


General Assembly Security Council

 Distr.
GENERAL

 A/42/736 /
S/19265
12 November 1987
ENGLISH
ORIGINAL: SPANISH

GENERAL ASSEMBLY

Forty-second session

Agenda items 129, 138 and 142

 PEACEFUL SETTLEMENT OF DISPUTES BETWEEN
STATES

 DEVELOPMENT AND STRENGTHENING OF GOOD-
NEIGHBOURLINESS BETWEEN STATES

 CO-OPERATION BETWEEN THE UNITED NATIONS
AND THE ORGANIZATION OF AMERICAN STATES

SECURITY COUNCIL

Forty-second year

Letter dated 12 November 1987 from the Permanent Representative of
Chile to the United Nations addressed to the Secretary-General

The Permanent Mission of Bolivia to the United Nations has had documents concerning my country distributed under the symbols A/42/348 and A/42/662.

I must point out that the General Assembly of the United Nations and, certainly, the Sixth Committee have no authority whatsoever to interfere in the above-mentioned matters which the Permanent Mission of Bolivia to the United Nations is trying to introduce.

Actually Bolivia is trying to pronounce on matters, such as Chile's territorial integrity, which fall exclusively within the purview of Chilean sovereignty. The General Assembly of the United Nations is not authorized and, indeed, is forbidden to do anything that affects the territorial integrity of its Members.

It should be noted that there is no territorial or boundary problem pending between Bolivia and Chile, because the boundary between the two countries was set in 1904 under an international treaty, adopted by the Bolivian Congress, a treaty which has been in force for over 80 years and which, in addition to defining the boundaries between the two countries, provides for certain obligations, which Chile has scrupulously honoured, and for advantages in favour of Bolivia which that country has enjoyed over all those years and continues to enjoy.

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For the sole purpose of supplying the missions accredited to the United Nations with accurate information, I attach hereto an annex containing a truthful and updated report on the relations between Chile and Bolivia.

I should be grateful if you would have this letter and its annex distributed in the same way as documents A/42/348 and A/42/662.

(Signed) Pedro DAZA
Ambassador
Permanent Representative

ANNEX

Chile and Bolivia's claim to access to the sea

In the annexes to documents A/42/662 and A/42/348, Bolivia seeks to link its claim to access to the sea with the peaceful settlement of disputes between States, the development and strengthening of good-neighbourliness between States and co-operation between the United Nations and the Organization of American States.

So far as the peaceful settlement of disputes between States is concerned, it must be pointed out that there is no dispute between the two countries. Actually there is no territorial or boundary problem pending between Chile and Bolivia, because the boundary between the two countries was definitively set under an international Treaty signed in 1904, i.e., almost one quarter of a century after the end of the hostilities between the two States in the second half of the 19th century; the Treaty establishes, in article 2, with reference to the territories specified therein, that "the absolute dominion in perpetuity of Chile over the territories is recognized". Moreover, the negotiations which led to the conclusion of that Treaty which laid many heavy obligations on Chile - obligations which Chile has fulfilled, fully, consistently and to the letter - were based precisely on a proposal by Bolivia, introduced by the diplomat Félix Avelino Aramayo as official representative of that country. That proposal included the waiver, by Bolivia, of any claim to a port on the Pacific and the granting, by Chile, among other benefits, of the most-favoured-nation clause in trade and the payment of a sum of money in annual instalments for the construction of railways for providing Bolivian products with easy access to the Pacific.

Bolivia elevated to the Office of the President of the Republic the main Bolivian negotiators of that Treaty which was adopted by large majorities in the Congress of Bolivia and freely ratified by that country. The report submitted by the Minister for Foreign Affairs and Worship of Bolivia, Claudio Pinilla, to the Congress in 1905 should be remembered. Referring to the 1904 Treaty, he spoke as follows:

"After the long and calm discussion which preceded the approval of the Treaty by the National Congress, a discussion in which we representatives of the executive branch expounded at great length on the reasons for each article of the Treaty, clarifying the doubts and queries expressed and explaining the scope and spirit of all its provisions ...".

As regards the atmosphere of freedom in which the Treaty was negotiated and the support it received from the Bolivian citizens, the following words of the distinguished Bolivian historian and diplomat Alberto Gutiérrez are worth quoting:

"When apprised of this openly presented Government Plan, the Bolivian communities responded through the ballot-boxes in May 1904, casting a majority of votes that was unprecedented in the history of our free voting system. The Government Plan formulated by the presidential candidate, which included the agreement with Chile on the basis of genuine compensation - unlike the

deceitful compensation of 1895 - commensurate with Chile's actual potential and with the demonstrable needs of our country, received the support of 38,000 Bolivian voters, a figure which is virtually equivalent to unanimity in terms of our electoral statistics."

In referring to the Government Plan of the presidential candidate who won in the elections of May 1904, the Bolivian historian is alluding to the programme championed by General Ismael Montes, elected President of Bolivia by the greatest majority in the country's history. In 1913, General Montes was re-elected President of Bolivia, and Eleodoro Villazón, Minister for Foreign Affairs at the time of the Treaty, became President of Bolivia in 1910. In view of the foregoing, there is no escaping the conclusion that the Bolivian people demonstrated and reiterated its confidence in those men who negotiated and concluded the Treaty with Chile.

