

INMEDIATE BACKGROUND

- On March 23rd 2016, during his speech for the “Day of the sea”, Bolivia’s President Evo Morales announced a study for a new claim against Chile, because of the use of waters from Silala River. Its watercourse begins in the Bolivian department of Potosí and flows through the border to the Chilean region of Antofagasta.
- On March 26th 2016, President Morales added that Bolivia would demand Chile before the International Court of Justice, becoming a formal preparation and no longer a general “study” of Silala.
- On March 29th 2016, President Morales invited a group of journalists and political leaders to visit the Silala valley, aiming to probe that it is not a river.
- On April 4th 2016, after meeting with military high command, President Morales announced that Bolivian Armed Forces will be part of the expert team regarding Silala.
- On May 11th 2016, a supreme decree was issued creating the “Strategic Direction of Defense of Silala Springs and Hydric Resources in Border with Chilean Republic”. This bureau has its own resources and exclusive dedication.
- On May 16th 2016, René Martínez was appointed Director of the new bureau. He said that he would seek to form the team of experts as soon as possible.
- Although Bolivia has borders with five countries in South America, in its definition the new Direction will only focus on hydric resources in border with Chilean Republic.
- In the period of the 13 Point Agenda Process –carried out during the first period of President Michelle Bachelet– Chile and Bolivia discussed the issue of Silala River and reached a draft agreement in 2009. It settled a shared use of water as usual in bi-national rivers. President Morales’ government decided to put this pre-agreement for public consultation with a referendum in Potosí Department. The result was negative, since local authorities demanded the payment of a allegedly “historic debt”. The Chilean government considered this unacceptable and the Bi-national Commission agreed to renew discussion further along.
- Chile has been open to reestablish dialogue but these conversations ended without results due to Bolivia’s insistence to deny the quality of international river of Silala, implying that Bolivia has a right over 100% of the watercourse.
- On May 8th 2016, President Morales accused Chile of setting a military base with war ammunition (tanks and missiles) 15 kilometers away from the border, just where the Silala River crosses to Chile. But he was referring in fact to Cariquima, a military post, located 300 kilometers north of Silala valley and 25 kilometers from the border with Bolivia. Cariquima post is part of an initiative called “Safe North Border Plan”, to face and prevent organized crime creating fear and insecurity in far off and helpless communities.
- Bolivia’s government has not yet responded the request of explanation regarding the presence of a military post build in its territory, on the Silala riverbank, only 1,5 kilometers from Chilean border.
- President Morales has used expressions such as “theft” and “stealing” to refer to the legitimate use of waters in Chilean territory. This offensive language towards

the country and its authorities has objectively restricted the possibilities for Chile to maintain its previous offers.

- The gathering of facts, described here above, allows Chile to conclude that Bolivia's government seeks to restrain its rights over a continuous bi-national course of water. In consequence, Chile has decided to ask the International Court of Justice to technically confirm the condition of bi-national river for Silala.

LAW FRAMEWORK

- International consuetudinary law regulates international watercourses. Its principles are reflected on the United Nations Convention on Law of the Non-navigational Uses of International Watercourses, agreed on July 8th 1997 and its entry into force of August 17th 2014.
- According to international law, a watercourse that crosses over two or more states is considered an “international watercourse”. In its second article the Convention defines “watercourse” as “a system of surface waters and groundwater constituting by virtue of their physical relationship a unitary whole and normally flowing into a common terminus”. And defines an “international watercourse” as “a watercourse, parts of which are situated in different States”.
- The principle of equal and reasonable usage of international watercourse is part of consuetudinary law. The Convention taking into account this principle states that to determine this equitable and reasonable use must be based on economic - social factors, population and their needs, “in a spirit of cooperation” and to prevent “causing significant harm to other watercourse States”.
- Chile was one of the countries in America, which promotes the development of this Convention, along with Brazil, Costa Rica, Haiti, Honduras, Mexico, Uruguay and Venezuela.
- Chile and Bolivia are not part of the Convention however is applied to both countries as a reflection on consuetudinary law.

LEGAL TEAM

- The Chilean claim is highly technique, genuine while it faces a denial of a right, which corresponds to Chile and seeks to create legal certainty on international law. It does not share any of the political and artificial elements with the Bolivian claim presented on 2013 in the International Court of Justice as well.
- Chile's claim is not in any way a response or retaliation to the previous demand issued by Bolivia. It is an effort to submit to the rule of international law what is considered as a negation of a right that belongs to Chile and potentially abusive actions over itself.
- Chile's claim is based on the International Law of Water Courses and it is a matter of specialist lawyers, hydrologist and geologist experts. Chile has a high-qualified team within the Direction of Borders and Limits of the ministry of Foreign Affairs, which has been studying this particular issue since 1997.
- The agent is Ximena Fuentes Torrijo, specialist in international law and PhD from Oxford University, with a thesis focused on International Water Courses.
- She is accompanied by two co-agents equally qualified: María Teresa Infante Caffi, lawyer from Universidad de Chile, with post graduate studies from the Graduate Institute of International and Development Studies, member of the prestigious Institut Droit International and former director of Borders and Limits and current ambassador of Chile in Netherlands; and Juan Ignacio Piña Rochefort, lawyer from Pontificia Universidad Católica de Chile and PhD from Universidad de Navarra, former deputy minister of Justice and president of the Council for State Defense.

