Introduction to Transboundary Waters Special Issue

Hannah Mink
University of Wyoming College of Law

Jenna VonHofe
University of Wyoming College of Law

Follow this and additional works at: https://scholarship.law.uwyo.edu/wlr

Recommended Citation
Available at: https://scholarship.law.uwyo.edu/wlr/vol23/iss2/12

This Special Section is brought to you for free and open access by the UW College of Law Reviews at Law Archive of Wyoming Scholarship. It has been accepted for inclusion in Wyoming Law Review by an authorized editor of Law Archive of Wyoming Scholarship.
Jason Robison, Photograph of the Río Silala (Jan. 12, 2019).
The Río Silala is the world in miniature.

On December 1, 2022, the principal judicial organ of the United Nations, the International Court of Justice (ICJ), issued its Judgment concerning the Río Silala.¹ Watched on the world stage, the case, and its outcome, sent ripples through the international community. The Dispute Over the Status and Use of the Waters of the Silala River, also referred to as Chile v. Bolivia, involved a disagreement between the Republic of Chile and the Plurinational State of Bolivia over the river’s status and the countries’ respective rights and obligations pertaining to its flows, demonstrating the complex relationships between natural resources and human institutions developed to manage them. Chile v. Bolivia illustrates how political, socio-economic, and environmental forces fuel resource competition—the river’s basin aptly deemed the most “hydro-politically vulnerable basin” in the world—raising important questions for international law and its capacity to remedy transboundary water disputes.² These questions are not novel in the Anthropocene era. Yet as nation-states grapple with them amidst anthropogenic climate change, the dialogue is more critical than ever.

¹ Dispute Over Status and Use of Waters of Silala (Chile v. Bol.), Judgment, 2022 I.C.J. 5 (Dec. 1).
This special issue of *Wyoming Law Review* is inspired by the Silala—its landscape, waterscape, and connected human communities; the legal controversy; and the many reflections to be gleaned in the small river’s flows. We begin the special issue with *Chile v. Bolivia*’s backstory, followed by an overview of the six-year ICJ proceeding, and ultimately a preview of the scholarship contributed by esteemed authors from around the globe.

**The Place: Land, River, People & Politics**

The Silala is certainly not the first river to prompt international conflict. Nor is it the first river brought before the ICJ. Yet the Silala is unique in that it is unusually small and remarkably remote. How did this river—no more than nine kilometers long and averaging about one meter wide, flowing through one of the most remote watersheds on earth—appear on the world stage? Our answer begins at the roots: the physical, cultural, and political realities within which *Chile v. Bolivia* grew.

**Green Ribbons on Arid Canvas**

The Río Silala begins its journey in Bolivia, emerging from groundwater springs in the Orientales and Cajones bofedales, the high-altitude wetlands of Bolivia’s Altiplano that link the Atacama Desert to the west and the Andean cordillera to the east. The waters flow southwest for approximately three kilometers through Bolivian territory before crossing into Chile. No more than six kilometers past the international border, the Silala merges with the Río de San Pedro de Inacaliri and continues west, navigating the feet of Volcán Paniri, Volcán San Pablo, and

---


Volcán San Pedro. The waters then take a sharp turn south as they join the Río Loa. Following the prominent U-shaped curve of the Loa’s oxbow, the commingled waters curve west towards Las Cascadas Río Loa, a series of waterfalls and desert oasis, eventually heading north out of the oxbow and towards the Pacific Ocean, forming Chile’s longest river and the only river in the region to reach the sea.\[7\]

Traveling through this region, one might not know these rivers exist but for the narrow ribbons of green popping up over the boundless swaths of muted greys, browns, and purples that define the Atacama Desert—and the thousands of kilometers of pipes and rail lines hinting at the existence of a valued resource. The Atacama is one of the driest places on Earth,\[8\] receiving about 1 centimeter of precipitation each year, though some areas haven’t seen a drop of rain in over 500 years.\[9\] Persistently flat expanses of land, ranging for over 105,000 square kilometers at an elevation of 2,400 meters, are interrupted by volcanos rising 6,100 meters in

\[7\] See illustration on p. 37 (Sketch-Map of the General Geographical Context (illustration), in Dispute Over Status and Use of Waters of Silala (Chile v. Bol.), Judgment, 2022 I.C.J. 5, 18 (Dec. 1)). The Loa, for which the Silala is a tributary, is the only exorheic basin in the Atacama and Altiplano region. Mulligan & Eckstein, supra note 5, at 596.

\[8\] Earth Resources Observation and Science Center, Lithium Mining in Salar de Atacama, Chile, USGS (Oct. 15, 2021), https://www.usgs.gov/media/before-after/lithium-mining-salar-de-atacama-chile#:~:text=Detailed%20Description,lies%20beneath%20this%20flat%20surface [https://perma.cc/2MGW-RTKM]; Atacama Desert, supra note 6.

the Andean cordillera that fringes the desert.\textsuperscript{10} In addition to the Río Loa Basin, fed in part by the Silala and its \textit{bofedales}, this region is home to the Salar de Atacama Basin, just south of the Loa, and the transboundary Lauca and Mauri watersheds to its north.

These freshwater sources, critical to the delicate balance of desert life, would each find themselves at the center of regional conflict, shaping both domestic and international relations. Of course, the existence (or scarcity) of water alone does

not create tension. That requires human beings—layers of humanity—and all the legal, technical, and political innovations accompanying them.

Colonization, State Construction & Layers of Humanity

Despite its hyper-aridity, Indigenous peoples have called the Atacama Desert home since time immemorial, with the Atacameño (or Lickanantay), Aymara, and Quechua peoples’ traditional lands extending across the region. The Atacama was a pre-Incan “interethic exchange circuit,” connecting communities on the far eastern slopes of the cordillera to the Pacific Ocean, routes that would later connect to the Inca Road. Studies indicate that during the first millennium, the Silala itself was used by Indigenous peoples as a route between the desert lowlands and the more vegetal highlands of the Altiplano for grazing and hunting. These populations survived the desert landscape with adaptive strategies and sophisticated technologies for managing the meager, often brackish surface water supplies, including irrigation canal systems, the development of groundwater-surface water connections to improve and preserve wetlands, and desalination methods.

Throughout Andean society and civilization, water has held profound cultural and ritual significance. Acting as a cornerstone for establishing identity over centuries, Indigenous communities deeply intertwine their sense of identity with rights to and stewardship of water. During the pre-colonization era, the Atacameño were one of the most prominent Indigenous groups living in the Atacama and

---

11 José Aylwin et al., Human Rights Impact Assessment of SQM Against the Rights of the Lickanantay Indigenous People: Executive Summary 1 (2021), https://observatorio.cl/wp-content/uploads/2022/05/eidh-sqm-english-version.pdf [https://perma.cc/4WNG-B6ZS]; Christopher R. Rossi, Remoteness Reconsidered: The Atacama Desert and International Law 16 (2021). Two thousand years prior to the Egyptians, the Chinchorros, Paracas, Chancay, and Nazca peoples are known to have practiced mummification in the Atacama, and the desert was a “pre-Incan caravan route and exchange nexus” for transporting goods. Id.


