

**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**

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**PROCEDURAL ORDER NO. 3**

**(ORGANIZATION OF THE HEARING ON COMPETENCE)**

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**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 May 2023**

**WHEREAS** on 2 February 2023, the Court of Arbitration (the “**Court**”) issued its Procedural Order No. 1 (“**PO1**”), determining that the Court would conduct a preliminary phase of the proceedings to consider the competence of the Court and the operation of Article IX of the Indus Waters Treaty 1960, on an expedited basis (the “**Preliminary Phase on Competence**”);

**WHEREAS** in PO1, the Court fixed a schedule for further written submissions and an oral hearing in the Preliminary Phase on Competence (“**Hearing on Competence**”), with the Hearing on Competence set down for 11 May 2023 to 13 May 2023 at the Peace Palace, The Hague, the Netherlands (with 13 May 2023 as a reserve day);

**WHEREAS** on 15 March 2023, the Court issued its Procedural Order No. 2, amending the schedule for further written submissions in the Preliminary Phase on Competence pursuant to an application from Pakistan, but maintaining the dates for the oral hearing;

**WHEREAS** on 26 April 2023, the Court invited the Parties to address a list of questions in their submissions at the Hearing on Competence;

**WHEREAS** on 26 April 2023, the Court provided the Parties with a draft of this procedural order on the organization of the Hearing on Competence, and invited the Parties’ comments;

**WHEREAS** on 27 April 2023, Pakistan wrote to the Court, providing its comments on the draft of this procedural order;

**THE COURT OF ARBITRATION HEREBY DECIDES:**

**1. Hearing Location and Participants**

- 1.1 The Hearing on Competence shall take place in-person at the Peace Palace, The Hague, the Netherlands.
- 1.2 By **Thursday, 4 May 2023**, each Party shall confirm to the PCA and the other Party its appearance at and participation in the Hearing and communicate the list of all participants who will attend the Hearing.

**2. Hearing Schedule**

- 2.1 The Hearing on Competence shall proceed from 11 May 2023 to 13 May 2023 in accordance with the following schedule:

<i>Thursday, 11 May 2023</i>	
09:20 – 09:30 ( <i>CEST</i> )	Introductory Remarks (Chairman of the Court)
09:30 – 11:00	Opening Submissions (India)
<i>11:00 – 11:30</i>	<i>Break</i>
11:30 – 13:00	Opening Submissions (India)
<i>13:00 – 14:15</i>	<i>Lunch Break</i>
14:15 – 15:45	Opening Submissions (India)

15:45 – 16:15	<i>Break</i>
16:15 – 17:45	Opening Submissions (India)
<b><i>Friday, 12 May 2023</i></b>	
09:30 – 11:00	Opening Submissions (Pakistan)
11:00 – 11:30	<i>Break</i>
11:30 – 13:00	Opening Submissions (Pakistan)
13:00 – 14:15	<i>Lunch Break</i>
14:15 – 15:45	Opening Submissions (Pakistan)
15:45 – 16:15	<i>Break</i>
16:15 – 17:45	Opening Submissions (Pakistan)
17:45 – 18:00	Directions in relation to Court Questions (Chairman)
<b><i>Saturday, 13 May 2023</i></b>	
09:30 – 11:00	Responses to Court Questions (India)
11:00 – 11:30	<i>Break</i>
11:30 – 13:00	Responses to Court Questions (Pakistan)
13:00 – 13:15	Concluding Remarks (Chairman)

2.2 The hearing schedule set out above is subject to any changes the Court deems necessary or appropriate for the efficient conduct of the Hearing, including as a result of the non-appearance of a Party in the Hearing.

### **3. Hearing Bundle and Hearing Materials**

3.1 The electronic repository, accessible to the Parties and to the Court, shall act as the electronic hearing bundle.

3.2 By **Thursday, 4 May 2023**, India shall identify a list of key exhibits and/or legal authorities (or relevant excerpts) for inclusion in a core hard-copy hearing bundle to be prepared for the Members of the Court by the PCA.

3.3 By **Tuesday, 9 May 2023**, Pakistan shall identify a list of key exhibits and/or legal authorities (or relevant excerpts) for inclusion in a core hard-copy hearing bundle to be prepared for the Members of the Court by the PCA.

3.4 The fact that exhibits and/or legal authorities that are already in the record of the proceedings are not included in the hard-copy core bundle to be prepared by the PCA shall not preclude their use by a Party during the Hearing.

3.5 Distinct from the materials addressed in paragraphs 3.2 and 3.3 above, recalling Article 22(6) of the Court’s Supplemental Rules of Procedure, and having regard to the questions transmitted by

the Court to the Parties on 26 April 2023 for response in the Hearing, the Parties may, with the leave of the Court, following a reasoned application, rely on supplementary materials during the Hearing (i.e., materials not already on the record of the proceedings). If so authorized by the Court, such supplementary materials shall be provided in a timely manner to the other Party, with that Party being afforded a reasonable opportunity to address the material in question. The time allocated in the Hearing schedule on Saturday, 13 May 2023 for responses to Court questions shall in principle be regarded as a reasonable opportunity to respond to any supplementary materials adduced by a Party in advance or in the course of its oral submissions.

- 3.6 A Party may use PowerPoint slides and demonstrative exhibits (“**Hearing Materials**”) at the Hearing, provided that these Materials reflect evidence on the record and do not introduce new evidence, directly or indirectly, subject to the provisions of paragraph 3.5 above concerning a Party’s leave to apply to introduce supplementary materials. Hearing Materials must include references to where the evidence referred to therein is found on the record. Hearing Materials must be clearly identified by a sequential document number (e.g. IHM-0001; PHM-0001).
- 3.7 An electronic copy of any Hearing Materials shall be sent to the other Party and the PCA at least one hour before they are deployed at the Hearing. At least 12 hard copies of any Hearing Materials shall be transmitted to the PCA before they are deployed at the Hearing.
- 3.8 The Court will keep under review the necessity or desirability of Post-Hearing Submissions, in the event that it considers that fairness dictates that a Party be afforded an opportunity to respond to an issue arising during the Hearing.

#### **4. Transcription and Audio Recording**

- 4.1 The PCA will arrange for the Hearing on Competence to be transcribed on a real-time basis, and audio recorded. The PCA will provide a copy of the audio recording to the Parties at the end of the Hearing.
- 4.2 The Parties shall submit any proposed corrections of the draft transcript to the Court within 14 days of the Hearing, in the format prescribed by the court reporter. The Court shall determine whether to adopt the proposed corrections, including in the event of a disagreement between the Parties.

#### **5. Publication of Information**

- 5.1 The PCA may issue press release(s) concerning the Hearing on Competence in the form to be directed by the Court, after seeking the views of the Parties.

#### **6. Leave to Apply**

- 6.1 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.
- 6.2 Any Party may, at any point prior to the Hearing on Competence, 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 May 2023

*Sean D. Murphy*

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**Prof. Sean D. Murphy**  
**Chairman**

**On behalf of the Court of Arbitration**