



INTERNATIONAL COURT OF JUSTICE

Peace Palace, Carnegieplein 2, 2517 KJ The Hague, Netherlands

Tel.: +31 (0)70 302 2323 Fax: +31 (0)70 364 9928

Website: www.icj-cij.org Twitter Account: @CIJ ICJ YouTube Channel: CIJ ICJ

LinkedIn page: [International Court of Justice \(ICJ\)](https://www.linkedin.com/company/international-court-of-justice)

Press Release

Unofficial

No. 2018/49

1 October 2018

Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile)

The Court finds that the Republic of Chile did not undertake a legal obligation to negotiate a sovereign access to the Pacific Ocean for the Plurinational State of Bolivia

THE HAGUE, 1 October 2018. The International Court of Justice (ICJ), the principal judicial organ of the United Nations, today delivered its Judgment in the case concerning Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile). In its Judgment, which is final, without appeal and binding on the Parties, the Court

(1) Finds, by twelve votes to three, that the Republic of Chile did not undertake a legal obligation to negotiate a sovereign access to the Pacific Ocean for the Plurinational State of Bolivia; and

(2) Rejects, by twelve votes to three, the other final submissions presented by the Plurinational State of Bolivia.

Reasoning of the Court

I. PRELIMINARY CONSIDERATIONS

Before examining the legal bases invoked by Bolivia with regard to Chile's alleged obligation to negotiate Bolivia's sovereign access to the Pacific Ocean, the Court recalls that, in its submissions, Bolivia requested the Court to adjudge and declare that "Chile has the obligation to negotiate with Bolivia in order to reach an agreement granting Bolivia a fully sovereign access to the Pacific Ocean". In this regard, as the Court noted in its Judgment of 24 September 2015 on the preliminary objection raised by Chile, "Bolivia does not ask the Court to declare that it has a right to sovereign access to the sea". What Bolivia claims in its submissions is that Chile is under an obligation to negotiate "in order to reach an agreement granting Bolivia a fully sovereign access". As a more general point, the Court observes that, while States are free to resort to negotiations or put an end to them, they may agree to be bound by an obligation to negotiate. In that case, States are required under international law to enter into negotiations and to pursue them in good faith.

II. THE ALLEGED LEGAL BASES OF AN OBLIGATION TO NEGOTIATE BOLIVIA'S SOVEREIGN ACCESS TO THE PACIFIC OCEAN

The Court then analyses the various legal bases put forward by Bolivia to support its claim that Chile has an obligation to negotiate Bolivia's sovereign access to the Pacific Ocean.

1. Bilateral agreements

The Court recalls that Bolivia's claim rests mainly on the alleged existence of one or more bilateral agreements that would impose on Chile an obligation to negotiate Bolivia's sovereign access to the sea. Bolivia invokes a variety of instruments on which such an obligation allegedly rests. In particular, it refers to: (a) the "Acta Protocolizada", i.e. the minutes of a meeting held in January 1920 between the Minister for Foreign Affairs of Bolivia and the Minister Plenipotentiary of Chile, as well as the follow-up exchanges to that meeting; (b) a 1950 exchange of diplomatic Notes between the Parties as well as a 1961 memorandum by Chile's Ambassador in Bolivia, Mr. Manuel Trucco; (c) a Joint Declaration signed by the Presidents of Bolivia and Chile at Charaña on 8 February 1975; (d) communiqués issued by the Ministers for Foreign Affairs of Bolivia and Chile in November 1986; (e) a Joint Declaration issued by the Ministers for Foreign Affairs of Bolivia and Chile on 22 February 2000, referred to as the "Algarve Declaration"; and (f) a document known as the "13-Point Agenda" drawn up during a meeting of a bilateral working group in 2006.

The Court concludes that none of the above instruments invoked by Bolivia establishes an obligation on Chile to negotiate Bolivia's sovereign access to the Pacific Ocean. Neither the "Acta Protocolizada" nor the follow-up exchanges indicate that there was an agreement under which Chile entered into a commitment to negotiate Bolivia's sovereign access to the sea. The 1950 exchange of Notes cannot be considered an international agreement and the Trucco Memorandum does not create or reaffirm any obligation to negotiate Bolivia's sovereign access to the sea. The wording of the Charaña Declaration does not convey the existence or the confirmation of an obligation to negotiate Bolivia's sovereign access to the sea. The wording used in the two 1986 communiqués is not the same and neither of them includes a reference to Bolivia's sovereign access to the sea. There is nothing in the "Algarve Declaration" which imposes on Chile an obligation to negotiate Bolivia's sovereign access to the sea. Finally, while the item entitled "maritime issue" included in the 13-Point Agenda is broad enough to encompass the issue of Bolivia's sovereign access to the sea, its mere mention does not give rise to an obligation for the Parties to negotiate on that issue.

