

Tangier Model United Nations International Court of Justice Chair Packet



**Chile vs. Bolivia Dispute over the Status
and Use of the Waters of the Silala**

Authors: Saad El Ouazzani and Sumin Lee

Table of Contents

Functionality	4
Procedure of the Court	6
Preparation	7
Topic Overview	8
Bibliography	10
Useful Sources	10
Contact Information	12

Welcome to the International Court of Justice of the TMUN (ICJ). This chair packet is intended to assist you understand what the ICJ is, how it will operate, and what you will need to prepare. We've included all of the details required to guarantee that our committee functions smoothly and efficiently. Please contact us, your chairs, if you have any queries or concerns. Please find our contact information at the bottom of this document.

Dear Delegates,

We, the presidency; Sumin Lee and Saad El Ouazzani are very pleased to welcome you to Tangier MUN 2022 and to the International Court Of Justice. In the upcoming conference, we will be entertaining the case of

**“Chile vs. Bolivia: Dispute over the Status and
Use of the Waters of the Silala”**

President of ICJ: Sumin Lee

Vice-President of ICJ: Saad El Ouazzani

Judges: Someya El Hadioui, Younes Arbai, Safae Hosni

Functionality

What is the International Court of Justice (ICJ) ?

The ICJ, which was first established in June 1945 and began work in April 1946, is the principal judicial organ of the United Nations. In accordance with International Law, its role is to settle legal disputes submitted to it by States and to give advisory opinions on legal questions.

For further information on the specifics of the ICJ as an organ in the United Nations, visit: <https://www.icj-cij.org/en>

How does Model ICJ work?

This year's ICJ will include three judges, two presidents, and 4 advocates divided by two pairs representing both sides of the conflict, during trial, in question. The goal for each advocate team is to make their case and convince the panel of judges to vote for or against (respectively) on the case. During the procedure, the advocates have to call on their memorandum, their witnesses and substantial evidence that they have provided. It is in the judges' discretion to decide whether the evidence and witnesses' statements are taken under Minimum, Medium, Maximum Consideration. Each judge has one vote for or against the Applicant. On the off chance that there is a tie, the president of the ICJ has the deciding vote. Keep in mind, the ICJ does not function like the other committee, and runs like an actual court case.

Objections, Points, and Motions

The Objections, Motions and Points are used to draw attention to mistakes that may have been made, requests to do something outside of the natural procedure and questions that a participant may have. Anyone can make these.

Objections:

- **Hearsay** (when during the interrogation of the witness, the witness doesn't work as a primary source but as a secondary)
- **Leading Question** (when the questions made by the advocate providing the witness to the same witness can be answered in a yes or no manner or it is posed in a way that the witness doesn't express their opinion)
- **Speculation** (when the witness or an advocate tries to predict a certain outcome that is not capable of being confirmed)
- **Prejudicial** (when a question hurts the integrity of the panel or the witness)
- **Competence** (when a question requires knowledge that the witness cannot possibly possess ex. a question with technical details)
- **Badgering** (when a question is intimidating the witness)
- **Relevance()**
- **Authenticity**, (ex: We are not sure if this is the whole).
- **Reliability**, (ex: This document is from an unknown author relevance, e.x It is not relevant to our case).

Points:

- **Point of Personal Privilege** (Ask the Chairs to change something making you uncomfortable, such as temperature, technical issues, or inability to hear the speaker. This is the only point that may interrupt a speaker)
- **Point of Parliamentary Inquiry** (in order to obtain the chair's guidance so they can take the appropriate action).
- **Point of Inquiry** (A question directed to the Chairs about MUN procedure).
- **Point of Clarification** (A point normally made by the Chairs to clarify something, such as a fact).

Motions:

- **Motion to extend** (only made by the Judges)
- **Motion to approach panel** (When a delegate wants to speak or show something privately that only the panel can hear)
- **Motion to Recess:** Motion to finish the current committee session.
- **Motion to Adjourn:** End of the conference.

