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The Vatican Mediation of the Beagle Channel Dispute: Crisis Intervention and Forum Building

Mark Laudy

Overview

IN 1978, ARGENTINA AND CHILE nearly went to war over a cluster of small islands at the southern tip of South America. The mediation that resolved the dispute (before blood was shed) was remarkable for several reasons. The mediator was the Vatican, whose supreme moral authority and influence over the large Catholic populations in each country made it a mediating body that the parties could not ignore. The Vatican played two distinct roles within the mediation. First, Cardinal Antonio Samoré, the Pope's personal envoy, acted to defuse the situation by bringing the parties to an agreement that stopped the immediate military crisis. In the next phase, the Vatican crafted a six-year process that allowed the parties to grapple with increasingly difficult issues. The process was remarkable because it was flexible enough to accommodate the changing political environments in both countries and because the mediator used a range of tools to great advantage. This process served to protect a fragile peace between the countries and ultimately allowed them to create an agreement that has lasted until this day. The case is also significant in the background role that regional and legal institutions, like the OAS (Organization of American States) and the International Court of Justice, played in the process.

Timeline

- 1881** Argentina and Chile sign the Boundary Treaty of 1881.
- 1967** Chile unilaterally invokes a 1902 treaty providing for resolution of disputes through arbitration by the British crown.
- 1971** **July 22:** Argentina and Chile sign an agreement formally submitting to binding arbitration under auspices of British Crown.
- 1977** **May 2:** Arbitral decision is announced, awarding PNL (Picton, Nueva, and Lennox) island group to Chile and providing for execution of the award within nine months. **May–December:** Direct negotiations regarding implementation of the arbitral award conducted between Chile and Argentina on an ad hoc basis. Negotiations prove unsuccessful.
- 1978** **Jan. 25:** Argentina repudiates the British arbitral award. **Feb. 20:** Argentine and Chilean presidents execute the Act of Puerto Montt, establishing a formal structure for further direct negotiations. **May–October:** Unsuccessful negotiations held in accordance with the Act of Puerto Montt. Military mobilization accelerated in Chile and Argentina. **November:** Argentina accepts Chilean proposal for mediation. **Dec. 12:** Argentine and Chilean foreign ministers meet in Buenos Aires and are unable to select a mediator. Armed forces at full state of alert. **Dec. 23:** Pope John Paul II informs Chile and Argentina that he is sending a personal envoy to meet with their respective governments. **Dec. 26–Jan. 5:** Cardinal Antonio Samoré arrives in South America and conducts shuttle diplomacy between Buenos Aires and Santiago.
- 1979** **Jan. 8:** Chilean and Argentine foreign ministers sign the Act of Montevideo, formally requesting mediation by the Vatican and renouncing the use of force. **May 4:** Mediation process officially begins at the Vatican. **May–Summer:** Mediation team gathers background information.
- 1980** **Fall 1979–May:** Preliminary negotiations on secondary issues, e.g., navigation and fishing rights. **May:** Negotiations begin on territorial sovereignty, maritime boundaries, and straight baselines. **Dec. 12:** Papal proposal for resolution of conflict presented to parties.
- 1981** **Jan. 8:** Chile accepts papal proposal. **Mar. 17:** Argentina delivers note to Vatican expressing serious objections to papal proposal. **April:** Chilean officials arrested in Argentina. Chile reciprocates. Argentina closes border with Chile. **April–June:** “Mini-mediation” focused on arrests and border closing.
- 1982** **Jan. 21:** Argentina announces termination of 1972 General Treaty on the Judicial Settlement of Disputes, creating *vacuum juris*. **January–September:** “Mini-mediation” focused on resolving *vacuum juris*. **April–June:** Falkland Islands War.
- 1983** **Feb. 3:** Cardinal Samoré dies. **July:** Santiago Benadava and Julio Barberi hold discussions and prepare “nonpaper.” **Dec. 10:** President Raúl Alfonsín takes office.
- 1984** **Jan. 23:** Chile and Argentina sign Declaration of Peace and Friendship. **Apr. 14:** Vatican Secretary of State Cardinal Agostino Casaroli meets sep-

rately with each delegation, requesting proposals for final settlement. **June 11:** Casaroli delivers final proposal to the parties. Vatican proposal accepted by both Chile and Argentina. **Oct. 18:** Casaroli delivers final text of treaty to the parties. **Nov. 25:** Argentine voters approve treaty in nonbinding national referendum. **Nov. 29:** Chile and Argentine foreign ministers execute Treaty of Peace and Friendship at the Vatican.

Background

The Beagle Channel conflict had its origins in a long-standing disagreement over the contours of the Argentine–Chilean border. The core issue in this dispute was sovereignty over three barren islands to the south of Tierra del Fuego and the scope of the maritime jurisdiction associated with those islands. In the course of attempting to resolve this initial problem, however, the parties confronted several collateral issues of great importance, including navigation rights, sovereignty over other islands in the Fuegian Archipelago, delimitation of the Straits of Magellan, and maritime boundaries south to Cape Horn and beyond.

The exact demarcation of the southern border between Chile and Argentina was a source of contention between the two countries from their earliest days as independent nations in the second decade of the nineteenth century.¹ In 1881, Chile and Argentina attempted to definitively resolve their territorial disputes through a comprehensive agreement known as the Boundary Treaty of 1881.² This agreement provided that the border between the two countries would follow the Andes as far south as the fifty-second parallel and would be defined by “the highest summits . . . which divide the waters.”³ At the fifty-second parallel, the border was to proceed along a generally eastward course to Point Dungeness, on the northern shore of the Straits of Magellan, just where the Straits empty into the Atlantic Ocean. To the south of the Straits, the 1881 Treaty stipulated that the border would run to the south from Cape Espiritu Santo, on the northern shore of Tierra del Fuego, “until it touches the Beagle Channel.”⁴ Tierra del Fuego was thus to be divided into an eastern portion belonging to Argentina and a western portion belonging to Chile. Finally, the treaty included a provision for allocation of the islands to the south of Tierra del Fuego: “As to the islands, Argentina will possess Staten Island, the small islands immediately surrounding it, and any other islands that may exist in the Atlantic to the east of Tierra del Fuego and the eastern coast of Patagonia; and Chile will possess all the islands to the south of the Beagle Channel as far as Cape Horn, and any other islands that may exist to the west of Tierra del Fuego.”⁵

This language soon led to various difficulties of application. With respect to the Beagle Channel and the islands south to Cape Horn, the key problem was the treaty’s failure to specify the eastern terminus of the Channel. Since the Boundary Treaty granted Chile possession of all the islands south of the Beagle Channel, the Channel effectively defined the longitudinal scope of Chilean sovereignty to the south of Tierra del Fuego. It was therefore impossible to definitively separate Chilean and Argentine claims in this region without determining

where the Channel ends. The Chilean view was that the Beagle Channel extended well to the east of Navarino Island, and beyond the three smaller islands—Picton, Nueva, and Lennox—which were the focus of the dispute.⁶ Under this interpretation, all three islands are south of the Channel, and thus Chilean. Argentina, on the other hand, argued that the Beagle Channel veered sharply to the south along the east side of Navarino Island, making everything to the east of that island Atlantic, and thus, under the terms of the Boundary Treaty, Argentine.⁷

Compounding this dispute was a crucial disagreement concerning the scope of maritime jurisdiction associated with the islands. When Chile and Argentina signed the Boundary Treaty in 1881, international custom restricted territorial waters to a three-mile offshore zone.⁸ During the twentieth century, however, changes in the law of the sea greatly expanded that zone; modern maritime custom, as codified in the 1982 UN Law of the Sea Convention, provides for territorial waters extending twelve miles offshore and an exclusive economic zone (EEZ) up to 200 miles offshore.⁹ While the 1982 Law of the Sea Convention was not in force during the mediation of this dispute, its principles had already gained virtually universal recognition in the international community.¹⁰ Thus, possession of the islands had the potential to carry with it control of an extensive area of the South Atlantic.

