



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

ARGUED: 23 October 2020

DECIDED: 24 October 2020

1 This Majority Opinion was written by President Maxwell of Greece and signed onto by Vice President Peters,
2 Justice Galgano, Justice Geadelmann of Norway, and Justice Beginski of Germany.

3 The International Court of Justice (“ICJ” or “Court”) has found that it has jurisdiction to decide this case
4 due to Article 36(2) of the Statute of the International Court of Justice and Article XXXI of the 1948 American
5 Treaty on Pacific Settlement (“the Pact of Bogot”). Article XXXI of the Pact of Bogot provides for the compulsory
6 jurisdiction of the ICJ for the settlement of “all disputes of a juridical nature.” Therefore, Article XXXI provides the
7 signatories of this Treaty with a vehicle of peaceful settlement of international legal issues and disputes in a judicial
8 setting. Since both Parties of this dispute are signatories of the Pact of Bogot, the Court has jurisdiction to rule on
9 this case.

10 The Court notes the importance of recognizing the progression of the treaties between the Parties over time.
11 The Boundary Treaty of 1866 created a line of demarcation in the Atacama Desert, providing Bolivia with access to
12 the Pacific. Resulting from the War of the Pacific of 1879, the 1884 Truce Pact provided Chile, inter alia, governance
13 over the coastal region. The 1895 Treaty on the Transfer of Territory was signed by both Parties and provided Bolivia
14 with certain provisions with the intention of strengthening the bonds of friendship. This Treaty included Bolivia’s
15 access to the sea; however, this agreement was based on Chile’s acquisition of territorial sovereignty of certain areas,
16 and the Treaty was never ratified nor did it come into force. Finally, the 1904 Treaty of Peace and Friendship (“1904
17 Peace Treaty”) officially ended the War of the Pacific between Bolivia and Chile; wherein, under Article I, Bolivia
18 relinquished all coastal territory to Chile, recognizing that the entire coastal territory belongs to Chile “absolutely
19 and in perpetuity.” This effectively created sovereign territory for Chile. Furthermore, under Article VI of the 1904
20 Peace Treaty, Bolivia was granted commercial transit rights through Chilean ports.

21 The Plurinational State of Bolivia has requested that this Court adjudicate whether the Republic of Chile
22 has an obligation to negotiate Bolivia’s sovereign access to the Pacific Ocean. And, if this Court adjudges that there
23 is an obligation, then Bolivia requests that this Court determine that Chile breached its obligation and that Chile
24 must comply with said obligation in good faith, promptly, formally, within a reasonable time and, effectively, grant
25 Bolivia fully sovereign access to the Pacific Ocean.

26 After hearing both the Bolivian and Chilean advocates’ arguments, the Court rules the following:

27 The Court dismisses the Plurinational State of Bolivia’s claim that Chile has an obligation to negotiate
28 Bolivia’s sovereign access to the Pacific Ocean. There was no substantive evidence in the arguments provided during
29 proceedings by the Parties to indicate Chile’s obligation to be legally bound to negotiate Bolivia’s sovereign access
30 to the Pacific Ocean. Thus, the Court cannot rule on Bolivia’s remaining two requests.

31 Furthermore, this Court determines that Chile’s potential willingness to negotiate sovereign access does not
32 necessitate an obligation to negotiate. The bilateral agreements between Bolivia and Chile, especially the 1904
33 Peace Treaty, do not provide a basis for the Applicant’s allegation of an obligation to negotiate. As with any other
34 obligation in customary international law, this Court maintains that an obligation to negotiate can only originate
35 from binding commitments vis-a-vis a bilateral agreement.

36 Acknowledging Chapter 1, Article 1 of the American Treaty on Pacific Settlements states that “[all signa-
37 tories] agree to refrain from the threat or the use of force, or from any other means of coercion for the settlement

38 of their controversies,” the Court finds that Bolivia’s assertion that the 1904 Peace Treaty is invalid because it was
39 entered into under coercion by Chile is unjustified.

40 This Court has determined that the 1895 Treaty on the Transfer of Territories was not of material fact to
41 this case, since it was never ratified or entered into force. Therefore, the provisions of the 1895 Transfer Treaty that
42 included, inter alia, Bolivia’s access to the sea were not applicable to the current judicial case.

43 Whereas negotiating in good faith is an expected aspect of the negotiation process, the Court also rules that
44 acting in good faith does not serve as an obligation to negotiate. Bolivia’s assertion that Chile is obligated to act in
45 “good faith” in negotiation is not solely an obligation to negotiate. According to Article 2(2) of the United Nations
46 Charter, Member States “shall fulfill in good faith the obligations assumed by them in accordance with the present
47 Charter.” However, this Court notes that prior ICJ case precedent has held that 2(2) is not in and of itself a source
48 of legal obligation, as decided in the case - Border and Transborder Armed Action (Nicaragua v. Honduras). The
49 good faith principle alone cannot enforce an obligation to negotiate.

50 Although the Court finds that Chile is not obligated to engage in negotiations with Bolivia, the ruling does not
51 preclude future negotiations from occurring. This Court encourages both Parties to engage in meaningful discussions
52 and work with surrounding regional partners to facilitate an open dialogue in the future regarding Bolivia’s sovereign
53 access to the Pacific Ocean. Whereas it is not within the Court’s purview to mandate such a negotiation, it is still
54 imperative that all Member States uphold the UN Charter and maintain international peace and security. Thus, the
55 Court strongly urges Bolivia and Chile to come to an amicable solution via effective negotiations.

Signed By

ICJ President Kaitlin Maxwell, Greece

Justice Justice Kaitlin Maxwell



Justice Justice Katie Galgano



Justice Justice Jack Gadelmann

Gillian E. Beginski

Justice Justice Gillian Beginski



Justice Justice Nicholas Peters