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INTERNATIONAL LAW AND RELIGION IN LATIN AMERICA: THE BEAGLE CHANNEL DISPUTE

M.C. Mirow*

*We have accepted your suggestion of mediation,
but for the Argentine Republic the only mediator
possible is his Holiness the Pope.¹*

With these words, in 1978, an Argentine diplomat proposed a method of defusing a territorial dispute that very nearly sparked off a war between Argentina and Chile. It was an offer calculated to be rejected by Chile, and yet Chile's immediate response was "Agreed" – a response so unthinkable to Argentina that within hours its military Junta revoked the power of the Foreign Minister and the President to sign the agreement it had just proposed. In December 1978, the countries were quickly moving towards a war that, if waged, would most likely have engulfed much of Latin America. The Vatican, however, intervened and brought peace between the parties.²

Today, outside the countries involved, few remember the Beagle Channel dispute because it was successfully negotiated to a peaceful solution. The dispute has been recounted in sev-

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1. Argentine Foreign Minister, Carlos Washington Pastor, to Chilean Foreign Minister, Hernán Cubillos, December 12, 1978, as reported in interview between Cubillos and Thomas Princen, Santiago, Chile, 1986. See THOMAS PRINCEN, *INTERMEDIARIES IN INTERNATIONAL CONFLICT* 141 (1992) [hereinafter PRINCEN, *INTERMEDIARIES*].

2. While the term "Vatican" in its strict sense refers only to the official residence of the Pope in Rome or the Vatican City State, I use it here to refer more generally to the papal government including the Holy See and its office responsible for international relations. See generally JORRI DUURSMA, *FRAGMENTATION AND THE INTERNATIONAL RELATIONS OF MICRO-STATES*, 374-419 (1996); Robert John Araujo, *The International Personality and Sovereignty of the Holy See*, 50 *CATH. U. L. REV.* 291, 291-360 (2001).

eral historical and journalistic works in Argentina and Chile.³ It has been used generally as a case study to inform discussions of international law, diplomacy, and mediation.⁴ Thomas Princen, the leading American scholar of the conflict, has used the dispute to probe theoretical aspects of the goals and effectiveness of mediation.⁵ Others too have used the case to illustrate the diplomatic process and the value of long-lasting negotiation in the face of apparent stalemate.⁶ Although all studies note the unique nature of the Pope and Vatican as mediators in reaching a peaceful solution, no study has attempted to analyze the role of the Vatican through the lens of Roman Catholicism.⁷

This article seeks to contribute in this direction. Attempting to view the Vatican's intervention, actions, and procedures in

3. See, e.g., SANTIAGO BENADAVA, *RECUERDOS DE LA MEDIACIÓN PONTIFICIA ENTRE CHILE Y ARGENTINA (1978-1985)* (Santiago, 1999) (Benadava was a member of the Chilean negotiating team); ALBERTO MARÍN MADRID, *EL CASO DEL CANAL BEAGLE* (Santiago, 1987) (Chilean Colonel Marín served on a commission addressing the Argentine and Chilean border); ALVAREZ NATALE, *BEAGLE: DE BRUJOS Y FANTASMAS A LA DECISIÓN FINAL* (Buenos Aires, 1984) (using the dispute to critique nationalism and to argue for Latin American integration); BRUNO PASSARELLI, *EL DELIRIO ARMADO: ARGENTINA-CHILE, LA GUERRA QUE EVITÓ EL PAPA* (Buenos Aires, 1998) (Passarelli covered the event for the Argentine media); LUIS ALFONSO TAPIA, *ESTA NOCHE: LA GUERRA* (Viña del Mar, 1997) (Tapia covered the event for the Chilean media); FABIO VIO VALDIVIESO, *LA MEDIACIÓN DE S.S. EL PAPA JUAN PABLO II* (Santiago, 1984). Much of the dispute must be reconstructed from individual accounts because the pertinent papers in the Vatican are sealed for seventy-five years after the event. See BENADAVA, *supra*, at 10.

4. See Gilbert Apollis, *La Médiation Internationale du Pape Jean-Paul II dans l'Affaire du Canal de Beagle*, in JOËL-BENOÎT D'ONORIO, *LE SAINT-SIÈGE DAN LES RELATIONS INTERNATIONALES*, 323-61 (Paris, 1989); Henry T. King, Jr. & Marc A. Le Forestier, *Papal Arbitration: How the Early Catholic Church Influenced Modern Dispute Resolution*, 52 *SMU DISP. RESOL. J.* 74, 78 (1997); Guillermo R. Moncayo, *La Médiation Pontificale dans l'Affaire du Canal Beagle*, 242 *RECUEIL DES COURS DE L'ACADÉMIE DE DROIT INTERNATIONAL* 197-433 (The Hague, 1993) (Moncayo served as chief of the Argentine negotiating team from 1979 to 1982). Moncayo's study contains a bibliography. *Id.* at 428-33.

5. See PRINCEN, *INTERMEDIARIES*, *supra* note 1; Thomas Princen, *International Mediation—The View from the Vatican: Lessons from Mediating the Beagle Channel Dispute*, 3 *NEGOTIATION J.* 347-66 (1987) [hereinafter Princen, *Mediation*].

6. See Mark Laudy, *The Vatican Mediation of the Beagle Channel Dispute: Crisis Intervention and Forum Building*, in *WORDS OVER WAR: MEDIATION AND ARBITRATION TO PREVENT DEADLY CONFLICT*, 293-320 (Melanie C. Greenberg et al. eds., 2000); Lisa Lindsley, *The Beagle Channel Settlement: Vatican Mediation Resolves a Century-Old Dispute*, 29 *J. CHURCH & ST.* 435 (1987).

7. One author has chronicled the response of the Argentine episcopacy and has abstracted over 150 public statements of the Church's hierarchy in Argentina addressing the dispute. See CLAUDIO GÚIDO, *EL BEAGLE, LA IGLESIA Y AMÉRICA LATINA* (Buenos Aires, 1984).

this way provides important insights into numerous aspects of the dispute. Not only does this approach yield a useful analytical tool for understanding the role of the Vatican in the Beagle dispute, but also it signals some of the prospects of and limitations to similar interventions by the Vatican in the future. Before addressing Vatican involvement, this article sets out the nature of the dispute between Argentina and Chile as essential background to the analysis that follows.

I. THE DISPUTE

A. *The Importance of the Beagle Channel in the Late 1970s*

The Andes Mountains have long provided a clear geographical feature for much of the border between Argentina and Chile. The southernmost tip of South America, however, does not have a geographical and historically recognized boundary. Even the language of the governing document clarifying the border between Argentina and Chile, the Boundary Treaty of 1881, was open to varying interpretations concerning the ownership of the numerous islands at the tip of the continent. This treaty uses the Beagle Channel, a channel connecting the Atlantic and Pacific Oceans and lying to the south of the better-known Straits of Magellan, as an important geographical marker.⁸ The treaty gives Chile "all the islands to the south of Beagle Channel up to Cape Horn, and those there may be to the west of Tierra del Fuego."⁹

For decades, Argentina and Chile expressed little interest in making a final determination of the boundary, ownership of islands, and delimitation of navigational waters in the area. This lack of concern over the imprecision of the arrangement was, for Argentina, painted against a backdrop of a general political and geographical agreement between the two countries that Argentina would have an exclusive presence in the Atlantic Ocean and

8. See THOMAS PRINCEN, BEAGLE CHANNEL NEGOTIATIONS 1 (Case 401, Institute for the Study of Diplomacy, School of Foreign Service, Georgetown University, Washington, D.C., 1995) [hereinafter PRINCEN, BEAGLE CHANNEL].

9. *Id.* at 1 (quoting translation as found in José Miguel Barros, CHILEAN-ARGENTINE RELATIONS: THE BEAGLE CHANNEL CONTROVERSY 83-84 (1978)).

