

# International Court of Justice

Research Report

**CACM**  **N**

**Forum:** International Court of Justice (ICJ)

**Issue:** Obligation to Negotiate Access to the Pacific Ocean (Chile vs. Bolivia)

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## Introduction

On 24th April 2013, the Plurinational State of Bolivia (hereafter referred to as “Bolivia”) instituted proceedings against the Republic of Chile (hereafter referred to as “Chile”) in the ICJ concerning a dispute regarding negotiations between Chile and Bolivia to agree upon Bolivia’s “fully sovereign access to the Pacific Ocean”. According to Bolivia, Chile has an obligation to partake in negotiations in order to formalize Bolivia’s sovereign access to the Pacific Ocean, but has failed to comply with this obligation. Bolivia cites Article XXXI of the American Treaty on Pacific Settlement (also known as the Pact of Bogotá), of 30th April 1948. As per Article XXXI, parties that sign the Treaty recognize the jurisdiction of the ICJ.

This case takes its roots in the 1880s. The War of the Pacific between Chile, Bolivia, and Peru, started in 1879 and ended in 1884. The War culminated in the Chilean annexation of disputed territory on the Pacific Coast (the Peruvian territory Tarapacá, the Bolivian department Litoral, and temporary control over the Peruvian territories of Tacna and Arica). The Chilean annexation of Litoral turned Bolivia into a landlocked country. The War of the Pacific began due to a dispute between Chile and Bolivia regarding control of territory in the Atacama Desert, which contained valuable minerals. Peru sided with Bolivia due to the nations’ secret agreement of 1873, which outlines a

mutual guarantee of the nations' territory and independence.

The 1904 Treaty of Peace and Friendship between Chile and Bolivia states that the territory belonging to Chile belonged to the nation "in perpetuity". Chile was to build a railway between the port of Arica and La Paz (Bolivia's capital), allowing Bolivia access to Chilean territory and ports. The railway was completed in 1913.

Since then, Bolivia and Chile have engaged in diplomatic interactions regarding Bolivia's access to the Pacific Ocean. Bolivia considers Chilean engagement in these interactions to be a formal recognition of an obligation to negotiate sovereign access to the Pacific Ocean for Bolivia. The signing of the 1975 Charaña Accords by Presidents Hugo Banzer (Bolivia) and Augusto Pinochet (Chile) was preceded by negotiations on Bolivia's sovereign access to the Pacific Ocean, but these negotiations were ultimately unsuccessful.

The Bolivian Constitution of 2009 declares its "inalienable and indefeasible right to the territory that gives access to the Pacific Ocean and sea space" in Article 267. The Constitution also states that a solution to the issue is a "permanent and inalienable objective of the Bolivian State".

This case has a long history of failed diplomatic negotiations and attempts by Bolivia to re-open discussions regarding the nation's sovereign access to the Pacific Ocean.

## **Definition of Key Terms**

### **Annexation**

Annexation is the unilateral act of a state claiming sovereignty over a territory that was not previously under its control, often through force. This process is typically considered illegal under international law unless recognized by other states or international bodies.

## **Sovereign Access**

The right of a nation to have direct control and access to a body of water, particularly in this case, Bolivia's claim for access to the Pacific Ocean following its loss of coastal territory to Chile.

## **War of the Pacific**

A conflict fought from 1879 to 1884 primarily between Chile and a coalition of Bolivia and Peru. The war arose from territorial disputes over the resource-rich Atacama Desert and resulted in Chile's victory, leading to Bolivia becoming a landlocked country and losing its coastal territory

## **1904 Treaty**

The treaty formalized the post-war territorial boundaries between Bolivia and Chile, affirming Chile's control over the territory it occupied and establishing Bolivia's rights regarding trade and transit, which Bolivia later argued were insufficient for its needs.

## **Estoppel**

A legal principle that prevents a party from arguing something contrary to a claim made or implied by their previous actions or statements. Bolivia attempted to use this principle in its arguments, claiming Chile's past conduct created an obligation to negotiate access.

## **Major Countries and Organizations Involved**

### **The Republic of Chile**

Chile is the primary defendant in the ICJ case brought by Bolivia, which claimed that Chile had a legal obligation to negotiate sovereign access to the Pacific Ocean. The roots of the dispute trace back to the War of the Pacific (1879-1884), after which Chile

secured significant territorial gains, including the coastal region that Bolivia lost. The 1904 Treaty established the current borders and affirmed Chile's sovereignty over the territory in perpetuity, while also granting Bolivia rights to free transit through Chilean territory. Chile argued that this treaty effectively resolved the issue of access to the sea, and the ICJ ruled in favor of Chile on October 1, 2018, rejecting Bolivia's claims.

