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भारत सरकार
जल शक्ति मंत्रालय
जल संसाधन, नदी विकास
और गंगा संरक्षण विभाग
GOVERNMENT OF INDIA
MINISTRY OF JAL SHAKTI
DEPARTMENT OF WATER RESOURCES,
RIVER DEVELOPMENT & GANGA REJUVENATION
21st December, 2022

D.O. No. Y-18012/1/2020-Indus

Dear Mr. Stephens,

I write to you in furtherance of our meeting on November 21, 2022, with Mr. Michel Lino, the Neutral Expert appointed in relation to the Indus Waters Treaty ('the Treaty'). Subsequent developments, to which I shall presently advert and which do not portend well for the integrity and inviolability of the Treaty, compel me to address this communication to you.

2. India has been unequivocal in articulating its principled position that the Treaty does not permit parallel proceedings before a Neutral Expert and a Court of Arbitration on the same issues. Such parallel proceedings are anathema to the Treaty since they create the possibility of inconsistent and mutually repugnant decisions. This possibility has also been acknowledged by the Bank on several occasions. Accordingly, it has been made clear that the conduct of parallel proceedings is unacceptable to India. Since this stand has consistently been communicated to you on multiple occasions, including through my letters dated August 13, 2021, November 20, 2021 and November 17, 2022, I shall refrain from burdening this letter with another detailed repetition. Instead, I am enclosing an explanatory note enunciating our stand based on the clear stipulations in the Treaty (**Enclosure 'A'**).

3. It merits reiteration that any attempt at conducting parallel proceedings before the Neutral Expert as well as a Court of Arbitration, which is what the World Bank has done, defies prudence, but more importantly the clear letter of the Treaty. It demolishes the carefully designed architecture of the dispute resolution provisions of the Treaty, which provide for a graded mechanism for the resolution of any question/issue between the parties as mentioned below:

- (i) any question which arises between the Parties shall first be examined by the Commission, which will endeavor to resolve the question by agreement;
- (ii) if the Commission does not reach agreement on any of the questions, then a difference will be deemed to have arisen and shall be dealt with by a Neutral Expert at the request of either Commissioner;
- (iii) if the Neutral Expert in accordance with Paragraph 7 of Annexure F, informs the Commission that in his opinion, the difference or a part thereof, should be treated as dispute, then a dispute will be deemed to have arisen. Also at the discretion of the Commission, any difference may be deemed to be a dispute and to be settled in accordance with the provisions of Paragraph (3), (4) and (5) of Article IX or may be settled in any other way agreed upon (*emphasis added*) by the Commission.



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4. Here, it is pertinent to state that in the instant case, the World Bank has not adhered to the mechanism mentioned in paragraph 3 (iii) above. Neither was there an agreement between the two Commissioners, nor a recommendation by a duly appointed Neutral Expert to treat the 'difference' as a 'dispute'. Therefore, in present case, a '*dispute*' meriting reference to a Court of Arbitration cannot said to have arisen since neither of the two requirements, viz., agreement of both the Commissioner or recommendation of the Neutral Expert was in place before the matter could be referred to the Court of Arbitration.

5. However, in 2016, when the World Bank received two requests i.e. one from India for the appointment of Neutral Expert and another from Pakistan to institute the Court of Arbitration, without going into the merits of procedural requirements of the requests as per the Treaty provisions, the Bank erred in initiating both processes parallelly.

6. After India brought the implications of parallel processes to the notice of the Bank, the Bank acknowledged the fact that parallel processes could result in potentially contradictory outcomes, with the risk of endangering the Treaty. To mitigate this risk the Bank paused both the processes on December 12, 2016. It is clear that the basic purpose of the pause was to give opportunity to both the parties to resolve the issues amicably through discussions or agree on the process of resolution in compliance with the provisions of the Treaty.

7. Therefore, India appreciated the pause and cooperated with all the efforts made by the Bank thereafter for resolution of the issues. However, the issues remained unresolved because of non-cooperation on the part of Pakistan. During the five meetings of the Permanent Indus Commission (PIC) (113th to 117th) held from March, 2017 to March, 2022, Pakistan repeatedly refused to discuss the issue of the procedural impasse.

