

# Litigating to Negotiate Access to the Pacific Ocean: A Study of the *Bolivia v. Chile* Case

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## Structured Abstract

Article Type: Case Study

*Purpose*—The purpose of this case study is to discuss the implications of the International Court of Justice’s (“ICJ”) ruling on the preliminary objections in the *Case Concerning the Obligation to Negotiate in Good Faith (Bolivia v. Chile)*.

*Design/Methodology/Approach*—This case study relies on academic literature, treaties, past decisions by the ICJ to examine the precedential value of *Bolivia v. Chile*.

*Findings*: Through an analysis of the preliminary objections phase of a case pending before the Court, this case study found that the ICJ rightly concluded that it had jurisdiction in the *Bolivia v. Chile* case.

*Practical Implications*—Useful for legal scholars, and lawyers, this paper helps the reader understand how the ICJ interprets international treaties to resolve disputes concerning preliminary objections to the jurisdiction of the Court, and the distinction between legal a political disputes in international adjudication.

*Originality/Value*—This case study makes an original contribution to the field by providing an overview of previous decisions of the ICJ as background to the analysis of the historical and legal background preceding the *Bolivia v. Chile* case, and considers its precedential value.

Keywords: admissibility, international court of justice, international dispute resolution, jurisdiction, justiciable, landlocked states, Law of the Sea, treaty interpretation, obligation to negotiate, preliminary objections

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## Introduction

On April 24, 2013, Bolivia initiated proceedings against Chile alleging that Chile had failed to uphold its obligation to negotiate effectively and in good faith to reach an agreement which would provide Bolivia sovereign access to the Pacific Ocean. In September 2015, the International Court of Justice (“ICJ”) rendered its judgment on the preliminary objections raised by Chile in the *Case Concerning the Obligation to Negotiate in Good Faith (Bolivia v. Chile)*.<sup>1</sup> Arguments concerning the non-justiciability of the issues, and the lack of a dispute between the parties permeated the preliminary objections phase of the dispute. In the judgment on preliminary objections, the ICJ took the opportunity to define the subject-matter of the dispute and reaffirmed that its role was to peacefully settle international disputes.

This commentary thus discusses the issues and decision of the ICJ in the preliminary objections phase of the proceedings and highlights how the judgment on preliminary objections further solidifies the Court’s jurisprudence distinguishing between legal and political disputes. *Bolivia v. Chile* is not the first case in which the ICJ has been called upon to resolve a dispute relating to the obligation to negotiate in good faith under international law, and the merits of the case will clarify whether such an obligation exists, and can serve more broadly as precedent to help interpret and define the rights of landlocked states and the extent of a state’s right to access the sea. This latter question is the crux of the case and will be decided during the merits phase of the proceedings, which the case has not reached at the time of writing. Thus, this commentary will focus on the questions which were the object of the preliminary objections proceedings, namely the ICJ’s discussion of jurisdiction in the case.

This commentary reviews the background of the case and arguments of the parties during the preliminary phase of the proceedings and argues that while there is a political context to the case, the Court rightfully decided that the dispute between the parties was one of a legal nature and that it had jurisdiction to entertain the case.

This commentary proceeds first by discussing the historical background of the case and by providing an overview of the preliminary objections proceedings. It then examines some ancillary matters in international law and the way various political factors permeate legal disputes. This commentary argues that *Bolivia v. Chile* provides a unique opportunity for the ICJ to resolve a long-standing dispute between neighboring states, while clarifying the international legal framework with respect to a state’s obligation to negotiate in good faith under international law.

## Background of the Dispute

### 1. Historical Overview: From the War of the Pacific to Present Day

The historical background of the case arose out of the 1879–1883 War of the Pacific which took place between Chile and Bolivia. Chile and Bolivia gained their

independence from Spain in 1818 and 1825 respectively. At the time of its independence, Bolivia had a coastline along the Pacific Ocean measuring several hundred kilometers. In 1866, Chile and Bolivia signed the *Treaty of Territorial Limits*, which established a “line of demarcation of boundaries” between the two States. These boundaries were confirmed in the Treaty of Limits between Bolivia and Chile, signed in 1874. Five years later, in 1879, Chile declared war on Peru and Bolivia. The war is now known as the War of the Pacific. In the course of this war, Chile occupied Bolivia’s coastal territory.