- **Right of Reply:** A formal request to speak after another delegate has offended you or your delegation. This must be submitted in writing to the Chairs

The Procedure of The Court

Opening Statement

- During the opening statements advocates will explain to judges their point of view about the case. They will make a <<rephrase>> of their memorandum, that means they will refer to the historical background, their policy and the judgment requested.

Presentation of Evidence

- During the presentation of evidence the advocates will submit only real pieces of evidence to support their case. The opposing party can object on some grounds (check the objection part)

Witnesses

- The advocates will try to fill the lack of their real evidence with the testimony of their witnesses. The witnesses will have Direct and Cross Examination. The advocates can object on some grounds (check objections part)
- **Direct Examination:** The party who called the witness is doing the direct examination. During the direct examination the advocates cannot make a leading question unless the witness is qualified as an expert.
- **Cross Examination:** The opposing party and the judges are doing the cross examination. During the cross examination all members are encouraged to ask leading questions in order to discover the truth. In cross examination it can't be asked something that the advocates didn't ask during the direct examination.

Examination of Evidence

- This is a very difficult part of the case because the judges call to decide which pieces of evidence they are going to keep in order to reach the verdict at the end of the case. First of all each judge takes one evidence and starts reading it, after that the judge has to check the relevancy, reliability and authenticity of the evidence and at the end the judge has to explain to the others judges the evidence and decide if the court will take into consideration and how much this evidence at the end of the case.

Closing Statements

- During the closing statements advocates will point out and explain some facts of the whole trial. Also they will try to solve any query and misunderstanding that judges might still have.
- For further explanation about the specific events, contact us(Check below for contact information).

Preparation

What should be prepared prior to the Court Session?

Each delegate is obliged to write a **Memorandum** (Position Paper) outlining their country's position and their point of view on the subject. The Memorandum (about 600 words) should include: a thorough statement of their country's concerns with the topic, proposals for a solution, and anything else that will make the judges more sympathetic towards the side they prefer. **Evidence Packets** must be prepared by advocates(Delegates). These packets should contain all of the evidence that the advocates intend to employ to support their legal claims. The paper must include the delegate's complete name and school, the nation they are representing, and the side they have chosen to defend. Each piece of evidence must adhere to specific style and citation requirements:

- Title, Author, Medium (Website link/Book/etc.), Date, Brief explanation (what is your source/what does it prove/how it's relevant/why it's reliable)

The panel maintains the discretion to exclude evidence that has not been vetted in advance. Once packets have been submitted, they cannot be updated or amended in any way. Evidence is typically made up of things that have some significance to the case, such as papers, publications, or documents. They must be relevant to the issue, especially in defense of points expressed. The panel maintains the ability to order an advocate to leave the court if evidence is falsified. Furthermore, the Advocates must seek for Stipulations (facts and occurrences on which both parties agree) and offer them to the President; they should be included in the Evidence Packet. Prior to the meeting, the aforementioned papers must be provided to the

Presidency and distributed to the Judges. Furthermore, the Advocates must create a **witness list** from the nations represented in the committee and notify the Presidency. Chile and Bolivia will be among the supporters. Once nation assignments are revealed, their associated advocates will be determined in advance. There will be no conclusion to anticipate because the verdict will be decided only by the judges. **Your Memorandum papers, evidence packs, and witness lists, on the other hand, are due on November 26th.**

Topic Overview

- Background

Silala, the river that springs in Bolivia and flows into Chile, is causing a legal dispute between Bolivia and Chile regarding the ownership of water of the river. The waters from Silala/Siloli is located in the Atacama Desert on the border between Bolivia and Chile, from high altitude wetlands called bofedales formed by groundwater springs in the Bolivian Altiplano, traversing approximately 4 kilometers through Bolivian territory and flowing into San Pedro Tributary, then into the Loa River oxbow in Chile, and ultimately into the Pacific Ocean. While located in a remote region, the dispute of Silala demonstrates the concept of “Hydropolitical Vulnerability” – the risk of political dispute over shared water systems –. Because of the underlying issues of politics, economics, sovereignty, and history, the Silala has become one of the most hydro politically vulnerable basins in the world. Suffice it to say that if the Silala river were considered an “international watercourse”, the following core principles would apply as customary rules: equitable and reasonable watercourse utilization, the obligation not to cause significant harm, and the general duty to cooperate, including a duty of information, consultation, and negotiation on measures that may impact other riparian States.