13 Rossi, supra note 11, at 16 (citing Axel E. Nielson, Pastoralism and the Non-Pastoral World in the Late Pre-Columbian History of the Southern Andes (1000–1535), 13 Nomadic Peoples 17, 23 (2009)).

14 Wheater et al., supra note 5, at 3.

15 Calogero M. Santoro et al., Continuities and Discontinuities in the Socio-Environmental Systems of the Atacama Desert During the Last 13,000 Years, 46 J. ANTHROPOLOGICAL ARCHAEOLoGY 28, 34 (2017); Prieto, Privatizing Water, supra note 12, at 225, 228 (explaining that to combat the high salinity of groundwater, it was necessary to dilute the salt content with water from the Loa River, a practice which, when combined with intricate irrigation systems, would create wetlands and desert oases).

Altiplano. Known for their prominent oasis settlements, the Atacameño tie their autonomy and cultural identity to water. During this same period, the Aymara people lived on the Altiplano of the central Andes, from the high plateau of what would become Bolivian territory to the extreme northern region of modern-day Chile. As a people connected from the mountains to the sea, the Aymara see water as the “place of creation and return.” The Quechua, direct descendants of Incan civilization, were also present in the Atacama region and widespread throughout the Andean highlands, forming a community founded on irrigation and agriculture, and on values of reciprocity, balance, and solidarity with pachamama (Mother Earth).

The Spaniards’ arrival in the Americas during the early 1500s transformed the trajectory of Indigenous communities and the future of Latin American nation-states. Spanning from roughly 1538 to 1824, Spanish rule disrupted pre-existing Indigenous economic and social systems through the establishment of Spanish settlements and institutions. By the early 1600s, the Spanish empire extended its northernmost point to Santa Fe, in what would become the State of New Mexico in the modern United States. As Spanish colonization expanded, the geographical boundaries of modern-day Central and South American countries were loosely established through the settlement of regional localities within a system of administrative divisions. At the beginning of the 19th century, Spain controlled most of the South American coastline abutting the Pacific Ocean. The Atacama Desert itself was named by the Spanish conquistadores.

Independence from Spanish rule resulted in loosely defined political borders between the modern-day countries of Chile, Peru, and Bolivia. With rapid

17 Id. at 488, 500.
18 Amy Eisenberg, Aymara Indian Perspectives on Development in the Andes 12 (2013).
19 Id.
21 JAMES MAHONEY, COLONIALISM AND POSTCOLONIAL DEVELOPMENT: SPANISH AMERICA IN COMPARATIVE PERSPECTIVE 36 (2010) (“In the Americas, these years saw the conquest of the most complex indigenous societies, permanent Spanish settlement, and the implantation of sometimes radically new institutions.”).
22 Albert J. Gallegos & José Antonio Esquibel, Alcaldes and Mayors of Santa Fe 1613–2008, in ALL TRAILS LEAD TO SANTA FE 403, 403 (2010).
24 Rossi, A Case Ill Suited for Judgment, supra note 23, at 52.
25 Bull et al., supra note 12, at 1271 (noting an original spelling of “atakama”).
26 Rossi, A Case Ill Suited for Judgment, supra note 23, at 53 (“La Plata (Argentina) gained
P. Cadot, *Desierto de Atacama* (illustration), *in* Museo Histórico Nacional (n.d.).
suspension of Spanish rule and decolonization, the exact delineation of nation-state boundaries marked a point of contention as countries sought corridors from the desert to the sea.\textsuperscript{27} These newly minted nation-states and imprecise geographical delineations paved the way for territorial conflict in the region. Bolivia’s border and territorial corridor to the Pacific Ocean spanned the Atacama Desert by the late 1870s.\textsuperscript{28} Yet national interest in the desert reached a new high with the discovery of valuable nitrate and guano, motivating Chile, Bolivia, and Peru to establish rights and territory for the exploitation of these resources.\textsuperscript{29} Chile’s interest in and commitment to mining the resources grew, and Chilean occupation of the region sharpened competition between the three countries.\textsuperscript{30}

The War of the Pacific, waged between Chile and a Peruvian-Bolivian alliance, served to further drive a wedge between Chile and Bolivia. Bolivia declared war on Chile on March 1, 1879, and despite attempts by the Peruvian government to settle the dispute, Chile declared war on Bolivia and Peru on April 5, 1879.\textsuperscript{31} The war was fought within the Pacific Ocean and in and around the Atacama Desert. Peru was the first to surrender, signing the Treaty of Ancon on October 20, 1883.\textsuperscript{32} Bolivia later signed a truce on April 4, 1884.\textsuperscript{33} The war, therefore, ended in a victory for Chile, which gained a significant amount of resource-rich territory from Bolivia and Peru.\textsuperscript{34} However, a formal agreement delineating the political boundaries of Bolivia and Chile was not signed until 1904.\textsuperscript{35} With that agreement, Bolivia lost territorial control of the Atacama Desert and its land access to the Pacific Ocean,\textsuperscript{36} a formative loss recently litigated before the ICJ.\textsuperscript{37}

\textit{Chile & Bolivia: Trials, Tribulations & Hydropolitics}

Water was a defining feature of pre-colonization Atacama settlements, and water would continue to define the region in the post-colonial era as well. With the Chilean-Bolivian border cutting across 15 waterbodies—each unique in the

\footnotesize{\textsuperscript{27} See id.; see also William F. Sater, Andean Tragedy: Fighting the War of the Pacific, 1879–1884, at 16–17 (Peter Maslowski et al. eds., 2007).

\textsuperscript{28} See Farcau, supra note 23, at 20–21.

\textsuperscript{29} Sater, supra note 27, at 13.

\textsuperscript{30} Farcau, supra note 23, at 10–11.

\textsuperscript{31} Rossi, A Case Ill Suited for Judgment, supra note 23, at 66.

\textsuperscript{32} Id. at 67.

\textsuperscript{33} Id. at 71.

\textsuperscript{34} See Farcau, supra note 23, at 191.

\textsuperscript{35} Rossi, A Case Ill Suited for Judgment, supra note 23, at 71.

\textsuperscript{36} See Farcau, supra note 23, at 196; Treaty of Peace and Amity, Bol.-Chile (Oct. 20, 1904) (reserving for Bolivia duty-free access to Chile’s Pacific ports in Antofagasta and Arica to import and export goods).

