A DIPLOMATIC SEQUEL TO THE WAR OF THE TRIPLE ALLIANCE (1864-1870):
UNITED STATES PRESIDENT RUTHERFORD B. HAYES’ 1878 ARBITRATION FOR
PARAGUAY AND ARGENTINA

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Abstract

Rutherford B. Hayes (1822-1893), the 19th United States (U.S) President, served as arbiter in 1878 for Paraguay and Argentina when the countries’ governments disputed a portion of the South American Grand Chaco after the War of the Triple Alliance (1864-1870). To present their claims to Hayes, Paraguayan and Argentine diplomats submitted thousands of pages of argumentative evidence. For Paraguay’s leaders, a successful arbitration was a desirable victory for the nation-state, which was devastated from the war. For Argentina’s leaders, the arbitration was a chance to aggrandize its physical size with territory also claimed by Paraguay but was only justified after Brazil, its wartime ally but post-war competitor, had successfully annexed land from Paraguay in 1872. As the first to use internal U.S State Department sources, the thesis lays out the origin and mechanics of the Hayes Arbitration while advancing an explanation as why the award favored Paraguay. In doing so, it explains why Hayes is a national hero in Paraguay, despite his perceived mediocrity in the U.S, as his award was pivotal for the recovery of the morale of the weak nation-state in the aftermath of the devastating war.
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My interest in Paraguay originated during a pizza dinner in Professor Christine Folch’s faculty residence on Duke’s campus. Professor Folch and Juan Carlos Duré Bañuelos had invited seven undergraduates, including myself, to join them in Paraguay for two months of summer break in 2020 for their inaugural DukeEngage-Paraguay. The dinner was the team’s first meet-and-greet. Given that I recall images in Duré’s slideshow about the War of the Triple Alliance but cannot remember what toppings were on the pizza, I was clearly more interested in the research than the food. This should say something to those who know me well. I am glad that I
remained on the research team when the pandemic obliged us to work virtually from the United States. I want to thank Folch, Duré, and the rest of the team for such a meaningful research experience and lasting friendships. And, to Folch and Duré for their recent collaboration that resulted in our January 23, 2022, article in *Última Hora*, one of Paraguay’s major newspapers. We wrote an article about Benjamín Aceval—a diplomat whose diligence proved vital for Paraguay’s victory in the Hayes Arbitration—and the decrepit state of his tomb in Asunción. I discuss Aceval in Chapter Two of the thesis.

I traveled to two archives after Duke lifted pandemic travel restrictions. From my trip to the Hayes Presidential Library in Fremont, Ohio in May 2021, I want to extend gratitude to Curator of Manuscripts Julie Mayle for facilitating my visit, and Brent Carson for the historical tour of President Hayes’ life in Delaware, Ohio. While I waited for the National Archives in College Park, Maryland to reopen in March 2022, archivist Cate Brennan sent me scanned pages from pertinent boxes. I am grateful for her time and assistance.

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A Note on Language

President Hayes was not the lone actor in the 1878 “Hayes Arbitration.” Paraguay’s diplomatic victory resulted from civil servants’ diligent work in Paraguay, Argentina, and the United States. When I reference the “Hayes Arbitration,” know that with the name Hayes, I acknowledge individuals whose identities remain unknown, but whose diligence enabled Paraguay’s favorable arbitral award: its sole victory after the devastating War of the Triple Alliance.
Introduction

Rutherford B. Hayes, the 19th United States (U.S) President, has been a household name in Paraguay since 1878. In a written arbitral award on November 12th of the same year, Hayes determined that Paraguay was “legally and justly” entitled to contested territory in the South American Grand Chaco.1 Argentina was Paraguay’s arbitral contender, and Bolivia had separate claims to the land that were not acknowledged at the time. Paraguay is divided into departments, which are its political administrative divisions subordinate to the central government. The third largest is named “Departamento Presidente Hayes,” and its departmental capital is “Villa Hayes.” Both nomenclatures honor the late President. Moreover, a soccer team in Paraguay’s Primera División league in the capital city Asunción is named “Club Presidente Hayes” and colloquially “los Yanquis,” a tribute not only to Hayes but to the U.S.

To acknowledge Hayes’ connection to Paraguay, the Rutherford B. Hayes Library and Museums’ officers and trustees twice gifted art to the Paraguayan government. The first was at the request of the U.S Information Agency (USIA) whose representative wrote to the library’s director, Dr. Watt P. Marchman, in 1955. She explained that “The U.S. Information Service at Asuncion, Paraguay, a country in which President Rutherford B. Hayes is a national hero, has asked us if it would be possible to obtain a replica of a statue or a bust of the President.”2 She went on to suggest, “The presentation of such a gift would be a great event of national interest and would result in incalculable good will.”3 Marchman agreed to fund a statue and coordinated


3. Lethbridge to Marchman.
the logistics with the Toledo Museum of Art’s director and a Gorham Company employee. He reported to the USIA, “The bust of President Rutherford B. Hayes will be executed this summer by Nison Tregor, an internationally famous sculptor… who has executed busts of Presidents Roosevelt, Truman, and Eisenhower.” A similar notion occurred again more than twenty years later when U.S Ambassador to Paraguay George W. Landau presented an oil portrait of President Hayes to Dr. Alberto Nogues, Paraguay’s Minister of Foreign Affairs, before an audience of distinguished public officials on November 12, 1976. Samuel Creed Gholson, a local artist and teacher at Heidelberg College, an institution just 17 miles from the grounds of the Presidential Library in Fremont, Ohio, executed this painting.

Others have sporadically acknowledged the Hayes Arbitration. In the late 20th century, an amateur U.S. historian, John Fatherley, believed that Hayes’ impact in Paraguay was undervalued in the U.S that he published two booklets that outlined a basic narrative of the arbitration. His first, Revelation and Reflections (2005), self-published in Spanish in Chicopee, Massachusetts, was followed by Tierra Disputada (2014), published in Bolivia. Local residents in Villa Hayes dubbed Fatherley the “Great John” (Gran Juan), a nickname he used in his email address username as recently as 2015 when he last contacted the Hayes Library. And, as recently as November 12, 2021, U.S Ambassador to Paraguay Joseph Salazar tweeted photos at a ceremony in Asunción to celebrate the arbitral award’s 143rd anniversary. He wrote, “This


celebration reminds us that the United States has been, and will always be, an ally of Paraguay.”

The U.S Embassy in Paraguay has not always acknowledged the date, but Villa Hayes residents celebrate the anniversary every year.

Despite the Hayes Arbitration’s sporadic acknowledgements, extensive research in the U.S and conversations with historians in the U.S and Paraguay suggest that this thesis is the most in-depth academic writing about the Hayes Arbitration. As noted even by Thomas Whigham, the leading historian of 19th century Paraguay in the U.S, his own work has been limited to a published talk to Paraguayan diplomats. This led him to call for “more work” on the arbitration. The biographer of Hayes, Ari Hoogenboom, only mentioned the arbitration once in each in his two volumes entitled The Presidency of Rutherford B. Hayes (1988) and Rutherford B. Hayes: Warrior and President (1995).

The scholarly lacunae may explain the Hayes Library Curator of Manuscripts’ reaction to an email about the arbitration from a former Peace Corps volunteer to Paraguay in 2004: “What

7. Joseph Salazar, Twitter, November 12, 2021, https://twitter.com/usambpy/status/1460270254270132228?s=10. The original text was transcribed in Spanish, “Hoy celebramos 143 años del #LaudoHayes destacando los pueblos de #Paraguay y los #EstadosUnidos, a lo largo de la historia. Esta celebración nos recuerda que #EEUU ha sido, y seguirá siendo siempre, un aliado del Paraguay.” Translated by Austin Connors.

8. Thomas Whigham presented “Entre los infiernos verdes de la selva chaqueña y la diplomacia interamericana: Unos comentarios sobre el Laudo Hayes de 1878” to an audience at the Diplomatic Academy in Asunción. In an email he sent me, he acknowledged, “My findings on it [the arbitration] are tentative and not particularly exciting or profound.” He continued, “The topic, moreover, still merits more work, so anything you produce would doubtlessly be welcomed both by your profs and by the folks in Paraguay, who are always looking for interesting work written by outsiders.” Whigham’s presentation script was helpful, especially towards the beginning of my research when I needed to grasp an understanding of the arbitration to later develop my own arguments. Since Whigham is an expert on the history that led up to the arbitration, his comment that the arbitration deserved more research helped me justify writing this thesis.

is it about Paraguay anyway?" In this case, lack of familiarity with Hayes’ importance to Paraguayans prevented the curator from embracing the query from the Peace Corps volunteer. During my own three-day visit in May 2021 to the Hayes Library, however, I found that staff members were interested in learning more about this connection to Paraguay.

The narrative is captivating: the 19th U.S President from rural Ohio—elected in one of the most contentious elections in U.S history—is more well-known in a small, landlocked country in South America than in the one he led. To those with a connection to Paraguay, Hayes’ impact is sometimes acknowledged but has not led to its examination through rigorous research as opposed to being cited as symbol of Paraguay’s relationship with the U.S.

This thesis takes up the challenge to engage with the lacunae. It argues that preparing for the arbitration—and the arbitral award that favored Paraguay—were essential as the Paraguayan nation-state strove to recover after its devastating defeat in the War of the Triple Alliance (1864-1870). Territorial losses to Brazil and Argentina that followed the armed conflict made the U.S. President’s arbitration vitally important for Paraguay. After all, an unfavorable arbitral award not only would have further diminished Paraguay’s size but also undermined the morale of its government, something necessary for Paraguay’s post-war recuperation. The arbitral award prevented a further loss of Paraguayan territory to Argentina and ended a regional conflict that spanned more than a decade on a favorable note for Paraguay: the war’s unequivocal loser. It also served as a prelude for a later war, this time with Bolivia in the 1930s, involving still-disputed territory in the Chaco.

The project references primary source-based research with materials from the Hayes Presidential Library in Fremont, Ohio and the National Archives in College Park, Maryland. Additionally, it references State Department microfilm: written correspondence sent between U.S and Argentine officials that pertained to the arbitration. And, the project also engages with secondary literature focused on Paraguay, the War of the Triple Alliance, and international arbitration.

This thesis does not synonymously reference the “nation,” “state,” and “nation-state.” Instead, it draws upon scholars’ definitions that incorporate centuries of research to distinguish the terms. Renowned historian Hugh Seton-Watson defined the nation, “A community of people, whose members are bound together by a sense of solidarity, a common culture, a national consciousness,” and the state, “A legal and political organization with the power to require obedience and loyalty from its citizens.” Within this framework, nations are dependent upon people with cultural associations, and states bind people together within a political structure. As stated by Yael Tamir, “The concept of nation, if at all mentioned when defining state, appears in the combination nation-state as one of the various possible forms of a state.” Thus, nation-states combine the cultural community with a political framework into a mutually dependent system, and some states are nation-states, but others are not. For centuries, however, nation-states have structured much of human society. Jürgen Habermas argued, “The ‘global success’ of

11. Many pages were written in Spanish yet translated to English so that the U.S personnel could read and understand the text. While I read Spanish documents to judge translation accuracy, I quoted and cited English versions when they were available since I was obliged to write this thesis in English.


nation-states is currently brought into play by the new requirements of multicultural
differentiation and globalization.”14 The founding and preservation of nation-states, then,
requires nations and states to communicate on an international echelon by ways such as
commerce, statecraft, and war.

This observation applies to Paraguay. The Paraguayan nation—mestizo and indigenous
persons alike—shared a tragic history under Spanish colonialization. The nation spoke not only
Spanish but also Guaraní: a language formed in Jesuit missions that is still the most common
first-language in Paraguay today. Paraguay’s history as a nation-state began at its independence
from Spain on May 15, 1811. Prior to this, Paraguay was a part of the Viceroyalty of the Rio de
la Plata. Spanish control in the Americas was delegated through viceroyalties, whose viceroys
had authority second to the kings’. Intendancies were subordinate governmental entities to the
viceroyalties. Buenos Aires and Paraguay, whose post-independence governments evolved into
the Argentine and Paraguayan states, were two of Rio de la Plata’s intendencies.

Napoleon Bonaparte replaced Spanish King Ferdinand VII with his brother Joseph-
Napoleon Bonaparte in 1808. Spanish-Americans perceived their new king as an illegitimate
leader, which led to the May Revolution from May 18-25, 1810. This widespread revolt against
the Spanish leadership in Buenos Aires triggered the Argentine War of Independence (1810-
1818). It also provided justification for the governing classes of Montevideo (Uruguay),
Paraguay, and Peru to distance themselves from Buenos Aires, the focal point of the viceroyalty.
As historians observed, “Many Paraguayans feared that union with Buenos Aires would expose

Paraguay to the civil wars unleashed by the demise of Spanish power in southern South America. These disturbances were to soak the region in blood for over three decades.”

After rejecting the Primera Junta, which was the legation meant to unite the former viceroyalty under Spanish authority in Buenos Aires, the Royal Governor of Asunción, Bernardo de Velasco y Huidobro, led troops into battle against the porteños in the Battles of Tacuarí and Paraguari. Velasco, however, refused to pay the Army and turned against creole Army officers, who would later gain political control of the emergent nation-state. His decision to betray subordinate leaders led them to discredit his leadership credibility and authority. After creoles consolidated power, they called Velasco to subject himself to their demands. They led an insurrection in Asunción on May 14, 1811, and Velasco created a five-man ruling junta. One of the men with new authority was José Gaspar de Francia (1766-1840), who “dominated Paraguayan politics by cultivating the myth of his indispensability” and became Paraguay’s first dictator. Velasco, still loyal to Spain, surrendered his authority on May 15, 1811, and Paraguay gained its independence.

Paraguay’s post-independence leaders, beginning with Francia, were influential in establishing a modern nation-state. They ensured that Buenos Aires did not meddle in Paraguay’s autonomy. At the start of Francia’s dictatorship, literate and urban “Paraguayans viewed the


16. A porteño is someone from Buenos Aires, Argentina.

17. Sacks, Paraguay, 22.


‘nation’ as a community of shared values, customs, and language. All who were raised within the Hispanic-Guarani milieu belonged to a greater Paraguayan “nation,” whether they lived in Paraguay proper, in the [adjoining] Misiones, or even in Corrientes [territories].”20 Miguel Angel Centeno claimed, “None of the newly independent states, again with the possible exception of Chile and Paraguay, could easily define the nation that they were supposed to represent.”21 Paraguay had a significant indigenous population, and while spread throughout a vast landscape, the creole elite sought to preserve the distinctly Paraguayan national identity.