### **The Plurinational State of Bolivia**

Bolivia is the claimant in the ICJ case, asserting its right to sovereign access to the Pacific Ocean, which it lost during the War of the Pacific. The country argues that historical negotiations and diplomatic interactions with Chile created a legal obligation for Chile to negotiate access. Bolivia's position is rooted in the desire to regain a maritime outlet to enhance its economic development and international trade. The ICJ's ruling against Bolivia on October 1, 2018, was a significant disappointment for the Bolivian government and its citizens, who have long viewed access to the sea as a national aspiration and a matter of sovereignty.

### **The Republic of Peru**

Peru, while not a direct party in the ICJ case, plays a significant role in the historical context of the dispute. As a former ally of Bolivia during the War of the Pacific, Peru shares a history with both Chile and Bolivia regarding territorial claims and resource management. The war resulted in territorial losses for both Bolivia and Peru, leading to ongoing regional tensions. Peru has occasionally engaged in discussions about the implications of Bolivia's landlocked status and has expressed its willingness to support Bolivia's aspirations for access to the sea, though primarily through diplomatic channels rather than legal avenues.

### **The Argentine Republic**

Argentina, as a neighboring country, has a vested interest in the stability and diplomatic relations between Chile and Bolivia. Historically, Argentina has been involved in various

regional initiatives aimed at fostering cooperation and dialogue among South American nations. While Argentina is not directly involved in the ICJ case, its role as a regional player means that it can influence discussions regarding Bolivia's access to the Pacific Ocean. Argentina's foreign policy often emphasizes regional integration and cooperation, and it has supported initiatives aimed at resolving disputes peacefully.

## Timeline of Events

<b>Date</b>	<b>Description of Event</b>
Feb 14, 1879 - October 20th, 1884	The War of the Pacific is fought between Chile, Bolivia and Peru, resulting in Bolivia losing its coastal territory to Chile.
October 20, 1904	The Treaty of Peace and Friendship is signed between Bolivia and Chile in Santiago, Chile, establishing the border between the two countries. Under this treaty, Bolivia lost 400 kilometers of coastline and 120,000 square kilometers of territory to Chile
April 24, 2013	Bolivia officially files a case against Chile at the ICJ, claiming that Chile has an obligation to negotiate sovereign access to the Pacific Ocean for Bolivia.
April 15, 2014	Bolivia submits a memorandum to the ICJ with arguments supporting its lawsuit against Chile for reclaiming access to the Pacific Ocean.
March 2018	The ICJ holds oral hearings where both parties present their arguments regarding Bolivia's claims and Chile's defense.
October 1st, 2018	The ICJ delivers its judgment, ruling entirely in favor of Chile. The court concludes that Chile is not legally obligated to negotiate sovereign access to the Pacific Ocean for Bolivia, rejecting all eight legal bases presented by Bolivia.
December 1st, 2022	The ICJ delivers a ruling in a separate case concerning the Silala River, which involves water rights between Chile and Bolivia. The

court declares the river an international waterway and rules in favor of Chile regarding the use of its waters while urging both nations to cooperate on river protection.

## **Relevant UN Resolutions, Treaties, and Events**

### **The American Treaty on Pacific Settlement (Pact of Bogotá)**

The Pact of Bogotá, adopted in 1948, is a regional mechanism for the peaceful settlement of disputes among American states. It establishes various procedures such as good offices, mediation, investigation, conciliation, and arbitration. The Pact also grants compulsory jurisdiction to the International Court of Justice (ICJ) for certain disputes. While seen as outdated by some, the Pact has been invoked in several cases before the ICJ, leading to interpretations of its complex interplay between general principles and the Court's jurisdiction.

### **The Charana Accords**

The Charana Accords, also known as the Charaña Process, were a series of negotiations between Bolivia and Chile from 1975 to 1978 aimed at resolving the landlocked status of Bolivia. The accords proposed a land swap where Bolivia would receive a strip of territory from Chile's northern coast in exchange for part of Bolivia's Amazon region. However, the negotiations ultimately failed due to disagreements over the proposed exchange and the status of Bolivia's access to the Pacific Ocean.