The main reason why this legal dispute is crucial is that both Chile and Bolivia is that because both countries are suffering from lack of water. Due to drastic climate change, both of the countries need the control of water for their economy and the water sustainability. In 2016, Bolivia declared a state of emergency due to water shortages, making the water a scarce resource in the nation. On the other hand, in Chile, water is considered an economic good that could be sold and paid for as an industrial product.

- **Plaintiff Allegations (Bolivia)**

Bolivia, the country where the Silala river springs from, claims that the river flow has been forcibly redirected to Chile, that Silala should not be considered as “International watercourse” and following the UN watercourses convention. Bolivia insists that Silala is not a transboundary watercourse and that Bolivia owns its exclusive right to control the usage of water in Silala. Bolivia is requesting Chile to pay for the usage of water from Silala as Bolivia has the dominant authority of the river.

- **Defendant's Objections (Chile)**

Chile, on the other hand, claims that Silala is an international watercourse as the river is shared by both countries, and the river flows naturally towards Chile due to the downward slope of the Silala river. Chile is requesting Bolivia to share the sovereignty of Silala, which Bolivia disagrees with. Chile also claims sovereignty over the Silala, an international watercourse that has never been diverted from its springs but has instead been naturally canalized.

● ***Useful/Relevant Sources:***

- <http://www.qil-qdi.org/silala-dispute-international-water-law-human-right-water-forthcoming/>
- <https://onlinelibrary.wiley.com/doi/abs/10.1111/reel.12377>
- <https://www.reuters.com/world/americas/world-court-hears-chile-vs-bolivia-suit-silala-river-rights-2022-04-01/>
- <https://jusmundi.com/en/document/other/en-dispute-over-the-status-and-use-of-the-waters-of-the-silala-chile-v-bolivia-verbatim-record-2022-14-thursday-14th-april-2022>
- <https://earth.org/silala-river-special-report/>
- <https://wedocs.unep.org/handle/20.500.11822/7803>
- <https://www.youtube.com/watch?v=46SR02SM-co>

Bibliography

Disclaimer: The majority of the information and content in this document has been adapted from the 2022 TMUN Chair Packet and the ACGMUN ICJ Manual.

- ICJ Manual - ACGMUN.GR. Pierce – The American College of Greece, <http://www.acgmun.gr/wp-content/uploads/2016/08/ICJ-Manual-ACGMUN.pdf>.

The Topic Overview Section is entirely paraphrased/copied from:

<http://www.qil-qdi.org/silala-dispute-international-water-law-human-right-water-forthcoming/>

Used Sources:

- * Adjunct Professor of International Law at University of Rome 'LUMSA'.
- See T Meshel, 'A New Transboundary Freshwater Dispute before the International Court of Justice' (2016) 42 Water Intl 92; BM Mulligan, GE Eckstein, 'The Silala/Siloli Watershed: Dispute over the Most Vulnerable Basin in South America' (2011) 27 Water Resources Development 595; CR Rossi, 'The Transboundary Dispute Over the Waters of the Silala/Siloli: Legal Vandalism and Goffmanian Metaphor' (2017) 53 Stanford J Intl L 55.
- ²¹ Dispute over the Status and Use of the Waters of the Silala (Chile v Bolivia) (Application Instituting Proceedings) 2016 <www.icj-cij.org/docket/files/162/19020.pdf>.