8. For reasons that are difficult to understand, the World Bank compounded the initial error by going back on its decision for a 'pause'. It decided to resume the concurrent appointment of the Neutral Expert and the Chair of the Court of Arbitration on March 31, 2022, even while acknowledging the fact that the two concurrent appointments pose practical and legal risks. This, in India's view, is an egregious mistake impinging adversely on the continuation of the Treaty. Regrettably, this may cast a cloud on the World Bank discharging its role under the Treaty in a neutral and impartial manner.

9. Parallel proceedings under the Treaty are inadmissible in view of the graded dispute resolution mechanism set out therein, and the explicit prohibition embodied under Article IX(6), which stands triggered by the appointment of the Neutral Expert, who is now dealing with differences between the parties at the

current juncture. Therefore, the very existence of the so-called Court of Arbitration has no legitimacy whatsoever under the Treaty. The only way to address this error for the so-called Court of Arbitration is to hold its hands until the Neutral Expert decides on the issues being dealt by him.

10. In good faith, an Indian delegation participated in the proceedings before the Neutral Expert on November 21, 2022. India's firm stand regarding the patent illegality and untenability of parallel proceedings being embarked upon before the Neutral Expert and a Court of Arbitration was, once again, voiced in this meeting. The outright illegitimacy of any so-called Court of Arbitration, in view of Article IX(6) of the Treaty having been triggered, was clearly explained. It was also made abundantly clear during the meeting that there could be no question of the Neutral Expert coordinating with an improperly constituted Court of Arbitration.

11. For the sake of preserving the sanctity of the Treaty, India expressly declines to accept or recognize the existence of the so-called Court of Arbitration as now proposed. As a logical corollary of this, the very question of any coordination or cooperation between the Neutral Expert and so called Court of Arbitration will gravely compound the original error of attempting parallel proceedings, and render illegitimate even the ongoing deliberations by the Neutral Expert.

12. As of now the constitution of the proposed Court of Arbitration is not even in consonance with the provisions and the procedures set out in Annexure G. The question of India notifying the names of Arbitrators to be appointed by it, does not arise, in view of the fundamental flaws and discrepancies in the process so far adopted. This being so, there is no effectively constituted Court of Arbitration.

13. The Treaty contemplated a wholesome process of understanding and cooperation. It visualized adherence to the procedures which would have facilitated a seamless transition from one stage to the other in the dispute resolution process. Looked at from this angle, the Treaty did not envision resorting to any other principle, or external agency, to ensure that all the parties will conduct themselves towards a well-meaning compliance with the Treaty.

14. The above said Treaty expectation that parties will proceed at the highest level of compliance with the Treaty is now put into doubt by reason of deviation from the mandates of the Treaty namely parallel initiation of Neutral Expert proceeding and the Court of Arbitration. India is, therefore, driven to the position of stating its objections to the proceedings by the proposed Court of Arbitration, which is not fully constituted in accordance with the Treaty. The

principle of *kompetenz-kompetenz* (competence-competence) and objection to arbitral proceedings will arise when the arbitral institution is duly constituted in accordance with the governing legal document, which is not the case here.

15. India, therefore, strongly reaffirms its serious objection to the creation and functioning of any Court of Arbitration. As India does not recognize the improperly constituted Court of Arbitration, any orders or directions sought from or issued by it, including any preliminary rulings or interim awards, will have no relevance.

16. I am in receipt of the World Bank's letter suggesting potential options to serve as the Secretariat for the Neutral Expert proceedings, and also of the draft summary of the handing-over meeting with the Neutral Expert held on 21 November 2022. I will revert to you, on both of these, shortly.

Yours sincerely,



(Pankaj Kumar)

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EXPLANATORY NOTE

1. At the outset, it is worth pointing out that there is no provision in the Indus Waters Treaty (the 'Treaty') which permits parallel consideration of any question by a Court of Arbitration as well as the Neutral Expert. On the other hand, as explained hereinafter, Paragraph (6) of Article IX of the Treaty explicitly prohibits such a course of action.
2. The reason for this prohibition is also not far to seek, since parallel proceedings before the Neutral Expert and a Court of Arbitration could well result in inconsistent or contradictory outcomes. This could seriously jeopardize the legitimacy, if not the very existence, of the Treaty itself.
3. This was recognized by the then President of the World Bank in his letter dated 12th December, 2016 addressed to India's Finance Minister. To the extent relevant, this letter stated:

"The Treaty does not anticipate that the World Bank acting alone might resolve these varying approaches by the two countries, which would result in two parallel processes and potentially contradictory outcomes, with the risk of endangering the Treaty. To mitigate this risk, and after much thought and deliberations, I have decided to pause the process of appointing the Chairman of the Court of Arbitration and Neutral Expert".

