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Zach J. Kleiman

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THE LONG, NOT-SO PACIFIC STRUGGLE FOR THE COAST: A BORDER DISPUTE BETWEEN CHILE AND BOLIVIA

Zach J. Kleiman

IN the midst of contentious litigation before the International Court of Justice (ICJ), tensions between the countries of Bolivia and Chile are at an all-time high.¹ The dispute is a culmination of over a century of affairs between the countries: one war,² multiple delineations,³ several treaties,⁴ and countless fights over valuable, natural resources.⁵ But ultimately, this case is a fight about the invaluable sovereign access to the Pacific Ocean, which Bolivia has lost over the years.⁶ In short, Bolivia contends that the actions of various Chilean authorities created an obligation for Chile to negotiate a sovereign access to the Pacific for Bolivia.⁷ Chile, on the other hand, claims that the ICJ does not have jurisdiction over this case because the subject of the dispute is settled and governed by a prior treaty.⁸ On September 24, 2015, the Court denied Chile's contention that the ICJ lacked jurisdiction, and thus, the case will be heard on the merits.⁹ This case has tremendous implications on international law as a whole, but the consequences for the respective countries are immeasurable.¹⁰

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1. *Obligation to Negotiate Access to the Pacific Ocean (Bol. v. Chile)*, Application, 1 (April 24, 2013), available at <http://www.icj-cij.org/docket/files/153/17338.pdf>.
 2. *Bolivia/Chile Pacific Access*, COUNCIL ON HEMISPHERIC AFFAIRS, 14-17 (June 24, 2011), http://www.coha.org/boliviachile-pacific-access/#_ftn1.
 3. *Id.* at 6, 16.
 4. *Id.* at 5, 7, 15.
 5. *Id.* at 4.
 6. *Obligation to Negotiate Access to the Pacific Ocean*, Application at ¶ 1.
 7. *Id.* at ¶ 31.
 8. *Obligation to Negotiate Access to the Pacific Ocean (Bol. v. Chile)*, Preliminary Objection, ¶1.1 (July 15, 2014), available at <http://www.icj-cij.org/docket/files/153/18616.pdf>.
 9. *Obligation to Negotiate Access to the Pacific Ocean (Bol. v. Chile)*, Judgment, ¶54 (September 24, 2015), available at <http://www.icj-cij.org/docket/files/153/18746.pdf>.
 10. *Bolivia's Claim to the Sea: What's at Stake and Why it Matters*, TELESUREGLISH, (May 5, 2015), <http://www.telesurtv.net/english/analysis/Bolivias-Claim-to-the-Sea-Whats-at-Stake-and-Why-it-Matters-20150505-0010.html>.

I. UNDERSTANDING HOW THE DISPUTE CAME TO BE

A. HISTORY OF CHILEAN-BOLIVIAN RELATIONS

In order to appreciate the significance of this case, one must first understand the history of the region, as well as the enduring, salty relationship between Bolivia and Chile. It is a long and convoluted history, so this note will only focus on the key events.¹¹

When Bolivia first gained its independence in 1825, it had direct access to the Pacific Ocean, with a coastline stretching more than 400 kilometers long¹² by means of what is now known as the Atacama Desert.¹³ But, because of vast natural resources located in this coastal region, especially guano, which was used for fertilizer and gunpowder, the region was highly sought after by the surrounding countries.¹⁴ Eventually, despite efforts between Chile and Bolivia to agree upon how the land should be treated, the Bolivian Congress increased taxes on all nitrate miners,¹⁵ and threatened to seize and auction Chilean assets if the tax was not paid.¹⁶ When the tax was not paid, the Bolivian government did just that, starting what is known as the War of the Pacific.¹⁷ This four year war, in which Chile dominated both Peru and Bolivia, came to a conclusion with the signing of two treaties: the 1883 Treaty of Ancón with Peru and the 1884 Truce of Valparaíso with Bolivia, which handed over Bolivia's coastal territory to Chile.¹⁸

More importantly, in 1904, Chile and Bolivia signed the Treaty of Peace and Amity (1904 Peace Treaty), which re-affirmed and cemented aspects of the 1884 Treaty, and permanently surrendered all of Bolivia's coastal territory in exchange for various conditions.¹⁹ Specifically, Chile would build a railway from La Paz to the Port of Arica at its own expense,²⁰ incur various financial obligations of Bolivia,²¹ pay the Bolivian government a sum of cash,²² give Bolivia the right to establish customs agencies in designated ports,²³ and offer in perpetuity "the fullest and most unrestricted right of commercial transit in its territory and its Pacific ports."²⁴ Since Bolivia signed this treaty, surrendering the land it had

11. *Bolivia/Chile Pacific Access*, *supra* note 2.

