

AWARD¹ OF THE PRESIDENT OF THE ARGENTINE REPUBLIC
IN THE ARBITRATION OF THE QUESTION OF THE BOUNDARY
BETWEEN BOLIVIA AND PERU. BUENOS AIRES, 9 JULY, 1909

Détermination de la ligne frontière entre la Bolivie et le Pérou.

José Figueroa Alcorta, President of the Argentine nation.

WHEREAS the Government of the Argentine Republic has been appointed as Arbitrator and Umpire for deciding the question of frontiers pending between the Republics of Bolivia and Peru, in accordance with the Treaty of Arbitration signed in the city of La Paz on the 30th day of December, 1902, the ratifications of which were exchanged in the said city on the 9th day of March, 1904.

Animated by the wish to justify the confidence in this Government shown by the Governments of the two Republics so intimately connected with Argentina by origin, traditions, and destiny, an Advisory Commission was appointed, which at present consists of the following gentlemen: Dr. Antonio Bermejo, President of the Supreme Court of Justice of the Nation, ex-Minister of Justice and Public Instruction, and ex-Plenipotentiary at the International American Conference of Mexico; Dr. Manuel Augusto Montes de Oca, ex-Minister of Foreign Affairs, ex-Adviser to the Argentine Government in the Arbitration with the Republic of Chile; Dr. Carlos Rodriguez Larreta, ex-Minister of Foreign Affairs, ex-Plenipotentiary at the Second Conference of La Paz, and member of The Hague Permanent Arbitration Court; and Dr. Horacio Beccar Varela, acting as Secretary. This Commission was to fix the proceedings to be followed in the determination of the Arbitration Award, to receive the exposition of their case, statements of claims and proofs of the High Contracting Parties, and to assist the Arbitrator in the solution of the question of frontiers submitted to his decision.

WHEREAS it appears that the said Commission, after having exchanged views with the Ministers representing Peru and Bolivia, fixed the rules of procedure to be observed, and, in conformity with these rules, there were submitted the respective expositions, replies, proofs, and objections (Case and Counter-Case) which have been carefully studied by the Commission.

That, according to the argument of the Republic of Bolivia, the dividing line should run as follows:—

“ Commencing in the south from the River Suches, the line crosses the lake of the same name for its entire length, rises to the Cordillera, through Palomani-tranca and Palomani-cunca, to the ‘ pie ’ (peak) of the same name, which is the highest of the ‘ Nevados ’ of this region. It descends on the eastern slope through the landmarks of Yaguayagua, Huajra, and Lurirni, which marks the domain of both Republics. It continues as far as the landmarks of Hichocorpa on the mountain ridge of that name, and descends, through the River Corimayo, as

¹ *British and Foreign State Papers*, vol. 105, p. 572.

far as the River San Juan del Oro or Tambopata, and through the course of the said river downstream to its confluence with the Lanza. From this point it runs to the mouth of the Chunchusmayo on the River Inambari, and down that river to its confluence with the Marcapata. Through the latter it rises to the border of the old Province of Paucartambo, and through those borders to the place known colonially under the name of Opatari, at the confluence of the Rivers Tono and Piñipiñi. Continuing through the borders of the Province of Urubamba and the River Yanatile, it enters the River Urubamba, the waters of which it follows to the point of its confluence with the Ucayali, from where it runs to the springs (falls) of the Yavary on the right bank of the said river." (Bolivian Case, page 313.)

That, in the argument of the Republic of Peru, their demand is condensed in the following terms: —

"Within the said limits, the demand of Peru goes to mark out the districts of Charcas and of the Virreinato of Lima, in the following manner:

"1. The Audiencia (Court District) of Charcas in the Viceroyalty of Buenos Aires, extended in the year 1810, in so far as these present proceedings are concerned, from the place where the demarcation of the frontier between Peru and Bolivia terminates, in accordance with the Agreement of the 23rd September, 1902, through the dividing line of the waters of the Tambopata and of the Tuiche to the sources of the Madidi; it continued, through the course of this river, to its junction with the Beni; it continued eastward until it met the Rio de la Exaltación, or Yruyani, the course of which, and that of the Mamoré River up to the mouth of the Guaporé or Iténez, were the terminal part of the dividing line.

