

**COORDINATION BETWEEN THE COURT OF ARBITRATION  
AND THE NEUTRAL EXPERT – A WORKABLE DIVISION OF COMPETENCE**

**Statement by the Islamic Republic of Pakistan**

---

**A. Introduction**

1. By correspondence of 3 February 2023, following the First Meeting of the Court of Arbitration (“**the Court**”) on 27–28 January 2023 (“**First Meeting**”), the Court directed the Parties to each file by 24 February 2023 “a statement addressing the possibility of coordination between the Court of Arbitration and Mr. Michel Lino in his capacity as a Neutral Expert, with respect to matters placed before both bodies pursuant to the Indus Waters Treaty.” The Court elaborated on this direction as follows:

“In particular, the Court would find it helpful to understand better the Parties’ positions on the following points:

- (a) specifically what issues now before the Court and the Neutral Expert might be addressed by the Court;
- (b) specifically what issues now before the Court and the Neutral Expert might be addressed by the Neutral Expert; and
- (c) the optimal sequencing and suggested time frame for decisions by the Court and the Neutral Expert in addressing their respective issues.

The Court notes that such filing would be without prejudice to either Party’s position with respect to the competence of the Court of Arbitration or the Neutral Expert.”

2. In response to the Court’s directions, this Statement sets out the views of the Islamic Republic of Pakistan (“**Pakistan**”) on the possibility of coordination between the Court and the Neutral Expert with respect to matters placed before each under the Indus Waters Treaty 1960 (“**the Treaty**”).

3. Pakistan notes the without prejudice clause in the Court’s directions, on which it places firm reliance. As Pakistan affirmed during the First Meeting, as well as in prior correspondence, it considers that the Neutral Expert was not validly appointed by the World Bank, having regard to the prior institution of arbitral proceedings pursuant to Pakistan’s Request for Arbitration of 19 August 2016 (“**Pakistan’s Request**”). Both for this reason and for others (Pakistan’s “**reserved issues**”), the Neutral Expert lacks competence to address all or some of the issues purportedly put before him by the Republic of India (“**India**”). As these reserved issues will fall to be addressed in the Preliminary Phase on Competence scheduled by

the Court in its Procedural Order No 1 of 2 February 2023, Pakistan says no more about these matters at this stage but for one observation that is directly material to Pakistan’s proposals on coordination addressed below.

4. Pakistan maintains and affirms its reserved issues regarding the competence of the Neutral Expert. As it has made clear, however, in the interests of the integrity of the Treaty, and of healthy and workable bilateral relations between the Parties, Pakistan would be prepared to waive its reserved issues if effective modalities of cooperation and coordination could be put in place between the Court and the Neutral Expert to ensure that systemic issues and interpretations of law engaging considerations going beyond India’s Request for Neutral Expert Determination of 4 October 2016 (“**India’s Request**”) could be properly and fully addressed by the Court. This is the prism through which this Statement should be viewed – an endeavour by Pakistan to facilitate the search for effective modalities of cooperation and coordination that would enable both the Court and the Neutral Expert to exercise a constructive and independent competence to settle the Parties’ disagreements. Pakistan hopes that such modalities will be achievable, and commits to engaging constructively and in good faith to this end. This said, if effective workable modalities cannot, for whatever reason, be achieved, Pakistan is committed, *inter alia*, to seeking a formal adjudication of its reserved issues including, as appropriate, by the Court, by the Neutral Expert, and by the International Court of Justice.

**B. Framing the issues**

5. Coordination between the Court and the Neutral Expert in the circumstances in contemplation will turn on the willingness of both mechanisms to find effective modalities of cooperation. Pakistan has no doubt that such modalities can be achieved, and on the basis of respect for the independence of and a constructive role to be played by both mechanisms.

6. To this end, coordination can and should be addressed at a number of levels.

(a) *Administrative coordination* between Registries and Secretariats to ensure that the two proceedings are aligned on basic issues such as the scheduling of meetings, agendas, shared documents, inter-proceeding transparency, etc. Quite apart from the tested track record and expertise of the Permanent Court of Arbitration (“**PCA**”), this is one of the reasons why Pakistan is proposing that the Neutral Expert appoint the PCA as Registry and Secretariat to his proceedings.