12. *Obligation to Negotiate Access to the Pacific Ocean*, Application at ¶ 9.

13. *Bolivia/Chile Pacific Access*, *supra* note 2 at 1.

14. *Beaches of the Future?*, *THE ECONOMIST* (May 9, 2015), <http://www.economist.com/news/americas/21650578-south-american-border-dispute-has-implications-international-law-beaches-future>.

15. *Id.*

16. *Bolivia/Chile Pacific Access*, *supra* note 2 at 14.

17. *Id.*

18. *Id.* at 16.

19. *Obligation to Negotiate Access to the Pacific Ocean (Bol. v. Chile)*, Preliminary Objection, 139 (July 15, 2014), available at <http://www.icj-cij.org/docket/files/153/18616.pdf>.

20. *Id.* at 145.

21. *Id.* at

22. *Id.*

23. *Id.*

24. *Id.* at 147.

worked so hard to protect, the Bolivian government has tried to convince Chile to open talks about granting Bolivia sovereign access to the sea.²⁵ These efforts, which resulted in various exchanges and declarations of Chilean officials, are the basis of Bolivia's claim before the ICJ. Bolivia contends that these actions created an obligation for Chile to negotiate, separate and independent from the 1904 Peace Treaty.²⁶

B. ECONOMIC IMPACT OF BEING LANDLOCKED

The crippling effects of being landlocked led Bolivia to adamantly argue that it has a legal right to part of the coastal region of South America.²⁷ Most notably is the impact the geographic disposition has on trade.²⁸ Since Bolivia became landlocked, the country has been forced to rely on roadway infrastructure rather than more efficient, maritime systems.²⁹ According to the U.N. Economic Commission for Latin America and the Caribbean, only 7.1 percent of Bolivia's roads are paved, which illustrates why Bolivia was rated as having the second worst infrastructure in South America.³⁰ According to the 2013 Global Enabling Trade Report, Bolivia ranked eighty-seven out of one-hundred and thirty-eight in the Enabling Trade Index, which carefully takes into account market access, border administration, infrastructure, and operating environment.³¹ Chile, on the other hand, ranked eighth.³² Imports in Bolivia take twice as long as those in Chile, and cost over \$800 more per container, while exports take about a week longer in Bolivia, and cost \$510 more per container.³³ Chile faces the lowest average tariff in the world at 3.5 percent, while Bolivia pays an average tariff of 4.9 percent.³⁴

The two most problematic factors Bolivia faces in importing goods are corruption at the border and high tariffs,³⁵ issues that are almost certainly impacted by being landlocked. As one might imagine, having direct access to a coastline simplifies logistics and thus, can lower costs.³⁶ Bo-

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25. *Obligation to Negotiate Access to the Pacific Ocean (Bol. v. Chile)*, Application, ¶17 (April 24, 2013), *available at* <http://www.icj-cij.org/docket/files/153/17338.pdf>.
 26. *Obligation to Negotiate Access to the Pacific Ocean (Bol. v. Chile)*, Written Statement of the Plurinational State of Bolivia on the Preliminary Objection to Jurisdiction Filed by Chile, ¶ 7 (Nov. 7, 2014), *available at* <http://www.icj-cij.org/docket/files/153/18622.pdf>.
 27. The World Bank, *Landlocked Countries: Higher Transport Costs, Delays, Less Trade* (June 16, 2008), <http://www.worldbank.org/en/news/feature/2008/06/16/landlocked-countries-higher-transport-costs-delays-less-trade>.
 28. *Id.*
 29. *Bolivia's Claim to the Sea: What's at Stake and Why it Matters*, TELESUREGLISH, (May 5, 2015), <http://www.telesurtv.net/english/analysis/Bolivias-Claim-to-the-Sea-Whats-at-Stake-and-Why-it-Matters-20150505-0010.html>.
 30. *Id.*
 31. World Economic Forum, *Global Enabling Trade Report 2014* 76 (Margareta Drzeniek Hanouz et al. eds., 2014).
 32. *Id.* at 98.
 33. *Id.* at 77, 99.
 34. *Id.*
 35. *Id.* at 76.
 36. *Id.* at 36.

livia's logistics costs are 31% higher than the regional average.³⁷ Although it may not be the only reason, it is hard to believe that Chile's vast access to the border is not somewhat responsible for this great disparity in trade between the two countries.