"2. The territories lying to the north and north-west of that line, as far as the frontier of Portugal, belonged to the Viceroyalty of Peru in 1810." (Case of the Republic of Peru, vol. I, page 3, and vol. II, page 259.)

And considering that, in accordance with Article I of the Treaty of Arbitration, "the High Contracting Parties submit to the judgment and decision of the Government of the Argentine Republic, in its capacity of Arbitrator and Umpire, the question of borders now pending between the two Republics, in order to obtain a definite judgment admitting of no appeal, according to which the whole of the territory, which in 1810 belonged to the jurisdiction or district of the old Audiencia of Charcas, within the borders of the Viceroyalty of Buenos Aires by enactments of the former Sovereign, should belong to the Republic of Bolivia, and all the territory which, on the same date and by enactments of the same origin, belonged to the Viceroyalty of Lima, should belong to the Republic of Peru.

That when interpreting this Article relating to the competency of the Arbitrator in the exercise of the power recognized by international law (Convention for the Pacific Settlement of International Disputes, sanctioned by The Hague Conferences of 1899 and 1907, section 48 of the former and section 73 of the latter), it must be understood that, by the same, the High Contracting Parties empowered him to fix the dividing line between the Audiencia of Charcas and the Viceroyalty of Lima in 1810, in so far as the respective territorial rights are concerned, because if he had to determine the entire perimeter of one and the other of the said colonial entities, rights of various nations which are not parties to the Arbitration Treaty of 1902, which form the basis of this present decision, would be affected. To this must be added the provision of Article IX of the Treaty according to which, after the decision has been given and notified to the Envoys Extraordinary and Ministers Plenipotentiary of the High Contracting Parties, "the territorial delimitation shall be legally considered as having been established in a definite and binding manner between

the two Republics," which expresses clearly that it is the territorial border between the said Republics which the Arbitrator is instructed to determine.

That in conformity with the provision of Article II of the Treaty of Arbitration, as modified by the Act of Exchange of Ratifications, signed at La Paz on the 9th day of March, 1904, the Arbitrator has, for determining the dividing line, a starting point expressly designated, namely, "the place where the present frontier line coincides with the River Suches," in the following terms of the Treaty of Arbitration, supplemented by the aforesaid Act of Ratification:—

"Article II. As by the Treaty dated the 23rd September of this present year the demarcation and the setting of land-marks on the frontier, which commences between the Peruvian provinces of Tacna and Arica and the Bolivian province of Carangas in the west, and runs to the place where the present frontier line coincides with the River Suches, has been settled, this section is excepted from the present Treaty."

That having most carefully examined the titles adduced by the two Parties, the Arbitrator does not find any sufficient ground for considering, as dividing line between the Audiencia of Charcas and the Viceroyalty of Lima in the year 1810, one or the other of the demarcations claimed in the respective pleadings of the States concerned.

That in reality the disputed zone was, in 1810 and up to a recent period, perfectly unexplored, as appears from the numerous maps of the colonial period and of periods subsequent to the latter, which were submitted by both parties, and this the latter themselves recognize, which explains that the demarcations of the said administrative entities, subject to one and the same Sovereign, had not been fully determined. This is recognized in the pleadings of Bolivia, which, when referring to the successive alterations in the frontiers of the principal colonial sections, state that: "In these long proceedings, which have continued for more than three centuries, it is frequently noticed that the dispositions of the Spanish Crown have been contradictory, some of the same being vague and many in disagreement with the situation or the topographical features of the places. This latter was due to the want of geographical knowledge, and an equitable interpretation, according to the respective ideas of the period, is therefore necessary for appreciating the true significance and scope of the said dispositions," even if it is added that, with respect to the district of the Audiencia of Charcas, the Royal Orders and dispositions were more precise (Case of the Government of Bolivia, page 2).

On the other hand, the pleadings of Peru, when entering upon the examination of the principles on which the demarcation of the districts of the Audiencias is based, state as follows: "That the eastern territories forming the subject-matter of these proceedings, which territories were unknown and unconquered during the entire time of the Spanish domination, could not be included, and were not included, within the district of any subordinate Audiencia" (Case of the Republic of Peru, vol. I, page 77); adding subsequently: "The genuine and honourable way consists in presenting the titles of possession respecting the territories in dispute, considered in bulk *uti universitas*, and in submitting the documents which enable the arbitrator to create a juridical and geographically reasonable demarcation" (Memorandum of observations and objections presented by Peru, page 104).