Francia isolated Paraguayan economics and politics from its neighboring countries with authoritative control until his death, which not only strengthened the national identity, but also the power of the state. Francia’s posthumous nickname “El Difunto” emerged as there was no clear succession for Paraguay’s leadership, and people still regarded him as their leader.22 Few were unaware that Francia’s battalion commanders competed with one another to control the country.23 These men led a series of juntas that resulted in a consular regime headed by two men upon Francia’s death.24 This effort enabled Carlos Antonio López (1787-1862), a wealthy man known to have been respected among the elite, to become a dual consul with Mariano Roque Alonzo until Alonzo’s resignation in 1843. At that time, López became the absolute ruler until his death in 1862. López, like Francia and other South American creole elite, “saw himself as a

20. Misiones and Corrientes were territories, like the Chaco, without explicit affiliation with a nation-state until after the War of the Triple Alliance. Thomas L. Whigham, The Paraguayan War: Causes and Early Conduct, Studies in War, Society, and the Military (University of Nebraska Press, 2002), 97.


22. El difunto translates from Spanish to “The Deceased.”


24. Whigham, 65.
modern man. Every contemporary regime in Europe, he observed, had crafted a legal structure appropriate to its needs and to the times. Nation building was a road to modernity and a guarantee of survival.” Lopez’s government, was an example—typical of Latin America—where European-descended creole elites governed mestizos and Native Americans. It sought to elevate Paraguay to European modernity without granting the rural majority any political power. Under Lopez’s watch, the state facilitated improvements to infrastructure, which broadcasted national strength to people within and beyond its borders. He hoped to create a cohesive nation capable of competing with other emerging South American nation-states. It was in this context—one of nationalistic post-colonial authoritarian leaders—that Paraguay plunged itself into the War of the Triple Alliance.

The War of the Triple Alliance was an interstate war in which Paraguay had little chance at success against three allied neighbors—Brazil, Argentina, and Uruguay. Also known as the Paraguayan War, it lasted upwards of five years until 1870. Paraguay was the unequivocal loser, and the battlefields were on its own land. Paraguay was depopulated and enemy troops occupied it by the war’s end. The country’s inconceivably large war debt included “$200,000,000 to Brazil, $35,000,000 to the Argentine Republic, and $1,000,000 to Uruguay; the home debt of $2,088,212, and a foreign loan negotiated in London in 1872, amounting to $7,320,000, and bearing interest at 8 per cent.” Accounting for inflation, these figures amounted to an exorbitant

25. Whigham, 66.


debt, so Paraguay’s fate was in large part controlled by the more powerful and victorious Alliance.

In a post-war power grab, allied states scrambled to expand their countries’ physical size. Despite these regional power politics, neither Brazil nor Argentina sought to absorb Paraguay in its entirety because of its geographic position as a strategic buffer between the two largest countries in South America. Yet, the two regional powers claimed territories for which Paraguay also contended. Brazil’s success in geographical expansion in the Treaty of Limits between Brazil and Paraguay (1872), the Loizaga–Cotegipe Treaty, offered a de facto authorization for Argentina to attempt territorial aggrandizement in a similar binational negotiation with the weakened Paraguay. The Treaty of Limits between the Republic of Paraguay and the Argentine Republic (1876), the Machaín–Irigoyen Treaty, concluded that Argentina would absorb territory along its borders with Paraguay. However, the two countries’ representatives left a portion of the South American Grand Chaco Boreal territory for an arbitration to be decided by the U.S President. The War of the Triple Alliance epitomized Paraguay’s struggle to further establish its nation-state with a use of armed force. This fits into a larger idea, that “the story of war and nation-states in Latin America by thinking of it as a series of spiral casualties.”

Hence by the end of the war, a victory—anything that could be perceived as triumph over its power-hungry neighbors—was crucial for Paraguay to reverse its downward trajectory.

Represented on the map, the Grand Chaco includes portions of modern-day Argentina, Paraguay, and Bolivia. Two major rivers, the Bermejo and Pilcomayo, flow southeast from the Andes Mountains, the Chaco’s western boundary, to the Paraguay and Paraná Rivers, its

easternmost boundary. The rivers are the geographic dividers for the Chaco’s three notable regions, each with unique climate and terrain. El Chaco Austral is south of the Bermejo, Central between the Bermejo and the Pilcomayo, and Boreal north of the latter. The extreme northern and southernmost limits are more implicit, but it is generally accepted that the Izozog Swamps in Bolivia and latitude 30° S are the Chaco’s approximate bounds.

Nearly three years after Argentine and Paraguayan representatives established terms for arbitration, U.S President Rutherford B. Hayes concluded, “The Republic of Paraguay is legally and justly entitled to the said territory.” Here, amid tragic loss, the President of the United States affirmed Paraguay’s claims by awarding it approximately 21,235 square miles of territory—roughly the size of the U.S state of West Virginia. This singular diplomatic victory was critical for the ravaged nation-state and its leaders as they began to reestablish its internal cohesion and cultivate international relationships. The U.S, a champion of Republican democracy, awarded Paraguay the territory only after diplomats presented evidence for their claims. Benjamín Aceval, the Paraguayan-appointed diplomat, returned home from Washington, D.C to Asunción on March 25, 1879 “to a hero’s welcome.” Although not without its flaws, Paraguay entered the twentieth century as an autonomous republic.

To demonstrate that the Hayes Arbitration was central to Paraguay’s recovery, the first chapter explores the origin of the War and its devastating aftermath. Hard pressed to achieve anything approximating a victory, the state focused on what could be attained in the Chaco—a

30. Hayes, “Rutherford B. Hayes’ Arbitral Award.”
32. Harris Gaylord Warren and Katherine F. Warren, Paraguay and the Triple Alliance: The Postwar Decade, 1869-1878, Latin American Monographs; No. 44 ([Austin]: Institute of Latin American Studies, University of Texas at Austin, 1978), 169, 276.
territory that was never-before valuable to South American nation-states—whose fate both Paraguay and Argentina agreed to resolved through international arbitration. The second chapter examines in detail the strategies of the foreign ministries and diplomats of Paraguay and Argentina as they worked to convince the U.S. State Department of the justice of their respective claims to the Chaco. It examines how they both made their case and the evidence and arguments they advanced while using hand-written internal U.S. State Department documents to understand how the U.S. government arrived at its historic decision: with sympathy for Paraguay beyond the submitted evidence.

In concluding, the thesis reaffirms the significance of the Hayes Arbitration after the War of the Triple Alliance. It also reveals that the Hayes Arbitration did not fully resolve contention over the Chaco. While not surprising that Latin American countries turned towards the U.S on a geopolitical matter, the international arbitration occurred prior to the creation of international law and courts to regulate them. Moreover, the arbitration did not address rival claims to parts of the Chaco by its Andean neighbor Bolivia, a dispute that would be resolved in a bloody conflict that ended in 1935 when the Paraguayan military defeated Bolivia’s armed forces. The Chaco, in other words, has been and remains central to national mythmaking and patriotism in Paraguay, even today, with a special appreciation for Rutherford B. Hayes.
Chapter 1

A Devastating War and the Contest for Territory:

The Disputed Chaco Region and the Origins of the Hayes Arbitration

The War of the Triple Alliance brought the question of territorial boundaries to the forefront of diplomacy in South America. Brazilian attempts to freely navigate the Paraguay River to access Mato Grosso in the 1850s was used to justify López’s military expansion and universal male conscription. Paraguay’s military grew, and “newspapers (some of which were written in Guaraní) helped reinforce national pride even as they conveyed the dangerous idea that Paraguay had to defend itself or be overwhelmed: ¡Viva la república del Paraguay! ¡Independencia o muerte!” López’s son, Francisco Solano López (1827-1870), who took power after his father’s death, was the top military figure in his predecessor’s government. He studied militaries on a European tour from 1853-1854, and his fascination with armed conflict, along with the country’s growing military, helped enable the catastrophic war.

Solano López was allied with of Uruguay's governing Blanco Party. Brazilian and Argentine leadership were aligned with Uruguay’s competing Colorado Party. Solano López’s sympathy dwindled after Uruguayans forcibly inspected a Paraguayan ship in February 1964, and Brazil and Argentina rejected Paraguay’s proposal to mediate Uruguayan tension. The

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36. Whigham, 156.
Uruguayan War erupted in August 1864, which exacerbated regional tensions. Argentina and Brazil made advances towards the Blanco stronghold in Montevideo, the Uruguayan capital. After the Brazilian invasion of Uruguay, López’s troops attacked the Marqués de Olinda, a Brazilian steamer, which was sailing north near Concepción towards Mato Grosso on November 13, 1864.

The following day, Paraguayan forces launched a successful offensive: the Mato Grosso Campaign. Brazil sent reinforcements in response to this attack. The Brazilian monarchy sought to defend its land and attack the Paraguayan forces. Argentina claimed neutrality, but only until Solano López requested to send soldiers to travel across Argentina to invade Corrientes and Rio Grande do Sul. Argentine President Bartolomé Mitre denied this request, and on March 29, 1865, Argentina and Paraguay declared war on one another. After Paraguayan aggression continued for several months, “The Brazilian minister in Buenos Aires, Francisco Octaviano de Almeida Rosa, moved speedily to sign a politico-military alliance with Argentina… By 24 April, Octaviano reached an understanding with Mitre on terms of the proposed alliance; the two men at once informed Uruguayan president Venancio Flores, who likewise affirmed his support for the agreement.”

The War of the Triple Alliance became inevitable.

Prior to the war, nation-states’ claims to the Chaco were at best nominal. No nation-state controlled the territory; it was effectively outside all emerging boundaries. The Chaco itself had not held sufficient importance for leaders to have initially incorporated it into South American nation-states. Paraguayan resistance and enormous loss of life during the conflict left the country’s postwar leadership—after several territorial losses—to focus on control of the underdeveloped Chaco. Arbitration did not guarantee Paraguay’s success, but it meant that

37. Whigham, 276.
Argentina would not contest the final decision if Hayes deemed it the loser. This chapter argues that the Chaco’s importance for Paraguay can only be understood with a grasp of the origin, impact, and diplomacy of the War of the Triple Alliance; and the arbitration’s importance to Paraguay stemmed from the war’s devastation to the emergent nation-state.

**El Gran Chaco: A Territory Outside of Emerging Nation States**

The Chaco, like Paraguay and Buenos Aires, was a part of Spain’s Rio de la Plata Viceroyalty. While a population of indigenous first nations who resided in the Chaco long before conquistadores determined that the Chaco was the “Green Hell” of South America, it was a seemingly inhabitable and formidable place from outsiders’ perspectives. A prominent French cartographer admitted, “We only know the interior of the Chaco through information from the Indians, all the styling has been done in this region from the end of the 16th century until the present time.”

38. Juan de Ayolas and Sebastián Cabot were among the first conquistadores who “penetrated the peripheries of the Chaco in the 1530s,” and their writings communicated the extent to which the region was undesirable. 39 Jesuit missionary Martin Dobrizhoffer, who lived for decades among native peoples in the Chaco, commented in his 1783-1784 collection of memoirs *Geschichte der Abiponer*, “The Spanish consider the Gran Chaco the theater of misery,  

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the barbarians in turn, their Palestine, their Elysuim.”⁴⁰ And as recently as 1987, a now-retired U.S. Foreign Service Officer wrote that in an attempt to cross the Chaco on the Trans-Chaco Highway, a travel agent in Bolivia told him, “‘No hacemos el turismo de castigo,’ or ‘We don’t deal in punishment tourism.’”⁴¹ He continued, “Given the harshness of the Chaco’s geography, her remark is understandable.”⁴² This evidence reveals that the Chaco was undesirable to the urban governing class under Spanish control and later independent Latin American states in the 19th century. Its importance to Paraguay resulted from 19th century statecraft, war, and expansion leading to 1876.

In the colonial era, the Chaco appeared consistently but erratically on regional and continental maps by French cartographers, which reveal early international perceptions of the Chaco’s geography. The following is a segment of a 1703 chorography, revealing one depiction of the Viceroyalty of the Rio de la Plata. Showing that boundaries were not firm, Paraguay’s territory appears to span almost the width of the continent and encompasses the Chaco. Buenos Aires, on the other hand, is microscopic.⁴³ Other cartographers depicted Buenos Aires as much larger and Paraguay much smaller. The Chaco was included as a region, but its limits are not specified.


⁴² Lowenthal, 37.

⁴³ L’Isle Guillaume de, Carte du Paraguay, du Chili, du Detroit de Magellan, etc. (Paris, 1703), https://www.loc.gov/item/gm71005436/.
The cartographers’ successors in the early 19th century, while not always specifying the Chaco’s boundaries, commonly denoted it as a territory: not under the jurisdiction of one or more nation-states. Alternatively, they arbitrarily placed it within the boundaries of an emerging Rio de la Plata nation-state. Clearly, cartographers were not granted arbitral authority, though their creations were used as supporting evidence for many. 19th century international arbitrations. The following 1809 map by Felix de Azara is titled, “Gouvernement du Paraguay et partie du

Map 2: “Carte du Paraguay, du Chili, du Detroit de Magellan, etc.” (1703)
A colonial-era map showing one perspective of the Chaco region in South America.
Chaco.”^{44} Using the French word for “and”—et—implies that the Chaco was not yet a part of Paraguay. As nation-states achieved independence and expanded across Rio de la Plata, South American borders were ambiguous to South Americans government officials, let alone European cartographers across the Atlantic. If the cartographers had any knowledge of the Chaco, earlier European explorers and colonizers in Rio de la Plata would have influenced their knowing.

**Map 3: “Gouvernement du Paraguay et partie du Chaco.” (1809)**

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The Chaco was delineated on maps by the mid-nineteenth century, but despite French and South American perceptions, the exact nation-states under whose jurisdiction it lay was not yet established. The Treaty of Navigation and Limits of 1852 “resolved to fix, as far as the most essential part thereof is concerned, the territorial boundaries, and to the establish at the same time the basis on which the commerce and navigation between the two Republics” of Paraguay and Argentina would operate.\textsuperscript{45} Paraguay’s southern land boundary along the Paraná River with Argentina was explicitly stated, but the two governments were more concerned with their respective rights of river navigation for commerce than of land borders. The treaty resolved that the Bermejo River was “completely common to both States” as were the Paraná and Paraguay Rivers.\textsuperscript{46}

The word “Chaco” is neither written in the treaty’s text, nor did any government explicitly claim land west of the Paraguay River. Because of this, the treaty furthered ambiguity as to which government had governing authority over the Chaco’s land. Article XII stated that Argentina would invite Paraguay to construct a port when the Pilcomayo River, which Argentina was to own, became unnavigable (shallow) so that trade would traverse Paraguayan territory on the shortest possible route to Bolivia. This implies that the land to the north of the river, which is the land awarded to Paraguay in 1878, was Paraguay’s in 1852. Since Argentina owned the Pilcomayo, however, anything south must have been under its jurisdiction. But since the treaty specified that the Bermejo River, which traverses the Chaco further south, was jurisdiction of both states without specifying ownership, there is a lack of clarity in the terms. Paraguay and

\textsuperscript{45} Benito Varela et al., “Treaty of Limits between Paraguay and the Argentine Republic of 1852,” in Appendix and Documents Annexed to the Memoir Filed by the Minister of Paraguay, on the Question Submitted to Arbitration (New York: Evening Post Steam Presses, 1878), 163.

