Bolivia v. Chile:

Jurisdiction and the Second War of the Pacific at the International Court of Justice

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I. Introduction

Bolivia asserts that it is not even a landlocked country, but rather a coastal state that has “unjustly and temporarily been deprived of her coastline by aggression.”

After the nation-states of Chile and Peru were born, the nations began experiencing the problems associated with nationhood and international borders. The leaders of the newly created nations agreed on the principle of uti possidetis to maintain their international boundaries. Uti possidetis was accepted among the new independence leaders, and was expressed in the political constitutions of the new nations, was incorporated in declarations by the new governments, and were included in the writings of their publicists. In addition, the principle of uti possidetis was formally recognized by various international conferences within Latin America, including the Lima Congress of 1848. In order to initially create the country of Bolivia, however, the territory known as “Charcas” had to be separated from Chile and Peru. Although initially against the

3 Id. at 3 (“translated literally, ‘as you possess,’ this principle derived from Roman law and, as applied to the new South American circumstances, provided that the boundaries of the newly created territorial entities would reflect the major colonial demarcations at the time of independence.”).
4 Raúl Porras Barrenechea, 7 Historia Jeneral de Chile 5-6 (Rafael Tovar, ed., 1902).
5 Id. at 29-33.
6 In its original demarcation, Bolivia possessed the province of Potosí (known for mining silver), and 350 miles of Pacific coastline that bordered Chile. Nonetheless, although Bolivia could claim Pacific territory, its coastal access encompassed one of the world’s driest regions of the world – the Atacama Desert. See Skuban, supra note 2, at 4.
7 Id. at 232.
creation of Bolivia based on uti possidetis principles, the “Liberator” himself, Simón Bolívar, allowed the leaders of Upper Peru to create an independent Bolivia.  

However, the creation of Bolivia’s new and superficial boundaries created massive problems: the limits of the units were not precisely delineated, thus holding the possibility for future disputes. As a consequence of the War of the Pacific, Bolivia lost its access to the sea, and has thus been landlocked since 1880. Since then, Bolivia has argued, and continues to argue, that the treaty is invalid because it was signed under duress, and because Chile has repeatedly violated it. Additionally, Bolivia asserts that there is an international right to access to the sea, and has continued to campaign in many international forums. On April 24, 2013, Bolivia filed an application with the International Court of Justice (hereinafter, “ICJ”), alleging that Chile has violated its obligation to negotiate with Bolivia in order to “reach an agreement granting Bolivia a fully sovereign access to the Pacific Ocean.” This case note will first highlight the key facts and background of the Chilean and Bolivian dispute, and will provide a detailed analysis of the War of the Pacific. Second, this case note will discuss the relevant international legal concepts and ICJ decisions regarding access to the sea, jurisdictional issues, and obligations to negotiate. Third, this case note analyzes international law, and concludes that the jurisdiction of the Court rests on whether or not the ICJ will hear a “settled dispute.” This paper concludes that the War of the Pacific and the 1929 and 1904 Treaties “settled” Bolivia and

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9 Skuban, supra note 2, at 4.
10 See infra, pp. 5-7 (discussing the War of the Pacific).
11 Glassner, supra note 1, at 375.
12 Id.; see also, Luis Barros Borgoño, The Problem of the Pacific and the New Policies of Bolivia (1924) (providing a detailed account of Bolivia’s campaigns for access to the sea).
Chile’s border dispute, and therefore, the ICJ does not have proper jurisdiction over the parties to hear this case.

II. Background

The region between Chile, Bolivia, and Peru has historically been a problem since the time of Spanish colonization.\(^{14}\) In fact, Simón Bolívar had to intervene in order to establish the initial boundaries for Bolivia.\(^{15}\) Although Bolivia owned part of the Pacific coastline, Bolivian leaders attempted to gain the port of Arica from Peru.\(^{16}\) Past Peruvian leaders declined to cede their coastal city, and so Bolivia began to develop its access to the sea through the Atacama Desert.\(^{17}\) By 1872, Chile and Peru discovered the volume of sodium nitrate located in the Atacama region (by the border).\(^{18}\) Furthermore, by 1874, more Chileans populated the border region than Bolivians.\(^{19}\) Tensions rose between the Chileans, Bolivians, and Peruvians, until Bolivia declared “war” on Chile in 1879.

A. The War of the Pacific

According to some historians, “the nitrate bearing territories of Antofagasta and Tarapacá were the real and direct causes of the war.”\(^{20}\) In reality, the potential wealth generated by sodium nitrate profits in the region significantly strained international relations among the three

\(^{14}\) Skuban, supra note 2, at 4.

\(^{15}\) Simon Bolívar, supra note 8, at 492-97 (declaring in a letter that he “d[id] not believe [he is] authorized to issue this decree; only the power of circumstances has forced it from me in order to . . . defend [his] reputation as a supporter of popular sovereignty and of free institutions.”).

\(^{16}\) Id.

\(^{17}\) Id.

\(^{18}\) Skuban, supra, note 2, at 8.

\(^{19}\) Oscar Bermudez, Historia del salitre, desde sus orígenes hasta la Guerra 369-71 (1963) (asserting that Chileans “invaded the Bolivian coastal plain and installed industrial centers in the region that had formerly been neither developed nor populated.”).

\(^{20}\) Skuban, supra note 2, at 10.
countries.\textsuperscript{21} Peru and Bolivia began to see Chile as an emerging threat, and by 1871, Bolivia withdrew many of its former territorial concessions with Chile.\textsuperscript{22} By 1873, Bolivia and Peru created a mutual defense treaty, in which the two countries bound themselves to guarantee “their independence, sovereignty, and the integrity of their respective territory.”\textsuperscript{23} Furthermore, the two countries agreed that the defensive alliance treaty would be kept secret until “unnecessary.”\textsuperscript{24}

During an economic recession in the second half of the 1870s, Bolivia began taxing the exportation of nitrates from Antofagasta, in direct violation of a previous treaty.\textsuperscript{25} When Bolivia confiscated the assets of Chilean nitrate companies in Antofagasta in 1879, Chile dispatched a military unit to occupy the region.\textsuperscript{26} Bolivia responded by declaring war on Chile on February 27, 1879, thus officially dragging Peru into the war based on their (secret) mutual defense treaty.\textsuperscript{27} The Peruvian government attempted to mediate between the two countries, but as tensions rose among the Chilean and Bolivian people (now aware of the not-so-secret defense alliance), the Peruvian government’s efforts proved ineffective.\textsuperscript{28}

