Epilogue: What is the Río Silala?

Jason Anthony Robison
University of Wyoming College of Law

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

Part of the Law Commons

Recommended Citation
Available at: https://scholarship.law.uwyo.edu/wlr/vol23/iss2/20
The question embedded in this epilogue’s title seems rhetorical at first blush. What is the Río Silala? It is a river—of course. But what does that mean?

In 2010, the Institute of Contemporary Art in Boston featured an exhibition titled, Roni Horn aka Roni Horn, encapsulating three decades of the American artist’s work and several pieces about water as a metaphor for identity.1 I had the privilege of seeing this exhibition with a dear friend and colleague from Bogotá, Jorge González Jácome, at a time when each of us was grappling with what to write our dissertations on (though Jorge was much further along). The exhibition was inspiring and brought together so many ideas rattling around my brain at that time about the nature of water and the layers of human institutions, laws and otherwise, constructed around it. Several years passed before I was able to complete my dissertation—eventually honing in on the “American Nile” (the Colorado River)2—and another few years would elapse before the Río Silala came across my radar. Ever since that day in 2010, however, a distinct perspective crystallized in my mind. Water is “a form of perpetual relation,” describes Horn, “not so much a substance but a thing whose identity is based on its relation to other things.”3

---


This relational, reflective perspective unifies the pieces of this special issue.

From what the esteemed authors have written, myriad reflections can be gleaned in the Río Silala’s flows. Framing these reflections is an inherently subjective exercise. In undertaking it, an important disclaimer is appropriate at the outset. As someone privileged to live and to work as a professor in the twenty-first-century American West, my heart and mind have been enriched deeply by traveling to the Río Silala and its environs, talking with many diverse, unique people who live there, and reading a good deal about the place. But I am not from and of the place. Rather, my home in the Rocky Mountains is thousands of miles away, both in a literal and a figurative sense. It is with this important disclaimer in mind that my observations of the physical and cultural landscape surrounding the Río Silala are humbly and respectfully offered below. Simply put, please take them with a grain of salt.

* * * * *

The water about which so much has been said above truly is a looking glass. Witness the place alone—sui generis in countless ways. My compadre Bryan Shuman and I saw far more of it than we bargained for when traveling to and from the Río Silala in 2019.

Our eastward journey to the river was mind-bending but safe. The Ojos de San Pedro are etched in my memory, a tranquil, verdant refuge, for vicuñas and humans alike, not far below the Río Silala-Río San Pedro confluence. San Pedro and San Pablo volcanoes loom over this stretch of the river system, towering at 6,142 meters and 6,092 meters, respectively, nearly the height of North America’s tallest peak, Denali (6,190 meters). The Altiplano’s colors were mesmerizing—not as bold as the Colorado Plateau’s burnt reds, oranges, and browns (think Grand Canyon), but lighter and tamer yellows, tans, and grays masquerading as purples, all beneath white snowcaps occasionally blending into clouds. If only it had rained.

Our southward and westward trek from the Río Silala was equally mind-bending and, in a word, hairball. Two gringos in a rear-wheel-drive pickup rented at Calama airport. A maze of unmarked jeep roads meandering along the Chilean-Bolivian border around and through San Pedro’s and San Pablo’s gigantic cousins. Nightfall descending with an aspirational map in Bryan’s hand and my foot glued to the gas pedal to propel through snowdrift-like sand patches. It was an ill-advised way of experiencing the place. But never before had I seen so many stars, nor

---

4 “Sui Generis”: “Of its own kind or class; unique or peculiar.” *Sui Generis*, BLACK’S LAW DICTIONARY (8th ed. 2004). While I plan on doing field research in southwestern Bolivia in 2025, my firsthand observations of the Atacama and Altiplano thus far are drawn solely from experiences on the Chilean side of the international border—specifically, from field research in northern Chile during 2019 and 2023.


savored their sight, as when we found our way through the maze and paused for a breath, dots in a black void, before traversing the Atacama back to Chiu Chiu.

