

INTERNATIONAL COURT OF JUSTICE

# APPLICATION

## INSTITUTING PROCEEDINGS

filed in the Registry of the Court  
on 6 June 2016

### DISPUTE OVER THE STATUS AND USE OF THE WATERS OF THE SILALA

(CHILE *v.* BOLIVIA)

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COUR INTERNATIONALE DE JUSTICE

# REQUÊTE

## INTRODUCTIVE D'INSTANCE

enregistrée au Greffe de la Cour  
le 6 juin 2016

### DIFFÉREND CONCERNANT LE STATUT ET L'UTILISATION DES EAUX DU SILALA

(CHILI *c.* BOLIVIE)

2016  
General List  
No. 162

I. THE MINISTER OF FOREIGN AFFAIRS OF CHILE  
TO THE REGISTRAR OF THE INTERNATIONAL COURT  
OF JUSTICE

Santiago, 30 May 2016.

The Minister of Foreign Affairs of Chile has the honour to communicate to the Honourable International Court of Justice that it has designated H.E. Ambassador Ximena Fuentes Torrijo as its Agent, and H.E. Ambassador María Teresa Infante Caffi and Mr. Juan Ignacio Piña Rochefort, President of the State Defense Council (Consejo de Defensa del Estado), as Co-Agents, for all the effects concerning the Application that the Republic of Chile will file against the Plurinational State of Bolivia, regarding the nature of the Silala River system as a transboundary watercourse and Chile's right as a riparian State.

This communication is made in compliance with Article 40, paragraph 1, of the Rules of Court.

Therefore, all communications relating to this case should be sent to the following address:

Embassy of the Republic of Chile  
Mauritskade 51  
2514 HG, The Hague  
The Netherlands

*(Signed)* Heraldo MUÑOZ VALENZUELA.

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II. THE AGENT OF THE REPUBLIC OF CHILE  
TO THE REGISTRAR OF THE INTERNATIONAL COURT  
OF JUSTICE

MINISTRY OF FOREIGN AFFAIRS, REPUBLIC OF CHILE

The Hague, 6 June 2016.

I have the honour to transmit herewith the original Application of the Republic of Chile against the Plurinational State of Bolivia, seeking declarations concerning the nature of the Silala River system as an international watercourse and resulting rights and obligations of the Parties under international law. This original documents and its Annexes dated today are signed by the Agent named for these proceedings, with the purpose of their being filed with the Registry in accordance with Article 52, paragraph 1, of the Rules of Court.

This original Application and its Annexes are accompanied by a copy that the undersigned Agent certifies as identical to the original for purposes of communication to the other Party in accordance with Article 43, paragraph 4, of the Statute of the Court.

In addition, I have the honour to transmit herewith 20 additional copies of the Application and its Annexes for the discretionary use of the Court.

The annexed documents are certified as accurate and identical to the originals, and the translations are also certified as true and accurate translations into the English language.

*(Signed)* Ximena FUENTES TORRJO.

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### III. APPLICATION INSTITUTING PROCEEDINGS

1. I, the undersigned, duly authorized by the Republic of Chile (hereinafter “Chile”), of which I am the Agent, have the honour to submit to the International Court of Justice, pursuant to Article 36 and Article 40 of the Statute, and to Article 38 of the Rules of Court, an Application instituting proceedings on behalf of Chile against the Plurinational State of Bolivia (hereinafter “Bolivia”) in the following matter.

#### I. SUBJECT OF THE DISPUTE

2. The Silala (also referred to as Siloli) River system is an international watercourse whose surface waters originate at approximately 4,400 m above sea level in Bolivian territory. Within a few kilometres, it flows overland and across the border into Chilean territory. The surface flows of the Silala River emanate from groundwater springs in the Orientales and Cajones Ravines, which are fed by an aquifer that itself straddles the border between Bolivia and Chile. Still within Bolivian territory, these waters flow into a common watercourse, the Silala River, which runs in a south-westerly direction towards Chile due to the natural inclination of the terrain.

3. The dispute between the Republic of Chile and the Plurinational State of Bolivia concerns Bolivia’s contention that the Silala River system is not a transboundary watercourse and therefore Bolivia is entitled to the use of 100 per cent of its waters. The nature of the Silala River as an international watercourse was never disputed until Bolivia, for the first time in 1999, claimed its waters as exclusively Bolivian.

4. As elaborated in the present Application, Chile requests that the Court adjudge and declare that the Silala River system is in fact and in law an international watercourse whose use by Chile and Bolivia is governed by customary international law. The precise declarations sought are as stated in Section V below.

#### II. JURISDICTION OF THE COURT

5. The Court has jurisdiction over the present dispute in accordance with the provisions of Article 36 of its Statute, by virtue of the operation of Article XXXI of the American Treaty on Pacific Settlement, the “Pact of Bogotá”, of 30 April 1948<sup>1</sup>, which reads as follows:

“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

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<sup>1</sup> American Treaty on Pacific Settlement (“Pact of Bogota”), 30 April 1948, United Nations, *Treaty Series (UNTS)*, Vol. 30, p. 83, <https://treaties.un.org/doc/Publication/UNTS/Volume%2030/v30.pdf> (Annex 1).