As such, the three countries entered into war, pitting Bolivia and Peru against Chile.\textsuperscript{29} Through what is now known as the “War of the Pacific,” Chile achieved naval superiority over its neighbors.\textsuperscript{30} While the details of the war are not necessary for this analysis, it is important that

\begin{itemize}
\item \textsuperscript{21} Skuban, supra note 2, at 10.
\item \textsuperscript{22} Id.
\item \textsuperscript{23} Id.
\item \textsuperscript{24} Id.
\item \textsuperscript{25} Id. at 10-11 (discussing the Walker Martinez Baptista Agreement (1874) between Chile and Bolivia that redefined the border and ensured that the two countries would share export taxes on nitrates).
\item \textsuperscript{26} Id. at 12.
\item \textsuperscript{27} Id.
\item \textsuperscript{28} Id.
\item \textsuperscript{29} Id.
\item \textsuperscript{30} Id.
\end{itemize}
by 1880, Chile gained the entire Atacama Desert and all of the area with sodium nitrates.\textsuperscript{31}

Bolivia lost its only access to the sea that same year, and Chile continued fighting Peru until it reached Lima in January 1881.\textsuperscript{32}

Chile occupied Lima for two years, until Peruvian guerrilla movements threatened more loss of life and financial costs.\textsuperscript{33} When a new president was elected in Peru, the new government negotiated with the Chileans to form an agreement about the border.\textsuperscript{34} In October 1883, Chile and Peru signed the Treaty of Ancón to end the war.\textsuperscript{35} Though the treaty is most famous for Article III (holding a plebiscite after “a period of ten years” to determine if Arica and Tacna belonged to Chile or Peru), Article II permanently ceded the territory of Tarapacá to Chile.\textsuperscript{36}

After forty-six years of infighting over the plebiscite and cold relations between Chile and Peru, the two countries finally resumed diplomatic and commercial relations and ratified the Treaty of Lima in 1929.\textsuperscript{37} Through this treaty, Peru defined its lower-most point as Tacna, and Chile defined its northern-most point as Arica.\textsuperscript{38} Bolivia was not included in any of these negotiations.\textsuperscript{39} Chile and Peru continued to fight over the exact maritime boundary in the treaty, eventually leading to the 2013 ICJ case, “Maritime Dispute (Peru v. Chile).”\textsuperscript{40}

\textsuperscript{31} Id.
\textsuperscript{32} Id.
\textsuperscript{33} Id. at 13.
\textsuperscript{34} Id.
\textsuperscript{35} Id. There were other attempts to get the three countries to come to an agreement after the war. In 1880, mediators from the United States held a peace conference on the U.S.S. Lackawanna. However, Chile refused to negotiate unless it gained the entire Atacama Desert and until the two countries paid an indemnity of 20 million pesos.
\textsuperscript{36} Id.
\textsuperscript{37} Id.
\textsuperscript{38} Id.
\textsuperscript{39} Id. at 208.
\textsuperscript{40} Chile v. Peru.
B. Chilean and Bolivian Relations Post 1904

After the War of the Pacific, Chile and Bolivia signed a Treaty of Peace, Friendship, and Commerce in 1904 that delimited the new boundary between them, gave Chile the permanent possession of Bolivia’s former access to the sea, and required Chile to build a railroad from Arica (Chile) to La Paz (capital of Bolivia), giving Bolivia the “broadest and freest right of commercial transit through her territory and ports of the Pacific.”\(^41\) In the Complementary Protocol to the Treaty, Chile and Peru agreed that each party is prohibited from “ceding to a third power the whole or any part of the territories received under the treaty and from constructing new international railroad lines across them, without the consent of the other.”\(^42\)

Although the Treaty of 1904 seemed to put Chile and Bolivia on good terms, by 1910, Bolivia began campaigning for its revision.\(^43\) In 1921, Bolivia appealed to the First Assembly of the League of Nations in an attempt to gain a revision of the treaties from the War of the Pacific.\(^44\) The League of Nations, however, held that they had not power to modify treaties.\(^45\) In 1923, Bolivia attempted to appeal directly to Chile, but Chile rejected a new revision.\(^46\) Bolivia also tried to lobby for support at the International Law Congress in Buenos Aires in 1925, but again did not garner any support.\(^47\) Bolivia also attempted to gain support at the Consultative Meeting of the Foreign Ministers of the American Republics in Rio de Janiero in 1942, at the

\(^{41}\) Glassner, supra note 1, at 374.
\(^{42}\) Complementary Protocol to the Treaty of Lima, 1929 (printed in Glassner, supra note 1, at 374).
\(^{43}\) Glassner, supra note 1, at 374.
\(^{44}\) Id.
\(^{45}\) Id. at 375.
\(^{46}\) Id.
\(^{47}\) Id.
San Francisco Conference in 1945, and at the Ninth Inter-American Conference in Bogotá in 1948.\(^48\)

In June 1950, Chile and Bolivia exchanged diplomatic Notes regarding Bolivia’s access to the sea.\(^49\) On June 1, 1950, Bolivia proposed in a Note to Chile that the two governments formally “enter into a direct negotiation to satisfy Bolivia’s fundamental need for obtaining an own and sovereign access to the Pacific Ocean . . . on the basis of mutual conveniences and the true interests of both countries.”\(^50\) On June 20, 1950, Chile responded that it was “willing to enter into a direct negotiation aiming at finding the formula which would make it possible” for Bolivia to have an access to the sea.\(^51\) However, Chile added the caveat that it would need compensations to take into account its interests in the territory.\(^52\)

The parties did not engage in any official dialogue about the Pacific territory until February 1975, when the presidents of both Bolivia and Chile signed the bilateral Declaration of Charaña, where the two countries agreed, among other things, to continue the dialogue “in order to find formulas to solve the vital issues which both countries faced.”\(^53\) Through this agreement and other dialogue, on August 26, 1975, the Chilean government proposed that it trade a strip of its land north of Arica (with access to the Pacific) in exchange for an equally sized piece of land

\(^{48}\) Id.
\(^{49}\) Note of Chile, June 20, 1950; Bolivia, June 1, 1950 (These notes are not published online, but sections of them are available in Bolivia’s 2013 Application to the ICJ, supra note 13, at 14).
\(^{50}\) Id.
\(^{51}\) Id.
\(^{52}\) Id.
\(^{53}\) Id. at 16. The Declaration of Charaña was signed on February 8, 1975 in Bolivia between General Augusto Pinochet (President/Dictator of Chile) and General Hugo Banzer (President/Military Dictator of Bolivia) in order to re-establish friendly relations between the two countries. See Acta de Charaña (Feb. 8, 1975).
from Bolivia.\textsuperscript{54} Despite these negotiations, Peru objected to Chile’s ceding of land under the terms of the peace agreement from the War of the Pacific (Complementary Protocol to the Treaty of Lima) that Peru and Chile could not give territory without the consent of the other.\textsuperscript{55} As a result, in March 1978, Bolivia once again broke off diplomatic relations with Chile.\textsuperscript{56}