In 1884, the hostilities between Bolivia and Chile ended with the *Truce Pact* which gave Chile the authority to govern the coastal region. As a result of the *Truce Pact*, Bolivia lost control of its coastline. In 1895, the *Treaty on the Transfer of Territory* was signed between Bolivia and Chile, but it never entered into force. This Treaty included provisions for Bolivia to regain access to the sea, subject to Chile acquiring sovereignty over certain specific territories.

In 1904, the Parties signed the *Treaty of Peace and Friendship* (“1904 Peace Treaty”), which officially ended the War of the Pacific between Bolivia and Chile. The treaty entered into force on March 10, 1905. Although Bolivia was granted a right of commercial transit to Chilean ports under this treaty the entire Bolivian coastal territory became Chilean. As a result, Bolivia became a landlocked state which has been trying to recover sovereign access to the sea for over a century.

In 1948, the *Pact of Bogotá* was adopted. Chile ratified the *Pact of Bogotá* in 1967 and deposited its instrument of ratification on April 15, 1974. Bolivia ratified the *Pact of Bogotá* in 2011 and deposited its instrument of ratification on June 9, 2011.

## 2. Overview of Proceedings Before the Court

In its Application, Bolivia sought to found the jurisdiction of the Court on Article XXXI of the *American Treaty on Pacific Settlement* signed on April 30, 1948 (“*Pact of Bogotá*”). Bolivia requested the Court to adjudge and declare that by virtue of a separate alleged agreement: (1) Chile has the obligation to negotiate with Bolivia in order to reach an agreement granting Bolivia a fully sovereign access to the Pacific Ocean; (2) Chile has breached the said obligation; and (3) Chile must perform the said obligation in good faith, promptly, formally, within a reasonable time and effectively, to grant Bolivia a fully sovereign access to the Pacific Ocean.

On July 15, 2014, Chile raised a preliminary objection to the jurisdiction of the Court. Chile claimed that, pursuant to Article VI of the *Pact of Bogotá*, the Court lacked jurisdiction under Article XXXI to decide the dispute. Chile maintained that the matters at issue in the case were territorial sovereignty and the character of Bolivia’s access to the Pacific Ocean. Referring to Article VI of the *Pact of Bogotá*, it contended that these matters were settled by the *1904 Peace Treaty* and that they remained governed by that Treaty, which was in force on the date of the conclusion of the *Pact of Bogotá*. According to Chile, the various “agreements, diplomatic practice[s] and ... declarations” invoked by Bolivia concern “in substance the same matter settled in and governed by the 1904 Peace Treaty.”

Bolivia's response was that Chile's preliminary objection was "manifestly unfounded" as it "misconstrue[d] the subject matter of the dispute" between the Parties. Bolivia maintained that the subject matter of the dispute concerned the existence and breach of an obligation on the part of Chile to negotiate Bolivia's sovereign access to the Pacific Ocean in good faith. It stated that this obligation exists *independently* of the *1904 Peace Treaty*. Accordingly, Bolivia asserted that the matters in dispute were not matters settled or governed by the *1904 Peace Treaty*, within the meaning of Article VI of the *Pact of Bogotá*, and that the Court had jurisdiction under Article XXXI thereof.

### 3. The Court's Judgment

The Court rejected the preliminary objections raised by Chile. The Court indicated that it was necessary to first determine the actual subject matter of the dispute and then turn to the question of whether the matters in dispute are matters "settled" or "governed" by the *1904 Peace Treaty*. In reaching its conclusion on the subject-matter of the dispute, the Court considered 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 in Bolivia's Application.

In the Court's view, there is a distinction to be drawn in the case between a dispute relating to an obligation to negotiate and the content thereof, and a dispute concerning whether Bolivia has a right to sovereign access to the sea: the Application did not ask the Court to adjudge and declare that Bolivia has a right to sovereign access. Rather, the Court concluded that the subject matter of the dispute is whether Chile is obligated to negotiate Bolivia's sovereign access to the Pacific Ocean in good faith, and, if such an obligation exists, whether Chile has breached it.<sup>2</sup>

The next question the Court had to consider was whether the matters in dispute fell under Article VI of the *Pact of Bogotá* and whether the matters in dispute were already settled. The *Pact of Bogotá* provides that parties recognize the compulsory jurisdiction of the Court in all disputes of a juridical nature that arise among them concerning: (a) the interpretation of a treaty; (b) any question of international law; (c) the existence of any fact which, if established, would constitute the breach of an international obligation; (d) the nature or extent of the reparation to be made for the breach of an international obligation.