Complicating the situation still further was a Chilean straight baselines decree issued in 1977, establishing a complex system of baselines that would enclose the vast archipelago, extending from the eastern mouth of the Beagle Channel southwest to Cape Horn Island and northwest from the Cape along the Pacific coast of Chile.¹¹ Argentina had objected to the portion of this system enclosing the islands from the Beagle Channel to Cape Horn, but the Chilean decree remained in effect when the Vatican intervened at the end of 1978. This decree had two important implications for the dispute. First, it extended the platform from which Chile might attempt to project its twelve-mile territorial sea and 200-mile EEZ along an unbroken line from Picton, Nueva, and Lennox Islands (the PNL group) as far south as Cape Horn, thus greatly increasing its potential maritime jurisdiction to the east and southeast. Second, it effectively converted all waters enclosed by the baselines into Chilean internal waters, where navigational rights for Argentina (as well as third-party states) would exist only through explicit agreements with Chile.¹² This made navigational rights a key element of the dispute. Argentina had long regarded the waters surrounding the southern archipelagos as critical to its commercial and military navigation. The Argentine port city of Ushuaia, located on the north shore of the Beagle Channel, was well established as the hub of Argentina's southern fishing fleet, as well as the base from which all Argentine expeditions to Antarctica proceeded. Argentina thus considered its unfettered use of the waters surrounding the Fuegian Archipelago to be a matter of critical importance.¹³

A further point of contention, though one that appears to have been of secondary importance during the mediation, centered on the boundary between the two nations in the eastern portion of the Beagle Channel itself. As noted

above, the 1881 Boundary Treaty indicated that the line dividing Tierra del Fuego was to run due south “until it touches Beagle Channel.” This language enabled Chile to argue that the border should be drawn along the northern shore of the Beagle, thus making the entire Channel Chilean. This was, in effect, the maximalist Chilean position, advanced sporadically in the years prior to the papal mediation. The alternate Chilean view was that the boundary ran through the middle of the Channel, with the northern half Argentine and the southern half Chilean. An arbitral award issued by the British government in 1977 (discussed below) had fixed the boundary more or less in the center of the Channel, in accordance with this latter interpretation, and this boundary was not disturbed as a result of the mediation. Nevertheless, the issue remained a potential source of conflict with the potential to color other aspects of the negotiations.

As a final matter, the mediation eventually addressed certain long-standing disputes between Chile and Argentina regarding the eastern portion of the Straits of Magellan. Although this issue was initially excluded from the papal mediation, the topic was reintroduced toward the end of the process, when substantial progress had been made toward resolution of territorial disputes in the Beagle Channel area.¹⁴ The issues regarding the Straits closely paralleled those involved in the dispute over the Beagle. Chile and Argentina had never agreed on a boundary marking the eastern mouth of the Straits of Magellan. The Chilean view was that the line marking the eastern end of the Straits runs from Point Dungeness to Cape Espiritu Santo, both of which were explicitly assigned to Chile in the 1881 Boundary Treaty. Under this view, Chile enjoyed sole control of the Straits themselves and was entitled to project an exclusive economic zone 200 miles eastward into the Atlantic. The Argentine position, on the other hand, was that the eastern boundary of the Straits runs along a line originating at Cape Virgins, an Argentine possession on the Atlantic, some ten kilometers east of Point Dungeness. Alternate Argentine arguments placed the southern mouth of the Straits either at Cape Espiritu Santo (in accordance with the Chilean view) or at a point to the southeast controlled by Argentina. These alternate Argentine arguments would award Argentina either complete or shared control of the eastern mouth of the Straits. In either case, Chile would be prevented from projecting an EEZ eastward into the Atlantic.

Interests of the Parties

As the foregoing discussion should make clear, Argentine and Chilean interests in the dispute went well beyond mere possession of the unimpressive PNL island group. The territory at issue was actually quite extensive; it included not only the PNL group, but also an extensive chain of islands ranging south to Cape Horn, along with the potentially extensive maritime areas associated with that territory. If one adds to that the ocean frontage at the eastern mouth of the Straits of Magellan and the vast EEZ that such frontage could potentially generate, the scope of the dispute expands to cover an enormous area of the South Atlantic.

Furthermore, both sides regarded the area in question as having substantial

economic and strategic importance. The military authorities of both countries had long regarded the southern zone as crucial to their long-term strategic objectives because of its three interoceanic passages—the Straits of Magellan, the Beagle Channel, and the Drake Passage.¹⁵ Argentina and Chile had always viewed one another as aggressive and potentially hostile neighbors, and each considered control of the southern zone necessary to curtail the perceived expansionist tendencies of the other.¹⁶ This was particularly significant in light of the fact that Argentina and Chile were both controlled by military governments at the time of the Vatican intervention. The economic stakes were also high. For example, the area contained significant, though largely undeveloped, fisheries.¹⁷ Additionally, by the late 1970s Chile and Argentina were convinced that large reserves of fossil fuels were located there. Tierra del Fuego had proven to be a rich source of oil and natural gas, and both governments believed that additional deposits existed in the nearby waters of the eastern Beagle Channel.¹⁸

The Beagle Channel dispute also had implications for the two countries' respective territorial claims in Antarctica. Chile and Argentina have asserted overlapping claims to sizable areas of Antarctica, and both countries take their claims very seriously. Not only do they view Antarctica as having the potential for future resource exploitation, but they also see it as a linchpin of their broad strategic goals for the southern zone. Furthermore, the two countries have always linked their Antarctic claims to their continental possessions and their claims to the southern passages. Since possession of the disputed territories and maritime zones could drastically realign the two countries' Antarctic frontage, the conflict stood to alter significantly their respective claims to that continent.¹⁹

The Chilean and Argentine governments shared another common interest in the dispute over the Beagle Channel: the preservation of political capital within their respective governments. By the time of the papal intervention in late 1978, the conflict over the Beagle Channel had become the primary foreign policy imperative of both governments. Nationalist elements in each country made possession of the islands a point of sovereign pride, and the prominence of the issue rendered the dispute highly significant to the internal politics of both Chile and Argentina. In Chile, where President Augusto Pinochet enjoyed absolute authority and was largely unaccountable to other elements within the military, this was a less significant issue. Nonetheless, the conflict tested the confidence and stability of the Pinochet government at a time when it was struggling with other serious pressures. The prolonged economic recession that plagued Chile in the late 1970s and early 1980s, coupled with Pinochet's growing isolation in the international community, made the Beagle Channel dispute a critical testing point for the Chilean dictatorship. Indeed, the dispute was viewed as having such profound implications for the internal politics of Chile that the Pinochet government took the highly unusual step of maintaining a dialogue on the subject with the opposition Christian Democratic Party.²⁰

In Argentina, the ramifications of the dispute for internal politics were even greater. The Beagle Channel conflict became a rallying point for extreme nationalist elements within the military junta that controlled the country until

1983. Among many junta members, a conciliatory approach to Chile came to be regarded as a sign of weakness, giving the dispute far-reaching consequences at the highest levels of Argentine politics. This ultimately produced an environment in which relatively moderate decision makers assumed a more confrontational posture due to the fear of removal.²¹

Prior Mediation Attempts

Although Chile and Argentina made a number of unsuccessful attempts to resolve the Beagle Channel problem over the nearly one hundred years that the dispute lingered between them, the most significant antecedents to the papal mediation were the British arbitration of 1971–77 and the period of direct negotiations that began with the issuance of the arbitral award and ended with the Vatican intervention. In one sense, it is somewhat artificial to consider these processes as distinct attempts to resolve the dispute; they are perhaps more accurately characterized as discrete phases of a single ongoing process. Nonetheless, each phase entailed readily distinguishable methods and produced markedly different results.

Between 1915 and 1964, there were no less than five unsuccessful attempts to submit the Beagle Channel controversy to arbitration.²² Finally, in 1967, Chile unilaterally availed itself of the arbitration mechanism provided for under a 1902 treaty and appealed to the British government to intervene as arbitrator. A period of negotiations between the two disputants ensued, and on July 22, 1971, Chile and Argentina signed an agreement formally submitting the matter to arbitration by the British Crown.²³

The question submitted for resolution under the 1971 agreement was narrowly focused on the eastern portion of the Beagle Channel, including the islands Picton, Nueva, and Lennox (the PNL group), and their surrounding waters. The court that was to decide the matter was composed of five judges from the International Court of Justice at The Hague. The arbitral court's final award would be submitted to the British Crown, which was authorized to accept or reject the award, but not to modify it. The 1971 agreement provided that if an award was made and approved by the British Crown, it would be binding on both parties. In February 1977, the court submitted its decision to the British government, which approved the award two months later. The arbitral decision, officially announced on May 2, 1977, established a boundary running roughly through the center of the Beagle Channel and extending to the east of the PNL island group. Thus, all three of the disputed islands were awarded to Chile.²⁴ The arbitral award included a provision requiring the parties to put it into effect within nine months.

Movement toward direct negotiations began almost immediately after the issuance of the arbitral award. On May 5, 1977, Argentina sent Admiral Julio A. Torti to Santiago with a proposal for direct discussions regarding the implications of the arbitral award, particularly maritime boundaries. This overture eventually led to two rounds of discussions, held from July 5 to 8 and October

17 to 20, 1977, with Chile represented by the legal scholar and former Foreign Minister Julio Philippi and Argentina represented by General Osiris Villegas. These talks bogged down as it became clear that Argentina was fundamentally committed to the goal of obtaining islands in the southern archipelago. According to Julio Philippi, "The reason why it was not possible to move forward was the Argentine delegation's groundless attempts to discuss Chilean sovereignty over the islands to the south of the Beagle Channel, both those covered in the British arbitration and those further to the south."²⁵ Argentina appears to have wasted no time in converting the post-arbitral dialogue—originally intended to focus on implementation of the award and the resolution of collateral issues such as maritime delimitation—into a forum for direct negotiation on the substantive issues underlying the arbitration itself.

