Arbitration — Successive arbitrations — Status of second arbitration tribunal—Second tribunal's jurisdiction confined to matters within the jurisdiction of the first tribunal—Whether second tribunal possessing independent status—Effect of award of second tribunal—*Res judicata*

Arbitration—Evidence—Maps—Reliability—Different uses which parties to arbitration made of maps—Other evidence before tribunal—Estoppel—Acquiescence

Arbitration—Procedure—Closing submissions of parties—Whether parties able to modify submissions—Use of expert by tribunal—Whether tribunal delegating power to expert—Finality of award—Party seeking revision of award on grounds of error—Powers of tribunal—Distinction between errors of fact and errors of law

International tribunals—Arbitration tribunal established by two States to determine boundary—Status—Procedure—Evidence

Lakes and landlocked seas — Lakes — Lake as part of international boundary—Water-parting—Use as boundary—Distinction between continental water-parting and local water-parting

Territory—Boundaries—Principles of delimitation—Use of orographical and hydrographical techniques — Maps — Relevance—Importance in showing State practice—Water-parting as boundary — Whether boundary could cross glacier — Effect of movement of glacier — Estoppel — Acquiescence—Administrative acts in disputed territory—Interpretation of earlier arbitration award — Effect of changed knowledge of location of water-parting since original award delivered—Argentine–Chile boundary

DISPUTE CONCERNING THE COURSE OF THE FRONTIER BETWEEN BP 62 AND MOUNT FITZROY (ARGENTINA/CHILE)*

("LAGUNA DEL DESIERTO")

International Arbitral Tribunal (Argentina / Chile)

* A list of counsel appears at pp. 17-20. A map of the Award can be found at www.cambridge.org/9780521642439

Judgment. 21 *October* 1994

(Rafael Nieto Navia, *President*; Reynaldo Galindo Pohl, Santiago Benadava, Julio A. Barberis and Pedro Nikken, *Judges*)

Request for Revision and Subsidiary Request for Interpretation. 13 *October* 1995

(Rafael Nieto Navia, *President*; Reynaldo Galindo Pohl, Santiago Benadava, Julio A. Barberis and Pedro Nikken, *Judges*)

Resolution Approving the Report and Map of the Expert Geographer.

13 *October* 1995

(Rafael Nieto Navia, *President*; Reynaldo Galindo Pohl, Santiago Benadava, Julio A. Barberis and Pedro Nikken, *Judges*)

SUMMARY:[1] *The facts*:—Article 1 of the Boundary Treaty between Argentina and Chile, 1881, provided that

> the boundary between the [two countries] is, from north to south, as far as the 52nd parallel of latitude, the Cordillera de los Andes. The boundary line shall run over the highest summits of the said Cordillera which divide the waters and shall pass between the sources flowing down to either side . . .

Explorations in the area by both Parties later revealed that the continental water-parting and the Cordillera did not in fact coincide in many areas. These findings led to conflicting interpretations of the Boundary Treaty and, in 1893, an Additional Explanatory Protocol was signed by the Parties. Under this Protocol, the two countries reaffirmed that the boundary line agreed in 1881 should be the invariable rule and that, in consequence, Argentina should have, as far as the Atlantic, all lands and waters lying to the east of the line of the highest summit of the Cordillera which divided the waters, while Chile was to have all lands and waters to the west of that line as far as the Pacific.

By a Treaty of 1896, the parties appointed the British Government as arbitrator in relation to any disputes which might arise in relation to the boundary south of parallel 26° 52′ 45″. In 1898, the Parties formally submitted their disagreements to arbitration by the British Government and the latter appointed a Tribunal to determine the dispute. Before that Tribunal, Argentina argued that the boundary agreed by the parties was essentially an orographical frontier, i.e. one determined by the highest summits of the Cordillera of the Andes, and Chile argued that the definition in the Treaty and Protocol could only be satisfied by a hydrographical line forming the water-parting between the Atlantic and the Pacific oceans. The Tribunal reported on 19 November 1902 and the Award was made the following day by King Edward VII.

[1] Prepared by Mr Dapo Akande, LL M, Lecturer in Law at the University of Nottingham.