C. ACTIONS AND EVENTS SUPPORTING BOLIVIA'S CLAIM

Bolivia's argument can only be understood by examining the specific exchanges and actions that Bolivia contends created this obligation to open negotiations. First, in 1950, replying to a note from the Bolivian government urging Chile to consider entering negotiations, Chile responded, "my Government . . . is willing to formally enter into a direct negotiation aiming at finding the formula which would make it possible to grant Bolivia an own and sovereign access to the Pacific Ocean. . . ."³⁸ Furthermore, in 1975, the President of Chile and Bolivia signed the Joint Declaration of Charaña, which, in part, included an agreement to "continue with the dialogue on different levels to find formulas for solving vital issues. . . such as the one relating to the confinement affecting Bolivia. . . ."³⁹ Finally, evidenced by the minutes of various diplomatic meetings between Chile and Bolivia, the countries confirmed that they would continue the mutual trust that apparently was achieved in prior meetings in order to "propose how to reach concrete, feasible, and useful solutions during the next and successive meetings. . . ."⁴⁰

Despite these events, Chile adamantly denies Bolivia's claim of a right to sovereign access to the sea and even alleges that there are no pending issues between Bolivia and Chile.⁴¹ The fundamental disagreement about whether these events between the two countries created an obligation for Chile to negotiate sovereign access to the Pacific with Bolivia is the basis of Bolivia's claim before the ICJ.⁴²

II. INTERNATIONAL COURT OF JUSTICE PROCEEDINGS

A. OVERVIEW

After decades of attempting to persuade Chile to open negotiations, Bolivia decided to take another route. On April 24, 2013, Bolivia filed an Application Instituting Proceedings before the International Court of Justice, contending that (1) Chile has an obligation to negotiate an agreement granting Bolivia sovereign access to the Pacific Ocean; (2) Chile breached that obligation; and therefore, (3) Chile must perform this obli-

37. Martin De Angelis, *Chile-Bolivia Land Dispute has long-term Implications for Mining and Gas*, GLOBAL RISK INSIGHTS (May 22, 2015), <http://globalriskinsights.com/2015/05/chile-bolivia-land-dispute-has-long-term-implications-for-mining-and-gas>.

38. *Obligation to Negotiate Access to the Pacific Ocean* (Bol. v. Chile), Application, ¶18 (April 24, 2013), available at <http://www.icj-cij.org/docket/files/153/17338.pdf>.

39. *Id.* at 39.

40. *Id.* at 58.

41. *Obligation to Negotiate Access to the Pacific Ocean*, Application at ¶ 29.

42. *Id.* at ¶ 1.

gation promptly, and in good faith.⁴³ In response, Chile claimed that the ICJ does not have jurisdiction over the case pursuant to Article VI of the Pact of Bogatá.⁴⁴ In its application, Bolivia points to Article XXXI of the Pact of Bogatá in order to invoke ICJ jurisdiction.⁴⁵ Article XXXI states that the ICJ shall have jurisdiction over disputes between participating parties that arise from: “(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; and (d) the nature or extent of the reparation to be made for the breach of an international obligation.”⁴⁶ Bolivia claimed jurisdiction is proper under Article XXXI (b)-(d) because the dispute was regarding an obligation *separate* from the 1904 Treaty, and was a question of international law about the existence and consequences of a breach of an international obligation.⁴⁷ But, Chile focused on Article VI of the Pact of Bogatá, an exception clause that states:

“The aforesaid procedures, furthermore, 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.*”⁴⁸

So, Chile argued that the subject matter of the case was territorial sovereignty and the character of Bolivia’s access to the Pacific Ocean, and that these issues were matters governed by the 1904 Peace Treaty, and therefore, were excluded from the jurisdiction of the ICJ under Article VI of the Pact of Bogatá.⁴⁹ Bolivia responded to the objection, arguing that Chile mischaracterized the subject matter in Bolivia’s application, and that the dispute was not about revisiting or amending content of the 1904 Peace Treaty, but it was a completely separate and independent issue: whether or not Chile’s subsequent actions created an obligation independent of any prior treaty.⁵⁰

Thus, the court’s decision on the objection rested on a single issue: the subject matter of the case.⁵¹ If, as Chile argued, the subject of the case

43. *Id.* at ¶ 32.

