

Argentinian Rejection of Beagle Channel Ruling

The Argentinian Government on Jan. 25, 1978, rejected a ruling by a tribunal of five judges of the International Court of Justice awarding the disputed islands of Picton, Lennox and Nueva (situated at the eastern entrance to the Beagle Channel, off Tierra del Fuego) to Chile [see 28419 A]. The rejection followed nearly nine months of deliberation on the ruling, which had been handed down on May 2, 1977, and was due to have entered into force on Feb. 2, 1978.

The Argentinian rejection was notified to the Chilean ambassador in Buenos Aires, Sr René' Rojas, and to the UK charge' d'affaires, Mr Hugh Carless (Britain having retained overall responsibility for the arbitration of this dispute under an agreement of July 1971, which was not affected by the abrogation in 1972 of the 1902 arbitration treaty on the basis of which it had been concluded—see 25239 A). The following reasons were given by the Argentinian Government as to why it "feels it is its duty formally to announce that it has decided to declare null and void the decision of Her Britannic Majesty on the Beagle Channel question":

(i) There had been distortion of the Argentinian position; (ii) the Court had ruled on other islands whose status was not a matter within its jurisdiction; (iii) there had been contradictions of reasoning, faulty legal interpretation, and geographical and historical errors; and (iv) the arguments and proofs advanced by each party had not been fairly evaluated. In conclusion, the official rejection noted that the Government "reasserts Argentina's sovereignty over all islands, maritime areas, continental shelves and seabed which belong to it beyond any doubt since they are located in the Atlantic Ocean, east of the Cape Horn meridian, in line with the spirit and letter of the 1881 and 1893 [boundary] treaties and the 1902 treaty". In addition, the Government expressed its "decision to implement all measures necessary to defend its rights in the area up to Cape Horn", but reiterated that it wished to find a peaceful solution.

In response, the Chilean Foreign Minister, Vice-Admiral Patricio Carvajal Prado, stated on Jan. 26 that Argentina's unilateral declaration was contrary to international law and to the treaties between Chile and Argentina. He maintained that Argentina's reasons were not justifiable and that the court ruling therefore remained mandatory and fully valid; the Chilean Government, he said, had submitted to Argentina a rejection of the declaration which also reaffirmed Chile's rights.

The Argentinian Foreign Minister, Vice-Admiral Oscar Montes, the same day handed a letter to the Chilean ambassador in Buenos Aires regretting the deterioration in relations which had resulted from the arbitration decision, and proposing the holding of bilateral negotiations.

Chile and Argentina also had overlapping claims in the Antarctic [see page 28273], where there were large untapped resources of fish and krill and also potential supplies of oil and minerals. Under the Beagle Channel ruling, Argentina stood to lose access to some of these resources, as well as to its Antarctic bases, and control over the Cape Horn and Beagle Channel sea lanes.

Earlier Developments following Court Ruling

The Argentinian Government had on Aug. 8, 1977, delivered a protest to Chile over the latter's publication of a map delineating Chilean jurisdictional waters in the southern Atlantic as a result of the court ruling, accompanied by a decree which extended Chilean claims outside the arbitration area and over waters in the south. Later the same month the Argentinian Navy had placed a navigational beacon on the island of Barnevelt, over which Chile was also claiming sovereignty.

Argentina subsequently protested formally to Chile at "recent unauthorized activities of units of the Chilean Air Force and Navy in Argentinian territory", specifying the following incidents:

(i) On July 14, 1977, a Chilean Navy patrol boat had "improperly circled a ship of the Argentinian Navy in the neighbourhood of Barnevelt island without identifying itself"; (ii) also on July 14, a Chilean Navy aircraft had "buzzed" an Argentinian patrol vessel several times; (iii) on July 15 a Chilean torpedo boat had appeared in the area but refused to identify itself or to acknowledge the challenge of the Argentinian vessel; and (iv) on Aug. 12 a survey ship and a torpedo boat of the Chilean Navy had again violated Argentinian waters.

At the same time, a note was handed to the Argentinian ambassador in Santiago on Aug. 4 alleging violations of Chilean jurisdiction in the Beagle Channel area, to which Argentina responded that "until our Government states its position regarding the ruling... it cannot accept any claims regarding alleged violations of Chilean territory".

The Argentinian Government on Dec. 5 delivered a formal objection to Chile over the terms of the court ruling, and on the same day was reported to be calling up Army reservists in the Mendoza border region (near Santiago). The latest in a series of talks between representatives of the Chilean and Argentinian Governments ended on Dec. 28, and a further meeting was cancelled, after Admiral Montes was reported to have presented conditions for continuing negotiations.

The legal adviser to the Chilean Foreign Minister, Sr Hernán Rios, said on Jan. 6 that the 1902 and 1971 arbitration treaties had established that any decision would be legally binding on the two countries and that it could not be appealed against; a decision could only be revised if it was based on false documents, or if it had been taken as the result of an error of judgment which could be proved.

Tension between the two countries was worsened as the result of remarks by President Pinochet of Chile on Jan. 5, when he said in a speech celebrating the majority vote in favour of the Government in the previous day's [see 28847 A] referendum that Chile would now pursue a more "aggressive and pragmatic" foreign policy, and added that the dispute with Argentina about the islands had been exacerbated by "certain Marxist elements in Argentina".