The Report of the Arbitral Tribunal noted that the orographical and hydrographical lines advanced by the Parties were frequently irreconcilable and neither fully conformed to the spirit of the agreements. The Tribunal stated that its task was not to determine which of the two alternative lines was 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". The Report set out a detailed definition of the line of the frontier and the Award included relevant maps. The boundary in the area of the present dispute was described by the 1902 Arbitral Award as follows:

> 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 Martín, 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.

The description in the relevant part of the Report of the Tribunal was as follows:

> From this point it [the boundary] shall follow the median line of the Lake [San Martín] southwards as far as a point opposite the spur which terminates on the southern shore of the Lake in longitude 72° 47′ W, whence the boundary shall be drawn to the foot of this spur and ascend the local water-parting to Mount Fitzroy . . .

In 1902, while the Award was pending, the Parties invited the Arbitrator to nominate a Commission to fix, on the ground, the boundary to be determined by the Award. This demarcation was carried out in the summer of 1903. During the demarcation work carried out in the area of the present dispute, a boundary post was erected on the southern shore of Lake San Martín at geographical coordinates 72° 46′ 00″ W longitude and 48° 53′ 10″ S latitude. This boundary post bore the number 62 (BP 62). No exploration of the region between Lake San Martín and Mount Fitzroy was carried out and no boundary posts were fixed in that region.

Differences over the course of the boundary in the sector of the frontier involved in the present case had been evident before the 1902 Award and continued thereafter. Both before and during the present proceedings there was agreement between the Parties as to the location of BP 62 and Mount Fitzroy but a Mixed Commission, composed of delegates of both countries, was unable to arrive at a definition of the course of the frontier between those points. In 1990 the Presidents of Chile and Argentina signed a joint declaration whereby they instructed their respective delegates to the Mixed Commission to prepare a complete Report on the outstanding questions of demarcation of the frontier. The Report of the Commission included as one of the outstanding questions the delimitation and demarcation of the "Sector from BP 62 to the terminal point of the Third Region [Mount Fitzroy] as defined

in Point 18 of the Report of the Tribunal of the Arbitration of 1902 and described in detail in the final paragraph of Point 22 of the said Report". On 21 August 1991, the Presidents of the two countries agreed to submit this question to Arbitration within the framework of the Treaty of Peace and Friendship of 29 November 1984. A Special Agreement establishing the present Arbitration Tribunal was signed by the Foreign Ministers of both countries on 31 October 1991. By Article I of that Special Agreement, the Tribunal was requested "to decide the course of the line of the frontier in the sector comprised between BP 62 and Mount Fitzroy in the Third Region, as defined in Point 18 of the Report of the Tribunal of Arbitration of 1902 and described in detail in the final paragraph of Point 22 of the said Report". Article II.1 required the Tribunal to reach its decision "by interpreting and applying the Award of 1902, in accordance with international law".

In the present proceedings, Argentina argued that Chile, by laying claim to part of the Atlantic basin of the Río Gatica or de las Vueltas, had exceeded that country's maximum claims in the 1898-1902 proceedings. According to Argentina, Chile's maximum claim in those previous proceedings had been that the natural and effective continental water-parting [*divortium aquarum*] was the frontier between the two countries, thus leaving to Argentina all Atlantic basins and to Chile all Pacific basins. Argentina maintained that since Chile had not claimed the basin of the Río Gatica or de las Vueltas in the previous proceedings, the Arbitrator could not have awarded that basin to Chile. If the present Tribunal were to allow this claim it would amount to a decision that the 1902 Award had given Chile territory that it did not claim at the time. To do so would be a violation of the rule of *non ultra petita partium* leading to a vitiation of the Award on grounds of *excès de pouvoir*.

Chile, for its part, denied that its present claims went beyond its maximum claims in the 1898-1902 Arbitration. Chile pointed out that the true position of the continental water-parting in the area was only identified towards the end of the 1940s. It argued that, in addition to basing its claims in the 1898-1902 proceedings on the continental water-parting, its maximum claims were indicated by a line drawn on a map and that line was south of what is now known to be the continental water-parting. According to Chile what really mattered was not its general adherence to the theory of the continental water-parting but the lines indicated on the maps, an examination of which showed that its present claims were within its claims in the previous proceedings. Thus, although Chile did not appear at the time to claim part of the Atlantic basin of the Río de las Vueltas that was only because that basin was thought to be further south than it is now known to be.