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.”

6. Both Bolivia and Chile are parties to the Pact of Bogotá. Chile ratified the Pact of Bogotá on 21 August 1967<sup>2</sup>. Bolivia did so on 14 April 2011, with a reservation to Article VI inasmuch as it considers that “peaceful procedures may also be applied to controversies arising from matters settled by arrangement between the Parties, when the said arrangement affects vital interests of a State”<sup>3</sup>. Bolivia withdrew this reservation on 10 April 2013<sup>4</sup>. No pertinent reservation made by either Party is in force at the present date.

7. Chile has always been willing to engage in discussions with Bolivia concerning a régime of utilization of the waters of the Silala. Chile and Bolivia have engaged in such discussions through a series of bilateral meetings between the years 2004 and 2010. Ultimately, these discussions terminated without result, due to Bolivia’s insistence on denying that the Silala River is an international watercourse and Bolivia’s contention that it has rights to the 100 per cent use of its waters.

8. On 27 March 2014, Chile sent a diplomatic Note repeating its continued interest and willingness to proceed with technical projects and mutual collaboration on the Silala River system<sup>5</sup>. Bolivia responded by insisting once more on its exclusive sovereign rights over this common water resource<sup>6</sup>.

9. On 23 March 2016, President Evo Morales of Bolivia claimed (again) that the Silala River is not an international watercourse and announced his intention to bring an international claim against Chile for the unlawful use of the waters of the Silala<sup>7</sup>. In the circumstances, Chile has elected to initiate the current claim in order to resolve the issue of the status of the Silala River.

<sup>2</sup> Republic of Chile, Decree No. 526, 21 August 1967, published on 6 September 1967 (Annex 2).

<sup>3</sup> Plurinational State of Bolivia, Note OEA-SG-111-11, 9 June 2011, attaching the Instrument of Ratification of the “Pact of Bogotá”, dated 14 April 2011 (Annex 3.1). The Instrument of Ratification was deposited with the Secretary-General of the OEA on 9 June 2011. On 10 June 2011, Chile submitted an objection to Bolivia’s reservation and declared that it precludes the entry into force of the Pact of Bogotá between the Republic of Chile and the Plurinational State of Bolivia, available at: [http://www.oas.org/dil/esp/a-42\\_objecion\\_chile\\_06-15-2011.pdf](http://www.oas.org/dil/esp/a-42_objecion_chile_06-15-2011.pdf) (Annex 3.2).

<sup>4</sup> Plurinational State of Bolivia, Note MPB-OEA-ND-039-13, 8 April 2013, attaching the Instrument of Withdrawal of Reservation to the “Pact of Bogotá”, received on 10 April 2013, available at: <http://www.oas.org/dil/esp/Nota%20de%20Bolivia%20ND-039-13.pdf> (Annex 3.3).

<sup>5</sup> Note No. 96/72 from the Ministry of Foreign Affairs of Chile to the Ministry of Foreign Affairs of the Plurinational State of Bolivia, 27 March 2014 (Annex 4).

<sup>6</sup> Note VRE-DGLFAIT-UAIT-Cs-136/2014 from the Ministry of Foreign Affairs of the Plurinational State of Bolivia to the General Consulate of Chile in Bolivia, 10 April 2014 (Annex 5).

<sup>7</sup> *Prensa Palacio*, “Presidente Morales instruye estudiar alternativas jurídicas para defender aguas del Silala”, La Paz, Bolivia, 23 March 2016, available at: <http://www.presidencia.gob.bo/fuente/noticia.php?cod=4185> (Annex 6.1). See also: *La Nación*, “Evo Morales anuncia que acudirá a instancias internacionales por aguas del Silala”, La Paz,

## III. STATEMENT OF FACTS

10. The Silala River rises from groundwater springs in the Orientales and Cajones Ravines, located at approximately 4,400 m altitude in Bolivia and at a few kilometres north-east of the Chile-Bolivia international boundary. The Silala River crosses the Chile-Bolivia international boundary at a point about 4 km south-east of the Inacaliri Hill, at co-ordinates 22° 00' 34" S-68° 01' 37" W (PSAD56) and at approximately 4,278 m altitude. The flow of the Silala River on entering Chilean territory is about 160 l/s. On Chilean territory, the river receives additional waters from various springs, including those in the Inacaliri and Negra Ravines, before it reaches the Inacaliri River. The total length of the Silala River is about 8.5 km. Of this distance, approximately 3.8 km are located on Bolivian territory and 4.7 km on Chilean territory.

11. The waters of the Silala River have historically and for more than a century been used in Chile for different purposes, including the provision of water supply to the city of Antofagasta and the towns of Sierra Gorda and Baquedano. The waters have also been used for industrial purposes by the Antofagasta (Chile) and Bolivia Railway Company Ltd. (also known as *Ferrocarril de Antofagasta a Bolivia*, henceforth the "FCAB") and by various mining companies, including the State-owned Corporación Nacional del Cobre ("CODELCO").