Part of my heart is lodged in that community, resting tranquilly on a desert rooftop in the sunset’s glow beside Sylvia Lisoni Reyes’s magical, affectionately named cat, Michael Jordan. With the Río Loa flowing through it, the Atacameño village seems to have taken root exactly where it should, a quiet oasis along the ancient Inca Trail. So many reflections can be seen in the river here. I remember bubbling laughter and joyful smiles of children playing and splashing in the water, their families absorbing shade and sun along the banks, during a community festival. On a hill right next to the river lies Chile’s oldest Catholic church, La Iglesia de San Francisco de Chiu Chiu. Built by the Spaniards in the 1600s, and dedicated as a national monument by the Chilean government in 1951, the church’s bleach-white adobe walls are almost blinding. Sitting on a bench in the Plaza de Chiu Chiu across the street, taking in fresh morning air with some of this special issue’s editors, a bell tolls and signals what feels like the most artificial construct of all in this place. Query what stories the Río Loa could tell about that bell.

Higher up, in the Quechua community of Ollagüe along the Bolivian-Chilean border, the train seems to function in concert with the bell. In routine, mechanical fashion, the Ferrocarril de Antofagasta a Bolivia (FCAB) line passes daily through the station and marshalling yard filled with industrial creatures, living and dead. A giant metal condor hovers with outstretched wings near the edge of the yard, apparently flying to or from the massive Ollagüe Volcano (elevation 5,868 meters) behind it, a constant steam plume emanating from the summit. Salt flats—some with pink flamingos—stretch across the landscape, for “Ollagüe” means “eternal salt flats and volcanoes,” as described by a Quechua innkeeper. Not far to the

7 Along or adjacent to the Río Loa upstream (north) of Chiu Chiu are the Atacameño villages of Lasana and Conchi Viejo. Interview with Sylvia Lisoni Reyes, at Sol del Desierto, Chiu Chiu (Jan. 10, 2023) (on file with author). To the east of Chiu Chiu, along the Río Salado and its tributaries, are the Atacameño villages of Ayquina, Turi, Caspana, and Toconce. Id. Like the Río Silala and the Río San Pedro, the Río Salado is a tributary of the Río Loa, with the Río Salado-Río Loa confluence immediately downstream (south) of Chiu Chiu.


9 Ollagüe is, of course, not the only community where the FCAB line runs like clockwork. Located in the heart of the Atacama, between Antofagasta and Calama, Baquedano is another railside town with a daily cycle of train arrivals and departures that felt timeless.


11 Interview with Virginia Anza, at Hostal Atahualpa, Ollagüe (Jan. 11, 2023) (on file with author) [hereinafter Virginia Interview]. As elaborated by Virginia, “[t]his name came to be because both the salt flats and the volcanoes are eternal, and we are never going to use them up. That is what Ollagüe means.” Id. She softly sang this song:

Beautiful Ollagueña, born from this land,
Land of mountains and salt flats,
Long live the Carnival of Ollagüe,
Beautiful Ollagueña of the Carnival.
east is the Río Loa's headwaters, Miño Volcano, a spot my companions and I had hoped to photograph from afar. But it was not to be. After poring over maps and conversing at length with a patient, kindred spirit, José Arrieta Araos, our group accompanied José to the Salar de Caracote instead, inspired by his vision of the region’s potential for recreation and tourism, as well as his sentiments about human connections to the more-than-human world, including blockages.12 From where we stood overlooking Lago Verde, in awe and wonder, the Río Loa Basin was just over the western ridge.

* * * * *

This austere, sui generis place is just one thing—albeit a surreal thing—reflected in the Río Silala and its close relations, the Río San Pedro and the Río Loa. Apparent in their flows, too, are visions of what ought to be—how the Atacama and the Altiplano ought to be inhabited, how human beings ought to be in relationship with the rivers and one another in regards to their water—and the dynamic things animating such visions: human values. Appurtenant to the water, these values cannot be missed, whether one focuses on the coast, the desert, or the high plain.

Consider Antofagasta—a toehold on the Pacific’s edge. Viewed from the air or eastern hills, it takes little imagination to envision the desert rising up, like a mythical titan stretching his arm, and with one fell swoop overtopping the city in a wave of sand. Antofagasta exists, in no small measure, because of the Río Silala.13

\[Id.\] (lyrics translated).

12 Interview with José Arrieta Araos, in Ollagüe (Jan. 11, 2023) (on file with author). With respect to economic diversification involving recreation and tourism, José described his work in Ollagüe as follows:

I am interested . . . that people from communities like this can have other opportunities, with projects that contribute to them. That . . . the people here, the children, at a certain age, instead of thinking about going to work in mining, have an option of thinking about, I don’t know, being mountain guides to be able to climb that volcano, or the one over there.

\[Id.\]; see also Virginia Interview, supra note 11 (“We would like to work more in tourism. . . . We want more tourists to come here, to see the places we have. . . . We want Ollagüe to become more known, like San Pedro de Atacama.”).