\textsuperscript{46} Varela et al., 164.
Argentina failed to incorporate the Chaco into their nation-states in a manner that would ultimately satisfy both governments. Domain over the Chaco was unclear to South American colonizers and political leaders, and the ambiguity influenced chorographers and chorographies.

The Treaty of Alliance: Evidence of War-Time Suspicion

The Uruguayan, Brazilian, and Argentine governments signed the Treaty of Alliance in Buenos Aires on May 1, 1865. At the time, Uruguay was just beginning to recover from the Uruguayan War and was largely dependent upon Brazil and Argentina. It had not joined the fight against Paraguay in any way apart from this political alliance, and Argentina and Brazil controlled their politics. The treaty acknowledged that the allies plotted themselves not against the entirety of Paraguay but specifically against Solano Lopez. Article V stated that fighting would cease when the “current Government of Paraguay be overthrown.” Solano Lopez, however, did not know this. Article XVIII of the treaty held that the treaty would remain secret until his government’s elimination. As a measure of common strategy, the allies withheld intent from their adversary.

The treaty was divided into eighteen further articles that established the alliance’s terms. While the first articles established terms as to how the allies would structure their military leadership to effectively dismantle the Paraguayan dictatorship, the articles most relevant to the Hayes Arbitration discussed conditions between the allied countries after the war: boundary limits between the nation-states. Article VIII stated that the allied forces “bind themselves to

47. “Treaty of Alliance between the Governments of Uruguay, Brazil, and Argentina, May 1, 1865,” in Appendix and Documents Annexed to the Memoir Filed by the Minister of Paraguay, on the Question Submitted to Arbitration (New York: Evening Post Steam Presses, 1878), 181.

respect the independence, sovereignty and territorial integrity of the Republic of Paraguay… without annexing itself or asking for the protectorate of any of the allies.”⁴⁹ The alliance, therefore, agreed to preserve the Paraguayan nation-state.

However, it did not guarantee Paraguay’s autonomy to its full extent after the War. Article X explained, “Concessions obtained from the Government of Paraguay, shall be common to all.”⁵⁰ Thus, a partial exploitation of Paraguay’s land was to be permitted, but it would have to equally benefit Argentina, Brazil, and Uruguay. In other words, if Brazil annexed a portion of Paraguay, Argentina and Uruguay also wanted the opportunity to do so. While exploiting Paraguay was allowed, it was not ideal for any party. Equally valuating economic agreements, water, and land to include all factors presented further diplomatic challenges. Yet, this concession in the treaty indicated that at least one alliance representative intended to benefit from the war, denoting skepticism of integrity from within the alliance.

Article XVI proposed specific treaties of limits for the aftermath of the war. ⁵¹ It was an attempt to avoid the implications of Article X. However, in similar regard to the Treaty of Navigation and Limits of 1852, the article did not grant Paraguay the definite right to the Chaco and set its western boundary at the Paraná and Paraguay Rivers. It did not specify that Argentina would absorb the Chaco and thus facilitated contention as to whom would legitimately control it. Moreover, if Paraguay were to claim other territory or conditions initially denied by the alliance, Article XVII states that Paraguay could annul the allies’ stipulation and negotiate new terms, so

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⁴⁹ “Treaty of Alliance between the Governments of Uruguay, Brazil, and Argentina, May 1, 1865,” 181.

⁵⁰ “Treaty of Alliance between the Governments of Uruguay, Brazil, and Argentina, May 1, 1865,” 182.

⁵¹ “Treaty of Alliance between the Governments of Uruguay, Brazil, and Argentina, May 1, 1865,” 183.
long as all allies are concurrently involved.\textsuperscript{52} If the alliance representatives had not been skeptical of the genuine interests of their counterparts, the Treaty of Alliance would have impeded ambiguous post-war boundaries. Instead, the treaty first presented a clear intent for war against Paraguay’s leadership and opened the possibility for boundary changes after Solano Lopez’s defeat.

“\textit{Long the Republic of Paraguay: Independence or Death!}”:\\
\textbf{Paraguay’s Formidable Resistance and its Devastating Legacy}

Paraguay’s ability to sustain a six-year fight against far more powerful and populous neighbors was quite a feat, despite the army’s shorter trek to the battlefields the troops endured relative to the allies. During the Francia era, “Paraguayan army officers could barely sign their own names… [and] when Carlos Antonio Lopez gained power in the early 1840s, he surveyed an Army little changed since 1814… [but] he quietly but very intently began to improve his armed forces.”\textsuperscript{53} According to historian Vera Blinn Reber, “The Paraguayan army in 1864 had 37 battalions and 29 regiments, with a total of 35,305 soldiers and 3,306 officers. Throughout the war, Paraguay maintained an army of 30,000 to 40,000 troops at any given time, and inducted into the service no more than 70,000 to 80,000 during the five-year war.”\textsuperscript{54} Whigham was less willing to provide a concrete number, but he cited an 1865 military report to suggest a force size of 38,173, and George Thompson, an English engineer hired by Solano López during the war

\textsuperscript{52} “Treaty of Alliance between the Governments of Uruguay, Brazil, and Argentina, May 1, 1865,” 184.


who became a Lieutenant Colonel, who estimated the figure to be 80,000 men.\textsuperscript{55} Compared to the alliance’s force size, these numbers were insignificant. In 1865, Argentina may have had as many as 184,478 soldiers, including its National Guard.\textsuperscript{56} Brazil’s standing army counted with 17,600 men, with as many as 200,000 more in the national guard.\textsuperscript{57} At the War’s peak, as many as 20,000 men were said to have been in the field.\textsuperscript{58} Uruguay, the smallest country in the alliance, only had “several thousand men under arms.”\textsuperscript{59} Together, the allied countries’ militaries dwarfed Paraguay’s.

Despite the numerical disadvantage, Solano López led a six-year fight and conscripted more men when necessary. As a further advantage, the allied militaries were not as effective in practice as they appeared on paper. Brazil was a monarchy from 1824-1889. Its leaders developed a military modeled after European armies, but the force lacked the experiences in war that Spanish, French, and British monarchs had supported for centuries. Lacking a sense of national unity, Argentine and Uruguayan soldiers were neither unified as fighting forces nor behind the purpose of the war. Like Brazil’s, Argentina’s army was “untested” and had yet to develop “any traditions of note.”\textsuperscript{60} Uruguay, a part of Brazil until 1825 and amidst its own war (1864-1865) with factions from all countries involved in the War of the Triple Alliance, lacked

\textsuperscript{55} Whigham, \textit{The Paraguayan War: Causes and Early Conduct}, 187.

\textsuperscript{56} Whigham, 172.

\textsuperscript{57} Whigham, 166–67.

\textsuperscript{58} Whigham, 166–67.

\textsuperscript{59} Whigham, 175.

\textsuperscript{60} Whigham, 173–74.
“a military service that was authentically Uruguayan in character.” Its leaders, like its allied partners, failed to craft resilient militaries and won the war with a numerical advantage.

The war’s casualties skewed Paraguay’s gender ratio and resulted in lasting socio-cultural impact. However, the question of nation-states’ ownership of American Indians, unclaimed and disputed territories, and rampant disease presented challenges for enumerators tackling the question of the overall regional population. Reber questions perhaps the most held belief: that “military actions, disease, and famine during the war deprived Paraguay of more than half of its population.” This claim is generally unquestioned in scholarship on the war apart from Reber’s writing. At face value, Reber’s claim exposes a harsh reality that Paraguay faced: national defeat and reconstruction. The high percentage of Paraguayan deaths elevates the importance of the Chaco arbitration: again, the only victory for the war-stricken country. By questioning whether Paraguay was decimated to the extent that the nationalistic narrative claims, Reber reduced hardship experienced by so many Paraguayans while seeking truth. While controversial relative to Whigham’s research and popular legend, Reber provided an interesting contribution to scholarship.

Reber specifically analyzed nineteenth century population growth rates and Paraguayan censuses, which led her to hypothesize that the war’s effect on the Paraguayan population was less severe than other scholars had previously suggested, costing the country between 8.7 and

61. Whigham, 175.
18.5 percent of its total demographic. She presented extensive research, showing a table “Various Estimates of the Paraguayan Population for the Nineteenth Century.” The table listed 64 estimates of the Paraguayan population from 1682-1899 derived from quantitative demographics research. The table held that Paraguay’s 1857 population was over 1.3 million people, its 1864 population between 300,000 and 400,000, and 1870 population to number between 200,000 and 300,000. Reber deemed that thorough Paraguayan censuses occurred in 1846 and not again until 1886, with the Paraguayan population respectively at 238,862 and 329,645. Perhaps, then, the 1857 population figures, that were commonly used to explain Paraguay’s high population loss, were exaggerated. After all, as part of a nationalistic agenda and amidst origins of war, it was in Francisco Lopez’s best interest to claim that Paraguay’s population was large.

After Reber analyzed Paraguayan household size from a comparative analysis of other Latin American countries, she concluded that Paraguay lost approximately five percent of its population during the war, which was lower than the figures she initially hypothesized. Her methodology, while extensive, is not entirely concrete, and some figures drawn from primary sources are inconclusive or subjective—take for example the four censuses she deemed thorough without explanation for why others were not.

Whigham and Barbara Potthast wrote “Some Strong Reservations: A Critique of Vera Blinn Reber's ”The Demographics of Paraguay: A Reinterpretation of the Great War, 1864-70”

64. Reber, 290.
in response. Whigham and Potthast indicated that Reber’s overarching argument, that population losses from the Great War are overexaggerated, valid to some degree. They concluded, “The question of Paraguayan demographics during and after the war of the Triple Alliance, then, remains unresolved.” This extensive and quite entertaining academic debate indicates that figures for the cost of war are relatively inconclusive. A lower casualty rate reduces the significance of a postwar victory, yet the Chaco award was still politically significant. However, “lower” is relative. Losing five percent of a country’s population is high, relative to casualty rates in wars more conclusively studied.

David Singer and Melvin Small calculated mortality (the average percentage of population killed), militarization (the average percentage of the population in the military), and intensity (average population killed per year) for nineteenth and twentieth century wars. They presented their data by world region, and most other wars’ mortality rates did not exceed one percent of the total population. Twentieth century global rates were higher, on average, than


70. Whigham and Potthast, 675. Of further note: in Whigham’s book on The Paraguayan War, published fourteen years after Reber’s article, he wrote, “The war… crushed Paraguay… causing its population of 450,000 to shrink by nearly 70 percent.” While Whigham agreed that Paraguay’s population was not close to one-million people, he resolved that the war decimated an even higher percentage than typically argued, which still dismissed Reber’s figures. If Whigham’s data is accurate, the alliance’s combined military force was equivalent to Paraguay’s entire population at the beginning of the war.


figures for the nineteenth century. This, however, is only the case because of the First and Second World Wars’ impact on North America and Europe. The two continents experienced an intensity of nearly four percent.\textsuperscript{73} Even then, the mortality rates were reportedly under one-half percent. Nineteenth century wars in South America and Mexico’ mortality, militarization, and intensity statistics all hovered around one-half a percentage. But then, “The War of the Triple Alliance is unique in many ways… as close as we come to the modern notion of total war.”\textsuperscript{74} So, regardless as to whether Paraguay lost much of its population in the war, the concurrence as to the war’s devastation of at least five percent mortality explains why gaining the right to a previously undesired territory was a crucial victory for the morale of the nation-state. With little that remained for and of Paraguay, the Chaco was a seemingly desired concession, and a victory was crucial for its morale.

\textbf{A War-time Alliance Splits: Brazil and Argentina Gain Territory from Paraguay, 1870-1876}

The allied diplomats who wrote and signed the Treaty of Alliance sought to prevent post-war conflict between their countries over the territorial limits of Paraguay by including the Article XVI, despite their skepticism of one another. To no surprise, however, the diplomats’ successors endeavored into a decade of postwar statecraft in which the sought to expand the physical size of their countries. All parties were successful to some extent. The exception was Uruguay, whose government did not petition another for land.

\textsuperscript{73} Miguel Angel Centeno, \textit{Blood and Debt: War and the Nation-State in Latin America} (University Park, PA: Pennsylvania State University Press, 2002), 41.

\textsuperscript{74} Centeno, 56.
From December 1870 through January 1871, representatives from all three Triple Alliance countries and Paraguay concurred with ten protocols at a conference in Buenos Aires. Vital boundary decisions for a second conference to be held in Asunción from October through December 1871.\textsuperscript{75} The second conference ended without a treaty and Barão de Cotegipe, “the [Brazilian] Empire’s finest statesman,” resolved to negotiate directly with Paraguay.\textsuperscript{76} Harris Gaylord Warren, whose *Paraguay and the Triple Alliance: The Postwar Decade, 1869-1878* “appeared to general acclaim” and “opened a hitherto closed chapter,” deemed the alliance’s altercation the “Crisis of 1872.”\textsuperscript{77} Cotegipe’s calculated risk to violate the Treaty of Alliance, which upset Argentina’s foreign ministry, led to the ratification of the Cotegipe-Loizaga treaties, including the Treaty of Limits between Brazil and Paraguay on January 9, 1872 in which Paraguay ceded land to Brazil.\textsuperscript{78} Here, Southern Cone power politics were at play. Neither Brazil nor Argentina wished to absorb Paraguay since it served as a buffer between them and in doing so would upset the other, but Brazil exploited a period of Argentine fatigue and Paraguayan obliteration to extract Paraguay’s outlying territory, projecting its influence.

The regional conflict pressed Argentina to seek guidance and support from the United States throughout the 1870s before its government took territory from Paraguay. Predating the attention specific to the Chaco, U.S Secretary of State Hamilton Fish (1808-1893) was well-

\textsuperscript{75} Harris Gaylord Warren and Katherine F. Warren, *Paraguay and the Triple Alliance: The Postwar Decade, 1869-1878*, Latin American Monographs; No. 44 (Austin, TX: Institute of Latin American Studies, University of Texas at Austin, 1978), 108–11.

\textsuperscript{76} Warren and Warren, 93, 111.


\textsuperscript{78} Carlos Loizaga and João Maurício Vanderlei, “Tratado de Límites Entre El Paraguay y Brasil,” January 9, 1872.
informed on regional disputes that resulted from the Paraguayan War. On June 26, 1872, the Argentine Plenipotentiary to the United States Manuel Garcia (1826-1887) wrote to U.S Secretary of State Hamilton Fish and expressed his government’s desire for peace but conveyed a tone of aggravation towards Brazil. He stated, “The situation is a very grave one in which my Government has been placed by the action of the Government of Brazil in ratifying these treaties, which the Empire has just concluded, on its own responsibility with Brazil. These stipulations threaten to produce very serious consequences to the very independence of the Republic of the Plate.” The Treaty of Limits of 1872 was not only a violation of the Treaty of Alliance, but also for the Argentine government, a frustrating sign that Brazil no longer trusted it. In this quote, Garcia feared for regional stability, and justifiably so.

