

**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. 5**

**(FURTHER AMENDED SCHEDULE  
FOR THE HEARING ON COMPETENCE  
AND SUBMISSION OF SUPPLEMENTARY MATERIALS)**

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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**

**9 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 26 April 2023, the Court invited the Parties to address a list of questions in their oral submissions at the Hearing on Competence;

**WHEREAS** on 2 May 2023, the Court issued its Procedural Order No. 3 (“**PO3**”), fixing the schedule for the Hearing on Competence, subject to any changes the Court deemed necessary or appropriate for the efficient conduct of the Hearing;

**WHEREAS** in PO3, the Court allowed the Parties, with leave of the Court following a reasoned application, to rely on supplementary materials during the Hearing on Competence, having regard to the questions transmitted to the Parties for response at the Hearing;

**WHEREAS** on 5 May 2023, the Court issued its Procedural Order No. 4 (“**PO4**”), amending the schedule for the Hearing on Competence, given that India had not confirmed its participation in the Hearing;

**WHEREAS** on 7 May 2023, Pakistan requested an extension of time for Pakistan’s oral submissions at the Hearing on Competence;

**WHEREAS** on 8 May 2023, Pakistan made an application for leave of the Court to rely on supplementary materials at the Hearing, comprising the exhibits and legal authorities identified in Annex A appended to this Order (“**Supplementary Materials**”);

**THE COURT OF ARBITRATION HEREBY DECIDES:**

**1. Further Amended Schedule for the Hearing on Competence**

1.1 Having regard to the questions transmitted to the Parties for response at the Hearing on Competence, and the available time in the Hearing Schedule, Pakistan’s request for an extension of time for its oral submissions at the Hearing on Competence is **granted**.

1.2 The schedule for the Hearing shall be further amended as follows:

<i>Thursday, 11 May 2023</i>	
09:20 – 09:30 (CEST)	Introductory Remarks (Chairman of the Court)
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>

<i>Thursday, 11 May 2023 (cont'd)</i>	
14:15 – 15:45	Opening Submissions (Pakistan)
15:45 – 16:15	<i>Break</i>
16:15 – 17:45	Opening Submissions (Pakistan)
<i>Friday, 12 May 2023</i>	
09:30 – 11:00	Opening Submissions (Pakistan)
<i>By 15:00</i>	<i>Directions in relation to Court Questions to be transmitted to the Parties by e-mail (Chairman / PCA)</i>
<i>Saturday, 13 May 2023</i>	
09:30 – 11:00	Responses to Court Questions (Pakistan)
11:00 – 11:30	<i>Break</i>
11:30 – 13:00	Responses to Court Questions (Pakistan)
13:00 – 13:15	Concluding Remarks (Chairman)

## 2. Supplementary Materials

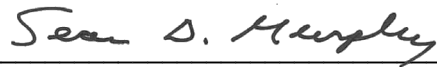
- 2.1 The Court has taken note of Pakistan's explanations as to the relevance of the Supplementary Materials to the questions transmitted to the Parties for response at the Hearing on Competence.
- 2.2 The Court further notes that India (or India's Commissioner for Indus Waters) is stated to be an author or recipient, or otherwise to be in possession of, the factual exhibits sought to be introduced (with the exception of a short explanatory note (item 68)), and that the legal authorities sought to be introduced are stated to be from publicly available sources.
- 2.3 In light of the above, and further to paragraph 3.5 of PO3, Pakistan's request for leave to introduce the Supplementary Materials into the record of the proceedings is **granted**.
- 2.4 Pakistan shall transmit an electronic copy of the Supplementary Materials to India and the PCA in accordance with Article 21 of the Supplemental Rules of Procedure as soon as practicable and in any case by **midnight (CEST) on 9 May 2023**, with USB flash drives containing the Supplementary Materials to be submitted to the PCA within 10 days in accordance with Article 21(2) of the Rules.
- 2.5 The Supplementary Materials shall be numbered, formatted, and organized in accordance with Article 20 of the Supplemental Rules of Procedure.