Chile in the Pacific Ocean. This understanding on the division of the oceans was termed "*bioceanismo*."¹⁰

Seeing mutual benefits in closer trading agreements in the 1960s, the countries realized that such peripheral matters as the Beagle Channel islands needed to be resolved.¹¹ By the late 1970s, other factors played into their desire for permanent resolution. These included the area's potential oil and mineral deposits, fishing rights, and a heightened international attention towards the Antarctic region in general during this period.¹² The changing consequences of territorial ownership under international law had also greatly increased the value of these islands to the countries. Since the Treaty of 1881, international law recognized increasingly larger maritime claims based on ownership of land. In the 1880s, a three-mile maritime territorial claim was common. Since the 1940s, several Latin American countries claimed 200-mile zones as patrimonial seas. By the early 1980s, through the U.N. Law of the Sea Convention of 1982, a territorial limit of twelve miles and an exclusive economic zone of 200 miles were recognized as rights emanating from territorial sovereignty to land. The navigational and maritime rights resulting from the ownership of the islands were the central issue in the dispute.¹³ After unsuccessful attempts at direct negotiation on the ownership of the islands and related maritime rights, the countries agreed to submit the dispute to arbitration.¹⁴

B. Arbitration and its Rejection

From 1902 until the early 1970s, Argentina and Chile made numerous attempts to settle their rights in regard to the islands near the mouth of the Beagle Channel. Other territorial disputes between the two countries had been successfully resolved through arbitration in the past.¹⁵ This dispute, however, was unsuccessfully addressed through direct negotiation, diplomatic

10. See BENADAYA, *supra* note 3, at 15-16; PASSARELLI, *supra* note 3, at 55. The bi-oceanic principle was restated in a Protocol from 1893 that sought to clarify the 1881 treaty. See LINDSLEY, *supra* note 6, at 436-37, 445.

11. See PRINCEN, INTERMEDIARIES, *supra* note 1, at 134.

12. See David M. Himmelreich, Note, *The Beagle Channel Affair: A Failure in Judicial Persuasion* [sic], 12 VAND. J. TRANSNAT'L L. 971, 971 (1979); LAUDY, *supra* note 6, at 296, 298; LINDSLEY, *supra* note 6, at 436-37.

13. See LAUDY, *supra* note 6, at 296; LINDSLEY, *supra* note 6, at 436.

14. See PRINCEN, BEAGLE CHANNEL, *supra* note 8, at 2.

15. See Moncayo, *supra* note 4, at 251-54.

protests and, in 1960, by a ruling of the International Court of Justice, which was not accepted by the countries.¹⁶ Under a treaty between Argentina and Chile from 1902, arbitration of the disputed territory and maritime rights was to be conducted by a panel headed by the Queen of England.¹⁷ With tensions increasing between Argentina and the United Kingdom over the Falkland/Malvinas Islands, Argentina requested that arbitration be conducted by a panel composed of members of the International Court of Justice at The Hague, and that the panel's decisions be presented to the Queen for her assent. Chile agreed, and the matter went to arbitration in 1971.¹⁸

The panel, composed of judges from France, Nigeria, Sweden, the United Kingdom, and the United States, issued its decision in 1977.¹⁹ There were no surprises. As international legal experts had expected, "Argentina retained navigational rights to its naval base in the channel, and Chile was awarded the three islands"²⁰ of Picton, Lennox, and Nueva located in the channel.²¹ The parties were given a nine-month period to execute the decision from the time of its ratification by the Queen.²²

During the five years from the submission of the dispute to the arbitral decision, Argentine views had changed, particularly as a result of a military coup led by General Jorge Rafael Videla that overthrew President Isabel Perón.²³ Most of Argentina's military leaders opposed the arbitration decision, and the foreign ministry was also divided in its support. Argentina's military believed that ownership of these channel islands would permit Chile to have a claim to maritime rights in the Atlantic.²⁴ Indeed, the changes in international law related to maritime rights dramatically increased Chile's Atlantic rights since the 1881 treaty. Casting away the nineteenth-century three mile limit, Chile now claimed a 200 mile exclusive economic zone.²⁵

16. See Lindsley, *supra* note 6, at 437; Moncayo, *supra* note 4, at 286-98.

17. See PRINCEN, BEAGLE CHANNEL, *supra* note 8, at 2.

18. See *id.*

19. See BENADAVA, *supra* note 3, at 16-18; Lindsley, *supra* note 6, at 438; F.V., *The Beagle Channel Affair*, 71 AM. J. INT'L L. 733, 735 n.4 (1977).

20. PRINCEN, *supra* note 1, at 134.

21. See PRINCEN, BEAGLE CHANNEL, *supra* note 8, at 2; see also, Moncayo, *supra* note 4, at 300-24; F.V., *The Beagle Channel Affair*, 71 AM. J. INT'L L. 733-40 (1977).

22. See PRINCEN, BEAGLE CHANNEL, *supra* note 8, at 2.

23. See DAVID ROCK, ARGENTINA 1516-1982, at 367-70 (1987).

24. See PRINCEN, INTERMEDIARIES, *supra* note 1, at 134.

25. See Lindsley, *supra* note 6, at 438.

Instead of executing the decision after its ratification by the Queen, Chile and Argentina went into a phase of informal negotiation.²⁶ Chile refused to reopen the arbitration's decision and sought only to negotiate on the question of maritime delimitation. Raising issues far beyond the ownership of three small channel islands, Argentina sought to renegotiate all aspects of the dispute, because, in its view, the questions were relevant to its sovereignty. During the second half of 1977, Argentina began mobilizing troops to the south and stepped up military exercises in the region. With Argentina's rejection of Chile's invitation to submit the dispute to the International Court of Justice, Presidents Pinochet and Videla attempted a settlement in January of 1978. Their general agreement disintegrated as negotiating teams worked to express the details of the agreement between the presidents.²⁷ On January 25, 1978, Argentina officially rejected the arbitration decision and the Queen's award based on the decision.²⁸

C. *The Act of Puerto Montt and its Failure*

On February 20, 1978, Chile and Argentina agreed to the Act of Puerto Montt where they pledged to continue negotiations under a three phase process.²⁹ The first stage was successful in agreeing upon the procedural aspects of the negotiation. The six-month second stage tackled the substantive aspects of the dispute. Any movement on the issue of the ownership of the channel islands and the maritime rights of the two countries was insignificant. By the end of the second stage in October, 1978, various proposals had failed. Argentina remained adamant in its desire for the channel islands, and Chile remained steadfast in its refusal. Argentina's military rhetoric increasingly asserted notions of sovereignty. Pinochet spoke of principle and international policy.³⁰ The channel islands had taken on a symbolic

26. See BENADAVA, *supra* note 3, at 19-20.

27. See BENADAVA, *supra*, note 3, at 20-21; PRINCEN, INTERMEDIARIES *supra* note 1, at 134-35; PRINCEN, BEAGLE CHANNEL, *supra* note 8, at 4-5.

28. See Argentina-Chile: The Exchange of Diplomatic Notes Concerning the Beagle Arbitration, Jan. 25-26, 1978, 17 I.L.M. 738-50; Himmelreich, *supra* note 12, at 974-90 (discussing arbitration decision and Argentina's grounds for rejecting it); Moncayo, *supra* note 4, at 324-26.

29. See BENADAVA, *supra* note 3, at 23-25; Moncayo, *supra* note 4, at 334-44; PRINCEN, INTERMEDIARIES *supra* note 1, at 136.