At the time of this letter, Brazil’s military, while poorly equipped, took orders from the monarch and had as many as 20,000 soldiers, many of whom were stationed in Paraguay and Mato Grosso. In the same letter, Garcia acknowledged that Brazil was “the strongest government in South America.” Perhaps in an emotional appeal to the U.S Secretary of State, whose country had recently concluded its own Civil War and was effectively seeking to preserve North American peace, Garcia also requested “the presence of a diplomatic agent of the United States” in his country. Upon further examination, Robert C. Kirk had held the Minister in

79. Manuel R. Garcia to Hamilton Fish, “Confidential Letter from the Argentine Legation to the U.S Secretary of State,” June 26, 1872, in "Notes from the Argentine legation in the U.S. to the Dept. of State, 1811-1906."

80. Garcia to Fish. There appears, here, to be an error in the translated archival letter. The second instance of “Brazil” may have supposed to have been “Paraguay.”


82. Garcia to Fish, “Confidential Letter from the Argentine Legation to the U.S Secretary of State,” June 26, 1872, in Notes from the Argentine legation in the U.S. to the Dept. of State, 1811-1906.

83. Garcia to Fish.
Resident position in Buenos Aires from July 7, 1869 until his abandonment of post a mere eight weeks before the ratification of the Cotegipe-Loizaga treaties. Arguing that Brazil’s traditions of conquest to expand its enormous empire had not changed, Garcia evidently expected the U.S’ presence in Argentina to enable peacekeeping in South America. President Grant confirmed a new U.S Minister in Resident on May 6, 1873.

After the Brazilians signed the 1872 treaty with Paraguay, the Argentines saw themselves permitted to treat directly with Paraguay as well. The Treaty of Limits between the Republic of Paraguay and the Argentine Republic of February 3, 1876, once again sought to resolve the question of Argentine-Paraguayan boundaries. Paraguayan Foreign Minister Facundo Machain and Argentine Foreign Minister Bernardo de Irigoyen negotiated and signed the treaty. While the treaty’s 14 articles include provisions for the 1878 Hayes Arbitration, it finalized more than just the grounds for arbitration.

The first three articles finalized boundaries in cardinal directions and domains of islands. The first: that the “Republic of Paraguay is divided on the Eastern and Southern parts from the Argentine Republic by the middle of the current of the principal channel of the Paraná River from its confluence with the Paraguay river.” With the ratification of this article, Paraguay officially ceded its claims of the Misiones territory to Argentina. Misiones was a buffer between Paraguay and the Brazilian state Rio Grande do Sul. It lies to the west of the Paraná River, so the 1876 article denotes that Paraguay’s bounded jurisdiction excludes it. After the war, Paraguay


85. Facundo Machain and Bernardo de Irigoyen, “The Treaty of Limits between the Republic of Paraguay and the Argentine Republic of February 3, 1876,” Appendix and documents annexed to the Memoir filed by the Minister of Paraguay, on the question submitted to arbitration, (Evening Post Steam Presses, 1878), 54.
had not only contested Argentina’s claim to the Chaco, but also to Misiones. Like the Chaco, Misiones was not firmly incorporated into a nation-state’s jurisdiction until this period, and Asunción had determined to hold onto Misiones since the Belgrano expedition in 1811.  

While some believed that Argentina’s claim to Misiones was exploiting land from Paraguay, José del R. Miranda, Paraguay’s Foreign Minister from 1873-1874, appeared willing to accept Argentina’s claim. In his October 31, 1873 Contra Memorandum, he referred to a protocol on 7 May of 1872, in which “the Republic of Paraguay, actuated by the good policy of making peace with the Argentine Republic, showed herself ready to accept conditionally that settlement.” Paraguay’s willingness to cede the territory to Argentina, however, later gave

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87. José del Rosario Miranda, “Contra Memorandum on the Question of Limit between the Republic of Paraguay and the Argentine Republic,” October 31, 1873, Appendix and documents annexed to the Memoir filed by the Minister of Paraguay, on the question submitted to arbitration, (Evening Post Steam Presses, 1878), 28.
Machain leverage to challenge Argentina to the Chaco Boreal since it left Paraguay with only one territory to claim.

Unlike the Chaco, which Europeans hesitated to conquer for its alleged harshness, Misiones had a prosperous colonial plantation economy from which Argentina would benefit. It was also more accessible from the most densely populated node in the region—Buenos Aires—
approximately 900 kilometers north on the Uruguay River. The Chaco Boreal was more inconvenient for Argentines in the capital city, since it would have required traveling up the Paraná to Asunción, located approximately 1500 kilometers away, before continuing northwest on the Pilcomayo. The first article also awarded the Apipé Island to Argentina and Yacireta Island to Paraguay, in accordance with a former 1856 treaty.\(^8^8\) Primary sources do not reveal this to have been a tumultuous debate given that the 1856 agreement was explicit.

Article II expressed the first mention of the Chaco territory in the treaty. It “definitely acknowledged [the territory of the Chaco] as belonging to the Argentine Republic as far as the principal channel of the Pilcomayo River which flows into the Paraguay River,” which included the Chaco Austral and Central.\(^8^9\) The other part of the Chaco is not mentioned until Article IV, but this Article II implies that another section of the Chaco would not be “definitely acknowledged” as within the boundaries of one nation-state. Before that point in Article III, however, the writers included details on how to determine whether smaller islands in rivers belonged to either of the two countries.\(^9^0\) Article IV was translated into English as followed:

The territory included between the principle arm of the Pilcomayo river and by Bahia Negra, shall be considered as divided into two sections, the first being that included between Bahia Negra and the Verde River which lies at the parallel of 23 degrees 10" inches south latitude according to Moucher’s map; and the second section included between the said Verde River and the principal arm of the Pilcomayo River, the City of Villa Occidental being included in this section.

The Argentine Government renounces all pretentions or right to the first section.

\(^8^8\) Machain and de Irigoyen, “The Treaty of Limits between the Republic of Paraguay and the Argentine Republic of February 3, 1876,” in Appendix and documents annexed to the Memoir filed by the Minister of Paraguay, on the question submitted to arbitration, (Evening Post Steam Presses, 1878), 54.

\(^8^9\) Machain and de Irigoyen, 54.

\(^9^0\) Machain and de Irigoyen, 54.
The ownership of right to the territory of the second section, including Villa Occidental, remains submitted to the final decision of arbitration. Since Argentina rejected any control over the most northern section of the Chaco, the article first implied that Paraguay could claim it, to Bolivia’s dismay. The second portion of the Chaco mentioned in the 1876 treaty became the subject of the 1878 international arbitration. Some writers who have made note of the Hayes Arbitration allude to it as an 1876 arbitration since it was agreed upon in this 1876 treaty, yet neither evidence for the arbiter nor his decision were not submitted until 1878.

The U.S President was Named to Arbitrate the Argentine-Paraguayan Dispute

Article V named the arbiter. It stated, “The two high contracting parties agree to elect his Excellency, the President of the United States of America, as umpire to decide as to the right to possess the second section of the territory referred to in the preceding article.” At this time, President Ulysses S. Grant (1822-1885), the revered war hero from his leadership in the U.S Civil War, was amidst his second term in office. Congress had not yet ratified the 22nd Amendment to the U.S Constitution (1947), which established a limit of two four-year terms per president. Because of this, Grant could have been reelected for a third term but was instead replaced after by a fellow member of the Republican Party, Rutherford B. Hayes, in March 1877.

Hayes was a controversial president-elect and president. C-SPAN’S 2021 Presidential Historians Survey revealed that 142 “historians, professors and other professional observers of

91. Machain and de Irigoyen, 54.
92. Machain and de Irigoyen, 55.
the presidency” ranked him as the 33rd best U.S President. Hayes first won the U.S Presidential Election of 1876 after Congress formed a highly contested commission to determine electoral college votes for states whose electors could not concur. Hayes supported this commission, and once elected, he earned the nicknames “His Fraudulency” and “Rutherfraud.” Secondly, after he accepted the bid to the presidency, Democrats obliged him to withdraw the remaining Union troops from the South. This ended Civil War Reconstruction, which appeased Southern Democrats who moved quickly to disenfranchise Black Americans. Hayes knew that he had little control over Southern Democrats and never initiated measures to improve civil rights beyond using his presidential veto. And as a final example of Hayes’ controversial personal stands: he did not drink, smoke, or gamble. The President and First Lady Lucy Hayes banned alcohol from the White House during their tenure. While Hayes was in office four decades before U.S prohibition, the American people were well-aware as to where Hayes stood as far as substance use, which, like the more pressing political issues of the time, was polarizing.

It would have been challenging for Irigoyen and Machaín in February 1876, to predict whether Grant or his successor would be their arbiter. They would not have known that Hayes’ reputation would not prove to be as ideal as Grant’s. Knowing that Grant may not have been in office after the 1876 election, it is evident that the “U.S. President” title was more important than the specific name that followed it.


The treaty’s authors established an intended arbitral timeline in Article VI, which stated that Paraguay and Argentina would address the U.S. president within 60 days of the ratification of the 1876 treaty, and Article VIII, which stated that the two parties would submit evidence to the president petitioning their cases within twelve months of his acceptance. This meant that the entire process would likely take more than one year—or a year and a half including the time it would take for the U.S. President to reply to the request.

Ultimately, Argentine President Nicolás Avellaneda did not ratify the treaty until September 1, 1876. Paraguayan President Juan Bautista Gill and diplomat Benjamín Aceval did not write Grant on Paraguay’s behalf until January 13, 1877, despite the 60-day period post-ratification previously agreed upon. Avellaneda wrote a letter with the same purpose for Argentina on January 25, 1877, but it was not mailed until March 19, 1877. U.S. State Department records do not contain information as to why neither country addressed the U.S President until later than agreed, whether it be for the sake of the 1876 U.S presidential election or otherwise.

96. Machain and de Irigoyen, 55; See subsequent chapter for evidence submitted by the Paraguayan representative Benjamín Aceval.

97. Paraguay, Appendix and Documents Annexed to the Memoir Filed by the Minister of Paraguay, on the Question Submitted to Arbitration. (New York: Evening Post Steam Presses, 1878), 58.

98. Juan Bautista Gill to Ulysses S. Grant, “Constitutional President of Paraguay to His Excellency the President of the United States,” January 13, 1877, in Exhibit A, No. 2, Appendix and documents annexed to the Memoir filed by the Minister of Paraguay, on the question submitted to arbitration, (Evening Post Steam Presses, 1878), 59.

99. Nicolás Avellaneda to Ulysses S. Grant, “Letter from President Nicolás Avellaneda to the U.S President,” January 25, 1877, in Notes from the Argentine Legation in the United States to the Department of State, 1811-1906, Roll 2; Manuel Garcia to William B. Evarts, “Letter from the Argentine Legation to the American Secretary of State,” March 19, 1877, in Notes from the Argentine Legation in the United States to the Department of State, 1811-1906, Roll 2.
Argentine diplomat Manuel Garcia explained his vision of the arbitration to President Hayes in the letter that he mailed him:

I hope, on behalf of the Governments interested, that the President of the United States will respond favorably to a request that is so much in accordance with the lofty principles which this nation has introduced as a rule for the peaceable adjustments of international differences. The Government of that Republic of Paraguay trusts, as does that of the Argentine Republic, that the President of the United States by accepting the position of umpire in the question which they submit to this decision, will not only act consistently with the principles which the Government of the United States has had the glory of introducing into modern international law, but that he will also thereby give those sister Republics an unequivocal evidence of sympathy and fraternal feeling which invite this great Republic with the others of the American continent.100

To Gill and Avellaneda, the U.S’ “lofty principles” reflected their ideals, and they expected that the U.S would support fellow American republics by agreeing to serve as arbiter. Regardless of the result, the countries’ governments pledged to respect the U.S President’s decision—not because of his political party, but because the South American allies perceived the U.S as a reliable and equitable democracy interested in spreading positive ideals across the American hemisphere.

Just before the War of the Triple Alliance, however, Paraguay questioned that perception. In 1859, the largest naval force to depart U.S waters reached the estuary of the Rio de la Plata, “On the verge of delivering an ultimatum to Paraguay, and the assemblage of this force of nineteen ships in the estuary demonstrated a determination to enforce the ultimatum.”101 Solano Lopez refused to ratify an 1853 commercial treaty with the U.S., fired upon the U.S.S Water

100. Garcia to Evarts, “Letter from the Argentine Legation to the American Secretary of State,” March 19, 1877.

Witch and expelled the U.S-owned United States and Paraguayan Navigation Company.\textsuperscript{102} In his December 1857 annual address to Congress, U.S President James Buchanan accused Paraguay of “displaying an unfriendly attitude toward the United States.”\textsuperscript{103}

On the contrary, the Triple Alliance leadership was lukewarm towards U.S intervention during the war. Scholars uncovered, “In late 1866 Secretary of State Seward believed that the time was opportune for such an offer [mediation]. Seward stated, “The United States had no intention of interfering in the war, but in the interests of peace, and should the belligerents all desire mediation, Washington would offer its good offices.”\textsuperscript{104} In a turn of events, Paraguay was no longer opposed to U.S intervention, but instead there was “unequivocal refusal of Brazil, the Argentine Republic, and Uruguay to accept the proffered mediation of the Government of the United States.”\textsuperscript{105} All four countries who had been at war had at various times disapproved of the United States’ interference in South American affairs. Yet to Argentina and Paraguay, the fact that U.S ideals could determine the final dispute in the aftermath of the war outweighed a contentious past. The U.S President as umpire would provide the ultimate test of the relationship between Argentina and the U.S that strengthened earlier in the decade. It also would determine whether Paraguay could render a diplomatic victory.

\textsuperscript{102} Flickema, 51.

\textsuperscript{103} Flickema, 51.

\textsuperscript{104} Cooney and Mora, \textit{Paraguay and the United States}, 25.

\textsuperscript{105} Cooney and Mora, \textit{Paraguay and the United States}, 25.
Conclusion

The Hayes Arbitration occurred only well after the War of the Triple Alliance that decimated Paraguay. Brazil, Argentina, and Uruguay signed the Treaty of Alliance in 1865, plotting their militaries against Paraguayan leader Francisco Solano López. The treaty indicated skepticism from within the alliance, and boundary disputes ultimately plagued diplomacy for a decade following the war. Solano López’s nationalism enabled him to lead a six-year fight against the Alliance, which led his nation-state into utter devastation. Paraguay lost territory to Brazil in the Treaty of Limits (1872), and Brazilian troops withdrew on May 13, 1876.\(^\text{106}\) Paraguay lost territory to Argentina in the Treaty of Limits (1876), but in that same treaty, Paraguay sought a diplomatic victory in the previously undesired Chaco territory.