Concerning matters already settled between the Parties, Article VI states that: "The ... procedures [laid down in the *Pact of Bogotá*] ... may not be applied to mat-  
ters 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." If the parties fail to agree as to whether the Court has jurisdiction over the controversy, the Court itself shall decide that question.<sup>3</sup> Therefore, the Court proceeded to determine whether the matters in dispute are matters "settled" or "governed" by the *1904 Peace Treaty*.

The provisions of the *1904 Peace Treaty* set forth at paragraph 40 do not expressly

or impliedly address the question of Chile's alleged obligation to negotiate Bolivia's sovereign access to the Pacific Ocean. Thus, the Court concluded that the matters in dispute are matters neither settled nor governed by agreements or treaties, within the meaning of Article VI of the *Pact of Bogotá*. Consequently, the Court dismissed Chile's preliminary objections.<sup>4</sup> Having discussed the preliminary objections proceedings and the Judgment of the Court, this commentary will now address some issues related to the case.

## Ancillary Issues

### 1. *Access to the Sea for Landlocked States in the United Nations Convention on the Law of the Sea*

Underlying the dispute between the Parties is the broader question regarding the rights of landlocked States and how international law governs access to the sea. While this case does not concern the interpretation or application of the *United Nations Convention on the Law of the Sea* ("UNCLOS") and the provisions therein related to the rights of landlocked States, it is relevant to discuss the provisions of the UNCLOS so as to frame the dispute between the Parties within a broader perspective. Both Chile and Bolivia ratified the UNCLOS.<sup>5</sup> Despite this fact, Bolivia's claim is not based on the UNCLOS, since the obligation to negotiate a sovereign access to the Pacific Ocean constitutes a demand which extends far beyond obligations owed to landlocked states under the UNCLOS.<sup>6</sup>

Transit and the right to access the sea is a major issue for all landlocked States around the world. There are 43 landlocked States in the world.<sup>7</sup> In 1973, an Alliance of Landlocked and Geographically Disadvantaged States ("Alliance") was formed. The group was comprised of 55 States.<sup>8</sup> The member states in the Alliance stressed that they should have transit rights to and from the sea. The overall result, after the intense negotiations ended, were far from satisfying to members of the Alliance.<sup>9</sup> However, their views were reflected to a certain extent in Article 125 of the UNCLOS.<sup>10</sup> Part 10 of the UNCLOS provides for a right of access for landlocked states to and from the sea. Article 125 delegates this right to landlocked States in order for them to be able to exercise other rights concerning the freedom of the high seas and the so-called common heritage to mankind.<sup>11</sup> For that purpose landlocked states must enjoy the freedom to traverse the transit state itself in order to reach the coast.<sup>12</sup> All modes of transport should be respected with regard to this right. Furthermore, it is up to the States themselves to agree upon the particular form through which landlocked states may exercise their freedom of transit.<sup>13</sup> Ultimately transit states retain their right to enforce measures which protect their legitimate interest in situations where their interests conflict with those of the landlocked state. This is to affirm the complete territorial sovereignty of the transit or coastal state.<sup>14</sup> According to the Chilean Foreign Ministry, Bolivia enjoys the right to retain autonomous customs officials in Chilean ports, and benefits from preferential tariffs, superior terms of storage of goods, tax exemptions and free transit through connecting roads to port facilities. These rights stem from the *1904 Peace Treaty* and more importantly

from subsequent bilateral agreements.<sup>15</sup> In the present case Bolivia asks for greater rights based on another alleged agreement.

This becomes evident when looking at the declaration made by Bolivia upon signing the UNCLOS:

3. Freedom of access to and from the sea, which the Convention grants to land-locked nations, is a right that Bolivia has been exercising by virtue of bilateral treaties and will continue to exercise by virtue of the norms of positive international law contained in the Convention.