In this background, an examination of the provisions of the Treaty reveals the position set out in the following paragraphs.

4. Any 'question' that arises in respect of an (a) interpretation or (b) application of the Treaty, or (c) the existence of any fact which, if established, might constitute a breach of this treaty, shall first be

examined by the Commission (i.e., the PCIW and ICIW together), which will endeavor to resolve the question by agreement [*Ref. Paragraph (1) of Article IX*].

5. In case the Commission is unable to reach an agreement, then the 'question' will be deemed to be a 'difference'. A 'difference' shall be dealt in the following manner [*Ref. Paragraph (2) of Article IX*]:
- (i) If in the opinion of either Commissioner the 'difference' falls within the provisions of Part 1 of Annexure F, then upon the request of either Commissioner, this difference will be dealt with by a Neutral Expert ('NE') in accordance with the provisions of Part 2 of Annexure F [*Ref. Paragraph (2)(a) of Article IX*].

This would mean that when (a) both Commissioners agree that the 'difference' falls under Part 1 of Annexure F, or when (b) the two Commissioners are not ad idem as to whether a difference falls under Part 1 of Annexure F, in either case, the matter, *upon request of either Commissioner,* will be referred to the NE to determine. The procedure for appointment of the NE is laid out in Paragraph (4) of Annexure F and procedure for the reference to the NE is laid out in Paragraph (5). Critically, it is to be noted that in case the appointment is not done in terms of Paragraph 4(b)(i), the Bank is authorized to appoint the NE [*Ref. Paragraph 4(b)ii*].

If the NE is dealing with situation (a) in the Paragraph above, he will render a decision on the matter on merits, and this decision shall be final and binding on the parties and any CoA established under Paragraph (5) of Article IX [*Ref. Paragraph (7) read with Paragraph (11) of Annexure F*].

If the NE is dealing with the situation (b) in the preceding Paragraph, he will decide first whether the difference falls under Part 1 of Annexure F or

not. At this juncture, he may either (a) decide that it is under Part 1, and render a decision on merits (which is binding); or (b) decide that only a part of the difference is under Part 1, and render a decision on merits as to such part (which is final and binding), and as to the other, inform the Commission that such other part should be treated as a 'dispute' or (c) decide that the entire difference falls outside of Part 1, and should be treated as a 'dispute' [*Ref. Paragraph (7)(a) and (7)(b) of Annexure F*]

The above procedure under Paragraph (7) has relevance not only for the sequence of technical, negotiatory and mediatory steps for resolution of any dispute, but also for the purposes of Paragraph (11) of Annexure F. The Treaty, thus, incorporates this engagement of the NE as a seminal component. Skirting this procedure would be in deviation from the Treaty.

- (ii) With the joint discretion and consent of both the Commissioners, i.e., the Commission, any difference, whether or not it falls under Part 1 of Annexure F, may be referred to the NE [*Ref. proviso to Paragraph 2 of Article IX*]. The NE shall then tender a decision as discussed above. [*Ref. Paragraph 7(a) and 7(b) read with Paragraph (11) of Annexure F*].
 - (iii) Any difference may be deemed to be a dispute only at the discretion of the Commission and to be settled in accordance with the provisions of Paragraphs (3), (4), and (5) of Article IX [*Ref. proviso to Paragraph 2 of Article IX*].
 - (iv) With the joint discretion and consent of both the Commissioners, i.e., the Commission, the difference may be settled in any other way [*Ref. proviso to Paragraph 2 of Article IX*].
6. Therefore, at this stage the difference either (a) has been settled by mutual consent of both the Commissioners in "any other way", or (b) has

been mutually deemed to be a dispute to be dealt with in accordance with the provisions of Paragraphs (3), (4), and (5) of Article IX, or (c) has been decided by the NE in terms of Paragraph (7) read with Paragraph (11) of Annexure F. If, in this process, the NE determines that part or whole of the difference ought to be treated as a 'dispute', then such dispute will be also be dealt with in accordance Paragraphs (3), (4), and (5) of Article IX.