13 As described in Chile’s memorial before the ICJ:

[O]n 31 July 1906, Chile granted a concession for the use of the waters of the Silala River on its territory, to the British company The Antofagasta (Chile) and Bolivia Railway Company Limited (FCAB), for an indefinite period of time and for the purpose of increasing the flow of drinking water serving the Chilean port city Antofagasta.

Memorial of the Republic of Chile, Dispute Over Status and Use of Waters of Silala (Chile v. Bol.), 86, ¶ 4.56 (July 3, 2017), https://www.icj-cij.org/sites/default/files/case-related/162/162-20170703-WRI-01-00-EN.pdf [https://perma.cc/VD6X-53VQ] [hereinafter Chile Memorial]; see also id. at 32, ¶ 2.25 (“In 1928, FCAB decided to construct open channels in Bolivia for sanitary reasons, to inhibit breeding of insects at the Silala River headwaters and avoid contamination of the potable water supply to Antofagasta.”). At oral argument, one of Chile’s counsel and advocates explained, “The Silala River supplied the city of Antofagasta with potable water until alternative solutions were developed in the late 1950s.” Verbatim Record, Dispute Over Status and Use of Waters of Silala (Chile v. Bol.), 30, ¶ 19 (Apr. 1, 2022), https://www.icj-cij.org/sites/default/files/case-related/162/162-20220401-ORA-01-00-BI.pdf [https://perma.cc/ZKK9-GUUZ].
It was funneled there by pipes, hundreds of kilometers of pipes, stretching from headwaters to coast, slaking thirst for city residents of all walks of life, in a manner resembling the hydraulic society of the U.S. Southwest.\(^\text{14}\)

Why were those iron-stemmed, clay-petalled daffodils planted at the Ruinas de Huanchaca (old silver foundry) in Antofagasta? And by whom? “The desert shall rejoice and blossom as the rose.”\(^\text{15}\) For me, London-based Chilean sculptor Fernando Casasempere’s *Out of Sync* installation carried theological overtones, though that was admittedly my projected interpretation.\(^\text{16}\) Some flowers bloomed in pale whites and copper-tinged oranges. Others wilted in charcoals and chocolates. But, most existentially, all were rooted in the same fashion: drilled into cracked, dry soil whose vitalization hinges on the essence of life and the human values that historically drew it from the Altiplano, across the Atacama, to this oasis.

Such values can be seen inland in Calama too. And not just by the city’s existence and that of Chuquicamata, the world’s largest open pit copper mine,\(^\text{17}\) with a depth second only to Utah’s Bingham Canyon Mine,\(^\text{18}\) next to which my beloved dad was born and raised. Rather, the Río Loa means even more to some residents, as it winds through their community.

Built in 1985 as a recreational and leisure area for families, El Loa Park offers one reflection, stretching like a green ribbon peppered with color-popping amusements (read: bounce houses) along a river segment in Calama. If my kids had joined me there, and especially if that kayak rental pavilion had been open, I might not have made it back to the United States. But I did with small gifts: key chains from the Natural and Cultural History Museum of the Atacama Desert,\(^\text{19}\) adjacent to the park, depicting the critically endangered Loa Water Frog.\(^\text{20}\)

Located just downstream, in Calama’s outskirts, similar values are apparent at Las Cascadas del Río Loa. A broader, lusher green ribbon of life emanates from the Río Loa along this stretch, as compared to El Loa Park, with the Atacama

---

\(^\text{14}\) The classic account of the American West as a hydraulic society is *Donald Worster, Rivers of Empire: Water, Aridity, and the Growth of the American West* (1985). This account dovetails with the “Big Buildup” recounted with respect to the Colorado River and other resources of the Colorado Plateau in *Charles Wilkinson, Fire on the Plateau: Conflict and Endurance in the American Southwest* (1999).

