

PCA Case No. 2023-01

**IN THE MATTER OF
THE INDUS WATERS WESTERN RIVERS ARBITRATION**

-before-

**THE COURT OF ARBITRATION CONSTITUTED
IN ACCORDANCE WITH THE INDUS WATERS TREATY 1960**

- between -

THE ISLAMIC REPUBLIC OF PAKISTAN

- and -

THE REPUBLIC OF INDIA

**SUPPLEMENTAL AWARD ON
THE COMPETENCE OF THE COURT**

COURT OF ARBITRATION:

Professor Sean D. Murphy (Chairman)
Professor Wouter Buytaert
Professor Jeffrey P. Minear
Judge Awn Shawkat Al-Khasawneh
Dr. Donald Blackmore

SECRETARIAT:

The Permanent Court of Arbitration

27 June 2025

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TABLE OF DEFINED TERMS

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| 23 April Statement | Ministry of External Affairs, Government of India, “Statement by Foreign Secretary on the decision of the Cabinet Committee on Security (CCS)” dated 23 April 2025 (P-0697) |
| 24 April Letter | Note Verbale No. 80/01/2025, enclosing Letter No. Y-18012/1/2024-Indus from Secretary, Indian Ministry of Jal Shakti to Secretary, Pakistan Ministry of Water Resources dated 24 April 2025 (P-0700) |
| Award on Competence | Award on the Competence of the Court dated 6 July 2023 |
| Commissioners | Pakistan’s Commissioner and India’s Commissioner |
| Court | The Court of Arbitration in these proceedings, constituted pursuant to Article IX(5) and Annexure G to the Treaty |
| First Phase on the Merits | The first phase on the merits of these proceedings concerning the overall interpretation or application of Article III of the Treaty, and Paragraph 8 of Annexure D thereto, in addition to a related question concerning the legal effect of past decisions issued by dispute resolution bodies established pursuant to Article IX of the Treaty |
| HEP | Hydro-Electric Plant |
| ICJ | International Court of Justice |
| India | The Republic of India |
| India’s Commissioner or ICIW | Commissioner for Indus Waters appointed by India pursuant to Article VIII(1) of the Treaty |
| India’s Site Visit Objections | Letter from India to the PCA dated 18 January 2024 |
| KHEP | Kishenganga Hydro-Electric Plant |
| Neutral Expert Competence Decision | Decision on Certain Issues Pertaining to the Competence of the Neutral Expert dated 7 January 2025, PCA Case No. 2023-14 (P-0695) |
| Neutral Expert | Mr. Michel Lino, the Neutral Expert appointed on 13 October 2022 by the World Bank further to India’s Request to the World Bank for the Appointment of a Neutral Expert dated 4 October 2016 (P-0156) |
| NJHEP | Neelum Jhelum Hydro-Electric Plant |
| Pakistan | The Islamic Republic of Pakistan |
| Pakistan’s Commissioner or PCIW | Commissioner for Indus Waters appointed by Pakistan pursuant to Article VIII(1) of the Treaty |

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|--|--|
| Pakistan's Submissions | Pakistan's Submissions on Recent Developments Pursuant to Procedural Order No. 15 dated 11 June 2025, as corrected on 12 June 2025 |
| Parties | The Parties to these proceedings, namely the Islamic Republic of Pakistan and the Republic of India |
| PCA | Permanent Court of Arbitration |
| Preliminary Phase on Competence | The preliminary phase of these proceedings on the competence of the Court and the operation of Article IX of the Treaty |
| Procedural Order No. 6 | Procedural Order No. 6 (Decision on Further Proceedings) dated 6 July 2023 |
| Procedural Order No. 10 | Procedural Order No. 10 (Site Visit Protocol) dated 3 February 2024 |
| Procedural Order No. 15 | Procedural Order No. 15 (Recent Developments that May Bear on Matters Before the Court) dated 16 May 2025 |
| Request for Arbitration | Pakistan's Request for Arbitration dated 19 August 2016 |
| RHEP | Ratle Hydro-Electric Plant |
| Run-of-River HEP | As defined at Paragraph 2(g) of Annexure D to the Treaty, "a hydro-electric plant that develops without Live Storage as an integral part of the plant, except for Pondage and Surcharge Storage" |
| Supplemental Rules of Procedure | Supplemental Rules of Procedure dated 31 March 2023 |
| Treaty | <i>Indus Waters Treaty 1960 Between the Government of India, the Government of Pakistan and the International Bank for Reconstruction and Development</i> , signed at Karachi on 19 September 1960 (PLA-0001) |
| VCLT | <i>Vienna Convention on the Law of Treaties</i> , opened for signature at Vienna on 23 May 1969 (PLA-0005) |
| Western Rivers | The Indus, the Jhelum, and the Chenab Rivers and their tributaries |
| World Bank | International Bank for Reconstruction and Development |

I. INTRODUCTION

1. These proceedings were instituted by the Islamic Republic of Pakistan (“**Pakistan**”) against the Republic of India (“**India**”) (together, the “**Parties**”) pursuant to the Indus Waters Treaty 1960 (“**Treaty**”).¹ The Treaty sets forth rights and obligations of the Parties concerning the use of the Indus system of rivers, and provides for the settlement of all questions that may arise as to the interpretation or application of the Treaty.² When questions cannot be resolved by the Parties themselves, Article IX of the Treaty provides that certain technical questions can be placed before a highly-qualified engineer (called a neutral expert) and any question can be placed before an arbitral panel consisting of highly-qualified lawyers and engineers (called a court of arbitration).
2. By a Request for Arbitration dated 19 August 2016, Pakistan initiated the present arbitration proceedings against India pursuant to Article IX and Paragraph 2(b) of Annexure G to the Treaty (“**Request for Arbitration**”).³ Through its request, Pakistan seeks to resolve certain issues that have arisen between the Parties concerning the interpretation or application of various parts of the Treaty governing the design or operation of run-of-river hydro-electric plants (“**Run-of-River Plants**” or “**HEPs**”)⁴ on the Indus, Jhelum, and Chenab Rivers and their tributaries (“**Western Rivers**”), including in the context of the Kishenganga Hydro-Electric Plant (“**KHEP**”) and the Ratle Hydro-Electric Plant (“**RHEP**”).⁵
3. After the filing of Pakistan’s Request for Arbitration, India separately requested the appointment of a neutral expert to resolve certain design and operation questions concerning the KHEP and the RHEP that are essentially identical to some of the questions presented by Pakistan in its Request for Arbitration.⁶ On 13 October 2022, the International Bank for Reconstruction and Development (“**World Bank**”) appointed Mr. Michel Lino as a neutral expert pursuant to Article IX and Annexure F to the Treaty (“**Neutral Expert**”).
4. The history of the origin of the present dispute before the Court of Arbitration (“**Court**”), and the circumstances concerning the parallel proceedings before the Neutral Expert, are addressed in

¹ **PLA-0001**, *Indus Waters Treaty 1960 Between the Government of India, the Government of Pakistan and the International Bank for Reconstruction and Development*, signed at Karachi on 19 September 1960, 419 U.N.T.S. 126 (“**Treaty**”).

² **PLA-0001**, Treaty, Art. III(2).

³ Pakistan’s Request for Arbitration dated 19 August 2016 (“**Request for Arbitration**”).

⁴ **PLA-0001**, Treaty, Annexure D, para. 2(g).

⁵ **PLA-0001**, Treaty, Arts. I(3), (6).