\textsuperscript{37} Obligation to Negotiate Access to Pacific Ocean (Bol. v. Chile), Judgment, 2018 I.C.J. 507, ¶ 177 (Oct. 1) (ruling that Chile never undertook a legal obligation to negotiate (\textit{pactum de negotiando}) a sovereign access to the Pacific Ocean for Bolivia).}
manner both countries approach shared use\textsuperscript{38}—the Atacama Desert witnessed prolonged disputes over its watersheds.\textsuperscript{39} Thus, the contemporary hydropolitical tension between Chile and Bolivia has historical roots, interwoven by both geopolitical boundaries and delineations of transboundary waters. Prior to the current controversy surrounding the Silala, two distinct watercourses alluded to above, the Río Mauri and Río Lauca, were both sources of international conflict.

The Río Mauri flows from modern-day Peru into the Río Desaguadero, a watershed that cuts into Bolivian territory.\textsuperscript{40} When Chile temporarily occupied the area after the War of the Pacific, the country examined the viability of constructing an irrigation canal from the Río Mauri to the Valle de Tacna. The project’s feasibility was bolstered by Chile’s construction of the Arica-La Paz Railroad in 1913, providing the infrastructure necessary to begin construction.\textsuperscript{41} Bolivia claimed that canalization of and irrigation from the Río Mauri would impede navigation and reduce water availability along the Río Desaguadero.\textsuperscript{42} Despite these objections, Chile completed the project and put it into operation. In 1929, under the Treaty of Santiago, Chile transferred the Mauri canal to Peru, which became the new owner of the system.\textsuperscript{43}

The Río Lauca conflict was yet another (and more protracted) disagreement between Bolivia and Chile over shared waters. The Río Lauca originates in the northern Chilean Altiplano, flows through the Andes, and empties into Coipasa Lake in Bolivia.\textsuperscript{44} During the 1930s, Chile announced its desire to divert water from the river to irrigate the Azapa Valley.\textsuperscript{45} Bolivia, the lower riparian state, protested the proposal, claiming it would damage Bolivian freshwater resources.\textsuperscript{46} Chile refuted this claim, asserting that the river would not be modified and its flows would not be affected,\textsuperscript{47} and in 1947 Chile approved funding for the diversion scheme.\textsuperscript{48} After several years of negotiations and studies by both governments without resolution of the conflict, Chile began constructing the project and prepared for a trial


\textsuperscript{40} Martin Ira Glassner, \textit{The Río Lauca: Dispute Over an International River}, 60 \textit{Geographical Rev.} 192, 203 (1970).

\textsuperscript{41} Id.

\textsuperscript{42} Id.

\textsuperscript{43} Id.


\textsuperscript{45} Rossi, \textit{Legal Vandalism}, supra note 2, at 72.

\textsuperscript{46} See Alona E. Evans, \textit{La Cuestión del Río Lauca}, 58 \textit{Am. J. Env’t L.} 1056, 1056 (1964) (reviewing Repúlica de Chile, Ministerio de Relanciones Exteriores, \textit{La Cuestión del Río Lauca} (1963)).

\textsuperscript{47} Glassner, supra note 40, at 195.

\textsuperscript{48} Id.
Bolivia escalated its complaints with a formal note to the Organization of American States (OAS) alleging “imminent geographic aggression” by the Chilean government, and in 1962 Bolivia formally broke diplomatic relations with Chile. Later that year, the OAS adopted a resolution that found Chile and Bolivia should “settle the matter peacefully.” Despite this prescription, the Río Lauca matter was left largely unresolved.

The relationship between Chile and Bolivia still bears the scars of these disputes, as well as those from the underlying War of the Pacific, and the hydropolitical dynamic demonstrated in the Mauri and Lauca conflicts would continue to play out in the Atacama through the turn of this century. While today the desert remains one of Chile’s least inhabited regions, the shared waters between Bolivia and Chile are of vital importance to the States, the desert and altiplano, and the communities and individuals who inhabit the area. And yet, of the 15 transboundary watercourses shared by these neighboring countries, not one is subject to an international agreement—including the Río Silala. There are no populations along the Silala proper that draw from its waters, with the exception of a “handful of soldiers and stray llamas.” In the Bolivian Altiplano and nearest to the headwaters are modern Quechua and Aymara communities, none of which receive Silala waters. In Chile, the Atacameño continue to live on traditional homelands in the Río Loa and the Salar de Atacama basins, with numerous smaller communities dotted throughout the region. Their populations are centralized around San Pedro de Atacama and San Francisco de Chiu Chiu, where Aymara peoples have also been migrating since the late 1970s. Silala waters flow naturally to several of these oasis Indigenous communities, where customary irrigation practices continue to sustain the surrounding wetlands via methods that

---

49 Id. at 195–96.  
50 Id. at 197.  
51 Id.  
52 Bull et al., supra note 12, at 1270.  
53 For a complete database of all transboundary freshwater treaties, see Transboundary Freshwater Treaties Database, Program in Water Conflict Management and Transformation, Oregon State Univ., https://transboundarywaters.science.oregonstate.edu/content/international-freshwater-treaties-database [https://perma.cc/7SR5-SSE7] (last visited April 23, 2023).  
54 Rossi, Legal Vandalism, supra note 2, at 57; Jacob Klein, Eight Kilometres of Petty Diplomacy, BolivianExpress (Aug. 28, 2016), https://bolivianexpress.org/blog/posts/eight-kilometres-of-petty-diplomacy [https://perma.cc/26ST-ZSP2].  
55 Quetena Chico, the closest community, is 70 kilometers from the bofedales, and does not rely on Silala waters for agriculture or domestic needs. Otto Spijkers, The No Significant Harm Principle and the Human Right to Water, 29 Int’l Envt’l Agreements 699, 703 (2020).  
56 José Aylwin et al., supra note 11, at 1; Bull et al., supra note 12, at 1270–71.  
57 Prieto, Privatizing Water, supra note 12, at 220. Communities in the Loa River Basin include Conchi Viejo, Taira, Lasana, Toconce, Caspano, Cupo, and Ayquina; communities in the Atacama Salt Flat Basin include Río Grande, Machuca, Catarpe, Quitor, Sequitor, Larache, Yaye, Solor, Coyo, Cucuter, Tulor, Toconao, Talabre, Camar, Socaire, and Peine. Aylwin et al., supra note 11, at 1.  
58 Prieto, Privatizing Water, supra note 12, at 220.
abate the water’s salinity. However, these Indigenous inhabitants have often been invisible, including in the eyes of water law frameworks. With the privatization of water rights in Chile, a model embedded in the country’s 1980 Constitution and 1981 Water Code, and the influx of new water interests in the region, this became especially true.