\(^\text{15}\) *Isaiah 35:1.*


\(^\text{19}\) [About Us, Museo Historia Natural y Cultural del Desierto de Atacama, muhncal.cl/en/about-us](https://perma.cc/LRZ2-3PX4).

delineating the corridor rather than humans. Yet, whatever words are used to describe it ("recreation," "leisure," etc.), there did not seem to be any difference in why those large, extended families were drawn to picnic next to the refreshing, geologically funky waterfalls, rather than at the park, amidst the summer heat. The draw is innate for human (and other sentient) beings. A sign posted next to the waterfalls just as soon could have been planted in the river’s banks at El Loa Park: “SI TU NO CUIDAS EL MEDIO AMBIENTE ¿QUIEN?” Translation: If you do not take care of the environment, who?

Similar questions have arisen during epic dam fights in the Colorado River Basin,\(^{21}\) bringing to mind another example of human values reflected in the Río Silala and its close relations: Conchi Dam and Reservoir. Impounding the Río Loa directly below FCAB’s San Pedro Station, this infrastructure appears to be set in the American West. Everything fits: the dam’s downstream earthen face; the reservoir’s bathtub rings and aridity-induced evaporation; the Río Loa’s suppressed, measured releases from the dam outlet; and the V-shaped canyon carved by the river over eons. There is one huge distinction: San Pedro’s and San Pablo’s omnipresence on the Altiplano to the east. Recall the Ojos de San Pedro. But walking across the bridge spanning the Río Loa canyon—seeing the pipes here, there, everywhere—a familiar combination of utilitarianism and anthropocentrism is on display. The water is invaluable to the region’s mines, other industry, and municipalities—and, by extension, so is the plumbing.\(^{22}\)

That brings me to the Río Silala proper—and a final vein of reflections in its water. This vein is where *Chile v. Bolivia* most naturally belongs. As canvassed above, apparent in the flows of the Río Silala and its close relations is the surreal place through which the rivers meander, and reflected too are the human values (and associated visions) appurtenant to the water. But what these subjects ultimately

---

\(^{21}\) Insightful storytelling about these dam fights can be found in Byron E. Pearson, *Still the Wild River Runs: Congress, the Sierra Club, and the Fight to Save Grand Canyon* (2002); Mark W.T. Harvey, *A Symbol of Wilderness: Echo Park and the American Conservation Movement* (1994); Russell Martin: *A Story that Stands Like a Dam: Glen Canyon and the Struggle for the Soul of the West* (1989); Marc Reisner, *Cadillac Desert: The American West and Its Disappearing Water* (1986); and John McPhee: *Encounters with the Archdruid* (1971).

\(^{22}\) An illustrative synthesis appears in Chile’s memorial before the ICJ:

[Chile] has relied and still relies on the waters of the Silala for various municipal, industrial and mining uses, developed over the course of more than a century. Among other users, the Chilean port city of Antofagasta and the towns of Sierra Gorda and Baquedano, at different times in the past and until as recent as 2010, used the water of the Silala River collected by FCAB for human consumption. A significant part of the waters collected by CODELCO is still used today for human consumption in its Mining Divisions. Past industrial uses included the Antofagasta-La Paz railway service, operated by FCAB, and current mining uses include that of CODELCO. The extremely arid conditions in the region make the waters of the Silala River of significant importance for all of these uses.

Chile Memorial, *supra* note 13, at 95–96, ¶ 5.11.
tee up is the most prominent element of this special issue, a human construct with formative influence on socioecological relations . . . .

“[D]o not doubt that all of this comes back to law, for our society lodges its best dreams in laws.” While renowned scholar Charles Wilkinson wrote that statement in reference to the American West, it applies readily to the Río Silala, in a couple ways. On the one hand, both settings are equally suited for American poet Thomas Hornsby Ferril’s profound quote etched in the Colorado capitol rotunda: “Here is a land where life is written in water.” Again, in a word, the Río Silala is essential, just like so many western creeks. On the other hand, given their essential nature, these waterbodies unsurprisingly share common ground of a different, abstract sort: they are jural spaces. Put differently, the Río Silala is a space of legal relations, as Chile v. Bolivia illustrates, with correlative rights and obligations superimposed on the river’s flows.

