Article 21 provided that the Delegates to the Commission were to have the sole responsibility of interpreting, on the ground, the above-listed official documents. The Delegates were required to take no account of suggestions made from outside the Commission,

and were to have particular regard to maintaining friendly relations between their Governments, which the Commission was to strengthen by the proper discharge of the task entrusted to it.

112. Decisions of the Commission. Article 7 dealt with decisions of the Commission and provided that these should be unanimous and not taken by a majority vote. It also provided for the reconciliation of divergent views.

113. Records of the Commission. Four types of record call for consideration: Annual Works Plans; Annual Informative Reports; Final Legal-Technical Reports; and Acts which, as will be seen below, were of two kinds.

114. Articles 11 and 13 were concerned with Annual Works Plans; these were to be based on the Works Plan, and each Annual Works Plan was to make provision for the zone to be demarcated, the number of Sub-committees and arrangements for the latter's meetings.

115. Article 23 provided that the Annual Informative Report, which was to be confidential, would be submitted

by each Delegation to its Government. Regulation 5 set out the matters to be covered in the Report; these were to include inter alia:

"...B. Description of the international boundary:

Section.....

- 1) Description of the international boundary in accordance with the official documents listed in Article 20 of the W.P. & G.P.
- 2) Report of the Demarcating Delegates.
- 3) Form in which the international boundary was, and now is materialized (list of boundary posts reviewed, cancelled and erected)."

116. Article 23 also provided that when all work on any given Section of the frontier had been completed the Commission was to draw up a "Final Legal-Technical Report by Sections" which was to be a public document. Regulation 6 described this Report as one "designed to release details of the work and achievements of the Mixed Commission on completion of the work in a given Section." Regulation 6 also prescribed the contents of this Report and among them was included (Item D) "Definitive description of the international boundary."

117. Articles 9 and 10 of the Works Plan dealt with the Acts of the Commission. They provided as follows:

"9. An act in two copies, both of the same tenor, one for each country will be drawn up for each session, and will be signed by all Delegates present.

10. Special acts will be drawn up giving the location and other descriptive data of each existing boundary post and of any subsequently set up, as well as of boundary posts which have disappeared or are replaced by others because they have been destroyed. These acts will be signed by the demarcating Delegates and will be numbered correlatively in each category."

These Articles drew the distinction between Acts recording the proceedings of a session of the Commission and the decisions adopted in it (Article 9), and Special Acts (Article 10). The former had to be signed by all Delegates present. Special Acts were to be signed by the Demarcating Delegates. Article 10 of the Works Plan set up the machinery for complying with the first paragraph of Article 6 of the Protocol, and so Special Acts were only required to attest the location and other descriptive data of boundary posts. Article 38 of the Works Plan related to the same subject and prescribed, by reference to the Regulations (see Regulations, Part I, Chapter I, Regulation 3), the form of the Special Act referred to in the first paragraph of Article 6 of the Protocol and outlined its contents. Such a Special Act had first to record the date of erection or review,

as appropriate, of the boundary post together with its number and name, if any, and any other identifying details. It had to be signed, as Article 10 of the Works Plan had already provided, by the Demarcating Delegates. The Special Acts also had to give the relevant geographical co-ordinates and altitudes, after approval of these by the Commission, and this part of the Special Act also had to be signed and dated by one Delegate from each country. Each copy of the Special Act was to be accompanied by a monograph for the boundary post. All the documents referred to were however to form a single instrument which was to be sufficient for the purposes of Article 6 of the Protocol.

118. A further distinction between Special Acts and Acts recording sessions was made by Article 61 of the Works Plan. This Article provided that when the geographical co-ordinates and altitudes of a Section had been ascertained, two Tables were to be prepared, one giving the technical values, and the other the legal values. The technical values were calculated to a higher degree of precision than the legal values. The final paragraph of Article 61 also provided as follows:-

"The technical and legal values, after approval by the Commission, shall constitute annexes to the act of the relevant meeting. The legal

values shall be embodied in the acts of the boundary posts and the monographs of the latter and of the trigonometrical points. These are the values that shall be annexed to the 'Final Legal-Technical Report by Sections.'"

119. Sub-committees. Article 17 of the Works Plan provided that the Mixed Commission should set up a Demarcating Sub-committee and a Geodetic Sub-committee. The organization of, and the tasks assigned to, each of these Sub-committees will be referred to in the following paragraphs which deal with the maps of the Mixed Commission and with demarcation.

120. Mixed Commission's Maps. By Article 43 of the Works Plan, the Geodetic Sub-committee set up under Article 17 was responsible for all the technical preparatory works and for the survey and for making the topographical sheets based upon the survey.

By Article 46 of the Works Plan, the Geodetic Sub-committee was to be under the control of two Delegates, one from each country, who were to act in concert. This Article also provided that in the absence of one of them, the other Delegate should take charge of this Sub-committee directly.

By Article 45, the national Delegation made responsible, by the Annual Works Plan, for certain

measurements or other preliminary work, had to provide the technicians to do the work. A technician appointed by the other national Delegation was to act as a collaborator and observer.

121. The experience of the Mixed Commission in carrying out the tasks assigned to it led progressively to the conclusion that the drawing of an accurate map was a prerequisite to the final demarcation on the ground. This marked a change in practice by the Commission. Previously, the Commission had placed intermediate boundary posts at points believed to be on the boundary line, and only thereafter did the Commission prepare a map based upon a survey on which the line was plotted. In 1950 the Mixed Commission decided that in all cases the demarcation should be preceded by a survey map with the boundary line plotted on it. The Commission approved an amendment of Article 28 of the Works Plan (Act No. 43 dated the 8th November, 1950, Annex No. 20 p. 45) which, as amended, read as follows:-

"The Demarcating Sub-committee will begin by checking boundary posts, replacing any which have disappeared and repairing any which are damaged. At points where intermediate boundary posts are required, it will proceed to the marking out strictly in accordance with the official documents listed in Article 20.

In order to "demarcate" and "plot" the line, maps of the relevant zone drawn up by the Mixed Commission must be available beforehand."

Article 24 of the Works Plan defined "demarcation" as meaning exclusively "the embodiment in material form or marking out of one or more points of the boundary on the ground." It defined the term "plotting" as meaning "drawing the boundary line on the topographical sheets."

122. In 1951 the Mixed Commission decided (Act No.45, dated the 11th October, 1951, Annex No.20 p. 52) to incorporate in the Works Plan the following provision (Article 22):

"In consideration of Article 3 of the Protocol, demarcation shall be preceded by a regular survey to the scale 1:50,000 of a strip approximately five kilometres wide on both sides of the boundary."

Article 22 was, as it stated, complementary to Article 3 of the Protocol, which provided that the Works Plan was to include "as the first operation", in cases in which the Commission thought fit, the making of a detailed survey map corresponding to a strip of territory of sufficient width on both sides of the boundary. By "regular survey" the Commission meant a survey conducted in accordance with accepted international standards. The survey, as stated above in paragraph 120, was the responsibility of the Geodetic Sub-committee

referred to in Article 17 of the Works Plan.

123. The survey was to be carried out, as the Mixed Commission considered convenient, by adopting one of the two different methods described in detail in Part III (not annexed) of the Regulations. These methods were: (i) plane-tabling survey (Part III, Chapter I, of the Regulations), and (ii) aerophotogrammetric survey (Part III, Chapter II, of the Regulations).

124. As may be seen in paragraph 120 above, the Geodetic Sub-committee was in charge of all the technical work concerning the making of the topographical sheets. This Sub-committee supervised the technical works which were entrusted to the relevant national Delegation, with a technician from the other country acting as a collaborator and observer (see Article 45 of the Works Plan).

Therefore, the topographical sheets were in the first place prepared, under the general supervision of the Geodetic Sub-committee, by the national Delegation to whom this responsibility had been assigned by the Annual Works Plan. The topographical sheets were then transmitted to the Mixed Commission in accordance with

the procedure laid down in Regulation 18 (Part I, Chapter II, of the Regulations).

125. By paragraph (a) of Regulation 18, the Delegation in charge of the plane tabling survey was to send to the Delegation of the other country all documents relating to it with the exception of the original plate, in place of which it was to send a signed photolithographic copy on the same scale. The photolithographic copies had to be accompanied by the proposal of the line of the international boundary, which was to be signed by the Delegates who had prepared the sheet; the proposal of the line was to be made on transparent oiled paper or other similar material.

126. Paragraph (b) of Regulation 18 laid down the procedure to be followed after receipt by the other Delegation of the documents referred to in paragraph 125 above.

If the recipient Delegation, after examining the documents, raised no objection, it was to sign the documents and return them to the other Delegation. If the examination gave rise to observations which could not be remedied through an exchange of correspondence,

the Delegation concerned had to propose to the Mixed Commission a field inspection. This inspection had to be included in the Annual Works Plan as the first operation to be carried out in the following season. If the Delegates in charge of the inspection did not reach a satisfactory agreement, the procedure laid down in Article 29 of the Works Plan was to be followed.

127. Paragraph (c) of Regulation 18 established the procedure to be followed in cases in which the plotting of the frontier line did not give rise to any disagreement. In such cases the Delegation which had provided the topographer who had prepared the topographical sheet was to proceed to transfer onto an aluminium plate the line proposed by it and agreed by the other Delegation. This plate bearing the final drawing was to be submitted for approval to the Mixed Commission at the next following session, and was to be signed by all Delegates present. On photolithographic copy to the same scale as the topographical sheet, as signed by the Delegates, was to be provided to the other country. The Regulation also provided that the written description of the particular stretch of the international boundary was to be complementary to the boundary line drawn on the aluminium plate and was

to appear as an Annex to the Act recording the proceedings of the session at which the boundary line was approved.

128. The procedure laid down in Regulation 18 was applicable to all surveys, regardless of the method used for them. Regulation 37, Note 2, (in Part III, Chapter II of the Regulations which is not annexed), provided that the exchange, revision and approval of the sheets surveyed by aerophotogrammetric methods should be made according to the procedure established in Regulation 18, (Part I, Chapter II).

129. In cases of disagreement "on the course which the boundary line should follow between two boundary posts", Article 29 of the Works Plan laid down the procedure to be followed by the Mixed Commission. The procedure envisaged reference to the Demarcating Sub-committee, whose task and membership were for this purpose described as follows :-

- "a) One or more members of the Commission will join the demarcating Sub-committee. The enlarged Sub-committee will arrange further field studies and will carry out the survey, specified in Article 8 of the Protocol, to any scale it deems suitable

The subsequent procedure was to be as follows :-

- "b) If the enlarged Sub-committee fails to reach the necessary agreement on the basis of this

information the matter will be referred to the full Commission, which will use all means at its disposal until agreement is reached.

- c) If the Commission fails to reach general agreement on the plotting of the frontier line in such a place, it will draw up an explanatory act in two identical copies of the disagreement which has arisen."

Each Delegation was to send to its Government a copy of this explanatory report together with details of the previous proceedings.

130. Demarcation. As stated in paragraph 119 above, Article 17 of the Works Plan provided that the Mixed Commission should establish a Demarcating Sub-committee. This Sub-committee was entrusted, according to Article 24, with the responsibilities of

"revising all existing boundary posts, replacing those which have disappeared, and setting up new intermediate ones wherever they are needed in order to mark the frontier more clearly and accurately".

In Regulation 10, in Chapter II of Part I of the Regulations, it was provided that, when the line on the topographical maps plotted in accordance with the official documents (other than the Mixed Commission's Acts) listed in Article 20 of the Works Plan had been agreed, demarcation was to be carried out.

131. By Article 25, Delegates of both countries were

to take charge of the Demarcating Sub-committee, and by Article 27, the Demarcating Delegates were to act in concert.

By Article 28, the Demarcating Sub-committee was to begin by checking boundary posts, by replacing any that had disappeared and by repairing any damaged posts. The same Article required the Sub-committee to "proceed to the marking out strictly in accordance with the official documents listed in Article 20" wherever intermediate boundary posts were required.

132. Article 34 of the Works Plan gave the Mixed Commission some guidance on the placing of boundary posts. It should be noted that this Article recommended that boundary posts should be set up "in the middle of summits which have no clearly defined peaks", and this provision is complementary to Article 37 of the Works Plan which provided that clearly defined, inaccessible summits through which the boundary passes were to be regarded as natural boundary posts, and their geographical co-ordinates and altitudes were therefore to be determined. But Article 37 went on to provide that natural boundary posts might only be so declared after the making of the relevant survey on which the

feature in question could be unmistakably identified. Regulation 9, (Part I, Chapter II of the Regulations), provided that natural boundary posts would be distinguished by name, and not numbered as artificial boundary posts had to be.

133. This Chapter contains only a description of the instruments governing the Mixed Commission. A legal analysis of the competence and powers of the Mixed Commission will be found in Chapter VIII, paragraphs 240 to 265.

CHAPTER VI

THE WORK OF THE MIXED BOUNDARIES COMMISSION 1941 to 1955

134. The Argentina-Chile Mixed Boundaries Commission began its activities on the ground on the 22nd April, 1942. Since then the Commission has worked on Sections III, V, VI, VII and VIII of the frontier (see paragraph 109 above). The Mixed Commission has unanimously approved the boundary line in many parts of these Sections, with the exception of Section VIII. The boundary line so approved includes the whole of the boundary line in Section VI, and parts of the boundary line in the Sector between Boundary Posts 16 and 17, which is part of Section VII of the frontier.

135. The Mixed Commission began its work with Section VI and by 1952 the whole of the boundary line in that Section had been finally demarcated by it. Maps made by the Mixed Commission and showing the line of boundary approved by it in Section VI are annexed hereto as Maps Nos. A 36 to A 46 inclusive. The results were published in 1952, in accordance with Article 23 of the Works Plan and Regulation 6, (Regulations, Part I, Chapter I), under the title "Memoria Definitiva Legal - Tecnica, Seccion VI" (Final Legal-Technical Report on Section VI).

The work of the Mixed Commission in every Section will not be considered in detail, but it is deemed necessary now to refer to some particular aspects of that work in

Sections V and VI. The work of the Mixed Commission in Section VII is dealt with in some detail later in this Chapter.

136. Before considering the work done by the Mixed Commission in the Sector referred to this Court, it is important to refer to the manner in which the Mixed Commission dealt with problems which arose during its work with regard to the proper course of the boundary line when applying the 1902 Award to the terrain. The Mixed Commission settled tracts of uncertain boundary, accomplishing its task without any prior reference to the two Governments, neither of whom ever questioned the finality of these settlements agreed upon by the Mixed Commission. All Acts, official documents and decisions of the Mixed Commission were communicated to the respective Governments by each Delegation. Some instances of these settlements are of particular significance for the purposes of this Memorial, as will be seen subsequently in this Chapter and in Chapter VIII. All of the examples given in paragraphs 137 to 143 below relate to parts of the boundary line referred to in Article III of the 1902 Award, or in paragraph 22 of the 1902 Tribunal's Report.

137. Cerro Principio. (Section V of the frontier; see annexed Map No. A 34 : $72^{\circ} 01' 20''$ W $47^{\circ} 12'$ S). Reference

to this peak is to be found in the Report of the 1902 Tribunal. The 1902 Award stated in Article III:

"The further continuation of the boundary is determined by lines which we have fixed across Lake Buenos Aires, Lake Pueyrredon (or Cochrane)..."

The Report of the Tribunal, paragraph 22, gives a more detailed description:

"..., and thence follow the water-parting between the basins of the Tamango (or Chacabuco) and of the Gio, and ascend to the summit of a mountain known locally as Cerro Principio in the Cordon Quebrado."

In 1946 the Mixed Commission declared Cerro Principio a natural boundary post and drew up the appropriate Special Act. Later, in Act No. 40 dated 29th March, 1949 (Annex No. 20 at p. 34), the Chilean representatives stated that the natural Boundary Post, Cerro Principio, was not on the water-parting mentioned in the Report of the Tribunal. After lengthy discussion about the line proposed by the Chilean representatives, which did not ascend to the summit of Cerro Principio, and after a visit to the terrain, the Mixed Commission accepted that the Chilean representatives were correct in concluding that the wording of the Report of the Tribunal did not coincide with geographical reality, because the point named in it, the summit of Cerro Principio, was not a point on the water-parting. The Commission decided that nevertheless the geographical feature named by the 1902 Tribunal in its Report as the summit of a mountain known

locally as Cerro Principio, should be retained as a point on the boundary line even though this involved abandoning the water-parting.

138. The successive steps taken by the Mixed Commission in relation to this point of the boundary were recorded in Act No.41, dated the 13th February 1950, in Act No.51, dated the 4th August, 1953, in Act No.52, dated the 6th April, 1954 and in Act No. 53, dated 4th November 1954 (Annex No. 20 pages 37, 63, 70 and 74 respectively).

The final decision in 1955 is recorded in Act No.55, Item 4B, paragraph (a), which approved the boundary line plotted on Sheet V-6 entitled "Lago Cochrane-Pueyrredon" (Map No. A34). Annex 4 to the same Act records the decision to appoint a Sub-committee to erect boundary posts on the approved boundary line (See Act No. 55, Annex No. 23 p.4). Accordingly, in 1956, the Mixed Commission erected a new boundary post, V-6A, to mark the diversion from the watershed in order to achieve a better definition of the marking out of the boundary line.

The order of events, therefore, was the making of a map; the Chilean proposal of a line to be plotted on the map; a visit by the Mixed Commission to the terrain; a further Chilean proposal of a line to be plotted on the map, which was a modification of the earlier Chilean

proposal; the unanimous approval of that plotted line by the Mixed Commission at a formal session recorded in the appropriate Act; and, some time later, in 1956, the erection of a new intermediate boundary post to demarcate the line. Neither Government has subsequently questioned the finality of the settlement in this part of the boundary line by the unanimous decision of the Mixed Commission.

139. Cerro Rojo. (Section V of the frontier; see annexed Maps Nos. A1, and A 35: $71^{\circ} 45' 40''$ W. $46^{\circ} 06' 32''$ S.) . In this instance the Mixed Commission found (see Act No. 40, dated the 29th March, 1949 - Annex No.20 p.34) a discrepancy between the description given by the 1902 Award and by the 1902 Tribunal in its Report, and geographical reality on the terrain. The 1902 Award, in Article III, says :

"....it [the boundary line] shall follow certain tributaries of the River Simpson (or Southern River Aisen), which we have fixed, and attain the peak called Ap Ywan,...."

The Tribunal's Report, in paragraph 22, says that the boundary line :

"....shall descend this affluent [of the main stream of the River Simpson] to its junction with the main stream, and from this junction shall follow the main stream upwards to its source under the mountain called Cerro Rojo (1790 m.) in the Map."

The Map forming part of the 1902 Award is in accord with the two texts. The mistake was discovered by the Mixed Commission while working in the area: the River Simpson does not have any "source under the mountain called Cerro Rojo", and there is in fact no river or rivulet having its source under or on Cerro Rojo, which the Mixed Commission had referred to as a natural boundary post in Act No. 40 Item 5 (a) (Annex No. 20 p. 34). After much discussion of this problem the Mixed Commission unanimously decided, in Act No. 55, Item 4B, paragraph (c), (Annex No. 23 p. 5), to plot the line so that it ran from a point on the River Simpson to the summit of Cerro Rojo. If this line had been plotted to the source of the River Simpson it would have been plotted to a point further west, near a different mountain, Cerro Roca Negra.

140. No intermediate boundary post has been erected by the Mixed Commission since this decision was made. This was, therefore, a case where geographical reality did not coincide with the description in the 1902 Report and the depiction on the 1902 Map, and yet the boundary was approved by the Mixed Commission as a line which accorded as nearly with the terms of the 1902 decision as geographical reality allowed (see Acts Nos. 40, 41

and 55 - Annex No. 20, pages 34 and 37 , Annex No.23,p.5, and Sheet V-14 annexed hereto as Map No. A35).

Since 1955, when the Mixed Commission approved (in Act No. 55) the line plotted on Sheet V-14, neither Government has sought to question or reopen this unanimous decision of the Mixed Commission.

The Argentine Government reserves its rights in this respect in the event that this Court were to reach a decision on the competence of the Mixed Commission or the validity of Act No. 55 which would show that the decision above described was without legal effect.

141. Cerro Ap-Iwan. (Section V of the frontier; see Map Nos. A1, and A.35 : $71^{\circ} 52' W$ $46^{\circ} 09' 20'' S$.) A few kilometres to the south-west of Cerro Rojo lies Cerro Ap-Iwan. Referring to it, in the contemporary spelling, Article III of the 1902 Award says that the boundary line shall:

".....attain the peak called Ap-Ywan,....."