4. Bolivia wishes to place on record that it is a country that has no maritime sovereignty as a result of a war and not as a result of its natural geographic position and that it will assert all the rights of coastal States under the Convention once it recovers the legal status in question as a consequence of negotiations on the restoration to Bolivia of its own sovereign outlet to the Pacific Ocean.<sup>16</sup>

According to Judge Türk, the UNCLOS as a whole does not derogate from any greater rights, with respect to transit, that landlocked States may have in particular with transit States.<sup>17</sup> Bolivia's claim relies on the merits of another alleged bilateral agreement with Chile. Bolivia alleges this agreement obliges Chile to negotiate a sovereign access to the sea with Bolivia, and thus offers greater rights than what the UNCLOS provides for landlocked states generally. A key term here is a "sovereign" access to the sea, since Bolivia is already enjoying free transit to the Pacific Ocean.

Bolivia claims that various commitments, exchange of notes, declarations, unilateral acts and other actions, constituted a negotiation process which formed an agreement independent of the *1904 Peace Treaty* which delineated their territorial boundaries.<sup>18</sup> Proposals were made, in particular during the 1950's, the 1970's, and continuing up until 2006, that allegedly constitute an agreement to negotiate a "sovereign" access to the sea. For example, Note No. 9 issued by Chile's Foreign Minister in 1950, states: "My government is willing to formally enter into direct negotiations aimed at finding a formula that will make it possible to give to Bolivia a sovereign access to the Pacific Ocean of its own, and for Chile to receive compensation of a non-territorial character that effectively takes into account its interests."<sup>19</sup> In 1975, the two states signed the *Joint Declaration of Charaña*, which reads: "Both Heads of State, within a spirit of mutual understanding and constructive intent, have decided to continue the dialogue, at different levels, in order to search for formulas to solve the vital issues that both countries face, such as the landlocked situation that affects Bolivia, taking into account the mutual interests...."<sup>20</sup> It will therefore be up to the ICJ to interpret these historical discussions to determine whether they constitute an agreement, and whether Chile has an obligation to negotiate a sovereign access to the Pacific Ocean. As noted above, the UNCLOS does not derogate from a greater right in respect of access to the sea that Bolivia may have with Chile based on an alleged separate agreement.

## 2. The Justiciability of the Dispute

The distinction between justiciable and non-justiciable disputes is known in Common Law systems as the "political question doctrine." It has been defined as a



doctrine which prevents a court of law from determining issues which are political in essence.<sup>21</sup> It is also understood to be a technique of judicial management used to rule out controversial cases.<sup>22</sup> Legal disputes are justiciable, and political disputes are non-justiciable and are not within the jurisdiction of a court of law. The ICJ has always looked at the applicant's formulation of the issues in order to rule on the justiciability of a dispute.

That Chile's points of objection are political arguments becomes evident when analyzed using the work of Edvard Hambro concerning the jurisdiction of the ICJ. Edvard Hambro, the former Registrar of the ICJ, wrote: "if the parties seek to find out what their respective rights are, the question is legal. If, on the other hand, the parties wish to change the existing law, the question is political."<sup>23</sup> Following that line of reasoning, Chile is effectively saying it is a political dispute, because Bolivia wants to change existing law, namely their boundary treaty. On the other side Bolivia, by claiming that the other party has an obligation towards Bolivia, simultaneously seeks to determine its rights against Chile.

This is not the first time that a party has argued that an issue before the Court is non-justiciable. In the case *Application of the Interim Accord of 13 September 1995 (Macedonia vs. Greece)*, the Respondent, Greece argued that the Macedonian Application was asking the Court to change an existing rule and reverse a decision made by NATO. Greece argued that the Court's judgment would not have any practical effect since the Court cannot modify a decision made by NATO.<sup>24</sup> The Court responded that Greece was correct in stating that the Court could not modify a NATO decision, but that this was not the request of the Applicant, Macedonia. The heart of Macedonia's request lied in something different: the conduct of Greece during NATO's decision-making process which breached an existing obligation towards Macedonia. Ultimately, the Court deemed that Greece's argument was "not persuasive."<sup>25</sup>