(b) *Procedural coordination* between the two mechanisms to ensure that there is a division of competence expressly agreed between them and that they are able to engage with each other at a working level to ensure a shared understanding of which mechanism is

addressing what issues when, and an appropriate sequencing of work to ensure that the decision-making of the mechanisms align.

- (c) *Substantive coordination* between the two mechanisms to ensure that there is an alignment of outcomes in the interests of the integrity of the Treaty. This may be achieved by adopting modalities to ensure that both mechanisms reach decisions on substantive points on which both agree and/or that the decisions of each mechanism are sequenced and ring-fenced such that they avoid conflict and build on the prior decisions of the other.

7. Beyond this, a workable and effective division of competence between the Court and the Neutral Expert will turn on three factors:

- (a) the framework of Article IX of the Treaty;
- (b) the scope of competence of the Court and the Neutral Expert under Annexures G and F of the Treaty respectively; and
- (c) the terms of the Parties' respective Requests.

8. It is axiomatic that the role and function of the Court and the Neutral Expert must be rooted in the Parties' respective Requests. This is because the settlement of the disagreements of which the Court and the Neutral Expert are presumptively seised must be based on the issues raised in the Parties' respective Requests, save only for any amendment to those Requests that may be authorised by the Court or Neutral Expert in due course.

9. Article IX of the Treaty and the scope of competence of the Court and Neutral Expert under Annexure G and Annexure F of the Treaty are the subject of the Court's Preliminary Hearing on Competence process that is now underway. Pakistan accordingly refrains from addressing these issues further at this point save for purposes of contextualising what follows in this Statement.

10. Three framing observations are pertinent.

- (a) Article IX(1) of the Treaty differentiates, *inter alia*, between (i) questions arising concerning the *interpretation* of the Treaty, (ii) questions arising concerning the *application* of the Treaty, and (iii) the existence of any fact which, if established, might constitute a breach of the Treaty.

Having regard to this framework, a workable division of competence between the Court and the Neutral Expert might usefully build on this differentiation of issues such as would see an allocation: (i) **to the Court**, of questions concerning the *interpretation* of

the Treaty, (ii) **to the Neutral Expert**, of questions concerning the *application* of the Treaty, having regard to the Court’s prior decision on *interpretation*, (iii) **to the Neutral Expert**, of determinations of facts which, if established, might constitute a breach of the Treaty, having regard to the Court’s prior decision on *interpretation*, and (iv) **to the Court**, of determinations of remedies that would follow any finding of breach by India, having regard to the prior decision of the Neutral Expert.

This decision-making framework is suggested, *inter alia*, by the following provisions of the Treaty:

- Article IX(1);
  - the broader scheme of Article IX;
  - Paragraphs 1 and 2 of Annexure F;
  - Paragraph 13 of Annexure F;
  - Paragraph 2(b) of Annexure G;
  - Paragraph 28 of Annexure G; and
  - Paragraph 29 of Annexure G.
- (b) The competence allocated to the Neutral Expert by the Treaty, and specifically in the context of the present disagreement, is a **Plant-specific competence** that arises under Paragraph 1(11) of Part 1 of Annexure F of the Treaty, and in particular “[q]uestions arising under the provisions of ... Paragraph 11 ... of Annexure D”. This is evident both from the express reference to Paragraph 1(11) of Annexure F in India’s Request and from the detailed terms of that Request.

Paragraph 11 of Annexure D provides that “[i]f a question arises as to whether or not the design of a **Plant** conforms to the criteria set out in Paragraph 8, then either Party may proceed to have the question resolved in accordance with the provisions of Article IX(1) and (2)” (emphasis added). It follows that the competence of the Neutral Expert under Paragraph 1(11) of Annexure F is Plant-specific and does not, and cannot, extend to questions of treaty interpretation of a systemic nature.