And the Report, paragraph 22, says :-

"From the peak Cerro Rojo it shall pass by the local water-parting to the highest summit of the Cerro Ap-Ywan (2,310 m.)."

It was found by the Mixed Commission that the local water-parting does not pass through Cerro Ap-Iwan, and the Mixed Commission decided that the boundary line should make a

diversion to the east from the local water-parting in order to reach the highest summit of that mountain (see Acts Nos. 51 and 53 dated the 4th August, 1953 and the 4th November, 1954 respectively, - Annex No. 20. pp 63 and 74, Act No. 55, Item 4B, paragraph (c) - Annex No. 23, p.5 and Sheet V-14 annexed as Map No. A35). Looking at the boundary line as it was approved in 1955 by the Mixed Commission in Act No. 55, it is easy to appreciate the difference from the line shown on the Map forming part of the 1902 Award. No intermediate boundary post has been erected by the Mixed Commission since its decision was made. Since 1955 neither Government has questioned the definitive character of this settlement. The Argentine Government must, however, make here the same reservation as that made above in respect of the decision referred to in paragraph 140.

142. The Customs House near El Coyte. (Section VI of the frontier; see Map No. A.37: $71^{\circ} 43' 21''$ W. $45^{\circ} 14' 0''$ S.).

Near El Coyte, a small Argentine settlement adjacent to the frontier, the Argentine Government had built a Customs House between Boundary Posts 39 and 40 erected in 1903 by the Chile-Argentine Boundary Commission. The Chilean Government had made no protests about the administration of the area or about the building of the Customs House.

The Mixed Commission plotted the boundary line between those Posts on the map of the area which it had prepared (Act No. 39, dated the 31st October, 1948; Annex No.20, p 32). This plotting of the boundary line showed that the Customs House was in Chilean territory. The two Governments acted in accordance with this information. Thereafter, the Mixed Commission decided that it would be expedient to erect an intermediate boundary post and somewhat later this was done, and the position of the intermediate boundary post attested by a Special Act in conformity with Article 6 of the 1941 Protocol. Still later, after certain internal legal formalities had been fulfilled, the Argentine Government transferred to the Chilean Government legal title to the Customs House without payment.

143. A similar case, that of the Customs House Alto Rio Mayo, was recorded in the Informative Report 1941-1947, referred to below, and annexed to this Memorial as Annex No. 21. As in the Customs House of El Coyte case, the change in jurisdiction led to the transfer to Chile of the building erected by Argentina.

144. Section VII of the Frontier. The work of the Commission on Section VII, which includes the Sector

between Boundary Posts 16 and 17, started in the year 1944. Having agreed that it was necessary to carry out a survey of that Section as the first operation, the Mixed Commission decided in February 1944 that reconnaissance flights were required (Act No. 26 dated the 1st March, 1944, annexed hereto in Annex No. 20 at p. 3).

Boundary Post 17 was inspected by the Mixed Commission on the 19th February, 1945 and, in accordance with the division of the frontier adopted in the Works Plan, a new number was given to it and to Boundary Post 18, inspected in the previous season: those new numbers were VII-2(17) and VII-1(18).

In March 1945 the Mixed Boundaries Commission decided to carry out the triangulation and the aerophotogrammetry necessary for the preparation of a map of the whole of Section VII. In the following years the triangulation on Section VII was continued but, for budgetary reasons, the aerial photography was not at that time undertaken. However the Mixed Commission did decide (Act No. 32 dated the 21st December, 1946 annexed hereto in Annex No.20, at p.9) that aerial photography would have to be carried out if it transpired that aerophotogrammetric work proved to be essential in Section VII.

In subsequent seasons more ground work was carried out and calculations worked out. These were compared

and approved by the Mixed Commission in 1948 (Act No.37, dated the 16th September, 1948 in Annex No. 20 at p. 24) by reference to a table prepared by a Sub-committee. Boundary Post 16 was inspected on the 5th March, 1947 and was given its new number as VII-3 (16).

145. Informative Report 1941-1947. As the Commission had previously not made Annual Informative Reports for each year since 1941, as contemplated by Article 23 of the Works Plan, a comprehensive Report for the years 1941 to 1947 was prepared by Engineer Norberto B. Cobos (Argentine Representative) and Lieutenant Colonel Mardoqueo Muñoz Moraga (Chilean Representative) under the title "Informative Report" (Annex No. 21). This Report was adopted by the Mixed Commission in October 1948 (Act No. 39 in Annex No.20 at p. 30) as its "Informative Report 1941-1947". That Report shows, among other things, the activities of the Mixed Commission in relation to the ascertainment of the geographical co-ordinates for each Boundary Post in existence, and the work carried out in inspecting and overhauling the existing boundary posts set up by the Chile-Argentine Boundary Commission in 1903.

Chapter 4 of the Report described a further task of the Commission in the following words (at p. 22):-

"The plotting of the international boundary along the frontier from the 40th to the 52nd parallel south, covered by the Award of His Britannic Majesty, presents a number of different cases :

By the terms of the Award, the plotting of the dividing line assumes four different forms along the various parts of the frontier:

- a) The line cuts across rivers or lakes, leaving the headwaters in one country and the lower course or parts in the other.
- b) The line follows the local watershed produced when it cuts across the rivers or lakes.
- c) The line follows the South American continental watershed as specified in the Award made by the King.
- d) Frontier follows rivers forming the boundary of both countries, between points on their courses specified in the Award.

The duty of the present Mixed Commission is limited to the erection of additional boundary posts where the British demarcators left it to the parties because there could be no doubts regarding interpretation.

.....

As a result of the foregoing considerations, the boundary must be described by naming the boundary posts, peaks and vertices through which it passes, leaving no case in doubt; so that when ordering measurements along the frontier, the Ministries of both countries have the necessary information to show the experts the points through which the international boundary runs. This is what is done in dealing with each Section."

146. As regards the Sector between Boundary Posts 16 and 17, the Informative Report summarised the decisions adopted and the work performed up to 1947. Reference was made (see Annex No. 21 p. 115) to the Annual Works Plan for the season

1946-1947 in which there appeared, under the heading "New Work", decisions both as to triangulation and topography to be carried out, of which the relevant ones are as follows :-

"Triangulation:

- a) Main chain along the frontier or close to it along Section VII, from Lake General Paz northwards;
- b) Special triangulation for the addition of further control points in the River Salto-River Encuentro-Cerro de la Virgen area, to support a topographical survey.

.....

Topography:.....

- c) Special survey of the River Salto-River Encuentro-Cerro de la Virgen area."

The Report went on to state that the following, among other points, had been agreed concerning this programme of work:

- "2. The Demarcation Delegates would make a field study of the problem of demarcation in the River Salto-River Encuentro-Cerro de la Virgen area as one of their first activities and would report to the first field work session as to which is the type of survey feasible and appropriate for that area."

Under the sub-heading of "Demarcation" in Part II, dealing with "New Work", there appeared the following:

- "b) Determination of the most feasible and suitable type of frontier survey (aerial or plane tabling) for the various sectors of Section VII."

147. Reporting on the work of the Demarcating Subcommittee the Report went on, after referring to the

reviewing of Boundary Posts 16 and 17 and other boundary posts by various members of the Commission, as follows :-

" STUDY OF THE FRONTIER IN SECTION VII

Starting from natural Boundary Post VI-43, Cerro Botella Oeste, the last Boundary Post of Section VI, situated in the high mountain chain separating the upper basin of the River Pico (to the East) from the basin of the same river, known as Figueroa in Chile (to the West), the boundary continues in a generally north-easterly direction along this chain and descends with it to Boundary Post VII-1 (18), situated on the south bank of Lake General Paz. The line crosses the lake from South to North and continues along a local water-parting separating the waters following into the River Engano, leaving them to the east, and finally reaching Cerro de la Virgen.

From this peak, which must be considered as a natural boundary post, the boundary should continue, according to the Award of His Majesty King Edward VII and the Report of the Arbitration Tribunal, along the course of the River Encuentro from its source until it flows into the River Palena. Boundary Post 16 is erected on the north bank of the River Palena, opposite the mouth of the River Encuentro.

The topography of the zone north of the Cerro de la Virgen does not correspond to that shown on the cartographical documents dating from the time when the Arbitration Award was made.

There are serious defects in the Map used by the British Demarcators on which the dividing line was plotted, especially in the section covering the hydrographic basin of the River Encuentro in its upper and middle course. For this reason the identification and materialisation on the ground of this sector of the boundary line has caused difficulties which the Mixed Commission is at present trying to resolve."

This passage shows that in 1947 the Mixed Commission was fully aware of the problems to which the 1902 Award gave rise in the part of the Sector to the north of Cerro

de la Virgen. No problem, however, arose for the Mixed Commission as to the course of the boundary to the south of Cerro de la Virgen. In particular the Commission was very clear that the boundary ran through Cerro de la Virgen, which was to be regarded as a natural boundary post. The final paragraph of the above quotation shows that at the time the Mixed Commission considered that a problem existed concerning the River Encuentro. The references to Cerro de la Virgen and to the whole course of the River Encuentro can be seen to be to the same geographical features as those identified in Chapter III above.

148. The Informative Report under the heading "FINAL DEMARCATION" stated as follows :-

"The frontier has not yet been finally demarcated by the addition of boundary posts between those erected by the British Demarcators in 1903, because the Annual Field Work Programme for 1946-47, approved during Section [sic] No. 32, provides only for reconnaissance of the frontier and the review of the existing boundary posts (Works Plan, Demarcation, p.88)."

The Annual Field Work Programme mentioned in the quotation was one of the Annual Works Plans referred to in Article 11 of the Works Plan. The Works Plan, Demarcation, was part of the Annual Works Plan.

149. As a result of the studies made on the ground, the need for an aerophotogrammetric survey was finally decided in 1950 (Act No. 41 in Annex 20 at p.37), and in the same year (Act No. 43 in Annex 20 at p.38) the Mixed Commission agreed on tables (Annex No. 20, pp.42-44) of geographical coordinates and altitudes for the trigonometrical points in Section VII, including technical data relating to the positions of Boundary Posts 16 and 17 and to other points, including Cerro de la Virgen, in the Sector between those Boundary Posts. These tables shew that up to that date the representatives of both Parties on the Mixed Commission had no doubt whatsoever about the location of those points, the positions of which they had jointly ascertained on the ground.

150. Between the years 1951 and 1954 the aerophotogrammetric survey undertaken by the Mixed Commission was completed and topographical sheets were drawn up from the survey. By previous agreement, the mapping of the Sector between Boundary Posts 16 and 17 was the responsibility of the Argentine representatives on the Commission with a Chilean representative, Major Alfonso Alfaro De La Cerdá, acting as observer. The extent of territory mapped in this way was agreed to by the Chilean observer putting his signature to an outline sketch (annexed hereto as Map No.A47)

of the area to be mapped. Before the preparation of the maps had been completed the Mixed Commission, as recorded in Annex 4 to Act No. 51, dated the 4th August, 1953, sent a field mission to check the maps upon the ground. As part of the checking process, two Field Sheets (Maps Nos. A48 and A49) were drawn up. After the topographical Sheets had been finally completed, five copies of the Sheets, namely, VII-1, VII-2 and VII-3, (Maps Nos. A29, A30 and A31), were handed to the Chilean representatives on the Commission together with the transparencies used in the making of the Sheets and some others obtained from the aerial photography but not used in the making of the Sheets (Act No. 53, dated the 4th November, 1954 in Annex No. 20 at p.74).

151. Decisions of the Mixed Commission in 1955. This Memorial now considers the discussions and decisions of the Mixed Commission in 1955 with regard to the boundary in the Sector between Boundary Posts 16 and 17.

152. Argentine proposal. In February, 1955, the Argentine representatives on the Mixed Commission handed to the Chilean representatives their proposal of the plotting of the boundary line on three transparent overlays to be placed on Sheets VII-1, VII-2 and VII-3 as

required by Regulation 18 (a) (Part I, Chapter II) of the Regulations (see the blue line described as "line proposed by the Argentine Boundary Commission" on Map No. A55).

The line proposed by the Argentine representatives can be described as follows:

From Boundary Post 16 opposite the junction of the River Encuentro with the River Carrenleufu, the boundary was to follow the River Encuentro to its source to the north of the Portezuelo de las Raíces; thence crossing the Portezuelo de las Raíces to the northernmost point of the River Engaño, and thence along the latter's course southwestwards downstream to its confluence with the River El Salto; thence upstream along that river to its source on the western slopes of Cerro de la Virgen. Ascending to that peak, it was then to follow the local water-parting southwards to the northern shore of Lake General Paz at Boundary Post 17.

The Argentine representatives also gave the Chilean representatives a written statement (Annex No.22 p.1.) of the reasons that had guided the formulation of their proposal and invited the Chilean representatives to carry out a visual inspection of the area. This visual inspection was in fact carried out by the representatives of both Parties (Act. No. 55, Annex 1; see Annex No.23 p.6)

153. XVth Plenary Meeting of the Mixed Commission and Chilean Counter-proposal. From the 20th October to the 1st November, 1955, the Mixed Commission held its XVth Plenary Meeting at Buenos Aires. At the beginning of the meeting the Chilean representatives, instead of adopting the general practice which was to discuss orally proposals made by the representatives responsible for the mapping and for the plotting of the line on the maps, made their own counter-proposal (Annex No.22 p.10) based on a map (annexed hereto as Map No. A52) prepared outside the Mixed Commission. The proposed line was reproduced on a transparent overlay (Map No. A53) designed to be used in conjunction with the map just referred to. According to that proposal (p.12) the boundary line:

"....starts at the Boundary Post VII-3(16), that is, at the confluence of the Rio Palena or Carrenleufu with the Rio Encuentro. It follows the lower course of the latter up to approximately 43° 36' 30" latitude South. From thereon, it changes its general direction South to North to that of East to West, forming its Western stretch, as mentioned in the Report of the Arbitration Tribunal.....Following this western stretch of the Rio Encuentro, its source is reached on the Western slopes of the Pico Virgen; a peak 2,100 metres above sea level situated at the extreme north of the range of high summits called de las Virgenes. From this peak the line proceeds southwards along the water-shed passing through the highest peaks of the Cordillera de los Andes in that region of Patagonia ... ultimately reaching Boundary Post VII-2 (17) on the Northern shore of Lago General Paz."

154. In the accompanying explanation of its proposal, the

Chilean Delegation stated (at p.13) among other things:

"Our differences of opinion begin at the confluence of the Rio Encuentro with Estero Lopez and its change of direction from North-South to East-West.

The 'Western stretch' of the Rio Encuentro referred to by the Arbitration Tribunal, which was discovered by Steffen and later considered by Captain Dickson, clearly shows that this river must necessarily have had at some part a clearly defined 'East-West' direction. It must be assumed that when Captain Dickson reconnoitred this geographical feature, from its confluence with the Rio Carrenleufu or Palena to its source in some massif of the cordillera, he was equipped with the necessary instruments to enable him to define a cardinal point with relation to a stretch of the aforementioned river. It is also feasible to assume that he must necessarily have had to establish his position in order not to get lost in a region of such difficult topography. Moreover, if Captain Dickson had followed the general South-North direction of the Rio Encuentro, and continued along the course of Estero Lopez and Estero Los Mallines, which run in the same direction, we consider that he never could have mentioned 'a western branch of the Rio Encuentro'.

.....

There is another geographical feature of vital importance on which to base our argument: it is 'the highest summits of the Cordillera de los Andes which divide the waters', which must at all times be considered to be in accordance with what is expressly stipulated in the 1881 Treaty. It is natural, therefore, that the English Expert must have gone to those high summits in order to mention a demarcatory line. The 'Pico Virgen' cannot, therefore, be arbitrarily located in some other zone which does not have the characteristics mentioned in the 1881 Treaty. That peak which we propose as being the Pico Virgen, 2,100 metres altitude, and which forms part of the range of mountains in which the highest summits of the zone are to be found coincides exactly with the source of the Rio Encuentro".

155. It should be noted that new names are given in this Chilean proposal to geographical features that traditionally had had firm denominations and had accordingly been included

by the Mixed Commission in Sheets VII-1, VII-2 and VII-3, which were jointly prepared without objection by the Chilean representatives.

It will also be noted that this Chilean proposal is based upon a confusion of east for west; upon the misidentification of previously well defined geographical features; and upon unsound reasoning. In the first paragraph in the quotation in paragraph 154 above, the Chilean proposal refers to the reach of a river which trends east to west; it refers to the reach as being the River Encuentro but it is in fact the River Falso Engaño. As will be readily seen from Map No.A31 this reach does not form a western branch but is an eastern branch of the River Encuentro. The River Encuentro upstream of the latitude quoted in the Chilean proposal ($43^{\circ} 36' 30''S$) has two branches: the first is the southward continuation of the River Encuentro itself to its source to the north of the Portezuelo de las Raices; the second is the River Falso Engaño. There is no doubt which of these branches general geographical usage would designate the western branch; it would designate as the western branch that which lies west of the centre line between the two branches. The River Falso Engaño is by that usage properly to be described as the eastern branch. Further references in the third sentence in the quotation of the

Chilean proposal in paragraph 153 above and in the second paragraph of the quotation in paragraph 154 above to a western branch are therefore just as inaccurate; what is there described is in truth the River Falso Engaño, i.e. an eastern branch of the River Encuentro.

In the case of the reference to the Pico Virgen in the Chilean proposal it will be seen that the Chilean representatives were putting forward for the first time a proposal that the mountain previously called Cerro Central should be given the name Pico Virgen. In the same way the reference to "a range of high summits called de las Virgenes" was a novelty introduced for the first time.

The Chilean suggestion, in the second paragraph quoted in paragraph 154, that Steffen discovered the River Falso Engaño is not substantiated by the available evidence; neither is the contention, also made in the proposal, that Captain Dickson reconnoitred this feature from the River Carrenleufu to its source. Nowhere in his Report does Captain Dickson mention the words "a western branch of the River Encuentro" (see the copy of Captain Dickson's Report dated 1st June, 1903 annexed hereto as Annex No. 13). Nor is there any evidence in his Report that he went to any high summits in this area; his attention was directed to the location and erection of

of Boundary Posts 16 and 17 both of which are in lowland situations and not on mountain summits.

156. The Argentine representatives commented upon the Chilean counter-proposal by pointing out that it had used maps not made or approved by the Mixed Commission. The Chilean rechristening of topographical features such as the River Encuentro as the Estero Lopez and Estero Los Mallines, and Cerro Central as Pico Virgen, was rejected, and moreover the arguments on the application of the 1881 Treaty and the supposed activities of Captain Dickson in the zone - that had never taken place - were refuted. Subsequently, the Argentine representatives summarised in a document (Annex No.22, p.26) the points that they had made in the discussion of the Chilean counter-proposal, and they annexed to that document two maps, which are also annexed to this Memorial as Maps Nos. A50 and A51.

In the light of the discussions, the Chilean representatives formally presented a document (Annex No.22, p. 19) commenting on some of the points which had been raised by the Argentine representatives on the Chilean counter-proposal.

The Argentine representatives then insisted that the Chilean representatives should follow the usual

procedure and comment on the original Argentine proposal. This the Chilean representatives did in a written statement (Annex No. 22, p 21). This was a short document, based on the argument that, if the maps of the time of the 1902 Award did not adequately represent the topographical reality, "they cannot be used as background to justify the proposed demarcation presented".

This document continued (p.22) :

"The difficulty and the discrepancies begin in the course followed by the Rio Encuentro to the Cerro de la Virgen, the conclusion being reached that this peak is not in fact the one that is shown as the source of the said river."

It added (p.24) :

"The proposed line follows the course of various rivers in different catchment basins (Engaño and Tigre), which were not mentioned at any point in the Arbitration and Award."

157. Decisions adopted in the XVth Plenary Meeting. Once the problems regarding the Sector between Boundary Posts 16 and 17 had been cleared up by discussion and by exchange of the documents mentioned above, the Mixed Commission entered upon the task of formulating the decisions called for by the Agenda which was before it. In particular the Mixed Commission unanimously decided upon the line in parts of the Sector, and those parts of the line were plotted on the three Sheets, VII-1, VII-2,

VII-2 and VII-3, mentioned above. An Act was drawn up recording the decisions taken at the XVth Plenary Meeting. This was Act No. 55 (Annex No.23). Three of the decisions, regarding Cerro Principio, Cerro Rojo and Cerro Ap-Iwan recorded in that Act have already been mentioned: see paragraphs 137 to 141 above.