Argentina made its next move on December 5, 1977, when Admiral Torti returned to Santiago with a proposal from President Jorge Rafael Videla of Argentina. Although the Argentine proposal apparently conceded the PNL group to Chile, it called for joint ownership of three other islands to the south that the Pinochet government considered unequivocally Chilean: Evout, Barnevelt, and Cape Horn Island. The Torti proposal also provided for a maritime boundary that would extend south for 200 miles along a meridian passing through Cape Horn.²⁶ Chile regarded this proposal as a thinly disguised attempt to modify the 1881 Boundary Treaty, according to which all islands to the south of the Beagle were Chilean. It therefore rejected the proposal and suggested instead that the foreign ministers of the two countries meet directly to discuss the issue of maritime boundaries. As a result, Argentine Foreign Minister Oscar Montes and his Chilean counterpart, Patricio Carvajal, met on two occasions in December 1977. These discussions proved equally fruitless.²⁷

By January of 1978, tensions were building to dangerous levels. On January 10, Chile invited Argentina to submit the matter to the International Court of Justice. But the Argentines, having been defeated in the British arbitration, had little appetite for further juridical proceedings. With armed confrontation beginning to seem like a real possibility, the Argentine and Chilean presidents met in Mendoza on January 19. Although no resolution was achieved, the two leaders agreed to meet again the following month in a final attempt to reach a settlement through direct negotiation, and tensions momentarily eased. The following week, however, as the nine-month period that the arbitral court had provided for execution of its award was drawing to a close, Argentina formally declared the arbitral award void. This development immediately elevated tensions to their most critical level yet. One key Chilean official has asserted that by the time of the Puerto Montt meetings the following month, the possibility of war was every bit as great as it was during December of 1978.²⁸ Chile denounced Argentina's repudiation of the award and reasserted its suggestion that the dispute be submitted to the International Court of Justice. However, plans for the next presidential meeting moved forward.

On February 20, 1978, Presidents Videla and Pinochet met in Puerto Montt, Chile, where they signed an agreement known as the Act of Puerto Montt. This

agreement established a framework for the continuation of direct negotiations regarding the conflict in the southern zone. It did so through the creation of two joint commissions. The first commission was to spend up to forty-five days developing proposals for measures that would improve relations and foster the atmosphere of mutual trust deemed necessary for a resolution of the dispute. The second commission was to address a variety of carefully specified substantive matters, and was to complete its work within six months following approval of the proposals developed by the first commission. The primary task of the second commission was, of course, to establish land boundaries and provisions for maritime jurisdiction in the southern zone. In addition, the commission was to address matters of economic integration, the problem of straight baselines, and issues relating to Antarctica and the Straits of Magellan.²⁹

By the beginning of May 1978, the first commission had completed its work. The second commission, headed by legal scholar Francisco Orrego of Chile and General Ricardo Echeverry Boneo of Argentina, then began six months of intense negotiations. Although the parties made some limited progress on questions of economic integration, the core issues proved totally intractable.³⁰ As the negotiations faltered, military operations accelerated on both sides of the Andes. And in Argentina, military leaders began to seriously consider the idea of occupying the islands.³¹ When the second commission's deadline passed at the end of October with no hint of an agreement in sight, both countries began full-scale military mobilizations.

Thus, by the beginning of November 1978, Chile and Argentina no longer had any mechanism for working toward a peaceful settlement, and the situation began to destabilize rapidly. Shortly after the second commission's negotiations came to an end, Chile once again proposed that the dispute be submitted to the International Court of Justice. The unofficial response from Buenos Aires was that Argentina would consider that course of action to be *casus belli*. It was at this point, with direct talks dead and a judicial settlement unacceptable to Argentina, that Chile suggested mediation. Argentina accepted the proposal and the two foreign ministers agreed to meet in Buenos Aires on December 12 for the purpose of selecting a mediator.³²

As agreed, Chilean Foreign Minister Hernan Cubillos met with his Argentine counterpart, Carlos Pastor, in Buenos Aires on December 12, 1978. Although the two ministers agreed within minutes that the Pope should mediate the dispute, their understanding proved ephemeral. Later that day, as the Chilean delegation was preparing the documents for signature, Pastor called Cubillos to tell him that President Videla, who had approved their choice of mediator, had been stripped of his authority by the junta. Despite hours of frantic diplomatic maneuvering and an uninterrupted meeting of the junta, no agreement could be reached.³³

The failure of the December 12 meeting convinced many decision makers in both Chile and Argentina that war was both inevitable and imminent. Indeed, it appears that Argentina did finalize its plans for an invasion of the islands during the week following the failure of the Buenos Aires meeting. According to

one report, the invasion was firmly set for December 22, but was delayed twenty-four hours due to unfavorable weather. Then on the morning of December 23, Pope John Paul II contacted both governments directly to inform them that he was sending a personal envoy to Buenos Aires and Santiago on a mission of good offices.

Key Interventions and Major Actors

Role of Standing Bodies

Although international organizations and standing bodies of international law were not explicitly invoked during the mediation phase of this dispute, they played a significant role in the events leading up to the papal intervention and remained a part of the backdrop to the mediation itself. In effect, it appears that the parties bargained in the shadow of these institutions, with the implicit threat of recourse to international organizations such as the OAS and the International Court of Justice (ICJ) serving as a Chilean counterpoint to the implicit threat of force that underlay much of Argentina's work at the negotiating table.

Although the OAS did not assume a significant role at any point during the mediation, Chile did invoke this organization as a potential leverage point in the crisis that developed following the failure of direct negotiations in late 1978. In December of that year, when the parties had not yet agreed to accept papal mediation, Chile announced an intention to initiate accusatory proceedings before the OAS, charging Argentina with actions threatening regional peace.³⁴ Later that month, while the two countries remained deadlocked and war appeared likely, the United States asked the OAS to intervene.³⁵ The question of OAS intervention became largely moot, however, with the arrival of envoy Samoré on December 26. Although the possibility of recourse to the OAS continued to exist, at least in theory, as an alternative to mediation, none of the negotiators interviewed for this chapter identified that possibility as a factor in shaping the mediation process, or indicated that it was seriously considered at any point.

More significant than the OAS as a potential alternative to the mediation process was the possibility of formalized legal proceedings under the ICJ. Indeed, the ICJ played an indirect role in the Beagle Channel dispute as early as 1971, when the British arbitration began; as noted above, the five judges who sat on the arbitral court were selected from the ICJ, in accordance with the 1971 arbitration agreement. The two countries solidified the role of the ICJ in the following year, when they adopted the General Treaty on the Judicial Settlement of Disputes, an agreement requiring that any conflicts not resolved through direct negotiations be submitted to the ICJ.³⁶ The 1972 General Treaty had a term of ten years, subject to renewal by the parties. This aspect of the agreement became an important point of negotiations during the mediation phase, when Argentina announced that it would allow the treaty to lapse in 1982. Even before this development, however, the ICJ loomed large as a backdrop to the mediation process. As discussed above, Chile repeatedly invoked the 1972 General Treaty

and called for review by the ICJ in the months following issuance of the British arbitral award in May 1977. Argentina consistently rejected that suggestion and ultimately made it clear that if Chile were to unilaterally resort to the ICJ, such action would be regarded as *casus belli*. Key participants from both sides confirmed that this remained the Argentine position throughout most of the dispute.³⁷

Choice of Parties

The character of the Beagle Channel dispute made the choice of parties somewhat simpler than in many mediation contexts: Chile and Argentina obviously had to be included, and there were no third-party states with interests sufficient to warrant a place at the negotiating table. To be sure, tensions in the far south were a matter of great concern to neighboring governments; indeed, there was widespread speculation that if war broke out between Chile and Argentina, Peru and Bolivia might seize the opportunity to attack Chile in an attempt to regain territory lost during the War of the Pacific in the nineteenth century.³⁸ In that event, some strategic analysts thought it possible that Brazil would enter the fray on Chile's side in order to block an Argentine bid for regional hegemony.³⁹ Such hypotheses were far too tenuous, however, to justify the inclusion of these or other third parties. This was unmistakably a bilateral dispute and was treated as such from the beginning.