⁶ See Procedural Order No. 6 (Decision on Further Proceedings) dated 6 July 2023, para. 4.

detail in the Award on the Competence of the Court dated 6 July 2023 (“**Award on Competence**”).⁷ It suffices to note here that, in its Award on Competence, the Court determined that it is competent to address all aspects of the dispute placed before it by Pakistan’s Request for Arbitration, notwithstanding, *inter alia*, India’s request for, and the World Bank’s appointment of, the Neutral Expert.⁸ Having confirmed its competence, the Court issued Procedural Order No. 6 (Decision on Further Proceedings) on 6 July 2023 (“**Procedural Order No. 6**”), by which the Court determined that it would conduct these proceedings in a phased manner, bearing in mind the status of, and developments concerning, the proceedings taking place before the Neutral Expert.⁹

5. The present issue concerns the Court’s continuing duty to satisfy itself that it is competent and has jurisdiction over the dispute before it.¹⁰ On 23 and 24 April 2025, the Government of India announced a decision, which was communicated to the Government of Pakistan, that the “Indus Waters Treaty 1960 will be held in abeyance with immediate effect”.¹¹ The circumstances leading to India’s decision to hold the Treaty in “abeyance”, and its relevance to the broader context of the Treaty and these proceedings, are addressed below. In light of India’s decision and associated reports in the media, on 16 May 2025, the Court issued Procedural Order No. 15 (Recent Developments that May Bear on Matters before the Court) (“**Procedural Order No. 15**”), inviting the Parties to address the effect, if any, of these recent developments on matters before the Court or the Neutral Expert, including their respective competences. On 11 June 2025, Pakistan filed its Submissions on Recent Developments Pursuant to Procedural Order No. 15 (“**Pakistan’s Submissions**”).¹² No submissions have been received from India.
6. Pakistan requests the Court to address and rule upon the issue of the effect, if any, of “recent developments” on the competence of the Court and the Neutral Expert in a dispositive decision, of binding *res judicata* authority, as soon as possible, including as regards the consequences, if

⁷ Award on the Competence of the Court dated 6 July 2023 (“**Award on Competence**”).

⁸ Award on Competence, para. 318(F).

⁹ Procedural Order No. 6, para. 34.

¹⁰ **PLA-0001**, Treaty, Annexure G, para. 16; Supplemental Rules of Procedure dated 31 March 2023, Art. 25(2).

¹¹ **P-0700**, Note Verbale No. 80/01/2025, enclosing Letter No. Y-18012/1/2024-Indus from Secretary, Indian Ministry of Jal Shakti to Secretary, Pakistan Ministry of Water Resources dated 24 April 2025 (“**24 April Letter**”).

¹² Pakistan’s Submissions on Recent Developments Pursuant to Procedural Order No. 15 dated 11 June 2025, as corrected on 12 June 2025 (“**Pakistan’s Submissions**”).

any, of India's policy of "abeyance" on the settled procedural trajectory and continuation of the Court and Neutral Expert proceedings currently underway.

7. **Part II** briefly sets forth the procedural history relevant to this Award, while **Part III** addresses the relevant facts that precipitated the issuance of Procedural Order No. 15. **Part IV** summarizes the positions of the Parties. **Part V** sets out the law to be applied by a court of arbitration. **Part VI** analyzes whether recent events affect the competence of the Court in these proceedings, addressing as well whether its analysis has any bearing on the competence of the Neutral Expert. **Part VII** concludes with the decision of the Court.

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II. PROCEDURAL HISTORY

8. As stated above, the detailed history of the origin of the present dispute and of these proceedings is set out in the Court's Award on Competence and in the Court's subsequent procedural orders. Accordingly, in this Award, the Court will focus on the key procedural developments that occurred subsequent to the issuance of its Award on Competence, to the extent they are relevant to the issues before the Court.
9. Following the receipt by the Court of objections by India to the competence of the Court, by way of India's letter to the World Bank dated 21 December 2022, the Court determined that it would conduct a preliminary phase of the proceedings to consider the competence of the Court and the operation of Article IX of the Treaty on an expedited basis ("**Preliminary Phase on Competence**").¹³
10. On 6 July 2023, following written submissions and an oral hearing, the Court issued its Award on Competence, finding that the Court is competent to consider and determine the disputes set forth in the Request for Arbitration.¹⁴ In particular, the Court held that it was properly constituted notwithstanding India's request for the appointment of a neutral expert and that the World Bank's appointment of the Neutral Expert did not alter or limit the competence of this Court.
11. On 6 July 2023, the Court also issued its Procedural Order No. 6, determining that the Court would conduct its proceedings in a phased manner. The Court stated in Procedural Order No. 6 that the next phase of the proceedings would address certain questions that arise from Pakistan's Request for Arbitration concerning the overall interpretation or application of Article III of the Treaty, and paragraph 8 of Annexure D thereto, in addition to a related question concerning the legal effect of past decisions issued by dispute resolution bodies established pursuant to Article IX of the Treaty ("**First Phase on the Merits**").¹⁵ Further, having sought the views of the Parties, the Court on 10 August 2023 issued Procedural Order No. 8 (Application to Amend the Request for Arbitration), granting an application by Pakistan to amend its Request for Arbitration. On 17 August 2023, Pakistan filed its Amended Request for Arbitration dated 28 July 2023.
12. On 28 July 2023, the Court wrote to the Parties, indicating that a site visit would be of assistance as it sought to apprehend the issues before it in the First Phase on the Merits. The Court further

¹³ See Procedural Order No. 1 (Preliminary Phase on Competence) dated 2 February 2023.

¹⁴ Award on Competence, para. 318.

¹⁵ See Procedural Order No. 6, paras. 34–39.

indicated that it welcomed the opportunity to visit Indian run-of-river HEPs, including the KHEP and RHEP, as well as a Pakistani run-of-river HEP, the Neelum-Jhelum Hydro-Electric Plant (“NJHEP”), as proposed by Pakistan.

13. On 18 January 2024, India wrote to the Registrar of the Court, setting out its objections to a proposed site visit to the NJHEP and contending that the Court lacks competence in this matter (“**India’s Site Visit Objections**”).
14. On 2 February 2024, the Court issued its Procedural Order No. 9 (Decision on India’s Objections to the Proposed Site Visit), in which it recalled the decisions made in its Award on Competence of 6 July 2023 and rejected India’s Site Visit Objections.
15. From 23 to 29 April 2024, the Court conducted a site visit to the NJHEP located in the Kashmir and Jammu region administered by Pakistan.¹⁶
16. From 8 to 17 July 2024, the Court held an oral hearing concerning the First Phase on the Merits in the Peace Palace in The Hague, the Netherlands.
17. In parallel with these proceedings, the Neutral Expert has conducted his proceedings. Among other things, on 1 December 2023, Pakistan submitted a statement on the competence of the Neutral Expert,¹⁷ to which India responded on 14 June 2024.¹⁸ After a meeting on the matter on 10 and 11 September 2024, the Neutral Expert issued on 7 January 2025 a Decision on Certain Issues Pertaining to the Competence of the Neutral Expert (“**Neutral Expert Competence Decision**”).¹⁹ In that decision, the Neutral Expert found that the Points of Difference referred to him by India fell within the scope of Part 1 of Annexure F to the Treaty and that no separate differences had been referred to him. As such, the Neutral Expert stated that he would proceed to render a decision on the merits of the Points of Difference, after hearing the Parties further on those merits in accordance with the work program for the proceedings.²⁰ The Neutral Expert further noted that the questions currently under deliberation by the Court “are put at a higher level

¹⁶ See Procedural Order No. 10 (Site Visit Protocol) dated 3 February 2024.

¹⁷ **P-0695**, Decision on Certain Issues Pertaining to the Competence of the Neutral Expert dated 7 January 2025, PCA Case No. 2023-14, para. 142.

¹⁸ **P-0695**, Decision on Certain Issues Pertaining to the Competence of the Neutral Expert dated 7 January 2025, PCA Case No. 2023-14, para. 183.

¹⁹ **P-0695**, Decision on Certain Issues Pertaining to the Competence of the Neutral Expert dated 7 January 2025, PCA Case No. 2023-14.

²⁰ **P-0695**, Decision on Certain Issues Pertaining to the Competence of the Neutral Expert dated 7 January 2025, PCA Case No. 2023-14, paras. 569–570.

than the Points of Difference” before the Neutral Expert and “would not go all the way in answering the Points of Difference in respect of the KHEP and the RHEP”.²¹

18. On 23 April 2025, following an attack by armed individuals in India-administered Jammu and Kashmir, the Foreign Secretary of India issued a statement about a decision of the Cabinet Committee on Security (“**23 April Statement**”), indicating, among other things, that “[t]he Indus Waters Treaty of 1960 will be held in abeyance with immediate effect, until Pakistan credibly and irrevocably abjures its support for cross-border terrorism”.²² On 24 April 2025, India’s Secretary of the Ministry of Jal Shakti sent a letter to Pakistan’s Secretary of the Ministry of Water Resources (“**24 April Letter**”) communicating a decision that the Treaty “will be held in abeyance with immediate effect”.²³ Thereafter, officials of India and Pakistan made further public statements, some reported in the media, referring to the Treaty.
19. On 16 May 2025, the Court issued its Procedural Order No. 15 (Recent Developments that May Bear on Matters before the Court), inviting the Parties to address any effect of these recent developments on matters before the Court or the Neutral Expert, including their respective competence.
20. On 11 June 2025, Pakistan filed its Submissions on Recent Developments Pursuant to Procedural Order No. 15. On 12 June 2025, Pakistan applied to the Court for leave to submit a corrected version of its submissions, which the Court granted on 14 June 2025. No submissions have been filed by India in response to Procedural Order No. 15, nor in reply to Pakistan’s Submissions.