Representatives set terms for an international arbitration. They chose the U.S President to draw set the boundary lines due to U.S’ respected liberal ideals. Argentine representatives, trusting the U.S President would offer “unequivocal evidence of sympathy and fraternal feeling,” supported the arbitration, making a Paraguayan victory seem unattainable. Due to the pending arbitration—and little doubt they would not surface as victors—Argentina’s army did not depart until May 14, 1879, after President Hayes awarded the Chaco territory to Paraguay.\(^\text{107}\) The arbitration reaffirmed Paraguay’s geopolitical legitimacy, expanded the country, and moved the utterly defeated nation.


\(^{107}\) Warren and Warren, 280.
Chapter 2
The Theory, Mechanics, and Arguments that Explain the Outcome in Washington, D.C.

International arbitration was a common tool that states used to settle international disputes during the 19th and 20th centuries. The U.S was a frequent participant based on the belief that it upheld liberal values, like justice and equity, that were evident in its founding principles and diplomacy. John Bassett Moore (1860-1947) shaped the field of international law and scholarship pertaining to international arbitration. His publications and career left a profound legacy in the world of inter-state arbitration of conflicts.\(^\text{108}\) “Arbitration is not to be confounded with mediation,” he argued in 1904, because “mediation is an advisory, arbitration a judicial, process. Mediation recommends, arbitration decides.” Arbitration at its highest level, as he explained, involved “the determination of controversies by international tribunals judicial in their constitution and powers.”\(^\text{109}\) In the case of the Argentine-Paraguayan dispute studied here, the arbiter was a nation-state’s leader, neutral to the dispute, upon whom both parties agreed in advance to make an unappealable decision.

In his Second Annual Message to Congress on December 2, 1878, President Hayes wrote about his role as an arbiter in the following way,

> Our relations with other countries continue peaceful. Our neutrality in contests between foreign powers has been maintained and respected… A boundary question between the Argentine Republic and Paraguay has been submitted by those Governments for arbitration to the President of the United States, and I have, after careful examination, given a decision upon it.\(^\text{110}\)

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In doing so, Hayes adopted the standard rhetorical strategy of many leaders: claiming his subordinates’ actions as his own. A man who journaled regularly, Hayes did not write a single comment in his diary about arbitrating the Chaco dispute. However, State Department records allow a look inside of the arbitral process. The 151 pages of hand-written notes by government officials which were placed in labeled folders, titled, “Brief of Statement of Paraguay,” “Brief of Argentine Memorial,” and “Comments on Argentine Paraguay Situation,” show that while Hayes was not as involved in the arbitral deliberations as he claimed, the State Department guided him to make a just decision.\(^{111}\)

Thomas J. Culbertson, a former director of the Hayes Presidential Library and Museums, however, speculated that “perhaps they [the U.S State Department] just flipped a coin” to determine the arbitral decision.\(^{112}\) This chapter draws upon the materials that Paraguay and Argentina sent to the State Department, alongside the State Department’s briefs—files that have been understudied to date—which prove that Culbertson’s statement was not true. It starts with an examination of U.S approach to international arbitration as set forth by its pioneering theorist John Basset Moore, who applied his theories as a diplomat. From there, it profiles the key Argentine and Paraguayan diplomats who lead each nations’ efforts to convince the U.S government of the righteousness of their claims to the Chaco. It examines the scope of the written submissions to the State Department as well as accompanying evidence. In addressing

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111. “Argentina-Paraguay Boundary Arbitration. 1876-1878,” Organizational Authority Record, 1878, U.S National Archives and Records Administration at College Park, Maryland. Hayes’ Secretary of State William Evarts handled all written correspondence between the White House and South American representatives that preceded the arbitral decision.

mechanics, it highlights the strengths and weaknesses of how each diplomat handled his admission while examining the arguments they advanced to persuade Washington D.C. to decide in their favor. Finally, it examines the State Department’s internal assessments of the rival submissions, which reveal the dispositions that underlay a final arbitral decision favorable to Paraguay’s claims to the Chaco. In a detailed examination of the arguments advanced by the winner, it will also reflect on the colonial foundations of the nature of such claims between rival nation states over territories that were, nonetheless, already occupied by indigenous peoples whose rights were dismissed outright prior to the arbitration by all sides.

**The Theory of International Arbitration: Established by U.S. Diplomat John Basset Moore**

Moore drew upon a lifetime of academic and diplomatic experience and published extensively within his field of expertise and was involved in numerous mediations and arbitrations at the highest echelons of diplomacy. As a young man, he briefly practiced law before serving as a law clerk at the State Department. This led to his appointment as Third Assistant Secretary of State under the Grover Cleveland and Benjamin Harrison administrations from 1886-1891. Although a Democrat, Moore advised both Democrats and Republicans and in 1912 he was appointment by Republican U.S President William Taft to the Permanent Court of Arbitration, an international body of state representatives that resolved dispute by way of arbitration.

Moore as scholar and diplomat was a strong believer in the U.S’ ability to model exceptional diplomacy to the world. In a “Prefatory Note” in *American Diplomacy Its Spirits and


Achievements (1905), Moore declared that “the United States has in reality always been, in the fullest and highest sense, a world-power; and the record of its achievements in the promulgation and spread of liberal and humane doctrines is one in which no American need hesitate to own a patriotic pride.” Although raised in a country plagued by its Civil War and vocally skeptical of alliance systems between nation-states, Moore perceived the United States to be a vital player in fostering international conflict resolution including arbitration as an expression of “liberal and humane doctrines.”

Moore produced the first standard reference work for international arbitrations, which included details of the Hayes Arbitration: a six-volume compendium History and Digest of the International Arbitrations to Which the United States Has Been a Party. Published in 1898, Moore devoted 6000 pages to the discussion of 48 major disputes in which the U.S. played a role that either established the grounds for arbitration or resulted in arbitration. It continues to be routinely cited in the field of study, even as recently as 2021 by the United Nations’ in Reports of International Arbitral Awards.

In all cases that Moore studied, the U.S representatives were either arbiters or a party in a dispute that asked another to arbitrate. In some instances, commissions carried out arbitrations, while other times an individual arbiter resolved the case. Other countries that partook in 19th century international arbitrations with the U.S were Canada, the United Kingdom, Spain, France, Russia, Italy, Switzerland, Brazil, Germany, Sweden, Netherlands, Denmark, Mexico, Colombia,


Argentina, Paraguay, Chile, Costa Rica, Ecuador, Peru, Venezuela, Haiti, Siam (Thailand), and Nicaragua. With several dozen historical cases, the digest reveals that the United States played a significant role in constructing the norms of international arbitration, despite its status as a new country relative to its European counterparts.

Moore discussed arbitrations with an individual arbiter, but also equally important to his work were arbitral commissions. Some treaties, such as the Machain-Irigoyen Treaty that enabled the Hayes Arbitration, are examples of the former. The treaty, again written nearly two years after the Brazilian-Paraguayan equivalent, was a final opportunity for Argentina to acquire territory from Paraguay. An arbitration commission would have had to deliberate amongst themselves, further delaying the period to resolve the Chaco dispute. The lone arbiter—President Hayes—would, in theory, deliberate with his trusted advisors in less time.

The “Treaty of Peace and Amity between His Britannic Majesty and the United States of America,” also known as the Treaty of Ghent, that followed the War of 1812, resulted in three arbitral commissions, a cohort of people not involved in writing the treaty but with connections to both contending states. Only one of the Treaty of Ghent’s commissions completed its mission internally before turning to an outside arbiter. Article IV specified that a third-party would “consider the decision of such friendly Sovereign or State” when conflict arose from the treaty.\textsuperscript{118} So the Emperor of Russia, in April 1822, declared his interpretation of the text, then offered his time to serve as mediator to resolve any further conflict that were to arise from his opinion.\textsuperscript{119}

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\textsuperscript{118} Moore, *History and Digest of the International Arbitrations to Which the United States Has Been a Party.*
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Narrowing the focus to U.S-Latin American arbitrations, Moore indicated that there were 22 instances between 1839 and 1893, excluding pending cases at the time of publication and those deemed “minor.” Of the 22, a U.S representative was arbiter for four cases and a party in conflict for 18. Two involved Paraguay: President Hayes’ Arbitration and the “Claim of the United States and Paraguay Navigation Company: Commission Under the Convention Between the United States and Paraguay of February 4, 1859.” Unlike the subsequent Hayes Arbitration, the first dispute was resolved by way of a commissioned tribunal, not by an arbiter established in a treaty. The commission determined that Paraguay had acted within reason to expel the United States and Paraguay Navigation Company and dismissed the company’s $1,000,000 claim. It was one of Moore’s 18 cases in which the United States’ party itself was amid a conflict, while the Hayes Arbitration was one of the four in which the U.S’ party served as arbiter. Moore’s work suggests why Presidents Gill and Avellaneda trusted the U.S government to resolve the Chaco dispute: the U.S’ impartiality and fairness in other international arbitrations before the establishment of international law that required a legitimate legal process to reconcile an arbitral award.

**How Contending Diplomats Conducted their Mission in Washington**

Paraguay and Argentina’s arbitral strategies required coordination among government officials and the expenditure of limited resources, especially in Paraguay’s case. The two countries’ diplomats, both deliberately assigned to petition the U.S President, spent months preparing arguments to convince Washington. The Argentine and Paraguayan presidents’ choices of the diplomats to represent their two countries in the U.S were key to Paraguay’s arbitral success. The two primary representatives had important roles: to compile relevant sources and reasonably
compel President Hayes. The two men whose names appear most prominently alongside the
evidence are Benjamín Aceval, for Paraguay, and Manuel García, for Argentina. From written
letters, it is evident that these two men themselves were directly involved with the arbitration.

Dr. Tomás Benjamín Aceval Marín, more commonly referred to as Benjamín Aceval,
was the highest-ranking official in Paraguay’s U.S Legation from August 3, 1877 until his heroic
return home to Asunción on March 25, 1879.² Aceval, while Paraguayan, was raised in
Argentina and earned his Doctor of Law degree from the Universidad de Buenos Aires in
1873.² Well-acquainted with the Argentine Republic’s elite, legal system, and culture, it was
strategic for Paraguayan President Higinio Uriarte to send Aceval to the U.S to focus his efforts
on the pending arbitration. In accepting the appointment to Washington, D.C, Aceval had to step
down from his post as Paraguayan Foreign Minister in Asunción, a position he reassumed in
1879 after the Hayes Arbitration.

The War of the Triple Alliance, in its destruction, left the Paraguayan educational system
in shambles. The money which Paraguayan lawmakers allotted for the Colegio Nacional was
instead used to fund Aceval’s expenses in the United States.² A distinguished proponent of
education, Aceval, would later direct the Colegio Nacional. As a man of intriguing character, his
allegiance to Paraguay surpassed his immersion and familiarity with Argentina. Aceval’s bold

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²² The national high school was started in the post-war decade as one school but grew to many, as Paraguay had few schools remaining after the war; Warren and Warren, *Paraguay and the Triple Alliance*, 168-169.
leadership would prove pivotal in Paraguay’s victorious outcome in the arbitration—and thus its international recognition and recovery.123

On March 27, 1878, Aceval wrote to U.S Secretary of State William Evarts and delivered “the memorandum and annexed documents relative to the rights of Paraguay over the territory submitted to the arbitration of His Excellency the President of the United States of America.”124 In this letter, he wrote that the translation from Spanish to English was not yet complete, but that he hoped that it would be ready within several days.125 Aceval’s urgency in delivering material to Evarts was due to Article VIII of the Treaty of Alliance. President Hayes, who accepted the case a year prior on March 28, 1877, expected the Paraguayan materials no later than the date that Aceval presented them.126 While Aceval’s translation was not yet prepared, he sent the Spanish texts and indicated that the English version would arrive shortly thereafter. Not yet overdue to where Argentina would have voided Paraguay’s arbitral claim and assumed domain over the contested Chaco, Aceval’s punctuality was a timely indicator of his thorough work.

Neither the treaty nor the letter implied that the accompanying materials had to be printed as opposed to handwritten, but Aceval chose to translate and print the appendix and documents attached to his memoria for the US Secretary of State in a bilingual 1878 edition entitled

Appendix and documents annexed to the Memoir filed by the Minister of Paraguay, on the

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126. “Rutherford B. Hayes to Juan Bautista Gill,” March 28, 1877, in Appendix and documents annexed to the Memoir filed by the Minister of Paraguay, on the question submitted to arbitration, 60.
question submitted to arbitration. Evening Post Steam Presses, a small press affiliated with a New York newspaper, printed the book. This is an additional indication of how Aceval conceived his mission as one of lobbying a U.S audience in pursuit of a favorable decision by the U.S President.

Dr. Manuel Rafael Garcia Aguirre, a lawyer and diplomat, was the Argentine representative sent to Washington, DC. While less familiar with Paraguay than Aceval was with Argentina, President Santiago Derqui had sent Garcia the U.S in 1860 to gain an understanding of the country’s federal judiciary. He wrote several articles on this research and on how Argentina could adapt the U.S Judiciary Act of 1789. His familiarity with the U.S legal system was influential in developing Argentina’s trial by jury. Later the Plenipotentiary to the U.S, Garcia was a strategic choice for President Nicolás Avellaneda to place in charge of petitioning Hayes.

While Aceval’s printed translation showed a financial commitment to the outcome of the arbitration, Garcia’s approach was quite different. The memoria he presented was in English, although handwritten, and his printed materials were in Spanish and published prior to the

127. Benjamín Aceval, Appendix and Documents Annexed to the Memoir Filed by the Minister of Paraguay, on the Question Submitted to Arbitration. (New York: Evening Post Steam Presses, 1878).


129. The microfilm "Notes from the Argentine legation in the U.S. to the Dept. of State, 1811-1906" suggests the Garcia had a close relationship with President Grant’s Secretary of State Hamilton Fish. Garcia requested a shipment of arms for Argentina and wrote Fish during a two-year trip to Europe. While not confirmed from credible sources for this thesis, Garcia, and his wife Eduarda Mansilla, had close relationships with President Grant and First Lady Julia Grant. As popular legend has it, Mansilla had a beautiful voice and sang at White House parties. Derqui would have known that Garcia had a personal relationship with the President and hoped that this relationship would blossom into yet another one with President Hayes.
arbitration. This is a stark contrast from Aceval, who believed translations were important for the U.S President. In his view, as Garcia wrote to Secretary of State Evarts,

I have considered a translation of all the documents unnecessary or superfluous, contending myself with indicating the main points; others are sent in Spanish, especially those of references, the translation of which I have not thought indispensable. I am ready, however, to give such explanations as any be deemed necessary, and to supply the complement of the proofs that may be required.\textsuperscript{130}

And, after learning of the unfavorable arbitration, Garcia even went so far as to request the return of the material they had submitted to Washington: a request rejected by the U.S.\textsuperscript{131} As this suggests, Paraguay was more invested in the outcome given the importance of achieving a nationalist victory, in light of the prostrate country’s diminutive size and economy in relation to that of Argentina’s. While both countries’ presidents hand-picked the representatives tasked with petitioning the U.S President on behalf of their nations and both men compiled extensive documents, Aceval’s effort was more ambitious and wide-ranging to court the State Department than was his Argentine counterpart’s.