158. Item 4 of that Act was headed "Various Legal, Technical and Administrative Matters" and the title of its Section A reads as follows :-

"Study and approval of lines plotted on Sheets (VII-1) "Lago General Paz-Palena", (VII-2) "Cerro de la Virgen" and (VII-3) "Rio Encuentro".

These Sheets are the Sheets annexed hereto as Maps Nos. A29, A30 and A31.

Sheet VII-1 (called "Lago General Paz-Palena") shows the boundary from parallel 44° S, to Lake General Paz and along the local water-parting to the north of Boundary Post 17 stretching in the direction of Cerro de la Virgen, but not reaching so far as that peak, stopping in fact at parallel $43^{\circ} 50'$ S.

Sheet VII-2 (called "Cerro de la Virgen") joins directly upon the northern edge of Sheet VII-1. It shows Cerro de la Virgen approximately in the centre of the Sheet and extends north to include the upper part of the valley of the River Encuentro as far as parallel $43^{\circ} 40'$ S.

The third Sheet, Sheet VII-3 (called "Rio Encuentro"), joins directly upon the northern edge of Sheet VII-2 and shows the country north to parallel $43^{\circ} 30'$ S. It includes the major part of the valley of the River Encuentro as far as its confluence with the River Carrenleufu, and the Cordon de las Tobas north of the River Carrenleufu.

159. Item 4A of Act No. 55 stated the conclusions at which the Mixed Commission had arrived. The first two conclusions read as follows :-

"a) The line proposed by the Argentine Delegation for the sheet "Lago General Paz-Palena" (VII-1) is approved.

b) Similarly, the Mixed Commission approves the stretch of the line plotted on the sheet "Cerro de la Virgen" (VII-2) between parallel $43^{\circ} 50'$ latitude South and the Cerro de la Virgen, the geographical co-ordinates and altitude of which were approved by the Mixed Commission in Act No. 43 Annex two, page six.

The Chilean Delegation states that the aforementioned line is approved having regard to the comments of the former Delegates, Señor NORBERTO COBOS and Lt. Colonel D. MARDOQUEO MUNOZ MORAGA, in the Informative Report covering the period 1941 to 1947 inclusive, and approved by Act No. 39 of the Mixed Commission reading as follows :-

'STUDY OF THE FRONTIER IN SECTION VII

Starting from natural Boundary Post VI-43, Cerro Botella Oeste, the last Boundary Post in Section VI, situated in the high mountain chain separating the upper basin of the River Pico (to the East) from the basin of the same river known as Figueroa in Chile (to the West), the boundary continues in a generally north-easterly direction along this chain and descends with it to Boundary Post VII-1 (18), situated on the south bank of Lake

General Paz. The line crosses the lake from South to North and continues along a local water-parting separating the waters flowing into the River Engaño, leaving them to the east, and finally reaching Cerro de la Virgen.

From this peak which must be considered as a natural boundary post, the boundary should continue..'

The Mixed Commission wishes to make it clear that the aforementioned Cerro de la Virgen is in no way connected with the Pico Virgen mentioned by the Chilean Commission in its reasons and proposed line handed to the Argentine Commission."

160. It will be seen that paragraphs (a) and (b) related to the course of the boundary between parallel 44° S and Cerro de la Virgen. The 1902 Award, and the Tribunal's Report, and the Map forming part of the Award, had all referred to this part of the boundary in the Sector without ambiguity, and in a manner which made it possible for it to be identified on the ground with certainty. The task of the Mixed Commission was therefore to carry out the terms of the 1902 Award by plotting on an adequate map the course of this part of the boundary as described in the 1902 Award. This task was carried out by the work involved in the plotting of the line on the two Sheets referred to, there having been no dispute between the representatives of both Parties to the Commission that the line so drawn followed the water-parting between Cerro de la Virgen and Lake General Paz at the location

of Boundary Post 17, as referred to in the 1902 Tribunal's Report and observed by Captain Dickson in 1903 from Boundary Post 17 (see paragraph 54 above), and the line also followed the boundary across Lake General Paz, through Boundary Post 18 and southwards as far as parallel 44° S, in accordance with the 1902 decision.

The comment made at the end of paragraph (b) of Item 4A of Act No. 55 refers to the earlier Chilean counter-proposal relating to a "Pico Virgen". As this proposal was abandoned by the Chilean representatives on the Mixed Commission, this comment merely goes to confirm, first, the withdrawal of that proposal, and secondly, that the Chilean representatives on the Mixed Commission were no longer asserting that Cerro Central was the mountain named "Virgen" in the 1902 Award through which the boundary was to pass.

161. The next part of the Sector which was considered by the Mixed Commission was that referred to in paragraph (c) of Item 4A of Act No. 55.

"c) Furthermore, after a full exchange of views, the Mixed Commission agrees to approve the line of Sheet VII-3 'Rio Encuentro', from Boundary Post VII-4A to a point on the River Encuentro having the graphical co-ordinates:

X = 5170310

Y = 1523970."

The graphical co-ordinates there given refer to the confluence of the River Encuentro and the River Falso Engaño. The reference in the same paragraph to Boundary Post VII-4A requires some explanation. By Special Act dated the 12th February, 1948, the Mixed Commission attested, under Article 6 of the 1941 Protocol, the location of one of the intermediate Boundary Posts which they had erected, at a point on the frontier where the boundary first reaches the crest of the Cordon de las Tobas, between Boundary Posts 15 and 16. Its geographical co-ordinates are : $43^{\circ} 52' 19.6''$ S. $71^{\circ} 46' 35.1''$ W. Paragraph (c) of Item 4A therefore was a decision about the line of the boundary from the point last described, Boundary Post VII-4A, and the confluence of the two rivers mentioned.

It had never been disputed between the Parties that the true course of the boundary in the Sector southwards from Boundary Post 16 was in the first place along the lower reaches of the River Encuentro. The first point at which the views of the Parties diverged was at the confluence referred to, and accordingly the lower reaches of the River Encuentro were mutually agreed between the Parties to be the proper course of the boundary. Whether or not the Chilean claim in the present proceedings diverges from this position, and whether or not it is accepted that

such lower reaches are still agreed between the Parties to be the proper course of the boundary, it is submitted that the context of this paragraph in Act No. 55 makes it clear beyond doubt that in 1955 the duly appointed representatives of the Parties were in entire agreement as to the course of the boundary in this part of the Sector, and that no dispute then existed. The question was one merely of plotting on the map the line of the boundary along the course of the river, and once this had been done and had been unanimously approved by the Commission, no dispute could exist. None had, moreover, ever existed; this part of the boundary had never been unsettled since 1902 within the meaning of Article I (1) of the Agreement for Arbitration (Compromiso).

162. It should be added that neither Government has ever questioned the decision of the Mixed Commission recorded in paragraph (c) of Item 4A of Act No. 55 insofar as it approved the boundary line between Boundary Post VII - 4A and Boundary Post 16. The same comment applies to the line of boundary on Sheet VII-1, namely that between parallel $43^{\circ} 50' S$ and parallel $44^{\circ} S$, the decision upon which was recorded in paragraph (a) of Item 4A of Act No. 55; in that case also neither Government has ever questioned

the decision insofar as it approved the line from Boundary Post 17 to Boundary Post 18, and from the latter to parallel 44° S, without deciding to erect intermediate boundary posts.

163. The next paragraph of Item 4A of Act No. 55 reads as follows :

"d) Furthermore, it is recorded that the proposed line presented by the Argentine Commission for the stretch between Boundary Post VII-4A peak at 1,802 m., on sheet VII-3 'Rio Encuentro' with the graphical co-ordinates :

X = 5177850 Y = 1510280

and the point on the watershed with the graphical co-ordinates :

X = 5183900 Y = 1511800

was tacitly approved, but will not be definitively approved until the survey for sheet VII-4 is available so that the continuous form of the terrain can be allowed for."

This reference to the provisional acceptance of a projected line is to a sector of the boundary to the west and north of Boundary Post VII-4A, referred to above, and is not relevant to the present proceedings.

164. Paragraph (e) of Item 4A of Act No. 55 refers to the remaining or middle part of the Sector between Boundary Posts 16 and 17:

"e) Since in the sheets listed in the heading, a stretch of line, between the Cerro de la Virgen and a point on the Rio Encuentro the co-ordinates of which are quoted in c) above, has not been approved, the Mixed Commission, having duly investigated, agrees the following statement :

'Having regard to the fact that the projected lines and the reasons thereof put forward by the Argentine and Chilean Commissions could not be made to accord fully with the terms of the Award of His Majesty King Edward VII and the Report of the Arbitration Tribunal, because the source of the western branch of the Rio Encuentro is not on the western slopes of the Cerro de la Virgen but at the junction of the graphical co-ordinates :

X = 5163550

Y = 1523670

the Mixed Commission, wishing to reach a friendly solution, agrees to refer the matter for consideration and decision to the two Foreign Ministries, so that the latter, in accordance with Article 8 of the Protocol concerning the replacement and erection of frontier posts along the Argentine-Chilean frontier, may decide on the joint proposal attached in Annex 5, consisting of a sketch showing the position of the boundary line together with its descriptive text.'"

165. The Commission, appreciating the difficulty caused by the mistake which rendered inaccurate part of the description of the boundary in the Sector in the 1902 decision, and being unable to place the terms of that decision on the ground with certainty, agreed, after considerable discussion, to recommend to the two Governments a solution, which would be a compromise. The recommended solution was not intended to be an interpretation and fulfilment of the 1902 Award, and was accordingly put forward merely as a proposal, to be referred for consideration of the respective Foreign Ministries of the two countries. This procedure was entirely in accordance with the spirit in which the Commission had entered upon its task, and, in the circumstances, it took the course which seemed to

it to be most suited to a practical solution. The recommended solution can be seen from the terms of Annex 5 of the Act and is broadly as follows: that the boundary should continue southwards along the River Encuentro, as marked on Sheet VII-3 prepared by the Mixed Boundaries Commission (Map No. A31), namely, that river which flows in a general south to north direction from its source, determined by the Mixed Commission to be at the junction of the graphical co-ordinates set out in paragraph (e) of Item 4A of Act No. 55. The boundary was then to continue, as a compromise solution, from that source to the top of Cerro de la Virgen, where it would join up with the line for the southern part of the Sector already approved as plotted on Sheets VII-1 and VII-2.

166. One point of interest to be noted in connection with Item 4A of Act No. 55 is that the Mixed Commission had drawn up a map strictly in accordance with the procedure laid down by it, and that this map had been divided for the sake of convenience into three Sheets. It can also be seen that these three Sheets between them include the whole of the Sector between Boundary Posts 16 and 17, and the first point upon which the Argentine Republic wishes to place emphasis is that the area included on the map comprises the zone within which the Mixed Commission

expected that the boundary would be situated. It should be recalled at this point that Article 3 of the 1941 Protocol referred to a map "corresponding to a strip of territory of sufficient width on both sides of the boundary", and Article 22 of the Works Plan to a strip "approximately five kilometres wide on both sides of the boundary". It should be noted that the determination of that "strip of territory" in the Sector between Boundary Posts 16 and 17 was agreed by the representatives of both Parties to the Mixed Commission, and that during nearly eight years of work in the Sector no objection was ever raised by Chile in respect of the extent of the area surveyed and mapped (see for instance Map No. A47). On the contrary, in 1952 the Chilean representatives acting (as they stated) on instructions from the Chilean Foreign Ministry, requested

".....that priority should be given to surveying the area in question during the next season of field work, so that the Mixed Commission could devote itself as soon as possible to determining the line of the frontier in that area"

(Act No.49, dated the 22nd October, 1952, Item 4 (a); Annex No.20 p.54).

167. Another point of some significance arises from the titles given to Sheets VII-2 and VII-3, - "Cerro de la Virgen" and "Rio Encuentro" respectively. It was the practice of the Mixed Commission, prescribed by Regulation

No. 22 of Part III (not annexed) of its Regulations, to entitle a Sheet with both the Argentine and the Chilean names of the most important geographical feature whenever there were different names adopted in each country; Sheet VII-1 itself provides an example in that it is entitled "Lago General Paz-Palena", thus giving the Argentine and Chilean names (in that order) for the lake to the south of the Sector. The Chilean representatives did not propose that Sheet VII-3 should be given a title which included the names Estero Lopez or Estero los Mallines, which, subsequently, they proposed as alternative names for part of the River Encuentro.

168. Thus there is contemplated in Item 4A of Act No.55 a complete line of boundary running between Boundary Posts 16 and 17: two separated stretches of the boundary line were unanimously approved by the Mixed Commission (the northern stretch extending northwards beyond Boundary Post 16 to Boundary Post VII-4A and the southern stretch extending southwards beyond Boundary Post 17 to parallel 44° S), in interpretation of the 1902 Award, and the intermediate or middle stretch was the subject of a recommended proposal which, if adopted by the two Governments, would be a compromise.

169. It will be noted that the Mixed Commission

identified the entire course of the River Encuentro by establishing its source, by reference to the graphical co-ordinates, at X = 5163550 Y = 1523670, namely, to the north of the Portezuelo de las Raices (Item 4A, paragraph (e) of Act No. 55), and by approving Sheets VII-2 and VII-3 on which the name "Encuentro" is given to the entire course of the river as so identified.

170. The procedure laid down for the Mixed Commission was fully carried out with regard to the part of the Sector running directly south from Boundary Post 16, and with regard to the part of the Sector running directly north from Boundary Post 17. First, a survey, aerial in this case, had been made. Then a map had been prepared on the basis of the survey, and the map was then checked on the ground. Finally, the line of the boundary had been plotted on the map and unanimously approved by the Mixed Commission. The Mixed Commission did not decide to erect any intermediate boundary posts in these parts of the Sector between Boundary Posts 16 and 17.

171. It should be stated at this stage that it never has been contended, and is not contended in these proceedings, that the boundary has been settled by any decision of the Mixed Commission between the confluence

of the Rivers Encuentro and Falso Engaño and Cerro de la Virgen. The contents of the Act discussed above make it quite clear that, with reference to this stretch of boundary, the Commission was only putting forward to the Governments a recommended compromise, formulated by all the members of the Commission, to solve the problem with which they were faced. This recommended solution was received favourably by the Argentine Government, but was eventually rejected by the Chilean Government, and consequently never had any binding effect upon the Parties. This Court may well feel that, for the purposes of its task, the real value of paragraph (e) of Item 4 A of Act No. 55 is in its identification of the course of the River Encuentro by fixing its source at the graphical co-ordinates given.

CHAPTER VII
SUBSEQUENT EVENTS

172. After the Argentina-Chile Mixed Boundaries Commission took its decisions recorded in Act No. 55, in November 1955, the two Governments themselves had to consider the compromise proposal which the Mixed Commission had recommended for the boundary line in the middle part of the Sector. At that time neither Government expressed any views about the other decisions taken by the Mixed Commission in Act No. 55, Item 4 (Annex No. 20 p.l.) but, as will be seen below, subsequently Chile questioned the validity of parts of those decisions insofar as they related to stretches of the boundary line in the Sector. In commenting upon events subsequent to Act No.55 of the Mixed Commission this Chapter selects only those which appear to the Argentine Republic to be of immediate relevance to the matter before this Court.

173. The Argentine Government, by a Ministerial Resolution of the Minister of Foreign Affairs dated the 14th December, 1955, approved the proposal recommended by the Mixed Commission as a compromise solution for the part of the boundary between the confluence of the Rivers Encuentro and Falso Engaño and Cerro de la Virgen i.e. the middle part of the Sector. On the same day, the 14th December, 1955, the Argentine Foreign Minister wrote a letter

(Annex No.16 p.1) to the Chilean Ambassador to the Argentine Republic offering to accept the recommended proposal. The material part of that letter read as follows:

"Recognising that the settlement proposed by the Commission is consistent with the spirit of friendship which has always marked relations between Chile and Argentina, my Ministry have decided to approve this proposal."

174. Also on the same day, the Chilean Minister of Foreign Affairs made the following declaration to the Chilean Senate with reference to the compromise proposal recommended by the Mixed Commission (see the text quoted in Annex No. 24 at p.120):

"As I have already had the honour to state, the proposed boundary line has been accepted by the Government of Chile, and in confidential Minute No. 182 of 9th December last our Ambassador in Buenos Aires was instructed to inform the Argentine Government that Chile was merely awaiting the official acceptance of the said line by the said country before proceeding to sign an Agreement or Treaty containing the same, which would of necessity have to be approved by the National Congress of Chile."

175. In a Note dated the 19th December, 1955 (Annex No.16 p.4) the Chilean Government replied to the Argentine Government stating:

".... As Your Excellency is aware, the said Mixed Commission, wishing to arrive at a harmonious settlement for this far-reaching problem, agreed to submit to the Foreign Ministries of the two countries, for consideration and decision, a joint proposal including a projected boundary line, entitled 'Description of the proposed line submitted by the Chile-Argentina Mixed Boundaries Commission to both Foreign Ministries for decision.'

This proposal is embodied in Annex 5 to Act No.55 of the said Plenary Meeting.

In the note to which I refer, Your Excellency states that your Ministry has decided to approve the settlement proposed by the Commission as being in accord with the spirit of friendship which has always marked relations between our two countries and considers that a favourable decision by the Chilean Foreign Ministry, coincident with that adopted by Your Excellency's Government, will enable the problem to be settled. Your Excellency adds that it would then be possible, in the season due to begin on 15th December, 1955, as agreed at the aforementioned meeting of the Mixed Commission, to give material form to the proposed line for the section of the boundary running along the River Encuentro and the watershed up to the Cerro de la Virgen, referred to in your note. Although the Chilean Ministry for Foreign Affairs feels that this proposal is to be commended, it nevertheless considers that the suggested line is not fully in accord with the Arbitration Award which fixed the frontier or with the Report of the Arbitration Tribunal, for the reasons stated in Act No.55 of the XVth Plenary Meeting, ... This is, therefore, a new line, rectifying or modifying a situation created by decision of the Arbitrator, but which the recent studies of the Mixed Commission have shown to be erroneous.

It is therefore obvious that the question cannot be resolved by the Methods and procedures laid down for the said body, which, according to Article 1 of the Protocol of 1941, is competent in the following matters only; it is competent a) to replace boundary posts which have disappeared or are in a bad state of repair; b) to set up intermediate boundary posts where considered necessary in order to mark the frontier line more clearly and accurately; c) to determine the exact graphical co-ordinates of all existing boundary posts and of those which it shall erect.

Consequently, as the line proposed by the Mixed Boundaries Commission involves frontier demarcation by the modification of a line stipulated by the Arbitrator, which the same Mixed Commission recognizes cannot be applied because of errors of fact, the question of fixing the boundary in the

River Encuentro - California - Cerro de la Virgen area must, in the view of the Chilean Foreign Ministry, be dealt with by the two Governments in accordance with the usual procedure for such matters, that is by the signature of a treaty or convention which must be submitted to the National Congress for approval and must be duly ratified....."

176. It should be mentioned that the Chilean Note quoted in the last paragraph spoke throughout of the "River Encuentro" and "Cerro de la Virgen" in terms which accord with the submission by the Argentine Republic in this Memorial as regards the identification and location of both those features. It is also to be observed that the Note made no reference to the unanimous decisions reached by the Mixed Commission in accordance with its established procedures, and recorded in paragraphs (a), (b) and (c) of Item 4A of Act No. 55, namely those on parts of the boundary between parallel 44°S and Cerro de la Virgen and between Boundary Posts VII-4A and the confluence of the Rivers Encuentro and Falso Engaño. It will be seen that the Note referred exclusively to the middle part of the boundary in the Sector which was the subject matter of the Mixed Commission's recommended compromise proposal.

The absence of any reference to the parts of the decisions of the Mixed Commission dealing with the other parts of the boundary which were dealt with in Act No. 55 led the Argentine Republic to believe that,

as was its own view, those decisions were final and accepted by both Parties. The Argentine Government received the same impression from the Official Declaration made by the President of the Republic of Chile on the 25th February, 1956 in which the President's comments were confined to the proposal (la proposicion) of the Mixed Commission, and made no reference to the decisions of the Mixed Commission relating to the boundary in the Sector, or outside it.