This appreciation is underlined by (i) the requirements that a Neutral Expert “shall be a highly qualified engineer”, rather than a lawyer, (ii) Paragraph 7 of Annexure F and Article IX(2)(b), which expressly contemplate the possibility that a Neutral Expert may conclude that a matter addressed to him/her constitutes a dispute, rather than a difference, to be addressed through some other Article IX settlement mechanism, and (iii) Paragraph 13 of Annexure F, which states explicitly that matters “not within the competence of a Neutral Expert” shall be settled through some other Article IX mechanism, of which a Court is at the apex.

In contrast, it is evident, *inter alia*, from Article IX(2)(b) of the Treaty, Paragraph 11 of Annexure D, Paragraphs 2(b), 16, 28 and 29 of Annexure G, and the settled decision of the Court of Arbitration in the *Kishenganga* proceedings,<sup>1</sup> that the competence of a Court of Arbitration is unconstrained, enabling it to address both Plant-specific disagreements and wider issues of legal and systemic treaty interpretation and application, as well as questions of relief beyond a Plant-specific declaration of breach.

- (c) It is clear from the Treaty that, while the Neutral Expert is competent to address questions of “whether or not **the design of a Plant** conforms to the criteria set out in Paragraph 8 [of Annexure D]”,<sup>2</sup> the Neutral Expert does **not** have a remedial competence. The Neutral Expert, for example, is not allocated competence under the Treaty (i) to specify interim measures (*cf.*, Paragraph 28 of Annexure G), (ii) to award financial compensation (see, *inter alia*, Paragraphs 2 and 13 of Annexure F), or (iii) to prescribe wider remedies, as opposed to “suggest for the consideration of the Parties ... measures [that are] ... appropriate ... to implement his decision” (see Paragraph 12 of Annexure F). In contrast, there is no constraint on the remedial competence of the Court other than that which would follow from the relevant applicable law, pursuant to Paragraph 29 of Annexure G.

### **C. The Parties’ Requests**

11. Turning to the Parties’ respective Requests, being the touchstones for any division of competence between the Court and the Neutral Expert, a side-by-side examination of these Requests shows both the overlap and the divergence of their subject-matter. As will be apparent, while there is considerable overlap between them – notably concerning the characterisation of the seven itemised disagreements – there is also material divergence both as regards the systemic framing of the issues and as regards the relief sought.

12. As expressed in their Requests as they currently stand,<sup>3</sup> there are three broad areas of disagreement between the Parties: (a) disagreements on systemic issues of legal interpretation of the Treaty, (b) Plant-specific disputes concerning the design specifications of the Kishenganga Hydroelectric Plant (“**KHEP**”) and the Ratle Hydroelectric Plant (“**RHEP**”), and (c) remedies. Whereas each Party’s Request identifies seven areas of disagreement that go to design specifications of the KHEP and RHEP,<sup>4</sup> only Pakistan’s Request frames these issues in

---

<sup>1</sup> *Indus Waters Kishenganga Arbitration (Pakistan v India)*, Partial Award, (2013) XXXI RIAA 55, ¶ 470

<sup>2</sup> As per Paragraph 11 of Annexure D (emphasis added). See also Paragraph 1(11) of Annexure F.

<sup>3</sup> This is without prejudice to an application by either Party to amend its Request, *inter alia*, for the reason of the passage of time since the Request was transmitted and developments on the ground over this period.

<sup>4</sup> Pakistan’s Request, ¶ 9; India’s Request, Annexure.

systemic, legal interpretative terms.<sup>5</sup> In contrast, India’s Request frames the Parties’ disagreements in narrow terms, described as purely “technical issues”.<sup>6</sup>

13. Also of considerable importance is that India’s Request implicitly limits the function of the Neutral Expert to the determination of the technical specifications applicable to the KHEP and RHEP. As such, it ignores any issues of compliance, rectification or remedy in the event of a finding of a breach of the Treaty’s terms by India. In contrast, Pakistan’s Request is clear and specific about the remedies that it seeks from the Court,<sup>7</sup> including (a) interim measures,<sup>8</sup> (b) injunctive relief,<sup>9</sup> (c) declarations of systemic legal interpretation,<sup>10</sup> and (d) design-specific declarations.<sup>11</sup> Significantly, only the last category of the remedies sought by Pakistan would come within the scope of the decision-making competence of the Neutral Expert, and even then, only insofar as the KHEP and RHEP are concerned.