Generally, non-justiciability has been a matter of propriety rather than an acknowledgment that the Court lacks the jurisdiction to hear a particular dispute.<sup>26</sup> The objection that a dispute is political is, in itself, more political than legal.<sup>27</sup> In the Advisory Opinion concerning the *Condition of Admission of a State to Membership in the United Nations*, the Court clarified that it could not "attribute a political character to a request which, framed in abstract terms, invites it to undertake an essentially judicial task, the interpretation of a treaty provision. It is not concerned with the motives which may have inspired this request.... It is the duty of the Court to envisage the question submitted to it only in the abstract form which has been given to it."<sup>28</sup> To be consistent with this view, the Court should not reject an application because of concerns about the political motives preceding the legal question.

A legal dispute, as the term appears in Article 36(3) of the United Nations Charter, is therefore defined not by the nature of the dispute, but by the process for best resolving particular issues.<sup>29</sup> The political-legal distinction is therefore functional.<sup>30</sup> The case between Bolivia and Chile, formulated in abstract terms, is a judicial task concerned with the interpretation of the post-1948 negotiations. Therefore, the ICJ can play a functional role in resolving the legal dispute, in particular when taking into consideration the fact that Bolivia and Chile have not had embassies in each

other's country since the 1970's due to their disagreements concerning Bolivia's access to the sea.<sup>31</sup> A binding judgment from the Court could remove legal uncertainties between the parties with regard to Bolivia's right to access to the sea. A binding decision may also assist two large neighboring countries in South America to effectively cooperate in the future. It is therefore within the Court's function to attribute a justiciable meaning to the claim.

It has been noted, in regards to decisions concerning justiciable and non-justiciable issues, that one could learn a lot from national courts.<sup>32</sup> A statement made by a Supreme Court Judge of the United States in his book, *The Judge in a Democracy*, underlines: "The more non-justiciability is expanded, the less opportunity judges have for bridging the gap between law and society and for protecting the constitution and democracy. Given these consequences, I regard the doctrine of non-justiciability or "political questions" with considerable wariness. Insofar as is possible, I prefer to examine an argument on its merits."<sup>33</sup> Equally in international law, one should if possible attribute a justiciable character to affirm jurisdiction. Otherwise, the more the Court declines jurisdiction, the more restricted it is in exercising its judicial function in more complex cases. In the *Tehran Hostages Case*, the Court recognized the important role of diplomatic institutions in facilitating effective cooperation within the international community.<sup>34</sup> There is a functional distinction between the roles of the Court and political institutions when trying to peacefully settle disputes. A judgment of the ICJ could remove legal uncertainties between the parties and could possibly contribute to more effective, regional cooperation.<sup>35</sup>

In its Judgment on the preliminary objections the Court stated:

As the Court has observed in the past, applications that are submitted to the Court often present a particular dispute that arises in the context of a broader disagreement between parties. 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, namely, whether Chile has an obligation to negotiate Bolivia's sovereign access to the sea and, if such an obligation exists, whether Chile has breached it. The Application does not ask the Court to adjudge and declare that Bolivia has a right to sovereign access.<sup>36</sup>

In support of this finding, the Court has never rejected a case because political aspects were involved. The Court has maintained that to dismiss a case because the legal aspect is only one element of a political dispute would be to impose a "far-reaching and unwarranted restriction upon the role of the Court in the peaceful settlement of disputes."<sup>37</sup> In the *Tehran Hostages Case*, Iran urged the Court in a letter "not to take cognizance of the case, which only represents a marginal and secondary aspect of an overall problem."<sup>38</sup> The alleged non-justiciable character was not upheld by the Court, a position which is consistent with the ICJ's jurisprudence. In the *Case concerning Military and Paramilitary Activities in and against Nicaragua*, the United-States made an argument, claiming that Nicaragua's allegations were "but one facet of complex of interrelated political, social, economic and security matters that confront the Central American region."<sup>39</sup> The Court rejected the argument holding that



it should not decline to take cognizance of the legal aspects of a dispute, merely because the dispute had other aspects as well.<sup>40</sup> Similarly the Court upheld its jurisdiction in the *Nuclear Weapons Advisory Opinion*,<sup>41</sup> which was also surrounded by political controversy. In the *Lockerbie Case* during the first phase, the court confirmed the customary presumption of justiciability despite the highly charged political context in which the case arose.<sup>42</sup>