SILALA RIVER

- The Silala River belongs to the Loa River basin. It is affluent of Inacaliri River, which tributes to San Pedro River and through Loa River it reaches the Pacific Ocean. In Chile it belongs to the Region of Antofagasta in Calama.
- The river begins in Bolivia, around 22°03' latitude south and 68°07' longitude west, over 4.410 meters surrounded by mountains with over 5.000 meters (Apagado volcano, Inacaliri hill and Siloli hill).
- It is an international and continuous course of water, which begins in Bolivia and crosses the border to Chile at 4.310 meters of altitude with an average flow between 120 and 180 liters per second. Its basin has 106 square kilometers, 70 of them are in Bolivian territory.
- Its headwaters in Bolivia are outbreaks in Quebrada Oriental and Quebrada Cajón, 1 and 3,5 kilometers from Chilean border. Its sources are defrosted waters and rains from December to April.
- The natural drain flows from Bolivia to Chile, adding lateral input to set the river as a whole. It does not exist any artificial works that could have affected the natural tilt of the land.
- Since 1996 Bolivia has denied the international quality of Silala, claiming that its is a water spring, artificially diverted towards Chile. For the previous 100 years the proper Bolivian cartography acknowledge Silala as a river. The river has not been diverted artificially; the water flows naturally to Chile. In a sector there is a canalization that allows an efficient use of water.
- Being a shared hydric resource, riverside countries have a right to use those waters according to the principle of reasonable and equal usage, applied in international rivers. The most important criteria to set the divisions of water volume are the current use of water from each riverside country. In this case, Chile uses water from Silala. In Bolivia there are not domestic, agricultural nor industrial uses reported.
- In 2009 there was an agreement between Chile and Bolivia for the distribution of volume from Silala River. The Bolivian government withdrew the negotiation after facing Potosí opponents that were aiming to charge Chile for the past use of water.

USE OF WATER FROM SILALA

- In the Treaty of 1904, Bolivia expressed its interest to have trains and railways for products transportation to the Pacific. Aligned with that interest in 1906 and 1908, Chile and Bolivia execute works in their respective territories to channel and take advantage of water from Silala. Both countries granted a concession to The Antofagasta (Chile) and Bolivia Railway Company Limited, nowadays known as Ferrocarril de Antofagasta a Bolivia (FCAB); to use the water for steam railway.
- In 1996 Bolivian government started to object this concession because the company has not respected the terms of the agreement. The reason was that in 1961 the transport company has begun to use diesel engines and traded water permits within Chile, which meant that they were not been used anymore for the goals they were granted. On March 14th 1997, Omar Manzano, from Potosí declared the concession cancelled. FCAB carried out administrative and legal proceedings with no success and the installations in Bolivia were no longer used.
- On August 30th 1999, Bolivian government tender the concession for Silala waters. On April 25th 2000, the company Ductec S.R.L. was awarded with the concession. The Chilean ministry of Foreign Affairs issued a statement refusing acknowledgement of Ductec's contract. In July 2003, the company lost the concession because it did not neither delivered guaranty invoices nor started the contract, according to the deputy minister of Basic Services in Bolivia, José Barragán.
- According to the measures from the General Direction of Waters from Chile, between January and March from 2016, the average flow crossing the border reaches 158 liters per second. It is considered as a normal average of 180 liters per second, with a maximum of 220 liters per second.
- Currently only two companies have rights over the waters from Silala, due to a similar process that Bolivia tried but could not execute effectively. These two are in Chilean sovereign territory. FCAB has one for 237 liters per second and Codelco has one for 119 and 41 liters per second. As usual there is a difference between rights granted and what is effectively used.
- In Chilean territory FCAB takes, from an installation 600 meters from the border, 60 liters per second.
- At the headwaters of Inacaliri River, Codelco-Chuquicamata division has rights for a total of 160 liters per second and takes 150 liters per second. At this point the source comes from Silala in a small percentage and mainly from underground outbreaks within Chilean territory setting a flow of 90 liters per second. Additionally Codelco buys from FCAB 12 liters per second.
- Water from Silala has supported the subsistence of communities such as Sierra Gorda, Baquedano and Estación Calama neighborhood.

THE BOLIVIAN MILITARY BASE IN SILALA

- Bolivia has a military base located 1.800 meters (1,8 KM) away from the border with Chile. Continuing with the flow of Silala River, the distance reduces to 1.400 meters (1,4 KM).
- The closest community near the military base on Bolivian side is Alota, located around 70 kilometers. The 74 milestone, that sets the border in that zone is located on the Silala Hill, about 4.600 meters of altitude.
- The Bolivian base is called “Military Post Silala” and depends on the Loa Infantry Regiment Number 4, located in Uyuni. Its exact location is the Silala Pass LXXIII and President Morales inaugurated it in 2006.
- By comparing pictures from year 2014 and 2015, it is possible to observe that in the first one they are three houses, and then in the next year, they are eight.
- At its inauguration, President Morales stated: “This presence of Armed Forces in Silala is not a provocation, nor an aggression to any country. Each State, any nation has the obligation to set sovereignty within its borders.”