

INTERNATIONAL COURT OF JUSTICE

YEAR 2018

**2018
15 November
General List
No. 162**

15 November 2018

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

(CHILE *v.* BOLIVIA)

ORDER

Present: *President* YUSUF; *Vice-President* XUE; *Judges* TOMKA, ABRAHAM, BENNOUNA, CANÇADO TRINDADE, DONOGHUE, GAJA, SEBUTINDE, BHANDARI, ROBINSON, GEVORGIAN, SALAM, IWASAWA; *Judges ad hoc* DAUDET, SIMMA; *Registrar* COUVREUR.

The International Court of Justice,

Composed as above,

After deliberation,

Having regard to Article 48 of the Statute of the Court and to Articles 31, 44, 45 and 80 of the Rules of Court,

Having regard to the Application filed in the Registry of the Court on 6 June 2016, whereby the Government of the Republic of Chile (hereinafter “Chile”) instituted proceedings against the Plurinational State of Bolivia (hereinafter “Bolivia”) with regard to a dispute concerning the status and use of the waters of the Silala,

Having regard to the Order of 1 July 2016, whereby the Court fixed 3 July 2017 and 3 July 2018 as the time-limits for the filing of the Memorial of Chile and the Counter-Memorial of Bolivia respectively,

Having regard to the Memorial duly filed by Chile within the time-limit thus fixed,

Having regard to the Order dated 23 May 2018, whereby the Court, at the request of Bolivia, extended until 3 September 2018 the time-limit for the filing of the Counter-Memorial of the Respondent,

Having regard to the Counter-Memorial duly filed by Bolivia within the time-limit as extended;

Whereas, in its Counter-Memorial, Bolivia states that, “[i]n accordance with Article 80 of the Rules of Court, [it] submits three Counter-Claims”;

Whereas,

“[a]s to Bolivia’s Counter-Claims, Bolivia respectfully requests the Court to adjudge and declare that:

- (a) Bolivia has sovereignty over the artificial channels and drainage mechanisms in the Silala that are located in its territory and has the right to decide whether and how to maintain them;
- (b) Bolivia has sovereignty over the artificial flow of Silala waters engineered, enhanced, or produced in its territory and Chile has no right to that artificial flow;
- (c) Any delivery from Bolivia to Chile of artificially-flowing waters of the Silala, and the conditions and modalities thereof, including the compensation to be paid for said delivery, are subject to the conclusion of an agreement with Bolivia”;

Whereas, in a letter dated 9 October 2018, the Agent of Chile noted that, according to her Government, “such counter-claims appear[ed] to be a re-formulation of Bolivia’s defense as a positive claim”; whereas the Agent of Chile stated, however, that in order to expedite the procedure her Government would not contest the admissibility of the counter-claims contained in the Counter-Memorial of Bolivia; whereas she further noted that, in Chile’s opinion, a second round of written pleadings was not warranted because the legal arguments and evidence put forward by the Parties in their written pleadings provided the Court with all the elements necessary to decide on the merits of the case; whereas, with reference to the right of Chile, under Article 80, paragraph 2, of the Rules of Court, to present its views in writing on the counter-claims of Bolivia in an additional pleading, she indicated that, according to her Government, for the reasons already expressed, no such additional pleading was required; and whereas she conveyed Chile’s position that the dispute should immediately proceed to the oral phase of the proceedings;

Whereas, in a letter dated 17 October 2018, the Agent of Bolivia stated that his Government considered that a second round of written pleadings was essential and that it would not be appropriate for the counter-claims to be argued exclusively during the oral phase; whereas the

Agent of Bolivia contended that, by virtue of Bolivia's counter-claims, the scope of the case had been expanded and that Bolivia had the right to present further evidence regarding its counter-claims and to be able to ascertain Chile's position in response to those counter-claims;

Whereas, at a meeting held by the President of the Court with the Agents of the Parties on 17 October 2018, the Agent of Chile reiterated the fact that her Government did not intend to contest the admissibility of the counter-claims of Bolivia and that, in its opinion, a second round of written pleadings was not warranted in the circumstances of the case; whereas, in particular, the Agent of Chile stated that, on the basis of the written pleadings already filed by the Parties, the Court had at its disposal all the elements necessary to decide on the merits of the case; whereas the Agent of Chile indicated that, should the Court decide that a second round of written pleadings was necessary, her Government was of the view that those pleadings should only deal with the counter-claims; and whereas in terms of time-limits, she indicated that Chile would need three months for the preparation of a Reply;

Whereas, at that same meeting, the Agent of Bolivia reiterated his Government's position that the case had been expanded by Bolivia's counter-claims and that a second round of written pleadings was essential so that both Parties could properly address the factual and legal issues raised by the case, and in particular the issues underpinning the counter-claims; and whereas he stated that his Government would need three months for the preparation of a Rejoinder;

Whereas, taking into account the fact that Chile has not objected to the admissibility of Bolivia's counter-claims, the Court does not consider that it is required to rule definitively, at this stage of the proceedings, on the question of whether the conditions set forth in Article 80, paragraph 1, of the Rules of Court have been fulfilled;

Whereas, moreover, the Court considers the filing of a Reply by Chile and a Rejoinder by Bolivia to be necessary;

Whereas, in order to protect the rights which third States entitled to appear before the Court derive from the Statute, the Court instructs the Registrar to transmit to them a copy of the present Order;

Taking account of the views of the Parties,

Directs the submission of a Reply by the Republic of Chile and a Rejoinder by the Plurinational State of Bolivia, limited to the Respondent's counter-claims;

Fixes the following time-limits for the filing of these written pleadings:

15 February 2019 for the Reply of the Republic of Chile;

15 May 2019 for the Rejoinder of the Plurinational State of Bolivia; and

Reserves the subsequent procedure for further decision.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this fifteenth day of November, two thousand and eighteen, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the Republic of Chile and the Government of the Plurinational State of Bolivia, respectively.

(Signed) Abdulqawi Ahmed YUSUF,
President.

(Signed) Philippe COUVREUR,
Registrar.