## 3. Leave to Apply

- 3.1 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.
- 3.2 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: 9 May 2023



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

**On behalf of the Court of Arbitration**

**ANNEX A: SUPPLEMENTARY MATERIALS (PAKISTAN)**

<b>Factual Exhibits</b>			
<b>No.</b>	<b>Title</b>	<b>Date</b>	<b>Author / Recipient</b>
1.	Letter No. Y-20014/1/2014-IT/2110	9 October 2014	ICIW / PCIW
2.	Letter No. WT(51)/(7450-A)/PCIW	29 October 2014	PCIW / ICIW
3.	Letter No. Y-20017/2/2014-IT/2115	14 November 2014	ICIW / PCIW
4.	Letter No. Y-20017/2/2014-IT/2117	24 November 2014	ICIW / PCIW
5.	Letter No. WT(9)/(7467-A)/PCIW	13 March 2015	PCIW / ICIW
6.	Letter No. WT(9)/(7471-A)/PCIW	7 April 2015	PCIW / ICIW
7.	Letter No. Y-20017/2/2014-IT/2131	9 April 2015	ICIW / PCIW
8.	Letter No. Y-20017/2/2014-IT/2137	6 May 2015	ICIW / PCIW
9.	Letter No. WT(9)/(7480-A)/PCIW	13 May 2015	PCIW / ICIW
10.	Letter No. WT(9)/7478-A/PCIW	16 June 2015	PCIW / ICIW
11.	Letter No. Y-20017/2/2014-IT/2148	26 June 2015	ICIW / PCIW
12.	Letter No. WT(9)/(7501-A)/PCIW	11 August 2015	PCIW / ICIW
13.	Letter No. WT(9)/(7509-A)/PCIW	21 September 2015	PCIW / ICIW
14.	Letter No. Y-20017/2/2014-IT/2166	3 November 2015	ICIW / PCIW
15.	Note Verbale No. KA(II)-2/11/2015	16 November 2015	Pakistan / India
16.	Letter No. WT(132)/(7526-A)/PCIW	9 February 2016	PCIW / ICIW
17.	Letter No. WT(9)/(7541-A)/PCIW	8 April 2016	PCIW / ICIW
18.	Letter No. WT(9)/(7569-A)/PCIW	19 October 2016	PCIW / ICIW
19.	Letter No. WT(9)/(7622-A)/PCIW	8 September 2017	PCIW / ICIW
20.	Letter No. WT(9)/(7648-A)/PCIW	19 February 2018	PCIW / ICIW
21.	Letter No. WT(51)/(7653-A)/PCIW	19 March 2018	PCIW / ICIW
22.	Letter No. Y-20017/1/2018-IT/2261	20 March 2018	ICIW / PCIW
23.	Letter No. Y-20017/1/2018-IT/2263	23 March 2018	ICIW / PCIW
24.	Record of the 114 <sup>th</sup> Meeting of the Permanent Indus Commission, 29-30 March 2018	31 March 2018	
25.	Letter No. WT(9)/(7658-A)/PCIW	9 April 2018	PCIW / ICIW
26.	Letter No. WT(51)/(7662-A)/PCIW	28 April 2018	PCIW / ICIW
27.	Letter No. Y-20017/2/2018-IT/2267	11 May 2018	ICIW / PCIW
28.	Letter No. WT(51)/(7666-A)/PCIW	5 June 2018	PCIW / ICIW
29.	Letter No. WT(51)/(7669-A)/PCIW	9 July 2018	PCIW / ICIW