44. Obligation to Negotiate Access to the Pacific Ocean (Bol. v. Chile), Preliminary Objection, ¶1.2 (July 15, 2014), *available at* <http://www.icj-cij.org/docket/files/153/18616.pdf>.

45. Obligation to Negotiate Access to the Pacific Ocean, Application at ¶ 5.

46. Obligation to Negotiate Access to the Pacific Ocean, Preliminary Objection at 237.

47. Obligation to Negotiate Access to the Pacific Ocean (Bol. v. Chile), Written Statement of the Plurinational State of Bolivia on the Preliminary Objection to Jurisdiction Filed by Chile, ¶ 22 (Nov. 7, 2014), *available at* <http://www.icj-cij.org/docket/files/153/18622.pdf>.

48. Obligation to Negotiate Access to the Pacific Ocean, Preliminary Objection at 23 (emphasis added).

49. *Id.* at ¶ 1.1.

50. Obligation to Negotiate Access to the Pacific Ocean Written Statement of Bolivia at ¶ 22.

51. *See* Obligation to Negotiate Access to the Pacific Ocean (Bol. v. Chile), Judgment, ¶24 (September 24, 2015), *available at* <http://www.icj-cij.org/docket/files/153/18746.pdf>.

were territorial sovereignty and the character of Bolivia's access to the Pacific Ocean, the Court would then determine if those issues were governed by the Peace Treaty of 1904.⁵² If the court concluded that they were, then the Court would not have jurisdiction. But, if the subject matter was Chile's separate obligation to negotiate Bolivia's sovereign access to the Pacific in light of past exchanges between Chile and Bolivia, a subject not mentioned in the Peace Treaty of 1904, then Article VI does not apply, and jurisdiction would be proper.⁵³

In the judgment issued on September 24, 2015, the ICJ tackled two issues: (1) the subject matter of the dispute, and (2) whether or not that matter is precluded by Article VI of the Pact of Bogotá.⁵⁴ Agreeing with Bolivia, the Court held that the subject matter of the dispute was whether Chile is obligated to negotiate Bolivia's access to the Pacific, and in the case there is an obligation, whether it was breached.⁵⁵ The Court then went on to explain that the "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."⁵⁶ Thus, Chile's objection to jurisdiction was denied and the case will proceed on the merits.⁵⁷

It is important to make a distinction between this holding and the hearing of the case on its merits. The procedural proceeding decided whether the specific issue, not the overall goal of the claim, was governed by a former treaty, in order to determine whether the ICJ could even hear the case.⁵⁸ The Court did not address, as it surely will when hearing the case on its merits, whether or not the *outcome* of the issue will contradict principles already established by the 1904 Peace Treaty.⁵⁹ A holding that the 1904 Peace Treaty does not cover the subject matter of Bolivia's claim simply prevents dismissal of the case, and is separate from the notion that the outcome of that claim could contradict express provisions of the Treaty itself.

B. INTERNATIONAL COURT OF JUSTICE PRECEDENT AS A PREDICTOR

The International Court of Justice has dealt with issues similar to the issue at hand, and therefore, it may be telling to examine these prior cases to trace any tendencies or trends of the ICJ on analogous issues.⁶⁰ In 1962, the ICJ heard a border dispute between present-day Cambodia and Thailand where each country claimed that the Temple of Preah Vihear

52. *Id.*

53. *Id.* at ¶ 50.

54. *Id.*

55. *Obligation to Negotiate Access to the Pacific Ocean*, Judgment at ¶ 34.

56. *Id.* at ¶ 50.

57. *Id.* at 54.

58. *See* *Obligation to Negotiate Access to the Pacific Ocean*, Judgment at ¶ 54.

59. *Id.* at ¶ 32.