The choice of mediator was a more difficult and complex process, because the decision as to *who* should mediate was interwoven with the decision as to *whether* to mediate. The parties considered a number of alternatives following the failure of negotiations under the Act of Puerto Montt in the fall of 1978, including further direct talks and recourse to the ICJ at The Hague. Chile, having prevailed in the British arbitration, sought to capitalize on its legal position through some kind of formalized, juridical method of dispute resolution.⁴⁰ Not surprisingly, Argentina preferred a political approach, reflecting its greater military strength and its dissatisfaction with the arbitral award.⁴¹ Viewed from this perspective, mediation represented an intermediate process, one that would incorporate some of the objectivity of a legal proceeding and yet retain the flexibility that Argentina required.

The two countries appeared to reach an agreement in principle to submit the matter to mediation in early December 1978. On December 12, their foreign ministers met in Buenos Aires to choose a mediator. Chile and Argentina had formulated overlapping, but still distinct, sets of criteria for a potential mediator. Chile's primary concern was that the mediator have sufficient power to prevent Argentina from ignoring its proposals or initiating hostilities. According to Hernan Cubillos, Chilean Foreign Minister in 1978, "It had to be a country powerful enough so that the suggestions it would make as a mediator had power behind them . . . And when we talk of power, I'm talking about influence, moral power, political power, economic power." Additionally, says Cubillos, Chile wanted a country "where legal tradition and legality were important and understood more or less the way we understand it. And as we had a very strong legal case and an award in our favor, we felt that we had to have a country that was willing

to understand the importance of that settlement and one that respected international law.”⁴² Based on these criteria, Chile drew up a list of five countries that it would consider acceptable mediators. The Vatican was at the top of the list.

Argentina's priorities were slightly different. Its primary concern was that the mediator be neutral—which for the Argentines meant a willingness to consider the matter on a clean slate, without being constrained by the results of the British arbitral process.⁴³ Argentina also considered it important that the mediator restrict its deliberations to the specific issues submitted for review by the two parties to the dispute. With these characteristics in mind, Argentina considered such diverse potential mediators as the king of Spain, the United Nations, the queen of England, UN Secretary-General Kurt Waldheim, Henry Kissinger, and the Pope. According to some reports published in the Argentine press, however, the Junta ultimately restricted its potential candidates to friendly governments from outside Latin America, not individuals or neighboring states.⁴⁴

The Vatican was an obvious choice given the parties' priorities. Its leadership of the Catholic Church gave it a moral authority that neither of these overwhelmingly Catholic nations could disregard. At the same time, the Vatican was remote from Latin American politics and more clearly neutral than any alternative state mediator, having no direct or even indirect interests in the dispute whatsoever. But was it the only suitable intermediary? Cubillos seems to believe that any number of countries would have been sufficiently powerful to satisfy Chile's requirements, including Switzerland by virtue of its international stature as a neutral meeting place.⁴⁵ Professor Francisco Orrego, a prominent Chilean international legal scholar and a member of the Chilean negotiating team, is of a different view. He feels that no third-party nation would have commanded sufficient authority to adequately constrain Argentina.⁴⁶ Dante Caputo, foreign minister of Argentina during the final phase of the mediation, agrees.⁴⁷

One characteristic that appears to have made the Vatican a particularly qualified intermediary is its unique institutional patience. Several of the negotiators interviewed for this paper identified the Vatican's patience as a key factor in producing a peaceful settlement.⁴⁸ Samoré himself advised the parties that a successful outcome would require “a bottle of wisdom, a barrel of prudence, and an ocean of patience.”⁴⁹ As discussed below, the parties remained mired in a stalemate and made little progress toward a settlement throughout much of the mediation period. Indeed, it appears unlikely that anything could have been done to achieve a settlement prior to the reinstatement of democratic government in Argentina at the end of 1983. Under these circumstances, much of the value of the mediation lay in maintaining a forum for peaceful discussions, one that stabilized the formerly volatile environment in the Southern Cone and prevented recourse to the use of force. In effect, the mediation served as a kind of holding mechanism that maintained the status quo until the political developments necessary for a permanent accord had been achieved. The Pope, having a long-term perspective on his mission and being largely unaccountable to any interested constituencies, was almost certainly better suited to such a role than other heads of state. Other governmental mediators, subject to electoral or other political

pressures, might be expected to push more aggressively for a quick solution, in the interests of short-term political expediency. In a delicate political environment, such an approach might well have jeopardized the mediation process and returned the parties to the brink of war.

Ripeness of the Conflict

A number of factors converged in late 1978 to make the Beagle Channel conflict more amenable for resolution than it had been at any prior point in the century-long history of the dispute. First, as discussed above, changes in the law of the sea that had occurred over the previous two decades made the territorial issues more pressing than they had ever been before. Second, by the 1970s, the need for regional economic integration had become quite apparent to decision makers on both sides of the Andes.⁵⁰ Third, the diplomatic and military face-off that had developed in the wake of Argentina's repudiation of the British arbitral award had brought the situation to an unmistakable crisis point: both sides recognized that unless they established a credible mechanism for achieving a long-term settlement, war was inevitable. Finally, the election of Pope John Paul II in October 1978 gave the parties a willing and uniquely capable vehicle for addressing their differences. The dispute afforded the new Pope the perfect opportunity to demonstrate strong leadership of the Church and to carve out a role for the Vatican in international diplomacy, objectives that were, by most accounts, very important to him.⁵¹ Furthermore, there was a major decennial conference of Latin American Church leaders scheduled for January 1979, which may well have enhanced the Pope's interest in mediating the dispute. The Third General Assembly of the Latin American Episcopate was expected to focus primarily on the role of the Church in the social and political issues facing Latin America.⁵²

Despite these incentives and opportunities, however, the dispute was not fully ripe for resolution in late 1978, or even when the delegations arrived in Rome the following May. The reason, quite simply, is that the parties remained absolutely committed to fundamentally irreconcilable positions. Chile, fortified in its convictions by the British arbitral award, was unwilling to make any concessions whatsoever regarding the islands themselves; for the Chileans, it would have been preferable to appeal unilaterally to the ICJ, knowing that such a course would likely mean war, rather than give up any part of the islands. Argentina, for its part, was firmly committed to the goal of attaining islands. Francisco Orrego reports that during one of the early negotiating sessions, a key member of the Argentine delegation flatly declared that unless Argentina received something in the way of islands, there would be war.⁵³ This version of events is at least partly corroborated by the fact that Argentina had already made plans for an invasion when the Vatican intervened on December 23, 1978.⁵⁴ Thus, each party preferred its next best alternative—appeal to the ICJ or direct military action—over a mediated result meeting the other party's minimal requirements. There was, in short, no bargaining range available between their respective reservation values.

What ultimately changed that situation and facilitated the eventual settlement of the dispute was the Falkland Islands War and the subsequent return to democratic government in Buenos Aires. The military government that controlled Argentina from the beginning of the mediation through the fall of 1983 viewed the dispute primarily in geopolitical terms. Given that unsurprising orientation, Argentina was not likely to abandon its pretension to islands—the key Argentine concession in the 1984 Treaty—so long as the junta remained in power. Indeed, key Argentine negotiators have confirmed that an agreement simply could not have been achieved before the Alfonsín government took over in December 1983.⁵⁵ It was only after the debacle in the Falklands—which both spurred a return to democratic government and discredited the military's aggressively nationalist agenda in the minds of future voters—that conditions truly ripened for settlement.

Disaggregation of Particular Elements

Notwithstanding the fact that a formal agreement was politically unrealistic prior to 1984, the Vatican did succeed in developing a dialogue between the delegations and in establishing a framework for discussions that enabled the parties to reach agreement very quickly following the reinstatement of democracy in Argentina. One of the keys to this success appears to have been the Vatican's willingness to disaggregate specific elements of the dispute and attack individual points in isolation. For example, in developing the modifications to the British arbitral award that ultimately formed the basis for the 1980 papal proposal (discussed below), the Vatican separated the issue of territorial possession of the islands from the problem of maritime jurisdiction.⁵⁶ This was the critical development that ultimately made the settlement acceptable to Argentina, albeit in a form quite different from the one originally proposed by the Pope. The arbitral court, charged with resolving a narrow question of international law, did not have the flexibility to interweave such doctrinally unorthodox, but politically expedient, elements into its result.

Another example of effective disaggregation was the suspension of discussions regarding the Straits of Magellan. This was a particularly important exclusion given the sensitive character of this topic in the wake of the British arbitration. The arbitral award included certain provisions pertaining to the Straits that favored Chile and also tended to support the Chilean view of the Beagle Channel dispute.⁵⁷ This was an especially sore point with Argentina, as the Straits had not been included in the 1971 agreement that defined the questions for arbitration. In fact, these apparently superfluous provisions of the arbitral award constituted one of the grounds that Argentina relied upon in declaring the decision null and void.⁵⁸ Issues relating to the Straits of Magellan were thus considered potentially inflammatory and were excluded from discussions throughout most of the mediation. In the final months of negotiations, however, when the parties had attained a good working relationship and were moving rapidly toward a comprehensive solution, the subject was reintroduced.⁵⁹ The final treaty there-

fore included provisions resolving the parties' outstanding differences with respect to the Straits.