<b>Factual Exhibits</b>			
<b>No.</b>	<b>Title</b>	<b>Date</b>	<b>Author / Recipient</b>
30.	Letter No. Y-20017/2/2018-IT/2275	31 July 2018	ICIW / PCIW
31.	Letter No. WT(51)/(7675-A)/PCIW	8 August 2018	PCIW / ICIW
32.	Letter No. Y-20017/3/2018-IT/2282	7 September 2018	ICIW / PCIW
33.	Letter No. Y-20017/3/2018-IT/2285	20 September 2018	ICIW / PCIW
34.	Letter No. WT(9)/(7683-A)/PCIW	28 September 2018	PCIW / ICIW
35.	Letter No. WT(45)/(7682-A)/PCIW	28 September 2018	PCIW / ICIW
36.	Letter No. Y-20017/3/2018-IT/2287	16 October 2018	ICIW / PCIW
37.	Letter No. WT(45)/(7694-A)/PCIW	24 November 2018	PCIW / ICIW
38.	Letter No. WT(45)/(7698-A)/PCIW	24 December 2018	PCIW / ICIW
39.	Letter No. Y-20017/3/2018-IT/2295	9 January 2019	ICIW / PCIW
40.	Letter No. WT(9)/(7701-A)/PCIW	12 January 2019	PCIW / ICIW
41.	Letter No. Y-20017/3/2018-IT/2298	16 January 2019	ICIW / PCIW
42.	Letter No. WT(9)/(7702-A)/PCIW	17 January 2019	PCIW / ICIW
43.	Letter No. Y-20017/3/2018-IT/2299	22 January 2019	ICIW / PCIW
44.	Record of the 119 <sup>th</sup> General Tour of Inspection by the Permanent Indus Commission, 27 January–1 February 2019	1 February 2019	
45.	Letter No. WT(9)/(7722-A)/PCIW	30 May 2019	PCIW / ICIW
46.	Letter No. WT(9)/(7729-A)/PCIW	23 July 2019	PCIW / ICIW
47.	Letter No. WT(51)/(7750-A)/PCIW	8 October 2019	PCIW / ICIW
48.	Letter No. WT(51)/(7753-A)/PCIW	25 October 2019	PCIW / ICIW
49.	Letter No. WT(51)/(7763-A)/PCIW	4 December 2019	PCIW / ICIW
50.	Letter No. WT(51)/(7767-A)/PCIW	27 December 2019	PCIW / ICIW
51.	Letter No. WT(9)/(7788-A)/PCIW	12 June 2020	PCIW / ICIW
52.	Letter No. WT(9)/(7860-A)/PCIW	18 March 2021	PCIW / ICIW
53.	Letter No. WT(9)/(7898-A)/PCIW	10 June 2021	PCIW / ICIW
54.	Letter No. WT(9)/(7917-A)/PCIW	6 July 2021	PCIW / ICIW
55.	Letter No. WT(9)/(7946-A)/PCIW	12 August 2021	PCIW / ICIW
56.	Letter No. WT(9)/(7977-A)/PCIW	29 September 2021	PCIW / ICIW
57.	Letter No. WT(9)/(8085-A)/PCIW	22 February 2022	PCIW / ICIW
58.	Record of the 116 <sup>th</sup> Meeting of the Permanent Indus Commission, 23–24 March 2021	3 March 2022	

<b>Factual Exhibits</b>			
<b>No.</b>	<b>Title</b>	<b>Date</b>	<b>Author / Recipient</b>
59.	Record of the 117 <sup>th</sup> Meeting of the Permanent Indus Commission, 1–3 March 2022	3 March 2022	
60.	Letter No. WT(132)/(8086-A)/PCIW	17 June 2022	PCIW / ICIW
61.	Letter No. WT(51)/(8094-A)/PCIW	27 July 2022	PCIW / ICIW
62.	Letter No. WT(51)/(8099-A)/PCIW	8 September 2022	PCIW / ICIW
63.	Letter No. WT(51)/(8110-A)/PCIW	18 November 2022	PCIW / ICIW
64.	Letter No. Y-20017/3/2007-IT/2423	25 January 2023	ICIW / PCIW
65.	Letter No. WT(150)/(8121-A)/PCIW	8 February 2023	PCIW / ICIW
66.	Letter No. WT(150)/(8126-A)/PCIW	24 February 2023	PCIW / ICIW
67.	Letter No. WT(150)/(8126(A)-A)/PCIW	24 March 2023	PCIW / ICIW
68.	Explanatory Note prepared by Pakistan		
69.	Record of the 115 <sup>th</sup> Meeting of the Permanent Indus Commission, 29-30 August 2018	30 August 2018	
70.	Letter No. WT(132)/(6997-A)/PCIW	29 April 2009	PCIW / ICIW
71.	Note Verbale No. KA (II)-2/2/2010	9 April 2010	Pakistan / India
72.	India's Rejoinder ( <i>Kishenganga</i> arbitration)	21 May 2012	
P-0040(C)	(Corrected) Transcript, Neutral Expert First Meeting ( <i>Indus Waters</i> ), Day 1	27 February 2023	
P-0041(C)	(Corrected) Transcript, Neutral Expert First Meeting ( <i>Indus Waters</i> ), Day 2	28 February 2023	