2. Chile's declarations and other unilateral acts

With respect to Bolivia's argument that declarations and other unilateral acts of Chile create an obligation to negotiate Bolivia's sovereign access to the sea, the Court notes that these declarations and unilateral acts are expressed not in terms of undertaking a legal obligation but of willingness to enter into negotiations. For instance, Chile declared that it was "willing to seek that Bolivia acquire its own outlet to the sea" and "to give an ear to any Bolivian proposal aimed at solving its landlocked condition". On another occasion, Chile stated its "unchanging purpose of studying, together with that brother country, within the framework of a frank and friendly negotiation, the obstacles that limit Bolivia's development on account of its landlocked condition". The wording of these texts does not suggest that Chile has undertaken a legal obligation. The Court therefore concludes that an obligation to negotiate Bolivia's sovereign access to the sea cannot rest on any of Chile's declarations or unilateral acts.

3. Acquiescence

The Court next examines Bolivia's argument that Chile has acquiesced to negotiating Bolivia's sovereign access to the Pacific Ocean. It notes that Bolivia has not identified any declaration which required a response or reaction on the part of Chile in order to prevent an obligation from arising. Thus, acquiescence cannot be considered a legal basis of an obligation to negotiate Bolivia's sovereign access to the sea.

4. Estoppel

Concerning Bolivia's argument based on estoppel, the Court recalls that the "essential elements required by estoppel" are "a statement or representation made by one party to another and reliance upon it by that other party to his detriment or to the advantage of the party making it". It finds that these essential conditions are not fulfilled. Although there have been repeated representations by Chile of its willingness to negotiate Bolivia's sovereign access to the sea, such representations do not point to an obligation to negotiate. Bolivia has not demonstrated that it changed its position to its own detriment or to Chile's advantage, in reliance on Chile's representations. Therefore, estoppel cannot provide a legal basis for Chile's obligation to negotiate Bolivia's sovereign access to the sea.

5. Legitimate expectations

With regard to the argument by Bolivia that Chile's denial of its obligation to negotiate and its refusal to engage in further negotiations with Bolivia "frustrates Bolivia's legitimate expectations", the Court notes that references to legitimate expectations may be found in arbitral awards concerning disputes between a foreign investor and the host State that apply treaty clauses providing for fair and equitable treatment. The Court considers that it does not follow from such references that there exists in general international law a principle that would give rise to an obligation on the basis of what could be considered a legitimate expectation. Bolivia's argument based on legitimate expectations thus cannot be sustained.

6. Article 2, paragraph 3, of the Charter of the United Nations and Article 3 of the Charter of the Organization of American States

The Court then examines whether an obligation to negotiate could be based on Article 2, paragraph 3, of the United Nations Charter or Article 3 of the OAS Charter. It recalls that, according to the former provision, "[a]ll Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered". For the Court, this paragraph sets forth a general duty to settle disputes in a manner that preserves international peace and security, and justice, but there is no indication in this provision that the parties to a dispute are required to resort to a specific method of settlement, such as negotiation. The Court holds that no obligation to negotiate Bolivia's sovereign access to the sea arises for Chile under the United Nations Charter. Concerning the OAS Charter, the Court recalls that its Article 3 (i) provides that "[c]ontroversies of an international character arising between two or more American States shall be settled by peaceful procedures". The Court also does not consider that this provision could be the legal basis of an obligation to negotiate Bolivia's sovereign access to the sea.

7. The resolutions of the General Assembly of the Organization of American States

The Court next considers Bolivia's argument that 11 resolutions of the OAS General Assembly which dealt with the issue of Bolivia's sovereign access to the Pacific Ocean confirm Chile's commitment to negotiate that issue. It notes that none of the relevant resolutions indicates that Chile is under an obligation to negotiate Bolivia's sovereign access to the Pacific Ocean. These resolutions merely recommend to Bolivia and Chile that they enter into negotiations over the issue. Moreover, as both Parties acknowledge, resolutions of the General Assembly of the OAS are not per se binding and cannot be the source of an international obligation. Chile's participation in the consensus for adopting some resolutions therefore does not imply that Chile has accepted to be bound under international law by the content of these resolutions. Thus, the Court cannot infer from the content of these resolutions nor from Chile's position with respect to their adoption that Chile has accepted an obligation to negotiate Bolivia's sovereign access to the Pacific Ocean.