Similarly, questions regarding Antarctica were carved out of the mediation process.⁶⁰ Antarctica was a potentially explosive issue that might well have seriously complicated the negotiations. By keeping this topic off the table, the Vatican was able to address the core issues of territorial sovereignty and maritime jurisdiction without confronting the problem of realigning the parties' respective claims to Antarctica. The 1984 treaty explicitly indicates that nothing in it should be construed to alter the parties' rights with respect to Antarctica.⁶¹

A final example of the Vatican's disaggregation of particular elements arose in 1982, when Argentina announced its intention to allow the General Treaty on the Judicial Settlement of Disputes to lapse at the end of the year. Expiration of the 1972 treaty could very well have endangered the entire mediation process; Chile might have felt compelled to bring its case to the ICJ before its right to do so under the treaty expired, a course of action which, at best, would have undermined the Vatican's efforts, and at worst might have provoked armed conflict.⁶² Recognizing this, the Vatican effectively put the substantive issues aside and for nine months conducted a "mini-mediation," focusing exclusively on the procedural issues surrounding the parties' dispute resolution machinery.⁶³ These efforts proved successful in September 1982, when Chile and Argentina agreed to renew the General Treaty solely for purposes of the Beagle Channel conflict.

Role of the United States

The United States took the Beagle Channel conflict seriously and attempted to play an active role in resolving the conflict.⁶⁴ Nevertheless, U.S. efforts appear to have been important primarily at the margins of the dispute. The Carter administration made it clear at an early stage that the United States would not mediate the dispute but that it would participate in any action by the OAS.⁶⁵ Chile and Argentina, for their part, never seriously considered requesting U.S. mediation. Indeed, the United States might not have satisfied Chile's principal requirement that the mediator have sufficient leverage to constrain any Argentine inclination to balk at the results or initiate hostilities. Several negotiators have indicated that despite its vast power and resources, the U.S. government had very little leverage with either country.⁶⁶ The Carter administration had been highly critical of each country's human rights record and had suspended arms sales to both. Given that state of affairs, the United States was never viewed as a suitable intermediary. Instead, the United States attempted to use diplomatic channels to discourage the use of force and encourage mediation. For example, it made a substantial, though unsuccessful, effort to pressure Argentina into reducing its military build-up on the Chilean border in November and December of 1978.⁶⁷ More significantly, the United States appears to have played a role in convincing the Vatican to assume the role of mediator. In December 1978, Carter's representative at the Vatican, Richard Wagner, held meetings with Vatican Secretary of State Agostino Casaroli in which he encouraged the Vatican to

intervene.⁶⁸ Even more important, perhaps, were the efforts of George Landau, U.S. Ambassador to Chile. Landau followed the political developments in the Southern Cone closely and relayed his information to the Vatican. Around December 19, 1978, when Landau learned of Argentina's imminent invasion from U.S. intelligence sources, he communicated the need for immediate action to the Vatican. The Pope had already been informed of the planned invasion by its nuncio in Buenos Aires, Pio Laghi, but had apparently decided not to intervene until after Christmas, convinced that Argentina would not attack before then. Landau's information may well have served to accelerate the Vatican's intervention by a few critical days.⁶⁹ It thus appears that the United States may have had some impact on the situation despite its relative lack of leverage with the parties, simply on account of its diplomatic and informational resources.

Form and Specific Mechanisms of Intervention

Broadly speaking, the Vatican intervention can be broken down into four distinct periods. The initial phase, beginning with Samoré's arrival in Buenos Aires in late December 1978, was a pure crisis intervention. This was the shortest, but perhaps most critical, period of the entire process. The central feature of this phase was Samoré's shuttle diplomacy, designed to prevent a war and secure an agreement to submit the matter to mediation, objectives that were achieved with the signing of the Act of Montevideo on January 8, 1979. The second phase ran from May 1979, when the two delegations arrived in Rome, through December 1980, when the Pope presented the parties with his proposal for settling the dispute. The third and longest phase, running from the beginning of 1981 until Argentina's return to democracy in December 1983, was characterized by long periods of stalled discussions. The most significant developments during this period were the Argentine repudiation of the 1972 General Treaty; the subsequent effort to fill the juridical vacuum resulting from that repudiation; and the Falkland Islands War, which set the stage for the return to democracy in Argentina. The final phase of the mediation began when Raúl Alfonsín assumed the presidency in Buenos Aires at the end of 1983 and ended with the signing of the 1984 Treaty of Peace and Friendship almost one year later.

Procedures of Mediation

Because the Vatican mediation extended over such a long period of time and involved such strikingly different objectives at different points in the process, it is hardly surprising that the procedures employed evolved substantially over the course of the mediation. In general, it appears that the Vatican's flexibility and adaptability in modifying the format of the proceedings in accordance with the changing tone of relations between the parties may have been one of its most important contributions.

The first phase of the Vatican's intervention was not really a part of the mediation effort at all, but rather a "good offices" mission with the limited objectives

discussed above. This phase of the process took the form of shuttle diplomacy; Samoré made four trips across the Andes in December 1978 and January 1979. The Vatican's officially stated position at this point was not to pursue the role of mediator, but merely to gather information and transmit proposals between the two governments. With an eye toward maintaining the strictest possible neutrality, Samoré alternated between the two capitals and was careful to spend roughly equal time with each side. Former Chilean Foreign Minister Hernan Cubillos has indicated that there was virtually no substantive component to Samoré's visits to Chile following his initial meeting with Cubillos but that the papal representative nonetheless spent as much time with Pinochet as with President Videla of Argentina, simply to maintain the appearance of neutrality.⁷⁰

Samoré spent his first week in South America questioning the leaders of the two countries regarding their respective positions and familiarizing himself with the background of the dispute. After this initial information gathering was complete, Samoré began encouraging the two sides to propose procedures for resolving the dispute. Chile favored a papal mediation without any restrictions as to the scope of discussions.⁷¹ Argentina initially insisted that any papal mediation effort be subject to a number of conditions. For example, the Argentines demanded that the arbitral award be considered null and void, and that the mediation be limited to specific topics agreed upon in advance. They also insisted that the mediation be based on an acceptance of the so-called "two ocean principle," defined in terms of a meridian passing through Cape Horn.⁷² These conditions remained unacceptable to Chile, leading to a great proliferation of alternative Argentine proposals. During this period, Samoré assumed an active role in transmitting proposals from one side to the other, either directly or through their respective ambassadors. Eventually, Samoré began to draft his own proposals as well.⁷³ On January 5, 1979, the Argentine junta finally agreed to papal mediation, thus paving the way for the Act of Montevideo.

In the course of working toward a procedural agreement, Samoré had avoided the question of military withdrawal, a point that Vatican sources report to have been one of his key objectives. Samoré considered this issue to be sufficiently sensitive for hard-line elements in the Argentine military that introducing it might have jeopardized the Montevideo agreement. Excluding this question might thus appear to have been another example of the disaggregation strategy that characterized Samoré's management of the dispute throughout the mediation process. In this case, however, the issue could not be put aside for very long; Samoré believed that if the parties maintained the military situation that had developed at the end of 1978, the entire mediation process would be jeopardized, as the slightest provocation could easily turn into outright hostility. He addressed this problem by adding to the Act of Montevideo a provision renouncing the use of force and calling for a military withdrawal. However, Samoré did not reveal this additional language to the parties until they arrived in Montevideo to sign the document on January 8. The Argentines were thus effectively presented with a *fait accompli* and, after much deliberation, accepted the addendum.⁷⁴

After the Pope accepted the parties' request for mediation later that month, the focus of the negotiations shifted from South America to the Holy See. Chile and Argentina sent permanent delegations to Rome at the beginning of May 1979, and the mediation process officially began there on May 4. Samoré continued to serve as the Pope's personal representative during the mediation and continued in that capacity until his death in February 1983.