12. An early cartographic representation of the Silala River appears on the *Mapa de las Cordilleras* of 1884, by Alejandro Bertrand commissioned by Chile<sup>8</sup>. It shows the "Río Cajón" (Cajón River, the name used at the time for the Silala River) on Bolivian territory, crossing into territory administrated by Chile as established under the 1884 Truce Pact between the Parties, and connecting with the "Río S. Pedro" (the continuation of the Inacaliri River).

13. The *Mapa Geográfico y Corográfico* of the Republic of Bolivia of 1890, by Justo Leigue Moreno, Sergeant of the Republic of Bolivia, also shows a watercourse identified as "Cajón" on Bolivian territory, connecting with the "Río S. Pedro" on territory administrated by Chile, again as established under the 1884 Truce Pact<sup>9</sup>.

14. Both States have recognized the Silala River as an international watercourse that naturally flows from Bolivia into Chile in numerous documents. These include the 1904 Treaty of Peace and Friendship and related documents, and water rights concessions granted by the two Governments in 1906 (Chile) and in 1908 (Bolivia) to the FCAB.

15. On 20 October 1904, Chile and Bolivia signed the Treaty of Peace and Friendship (mentioned above) that established the definitive international boundary between both States<sup>10</sup>. On that occasion, the signatory States adopted a map, also signed on 20 October 1904 by Chilean Minister of Foreign Affairs Mr. Emilio Bello Codesido and the Bolivian Ambassador in Chile Mr. Alberto Gutiérrez. This map depicts the "Río Silala" crossing the boundary between Bolivia and Chile, between point 15 (*Cerro Silala*) and point 16 (*Cerro Inacaliri*) of that boundary, in the year 1904<sup>11</sup>.

Bolivia, dated 23 March 2016, available at: <http://www.lanacion.cl/noticias/mundo/bolivia/evo-morales-anuncia-que-acudira-a-instancias-internacionales-por-aguas/2016-03-23/113759.html> (Annex 6.2).

<sup>8</sup> Alejandro Bertrand, *Mapa de las Cordilleras*, 1884 (Annex 7).

<sup>9</sup> Justo Leigue Moreno, *Mapa Geográfico y Corográfico*, 1890 (Annex 8).

<sup>10</sup> Treaty of Peace and Friendship entered into by Bolivia and Chile, 20 October 1904 and published in the *Official Gazette* No. 8169 of 27 March 1905 (Annex 9.1).

<sup>11</sup> Map appended to the Treaty of Peace and Friendship, 20 October 1904 (Annex 9.2).

16. On 23 March 1906, Julio Knautd and Luis Riso Patrón, the Bolivian and Chilean Directors of the respective Boundary Commissions, defined the location of the iron pyramids that would demarcate the boundary, including one located “at the Silala River” (*en el río Silala*)<sup>12</sup>. The existence of the Silala River was also confirmed by the Bolivian Boundary Commission presided over by Bolivian engineer Quintín Aramayo Ortiz, during the demarcation expedition carried out between 28 May and 28 July 1906<sup>13</sup>.

17. On 31 July 1906, Chile granted a concession to the FCAB with respect to the use of the waters of the Silala River on Chilean territory, for an indefinite period of time and for the purpose of increasing the flow of water serving the Antofagasta port<sup>14</sup>.

18. On 28 October 1908, Bolivia also granted a concession to FCAB, with respect to the waters of the Silala River on Bolivian territory<sup>15</sup>. FCAB had requested use of the waters for the operation of its steam engines and permission to construct an intake and canalization works on Bolivian territory<sup>16</sup>.

19. In 1942, the Chile-Bolivia Mixed Boundary Commission (henceforth “Mixed Boundary Commission”) was constituted under the Protocol on the Conservation of Boundary Markers (*Protocolo sobre Conservación de Hitos Fronterizos*)<sup>17</sup>. The Mixed Boundary Commission has confirmed on multiple occasions the existence of the Silala River on both sides of the boundary.

20. On 7 May 1996, Bolivia issued an official press release, responding to certain allegations in the Bolivian press that waters from the Silala River had been artificially diverted to Chile. In the press release, Bolivia rejected such allegations and confirmed that the Silala is a river that originates on Bolivian territory and flows into Chilean territory, Bolivia being the upstream riparian and Chile the downstream riparian. However, Bolivia did give credence to the claim that the waters of the Silala River had been used for over a century by Chile without any benefit to Bolivia, and it announced that it would put this issue on the bilateral agenda<sup>18</sup>.

21. Shortly thereafter, on 31 May 1996, Bolivian Ambassador Teodosio Imaña Castro, Chair of the National Sovereignty and Boundary Commission of the Bolivian Ministry of Foreign Affairs, confirmed that the Silala River naturally flows from Bolivia to Chile, following a consistently downhill course<sup>19</sup>.