With regard to the development and strengthening of good-neighbourliness between States, it should be borne in mind that Chile extends its support and collaboration on a continuing basis to Bolivia which enjoys the most comprehensive, exceptional and privileged freedom of transit in the world granted to a land-locked country, thanks to the facilities provided to it by Chile under the 1904 Treaty. These facilities, in addition to being fully in force, have also been continuously improved through the introduction of régimes, processes and arrangements agreed upon by both countries.

As for co-operation between the United Nations and the Organization of American States, it should be noted that that item refers to relations between the two organizations in respect of institutional co-operation and has no connection with the agendas or items that either organization takes up in its respective field of competence.

Accordingly, it must be concluded that the arguments set forth in documents A/42/662 and A/42/348 are irrelevant, to which it may be added that their annexes contain not only misinterpretations of history but also misrepresentations of the facts.

Bolivia maintains that it had its own coast and ports before the war of 1879 which it lost against Chile, and has stated in various international forums that the lack of access to the sea is the reason for the Bolivian economy's underdevelopment. It asserts that the 1904 Treaty, which establishes the boundary with Chile and grants to Bolivia facilities which it has enjoyed for more than 80 years, is flawed because Bolivia's assent was wrung from it by alleged coercion on the part of Chile, an assertion which is disproved in the preceding paragraphs. Bolivia also alleges that international organizations, such as the United Nations and the Organization of American States, exert pressure on Chile in order to make it yield part of its coast and one port. With this in mind, Bolivia is trying to assert its claim as an international dispute susceptible of settlement through the peaceful processes provided for in the respective charters of the aforesaid organizations, a claim that is likewise disproved in the preceding pages. In the annex to document A/42/348, concerning the suspension of negotiations between the two Governments, Bolivia makes an insulting allusion to Chile's reply to its proposal.

Chile wishes to point out that, during the colonial era, under Spain, Bolivia had no access to the sea and that, for a certain time, after independence and through the unilateral action of its Government, it gained such access, which led to a frontier dispute with Chile, giving rise to the Treaties of 1866 and 1874 signed between the two countries. Bolivia's failure to comply with those international instruments and its violation of their provisions led to the war of 1879.

The presence and rights of Chile from the twenty-third parallel, and with regard to the area encompassing the inlet of Cobiya, situated at latitude 22°33' which Bolivia used temporarily, date back to an era long before the emergence of Chile as an independent republic and the sovereignty of Chile over these territories is expressly recognized in the first constitutions of Chile; indeed, under the Fundamental Charters of 1822, 1823, 1828 and 1833, the territory of Chile extends from the Atacama desert in the north to Cape Horn in the south, and Chile's jurisdiction over these territories has been manifested in countless proceedings formalized in the intervening years. Neither these constitutional instruments nor the 1833 Treaty of Friendship, Trade and Navigation between Chile and Bolivia recognize in any way, as Bolivia claims in its annex to document A/42/662, Bolivian rights over Atacama, an area which is not even mentioned in the Treaty.

Chile was dragged into a war which it had not sought and which it tried by all means in its power to avoid, and repeatedly proposed arbitration which Bolivia rejected.

In that connection, mention should be made of the circular issued by the Bolivian Ministry of Foreign Affairs explaining the scope of the Act of 14 February 1878, cited by Dr. Cornelio Ríos in his book Bolivia en el Primer Centenario de su Independencia (Buenos Aires, 1925, pp. 370-371), which refers to the international arbitration "proposed and demanded" by the Government of Chile. The Bolivian statesman Mariano Baptista made the following observation on that point:

"Chile's demand was a just one. Daza considered it, then suspended enforcement of the Act for seven months and gave an assurance, although it was toned down by the head of his Foreign Ministry. When Bolivia changed its mind, Chile requested arbitration. Bolivia refused, both during the litigation with the Company and afterwards when it rescinded its contracts. Consequently, Bolivia, refusing arbitration, resorted to armed force. The sentence of the war was against it ..." (Obras completas. Documentos de Política Externa e Interna, vol. V., p. 187).

By the Treaty of 1904, which, as mentioned above, was signed nearly a quarter century after the end of the war between the two countries, Chile assumed obligations, so numerous and so heavy that they, together with the time-lapse between the end of the conflict and the signing of the Treaty, the categorical and unequivocal Bolivian approval of the Treaty, and the elevation of the Bolivian negotiators to the office of the President of their country preclude the assertion that Bolivia signed the Treaty under duress. Furthermore, the basis of the negotiations which led to the signing of the Treaty was, as noted above, Bolivia's

proposal, presented by the diplomat Félix Avelino Aramayo as official representative of Bolivia.