The Río Silala’s jural nature—the way in which the river is a space to which legal relations apply—can be perceived in many ways. For my part, I will just say that while visiting the river, it would have been grave error to have overlooked this quality. Escorting by Chilean Carabineros with machine guns and other firearms to the area where the Río Silala flows downhill from Bolivia to Chile, I was told in no uncertain terms not to go anywhere near the international border. Message received. Not on my first trip in 2019, but earnestly on my second trip in 2023, I was likewise told not to take photographs of the Bolivian flag. “Zona Militar,” read the sign next to that flag at the border in 2019, with a copy also painted on a boulder at the flagpole’s base. On the Chilean side, the scene was similar: no “Zona Militar” sign, but a raised Chilean flag and painted boulder beneath. Uphill from the border was a Bolivian military outpost, downhill was Reten Inacaliri, the Carabineros’ station. This militarization threw into sharp relief how the Río Silala is a space of legal relations, revealing in plain sight who holds those relations, even if precisely what the relations entail was (and largely remains) less than clear.

As the expert contributors to this special issue have discussed at length, the ICJ’s decision in Chile v. Bolivia shed at least some light on the latter subject. Exactly

how much is in the eye of the beholder.\textsuperscript{27} Various iterations of this point have been made, but perhaps none more eloquent than Judge \textit{ad hoc} Bruno Simma’s:

\begin{quote}
The Court owes it to the parties to render well-reasoned judgments which settle their disputes with binding force, and, where appropriate, offer[] them guidance on their rights and obligations. Reflecting on the Court’s deliberative process, the then President of the Permanent Court of International Justice, Max Huber, once compared the Court’s decisions to “ships which are intended to be launched on the high seas of international criticism.” It is a pity that today the Court chose to launch an empty vessel.\textsuperscript{28}
\end{quote}

More succinctly, per Judge Tomka, \textit{Chile v. Bolivia} “decides almost nothing.”\textsuperscript{29}

Entering the fray over the ICJ decision’s normative and relational value—critiquing the “empty vessel” in Judge Simma’s parlance—is a critical scholarly endeavor. This special issue serves as a testament. But rather than revisiting and potentially contributing to that dialogue, my basic point in this epilogue is the reflective one.

\textit{Chile v. Bolivia} shows how the Río Silala is a jural space. The ICJ’s decision—most fundamentally, its conclusions regarding the parties’ positions converging on the river’s legal status as an international watercourse and the concomitant application of customary law to the river\textsuperscript{30}—involves juridification. As used here, this term refers to “the expansion of legal structures to areas of life that had not previously been regulated by law, or the intensification and increasingly detailed nature of existing law.”\textsuperscript{31} Along the Río Silala, at the Grand Canyon,\textsuperscript{32} and elsewhere, law is salient among the numerous human institutions that characterize the Earth’s current geological time interval, the Anthropocene.\textsuperscript{33} Pervasive application of formal

\begin{footnotes}
\item[27] See \textit{infra} note 35 (summarizing the ICJ’s conclusions regarding application of international custom).
\item[28] Dispute Over Status and Use of Waters of Silala (Chile v. Bol.), 2022 I.C.J. ¶ 20 (separate opinion by Simma, J.) [hereinafter Simma Opinion].
\item[29] Chile v. Bol., 2022 I.C.J. ¶ 1 (separate opinion by Tomka, J.); see also Simma Opinion, supra note 28, ¶ 1 (“It is a curiosity of this Judgment that it decides almost nothing.”).
\item[32] Jason Anthony Robison, \textit{Grand Canyon as Legal Creation}, 60 J. ARIZ. HIST. 557, 560 (“Just as it is arguably impossible to identify an ecosystem on the planet where human beings have not had some impact, so too would one be hard pressed to locate an ecosystem untouched by human laws.”).
\end{footnotes}
legal constructs, international and domestic, to the more-than-human world, rivers and otherwise, is an Anthropocene hallmark. In this sense, one can glean in the Río Silala’s water not only the unique place through which it flows and the varied human values appurtenant to it, but the legal relations contemplated by the ICJ’s treatment (however satisfactory) of the parties’ rights and obligations.

And there is an important corollary to this reflection, something that will bring back Roni Horn momentarily. Legal relations are inherently normative—in how they are conceptualized (law on the books) and how they are implemented (law in action). This normativity exists irrespective of the doctrinal sources in which legal relations are anchored (international custom, framework conventions, bilateral treaties, etc.) or the identities of the public entities engaged in conceptualization and implementation (judicial, legislative, executive, etc.). Relevant to the post-Chile v. Bolivia world, the two countries will not be embarking on a value-neutral process when further conceptualizing and implementing the customary principles applicable to the Río Silala addressed in the ICJ’s decision. It will be a process rife with meaning.

