



ESTADO PLURINACIONAL DE BOLIVIA

Embajada La Haya – Países Bajos

BOLIVIA'S COMMENTS ON CHILE'S REPLY

TO JUDGE OWADA'S QUESTION

1. Bolivia hereby respectfully submits its comments to Chile's 13 May 2015 reply to Judge Owada's question to the parties. Chile's reply merely repeats its argument that the 1904 Treaty is allegedly irreconcilable with an obligation to negotiate sovereign access to the Pacific Ocean. As Bolivia has explained, this objection fails to distinguish between negotiations and their final results; it both misrepresents, and attempts to refute, Bolivia's case on the merits.
2. As set forth in the Memorial¹, the parties agreed to negotiate *for the purpose of finding a modality that would grant Bolivia a sovereign access to the sea.*
3. With regard to the possible modalities of sovereign access, Chile's reply is misleading. It makes various references to "territorial cession" in Bolivia's Memorial, but fails to mention that all of these references are either from Chile's own unilateral declarations or its repeated agreements with Bolivia to negotiate sovereign access. Chile's response does nothing more than confirm what it agreed to on successive occasions, although the existence and specific content of that agreement is clearly a matter for the merits.
4. Chile's reply invokes paragraphs 361, 410, 411, 445, 483, 484, and 486 of Bolivia's Memorial without recognizing that these simply reproduce verbatim or otherwise refer to the express terms of Chile's own declarations or its agreements with Bolivia concluded independently of the 1904 Treaty. For example, with regard to the 1950 Exchange of Notes, paragraph 362 refers to the 20 June 1950 Note of the Chilean Minister of Foreign Affairs. This Note expressly recognized the 1895 Transfer Treaty, the 1920 Act, Chile's Note of 1923, the 1926 Kellogg proposal and Matte Memorandum, and declarations of the Chilean President between 1946 and 1949, as "important precedents, that identify a clear policy direction of the Chilean Republic".² Furthermore, Chile's 1950 Note expressly declared that consistent with these prior agreements, Chile "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".³The

¹ See Memorial, pars. 238, 487, and 498.

² See Memorial, pars. 364-369.

³ Memorial, Vol. II, Annex 109(B).



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terms of the 1950 Agreement were subsequently repeated and confirmed by Chile in the 10 July 1961 Memorandum.⁴

5. There can be no doubt from the 1950 Note that Chile has agreed: (a) to negotiate Bolivia's "own" and "sovereign" access to the sea; and (b) that the object of the negotiations is "finding a formula" that will make this possible⁵. The definition of the specific contents of sovereign access therefore, is to be determined by a "formula" or modality to be agreed upon by the parties, this being the purpose of the negotiations.

6. This is consistent with the unanimous OAS resolutions, such as resolution N° 686 (XIII-0/83) (1983), which was adopted with Chile's support⁶ and calls for "a formula for giving Bolivia a sovereign outlet to the Pacific Ocean, on bases that take into account mutual conveniences, rights and interests of all parties involved"⁷. Again, the OAS resolution confirms that the purpose of negotiations is to find a "formula" that defines the specific content of a sovereign access which could be expressed through various modalities and must emerge from the negotiation between the parties.

7. By directly linking Judge Owada's question to paragraphs 32(a) and 32(c) of Bolivia's Application, and paragraphs 500(a) and (c) of the Request for Relief in its Memorial, Chile leaves no doubt that its objection to jurisdiction asks for a determination of the merits.

8. The argument set forth by Chile in the last paragraph of its reply to Judge Owada's question expressing that "Bolivia seeks a ruling that compels Chile to grant Bolivia a sovereign access to the Pacific Ocean" is untrue. What Bolivia asks the Court is to declare that Chile is under the obligation to negotiate with Bolivia in order to reach an Agreement that grants Bolivia a sovereign access to the sea independently of the 1904 Treaty.

⁴ Memorial Vol. II, Annex 24.

⁵ See Memorial, Vol. II, Annex 109 and 109 (B)

⁶ See Memorial, par.173.

⁷ See Memorial, Vol. II Annex 195.