

**OPINION ON THE
CONTROVERSY BETWEEN PERU
AND CHILE, KNOWN AS THE
QUESTION OF THE PACIFIC**

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Opinion on the controversy between Peru and Chile, known as the question of the Pacific by
Edwin M. Borchard

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By

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Professor of International Law, Yale University



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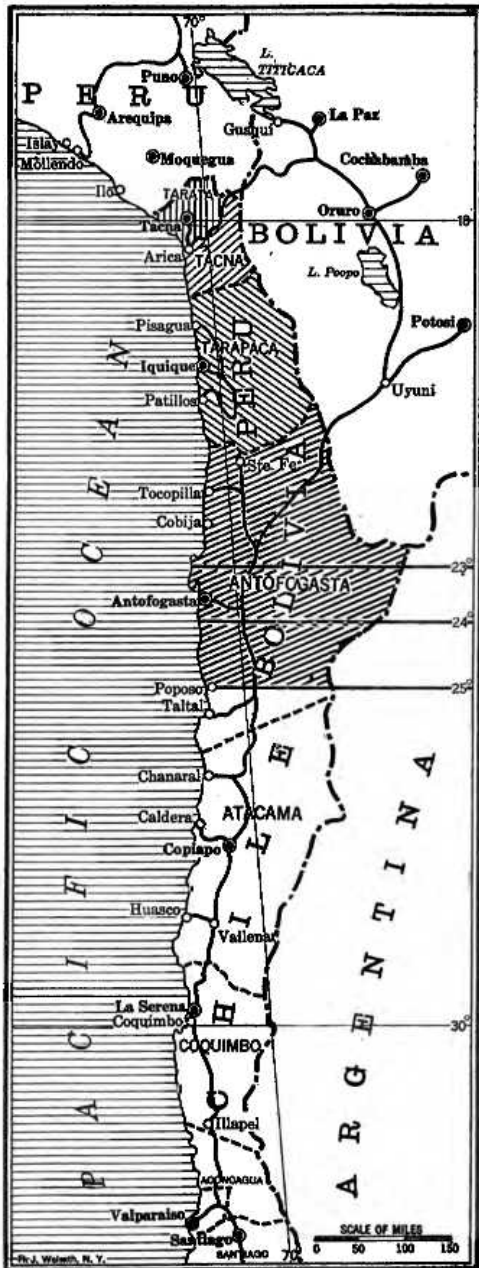
1. The first part of the document discusses the importance of maintaining accurate records of all transactions and activities. It emphasizes that proper record-keeping is essential for transparency and accountability, particularly in the context of public administration and government operations. This section also highlights the role of technology in streamlining record management processes and reducing the risk of data loss or corruption.

2. The second part of the document focuses on the implementation of robust internal controls and risk management frameworks. It outlines the need for regular audits and assessments to identify potential vulnerabilities and ensure that organizational policies are effectively enforced. This section also discusses the importance of employee training and awareness programs to foster a culture of integrity and ethical behavior within the organization.

3. The third part of the document addresses the challenges of data security and privacy protection in the digital age. It highlights the need for strong cybersecurity measures, including encryption, access controls, and regular security updates, to safeguard sensitive information from unauthorized access and cyber threats. Additionally, it discusses the importance of complying with relevant data protection regulations and ensuring that data is handled in a lawful and ethical manner.

4. The fourth part of the document explores the role of leadership and governance in promoting organizational success and sustainability. It emphasizes the importance of clear communication, strategic vision, and ethical leadership in driving positive change and fostering a sense of purpose among employees. This section also discusses the need for effective governance structures and mechanisms to ensure that the organization remains aligned with its mission and values.

5. The fifth and final part of the document provides a summary of the key findings and recommendations. It reiterates the importance of a holistic approach to organizational management, one that integrates financial, operational, and ethical considerations. The document concludes by encouraging organizations to embrace a culture of continuous improvement and innovation, and to remain committed to the highest standards of integrity and accountability in all their activities.





OPINION ON THE CONTROVERSY BETWEEN PERU AND CHILE KNOWN AS THE QUESTION OF THE PACIFIC

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Article 3 of the Treaty of Peace between Chile and Peru concluded at Ancon, October 20, 1883, reads as follows:

"The territory of the provinces of Tacna and Arica, bounded on the North by the River Sama, from its source in the Cordilleras bordering Bolivia to its disembogement into the sea; on the South, by the ravine and river of Camarones; on the East, by the Republic of Bolivia; and on the West, by the Pacific Ocean, shall continue in the possession (*continuará poseído*) of Chile, subject to Chilean legislation and authority for a period of ten years from the date of the ratification of the present treaty of peace. At the expiration of that term, a plebiscite will decide, by popular vote, whether the territory of the provinces above-mentioned is to remain (*queda*) definitely under the dominion and sovereignty of Chile or is to continue to constitute a part (*continua siendo parte*) of Peru. That country of the two to which the provinces of Tacna and Arica thus remain annexed (*queden anexadas*) shall pay to the other ten millions of pesos of Chilean silver or of Peruvian soles of equal weight and fineness.

"A special protocol, which shall be considered an integral part of the present treaty, will determine the form in which the plebiscite is to be carried out and the terms and time for the payment of the ten millions by the nation which remains the owner (*dueño*) of the provinces of Tacna and Arica."