Legal Authorities		
No.	Title	Date
1.	<i>Baglihar Hydroelectric Plant (Pakistan v. India)</i> , Indus Waters Treaty Annexure F, Neutral Expert Determination, Executive Summary	12 February 2007
2.	<i>Indus Waters Kishenganga Arbitration (Pakistan v. India)</i> , Decision on India's Request for Clarification or Interpretation (2013) XXXI RIAA 295	20 December 2013
3.	<i>Certain German Interests in Polish Upper Silesia (Germany v. Poland)</i> , Judgment (1926) PCIJ Ser A No 7	25 May 1926
4.	<i>Interpretation of Peace Treaties with Bulgaria, Hungary and Romania (Second Phase)</i> , Advisory Opinion [1950] ICJ Rep 221	18 July 1950
5.	<i>Nottebohm (Liechtenstein v. Guatemala)</i> , Preliminary Objections [1953] ICJ Rep 111	18 November 1953
6.	<i>Nuclear Tests (Australia v. France)</i> , Judgment [1974] ICJ Rep 253	20 December 1974
7.	<i>Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt</i> , Advisory Opinion [1980] ICJ Rep 73	20 December 1980
8.	<i>Ceskoslovenska Obchodni Banka as v. Slovak Republic</i> , ICSID Case No. ARB/97/4, Decision of the Tribunal on Objections to Jurisdiction	24 May 1999
9.	<i>Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)</i> , Judgment [2002] ICJ Rep 3	14 February 2002
10.	<i>Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)</i> , Judgment [2002] ICJ Rep 265	17 December 2002
11.	<i>Compañía de Aguas del Aconquija SA (formerly Aguas del Aconquija) and Vivendi Universal SA (formerly Compagnie Générale des Eaux) v. Argentine Republic (I)</i> , ICSID Case No. ARB/97/3, Decision on Jurisdiction	14 November 2005
12.	<i>Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)</i> , Preliminary Objections [2011] ICJ Rep 70	1 April 2011
13.	<i>Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)</i> , Judgment [2012] ICJ Rep 422	20 July 2012
14.	<i>Teinver S.A., Transportes de Cercanías S.A. and Autobuses Urbanos del Sur S.A. v. Argentine Republic</i> , ICSID Case No. ARB/09/1, Decision on Jurisdiction	21 December 2012
15.	<i>Tenaris SA and Talta - Trading e Marketing Sociedade Unipessoal Lda v. Bolivarian Republic of Venezuela (II)</i> , ICSID Case No. ARB/12/23, Award	12 December 2016



Legal Authorities		
No.	Title	Date
16.	<i>Valores Mundiales SL and Consorcio Andino SL v. Bolivarian Republic of Venezuela</i> , ICSID Case No ARB/13/11, Award, English translation	25 July 2017
17.	R. Kolb, <i>Good Faith in International Law</i> (Hart 2017) [Extract]	2017
18.	<i>Immunities and Criminal Proceedings (Equatorial Guinea v. France)</i> , Preliminary Objections, Judgment [2018] ICJ Rep 292	6 June 2018
19.	<i>Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)</i> , Preliminary Objections [2019] ICJ Rep 558	8 November 2019
20.	<i>Appeal Relating to the Jurisdiction of the ICAO Council Under Article II, Section 2, of the 1944 International Services Transit Agreement (Bahrain, Egypt and United Arab Emirates v. Qatar)</i> , Judgment [2020] ICJ Rep 172	14 July 2020
21.	S. Schill, L. Malintoppi, A. Reinisch, C. Schreuer, A. Sinclair, <i>Schreuer's Commentary on the ICSID Convention</i> (Cambridge University Press, 3 <sup>rd</sup> ed. (2022)) [Extract]	2022
22.	<i>Certain Iranian Assets (Islamic Republic of Iran v. United States of America)</i> , ICJ General List No. 164, Judgment	30 March 2023