30. See PRINCEN, INTERMEDIARIES *supra* note 1, at 136.

identity much greater than their true national or strategic value. Chile based its position on strict readings of international law and the favorable decision of the arbitration panel. Argentina's position considered the changes in international law since the Treaty of 1881 and the overall political aspects of the bi-oceanic principle.³¹

As hopes for resolution faded, the political and military responses escalated. Economic sanctions, trading hindrances, expulsion of immigrants, air raid drills, and stock piling and purchases of arms were all undertaken as the countries prepared for the date when any extant negotiation procedures expired, November 2, 1978.³² Negotiations fell apart and "both countries immediately began a total mobilization of armed forces. Troops converged on the borders, and the two navies began moving south."³³

Diplomatic exchanges attempted to abate the crisis. The key activities were conducted by Chile's Foreign Minister, Hernán Cubillos, and Argentina's Foreign Minister, Carlos Washington Pastor. Cubillos and his staff considered appeals to the Organization of American States, the United Nations, and the International Court of Justice. Chilean desires to submit the dispute to the International Court of Justice were met with Argentine informal responses that such a request to the court would be tantamount to a declaration of war.³⁴

Mediation by a neutral third party appeared to be the only way to prevent an eventual military battle. From the Chilean perspective, the third party had to have certain attributes. Later, Cubillos was to tell Thomas Princen, "[a]nd when we talk of power, I'm talking about influence, moral power, political power, economic power."³⁵ Argentina too was moving towards mediation, and Argentine candidates to undertake the task included "the King of Spain, the United Nations, the Queen of England, UN Secretary General Kurt Waldheim, Henry Kissinger, and the Pope."³⁶

31. See Lindsley, *supra* note 6, at 438.

32. See PRINCEN, *INTERMEDIARIES supra* note 1, at 137.

33. See *id.* at 138.

34. See *id.* at 138.

35. See *id.* at 139.

36. See *id.* at 139.

II. THE VATICAN INTERVENTION

A. Preliminary Vatican Involvement

Since mid-1978, Chilean Foreign Minister Cubillos visited Pope John Paul I and sought Vatican help in the crisis. The Pope had sent a letter to local bishops in South America to urge peace in the region.³⁷ Chilean Cardinal Raúl Silva Henríquez had also informed John Paul I of the worsening situation in September, 1978.³⁸ After the death of John Paul I, as the crisis heightened, Cubillos sought an audience with Pope John Paul II. Although he was in office only five days at the time of their meeting, John Paul II had been briefed and studied the situation.³⁹ Thus, as aggression mounted in the region, the Vatican was somewhat aware of the seriousness of the situation.

The selection of the Pope as the mediator came about through an unexpected sequence of events. As of December, 1978, the Vatican made it clear that the idea of papal mediation was "premature" and that the Pope would undertake an active role only after a request from both governments.⁴⁰ On December 11, 1978, Cubillos arrived in Buenos Aires seeking diplomatic solutions. Thomas Princen's account of the events and of his interview with Cubillos follow:

Cubillos arrived in Buenos Aires the night of December 11, 1978. He attended a dinner hosted by Videla, Pastor, and several other high-level officials. Among the guests was Papal Nuncio Pio Laghi. Taking Cubillos aside, Pio Laghi explained that he had had long talks with Videla. He trusted Videla and was sure an agreement could be reached. The official meeting began the next morning. Cubillos recalled the events of that day.

December 12th is a day I will never forget. Things were really hot. The *ambiente* [sic] in Buenos Aires was one of war. I was received with proper protocol that corresponds to a foreign minister. Troops and all sorts of things, everything done very carefully

I started the morning by paying an official visit to President Videla . . . I was so concerned about the power structure of Argentina I did something completely on the spur of the moment which I had not planned on doing, but remembering my conversation with Laghi the previous night [and] having seen so many signs that Videla didn't have any power I said something that really created a shock I said, Mr. President . . . I want to be sure that

37. See PRINCEN, *INTERMEDIARIES*, *supra* note 1, at 138.

38. See BENADAVA, *supra* note 3, at 26.

39. See PRINCEN, *INTERMEDIARIES*, *supra* note 1, at 138.

40. See *id.* at 140.

your minister has the power to reach a decision, I want to be sure he has the same power I have, which I suppose comes from you

.....
Videla said . . . Mr. Minister if you were not such a nice person, and we didn't know each other before, and I really would ask you to leave, because that is a very unproper question. And after having said that, he went on for an hour explaining to me the power structure in Argentina . . . So [he said], go at ease, make the decision, reach an agreement with my foreign minister and you can sign the accord this evening

So, we went to the Palacio San Martin We entered into a meeting alone . . . with Pastor. And we sat down and he opened the conversation saying, ["Mr. Minister . . . so that we don't lose any time, I want to make it clear to you that we have accepted your suggestion of mediation, but for the Argentine Republic, the only mediator possible is his Holiness the Pope."] I looked at him straight in the face and said, "Agreed. What else?" And he could not continue the conversation.

Now, looking back (because we have analyzed this many times), the Argentines played that card sure that we would not accept the Vatican as mediator. But I think that they made a great mistake there. Why did they think that we would not accept the Vatican? Because relations between the government in Chile and the local church were lousy. But what they didn't understand . . . we had the [local] church on this matter on our side. And obviously, we would accept the Vatican if it is number one on my list. But it was incredible, I will never forget that minute, he was so taken back that he couldn't continue the conversation

I think he wanted to end there and say that it had failed because they did not accept the Vatican. In five minutes I was out of there, and we agreed to ask our delegations to get together and write an agreement, and we agreed to sign it at 4:00 p.m. Then he came back and said . . . I will check with Videla So I stayed there with my delegation and about an hour later he came beaming, smiling, and said, I have full green light, again. And so, go and write [it up], and let's meet here at four to sign the agreement

Five minutes before I left, around 3:30 p.m., I received a personal call from Pastor who was practically in tears saying, I have been *desautorizado* [disauthorized]. There will be no signing of an agreement, I am not authorized to sign anything. President Videla has been *desautorizado* by the Junta and no agreement can be made. It was like speaking to someone who had been knocked out; he had no reasons to give, he had no excuses. They had proposed the Pope, I had agreed. We had had no bargaining, and he couldn't sign

Well, there I called Pio Laghi, the nuncio, and told him the full story. I think that it was the first time . . . Pio Laghi had learned that we had agreed on the Pope He couldn't believe it.⁴¹

Each country called on other powers, including the Vatican, to act to reduce the chances of the impending war. President Carter and the United States Ambassador to Chile, George Landau, tried to apply U.S. pressure to bring about a peaceful resolution, but relations with neither Pinochet nor the Argentine Junta were strong enough to exert meaningful influence.⁴² Chile sought the intervention of the Organization of American States.⁴³ The countries moved towards war and regional alliances were being constructed so that there was a possibility hostilities would not be limited to Argentina and Chile. Peru and Bolivia had both lost territory to Chile in the late nineteenth century, and with Argentina as an ally, they might act to regain these areas.⁴⁴

On December 14, 1978, President Videla gave the orders for an invasion of the islands on December 21 or 22. He told Pio Laghi that there was no choice in the matter; if he had not given the orders, he would have been summarily removed by the Junta and replaced by a more extreme leader. Laghi suggested direct intervention by the Pope, and Videla said such an act might avert the war.⁴⁵

As warships steamed towards each other in the Straits of Magellan on December 23, Pope John Paul II announced that he was sending a personal representative.⁴⁶ With this news, military activity froze. A few Argentine troops who had secretly slipped into Chilean territory had to be recalled from their advanced positions.⁴⁷ The papal representative, Cardinal Antonio Samoré, caught the next flight from Rome to Buenos Aires. It

41. PRINCEN, *INTERMEDIARIES*, *supra* note 1, at 140-42; *see* TAPIA, *supra* note 3, at 139-47. This version of events contrasts starkly with at least one other that places the cause of the impasse on Chilean obstinacy to limit the scope of the mediation. *See* PASSARELLI, *supra* note 3, at 75-80.

42. U.S. surveillance and intelligence was channeled to the Vatican throughout the crisis and was a key source of information for the Pope. *Id.* *See* PRINCEN, *INTERMEDIARIES*, *supra* note 1, at 143.

43. *See* BENADAVA, *supra* note 3, at 41.

44. *See* PRINCEN, *INTERMEDIARIES*, *supra* note 1, at 142-43.

45. *See id.* at 143.

46. *See id.* at 145.

47. *See* PASSARELLI, *supra* note 3, at 131.

was Christmas Day. On arrival the following day, he was welcomed by thousands demonstrating their support for peace.⁴⁸

Despite being already in his early seventies, Samoré was the ideal person to represent the Pope's intervention. He had a long-standing interest in Latin America and spoke Spanish fluently. He had accompanied Paul VI on his trip to Medellín, Colombia, and had been a papal nuncio in Bogotá. He had been involved with regional conferences of the Latin American episcopate, and even his religious devotion was closely tied to Latin America. Much of his devotional worship was directed towards the Virgin of Guadalupe.⁴⁹ Dating from early Spanish colonial times, the tradition and image of this Virgin are perhaps the most famous in Mexico and Latin America. She was chosen patroness of many countries of Latin America, and in 1910, Pius X declared her the Patroness of Latin America. In 1945, Pius XII stated that she was "Queen of Mexico and Empress of America."⁵⁰ It is not surprising that Samoré would turn to this image of the Virgin considering its close association with Latin America.