Here a few examples. What, if anything, should be done to preserve and restore the high-altitude wetlands (bofèdals) at the Río Silala’s headwaters, an ecosystem encompassed within the Los Lípez Ramsar site? How might the

34 Chile v. Bolivia's juridification of the Río Silala in the context of international law is, of course, not intended to overlook the river’s juridification in the context of domestic law—for example, via Bolivian and Chilean contract law governing historical and current concessions to install infrastructure and to divert flows.

To be clear, Bolivia and Chile are not parties to the UN Watercourses Convention, nor have they yet formed a bilateral agreement for the Río Silala system. Chile v. Bol., 2022 I.C.J. 24, ¶ 54. With respect to international custom, the ICJ’s decision provides, inter alia, as follows: (1) the countries are "entitled to the equitable and reasonable utilization of the Silala waters under customary international law," and this principle “applies to the entirety of the waters of the Silala, irrespective of their ‘natural’ or ‘artificial’ character”; (2) the countries are “bound by the customary obligation to prevent transboundary harm” (i.e., significant transboundary harm), including with respect to Bolivia’s maintaining or dismantling of channels and drainage mechanisms located in its territory; and (3) the countries are “required, under customary international law, to notify and consult the other riparian State with regard to any planned activity that poses a risk of significant harm to that State.” Id. at 26, ¶ 64; 29, ¶ 83; 36, ¶ 118; 42, ¶ 145.

36 Los Lípez, RAMSAR SITE INFO. SERV., https://rsis.ramsar.org/ris/489 [https://perma.cc/5ACR-5B3Q] (last visited June 6, 2023). According to Bolivia, canalization of the bofèdals has significantly impacted the ecosystem:

Most of the wetland corresponds to the South Bofedal (87,892 m²), while the North Bofedals and confluence area are smaller (20,290 m² and 6,635 m², respectively). Of this total, only 7,680 m² (0.76 hectares) correspond to actual bofèdal at present. In conclusion, it can be affirmed that 107,137 m² (10.7 hectares) of bofèdal have been lost due to canalization.

countries implement the principle of equitable and reasonable utilization to develop a bilateral apportionment for the Río Silala system, perhaps embedded within a “watercourse agreement” governing conjunctive use of surface water and groundwater, as well as potential transboundary marketing of unused water by Bolivia? To what extent, if at all, should the human right to water influence how equitable and reasonable utilization is approached vis-à-vis the Río Silala? And what should be done regarding the obligation not to cause significant transboundary harm—which metrics ought to gauge “significance” as this threshold triggers not only the obligation to prevent such harm, but also procedural duties such as the obligation to notify and consult? Finally, extending from the duty to cooperate, which entities and processes should be developed to address the preceding subjects, and which parties should be included in governance of the Río Silala

CAF2-RCHL]. Regardless, “[i]f Bolivia wishes to remove the channels and to restore the wetlands to their pre-1920s state, this is something that Chile would positively encourage,” so long as it is done in a way that does not violate the parties’ rights and obligations under international custom. Reply of the Republic of Chile, Dispute Over Status and Use of Waters of Silala (Chile v. Bol.), 4, ¶ 1.8 (Feb. 15, 2019), https://www.icj-cij.org/sites/default/files/case-related/162/162-20190215-WRI-01-00-EN.pdf [https://perma.cc/FF6V-7A2X].

It is worth flagging that the ICJ concluded the parties had come to agree Chile’s current use of the Río Silala’s water comports with the principle of equitable and reasonable utilization. Chile v. Bol., 2022 I.C.J. 28, ¶ 75. As described by the ICJ, however, Chile did “not seek to obtain any pre-judgment as to what future use of the Silala River may be equitable and reasonable.” Id. at 26, ¶ 67 (emphasis added).