Urban growth and natural resource extraction in Chile would continue to drive up water demands in the Río Loa Basin, requiring early 20th century water infrastructure—some originally used to supply water for FCAB steam engines traveling between newly landlocked Bolivia and Chile’s coast—to carry Silala waters across the Chilean desert to support agricultural and domestic needs of small, rural communities such as Sierra Gorda and Baquedano, as well as municipal needs of larger urban areas such as Calama and the coastal city of Antofagasta. For decades, the Silala has also supported Chile’s Chuquicamata mine, a state-owned operation, and one of the largest open-pit copper mines in the world. Also home to the world’s largest lithium reserves, Chile’s lithium industry continues to boom, particularly in the Salar de Atacama, where the United States, China, and Canada have also invested in extraction and production. Mining is the most lucrative industry in Chile, making the country a significant player in the global market, and highly water dependent. Given the desert’s limited water sources, mining activities exacerbate water access issues and competition over natural resources.

---

59 Id. at 225–28; Amaya Álvez-Marín et al., Legal Personhood of Latin American Rivers: Time to Shift Constitutional Paradigms?, 12 J. Hum. RTS. & Env’t 147, 156 (2021) (explaining that traditional practices for developing water delivery systems and agricultural production “remain mostly intact today”).


61 See infra notes 108–09, 112 and accompanying text. For a discussion on the introduction of neoliberal economics in Chile and its impact on domestic water management, see Prieto et al., The (Not So Free) Chilean Water Model, supra note 12.

62 See infra notes 108–09, 112 and accompanying text. See also Antonio Belmar et al., Conflicts over Water in Chile: Between Human Rights and Market Rules 18 (Sara Larrain & Colombina Schaeffer eds., 2010); Álvez-Marín et al., supra note 59, at 156.

63 See Dispute Over Status and Use of Waters of Silala (Chile v. Bol.), Judgment, 2022 I.C.J. 5, ¶ 29 (Dec. 1); Verbatim Record, Dispute Over Status and Use of Waters of Silala (Chile v. Bol.), ¶ 19 (Apr. 1, 2022), https://www.icj-cij.org/sites/default/files/case-related/162/1622020401-ORA-01-00-BI.pdf [https://perma.cc/ZKK9-GUUZ] (“The Silala River supplied the city of Antofagasta with potable water until alternative solutions were developed in the late 1950s.”); Prieto et al., The (Not So Free) Chilean Water Model, supra note 12, at 1–4. The authors of this Introduction traveled through Baquedano in January 2023, where they met a local resident and museum owner who knew exactly where his water came from: “el Río Silala.”

64 Prieto et al., The (Not So Free) Chilean Water Model, supra note 12, at 4; Rossi, Legal Vandalism, supra note 2, at 63.

65 See Aylwin et al., supra note 11, at 2.1, 5.2; Prieto et al., The (Not So Free) Chilean Water Model, supra note 12, at 2–5.


67 See Sally Babidge & Paola Bolados, Neoextractivism and Indigenous Water Ritual in Salar de Atacama, Chile, 45 Lat. Am. PERSPECTIVES 170, 171 (2018); Cantillana & Iniesta-Arandia, supra
Bolivia, meanwhile, has not developed similar industrial, commercial, domestic, or agricultural uses with the Silala’s waters. In 2006, the government of then-President Evo Morales set up a military base beside the Silala and announced plans for a water bottling plant, along with the slogan: “Drink Silala water for sovereignty.” In 2009, there were proposals for a weir on the Silala, within Bolivian territory, and a few years later plans emerged to construct a fish farm. None of these plans came to fruition.

Various (and competing) water interests coexisting in this water-scarce region, territorial line drawing (and redrawing), and claims over natural resources together characterize Chile v. Bolivia’s environmental, political, economic, and social backdrop.

Jenna VonHofe, Photograph of pipelines crossing the Atacama Desert downstream of the Río Silala-Río San Pedro confluence, with Volcán San Pedro (left) and Volcán San Pablo (right) (Jan. 10, 2023).

---

note 61, at 1126–27. The concentrated allocation of water resources for industrial and mining uses “triggered the dispossession of water in the neighboring indigenous communities.” Mining companies have acquired rights of use from Indigenous communities either through purchase on the market, drilling new wells, or “through the regularization of illegal loggings.” Cantillana & Iniesta-Arandia, supra note 61, at 1126–27.

68 Mulligan & Eckstein, supra note 5, at 598–99.
69 Id.
The Río Silala Dispute

The Río Silala moved to center stage in Chilean-Bolivian diplomatic relations in the late 1990s. In 2016, the river found itself before the ICJ. *Chile v. Bolivia* centered on the Silala’s legal status—a status determinative of the principles of international water law applicable to its waters and the associated rights and obligations of the riparian states. If considered an international watercourse, Chile and Bolivia would share the Río Silala’s waters, both countries being required to participate in the use, development, and protection of the watercourse in an equitable and reasonable manner. If not considered an international watercourse, Bolivia’s territorial sovereignty over the Silala’s headwaters would challenge international water law’s notion of reciprocal rights and obligations along the river, as well as Chile’s past, present, and future water uses.

The 1997 United Nations Convention on the Law of Non-Navigational Uses of International Watercourses, the central “framework” convention for international water law, provides the legal principles applicable to waterbodies that meet the definition of “international watercourse”—most notably, equitable and reasonable utilization, the obligation not to cause significant harm, and the duty to cooperate. Neither Bolivia nor Chile are signatories to the Convention, so the parties’ arguments and ICJ’s Judgment relied on those principles of the Convention’s legal framework that constitute customary international law. Chile and Bolivia sought legal certainty from the ICJ as to the Río Silala’s legal status, confirmation of their respective rights and obligations under customary international law, and perhaps a sense of resolve in light of the contentious political relationship that has plagued the two countries for the past century and a half.

Parties’ Positions

On June 6, 2016, Chile initiated proceedings before the ICJ. Chile sought a declaratory judgment that the Río Silala is an international watercourse to which customary international law applies, and therefore Chile has a right to equitable and reasonable utilization of the river’s water and Bolivia has obligations to prevent harms to, and to cooperate with, Chile regarding activities impacting the river. Bolivia’s position at the onset of the proceedings—and the impetus for Chile’s

---

70 *See* Dispute Over Status and Use of Waters of Silala (Chile v. Bol.), Judgment, 2022 1.I.C.J. 5, ¶ 30–34 (Dec. 1). In 1997, Bolivia revoked and annulled a 1908 concession granted to FCAB for use of the Silala waters. *Id.* ¶ 31. In 1999, the legal status of the river was brought into question, with Bolivia asserting the Silala is not an international river. *Id.* ¶ 32. Many of this special issue’s contributing authors, featured in the pages below, discuss in detail the events leading up to the ICJ proceeding.

71 *See* id.

72 *See* Convention on the Law of the Non-Navigational Uses of International Watercourses, opened for signature May 21, 1997, 2999 U.N.T.S. 77, art. 2 (definition of “international watercourse”), art. 5 (principle of equitable and reasonable utilization), art. 7 (obligation not to cause significant harm), art. 8 (general obligation to cooperate).

bringing the case—was that the Silala is not an international watercourse, and therefore Bolivia has sovereignty over 100% of the river’s water and Chile owes compensation for any of its use.\textsuperscript{74} Yet throughout the course of the proceedings, Bolivia’s argument evolved.