Samoré and his principal assistant, the Spanish priest Monsignor Faustino Sainz Muñoz, spent the first several months of the mediation process attempting to gain a fully developed view of the parties' positions.⁷⁵ Toward this end, Chile and Argentina each submitted papers outlining their views on the conflict, accompanied by whatever documentary materials they deemed relevant. Oral presentations and extensive questioning by Samoré served to augment these papers. Throughout this stage of the process, each side met separately with the mediators; there were no joint meetings.⁷⁶

During this period, Samoré took no steps toward finding a solution and did not pressure the parties to make concessions.⁷⁷ He did, however, provide them with some general guidelines for structuring the mediation process. First, he informed the delegates that the mediation would address every aspect of the conflict.⁷⁸ In actual fact, Cardinal Samoré deviated from this guideline in several important respects. First, he subsequently made it clear that the Straits of Magellan were beyond the scope of the papal mediation, notwithstanding their close historical, political, and geographical ties to the Beagle Channel. Thus, as noted above, the Straits were excluded from the negotiations throughout most of the process. Furthermore, Francisco Orrego reports that Samoré was very willing to declare specific topics off-limits to the parties when he wanted to focus their attention in a particular direction. Specifically, during the early stages of the discussions, he firmly directed Chile not to raise the issue of maritime jurisdiction; Orrego believes that Samoré probably gave parallel instructions to the Argentines regarding their aspirations for islands.⁷⁹ This technique may have served to keep the parties focused on those aspects of the dispute where Samoré expected them to make concessions. In any case, Samoré seems to have been entirely comfortable restricting the scope of discussions when it suited his purposes to do so.

The other guidelines that Samoré set out during the initial stage of the mediation were more straightforward. He assured each side that no concessions they made in the course of working toward a solution would be binding until a final treaty was signed. He also informed the delegations that the mediation team would edit their proposals before passing them on to the other party, so as to eliminate any inflammatory language. Finally, he impressed upon them the need for absolute secrecy in conducting the mediation.⁸⁰ This he regarded as essential in order to avoid debilitating public debate that might diminish confidence in the proceedings and limit the freedom of action of both governments. Accordingly, it was determined that public communications would be restricted to joint official announcements. For the most part, the two countries followed this guideline throughout the dispute. The most notable exception was the Pope's

highly confidential 1980 proposal, parts of which were leaked to the Argentine press within one month.⁸¹

Several negotiators have observed that Cardinal Samoré's preferred method of mediation was to begin with the easiest matters and then move on to more difficult problems.⁸² This technique manifested itself as soon as the initial fact-finding stage came to a close. At Samoré's direction, the delegations began their substantive negotiations by seeking points of convergence on subjects tangential to the key territorial issues, such as navigation and fishing rights.⁸³ As before, the mediation proceeded through separate meetings with the Vatican team. Each delegation would meet with the mediators to consider possible subjects for joint discussion. Next, the delegation would develop a working paper to be used in preparation for a joint meeting on the topic.⁸⁴ Typically, Samoré would conduct follow-up meetings to obtain clarification on specific points. In fact, Francisco Orrego has indicated that the careful and persistent questioning that Samoré employed in seeking clarification of the parties' positions was one of the most consistent characteristics of his mediation technique throughout the dispute, and one that Orrego considered highly effective.⁸⁵ The Vatican's expectation was that the preparation of working papers and follow-up meetings would serve to sharpen the issues and pave the way for joint meetings. In actual practice, however, joint meetings were uncommon and resulted only in very limited progress.⁸⁶

In May of 1980, despite the lack of meaningful progress on the ancillary issues covered during the preceding fall and winter, the mediation team shifted the focus of its efforts toward the core problems of the dispute: territorial sovereignty, maritime jurisdiction, and straight baselines.⁸⁷ The format of the mediation remained essentially unchanged, but now the cardinal began to relay limited information regarding each side's views along to the other party. As before, the primary method of discussions was separate meetings. The two delegations came together only sporadically, typically when Samoré or the Pope wished to address them generally, or when it was necessary to work out some narrow or technical point.⁸⁸ Samoré continued to patiently question each side on the details of its views, the bases for its positions, and its potential for flexibility. The two countries managed some minor concessions, but made no progress on the key issues.

Taking an alternate tack, Samoré asked the two delegations to draft proposals for a comprehensive settlement. The parties' responses, and all subsequent communications relating to their proposals for settlement, were maintained in confidence. Unfortunately, the proposals revealed that the gap between the Chilean and Argentine positions had not meaningfully narrowed. So after issuing a set of questions designed to identify potential points of flexibility, the cardinal drafted his own proposal. This, too, failed to bring the two sides closer. Samoré pressed each side for more open and creative proposals. But a second round of responses from the Argentine and Chilean delegations, in September of 1980, made it clear that there was still no room for agreement. Faced with this apparent stalemate, Samoré met with the Pope to discuss the Vatican's available

options. They considered several alternatives, such as suspending the mediation effort—thus leaving the parties to negotiate directly—and making a specific “take-it-or-leave-it” proposal.⁸⁹

On December 12, 1980, the Pope received the two delegations and presented to them his proposal for resolving the conflict, the terms of which had been developed entirely in secret.⁹⁰ Under the papal proposal, Chile would retain all of the islands, but Argentina would be entitled to maintain certain limited facilities there and would receive important navigation rights. The key element to this proposal, however, was the creation of a vast ocean area known as the Sea of Peace. In this area, extending to the east and southeast from the disputed chain of islands, Chile would be limited to a narrow territorial sea, in which it would be obliged to afford Argentina equal participation in resource exploitation, scientific investigation, and environmental management. Beyond the Chilean territorial waters would be a much broader band of ocean subject to Argentine jurisdiction, but also subject to the same sharing provisions that applied in Chilean waters.⁹¹

Despite some reservations regarding the proposal, Chile accepted it very quickly.⁹² Argentina, on the other hand, never formally replied to the proposal. However, in March 1981, Argentina delivered a note to the Vatican expressing grave misgivings about the proposal, both because it failed to award any islands to Argentina and because it allowed Chile to maintain a presence so far into the Atlantic.⁹³ Furthermore, key negotiators from both sides have indicated that the proposal's sharing provisions were highly problematic and probably unworkable.⁹⁴ Given that the proposal was totally unacceptable to one party and only marginally acceptable to the other, the question arises whether the Vatican truly expected the parties to accept it, or whether Samoré simply hoped it would advance other purposes, such as constraining hard-line elements in the Argentine military from resuming their menacing posture.

Francisco Orrego is convinced that the Vatican issued its proposal in the genuine belief that it stood a reasonable chance of acceptance. But in so doing, he feels, the mediation team fundamentally misread the Argentines. Orrego attributes this miscalculation to a communication failure on the part of the Argentine delegation; he speculates that one of the Argentine representatives, expressing views not generally shared by the rest of the delegation or the Argentine government, may have given the mediation team reason to believe that its proposal would be acceptable.⁹⁵ General Echeverry Boneo, however, has indicated that he gave Samoré unambiguous instructions that all communications from his delegation were to come through him.⁹⁶ It is certain, in any event, that the Argentine delegation experienced relatively frequent rotation of its top negotiators, and there appears to have been at least some overlap of leadership roles.⁹⁷ Thus, the possibility of miscommunication cannot be ruled out altogether.

Following the papal proposal, negotiations remained stalled for an extended period of time. Chile, having accepted the proposal, was unwilling to dicker with its terms, and so rebuffed Argentina's efforts to renew negotiations.⁹⁸ Meanwhile, a series of unfortunate incidents in Chile and Argentina strained relations

between the two countries and further hampered the dialogue on the Beagle Channel. These difficulties developed when Argentina closed the border and detained a number of Chilean officials and civilians. Chile responded by arresting Argentine officials in Chile, and the two countries rapidly degenerated into a hostile and unstable posture.⁹⁹ The situation in South America, coupled with the stalemate in Rome, placed the entire mediation process in grave danger. Samoré responded to this situation by suspending his work on the core territorial issues and devoting himself completely to resolving these new difficulties, notwithstanding the fact that they were entirely beyond the scope of the original mediation.

This reorientation of the mediation effort resulted in several months of discussions aimed solely at the narrow diplomatic problems that had engulfed the two countries on the home front.¹⁰⁰ For the most part, these discussions proceeded within the existing mediation structure, employing the same procedures that were by now familiar to all participants: separate meetings, probing inquiries by Samoré, and limited exchanges between the parties. For this reason, the process of resolving the diplomatic problems of 1981 has been described as the “mini-mediation” or the “mediation within the mediation.”¹⁰¹ However, in a desperate attempt to keep the Vatican’s efforts alive, Samoré also took the unusual step of moving outside the framework of the mediation and directly contacting high-level decision makers in Buenos Aires and Santiago.¹⁰² These efforts eventually paid off. When the Pope, recovering from a nearly successful attempt on his life, issued an entreaty to Chile and Argentina, the two countries quickly acceded to his wishes; shortly thereafter, they released their prisoners and reopened the border.¹⁰³

The year 1981 thus came to an end without any progress on the substantive issues of the mediation, but with the process itself still intact. At the beginning of the following year, however, Argentina again placed the mediation in jeopardy by announcing that it would allow the 1972 General Treaty on the Judicial Settlement of Disputes to lapse at the end of its initial ten-year term.¹⁰⁴ This presented a profound problem to Chile. If the 1972 Treaty were allowed to lapse, Chile would have to decide before the end of the year whether to pursue recourse to the ICJ. Failure to do so might mean that the opportunity would be lost forever. On the other hand, unilaterally appealing to the ICJ would very likely imperil the mediation process and might inspire an extreme response from Argentina. Given that state of affairs, Chile was more reluctant than ever to resume negotiations regarding the underlying substantive issues, as long as the so-called *vacuum juris* continued to exist. Samoré and his team returned to the familiar role of conducting a mediation within the mediation, a process that occupied most of 1982. During this time, however, a fundamental shift in the nature of the process occurred.

