

REPUBLIC OF CHILE
Ministry of Foreign Affairs

May 12th, 2015

H.E. Mr Philippe Couvreur
Registrar
International Court of Justice
Peace Palace
The Hague
The Netherlands

Sir,

Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile)
Chile's Answer to Judge Owada's question concerning the meaning of "sovereign access to the sea"

I have the honour to convey the response of the Republic of Chile to the question asked by Judge Owada at the close of the oral hearings on Chile's Preliminary Objection, which was:

"In the course of the present oral proceedings, as well as in the written documents submitted by the two sides, both the Applicant and the Respondent have been referring to the expression 'sovereign access to the sea'. This is not a term of art in general international law, though the Applicant and the Respondent have been referring to this expression in describing either their own position or the position of the other side. I should appreciate it if both of the Parties would define the meaning of that term as they understand it, and explain the specific contents of that term as they use it for determining their position on jurisdiction of the Court."

The starting point must be Bolivia's Request for Relief, the relevant parts of which are contained in paragraphs 32(a) and 32(c) of its Application and 500(a) and 500(c) of its Memorial. There, Bolivia refers to "a fully sovereign access to the Pacific Ocean". The expression "fully sovereign" is equally used in paragraphs 1, 4, 13 and 30 of the Application.

In the Memorial, Bolivia indicated with greater precision what it means by "sovereign access to the sea". At paragraph 410 it referred to "sovereign access to the sea for Bolivia, to be effected by a transfer of territory to Bolivia from Chile" and in the following paragraph to "sovereign access to the sea for Bolivia by the transfer of an area of the territory now held by Chile".

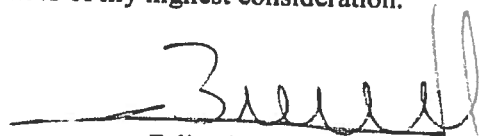
At paragraph 361 of the Memorial, Bolivia asserts that Chile agreed "to transfer territory to Bolivia in order to grant it a sovereign access to the sea". At paragraph 445, Bolivia was particularly clear: "According to Chile, negotiations between the two States could only be considered provided that they would not lead to any territorial cession – which is to say, on the condition that they would not involve any sovereign access to the sea."

In the context of explaining its claim for a right to “sovereign access to the Pacific Ocean”, Bolivia equally referred in the Memorial to “the cession to Bolivia of a sovereign coast” (paragraph 483), “cession of territory” (paragraph 484) and “modification of the territorial status between the two countries” (paragraph 486).

The meaning of the expression “sovereign access to the sea” as used by Chile in formulating its objection to jurisdiction is the same as that used by Bolivia in its Application and Memorial. Chile considers that in asking the Court to declare that Chile is under an obligation “to grant Bolivia a fully sovereign access to the Pacific Ocean” (Request for Relief: Application, paragraph 32(c) and Memorial, paragraph 500(c)) Bolivia is claiming that Chile is under an obligation to transfer to Bolivia sovereignty over coastal territory bathed by the Pacific Ocean.

The significance of this for Chile’s jurisdictional objection is that in Article II of the 1904 Peace Treaty, Bolivia and Chile settled the allocation of sovereignty over territory between them, and in Article VI of that same treaty provided that Chile would accord “in favour of Bolivia in perpetuity the fullest and most unrestricted right of commercial transit in its territory and its Pacific ports.” The 1904 Peace Treaty settled and governed on 30 April 1948, just as it does now, that the access to the Pacific Ocean that Bolivia has a right to is not sovereign access. Bolivia’s Request for Relief seeks an order requiring Chile to agree to grant sovereign access to the Pacific Ocean to Bolivia. That would necessarily unsettle what was settled in and governed by the 1904 Peace Treaty, and is therefore outside the Court’s jurisdiction by force of Article VI of the Pact of Bogotá.

Accept, Sir, the assurances of my highest consideration.


Felipe Bulnes
Agent of Chile