60. Andrés Guzmán Escobari, *Bolivia's Reasonably Strong ICJ Case Against Chile*, OPINIO JURIS (March 21, 2014), <http://opiniojuris.org/2014/03/21/bolivias-reasonably-strong-icj-case-chile/>.

resided on its territory.⁶¹ Under a previous treaty, the exact delineation was to be established by a Franco-Siamese Mixed Commission, but because this Commission apparently made no record of their findings, Cambodia relied on a map made in the final delimitation stage when various French officials (some on the Commission) produced maps of the disputed areas.⁶² Cambodia relied on this map, which illustrated the temple as being on the Cambodian side of the border, for its claim of sovereignty over the coveted sanctuary, while Thailand contended that, because this map was not the work of the Commission, it had no binding effect under the treaty.⁶³

The court held that, even though the map was not binding at its creation, it became binding due to the subsequent unilateral actions of Thailand.⁶⁴ Because Thai authorities had no adverse reaction for many years, they seemingly accepted this map as true.⁶⁵ The Court also reasoned that Thailand's continued use and even publishing of maps depicting the temple on Cambodian territory further supported Cambodia's contention that a map not created by the Commission nonetheless effectively established the border.⁶⁶ Interestingly, the ICJ does have a history of upholding obligations created by the conduct of governmental officials.⁶⁷

In a 1974 case between New Zealand and France, New Zealand argued that various declarations and letters of French officials created an obligation to terminate nuclear tests in the South Pacific after the completion of a series of tests.⁶⁸ The office of the President of France conveyed to New Zealand that, "in view of the stage reached in carrying out the French nuclear defence programme France will be in a position to pass on to the stage of underground explosions as soon as the series of tests planned for this summer is completed".⁶⁹ France argued that these statements simply left open the possibility to cease testing, but the Court concluded that it must "form its own view of the meaning and scope intended to be given to these unilateral declarations."⁷⁰ Considering this, the Court determined that "[i]t is well recognized that declarations made by way of unilateral acts, concerning legal or factual situations, may have the effect of creating legal obligations," and therefore held that this statement, along

61. Temple of Preah Vihear (Cambodia v. Thailand), Summary of the Summary of the Judgment, 58 (June 15, 1962), available at <http://www.icj-cij.org/docket/index.php?sum=284&p1=3&p2=3&case=45&p3=5>.

62. *Id.* at 59.

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.*

67. Andrés Guzmán Escobari, *Bolivia's Reasonably Strong ICJ Case Against Chile*, OPINIO JURIS (March 21, 2014), <http://opiniojuris.org/2014/03/21/bolivias-reasonably-strong-icj-case-chile/>.

68. Nuclear Tests (New Zealand v. France), Summary of the Summary of the Judgment (December 20, 1974), available at <http://www.icj-cij.org/docket/?sum=317&code=nzf&p1=3&p2=3&case=59&k=6b&p3=5>.

69. *Id.* at 99.

70. *Id.*

with the statement of other officials, created a binding obligation to hold no further tests in the South Pacific.⁷¹

Previous ICJ cases illustrate the Court's willingness to uphold obligations created by the unilateral conduct of one nation's officials,⁷² even if the outcome contradicts a prior treaty.⁷³ This history works in the favor of Bolivia, but there are distinctions.⁷⁴ Because of the unique set of facts in the Temple of Preah Vihear case, the proposition that an obligation can stand even if it contradicts a treaty may not be applicable in this case.⁷⁵ In the Temple of Preah Vihear case, it was nearly impossible to abide by the treaty's requirement that a joint Commission establish the border because the Commission failed to document findings, and thus, the court was left with little choice but to interpret past dealings and conduct of the two countries in order to establish the proper borders.⁷⁶ But, the concept of contradicting a treaty may not be of immediate concern in the present case, as the court determined that the 1904 Peace Treaty did not establish that unilateral actions could create separate obligations.⁷⁷ This issue may come into play once the Court hears the case on the merits, because forcing Chile to negotiate access in "good faith" may inherently contradict the treaty of 1904, which granted Chile the territory in perpetuity.⁷⁸

The analysis in the 1974 Nuclear Tests case is more promising for Bolivia, however.⁷⁹ The ICJ focuses on making its *own* determination of the meaning and scope of unilateral acts, and holds that the declarations, which are very similar to ones made by Chile, did, in fact, create a legal obligation.⁸⁰ A long history of treaties, wars, and distrust between the two countries adds an extra layer that was not present in the previously mentioned ICJ cases.⁸¹ Examining former holdings and analyses of the ICJ shows that the Court is willing to hold officials accountable for their

71. *Id.*

72. Nuclear Tests, *supra* note 81.

73. Temple of Preah Vihear (Cambodia v. Thailand), Summary of the Summary of the Judgment (June 15, 1962), available at <http://www.icj-cij.org/docket/index.php?sum=284&p1=3&p2=3&case=45&p3=5>.

74. *See id.*; Obligation to Negotiate Access to the Pacific Ocean (Bol. v. Chile), Application, ¶18 (April 24, 2013), available at <http://www.icj-cij.org/docket/files/153/17338.pdf>.