The treaty was ratified on March 28, 1884, so that under the terms of the article just quoted, the plebiscite should have been held on March 28, 1894. The plebiscite was not held on that date, nor has it been held since then, and Chile still remains in possession of Tacna and Arica. Both parties are laying claim to sovereignty over the territory in dispute, each accusing the other of the non-fulfillment of the treaty stipulation. The question at issue then is this: What is the effect of the non-fulfillment of the condition mentioned, the holding of the plebiscite and its result, on the legal relations of Peru and Chile with respect to the territories involved?

Properly to examine and determine this question, requires a brief review of the history of the relations between Peru and Chile; of the events and negotiations leading up to the formulation of art. 3 of the Treaty of 1883; and of the diplomatic negotiations since the conclusion of the treaty designed to bring about the holding of the plebiscite. The writer has not had the advantage of a formal Case, Counter-Case and Arguments prepared by the respective parties to the dispute, but the literature of both sides, official, semi-official and private, is so voluminous that it is not believed that any serious contention or argument has been overlooked. Much of the literature examined, listed in the Appendix to this Opinion is necessarily controversial and partisan in character; for this factor, due allowance has been sought to be made. In the course of this Opinion, the respective contentions on issues of fact or of law will be set forth wherever possible.

I

To appreciate the nature of the dispute, it is desirable to mention the geography of the territory in question and to set forth the chronology of events leading up to the war of the Pacific. Chile is a long, narrow country lying along the southwestern edge of South America. In length, about 2,000 miles, it would cover approximately a coastal strip from Maine to North Carolina; in width, it extends from 100 to 200 miles only, from the Pacific Ocean to the Cordilleras of the Andes.

Down to 1842, there appears to have been no doubt as to the northern boundary of Chile. Chile's constitutions of 1822, 1823, 1828, 1832, and 1833, all appear expressly to recognize the northern boundary of Chile as the desert of Atacama, about 27° south latitude. Chapter I of the Constitution of 1833, as printed in Arosemena's *Estudios Constitucionales sobre los Gobiernos de la America Latina* (2nd ed. Paris, 1878) I, p. 67 reads: "The territory of Chile extends from the desert of Atacama to Cape Horn, and from the Cordilleras of the Andes to the Pacific Ocean * * *." The desert of Atacama, extending from about 27° to 23° south latitude, was up to 1842 under the undisputed dominion and sovereignty of Bolivia. North of 23° was Bolivian territory, including Antofagasta, extending to 21°; north of that, the Peruvian province of Tarapacá, extending from about 21° to 19°; and immediately to the north of this line are the provinces of Tacna and Arica, extending from about 19° to 17° 30'. From 17° 30' to 17° adjoining Tacna, lies the province of Tarata, which represents since 1883 the northern limit of Chilean occupation. Between 1842 and 1883 Chile advanced her northern boundary from 27° to about 17° south latitude.

The immediate reason for the first step in this northward expansion appears to have been the discovery of guano in the desert of Atacama. President Montt, of Chile, in a message to the Chilean Congress, on July 31, 1842, informed the Congress that he had sent a commission of exploration "for the purpose of discovering if any guano deposits existed in the territory of the Republic which * * * might furnish a new source of revenue to the treasury; * * * Guano has been discovered from 29° 35' to 23° 6' south latitude." Chile's northern boundary was then 27°, so that evidently much of the territory exploited was in the desert of Atacama, then Bolivian. The Chilean Congress, in pursuance of the Presidential Message, enacted on October 31, 1842 a law providing that "all the guano deposits which existed in the Province of Coquimbo, in the littoral of Atacama, and in the adjacent islands, are hereby declared national property." Bolivia formally protested against this assumption of Chilean sovereignty over Bolivian territory, and thus began the controversy which culminated in the war of the Pacific of 1879, brought Peru into the conflict and created the question of the Pacific now at issue.

Bolivia's protests went unheeded. Continuous incursions by Chilean guano hunters were followed in 1857 by the landing of a Chilean military expedition at Mejillones, one of the principal ports of the Atacama desert, and the ousting of the Bolivian authorities. To Bolivia's demands for evacuation of the territory thus occupied, Chile set up a claim of territorial right and expressed a willingness to draw up a boundary treaty, dividing the Atacama desert between them. Bolivia, weak and misgoverned by a succession of military dictators, was constrained to yield. Protracted negotiations, interrupted by the war against Spain, finally resulted in the treaty of 1866, by which the new boundary line was fixed at 24°, Bolivia thus surrendering the territory from 27° to 24°. Chile had claimed all the territory up to 23°. In the region between 23° and 25° a sort of condominium was set up, each country to receive half the proceeds of the guano and mineral deposits and dividing the export duties. The condominium proving unsatisfactory in administration, a new treaty was concluded in 1874 which fixed 24° as the boundary between Chile and Bolivia. It also provided that guano deposits in the zone between 23° and 24° were to be equally divided between Bolivia and Chile. Article 4 of the treaty, which ultimately gave rise to the dispute which led to the war of 1879, reads:

"The export duties to be levied on the minerals mined within the zone mentioned in the preceding articles shall not exceed those which are in force at the present time; and the Chilean capital,