8. The legal significance of instruments, acts and conduct taken cumulatively

Finally, the Court examines Bolivia's argument that, even if there is no instrument, act or conduct which, taken individually, creates an obligation to negotiate its sovereign access to the sea, all these elements may cumulatively have "decisive effect" for the existence of such an obligation. For the Court, given that its analysis shows that no obligation to negotiate Bolivia's sovereign access to the Pacific Ocean has arisen for Chile from any of the invoked legal bases taken individually, a cumulative consideration of the various bases cannot add to the overall result.

III. GENERAL CONCLUSION ON THE EXISTENCE OF AN OBLIGATION TO NEGOTIATE SOVEREIGN ACCESS TO THE PACIFIC OCEAN

The Court observes that Bolivia and Chile have a long history of dialogue, exchanges and negotiations aimed at identifying an appropriate solution to the landlocked situation of Bolivia following the War of the Pacific and the 1904 Peace Treaty. The Court is however unable to conclude, on the basis of the material submitted to it, that Chile has "the obligation to negotiate with Bolivia in order to reach an agreement granting Bolivia a fully sovereign access to the Pacific Ocean". Accordingly, the Court cannot accept the other final submissions presented by Bolivia, which are premised on the existence of such an obligation, namely that the Court adjudge and declare that Chile has breached that obligation and that Chile must perform that obligation in good faith, promptly, formally, within a reasonable time and effectively. The Court adds that its finding should not be understood as precluding the Parties from continuing their dialogue and exchanges, in a spirit of good neighbourliness, to address the issues relating to the landlocked situation of Bolivia, the solution to which they have both recognized to be a matter of mutual interest.

Composition of the Court

The Court was composed as follows: President Yusuf; Vice-President Xue; Judges Tomka, Abraham, Bennouna, Cañado Trindade, Donoghue, Gaja, Sebutinde, Bhandari, Robinson, Gevorgian, Salam; Judges ad hoc Daudet, McRae; Registrar Couvreur.

President YUSUF appends a declaration to the Judgment of the Court; Judges ROBINSON and SALAM append dissenting opinions to the Judgment of the Court; Judge ad hoc DAUDET appends a dissenting opinion to the Judgment of the Court.

A summary of the Judgment appears in the document entitled “Summary No. 2018/5”. This press release, the summary and the full text of the Judgment are available on the Court’s website (www.icj-cij.org), under the heading “Cases”.

Note: The Court’s press releases do not constitute official documents.

The International Court of Justice (ICJ) is the principal judicial organ of the United Nations. It was established by the United Nations Charter in June 1945 and began its activities in April 1946. The seat of the Court is at the Peace Palace in The Hague (Netherlands). Of the six principal organs of the United Nations, it is the only one not located in New York. The Court has a twofold role: first, to settle, in accordance with international law, legal disputes submitted to it by States (its judgments have binding force and are without appeal for the parties concerned); and, second, to give advisory opinions on legal questions referred to it by duly authorized United Nations organs and agencies of the system. The Court is composed of 15 judges elected for a nine-year term by the General Assembly and the Security Council of the United Nations. Independent of the United Nations Secretariat, it is assisted by a Registry, its own international secretariat, whose activities are both judicial and diplomatic, as well as administrative. The official languages of the Court are French and English. Also known as the “World Court”, it is the only court of a universal character with general jurisdiction.

The ICJ, a court open only to States for contentious proceedings, and to certain organs and institutions of the United Nations system for advisory proceedings, should not be confused with the other — mostly criminal — judicial institutions based in The Hague and adjacent areas, such as the International Criminal Court (ICC, the only permanent international criminal court, which was established by treaty and does not belong to the United Nations system), the Special Tribunal for Lebanon (STL, an international judicial body with an independent legal personality, established by the United Nations Security Council upon the request of the Lebanese Government and composed of Lebanese and international judges), the International Residual Mechanism for Criminal Tribunals (IRMCT, mandated to take over residual functions from the International Criminal Tribunal for the former Yugoslavia and from the International Criminal Tribunal for Rwanda), the Kosovo Specialist Chambers and Specialist Prosecutor’s Office (an ad hoc judicial institution which has its seat in The Hague), or the Permanent Court of Arbitration (PCA, an independent institution which assists in the establishment of arbitral tribunals and facilitates their work, in accordance with the Hague Convention of 1899).

Information Department:

Mr. Andrey Poskakukhin, First Secretary of the Court, Head of Department (+31 (0)70 302 2336)

Ms Joanne Moore, Information Officer (+31 (0)70 302 2337)

Mr. Avo Sevag Garabet, Associate Information Officer (+31 (0)70 302 2394)

Ms Genoveva Madurga, Administrative Assistant (+31 (0)70 302 2396)