By some accounts, it was the arrival of Argentine representative Ambassador Ortiz de Rozas that jump-started the process.¹⁰⁵ De Rozas was a friend of Enrique Bernstein, head of the Chilean delegation, and the two men reportedly began to meet directly on an informal basis. Although some participants in the

negotiations have discounted the importance of this relationship in moving the negotiations forward, the direct, informal discussions were a new element in the mediation, and one that assumed increasing importance in the later stages of the process.¹⁰⁶ The Vatican apparently encouraged the direct communications between Bernstein and de Rozas, and even tried to use their discussions to restart negotiations based on the Pope's 1980 proposal. It quickly became apparent, however, that no progress could be made on the substantive issues until the procedural problem presented by the *vacuum juris* was resolved. This objective was finally achieved on September 15, 1982, when the parties accepted a papal proposal to extend the 1972 Treaty solely for purposes of the Beagle Channel dispute.¹⁰⁷

Yet despite the Vatican's success in moving the parties beyond the diplomatic crisis of 1981 and the *vacuum juris* of the following year, negotiations continued to move very slowly. Chile evinced a greater willingness to negotiate modifications to the papal proposal following the renewal of the 1972 Treaty, but by then it had become clear that the Argentine junta, reeling from its defeat in the Falkland Islands War, was too badly debilitated to consummate an agreement. The death of Cardinal Samoré in February 1983 did nothing to help move things forward, though mediation participants have expressed differing views as to the impact of this development.¹⁰⁸ Further complicating the situation, Argentine delegation head Ortiz de Rozas resigned his position later that month. Under the circumstances, the participants tacitly resigned themselves to waiting out the clock until the new government took over.¹⁰⁹ The Pope attempted to move discussions forward by suggesting that the parties sign a nonaggression agreement in advance of their final settlement. Argentina rejected that proposal.¹¹⁰

Nonetheless, this period was not entirely barren. Indeed, the trend toward a broadened, more direct dialogue that had begun with the discussions between Bernstein and de Rozas was reinforced during the summer of 1983. In July of that year, Santiago Benadava, one of the key Chilean representatives, met with Julio Barberi, the Argentine ambassador to Holland, while visiting The Hague on unrelated business. Discussions between the two led to the production of a "nonpaper," setting forth modifications to the papal proposal that they thought might serve as the basis for future negotiations. The basic refinement of this nonpaper was that Argentina would renounce its pretension to the islands and give up the limited facilities on Chilean soil envisioned by the 1980 proposal, while Chile would sacrifice its rights to joint use of the vast Argentine maritime zone and settle for a relatively narrow territorial sea. Benadava and Barberi presented these ideas to their respective governments and received approval to negotiate on that basis. Thereafter, the basic format of The Hague nonpaper served as the foundation for discussions at the Vatican. Using this format, the parties were able to lay much of the groundwork for a final settlement even before such a result was politically feasible.¹¹¹

The final phase of the mediation process began with the return to democratic government in Argentina in December 1983. President Alfonsín's new government was firmly committed to securing an agreement as quickly as possible, and the structure of the mediation changed radically as a result.¹¹² During this pe-

riod, direct discussions were far more common than separate meetings. Furthermore, direct channels of communication were opened between career diplomats and politicians in Buenos Aires and Santiago.¹¹³ Indeed, the new delegation heads, Marcelo Delpech of Argentina and Ernesto Videla of Chile, conducted most of their work in South America rather than Rome.¹¹⁴ By comparison with the preceding five years, negotiations proceeded at a breakneck pace. In his first major foreign policy initiative, President Alfonsín acted to revive the stalled mediation process by sending Deputy Foreign Minister Hugo Gobbi to Rome in December 1983.¹¹⁵ Based on Gobbi's talks and additional discussions between Delpech and Videla, the two countries agreed to request that the Pope call their foreign ministers together to sign a Declaration of Peace and Friendship. The Vatican agreed, and on January 23, 1984, Argentine Foreign Minister Dante Caputo and Chilean Foreign Minister Jaime del Valle signed the Declaration at a joint meeting in the Holy See.¹¹⁶

In April 1984, Vatican Secretary of State Agostino Casaroli met separately with the two delegations and requested their proposals for a final solution.¹¹⁷ Each side complied with this request. Based on the proposals, Casaroli submitted to the two delegations what he unequivocally described as the Vatican's last proposal on June 11, 1984. Casaroli made it clear that a rejection of this last proposal would end the Vatican mediation.¹¹⁸ Both sides accepted the proposal.

At this point, the mediation was essentially complete. Teams of experts were called in to work out details regarding dispute resolution mechanisms and the precise contours of the boundary, but progress was swift and the Vatican mediation team played little part in the process. By October, the parties had reached a complete understanding, and the treaty language was finalized on October 18. Following a national referendum in Argentina, the Treaty of Peace and Friendship was signed in Rome on November 29, 1984.¹¹⁹

Key Factors in Shaping the Result

Argentine Political Considerations

The domestic political situation in Argentina was clearly one of the most significant factors driving the mediation process, and changes in that situation were quite arguably the primary impetus for the settlement ultimately achieved. The military junta that controlled the Argentine government throughout most of the mediation process was sharply divided between hard-line nationalists and more moderate military leaders. Jorge Videla and Roberto Viola, who held the Argentine presidency back to back from the beginning of the papal intervention until 1981, are generally associated with the latter group. Nevertheless, they were severely constrained in their ability to work toward a peaceful solution by more extreme members of the junta. The military leadership was perpetually concerned that a conciliatory approach toward Chile would be regarded as a face-losing transaction that might destabilize its control and invite challengers from the ranks of the junior officers. It has been reported, for example, that when President

Videla informed the papal nuncio, Pio Laghi, of Argentina's plans to invade the PNL island group in December 1978, he justified the decision by saying that if he did not give the orders for invasion, he would be replaced by extremists within the junta.¹²⁰

The sea change in Argentine politics that ultimately paved the way for the settlement was the Falkland Islands War. Often characterized as a desperate bid to build popular support for the military government in a time of economic crisis, the debacle in the Falklands instead served to fatally weaken the Galtieri government and sour the public on territorially aggressive foreign policy in general. By the time of the presidential election in 1983, public opinion clearly favored a rapid resolution to the problems with Chile. Alfonsín was elected on a platform featuring a pledge to bring the Chilean conflict to an end. As discussed above, the new president moved quickly to make good on that promise. Dante Caputo has indicated that the Alfonsín government regarded a quick settlement as an essential part of its strategy to reduce the influence of the military and implement economically critical military cutbacks.¹²¹ Additionally, the need for regional economic integration had become apparent to everyone, and that process was badly restricted by the conflict in the southern zone. Alfonsín's approach to the Beagle Channel dispute garnered substantial approval among citizens weary of international conflict, and the momentum of that support carried the process to a swift completion.¹²²

The Moral Authority of the Pope and Public Opinion

The foregoing discussion might lead to the conclusion that the resolution of the Beagle Channel conflict was entirely the product of historical accident, a lucky break for which the mediator deserves no credit. While it is probably true that the dispute could not have been resolved but for the change in government in Argentina, it does not follow that the Vatican's efforts were without effect. On the contrary, it is almost certain that the papal intervention prevented a war between Chile and Argentina. Every negotiator interviewed for this paper indicated, generally without qualification, that the two countries would have gone to war in the winter of 1978–79 had the Vatican not intervened.¹²³ Given the evidence suggesting that orders for an invasion had already been given when the Pope announced that he was sending Samoré to Buenos Aires, those assertions appear well grounded.¹²⁴ Additionally, the Vatican's efforts served to maintain a dialogue between Chile and Argentina through some very difficult periods, when relations between the two countries might otherwise have declined to a dangerously unstable level. In particular, the Vatican was instrumental in resolving the difficulties that developed following the border closing and detention of prisoners in 1981 and the Argentine repudiation of the General Treaty on the Judicial Settlement of Disputes in 1982.