In its August 2018 Counter-Memorial, Bolivia argued the Silala is a system of groundwater springs located entirely in Bolivian territory that would not reach Chile but for artificial channelization.\textsuperscript{75} Thus, Bolivia introduced a distinction between “natural” and “artificial” flows: naturally flowing waters would meet the definition of “international watercourse” to which customary international law applies, but waters “engineered, enhanced, or produced” in Bolivian territory would not.\textsuperscript{76} During the 2022 oral proceedings, after scientific studies and expert reports had been submitted, Bolivia acknowledged that the waters of Silala, in their entirety, constitute an international watercourse to which customary international law applies.\textsuperscript{77} Yet according to Bolivia, the Silala’s “unique characteristics” would require a “tailored application of customary international law.”\textsuperscript{78}

Two points of dispute in the case involved specific uses and actions of the parties. First, Chile requested a declaratory judgment that Bolivia breached its duty to cooperate by failing to notify and consult Chile of planned activities on the Silala (the proposed water bottling plant, weir, and fish farm) that might adversely impact Chile’s water use.\textsuperscript{79} Bolivia denied this claim, arguing the activities did not pose a risk of significant transboundary harm so as to trigger Bolivia’s obligations for notification or consultation.\textsuperscript{80} Second, Chile requested a declaratory judgment that it has a right, under the principle of equitable and reasonable utilization, to its current use of Silala waters.\textsuperscript{81} Bolivia countered that Chile was essentially requesting a perpetual right to its current uses, which contradicts the principle of equitable and reasonable utilization, and claiming an “acquired right” to the artificially enhanced flows, which conflicts with Bolivia’s sovereignty.\textsuperscript{82} Bolivia sought declaratory judgments acknowledging that its sovereignty extends to artificial structures and

\textsuperscript{74} Id. \S\S 3, 7–9, 32.


\textsuperscript{76} Counter-Memorial of the Plurinational State of Bolivia, supra note 75, \S 20.

\textsuperscript{77} Verbatim Record, Dispute Over Status and Use of Waters of Silala (Chile v. Bol.) \S\S 7–8 (Apr. 13, 2022), https://www.icj-cij.org/sites/default/files/case-related/162/162-20220413-ORA-01-00-BI.pdf [https://perma.cc/HSF9-HZRX] [hereinafter Apr. 13 Verbatim Record].

\textsuperscript{78} Id. Under this tailored application, while Chile would have a right to equitable and reasonable utilization of Silala waters and Bolivia would have an obligation to notify Chile of any activities along the Silala that would cause significant harm, Bolivia would have sovereignty over the “artificial” flows produced in its territory and the sovereign right to modify the artificial channels and drainage mechanisms installed in its territory. Id.

\textsuperscript{79} Chile v. Bol., 2022 I.C.J. \S\S 121–22.

\textsuperscript{80} Id. \S\S 123–24.

\textsuperscript{81} Id. \S\S 66–76.

\textsuperscript{82} Id. \S\S 67, 162; Counter-Memorial of the Plurinational State of Bolivia, supra note 75, \S\S 122–29.
flows in its territory and that any future deliveries to Chile of such flows are subject
to the conclusion of an agreement (with provisions for compensation by Chile) between the countries.\textsuperscript{83}

After six years of proceedings, the ICJ issued its highly anticipated Judgment on December 1, 2022. The Judgment generally boiled down to whether a dispute continued to exist between the parties.

\textit{ICJ Judgment}

The ICJ’s jurisdiction to hear the case was based on Article XXXI of the Pact of Bogotá, which provides: “The existence of a dispute between the parties is a condition of the Court’s jurisdiction.”\textsuperscript{84} A “dispute,” defined as “a disagreement on a point of law or fact, or conflict of legal views or of interests,” must exist at the onset of the proceedings.\textsuperscript{85} As surveyed above, when Chile submitted its Application to the ICJ, Chile and Bolivia disagreed as to whether the Río Silala is an international watercourse, whether Chile has any right to its waters, and whether Bolivia owes any obligations to Chile.\textsuperscript{86} Based on these submissions, the Court was “satisfied” in its jurisdiction to adjudicate the parties’ claims and counter-claims.\textsuperscript{87} Noting, however, that the parties’ positions had “evolved considerably during the course of the proceedings,”\textsuperscript{88} the ICJ acknowledged a certain level of judicial discretion: the Court “may, in an appropriate case, make a declaratory judgment,”\textsuperscript{89} but if it finds the parties have come to agree, in substance, on a claim or counter-claim, such judgment is not warranted.\textsuperscript{90} For the Court cannot adjudicate the merits of a claim when the “adjudication [would be] devoid of purpose.”\textsuperscript{91} Accordingly, the Court proceeded to interpret Chile’s and Bolivia’s respective claims and counter-claims to determine whether a dispute continued to exist.\textsuperscript{92}

The ICJ began with the central issue: Is the Silala an international watercourse? Despite Bolivia’s contentions of “unique characteristics” and “artificially enhanced

\textsuperscript{83} Chile v. Bol., 2022 I.C.J. ¶¶ 156–57.
\textsuperscript{84} Id. at ¶ 39; American Treaty on Pacific Settlement (Pact of Bogota) art. XXXI, Apr. 30, 1948, 30 U.N.T.S. 449 [hereinafter Pact of Bogota].
\textsuperscript{85} Chile v. Bol., 2022 I.C.J. ¶ 39; Pact of Bogota, supra note 83, art. XXXI.
\textsuperscript{86} Chile v. Bol., 2022 I.C.J. ¶ 37 (“Chile . . . decided to request a judgment from the Court . . . following several statements made by the President of Bolivia, Mr. Evo Morales, in 2016, in which he accused Chile of illegally exploiting the waters of the Silala without compensating Bolivia, stated that the Silala was ‘not an international river’ and expressed an intention to bring the dispute before the Court.”).
\textsuperscript{87} Id. ¶ 39.
\textsuperscript{88} Id. ¶ 41.
\textsuperscript{89} Id. ¶ 46 (quoting Frontier Dispute (Burk. Faso v. Niger), Judgment, 2013 I.C.J. 44, ¶¶ 53–59 (Apr. 2013) (emphasis added)).
\textsuperscript{90} Id.
\textsuperscript{91} Id. ¶ 42 (quoting Northern Cameroons (Cameroon v. U.K.), Judgment, 1963 I.C.J. 15, 38 (Dec. 2)).
\textsuperscript{92} Id. ¶ 43 (quoting Nuclear Tests (Austl. v. Fr.), Judgment, 1974 I.C.J. 253, ¶ 29 (Dec. 20)). The Court noted that, while it has “no power to substitute itself for [the parties] and formulate new submissions simply on the basis of arguments and facts advanced,” the Court is “entitled to interpret
flows,” and the fact that Chile maintained the parties did not agree on this submission, the Court interpreted the parties’ positions as reflecting agreement that the Silala is an international watercourse to which customary international law applies.93 Similarly, the Court determined the parties had reached agreement regarding Chile’s right to equitable and reasonable utilization, Bolivia’s obligation not to cause significant harm, and Bolivia’s sovereignty over the “artificial flows” and structures within its territory.94 On this ground, the Court concluded that six of the eight claims and counter-claims no longer had “any object and that, therefore, the Court is not called upon to give a decision thereon.”95 The ICJ also rejected Chile’s remaining claim and Bolivia’s remaining counter-claim. On the former, the Court determined that Bolivia had not breached its duty to notify and consult regarding activities posing no risk of significant harm.96 On the latter, because Bolivia’s request for a declaration about the need for some future agreement between the parties was predicated on a hypothetical (and seemingly unlikely) scenario arising to necessitate such an agreement, the counter-claim did not involve an actual dispute about which the Court could opine.97