**C. Resolutions from the General Assembly of the OAS**

In 1979, the General Assembly of the OAS adopted Resolution 426, recommending to “the States most directly concerned with this problem that they open negotiations for the purpose of providing Bolivia with a free and sovereign territorial connection with the Pacific Ocean.”\textsuperscript{57} Between 1979 and 1989, the OAS General Assembly adopted ten subsequent Resolutions urging Chile, Bolivia, and Peru to come to an agreement about Bolivia’s lack of access to the sea.\textsuperscript{58}

**D. Diplomatic Notes between Chile and Bolivia**

In February 2000, the Ministers of Foreign Affairs for Bolivia and Chile issued a joint communiqué about their agreement to put together a “work agenda including, without any exclusion, the essential matters of the bilateral relationship.”\textsuperscript{59} By 2006, Bolivian President Evo

\textsuperscript{54} Guillermo Carmona Lagos, History of Chile’s Borders. The boundary treaties with Bolivia 127 (1981); see also Ramiro Prudencio Lizon, History of negotiating Charana (2011).

\textsuperscript{55} See Complementary Protocol to the Treaty of Lima, supra note 13 (“ceding to a third power the whole or any part of the territories received under the treaty and from constructing new international railroad lines across them, without the consent of the other”).

\textsuperscript{56} See Uldaricio Figueroa, The Bolivian demand in international forums 118-23 (2007).

\textsuperscript{57} OAS AG/Res. 426 (IX-0/79), 9th Sess. (Oct. 31, 1979).

\textsuperscript{58} From a cursory glance, the ten GA Resolutions are similar and just a notion that the topic shall remain on the following session’s agenda until resolved. See, e.g., AG/RES 989, 19th Sess. (Nov. 18, 1989); AG/RES 930, 18th Sess. (Nov. 19, 1988); AG/RES 873, 17th Sess. (Nov. 14, 1987); AG/RES 816, 16th Sess. (Nov. 15, 1986); AG/RES 766, 15th Sess. (Dec. 9, 1985); AG/RES 701, 14th Sess. (Nov. 17, 1984); AG/RES 686, 13th Sess. (Nov. 18, 1983); AG/RES 602, 12th Sess. (Nov. 20, 1982); AG/RES 560, 11th Sess. (Dec. 10, 1981); AG/RES 481, 10th Sess. (Nov. 27, 1980).

\textsuperscript{59} Bolivia’s 2013 Application to the ICJ, supra note 13, at 16.
Morales and Chilean President Michelle Bachelet agreed on the “Agenda of 13 Points,” which included point VI that addressed “Maritime Issues.” According to the Bolivian Application to the ICJ, Chile and Bolivia scheduled a meeting for November 2010 to discuss the “Maritime Issue,” but Chile suspended the meeting.

Since 2010, Bolivia has publicly criticized the Chilean government for refusing to negotiate or propose methods for Bolivia to gain access to the sea. Meanwhile, Chile has repeatedly denied the existence of any dispute between Chile and Bolivia, and further noted that “Bolivia lacks any legal basis to access the Pacific Ocean through territories appertaining to Chile.”

E. Bolivia’s 2013 Application to the ICJ

On April 24, 2013, Bolivia submitted its Application Instituting Proceedings against Chile before the ICJ. According to the Application, Bolivia asserts that Chile has an obligation “to negotiate in good faith and effectively with Bolivia in order to reach an agreement granting Bolivia a fully sovereign access to the Pacific Ocean.” The Application states,

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60 Minutes of the 2d Meeting of the Working Group on Bilateral Affairs Bolivia-Chile, Agenda of the 13 Points, July 17, 2006.
61 See Section E, infra pp. 11-13.
62 Bolivia’s 2013 Application to the ICJ, supra note 13, at 18.
65 Bolivia’s 2013 Application to the ICJ, supra note 13, at 10.
66 Id.
The subject of the dispute lies in: (a) the existence of that obligation, (b) the non-compliance with that obligation by Chile, and (c) Chile’s duty to comply with the said obligation.

At present, contrary to the position that it had itself adopted, Chile rejects and denies the existence of any obligation between the Parties concerning the subject of the present Application.

Bolivia asserts that Chile’s denial of the obligation to enter into negotiations regarding Bolivia’s fully sovereign access to the Pacific Ocean evidences a fundamental difference in points of view. It closes any possibility of negotiating a solution to this difference, and continues a legal dispute between the Parties, which Bolivia hereby has the honour to submit to the Court.  

Bolivia notes that while Chile denies the existence of that obligation, this dispute is based on (1) wording in past territorial treaties between the two countries, (2) official diplomatic notes between Bolivia and Chile, (3) OAS General Assembly Resolutions, and (4) outstanding bilateral agenda points to discuss “maritime issues.” Lastly, Bolivia alleges that, “it is clear that Chile has no intention of truly going forward in the formal negotiation regarding the agreement to perform its obligation of effectively ensuring a fully sovereign access to the sea for Bolivia.”

In the Application, Bolivia relies heavily on the diplomatic notes between herself and Chile. The first note, dated June 1, 1950, was from Bolivia to Chile, and proposed,

For the Governments of Bolivia and Chile to formally enter into a direct negotiation to satisfy Bolivia’s fundamental need for obtaining an own and sovereign access to the Pacific Ocean, thus resolving the problem of Bolivia’s confinement, on the basis of mutual conveniences and the true interests of both countries.