The 1904 Treaty, so often mentioned, made Bolivia once again a land-locked State, but awarded to it in return many important and varied compensatory benefits. Chile granted to Bolivia, in perpetuity, the fullest freedom of transit for its trade through Chile's Pacific territory and ports. Chile built international railways and roads, at great cost, which connect Bolivia with the ports, and it helped build Bolivia's internal railway system. Chile provides warehouse, berths and a complete infrastructure in order to facilitate Bolivia's international trade to the fullest extent. This system is, as mentioned above, the most favourable one in the world granted to any land-locked country; it is so favourable that Bolivia has not ratified the Convention on Transit Trade of Land-locked States, adopted in New York on 8 July 1965, which was the culmination of a United Nations conference; it included principles and procedures which the international community considered adequate for solving the transit problems of those countries. Bolivia did not ratify it because the facilities provided under the multilateral Convention were much less favourable than those granted by Chile, which are available for all types of cargo at any time, without exception.

The facilities granted to Bolivia by Chile, together with those granted by its other neighbours, afford Bolivia easy and effective access to both the Atlantic and the Pacific Oceans. Consequently, attributing its underdevelopment to the lack of access to the sea is a fallacy which does not stand up to serious examination. By the same token, mention should be made of the statement by the present President of Bolivia, Víctor Paz Esstensoro, in his letter of 25 September 1950, to another outstanding Bolivian statesman, former President Hernán Siles Suazo, published in La Nación of La Paz on 19 June 1964:

"In our view, the port problem is not one of the most pressing ones confronting Bolivia. The frequent assertion that our underdevelopment results mainly from the lack of access to the ocean is not only childish but also tendentious, because it seeks to divert public attention from the real causes of Bolivia's stagnation. A more urgent and useful course, from the point of view of the national interest, would be to channel all our capabilities, energies and resources towards developing Bolivia's great economic and human potentials ... Paradoxically, it would not be in our interest for the issue of the port to be settled immediately; it would be better to postpone it for the future."

On another matter, it should be noted that, besides the use which it can make of all ports on the Chilean coast, Bolivia participates, under the Treaty of 1904, in the customs control of its trade through agencies which it may establish in any Chilean port of its choosing; moreover, Chile has also assumed other commitments, including the payment of obligations recognized by Bolivia in respect of loans and compensation in favour of individuals and juridical persons.

Bolivia's claim for an outlet to the Pacific Ocean can be asserted only bilaterally with Chile, which has been prepared to consider it on several occasions. However, the proposed solutions have proved elusive and extremely

difficult to apply. Indeed, the negotiations in 1950 on the issue failed as soon as the public of either country became aware of them; the people of Bolivia categorically rejected Chile's use of its waters, and the Chilean people was opposed to ceding any of the national territory. The negotiations from 1975 to 1978, which envisaged an exchange of territories - a concept accepted by the Bolivian Government - failed mainly because the Bolivian Government changed its position on the exchange owing to public pressure against the idea of territorial compensation for Chile in exchange for the proposed corridor. Bolivia unilaterally withdrew from the negotiations and broke off diplomatic relations with Chile, a situation which still continues today.

Recently, talks between the Ministers for Foreign Affairs of the two countries resulted in the establishment of a joint committee to discuss various matters of bilateral interest. The idea was to re-establish an atmosphere of understanding and good will between the two countries. The purpose was to initiate a stage of rapprochement. Bolivia quickly made a proposal which was clearly unacceptable to the Government and people of Chile, because it did not provide for any territorial compensation for the cession of enclaves or of a corridor through Chilean territory. The Bolivian proposal, by way of compensation, made only vague offers of water and natural gas resources, subject to various conditions and without specifying quantities or giving assurances with regard to the supply of such resources: these resources were not to form part of Chile's national assets and had to be used for mutually beneficial projects. The new Bolivian proposal lacked the "fresh approach" promised by the President of Bolivia, and the immediate and overwhelming public rejection of the proposal in Chile led its Government to tell Bolivia that it was unacceptable. This sovereign act of foreign policy was considered hostile, which presumably means that what Bolivia offered was not a proposal but a kind of ultimatum, which was, of course, unacceptable.

The fact that there is a permanent and self-sacrificing presence of Chilean citizens in the territories in question has been and still is as important as the acts of the Chilean Government and stands in obvious contrast to the negligible or non-existent Bolivian presence in the area. In that regard, it should be noted that Bolivia recognized, 40 years before the beginning of the conflict between the two countries and on the occasion of its denunciation of the Treaty of Friendship, Commerce and Navigation with the United Kingdom, that it did not have a presence on the coast and that, according to Bolivian sources, the population of the city of Antofagasta in 1874 consisted of 93 per cent Chileans, 5 per cent Europeans, North Americans, South Americans and Asiatics and 2 per cent Bolivians. Now, the enclaves and corridor which Bolivia had in mind in its proposal are inhabited and developed by Chilean nationals, who are fully integrated with the Chilean nation and State.

No person, no country, no group and no organization can expect Chile to cede territories or displace populations. Chile does not accept outside intervention in matters pertaining to the exercise of its sovereignty which fall legitimately, solely and exclusively within its jurisdiction.