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Bolivia Takes Sea-Access Case against Chile to International Tribunals

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Bolivian President Evo Morales surprised South American diplomats with the unexpected announcement that Bolivia would appeal to international tribunals and organizations to break the country's landlocked status and finally, after 132 years, force Chile to restore its sovereign access to the Pacific Ocean.

Bolivia was left imprisoned in the heart of South America following the War of the Pacific (1879-1884), in which Chilean troops annihilated the Bolivian and Peruvian armies, annexing territory that had belonged to the losers since independence from the Spanish crown in the early 19th century (NotiSur, Jan. 23, 2004).

The conflict is centered on a desert and semi-desert area that contains the region's richest copper and salt deposits.

While conservative Chilean President Sebastián Piñera's administration reacted by denying the validity of Bolivia's claim, regional foreign ministries kept silent and seemed unaware that an eventual diplomatic escalation of the dispute could upset the equilibrium on a continent that has not experienced such a situation since the 1995 conflict between Ecuador and Peru regarding the Cordillera del Cóndor (NotiSur, Jan. 23, 2004) and (Oct. 30, 1998).

Morales' decision well-planned

Morales' announcement—made on Feb. 23, when the country was solemnly commemorating the Día del Mar (Day of the Sea), the anniversary of the date on which the powerful Chilean Army devastated a column of poorly armed Bolivian civilians who had no military training, pure patriots who defended what they believed were their inalienable rights—pointed to a meticulously outlined strategy.

The president began by giving a brief history of the national drama and concluded by enumerating the reasons that the country has the right to a fully sovereign access to the sea. He called on Congress to ratify certain international agreements, such as the 1948 Tratado Americano de Soluciones Pacificas, better known at the Pacto de Bogotá, by which Latin America recognized the jurisdiction of the UN and the International Court of Justice (ICJ) at The Hague, Netherlands, to address conflicts between states. After more than six decades, Bolivia has still not ratified the pact, and today it is essential that it do so because the ICJ could be the first instance for the country's action against Chile.

The executive also established the Dirección General de Reivindicación Marítima, an agency charged with preparations for future legal actions in Bolivia's maritime cause.

In his message, warmly praised by the entire country—including the principal economic groups, although not the political right—Morales said, "At this time, it is feasible and possible that
international agencies administer justice and repair damages caused to countries without the need to resort to any form of violence."

Morales added, "The international community must understand that the time has come for Bolivia's huge wound from being landlocked to be closed based on a process of historical implications and a just and accurate ruling that returns maritime access to our country."

The president strongly emphasized—saying it three times in a brief 18-minute speech—that the suit "does not mean that Bolivia is abandoning dialogue."

Dialogue with Chile began in 2006, and, thanks to an ideological affinity and good relations between Morales and former Chilean President Michele Bachelet (2003-2010), the two countries put together a 13-point agenda that expressly included Bolivia's access to the sea. It was a noble gesture by Chile, since until then the countries had not moved beyond the possibility of Bolivia acquiring use of an access corridor to the Pacific in exchange for part of its territory. Morales repeatedly insisted that "we are living in the time of dialogue, in which reasons for violence have no value for us."

**Piñera says Bolivian action is obstacle to dialogue**

By the time President Piñera reacted publically, the worst of Chilean nationalism had come to the surface, mixed with a contemptuous attitude toward Bolivians and toward Morales' indigenous ethnicity. It was noteworthy that, to draft his response, Piñera met not only—logically—with his foreign minister but also with Defense Minister Andrés Allamand, even though there was no possibility of an armed confrontation.

"President Morales' statements, including his intention to appeal to international tribunals and agencies, are a serious obstacle to relations between the two countries and do not coincide with either the letter or the spirit of the 1904 Chilean-Bolivian treaty," said Piñera. (The treaty Piñera referred ended the War of the Pacific following a cease-fire in 1884.) "Bolivia cannot in any way seek a direct and sincere dialogue while manifesting its intention to appeal to international agencies to challenge an existing treaty, and while claiming to apply constitutional norms approved by the country more than 100 years after the 1904 treaty was signed."

Morales had alluded to the demand regarding the maritime claim in the most recent Bolivian Constitution. Piñera did not make the best argument. All historians currently acknowledge that the 1904 treaty was signed under pressure and with a powerful Chilean military presence on the border.

As noted, the Bolivian strategy had been meticulously planned before March 23. Morales had already insinuated to his aides that, after the transfer of power to Piñera, all the laborious advances made with Bachelet were at a standstill. The president, true to form, had also anticipated other information that German news agency Deutsche Presse-Agentur (DPA) analysts said had not been noticed at the time. "Atacama [the desert area with the world's largest copper deposits] was formerly Bolivia's and we hope to regain it soon," Morales had said on Jan. 22, 2011.

The comment irritated Piñera, who pointed out that "Atacama belongs to Chile."

Days later, the Bolivian government sent Walker San Miguel, its consul in Santiago, Chile, to The Hague, seat of the ICJ, to obtain a copy of the file pertaining to the maritime dispute between Chile and Peru (Notisur, Feb. 8, 2008). In early February, Spanish news agency EFE quoted Bolivian Foreign Minister David Choquehuanca as saying that, given the state of the dialogue, "the conflict
with Chile should be resolved by the ICJ at The Hague." The statement was also ignored by news analysts.

History of the conflict

The immediate cause of the War of the Pacific was Bolivia's decision in 1874 to charge the Compañía de Salitres y Ferrocarril de Antofagasta a tax of "10 cents per quintal exported" (a quintal equals 46.04 kg). The tax revenue would be used to reconstruct the region following a recent earthquake. The Compañía—made up of business people and various members of the Chilean government—refused to pay and appealed to the good offices of the government in Santiago.

In 1878, Bolivia decided to auction off the Compañía's assets to pay the taxes that had gone unpaid since February of that year. To stop the auction, Chilean troops disembarked in four Bolivian cities on the Pacific Coast—Antofagasta, Mejillones, Cobija, and Caracoles—and on April 5, 1879, Chile declared war on Bolivia and Peru, which had signed a reciprocal military-assistance accord.

Chile thus began what would be one of the bloodiest wars in Latin America to defend and avenge its ministers and business people, owners of "the Compañía," in retaliation for a sovereign decision by Bolivia. The economic factor is still crucial 132 years later. Beyond what for Bolivians is a matter of honor and of historic reparation, the cost of being landlocked can be measured in dollars and in lack of development.

"Not having our own ports prevents us from exporting gas to Asia and the Northern Hemisphere, for example," Carlos Orías, spokesperson for the Ministerio de Hidrocarburos, told the BBC.

Orías admitted that it was difficult to calculate the cost of this limitation, but he offered a figure for comparison. "If we estimate that Bolivia receives some US$300 million monthly [US$3.6 billion a year] for the gas it sells to Brazil and Argentina, the potential of other markets can be clearly seen."

The Cámara Nacional de Exportadores de Bolivia (CANE) confirmed that Bolivia's lack of a port reduces productive competitiveness. Transporting soy to the Pacific requires paying freight costs for an overland journey of more than 500 km from Oruro, and transporting gas from the eastern part of the country requires a 2,000-km overland trek. "The freight charges mean that our products cease to be competitive and, as if that were not enough, not having our own ports means an enormous loss of income from tariffs and administrative charges for not having storage facilities or a site to park our containers," said CANE.