A further issue which divided the Parties was the meaning of the term "local water-parting" as used in the 1902 Report and Award ("the boundary shall . . . *ascend the local water-parting* to Mount Fitzroy . . ."). Both countries agreed that the "continental water-parting", in the American context, means the line separating the waters which drain to the west towards the Pacific from those waters which go to the east towards the Atlantic. Argentina argued that the word "local" simply relates to an area situated between two previously determined points, such as BP 62 and Mount Fitzroy. According to that country, it is the notion of water-parting which is decisive and not its classification as "local" or "continental". Consequently, there was nothing to

prevent a "local" water-parting from coinciding with parts of the "continental" water-parting and the line of the frontier put forward by Argentina[2] ran in parts along the continental water-parting.

In its written pleadings, Chile argued that whilst the continental water-parting separated waters flowing into different oceans, a local water-parting was that which separated waters which ran into one ocean only. Thus, a water-parting could not, at the same time, be both "continental" and "local". On this basis, Chile criticized the line advanced by Argentina in the present Arbitration. Furthermore, Chile argued that no continuous "local water-parting" existed between BP 62 and Mount Fitzroy and that the term "local water-parting," as used in the 1902 Award, must bear a meaning different from its normal meaning, in that it referred to a line which cut surface waters. The line proposed by Chile[3] in its oral pleadings was described by it as a true local water-parting although it cut surface waters and coincided in one section with the continental water-parting, thus indicating that the terms "continental water-parting" and "local water-parting" were not mutually exclusive as Chile had earlier claimed.

JUDGMENT OF 21 OCTOBER 1994

Held (Judges Galindo Pohl and Benadava dissenting):—The course of the frontier between the Argentine Republic and the Republic of Chile between BP 62 and Mount Fitzroy was the local water-parting, identified in Paragraph 151 of the Judgment.

(1) The Tribunal was an autonomous judicial body. It was neither a successor of King Edward VII, nor dependent upon any other arbitral agency. Its task was to decide the boundary between BP 62 and Mount Fitzroy as it was determined in the Award of 1902. That Award had been recognized by the Parties as *res judicata* and was not the subject of proceedings by way of revision, appeal or nullity (p. 42).

(2) As was held in the 1966 *Argentina–Chile Frontier Case*,[4] the Award of 1902 was constituted by the decision *stricto sensu*, the Report of the Tribunal and the Map of the Arbitrator. Contrary to the claims of Chile, it did not include the demarcation. A decision on a frontier dispute and its demarcation were two distinct acts, each of which had its own legal force (pp. 42-3).

(3) A judgment, of which the legal validity was not questioned and which had the force of *res judicata*, must not be interpreted so as to lead to the result that the decision of the judge or arbitrator was found to have been given in violation of international law. The jurisdiction of international tribunals was limited by the powers which the parties granted to them and by the maximum claim of the parties in the course of the proceedings. Therefore a decision by such a tribunal must be interpreted to be within those limits, otherwise the decision would be *ultra vires* or vitiated on grounds of nullity for *excès de pouvoir* having been given contrary to the rule of *non ultra petita partium* (pp. 45-6).

[2] The line advanced by Argentina is set out on pp. 26-8 below.
[3] The line advanced by Chile is set out on p. 29 below.
[4] 38 *ILR* 10 at 89-90.

(4) Chile's maximum claim in the 1898-1902 Arbitration was the natural and effective continental water-parting, that is to say, the one determined by nature and existing in reality. To give the 1902 Award a meaning which granted Chile territory that lay outside this line would amount to ruling that the 1902 Award infringed international law by violating the rule *non ultra petita partium*.

(a) In its pleadings in the 1898-1902 Arbitration, Chile had claimed the line of the continental water-parting as the line of the frontier established by the 1881 Treaty and 1893 Protocol. Chile had established a hierarchy in the documents expressing its intention (the written text and the maps): it had declared that the natural and effective water-parting should prevail over its cartographic representations. At that time, Chile had argued that neither the inaccuracy of the maps, nor the lack of knowledge of a region, could serve as a pretext for not applying what, in its view, was the invariable criterion for demarcation: the continental water-parting (pp. 49-56).