22. The referenced documents demonstrate that from the end of the nineteenth century until at least 1996, Bolivia considered the Silala to be an international watercourse. Only in 1997 did it begin to change its position towards a claim that

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<sup>12</sup> Minutes signed by Julio Knautd and Luis Riso Patrón, 23 March 1906, in *Antecedentes Límites Chile-Bolivia*, p. 2 (Annex 10.1).

<sup>13</sup> Report signed by Quintín Aramayo Ortiz, 14 August 1906, in *Antecedentes Límites Chile-Bolivia*, pp. 14-18 (Annex 10.2).

<sup>14</sup> Deed of Concession by the State of Chile of the waters of the Siloli (No. 1892) to the Antofagasta (Chili) and Bolivia Railway Company Limited, 31 July 1906 (Annex 11).

<sup>15</sup> Deed of Bolivian Concession of the waters of the Siloli (No. 48) to the Antofagasta (Chili) and Bolivia Railway Company Limited, 28 October 1908 (Annex 12).

<sup>16</sup> *Ibid.*, p. 2.

<sup>17</sup> Protocol on the Conservation of Boundary Markers, 10 August 1942 (Annex 13).

<sup>18</sup> Press release from the Ministry of Foreign Affairs of Bolivia, 7 May 1996, in *El Diario*, La Paz, Bolivia (Annex 14).

<sup>19</sup> Interview with Bolivian Ambassador Teodosio Imaña Castro, 31 May 1996, in *Presencia*, La Paz, Bolivia (Annex 15).

the Silala is a spring whose waters are situated exclusively on Bolivian territory and for whose use Chile must pay.

23. Indeed, on 14 May 1997, Bolivia “reversed and annulled” FCAB’s 1908 concession for the use of the waters, claiming the disappearance of its object and purpose due to the withdrawal of steam locomotives and the legal inexistence of the company. In this administrative resolution, Bolivia refers to the waters of Silala as “springs” and avoids referring to the Silala as a river<sup>20</sup>.

24. During the year 1999, Chile sent several diplomatic Notes to Bolivia in which it expressed its concern that declarations by Bolivian authorities concerning the waters of Silala, as well as a call for tenders for the use of those waters, did not properly consider the international nature of the Silala River system and Chile’s rights of utilization<sup>21</sup>. In response, Bolivia affirmed the exclusively Bolivian nature of the waters and denied that the Silala is an international watercourse<sup>22</sup>.

25. On 25 April 2000, Bolivia granted the use of the waters of the Silala to the private Bolivian company DUCTEC S.R.L. for the duration of forty years. The concession authorized the commercialization or exportation of the waters for industrial use and human consumption, presumably to Chile, since the concession explicitly excluded their use for potable water and sewerage services in Bolivia without an additional public utility concession, as well as for mining activities by third parties on Bolivian territory<sup>23</sup>. In May 2000, DUCTEC attempted to invoice CODELCO and FCAB for their use of the waters of the Silala, ignoring the existing rights of both companies to the use of those waters on Chilean territory.

26. Chile formally objected to the concession of the waters to DUCTEC on the ground that it disregarded the international nature of the Silala River and Chile’s right to the utilization of its waters<sup>24</sup>.

27. Following this exchange of diplomatic notes, Bolivia and Chile set up a technical commission and agreed to collaborate in the compilation of information on the Silala area and the elaboration of cartography. This joint effort included an aerial photogrammetric flight in November 2001.

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<sup>20</sup> Administrative Resolution No. 71/97 by the Prefecture of the Department of Potosi, Bolivia, 14 May 1997 (Annex 16).

<sup>21</sup> Note No. 474/71 from the General Consulate of Chile in La Paz, Bolivia, to the Ministry of Foreign Affairs and Worship of the Republic of Bolivia, 20 May 1999 (Annex 17); Note No. 017550 from the Ministry of Foreign Affairs of the Republic of Chile to the Ministry of Foreign Affairs and Worship of the Republic of Bolivia, 15 September 1999 (Annex 18); Note No. 1084/151 from the General Consulate of Chile in La Paz, Bolivia, to the Ministry of Foreign Affairs and Worship of the Republic of Bolivia, 14 October 1999 (Annex 19); Note No. 022314 from the Ministry of Foreign Affairs of the Republic of Chile to the Ministry of Foreign Affairs and Worship of the Republic of Bolivia, 3 December 1999 (Annex 20).

<sup>22</sup> Note No. GMI-656/99 from the Ministry of Foreign Affairs and Worship of the Republic of Bolivia to the General Consulate of Chile, 3 September 1999 (Annex 21); Note No. GMI-815/99 from the Ministry of Foreign Affairs and Worship of the Republic of Bolivia to the Ministry of Foreign Affairs of the Republic of Chile, 16 November 1999 (Annex 22).

<sup>23</sup> Concession Contract for the Use and Exploitation of the Springs of the Silala between the Bolivian Superintendent of Basic Sanitation and DUCTEC S.R.L., 25 April 2000 (Annex 23).