14. Any framework for coordination between the Court and the Neutral Expert would need to be sensitive to these issues.

#### **D. A structural approach to coordination and the division of competence**

15. Drawing on the preceding, Pakistan proposes that a workable division of competence between the Court and the Neutral Expert in structural terms would sensibly be based on a sequential exercise of functions by the Court and the Neutral Expert as follows:

**First, the Court would address questions of Treaty interpretation arising from the Parties’ respective Requests.**

**Second, the Neutral Expert would thereafter address the application of the Court’s interpretative rulings to the Parties’ disagreements concerning the design specifications of the KHEP and the RHEP. A necessary element of this determination would be an assessment of whether aspects of India’s design of the KHEP or the RHEP, and its operation of the KHEP, were in breach of the terms of the Treaty, as construed authoritatively by the Court.**

---

<sup>5</sup> See, for example, Pakistan’s Request, at ¶¶ 3–5, 7–8 and 32.

<sup>6</sup> India’s Request, *inter alia*, at ¶ 11.

<sup>7</sup> This is without prejudice to other remedies that Pakistan may seek in due course, subject to permission to amend its Request.

<sup>8</sup> Pakistan’s Request, ¶¶ 12 and 90.

<sup>9</sup> *Ibid*, ¶¶ 91(c), 91(e), 92(b), 92(d), 93(b), 94(b), 95(b), 96(b) and 97(b).

<sup>10</sup> *Ibid*, ¶¶ 91(a), 91(f), 93(c), 94(c), 95(c) and 96(c).

<sup>11</sup> *Ibid*, ¶¶ 91(b), 91(d), 92(a), 92(c), 93(a), 94(a), 95(a), 96(a) and 97(a).

**Third, in the event of a finding of breach of the Treaty in respect of the KHEP and/or RHEP design specifications or operation, the Court would address the appropriate remedies.**

16. A division of competence of this kind would both allocate to the Court and the Neutral Expert appropriate areas of responsibility and avoid them arriving at inconsistent decisions with respect to the same or related matters.

**E. Coordination and the division of competence in substantive terms**

17. The preceding analysis addresses the issue of coordination between the Court and the Neutral Expert in structural terms, having regard to the competence of each mechanism under the Treaty and the disagreements of the Parties, broadly construed, in their respective Requests. Building on this approach, Pakistan considers that it may further assist the Court and the Neutral Expert to have a clearer sense of the division between the Parties in substantive terms.

18. Although crystallised in the immediate context of the KHEP and RHEP, the issue between the Parties, broadly formulated, is one of disputed treaty interpretation centred on Paragraph 8 of Annexure D of the Treaty, although drawing in other provisions of the Treaty as well which are necessary to properly contextualise Paragraph 8. This legal, interpretative function, which goes beyond Plant-specific differences, can only be performed by the Court. Once the relevant terms of Paragraph 8 have been construed by the Court, however, they could thereafter be applied in a technical sense by the Neutral Expert to the specifics of the KHEP and the RHEP.

19. As noted above, the Parties' systemic dispute is clearly set out in Pakistan's Request. Pakistan notes, for example, that "[i]n addition to the KHEP and the RHEP, India is planning to design and construct many additional Run-of-River Plants on the Western Rivers ... using the same approach employed at the KHEP and the RHEP".<sup>12</sup> As this makes plain, Pakistan is not simply concerned with the design specifications of the KHEP and the RHEP but is even more acutely concerned with the design approach that would follow in respect of the many tens of additional Plants that India has in active contemplation. In consequence, what Pakistan requested from the Court was not simply a narrow determination as to whether the KHEP and RHEP were consistent with Annexure D of the Treaty, but rather a determination of "principles [that] will apply not only to the KHEP and RHEP, but also *erga omnes* to future Run-of-River Plants" constructed by India on the Western Rivers.<sup>13</sup> In keeping with this, Pakistan framed its request for relief not just in terms of the KHEP and RHEP but in terms of any other Plant

---

<sup>12</sup> *Ibid*, ¶ 32.