177. The last comment of the preceding paragraph applies equally to the Chilean Note of the 27th February, 1956 (Annex No. 16 p. 9) in which the Chilean Ambassador to the Argentine Republic informed the Argentine Foreign Minister that his Government had decided to "disregard the projected line for the Palena-California region proposed by the Mixed Boundaries Commission at its meeting last October". This decision was said to be based on a study of new background material and a detailed investigation in the disputed area. The reference to the resumption of their former patrols by the Chilean police was also taken by the Argentine Republic to refer to the arrangements in the River Encuentro area referred to in the final paragraph of

the Chilean Note of the 19th December, 1955, (Annex No. 16, p. 8).

It was on this basis that the Note from the Argentine Foreign Minister to the Chilean Ambassador to the Argentine Republic on the 6th March, 1956 (Annex No.16 p. 15) stated as follows:-

"4) The Argentine Government welcome Your Excellency's assurance that the Chilean Government is firmly resolved to reach a settlement of the outstanding problem, which is now limited to the intermediate sector referred to in item 1 of this note; they will for their part make every effort to arrive at a solution in conformity with the good relations which exist between our two countries."

The reference in this quotation to "item 1" imported a reference to Annex 5 of Act No. 55 which refers, as already stated (see paragraph 165 above), to an intermediate stretch of boundary running from the confluence of the River Falso Engaño with the River Encuentro to Cerro de la Virgen.

178. It was not until a Note, dated 18th April, 1956, (Annex No.16 p.18) from the Chilean Foreign Ministry to the Argentine Ambassador in Santiago, that the Chilean Government questioned the binding effect of the unanimous decisions of the Mixed Commission relating to what may be conveniently referred to as the northern and southern parts of the boundary line in the

Sector (Act No.55, Item 4A, paragraphs (a), (b) and (c)). Seizing upon a mistaken reference in the Argentine Note of the 6th March, 1956 to Article 6 of the 1941 Protocol, the Chilean Note sought to use the provisions of this Article about the attestation of the location of boundary posts to deny final legal efficacy to these unanimous decisions of the Mixed Commission approving lines plotted by the Commission on its official maps, for the alleged reason that these were cases where it had not subsequently erected intermediate boundary posts. It is, however, to be noted that Chile did not seek to put in question such decisions of the Mixed Commission as related to parts of the boundary other than those in the Sector now under consideration by this Court. In particular there was no suggestion that the line marked upon Sheet V - 14 had not been approved finally by the unanimous decisions recorded in the same item (4B) of Act No.55, thus re-opening the boundary line in the Cerro Rojo and Ap-Iwan areas (see paragraphs 139 to 141 of Chapter VI above).

179. After an interval occasioned by the investigations carried out by a Bicameral Commission of the Chilean Congress (see paragraph 181 below), the diplomatic correspondence was resumed by a Note dated the 24th

January, 1957 (Annex No.16 p.27) from the Argentine Ambassador to Chile to the Foreign Minister of Chile. This Note set out at length the arguments on behalf of the Argentine Republic in favour of treating the unanimous decisions of the Mixed Commission as binding, but, with respect to the part of the boundary in the Sector on which the Mixed Commission had made no decision but had merely recommended a compromise proposal, the Note suggested that, if further meetings of the Mixed Commission produced no decision, Her Britannic Majesty's Government should be requested to interpret the 1902 Award, since

"the dispute arises from the fact that the Award made by His Britannic Majesty is not clear as regards the section running from Cerro de la Virgen to the point where the River Falso Engaño runs into the River Encuentro",

so that

"the Arbitrator himself can elucidate and clarify the exact scope and practical application of this part of the original Award"

(paragraph 12 of the Note).

180. In his reply, on the 27th June, 1957 (Annex No.16 p. 39), to the Argentine Note of the 24th January, 1957, the Foreign Minister of Chile repeated the arguments already expressed by the Chilean Government. As a result of this correspondence both Governments instructed

their representatives on the Mixed Commission to seek agreement on the problem. In further meetings of the Mixed Commission, some of which considered the question, the Chilean representatives attempted to reopen discussion of the whole course of the boundary line in the Sector between Boundary Posts 16 and 17. The Argentine representatives did not agree to the reopening of these discussions and no further decisions were reached after 1955 by the Mixed Commission on the subject.

181. When the proceedings of the Mixed Boundaries Commission which had taken place in Buenos Aires between the 20th October and the 1st November, 1955, and which are recorded in Act No. 55, became known publicly in Chile, there was a political and press agitation, which resulted in the appointment of a Bicameral Commission of the Chilean Congress.

This Commission carried out, during the period from January to October 1956, an enquiry about the problem and produced a lengthy Report dated the 25th October, 1956 (annexed hereto as Annex No.24). It is not proposed to deal at length with the contents of that Report (two of the maps forming part of the Report have already been referred to: (see paragraph 87 above), but certain points in the Report call for mention here.

182. The Report criticised the actions of the Chilean representatives on the Mixed Boundaries Commission concerning some of the decisions recorded in Act No. 55, and in particular criticised the basis upon which such decisions had been reached. The Report ended by placing the responsibility for such decisions on the Chilean Ministries of Foreign Affairs and National Defence and on several Ministers and high Officials, including the President of Chile (Annex No. 24 p.140).

183. The Report, under the title "the correct arbitration Line" (p.10), went on to resurrect and enlarge the scope of the proposal already abandoned by the Chilean representatives on the Mixed Boundaries Commission as to the course of the boundary line between Boundary Posts 16 and 17 (see paragraphs 153 to 155 and paragraph 160 above). The contrast between the line proposed in the Report of the Bicameral Commission and other lines proposed, described or decided upon at other times as the boundary line in the Sector, is demonstrated by Map No. A55 annexed hereto. This Map shows, upon a sketch map of the Sector and its adjacent area, seven differently coloured or identified lines which are relevant to the issues in the present proceedings. The lines are set out and briefly described in the key to that Map.

Following the order in that key, the first two, blue and red, interrupted lines are those put forward respectively by the Argentine and Chilean Delegations to the Mixed Boundaries Commission in the proceedings in 1955 described in Chapter VI of this Memorial. The third and fourth lines shown on Map No. A55 are alternative methods of showing the line marked on the Map which formed part of the 1902 Award (annexed as Map No. A1); for the third, the geographical co-ordinates on the 1902 Map and the present sketch Map are made to co-incide, and for the fourth, the co-ordinates are adjusted so that the boundary line marked on Map No. A1 passes through the actual positions of Boundary Posts 16 and 17 as shown on the sketch Map. The fifth line, in brown, is that shown on a map submitted in 1903 by A. Bertrand, the Chilean boundaries expert, to his own Government. The sixth, an interrupted black line, shows the parts of the line approved by the Mixed Boundaries Commission in Act No. 55 referred to above. The seventh and last, a continuous red line, shows the line proposed in the 1956 Report of the Bicameral Commission.

184. The Report claimed that the Pico Virgen was a mountain situated approximately in the geographical position of Cerro Central, and attempted to identify the River Falso Engaño as being the upper course of

the River Encuentro. Comment on both of these aspects of the counter-proposal of the Chilean representatives to the Mixed Commission in 1955 has already been made (see paragraph 155 in Chapter VI above). The Report sought to support the conclusion that the 1902 Award decided that the boundary line should pass through a mountain called Pico Virgen in the position in which it appears on the 1965 Edition of the Chilean Carta Preliminar.

185. The Report also amended the line of the earlier counter-proposal made by the Chilean representatives to the Argentine representatives on the Mixed Commission and subsequently withdrawn by the Chilean representatives. Thus the new proposed boundary line was now made to follow a water-parting along a circuitous route east of the Lagunas del Engaño, and by this means the line ceased to cross the River Engaño, as it had been shown to do on the maps in the Chilean counter - proposal (annexed hereto as Maps Nos. A52 and A53).

186. The Bicameral Commission's Report contained many allegations which are by no means accepted by

the Argentine Republic, but if those allegations are reasserted in these proceedings by the Republic of Chile, they will be answered by the Argentine Republic at the due time for countering arguments put forward on behalf of Chile.

The Report concentrated its criticisms on General Daniel Urra Fuentes, who at the material time was the President of the Chilean Boundaries Commission which formed the Chilean element of the Mixed Boundaries Commission. In the course of the proceedings of the Bicameral Commission, General Urra had presented a Memorandum which he signed as President of the Chilean Boundaries Commission. This Memorandum was referred to in the Bicameral Commission's Report and has been the subject of comment in Chilean publications since its production. The Memorandum of General Urra is annexed hereto marked Annex No. 25. It will be seen to contain geographical arguments in favour of the course taken by the Chilean representatives on the Mixed Boundaries Commission, and, in particular, detailed reasons, sustaining the location of Cerro de la Virgen in the place where it was marked on the Map (Map No. A1) forming part of the 1902 Award, and further supporting a boundary line running through this point and through no other point bearing the same or a similar name.

187. Reference may be made to the annexed copy of this Memorandum by General Urra, but it is desired to refer in this Memorial to paragraph 6(b) of Chapter II of his Memorandum (Annex No. 25 p. 35), which is in the following terms:

"The Chilean Boundaries Commission knows its terms of reference and has not exceeded them. It complies rigidly with these in that it had never accepted any line departing from the Award and Arbitration Report or appearing in the attached Maps.

The "Joint Proposal" is merely a draft which is subject to total or partial rejection, modification or acceptance according to the decision of the Foreign Ministry and in the light of the highest interests of the Nation.

Moreover, the Chilean Commission did nothing other than comply strictly with the written instructions (oficio Conf. No.62 dated 7th October 1955) of the Foreign Ministry providing that it should "at the next Plenary Meeting, to be held in the second fortnight of the present month, attempt to arrive at a definitive solution in increasing the number of boundary posts demarcating the frontier in the River Encuentro zone'."

The first two sentences of this quotation clearly show that the Chilean Boundaries Commission (composed of the Chilean representatives on the Mixed Boundaries Commission) considered that the Mixed Commission was acting within its competence. The comment may be added that it would have been strange if the Mixed Commission had agreed to the proceedings recorded in Act No. 55 if it had not thought that it had authority

to take the decisions recorded.

The passage in General Urrea's Memorandum in relation to the position of Cerro de la Virgen, ends with the following words (at p.46):

"A comparison of the Chilean and Argentine maps and the map used by the Arbitrator and the Demarcators with the aerial survey map of the Mixed Commission clearly shows that the Cerro de la Virgen is the peak mentioned by the Arbitrator in describing the boundary line and is the same peak as that featuring on the aerophotogrammetric survey map, by virtue of its location with respect to the catchment basins and orographical system of the area." (Author's emphasis).

188. In the Sector between Boundary Posts 16 and 17, there have been a certain number of incidents since 1956, which have been the cause of some unrest in the Sector itself, and the subject matter of considerable diplomatic correspondence. The attitude adopted by the Argentine Republic in the present proceedings is that such incidents, minor in themselves, do not have any bearing on the Question submitted to the Court, and that it is unnecessary to deal with them in detail. A more important legal consideration is the fact that they cannot have any bearing upon the interpretation and fulfilment of the 1902 Award.

189. Mention must be made, however, of the fact that

the Argentine Republic protested on such occasions as the Chilean Government sought to take unilateral administrative actions in territory east of the line between Boundary Posts 16 and 17 which is submitted by the Argentine Republic in this Memorial as the correct boundary line.

190. In this respect it is important to mention Note No. 208 dated the 25th September, 1959 (not annexed) from the Argentine Ambassador in Santiago to the Chilean Foreign Ministry, regarding the raising in that year of the Chilean flag on the house of a settler who some two years earlier had made his house available as temporary accommodation for the education of children of neighbouring settlers. Before 1955 the only school in the Sector had been the neighbouring Argentine National School No. 61 which the local children had attended. In that Note the Argentine Ambassador stated that:

"...my Government feels obliged to present to Your Excellency's Government its formal protest about this incident which represents a purported act of sovereignty...."

Further on, the Note stated:

"...consequently the Argentine Government desires that the necessary steps be taken as a matter of urgency to ensure that the Chilean flag is not flown over the school in question, so as to prevent any impairment of the negotiations now under way between the two Governments with a view to finding a definitive solution of the frontier problem."

191. The installation of a post of Chilean Carabineros east of the line referred to in paragraph 189, gave rise to a protest by the Argentine Government embodied in Note No. 1790 of the 9th November, 1960 (not annexed) addressed by the Argentine Ministry of Foreign Affairs to the Chilean Ambassador in Buenos Aires. The Note stated that the Carabineros had established a camp on Argentine territory and it demanded that the Chilean Government effect its immediate removal. In this connection it is to be noted that prior to 1955 the only police station in the Sector, east of the line above referred to, was that of the Argentine Gendarmerie at Carrenleufu (grid reference 248741 on Map No.A31), where it was established on the 6th July, 1944.

192. On the 16th September, 1960 the Government of Chile published a Decree, No. 1768, (not annexed) bearing date 8th April, 1960. This Decree instituted a new administrative division of the Chilean Province of Chiloé, purporting to incorporate some Argentine territory into the said Province, in a newly constituted "District of California". The Argentine Government made a strong protest which was also included in Note 1790 mentioned above. On this subject the Note stated:

"...from the context of this provision /Decree No. 17687/, it can be seen that, by an administrative act, the Government of Chile has created a political district in a zone which is part of Argentine national territory,

The Argentine Government make their most formal protest to Your Excellency, and through you to the Chilean Government, about this action which violates the sovereign rights of the Argentine Republic."

This protest was reiterated by Note No. 1159 of the 21st June, 1961, also from the Ministry of Foreign Affairs to the Chilean Embassy in Buenos Aires.

193. In 1959 negotiations began between both countries with a view to submitting the dispute to the Arbitration of Her Britannic Majesty. On the 12th June, 1960 a Protocol was signed to that effect, but it was never ratified by either Party, and thus never entered into force.

CHAPTER VIII

STATEMENT OF LAW: PART ONE

194. Order No. 1 of the Court made on the 20th May, 1965, required the Parties to include in their Memorials a statement of law. In accordance with that provision there follows, in this Chapter and the next, a statement of the issues of law which appear to the Argentine Republic to arise on the presentation of its case. The Argentine Republic wishes, nevertheless, to reserve the right at a later stage to add to this statement further submissions on any question of law which may arise from the submissions made in the Memorial to be filed by the Republic of Chile; it is assumed that the right to do this is recognised by the further Reservation made in Order No. 1 of the Court. What follows in this Chapter and Chapter IX, therefore, must be considered to be a first statement of the issues of law which appear to the Argentine Republic to be relevant to the present proceedings.

THE 1902 AWARD.

195. The boundary decided upon by the 1902 Award was described both in the Award itself and in the Report of the Tribunal, such Report forming part of the Award; and the boundary line, as marked in red by the Tribunal on the Map which accompanied its Report, was approved by the Arbitrator. By Article V (paragraph 16 above) of the 1902

Award, these three documents must be read together when interpreting the Award in order to identify the course of the boundary in the Sector, decided upon by the Arbitrator. Where, for example, one, or even two, of the three documents - Award, Report and Map - do not give an adequate description in present circumstances, recourse may, and indeed must, be had to the remaining document or documents in order to ascertain what course of the boundary was described by the Arbitrator.

In this context it is to be noted that the Permanent Court of International Justice in the Jaworzina Case (Ser. B., No. 8, at p.33) had no hesitation in referring to marked maps annexed to a decision in order to reach the conclusion that

".... the authors of the maps, who are undoubtedly also responsible for the topographical descriptions in the decision, realised that the line defined in the decision embraces much more than the frontier described in detail."

The Court added:

"It is true that the maps and their tables of explanatory signs cannot be regarded as conclusive proof independently of the text of treaties and decisions; but in the present case they confirm in a singularly convincing manner the conclusions drawn from the documents and from a legal analysis of them; and they are certainly not contradicted by any documents."

Thus, where an award is accompanied by a map referred to in and made part of the award, the cogency of the map as evidence of the meaning of the award is evident

both in law and in common sense: see also the International Court of Justice in the Temple Case, I.C.J. Reports 1962, p.6, and the comment thereon by Weissberg in A.J.I.L., Vol. 57 (1963), pp.781 et. seq; also Professor David Johnson in I. & C.L.Q., Vol. 11 (1962), at p.1203.

Where, however, an instrument is accompanied by a map, and as a result of a mistake or indeed otherwise, there is a resulting discrepancy between text and map, the normal rule is, of course that the text prevails over the map. See e.g. the Law Officers' Report cited in McNair, Law of Treaties, 1961, at p.211; and Professor David Johnson, loc. cit. at p.1203.

196. When considering the 1902 Award, it is necessary at the outset to emphasise a legal point that has already been mentioned in Chapter I of this Memorial, namely, that this Court is required by the terms of the Agreement for Arbitration (Compromiso) to begin by enquiring to what extent, if any, the course of the boundary in the Sector between Boundary Posts 16 and 17 has remained "unsettled" since the 1902 Award; and thereafter, to settle the proper course of the boundary in any such unsettled portions in accordance with the "proper interpretation and fulfilment" of that Award.

197. In accordance with the formulation of the Question,

the starting point of the enquiry is, therefore, the 1902 Award. It is open to the Court to decide that the whole of the boundary has been finally settled since 1902 by virtue of the 1902 Award itself, but even insofar as it finds that the boundary or part of it has remained unsettled, the Court is still required to decide what is the course of the line according to "the proper interpretation and fulfilment of that Award".

198. The Agreement for Arbitration (Compromiso) inescapably assumes the validity of the 1902 Award in respect of this Sector of the frontier. The General Treaty of Arbitration of 1902, pursuant to which this Court is established, states in Article II;

"Questions which have already been the subject of definite settlement between the High Contracting Parties cannot in virtue of this Treaty, be re-opened. In such cases arbitration will be limited exclusively to the questions which may arise respecting the validity, the interpretation and the fulfilment of such agreement"

Consequently, as the Question put to this Court under the Agreement for Arbitration (Compromiso) refers only to "interpretation and fulfilment" of the 1902 Award, it must be inferred that the validity of that Award is assumed since it was a "definite settlement" within the meaning of Article II of the 1902 General Treaty of Arbitration.

Nor is this to be inferred merely from the terms of the Agreement for Arbitration (Compromiso). Since 1902

neither of the Parties has ever challenged the validity of the 1902 Award, and it is clear from the attitude of both Parties that they have consistently regarded the 1902 Award as a valid and binding instrument.

199. Furthermore it is important to remember in this context the character of the demarcation which followed, in 1903, the decision of the Arbitrator in 1902. The Chile-Argentine Boundary Commission of 1903 derived its authority from two instruments, an Agreement between the Parties themselves and an Agreement between the British Demarcation Commissioner and the Parties. By an Act on a Boundaries Commission, signed at Santiago on 28th May, 1902 and later ratified (see paragraph 49 above) the Parties agreed,

"in order to avoid any difficulties in the material demarcation of the boundary line between both countries, in the part subject to the Award of His Britannic Majesty",

to ask the Arbitrator

"to appoint a Commission to fix on the ground the dividing line to be ordered by His Award."

Thus, it will be seen that by this Treaty the two Governments expressly agreed to the appointment of the Commission by the Arbitrator, the Commission being thus endowed with a direct juridical nexus to the authority of the Arbitrator himself. This accorded with the recommendation in paragraph 17 of the 1902 Tribunal's

Report

"that in our view the actual demarcation should be carried out in the presence of officers deputed for that purpose by the Arbitrating Power, in the ensuing summer season in South America".

Not surprisingly, it was Colonel Sir Thomas Holdich, himself a member of the Tribunal, who was appointed the "Commissioner for the Demarcation of the Chile-Argentine Boundary". Captain B. Dickson, R.A., was an Assistant Commissioner.

200. The juridical link between the 1903 Commission and the Arbitrator is reflected in the agreed method of work which was communicated by the Commissioner in his letter of the 29th December, 1902 to the Argentine Minister for Foreign Affairs (see paragraph 50 above), and which contained the following stipulation:

"6. The British Officer in charge will be in absolute command of the party, and the final referee in cases of dispute. He is also to be responsible for the correctness of the final records of the boundary, which will include:- (1) The final map. (2) A synopsis, or list of pillars giving their co-ordinate positions in Latitude and Longitude to the nearest ten seconds on that map, and their bearings from contiguous pillars, and surrounding points fixed by triangulation."

Colonel Sir Thomas Holdich comments in his letter of the 30th June, 1903 (Annex No. 12 at p.4) that

"the general result of the process of demarcation proves the wisdom of the arrangement of introducing British officers as supervisors and umpires!!"