<sup>24</sup> Note No. 006738 from the Ministry of Foreign Affairs of the Republic of Chile to the Ministry of Foreign Affairs and Worship of the Republic of Bolivia, 27 April 2000 (Annex 24).

28. On 26 February 2002, the Bolivian Ministry of Foreign Affairs publicly denied the existence of any kind of bilateral negotiations related to the waters of Silala. It contended that the waters of Silala do not flow naturally to Chile and exclusively pertain to Bolivia. It announced as possible courses of action, the interruption of the flow of the waters to Chile or the initiation of international proceedings before an *ad hoc* tribunal or this Court<sup>25</sup>.

29. Chile rejected Bolivia's qualification of the Silala River as an exclusively Bolivian watercourse. It also rejected any measures that could hinder the flow of the waters of the Silala River into Chilean territory<sup>26</sup>.

30. In 2004, Bolivia and Chile set up a Working Group whose purpose was to continue studying the question of the Silala and to provide elements for a common understanding on the watercourse. In 2006, the question of the Silala was also included as one of the points on a bilateral agenda established between the two States.

31. No progress was made until 2008 when Bolivia accepted to retake the joint technical work as the basis for a possible preliminary agreement. Meetings were held until 2009, in which the Working Group made some progress towards defining a régime of utilization and protection of the waters of the Silala, including the carrying out of joint technical studies of the Silala hydrological system.

32. In July 2010, at a meeting concerning the points of the bilateral agenda, Bolivia came back to its original position of a 100 per cent ownership of the Silala waters and introduced the idea that Chile must pay compensation for its century-long utilization of the waters of the Silala (characterized by Bolivia as Chile's "historic debt"), as part of any agreement concerning the Silala. This position is directly contrary to Bolivia's long-held characterization of the Silala as an international river. It is not in accordance with customary international law, and it is unacceptable to Chile.

33. In October 2010, the Working Group met one more time. On this occasion, Bolivia insisted on its proposal to incorporate Chile's "historic debt" as part of a régime of utilization of the waters of the Silala, which was again rejected by Chile. Bolivia's intransigence on this matter rendered fruitless the carrying out of joint technical studies of the Silala hydrological system and the meetings of the Working Group were terminated without any result.

34. On 7 May 2012, Chile requested information on several projects in the Silala area that had been announced by the Governor of the Department of Potosí, including the construction of a fish farm, a dam and a mineral water bottling plant, in order to ensure preservation of its rights as a riparian State to the utilization of the Silala waters<sup>27</sup>. Bolivia did not respond to Chile's request.

35. Chile repeated its request for information on 9 October 2012<sup>28</sup>. On 25 October 2012, Bolivia responded by again denying that the Silala is an international river, and reaffirmed its full sovereign rights over the use and exploitation of its

<sup>25</sup> Communication No. 143 from the General Consulate of Chile in Bolivia attaching a press release from the Ministry of Foreign Affairs of Bolivia, 26 February 2002 (Annex 25).

<sup>26</sup> Press release from the Ministry of Foreign Affairs of Chile, 4 March 2002 (Annex 26).

<sup>27</sup> Note No. 199/39 from the General Consulate of Chile in La Paz, Bolivia, to the Ministry of Foreign Affairs of the Plurinational State of Bolivia, 7 May 2012 (Annex 27).

<sup>28</sup> Note No. 389/149 from the General Consulate of Chile in La Paz, Bolivia, to the Ministry of Foreign Affairs of the Plurinational State of Bolivia, 9 October 2012 (Annex 28).

waters<sup>29</sup>. A further exchange of diplomatic Notes followed, in which Bolivia did not change its position.

36. As far as Chile has been able to establish, Bolivia has indeed constructed a fish pond, a military post and houses adjacent to the Silala River. These projects may have adverse effects on the quality and quantity of the waters of the Silala River system. Yet Chile has been informed neither of the plans for these measures nor of any measures taken by Bolivia to prevent and control any resulting pollution of the waters of the Silala River.

37. On 23 March 2016, on the occasion of Bolivia's annual Day of the Sea, the country's President Evo Morales announced Bolivia's intention to defend the waters of the Silala before the competent international organs. President Morales stated that: "Every day, Chile makes an illegal and cunning use of that natural resource without compensating even a cent. This abusive and arbitrary behavior that undermines our heritage cannot continue."<sup>30</sup> Two days later, President Morales accused Chile of "stealing waters from the department of Potosí" and announced Bolivia's decision to present a claim before the International Court of Justice<sup>31</sup>.

38. On 29 March 2016, President Morales made a site visit to the Silala River, together with the Minister of Foreign Affairs, Mr. David Choquehuanca, the Vice-Minister of Foreign Affairs, Mr. Juan Carlos Alurralde and the General State Attorney, Mr. Héctor Arce, among other high authorities. On this occasion, President Morales made clear that "the Chilean authorities are lying when they call this [the Silala] an international river" and again claimed its waters as exclusively Bolivian<sup>32</sup>.

