



INTERNATIONAL COURT OF JUSTICE

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Press Release

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

The Court rejects the preliminary objection raised by Chile and finds that it has jurisdiction to entertain the Application filed by Bolivia on 24 April 2013

THE HAGUE, 24 September 2015. The International Court of Justice (ICJ), the principal judicial organ of the United Nations, today delivered its Judgment on the preliminary objection raised by Chile in the case concerning the Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile).

In its Judgment, which is final and without appeal, the Court

(1) Rejects, by fourteen votes to two, the preliminary objection raised by the Republic of Chile;

(2) Finds, by fourteen votes to two, that it has jurisdiction, on the basis of Article XXXI of the Pact of Bogotá, to entertain the Application filed by the Plurinational State of Bolivia on 24 April 2013.

The Court's reasoning

The Court recalls that, in its Application, Bolivia seeks to found the jurisdiction of the Court on Article XXXI of the Pact of Bogotá. Chile, on the other hand, argues in its preliminary objection that the Court has no jurisdiction under that provision to rule on the dispute submitted by Bolivia. Citing Article VI of the Pact of Bogotá¹, it contends that the matters in dispute in the present case, namely territorial sovereignty and the character of Bolivia's access to the Pacific Ocean, were settled by an arrangement set out in the 1904 Peace Treaty, and that they remain governed by that Treaty. Bolivia responds that the sole subject-matter of the dispute is the existence of an obligation incumbent upon Chile to negotiate in good faith Bolivia's sovereign access to the Pacific Ocean, and the breach of that obligation. According to Bolivia, the said obligation, which derives from "agreements, diplomatic practice and . . . declarations attributable to [Chile]" extending over more than a century, exists independently of the 1904 Peace Treaty. Accordingly, in Bolivia's view, the matters in dispute in the present case are not matters settled or

¹Article VI of the Pact of Bogotá: "The . . . procedures [laid down in the Pact of Bogotá] . . . may not be applied to matters already settled by arrangement between the parties, or by arbitral award or by decision of an international court, or which are governed by agreements or treaties in force on the date of the conclusion of the present Treaty."

governed by the 1904 Peace Treaty, within the meaning of Article VI of the Pact of Bogotá, and the Court has jurisdiction to consider them under Article XXXI thereof.

The Court observes that, on its face, the Application presents a dispute about the existence of an obligation to negotiate sovereign access to the sea, and the alleged breach thereof. The Court considers that, while it may be assumed that sovereign access to the Pacific Ocean is, in the end, Bolivia's goal, a distinction must be drawn between that goal and the related but distinct dispute presented by the Application, which does not ask the Court to adjudge and declare that Bolivia has a right to such access.

The Court recalls that, under Article VI of the Pact of Bogotá, if it were to find that, given the subject-matter of the dispute as identified by it, the matters in dispute between the Parties are matters "already settled by arrangement between the parties" or "governed by agreements or treaties in force" at the date of signature of the Pact of Bogotá, namely 30 April 1948, it would lack the requisite jurisdiction to decide the case on the merits. The Court notes that the relevant provisions of the 1904 Peace Treaty do not expressly or impliedly address the question of Chile's alleged obligation to negotiate Bolivia's sovereign access to the Pacific Ocean. In the Court's view, therefore, the matters in dispute are not matters "settled by arrangement between the parties, or by arbitral award or by decision of an international court" or "governed by agreements or treaties in force on the date of the conclusion of the [Pact of Bogotá]", within the meaning of Article VI of the Pact of Bogotá. Article VI thus does not bar the Court's jurisdiction under Article XXXI of the Pact of Bogotá and the preliminary objection to jurisdiction raised by Chile must accordingly be dismissed.

Composition of the Court

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

Judge BENNOUNA appends a declaration to the Judgment; Judge CANÇADO TRINDADE appends a separate opinion to the Judgment; Judge GAJA appends a declaration to the Judgment; Judge ad hoc ARBOUR appends a dissenting opinion to the Judgment.

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A summary of the Judgment appears in the document "Summary No. 2015/2". This press release, the summary of the Judgment and its full text can be found 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 Tribunal for the former Yugoslavia (ICTY, an ad hoc court created by the Security Council), the International Criminal Court (ICC, the first permanent international criminal court, established by treaty, which 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), 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).

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