(As noted in paragraph 49 above the British Officers were,

assisted by experts appointed by the two Governments). It is, of course, not unusual for disagreements between the commissioners of mixed commissions to be referred to an arbitrator (see e.g. Paul de Lapradelle, La Frontière, p.164): here the arbitral function was, so to speak, built into the Commission itself.

201. The Chile-Argentine Boundary Commission's function and competence were simply to apply the Award to the ground and this is what they endeavoured to do. Of course it is the fact that, as in any process of demarcation that is worth the trouble of the undertaking, there was, as Colonel Sir Thomas Holdich put it in his Report, "room for discussion". Nevertheless, there can be no possible doubt from the documents that the task the 1903 Commission set about was a demarcation simply and strictly so-called, and there can be no doubt that it had ample powers to perform this task.

202. It would seem therefore almost otiose to embark upon an argument that at least those parts of their demarcation as resulted in an unambiguous identification on the ground - e.g. the mouth of the River Encuentro - of points of delimitation laid down in the 1902 Award, resulted in a final "settlement" of that part of the course of the boundary. The proposition might be thought to be legally self-evident. Nevertheless, there are certain points that deserve mention, quite apart from

the competence and authority of the 1903 Commission itself.

One point is that, since there can be no possible question in this case of the 1903 Commission having exceeded its competence, the only conceivable ground upon which the validity of a particular identification might be attacked would be if it were manifestly mistaken. The burden of proof would clearly be against such a proposition and it would be for the Party making it to show affirmatively that the identification made upon the ground by the Commission could not be right.

Finally, for all these reasons, it is important to remember that an authoritative demarcation on the ground of even an ambiguous delimitation resolves in law the ambiguity and fixes the line beyond further question. Indeed this is but to state what the process of demarcation is.

203. Consequently, the question which parts of the Sector were "settled" by the legal events of 1902-3, involves not only an examination of the Arbitrator's Award, the Report and the Map of 1902, but also which parts of it the 1903 Commission successfully identified and fixed on the ground.

204. A further consequence flowing from the formulation of the Question in the Agreement for Arbitration

(Compromiso) is that it is no longer permissible to go back to the general clauses of the original Treaties taken by themselves, for the law governing the matter is no longer those Treaties only, but has become those Treaties as interpreted and applied in the 1902 Award and in successive procedures of demarcation.

205. The problem presented by the Treaty of 1881 and the Protocol of 1893 is, of course, well known and has been the subject of a considerable literature. The Treaty of 1881 marked a new beginning in the endeavour to settle the Argentina-Chile boundary, by substituting the Cordillera of the Andes for the original uti possidetis juris principle which had proved inconclusive. Yet the general terms of the operative provisions of the Treaty of 1881 and the Protocol of 1893 likewise proved inconclusive in relation to parts of the Cordillera of the Andes - like the Sector in the present case - where the main chain is cut by transverse valleys. But the earlier Treaties no longer stand alone; they cannot now be considered or properly understood except by reference to later procedures of delimitation and demarcation.

206. The establishment of a boundary that has been defined in general terms in a treaty is within limits a progressive process, by which final demarcation on

the ground is gradually evolved from general treaty provisions, and the areas of possible doubt narrowed and ultimately eliminated. Such processes, whether accomplished through an arbitral tribunal or a mixed commission, represent in effect a joint exercise of the will of both parties, by the grant and exercise of the necessary powers to the tribunal or commission concerned. And where such a tribunal or commission has made a determination within its competence, this, of course, is thereafter binding, and since it creates an obligation as binding as a treaty, that binding force cannot be reduced or prejudiced thereafter by the unilateral act of one of the parties, but only by a new agreement between the parties. Thus, procedures of delimitation and demarcation based upon a boundary treaty, when they have been carried out, become part of the corpus of law concerning that boundary so that the earlier treaties may no longer be considered in isolation.

207. In other words, after such procedures, it is no longer permissible to go back to the general clauses of the earlier treaties simpliciter and de novo; for the law governing the matter is no longer the earlier treaties but has become the earlier treaties as interpreted, applied and even modified in successive

procedures of delimitation and demarcation.

208. Thus, in the present case, the basic international legal instrument is the 1902 Award, which provided a definite, valid and binding interpretation of the earlier Treaties concluded between the Parties for the determination of their common frontier.

209. In dealing with this case, it should also be borne in mind from the outset that the main object of international law in relation to frontier questions is to achieve finality and stability.

This was in particular the case when King Edward VII delivered His Award in 1902 at which time, due to their frontier problems, both Parties were facing a grave crisis in their otherwise friendly relations.

210. That the Law leans strongly towards finality and stability in frontier questions has been clearly stated, with great authority and cogency, by the International Court of Justice in the Temple Case (I.C.J., Reports, 1962, at p. 34):

"In general, when two countries establish a frontier between them, one of the primary objects is to achieve stability and finality. This is impossible if the line so established can, at any moment, and on the basis of a continuously available process, be called in question, and its rectification claimed, whenever any inaccuracy by reference to a clause in the parent treaty is discovered. Such a process could continue indefinitely, and finality would never be reached

so long as possible errors still remained to be discovered. Such a frontier, so far from being stable, would be completely precarious."

ACTS OF THE PARTIES ON THE GROUND

211. It is convenient at this point to consider how far, if at all, acts of the Parties on the ground in the area of the boundary line in the Sector could be relevant in law to the Question asked of this Court. By the expression "acts of the Parties", reference is made of course to acts of the Governments themselves. It is hardly necessary to say that any supposed affiliations of individual persons must be irrelevant in law. As Lord McNair said in the Norwegian Fisheries Case (I.C.J. Reports, 1951, p.184):

"... the independent activity of private individuals is of little value unless it can be shown that they had acted in pursuance of a licence or some other authority received from their Governments or that in some other way their Governments have asserted jurisdiction through them."

212. It is submitted that in this matter the Court must again have strict regard to the precise nature of the issue put before it in the terms of the Agreement for Arbitration (Compromiso). According to the terms of that Agreement, this is a case concerning the correct course of a boundary line, and it is not a case concerning rival claims to particular parcels of territory. It is an actio finium regundorum, not a

vindicatio. It is true that the one type of question must to some extent involve the other, and that no boundary line can be fixed without at the same time making some determination of territorial sovereignty; but obviously it does make a difference, whether the decisions as to sovereignty follow from the determination of the boundary line, or whether the course of the line depends upon the prior determination of questions of sovereignty. That the present case belongs to the former class is incontrovertible.

213. It follows from this that any evidence that may be adduced by a Party concerning purported acts of administration on the ground must be of, to say the least, doubtful relevance. For there can be no question of any new acquisition of sovereignty by either Party, whether by occupation, prescription or otherwise. Indeed a Party purporting to make a claim of this nature would be in a dilemma: if such acts are performed on one side of whatever may be the correct "course of the boundary", they are without legal significance, and if performed on the other side, they are merely unlawful. Such acts, therefore, could not in the present case be a root of title.

214. Moreover, there is a further limitation upon the cogency of such evidence of acts on the ground. It is the fact that the activity of Chile in the territory east of the River Encuentro is subsequent to the

establishment of the Argentina-Chile Mixed Boundaries Commission, and mostly indeed subsequent to 1955. It would be contrary to every tenet of jurisprudence and contrary to commonsense to suggest that acts on the ground, begun by one Party, after the setting up of a boundary commission, and during the continuation of its existence, could be relevant evidence as to the proper course of the boundary line. Furthermore it may not be an irrelevant consideration that the International Court of Justice in the Minquiers and Ecrehous Case (I.C.J. Reports, 1953, p.47 at p.59) made it clear that even where, owing to "special circumstances", the evidence of acts subsequent to the "'critical date' for allowing evidence" might be considered by the Court, this ceased to be permissible where "the measure in question was taken with a view to improving the legal position of the Party concerned".

THE LEGAL FRAMEWORK OF THE COURT'S TASK

215. Before considering the proper course of the boundary line in the Sector, it is necessary to state the several different legal considerations that describe and limit the legal framework within which the Court should set about the task laid upon it. This is a matter of no small complexity. There are three principal legal considerations - the concept of settlement of a boundary line, the limits set by the formulation of the Question

asked of this Court, and the nature of mistake. Since the first two of these considerations will be found to qualify the third it will be useful to discuss them in the above order and seriatim before attempting to consider their joint operation in respect of the proper course of the boundary line in the Sector.

It has to be borne in mind that the "Sector" between Boundary Posts 16 and 17 is a convenient description contained in the Agreement for Arbitration (Compromiso), and that the fact that the length of boundary so described is the total extent of the boundary submitted for the consideration of this Court is not to be taken as implying that mistake rendered unclear all the terms of the 1902 decision which relate to the whole of that extent.

THE CONCEPT OF SETTLEMENT OF A BOUNDARY LINE

216. A legal analysis of the issues in this case must begin by asking what is the meaning in law of the word "unsettled" that figures so significantly in the Question asked of this Court, and so necessarily brings into consideration the meaning of the concept of settlement in relation to the boundary line in the Sector. As settlement has several quite different possible meanings, it is important to distinguish these, and then to see how far each is relevant to the Question. In a general sense of the word, indeed, any part of the boundary line that is at

any time put in doubt by unilateral allegation may be said to be unsettled; but this clearly is not what is meant by "unsettled" in the Agreement for Arbitration (Compromiso) where it refers in Article I(1) to "the course of the boundary" remaining "unsettled".

Settlement in such general sense depends purely on the existence or not of a dispute; and therefore could exist whether or not the course of the boundary or any part of it had been settled in any of the connotations of settlement that are relevant in the present case.

The three connotations of settlement that are relevant in the present case are as follows :

(i) Since the Court is required to decide the boundary line according to "the proper interpretation and fulfilment" of the 1902 Award, it follows that it must be assumed that the 1902 Award settled the whole line of the boundary in the Sector in principle, and settled finally those parts of the boundary line to which it refers in terms which are accurate.

(ii) That the whole line must be accepted as settled in principle by the 1902 Award does not, however, exclude the possibility of parts of that Award being, as a result of mistake or otherwise, unclear; and until the meaning of those parts of the Award is by some authoritative process clarified, the boundary may to

that extent be said to be "unsettled".

(iii) But even where the 1902 Award is, as a result of mistake or otherwise, unclear, the doubt may have been resolved subsequently by some valid decision or agreement. To the extent that this had happened the matter is "settled". In this sense "settled" is equivalent to res judicata; and it goes without saying that any question thus settled is in law henceforward beyond the reach of the legal effects of mistake.

217. It is clear that the question of settlement may be relevant to the task of this Court in all of these three possible meanings: it must certainly ask whether any of the parts, disputed or not, have been settled finally by e.g. the demarcation of 1903 or the decisions of the Argentina-Chile Mixed Boundaries Commission; it must ask what remaining parts of the line are unclear and therefore in need of a process of interpretation; and in performing any process of interpretation it will assume that the matter was settled in 1902 in principle, for the only alternative would, in view of the form of the Question to the Court, be to enter a non liquet.

It is also evident, both from the logic of the legal situation and from the way in which the Question is asked of the Court, that the examination of this question of settlement is prior to the question of mistake; and that

it is only when the parts of the boundary that have been settled, have been identified, that the Court can usefully turn to consider the effect of mistake upon the other parts.

THE LIMITS SET BY THE QUESTION PUT TO THE COURT

218. One limitation upon the possible ambit of mistake in this case has already been mentioned in paragraph 216(iii) above; where the doubt resulting from mistake has been subsequently resolved by some valid decision or agreement which has thereby "settled" the matter. A second limitation upon the possible ambit of mistake in this case is also contained in the formulation of the Question that the Court is called upon to answer.

219. It is an elementary but nevertheless crucial proposition that this Court can only remedy the situation, insofar as it needs remedy, by the employment of such powers and competence as have been expressly conferred upon it by the instrument by which it is established. As the Permanent Court of International Justice said in the Jaworzina Case (Ser. B. No. 8 at p.38), after allowing that the Conference of Ambassadors "had some points in common with those of an Arbitrator entrusted by two States with the settlement of a frontier dispute between them", yet "in the absence of an express agreement between the parties, the Arbitrator is not competent to

interpret, still less modify, his award by revising it". What, then, is the latitude allowed to the present Court by the Agreement for Arbitration (Compromiso) ?

This Agreement clearly contemplates that the presence of mistake affecting part of the 1902 Award will create for this Court a problem of interpretation in respect of that part of the Award which mistake rendered unclear but this Court is not, by any "express agreement" given a power to "modify" the 1902 Award by "revising it".

220. In the present case, however, the Court is to decide according to the "proper interpretation and fulfilment" of the 1902 Award; and the question obviously arises how far the word fulfilment may be held to qualify interpretation. Fulfilment is certainly not a legal term of art, and in its ordinary meaning would seem to refer simply to the faithful carrying out of an Award by the parties to whom it is addressed, a meaning which it is given in Article XIII in the General Treaty of Arbitration of 1902. Yet the question arises whether it is here used in a different sense as qualifying the power to interpret.

The Shorter Oxford English Dictionary (3rd Edition Revised) gives a further meaning of "fulfil" as being "to make complete; to supply what is lacking in". In such a sense, 'fulfilment' may be thought to be a cogent way of expressing precisely what the Argentine Republic is asking

this Court to do in the middle part of the boundary line in the Sector. But it is emphasized that this further meaning of 'fulfilment', as making complete or supplying what is lacking, very clearly excludes any question of revision, or change, or modification, in those parts of the 1902 Award that are clear - for this would not be to supply what is lacking but to supply an alternative for what is already there.

221. The conclusion then must be that this Court is required to approach the question of mistake as one affecting interpretation; and since it is to decide according to the proper interpretation and fulfilment of the 1902 Award it follows inexorably that it has no power to annul, to revise, or to grant a new Award.

THE LEGAL EFFECTS OF MISTAKE OF FACT

222. It is necessary first of all to distinguish two processes in respect of mistake of fact: first there is the question of the establishment of mistake of fact as a fact, and secondly there is the question of the legal effects, if any, that result in law from the mistake of fact. These are two different questions. Thus it cannot be assumed that everything that has been in some way affected in fact by a mistake of fact is to that extent legally vitiated; on the contrary, the tendency of all systems of law - except where the mistake is the result of

fraud - is to save as far as may be the validity of an instrument that has been affected by mistake. Even so, a mistake may be so fundamental as to nullify an instrument; but this is not a permissible result in the present case, even supposing it were an arguable one. This was clearly recognised when Her Majesty's Government in the United Kingdom, in determining the Agreement for Arbitration (Compromiso), required the Court to carry out its task on the basis that the 1902 Award is a valid Award. (See Chapter I, paragraphs 8 and 9, and this Chapter paragraph 198). Consequently the argument in this case must begin from the assumption that the task is one of interpretation and fulfilment only.

223. This being so, it is next necessary to consider what sort of an instrument it is that calls for interpretation. Mistake of fact has featured not infrequently in judicial and arbitral decisions, but the precedents must be approached with caution, because most of the decided cases have been about mistakes, or alleged mistakes, made in respect of treaties; and in respect of treaties a critical question may be how far a mistake has vitiated the consent of a party and so rendered the transaction null. In respect of an arbitral award, the problem of mistake of fact is at once simpler and less far-reaching; for there is here no place for a requirement of consensus

of a plurality of wills. And there seems indeed to be some doubt whether mistake purely of fact can ever render an award wholly void (see Simpson and Fox, International Arbitration p.257).

224. If nullity, in whole or in part, is to be excluded from consideration, any mistake found to have existed must have a more limited effect. And once attention is turned from "fundamental" mistake that nullifies, to the kind that merely creates a problem of interpretation of a still living instrument, there is a distinct parallel between the problem as it relates to treaties and as it relates to an Award. For in both cases the task of the Court is limited to finding the legal meaning of the actual terms of the instrument; it is not concerned with ulterior motivations or the state of mind of parties (see e.g. Report of the International Law Commission 1964, p.27: "the starting point of interpretation is the elucidation of the meaning of the text, not an investigation ab initio of the intentions of the parties"). The problem is usually, therefore, a linguistic crux and the method of its resolution is one of interpretation. Thus, for example, in the well-known St. Croix River Case (Moore, International Adjudications, (Modern Series) vols 1 and 2), the question for the Commissioners was the effect of the mistake in Mitchell's map of 1755 which had been used by the

negotiators of the 1783 Treaty which described that river as the boundary between British and American territory: i.e. the question was, "what River was truly intended under the name of the River St. Croix in the Treaty?" Or again, in the case of United States v. Texas (1895) 162 U.S. p.1, involving a mistake on a map, the problem was again approached by the Court as being one essentially of misdescription. In all such cases, therefore, it is a matter of pure interpretation of language: terms are, of course, to be taken first in their plain meaning, but if this does not make legal sense the Court has to decide what other meaning they must have been expected to convey.

225. How far questions of precisely this kind may arise in the present case, calling for a decision on the right interpretation of certain words or phrases or line on a map in the instruments constituting the 1902 Award, cannot in the nature of things be exactly known until the two Memorials to the Court are laid side by side. It certainly appears to the Argentine Republic that the need for interpretation cannot be other than very limited in respect of a valid Arbitral Award the plain terms of which, for the greater part of the line in this Sector, can be traced immediately and with ease on any accurate modern map.

226. It follows, therefore, from the "plain terms rule"

itself that the legal results of any mistake should be confined to the part of the boundary line the description of which is directly affected and rendered inaccurate by the mistake, and that they cannot in law invalidate those parts of the line laid down in 1902 that are clear. See e.g. the Admission to the United Nations Case, I.C.J. Reports, 1950, p.4 at p.8, where the International Court of Justice said:

"The Court considers it necessary to say that the first duty of a tribunal which is called upon to interpret and apply the provisions of a treaty, is to endeavour to give effect to them in their natural and ordinary meaning in the context in which they occur. If the relevant words in their natural and ordinary meaning make sense in their context, that is an end of the matter. If, on the other hand, the words in their natural and ordinary meaning are ambiguous or lead to an unreasonable result, then, and then only, must the Court, by resort to other methods of interpretation, seek to ascertain what the parties really did mean when they used these words....."

This result also follows for other cogent reasons which will now be considered.

227. There is admittedly a dearth of authority in international law on the question how far an invalid or otherwise legally vitiated part of an instrument can be severed from the rest and the remainder of the instrument thus saved from taint. This whole question was considered at some length by the late Judge Sir Hersch Lauterpacht in his individual opinion in the Norwegian Loans Case,

I.C.J. Reports, 1957, p.9 at p. 56 ff. where he said:

"Legal practice and doctrine within the State are familiar with situations in which a contract or any other legal instrument contains a clause which the law treats as invalid or unenforceable without necessarily bringing about the nullity of the contract or instrument as a whole. In those cases the provision in question is severed - is treated separately - from the rest of the text. This is not always possible."

Then, after considering a number of cases concerned with treaties, he suggests the following general principle:

"International practice on the subject is not sufficiently abundant to permit a confident attempt at generalization and some help may justifiably be sought in applicable general principles of law as developed in municipal law. That general principle of law is that it is legitimate - and perhaps obligatory - to sever an invalid condition from the rest of the instrument and to treat the latter as valid provided that having regard to the intention of the parties and the nature of the instrument the condition in question does not constitute an essential part of the instrument. Utile non debet per inutile vitiari."

Thus the question is: can the part affected by the mistake be separated from the rest of the instrument?

If it can, it is the duty of the Court to do so.

228. Turning now to the 1902 Award, the need to confine any effects of mistake to parts of the Award which, as a result of mistake cannot, without some further legal process, be applied to the ground, becomes very clear immediately the alternatives are considered.

For, if this Court once allowed itself to depart from

the actual Award and to enter upon a course of speculation and hypothesis concerning possible repercussions of mistake upon this or that otherwise amply clear part of the line, it will be seen that there is no rule or principle that would enable a halt to be called to the chain reaction thus engendered.