**The Nature and Scope of the Submitted Evidence**

Both sides’ materials to substantiate their claims were lengthy. At their core stood the “memorias” submitted by Aceval and Garcia. This Spanish term translates most literally to “memory” in English. Yet, in documents relevant to the arbitration, 19\textsuperscript{th} century scribes translated the word to “memorandum” and “memorial.” In the U.S State Department’s translation of a July 7, 1872, letter from the Argentine Legation, the translator wrote “the

\begin{footnotesize}
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  \item \textsuperscript{130} Manuel Garcia to William Evarts, “Letter from Argentine Legation to U.S Secretary of State,” March 25, 1878, in Notes from the Argentine legation in the U.S. to the Dept. of State, 1811-1906, Roll 2.
  \item \textsuperscript{131} “Note to Secretary of State William Evarts,” November 16, 1878, in Notes from the Argentine legation in the U.S. to the Dept. of State, 1811-1906, Roll 2.
\end{itemize}
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enclosed copy of the memoria (memorandum?), revealing confusion as to how to perceive the memoria. The Oxford English Dictionary (OED) defines memorandum, “An informal diplomatic message, esp. one summarizing the state of a question, justifying a decision, or recommending a course of action.” And, under its entry for memorial, the Oxford English Dictionary (OED) states, “A record, chronicle, or memoir; (in plural) a record, often containing personal reminiscences, of the history of a person, place, or event; memoirs, observations” and “In diplomatic use: any of various informal state papers giving an account of a matter under discussion, esp. one presented by an ambassador to the state to which he or she is accredited, or by a government to one of its agents abroad. Obsolete.” While now obsolete, the term was used in diplomatic circles through the early twentieth century. These definitions suggest that a memorial was a more specified type of diplomatic memorandum. Thus, Garcia and Aceval wanted to informally provide their own arguments to U.S representatives, showing personability.

While the centerpiece, however, the memorials were not the only evidence submitted to the U.S President. Garcia submitted the materials listed on the following table having benefitted from the fact that Argentina’s libraries, unlike Paraguay’s, had not been burned in the War of the Triple Alliance. With Buenos Aires, the capital of the former viceroyalty, at his disposal, Garcia had more access to written material than did Aceval.

135. The following two tables are derived from listings in John Bassett Moore, History and Digest of the International Arbitrations to Which the United States Has Been a Party (Buffalo, N.Y.: W. S. Hein & Co., 1995., 1898), 1927.
Despite García’s inquiry as to whether Evarts would return the materials, the U.S State Department catalogued the materials and stored them for reference. For Argentina, the outcome of the Hayes Arbitration was a national embarrassment, which meant that the government—unlike Paraguay’s—did not publish a book expressing gratitude towards Hayes. Instead, the Argentine government claimed that the arbitral decision was not just in 1880 in *Cuestión de límites entre la República Argentina y el Paraguay. Ojeada retrospectiva por unos amigos de la justicia*. It claimed, “The arbitrator judge proceeded lightly, without thoroughly studying the titles and documents presented by the Argentine Republic.”\(^{136}\) This contrasted from a gracious tone in correspondence from Argentine representatives before the arbitral decision that implied the decision could be made with reasons beyond the literal evidence in the documents.

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While Argentina’s lack of commemorative materials is no surprise, one might expect that some books submitted to Hayes would have been created specifically for the arbitration as found in the Paraguayan submission. The opposite is true: only the memoria was original writing, and all books submitted to Hayes were in Spanish and published before the arbitration. Indeed, three books included in Argentina’s materials—that were not included in Moore’s list of contents—were Belisario Saravia’s *Memoria sobre los límites entre la República argentina y el Paraguay* in 1867 and Manuel Ricardo Trelles’ *Cuestión de límites entre la República Argentina y el Paraguay*, and the “Anexos a la memoria sobre Cuestión de límites entre la República argentina y el Paraguay.”¹³⁷ Trelles and Saravia were political dissidents during the War of the Triple Alliance who criticized the Argentine government for not being forceful enough in expanding across the continent.

Saravia, in his 163-page book, claimed that Argentina ceded territory in the Treaty of Alliance (1865): “A cession that perhaps the Argentine Government should have recorded in bold characters in the body of the Treaty of Alliance.”¹³⁸ He stated,

> The remarkable injustice of attributing the National Government the absorption of territories that do not legitimately belong to it, when on the contrary it is the Argentine Republic that has been defrauded of its rights by that stipulation, I decided to state the truth very clearly, not precisely because I trust the weakness of my pen, but because until today no one has undertaken this work with the deserved determination.¹³⁹

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¹³⁷. These books are mentioned in this thesis because they were published and accessible online while NARA was closed, and the author was unable to analyze the Argentine memoria, which was not available online.


¹³⁹. Saravia, 5–6. Original text: La remarcable injusticia de atribuir al Gobierno Nacional la absorción de territorios que no le pertenecen legitimamente, cuando por el contrario es la República Argentina la defraudada en sus derechos por aquí a estipulación, me decidí a tratar de poner bien claro la verdad no precisamente para esa tarea Confía en la flaqueza de mi pluma, sino más bien porque hasta hoy nadie ha emprendido ese trabajo con la medida determinación. Translated by Austin Connors.
Thus, according the Saravia, Argentina should not have established its desired territorial bounds along natural boundaries, such as the Paraná and Paraguay Rivers. Nor should they have been established in the Treaty of Alliance. The diplomats at the very least should have petitioned for an even larger Argentina, according to rights of conquest granted to Argentine predecessors. His 15 pages on Paraguay’s claim to the Chaco were a nationalist dismissal of the Paraguayan claim to it based solely on Argentina’s uninterrupted right going back to the establishment of the colonial Spanish Viceroyalty of La Plata.

Trelles, who later led Argentina’s national library, included text in *Cuestión de límites entre la República Argentina y el Paraguay* from French and Paraguayan historians who wrote about Buenos Aires’ rightful territorial jurisdictions. He opened his appendix with a statement,

> So unquestionable is the sovereignty of the Argentine Republic over the entire territory of the Chaco, that, after knowing our domain title, it has been tempted as a last resort, in support of the contrary claims, to present as possession titles, the expeditions that some governors of Paraguay did to that territory, without taking into consideration the motives and objects of those enterprises, no value to create rights of sovereignty before the laws that consecrated the inviolability of the territory of the governorates of the Indies.¹⁴⁰

Like Saravia, Trelles claimed that Argentina’s right to the Chaco was absolute. He claimed that Paraguayan expeditions to the Chaco coincided only with expeditions that Argentina funded or licensed. With no way to know that Paraguay would claim the Chaco a decade later and in no way

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¹⁴⁰ Manuel Ricardo Trelles, *Anexos a La Memoria Sobre Cuestión de Límites Entre La República Argentina y El Paraguay*, Cuestión de Límites Sobre La República Argentina y El Paraguay. (Buenos Aires: Imp. del Comercio del Plata, 1867), 2–3. https://catalog.hathitrust.org/Record/011544813. Original text: Tan incuestionable es la soberanía de la República Argentina sobre todo el territorio del Chaco, que, después de conocido nuestro título de dominio, se ha tentado como último recurso, en sosten de las pretendencias contrarias, el presentar como títulos de posesion, las entradas que hicieron á ese territorio algunos gobernadores del Paraguay, si tomar en consideracion los motivos y objetos de esas empresas, ningun valor para crear derechos de soberania ante las leyes que consagraban la inviolabilidad del territorrio de las gobernaciones de Indias. Las únicas expediciones que pueden mencionarse como actos poseserios del territorio del Chaco, son las numerosas expediciones argentinas, pues solo ellas fueron verificadas en virtud de jurisdiccion propia. Las entradas procedentes del Paraguay, ó se hicieron en combinacion con las expediciones argentinas, ó con licencia, ó por órden del gobierno del Rio de la Plata. Translated by Austin Connors.
had the Argentine government reached its “last resort” of claiming the Chaco, Trelles perhaps harmed Argentina’s arbitral case for it. He acknowledged that the Paraguayans had reason to claim the Chaco. Polemical dissidence from within one’s own government was not strong evidence, as Paraguay revealed what its people had done adequately in the Chaco and for its residents.

On the Paraguayan side, Aceval submitted 16 books, at least one hundred and five testimonials, two reports, four newspaper volumes, four maps, and one decree. The quantity of materials sent as evidence for its petition was significant for Paraguay. The country’s public library was established in 1869 with a mere 526 volumes, showing that the nation sacrificed numerous academic resources for this arbitral petition.141 The following table lists the materials submitted to President Hayes. Most are still held at the U.S National Archives and Records Administration (NARA) in College Park, Maryland. Some, however, are missing, or no longer legible.

Table 2: The Mechanics of Paraguay’s Evidence Submitted to President Hayes

<table>
<thead>
<tr>
<th>Paraguay Sources Submitted as Evidence for the 1878 Arbitration</th>
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<tr>
<td>Treaty of Limits</td>
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<td>75 documents compared by minister of Italy</td>
<td>75</td>
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<tr>
<td>3 reports from Argentine minister of foreign affairs: 1874, 1876, 1877</td>
<td>3</td>
</tr>
<tr>
<td>Supplement to report to Brazilian foreign minister 1875</td>
<td>1</td>
</tr>
<tr>
<td>1782 docket: 30 witnesses attesting to towns possessed by Paraguay</td>
<td>30</td>
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<tr>
<td>Packet that records occurrences of Melodia blockhouses in Villa Occidental</td>
<td>unknown</td>
</tr>
<tr>
<td>El Paraguayo Independiente, 2 volumes</td>
<td>2</td>
</tr>
<tr>
<td>vol 1, Rio de la Plata Review</td>
<td>1</td>
</tr>
</tbody>
</table>

Aceval also oversaw the production of printed English translation of the Paraguayan case during the arbitration: *Appendix and Documents Annexed to the Memoir Filed by the Minister of Paraguay* (New York), which was later published in Spanish in 1896 as *Chaco paraguayo: memoria presentada al árbitro* (Asunción). These two books contain much of the same content, including some from the sources itemized above. The former contains a translated edition of the latter and was sent to the U.S State Department for consideration in the arbitration. The latter, published nearly two decades after the arbitration, likely served as a means to commemorate Paraguay’s diplomatic triumph in 1878.

The overlap between the two books breaks into two primary sections: the annex and the exhibits. The bilingual 1878 book of 185 pages is divided into the appendix and exhibits and includes a more in-depth index than the later 1896 version which also does not title each document. The books begin with a 40-page Contra Memorandum, written in 1873 to rebut a “Memorandum” written by Brigadier General Don Bartolome Mitre, Minister Plenipotentiary of the Argentine Republic, which laid out the Argentine position on post-war borders to his
Paraguayan counterpart. As any clever attorney seeks to mask their opponents’ strongest arguments, Aceval did not include Mitre’s memorandum in the book, thus strategically strengthening his own arguments.

The Contra Memorandum had set Paraguay’s standards for the Machain-Irigoyen Treaty and thus the arbitration under President Hayes. Miranda, who wrote the document, reminded the Argentine Foreign Ministry and, in the case of the 1878 book, informed the US State Department that the Treaty of Alliance “provided for a war, not against the Paraguayan people, but against it government, at that time, or in other words, against Marshal Lopez.” He showed invalidation of provisions from the Treaty of the Alliance, claiming that any Argentine argument grounded upon the Treaty of the Alliance “disappeared on the 20th of June, 1870, when the preliminaries of peace between the Government of the Republic of Paraguay and the allied powers were signed at La Asunción.” It also traces the history of colonizers’ contact and interaction with native peoples who occupied the Chaco region.

The subsequent one hundred and thirty-three pages of exhibits, upon close examination, provided evidence for claims in the Contra Memorandum. The oldest document included was a letter, written on December 31, 1662 by Spanish King Phillip IV to the “Chief Justice and the Associate Justices of the Royal Audience… in La Trinidad del puerto de Buenos Aires.” And,

142. “José Del Rosario Miranda to Brigadier General Don Bartolome Mitre,” September 2, 1873, in Appendix, Appendix and documents annexed to the Memoir filed by the Minister of Paraguay, on the question submitted to arbitration, 5.

143. José del Rosario Miranda, “Contra Memorandum on the Question of Limit between the Republic of Paraguay and the Argentine Republic,” October 31, 1873, in Appendix, Appendix and documents annexed to the Memoir filed by the Minister of Paraguay, on the question submitted to arbitration, 10, 15.

144. Miranda, 15.

145. “King Phillip IV to the Chief Justice and the Associate Justices of the Royal Audience in the City of La Trinidad de Puerto de Buenos Aires, in the Province of the La Plata River,” December 31, 1662, in Exhibit C, No. 1,
the most recent: a letter, on August 25, 1877, from the Charge d’Affairs of Italy in Asunción Enrique Stella in which he agreed, “In the absence of an American Legation, to authenticate the copies of the original documents referring to the question of the Chaco.” While preparing for the arbitration, Aceval sought validation from another neutral third party to support his evidence, hoping that Italy’s support of the Paraguayans would further validate his claims.

The exhibits were organized into categories A through G. Exhibit A contained one treaty—the February 3, 1876, Treaty of Limits—along with the letter from Paraguayan president Gill asking Hayes to serve as umpire, followed by Hayes’ acceptance. Exhibit B was comprised of two letters: the correspondence between the Italian Minister and Jara. Exhibit C was 48 letters between governors, kings, generals, and notaries. Its overall purpose was to prove that, from 1662, Paraguay was deeply embedded into settling, Christianizing, and militarizing the Chaco region. Interestingly, Aceval wrote in a letter, “Exhibit C, containing 75 documents, copied from the originals in the archives of La Asunción, compared by the minister of Italy for the Government of Paraguay, and duly authenticated,” showing that he intended for all 75 documents to be translated and published, but though only 48 were printed. Exhibit D provided five documents from Portuguese elites that indicate Paraguayan presence in the Chaco. In it, there was no mention of Argentina’s expeditions. Exhibit E included the 1852 Treaty of Navigation and Limits between Paraguay and Argentina. A letter from an Argentine diplomat in response to the treaty states applauds the “neutrality of the territory of the cost of El Chaco.

Appendix and documents annexed to the Memoir filed by the Minister of Paraguay, on the question submitted to arbitration, 62-65.

146. “Enrique Stella to Don Juan A. Jara,” August 25, 1877, in Exhibit B, Appendix and documents annexed to the Memoir filed by the Minister of Paraguay, on the question submitted to arbitration, 61.