The second Note is from Chile to Bolivia, dated June 20, 1950, which states that Chile 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

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67 Id. at 10.
68 Id. at 16-18.
69 Id. at 20.
70 Id. at 14.
Pacific Ocean and for Chile to obtain compensations that are not of a territorial nature and that effectively take into account its interests.\textsuperscript{71}

In its memorial, Bolivia will likely argue that Chile’s public conduct of putting the issue on their political agenda and/or planning to have a meeting together to discuss maritime issues are legally binding. Bolivia will likely look to a 1962 ICJ decision between Siam (now Thailand) and French Indo China (now Cambodia), where the Court held that Siam tacitly recognized the sovereignty of French Indo China over the Temple Preah Vihear because of the conduct of the State of Siam, expressed in different acts of its official representatives which “clearly demonstrated such recognition.”\textsuperscript{72} It will also look to a 1974 ICJ decision between New Zealand and Australia against France, where the Court recognized that the public statements of the French official authorities in order to cease nuclear-testing were legally binding.\textsuperscript{73} Lastly, Bolivia will likely discuss the case between Denmark and Norway regarding to the sovereignty over eastern Greenland, where the Permanent Court of International Justice determined that the verbal declaration of Mr. Ilhem, the Norwegian Foreign Minister, was also legally binding.\textsuperscript{74} In this manner, Bolivia will assert that Chile’s official and unofficial statements, declarations, diplomatic notes, and agenda slotting have amounted to a binding obligation to discuss Bolivia’s lack of access to the sea.\textsuperscript{75}

\textsuperscript{71} Id.
\textsuperscript{73} Id.
\textsuperscript{74} Id.
\textsuperscript{75} Id.
After accepting Bolivia’s Application, the Court mandated that Bolivia’s Memorial was to be submitted by April 17, 2014, and that Chile’s Counter-Memorial is to be submitted by February 18, 2015.76

**F. Chile’s Jurisdictional Objection**

The ICJ gains its jurisdiction to hear contentious cases through Article 36, paragraph 2 of the Statute of the International Court of Justice.77 Bolivia claims that the ICJ has jurisdiction to hear this case based on the American Treaty on Pacific Settlement (hereinafter, “Pact of Bogotá”) of 1948, of which Bolivia and Chile are parties.78 On July 15, 2014, Chile filed a preliminary objection to the jurisdiction of the Court.79 The Court mandated that Bolivia was to address Chile’s jurisdictional objection by November 14, 2014.80

Article II of the Treaty articulates that the parties have an obligation to settle international controversies by “regional pacific means.”81 Should a dispute arise between the parties that cannot be settled by direct negotiations, “the parties bind themselves to use the procedures established in the present Treaty, in the manner and under the conditions provided for in the following articles.”82 Bolivia asserts jurisdiction to the ICJ through Article XXXI, which provides that,

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78 American Treaty on Pacific Settlement, Article XXXI, Apr. 30, 1948, 30 UNTS 55. See also, Application, supra note 13, at 10.
79 Order, July 15, 2014, supra note 73.
80 Id.
82 Id.
In conformity with Article 36, paragraph 2, of the Statute of the International Court of Justice, the High Contracting Parties declare that they recognize, in relation to any other American State, the jurisdiction of the Court as compulsory ipso facto, without the necessity of any special agreement so long as the present Treaty is in force, 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.

Chile ratified the Pact of Bogotá on July 9, 1967, and Bolivia ratified it on June 9, 2011. While both countries have filed reservations on the Pact of Bogota, these reservations are not relevant to the current case before the ICJ.

While Chile’s jurisdictional objection is not published, through a reading of the Pact of Bogota, one can anticipate that Chile will highlight that Treaty does not apply to matters between states that are already settled, either by treaty or by other means. Since Bolivia’s loss of its access to the sea is governed by the Treaty of Ancón and the Treaty of Peace, Friendship, and Commerce, and since the League of Nations previously held that it could not modify existing


85 See Pact of Bogota, supra note 78, at art. IV.
treaties, Chile should argue that the Bolivian/Chilean borders is “already settled.” Second, the Treaty provides that all disputes are to be settled through diplomatic means before any other arbitration action is taken.\textsuperscript{86} Chile should argue that a “Chilean Note” stating that the Bolivia and Chile should negotiate for access to the sea, a few OAS Resolutions directed toward Chile and Bolivia, and two points on the Chilean/Bolivian political agendas do not constitute sufficient “diplomatic means,” such that compulsory international arbitration is necessary.\textsuperscript{87} Lastly, since the Pact of Bogotá expressly states that no one arbitration procedure is preferred over another, it is up to both parties to determine what special procedures will help them arrive at a solution.\textsuperscript{88}

Should Chile lose on jurisdiction, it would likely argue that the principle of \textit{pacta sunt servanda} and the principle of stability of boundaries prevent the ICJ from redrawing a boundary that has already been agreed upon by treaty.\textsuperscript{89} Furthermore, Chile should argue that it won Bolivia’s access to the sea through a war initiated by Bolivia.

\textbf{G. Landlocked Countries}

There are thirty landlocked countries in the world, and two of them are in South America. Most of the countries are poor, and sixteen of these countries are labeled as some of the “least developed” countries in the world.\textsuperscript{90} Landlocked countries are subject to serious economic consequences, especially as maritime channels still carry most of the world’s international commerce.\textsuperscript{91} In addition, as is applicable to Bolivia, most of the landlocked countries are

\begin{footnotesize}
\begin{enumerate}
\item \textit{Id.} at art. II.
\item See \textit{supra} pp. 11-13 and accompanying notes (describing Bolivia’s 2014 Application and its assertions of Chile’s obligations
\item See Pact of Bogota, \textit{supra} note 78, at art. II, III, XXXII.
\item See Maritime Dispute (Peru v. Chile), 137 ICJ 2014, Judgment Jan. 27, 2014, at para. 23 (noting Chile’s arguments as to why the ICJ should not redraw its boundary with Peru).
\item Glassner, \textit{supra} note 1, at 368.
\item \textit{Id.} at 366.
\end{enumerate}
\end{footnotesize}
separated from the sea by deserts, mountains, forests, and sparsely populated terrain.\textsuperscript{92} As long as the landlocked country has alternate routes to the sea, or instead, maintains excellent connections with the transit state, the landlocked country will not be too inconvenienced.\textsuperscript{93} However, not all landlocked countries enjoy these benefits. Bolivia, most notably, does not.