B. *The Mechanics: Cardinal Samoré's Offer of Bons Offices*

The parties were far from mediation of the dispute by Samoré. Instead, Samoré sought to offer the Church's *bons offices* or "good offices" to serve as a means of communication and information for the parties.⁵¹ Samoré single-mindedly and forcefully pressured each side to express and to concretize their positions in a series of testing sessions of shuttle diplomacy between Buenos Aires and Santiago. Chile was steadfast in its desire to uphold the arbitral decision, and Argentina's position was refined to include four main elements. Argentina required that continuation of negotiations would have to take place under the third phase of the Act of Puerto Montt. Second, the arbitral decision would have to be declared null. Third, the balance of Argentina's control of the Atlantic and Chile's control

48. See PRINCEN, *INTERMEDIARIES*, *supra* note 1, at 144.

49. See PASSARELLI, *supra* note 3, at 136-37. For additional biographical information of Samoré, see TAPIA, *supra* note 3, at 171-74.

50. A.M. Garibay K., *sub nom. Guadalupe, Our Lady of*, in 6 *NEW CATHOLIC ENCYCLOPEDIA* 821-22 (1967).

51. See, e.g., Ruldolf L. Bindschedler, *Good Offices*, in 1 *ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW* 57-69 (Rudolf Bernhardt ed., Amsterdam, 1981); Moncayo, *supra* note 4, at 214-18.

of the Pacific would have to be maintained. Fourth, limitations on the nature of the mediation would have to be determined beforehand.⁵²

After several trips back and forth between Santiago and Buenos Aires, Samoré was making progress. The prospects of mediation by the Vatican and an agreement among the three parties were being floated by Samoré. Many drafts later, Pinochet and the Argentine Junta agreed to sign an agreement for mediation in Montevideo. The deal had been settled and was set for signing. Despite the efforts of an Argentine army commander to stop Pastor from going to the meeting scheduled for January 8, Pastor arrived safely in Montevideo with authority to enter into the agreement.⁵³

III. THE ACT OF MONTEVIDEO

Samoré knew that a further step needed to be taken, but if he had mentioned it before the parties were committed to signing the agreement, the process would have crumbled. Samoré correctly realized that the usefulness of mediation could be immediately destroyed by one small mistake by either of the parties who were nervously poised towards military action. Although the meeting at Montevideo was officially only for signing the mediation agreement, Samoré demanded that the parties agree to withdraw forces to a *status quo ante* level. This was a second, non-negotiated, part of the Act of Montevideo. Chile accepted, but Pastor had to consult Videla who, apparently without consulting the Junta, told Pastor to agree. When Pastor returned before the Junta, he put his position on the line to uphold the agreement. The Junta agreed. In early January, 1979, Samoré returned to the Vatican with an outline for continuing negotiations that narrowly sidestepped imminent war.⁵⁴

The Pope accepted the countries' request for mediation and again appointed Samoré as his personal representative, this time for mediation at the Vatican. The talented Vatican personnel were at Samoré's disposal. Samoré was assisted by two priests at the Vatican, Monsignor Faustino Sáinz Muñoz and the Jesuit Fiarello Cavalli.⁵⁵ Sáinz Muñoz was the son of a Spanish Su-

52. See PRINCEN, INTERMEDIARIES, *supra* note 1, at 144-45.

53. See *id.* at 147-48.

54. See *id.* at 148-50.

55. See Laudy, *supra* note 6, at 310; Tapia, *supra* note 3, at 175.

preme Court judge and had studied law in Madrid.⁵⁶ From 1981, Samoré was also assisted in the mediation by the Colombian Archbishop Gabriel Montalvo.⁵⁷ Montalvo was the son of a Colombian ambassador to the Vatican and had served as Pronuncio in Tunis, Algeria, and Libya. He was educated in Rome and had served as a Vatican diplomat throughout Latin America.⁵⁸

The Pope himself officially opened the mediation and met with the delegations from Argentina and Chile. The delegation from Argentina was headed by Guillermo R. Moncayo. Enrique Bernstein led the Chilean team.⁵⁹ The Pope wanted the mediator to seek direction from God and offer advice to the parties.⁶⁰ At key points in the mediation, the Pope would personally request that the parties remember the importance of their work and the need for progress.⁶¹

Despite such encouragement, progress was slow, and by May, 1980, the parties had only just begun to touch on the most sensitive aspects of the dispute: territory and maritime demarcation. Literally hundreds of meetings were conducted by Samoré both individually and jointly with the delegations. The positions of the two countries were exactly set out in writing. With a stalemate languishing over the mediation, Samoré sought personal papal involvement. John Paul II met with the delegations and informed them that they were far from an agreement. He would offer his own proposed solution.⁶² By mid-December, 1980, both delegations were presented not only with the papal proposal, but also with a reminder that the Pope's actions were necessitated because "God, the Father of all, drove [him] to make a gesture of peace"⁶³ Part of the Pope's proposed

56. See BENADAVA, *supra* note 3, at 108.

57. See PASSARELLI, *supra* note 3, at 231.

58. See BENADAVA, *supra* note 3, at 104.

59. Ian Brownlie and Prosper Weil served as advisors to Chile. See BENADAVA, *supra* note 3, at 63.

60. See, PRINCEN, INTERMEDIARIES, *supra* note 1, at 150-51.

61. See PASSARELLI, *supra* note 3, at 170.

62. See PRINCEN, INTERMEDIARIES, *supra* note 1, at 152-54. Benadava speculates that the proposal was authored by Samoré and Sáinz Muñoz. See BENADAVA, *supra* note 3, at 82. The Pope's message on delivering the proposal noted that it did not seek a purely legal solution, but one "*ex bono et aequo*" stemming from the theory of the "ancient Roman jurists and canonists" without setting aside the "support and light of divine wisdom." BENADAVA, *supra* note 3, at 86.

63. PRINCEN, INTERMEDIARIES, *supra* note 1, at 154.

solution was a jointly governed region covering the contested area where both countries would have certain rights.⁶⁴

Chile accepted the proposal early in 1981, but Argentina waited and then unofficially objected to it in March, 1981. Tensions mounted along the border between the two countries. Again, a direct appeal from the Pope led to both governments decreasing the possibility of violence in the region. Over the next few months the situation in and between both countries deteriorated.⁶⁵ Argentina stated that it would not renew a treaty from 1972 that provided disputes between Argentina and Chile be submitted to the International Court of Justice at The Hague. Again, only through a direct formal proposal of the Pope did both sides agree to extend this treaty which provided for an important, non-military default procedure in the event of unsuccessful mediation.⁶⁶ In April, 1982, Argentina entered into war with the United Kingdom over the Falkland/Malvinas Islands, which some saw as a prelude to a Beagle Channel invasion.⁶⁷ Things in Chile were equally difficult as Pinochet substituted his civilian ministers with military men.⁶⁸ Chile was also entering a period of national economic crisis.⁶⁹ After losing the Falklands/Malvinas War, the Argentine military government had little power to negotiate, and it was not until new Argentine representatives, this time "professional diplomats," appointed by President Alfonsín, arrived that negotiations could be renewed.⁷⁰

Having spent nearly six years of his life deftly delaying war between Argentina and Chile, Samoré died on February 3, 1983. His last words were addressed to Montalvo and Sáinz Muñoz and concerned reaching a peaceful resolution between Argentina and Chile.⁷¹

To replace Samoré, the Pope requested Vatican Secretary of State Cardinal Agustino Casaroli to step in as the new head of the mediation team. With a change in the Argentine government, and with informal negotiations between Argentine and

64. See Lindsley, *supra* note 6, at 446.

65. See PRINCEN, *INTERMEDIARIES*, *supra* note 1, at 154-57.

66. See BENADAVA, *supra* note 3, at 117-18.

67. See TAPIA, *supra* note 3, at 218.

68. See PRINCEN, *INTERMEDIARIES*, *supra* note 1, at 154-57.

69. See Lindsley, *supra* note 6, at 447.

70. See *id.* at 447.

71. See PASSARELLI, *supra* note 3, at 238.

Chilean representatives stationed in Europe, slow progress towards peace could once again be seen. On January 23, 1984, the foreign ministers of Argentina and Chile signed a Declaration of Peace and Friendship. Within six months, Casaroli had brokered an accord. By meeting with and pressing each party to abandon its bargaining strategy and to make honest "confessions" for the benefit of the mediation team, Casaroli was in a position to request proposals for a solution from both sides.