(b) In line with the general tenor of Chile's argument, its maximum claim in 1898-1902 in the area of the present dispute was the natural and effective continental water-parting which separated the basin of the Río Gatica or de las Vueltas from the waters flowing into the Pacific. In those previous proceedings, Chile had claimed as the frontier a line running along the northern edge of the basin of the Río Gatica or de las Vueltas thus leaving the basin a tributary of the Atlantic on the Argentine side. Chile had intended that the frontier should separate the basin of Lake San Martín from that of the Río Gatica or de las Vueltas whatever its true extent might be (pp. 57-8).

(5) In the terminology of the 1902 Award, a local water-parting ran between two points, at least one of which was not on the continental water-parting.

(a) The notion of "water-parting" fulfilled an essential function in the 1902 Award and formed part of the *res judicata*. In international law the doctrine of *res judicata* applied not only to the operative part of a decision and the considerations necessarily underlying it, but also to the meaning of terms used in the propositions which shaped the award (pp. 60-2).

(b) There was nothing to indicate that the Arbitrator in 1902 intended to depart from the notion of "water-parting" as it was commonly used at the time, including in the submissions of the Parties. Both in English and Spanish, the adjective "local" signified something pertaining to a particular place or restricted to a particular area, as opposed to something of a general character. The instances in which the 1902 Report used the expression "local water-parting" presented certain common characteristics. All but one of those references related to sections where the starting point did not coincide with a continental water-parting (pp. 60-9).

(c) The rule of *effet util* required that an instrument must always be interpreted so as to give it some effect. This led to the conclusion that the Chilean argument, that a local water-parting separated waters flowing into the same ocean, could not be accepted, as BP 62 was situated in a Pacific basin and Mount Fitzroy was on the Atlantic side, thus indicating that, for at least part of its course, the water-parting joining those points separated waters draining into different oceans (p. 70).

(d) There was no evidence to suggest that the 1902 Award allowed local water-partings to cut rivers. The passages relied on by Chile did not support

that contention, which was contrary to the general notion of a water-parting which was accepted in its usual sense in the 1902 Award and thus had the force of *res judicata* (pp. 69-72).

(6) The local water-parting between BP 62 and Mount Fitzroy was a natural feature that existed in 1902 and continued to exist thereafter. Declaring what that frontier line was, in the light of subsequently acquired knowledge as to where the water-parting lay, was a faithful application, and not a revision, of the 1902 Award. The present Award was simply declaratory of the content and meaning of the 1902 Award and of the 1881 Treaty and 1893 Protocol. It did no more than state the line of the frontier which had always existed between the two Parties.

The line of the local water-parting between BP 62 and Mount Fitzroy, as identified by the Tribunal's Expert Geographer and defined in the present Award (para. 151), was in accord with the three instruments which together comprised the 1902 Award. It coincided with the decision, *stricto sensu*, of Edward VII and with the indications in the Report of the Tribunal and it was consistent with the Map of the Award. The part of the line on that Map representing the area that was still unexplored merely indicated the direction in which the frontier ran (in this case towards Mount Fitzroy) and could not be expected to follow the precise course of the water-parting, as this was not then known (pp. 74-7).

(7) Neither the official maps of the Parties nor their subsequent practice supported the Chilean contentions that it was entitled to a portion of the basin of the Río Gatica or de las Vueltas. Argentine maps had consistently shown the frontier in the disputed sector as running along the northern edge of that basin, thus placing it in Argentine territory. By contrast, the acts of Chile in the area had not displayed the consistency, unequivocal nature and effectiveness necessary to make them relevant in the present proceedings (pp. 77-9).

(8) The course of the frontier as determined by this Award was to be demarcated before 15 February 1995 by the Expert Geographer of the Tribunal with the assistance of the Mixed Boundary Commission. The Expert Geographer should indicate the places where boundary posts were to be erected and take the necessary measures for the demarcation (p. 80).

Dissenting Opinion of Judge Reynaldo Galindo Pohl

(1) Chile's present claims had been within the territorial jurisdiction of the Arbitrator in 1902 and thus did not fall outside the territorial jurisdiction of the present Tribunal. To include within the jurisdiction of the Arbitrator the area situated to the north and west of the continental water-parting, as it had been thought to exist in 1902, would not amount to a decision that the 1902 Award had been tainted by an *excès de pouvoir* or reached in violation of the *non ultra petita* principle. In addition, the conditions for the application of the *actos propios* principle (estoppel or preclusion) were not satisfied.