The League of Nations had a series of conferences in the 1920s for the facilitation of free transit. The Barcelona Convention and the Statute on Freedom of Transit of 1921, and the Convention and Statute on the International Regime of Maritime Ports (1923) set minimum standards for transit for all states.\textsuperscript{94} The 1964 UN Conference on Trade and Development (UNCTAD) adopted principles about states’ access to the sea and issued recommendations, which resulted in the United Nations Convention on Transit Trade of Landlocked States (New York, July 1965).\textsuperscript{95} While the creation of a conference addressing the issue was novel, this first multilateral treaty did not offer a solution to the problem.\textsuperscript{96} Also, only a few countries have ratified the convention, and only one of the countries (Nigeria) actually provided transit for a developing landlocked country.\textsuperscript{97} In 1973, landlocked countries united with other “geographically disadvantaged states” to form the United Nations Conference on the Law of the Sea (UNCLOS III).\textsuperscript{98} Unfortunately, the group did not make any gains to remedy their problems. The UN also has a special unit specializing in landlocked countries under UNCTAD. This unit provides studies and recommendations for both transit countries and landlocked countries. In addition, the UN Development Programme has a special project to “provide Assistance to the

\begin{itemize}
\item \textsuperscript{92} Id.
\item \textsuperscript{93} Glassner, supra note 1, at 367.
\item \textsuperscript{94} Id.
\item \textsuperscript{95} Id. at 368.
\item \textsuperscript{96} Id.
\item \textsuperscript{97} Id.
\item \textsuperscript{98} Id. at 369.
\end{itemize}
Lease Developed Land-locked Countries.” 99 The World Bank and other regional development banks have also invested in transportation infrastructure in these countries. 100 In 1976, the UN General Assembly created the Special Fund for Land-locked Developing Countries to collect and disburse contributions “in order to compensate the land-locked countries for their additional transport costs.” The fund has not collected much money, but has been able to finance some construction projects in Africa and Asia. 101 As such, landlocked countries have not experienced much success in their cries for access to the sea at the global level, and some experts assert that that international law has not yet “assured landlocked countries of a guaranteed right of transit and is not likely to do so in the foreseeable future.” 102

III. Analysis

The question of the jurisdiction of the Court according to the Pact of Bogota is a point of contention that could likely determine the outcome of this case. The first section below will address the Pact of Bogota, and interpret the meaning of its peaceful dispute resolution mechanisms using the Vienna Convention on the Law of Treaties. After concluding that none of the methods in the Pact of Bogota is to have preference over the other, the second section will interpret what a “settled matter” means in order to determine if the ICJ has jurisdiction over this case. Through a comparison and analysis of former ICJ cases addressing the Pact of Bogota, border disputes, and “settled matters,” the final section concludes that the ICJ does not have jurisdiction over this matter because the Bolivian and Chilean border is governed by a treaty already in force.

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99 Id. at 370.
100 Id.
101 Id. at 372.
102 Id. at 369.
A. Interpreting the Pact of Bogota with the Vienna Convention on the Law of Treaties

In an effort to avoid disputes concerning treaties, in 1969, the United Nations community came together to write a treaty on treaty law, including interpretation.103 Article 31 of the Vienna Convention on the Law of Treaties (“VCLT”) declares that, “[a] treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of their object and purpose.”104 Finally, Article 32 explains that the preparatory work of treaties and the “circumstances of its conclusion” can be used to confirm the meaning of a treaty term or provision.105

The VCLT entered into force on January 27, 1980.106 As of December 2014, 114 countries have ratified the VCLT.107 Chile ratified the VCLT in 1981, while Bolivia signed the VCLT in 1981, but never ratified it.108 Nonetheless, the ICJ has used the VCLT to interpret treaties before the Court, whether or not the states are both parties, or if the treaty in question predates the VCLT.109

104 VCLT, supra note 103, at art. 31.
105 Id. art. 31.
106 Id. preamble.
108 Id.
Using the VCLT to interpret the 1988 Drug Convention, parties are to use the ordinary meaning of the terms of the contract, as well as the overall context and goals of the Convention. Specifically, the drafters of the VCLT intended that, when possible, interpreters should “construe provisions in a manner that honors the agreement’s ‘object and purpose.’” In addition, the VCLT provides that, in order to interpret the purpose and intent of the treaty, interpreters should look to (1) related agreements between the treaty parties, (2) official instruments of the treaty, (3) later agreements between the parties regarding the interpretation of the treaty, (4) subsequent practice in the application of the treaty, (5) and any relevant applicable rules of international law.

A plain reading of the relevant portions of the Pact of Bogota demonstrate that the Treaty does not apply when the “dispute” has already been settled. For example, Article VI provides that the Treaty “may not be applied to matters already settled by agreement 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.” Furthermore, on its face, Articles II and III of the Treaty provide that,

in the event that a controversy arises between two or more signatory states which, in the opinion of the parties, cannot be settled by direct negotiations through the usual diplomatic channels, the parties bind themselves to use the procedures established in the present Treaty, in the manner and under the conditions provided for in the following articles, or, alternatively, such special procedures as, in their opinion, will permit them to arrive at a solution.


110 See VCLT, supra note 103, at art. 31.

111 See Criddle, supra note 103, at 437-38 (citing information from the International Law Commission, a working group delegated by the UN General Assembly to interpret the VCLT).

112 VCLT, supra note 103, at art. 31.

113 Pact of Bogota, supra note 78, at art. VI (emphasis added).

114 Id. at art. II (emphasis added).
and,

[that t]he order of the pacific procedures . . . does not signify that the parties may not have recourse to the procedure which they consider most appropriate in each case, or that they should use all these procedures, or that any of them have preference over others except as expressly provided.\footnote{Pact of Bogota, \textit{supra} note 78, at art. III.}

Lastly, while Article XXXI provides that the Treaty’s parties have compulsory jurisdiction to the ICJ, Article XXXII provides that the parties shall have recourse at the ICJ only when “the conciliation procedure previously established in the present Treaty . . . does not lead to a solution.”\footnote{\textit{Id.} at arts. XXXI, XXXII (emphasis added); see also Josef L. Kunz, \textit{International Arbitration in Pan American Developments}, 27 \textit{Tex. L. Rev.} 182, 207 (Dec. 1948) (“for all types of procedures for the settlement of Inter-American disputes, provided for in the Pact of Bogota, it is a condition that settlement by direct negotiations through the usual diplomatic channels has failed”).}

In interpreting the Pact of Bogota, the ICJ has held that Article XXXI is compulsory unless supplemented by a reservation or a later renunciation.\footnote{Case Concerning Border and Transborder Armed Actions (Nicaragua v. Honduras), 1988 ICJ Rep. 69, 84-85 (Dec. 20, 1988); see also Peter Trooboff, \textit{International Court of Justice – Jurisdiction and Admissibility – Pact of Bogota}, 83 Am. J. Int’l L. 353, 354 (Apr. 1989) (providing a case note of Nicaragua v. Honduras).} In Nicaragua v. Honduras, Nicaragua claimed compulsory jurisdiction through Article XXXI of the Pact of Bogota.\footnote{\textit{Id.} \textit{supra} note 117, at 354.} Honduras argued that Article XXXI must be supplemented by an affirmative declaration that recognizes the ICJ’s jurisdiction as compulsory.\footnote{1988 ICJ Rep. at 84.} Instead, the Court held that this “declaration” was included by state parties in Article XXXI of the Pact of Bogota, and does not need an affirmative statement by member states in order to be enforced.\footnote{\textit{Id.} at p. 84, para. 34.} However, the Court noted in
dicta that “some provisions of the Treaty restrict the scope of the parties’ commitment.”\textsuperscript{121}

Therefore, it appears that unless a member state can point to an enumerated exclusion from compulsory jurisdiction (or has previously made a reservation or renunciation), parties are free to bring ripe cases to the ICJ.