<sup>13</sup> *Ibid*, ¶ 5.

that India designed or constructed on the Western Rivers.<sup>14</sup> In contrast, India’s Request was confined to KHEP and RHEP “technical issues”. It made no request for wider interpretation of the Treaty,<sup>15</sup> nor could it have done, given the limitations of the competence of a Neutral Expert.

20. Other documents show the genesis of the wider legal dispute that the duelling dispute settlement mechanisms presently mask. In the broadest terms, Pakistan and India disagree with the extent to which non-Treaty-based design and operational practices in Plant construction can be used to augment the plain words of the Treaty and the technical restrictions it places on Plant design. Pakistan relies on the approach of the *Kishenganga* Court of Arbitration.<sup>16</sup> India relies on the *Baglihar Determination*.<sup>17</sup>

21. Significantly, the different approaches from these two decisions would produce materially divergent outcomes in practice on the Western Rivers (and, consequently, for Pakistan). So, for example, the *Baglihar Determination*, citing “the current level of scientific and technical knowledge”, held that the sediment management technique known as drawdown flushing was permitted under the Treaty.<sup>18</sup> In contrast, the *Kishenganga* Court, which succeeded the *Baglihar Determination*, while holding that the latter remained in place with respect to the Baglihar Plant,<sup>19</sup> disagreed with the *Baglihar* analysis. Noting that “it is not for the Court to apply ‘best practices’ in resolving this dispute”, the Court found that “the Treaty restraints on the construction and operation by India of reservoirs” are “a regulatory factor” in Plant design, such that the Treaty prohibited drawdown flushing.<sup>20</sup>

22. In the present case, the Parties’ disagreement over this systemic question of Treaty interpretation manifests most prominently, although not solely, in their dispute over pondage (and wider storage limits) on the Western Rivers, which remains a critical point of contention between the Parties. Both the *Kishenganga* Partial Award<sup>21</sup> and Pakistan’s independent review of the *travaux préparatoires* of the Treaty show that the question of storage limits in particular was a key point of contention between the Parties.

23. In addition to the key issue of pondage, as both Parties’ Requests make clear, the Parties are also divided over the interpretation and application of other elements of Paragraph 8 of Annexure D of the Treaty – addressing design and operational practices in Plant construction

---

<sup>14</sup> *Ibid*, ¶¶ 91(a), 91(f), 93(c), 94(c), 95(c), 96(c). The question of the freeboard on the RHEP was, however, confined to the RHEP only: *ibid*, ¶ 97.

<sup>15</sup> India’s Request, Annexure.

<sup>16</sup> See, for example, Letter No. WT(132)/(7531-A)/PCIW dated 25 February 2016, ¶ 5. (**Appendix 1**)

<sup>17</sup> See, for example, Letter No. Y-11017/2/2015-IT/2155 dated 21 August 2015, ¶ 9. (**Appendix 2**)

<sup>18</sup> *Baglihar Determination (Pakistan v India)*, Indus Waters Treaty, Neutral Expert Determination, 12 February 2007, §5.5.3.

<sup>19</sup> *Indus Waters Kishenganga Arbitration (Pakistan v India)*, Partial Award, (2013) XXXI RIAA 55, ¶ 470.

<sup>20</sup> *Ibid*, ¶ 522.

<sup>21</sup> *Ibid*, ¶ 504.

concerning submerged power intakes, low-level sediment outlets, gated spillways for flood control, and freeboards.