That the demarcation claimed in these proceedings by the pleadings of Bolivia as following the course of the Rivers Corimayo, San Juan del Oro or Tambopata, Inambari, Yanatile, Urubambe, and Ucayali, as far as the sources of the Yavari, had been previously indicated by a straight line, which, starting

from the said sources of the Yavari, arrived at the confluence of the River Inambari with the River Madre de Dios (Notes of the 5th May, 1894, and 23rd October, 1902, in the Annexes to the reply of Bolivia, pages 26 and 36; Protocol Polar-Gómez of the 21st May, 1897); while at the same time Peru, which in these proceedings traces the line of demarcation through the Rivers Madidi, Yruyani, and Mamoré, had previously fixed it as running through the Rivers Tequeje and Beni, and continuing through the latter as far as its junctions with the Mamoré (Note of the Legation of Peru, dated La Paz, 10th November, 1902, in the Annexe to the reply of Bolivia, page 40).

That the said differences are fully explained, if it is taken into account that, as had been provided in the Treaty of Arbitration of the 30th December, 1902, and, as shown in the notable works submitted by both parties to the assessing committee, the Royal Acts and dispositions, which were in force in 1810, did not define in a clear manner the ownership of the disputed territory, in so far as it had to be determined whether this had been attributed to the jurisdiction of the Viceroyalty of Lima, or to that of the Audiencia of Charcas, which were colonial entities subordinate to the same undisputed Sovereign of the said territories, and, up to the year 1776, the latter formed an integral part of the former.

In order to recognize this it is, moreover, sufficient to mention that the statutes of the Indies, which in the third Article of the Treaty of Arbitration were indicated, in the first instance, as an element for the decision, gave the borders of the Audiencia of Charcas as follows: —

“ On the north, by the Royal Audiencia of Lima and unexplored provinces; on the south, by the Royal Audiencia of Chile; and on the east and west, by the northern and southern seas, and the line of demarcation between the Crowns of the Kingdoms of Castilla and Portugal, on the side of the Province of Santa Cruz, in Brazil,” and those of the Audiencia of Lima as follows: “ On the north, by the Royal Audiencia of Quito; on the south, by that of La Plata; on the west, by the southern sea; and on the east, by unexplored provinces ” (Laws 5 and 9, Title 15, Book II).

In the meantime no document whatsoever of a decisive nature has been exhibited which might make it possible to locate the said unexplored provinces, which were bordered on the north by the Audiencia of Charcas, and on the east by the Audiencia of Lima, and to justify us either to extend the same, as claimed by Peru, from the Marañon to the northern frontier of Paraguay, including Hoya (river bed) of the Madre de Dios (Counter-Case of Peru, page 102), or else to establish that they were extending along the banks of the said river, as claimed by Bolivia, when stating: “ The only uncertainty which exists in the said demarcations is that of the unexplored provinces. Not a single word, however, is contained in any of these delimitation laws which in any way would allude to the virtual or actual districts. It is true that between the Audiencias of Nueva Granada and Quito on the south, that of Lima on the west, and that of Charcas on the north, there remained a space or zone of lands which was designated as unexplored provinces. These provinces, however, which, according to all probability, extended along the banks of the Marañon, did not come within the limits of the Audiencias referred to ” (Reply on the part of Bolivia to the Statement by Peru, page 130).

That the same applies to the borders of the said Audiencia of Charcas towards the northern sea and the line of demarcation between the Crowns of the Kings of Castilla and Portugal, and the inclusion in the same of the Province of Chunchos, according to the said statutes of the Indies, because, even apart from the fact that the standard of demarcation in force in 1810 may have

modified that of the laws of the said code, in accordance with the ordinances of Governors between 1782 and 1803, it is sufficient to mention, that at the time when the said code was promulgated the Audiencia of Charcas may have bordered on the northern sea, either in the region of Para to the west of the line of Tordesillas or in that of the Province of Rio de la Plata, included in its district, and, as regards the Province of Chunchos, afterwards known under the designation of Misiones de Apolobamba, there is nothing which would entitle one to admit that it included the entire area of the concession, which, under the name of Nueva Andalucia, was granted to Alvarez Maldonado in 1567 and 1568, and still less that it extended towards the north as far as the line of the Treaty of San Ildefonso of 1777, which was to connect the sources of the Yavari with a point equidistant from the confluences of the River Madera with the Mamoré and the Marañon.