Furthermore, to the extent that parties must settle disputes through prior reconciliation before bringing a case to the ICJ, the Court in Nicaragua v. Honduras held that Articles XXXI and XXXII are to be read separately, and therefore provide two ways to bring a case to the Court: “[t]he first relates to cases in which the Court can be seized directly and the second to those in which the parties initially resort to conciliation.”\textsuperscript{122} Since Nicaragua relied on Article XXXI, “it is accordingly not pertinent whether the dispute submitted to the Court has previously been the subject of an attempted conciliation.”\textsuperscript{123} International legal scholars have interpreted the Pact of Bogota similarly, and have commented that, “no attempt has been made to establish a certain binding order in which different pacific procedures must be used successfully. Quite the contrary, the Pact expressly provides that the order of the procedures established in the Pact does not signify that the parties should use all these procedures, or that any of them have preference over others.”\textsuperscript{124}

\textsuperscript{121} \textit{Id.} at p. 84, para. 35, 36. See also Territorial and Maritime Dispute (Nicar. v. Colom.), Preliminary Objections, 2007 ICJ REP. 832, para. 58 (Dec. 13) (indicating that if the ICJ finds that the referred matters have “previously been settled by one of the methods spelled out in Article VI thereof, it would lack the requisite jurisdiction under the Pact [of Bogota] to decide the case.”).

\textsuperscript{122} \textit{Id.} at p. 90, para. 47.

\textsuperscript{123} \textit{Id.}

\textsuperscript{124} \textit{Id.}
B. The ICJ Does Not Have Jurisdiction Because Bolivia and Chile’s Maritime Dispute is a “Settled Matter” under the Pact of Bogota

While a VCLT interpretation of the Pact of Bogota provides for exclusions from compulsory jurisdiction before the ICJ, an analysis of what is a “settled matter” is essential to Chile’s claim of a lack of jurisdiction. This section will first define what a “settled matter” means according to the Pact of Bogota and the ICJ. Then, this section asserts that the Bolivian and Chilean boundaries are “settled matters” because there are active treaties that govern the countries’ borders and already account for Bolivia’s lack of access to the sea. In this manner, since Bolivia’s boundaries are a “settled matter” according to the Pact of Bogota, unless Chile cedes jurisdiction, the ICJ should dismiss the case with prejudice.

1. “Settled Matters” according to the Pact of Bogota

Article VI of the Pact of Bogota provides that compulsory jurisdiction to the ICJ “may not be applied to matters already settled by agreement between the parties . . . or which are governed by agreements or treaties in force on the date of the conclusion of the present Treaty.”125 While the Pact of Bogota does not define what a “settled matter” is, the ICJ has provided some guidance. In Nicaragua v. Colombia (2007), the ICJ considered Nicaragua’s request for sovereignty over ten islands in the Caribbean Sea that Colombia claimed.126 Nicaragua recommended the case to the ICJ with jurisdiction under the Pact of Bogota.127 Colombia objected to the jurisdiction of the ICJ under the Pact of Bogota because three of the islands were given to Colombia in a 1928 treaty

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125 Pact of Bogota, supra note 78, at art. VI.
and 1930 protocol between Colombia and Nicaragua.\textsuperscript{128} To that end, Colombia asserted that “the matters raised by Nicaragua were settled by a treaty in force on the date on which the Pact was concluded.”\textsuperscript{129} The Court looked at the circumstances of the conclusion of the two treaties, and the content of the treaties to see if the documents actually provided at “settlement” of the dispute.\textsuperscript{130} In particular, the Court noted that the treaties were designed to put “an end to the question pending between the two republics, concerning the San Andres and Providencia Archipelago and the Nicaraguan Mosquito Coast.”\textsuperscript{131} Additionally, the preambles of the two treaties reflected the parties’ desire to end the territorial dispute between the two.\textsuperscript{132}

The ICJ opined on this matter and specified that,

what matters are or are not settled within the terms of Article VI may require determination. However, the clear purpose of this provision was to preclude the possibility of using those procedures, and in particular judicial remedies, in order to reopen such matters as were settled between the parties to the Pact, because they had been the object of an international judicial decision or treaty.\textsuperscript{133}

Furthermore, the Court continued to say that “States parties to the Pact of Bogota would have considered that matters settled by a treaty or international judicial decision had been definitively resolved unless a specific reservation relating thereto was made under . . . the Pact.”\textsuperscript{134}

While the court eventually upheld its jurisdiction concerning the rest of the seven islands, the ICJ held that, since the treaties were in force at the time of the dispute, and since Nicaragua did not present a reservation or renunciation of the treaties in the 1948 Pact of Bogota, it did not

\begin{itemize}
\item \textsuperscript{128} Territorial and Maritime Dispute (Nicar. v. Colom.), Preliminary Objections, 2007 ICJ REP. 832 (Dec. 13).
\item \textsuperscript{129} Id. at para. 43.
\item \textsuperscript{130} Id. at para. 63-70.
\item \textsuperscript{131} Id. at 67-68.
\item \textsuperscript{132} Id.
\item \textsuperscript{133} Id. at 77.
\item \textsuperscript{134} Id. at 78.
\end{itemize}
have the jurisdiction to hear disputes about the former three islands because the two parties had “settled” any dispute within the meaning of Article XXXI of the Pact of Bogota.\footnote{Id.}

Although the ICJ did not consider “settled matters” under Article XXXI of the Pact of Bogota in Peru v. Chile, it had to address whether a maritime boundary was already delineated between the two countries in order to proceed with judgment.\footnote{Peru v. Chile, \textit{supra} note 89, at para. 24.} The ICJ considered proclamations, declarations, and various agreements between the two countries in order to decide if the matter was “already settled.”\footnote{Id. at para. 58.} First, the Court looked at the documents to see if they “made express references to the delimitation of maritime boundaries of the zones generated by the . . . state parties.”\footnote{Id. at para. 58.} Since the Declarations did not make express references to an exact delimitation of the maritime boundary, and since it is expected that a treaty to determine maritime boundaries should include detailed information for boundaries, such as specific coordinates or cartographic material, the Declarations did not completely settle the matter.\footnote{Id. at para. 122.}

There, the ICJ held that the declarations went “no further than establishing the Parties’ agreement concerning the limits between certain insular maritime zones and those zones generated by the continual coats which abut such insular maritime zones.”\footnote{Id.} Since the Court found that the previous declarations and treaties did not specifically delimitate a border, it proceeded with its analysis to get at the merits of Chile and Peru’s contentions.
Therefore, in accordance with the VCLT and the Pact of Bogota, it appears that the ICJ deems matters to be “settled” when there is a current treaty that is intended to end a dispute, and specifically articulates how the dispute is to be settled.