24. These disputes caused Pakistan’s Commissioner for Indus Waters to consider that “the issues over the [KHEP] and [RHEP] are substantially, if not predominantly, legal in nature” and “present legal questions of Treaty interpretation that will inevitably recur as India proceeds with other [hydroelectric] projects on the Western Rivers”. He accordingly considered that the empanelment of a Court of Arbitration was the only appropriate means of resolving the wider dispute.<sup>22</sup>

**F. Phase I – What issues presently before the Court and the Neutral Expert might be addressed by the Court?**

25. In light of the foregoing, Pakistan proposes that, looked at in substantive terms, a workable division of competence between the Court and the Neutral Expert would see the Court address questions concerning the systemic interpretation of the Plant design criteria set out in Annexure D – and, in particular, in Paragraph 8 thereof – by way of a partial award.

26. The overarching systemic dispute that has emerged between the Parties concerns the extent to which the Treaty limits the storage of water by India on the Western Rivers and constrains the design specifications of key features of run-of-river hydroelectric Plants. At bottom, and as Pakistan’s Request makes clear,<sup>23</sup> all disputes presently between the Parties come back to these questions, and the extent to which plants like the KHEP and the RHEP allow India to control more of that water than the Treaty permits, at odds with the fundamental “let flow” obligation with respect to the Western Rivers in Articles III(1) and (2) of the Treaty.

27. Each of the technical questions that have been raised concerning the KHEP and the RHEP are therefore dependent on an antecedent question of systemic Treaty interpretation, which can be answered only by the Court, namely:

**COA1: Pakistan and India disagree with the extent to which non-Treaty-based design and operational practices in Plant construction can be used to augment the plain words of the Treaty and the technical restrictions it places on Plant design. Having regard to the rights and duties of the Parties under the Treaty – in particular, under Article III and Annexure D thereof – to what extent can non-Treaty-based design and operational practices be taken into account for purposes of interpreting the technical requirements set out in Paragraph 8 of Annexure D?**

---

<sup>22</sup> Letter No. WT(132)/(7531-A)/PCIW dated 25 February 2016, ¶¶ 5, 7. (**Appendix 1**) See also *ibid*, Annexure, setting out the precise issues to be submitted to arbitration by reference to the specifics of the KHEP and RHEP but also the wider principles to be determined on a systemic basis.

<sup>23</sup> Pakistan’s Request, ¶¶ 2–5, 8, 33–41, 44, 51–52, 55, 67–71, 78–82, 86–88.

28. With the overarching interpretive scheme of Paragraph 8 of Annexure D established, the Court could then move to resolve specific, but no less systemic, issues in dispute between the Parties. The headline question concerns pondage, a critical input that determines the amount of water that India is allowed to store in the operating pool of a Plant constructed in accordance with Annexure D. The Parties' respective approaches to calculating this critical figure differ considerably.<sup>24</sup> Beyond the issue of pondage, however, the interpretation of key provisions going to design and operational practices in Plant construction are also critical, concerning submerged power intakes, low-level sediment outlets, gated spillways for flood control, and freeboards.

29. This appreciation leads to the following questions that only the Court would be competent to address on a Treaty-wide basis:

**COA2: Having regard to Paragraph 8(c) of Annexure D, as well as the other elements of that Annexure, what is to be taken into account for the purposes of calculating maximum pondage for a particular Plant under the Treaty, and what is to be excluded?**

**COA3: Having regard to Paragraph 8(f) of Annexure D, as well as the other elements of that Annexure, what is to be taken into account for the purposes of designing submerged power intakes for a particular Plant under the Treaty, and what is to be excluded?**

**COA4: Having regard to Paragraph 8(d) of Annexure D, as well as the other elements of that Annexure, what is to be taken into account for the purposes of designing low-level sediment outlets for a particular Plant under the Treaty, and what is to be excluded?**

**COA5: Having regard to Paragraph 8(e) of Annexure D, as well as the other elements of that Annexure, what is to be taken into account for the purposes of designing gated spillways for flood control for a particular Plant under the Treaty, and what is to be excluded?**

**COA6: Having regard to Paragraph 8(a) of Annexure D, as well as the other elements of that Annexure, what is to be taken into account for the purposes of designing the freeboard for a particular Plant under the Treaty, and what is to be excluded?**

---

<sup>24</sup> For Pakistan's approach, see: Pakistan's Request, ¶ 47. For India's approach, see, for example, Letter No. Y-11017/2/2015-IT/2177 dated 1 March 2016 (**Appendix 3**); India's Request, Annexure, ¶¶ A.i, B.ii.