229. Thus, for example, if it were supposed that the mistake affected the entire frontier line decided upon by Article III of the 1902 Award, this would call for reconsideration of the line northwards beyond Boundary Post 16 and southwards beyond Boundary Post 17, of the Sector between those Boundary Posts, and indeed of the positions of those Boundary Posts themselves. Such a reconsideration would force a court, supposing it had so wide a jurisdiction, to speculate upon the motivation behind this part of the Award; it would be led into a vain attempt at assessment of the influences which bore upon the mind of the Arbitrator. It might well come to the conclusion, for example, that the frontier would not have crossed the River Carrenleufu at the point at which it does cross and that Boundary Post 16 ought to have been placed further west, at the confluence of the River Carrenleufu and the River El Salto; this would lead the Court to conjecture about the angle at which the line would cross the Cordon de las Tobas. Then, the Court might wonder whether, in the

south, the line ought not to follow the local water-parting to the west of that described in the 1902 Award (Tribunal Report, paragraph 22) so that Boundary Post 17 ought to be repositioned further to the west, opposite what is the narrowest part of the Lake, and so more directly south of Cerro de la Virgen and Boundary Post 16. Then of course the position of Boundary Post 18 would have to be altered. Speculation on the motivations behind the Award and the influences upon the mind of the Arbitrator could go further, but for present purposes this example should suffice to show the difficulties which attend any attempt to take the inquiry into mistake behind what is actually provided in the instruments of the 1902 decision.

230. To sum up the argument thus far: the function of the Court being basically one of interpretation of the 1902 decision, its task can be said to be to make the decision clear wherever it is found to be unclear, and to make it workable by filling any actual lacuna resulting from mistake. How should it set about this task?

231. The primary rule undoubtedly is that the process of interpretation and fulfilment should be directed always to the decision of the 1902 Arbitration as it is actually expressed in the Award and in the Tribunal's Report and the Map, both of which were made part of the Award.

The question at issue is the effect in law of a mistake of fact upon the meaning of the decision as it is expressed in the Award; it cannot be a question of speculation concerning quite different decisions that the Arbitrator could conceivably have preferred, had his geographical knowledge been more perfect, but which he did not in fact express in his Award. Just as municipal courts have adhered to the principle that the interpretation of a contract must stop short of making a new contract for the parties, so also, this Court cannot in the name of interpretation and fulfilment of the 1902 Award, replace the latter by a new and different Award.

232. Next it must be remembered that what is in question is a boundary line and that a line, whether it be a boundary line or any other line, can only be described by identifying the points through which it passes. Granted that some of those points in the present case may be mistakenly described or identified, it will clearly be fruitless, as well as wrong in legal principle, to begin from the mistakenly described points and build from there an edifice of pure conjecture. If the question is the ambit of mistake, it is sensible first to find what is correct. The only right method therefore is to begin by plotting those points that are correctly and clearly described; and indeed any points that are in any sense

settled. By this means it will quickly be found that the general direction of the line is already established and the establishing of the remainder has thereby become not only a viable operation but one clearly within the scope of a process of interpretation and fulfilment.

The practicability of this approach can be demonstrated by anticipating some of the later submissions of the Argentine Republic in this Memorial. This Court has to begin by assuming that the positions of Boundary Posts 16 and 17 - whether originally affected by mistake or not - are now settled by the very terms of the Agreement for Arbitration (Compromiso). Then, the point Cerro de la Virgen, being accurately described in all the documents, and therefore capable of unambiguous identification, is likewise established as a settled point through which the line passes. Again, parts of the line are settled also, either because the 1902 decision is itself sufficiently clear in these stretches, or because they became clear after the identifications made by Captain Dickson in 1903, or because the unanimous decisions of the Argentina - Chile Mixed Boundaries Commission are binding, or because of all these reasons or some combination of them. The purpose of the above examples is merely to establish that, in considering the effects of mistake and the problems of

interpretation to which they may give rise, the only right method, as well as the one that is in any case required by the terms of the Agreement for Arbitration (Compromiso), is to decide first what points of the line are "settled", whether because correctly described in the instruments or because already subject to a decision that is binding.

PARTS OF THE BOUNDARY LINE IN THE SECTOR SETTLED IN 1902/3.

233. The submissions of the Argentine Republic upon those terms of the 1902 decision which are clear and unaffected by mistake are as follows.

In the process of making and carrying out the 1902 Award, Boundary Posts 16 and 17 were fixed, and their positions are not in question in these proceedings. Boundary Post 16 was stated to be placed opposite the mouth of the River Encuentro, and the boundary was to pass up that river. It is beyond doubt that there is indeed a river opposite Boundary Post 16, and there can be no dispute that it is called the River Encuentro.

234. It has not hitherto been disputed between the Parties that (upon a proper interpretation of the 1902 Award) the course of the boundary southwards from Boundary Post 16 follows the course of the River Encuentro at any rate as far as the confluence of that river and the eastern branch of the River Encuentro which is called the River Falso Engaño.

235. Upstream of the confluence of the River Falso Engaño with the River Encuentro, the River Encuentro flows to that confluence almost due north from its origin which is to the north of the Portezuelo de las Raices; that origin was identified by the Mixed Boundaries Commission who gave its co-ordinates in Act No.55 (See paragraph 164 above), The Sheets of the map drawn by the Mixed Boundaries Commission show clearly the whole course of the River Encuentro, the name which the Mixed Commission applied to that whole course, and it might therefore be thought that the whole course of that river was clear beyond doubt.

236. However, since 1955, Chile has raised doubt as to the true course of the River Encuentro, but only in the sense that it has sought to establish that the River Falso Engaño should be given the name Encuentro (see paragraphs 86, 87 and 89 above, and the Report of the Chilean Bicameral Commission, Annex No. 24 p.5, et seq.)

237. It may be part of the task of this Court to identify the whole course of the River Encuentro. In that event the task of interpretation of the 1902 Award in relation to the upper stretches of the River Encuentro, south of its confluence with the River Falso Engaño, would accordingly be limited solely to the question of identification of what is the River Encuentro; once that river is identified as the River Encuentro as described in this Memorial, the

course of the boundary along that river should be regarded as finally settled without any further legal process being involved.

238. Continuing southwards along the boundary in the Sector as described in Article III the 1902 Award, the next feature referred to in that Article is Cerro de la Virgen. This feature, as submitted at length in Chapter III above, is, in the submission of the Argentine Republic, clear both in identification and location. If the overwhelming evidence put forward is accepted, this Court must come to the conclusion that this point in the boundary line in the Sector is clear and accordingly its inclusion in the boundary line as decided upon in 1902 must be regarded as settled.

239. A further part of the boundary in the Sector to which similar considerations apply is that between Cerro de la Virgen and Boundary Post 17 on the northern shore of Lake General Paz. This part of the boundary is described in the 1902 Tribunal's Report (paragraph 22) as following the local water-parting southwards. As described in paragraph 79 of Chapter III above, such a water-parting exists as Captain Dickson saw it from Boundary Post 17 (see paragraph 54 above), and in the place defined by the terms of the 1902 decision. From the geographical point of view, there can be no dispute as to the location or existence of this natural feature. Accordingly, it must follow that the

terms of the 1902 decision settled the boundary along the course of such water-parting; a detailed identification of such a water-parting can be found by reference to the Sheets of the map of the Argentina-Chile Mixed Boundaries Commission annexed hereto as Maps No. A29 and A30.

PARTS OF THE BOUNDARY LINE SETTLED BY THE ARGENTINA-CHILE MIXED BOUNDARIES COMMISSION.

240. If this Court rejected all or part of the submissions of the Argentine Republic in paragraphs 233 to 239 above dealing with the two parts of the boundary in the Sector (north and south) which it is urged were settled finally by the 1902 Award, the Court would still have to consider whether any parts of the boundary in the Sector had been otherwise settled since 1903 and prior to the determination of the Agreement for Arbitration (Compromiso) by Her Majesty's Government.

As will be seen, the submissions of the Argentine Republic in this regard are, to some extent, cumulative as well as alternative to the submissions made in the earlier paragraphs.

241. The Argentina-Chile Mixed Boundaries Commission considered certain parts of the boundary in the Sector. It is the submission of the Argentine Republic that certain parts of the boundary, if not finally settled by the 1902 Award (as the earlier submission suggests), were

settled by unanimous decisions of that Commission; if those parts were settled by the 1902 Award, then such settlement was confirmed by the decisions of the Commission.

242. The unanimous decisions of the Mixed Boundaries Commission recorded in paragraphs (a)(b) and (c) of item 4A of Act No. 55 have been described in paragraphs 159 to 162 of this Memorial. The parts of the boundary within the Sector to which those decisions relate are, in the north, from Boundary Post 16 to the confluence of the Rivers Encuentro and Falso Engaño, and in the south from Cerro de la Virgen to Boundary Post 17. Thus, in the south, the boundary line settled by the Mixed Commission is co-extensive with that settled, according to the first submission of the Argentine Republic, by the 1902 Award. In the north, the length of boundary within the Sector settled by the Mixed Commission is less extensive than that settled, in the Argentine Republic's submission, by the 1902 Award, in that the Mixed Commission did not include, in its decision recorded in paragraph (c) of item 4A of Act No. 55, the course of the River Encuentro upstream from the confluence of the River Falso Engaño with the River Encuentro to its origin north of the Portezuelo de las Raices. Nevertheless, as has been noted in paragraphs 164 and 235 above, the Mixed Commission identified by reference to graphical coordinates the point of origin of that river.

243. The competence of the Mixed Commission to settle those parts of the boundary, by its unanimous decision, is considered, as a matter of law, to have been acquired either from the express powers given to the Commission by the 1941 Protocol, and confirmed by the subsequent practice of the Commission itself and by the subsequent behaviour of the two Governments which created it; or from implied powers which were necessary for it, if it was to carry out the task which it had been given by the Protocol. Yet again, although the decisions relating to the Sector were, after a significant interval, questioned by Chile, neither Government has ever questioned the competence of the Mixed Commission to reach other decisions, of the same character and effect, referred to below.

Before this Memorial turns to consider in greater detail the above mentioned possible sources of legal efficacy of the decisions of the Mixed Commission, it should be mentioned in passing that, apart from that, this Court ought, it is submitted, to pay full attention to any opinions as to the proper course of the boundary which the highly qualified experts, who comprised the Mixed Boundaries Commission from time to time, expressed either in its records, its reports or its decisions.

244. Adoption of the Argentine Republic's submission as to the competence of the Mixed Boundaries Commission would

not be at variance with the general practice of states with regard to boundary commissions, many of which have been given a competence not dissimilar to that given to the Argentina-Chile Mixed Boundaries Commission. There is certainly no doubt that commissions appointed by two or more Governments for the purpose of deciding boundaries have frequently been given power to make binding decisions which require no ratification or endorsement by the Governments which created them. An example occurred in the boundary arbitration between Colombia and Venezuela, with the Swiss Federal Council as arbitrator, of the 24th March, 1922 (I.L.R. 1919-22, p.371 and Hackworth's Digest, vol. 1, p.736). The relevant passage in the Award in that case reads :-

"...The successive treaties concluded between the Parties since 1833 have contained the principle that procès verbaux and the plans drawn up by the commissions of the two countries must, if they are in agreement with each other, be considered as forming part of the treaty and as 'having the same force and value as if they were inserted therein...'. The decisions of Mixed Commissions therefore are definitive and are not subject to revision except on the points where the Commissioners have not been able to agree and have submitted the case to the two Governments, such disagreement keeping a purely local character and not suspending the continuation of the work of marking the other sections of the boundary line. The Mixed Commissions themselves have always considered their decisions rendered by common agreement as definitive and have so designated them in their procès verbaux."

There are numerous other authorities to the same effect; for example, J.B. Scott states in Judicial Settlement of Controversy between States in the American Union (Vol. 2, 1918, p.1196) :-

"...where States enter into an agreement giving Commissions the power to exercise judgment as to the exact location of the boundary between them, they must suppose that such judgment will be exercised as to disputed locations and that when exercised it shall be binding upon them".

In the Temple Case (I.C.J. Reports, 1962, p.6) the claim of Cambodia was that a map published by the relevant mixed commission set forth the decisions taken by the commission and that for reasons given such map acquired a treaty character. The Court, in finding that the map had acquired authority by acquiescence and estoppel, did not find that the map had been published on the authority of the mixed commission; however, it had been inherent in the arguments of both the parties before the Court, and in the findings of the Court itself, that a mixed Commission could itself have had the competence to decide on a line without the need to submit for approval by the respective Governments the decision which the commission had reached.

Again, the Award of the King of Spain Case (I.C.J. Reports, 1960, p.192) between Honduras and Nicaragua involved the work of a mixed Commission set up under the

Gamez-Bonilla Treaty of 1894 (Article I).

"to settle in a friendly manner all pending doubts and differences, and to demarcate on the spot the dividing line which is to constitute the boundary between the two Republics."

It was only when the commission failed to agree about a sector of the boundary line that the need for further procedures was envisaged.

245. There can be no doubt that the terms of Article 1 of the 1941 Protocol (Annex No. 17) evidenced the will of the Parties to achieve certainty and finality, and therefore stability, along their frontier.

Nor can there be doubt that both Parties regarded the Mixed Commission as having sufficient powers to enable it to accomplish this task.

246. The powers given to the Mixed Commission by the 1941 Protocol in order to enable it to accomplish its task were:

1. To agree upon a Works Plan (Article 3). This Plan was to include, as the first operation, the making of a survey, in cases where the Commission saw fit, from the results of which the Commission was to make an official map of a strip of territory of sufficient width on both sides of the boundary (Article 3). The Mixed Commission was required to communicate the agreed Works Plan to the two Governments merely for the latter's information (Article 5).

2. To make a survey, in cases where the Commission saw fit, from the results of which the Commission was to make an official map of a strip of territory of sufficient width on both sides of the boundary (Article 3, see 1 above).
3. To replace missing boundary posts (Article 1).
4. To replace boundary posts in a bad condition (Article 1).
5. To erect new intermediate boundary posts where the Commission considered it necessary to do so, in order to indicate the frontier line more clearly and accurately (Article 1).
6. To determine the exact geographical co-ordinates of all existing boundary posts and of those which the Commission erects (Article 1).
7. To make a survey from which a plan on a large scale could be drawn up of any zone in which in the course of erecting boundary posts disagreement has arisen in the Commission over the location of the dividing line (Article 8). This plan was to be sent, accompanied by a report from the representatives of both countries on the Mixed Commission, to the respective Foreign Ministries, who were to make an appropriate decision, or, in the event of disagreement between the Ministries, to submit the

disagreement to arbitration. It is to be noted that the Commission was not required to report to the Governments in any case where, in erecting boundary posts, the Commission was agreed about the location of the dividing line.

8. To draw up Acts in two identical copies attesting the location and other descriptive data of each of the boundary posts set up (Article 6). These Special Acts, which were to be signed by the Commissioners in charge of the demarcation and sent to the Governments, were to have full effect and to be considered binding and valid, and thenceforth each of the countries would exercise full dominion in perpetuity over the territories respectively belonging to them. It is to be noted that these Acts were sent to the Governments for their information and there was no requirement for any further procedure. The Governments undertook to withdraw, within a period of six months, from any territories which as a result of the Mixed Commission's action passed from the jurisdiction of one country to that of the other, and the Governments were to notify their withdrawal for the purposes of the corresponding occupation.

247. It will be observed that the Protocol, in setting out

the task and powers of the Mixed Commission, assumed first, that a boundary line had been established, and secondly, that the line had been partially marked upon the ground in every Section of the boundary, but that in some places further and more precise demarcation might be required. It is evident, from Article 1 of the Protocol, that the task of the Commission is concerned with a "frontier line"; and the requirement that it should set up new intermediate boundary posts where necessary indicates that it is the frontier line that it is concerned with, and not merely the repair or replacement of existing boundary posts.

248. This conclusion seems to be made doubly clear by the second paragraph of Article 6 of the Protocol, whereby the respective Governments undertake to withdraw within six months from territories which pass from the jurisdiction of one nation to the other. It is impossible to withdraw behind a post; it is only possible to withdraw behind a line. The use of the word "territories" involves the concept of area; when withdrawing from an area, it is not possible to withdraw from a post; it is necessary to withdraw from a line.

As the Permanent Court of International Justice said in the Jaworzina Case (Series B, No. 8, at p.47):-

"... the word abornement (marking out)... has not always, in fact, nor necessarily, the narrow technical meaning which the Czechoslovakian

Government desires to give it. The process of marking out does not merely consist of the actual placing of posts and stones which are to indicate the line separating two neighbouring countries; the expression must be held to include all operations on the ground. Moreover, this expression cannot, in the decision of Dec. 2nd, 1921, have the meaning attributed to it by the Czechoslovakian Government for marking out must always be preceded by the fixing of the line"(emphasis supplied).

The conclusion that the task of the Mixed Commission was concerned with a boundary line and not merely with boundary posts is not only consonant with the text of the treaty, but it is dictated by common sense.

Article 6 read as a whole must have the meaning that the authority conferred by that Article included the full power to decide upon a boundary line joining the boundary posts, for otherwise it is not possible for the respective Governments to withdraw in accordance with the second paragraph of the Article; and the reference in the second sentence of the first paragraph to dominion over the territories must require a similar interpretation. It must be accepted that the power given to a Commission to demarcate would normally include a power to decide the boundary line indicated by the governing instrument, and the effect of the Protocol is to give such a power to the Mixed Commission in order to apply, among other delimiting documents, the 1902 Award.

249. The terms of the Protocol show that the main task

of the Commission was one of demarcation on the ground; between the years 1941 and 1956 both Governments and the Mixed Commission itself adopted and acted upon the view that the main objective of the Protocol was to enable the Commission "to indicate the frontier line more clearly and accurately" (1941 Protocol, Article 1).

Evidence of this interpretation will be found in the statements of both Argentine and Chilean representatives in the Mixed Commission; in the decisions unanimously reached by the Mixed Commission and recorded in the Acts; in the Commission's Works Plan agreed upon under Articles 3 and 5 of the 1941 Protocol and communicated to the Governments; in the Mixed Commission's Regulations; and in the inter-governmental correspondence in the years immediately following the establishment of the Mixed Commission.

250. The interpretation by the Mixed Commission of its own powers is clearly consonant with the conclusion set forth in the preceding paragraphs.

As has been seen in Chapter V of this Memorial, the Mixed Commission decided in 1950 that demarcation should be preceded by a regular survey and the making of a map in every case and this decision was included in the Works Plan (Article 22). It should be noted that this decision was, until the Chilean representatives challenged it in 1956, interpreted by the Mixed Commission as a valid

exercise of the power given to it by Article 3 of the Protocol, as is shown by the fact that this Article was expressly mentioned in Article 22 of the Works Plan as the source of the authority to adopt the practice.

The Mixed Commission also decided that the boundary line should be plotted on the topographical sheets, which should be annexed to the Act recording the decision upon the particular stretch of the frontier line shown on the map (see Regulation 18 of the Regulations, paragraph 127 above).

251. The interpretation placed by the Mixed Commission on the extent of its own powers was acquiesced in by both Governments. In the first place the Works Plan and the Regulations were duly communicated to them and, until 1956, neither complained of their contents, either directly, or indirectly through their representatives on the Commission. Secondly, neither Government challenged before that year the Mixed Commission's decisions upon the boundary line, which were communicated to them; in this regard, before 1956, the Governments made no distinction between the Commission's decisions communicated to them pursuant to Article 6 of the Protocol and Article 15 of the Works Plan, and those of which they learned when they received the consolidated Annual Informative Report 1941-1947 and subsequent Informative Reports submitted annually. This was so even in cases where the Mixed

Commission met and resolved problems arising from the fact that the boundary line as decided upon in 1902/3 did not fully accord with geographical realities as the Commission found them to be; even after 1956 these particular decisions have not been challenged by either Government.

Specifically, the practice of the Mixed Commission to draw up a map of a given zone and approve the dividing line plotted on that map before placing any intermediate boundary posts on the ground was never challenged by either Government before 1956.

252. The attitude of Chile on the competence of the Mixed Commission in early years is illustrated by a letter from the Chilean Embassy in Buenos Aires to the Ministry of Foreign Affairs, dated the 19th October, 1943, and numbered 207. The relevant parts of this letter, which refers to Section VIII of the frontier, are as follows :

"The Embassy of Chile has the honour to inform the Ministry for Foreign Affairs and Worship that, according to the report submitted to the Foreign Ministry at Santiago by Mrs. Rosalva Figueroa V. de Lerin, exploitation of the forest has been commenced by the National Park Authority on the rural property "Perihueico", which forms part of the Lerin estate, and which is located on the south bank of the River Huahum, being bounded to the east and south by the Argentine frontier, between Boundary Posts 5 and 6 (Latitude $40^{\circ} 6' 13''$ and $40^{\circ} 9' 30''$ respectively). The said felling work is stated to be taking place in spite of the fact that the final boundary line has not been definitively drawn, and staff of the above mentioned governmental office are said to pass frequently over to the Chilean side,

which is occupied by the said rural property of the Lerin estate.