These landmark cases heard before the ICJ demonstrate the Court's competence to adjudicate cases which involve historical and regional political aspirations, even in contentious situations. In affirming its jurisdiction, as it did in the judgment on preliminary objections in the *Bolivia v. Chile* case, the Court asserted its role as the principal judicial organ of the United Nations in the peaceful settlement of international disputes. In order to maintain its flexibility in that regard, the Court has not sought a definition of legal disputes that is so narrow that it would prevent the adjudication of disputes involving to some extent non-legal issues.<sup>43</sup> The Court recalled in its Judgment

that Bolivia does not ask the Court to declare that it has a right to sovereign access to the sea nor to pronounce on the legal status of the 1904 Peace Treaty. ... Even assuming arguendo that the Court were to find the existence of such an obligation, it would not be for the Court to predetermine the outcome of any negotiation that would take place in consequence of that obligation.<sup>44</sup>

As Bolivia noted before the Court, it did not want to define the form of a sovereign access to the sea in advance, because this issue needed to be decided through negotiations. This reservation is consistent with the Court's opinion in *The Haya de la Torre Case*, also known as the *Asylum Case*. In that case the Court ordered Colombia to terminate the asylum of a Peruvian man.<sup>45</sup> The States could not agree about the manner in which the asylum should be terminated, and asked the Court for a decision.<sup>46</sup> The Court refused to do so, saying that:

the various courses by which the asylum may be terminated are conditioned by facts and possibilities which, to a very large extent, the parties are alone in a position to appreciate. A choice among them could not be based on legal considerations, but only on considerations of practicability or of political expediency. It is not part of the Court[']s judicial function to make such choice.<sup>47</sup>

Equally, in the present case the form of the access should not be solely based on legal considerations, it must also take into account practical ones (geographic location, costs, etc.) which can only be addressed through negotiations. The Court can make a decision on the main issue dividing the Parties, such as the obligation to negotiate, while leaving other issues (which it cannot decided on) unresolved, such as the form of access. In the *Free Zones Case*, the Court refused to address economic issues left unresolved by an agreement between France and Switzerland.<sup>48</sup> Scholars have affirmed that in certain circumstances the details for carrying out the Court's judgments are to be entrusted to politics and political institutions,<sup>49</sup> negotiations being a political means for parties to agree upon "the details."

The term "sovereign access" stems from previous negotiations where various different proposals were made. One example of a special regime which has been

negotiated is the Czech ports located in Germany. The Treaty of Versailles (1919) guaranteed in article 363 and 364 two northern ports in Germany for the Czech-Slovak State at that time.<sup>50</sup> On the basis of that Treaty, a lease agreement was concluded in 1929 between the city of Hamburg and the Czech-Slovak State.<sup>51</sup> The two ports *Moldauhafen* and *Saalehafen* are leased for 99 years, and the agreement continues to be valid until 2028 between Hamburg and the Czech Republic.<sup>52</sup> It is governed under the general regime of free zones, and serves the direct transit of goods coming from or going to the Czech Republic.<sup>53</sup> Free access was also guaranteed for inland waterway ships. It is to a certain extent a privileged access. A similar arrangement could potentially be a viable outcome of any future negotiations between Bolivia and Chile.

## Conclusion

The case between Bolivia and Chile presents some important aspects concerning the obligation to negotiate under international law. The case will also have an impact on the diplomatic relations between the two states. Although this case concerns a specific regime between the parties, and not the UNCLOS regime, it will be an important precedent that brings some comparative perspective on the rights of landlocked states. The Court has rightly reiterated its mandate to peacefully settle international disputes in affirming its jurisdiction to hear the case on the merits. The Court can also provide, in its judgment on the merits, much needed clarity as to what the obligation to negotiate entails and whether it is in effect an obligation to reach an agreement on the sovereign access to the sea, while leaving it to the Parties to negotiate and decide how sovereign access to the sea will be crafted in practice.