39. Thus, Bolivia continues to deny and to limit Chile's rights as riparian State to the utilization of international watercourses shared by the two countries (as it has done with a second river, the Lauca River, whose waters are partly used by Chile for irrigation purposes<sup>33</sup>).

40. The communications between Chile and Bolivia since 1999 in relation to the waters of Silala, and in particular the recent actions and declarations by Bolivia, demonstrate that there exists a dispute between both States concerning the legal nature of the Silala River as an international watercourse and Chile's right to the utilization of its waters in accordance with customary international law. As to this dispute, both States hold opposite and irreconcilable views.

<sup>29</sup> Note VRE-DGRB-UAM-020663/2012 from the Ministry of Foreign Affairs of the Plurinational State of Bolivia to the General Consulate of Chile, 25 October 2012 (Annex 29).

<sup>30</sup> *Prensa Palacio*, "Presidente Morales instruye estudiar alternativas jurídicas para defender aguas del Silala", La Paz, Bolivia, 23 March 2016, available at: <http://www.presidencia.gob.bo/fuente/noticia.php?cod=4185> (Annex 6.1). See also: *La Nación*, "Evo Morales anuncia que acudirá a instancias internacionales por aguas del Silala", La Paz, Bolivia, 23 March 2016, available at: <http://www.lanacion.cl/noticias/mundo/bolivia/evo-morales-anuncia-que-acudira-a-instancias-internacionales-por-aguas/2016-03-23/113759.html> (Annex 6.2).

<sup>31</sup> *Página Siete Digital*, "Bolivia demandará a Chile por el Silala en La Haya", La Paz, Bolivia, 26 March 2016, available at: <http://www.paginasiete.bo/nacional/2016/3/26/bolivia-demandera-chile-silala-haya-91113.html> (Annex 6.3).

<sup>32</sup> *Camiri.net*, "Evo muestra al mundo que aguas del Silala son de Bolivia", 29 March 2016, available at: <http://www.camiri.net/?p=22817> (Annex 6.4).

<sup>33</sup> The issue concerning the Lauca River first arose in the late 1930s. It centred on Chile's use of its waters for irrigation in the Azapa Valley which ultimately led to a break in Bolivian-Chilean diplomatic relations in 1962.

41. Under these circumstances, Chile has decided to request the Court's judgment on its legal dispute with Bolivia concerning the nature of the Silala River system as an international watercourse and Chile's rights as a riparian State.

#### IV. LEGAL GROUNDS

42. The utilization of international watercourses is governed by customary international law. The principles of customary international law on the non-navigational uses of international watercourses are evidenced by the Convention on the Law of the Non-Navigational Uses of International Watercourses ("UNWC"), signed in New York on 21 May 1997 and entered into force on 17 August 2014<sup>34</sup>, by the case law of this Court and other courts and tribunals, and by State practice.

##### *1. The Definition of an International Watercourse under Customary International Law*

43. Under general international law, a watercourse which crosses two or more States is considered as an "international watercourse". Article 2 of the UNWC reflects customary international law, establishing that:

“(a) ‘Watercourse’ means a system of surface waters and groundwaters constituting by virtue of their physical relationship a unitary whole and normally flowing into a common terminus;

(b) ‘International watercourse’ means a watercourse, parts of which are situated in different states.”

44. There can be no doubt that the Silala River is an international watercourse under customary international law. The Silala River basin shows an uninterrupted and steady gradient of approximately 4.3 per cent on average, from its origins in Bolivia until it reaches the Chilean Inacaliri River. Its headwaters are located in the Bolivian Cajones and Orientales Ravines, at approximately 4,360 and 4,421 m above sea level, respectively. The Silala River crosses the international boundary into Chilean territory at approximately 4,278 m above sea level. At various stretches in Bolivia and Chile its waters run through ravines that were carved out over the course of thousands of years, clear evidence that the Silala is a river and not the product of recent canalization.

45. Bolivia has, during at least 93 years, consistently recognized the nature of the Silala as an international watercourse. It has accepted the cartographic representation of the Silala as a river on a number of occasions, including the official and signed map appended to the 1904 Treaty of Peace and Friendship. Bolivia cannot now deny the fact that the Silala is an international river by referring to it as springs (*manantiales* or *vertientes*). Moreover, the fact that the waters forming the Silala River emerge on the surface through a spring in no way prevents them from forming an international watercourse.

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<sup>34</sup> Convention on the Law of the Non-Navigational Uses of International Watercourses, New York, 21 May 1997, UN doc. A/RES/51/229 (1997), available at: [http://legal.un.org/ilc/texts/instruments/english/conventions/8\\_3\\_1997.pdf](http://legal.un.org/ilc/texts/instruments/english/conventions/8_3_1997.pdf) (Annex 30).