7. The occurrence, or arising of a 'dispute', is a necessary precursor for the issue to be referred to a CoA. In other words, absent a 'dispute', the question of referring the matter to the Court of Arbitration premature and impermissible. A dispute can be said to arise, as per the provisions of the Treaty, only under the following circumstances:
- (i) Both parties agree that the difference does not fall within Part 1 of Annexure F [Ref. Paragraph (2) of Article IX read with the proviso thereto];
 - (ii) Both Commissioners, jointly, i.e., the Commission is of the view that the difference may be deemed to be a dispute 'irrespective of whether the difference / question relates Part 1 of Annexure F or not [Ref. proviso to Paragraph (2) of Article IX];
 - (iii) There is an disagreement between both parties as to whether the difference falls within Part 1 of Annexure F or outside of it, in which case, upon the request by either party, the matter shall to be referred to the NE [Ref. Paragraph (7) read with Paragraph (11) of Annexure F], and the NE has determined that the whole or part of the difference should be treated as a 'dispute'.

It is only a 'dispute' so understood which can be referred to a Court of Arbitration under Article IX of the Treaty. Significantly, as explained above, **'dispute' has not arisen in the case at hand.**

On the other hand, insofar as the outstanding differences between the parties in relation to the *Kishenganga* and *Ratle* projects are concerned, both Commissioners have, at different times, sought the appointment of a Neutral Expert. First, on July 3, 2015, the Pakistan Commissioner notified India for the appointment of a Neutral Expert. Subsequently, the Indian Commissioner made a similar request, on 11 August 2016. The Neutral Expert admittedly stands appointed, and is dealing with the differences that have arisen.

The Treaty also caters to a situation where a Neutral Expert cannot be appointed jointly by the two governments. Paragraph 4(b) of Annexure 'F' to the Treaty provides that if the Neutral Expert is not appointed jointly by the two governments within one month of a request having been made by either Commissioner, the World Bank will make the appointment. This is how the appointment of the Neutral Expert has come about in the case at hand.

8. Only in a situation where a 'dispute' is said to have arisen, will the provisions of Paragraph (3), (4), and (5) of Article IX apply. As per Paragraph (3), as soon as a 'dispute' arises, the Commission shall, at the request of either Commissioner, report the fact to the two Governments stating in its report the points on which the Commission is in agreement and the issues in dispute, the views of each Commissioner on these issues and his reasons therefor.
9. Paragraph (4) of Article IX, thereafter, envisages a genuine attempt by the both governments of Pakistan and India to settle the 'dispute' which has arisen in a cooperative spirit, including by utilizing the services of

mediators acceptable to them. This expectation of a genuine attempt runs through all such international treaties.

10. In case (a) after negotiations have begun pursuant to paragraph (4), and one of the parties is of the opinion that the dispute is not likely to be resolved by negotiation or mediation, or (b) if the party / government which invites the other party/government to resolve the dispute in terms of Paragraph (4), comes to the conclusion (after one month of the other government receiving the invitation) that such other government is unduly delaying the negotiations, then either party may request the establishment of the Court of Arbitration ('CoA') to resolve the dispute in the manner provided for in Annexure G [*Ref. Paragraph (5) of Article IX*].

In good faith and to resolve the issue bilaterally, India accepted and participated in the negotiations without "prejudice to India's stand on inadmissibility of taking the matters to the Court of Arbitration which are under the purview of the Commission or at most of Neutral Expert". However because of Pakistan's non-cooperation the negotiations could not have a positive outcome.

11. Therefore, a CoA can be established [*Ref. Paragraph (5) of Article IX*] in respect of a dispute only if a 'dispute' has arisen (as described in Paragraph (iv) above), and either:
 - (i) the parties have agreed to refer the matter to the CoA [*Ref. Paragraph 5(a) of Article IX read with Paragraph 2(a) of Annexure G*], or
 - (ii) the parties have followed the provisions of Paragraphs (3) and (4) of Article IX, and despite any attempts at negotiation and/or mediation, the 'dispute' could not be settled .