The Court has a duty to make judgments on certain issues as requested by the parties, to record those judgments, and to provide clarity in terms of finality and preclusion.98 In its Judgment, the ICJ recognized neither Chile nor Bolivia expressly acknowledged agreement had been reached on the claims and counter-claims. Rather, the parties maintained that “certain submissions of the other Party, while reflecting points of convergence between the parties, remain vague, ambiguous or conditional, and therefore cannot be taken to express agreement.”99 ICJ Judge Charlesworth, in a separate opinion, noted that the Court’s dismissal underestimated the value a declaratory judgment may have provided.100

the submissions . . . and is in fact bound to do so.” Id. ¶ 43 (quoting Certain German Interests in Polish Upper Silesia (Ger. v. Pol.), Judgment, 1926 P.C.I.J. (ser. A) No. 7, at 35 (May 25)).

93 Id. ¶¶ 50–59.
94 Id. ¶¶ 60–65 (Chile’s entitlement to the equitable and reasonable utilization of the waters of the Silala River system), 77–86 (Bolivia’s obligation to prevent and control harm resulting from its activities in the vicinity of the Silala River system), 138–47 (Bolivia’s sovereignty over the artificial channels and drainage mechanisms installed in its territory), 148–55 (Bolivia’s sovereignty over the “artificial” flow of Silala waters engineered, enhanced, or produced in its territory).
95 See id. ¶¶ 59, 65, 76, 86, 147, 155.
96 Id. ¶ 128.
97 Id. ¶¶ 160–62. In arriving at this conclusion, the Court referenced Chile’s argument that the agreement described by Bolivia depended on a “double hypothetical” wherein (1) Bolivia would communicate its intent to dismantle the artificial channels within its territory, and (2) Chile would seek instead to maintain the status quo and thereby necessitate an agreement. This scenario overlooked Chile’s repeated acknowledgment of Bolivia’s sovereign right to dismantle the channels, as well as assumed Bolivia’s dismantling of the channels would actually impact flows to Chile. Id. ¶ 159. The ICJ invoked what might be compared to the doctrine of “ripeness.” Under the doctrine, cases are declared not “ripe” for adjudication when the injuries are too speculative, preventing courts from “entangling themselves in abstract disagreements.” Abbott Laboratories v. Gardner, 387 U.S. 136, 148–49 (1967).
99 Chile v. Bol., 2022 I.C.J. ¶ 44.
100 Id. ¶ 3 (separate opinion by Charlesworth, J.).
Simma, also in separate opinions, expressed similar confoundment, wondering what value, if any, this Judgment will have for the parties’ future relations.\footnote{101}

**Reflections from the Río Silala**

Law shapes place, just as a river does. And conflicts over transboundary waters will continue to shape international law’s development. *Chile v. Bolivia* is a testament—a reminder to states and the broader legal community of the importance of cooperative management of freshwater resources, and the challenges that come with it. The pages below offer a preview of the essays featured in this special issue, written by scholars from around the world, providing reflections on the case proper, its core themes, and its broader implications for international law and transboundary water management. The authors explore the case’s nuances, the ICJ’s capacity to resolve transboundary water conflicts, and the strengths and weaknesses of international law as a whole. The essays also contain insights on how domestic policies, human values, and deep historical conflicts further complicate relations around water. Finally, we end this Introduction with some closing reflections.

**Of Legal Norms & Implementation**

Despite the uncertainties and potential weakness in its Judgment, the ICJ did provide some degree of clarity sought by the countries. First, the Court removed any question as to the Silala’s status as an international watercourse. In doing so, the Court also fortified the principle of equitable and reasonable utilization, the obligation not to cause significant harm, and the general duty to cooperate as a customary international law framework applicable to the river as an international watercourse. Finally, the ICJ reminded the countries it is incumbent on riparian states to ensure proper implementation of these principles and the rights and obligations rooted in them.\footnote{102} But was the Judgment sufficient?

Ximena Fuentes, Undersecretary of Foreign Relations of Chile, and Johanna Klein Kranenberg, Coordinator of the Defense Program in Foreign Investment Arbitration, offer their perspectives on *Chile v. Bolivia* as agents of the Chilean litigation team.\footnote{103} Fuentes and Kranenberg provide both the historical underpinnings and modern perspectives that frame the Chilean-Bolivian conflict, detailing Chile’s decision to bring the Silala dispute to the ICJ in 2016. Noting Chile’s longstanding goal of legal certainty regarding the Silala, the authors share the State’s perspective on the dispute’s outcome and whether it might provide “an opportunity for Chile and Bolivia to cooperate” moving forward.

Professor Tamar Meshel of the University of Alberta narrows in on the notion of cooperation, exploring the international legal duty of states to cooperate and how

\footnote{101} *Id.* ¶ 2 (separate opinion by Simma, J.); *id.* ¶¶ 1, 4 (separate opinion by Tomka, J.).

\footnote{102} *Chile v. Bol.,* 2022 I.C.J. ¶ 100.

\footnote{103} Ximena Fuentes & Johanna Klein Kranenberg, *Chile’s Decision to Bring the Silala Case Before the International Court of Justice*, 23 Wyo. L. Rev. 39 (2023). Wyoming Law Review’s Editorial Board also sought contributions to this special issue from Bolivia’s litigation team but was unsuccessful.
the ICJ approached the duty in *Chile v. Bolivia*—the “one and only issue the ICJ adjudicated.”

Meshel describes the duty’s bounds, identifies weaknesses in the ICJ’s treatment, and details a proposed, alternative approach. According to Meshel, the duty to cooperate, integral to the peaceful and sustainable management of shared watercourses, cannot be realized by a mere mandate: “there is little benefit in declaring a strong customary duty to cooperate that is empty of content.” While the ICJ confirmed the general duty to cooperate as a central principle in international water law, Meshel explains that with its decision, the Court diluted the principle on a global scale, the effects of which extend far beyond the Silala.