### **Treaty of Peace and Friendship (1904)**

On October 20, 1904, This treaty was signed between Bolivia and Chile following the War of the Pacific. It established the borders between the two countries, confirming Chile's sovereignty over the territory it occupied, which included Bolivia's coastal region.

The treaty also stipulated that Chile would provide Bolivia with free transit rights through its territory and ports. Bolivia has since argued that this treaty does not preclude Chile from negotiating additional access to the sea.

## **ICJ Judgment**

On October 1, 2018, The ICJ delivered its judgment, ruling entirely in favor of Chile. The court concluded that Chile is not legally obligated to negotiate sovereign access to the Pacific Ocean for Bolivia, effectively rejecting all eight legal bases that Bolivia had presented in its claim.

## **Previous Attempts to Solve the Issue**

### **1910 Negotiations**

After the completion of the railway from Arica to La Paz in 1913, there were discussions between Bolivia and Chile regarding Bolivia's access to the sea. However, these talks did not result in any formal agreements.

### **Bolivian Proposals (1950s-1970s)**

Throughout the mid-20th century, Bolivia made various proposals to Chile for negotiations concerning access to the Pacific. These proposals included requests for a corridor to the sea or the return of some territory. However, Chile consistently rejected these proposals, citing the 1904 Treaty as a binding agreement.

### **1975 Dialogue**

In 1975, under the military dictatorship of General Augusto Pinochet in Chile and the military regime of Hugo Banzer in Bolivia, there was a brief period of dialogue. A proposal for a "free zone" in the port of Arica for Bolivian trade was discussed, but ultimately, no agreement was reached.



## **2006 Bilateral Talks**

After Evo Morales became president of Bolivia, he renewed calls for negotiations with Chile regarding access to the sea. In 2006, the two countries engaged in talks, but they did not yield significant progress, and Bolivia's demands for a sovereign outlet to the Pacific remained unmet.

## **2009 UN General Assembly**

Bolivia presented a resolution at the UN General Assembly calling for Chile to negotiate sovereign access to the sea. The resolution was supported by several countries but did not compel Chile to engage in negotiations.

## **ICJ Application (2013)**

On April 24, 2013, Bolivia officially filed a case against Chile at the International Court of Justice, claiming that Chile had a legal obligation to negotiate sovereign access to the Pacific Ocean. This marked a significant escalation in Bolivia's efforts to reclaim maritime access through legal means.

## **ICJ Ruling (2018)**

After years of proceedings, the ICJ ruled on October 1, 2018, that Chile was not legally obligated to negotiate access to the sea for Bolivia. This ruling effectively closed the door on Bolivia's claims through the ICJ, although Bolivia continues to seek dialogue with Chile on the issue.

## **Possible Solutions**

Possible solutions to the longstanding issue of Bolivia's access to the Pacific Ocean could involve a combination of diplomatic negotiations, regional cooperation, and creative legal frameworks. One potential solution is the establishment of a special economic zone

or corridor that allows Bolivia to access the sea through Chilean territory, facilitating trade and commerce while respecting Chile's sovereignty. This could be accompanied by agreements on shared use of ports and infrastructure, enhancing economic ties between the two countries. However, while this solution could boost Bolivia's economic opportunities and strengthen bilateral ties, it could also face significant obstacles, such as concerns over sovereignty and potential resistance from Chilean stakeholders who may view this as an infringement on their territorial integrity.

Another avenue could involve third-party mediation from regional organizations, such as the Union of South American Nations (UNASUR) or the Organization of American States (OAS), which could help facilitate dialogue and foster a collaborative approach to resolving the dispute. The advantage of this approach lies in providing a neutral platform that can reduce tensions and leverage broader regional support. However, its effectiveness depends on the willingness of both parties to engage in good faith, and there's a risk that external involvement could complicate matters or lead to perceptions of bias.

Additionally, bilateral agreements that address Bolivia's transit rights and establish mechanisms for ongoing negotiations could offer a more direct and potentially less contentious solution. These agreements could be tailored to the specific needs and concerns of both nations, allowing for flexibility and ongoing adjustment. The downside is that bilateral negotiations can be slow and may stall if either party perceives an imbalance in the benefits, potentially leading to a deadlock that prolongs the dispute. In summary, while each solution offers potential benefits—whether through economic integration, regional cooperation, or direct negotiation—each also comes with significant challenges that need to be carefully navigated to achieve a sustainable resolution.

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