75. Temple of Preah Vihear, *supra* note 73.

76. *See id.*

77. Obligation to Negotiate Access to the Pacific Ocean (Bol. v. Chile), Judgment, ¶49 (September 24, 2015), available at <http://www.icj-cij.org/docket/files/153/18746.pdf>.

78. Obligation to Negotiate Access to the Pacific Ocean (Bol. v. Chile), Preliminary Objection, 147 (July 15, 2014), available at <http://www.icj-cij.org/docket/files/153/18616.pdf>.

79. *See* Nuclear Tests (New Zealand v. France), Summary of the Summary of the Judgment (December 20, 1974), available at <http://www.icj-cij.org/docket/?sum=317&code=nzf&p1=3&p2=3&case=59&k=6b&p3=5>.

80. *Id.*; Obligation to Negotiate Access to the Pacific Ocean (Bol. v. Chile), Application, ¶18 (April 24, 2013), available at <http://www.icj-cij.org/docket/files/153/17338.pdf>.

81. *See Bolivia/Chile Pacific Access*, COUNCIL ON HEMISPHERIC AFFAIRS, 14-17 (June 24, 2011), http://www.coha.org/boliviachile-pacific-access/#_ftn1.

unilateral actions-but will distinctions in this case inhibit the ICJ from doing the same?

III. LEGAL AND ECONOMIC IMPLICATIONS OF THE CASE

A. IMPLICATIONS IF THE COURT RULES IN FAVOR OF BOLIVIA

1. *Legal Implications*

The legal implications could be far reaching if the ICJ rules that Chile's actions have, in fact, created an obligation to negotiate access to the Pacific.⁸² A distinction must be made, however.⁸³ There is a difference between the obligation to negotiate, and the obligation to grant sovereign access.⁸⁴ An obligation to negotiate does not necessarily mean that Chile *must* allocate its coastal land; it just suggests that the countries must partake in good faith negotiations, which may or may not lead to transfer in land.⁸⁵ The Court held that Bolivia's Application "does not ask the Court to adjudge and declare that Bolivia has a right to sovereign access."⁸⁶ Even so, a holding that would force these negotiations is precarious because it risks setting a precedent that may deflate the power of all international treaties.⁸⁷ Countries may be less inclined to enter into international treaties if they know that subsequent events may lead to obligations that change the nature of the terms.⁸⁸

Regardless of what the Court suggests, if Chile is forced to negotiate sovereign, coastal access to Bolivia, it will directly contradict the 1904 Peace Treaty, which gave Chile ownership of the coastline *in perpetuity*.⁸⁹ Treaties are incredibly powerful tools that promote peace and diplomacy between countries around the world; diminishing this power could have a detrimental effect on foreign relations.⁹⁰ Countries could manipulate their way into reneging parts of long-established treaties that may be unfavorable to them.

Just as important, if the Court holds that Bolivia has the right to negotiations for part of Chile's coastal territory established in a previous treaty, countries would have a disincentive to participate in meaningful and pro-

82. *Bolivia's Claim to the Sea: What's at Stake and Why it Matters*, TELESUREGLISH, (May 5, 2015), <http://www.telesurtv.net/english/analysis/Bolivias-Claim-to-the-Sea-Whats-at-Stake-and-Why-it-Matters-20150505-0010.html>.

83. See *Obligation to Negotiate Access to the Pacific Ocean (Bol. v. Chile)*, Judgment, ¶32 (September 24, 2015), available at <http://www.icj-cij.org/docket/files/153/18746.pdf>.

84. *See id.*

85. *See id.*

86. *See id.*

87. *What is at Stake*, MYTH AND REALITY, <http://www.mitoyrealidad.cl/what-is-at-stake/mitoyrealidad/2014-12-19/143038.html> (last visited Nov. 3, 2015).

88. *See id.*

89. *Obligation to Negotiate Access to the Pacific Ocean (Bol. v. Chile)*, Preliminary Objection, 147 (July 15, 2014), available at <http://www.icj-cij.org/docket/files/153/18616.pdf>.

90. *See What is at Stake*, *supra* note 87.

ductive conversations.⁹¹ Bolivia's argument is that exchanges between the two countries are the foundation of this obligation.⁹² Thus, if countries may be penalized for engaging in diplomatic discussions about improving the countries relations, why would they bother?⁹³ Discouraging constructive, international conversations is a dangerous precedent to set, and the Court may be doing just that if it forces Chile to negotiate a matter that is already established.