From these proposals, Casaroli prepared his own suggestions for the divisions of territory and the settlement of economic compensation, the latter to be addressed through a bilateral commission. Casaroli's suggestions were put in front of the Argentine and Chilean delegations on an accept-or-reject basis, and he made it clear that a rejection by either party would terminate papal mediation. Both accepted Casaroli's suggestions and a drafting team was brought in to prepare a treaty text. After Argentina obtained permission to sign through a national referendum on the issue, the foreign ministers of Argentina and Chile and Casaroli signed the treaty on November 29, 1984. Chile obtained the three disputed islands, but limited its maritime claims to a line about thirty miles to the southeast of the islands, rather than the accepted 200 mile economic zone often asserted. Argentina maintained the split between the Atlantic and Pacific Oceans for which it was willing to wage war.⁷² Peace between the countries over this issue had been obtained. The treaty also provided for commissions to settle disputes between the countries and to improve economic relations.⁷³

IV. FAITH-BASED INTERNATIONAL DISPUTE RESOLUTION: RELIGIOUS ASPECTS OF VATICAN INTERVENTION IN THE BEAGLE CHANNEL DISPUTE

A. *The Religious Authority of the Church*

Prior commentators on the Beagle Channel dispute have readily noted the "moral" force of the Roman Catholic Church in Latin American relations. Perhaps believing that "moral" is an acceptable and neutral code-word for "religious," few studies have distinctly discussed the Church as a "religious" force in set-

72. See BENADAVA, *supra* note 3, at 131-57; PRINCEN, *INTERMEDIARIES*, *supra* note 1, at 158-61.

73. See Lindsley, *supra* note 6, at 449.

ting this international dispute. Indeed, modern scholars and practitioners of international law become uncomfortable when the terms "religion" and "international law" are mentioned in proximity outside of some limited contexts, such as human rights or the history of international law.⁷⁴ As a present religious force, though, the Church is not limited to assessments of what is right or wrong under the circumstances. For Roman Catholics, the Church can authoritatively judge what is Good or Evil, and what actions or omissions may lead to eternal damnation. This is something different from and additional to moral authority; it is religious authority. As Yvonne Thayer, a former official at the U.S. Embassy in Argentina from 1976 to 1979, notes, "In the Latin world, the Church has a stature that other [mortals] don't have."⁷⁵ The Church's unique authority, its religious authority, helps explain why on December 23, 1978, Chile and Argentina chose to listen to John Paul II's appeal for peace.⁷⁶ It appears that only the Pope could command their actions without a loss of military honor on their parts.⁷⁷ This was true despite the individually strained relations between the dictatorships and the Church both at home and in Rome.⁷⁸

Peacemaking is a religious vocation. As earthly representatives of Jesus Christ, members of the Church are called to work for peace.⁷⁹ Samoré himself saw his presence in the region as

74. See HAROLD J. BERMAN, *FAITH AND ORDER: THE RECONCILIATION OF LAW AND RELIGION* 277-87 (1993); William P. George, *Grotius, Theology, and International Law*, 14 *J.L. & RELIGION* 605, 606 (1999-2000); Mark W. Janis, *Religion and The Literature of International Law: Some Standard Texts*, in *RELIGION AND INTERNATIONAL LAW*, 121-43 (Mark W. Janis & Carolyn Evans eds., The Hague, 1999); David Kennedy, *Images of Religion in International Legal Theory*, in *RELIGION AND INTERNATIONAL LAW*, *supra*, at 145-53. Cf. *FAITH-BASED DIPLOMACY: TRUMPING REAL-POLITIK* (Douglas Johnston ed., 2003); *RELIGION, THE MISSING DIMENSION OF STATECRAFT* (Douglas Johnston & Cynthia Sampson eds., 1994) (essays illustrating the importance of religion in international peacemaking).

75. See Lindsley, *supra* note 6, at 443 (citing Yvonne Thayer, Director of Face-to-Face, Carnegie Endowment, Political Officer, U.S. Embassy Argentina, 1976-1979 (Nov. 26 1985)).

76. See *id.* at 444.

77. See *id.* at 453.

78. See Laudy, *supra* note 6, at 317.

79. "All citizens and all governments are obliged to work for the avoidance of war." *CATECHISM OF THE CATHOLIC CHURCH* § 2308 (1994). See generally *id.* at §§ 2302-17. For the historical background of the Church's activities in working towards peace between belligerent countries and its involvement in peace treaties, see WILHELM G. GREWE, *THE EPOCHS OF INTERNATIONAL LAW* 51-59, 106-13, 141-62 (Michael Byers trans., Berlin, 2000); Apollis, *supra* note 4, at 326-35; King & Le

something beyond a typical offer of assistance by a neutral third party. He spoke of “mission and not of mediation,” of the newness of such intervention, and of God as the prince of peace and the Holy Virgin as the queen of peace.⁸⁰ Indeed, his aim was “not to continue the negotiation in a strict juridical plan [*sic*] nor in a political plan in the sense that it means to dispense with the law, but rather in a new plan, in a higher plan—if you permit a priest to express it like this—spiritual.”⁸¹ Likewise, John Paul II described his involvement in the dispute in 1979 as stemming from his identity as “one who considers that peace is one of the greatest human values and its pursuit and realization a desire, nay more, a mandate of the Son of God made Man, the Prince of Peace, whose vicar Providence has made me among men.”⁸²

The Pope, as a religious authority, was called upon to bring peace between Argentina and Chile as the dispute grew out of control. As early as September, 1978, Cubillos met with Pope John Paul I in whose short time as Pope sent a letter imploring the Episcopal conferences of Argentina and Chile to work for peace.⁸³ The letter noted the many common attributes of the countries, including their identical religious ties.⁸⁴ Certainly, a direct personal request from the Pope to a faithful Catholic would be a very difficult request to refuse.⁸⁵ As the Commander-in-Chief of the Argentine Air Force said at the time,

Forestier, *supra* note 4, at 75-77; Moncayo, *supra* note 4, at 256-71; Alain Wijffels, *Martinus Garatus Laudensis on Treaties*, in *PEACE TREATIES AND INTERNATIONAL LAW IN EUROPEAN HISTORY: FROM THE LATE MIDDLE AGES TO WORLD WAR ONE 192-193* (Randall Lesaffer ed., Cambridge, 2004). It appears the invocation at the beginning of the 1984 treaty—“In the name of Almighty God”—the same invocation of the Treaty of 1881, had more rhetorical value than religious significance. See SERGIO GUTIERREZ OLIVOS, *COMENTARIO SOBRE EL TRATADO DE PAZ Y AMISTAD CON ARGENTINA 20* (Santiago, 1986).

80. PRINCEN, *INTERMEDIARIES*, *supra* note 1, at 147 (citing and translating from ARMANDO AMUNCHÁSTEQUI ASTRADA, *ARGENTINA-CHILE 184* (1980)).

81. PRINCEN, *INTERMEDIARIES*, *supra* note 1, at 147 (citing and translating from ARMANDO AMUNCHÁSTEQUI ASTRADA, *ARGENTINA-CHILE 184* (1980)).

82. Princen, *Mediation*, *supra* note 5, at 349. For a discussion of the “mediative functions” of religion in international law, see James A.R. Nafziger, *The Functions of Religion in the International Legal System*, in *RELIGION AND INTERNATIONAL LAW*, *supra* note 74, at 170-71.

83. See TAPIA, *supra* note 3, at 110-12.

84. See BENADAVA, *supra* note 3, at 27.

85. “For the Roman Pontiff, by reason of his office as Vicar of Christ, and as pastor of the entire Church has full, supreme, and universal power over the whole Church, a power which he can always exercise unhindered.” *CATECHISM OF THE CATHOLIC CHURCH*, *supra* note 79, at § 882 (quoting *Lumen gentium 22*).