This commentary reviewed the issues decided during the preliminary objection phase and argued that the Court rightly concluded that it had jurisdiction to entertain the case. The *Bolivia v. Chile* case is important because it enables the ICJ to continue to play a role in dispute resolution processes in Latin America through the *Pact of Bogotá*. Historically, there have been numerous cases where the Court has played an important role in resolving disputes in Latin America, which has contributed to the re-establishment of diplomatic relations between the parties involved. During the proceedings on preliminary objections, the Court was called upon to reject jurisdiction on the basis of non-justiciability; the Court took the opportunity to once again re-affirm its judicial role and clarify the dispute between the parties. Even when the subject-matter of the dispute is confined to whether there exists an obligation to negotiate access to the sea, the Court's judgment on the merits can help to clarify matters between the Parties, and provide a path forward.

## Notes

1. "Case Concerning the Obligation to Negotiate in Good Faith, Preliminary Objection (Bolivia v. Chile)," *International Court of Justice*, September 24, 2015 ("Preliminary Objections Judgment").

2. "Preliminary Objections Judgment," *supra* note 1, paragraph 34.
3. "American Treaty on Pacific Settlement (The 'Pact of Bogotá')," *Organization of American States*, April 30, 1948, Article XXXIII ("Pact of Bogotá").
4. "Preliminary Objections Judgment," *supra* note 1, paragraph 54.
5. "United Nations Convention on the Law of the Sea," *United Nations Division for Ocean Affairs and the Law of the Sea*, December 10, 1982, [http://www.un.org/depts/los/convention\\_agreements/convention\\_declarations.htm](http://www.un.org/depts/los/convention_agreements/convention_declarations.htm), accessed June 16, 2015 ("UNCLOS").
6. Natalie Klein, "The Effectiveness of the UNCLOS Dispute Settlement Regime: Reaching for the Stars?," *American Society of International Law* 108 (2014), p. 363.
7. Samuel Pyeatt Menefee, "The Oar of Odysseus": Landlocked and 'Geographically Disadvantaged' States in Historical Perspective," *California Western International Law Journal* 23(1) (1992), p. 1-65.
8. James L Kateka, *Landlocked Developing Countries and the Law of the Sea*, cited in Isabelle Buffard et al., *International Law Between Universalism and Fragmentation: Festschrift in Honour of Gerhard Hafner* (Leiden, NL: Martinus Nijhoff Publishers, 2008), p. 771.
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10. Boleslaw Adam Boczek, *International Law: A Dictionary* (Lanham, MD: Rowman & Littlefield, 2005), p. 294.
11. "UNCLOS," *supra* note 5, Preamble.
12. *Ibid.* Article 125.
13. *Ibid.*
14. *Ibid.*
15. "Chile and Bolivia's Access to the Sea. Myth and Reality," *Chilean Ministry of Foreign Affairs*, June 2014, [http://www.mitoyrealidad.cl/mitoyrealidad/site/artic/20141230/asocfile/20141230145007/uv\\_congreso\\_av\\_ggg\\_0000\\_pro\\_1.pdf](http://www.mitoyrealidad.cl/mitoyrealidad/site/artic/20141230/asocfile/20141230145007/uv_congreso_av_ggg_0000_pro_1.pdf), accessed May 10, 2017.
16. "UNCLOS," *supra* note 5, "Declarations and Statements," *United Nations Division for Ocean Affairs and the Law of the Sea*, December 10, 1982, [https://www.un.org/depts/los/convention\\_agreements/convention\\_declarations.htm#Bolivia%20Upon%20signature.](https://www.un.org/depts/los/convention_agreements/convention_declarations.htm#Bolivia%20Upon%20signature.), accessed May 30, 2015.
17. "Landlocked States," *supra* note 9.
18. Country of Bolivia, "Obligation to Negotiate Access to the Pacific Ocean, Written Statement of Bolivia (Bolivia vs. Chile)," *International Court of Justice*, November 7, 2014, <http://www.icj-cij.org/docket/files/153/18622.pdf>, accessed April 1, 2015.
19. The Ministry of Foreign Affairs of Bolivia, *The Book of the Sea* (Bolivia: 2014), p. 125.
20. *Ibid.* p. 127.
21. H. Lauterpracht, "The Doctrine of Non-Justiciable Disputes in International Law," *Economica* 24 (1928), p. 277-317, <https://doi.org/10.2307/2548052>.
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