12. It is crucial to note that as per Paragraph (6) of Article IX, the provisions of Paragraphs (3), (4), and (5) shall not apply to any difference while it is being dealt with by an NE. Stated differently, when the NE is seized of a difference, i.e., as soon as either party requests an NE to be appointed, the provisions of Paragraphs (3), (4), and (5), are on a moratorium, and the NE resolution process takes primacy and precedence. Thus, a difference placed before a NE will continue to remain in the domain of NE and the provisions of para (3), (4) and (5) will not enter the picture. Only once the NE has rendered his decision, and if as per such decision any party or whole of the difference ought to be treated as a dispute, would the provisions of (3), (4), and (5) come into the picture. Till such time, the Treaty explicitly does not envisage any reference to the CoA. Paragraph (6) rules out parallel occupation of a difference placed before the NE, both by the NE and the CoA.
13. Additionally, a reference to Annexure 'G' of the Treaty, which deals with "Court of Arbitration", is apposite at this stage. The recourse to appointment of a CoA under Annexure G is contingent upon the following expressions in Clause 1 of Annexure G, namely, "*if the necessity arises to establish a court of arbitration*", i.e., either (i) exhaustion of the first stages of resolution or (ii) arising out of a situation when both parties agree that recourse to arbitration will be ideally suitable or necessary for determination of issues between them. It is evident from the above the recourse to arbitration may not be treated as a matter of course, and, thus, not even a matter of unilateral discretion.
14. Therefore, now, the question would be, without abiding by the mandates of Article IX, which have to be followed in a certain sequence, with each one of them having a logical connection, can it be said that "*the necessity has arisen to establish a Court of Arbitration*" in terms of Article IX and Annexure G? The answer would have to be in the negative. The word "*necessity*" has been used, advisedly, having regard to the scheme

of movement of resolution of differences set out in Article IX. Necessity is understood as "*the state of being required or indispensable*", or a "*a situation enforcing a particular course*".

15. The letter dated 25.02.2016 from the Pakistan Commissioner for Indus Waters, claiming that a dispute has arisen and a COA should be constituted to resolve the issues, does not satisfy the threshold of 'necessity' having arisen. It is also not in conformity with the scheme of Article IX of the Treaty. By his earlier letters of 03.07.2015 and 12.11.2015, the Pakistan Commissioner had sought the appointment of a Neutral Expert. The narration of the questions that the Pakistan Commissioner believed had arisen between the parties remained identical in these sets of letters, i.e. in the letters seeking the appointment of the NE as well as the letter seeking a COA. The mere passage of seven months between July, 2015 and February, 2016 cannot render the technical questions raised by the Pakistan Commissioner into legal issues. Therefore, the very inception of Pakistan's position that a 'dispute' has arisen necessitating the establishment of a COA is in the teeth of the express provisions of the Treaty, and the intention of the Treaty that a COA ought to be established only if the *necessity* so arises.

16. Additionally, the letter of 25.02.2016 stated that the Pakistan's invitation to appoint an NE lapsed since India failed to jointly appoint one. However, this statement ignores the provision of paragraph 4(b)(ii) of Annexure F, which provides that the Bank may appoint the NE in case the governments of Pakistan and India fail to jointly appoint one. The Treaty does not envisage the 'lapsing' of a request to appoint an NE as claimed in this communication. Instead of approaching the Bank for taking any action under paragraph 4(b)(ii) of Annexure F, the Pakistan Commissioner proceeded to unilaterally deem the difference to be a 'dispute' and seek negotiation in terms of Paragraph (4) of Article IX. This is impermissible under the Treaty. Therefore, the true position was that Pakistan's request

for the NE, and a similar subsequent request by India, remained live, and took primacy and precedence over any request for establishment of a CoA. The World Bank, therefore, was justified in subsequently appointing the NE.

17. If the parties to the Treaty could not have proceeded to invoke the provisions of Paragraph (5) of Article IX read with Annexure G, namely, recourse to Arbitration, without abiding by the mandates of Article IX, the World Bank, also cannot do so. In view of the unequivocal stand taken by the Bank itself, in its communication dated 12.12.2016 and 18.07.2017 that its processes shall not contribute to '*endangering the Treaty*' and weakening the integrity of the Treaty, the Bank could not have proceeded to act bypassing the scheme under Article IX and the sequence of processes set out therein and in Annexure G.

18. It is worth reiterating that in the case at hand, the arbitration provisions [Paragraphs (3), (4) and (5) of Article IX, as well as Annexure 'G' to the Treaty] have not been triggered at all. Since no 'dispute' can be said to have arisen yet, in terms of the Treaty, the procedure for resolving it under Paragraphs (3), (4) and (5) cannot be applied. On the other hand, the prohibition under Article IX(6) has undeniably been triggered, since a Neutral Expert has been appointed and is currently dealing with the differences that have arisen.