The 2009 draft preliminary agreement developed but ultimately not adopted by the parties called for a percentage-based allocation scheme that allowed for transboundary marketing. Specifically, Article 6 provided that of the Río Silala system’s total flow volume, “50% corresponds, initially, to the Plurinational State of Bolivia, is freely available to it and can be used within its territory or authorized to be captured for use by third parties, including its deliverance to Chile.” The Initial Agreement on Silala, or Siloli Art. 6 (2009) (unofficial translation), https://www.internationalwaterlaw.org/documents/regionaldocs/Silala/SilalaAgreement2009_English.pdf [https://perma.cc/4UYM-6JQC]. Article 13 went on to state: “The Ministry of Environment and Water will determine the value per cubic metre to be received by the Plurinational State of Bolivia in compensation depending on the volume transferred, which will be negotiated directly with the relevant public or private legal entity.” Id. art. 13. One potential entity identified in the agreement for negotiating such transfers was the Prefecture of the Department of Potosi. Id. art. 12(1).

Article 10 of the UN Watercourses Convention calls for resolving transboundary water conflicts by applying the principle of equitable and reasonable utilization, as well as the obligation not to cause significant harm, “with special regard being given to the requirements of vital human needs.” UN Watercourses Convention, supra note 38, art. 10(2). As described by Bolivia’s agent before the ICJ, “[i]n 2009, Bolivia enshrined in its Constitution the access to water as a right of the peoples.” Verbatim Record, Dispute Over Status and Use of Waters of Silala (Chile v. Bol.), 11, ¶ 3 (Apr. 4, 2022), https://www.icj-cij.org/sites/default/files/case-related/162/162-20220404-ORA-01-00-BI.pdf [https://perma.cc/99DF-PBVY] [hereinafter April 4 Verbatim Record].

Based on its interpretations of Chile’s submissions, the ICJ concluded the parties had come to agree on “the threshold of ‘significant transboundary harm’ put forward by Bolivia and repeatedly used by Chile itself, including with reference to Article 7 of the [UN Watercourses Convention].” Chile v. Bol., 2022 I.C.J. ¶ 85–86.
(e.g., Indigenous peoples)? These questions share one critical thing in common: they will not answer themselves.

This corollary—that the legal relations reflected in the Río Silala’s flows are inherently normative—puts into perspective what lies downstream in time from *Chile v. Bolivia*.

* * * * *

Identity. Recall Roni Horn’s conceptualization of water: “a form of perpetual relation, not so much a substance but a thing whose identity is based on its relation to other things.”

Moving forward from *Chile v. Bolivia*, the Río Silala’s water will continue to be a metaphorical looking glass, reflecting the *sui generis* place animated by the river and its close relations, as well as the diverse human values appurtenant to their flows. Further, Bolivia and Chile will continue to share a relationship over the Río Silala. More precisely, they will remain in relationship with one another over the river, as well as with the river itself. How legal relations over water are constructed is always telling—no surprise given its essentiality.

This special issue has offered abundant food for thought on this relational space. I think about it, in the final analysis, from a reductionist angle. It is one thing to express agreement, in the context of an ICJ proceeding involving transboundary waters, to the general existence and application of legal norms such as the principle of equitable and reasonable utilization, the obligation not to cause significant harm, the duty to cooperate, etc. It is another thing to take such agreements (read: words) and to make them real in relation to finite supplies of the essence of life, whether flowing in the Río Silala or elsewhere. Water law is a zero-sum game in the Atacama and other arid places, notwithstanding the importance of collaboration and resource conservation. This reality yields an identity-revealing result as predictable as it is profound.

Looking ahead from the ICJ’s decision, the Río Silala will reflect who Bolivia and Chile are as nation-states—what they are fundamentally about—in defining ways. How the parties approach their legal relations, in conceptualization and implementation, will display character qualities as vital as the flows to which the

---

42 With respect to Indigenous peoples’ inclusion in Río Silala governance, it is worth noting the Bolivia agent’s description before the ICJ of the following shift within Bolivian society:

In the last two decades, Bolivia has been undergoing a process of important social and cultural transformations, constitutionally recognizing itself as a plurinational nation which revitalizes its ancient cultures. Thus, Bolivia, through its indigenous peoples and subsequently through its government, has been the main promoter of the cosmovision of the Abya Yala indigenous nations and peoples, which favours life in harmony with Pachamama, or Mother Earth in English, and its natural resources.

April 4 Verbatim Record, *supra* note 40, at 10, ¶ 2.

43 Routa, *supra* note 3.
relations apply. And nothing here should suggest stationarity. Legal relations over transboundary waters are just like rivers—and identity.

So what is the Río Silala? I stand by my original, literal answer. It is a river. And what “river” means, in this epilogue, is hopefully clear: a reflection of self.