2. Economic Implications

The economic impact of a holding in favor of Bolivia could be significant. But, if the court merely holds that an obligation to *negotiate* exists, it doesn't guarantee sovereign access for Bolivia.⁹⁴ Even this has powerful economic implications, as future litigation costs could run rampant, as a court would likely supervise the process. The negotiation could potentially be more complicated than the current litigation.

Furthermore, a forced negotiation between the two countries would likely tarnish the already unhealthy relationship between the two, which could lead to drastic, and even irrational behavior by either country. But, if sovereignty were granted through negotiations, the effects would be monumental.⁹⁵ As previously discussed, the geographic constraints that Bolivia is subject to is likely a reason for many of the trade issues Bolivia is forced to endure.⁹⁶ With sovereign access to the coast, these concerns would be diminished significantly, as it would allow Bolivia to decrease its reliance on outdated and inefficient infrastructure and allow the country to develop new economic sectors like fishing to boost its economy.⁹⁷

Additionally, Chile has become reliant on imported liquefied natural gas (LNG) as a power source, and therefore, constructed various pipelines and terminals throughout the country.⁹⁸ Sovereign access to the sea gained through negotiation would "necessarily include pipelines of LNG ports."⁹⁹ Even more dramatic, if the Court rules that the two must negotiate to restore part of the Antofagasta territory that Bolivia once ob-

91. *Id.*

92. Obligation to Negotiate Access to the Pacific Ocean (Bol. v. Chile), Application, ¶31 (April 24, 2013), available at <http://www.icj-cij.org/docket/files/153/17338.pdf>.

93. See *What is at Stake*, *supra* note 87.

94. See Obligation to Negotiate Access to the Pacific Ocean (Bol. v. Chile), Judgment, ¶32 (September 24, 2015), available at <http://www.icj-cij.org/docket/files/153/18746.pdf>.

95. *Bolivia's Claim to the Sea: What's at Stake and Why it Matters*, TELESUREGLISH, (May 5, 2015), <http://www.telesurtv.net/english/analysis/Bolivias-Claim-to-the-Sea-Whats-at-Stake-and-Why-it-Matters-20150505-0010.html>.

96. See World Economic Forum, *Global Enabling Trade Report 2014* 77-79 (Margareta Drzeniek Hanouz et al. eds., 2014).

97. *Bolivia's Claim to the Sea: What's at Stake and Why it Matters*, *supra* note 95.

98. Martin De Angelis, *Chile-Bolivia Land Dispute has long-term Implications for Mining and Gas*, GLOBAL RISK INSIGHTS (May 22, 2015), <http://globalriskinsights.com/2015/05/chile-bolivia-land-dispute-has-long-term-implications-for-mining-and-gas/>.

99. *Id.*

tained, it “would effective[ly] cut Chile in half.”¹⁰⁰ Also, because Bolivia used to occupy the land that borders present-day Chile and Peru, “Chile could lose its border with Peru and forever modify its foreign, military, and commercial relations with one of its top trade partners.”¹⁰¹

B. IMPLICATIONS IF THE COURT RULES IN FAVOR OF CHILE

1. *Legal Implications*

If the Court rules in favor of Chile, negotiations will not be entered into and Bolivia will be denied the possibility of sovereign access to the Pacific. One problem that could arise from this holding is that it could devalue the words and actions of governmental authorities; they would have hardly any meaning at all.¹⁰² If statements and declarations hold no weight when there is a treaty in place, countries would be inclined to say and do anything that may benefit them, regardless if they intend to stand true.¹⁰³ Declarations, like the one entered into between Bolivia and Chile, would be meaningless.¹⁰⁴ But, this is only the case if the end goal of the conversations or actions is a matter that is already established and governed by a previous treaty.¹⁰⁵ This ruling would not suggest that all agreements and statements that countries have are inconsequential, just ones about matters that are already cemented by a treaty.¹⁰⁶ In any legal system, there must be hierarchy of law, and it makes sense that an international treaty would trump the actions of a country’s officials.