30. Beyond these specific questions, which go to the heart of the Parties' dispute, Pakistan recognises that the Court may identify other questions of legal interpretation of the Treaty, that go to its systemic application, as it considers Pakistan's Request. If so, having regard to Pakistan's structural proposal for coordination and division of competence set out above, the Court should proceed to address those additional questions.

31. Pakistan is cognisant that, while addressing these interpretative questions, the Court may identify technical matters concerning the application of Annexure D to the specific situations of the KHEP and the RHEP. In keeping with the proposed broad division of competence set out above, Pakistan proposes that, where such matters are identified by the Court, they should be deferred for subsequent determination by the Neutral Expert, along with the questions set out below.

**G. Phase II – What issues presently before the Court and the Neutral Expert might be addressed by the Neutral Expert?**

32. In the light of the Court's response to the interpretative questions addressed above, the baton would pass to the Neutral Expert, who would then be in a position to apply the Court's interpretation to the specific situations of the KHEP and the RHEP. To that end, the Neutral Expert would consider the following question with respect to the KHEP:

**NE1: By reference to the Court's interpretative rulings in response to COA1–6, does India's design and operation of the KHEP comply with the requirements of Article III and Paragraph 8 of Annexure D of the Treaty, particularly insofar as it concerns:**

- (a) the calculation of pondage;
- (b) the placement of power intakes;
- (c) the size and placement of outlets; and
- (d) the placement of the spillway gates?

33. Applying the same interpretation, the Neutral Expert would also consider the following question with respect to the RHEP:

**NE2: By reference to the Court interpretative rulings in response to COA 1–6, does India's design of the RHEP comply with the requirements of Article III and Paragraph 8 of Annexure D of the Treaty, particularly insofar as it concerns:**

- (a) the calculation of pondage;
- (b) the placement of power intakes;
- (c) the size and placement of outlets;
- (d) the placement of the spillway gates; and

**(e) freeboard height?**

34. Pakistan is cognisant that, as anticipated at Article IX(2)(b) of the Treaty, in the course of considering the technical matters before him, the Neutral Expert may identify legal or systemic issues that fall outside his competence or that he may reach the view that certain questions should be considered as “disputes” that should be addressed in accordance with Article IX(3)–(5) of the Treaty. If this occurs, such questions should be deferred or referred for decision by the Court – either once the Neutral Expert has addressed the Plant-specific technical questions just noted or, if the Neutral Expert would not be in a position to address the Plant-specific technical questions of which he was seised without the interpretative guidance of the Court, by the Court immediately in the form of a further partial award.

**H. Phase III – Remedies**

35. As noted above, Pakistan’s request for relief is considerably broader than relief associated simply with the KHEP or the RHEP. In particular, and to the extent that there would be a finding that the design and operation of the KHEP and/or the design of the RHEP are inconsistent with Paragraph 8 of Annexure D or other provisions in the Treaty, Pakistan has requested the Court to prescribe both declaratory and injunctive relief prohibiting India from constructing other Plants of similar design elsewhere on the Western Rivers.<sup>25</sup> Given that the Neutral Expert’s competence is Plant-specific,<sup>26</sup> such that he could not grant the relief sought by Pakistan, the settlement of the dispute between the Parties would require the Court to address in a final award any issues of remedies that may arise.

**I. Timing and sequencing**

36. The proposed sequencing of the work of the Court and the Neutral Expert is addressed above. Pakistan anticipates that interpretative issues with which the Court would be faced in Phase I above could be addressed relatively quickly. As they concern solely matters of legal interpretation, they would not require the presentation of considerable evidence in respect of particular Plants, and could be addressed without the need for a site visit to the KHEP or RHEP, even if a site visit would be beneficial. Indeed, from a familiarisation perspective, to enable the Members of the Court to better understand the working of Himalayan run-of-river Plants, a familiarisation visit to such a Plant in Pakistan may serve equally well.