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²¹ **P-0695**, Decision on Certain Issues Pertaining to the Competence of the Neutral Expert dated 7 January 2025, PCA Case No. 2023-14, para. 563(e).

²² **P-0697**, Compendium of Recent Statements, Ministry of External Affairs, Government of India, “Statement by Foreign Secretary on the decision of the Cabinet Committee on Security (CCS)” dated 23 April 2025.

²³ **P-0700**, Note Verbale No. 80/01/2025, enclosing Letter No. Y-18012/1/2024-Indus from Secretary, Indian Ministry of Jal Shakti to Secretary, Pakistan Ministry of Water Resources dated 24 April 2025.

III. RELEVANT FACTUAL BACKGROUND

21. On 22 April 2025, an attack occurred in Pahalgam, located in India-administered Jammu and Kashmir, resulting in the death of 26 people and injuries to others.²⁴
22. On 23 April 2025, the Foreign Secretary of India issued a statement on the decisions of India's Cabinet Committee on Security in response to the attack.²⁵ The 23 April Statement provides that "[i]n the briefing to the [Cabinet Committee on Security], the cross-border linkages of the terrorist attack were brought out" and, "recognizing the seriousness of this terrorist attack", outlines a series of measures decided upon by the Committee.²⁶ Relevantly, these measures include that "[t]he Indus Waters Treaty of 1960 will be held in abeyance with immediate effect, until Pakistan credibly and irrevocably abjures its support for cross-border terrorism".²⁷
23. On 24 April 2025, India's Secretary of the Ministry of Jal Shakti sent a letter to Pakistan's Secretary of the Ministry of Water Resources. The 24 April Letter reads as follows:

This is with reference to the Government of India's notices sent to the Government of Pakistan seeking modification of the Indus Waters Treaty 1960 (the Treaty) under Article XII (3) of the Treaty. These communications cited fundamental changes in the circumstances that have taken place since the Treaty was executed that require a re-assessment of obligations under the various Articles of the Treaty read with its Annexures.

2. These changes include significantly altered population demographics, the need to accelerate the development of clean energy and other changes in the assumptions underlying the sharing of waters under the Treaty.

3. The obligation to honour a treaty in good faith is fundamental to a treaty. However, what we have seen instead is sustained cross border terrorism by Pakistan targeting the Indian Union Territory of Jammu and Kashmir.

4. The resulting security uncertainties have directly impeded India's full utilization of its rights under the Treaty. Furthermore, apart from other breaches committed by it, Pakistan has refused to respond to India's request to enter into negotiations as envisaged under the Treaty and is thus in breach of the Treaty.

²⁴ **P-0698**, John Curtis, Kashmir: Renewed India-Pakistan Tensions (House of Commons Library, Research Briefing No. 10264), dated 16 May 2025, pp. 7–9.

²⁵ **P-0697**, Compendium of Recent Statements, Ministry of External Affairs, Government of India, "Statement by Foreign Secretary on the decision of the Cabinet Committee on Security (CCS)" dated 23 April 2025, p. 5.

²⁶ **P-0697**, Compendium of Recent Statements, Ministry of External Affairs, Government of India, "Statement by Foreign Secretary on the decision of the Cabinet Committee on Security (CCS)" dated 23 April 2025, p. 5.

²⁷ **P-0697**, Compendium of Recent Statements, Ministry of External Affairs, Government of India, "Statement by Foreign Secretary on the decision of the Cabinet Committee on Security (CCS)" dated 23 April 2025, p. 6.

5. The Government of India has hereby decided that the Indus Waters Treaty 1960 will be held in abeyance with immediate effect.²⁸

24. On 26 April 2025, Pakistan's Prime Minister condemned the attack in Pahalgam and indicated a willingness to participate in a "neutral, transparent and credible investigation" into the attack.²⁹ Further, on 8 May 2025, Pakistan's Secretary of the Ministry of Water Resources sent a letter to India's Minister for the Ministry of Jal Shakti, stating:

I refer to your letter dated 24 April 2025 by which you convey that the Government of India has decided 'that the Indus Waters Treaty will be held in abeyance with immediate effect.'

2. As an initial matter, I note that the term "abeyance" is not a term of international law with respect to the application of treaties. It is therefore obscure what India intends by its stated policy. That said, for the avoidance of doubt, Pakistan states unambiguously that there is no basis whatever in international law for any purported holding in abeyance of the Treaty. The Treaty accordingly continues in force as enshrined in Article XII (4) of the Treaty. India's statement that it is holding the Treaty in abeyance is therefore of no legal effect whatsoever. It remains in full force for all legal purposes.

3. Pakistan condemns terrorism in all its forms and manifestations. It also unequivocally rejects the baseless accusation of cross-border terrorism both in context and in its attempted linkage to the operation of a water sharing treaty.

4. As India knows well, the Treaty provides a clear, comprehensive and robust mechanism under Article IX for the resolution of any question concerning its interpretation or application, or the existence of any fact which, if established, might constitute a breach. If India considers that there is a conduct by Pakistan that either effects the application of the Treaty or constitutes a breach, it is open to India to pursue these claims under the mechanisms established by Article IX of the Treaty. Were India to do so, Pakistan would engage fully and without hesitation, including as appropriate by agreeing to the urgent empanelment of a Court of Arbitration to address such matters without delay.

5. Pakistan also firmly rejects India's allegation that it is, inter alia, in breach of the Treaty by failing to engage with the Government of India under Article XII (3) of the Treaty. At no point has Pakistan refused to engage. On the contrary, Pakistan has consistently conveyed its openness to hear and discuss India's concerns.

6. Pakistan continues to faithfully comply with its obligations under the Treaty. It expects India to do the same.³⁰

25. Pakistan has indicated that, as of 11 June 2025, it had received no response from India to this letter.

²⁸ **P-0700**, Note Verbale No. 80/01/2025, enclosing Letter No. Y-18012/1/2024-Indus from Secretary, Indian Ministry of Jal Shakti to Secretary, Pakistan Ministry of Water Resources dated 24 April 2025.

²⁹ **P-0691**, "PM Shehbaz says Pakistan open to 'neutral, transparent' probe into Pahalgam attack" Dawn dated 26 April 2025; **P-0692**, "Pahalgam attack: FM Dar throws down gauntlet to India, asks for evidence of allegations against Pakistan" Dawn dated 24 April 2025; **P-0693**, Video Excerpt, "Federal Ministers Ishaq Dar & Khawaja Asif Important Press Conference" 24 News HD dated 24 April 2025 (for a transcript of the video excerpt, see **P-0694**).

³⁰ **P-0706**, Note Verbale No. Ind(II)-11/01/2025, enclosing Letter No 4(38)/2015-Water from Secretary, Pakistan Ministry of Water Resources to Secretary, Indian Ministry of Jal Shakti dated 8 May 2025.

26. Subsequent statements have been made by officials of India and Pakistan with reference to the Treaty, including in press briefings and official statements, including speeches at the UN Security Council.³¹ Indian and Pakistani media have reported on these developments, and further statements regarding the Treaty have been attributed to Indian officials.³²
27. From 6 to 10 May 2025, military strikes occurred between India and Pakistan, following which a ceasefire was agreed on 10 May 2025.³³

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³¹ See **P-0697**, Compendium of Recent Statements, pp. 30–132; **P-0698**, John Curtis, Kashmir: Renewed India-Pakistan Tensions (House of Commons Library, Research Briefing No. 10264), dated 16 May 2025, pp. 10–12.

³² See **P-0697**, Compendium of Recent Statements, pp. 30–132; **P-0698**, John Curtis, Kashmir: Renewed India-Pakistan Tensions (House of Commons Library, Research Briefing No. 10264), dated 16 May 2025, pp. 10–12.

³³ **P-0698**, John Curtis, Kashmir: Renewed India-Pakistan Tensions (House of Commons Library, Research Briefing No. 10264), dated 16 May 2025, pp. 4, 13–15; see also Pakistan’s Submissions, para. 2.11.