2. *Economic Implications*

Status quo will be maintained if the ICJ rules in favor of Chile. This would be a detrimental blow to Bolivia’s hope of increasing trade efficiency and catalyzing a struggling economy.¹⁰⁷ But, although Bolivia would not have *sovereign* access to the Pacific Ocean, the Peace and Friendship Treaty requires Chile to grant “the broadest freedom of commercial transit through its territory and the ports of the Pacific.”¹⁰⁸ Thus, Bolivia is privy to special treatment that most landlocked countries do

100. *Id.*

101. *Id.*

102. See Roxana Forteza, *International Law Back Return of Lost Territory*, PANAMPPOST (May 27, 2015), <https://panampost.com/editor/2015/05/27/should-chile-grant-bolivia-sovereign-access-to-the-sea/>.

103. *Id.*

104. *Obligation to Negotiate Access to the Pacific Ocean (Bol. v. Chile)*, Application, ¶31 (April 24, 2013), available at <http://www.icj-cij.org/docket/files/153/17338.pdf>.

105. See *Obligation to Negotiate Access to the Pacific Ocean (Bol. v. Chile)*, Judgment, ¶54 (September 24, 2015), available at <http://www.icj-cij.org/docket/files/153/18746.pdf>.

106. See *id.*

107. *Bolivia’s Claim to the Sea: What’s at Stake and Why it Matters*, *supra* note 95.

108. *Obligation to Negotiate Access to the Pacific Ocean (Bol. v. Chile)*, Preliminary Objection, ¶ 3.39 (July 15, 2014), available at <http://www.icj-cij.org/docket/files/153/18616.pdf>.

not enjoy.¹⁰⁹ For example, Bolivian goods can remain in the primary zones of various Chilean ports for as much as nine months longer than other countries, and enjoy free storage services for up to a year for imports and sixty days for exports.¹¹⁰ Furthermore, at the port of Arica, Bolivia pays a tariff of \$.85 per ton while other countries must pay \$1.98 per ton for the same service.¹¹¹ Chilean law also establishes a tax exemption from all taxes that may affect cargo in free transit from or towards Bolivia through Chilean territory.¹¹² This special treatment may help reduce the detrimental effects of being landlocked, but it far from fixes it. A holding in favor of Chile would inhibit hopes of economic growth and prosperity for Bolivia.¹¹³

IV. CONCLUSION

The stakes are extraordinarily high, as this may be Bolivia's best chance to gain sovereign access to the Pacific Ocean and revitalize its struggling economy that is constricted by being landlocked. Bolivia faces an uphill battle, however, due to the fact that it explicitly surrendered this very land to Chile in the 1904 Peace Treaty. Bolivia's argument is that various exchanges and declarations created an obligation to negotiate access separate from the aforementioned Treaty. Unless Bolivia amends its application, the Court will merely decide whether or not an obligation to negotiate access exists. If the Court decides that the unilateral conduct and declarations of various Chilean officials created a separate, legally binding obligation, as it did in the Nuclear Test case, then Chile will only be obligated to *negotiate* and not grant access, although this could create enormous procedural complications itself. But, the Court will be faced with the difficult conundrum of whether forcing Chile to simply negotiate access inherently contradicts the Peace Treaty of 1904 by forcing Chile to put forth a good faith effort to negotiate for land that it expressly owns. The political, economic, and legal implications of the case are extreme. It is obvious why both countries are so passionate about the issue; their economy, their history, and their pride are on the line.

109. *Bolivia has Access to the Sea*, MYTH AND REALITY, <http://www.mitoyrealidad.cl/bolivia-has-access-to-the-sea/mitoyrealidad/2014-12-19/143552.html> (last visited Nov. 3, 2015).

110. *The right to store cargo for longer periods*, MYTH AND REALITY, <http://www.mitoyrealidad.cl/the-right-to-store-cargo-for-longer-periods/mitoyrealidad/2014-12-19/123704.html> (last visited Nov. 3, 2015).

111. *Preferential tariffs for the use of loading docks*, MYTH AND REALITY, <http://www.mitoyrealidad.cl/preferential-tariffs-for-the-use-of-loading-docks/mitoyrealidad/2014-12-19/123826.html> [mitoyrealidad/2015-01-12/120133.html](http://www.mitoyrealidad.cl/2015-01-12/120133.html) (last visited Nov. 3, 2015).

112. *Tax exemption applied to all Bolivia cargo in transit*, MYTH AND REALITY, <http://www.mitoyrealidad.cl/tax-exemption-applied-to-all-bolivian-cargo-in-transit/mitoyrealidad/2014-12-19/123950.html> (last visited Nov. 3, 2015).

113. *See id.*

Updates