## 2. *The Principle of Equitable and Reasonable Utilization*

46. The principle of equitable and reasonable utilization of international watercourses is customary international law. As the Court has recognized, this principle has its basis in the community of interest of all riparian States in the use of a shared watercourse<sup>35</sup>.

47. Chile maintains that the application of the customary international law on the non-navigational uses of international watercourses supports Chile's past and present utilization of the waters of the Silala River, flowing through the international boundary, as equitable and reasonable.

## 3. *Other Obligations of Bolivia under Customary International Law*

48. Under customary international law, Bolivia is under an obligation to cooperate and prevent transboundary harm to the utilization of the waters of the Silala River system in Chile. Bolivia must also notify and inform Chile of planned measures which may have adverse effect upon Chile's utilization of those waters. This notification shall be accompanied by available technical data and information, including the results of any environmental impact assessment, in order to enable Chile to evaluate their possible effects.

49. Bolivia has violated these obligations by refusing to honour Chile's request for information on the construction of a fish pond and other projects in the year 2012. It has also failed to inform Chile about the construction of a military post and housing that may result in effects on the Silala River that adversely impact Chile. Nor is there any evidence that Bolivia has given due consideration to the environmental impact of these installations and their potential effect on the waters of the Silala River that flow towards Chile.

## V. DECISION REQUESTED

50. Based on the foregoing statement of facts and law, and reserving the right to modify the following requests, Chile requests the Court to adjudge and declare that:

- (a) The Silala River system, together with the subterranean portions of its system, is an international watercourse, the use of which is governed by customary international law;
- (b) Chile is entitled to the equitable and reasonable use of the waters of the Silala River system in accordance with customary international law;
- (c) Under the standard of equitable and reasonable utilization, Chile is entitled to its current use of the waters of the Silala River;
- (d) Bolivia has an obligation to take all appropriate measures to prevent and control pollution and other forms of harm to Chile resulting from its activities in the vicinity of the Silala River;
- (e) Bolivia has an obligation to co-operate and to provide Chile with timely notification of planned measures which may have an adverse effect on shared water resources, to exchange data and information and to conduct where appropriate an environmental impact assessment, in order to enable Chile to

<sup>35</sup> *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, I.C.J. Reports 1997, p. 56, para. 85.

evaluate the possible effects of such planned measures, obligations that Bolivia has breached.

51. Chile reserves the right to supplement, modify or amplify the present Application in the course of the proceedings.

52. Chile also reserves its right to request the Court to indicate provisional measures, should Bolivia engage in any conduct that may have an adverse effect on Chile's current utilization of the waters of the Silala River.

53. Chile will exercise the right conferred by Article 31 of the Statute of the Court to choose a person to sit as judge *ad hoc*. It will inform the Court of its decision in due course.

54. The undersigned has been designated by the Government of Chile to act as Agent for the purposes of these proceedings. It is requested that all communications relating to this case be sent to the Embassy of the Republic of Chile in the Netherlands, Mauritskade 51, 2514 HG, The Hague, the Netherlands.

Respectfully submitted,

The Hague, 6 June 2016.

(Signed) Ximena FUENTES TORRIJO,  
Agent of the Republic of Chile.

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CERTIFICATION

MINISTRY OF FOREIGN AFFAIRS, REPUBLIC OF CHILE

6 June 2016.

The undersigned Agent of the Republic of Chile certifies that the documents hereunder listed are true copies and conform to the original documents and that the translations into English made by Chile are accurate translations of the documents annexed to the Application by the Republic of Chile instituting proceedings against the Plurinational State of Bolivia.

*(Signed)* Ximena FUENTES TORRIJO,  
Agent of the Republic of Chile.

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## LIST OF ANNEXES\*

- Annex 1.* American Treaty on Pacific Settlement (“Pact of Bogotá”), 30 April 1948, United Nations, *Treaty Series (UNTS)*, Vol. 30.
- Annex 2.* Republic of Chile, Decree No. 526, 21 August 1967, published on 6 September 1967.
- Annex 3.* 1. Plurinational State of Bolivia, Note OEA-SG-111-11, 9 June 2011, attaching the Instrument of Ratification of the “Pact of Bogotá”, dated 14 April 2011.  
2. Republic of Chile, Objection to the reservation made by the Plurinational State of Bolivia, dated 10 June 2011.  
3. Plurinational State of Bolivia, Note MPB-OEA-ND-039-13, 8 April 2013, attaching the Instrument of Withdrawal of Reservation to the “Pact of Bogotá”, received on 10 April 2013.
- Annex 4.* Note No. 96/72 from the Ministry of Foreign Affairs of Chile to the Ministry of Foreign Affairs of the Plurinational State of Bolivia, 27 March 2014.
- Annex 5.* Note VRE-DGLFAIT-UAIT-Cs-136/2014 from the Ministry of Foreign Affairs of the Plurinational State of Bolivia to the General Consulate of Chile, 10 April 2014.
- Annex 6.* Press articles:  
1. *Prensa Palacio*, “Presidente Morales instruye estudiar alternativas jurídicas para defender aguas del Silala”, La Paz, Bolivia, 23 March 2016.  
2. *La Nación*, “Evo Morales anuncia que acudirá a instancias internacionales por aguas del Silala”, La Paz, Bolivia, dated 23 March 2016.  
3. *Página Siete Digital*, “Bolivia demandará a Chile por el Silala en La Haya”, La Paz, Bolivia, dated 26 March 2016.  
4. *Camiri.net*, “Evo muestra al mundo que aguas del Silala son de Bolivia”, dated 29 March 2016.
- Annex 7.* *Mapa de las Cordilleras* by Alejandro Bertrand, 1884.
- Annex 8.* *Mapa Geográfico y Corográfico* by Justo Leigue Moreno, 1890.
- Annex 9.* Treaty of Peace and Friendship entered into by Bolivia and Chile, 20 October 1904:  
1. Treaty of Peace and Friendship published in the *Official Gazette* No. 8169 of 27 March 1905.  
2. Map appended to the Treaty of Peace and Friendship, 20 October 1904.