“Cómo es posible decirle que no al Papa?” (How is it possible to say no to the Pope?).⁸⁶ So important was the Pope as head of the mediation that his scheduled visit to England during the Falklands/Malvinas War to improve Roman Catholic relations with the Church of England had to be balanced with a quickly planned visit to Argentina immediately afterwards. Nonetheless, in the thirty-six hours he spent in Argentina, he publicly implored his audience for peace no less than twenty-five times.⁸⁷

The Church's religious authority might undermine its claims of neutrality, an attribute essential for effective and valid mediation. Nonetheless, on the political level, the Church offered neutrality. Because it lacks traditional military or political ambitions, it maintains a high level of “disinterestedness and objectivity” in disputes between other countries.⁸⁸ Since 1929, the Vatican has agreed to refrain from taking sides in international disputes and to interpose itself only when requested by states.⁸⁹ In this sense, the Church was about as politically neutral a mediator one could find. On the religious level, the Church was far from neutral. Because the Church asserts a spiritual jurisdiction over Roman Catholics throughout the world, it and its members had a spiritual jurisdiction over the actors in this dispute.⁹⁰ Part of the Church's mission is to maintain and promote peace.⁹¹ Any hindrance of this mission, might cast those responsible into spiritual danger. It is unlikely that such spiritual sanctions had to be expressed specifically or individually to be felt by the negotiating teams and their governments. To faithful Catholics dealing one-on-one with the highest levels of the Church, the

86. See PASSARELLI, *supra* note 3, at 174. Analyzing the role of the Pope in the work of Martinus Garatus, Wijffels provides an example of this tradition: “Whereas the emperor's role in *De confederatione* is almost reduced to its vanishing point, the pope as the supreme authority of the community of actors is strongly asserted. His superiority *in jure* over the princes is unequivocally established, though the role ascribed to him often seems to take into account that his superiority is rather a matter of law, moral authority and religious duty than political (or military) clout.” Wijffels, *supra* note 79, at 191.

87. See PASSARELLI, *supra* note 3, at 227-28.

88. See Princen, *Mediation*, *supra* note 5, at 349.

89. See NICHOLAS J. HERCULES, *HOLY SEE DIPLOMACY: A STUDY OF NON-ALIGNMENT IN THE POST WORLD WAR TWO ERA 5* (M.Sc. dissertation, University of Bristol, 1998), available at <http://www.petersnet.net/research.retrieve.cfm?RecNum=798> (last visited Sept. 20, 2004).

90. See Princen, *Mediation*, *supra* note 5, at 348-49. CATECHISM OF THE CATHOLIC CHURCH, *supra* note 79, at §§ 836-38.

91. See *supra* note 79 and accompanying text.

implicit spiritual pressures must have been sufficient to provide a uniquely coercive effect on those negotiating the dispute. Thus, in this dispute, the Vatican had dual jurisdictions. The first, a consensual jurisdiction, gave it authority under international law to mediate the dispute. The second, an assumed silent jurisdiction, gave it the ability to exert itself directly on the actions of any Catholic involved in the dispute.⁹²

The religious authority of the Vatican in the dispute was not expressed exclusively on the level of the Pope and bishops. The Vatican provided a mediation team composed entirely of clergy, "individuals who were trained to listen, to be understanding, to be patient, to try to reconcile differences."⁹³ They could be trusted with confidences, but could also use their position to coerce information. For example, at a later stage of the negotiations, the Vatican requested that each team state its position "as if in confession."⁹⁴ Taken seriously, this would require the team's "diligent self-examination" and the revelation of its "most secret" information.⁹⁵ Only with priests could such a request be imagined in the course of negotiating an international dispute.

Priests are also trained to pray, and the priests involved in resolving this dispute sought God's help in securing peace.⁹⁶ Various accounts of the dispute record the papal nuncio, Laghi, turning to prayer in the last days of December, 1978, waiting for Vatican intervention.⁹⁷ The very evening John Paul II sent word to the presidents of Argentina and Chile that he was willing to intervene based upon their request, he directed his prayer towards the Holy Spirit.⁹⁸ Even as Cubillos and Pastor signed the agreement, Samoré was said to have prayed under his breath

92. Although this second jurisdiction forcefully guided Catholics involved in the dispute, there were, of course, non-Catholics who made important contributions to the mediation. See BENADAVA, *supra* note 3, at 67-68.

93. Princen, *Mediation*, *supra* note 5, at 349.

94. PRINCEN, *INTERMEDIARIES*, *supra* note 1, at 180.

95. See CATECHISM OF THE CATHOLIC CHURCH, *supra* note 79, at § 1456.

96. The author here follows William W. Park's suggestion that part of writing on law and religion is to "show an appreciation of what religion means in the life of individual believers" and to "tak[e] seriously the religious experience itself." William W. Park, *Spiritual Energy and Secular Power*, in *RELIGION AND INTERNATIONAL LAW*, *supra* note 74, at 270.

97. See PASSARELLI, *supra* note 3, at 106.

98. See *id.* at 127.

giving thanks for the intervention of the Holy Spirit.⁹⁹ Samoré and Latin America's affinity for the Virgin of Gaudalupe made her a frequent intercessor during the peace process. The mediation at the Vatican opened with mass and the veneration of the Virgin of Guadalupe.¹⁰⁰ Numerous times during the dispute, Samoré sought the guidance of the Virgin of Guadalupe.¹⁰¹ Through its bishops in the two countries, the Church continually called on the faithful to pray for a peaceful outcome to the mediation.¹⁰²

Movement towards peace was also found in religious festivals, arranged pilgrimages, and in the liturgy.¹⁰³ Masses were celebrated at various points during the mediation.¹⁰⁴ Samoré celebrated mass in Luján, near Buenos Aires, shortly after arriving in Argentina and offered prayers of thanks before the Virgin on obtaining the agreement for the Pope to mediate the dispute.¹⁰⁵ Providing geographical balance, Samoré likewise celebrated mass in Maipú, Chile, during his shuttle diplomacy between the countries.¹⁰⁶ An important breakthrough in the mediation came the day after Samoré's death, when John Paul II said mass for his soul. In addition to the numerous cardinals and Church officials present, the delegations from Argentina and Chile also attended.

And when the moment for the embrace of peace came, Colonel Videla and Ambassador Llopis [of Chile] shook hands. Behind them, the other diplomats of Chile and Argentina extended their right hands. At that moment, this gesture acquired an immense testimonial value. It was as if these old and stubborn archenemies were tacitly laying down their arms to the fallen cardinal.¹⁰⁷

It was this type of conversion that the Church sought to obtain between the countries. It seems implausible that a discussion of Argentina and Chile in the late 1970s has not yet touched on their internal conditions or their horrid record for

99. *See id.* at 157.

100. *See* BENADAVA, *supra* note 3, at 61.

101. *See* PASSARELLI, *supra* note 3, at 208, 233.

102. *See* GUIDO, *supra* note 7, at 58-64; Moncayo, *supra* note 4, at 381.

103. *See* GUIDO, *supra* note 7, at 72-74.

104. *See* BENADAVA, *supra* note 3, at 73. The Pope also presided over private masses for the delegations at various points of the mediation. *See* Apollis, *supra* note 4, at 355 n.67.

105. *See* PASSARELLI, *supra* note 3, at 153-54.

106. *See* BENADAVA, *supra* note 3, at 54.

107. PASSARELLI, *supra* note 3, at 240 (author's translation).

human rights in the international community. At the time, President Carter had suspended arms sales to both countries because of their poor human rights records.¹⁰⁸ Argentina was under the control of a repressive and violent military junta. Since the mid-1970s and after the death of Perón in 1974, the military wiped out guerilla troops, sympathizers, suspects, and innocents through random “disappearances,” murdering over 10,000 individuals. “The last phase of the guerilla war was its bloodiest and most terrifying: all due process of law was overturned; military patrols infested the country; thousands vanished into the prisons and police torture chambers.”¹⁰⁹ Various factions of the military vied for power, and by the early 1980s, they had steered Argentina into the calamitous Falklands/Malvinas War, which produced almost two thousand casualties.¹¹⁰ The war led to the Junta’s fall from power. Videla and the military leaders of his era were sentenced to prison in 1985.¹¹¹

Pinochet’s Chile was not any better. In 1973, his coup had similarly targeted the democratically elected government of Allende, and set out relentlessly to imprison, to torture, and to banish any opposition. Although most of the blood had been let by 1977, “disappearances, torture, and murder were, however, to recur at regular intervals until almost the end of the military regime.”¹¹² Pinochet has faced prosecution for the crimes of murder and torture.¹¹³

In sum, Argentina and Chile could be characterized as nationalistic military dictatorships, with miserable human rights records, swiftly positioning themselves for war against each other. If war broke out, Argentine aspirations included not only the taking of the islands in question, but also an all-out occupation of Chile. The Junta had plans in hand for assaults on Santi-

108. See Laudy, *supra* note 6, at 307.

109. See ROCK, *supra* note 23, at 367-68; see also MARGUERITE FEITLOWITZ, A LEXICON OF TERROR: ARGENTINA AND THE LEGACIES OF TORTURE (1998); NUNCA MÁS: THE REPORT OF THE ARGENTINE COMMISSION ON THE DISAPPEARED (1986).