Whereas by virtue of the Convention on the Replacement and erection of Boundary Posts, signed between Argentina and Chile on April 16, 1941 and promulgated on October 8 of that same year, the Mixed Commission entrusted with the implementation of that Convention, which has duly commenced its work, is solely responsible for determining the Chilean-Argentine frontier, and it has been established that its decisions shall be regarded as definitive and irrevocable, the Embassy of Chile, with a view to avoiding detriment to Chilean interest, requests the Ministry for Foreign Affairs and Worship to intercede with the appropriate authorities to ensure that exploitation of the forest land in the frontier areas shall be refrained from until such time as the Mixed Commission has definitively demarcated the boundary....."

253. It should be noted that the Notes exchanged in 1955 and early in 1956 between the two Governments in the months immediately following Act No. 55 (see paragraphs 173 and 175 to 177 above) did not question the decisions of the Mixed Commission concerning the location of the boundary line in several stretches of the boundary recorded in that Act.

These included those which referred to the northern and southern parts of the boundary between Boundary Posts VII-4A and parallel 44°S. (see paragraphs 159 to 162 above).

Furthermore the Chilean Government has never questioned the finality and binding effects of the decisions unanimously reached by the Mixed Commission in those other parts of the boundary recorded in Act No. 55, namely, Cerro Rojo and Cerro Ap-Iwan (see paragraphs 139

to 141 above); in both these cases the Mixed Commission, having plotted the lines on the maps, did not erect intermediate boundary posts, notwithstanding the fact that the line had been adjusted to take account of geographical realities. Again, neither Government has challenged the decision of the Mixed Commission, also recorded in Act No. 55, in the case of Cerro Principio (paragraphs 137 and 138 above) when the Mixed Commission also adjusted the line to take account of geographical realities and erected a new boundary post in order to mark the line more clearly.

254. It was only on the 18th April, 1956 that the Government of Chile questioned the decisions of the Mixed Commission regarding the boundary line between Boundary Posts 16 and 17 on the ground that the formalities required by Article 6 of the 1941 Protocol had not been fulfilled (see the Chilean Note of the 18th April, 1956, paragraph 178 above).

255. The subsequent practice of the Parties makes clear that the decisions unanimously reached by the Mixed Commission upon the location of the boundary line were considered by the Governments as final and binding, quite apart from the requirements of Article 6 of the Protocol. In the first place the decisions were never submitted to the Governments for approval. They were

formally recorded in the Acts of the Sessions of the Mixed Commission. Secondly, the erection of intermediate boundary posts and the drawing up of the Special Acts provided for in Article 6 of the Protocol were not considered as a necessary requirement which should be fulfilled in order to make such decisions finally binding upon the Parties. The erection of boundary posts and the drawing up of Special Acts were considered as the normal way of concluding the demarcation of a particular stretch of boundary if intermediate boundary posts were necessary, but the erection of such posts and the drawing up of Special Acts were not essential in order to make decisions reached unanimously by the Mixed Commission upon the position of the frontier line definitively binding upon the Parties.

256. The final consideration in this examination of the competence of the Argentina-Chile Mixed Boundaries Commission is thus to have regard to the subsequent practice of the Parties in relation to the carrying out of the operations provided for under the 1941 Protocol. It is a well recognised and established principle, observed by courts and tribunals of international character, that such a consideration is material, and may well be decisive, in showing what the correct meaning of a treaty is.

Thus the International Law Commission in its draft Articles on the law of treaties (see Report of the International Law Commission on its 16th Session 1964, G.A. 19th Session, Suppl. No. 9(a/5809)) provides in Art. 69, 3(b) for the interpretation of treaties according inter alia to "any subsequent practice in

the application of the treaty which clearly establishes the understanding of all the parties regarding its interpretation". The comment on this provision (see p.29 of the Report) states that

"it constitutes the objective evidence of the understanding of the parties as to the meaning of the treaty. Recourse to it as a means of interpretation is well established in the jurisprudence of international tribunals."

Reference is then made to the decision of the Permanent Court of International Justice on the Competence of the I.L.O. (1922) Ser. B, No. 2, p.39; the decision of the Permanent Court on the Interpretation of the Treaty of Lausanne (1925), Ser. B, No. 2, p.24; the decision of the Permanent Court in the Brazilian Loans Case (1929) Ser. A, Nos. 20 and 21, p.119; the Corfu Channel Case, (1949), I.C.J. Reports 1949, p.25; the Status of South-West Africa Case, I.C.J. Reports (1950), pp. 135-6; and also to writers of authority, including McNair, Law of Treaties, 1961, Chapter 24; Charles De Visscher, Problèmes d'interprétation judiciaire en droit international public (1963) pp. 121-127; and V.D. Degan, L'interprétation des accords en droit international, (1963) p.130-132.

And indeed it is recognised by Article 68 of the I.L.C. draft Articles that the operation of a treaty may even be modified -

"(b) By subsequent practice of the parties in the application of the treaty establishing their agreement to an alteration or extension of its provisions".

In the comment on this provision the Report says (p.24):

"Subsequent practice in the application of a treaty... is decisive as to the interpretation of a treaty when the practice is consistent, embraces all the parties, and shows their common understanding regarding the meaning of the treaty. Equally, a consistent practice embracing all the parties and establishing their common consent to the application of the treaty in a manner different from that laid down in certain of its provisions, may have the effect of modifying the treaty."

Reference in support of this is made to the decision of the International Court of Justice in the Temple Case and to other authorities:

"In the case concerning the Temple of Preah Vihear, for example, the boundary line acted on in practice was not reconcilable with the ordinary meaning of the terms of the treaty and the effect of the subsequent practice was to amend the treaty. Again, in a recent arbitration between France and the United States regarding the interpretation of an Air Transport Services Agreement, the Tribunal, speaking of the subsequent practice of the parties said: 'This course of conduct may, in fact, be taken into account not merely as a means useful for interpreting the Agreement, but also as something more; that is, as a possible source of a subsequent modification, arising out of certain actions or certain attitudes, having a bearing on the juridical situation of the Parties and on the rights that each of them could properly claim'. And the Tribunal in fact found that the Agreement had been modified in a certain respect by the subsequent practice."

Moreover, the importance attached by the International Court of Justice to subsequent practice has been pointed

out by the late Judge Sir Hersch Lauterpacht in The Development of International Law by the International Court, 1958, p. 170:

"It is a question of emphasis whether reliance on the conduct of the parties to a treaty subsequent to its conclusion is treated from the point of view of the doctrine of estoppel as preventing a party from asserting an interpretation inconsistent with its conduct or whether it is considered as a legitimate factor in the process of interpretation in the sense that subsequent conduct throws light upon the intention of the parties at the time of the conclusion of the Treaty. Both represent, in substance, a general principle of law."

257. The application to the present case of these principles, so clearly accepted in international law as described above, depends upon the work of the Mixed Boundaries Commission, which has been considered in Chapter VI of this Memorial and earlier in the present Chapter. It can be seen that, until 1956, the activities of the Commission were entirely consistent with that body having full competence to determine finally all questions relating to the final stages of boundary-making without reference to the Governments of either side.

All the proceedings of the Commission with regard to the boundary line in the Sector between Boundary Posts 16 and 17 were conducted on the basis that, if unanimity could be achieved, the Commission itself was the competent body finally to determine the boundary line as established by the 1902-1903 decision. Consideration of the proceedings

of the Commission, which are fully documented, and of which the material parts form Annexes to this Memorial, shows that the Commission, basing itself upon the official documents (selected by itself in accordance with Article 20 of its Works Plan), without hesitation embarked upon the task of marking out the line of the boundary along parts of its course in the Sector under consideration by this Court.

258. The ultimately decisive factor is the practice of the Governments themselves; and what, therefore, makes the practice of the Mixed Commission of great legal significance is the consistent attitude of the two Governments towards that practice at all times and in all cases up to the Chilean attempt to reject selected portions of the Commission's decisions in Act No. 55 concerning certain parts of the boundary line in the Sector.

For it is the fact that in parts of the frontier, with the sole exception of portions of the present Sector, both Governments acquiesced in decisions concerning the course of the boundary line, including cases where the Commission's decision clearly involved more than a purely technical and automatic process; and in regard to these decisions of the Commission neither Government did anything that even suggested by inference that such decisions required any act of approval or acceptance by the Governments in order to make them effective. There was,

therefore, a concordant though tacit agreement between them, forming a common understanding of the legal position. This recognition by both Governments of the legal efficacy of unanimous decisions of the Mixed Commission - the fact that none of them, except for parts of Act No. 55, has ever been called in question by either Party to this day - is the clearest possible evidence that both regarded the Mixed Commission, where its members were unanimous, as competent to determine the line of the 1902 Award in a manner that resulted in law in a 'settlement'. 259. It has been said above that - until the case of the Mixed Commission's Act No. 55 - both Governments 'acquiesced' in the legal efficacy of all the unanimous determinations of the course of the boundary line by the Commission. Acquiescence is a term that has been used in several different senses in international law; and the sense in which it is being employed here requires a brief explanation. 260. Acquiescence is not used here in the sense of a "condonation of illegality" (see McGibbon, B.Y.I.L., vol. xxxi, p.143). It is not a question of prescription; indeed even the earliest decisions of the Mixed Commission are still so recent that any kind of acquisitive prescription is hardly a legal possibility. It is a question of interpretation.

That acquiescence may be an element of interpretation

is clear from the authorities, as well as from the logic of the situation in the present case. Thus McGibbon (loc. cit. at p.146) says:

"Evidence of the subsequent actions of the parties to a treaty may be admissible in order to clarify the meaning of vague or ambiguous terms. Similarly, evidence of the inaction of a party, although not conclusive, may be of considerable probative value. It has been said that 'the primary value of acquiescence is its value as a means of interpretation'. McGibbon here refers to Proceedings of the Alaskan Boundary Tribunal, vol. vii, p.619, and p.556."

261. It is very clear in the present case that the passivity of both Governments in regard to decisions of the Mixed Commission - and the absence in the whole series of Commission decisions prior to Act No. 55 of any 'timeous notification' - was an unambiguous indication that in their opinion no further step was necessary for finalising the course of the boundary. Where the proposition is that no further step is necessary, inaction must be the most completely cogent of all possible forms of behaviour.

262. It is true, certainly, that the hitherto consistent acquiescence of both Parties in the legal efficacy of unanimous decisions of the Mixed Commission was eventually interrupted by Chile's attempt, after an interval of apparent acquiescence, to reject some parts, though seemingly not all, of the Commission's Act No. 55.

It is necessary, therefore, to ask what are the possible

legal effects of protesting the Mixed Commission's decision in this way?

Firstly, such a protest is a bar to the acquisition by the other Party of a title by prescription, but, as has already been mentioned, this consideration could hardly arise in the circumstances of the present case. Secondly, a protest may serve to prevent an inference that might otherwise be drawn from the Government's silence.

263. But in the present case the protest was too late to have this effect either in law or in logic; for the inference is already irresistibly drawn from Chile's unambiguous attitude towards that series of similar, but earlier, Mixed Commission decisions, and also from her attitude towards other parts of Act No. 55. It would be inequitable, not to say unconscionable, if a Government were able tacitly to reap the benefit of a series of such decisions favourable to itself, and then later effectively to protest a subsequent decision that in part favoured the claims of the other Party.

For, in those circumstances, the protesting State must find itself impaled upon the horns of a dilemma: if its protest were effective to prevent any inference concerning the competence of the Mixed Commission, that result could not by any means be confined to parts of one set of decisions of the Commission, but must apply more

generally; if the Mixed Commission was incompetent to approve finally the boundary line in parts of the Sector between Boundary Posts 16 and 17, neither could it have been competent to approve finally the boundary line between Boundary Post VII-4A and Boundary Post 16 or between Boundary Post 17 and Parallel 44°S; or in the Cerro Rojo area or in the Cerro Ap-Iwan area. All legally similar decisions of the Mixed Commission must stand or fall together.

264. Given a consistent and consecutive series of cases of tacit recognition of the Commission's competence, it is tempting to rationalize the situation not merely in terms of probative value of the subsequent behaviour of the Parties but also in terms of preclusion or estoppel. Yet, though the thought is cogent, there must remain some element of doubt whether estoppel is strictly appropriate, since the scope of the doctrine of estoppel in international law is probably not yet settled. Certainly, if the term is to be construed strictly in accordance with common law notions, it is of limited scope as Judge Sir Gerald Fitzmaurice pointed out in the Temple Case (loc. cit. p.63) when he said:

"However, in those cases where it can be shown that a party has, by conduct or otherwise, undertaken, or become bound by, an obligation, it is strictly not necessary or appropriate to invoke any rule of

preclusion or estoppel, although the language of that rule is, in practice, often employed to describe the situation. Thus, it may be said that A, having accepted a certain obligation, or having become bound by a certain instrument, cannot now be heard to deny the fact, to 'blow hot and cold'. True enough, A cannot be heard to deny it; but what this really means is simply that A is bound, and, being bound, cannot escape from the obligation merely by denying its existence. In other words, if the denial can be shown to be false, there is no room or need for any plea of preclusion or estoppel. Such a plea is essentially a means of excluding a denial that might be correct - irrespective of its correctness. It presents the assertion of what might in fact be true...."

265. Thus, if this analysis of estoppel be accepted, it does not strictly apply - though it is conceded by Sir Gerald that such language is often employed - to a case like the present, where the acquiescence is put forward for its probative cogency concerning the true legal position of the Mixed Commission; and not on the basis that it has precluded an assertion of a contrary proposition that might otherwise have been true.

But, however the question of terminology may be resolved, the point of substance is unaffected; and it is that acquiescence in this context rests firmly upon the operation of the principle of good faith. And this has nowhere been more eloquently expressed than in the passage written by the late Judge Sir Hersch Lauterpacht (B.Y.I.L., vol. XXVII p.395), and cited with approval by Judge Alfaro in the Temple Case, (loc. cit. p.41):-

"... the far-reaching effect of the failure to protest is not a mere artificiality of the law. It is an essential requirement of stability - a requirement even more important in the international than in other spheres; it is a precept of fair dealing inasmuch as it prevents states from playing fast and loose with situations affecting others; and it is in accordance with equity inasmuch as it protects a state from the contingency of incurring responsibilities and expense, in reliance on the apparent acquiescence of others, and being subsequently confronted with a challenge on the part of those very States."

CHAPTER IX

STATEMENT OF LAW: PART TWO

SETTLED AND UNSETTLED PARTS OF THE BOUNDARY LINE.

266. The Statement of Law in this Memorial now turns to the question what parts of the boundary line in the Sector between Boundary Posts 16 and 17 have been settled, and what parts remain "unsettled" and so call for "interpretation and fulfilment" of the 1902 Award. In this context it is necessary to consider three possible situations.

If the submissions of the Argentine Republic made in the preceding Chapter are accepted, then only the middle part of the boundary line in the Sector is unsettled within the meaning of the Question submitted to this Court. The length of boundary line which remains unsettled in the middle part of the Sector will depend, of course, upon the extent to which the submissions in paragraphs 233 to 242 in the preceding Chapter are accepted. If the Court accepts that the 1902 Award finally settled the northern and southern parts of the boundary line to the extent there submitted (paragraphs 233 to 239), the middle part of the boundary line remaining unsettled will be less in extent than would be the case if the Court were to decide that final settlement of the northern and southern parts only took place after 1903 by virtue of the unanimous decisions of the Argentina-Chile Mixed Boundaries Commission

(Paragraphs 240 to 242).

A further possibility is that this Court might reach the conclusion that although the southern part of the boundary line in the Sector, that between Cerro de la Virgen and Boundary Post 17, was settled in one of the two ways submitted in the previous Chapter, the remainder of the boundary line from Boundary Post 16 to Cerro de la Virgen remains unsettled and so requires the 1902 Award to be interpreted and fulfilled in respect of the northern and middle parts.

Yet another conceivable possibility is that the view might be taken that no part of the boundary line in the Sector between Boundary Posts 16 and 17 has been settled and that therefore the entire extent of the line in the Sector remains unsettled. This Chapter examines each of these possibilities in turn and makes the relevant submissions on behalf of the Argentine Republic in each set of circumstances.

267. Before making any submission on the proper interpretation and fulfilment of the 1902 Award, it is convenient to examine the extent to which mistake affected the description of the boundary line in the Sector. Mistake affected that description in the following three respects:

- (1) The Award and the Report both referred to

a river having a confluence with the River Carrenleufu , and they called it the River Encuentro. There is in fact a river which has its confluence with the River Carrenleufu opposite Boundary Post 16 and it is called the River Encuentro.

The Map, indeed, depicted a river and gave it the name Rio Encuentro; but the lower part of the river so depicted under this name does not exist, and the upper part, although it exists, is part of the River El Salto, and no part of the River Encuentro system.

(2) The watercourse, which was referred to in the Report as rising on the "western slopes" of Cerro de la Virgen, was clearly and correctly depicted on the Map; but the watercourse was wrongly described in the Report, and wrongly depicted on the Map, as being part of the system of the River Encuentro;

(3) There thus remains a gap in the boundary as described and depicted in the three documents making up the 1902 decision between :-

(a) The point which modern maps show as the confluence of the River El Salto (the watercourse referred to in (2) above) with the River Engaño, and

(b) The origin - where it is now known to be - of the River Encuentro.

268. This Memorial now examines in turn each of the above respects in which mistake affected the 1902 description of the boundary line in the Sector.

269. (1) As the River Encuentro was correctly named in the Award and in the Report, and as its mouth was correctly referred to, the verbal descriptions must in principle take precedence over the Map (see paragraph 195 above), but, in any event, the British Demarcator in 1903 placed Boundary Post 16 on the north bank of the River Carrenleufu opposite the mouth of a river which he determined to be the river mentioned in the Award, and which is the River Encuentro. The position of this Boundary Post has not been disputed, and is not disputable. The 1902 Award itself, in Article III, refers to the boundary as following the River Encuentro, and the Report, in paragraph 22, refers to it as following "the Encuentro along the course of its western branch to its source.....". So far, these descriptions admit of no uncertainty. But the Report goes on to misplace the source of the western branch of the Encuentro by referring to its source as "on the western slopes" of Cerro de la Virgen, and the Map likewise shows the River Encuentro as having a continuous course to the western slopes of Cerro de la Virgen.

It is submitted that this Court must interpret the 1902 decision as including in the boundary line the entire course of the River Encuentro, as described in this Memorial, and therefore reach the conclusion that to the extent that the verbal descriptions in the documents making up the 1902 decision are capable of being applied to the ground, they must be so applied in their plain terms. As however the identification of this river in its stretch between its origin and its confluence with the River Falso Engaño has in the recent past been disputed by Chile, this Court may be called upon to identify the course of the River Encuentro upstream of its confluence with the River Falso Engaño. The above merely restates the alternative submissions made in the previous Chapter on the extent of the boundary in the northern part of the Sector which was settled either by the 1902/3 decision or by the unanimous decisions of the Mixed Boundaries Commission in 1955.

270. (2) The watercourse which was referred to in the Report as rising on the western slopes of Cerro de la Virgen and was correctly depicted on the 1902 Map, as regards its origin and its course as far as its confluence with the River Engaño, is easily identifiable on modern maps and on the ground as being part of the

River El Salto. Therefore it is clear to what watercourse the Arbitrator was referring when he marked the line on the Map to accord with that part of the description of the boundary which contained the reference to the western slopes of Cerro de la Virgen.

The mistake in this part of the boundary lay only in the failure to recognize that the watercourse so described was not part of the River Encuentro system, but this does not invalidate the description in the Report and on the Map insofar as it relates to the watercourse which rises on the western slopes of Cerro de la Virgen.

If the above submissions are accepted, then the Award needs interpretation, as regards the part of the boundary from Boundary Post 16 to the origin of the River Encuentro, only to the extent of identification of part of the course of the River Encuentro; and the process of interpretation called for in the part of the boundary from Cerro de la Virgen, by way of its western slopes, to the confluence of the River El Salto with the River Engaño, is that the inaccuracies of the verbal description in the 1902 Report should be redressed by reference to the line marked upon the Award Map which in this respect is quite correct.