The Vatican's contribution to the peaceful settlement of this conflict featured two principal elements: the initial crisis intervention, which prevented armed conflict in 1978, and the creation of a forum that kept the situation stable during the potentially volatile period while conditions ripened for the permanent

resolution of the dispute. The Vatican was probably better suited to this role than any other mediator. Indeed, the unique nature of the mediator was probably one of the key factors contributing to the peaceful settlement. And what made the Pope the perfect intermediary in this context was that he was uniquely positioned to influence the parties while remaining—and appearing—absolutely neutral. He was, in short, a neutral mediator with leverage.

The Pope's leverage derived from his moral authority in the international community and, perhaps more importantly, within the two countries. Admittedly, the Pope did not have the kind of leverage that could be applied by an interested third-party state with resources to grant or withhold. But he had exactly the kind of power that was so important to Chile when it evaluated possible mediators in 1978: he could not be ignored. If the dispute had been mediated by Henry Kissinger or the king of Spain, Argentina might well have felt at liberty to reject the 1980 proposal and resume a hostile posture. Such a course would certainly have occasioned disapproval in the international community, but nothing approaching the outrage that could be expected with the Pope in the middle. Thus, the Vatican's moral authority afforded leverage, not so much to compel a particular course of action, as to restrict the options of would-be belligerents. Under the circumstances, that is exactly what was needed.

The Pope's moral authority was an even more salient factor within the two countries themselves. Santiago Benadava, a key member of the Chilean delegation throughout the mediation process, has emphasized that even though Chile and Argentina were dictatorships whose relations with the Church were poor during the mediation years, they were not immune to the pressures of public opinion.¹²⁵ And public opinion in these two overwhelmingly Catholic countries was profoundly affected by the Pope. The Vatican appears to have been very conscious of this leverage point and exploited it to maximum advantage throughout the dispute. During the initial period of shuttle diplomacy, Samoré made substantial use of the media in publicly exhorting the parties to avoid confrontation. On occasion, he also used the press to chastise the leaders of the two countries for their intransigence.¹²⁶ Eventually, the Church began to sponsor peace rallies, pilgrimages, and special masses designed to build public support for the peace effort.¹²⁷ This highlights the key point distinguishing the Pope from an ordinary mediator: unlike most neutral intermediaries, the Pope actually had a constituency within the two countries.

Success of the Mediation

Evaluating the impact of particular mediation techniques employed by the Vatican is a more difficult proposition, since it necessarily requires counterfactual speculation as to how effectively the dispute would have been resolved had other techniques been employed. The negotiators interviewed for this chapter generally did not identify specific mediation methods as having greatly impacted the outcome of the dispute. However, a few particularly central aspects of the Vatican's technique deserve comment.

Several mediation participants have expressed a belief that the direct negotiations that characterized the last phase of the mediation were significantly more productive than separate meetings.¹²⁸ In this view, articulated most vigorously by Marcelo Delpech, chief of the Argentine delegation from late 1983 through the conclusion of the dispute, the format followed during the early stages of the mediation prevented channels of communication from developing between the Argentine and Chilean teams. However, Dante Caputo, Argentine foreign minister under President Alfonsín and the official who signed the 1984 Treaty of Peace and Friendship on behalf of Argentina, feels that separate discussions were appropriate during the early stages of the mediation, because of the strained relations and mutual mistrust between the countries at that time.¹²⁹

Clearly, the period characterized by direct talks produced the most substantial gains in the shortest period of time. As previously discussed, however, these results are attributable to a variety of factors, the most fundamental of which was simply an increased desire on the part of the Argentine government to reach an accommodation. Even Delpech acknowledges that a settlement was unlikely prior to Alfonsín's election, regardless of the mediation techniques employed.¹³⁰ If we assume, with the benefit of hindsight, that the proper objective for the pre-1983 period was simply keeping the parties at the table, then Samoré's system of separate meetings seems highly appropriate. At the same time, the mediation team was flexible enough to permit direct talks where they seemed promising, as it did, for example, when a dialogue developed between Bernstein and de Rozas, and when Benadava and Barberi met in Holland.

Another technique identified as having been particularly effective was the relentless questioning to which Samoré subjected the two delegations. By combining this technique with very limited transfers of information between the parties, Samoré was able to act as a kind of informational escrow, immune to the problems of strategic gamesmanship that would certainly characterize any direct interchange of information between the parties at an early stage in the process. This enabled him to identify potential points of convergence and direct the discussions accordingly. Francisco Orrego considered this one of the most effective tools employed by Samoré during the mediation. Again, however, it does not appear to have significantly altered or accelerated the course of the mediation.¹³¹

The most important mediation technique employed by the Pope was clearly the proposal that he developed in December 1980. Although both sides harbored considerable uneasiness regarding its sharing provisions, most of the negotiators interviewed for this paper feel that it had significant value in clarifying issues and providing a platform for future discussions. The one participant who does not share this view, General Ricardo Echeverry Boneo, thinks that the Vatican should have developed a variety of proposals rather than relying on just one.¹³² Although it is very difficult to say whether a profusion of proposals would have accelerated the process, one cannot dismiss Echeverry's claim that additional proposals might have sparked creative bargaining and enabled the parties to arrive at an accommodation sooner. On the other hand, if one believes

that an agreement was unattainable before 1983, and that the Pope's role prior to that time was largely one of stabilization, then the single proposal begins to look more sensible. By focusing the parties' deliberations within a single, structured context, the 1980 proposal may have served this end more effectively than a multiplicity of overlapping plans. Moreover, it was very likely more difficult to reject the proposal outright, given that the Vatican had put its weight behind this plan as its sole recommendation, than it would have been to dismiss each in a series of mere suggestions. In this regard, it is worth noting that Argentina never explicitly rejected the 1980 proposal, although its negotiators considered it totally unacceptable and never seriously considered accepting it.¹³³

Conclusion

Because the outcome of this mediation effort was so significantly shaped by factors such as internal politics and the unique identity of the mediator, specific and generally applicable recommendations are not immediately apparent. However, the Beagle Channel experience does suggest a few general guidelines that may be of value to future intermediaries.

First, the Vatican mediation is a textbook illustration of the value of patience in an unstable, but not yet bellicose, negotiating environment. Stephen Stedman has suggested that when confronted with failure, mediators do best to admit defeat and end the mediation. This position is based on the belief that disputants tend not to appreciate mediation until it is taken away from them. It is also based, at least implicitly, on the assumption that the damage resulting from a suspension of mediation will be more than offset by an increased willingness to work toward a settlement. This may frequently be the case where armed conflict already exists, and there is a premium on getting a settlement as quickly as possible. As the Beagle Channel conflict illustrates, however, this approach is inappropriate when the mediator's goal is to preserve a fragile peace rather than to terminate bloodshed already in progress. Under such circumstances, the mediator plays a dual role, striving both to achieve a workable long-term solution and also to prevent the situation from deteriorating into war. Thus, the mediator of a volatile but noncombative dispute can serve a useful purpose even without obtaining a solution, simply by providing a stable environment within which the situation can be allowed to ripen. And the mediator must be mindful of the fact that efforts to force an early settlement may jeopardize this other important goal.

The Beagle Channel case also illustrates the value of flexibility in a long-term mediation context. Although Samoré worked hard to establish a rigorous structure for the negotiations, he was very willing to work outside that structure when he deemed it necessary or desirable to do so. For example, Samoré moved outside the mediation forum altogether during the diplomatic crisis of 1981, by directly contacting high-level government officials in Buenos Aires and Santiago. He was also willing to relax the highly formal mechanisms for interaction between the parties when opportunities for movement presented themselves;

although the Vatican team took great pains to keep the delegations apart during the tense early stages of the mediation, Samoré permitted and made use of the informal direct meetings between Ortiz de Rozas and Enrique Bernstein and the later meetings between Santiago Benadava and Julio Barberi. The Vatican's success in this regard suggests that mediators must strike a careful balance between the need for a negotiating environment sufficiently structured to maintain stability, and the need to exploit fortuitous developments and alternative problem-solving approaches.

Additionally, Samoré's techniques of information management may well be of value to future mediators. Although these methods probably did nothing to accelerate the resolution of the present dispute, they may well do so in other disputes characterized by informational gamesmanship. Several negotiators were impressed by Samoré's ability to extract candid assessments of the parties' positions through intensive, confidential questioning conducted in separate meetings. It bears noting that this technique requires the mediator to achieve the complete trust of the parties and to convince them of his absolute neutrality. Needless to say, most mediators will have more difficulty than the Vatican in establishing this kind of relationship with the parties.

While the conflict was rooted in a very particular historical and geographical context, the choice of mediator with compelling moral authority, and the techniques used by the mediator to keep war at bay, could be very useful even in post-Cold War cases of secession, internal conflict, or minority rights.