On Jan. 8, 25 vessels of the Argentinian fleet sailed for the Beagle Channel area and remained offshore, while Admiral Eduardo Emilio Massera, (the Commander of the Navy, and a member of the Argentinian junta), boarded the aircraft carrier *25 de Mayo* on Jan. 10 and set out from Bahia Blanca to observe exercises in southern waters, stating that the Navy was "ready for action". In the meantime, Brigadier-General Orlando Ramón Agosti (the Commander of the Air Force and also a member of the junta) inspected airfields on the Chilean border, and Major-General José' Vaquero (the commander of the Fifth Army corps in Bahia Blanca) began inspecting troops in Patagonia

At the same time, Argentina claimed that on the Chilean side, thousands of Chilean soldiers were massed in the far south, between Puerto Natales and Punta Arenas, that tank and infantry manoeuvres were in progress, and that Chilean warships were patrolling the Magellan Straits. Amid fears of a military confrontation in the area, the United States on Jan. 10 offered its good offices in the dispute, and President Videla of Argentina interrupted a vacation to return to Buenos Aires for consultations with his Government.

In the light of reports that Argentina was about to reject the ruling of the International Court, the Chilean Foreign Ministry said on Jan. 10 that Chile would continue to abide by the 1881 treaty "assigning to Chile all islands south of the Beagle up to Cape Horn", as "ratified by the award of May 2, 1977". The right to these islands was reasserted in a statement read out by Admiral Carvajal Prado to all ambassadors accredited to Santiago, in response to which the Argentinian Foreign Ministry replied on Jan. 13 that it did not accept the Chilean claim since it mentioned territories and waters under indisputable Argentinian control.

Article 3 of the treaty of 1881 laid down that Staten Island (on the eastern tip of Tierra del Fuego), the small neighbouring islands and other islands which could be said to be in the Atlantic, east of Tierra del Fuego and off the east coast of Patagonia would belong to Argentina, while all the islands situated south of the Beagle Channel up to Cape Horn as well as west of Tierra del Fuego would belong to Chile.

On Jan. 12 at least 2,000 Chileans were arrested in the Argentinian provinces of Chubut and Mendoza (both bordering on Chile) and were held in the municipal gymnasium and at an airbase in Trelew (on the Atlantic coast). According to the Argentinian Foreign Ministry the detentions had nothing to do with the Beagle Channel dispute, but were made because the papers of the detainees were out of order. The Chilean Foreign Minister at the same time recalled ambassadors from several Latin American countries for briefing.

A flotilla of Chilean vessels set off from Valparaiso on Jan. 16 under the command of Rear-Admiral Raul López Silva, with the US, West German and Spanish ambassadors aboard the flagship, *Capitan Prat*, as observers.

The Argentinian and Chilean Presidents met on Jan. 19 in Mendoza (Argentina) for several hours of talks on "matters of joint concern, especially with regard to the southern area", but a communique' issued at the close of the meeting said only that they had "laid the basis for reaching an agreement" and that a second meeting would take place in Chile the following week. This meeting was postponed on Jan. 25 after Argentina rejected the Beagle Channel ruling.

However, the two Presidents met on Feb. 20 in Puerto Montt (Chile) and signed the "Act of Puerto Montt" as the first step towards creating "a harmonious atmosphere which may lead to a peaceful solution of our controversies and, subsequently, to determining our two nations' respective rights under the legal system". The Act listed the main areas of disagreement and proposed a plan for work to be carried out within stated periods by commissions to be set up. It also reflected the interest of the two sides in the physical integration of the area and their desire to defend their legal rights in the Antarctic, while ensuring that citizens of both countries, especially those living in the border areas, should regard one another as brothers.

President Pinochet stressed in a speech on signing the Act that the negotiations did not signify any change in the position of either party with regard to the Beagle Channel award, and added that "Chile has no expansionist aims nor does she intend unjustly to claim land, maritime or continental shelf areas which are not hers".

In September and October 1977 a total of nine Soviet and Bulgarian fishing vessels alleged to be fishing inside Argentina's 200-mile territorial waters limit (which it had claimed on Jan. 5, 1967—see 21862 B and page 27514) and were boarded by elements of the Argentinian Navy and escorted to Puerto Madryn. In an incident on Oct. 1 a Bulgarian sailor was reported killed and several others injured when Argentinian gunboats opened fire on two Bulgarian and two Soviet fishing vessels on the personal orders of Admiral Massera, who said that the attack should be pressed home "to its ultimate consequences, because the defence of our sovereignty is at stake"; three Argentinian members of a boarding party were reported to have drowned. The captains of the Soviet ships denied that they had entered territorial waters.—(Times - Guardian - BBC Summary of World Broadcasts - Neue Zürcher Zeitung - Le Monde - Latin America Political Report - Financial Times - La Vanguardia, Barcelona) (*Prev. rep. Beagle Channel Ruling*, 28419 A; *1971 Arbitration Agreement*, 25239 A; *Chile-Argentina Relations*, 28224 A; *Argentina-UK, Falklands Dispute*, 28405 A; *Chilean Claim to 200-Mile Zone (1953)*, 13908 A)

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