(a) In the negotiations leading up to the 1898-1902 Arbitration both Parties had presented their proposals in terms of a list of numbered points translated onto maps. The maps had been an essential part of the Parties' claims. The dispute was not between a concept or principle (the continental water-parting) advocated by Chile and an actual line advocated by Argentina. Both Parties

had argued over lines, which were nevertheless based on principles that provided the basis for their precise claims.

(b) It was Chile's final submission on its final map which determined the extent of its claim, as, once those final submissions had been presented, each Party lost its right to amend its line of claim. Thus, although the Chilean claims in particular unexplored sectors were indicated on Chilean maps with a pecked line, that did not mean that its claims were subject to correction in the light of subsequent geographical knowledge as to where the water-parting lay.

(c) Chilean statements that its claims were not dependent on the accuracy of maps simply meant that their accuracy was not a condition *sine qua non* of the Arbitrator being able to adopt a line based on the continental water-parting. Those statements did not demonstrate the irrelevance of the maps.

(d) The Arbitrator's map was decisive in establishing the scope of his territorial jurisdiction because he drew his pecked line in the area which subsequently became known as the upper part of the basin of the Río de las Vueltas in the belief that it was a Pacific basin.

(e) The subsequent conduct of the Parties showed that, even when it was discovered that the Río de las Vueltas was an Atlantic basin, the Parties continued to draw lines on their maps which reproduced either the line of the Arbitrator or of the demarcation. There was thus a consensus that the area fell within the Arbitrator's jurisdiction (pp. 80-134).

(2) The Argentine line should be rejected, on the grounds that:

(a) it combined the continental water-parting with local water-partings. Such an interpretation of the term "local water-parting" did not accord with the language of the 1902 Report or its *travaux préparatoires*. The final paragraph of point 22 of that Report used the terms "local water-parting" and "continental water-parting" in the same clause, providing that the frontier was to ascend the local water-parting towards Mount Fitzroy, that is to say in the direction of Mount Fitzroy, and from there it was to go on to the continental water-parting. If the Tribunal had wanted the frontier in this sector to follow the line of a water-parting without any qualification, or had been indifferent as to whether it was dealing with a continental or local water-parting or a combination of the two, it would simply have used the term "water-parting";

(b) that line was not compatible with the line on the Arbitrator's map which, though pecked or broken in the disputed sector, could not be disregarded. That map carried the authority conferred on it by the Award and the line drawn on it must at the very least be taken to indicate the true direction of the line of the Award. The Argentine line moved in directions quite different from the general direction of the line on the map (pp. 134-46).

(3) The Chilean line should be rejected for the following reasons:

(a) it wrongly placed emphasis in its starting point on dividing ranges, while the 1902 Award and Report required that the line follow the local water-parting;

(b) it combined the continental water-parting with local water-partings;

(c) it crossed rivers contrary to the notion of a water-parting which was to separate waters and thus could not be cut by waters; and

(d) it made a relatively substantial incursion into territory which lay outside the disputed area in 1898-1902 (pp. 146-54).

(4) The Demarcator's map could not be substituted for the Arbitrator's map, from which it had diverged, without authority, in certain respects. It was not a true interpretation of the Award. The subsequent use of the Demarcator's map by both Parties could not cure its original defects. However, the line on that map, and its subsequent use, confirmed that the territory through which the line ran, linking BP 62 to Mount Fitzroy, was subject to the jurisdiction of the Arbitrator (pp. 154-60).

(5) Since none of the three instruments constituting the Award of 1902, in isolation, could resolve the problem of the line of the frontier in the disputed sector, the three components (the Award, *stricto sensu*, the Tribunal's Report and the Arbitrator's map) must be considered as a whole. Even if every interpretation proposed should encounter an insuperable obstacle, the Tribunal still had power to adopt its own decision, adapted to the factual and legal background of the case and in accordance with the framework of the Arbitration of 1902 (pp. 163-72).