2. The Chilean/Bolivian Border is “Already Settled” Because the Parties Have a Current Treaty Delimitating the Borders.

The ICJ does not have jurisdiction over the Chilean and Bolivian border because the two parties settled this matter through a war and have a treaty that specifically details the border region between the two countries.

First and foremost, when tensions over the Bolivian, Chilean, and Peruvian borders came to a head, Bolivia declared war on Chile, therefore involving Peru through a mutual defense agreement.\(^{142}\) Clearly, the three parties intended on ending the border dispute through war. When Bolivia lost the war, it too lost its access to the Pacific Ocean.\(^{143}\) Chile, therefore, won Bolivia’s territory through war while defending itself against a foreign aggressor.\(^{144}\)

Second, after Chile won the War of the Pacific, it ended the border dispute through the 1929 Treaty of Lima and the 1904 Treaty of Peace, Friendship, and Commerce. In the 1929 Treaty of Lima, Chile and Peru was created to “remove all of the difficulty between both countries and to assure their friendship and good intelligence . . . to fix the direct dispute between them, and to resolve the problem of Tacna and Arica.”\(^{145}\) The Treaty specifically divided the newly acquired territory (what used to be Bolivian) between the two countries.\(^{146}\) In Article 2, the parties divided Tacna for Peru and Arica for Chile, and drew a line where “Concordia” is,

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\(^{142}\) See supra, pp. 5-7 (providing a detailed account of the beginnings of the War of the Pacific).

\(^{143}\) Id.

\(^{144}\) Id.

\(^{145}\) Id. at art. 2.

\(^{146}\) See Treaty of Lima, discussed in supra pp. 4-7, at preamble (translated from Spanish).

\(^{146}\) Id. at art. 1-3.
about 10 kilometers north of the Rio Lluta bridge, and delimitating that their territory was to go as west as the Chilean section of the Arica-La Paz railroad.\(^{147}\) Article 2 provides specific landmarks, town names, and kilometer markings to define the territory and mark which parts of the former Bolivian territories would belong to Chile and Peru.\(^{148}\)

The 1904 Treaty of Peace and Friendship between Bolivia and Peru has even more detail as to the former Bolivian territory and the Chilean and Bolivian border.\(^ {149}\) This Treaty was created to end the War of the Pacific, and to delimitate the northern part of Chile and Bolivia.\(^{150}\) Article II of the Treaty of Peace and Friendship has six long paragraphs that specifically accounts landmarks, structures, kilometer markings, and coordinates that delimitate the new boundaries between the two countries.\(^ {151}\) For example, for one border, the Treaty provides that the new Chilean boundary will be “from the highest point of the Zapaleri region, in a straight line from the highest peak of the Guayaques hill, at 22 degrees latitude and 54 degrees longitude . . . .”\(^ {152}\) In addition, to specifically address the fact that Bolivia was losing its access to the sea, in Article III of the Treaty, Chile and Bolivia agreed that Chile would build a railroad (at Chile’s expense) between La Paz and the port of Arica. Chile further agreed to waive import fees from Bolivia and invest that money into new railways within Bolivia.\(^ {153}\) Finally, Chile paid Bolivia £300,000 for the territory, according to Article IV.\(^ {154}\) The rest of the Treaty discusses how Chile and Bolivia will continue commerce in a manner to help Bolivia due to its newly land-locked status.\(^ {155}\)

\(^{147}\) Id. at art. 2.
\(^{148}\) Id.
\(^{149}\) See Treaty of Peace and Friendship, discussed in supra pp. 5-7, at art. 2.
\(^{150}\) Id. at preamble, art. 2.
\(^{151}\) Id.
\(^{152}\) Id. (translated from Spanish).
\(^{153}\) Id. at art. 3.
\(^{154}\) Id. at art. 4.
\(^{155}\) Id. at art. 6-12.
In this manner, both the 1929 Treaty of Lima and the 1904 Treaty of Peace and Friendship were created (1) to specifically end the border dispute between Peru, Chile, and Bolivia, and (2) definitively created a border with specific coordinates, landmarks, and kilometer markings. Like the 1928 treaty between Colombia and Nicaragua created to end the question of ownership of three islands in the Caribbean, here, the two treaties were designed to put an end to the long-lasting, territorial dispute.\(^{156}\) Furthermore, unlike the declarations and treaties between Peru and Chile that addressed maritime boundaries, the 1929 Treaty of Lima and the 1904 Treaty of Peace and Friendship have express references to the boundaries as generated and agreed upon by the state parties.\(^{157}\) Whereas the previous declarations of Chile and Peru did not make any reference to details, specific coordinates, or cartographic material, here, the 1929 Treaty of Lima and the 1904 Treaty of Peace and Friendship have listed coordinates, volcanoes, steps, landmarks, and kilometer markings to define the new boundary.\(^{158}\) Rather than just agreeing to a general border, such as the case in Peru v. Chile, in the 1929 Treaty of Lima and the 1904 Treaty of Peace and Friendship, was specific as to create a new border and settle the long-standing international border dispute.\(^{159}\)

Lastly, Chile, Peru, and other international organs view the 1929 Treaty of Lima and the 1904 Treaty of Peace, Friendship, and Commerce as binding treaties that establish a specific border. While Chile has previously discussed the possibility of one day talking about a potential

\(^{156}\) See Nicaragua v. Colombia, supra note 127, at para. 43, 63-70. See also discussion, supra pp. 24-27 and accompanying notes.
\(^{157}\) Peru v. Chile, supra note 89, at para. 24.
\(^{158}\) Compare Peru v. Chile, supra note 89, at para. 24, with 1904 Treaty of Peace, Friendship, and Commerce, discussed supra pp. 5-7, at art. 2.
\(^{159}\) See Peru v. Chile, supra note 89, at para. 58 (holding that Chile and Peru’s previous agreements went “no further than establishing the Parties’ agreement concerning the limits between certain insular maritime zones and those zones generated by the continual coasts which abut such insular maritime zones”).
access to the sea for Bolivia, it has never addressed or even suggested that the borders are not defined or that the issue was “unsettled.”\textsuperscript{160} When Bolivia has approached Chile to revise the two treaties for their borders, Chile rejected any revisions.\textsuperscript{161} While Bolivia will likely assert that Chile’s conduct of potentially opening the door to future discussions is enough to show that the matter is not “settled,”\textsuperscript{162} it can be argued that Chile’s conduct has actually demonstrated that it sees (1) the issue as settled, and (2) that it does not have an obligation to discuss its borders or modify its treaties with Bolivia.\textsuperscript{163}