Professor Joseph Dellapenna, Visiting Professor of Law at Beijing University School of Transitional Law in China and Rapporteur of the Berlin Rules on Water Resources, follows suit with an in-depth examination of international law and what the ICJ might have done in *Chile v. Bolivia*. For the third time, Dellapenna argues, the ICJ was presented with an opportunity to adjudicate an international transboundary water dispute, and for the third time the Court stopped short of deciding the matter before it, once again leaving it to the parties to navigate and implement the applicable principles of international law. Given the general lack of enforcement mechanisms for international law, the author explores the question: “Is international law, law?” Dellapenna also questions when the Court will conduct a thorough review of international water law, given how it has passed up the opportunities to date. The Court’s failure to clarify and develop customary international law for transboundary waters offers important insight into how future conflicts might play out if brought before the ICJ.

**Of Values, Connectivity & Paradox**

As noted by each parties’ experts in the case, while international water law provides “clear indications as to the general rights and obligations of Bolivia and Chile in relation to the Silala watercourse,” the specifics of their implementation are subject to the unique circumstances of the watercourse at issue and the players involved. Moreover, of the customary international law principles deemed applicable by the ICJ to the Silala (and other international watercourses), none serve as guaranteed protections to human rights, Indigenous peoples, or the watercourse itself—despite *Chile v. Bolivia* implicating all three issues. At international law, the onus is on the riparian states to ensure such protections; however, the states’ capacities to do so are complicated by distinct value systems, competing water interests, and unrelenting power struggles. For example, Chile’s water-dependent


mining industry values water as a means to an economic end, and this value has shaped the Atacama region’s hydropolitics since the late-19th century.\textsuperscript{108} The Chilean socio-economic philosophy around water has been defined by privatization and centralization,\textsuperscript{109} though as the country embarks on another round of constitutional reform, this paradigm might change to some extent.\textsuperscript{110} Meanwhile, since the early 2000s, Bolivia has promoted the idea of water as a fundamental human right, a concept enshrined in its 2009 Constitution, and the country has positioned itself at the forefront of the anti-privatization movement.\textsuperscript{111} Yet both models have been challenged by the realities of regulatory frameworks that do not support sustainable water management and exploit resources at the expense of other priorities—namely, ecosystems and rural communities’ agricultural and pastoral water interests.\textsuperscript{112}

Professor José Aylwin, a Chilean human rights lawyer and director of Observatorio Ciudadano—along with co-authors Marcel Didier, also a Chilean lawyer involved with Observatorio Ciudadano, and Oriana Mora, a prominent educator and Lickanantay community leader—zooms in on the Salar de Atacama, where the impacts of Chile’s domestic water policy and disparate water-related values are seen and felt.\textsuperscript{113} Expanding on research they conducted for 2019 and 2021 human rights reports, the authors survey the implications of lithium mining for the salar, which as mentioned lies within traditional lands of the Atacameño (or Lickanantay) peoples. Noting how the lithium extraction process employed in the region drains scarce freshwater resources, damages existing wetlands, and intrudes on Indigenous lands, resulting in significant and ongoing threats to human rights, the authors illustrate the interconnection between natural resources and Indigenous well-being. With testimonies from Lickanantay community members, the authors

\textsuperscript{108} During the late 1970s and early 1980s, under August Pinochet’s military regime, neoliberal economics entered the Chilean fray in full force, reflected in the country’s 1980 Constitution and 1981 Water Code. Prieto et al., The (Not So Free) Chilean Water Model, supra note 12, at 1 passim. See also Mulligan & Eckstein, supra note 5, at 601.

\textsuperscript{109} See Mulligan & Eckstein, supra note 5, at 601; Álvez-Marín et al., supra note 59, at 149–50, 162. “[A]lthough the state has a free-market ideology, contradictorily, it plays a fundamental role in the allocation of the resource, protecting its concentration for large extractive industries such as mining.” Raphael Cantillana & Irene Iniesta-Arandia, Beyond Scarcity and its Management: Sociocultural Dimensions of the Water Crisis in the Atacama Desert 24 Water Pol’y 1124, 1127 (2022).

\textsuperscript{110} See Verónica Delgado & Dominique Hervé, Environmental Issues in a New Constitution, in Social Rights and the Constitutional Moment Learning from Chile and International Experiences 203–16 (Koldo Casla et al. eds., 2022); Álvez-Marín et al., supra note 59, at 169.

\textsuperscript{111} Mulligan & Eckstein, supra note 5, at 601; Counter-Memorial of the Plurinational State of Bolivia, supra note 74, ¶¶ 3–8.

\textsuperscript{112} Afnan Agramont et al., Transdisciplinary Learning Communities to Involve Vulnerable Social Groups in Solving Complex Water-Related Problems in Bolivia, Water, Feb. 2019, at 8–9 (identifying the lack of coordination, inefficiencies, asymmetrical resource allocation, and lack of control and clarity in terms of water rights as some of the chief problems in Bolivia’s regulatory framework that result in environmental damage and social inequalities); ANTONIO BELMAR ET AL., Conflicts over Water in Chile: Between Human Rights and Market Rules 18–19 (Sara Larrain & Colombina Schaeffer eds., 2010) (describing the environmental and social consequences of privatization and centralization of water in Chile).

\textsuperscript{113} José Aylwin et al., The Lithium Industry and its Human Rights Impacts: The Case of the Lickanantay People in Chile, 23 Wyo. L. Rev. 107 (2023).
confirm the on-the-ground consequences of mining and consider the “irony” of one lithium company’s efforts to implement a “human rights” plan. While this region is no stranger to mineral extraction, the growth of lithium mining has far-reaching consequences for future water management and Indigenous community longevity.

Moving northeast from the Salar de Atacama, PhD candidate Zoe Rosenblum and Professor Aaron Wolf of the College of Earth, Ocean, and Atmospheric Sciences at Oregon State University focus on the Silala headwaters, Bolivia’s Orientales and Cajones bofedales. Rosenblum and Wolf survey the chief international water law conventions applicable to wetlands and aquifers, as well as the strengths and weakness of international water law in protecting these critical ecosystems. The authors emphasize the importance of considering hydrological connections in managing transboundary waters, “as climate change and unilateralism threaten regional stability,” and explore the prominent roles played by wetlands and groundwater aquifers in Chile v. Bolivia, where the issues before the ICJ necessarily involved questions about the hydrological connections between the river, bofedales, and aquifers. It is “imperative that our legal regimes better reflect the hydrologic connectivity of water resources,” describe the authors, in order to successfully manage those resources.