110. See ROCK, *supra* note 23, at 374-83.

111. Marfa Inés Bergoglio, *Argentina: The Effects of Democratic Institutionalization*, in LEGAL CULTURE AND THE AGE OF GLOBALIZATION: LATIN AMERICA AND LATIN EUROPE 21 (Lawrence M. Friedman & Rogelio Pérez-Perdomo eds., 2003).

112. SIMON COLLIER & WILLIAM F. SATER, A HISTORY OF CHILE, 1808-1994, 361 (Cambridge, 1996); see REPORT OF THE NATIONAL COMMISSION ON TRUTH AND RECONCILIATION (Philip E. Berryman trans., 1993).

113. See Ruth Wedgwood, *International Criminal Law and Augusto Pinochet*, 40 VA. J. INT’L L. 829-47 (2000).

ago and Valparaíso.¹¹⁴ The Church, however, is accustomed to dealing with the sinful and violent. Historically, theologically, and institutionally, it is an expert in the area. The Church seeks to reconcile sinners, to turn them from evil to good, from war to peace. In this dispute, the Church was able to apply its centuries of experience in religious conversion to the similar problem of political conversion. It invoked the power of God, prayer, and liturgy. From this central hub of faith, the Church also employed more traditional tools of international law and diplomacy to resolve the dispute, but always with its own interpretation of these methods.

B. Information Control and Secrecy

The Vatican is an institution used to maintaining secrecy and has a "low need for public disclosure and public accountability."¹¹⁵ As part of its function as mediator in the Beagle Channel dispute, the Vatican kept tight control over information released to the public. All public statements regarding the mediation were issued jointly by the parties and the Vatican mediation team. Thus, the parties were, for the most part, unable to try their case in the media or influence popular beliefs at home.¹¹⁶ The Vatican was the main and only official source concerning the progress of the mediation. Leaks from within the Vatican were highly unlikely. As Princen stated, "[a]s a small, tradition-bound institution, the Holy See is, therefore, accustomed to keeping things under wraps."¹¹⁷ This control aided greatly in resolving the dispute by removing all of the positioning and feigning the parties might otherwise have been compelled to undertake in presenting their views to the public. It also reduced the number of relevant statements and positions of the parties to those presented in the official course of the mediation.

The Vatican's control of information did not end with limiting what would be presented to the public and the press; it also

114. See PASSARELLI, *supra* note 3, at 17-42.

115. Princen, *Mediation*, *supra* note 5, at 352.

116. See *id.* at 348. "For the most part, the two countries followed this guideline throughout this 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." Laudy, *supra* note 6, at 310-11; see also PASSARELLI, *supra* note 3, at 185.

117. See PRINCEN, *INTERMEDIARIES*, *supra* note 1, at 174.

had its own means of informing the people and governments of Argentina and Chile. With the presence of approximately 115 bishops throughout Argentina and Chile, the Vatican had a responsive and loyal system of disseminating information.¹¹⁸ Its influence, however, was not only limited to the Church hierarchy within each country, but also could operate on a number of levels simultaneously. Every Catholic Church in Argentina and Chile was a potential outlet for information the Vatican wanted to telegraph directly to the people of each country. The Church, thus, had a strong popular constituency within the disputing countries and was able to demand popular support for peace on a grass-roots level.¹¹⁹ While ruling individuals in Latin American countries found it easy to disregard popular demonstrations and unrest, such activities bolstered and instigated by the Church were more difficult to ignore. For example, late in 1978 as the countries headed for war, "[t]he Roman Catholic Church in Chile and Argentina orchestrated a campaign for peace which included marches to the Andes, youth movements, and petitions."¹²⁰ The Vatican's means of disseminating information proved to be especially useful when it substantially limited media access to the mediation. In this way, the long-arm aspect of the Vatican made it effective in influencing the positions of each party. The Vatican's reach also made it unusually able to exert influence across the leadership and decision-making structure within each country. As a result, the Vatican could put pressure on foreign ministers, presidents, and military leaders who might dissent to the decisions made by their respective representatives at the negotiations.¹²¹

This proved to be particularly important in Argentina, which, in the course of the negotiations, "had five presidents and five delegation chiefs."¹²² For example, in the final days of December, 1978, Laghi, the nuncio in Argentina, was able to speak directly to President Videla. Seeking Videla's consent to papal intervention, Laghi reminded the President that the Church opposed war and that the President, whose piety was

118. See Lindsley, *supra* note 6, at 452. In October, 1978, Bishop Valdés Subercaseaux sent a letter to the presidents of Argentina and Chile imploring peace and love between the countries. See BENADAVA, *supra* note 3, at 28-29.

119. See Laudy, *supra* note 6, at 317.

120. Lindsley, *supra* note 6, at 441.

121. See Princen, *Mediation*, *supra* note 5, at 354-55.

122. *Id.* at 363; see also Laudy, *supra* note 6, at 312.

publicly known, should seek peace through papal intervention.¹²³ Similarly, the local episcopate in Argentina served to communicate the gravity of the situation to Rome at the close of 1978.¹²⁴ In Chile, such direct influence by the local church hierarchy was more limited due to the cool relationship between the Chilean President of the Episcopal Conference and Pinochet.¹²⁵ Nonetheless, late in 1983, after the terms of the treaty had been worked out, cardinals from Argentina and Chile sent word of their support for the treaty to the episcopacies of their home countries.¹²⁶ In this and other ways, the Argentine and Chilean cardinals also served the goal of reaching a peace.¹²⁷

C. Institutional and Structural Advantages of the Church

Roman Catholics are superb at waiting. The Church has waited almost two thousand years for the second coming of Jesus Christ. The Church has waited centuries for the reunification of the splintered factions of sects. It sometimes waits more than a hundred years for a final determination on a cause for canonization. It waits for sinners to reject falsehood and embrace truth. These are big things, and they take time. Because the stakes are so high, procedures that many believe to be painstakingly slow and detailed have become inextricably woven into the mindset of the Church. As Sir D'Arcy Osborne noted:

Not only is the atmosphere of the Vatican supernatural and universal . . . but it is also fourth-dimensional, and so to speak, outside of time . . . for example, they can regard the Savoy dynasty as an interlude, and the Fascist era as an incident, in the history of Rome and Italy. They reckon in centuries and plan for eternity and this inevitably renders their policy inscrutable, confusing, and, on occasion, reprehensible to practical and time-conditioned minds.¹²⁸

The Church, then, possesses a different sense of time and history than most other mediating bodies.

123. See PASSARELLI, *supra* note 3, at 100-01.

124. See *id.* at 118-19.

125. See *id.* at 150; Patrick J. Thurston, *The Development of Religious Liberty in Chile, 1973-2000*, 2000 BYU L. REV. 1185, 1201-29; TAPIA, *supra* note 3, at 216 (describing activity of Chilean nuncio with Pinochet to advance peaceful settlement).