Furthermore, other international law bodies have accepted the treaties from the War of the Pacific as binding and settled.\textsuperscript{164} For example, when Bolivia appealed to the First Assembly of the League of Nations in an attempt to gain a revision of the treaties from the War of the Pacific, the League of Nations held that they had not power to modify treaties.\textsuperscript{165} Additionally, Bolivia’s attempts to lobby for support at the International Law Congress in Buenos Aires in 1925 were futile and did not garner any support.\textsuperscript{166} Bolivia will likely raise the fact that the UN General Assembly has consistently produced resolutions asking the parties to come to an agreement, thus demonstrating that the international forum does not see the matter as already “settled.” While this is perhaps a convincing argument, the general principles of international

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\item \textsuperscript{160} See Bolivia’s 2013 Application to the ICJ, \textit{supra} note 13 (displaying all of Chile and Bolivia’s diplomatic discussions and “notes” regarding Bolivia’s access to the sea).
\item \textsuperscript{161} Glassner, \textit{supra} note 1, at 375.
\item \textsuperscript{162} See \textit{supra} pages 10-14 and accompanying notes.
\item \textsuperscript{163} But see Guzman Escobari, \textit{supra} note 72 (asserting that Chile is not bound by the written political agendas and notes, but rather through its conduct).
\item \textsuperscript{164} See, e.g., Glassner, \textit{supra} note 1, at 375 (giving examples of Bolivia’s lobbying at the International Law Congress in Buenos Aires and the First Assembly at the League of Nations for support).
\item \textsuperscript{165} Glassner, \textit{supra} note 1, at 374.
\item \textit{Id.}
\end{itemize}
\end{footnotesize}
law strongly assert that territory won by war is prize that is to be respected.¹⁶⁷ Scholars have
noted that once a country has annexed a territory and it has been followed by international
recognition, “international law is powerless to do anything by accept the new reality.”¹⁶⁸

To the extent that modern international law is hesitant to allow annexation through force,
international law has provided the “self defense exception” where the losing country attacks
first.¹⁶⁹ In fact, many countries around the world have gained territory through an invocation of
the “self-defense” exception, such as India’s entry into the Bangladesh-Pakistan War in 1972, the
U.S.’s “quarantine” of Cuba, and Pakistan’s entry into Kashmir.¹⁷⁰ In this case, Bolivia is clear
the aggressor, since she declared war on Chile first, and also brought in a third party alliance.
Chile merely acted in self defense, and happened to win territory through its victory. Chile then
annexed that territory, signed the 1904 and 1929 treaties with Bolivia and Peru establishing
definite boundaries, and the international arena has looked to these treaties as “finite.”

In that manner, the ICJ too has seen the War of the Pacific as a war that ended the
boundary dispute between Chile, Bolivia, and Peru.¹⁷¹ Perhaps most important from the Peru v.
Chile judgment is that, after deciding that it needed to delimitate a new maritime border between
the states, it looked to the treaty that ended the War of the Pacific, the 1929 Treaty of Lima.¹⁷²
The Court chose this Treaty as the controlling authority on the two country’s borders, and noted

¹⁶⁷ Allan Gerson, War, Conquered Territory, andMilitaryOccupationintheContemporary
InternationalLegalSystem,18Harv. Int’l. L. J. 525, 544 (1977); see also I. Brownlie,
Principles of Public International Law 417 (1966); D. O’Connell, International Law 432
¹⁶⁸ Gerson, supra note 167, at 544.
¹⁶⁹ Id. at 547.
¹⁷⁰ Gerson, supra note 167, at 547.
¹⁷¹ Peru v. Chile, supra note 89, at para. 153.
¹⁷² Id.
that the intention of the 1929 Treaty of Lima was to define a boundary between the countries.\textsuperscript{173} The Court then used the 1929 Treaty of Lima as a starting point to settle the maritime dispute 200 miles off the coast of Peru and Chile, mentioning that the Treaty is to be the line in the sand.\textsuperscript{174} Since the ICJ has already used the 1929 Treaty as a finite point in border demarcation, it should not rule that the Treaty leaves matters “unsettled” as to warrant future ICJ litigation. In fact, holding in the future that the 1929 Treaty does not settle the War of the Pacific will disturb the borders established by the ICJ’s previous opinions, and potentially result in a second war to determine Bolivia’s access to the sea.

\textbf{VI. Conclusion}

As the respected Professor James Brierly commented, “the truth is that international law can no more refuse to recognize that a finally successful conquest does change title to territory than municipal law can change a regime brought about by a successful revolution.”\textsuperscript{175} After a “revolution” of sorts with the election of President Evo Morales, Bolivia has applied for the ICJ to determine if Chile has an obligation to negotiate for Bolivia’s access to the sea. Before the ICJ can hear the merits of the case, however, it must determine jurisdiction. The parties can either both cede jurisdiction to the Court, or, the Court must find jurisdiction under the Pact of Bogota, of which both Chile and Bolivia are parties. The Pact of Bogota prohibits compulsory jurisdiction to the Court when the dispute is over a “settled matter.” Unfortunately, the Pact of Bogota does not give guidance as to what a “settled matter” is in order to bar jurisdiction.

Through an interpretation of the Pact of Bogota using the VCLT and relevant ICJ opinions, it is evident that a settled matter is one that is governed by a treaty that is current. For

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\textsuperscript{173} Id. at para. 157.
\textsuperscript{174} Id.
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this analysis, it is most relevant that the 1929 Treaty of Ancon and the 1904 Treaty of Peace and Friendship between Bolivia and Chile are current, in force, and specify that the Treaties were created to settle the boundary dispute between the parties and Peru. Furthermore, other international organizations, including the League of Nations and the ICJ, have looked to these treaties to “settle” boundary disputes on the Pacific Coast. Therefore, since Bolivia’s boundaries are a “settled matter” according to the Pact of Bogota, unless Chile cedes jurisdiction, the ICJ should dismiss the case with prejudice.