- ¹⁴³ P Cullet, 'Water Law in India. Overview of Existing Framework and Proposed Reforms' (2007) IELRC Working Paper, 1 <www.ielrc.org/content/w0701.pdf>.
- ¹⁴⁴ See SC McCaffrey, *The Law of International Watercourses* (OUP 2007); A Tanzi, M Arcari, *The United Nations Convention on the Law of International Watercourses: A Framework for Sharing* (Kluwer 2001).
- ¹⁴⁵ Convention on the Law of the Non-Navigational Uses of International Watercourses (adopted 21 May 1997, entered into force 17 August 2014) UNGA Res 51/229 (21 May 1997) UN Doc A/RES/51/229. Consideration must also be paid to the so-called Berlin Rules on Water Resources, adopted by the International Law Association at the Berlin Conference on Water Resources Law on 21 August 2004.
- ¹⁴⁶ JW Dellapenna, 'The Customary International Law of Transboundary Fresh Waters' (2001) *Intl J of Global Environmental Issues* 264.
- ¹⁴⁷ P Cullet, 'Water Law – Evolving Regulatory Framework', in P Cullet, A Gowlland-Gualtieri, R Madhav, U Ramanathan (eds), *Water Governance in Motion, Towards Socially and Environmentally Sustainable Water Laws* (Foundation Books 2010) 27-31.
- ¹⁴⁸ Convention on the Law of the Non-Navigational Uses of International Watercourses (n 5) arts 5-6. *Case concerning the Gabčíkovo-Nagymaros Project (Hungary v Slovakia)* (Merits) [1997] ICJ Rep para .
- ¹⁴⁹ C Leb, 'The Right to Water in a Transboundary Context: Emergence of Seminal Trends' (2012) *Water Intl* 648.
- ¹⁵⁰ Convention on the Protection and Use of Transboundary Watercourses and International Lakes (adopted 17 March 1992, entered into force 6 October 1996) (1992) 31 *ILM* 1312.
- ¹⁵¹ Protocol on Water and Health to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes (adopted 17 June 1999, entered into force 4 August 2005) (18 October 1999) UN Doc MP.WAT/2000/1 art 6. See A Tanzi, 'Reducing the Gap between International Water Law and Human Rights Law: The UNECE Protocol on Water and Health' (2010) 12 *Intl Community L Rev* 267-285.
- ¹⁵² Berlin Rules on Water Resources (n 5) art 14(1).
- ¹⁵³ *ibid* art 17(1): 'Every individual has a right of access to sufficient, safe, acceptable, physically accessible, and affordable water to meet that individual's vital human needs'. As it will be seen in section 4, this provision corresponds to the definition of the right to water provided for by the International Committee on Economic, Social and Cultural Rights.
- ¹⁵⁴ This doctrine was first affirmed in 1895 by the US Attorney General, Judson Harmon, in the context of a dispute between the USA and Mexico over the use of the Rio Grande. In the relevant part, the opinion of the Attorney General Harmon read as follows: 'The case presented is a novel one. Whether the circumstances make it possible or proper to take any action from considerations of comity is a question which does not pertain to this Department; but that question should be decided as one of policy only, because, in my opinion, the rules, principles and precedents of international law impose no liability or obligation upon the United States.' (1894-1897) 21 *Official Opinions of the Attorneys General of the US* 283.
- ¹⁵⁵ See Permanent Sovereignty over Natural Resources, UNGA Res 1803(XVII) (14 Dec 1962) para 5; Declaration of the United Nations Conference on the Human Environment, Stockholm (16 June 1972) Principle 21; Protocol on Water and Health (n 17) art 5(c).
- ¹⁵⁶ It is noteworthy that Bolivia has included the right to water in its Constitution. See República del Bolivia – Constitución de 2009 (7 February 2009) art 16(1): 'I. Toda persona tiene derecho al agua y a la alimentación'. Art 20(1): 'Toda persona tiene derecho al acceso universal y equitativo a los servicios básicos de agua potable'; and (3): 'El acceso al agua y alcantarillado constituyen derechos humanos, no son objeto de concesión ni privatización y están sujetos a régimen de licencias y registros, conforme a ley'. On the contrary, Chile, has fully divested the water service sector.

Our Contact Information:

If you have any questions don't hesitate to contact us at:

- President of ICJ:
 - Sumin Lee
 - sumin.lee@ast.ma,
 - +212 6 64 89 86 95
- Vice-President of ICJ:
 - Saad El Ouazzani
 - saad.elouazzani@ast.ma
 - +212 6 13 13 15 13