(6) The pecked line, representing then unexplored areas, on the Arbitrator's map was not to be given a significance different from that of the continuous lines. Thus, the line of the frontier should pass through Cerro Gorra Blanca as indicated on the map and move in the general direction of the line on the map. According to the map, Mount Fitzroy was not, and could not be, the terminal point of the local water-parting that started from the southern shore of Lake San Martín. It was the terminal point of another local water-parting, which originated from a peak on the continental water-parting of that period. In order to align the Report and the map of 1902, the words in the report "shall ascend the local water-parting to Mount Fitzroy" must be interpreted to mean "in the direction of Mount Fitzroy" and not "as far as Mount Fitzroy" thus eliminating the requirement of a single local water-parting. Furthermore, even though there was now known to exist a water-parting composed of continental and local sections, that line did not accord with the language of the Report or with the knowledge of the Arbitrator at the time, since he had thought the continental water-parting ran some considerable distance away (pp. 167-74).

(7) There were three possible lines which met the criteria thus identified. Since there was no single water-parting within the area in question, the line chosen would have to follow a succession of local water-partings. It would also have to include a section of the continental water-parting, as there was no other way of giving effect to the 1902 Award including the Report and the Map. The third identified line[5] was that which most closely approximated to that on the Arbitrator's map and should be given preference. The application of any of the three lines would result in the division of the Laguna del Desierto and, though this option had not been considered by either of the Parties or the present Tribunal, it was consistent with a representation of the Arbitrator's pecked line on today's maps (pp. 174-5).

[5] This line passes through Cerro Vespigniani, crosses the Río Cañadon de los Toros and the Río Milodón, passes through Cerro Cagliero and then Cerro Gorra Blanca and terminates on Mount Fitzroy. This line reaches Cerro Gorra Blanca via four successive water-partings.

Dissenting Opinion of Judge Santiago Benadava

(1) The maximum claim of Chile in the 1898-1902 Arbitration had included a substantial part of the basin of the Río Gatica or de las Vueltas. That conclusion followed from the fact that the maximum claims of the Parties in that arbitration had been constituted by lines shown on maps provided to the Tribunal, not merely by the principles on which those lines were based. That had been the understanding of the 1902 Tribunal and the basis on which it had reached its compromise solution. It was clear from the final map of Chile in that Arbitration that the line representing its maximum claim left the area currently in dispute within that claim. Similarly, it was clear from the line on the Arbitrator's map that the area which it crossed lay within the area of Chilean claim and the territorial jurisdiction of the Arbitrator. The Arbitrator had believed that the continental water-parting had been further south than it was now known to be, and had thought that territory to the north of that water-parting was part of the Pacific basin of Lake San Martín-O'Higgins and not of the Atlantic basin of the Río de las Vueltas. It was on this understanding that he had divided up the basin, thus awarding a substantial part of the basin of the Río de las Vueltas to Chile (pp. 176-87).

(2) The frontier between BP 62 and Mount Fitzroy, as laid down by the Arbitrator, was the local water-parting thought to separate the waters in what was believed to be the Pacific basin Lake San Martín-O'Higgins and not a "mixed" water-parting. This interpretation was in conformity with the use of the term "local water-parting" in the Report, where in all cases it separated waters flowing into the same ocean and between a point on the shore of a river or a lake and a peak (or vice versa), or between two peaks. Although it was established that there was no continuous local water-parting in the area, the Award of the present Tribunal was wrong to hold that the local water-parting between BP 62 and Mount Fitzroy, referred to in the 1902 Report, was a water-parting which included the continental water-parting (pp. 187-91).

(3) The Argentine line did not correspond to the course of the frontier since it was composed of a section of the continental water-parting and stretches of local water-parting. Neither did that line follow the direction of the Arbitrator's map. Furthermore, while Chile had carried out administrative acts to the south and east of the Argentine line, without any form of protest from Argentina, Argentina had not carried out any administrative activity in that area prior to 1965 (pp. 191-2).

(4) The Chilean line did not correspond to the course of the frontier as it was also composed of a section of the continental water-parting and stretches of local water-parting. In addition, the Chilean line penetrated to a significant extent into that part of the basin of the Río de las Vueltas which was recognized as such during the 1898-1902 Arbitration (pp. 192-3).

(5) Although it was impossible to apply the criterion prescribed by the 1902 Award of a continuous local water-parting between BP 62 and Mount Fitzroy, the present Tribunal ought to have made an effort to define a line which reflected the line of the 1902 Award as faithfully as possible. The line which would best interpret the intention of the Arbitrator would be one which, running predominantly along local water-partings, followed the general course of the line drawn on the Arbitrator's map and left to Chile the territory situated to the north and west of that line, including the Laguna del Desierto (pp. 193-4).