[since] that tract of neutral coast is of no value, it being an inaccessible marsh in time of inundations,“148 suggesting that Argentina had not previously sought explicit ownership over the Chaco. Exhibit F was one document: the 1851 decree that established Nueva Burdeos, the French colony that later became Villa Occidental and finally Villa Hayes. Exhibit G translated the 1865 Treaty of the Alliance to English for it to be accessible for Hayes and the U.S State Department. The exhibits were strategically organized to support Paraguay’s historical arguments for the unsettled Chaco, showing a history of European support of Paraguay’s endeavors and Argentina’s disinterest until officially claiming the territory was theirs in the 1870s. These materials revealed Paraguay’s investments into the region: its exploration, colonization, and Christianization of the peoples. And, that such activities were supported by European monarchs.

From Aceval’s deliberate assignment to the United States and the resources invested to the materials submitted to President Hayes, it is evident that the highest levels of Paraguay’s national leadership, despite its own reestablishment throughout the 1870s after the war, were committed to achieving a favorable arbitral outcome in 1878. To Argentina, the arbitration would have been a small victory relative to having successfully removing Solano Lopez from power and annexing Misiones.

Heathens, Savages, and Paraguay’s Civilizing Mission: A Winning Argument

Indigenous groups resided as independent nations in the Chaco before the formation of post-colonial nation-states, like Paraguay and Argentina. The nation-states involved in the 1878 arbitration were not the first nations to occupy the disputed Chaco territory, and unsurprisingly,

148. “Santiago Derqui to Luis José de La Peña,” July 26, 1852, in Exhibit E., No. 1, Appendix and documents annexed to the Memoir filed by the Minister of Paraguay, on the question submitted to arbitration, 168.
the first nations were not given a say in the arbitral decision. Yet Paraguay expounded upon its “right” to the Chaco with arguments derived in colonial justification. While the evidence did not suggest that Paraguay incorporated the Chaco into its borders after independence, it described Paraguayan attempts to Christianize and “defend” the indigenous populations in the Chaco before Paraguay’s independence. This was likely to be received sympathetically by the U.S government since U.S policy at the time sought to control its own Native American population, embracing the concept Manifest Destiny.

Direct references to indigenous peoples were written throughout the annexed documents, which as previously stated, span dates between 1662 and 1877. Within the documents, there are 127 instances of the word “Indian,” 17 of the word “tribe,” 6 of the word “heathen,” and 4 of the word “savage.” So, this compilation averages over one direct mention on each of the 133 pages of exhibits, and these calculations exclude indirect references. This proves that the indigenous figured prominently in the documents Aceval submitted to Washington.

Of the total mentions, there were 76 references to “Indian[s]” as a collective. Sometimes this occurred when a document’s author neither refers to a specific indigenous group nor uses an adjective with a negative connotation alongside the noun. Common phrases included “Indian[s],” “the Indians” and “some Indians.” There are, however, 30 references to specific groups of named “Indian[s]”: Abipone, Pamba, Serrano, Ubaya, Mbocobi, Toba, Leguas, Enimaga, and Caaiiguás. And, shown in an explicitly negative light, “Indian[s]” were referred to as uncivilized in 14 places. The indigenous were also described as heathens and savages, wild, warriors, heathen, hostile, or as provokers of hostilities. Interestingly, there were seven instances of “Indian[s]” described in a positive sense in the exhibits: as “settled” and “laborer[s].” Thus, European colonizers and their descendants spoke highly of first peoples when they adapted to
European settlements or served the white man but felt neutrally about the peoples—at best—unless criterion were met to deem them obedient or laborious.

The general distinction between the civilized and uncivilized was also evident in the language of the Treaty of the Alliance. Sovereign nations, including Paraguay, were defined as “civilized” in the following terms: the “Government of Paraguay… violated solemn treaties and international rules of civilized nations, and committed unjustifiable acts after having disturbed its relations with its neighbors by the most abusive and aggressive proceedings.”¹⁴⁹ This acknowledgement of civility suggests that the indigenous nations, whom the civilized only selectively acknowledge in the evidence and not as having rights to the Chaco, were the uncivilized. Indeed, Aceval advanced Paraguay’s claim in the evidence: that Paraguayans spent two centuries helping to “civilize” indigenous populations and expose them to the ways of “civilized” Spanish-speaking persons, without acknowledging that the remaining indigenous communities should have a stake in the arbitration.

Aceval was particularly eager to provide evidence of a Chaco indigenous people’s alleged voluntary openness to joining Jesuit reducciones, Paraguayan economic generosity to the reducciones, and investment to the Chaco’s defense to establish Paraguay’s claim of the Chaco territory in 1878. From the eighteenth century, Jesuit elite in the Province of Paraguay believed the Church and Spanish crown to be liberating forces; indigenous persons in Spanish-America who were willing to convert to Catholicism and become subjects of the Spanish crown would

¹⁴⁹. “Treaty of Alliance between the Governments of Uruguay, Brazil, and Argentina,” May 1, 1865, in Exhibit G, Appendix and documents annexed to the Memoir filed by the Minister of Paraguay, on the question submitted to arbitration, 179.
receive the “protection of the Royal Crown, as subjects of his Majesty.” Despite known conflict between Spanish colonists and Jesuits, the King supported such missions as a way to extend his global influence.

The Abipone people, an indigenous group that no longer exists as a defined population and whose population dwindled in the latter half of the nineteenth-century, allegedly “requested to be gathered in a reducción, where to be converted and live under the subjugation of Evangelical law.” It is “alleged” because of the following remark, a footnote on the same page: “Reducción is the term used to express a town or settlement newly founded, to which the Indians were invited to come to receive instruction under the direction of a priest and become members of a civilized community.” The note was not found in the 1896 Spanish text and was therefore added into Aceval’s 1878 translation for the U.S officials understand what was meant by the unfamiliar term. While the men sending and receiving the 1762 correspondence believed that the Abipone wanted to live within Spanish colonialism, the translator in 1878 did not imply that to be the case. Thus, within these two paradoxical quotations, there is an explicit clash between the supposed request and routine invitation to what superficially appears to be gratuitous resources and independence. The Abipone, after moving into their reducción, would be subject to “Royal Laws of the Indies relating to the Indians who freely and spontaneously

150. “Nicholas Contucci to Jose Martinez Fontes,” November 12, 1762, in Exhibit C, No. 3, Appendix and documents annexed to the Memoir filed by the Minister of Paraguay, on the question submitted to arbitration, 68-69.

151. “Jose Martinez Fontes to Nicolas Contucci,” October 25, 1762, in Exhibit C, No. 2, Appendix and documents annexed to the Memoir filed by the Minister of Paraguay, on the question submitted to arbitration, 66-67.

152. “Jose Martinez Fontes to Nicolas Contucci.”

accept the Gospel” and “spiritual training.” From the letter writer’s perspective, a Catholic Spaniard, affiliation with the globally powerful and commercially prominent Spanish Empire was liberating, yet it stripped the Abipone from autonomous government systems and trade networks. Adding to the Abipones’ instability after contact with the Spanish, the Jesuits were expelled from the Chaco region, and in the 1850s and Italian Franciscans had founded new “missions” for the Abipone people. In reality, contact with Europeans meant that the Abipone adapted to the white man’s political turmoil in addition to remaining connected to what remained of their own indigenous nations.

At the time of Aceval’s compiling of exhibits as evidence for U.S officials, Paraguayan intervention in the Abipones’ society was not frowned upon, and instead pedestaled as an accomplishment broadcast to Hayes. The U.S had yet to reach its peak imperialist era. While the U.S government never used “colony” to express its later ownership of its territories—Cuba, Puerto Rico, Guam, and the Philippines—former Spanish colonies, after the Spanish-American War in Cuba (1898), the government’s perspective on providing protection superior to its first nations was in line with the Spanish, Jesuit, and Franciscan interaction with the Abipone. Paraguay’s nation-state, like the U.S’, was only achieved from dominating first peoples and their land. Here, Paraguay’s most qualified diplomat narrated a tale of people who “voluntarily” surrendered themselves to Spanish control. In doing so, Aceval sought justice for Paraguay over Argentina expressing his government’s history of “generosity.”

154. “Nicholas Contucci to Jose Martinez Fontes,” November 12, 1762.

The conditions to which, from Aceval’s perspective, the Abipones subjected themselves voluntarily was not the only claim to which the Paraguayan Foreign Ministry assumed precedence over the Chaco. Aceval also argued that the Spanish King and European-descended Paraguayans offered a high standard of living for native people. On July 15, King Charles III wrote to the Governor of Paraguay, “I command you to do the best, as far as you are concerned, in order that the few Abipone Indians remaining at the reducción, and all those who might return to it, receive the kindest treatment, and to provide them with priests . . . who will teach them in the proper way.” Once a cacique led his tribe into a reducción, not only would the provincial leadership provide the reducciones with clergy to convert the indigenous, but individual inhabitants were also instructed to donate their personal resources, to include heads of cattle, to the Chaco’s Indians. Their “changeable disposition” was worthy of investment, in accordance with the King’s mandate. The revered king was nicknamed “el Rey alcalde,” meaning “the mayor King,” because of his sincere reverence towards Spanish subjects. Though heroic in Spain and demonstrating good intent towards the indigenous populations in the Chaco, he was apathetic, if not oblivious, to the disease and armed conflict that ravaged the American continent that resulted from European intervention.

156. The Abipone has been referenced as a nation in contact and protected in reducciones with donated resources from the province. Abipone was just one nation of many that Paraguay “protected.” The other groups named in the Exhibits, such as the Tobas, Lenga, Machucui, Enimaga, and Guaná, were essential to Aceval’s argument because they demonstrate Paraguayan knowledge about and possibly influence in the Chaco region.

157. “The King to the Governor and Captain-General,” July 15, 1769, in Exhibit C, No. 8, Appendix and documents annexed to the Memoir filed by the Minister of Paraguay, on the question submitted to arbitration, 79.

158. “Note to President Hayes,” 1878, in Appendix and documents annexed to the Memoir filed by the Minister of Paraguay, on the question submitted to arbitration, 107.

159. “Note to President Hayes,” 1878.
Notably, “inhabitants,” written in other Exhibit documents, refer to the Chaco’s non-
“Indian” population. The inhabitants of the 17th century were said to have “employ[ed] their
Indians in transporting to the neighboring provinces the grass and the tobacco raised by them.”\textsuperscript{160}
There was no mention of employment within 18th century documents in the Exhibits. The natives
instead, “As to the cultivation of their lands, assigned to them, the province will contribute oxen,
tools, and seeds, as soon as the Indians will commence to work,” in the instance cited.\textsuperscript{161} As
Paraguay’s colony grew throughout the course of the seventeenth and eighteenth centuries, the
document suggests that colonial attitudes towards the value of the indigenous persons in the
Chaco shifted from the belief they would serve as laborers for white settlers to people able to
become civilized persons. With these specific documents, Aceval conveyed that the nation-
state’s right to the Chaco incorporated these “civilized Indians,” who over time gravitated more
towards the lifestyle of a Paraguayan.

In addition to referencing civilizing missions, the exhibits also established Paraguay as a
military force in the Chaco between the colonial era and into the 19th century up until the
arbitration. One would expect that Hayes, a Brigadier General in the U.S Civil War, would
logically be receptive to Paraguay’s fortification of the Chaco to support national interests.
Aceval himself deemed this “an argument” in a note—one in the same format as the definition of
a reduccion but also written in Spanish in the 1896 book, stating, “Mention has been made of the

\textsuperscript{160} “King Phillip IV to the Chief Justice and the Associate Justices of the Royal Audience in the City of La
Trinidad de Puerto de Buenos Aires, in the Province of the La Plata River,” December 31, 1662, in Exhibit C, No. 1,
\textit{Appendix and documents annexed to the Memoir filed by the Minister of Paraguay, on the question submitted to
arbitration}, 64-65.

\textsuperscript{161} Pedro Alcantara Rodriguez, “La Asuncion City Council Meeting Notes,” June 1, 1776, in Exhibit C, No. 12,
\textit{Appendix and documents annexed to the Memoir filed by the Minister of Paraguay, on the question submitted to
arbitration}, 91.
names of the different people who settled and maintained themselves, without any interruption, in the Paraguayan Chaco, since the time of the Spaniards up to the present.”

He continued to specify the role of such people, “I will copy a certain correspondence between the officer commanding the reduccion at Remolinos, named of San Francisco Solano, and the fort thereof, both within El Chaco.” The Jesuit reducciones, therefore, were not only overseen by priests, but also an armed commander.

While fortifying the Chaco under the pretense that it benefits native inhabitants seems absurd today, it was an unquestionably strong justification for Aceval’s claim to the Chaco. In 1872, Fray Inocencio Cañete, from Spain, certified, “It is true that this province [of Paraguay] possesses the towns, reducciones, fortified places, and military posts… and troops, that are faithfully described in the “Paraguayan Topography” filed by the Solicitor General… [and] his Lordship having, with these safeguards, protected the province against the invasions of the heathen of the Chaco.”

As in other examples, there was no mention of what would be the Argentine claim to the Chaco, and third-party support strengthened Aceval’s overall argument claims. Aceval, though not a combatant, thought Paraguayan armed “protection” of indigenous groups an unfortunate consequence of their willingness to reside in reducciones, thus using historical evidence of Paraguayan armed defense as a national claim to the Chaco in 1878.

162. Aceval, *Appendix and Documents Annexed to the Memoir Filed by the Minister of Paraguay, on the Question Submitted to Arbitration.*, 117.

163. Aceval, 117.


165. According to my tour guide at the Hayes Presidential Museum, Hayes preferred his rank of General to his title as President.
Aceval’s mission for the U.S to award the contested Chaco to Paraguay stemmed from a colonial era perspective on the indigenous communities whose nations had resided in the Chaco for years before Spanish intervention. As caciques allegedly voluntarily led groups into reducciones, Aceval’s sources argue that European-descended Paraguayans provided them with material and economic resources to maintain the communities, Christianity to convert the savage, and defense of the land from savage people who rejected reducciones. All this justified the Paraguayan nation-state to claim the Chaco after Paraguay’s colonized civility was in ruins after the War of the Triple Alliance, while Argentina, whose contributions to the Chaco’s indigenous are not noted throughout the exhibits, perpetrated these losses. This perception on the part of U.S State Department may in part have contributed to the Paraguayan victory.

Arbitration of Evidence Alone? John Bassett Moore and State Department Deliberations

Moore’s monumental compendium of 1898 devoted Twenty pages to “The Middle Chaco Arbitration: Treaty Between the Argentine Republic and Paraguay of February 3, 1876.” The title of Chapter XLVI referenced the Machain-Irigoyen Treaty, which established the agreement to arbitrate, and then set up the work’s standard sub-sections for ease of reference by a working diplomat: “Territory in Dispute,” “Submission of Cases,” “Paraguayan Claim,” “The Argentine Claim,” “Summary of Arguments,” and “The Award.” In processing the hundreds of pages produced by the claimants in this fashion, Moore suggests that the arbitration was grounded upon an almost judicial weighing of the evidence without reference to other factors that might have influenced the decision.