271. (3) There thus remains a gap in the boundary

between the confluence of the River El Salto with the River Engaño and the origin of the River Encuentro. In this area the Court is called upon to interpret and fulfil the Award with such assistance as the three documents making up the 1902 decision can afford. It is clear from those documents that in this part of the boundary the Arbitrator was seeking to create a boundary line which followed a watercourse continuously from Boundary Post 16 to Cerro de la Virgen. This, as is now apparent, was impossible, but the present Court will recognize at once that the distance over which this continuity of watercourse is broken is only some 1300 metres, that is to say, the distance between the northernmost point of the River Engaño and the origin of the River Encuentro.

Thus it is submitted that the terms of the 1902 decision can be properly interpreted and fulfilled by taking the boundary line from the confluence of the River El Salto and the River Engaño, northeastwards, upstream along the course of the River Engaño to its most northerly point. From that most northerly point to the origin of the River Encuentro must be drawn, it is submitted, a line of boundary which appears to the Court to be most in accord with the general direction of the line described in the 1902 documents. It is submitted that this would be the shortest line,

consistent with natural features, crossing the Portezuelo de las Raices to the point of origin of the River Encuentro.

272. If the Court were to decide upon such a line, they would in fact be doing no more than has been done in settling other parts of the boundary line where strict adherence to the terms and descriptions of the boundary line in the 1902 documents was impossible. In those cases, the Argentina-Chile Mixed Boundaries Commission decided upon the line which most nearly accorded to the 1902 terms and descriptions as existing circumstances permitted: see paragraphs 137 to 141 above. The fact that neither Party has at any time raised any objection to those decisions of the Mixed Commission or suggested that they can in any way be called in question, evidences the recognition of the Parties of the need to adhere as strictly as possible to the terms of the 1902 decision, adjusting the boundary line only to the extent made necessary by geographical reality.

273. If the Court accepts the submission that the 1902 Award finally settled the parts of the boundary line:

- (a) from Boundary Post 16 to the origin - where it is now known to be - of the River Encuentro, and

(b) from the peak of Cerro de la Virgen to
Boundary Post 17,

the only part of the boundary line in the Sector which calls for interpretation and fulfilment of the 1902 Award is that between the origin of the River Encuentro and the peak of Cerro de la Virgen. The submission of the Argentine Republic on the course of the boundary line in this middle part of the Sector, on a proper interpretation and fulfilment of the 1902 Award, is as follows :-

From the source of the River Encuentro, crossing the Portezuelo de las Raices to the northernmost point of the River Engaño, and thence along the latter's course southwestwards downstream to its confluence with the River El Salto, and thence upstream along that river to its source on the western slopes of Cerro de la Virgen, and thence to the peak of that mountain.

274. Paragraph 271 gives the reasons why the 1902 Award, on its proper interpretation and fulfilment, supports the line from the confluence of the River El Salto and the River Engaño to the origin of the River Encuentro.

Paragraph 270 sets out the reasons why, in the submission of the Argentine Republic, a proper interpretation and fulfilment of the 1902 Award permits the Court to adopt the line from the peak of Cerro de la Virgen, by way

of its western slopes, along the course of the watercourse which rises on those western slopes, and thence to the confluence of that watercourse (the River El Salto) with the River Engaño.

275. If the Court, declining to accept the submission that the 1902 Award finally settled the northern and southern parts of the boundary line in the Sector mentioned under (a) and (b) in paragraph 273 above, concludes that parts in the north and south of the Sector were nevertheless settled by the unanimous decisions of the Mixed Boundaries Commission in 1955, the middle part of the boundary line remaining unsettled would be the same as that discussed in the preceding paragraph, with the exception that there would be also unsettled the part between the confluence of the River Encuentro and the River Falso Engaño and the origin of the River Encuentro. Paragraph 269 above sets out the reason for the submission of the Argentine Republic that the Court must interpret the 1902 Award as including in the boundary line the entire course of the River Encuentro, as described in this Memorial. Subject to such identification of the entire course of the River Encuentro, if this issue is raised by Chile, the decision of the Court in this respect is, in the submission of the Argentine Republic, inescapable.

276. If the Court were to decide that, although the part of the boundary line between Cerro de la Virgen and Boundary Post 17 was settled either by the 1902 Award or by the relevant unanimous decision of the Mixed Boundaries Commission, the remainder of the boundary line, from Boundary Post 16 to Cerro de la Virgen, remains unsettled, then the submission of the Argentine Republic as to the course of this unsettled part of the boundary line is as follows :

that the line should follow from Boundary Post 16 the entire course of the River Encuentro as described in this Memorial, for the reasons stated in the preceding paragraph and in paragraph 269 above, and thence, for the reasons stated in paragraphs 270 and 271 above, in the short length of boundary between the source of the River Encuentro and the confluence of the River Engaño and the River El Salto, by following a line from the source of the River Encuentro, crossing the Portezuelo de las Raices to the northernmost point of the River Engaño, and thence along the latter's course southwestwards downstream to its confluence with the River El Salto; thence upstream along that river to its source on the western slopes of Cerro de la Virgen, and thence to the peak of that mountain.

277. If the Court were to take the view that no part of the boundary line in the Sector had been settled prior to the 1st April, 1965, and that therefore the entire extent of the line remains unsettled, then the submission of the Argentine Republic as to the course of the boundary line in the Sector is, on a proper interpretation and fulfilment of the 1902 Award, as follows :-

Crossing the River Carrenleufu at Boundary Post 16 opposite the junction of the River Encuentro with the River Carrenleufu, the boundary shall follow the River Encuentro to its source to the north of the Portezuelo de las Raices; thence crossing the Portezuelo de las Raices to the northernmost point of the River Engaño and thence along the latter's course southwestwards downstream to its confluence with the River El Salto; thence upstream along that River to its source on the western slopes of Cerro de la Virgen. Ascending to that peak, it shall then follow the local waterparting southwards to the northern shore of Lake General Paz at Boundary Post 17.

It will be noted that the most northern part and the southern part of this line are the same as those which, on the earlier submission made in this Memorial,

were unanimously approved by the Mixed Boundaries Commission in 1955.

278. Before explaining the reasons which support the submission last made, it is necessary to state emphatically that the Argentine Republic submits that in no circumstances ought this court to take the view last described, insofar as it concerns the southern part of the boundary line in the Sector, namely, that between the peak of Cerro de la Virgen and Boundary Post 17. As has been shown elsewhere in this Memorial (see paragraphs 79 and 239) there is here no ambiguity in the terms and descriptions of the documents making up the 1902 decision, and there is no doubt about the identity of the waterparting referred to in the Report of the Tribunal, depicted on the 1902 Map, and observed by Captain Dickson in 1903 from Boundary Post 17. The present submission therefore proceeds upon an assumption of the remote possibility that this Court might find that the boundary line remains unsettled in what has been conveniently described as the southern part of the Sector.

279. The reasons which support the submission of the Argentine Republic on the line to be decided upon throughout the Sector, if no part has been finally settled, are

of two kinds. The more general reasons are that the 1902 Award settled in principle the entire boundary line in the Sector, and that the boundary line decided upon by the Arbitrator in 1902, over the whole extent of frontier submitted to his decision, was a line generally following a north to south direction, and adhering, so far as was compatible with the natural features, to a central meridional line between the rival claims of the two Parties in that Arbitration. The more particular reasons have to a great extent already been mentioned. Boundary Post 16 was finally fixed in 1903, and is not disputable. That Boundary Post 16 is placed opposite the mouth of the River Encuentro is also beyond controversy. The argument for following the entire course of the River Encuentro as described in this Memorial has already been stated: see paragraph 269 above. The line between the source of the River Encuentro and the peak of Cerro de la Virgen has already been described, in the terms of the proper interpretation and fulfilment of the 1902 Award, in paragraphs 270 to 272 above. Paragraph 278 above, prefacing the present submission has already stated why, in the submission of the Argentine Republic, it is unthinkable that the boundary line between the peak of Cerro de la Virgen and Boundary Post 17 is in any respect doubtful according to the terms of the 1902 Award.

CHAPTER X

SUMMARY OF SUBMISSIONS

280. Without attempting an authoritative summary of the arguments made in this Memorial, and without derogating from its detailed submissions, this Chapter seeks to provide the Court with a short synopsis of the submissions of the Argentine Republic.

Map No. A54 shows the parts of the boundary line referred to under points (6), (7), (8) and (9) in paragraph 281 below.

281. The submissions of the Argentine Republic, in the summarised form above described, are that:

- (1) The essential legal validity of the 1902 Award is in no way in issue in the present Arbitration.
- (2) The 1902 Award settled in principle the entire boundary in the Sector between Boundary Posts 16 and 17.
- (3) It is for the Party wishing to show that any part of the boundary in the Sector between Boundary Posts 16 and 17 remains "unsettled" to prove the extent of the boundary so remaining unsettled.
- (4) The mistake which existed at the time of the 1902 Arbitration does not render the 1902 Award a nullity, either in whole or in part.

- (5) The effect of such mistake must be confined to those parts of the 1902 Award that it actually rendered inaccurate.
- (6) The part of the boundary line in the Sector between Boundary Post 16 and the confluence of the River Encuentro and the River Falso Engaño, is along the course of the River Encuentro, and this part was finally settled by the 1902 Award or, alternatively, by the relevant unanimous decision of the Mixed Boundaries Commission in Act No. 55 in 1955.
- (7) The part of the boundary between the confluence of the River Encuentro and the River Falso Engaño, and the source of the River Encuentro, at the graphical co-ordinates established by the Mixed Commission in Act No. 55, is along the remaining length of the course of the River Encuentro as depicted on Maps Nos. A30 and A31, and this part was settled by the 1902 Award, subject only to identification by this Court of the course of the River Encuentro upstream of the confluence of the River Falso Engaño with the River Encuentro.
- (8) The part of the boundary in the Sector between the source of the River Encuentro, as above described, and Cerro de la Virgen should be determined by this Court, according to the proper interpretation and

fulfilment of the 1902 Award, as follows:

a line from the source of the River Encuentro, as above described, thence crossing the Portezuelo de las Raices to the northernmost point of the River Engaño, and thence along the latter's course southwesterly downstream to its confluence with the River El Salto; thence upstream along that river to its source on the western slopes of Cerro de la Virgen, and thence ascending to that peak.

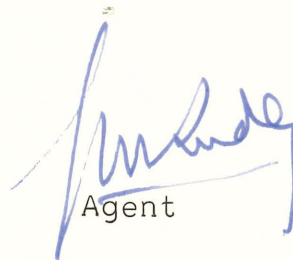
- (9) The part of the boundary line from Cerro de la Virgen to Boundary Post 17 follows the local waterparting southwards to that Boundary Post and that part was finally settled by the 1902 Award or, alternatively, by the relevant unanimous decision of the Mixed Boundaries Commission in Act No. 55 in 1955.
- (10) If this Court were not to accept the submissions summarized under points (6), (7) and (9) above, the course of the boundary in the Sector, on the proper interpretation and fulfilment of the 1902 Award, is in any event as follows :

Crossing the River Carrenleufu at Boundary Post 16, opposite the confluence of the River Encuentro with the River Carrenleufu, the boundary

shall follow the River Encuentro to its source north of the Portezuelo de las Raices; thence corssing the Portezuelo de las Raices to the northernmost point of the River Engaño, and thence along the latter's course southwestwards downstream to its confluence with the River El Salto; thence upstream along that river to its source on the western slopes of Cerro de la Virgen. Ascending to that peak, it shall follow the local water-parting southwards to the northern shore of Lake General Paz at Boundary Post 17.

The line is marked on Map No. A54 as a combination of the continuous and dotted lines shown thereon.

Submitted on behalf of the Argentine Republic



Agent

London,
30th November, 1965.

TABLE OF ANNEXED DOCUMENTS

VOLUME I

1. Award pronounced by His Majesty King Edward VII, dated the 20th November, 1902.
2. Report of the Tribunal appointed by Her Majesty Queen Victoria, dated the 19th November, 1902.
3. Treaty between the Parties, dated the 30th August, 1881.
4. Protocol between the Parties, dated the 1st May, 1893.
5. Agreement between the Parties, dated the 17th April, 1896.
6. Record of agreement between the Parties signed in Santiago, Chile, on the 22nd September, 1898.
7. Interim Report by Sir Thomas Holdich to the Tribunal, dated the 3rd April, 1902.
8. Parts of Chapters IV and V of "Memorias e Informes relativos a la Expedicion Esploradora del Rio Palena" (Informative Accounts and Reports Relative to the Exploratory Expedition along the River Palena) by Dr. H. Steffen, Santiago, 1895.
9. Extracts from the Report of G. Lange, dated August, 1901.
10. Act between the Parties, dated the 28th May, 1902, concerning the establishment of a Boundaries Commission.
11. Letter, dated the 29th December, 1902 from Colonel Sir Thomas Holdich to the Argentine Minister for Foreign Affairs.
12. Letter from Colonel Sir Thomas Holdich to the Under Secretary of State, Foreign Office, dated the 30th June, 1903.

13. Report of Captain Dickson, R.A., Assistant Commissioner, Chile-Argentine Boundary Commission, dated the 1st June, 1903.
14. General Treaty of Arbitration between the Parties, dated the 28th May, 1902 and a Protocol thereto.
15. Statutory Declaration of Eilert Sundt, dated the 19th August, 1965.
16. Extracts from diplomatic correspondence between Argentina and Chile between the 14th December, 1955 and the 27th June, 1957.

VOLUME II

17. Protocol between the Parties, dated the 16th April, 1941 establishing the Argentina-Chile Mixed Boundaries Commission.
18. Works Plan and General Provisions of the Argentina-Chile Mixed Boundaries Commission in force in 1955.
19. Extracts from the Regulations of the Argentina-Chile Mixed Boundaries Commission in force in 1955.
20. Extracts from Acts Nos. 25-54 of the Argentina-Chile Mixed Boundaries Commission, (1943-1955).
21. Informative Report of the Argentina-Chile Mixed Boundaries Commission 1941-1947 (annexed to Act No. 39).
22. Documents exchanged in 1955 between the Argentine Boundaries Commission and the Chilean Boundaries Commission relating to the proposed boundary line in the Sector.
23. Act No. 55 of the Argentina-Chile Mixed Boundaries Commission, dated the 1st November, 1955.

VOLUME III

24. Report of the Special Mixed Commission of Senators and Deputies, relating to the question of the frontier line between Chile and Argentina in the California - Rio Encuentro district, (The Bicameral Commission Report), dated the 25th October, 1956.

25. Report of General Daniel Urrea Fuentes, Chairman of the Chilean Boundaries Commission, (1956).

Notes on Original Documents
and Translations

1. The original version of any document annexed to this Memorial, or of any document not annexed to this Memorial, but referred to herein, will be made available if the Court requires, so far as it is within the possession or power of the Argentine Government.
2. Annexes 3 to 6 are translations from the Spanish originals, which translations were annexed to the Argentine Report to the 1902 Tribunal.
3. Annex 13 is the translation appearing in the United Kingdom State Papers, Volume 95, page 759.
4. Annexes 14 and 16 to 25 are translations made for the purposes of these proceedings and are not to be regarded as finally authentic translations.

TABLE OF MAPS, PLANS AND SHEETS ANNEXED

No.	Title or Description	Sheet or Map No.	Author	Scale	Date of Survey or Publication
A1.	Map annexed to 1902 Award - Perez Rosales to Lake Buenos Aires	-	1902 Tribunal	1:200,000	1902
A2.	Comparative Extracts of the 1902 Award Map and related Maps	-	Drawn for the purpose of the present proceedings	-	-
A3.	Chile, between 43° and 46°S.	VII	Annexed to Chilean Statement in 1902 proceedings	1:500,000	1902
A4.	Argentine Republic Map used by Captain Dickson R.A.	No.2	Annexed to Argentine Reply in 1902 proceedings	1:200,000	1902
A5.	"	No.3	"	1:200,000	1902
A6.	Andean Region of the Territory of Chubut	-	P. Ezcurra	1:712,500	(1893)
A7.	Territory of Chubut	-	"	1:1,000,000	1893

No.	Title or Description	Sheet or Map No.	Author	Scale	Date of Survey or Publication
A8.	Territory of Chubut	-	Eng. Cobos	1:500,000	1895
A9.	El Rio Vuta-Palena	-	Dr. H. Steffen and O de Fischer	1:250,000	1894
A10.	Lange's Survey	-	G. Lange	1:100,000	1900/01 (unpublished)
A11.	Hydrographic Sketch of the Zone Lake General Paz - River Palena	-	Argentina- Chile Mixed Boundaries Commission (Chilean element)	1:140,000 (approx.)	(1945/48)
A12.	Chile between 43 ^o and 44 ^o S.	-	From the book "Report on the Arbitral Demarcation of the Argentina- Chile Frontier", (Bertrand), Santiago, 1903	1:500,000	1903
A13.	Llanquihue	-	Chilean Boundaries Commission	1:250,000	1906

No..	Title or Description	Sheet or Map No.	Author	Scale	Date of Survey or Publication
A14.	La Linea de Frontera con la Republica Argentina	-	Boundaries Office, Santiago	1:1,000,000	1907
A15.	Chile between 43° and 45°S.	14	(Chilean Land Measurement Office)	1:500,000	(1910)
A16.	Map of part of Chile	14	Chilean Land Measurement Office	1:500,000	1910
A17.	Chile between 43° and 45°S.	-	Chilean Lands and Colonization Office	1:500,000	1928
A18.	Lago Nahuel-Huapi	S.K.-19	American Geographical Society of New York	1:1,000,000	1930
A19.	El Valle del Palena-Carrenleufu	<u>IV</u>	From the book "Patagonia Occidental" by Dr. H. Seffen	1:250,000	1944
A20.	Quellon - Palena - Futaleufu	14	Chilean Military Geographic Institute	1:500,000	1945

No.	Title or Description	Sheet or Map No.	Author	Scale	Date of Survey or Publication
A21.	Air Navigation Map - (Castro-Aisen)	6	Chilean Military Geographic Institute	1:1,000,000 (approx.)	1946
A22.	Puerto Montt - Rio Chubut	S.K.-18, 19	U.S. Army Map Service	1:1,000,000	1954
A23.	Puerto Montt - Rio Chubut	S.K.-18, 19	U.S. Army Map Service	1:1,000,000	1956
A24.	San Carlos de Bariloche	3538	I.C.A.O. (Argentina)	1:1,000,000	1957
A25.	Monte Maca	-	U.S. Coast and Geodetic Survey	1:1,000,000	1942
A26.	Las Cordilleras Patagonicas	1	From the book "Patagonia Occidental" by Dr.H. Steffen	1:2,500,000	1944
A27.	Wall Map of Chile	-	Prof. Alejandro Rios V. and Anguita F.	1:1,500,000	1941

No.	Title or Description	Sheet or Map No.	Author	Scale	Date of Survey or Publication
A28.	Geomorphological Map of Palena	-	Prof. Reynaldo Börgel O.	-	1965
A29	Lago General Paz- Palena	VII - 1	Argentina- Chile Mixed Boundaries Commission	1:50,000	1951/53
A30	Cerro de la Virgen	VII - 2	"	1:50,000	1952/53
A31	Rio Encuentro	VII - 3	"	1:50,000	1952/53
A32	Chile: Carta Preliminar- 4372 Palena	4372	Chilean Military Geographic Institute	1:250,000	1952
A33	Chile: Carta Preliminar-Palena 4372	4372	"	1:250,000	1959
A34	Peninsula Cochrane- Pueyrredon	V-6	Argentina- Chile Mixed Boundaries Commission	1:50,000	1947/50
A35	Ap-Iwan	V-14	"	1:50,000 and 1:10,000	1947/55

No.	Title or Description	Sheet or Map No.	Author	Scale	Date of Survey or Publication
A36	Cerro de la Galera	VI - 2	Argentina- Chile Mixed Boundaries Commission	1:50,000	1943/45
A37	Rio Nireguao- El Coyte	VI - 5	"	1:50,000	1944
A38	El Coyte	VI - 6	"	1:50,000	1945
A39	Cerro Katterfeld	VI - 7	"	1:50,000	1948/49
A40	Portezuelo Cerro Cathedral	VI - 8	"	1:50,000	1948/49
A41	Lago 1a Plata Chico - Rio Torcaza	VI - 9	"	1:50,000	1948/49
A42	Loma Collar	VI -10	"	1:50,000	1948/49
A43	Portezuelo Cumbre Negra	VI -11	"	1:50,000	1948/49
A44	Cerro Steffen	VI -15	"	1:50,000	1948/49
A45	Rio Pico	VI-16	"	1:50,000	1948/49

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Título ~~Submitted by the Argentine Repu-~~
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