IV. THE PARTIES' POSITIONS

A. PAKISTAN'S POSITION

28. Pakistan's position is that India's policy of holding the Treaty in "abeyance" has no effect on the competence of either the Court or the Neutral Expert.³⁴ *First*, the term "abeyance", as used by India, has no meaning under the Treaty or international law and therefore cannot have any implications for the competence of the Court or the Neutral Expert.³⁵ *Second*, Pakistan submits that the Court and the Neutral Expert have each affirmed their own competence as to the questions of which they are respectively seized, which cannot be affected by post-seizin developments absent the agreement of the Parties.³⁶ *Third*, in anticipation of India's position, Pakistan contends that India cannot justify its unilateral suspension of the Treaty under customary international law, such as by reference to fundamental change of circumstances, repudiatory breach, or lawful countermeasures.³⁷ *Fourth*, Pakistan characterizes India's policy of "abeyance" as a cover behind which India is acting in breach of its Treaty obligations.³⁸

1. The Meaning and Intention Behind India's "Abeyance" of the Treaty

29. Pakistan submits that the term "abeyance", as used by India in its initial public statement of 23 April 2025 and its 24 April Letter, has no meaning under the Treaty or international law and therefore cannot have any implications for the competence of the Court or the Neutral Expert.³⁹ Further, India itself has not indicated any consequences that flow from the concept.⁴⁰
30. Based on what India said in its communications, Pakistan regards India as "tak[ing] advantage of the Pahalgam atrocity to apply pressure on Pakistan to enter into negotiations to modify the Treaty on what Pakistan considers are spurious fundamental change of circumstances grounds".⁴¹ Consequently, Pakistan assesses that "India's policy of 'abeyance' must properly be seen as a policy of unlawful suspension or of breach or abrogation of the Treaty by India",⁴² which is

³⁴ Pakistan's Submissions, paras. 3.15, 6.8(a).

³⁵ Pakistan's Submissions, paras. 3.2–3.3, 4.2.

³⁶ Pakistan's Submissions, para. 3.4.

³⁷ Pakistan's Submissions, paras. 3.4, 4.1–4.50.

³⁸ Pakistan's Submissions, paras. 5.1–5.15.

³⁹ Pakistan's Submissions, paras. 2.8, 3.1–3.2, 4.2.

⁴⁰ Pakistan's Submissions, para. 3.3.

⁴¹ Pakistan's Submissions, para. 2.9; see also Pakistan's Submissions, paras. 2.13–2.16.

⁴² Pakistan's Submissions, para. 2.35.

designed to support construction of works and other measures on the Western Rivers that are inconsistent with India's obligations under the Treaty.⁴³ Pakistan further notes that the repeated use by India of the term "abeyance", in the face of repeated use of the word "suspension" in the media and elsewhere, reflects India's "posture of destructive ambiguity, characterising its policy in ambiguous terms while in actuality threatening and implying 'suspension' of the Treaty".⁴⁴

2. Effect of "Abeyance" on the Competence of the Court and of the Neutral Expert

31. Pakistan submits that, regardless of whether India's decision is characterized as a policy of an "abeyance" or "suspension" of the Treaty, the Court and the Neutral Expert have, in any event, each affirmed their own competence, with *res judicata* effect, as to the questions of which they are respectively seized. Accordingly, absent agreement of the Parties, such competences cannot be removed or otherwise diminished by post-seizin events.⁴⁵ In support of this proposition, Pakistan refers to international precedent and writings.⁴⁶
32. Specifically, Pakistan submits that the competence of the Court, and of the Neutral Expert, arises respectively from Annexures G and F of the Treaty. Pakistan considers there is nothing in the Treaty that would permit or provide a basis for a Party, acting unilaterally, to undermine the competence of either the Court or the Neutral Expert, once established.⁴⁷ Accordingly, India's decision to hold the Treaty in abeyance cannot affect the settled procedural trajectory and continuation of the Court and Neutral Expert proceedings currently underway.⁴⁸

3. Lawful Defenses or Excuses that Might Be Invoked by India to Support "Abeyance" or "Suspension"

33. Pakistan argues that there are no lawful defenses or excuses that India may invoke to support its "abeyance" or suspension of the Treaty.
34. *First*, Pakistan assesses the threshold for suspending a treaty under the Vienna Convention on the Law of Treaties ("VCLT") as being "punishingly high", and it cites in this regard to both

⁴³ Pakistan's Submissions, paras. 2.36–2.44.

⁴⁴ Pakistan's Submissions, para. 2.18; see also Pakistan's Submissions, paras. 2.29–2.30.

⁴⁵ Pakistan's Submissions, paras. 3.4–3.6.

⁴⁶ Pakistan's Submissions, paras. 3.6, 3.8, 3.11.

⁴⁷ Pakistan's Submissions, para. 3.2.

⁴⁸ Pakistan's Submissions, para. 3.16.

international precedent and publicists.⁴⁹ Pakistan then analyzes the legal requirements under Article 62 of the VCLT for finding a fundamental change of circumstances, which would purportedly justify India's suspension of the Treaty,⁵⁰ contending that they "operate to preclude the operation of fundamental change of circumstances in all but the most highly exceptional cases".⁵¹ Pakistan contends that any such claim by India "would suffer from multiple and insurmountable difficulties",⁵² given that the Treaty is akin to a boundary treaty,⁵³ the "changes" identified by India were both foreseeable and foreseen at the time the Treaty was adopted,⁵⁴ the circumstances cited by India did not constitute an essential basis for the Parties' consent to be bound by the Treaty in 1960,⁵⁵ and India did not timely advance such a justification when the changed circumstances purportedly arose.⁵⁶

35. *Second*, Pakistan turns to the legal requirements under Article 60 of the VCLT for finding a material breach of the Treaty by Pakistan, which would purportedly justify India's suspension of the Treaty.⁵⁷ In this instance, Pakistan notes that it has not repudiated the Treaty, such that India would have to show that Pakistan violated a provision "essential to the accomplishment of the object or purpose of the Treaty".⁵⁸ According to Pakistan, such a violation cannot occur by a violation of a preamble,⁵⁹ by an alleged failure to negotiate a new treaty,⁶⁰ or by alleged acts unrelated to the Treaty (such as accusations of support for cross-border terrorism).⁶¹
36. *Third*, Pakistan assesses the legal requirements identified by the U.N. International Law Commission ("ILC") in the Articles on Responsibility of States for Internationally Wrongful

⁴⁹ Pakistan's Submissions, paras. 4.4–4.8.

⁵⁰ Pakistan's Submissions, paras. 4.11–4.14.

⁵¹ Pakistan's Submissions, para. 4.15.

⁵² Pakistan's Submissions, para. 4.16.

⁵³ Pakistan's Submissions, para. 4.17.

⁵⁴ Pakistan's Submissions, para. 4.18.

⁵⁵ Pakistan's Submissions, paras. 4.19, 4.22.

⁵⁶ Pakistan's Submissions, para. 4.23.

⁵⁷ Pakistan's Submissions, para. 4.26.

⁵⁸ Pakistan's Submissions, para. 4.27.

⁵⁹ Pakistan's Submissions, para. 4.28.

⁶⁰ Pakistan's Submissions, paras. 4.30–4.31.

⁶¹ Pakistan's Submissions, para. 4.32.

Acts,⁶² and specifically whether India's suspension of the Treaty could be excused as a countermeasure in response to an antecedent wrongful act of Pakistan.⁶³ Among other things, Pakistan notes that countermeasures are not a form of punishment; they are to be taken in response to a demonstrable breach of international law by the other State solely as a means of encouraging that State's compliance with international law. Moreover, the availability of countermeasures does not relieve the State of its obligations under dispute settlement procedures applicable between it and the other State.⁶⁴ Pakistan submits that none of the requirements for countermeasures are met here: Pakistan has not committed an antecedent wrongful act;⁶⁵ India has not engaged with Pakistan to address any alleged non-compliance;⁶⁶ a unilateral suspension of the Treaty would not be proportionate;⁶⁷ India's countermeasures do not appear to be reversible;⁶⁸ and India cannot on this basis abjure dispute settlement proceedings under the Treaty.⁶⁹

37. Pakistan also maintains that any armed conflict between the Parties is not a basis for suspension of the Treaty.⁷⁰ Among other things, Pakistan cites to the work of the ILC on the effects of armed conflict on treaties, which identifies as treaties presumed to continue in operation during armed conflict those that: (a) declare, create, or regulate a permanent regime or status or related permanent rights; (b) relate to international watercourses and related installations and facilities; and (c) relate to the international settlement of disputes by peaceful means.⁷¹

4. India's Weaponization of the Waters of the Western Rivers

38. Pakistan maintains that, beyond addressing the relevance of recent events to the competence of the Court and the Neutral Expert, there is another issue that is before "both the Court and the Neutral Expert, albeit in different forms, that warrants comment by Pakistan", which is "the issue

⁶² Pakistan's Submissions, para. 4.34, citing **PLA-0149**, International Law Commission, "Articles on the Responsibility of States for Internationally Wrongful Acts" (2001), Arts. 49–54.

