

PCA Case No. 2023-01

IN THE MATTER OF AN 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

PROCEDURAL ORDER NO. 1

(PRELIMINARY PHASE ON COMPETENCE)

COURT OF ARBITRATION:

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

SECRETARIAT:

The Permanent Court of Arbitration

2 February 2023

WHEREAS, by way of a Request for Arbitration dated 19 August 2016, Pakistan instituted arbitration proceedings, pursuant to Article IX(5) and paragraph 2(b) of Annexure G to the Indus Waters Treaty 1960 (the “**Treaty**”);

WHEREAS in accordance with paragraphs 4 to 9 of Annexure G of the Treaty, a Court of Arbitration (the “**Court**”) has been constituted;

WHEREAS in accordance with Annexure F of the Treaty, a Neutral Expert has been appointed;

WHEREAS by way of its letter to the World Bank dated 21 December 2022 (the “**21 December Letter**”), India expressed concerns about the parallel proceedings, stated that it “expressly decline[d] to accept or recognize the existence of the so-called Court of Arbitration”, and enclosed an explanatory note “enunciating [India’s] stand based on the clear stipulations in the Treaty”;

WHEREAS in a letter to the Parties dated 12 January 2023, the Chairman of the Court enclosed a revised agenda for the Court’s first meeting, including proposed discussion of a possible “Preliminary Phase on Jurisdiction/Admissibility/Competence”;

WHEREAS on 27-28 January 2023, the Court held its first meeting, in the Peace Palace, in The Hague, The Netherlands, in which Pakistan appeared and participated, but India did not appear or participate;

THE COURT OF ARBITRATION, HAVING SOUGHT THE VIEWS OF THE PARTIES, HEREBY DECIDES:

1. Scheduling of a Preliminary Phase on the Competence of the Court

- 1.1 The Court considers that India’s 21 December Letter (including its enclosed explanatory note) constitutes a plea concerning the competence of the Court for the purposes of paragraph 16 of Annexure G of the Treaty and will be treated as such for the purposes of this arbitration.
- 1.2 The Court will 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 (the “**Preliminary Phase on Competence**”).
- 1.3 The schedule for further written submissions and an oral hearing in the Preliminary Phase on Competence shall be as follows:

Date	Deadline / Event
17 March 2023	Pakistan’s Response
7 April 2023	India’s Reply
21 April 2023	Pakistan’s Sur-Reply
11 May 2023 – 13 May 2023	Hearing (<i>Peace Palace, The Hague, The Netherlands</i>) <i>[13 May 2023 to be held as a reserve day]</i>

- 1.4 The Court may, at any time, after seeking the views of the Parties, amend the schedule for the Preliminary Phase on Competence set out above.

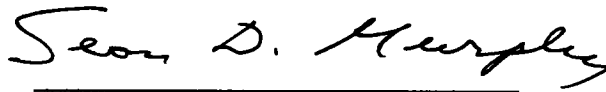
1.5 The Court may, at any time, invite the Parties to address specific issues or questions relating to the competence of the Court and/or the operation of Article IX of the Treaty, in their written submissions or at the Hearing as set out in the schedule above, or in supplementary written submissions within a deadline to be prescribed by the Court.

2. Leave to Apply

2.1 Any Party has leave to apply to the Court for a variation of this Order, giving particulars of the variation sought and the reason for it.

2.2 Any Party may, at any point in these proceedings, request that the Court convene a conference with the Parties to address any procedural aspect of these proceedings. The Court will arrange to confer with the Parties in person or by videoconference, according to the circumstances.

Dated: 2 February 2023



Prof. Sean D. Murphy
Chairman

On behalf of the Court of Arbitration