126. See PASSARELLI, *supra* note 3, at 258.

127. See TAPIA, *supra* note 3, at 133.

128. SIR D'ARCY OSBORNE, British Ambassador to the Holy See, March 1947, as quoted in HERCULES, *supra* note 89, at 2.

The Vatican's approach to the Beagle Channel mediation reflected this worldview. Samoré's procedures included many separate meetings with each side, with face-to-face meetings reserved only for issues that were not contentious. The stances of each side were written in detailed position statements.¹²⁹ This not only served the Vatican mediation team in gathering information and assessing positions, but also offered the parties the opportunity to commit to and to solidify their views. The use of position statements has been criticized for their tendency to lock parties inflexibly into a particular stance, and thus make negotiation towards common ground more difficult.¹³⁰ Thomas Princen correctly observes that such written position statements are "standard operating procedure for the Holy See," but upon closer examination there is something institutionally deeper here.¹³¹ The reliance on written position statements stems from both historical and present-day methods of truth seeking in canon law and theology in the Roman Catholic Church. First, from the perspective of canon law, written statements are consistent with the standard method of canonical procedure. In canon law, disputes are initiated and responded to by writings. Evidence is collected in written statements often based on written questions. Judges usually rely exclusively on the written record to produce written decisions.¹³² For priests familiar with canon law and called to produce a written treaty (similar to a canonical sentence), the written position statement is the most obvious starting point. Second, from the perspective of theological debate, the error reflected in a written work becomes the raw material upon which the process of correction can be imposed. The Scholastic method, second nature to theologians and canon lawyers, requires a proposition to be disputed. As Harold Berman writes, "[t]he method is called 'dialectical' in the twelfth-century sense of that word, meaning that it seeks the reconciliation of opposites."¹³³ The task before these priests trained in the Scholastic method was reconciling the opposite positions of Argentina and Chile. Position statements were the

129. See Princen, *Mediation*, *supra* note 5, at 351-52.

130. See PRINCEN, *INTERMEDIARIES*, *supra* note 1, at 177; Princen, *Mediation*, *supra* note 5, at 360-61.

131. PRINCEN, *INTERMEDIARIES*, *supra* note 1, at 178.

132. See HAROLD J. BERMAN, *LAW AND REVOLUTION: THE FORMATION OF THE WESTERN LEGAL TRADITION* 250-52 (1983).

133. *Id.* at 131.

raw material upon which the Scholastic method could be worked to reach a peaceful solution. Princen has observed that, consistent with the needs of the two parties, the method provided a highly formal and organized structure to the negotiation.¹³⁴ It is not surprising that Samoré, with doctorates in both theology and canon law, applied his training in these fields to structure the resolution of an international dispute.¹³⁵

While this method was time-consuming, it appears that the Church saw little problem in delay. Each day of negotiation, each day of preparing position statements, was a day of peace. Princen states one positive aspect of this method was "to keep the parties busy."¹³⁶ Delay provided an opportunity for favorable internal changes in the disputing countries.¹³⁷ Thus, a long period of negotiation, during which no decision was reached, was acceptable. Patience turned out to be an essential attribute for the Vatican team.¹³⁸ Indeed, the willingness to continue mediation over six years, even when no movement in positions was expected, led to a six-year period of peace.¹³⁹

The institutional aloofness of the Vatican was a valuable attribute in its role as a mediator. While this quality supported its neutrality towards the parties, it also meant that the Vatican would not easily be swayed by outside interests. Its religious interest in a peaceful and lasting reconciliation between the parties was its primary goal. As an institution, the Vatican has long withstood public pressure against and disenchantment with its actions and positions. In the face of broad and forceful criticism by much of the modern world, Vatican priests must individually stand up for their faith and defend the Church's position. Samoré and other members of the negotiating team were appropriately detached from outside criticism concerning their selected procedures and methods of handling the mediation.

Finally, the Vatican offered a well-oiled bureaucratic machine. Indeed, it is staffed with professionals of the highest caliber accustomed to dealing with matters of the utmost

134. See Princen, *Mediation*, *supra* note 5, at 361.

135. See TAPIA, *supra* note 3, at 171.

136. PRINCEN, *INTERMEDIARIES*, *supra* note 1, at 182.

137. See Princen, *Mediation*, *supra* note 5, at 364.

138. Patience is one of the fruits of the Holy Spirit. See CATECHISM OF THE CATHOLIC CHURCH, *supra* note 79, at §§ 736, 1832.

139. See Princen, *Mediation*, *supra* note 5, at 364.

seriousness. For example, the Vatican could control and shape the negotiation process with adept skill. It was used to dealing with secular power, to afford it appropriate diplomatic respect, and to criticize it from the superior position of religious truth. It also provides its own counterweight of history, power, and majesty. For example, in 1980, when John Paul II made his proposal for a resolution of the conflict, the delivery of his solution was made in person, in a solemn ceremony in the Consistorial Hall of the Apostolic Palace – an impressive location by anyone's standards.¹⁴⁰

V. THE CHURCH'S AGENDA IN MEDIATION

The Church's main goal in intervention and mediation was the preservation of peace between countries claiming a common faith. Making peace is central to the religious mission of the Church.¹⁴¹ Beyond reaching a peaceful solution, the Church may have had other things to gain by successful mediation. A successful resolution would have greatly increased the international stature of both the Vatican and the new Pope, John Paul II. During the time of the dispute in the region, the Church's social conscience had been brought under close scrutiny by the rise of liberation theology. By maintaining peace between the countries and asserting its position against military governments of questionable validity, the Church expanded its activities in the region. The Church's actions may have even risen to the level of institutional atonement to these countries' poor who suffered most under Argentina and Chile's purges of communists and dissidents. The Church's complex and multilevel responses of objection to, dissent from, silence about, and complicity with these countries' governments and their atrocities are beyond the scope of this work.¹⁴² Nonetheless, all would agree that the Church's actions were less than perfect in response to such events. Furthermore, the Church sought progress on this issue. The Church's place in Latin American society and politics was to be addressed at the Third General

140. See BENADAVA, *supra* note 3, at 84, and photo preceding 57; PASSARELLI, *supra* note 3, at 177.

141. See *supra* note 79 and accompanying text.

142. See COLLIER & SATER, *supra* note 112, at 361-62; FEITLOWITZ, *supra* note 109, at 219-23.

Assembly of the Latin American Episcopate in January, 1979.¹⁴³ A war between Argentina and Chile, and perhaps spreading throughout the entire region, would have greatly undermined any possible progress of a general assembly.

VI. CONCLUSION

The Vatican's intervention in the Beagle Channel dispute offers an opportunity to see one instance of successful faith-based international action by the Roman Catholic Church. Consistent with the Church's mission of making peace, the Vatican brought several unusual attributes to the process of mediation. These included the religious authority of the Church, the ability to control information regarding the mediation, neutrality stemming from its lack of military and earthly ambitions, and highly trained and patient bureaucratic machinery accustomed to dealing with power and evil.

These attributes make the Church an ideal actor for international peace in disputes between countries that are predominantly Roman Catholic. The resolution of the conflict between Argentina and Chile by the Vatican was greatly aided by the countries' historical, political, and popular ties to the Church. Where different religions or faiths underlie a dispute, intervention by an organized representative of the faith of one party will be seen as lacking impartiality. Where Roman Catholicism predominates, such as in the countries of Latin America, the Vatican is aware of the special contribution it may make to maintain and create peace. In a letter to the United Nations, John Paul II noted these possibilities.¹⁴⁴ The Organization of American States is also aware of the unique service the Vatican can offer in such situations.¹⁴⁵ In fact, the Beagle Channel dispute was not the first time in the twentieth century that Vatican intervention brought peaceful solutions to international problems in Latin America.¹⁴⁶ The Vatican served to facilitate Manuel Antonio Noriega's safe and peaceful relocation to the United States for trial.¹⁴⁷ In 1965, a papal nuncio helped establish a

143. See Laudy, *supra* note 6, at 305.

144. See Lindsley, *supra* note 6, at 453.

145. See *id.* at 454.

146. See Apollis, *supra* note 4, at 333-35.

147. See James A.R. Nafziger, *The Functions of Religion in the International Legal System*, in *RELIGION AND INTERNATIONAL LAW*, *supra* note 74, at 170-71.

cease-fire in the Dominican Republic.¹⁴⁸ As other conflicts and disputes arise in the region, it is hoped that world leaders, international organizations, and the Vatican itself remember the successes of the Beagle Channel intervention and the unique religious perspective and tools the Vatican might bring to peacemaking in Latin America.

148. See William P. George, *Looking for a Global Ethic? Try International Law*, in RELIGION AND INTERNATIONAL LAW, *supra* note 74, at 495.