⁶³ Pakistan's Submissions, para. 4.34.

⁶⁴ Pakistan's Submissions, para. 4.35.

⁶⁵ Pakistan's Submissions, para. 4.37.

⁶⁶ Pakistan's Submissions, para. 4.38.

⁶⁷ Pakistan's Submissions, paras. 4.39–4.40.

⁶⁸ Pakistan's Submissions, para. 4.41.

⁶⁹ Pakistan's Submissions, para. 4.42.

⁷⁰ Pakistan's Submissions, paras. 4.44–4.50.

⁷¹ Pakistan's Submissions, para. 4.48.

of weaponization of water by India through its abuse of the rights that it is afforded under Article III and Annexure D of the Treaty and the correlative obligations by which it is bound”.⁷²

39. While it has previously addressed weaponization “largely as a hypothetical”, Pakistan maintains that “India’s policy of ‘abeyance’ since 23 April 2025, together with public rhetoric, has stoked the threats and perhaps the realization of its new approach: to use dams to manipulate or deny downstream releases to Pakistan”.⁷³ Pakistan recalls that “weaponization” in this context concerns three ways India can control waters of the Western Rivers: “(a) the interruption of water supply used for downstream irrigation through the filling of sizeable pondage pools and other reservoirs; (b) the opening of dam gates to release stored water in excessive volumes in a manner that causes flooding downstream; and (c) the rapid, mass release of sediment impacting rivers, land, infrastructure and people living downstream”.⁷⁴
40. According to Pakistan, the “rhetoric of India’s officials and stoked clamour of the Indian media in the period since 23 April now shows that weaponisation scenarios are far from hypothetical”.⁷⁵ Moreover, based on its monitoring of the flow of the Western Rivers into Pakistan, Pakistan maintains that these “data show *prima facie* that, since India’s 23 April ‘abeyance’ policy declaration, it has been acting in material disregard of the operational constraints in Paragraph 15 of Annexure D, causing—without doubt intentionally—significant variations in the downstream flow of water to Pakistan”.⁷⁶
41. In support of that contention, Pakistan provides stream flow data for the Chenab as it enters Pakistan, represented as hydrographs, which Pakistan says “show two significant flow variation episodes, one at the start of May and the second at the end of the month and extending into June”.⁷⁷ According to Pakistan, the “flow variations indicated in these hydrographs is almost certainly the result of the emptying and filling of the Baglihar HEP reservoir, involving both its 37.5Mm³ of allocated Pondage and, in all likelihood, a significant volume of dead storage as well”, with spikes in sediment concentration indicating “that both were likely drawdown flushing events”.⁷⁸ While Pakistan’s Commissioner for Indus Waters (“**Pakistan’s Commissioner**”) wrote to India’s

⁷² Pakistan’s Submissions, para. 5.2.

⁷³ Pakistan’s Submissions, paras. 5.3–5.4.

⁷⁴ Pakistan’s Submissions, para. 5.6.

⁷⁵ Pakistan’s Submissions, para. 5.7.

⁷⁶ Pakistan’s Submissions, para. 5.9.

⁷⁷ Pakistan’s Submissions, para. 5.10.

⁷⁸ Pakistan’s Submissions, para. 5.11.

Commissioner for Indus Waters (“**India’s Commissioner**”) on 27 May 2025 seeking an explanation for these spikes,⁷⁹ Pakistan indicates that it received no response as of the filing of Pakistan’s Submissions.⁸⁰

42. Pakistan states that “it is in a position to say with a high degree of confidence that India’s conduct is in breach of Paragraph 15(ii) of Annexure D”.⁸¹ Consequently, in Pakistan’s view, “it is plain that, whatever might have been the intention initially, India’s policy of ‘abeyance’ is now simply cover behind which India is acting in breach of its Treaty obligations”.⁸²

5. Pakistan’s Requested Relief

43. In Pakistan’s Submissions, Pakistan requests the following relief from the Court:

Pakistan formally requests the Court of Arbitration to address and rule upon the questions raised by its enquiry in the form of a dispositive decision, of binding *res judicata* authority, in accordance with Paragraph 23 of Annexure G of the Treaty, as soon as possible, including, but not necessarily limited to the following:

- (a) that India’s policy of “abeyance” in respect of the Indus Waters Treaty has no effect on the competence of either the Court or the Neutral Expert;
- (b) that this applies however India’s policy of holding the Treaty in “abeyance” is characterised;
- (c) that both the Court of Arbitration and the Neutral Expert have a continuing responsibility to advance their proceedings in a timely, efficient and fair manner without regard to India’s policy of “abeyance”, and that a failure to do so would be inconsistent with the obligations of each under the Treaty; and
- (d) to make such other findings, determinations and rulings as may be warranted or appropriate by reference to the facts, evidence and arguments indicated in this Submission, including its appendices, exhibits and authorities, having regard to the Court’s Award on Competence, the Neutral Expert’s Decision on Competence, including the limitations on the Neutral Expert’s competence, both generally and as identified in the Neutral Expert’s Decision on Competence, and the Court’s Procedural Order No. 6, including the general duty of mutual respect and comity indicated therein.⁸³

B. INDIA’S POSITION

44. India has not addressed any submissions to the Court regarding its decision to hold the Treaty in “abeyance” or the implications, if any, this decision may have on the competence of the Court.

⁷⁹ **P-0709**, Letter No. WT(132)/(8188-A)/PCIW from the PCIW to the ICIW dated 27 May 2025, para. 11.

⁸⁰ Pakistan’s Submissions, para. 5.15.

⁸¹ Pakistan’s Submissions, para. 5.12.

⁸² Pakistan’s Submissions, para. 5.14.

⁸³ Pakistan’s Submissions, para. 6.8.

Consequently, the Court must rely on reasons identified in India's 23 April Statement and 24 April Letter, as well as related public statements made by Indian officials, to assess India's position.

45. *First*, India contends that there have been “fundamental changes in the circumstances that have taken place since the Treaty was executed that require a re-assessment of obligations under the various Articles of the Treaty read with its Annexures”.⁸⁴ These changes are said to include “significantly altered population demographics, the need to accelerate the development of clean energy and other changes in the assumptions underlying the sharing of waters under the Treaty”.⁸⁵ Yet, India alleges that “Pakistan has refused to respond to India's request to enter into negotiations as envisaged under the Treaty and is thus in breach of the Treaty”.⁸⁶ Further, India contends that Pakistan's alleged refusal to discuss modifications of the Treaty “prevent[s] the exercise of full utilisation of legitimate rights by India”.⁸⁷
46. *Second*, India maintains that “[t]he obligation to honour a treaty in good faith is fundamental to a treaty”⁸⁸ and that India entered into the Treaty “in good faith”, and “in a spirit of good will and friendship”, as reflected in the Treaty's Preamble.⁸⁹ Yet, India contends, Pakistan has “violated the spirit of the treaty” as a result of Pakistan's alleged “state-sponsored cross border terrorism”.⁹⁰ India states that the resulting “security uncertainties have directly impeded India's full utilization

⁸⁴ **P-0700**, Note Verbale No. 80/01/2025, enclosing Letter No. Y-18012/1/2024-Indus from Secretary, Indian Ministry of Jal Shakti to Secretary, Pakistan Ministry of Water Resources dated 24 April 2025.

⁸⁵ **P-0700**, Note Verbale No. 80/01/2025, enclosing Letter No. Y-18012/1/2024-Indus from Secretary, Indian Ministry of Jal Shakti to Secretary, Pakistan Ministry of Water Resources dated 24 April 2025.

⁸⁶ **P-0700**, Note Verbale No. 80/01/2025, enclosing Letter No. Y-18012/1/2024-Indus from Secretary, Indian Ministry of Jal Shakti to Secretary, Pakistan Ministry of Water Resources dated 24 April 2025.

⁸⁷ **P-0697**, Compendium of Recent Statements, Ministry of External Affairs, Government of India, “Statement by Ambassador Parvathaneni Harish, Permanent Representative at the Permanent Mission of India to the UN, New York” dated 23 May 2025, p. 28.

