

REPUBLIC OF CHILE
Ministry of Foreign Affairs

May 14th, 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 comments on Bolivia's Answer to Judge Owada's question concerning the meaning ascribed by the Parties to "sovereign access to the sea"

I have the honour to convey the comments of the Republic of Chile on the answer given by Bolivia on 13 May 2015 to the question asked by Judge Owada concerning the meaning of the term "sovereign access to the sea" for the purpose of determining whether the Court has jurisdiction over the matter that Bolivia has referred to it.

In its answer, Bolivia adopts the extraordinary position that the meaning to be ascribed to an expression central to its Request for Relief can be determined only as part of a consideration of the merits of its claim. The meaning of Bolivia's Request for Relief cannot depend on a consideration of the merits of whether the Court should grant that relief. What Bolivia's Request for Relief means is exactly the kind of issue of characterization that can and should be determined at a preliminary stage, in order to decide whether the Court has jurisdiction. If Bolivia's approach were correct, a respondent State could be left to answer the merits of a claim the meaning of which the applicant declined to explain.

As Chile emphasized in its answer to Judge Owada's question, it is clear from the content of Bolivia's Application, Memorial and Request for Relief that by seeking a declaration that Chile is under an obligation to agree to grant Bolivia "sovereign access to the sea", Bolivia seeks a declaration that Chile is under an obligation to agree to transfer to Bolivia sovereignty over coastal territory. Bolivia now declines to enunciate the point that it has already made so explicit in its Application, Memorial and Request for Relief, because it is clear that a request for a declaration that Chile is under an obligation to agree to change the allocation of sovereignty over territory is objectively inconsistent with the settlement reached in the 1904 Peace Treaty and thus outside the Court's jurisdiction by force of Article VI of the Pact of Bogotá. Chile's Preliminary Objection

must, however, be decided on the basis of the Application, Memorial and Request for Relief to which it objects.

Chile additionally notes that in Bolivia's second round oral submissions on Friday 8 May, counsel for Bolivia submitted that "Bolivia is not even asking the Court to determine the specific modality of sovereign access. Such access could be expressed in many ways, whether it is a corridor, a coastal enclave, a special zone, or some other practical solution." (CR 2015/19, p. 51, para. 3 (Akhavan)).

Chile further notes that Bolivia's answer to Judge Owada's question equally focuses on its position that the modalities of the claimed sovereign access would be a matter to be determined by agreement between the two States, and is not something with which the Court should be concerned.

If Bolivia's reference to "a special zone, or some other practical solution" and its insistence that the modalities of the claimed access are not a matter for the Court, are intended as a retreat from the position adopted in the Application and Memorial and embodied in the expression "fully sovereign access" contained in Bolivia's Request for Relief, Chile reiterates that its Preliminary Objection must be decided on the basis of the Application, Memorial and Request for Relief in response to which that objection has been made, none of which Bolivia has withdrawn or modified.

Accept, Sir, the assurances of my highest consideration.



Felipe Bulnes
Agent of Chile