That, under these circumstances there must be strictly applied to the case the provisions of Article IV of the Treaty of Arbitration, which states: "Wherever the Royal enactments or dispositions do not define clearly the right of possession to a territory, the Arbitrator shall decide the question equitably, keeping as close as possible to their meaning and to the spirit which inspired them."

That the significance and the spirit of the Statutes of the Indies and of the Royal Letters Patent and Orders, the Ordinances of Governors, the diplomatic Acts relating to the demarcation of frontiers, officials' maps and descriptions and other documents, brought forward by the High Contracting Parties and, in particular, the Laws 1, 5 and 9 of Title 15, Book II, of the Statutes of the Indies, relating to the general demarcation of the Audiencias, and particularly to those of Charcas and Lima, Law 3, Title 7, Book I, of the said code on the demarcation of bishoprics, the Royal Letters Patent, dated the 26th August, 1573, and the 8th February, 1590, relating to the concession granted to Juan Alvarez Maldonado, the Royal Order, dated the 1st February, 1796, by which the district ("intendencia") of Puno was separated from the Viceroyalty of Buenos Aires, and annexed to the Viceroyalty of Lima, the negotiations relating to the making and carrying into effect of the Border Treaties of 1750 and 1777 between the Crowns of Spain and Portugal, the Ordinances of Governors, of the 28th January, 1782, and the 23rd September, 1803, the documents relating, on the one hand, to the development of the missions of the Carabaya in the district of the River San Juan del Oro or Tambopata and, on the other hand, to the development of the missions of Apolobamba and Mojos, in the district of the River Toromonas, have been studied and carefully considered.

That, in accordance with the preceding considerations, I must decide this question in an equitable manner, keeping in mind, in this present decision, the significance of the Royal Orders invoked in the respective pleadings and the spirit which has inspired them.

Therefore I declare, in accordance with the advice given by the Advisory Commission, that the frontier line in dispute between the Republics of Bolivia and Peru is determined as follows: —

Starting from the place where the present frontier line coincides with the River Suches, the line of territorial demarcation between the two Republics crosses the lake of the same name up to the Cerro or Palomani-Grande, from where it continues as far as the lagoons of Yaguayagua, and through the river of the same name reaches the River San Juan del Oro or Tambopata. It will continue through the course of this River Tambopata downstream until it meets the mouth of the River Lanza or Mososhuaico. From the confluence of the River Tambopata with the River Lanza the line of demarcation will run as

far as the western source of the River Abuyama or Heath, and follow the line of this river downstream as far as its junction with the River Amarumayu or Madre de Dios. Through the "thalweg" of the River Madre de Dios the the frontier line will descend as far as the mouth of the Toromonas, its affluent on the right side. From this confluence of the Toromonas with the Madre de Dios, a straight line will be drawn which meets the point of intersection of the River Tahuamanu with the sixty-ninth degree of longitude west of Greenwich and, following this meridian, the dividing line shall be prolonged towards the north until it meets the border of the territorial sovereignty of another nation which is not a party to the Treaty of Arbitration of the 30th December, 1902.

The territories situated to the east and south of the above line of demarcation shall belong to the Republic of Bolivia, and the territories situated to the west and north of the said line shall belong to the Republic of Peru.

Let this award be brought to the knowledge of the Envoys Extraordinary and Ministers Plenipotentiary of the High Contracting Parties, to whom shall be sent a copy in conformity with Article IX of the Treaty of Arbitration.

GIVEN in triplicate, sealed with the Great Seal of the arms of the Republic and counter-signed by the Secretary of State of the Department of Foreign Affairs and Worship, in the Palace of the National Government, in the city of Buenos Aires, capital of the Argentine Republic, on the 9th day of the month of July of the year 1909.

J. Figueroa ALCORTA

V. De La Plaza