19. Even otherwise, none of the requirements of Paragraphs (3), (4) and (5) of Article IX were ever complied with by the Parties. No report under Paragraph (3) was ever prepared by the Commissioners. The Parties have never arrived at any agreement to refer the outstanding differences to arbitration. India's willingness to discuss this matter at the Government level, purely in the interest of good neighborly relations, can never be construed to mean that a 'dispute', as defined in Article IX of the Treaty, is deemed to have arisen.

20. It is now for the Neutral Expert, who is currently in *seisin* of the matter, to finally decide whether, in his opinion (i.e. based on his satisfaction) the unresolved questions constitute a 'difference' or a 'dispute' in terms of the treaty. It is only in the event that the Neutral Expert concludes that the unresolved questions, wholly or in part, constitute a 'dispute' that a reference to arbitration could arise. If, on the other hand, the Neutral Expert concludes that the unresolved questions are really only 'differences', he would be competent to decide the unresolved questions himself. His decision would, as already pointed out, bind not only the parties but also any subsequent Court of Arbitration, in terms of paragraph 11 of Annexure 'F' to the treaty.

21. The questions raised by Pakistan fall under Paragraph 1(11) of Part 1 of Annexure F. Accordingly, these matters are correctly being considered by the Neutral Expert. Similar issues in the case of the Baglihar project on the river Chenab were also resolved by Neutral Expert in 2007. In fact, in that case, when Pakistan's request was made to the World Bank on 15 January, 2005, the first step taken by the Bank on 24 January, 2005, was to ensure that "*before the Bank can proceed to make such an appointment, it needs to satisfy itself that all the requirements of the Treaty have been met*". The World Bank had also concluded that "*if some of these steps have not been taken then it will be necessary to go back over the process and remedy these omissions ensuring that all necessary notices are given and documented and that the time limits required by the treaty have also been complied with.*" Accordingly, the World Bank requested both parties to furnish documentary evidence to establish that the requirements under the provisions of the Treaty stood complied with.

22. It is also noteworthy that India's position on the appointment of Neutral Expert is in fact in consonance with the communication of the

Pakistan Commissioner, dated 29 April 2009, prior to the commencement of the proceedings of the CoA in Kishenganga HEP arbitration case (2010-13), in which he had stated that.

"In any event, to the extent India believes that Question No. 1 is more appropriately examined by a Neutral Expert than a court of Arbitration, it can request the appointment of a Neutral Expert with respect to Question No. 1 and the Neutral Expert so appointed shall then be entitled to determine under paragraph 7 of Annexure F of the Treaty whether Question No. 1 falls within part 1 falls within Part 1 of Annexure F."

23. As a matter of fact, the Partial Award of the Court of Arbitration in the Kishenganga Matter, in Paragraph 280, records Pakistan's own stand as being that in the absence of a formal request for the appointment of a Neutral Expert under the Treaty, a Court of Arbitration may validly be constituted. Thus, paragraph 280 records that *"if the Commissioner doesn't trigger the Neutral Expert procedure under Article IX(2)(a) prior to the establishment of the Court of Arbitration, that priority is never triggered and the Court of Arbitration has jurisdiction under Article IX(5) of the Treaty."* Further, in Paragraph 484 of the Partial Award, the Court of Arbitration expressed the view that *"nothing in the Treaty requires that a technical question listed in Part 1 of Annexure F be decided by a neutral expert rather than a court of arbitration—**except where a Party so requests** (and then only if the neutral expert considers himself competent)." (emphasis supplied). In the present case, admittedly, the procedure under Article IX(2)(a) for the appointment of the Neutral Expert had been triggered prior to establishment of the Court of Arbitration and even before institution of the proceedings as defined under paragraph 3 of Annexure G. Moreover, the Neutral Expert is now dealing with all differences that have arisen.*

24. The inexplicable *volte face* by Pakistan in this case, and its pursuit of the appointment of a Court of Arbitration despite having first requested for a Neutral Expert, is untenable under the provisions of the Treaty. It militates against the basic tenets of cooperativeness and adherence to solemn treaty obligations. The concurrent appointment of the NE and a COA, which is being attempted by the World Bank, is equally untenable and violative of the Treaty.