⁸⁸ **P-0700**, Note Verbale No. 80/01/2025, enclosing Letter No. Y-18012/1/2024-Indus from Secretary, Indian Ministry of Jal Shakti to Secretary, Pakistan Ministry of Water Resources dated 24 April 2025.

⁸⁹ **P-0697**, Compendium of Recent Statements, Ministry of External Affairs, Government of India, “Statement by Ambassador Parvathaneni Harish, Permanent Representative at the Permanent Mission of India to the UN, New York” dated 23 May 2025, p. 27.

⁹⁰ **P-0697**, Compendium of Recent Statements, Ministry of External Affairs, Government of India, “Statement by Ambassador Parvathaneni Harish, Permanent Representative at the Permanent Mission of India to the UN, New York” dated 23 May 2025, p. 28; **P-0700**, Note Verbale No. 80/01/2025, enclosing Letter No. Y-18012/1/2024-Indus from Secretary, Indian Ministry of Jal Shakti to Secretary, Pakistan Ministry of Water Resources dated 24 April 2025. India has also contended that “Pakistan has held these principles [of goodwill and friendship] in abeyance by its promotion of cross-border terrorism for several decades now”; **P-0697**, Compendium of Recent Statements, Ministry of External Affairs, Government of India, “Transcript of Weekly Media Briefing by the Official Spokesperson” dated 13 May 2025, p. 15.

of its rights under the Treaty”.⁹¹ In numerous statements, India has asserted that it is holding the Treaty in abeyance “until Pakistan credibly and irrevocably abjures its support for cross-border terrorism”.⁹²

47. *Third*, although not expressed in India’s 23 April Statement or 24 April Letter, India maintains that Pakistan violated the Treaty by obstructing India’s ability to exercise its legitimate rights on the Western Rivers. Specifically, India has stated:

Pakistan is the one that has been acting in violation of the treaty, deliberately creating legal roadblocks in India exercising its legitimate rights on the Western Rivers. Any projects that India sought to build on the Eastern Rivers, and even on the Western Rivers, which we are allowed to by the treaty, were always challenged by Pakistan, thereby, hampering our rights to utilise our legitimate waters under the treaty.⁹³

48. It is noted that, in its statements, India has referred to holding the Treaty in “abeyance” and not to suspending the Treaty. Further, India’s statements have not invoked the provisions on the suspension of treaties found in the VCLT, nor has it invoked the permissibility of countermeasures under rules on the responsibility of States for internationally wrongful acts.

* * *

⁹¹ **P-0700**, Note Verbale No. 80/01/2025, enclosing Letter No. Y-18012/1/2024-Indus from Secretary, Indian Ministry of Jal Shakti to Secretary, Pakistan Ministry of Water Resources dated 24 April 2025.

⁹² **P-0697**, Compendium of Recent Statements, Ministry of External Affairs, Government of India, “Statement by Foreign Secretary on the decision of the Cabinet Committee on Security (CCS)” dated 23 April 2025, p. 6.

⁹³ **P-0697**, Compendium of Recent Statements, Ministry of External Affairs, Government of India, “Foreign Secretary’s Statement: Special briefing on OPERATION SINDOOR” dated 8 May 2025, p. 11.

V. APPLICABLE LAW

49. The Court recalls that the law to be applied by a court of arbitration is provided in Paragraph 29 of Annexure G to the Treaty:

Except as the Parties may otherwise agree, the law to be applied by the Court shall be this Treaty and, whenever necessary for its interpretation or application, but only to the extent necessary for that purpose, the following in the order in which they are listed:

- (a) International conventions establishing rules which are expressly recognized by the Parties.
- (b) Customary international law.⁹⁴

50. Thus, the primary source of law for this Court to interpret and apply is the Treaty. Whenever necessary for the interpretation or application of the Treaty, however, the Court may apply international conventions and customary international law as indicated by Paragraph 29.

* * *

⁹⁴ PLA-0001, Treaty, Art. IX, Annexure G, para. 29.

VI. THE COURT'S ANALYSIS

51. The principal issue before the Court concerns the implications, if any, that India's decision to hold the Treaty in "abeyance" may have on the competence of the Court.
52. Paragraph 16 of Annexure G to the Treaty relevantly provides that "[s]ubject to the provisions of this Treaty and except as the Parties may otherwise agree, the Court shall decide all questions relating to its competence".⁹⁵ Thus, the Court enjoys *compétence de la compétence*. The source of such competence is the consent of the Parties when signing and ratifying the Treaty, including the consent of India. As the Court has previously observed:

In sum, the validity of the Court's competence to decide upon its competence is based on the standing consent given by India at the time of its signature and ratification of the Treaty. The interpretation of the limit and conditions of that consent, by force of Paragraph 16 of Annexure G and of necessary logic, falls to be decided by the Court itself and not by either Party alone.⁹⁶

53. Accordingly, it is for the Court—and the Court alone—to answer the question now before it. The Court has remained acutely aware that it is under a continuing duty to verify that it is competent and has jurisdiction over the dispute before it.⁹⁷ In the prior phase of these proceedings conducted for this very purpose, the Court considered in depth and confirmed its competence over the dispute filed by Pakistan in its Request for Arbitration. Having established that the Court is properly seized of the disputes raised in Pakistan's Request for Arbitration, the question now before the Court is whether any event post-dating Pakistan's Request for Arbitration—in particular, a unilateral claim by a Party that the Treaty is in "abeyance" (which may or may not mean "suspension")—can deprive the Court of its competence.

A. THE TREATY

54. In addressing the issues before the Court, it is necessary to commence with consideration of the terms of the Treaty. The Treaty does not expressly address the issue of whether a unilateral act by a Party can affect the competence of a court of arbitration after the proceedings have been commenced. Nor does it expressly address that possibility in the event that a Party invokes a ground for suspending the Treaty. In this regard, the Court observes that the scope of the Treaty, and the procedural requirements for its ratification, entry into force, amendment, and termination,

⁹⁵ PLA-0001, Treaty, Annexure G, para. 16.

⁹⁶ Award on Competence, para. 154.

⁹⁷ PLA-0001, Treaty, Annexure G, para. 16; Supplemental Rules of Procedure, Art. 25(2).

are addressed in Article XII of the Treaty.⁹⁸ Significantly, the Treaty does not provide for the “abeyance” or “suspension” of the Treaty, either unilaterally or by agreement. To the contrary, Article XII(4) provides as follows:

The provisions of this Treaty, or the provisions of this Treaty as modified under the provisions of Paragraph (3), shall continue in force until terminated by a duly ratified treaty concluded for that purpose *between the two Governments*.⁹⁹

55. The text of the Treaty, therefore, does not provide for the unilateral “abeyance” or “suspension” of the Treaty. Rather, the Treaty provides for its continuation in force until terminated by mutual consent by India and Pakistan. Such text definitively indicates an intent by the drafters not to allow for unilateral action to alter the rights, obligations, and procedures established by the Treaty, including the Treaty’s dispute settlement procedures.
56. Additionally, the object and purpose of the Treaty, as expressed in its Preamble, includes establishing procedures for the resolution “of all such questions as may hereafter arise in regard to the interpretation or application of the provisions agreed upon” in the Treaty.¹⁰⁰ To that end, the Treaty’s procedures, *inter alia*, call for the establishment of a court of arbitration at the request of one of the Parties, and provide that such court of arbitration, after receiving written and oral submissions, is empowered to render an award or awards that “shall be final and binding upon the Parties with respect to that dispute”.¹⁰¹ It is difficult to see how this object and purpose of the Treaty—compulsory dispute resolution for definitive resolution of disputes arising between the Parties—could possibly be achieved if it were open to either Party, acting unilaterally, to suspend an ongoing dispute settlement process. Such an interpretation would fundamentally undermine “the value and efficacy of the Treaty’s compulsory third-party dispute settlement process”.¹⁰²
57. Consistent with this interpretation of the Treaty, the Court has previously found that once a proceeding before a court of arbitration is properly initiated, as in the present case, “there must

⁹⁸ PLA-0001, Treaty, Art. XII (“Final Provisions”).

⁹⁹ PLA-0001, Treaty, Art. XII(4) (emphasis added).

¹⁰⁰ PLA-0001, Treaty, Preamble; see also PLA-0001, Treaty, Art. IX, Annexure F, Annexure G.

¹⁰¹ PLA-0001, Treaty, Annexure G, para. 23.