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\* Annexes not reproduced in print version, but available in electronic version on the Court’s website (<http://www.icj-cij.org>, under “cases”).

*Annex 10. Antecedentes Límites Chile-Bolivia:*

1. Minutes signed by Julio Knautd and Luis Riso Patrón, 23 March 1906 (pp. 1-2).
2. Report signed by Quintín Aramayo Ortíz, 14 August 1906 (pp. 14-18).

*Annex 11.* Deed of Concession by the State of Chile of the waters of the Siloli (No. 1892) to the Antofagasta (Chili) and Bolivia Railway Company Limited, 31 July 1906.

*Annex 12.* Deed of Bolivian Concession of the waters of the Siloli (No. 48) to the Antofagasta (Chili) and Bolivia Railway Company Limited, 28 October 1908.

*Annex 13.* Protocol on the Conservation of Boundary Markers, 10 August 1942.

*Annex 14.* Press release from the Ministry of Foreign Affairs of Bolivia, 7 May 1996, in *El Diario*, La Paz, Bolivia.

*Annex 15.* Interview with Bolivian Ambassador Teodosio Imaña Castro, 31 May 1996, in *Presencia*, La Paz, Bolivia.

*Annex 16.* Administrative Resolution No. 71/97 by the Prefecture of the Department of Potosí, Bolivia, 14 May 1997.

*Annex 17.* Note No. 474/71 from the General Consulate of Chile in La Paz, Bolivia, to the Ministry of Foreign Affairs and Worship of the Republic of Bolivia, 20 May 1999.

*Annex 18.* Note No. 017550 from the Ministry of Foreign Affairs of the Republic of Chile to the Ministry of Foreign Affairs and Worship of the Republic of Bolivia, 15 September 1999.

*Annex 19.* Note No. 1084/151 from the General Consulate of Chile in La Paz, Bolivia, to the Ministry of Foreign Affairs and Worship of the Republic of Bolivia, 14 October 1999.

*Annex 20.* Note No. 022314 from the Ministry of Foreign Affairs of the Republic of Chile to the Ministry of Foreign Affairs and Worship of the Republic of Bolivia, 3 December 1999.

*Annex 21.* Note No. GMI-656/99 from the Ministry of Foreign Affairs and Worship of the Republic of Bolivia to the General Consulate of Chile, 3 September 1999.

*Annex 22.* Note No. GMI-815/99 from the Ministry of Foreign Affairs and Worship of the Republic of Bolivia to the Ministry of Foreign Affairs of the Republic of Chile, 16 November 1999.

*Annex 23.* Concession Contract for the Use and Exploitation of the Springs of the Silala between the Bolivian Superintendent of Basic Sanitation and DUCTEC S.R.L., 25 April 2000.

*Annex 24.* Note No. 006738 from the Ministry of Foreign Affairs of the Republic of Chile to the Ministry of Foreign Affairs and Worship of the Republic of Bolivia, 27 April 2000.

*Annex 25.* Communication No. 143 from the General Consulate of Chile in Bolivia attaching a press release from the Ministry of Foreign Affairs of Bolivia, 26 February 2002.

*Annex 26.* Press release from the Ministry of Foreign Affairs of Chile, 4 March 2002.

- Annex 27.* Note No. 199/39 from the General Consulate of Chile in La Paz, Bolivia, to the Ministry of Foreign Affairs of the Plurinational State of Bolivia, 7 May 2012.
- Annex 28.* Note No. 389/149 from the General Consulate of Chile in La Paz, Bolivia, to the Ministry of Foreign Affairs of the Plurinational State of Bolivia, 9 October 2012.
- Annex 29.* Note VRE-DGRB-UAM-020663/2012 from the Ministry of Foreign Affairs of the Plurinational State of Bolivia to the General Consulate of Chile, 25 October 2012.
- Annex 30.* Convention on the Law of the Non-Navigational Uses of International Watercourses, New York, 21 May 1997, UN doc. A/RES/51/229 (1997).
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