Professor Agnes Chong of the University of Hong Kong shifts our attention to other, related complicating factors in the Silala basin—commercialization of shared natural resources, the canalization of the Silala, and Bolivia’s requests for compensation for Chile’s past and current water uses. Focusing on the principle of equitable and reasonable utilization and the global, paradigmatic goal of sustainable development, Chong considers water commodification and artificial enhancements and their influence on competition over resources, sovereignty claims, and compensation. Can states achieve equitable and reasonable utilization in a way that addresses artificial flows, water as an economic good, and goals for “maximizing basin benefits”? Chong takes a deep dive into these matters. Noting the lack of resolution offered by the ICJ in Chile v. Bolivia, Chong concludes the case’s most important outcome is that it highlighted water commodification and privatization as a contemporary problem for international water law—a problem that can be addressed through the current international legal framework and that riparian states must address when attempting to form and maintain cooperative relationships around shared water resources, especially in contentious, water-scarce situations.

Finally, Professor Christopher Rossi of the University of Tromsø, the Arctic University of Norway, rounds out the discussion by exploring the “cruel irony of the Atacama.” Rossi endeavors to understand the ICJ’s prevailing conclusions that a dispute no longer existed between Bolivia and Chile, beginning with the

---

biggest, most “perplexing” question of all: “What was this dispute about?” Charting a history of struggles for sovereignty and control of resources, the author discusses the “great shades of nuance” that can complicate the meaning of a dispute and lead to narrow judicial reasoning, including underlying motivations, symbolic gestures and interpretations, and abstract territorial line-drawing atop the “complexity and porosity of human geographic life.” Rossi closes by considering where, if at all, the rivaling neighbors might find common ground, concluding: “Perhaps the most obvious convergence of opinion” is that “the abundant mineral resources of the Atacama inextricably tether to the resource in shortest supply—water.”

The Atacama Desert is a paradox: inhospitable yet inhabited since time immemorial, overlooked yet coveted, barren yet beautiful, isolated yet at the center of global discourse.

**Of Pebbles & Ripples (aka Precedent)**

International law, with its goal of peaceful relations, operates best when states hold mutual or reciprocal interests. In this sense, critical, transboundary resources such as water are prime candidates for cooperation. When the goal is protecting, in perpetuity, self-interests in a critical and finite resource, practicality points to compromise and cooperation. Of course, transboundary water resources also provide moments for conflict. And conflict provides moments ripe for the development of international water law. Conflict puts international law to the test—the “catalytic effect” of conflict exposes the needs for better normative frameworks.” The special issue leans into this notion.

The ICJ has put the international community on notice that it is up to nation-states to resolve transboundary water disputes and to ensure equitable utilization and participation vis-à-vis the shared waters. This deferential approach is not new. The Supreme Court of the United States has sent a similar message: it is much preferred that states resolve interstate water conflicts through cooperative agreements determining each state’s equitable use of the water. At a time when water scarcity continues to amplify hydropolitical dynamics, opening the door to increased competition and more assertive water-driven foreign policy and international posturing, this precedent is significant.

---


119 See, e.g., New York v. New Jersey, 256 U.S. 296, 313 (1921); Connecticut v. Massachusetts, 282 U.S. 660 (1931); Washington v. Oregon, 297 U.S. 517 (1936); Colorado v. New Mexico, 467 U.S. 310 (1984); Florida v. Georgia, 138 S. Ct. 2502 (2018); Mississippi v. Tennessee, 142 S. Ct. 31 (2021). The Supreme Court has stated that interstate conflicts are “more likely to be wisely solved by cooperative study and by conference and mutual concession on the part of representatives of the States so vitally interested in it than by proceedings in any court however constituted.” New York, 256 U.S. at 313.

120 See Héloïse Garry, *The Case of the Silala River: Between the Laws of Men and the Laws of*
There are 310 international river basins on this planet. These basins, shared by 150 countries—a result of 150 instances of political line-drawing—each provide unique occasions for cooperation or conflict, to test and improve international water law. Given climate change’s current and projected effects on freshwater resources, these moments will continue to be in abundance, each one sending ripple effects through the broader international community. It remains to be seen exactly how, if at all, Chile v. Bolivia will influence the development of international water law, but the conflict has certainly revealed opportunities for reflection. How the countries conduct themselves moving forward will be equally revealing. The smallest pebble creates a ripple.

However nation-states (and subnational states) choose to approach these cooperative solutions, they are equipped with a framework of core international water law principles—including equitable and reasonable utilization, the obligation not to cause significant harm, and the duty to cooperate—as well as freedom to consider emerging norms and novel legal innovations, and how they might fit within and enhance existing frameworks. Take, for example, the growing discourse on a human right to water and rights of nature; or the importance of science and Indigenous knowledge in managing water resources in line with sustainable development goals; or the theory that because interests in a shared watercourse involve one “indivisible entity,” they can be viewed as a community of interests, no matter how divergent or conflicting those interests may be. International law invites both practicality and creativity in solving contemporary challenges. Yet the concept of equity, “at once basic and profound,” continues to plague international

---


123 See generally Álvarez-Marin et al., supra note 59 (discussing a human right to water and rights of nature within the context of Bolivia’s constitution, Chile’s constitutional reform process, and international law broadly); Anna F.S. Russell, The Human Right to Water in a Transboundary Context, in Research Handbook on International Water Law 255 (Stephen C. McCaffrey et al. eds., 2019).


126 Jason Anthony Robison, Introduction to Cornerstone at the Confluence: Navigating
(and subnational) relations around water. On the one hand, transboundary waters are inherently unifying, serving as a platform for strong, regionally authentic relationships—a platform for community.\textsuperscript{127} On the other hand, building such platforms is often not easy.

Reflected clearly in the waters of the Silala, and in the scholarship of this special issue, is the complexity of relationships around water. Also reflected is the fact that relationships around water, and with water, are \textit{human} (hence, complex). Professor Jason Robison explores this “reflective, relational perspective” in the Epilogue, initially returning to the place itself and reminding us what can be gleaned by witnessing a river’s reflections firsthand.\textsuperscript{128} Stop at any point along the river system and it’s easy to see what relationships exist, and the values that underly them. Bounce houses next to the Río Loa in Calama, machine guns at the international border. To begin this Introduction, we asked why the tiny Silala (a stream, really) in this remote, dry area of the world is a subject of international importance. The reflections offered by the authors in this special issue each provide answers to that question. And Robison encapsulates it while the Silala reminds us that relationships around water are politically, economically, and legally defined, these relationships also define, collectively and individually, who we are and what we’re made of.

“In scarcity lies the opportunity for community.”\textsuperscript{129} Perhaps Chile and Bolivia will arrive at such a place, mediating the myriad interests, values, and historical trauma that exist throughout this water-scarce, hyper-arid region. Perhaps they won’t. Regardless, the Río Silala, with the human and environmental realities that define its landscape, is emblematic—a microcosm of the realities playing out in similar settings across the globe, and of the contemporary challenges facing the global community in managing transboundary resources. The world in miniature.