¹⁰² Award on Competence, para. 152.

be a strong presumption against the incidental loss of jurisdiction over the matters placed before it by subsequent acts, such as the appointment of a neutral expert”.¹⁰³

58. Accordingly, the text of the Treaty, read in light of its object and purpose, does not to allow either Party, acting unilaterally, to hold in abeyance or suspend an ongoing dispute settlement process.

B. CUSTOMARY INTERNATIONAL LAW

59. In confirmation of the above conclusion, the Court regards it necessary to consider relevant rules of customary international law.

60. It is a well-settled rule of customary international law that jurisdiction will be determined in the light of the situation as it existed on the date the proceedings were instituted. Unless otherwise agreed by the parties, events occurring after the initiation of proceedings shall have no effect on jurisdiction. The consequence of this rule is that, once established, jurisdiction cannot be defeated by a party’s unilateral action.

61. The International Court of Justice (“ICJ”) in 2016 confirmed this rule in *Alleged Violations of Sovereign Rights and Maritime Spaces (Nicaragua v. Colombia)*, in which it recalled:

[T]he date at which its jurisdiction has to be established is the date on which the application is filed with the Court [...]. One consequence of this rule is that “the removal, after an application has been filed, of an element on which the Court’s jurisdiction is dependent does not and cannot have any retroactive effect” [...]. Thus, even if the treaty provision by which jurisdiction is conferred on the Court ceases to be in force between the applicant and the respondent [...] after the application has been filed, that fact does not deprive the Court of jurisdiction.¹⁰⁴

62. In reaching that conclusion, the ICJ referenced *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, where it explained:

It is easy to see why this rule exists. [...] If at the date of filing of an application all the conditions necessary for the Court to have jurisdiction were fulfilled, it would be unacceptable for that jurisdiction to cease to exist as the result of a subsequent event. In the first place, the result could be an unwarranted difference in treatment between different applicants or even with respect to the same applicant, depending on the degree of rapidity with which the Court was able to examine the cases brought before it. Further, a respondent could deliberately place itself beyond the jurisdiction of the Court by bringing about an event or act, after filing of an application, as a result of which the conditions for the jurisdiction of

¹⁰³ Award on Competence, para. 292, citing **PLA-0024**, *Nottebohm (Liechtenstein v. Guatemala)*, Preliminary Objections [1953] ICJ Rep 111, p. 124; **PLA-0012**, *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom)*, Preliminary Objections, Judgment [1998] ICJ Rep 9; **PLA-0028**, *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*, Judgment [2002] ICJ Rep 3.

¹⁰⁴ **PLA-0071**, *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, Preliminary Objections [2016] ICJ Rep 3, para. 33.

the Court were no longer satisfied — for example, by denouncing the treaty containing the compromissory clause. That is why the removal, after an application has been filed, of an element on which the Court's jurisdiction is dependent does not and cannot have any retroactive effect. What is at stake is legal certainty, respect for the principle of equality and the right of a State which has properly seised the Court to see its claims decided, when it has taken all the necessary precautions to submit the act instituting proceedings in time.¹⁰⁵

63. Indeed, this rule was applied by the ICJ in a case between India and Pakistan. In *Appeal Relating to the Jurisdiction of the ICAO Council*, when addressing the contention that post-application events do not affect jurisdiction in pending proceedings, the ICJ stated:

[A] merely unilateral suspension *per se* [cannot] render jurisdictional clauses inoperative, since one of their purposes might be, precisely, to enable the validity of the suspension to be tested. If a mere allegation, as yet unestablished, that a treaty was no longer operative could be used to defeat its jurisdictional clauses, all such clauses would become potentially a dead letter, even in cases like the present, where one of the very questions at issue on the merits, and as yet undecided, is whether or not the treaty is operative—i.e., whether it has been validly terminated or suspended. The result would be that means of defeating jurisdictional clauses would never be wanting.¹⁰⁶

64. The ICJ went on to conclude:

This contention, if it were put forward, would be equivalent to saying that questions that *prima facie* may involve a given treaty, and if so would be within the scope of its jurisdictional clause, could be removed therefrom at a stroke by a unilateral declaration that the treaty was no longer operative. The acceptance of such a proposition would be tantamount to opening the way to a wholesale nullification of the practical value of jurisdictional clauses by allowing a party first to purport to terminate, or suspend the operation of a treaty, and then to declare that the treaty being now terminated or suspended, its jurisdictional clauses were in consequence void, and could not be invoked for the purpose of contesting the validity of the termination or suspension, whereas of course it may be precisely one of the objects of such a clause to enable that matter to be adjudicated upon. Such a result, destructive of the whole object of adjudicability, would be unacceptable.¹⁰⁷

¹⁰⁵ **PLA-0013**, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Preliminary Objections [2008] ICJ Rep 412, para. 80 (emphasis added); see also **PLA-0024**, *Nottebohm (Liechtenstein v. Guatemala)*, Preliminary Objections [1953] ICJ Rep 111, p. 123; **PLA-0141**, *Right of Passage over Indian Territory (Portugal v. India)*, Preliminary Objections [1957] ICJ Rep 125, pp. 141–142; **PLA-0018** (resubmitted), *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Judgment [1986] ICJ Rep 14, para. 36; **PLA-0012**, *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United States of America)*, Preliminary Objections [1998] ICJ Rep 9, para. 36; **PLA-0028**, *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*, Judgment [2002] ICJ Rep 3, para. 26.

¹⁰⁶ **PLA-0142**, *Appeal relating to the Jurisdiction of the ICAO Council (India v. Pakistan)*, Judgment [1972] ICJ Rep 46, para. 16(b).

¹⁰⁷ **PLA-0142**, *Appeal relating to the Jurisdiction of the ICAO Council (India v. Pakistan)*, Judgment [1972] ICJ Rep 46, para. 32.

65. Reflecting upon such jurisprudence, Sir Gerald Fitzmaurice regarded the rule as “obvious and [...] elementary”.¹⁰⁸
66. This rule also has been consistently affirmed and applied by international arbitral tribunals. For example, in arbitral proceedings concerning a territorial and maritime dispute between the Republic of Croatia and the Republic of Slovenia, the tribunal relied on the rule identified in the *ICAO Council* case, concluding that Croatia’s decision to terminate the relevant arbitration agreement after the initiation of proceedings did not deprive the tribunal of jurisdiction.¹⁰⁹
67. Investor-State tribunals are in accord as to the effect of this rule. For example, in *Vivendi v. Argentina*, an ICSID arbitral tribunal stated:

[I]t is generally recognized that the determination of whether a party has standing in an international judicial forum, for purposes of jurisdiction to institute proceedings, is made by reference to the date on which such proceedings are deemed to have been instituted. ICSID Tribunals have consistently applied this rule [...] The consequence of this rule is that, once established, jurisdiction cannot be defeated. It simply is not affected by subsequent events. Events occurring after the institution of proceedings [...] cannot withdraw the Tribunal’s jurisdiction over the dispute.¹¹⁰

C. THE PROCEEDINGS BEFORE THE COURT

68. For the reasons stated above, the text of the Treaty, read in light of its object and purpose, does not allow either Party, acting unilaterally, to hold in abeyance or suspend an ongoing dispute settlement proceeding. Moreover, such a rule is confirmed by customary international law. Consequently, it is not open to India to take unilateral action that suspends these proceedings. The Court’s competence is to be assessed based on the circumstances as they existed when Pakistan filed its Request for Arbitration on 19 August 2016. The Parties, of course, may mutually agree after commencement of the arbitration to suspend the proceedings but, absent any such agreement, the Court’s competence rests upon the circumstances as they existed on the date of the filing of

¹⁰⁸ **PLA-0140**, Gerald Fitzmaurice, *The Law and Procedure of the International Court of Justice*, Volume II (Grotius 1986), p. 443.

¹⁰⁹ *Arbitration between the Republic of Croatia and the Republic of Slovenia*, PCA Case No. 2012-04, Partial Award, 30 June 2017, paras. 159–162.