The internal deliberations of the State Department, however, suggests a process by no mean impermeable to sympathies or politics. Both countries’ claims and an overall assessment
were summarized in the following documents by unnamed State Department functionaries: “A Brief of the Argentine Memorial,” “A Brief of the Paraguayan Memorial,” and “Comments on the Argentine-Paraguay Situation.” These files affirmed that officials read portions of the submitted evidence, but also indicated that Paraguay was likely to achieve its desired arbitral outcome based on the State Department’s preference for the weaker government that sought self-determination.

The titles alone showed what the U.S State Department reviewed most thoroughly before Hayes signed the arbitral award: the memorias. While delivered with the additional exhibits and documents, the memorias were the more concise means through which Evarts and Garcia conveyed their countries’ claims to the Chaco Boreal. The State Department’s documents revealed summary and analysis, which were produced to assist Evarts and Hayes with their deliberations.

The 38 handwritten pages produced on the Argentine memorial offer a summary of 18th century history that was presented to the U.S officials. At one point, the text states, “In a Royal Degree of 12 February 1764, the King sent Paraguay into the Chaco to subdue the Indians. The King ordered the Paraguayans to do so.” This epitomizes the overarching Argentine claim to the Chaco in the memoria: the Paraguayans did not voluntarily venture into the Chaco but instead followed orders from the Spanish crown whose authority was delegated to Buenos Aires as the capital of the Viceroyalty of La Plata. In Garcia’s vision, Argentina’s right to the Chaco stemmed from the principle of *uti possidetis* (as you possess under law), a term that “first arose

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167. “A Brief of the Argentine Memorial.”
in Roman law as a means of preserving the status quo of a situation, however that situation arose.”¹⁶⁸ It became part of customary international law with the first wave of anti-colonial movements in the New World.¹⁶⁹ In Garcia’s interpretation, as summed up by the State Department, possession had to be *de jure* (based on law, i.e. Spanish colonial law) not *defacto* (actual occupation), “the reverse of what took place in part, at the beginning of the colonization” when European conquerors created legal claims to the territory.¹⁷⁰

The State Department’s “Brief of the Paraguayan Material” was 70 pages: the longest of the State Department’s three documents. The length is one sign that the U.S examined Paraguay’s submission in greater detail than Argentina’s. The summary included Aceval’s claims of American Indian violence towards Paraguayan expeditions, Paraguay’s formation of Indian reducciones, and a peace treaty with the Abipone nation in 1762. It referenced specific annexes, which was not done in the Argentine brief: another sign of partiality towards Paraguay. The writing was also more opinionated that the Argentine brief. One of the first sentences that the official wrote was, “This represents that it is not as full as it might have been, partly on account of the disappearances from the Archives of that Republic.”¹⁷¹ The tone communicated that Paraguay’s mere devastation was influential in the arbitral deliberations. Thus, the summary

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¹⁶⁹ Malcom Shaw, “Peoples, Territorialism and Boundaries,” *European Journal of International Law* 8 (2017) #3: 492-3. With independence in Latin America, *uti possidetis* came to have two meanings: to allow a claim even to unsettled territory by new nation-states to exclude rivals, even if the local nation-state was not in effective control of the area. Shaw wrote, “The second role of *uti possidetis* was to seek to prevent boundary conflicts as between the successor states of the Spanish Empire,” which conflicts were predominant, like in this case.

¹⁷⁰ “A Brief of the Argentine Memorial.”

¹⁷¹ “A Brief of the Paraguayan Memorial,” 1878, Argentina-Paraguay Boundary Arbitration. 1876-1878, U.S National Archives at College Park, Maryland.
of Paraguay’s history of engagement with the indigenous peoples, destruction in the War of the Triple Alliance, and settlements in the Chaco were considered since the State Department referenced more than just the memoria, but Aceval’s mechanical preparation alone impressed the U.S readers given Paraguay’s challenges at the time.

The State Department’s third document produced ahead of the arbitral award synthesized thoughts from the preceding two. The writer summarized Paraguay and Argentina’s colonial histories, then claimed, “The statements on both sides of this case have been carefully studied in connection with the written and printed documents and books referred to.” But, the document concludes with another statement that indicates that Paraguay’s struggle impressed the State Department:

It is evident that the Argentines and especially those of Buenos Aires, were much hurt by the refusal of Paraguay to join their confederation. This feeling was kept up and more of less led to the part which the Argentines took in the Triple Alliance. It may safely be said, however, that the latter [the Triple Alliance] could never have subdued Paraguay. This may be inferred, if from nothing else, from the stubborn resistance which the latter [Paraguay] made to her three adversaries, one of them a monarchy with great resources.

The Paraguayan and Argentine governments both strategically presented evidence, but Aceval’s efforts and Paraguay’s wartime resistance were collectively more impressive than Argentina’s aggression and Garcia’s evidence or his legal theory uti possidetis.

**Conclusion**

Multiple factors influenced the U.S’ decision to award the contested Chaco to Paraguay. These included each sides’ expended resources relative to its potential, effectiveness of

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arguments made, and the evidence submitted to substantiate claims. It has demonstrated that the stakes involved were far higher for Paraguay, which produced a more effective effort to lobby the State Department than of their larger and richer neighbor Argentina. While summarizing the strategies of argument by both sides, with a special emphasis on Paraguay, the internal State Department deliberations have suggested a gap between practice and the shared “lofty principles… introduced as a rule for the peaceable adjustments of international differences.”\textsuperscript{173}

In its sympathies for the loser in the War of the Triple Alliance, one might see operation of a “sympathy and fraternal feeling” among “sister Republics,” cited by Garcia, in their decision.\textsuperscript{174}

In this case, the evidence shows that U.S. diplomats proved more sympathetic to Paraguay—driven by earnest efforts of its representative Aceval as well as the arguments he advanced—than they were to Garcia who miscalculated what was likely to work best, whether in printing or translating his memorial, the arguments advanced, or even the inclusion of nationalist claims that ignored understandings of shared principles of customary international law.

\textsuperscript{173} Manuel Garcia to William B. Evarts, “Letter from the Argentine Legation to the American Secretary of State,” March 19, 1877, Roll 2, Notes from the Argentine Legation in the United States to the Department of State, 1811-1906.

\textsuperscript{174} Garcia to Evarts.
Conclusion

In a critically important arbitration, U.S President Rutherford B. Hayes in 1878 awarded a disputed portion of the Grand Chaco—a territory not previously important to the emergent South American nation-states—to Paraguay over Argentina. The arbitration gave meaning to “western” territorial claims to the Chaco and extended Paraguay’s legitimate boundaries in the aftermath to its defeat in the War of the Triple Alliance and subsequent territorial losses. It resolved the final boundary dispute between Paraguay and its opponents. The decision to outsource the decision was consistent with the general approach of South American leaders of that era as to how to resolve disputes between them. As Miguel Centeno noted,

Latin American states . . . directed their attention not to their immediate borders, but to metropolitan centers half a globe away. These foreign powers-that-be also provided the continent with a hegemonic balance of strength, thus assuring that no individual regional military giant could arise. This avoided the kind of mutually assured-destruction competition responsible for much contemporary warfare.175

Paraguay’s fate thus rested geographically and diplomatically between regional military powers Brazil and Argentina, while both the Argentine and Paraguayan governments were disposed to trust the U.S President to make a just decision.

The two countries’ presidents both appointed qualified diplomats to compile and present the evidence for their claims to the territory. Yet it was the work of Benjamín Aceval, Paraguay’s Foreign Minister who stepped down to directly handle the arbitration, that proved exceptional and contributed to Paraguayan success. In a very real sense, Aceval’s role illuminated the arbitration’s importance to Paraguay, which is also reflected in the mechanics and content of his chosen materials. He ensured that his files were translated into English and published and that

they logically conveyed Paraguay’s claims to the Chaco in language amenable to Washington. Argentina’s Manuel Garcia, on the other hand, was qualified for the position, but his work on Argentina’s behalf was by no means as thorough and behaved in a manner befitting the larger and richer country. Garcia did not print a new volume specifically for the arbitration, and the books he submitted included nationalist critiques by dissidents of Argentina’s conduct of the war for being too restrained in its expansionist claims. Only his memoria was translated, submitted in handwritten form, while the remaining materials were not obviously accessible to English-speaking U.S representatives. In a haughty gesture after the Hayes decision, Garcia went so far as to request the return of the materials, which the State Department rejected. In his calculations, Garcia knew that Argentina had already successfully annexed a territory, known as Misiones, in the Treaty of Limits (1876) that was far more valuable than the Chaco. Handling the arbitration in a routine fashion—unlike Aceval—Garcia’s behavior further illustrated how the Chaco was of far less importance to Argentina than it was to Paraguay.

Argentina’s claim to the Chaco was largely an argument that Paraguay had no genuine claim because Rio de la Plata conquest missions were under de jure direction from Buenos Aires going back to the creation of the Spanish Viceroyalty of La Plata. This contrasted with Paraguay’s overarching argument held that early colonizers included armed personnel and missionaries who undertook a perceived duty to civilize Chaco’s “savage Indians” and that this continued after Paraguayan independence in the 19th century. Legally, Garcia advanced—as noted by the State Department functionaries evaluating the Argentine submission—the principle of uti possidetis (as one possesses under law) based on de facto not de jure rationale; for the State Department, proven efforts and actions vis-à-vis the Chaco were judged as more important than paper claims based on colonial legal jurisdictions of the Viceroyalty.
Moreover, the confidential internal comments by State Department functionaries evaluating the case established a certain sympathy for Paraguay as the underdog, which had offered stubborn resistance to the Triple Alliance’s invasion. Treating the matter solely as juridical, John Bassett Moore’s summary of the Hayes arbitration did not consider such a sympathy as an influence on the outcome although his language reflected similar attitudes towards “savage” Indians. Here, one might argue that the Hayes Arbitration showed U.S partiality towards a weaker country, with powerful opponents, that sought to affirms its independence in the aftermath of a devastating war.

The story of the Hayes Arbitration, however, did not end in 1878 because there was a third country, Bolivia, with claims to the Chaco. Well-aware of the pending arbitration, Bolivian Foreign Relations Minister J.M del Carpio wrote his U.S counterpart, Secretary of State Evarts, in April 1878. Del Carpio’s memorandum, written on behalf of the Bolivian government, objected to the arbitration because Bolivia’s claim to the Chaco was not considered. Del Carpio noted that a treaty between Argentina and Bolivia on June 9th, 1868, resolved all boundary contentions between Bolivia and Argentina, except for the Chaco. He argued that Argentina’s refusal to permit Bolivia to treat with it and Paraguay after the War of the Triple Alliance was a violation of the terms between Bolivia and Argentina. As he explained, “The question of her natural northern and southern boundaries in for Bolivia a question of life and death; while for her opponents the States of the Plata, which possess extensive coasts and numerous ports, it is a question of but minor importance,” del Carpio’s plea indicated that he

176. José M. del Carpio, “Bolivian Memorandum on the Chaco Arbitration,” April 4, 1878, in "Argentina-Paraguay Boundary Arbitration. 1876-1878," Box 5, Envelope 5, National Archives at College Park, Maryland.

177. José M. del Carpio.
perceived the Chaco’s importance to Bolivia similar in nature to Paraguay’s: one of recognition, growth, and survival. The U.S State Department archives do not indicate any action taken in regards to this memorandum, and there is no record that Evarts asked Argentina and Paraguay whether Bolivia’s claims could be considered as part of the 1878 arbitral decision.

A half century later, in 1929, the Paraguayan Charge ‘Affaires Pablo Max Ynsfrán would follow up in a note to U.S Diplomat Dana G. Munro asking whether “there is any record of a legal opinion prepared in the Department, or by an outside lawyer, which served as a basis for the arbitral award given by President Hayes in 1878 in the boundary dispute between Paraguay and Argentina.” Coming at a moment of rising tension over the Chaco between Paraguay and Bolivia, Ynsfrán was looking for further documentation to counter Bolivia’s continued claims to the Chaco—this time, just three years before the countries fought each other in the Chaco War (1932-1935). An official responded to Munro, “HA [Historical Advisor] reports that no such thing as a legal opinion can be found.” This is not surprising, of course, since international arbitration was not regulated until the early twentieth century and didn’t necessarily produce a written justification for a decision. Four days later, a dubious Munro wrote to another diplomat, “I told Ynsfran that we had found no record of such a legal opinion… I doubt we should volunteer to show him any documents which he has not specifically requested.”

178. José M. del Carpio.

179. Dana Munro to Office of the Department of State Historical Advisor, November 21, 1929, in “Argentina-Paraguay Boundary Arbitration. 1876-1878,” Box 1, Envelope 6, Folder 11, National Archives at College Park.

180. Letter to Dana Munro, November 22, 1929, in “Argentina-Paraguay Boundary Arbitration. 1876-1878,” Box 1, Envelope 6, Folder 11, National Archives at College Park.

181. Dana Munro to E McGurk, November 26, 1929, in “Argentina-Paraguay Boundary Arbitration. 1876-1878,” Box 1, Envelope 6, Folder 11, National Archives at College Park.
perspective on international arbitration had, by this time, shifted to require a legal analysis, and these State Department employees were evidently skeptical of repercussions of unveiling their predecessors’ internal deliberations on the Hayes Arbitration. And, if the Paraguayan government keenly analyzed the documents, he would find that the U.S did not award the Chaco based on mere evidence but also including fraternal sympathy. It might even be used to criticize the U.S. by Argentines and Bolivians.

In 1934, as war unfolded, the *New York Times* reported that the League of Nations offered to arbitrate the Chaco Boreal again, this time to resolve the tension between Paraguay and Bolivia.\(^1\) However, the Paraguayan government did not believe that the Chaco, whose borders were still unclear, should be subject to another arbitration.\(^2\) This suggested that the League of Nations had yet to confront an arbitral appeal, and progress seemed unlikely at the time, given that the Paraguayan Chaco by then hosted Argentine investments to Paraguay.\(^3\) Paraguay persisted, and its president did not surrender the portion of Chaco that Hayes granted them when he signed the armistice in 1935, which left substantial additional territory in the Chaco to Paraguay.

The Paraguayan nationalist narrative continues to include pride in their military triumph over Bolivia in the Chaco War (1932-1935). 60% percent of Asunción’s monuments and over 61% percent of its streets refer to historical military figures, a higher percentage for those figures than in Bogotá, Buenos Aires, La Paz, Lima, Montevideo, Quito, Rio de Janeiro, and Santiago.\(^4\)

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2. White.

3. White.

This nationalist epic emphasizes the blood shed from the time of Spanish independence to the War of the Triple Alliance and through the Chaco War. As a diplomatic sequel to a lost war followed by territorial losses, the Hayes Arbitration served to provide a lift in morale for Paraguayans, followed, in 1935, by its armed victory over the Chaco. For this reason, the story of the decision of U.S President Rutherford B. Hayes remains central for the people of a nation-state, far away from Hayes’ home in Ohio, to which he devoted little attention. Hopefully, this thesis will speak to the question asked by those with a connection to Hayes who have wondered, “What is it about Paraguay anyway?”
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