¹¹⁰ **PLA-0030**, *Compañía de Aguas del Aconquija SA (formerly Aguas del Aconquija) and Vivendi Universal SA (formerly Compagnie Générale des Eaux) v. Argentine Republic (I)*, ICSID Case No. ARB/97/3, Decision on Jurisdiction, 14 November 2005, para. 60. See also *Teinver S.A., Transportes de Cercanías S.A. and Autobuses Urbanos del Sur S.A. v. The Argentine Republic*, ICSID Case No. ARB/09/1, Decision on Jurisdiction, 21 December 2012, para. 255; *Ceskoslovenska Obchodni Banka, A.S. v. The Slovak Republic*, ICSID Case No. ARB/97/4, Decision of the Tribunal on Objections to Jurisdiction, 24 May 1999, para. 31; *Mytilineos Holdings SA v. State Union of Serbia & Montenegro and Republic of Serbia (I)*, UNCITRAL, Partial Award, 8 September 2006, para. 159; *Holiday Inns S.A. and others v. Morocco*, ICSID Case No. ARB/72/1, Decision on Jurisdiction, 12 May 1974.

Pakistan's Request for Arbitration. Subsequent actions by one or the other Party cannot, standing alone, alter the Court's competence.

69. Given the rule identified above, the Court finds it unnecessary to determine what exactly India means by "abeyance" in the 23 April Statement or 24 April Letter, including whether that term reflects an assertion that the Treaty is suspended. Nor is it necessary for the Court to determine whether any such suspension may be justified by India based on the law of treaties (such as due to a material breach of the Treaty by Pakistan or a fundamental change of circumstances) or based on the law concerning the responsibility of States for internationally wrongful acts (such as rules on countermeasures). The relevant question here is whether a unilateral act by India that post-dates the filing of Pakistan's Request for Arbitration can have any effect upon the competence of the Court. Since it cannot, the Court's competence remains intact, regardless of how one characterizes or justifies India's position that it is holding the Treaty in "abeyance".¹¹¹

D. THE PROCEEDINGS BEFORE THE NEUTRAL EXPERT

70. In Procedural Order No. 6, the Court refrained from taking any position on the status of the Neutral Expert's proceedings. The Court stated:

27. It appears [...] that irrespective of whether the Neutral Expert was properly appointed or is competent pursuant to Article IX of the Treaty, the Neutral Expert may be competent in respect of the issues presented to him on the basis, and to the extent, of the Parties' joint consent (expressed by India through its request for the appointment of a Neutral Expert and by Pakistan through its participation in the Neutral Expert process).

28. Accordingly—although the Court expressly reserves taking any position on the status of the Neutral Expert proceeding—it may be the case that both the Court of Arbitration and the Neutral Expert are presently competent to address the KHEP/RHEP Design and Operation Issues that have been presented in both processes. On these issues, the Court of Arbitration is competent pursuant to the operation of Article IX of the Treaty; the Neutral Expert may be competent either by operation of that article or through the Parties' joint consent.¹¹²

71. The Court continues to refrain from taking a position on the competence of the Neutral Expert. The Court nevertheless recalls its observation that "there is a general duty of any international

¹¹¹ The Court notes that, a day after meeting with India's Prime Minister, World Bank President Ajay Banga on 9 May 2025 stated that: "The Treaty is not suspended. It's technically called something in abeyance, [that] is how the Indian government worded it. There is no provision in the Treaty to allow for suspension. The way it was drawn up, it either needs to be gone or it needs to be replaced by another one. That requires the two countries to want to agree": **P-0697**, Compendium of Recent Statements, "We Have No Role To Play...": World Bank Chief Ajay Banga on India-Pakistan's Indus Waters Treaty", News18 dated 9 May 2025, p. 79; see also **P-0705**, Video, "World Bank President On Indus Water Treaty Suspension", CNBC dated 8 May 2025.

¹¹² Procedural Order No. 6, paras. 27–28.

dispute resolution body to exercise its competence in such a manner as to facilitate the actual resolution of the Parties' dispute and to avoid the risks of duplicative proceedings or conflicting decisions".¹¹³ To the extent that a neutral expert is competent, the analysis above with respect to a court of arbitration applies *mutatis mutandis*.

72. Annexure F to the Treaty contains no provision that permits a Party to act unilaterally so as to discontinue existing proceedings before a neutral expert. Like a court of arbitration, a neutral expert is part of the compulsory dispute settlement procedures established by the Treaty to achieve its object and purpose; the rules for a neutral expert's proceedings are detailed in Annexure F; and those rules provide that the decision of a neutral expert is final and binding when taken within his or her competence and "in respect of the particular matter on which the decision is made".¹¹⁴ As with a court of arbitration, it is difficult to see how a compulsory neutral expert proceeding under the Treaty could operate effectively if either Party, acting unilaterally, could suspend that process.
73. The rule of customary international law that unilateral acts post-dating the filing of a dispute have no effect on competence typically arises in the context of an international court or tribunal. Yet, a neutral expert established pursuant to Article IX of the Treaty also plays an adjudicative role under international law within the scope of his or her competence. It follows that the rule applies as well with respect to an ongoing neutral expert proceeding for the resolution of a difference.
74. It is relevant in the pending Neutral Expert proceeding that the general rule of international law applies even with respect to an applicant's effort to discontinue its own case. For example, the ICJ applies the rule even with respect to a unilateral attempt by an applicant State to terminate its case, allowing the respondent State to insist upon the case's continuation, so as to bring about a *res judicata* decision that finally disposes of the matter at hand.¹¹⁵ Thus, it matters not whether the Party acting unilaterally before a neutral expert is the Party that initiated the neutral expert proceeding; once the proceeding has been initiated, neither Party is in a position unilaterally to deprive the neutral expert of competence that is otherwise valid.

¹¹³ Procedural Order No. 6, para. 30.

¹¹⁴ **PLA-0001**, Treaty, Annexure F, para. 11.

¹¹⁵ See **PLA-0143**, Rules of the Court of the International Court of Justice, adopted on 14 April 1978 and entered into force on 1 July 1978, art. 89(2); **PLA-0144**, *Barcelona Traction, Light and Power Company Limited (New Application: 1962) (Belgium v. Spain)*, Preliminary Objections [1964] ICJ Rep 6, p. 20.

75. As such, a unilateral act by India that post-dates the filing of India's initiation of proceedings before the Neutral Expert cannot have any effect upon the competence of the Neutral Expert. The conclusions reached above with respect to the Court of Arbitration apply, *mutatis mutandis*, with respect to any competence that the Neutral Expert otherwise possesses.

* * *

VII. DECISION

76. For the above reasons, the Court of Arbitration unanimously:

- A. FINDS that India's position that it is holding the Treaty in "abeyance", however that position may be characterized as a matter of international law, does not deprive the Court of Arbitration of competence.
- B. FINDS that the Court of Arbitration has a continuing responsibility to advance its proceedings in a timely, efficient, and fair manner without regard to India's position on "abeyance", and that a failure to do so would be inconsistent with its obligations under the Treaty.
- C. DETERMINES that the above findings apply, *mutatis mutandis*, with respect to any competence that the Neutral Expert otherwise possesses.
- D. RESERVES for further consideration and directions all issues not decided in this Award.

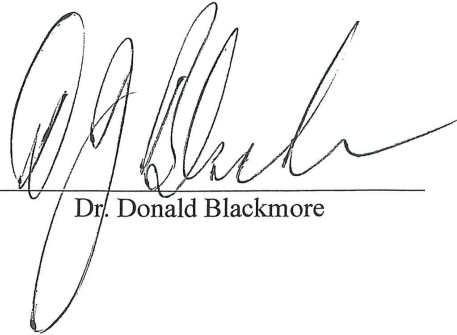
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Indus Waters Western Rivers Arbitration
Supplemental Award on the Competence of the Court

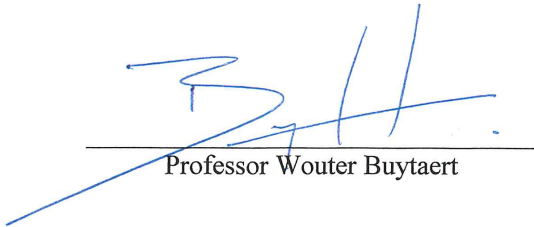
Done this 27th day of June 2025:



Judge Awn Shawkat Al-Khasawneh



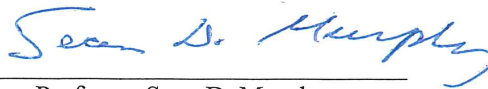
Dr. Donald Blackmore



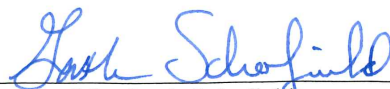
Professor Wouter Buytaert



Professor Jeffrey P. Minear



Professor Sean D. Murphy
Chairman



Mr. Garth Schofield
Registrar