37. While the Neutral Expert could decide simply to await the Court’s Phase I partial award, other possible approaches are also apparent. The Neutral Expert might, for example, observe the work of the Court, which would facilitate his understanding of the interpretative

---

<sup>25</sup> Pakistan’s Request, ¶¶ 91(a), 93(c), 94(c), 95(c) and 96(c).

<sup>26</sup> *Indus Waters Kishenganga Arbitration (Pakistan v India)*, Partial Award, (2013) XXXI RIAA 55, ¶ 470.

guidance which he would thereafter be charged with applying. Pakistan would welcome such an approach. Additionally or alternatively, the Neutral Expert could use the Phase I period to collect evidence specific to the KHEP and RHEP – for example by undertaking site visits to those Plants and consulting with the Parties as to the evidence that he requires to fulfil his mandate.

**J. Concluding observations**

38. Coordination and cooperation between the Court and the Neutral Expert, on the basis of workable and effective modalities at the administrative, procedural and substantive level, will be essential if the integrity of the Treaty is to be maintained and reinforced, not just for the disagreements between the Parties currently in view but for purposes of heading off other disputes to come. In contemplating how to address the imperative of coordination and cooperation, both the Court and the Neutral Expert ought properly to have regard to the pivotal role that the Treaty has played in the peaceful relations between the Parties since 1960. The allocation of water by, and of the rights and responsibilities of the Parties under, the Treaty is closely analogous to the settlement that comes with a peace treaty that brings active hostilities to an end. The risks associated with parallel Article IX mechanisms are too high to leave simply to an untamed running of the gauntlet by duelling proceedings that are untethered from each other, particularly in circumstances in which, as is so far plainly, and regrettably, apparent, one of the Parties to the Treaty is intent on pursuing a non-cooperative posture.

AHMAD IRFAN ASLAM  
Agent | Islamic Republic of Pakistan

**23 February 2023**

**APPENDIX 1**

**Letter from the Pakistan Commissioner for Indus Waters, 25 February 2016**  
**No. WT(132)/(7531-A)/PCIW**



**MIRZA ASIF BAIG**  
PAKISTAN COMMISSIONER FOR INDUS WATERS  
Fax: +92 42 99212785  
Telephone: +92 42 99212788

GOVERNMENT OF PAKISTAN  
MINISTRY OF WATER & POWER  
OFFICE OF  
PAKISTAN COMMISSIONER FOR INDUS WATERS  
4-LYTTON ROAD, LAHORE-54000

No.WT(132)/(7531-A)/PCIW

Dated the 25<sup>th</sup> February 2016

My dear Vohra Sahib,

Kindly refer to your letter No.Y-11017/2/2015-IT/2169 dated 27<sup>th</sup> November 2015.

2. In my letter of 24 July 2015 (No. WT(132)/(7497-98-A)/PCIW), I invited the Government of Pakistan and the Government of India to appoint a Neutral Expert within a month's time to resolve specific issues, set forth in the Annexure to that letter, relating to design parameters of the Kishenganga HEP and Ratle HEP. Although those issues have been discussed within the Indus Waters Commission for several years, you responded on 21 August 2015 that my "unilateral intention to take the matter to Neutral Expert (NE) is premature." (Letter No. Y-11017/2/2-15-11/2155, Paragraph 2.) In addition, on the critical issue of pondage, you wrote, *inter alia*, that the "the principle of calculation of pondage in case of Ratle HEP and KHEP are same as the one raised before the Neutral Expert in case of Baglihar, thus falling within the same scope." (Paragraph 9). On this point, in my letter to you of 11 September 2015 (No. WT(132)/(7505-A)/PCIW), I responded that India's reliance upon the Neutral Expert's decision on pondage with respect to the Baglihar HEP was "invalid" because, pursuant to paragraph 470 of the Partial Award by the Court of Arbitration in the Kishenganga case, "[t]he effect of a neutral expert's determination is restricted to the elements of the design and operation of the specific hydro-electric plant considered by that Expert." (Paragraph 11.) Your letter of 13 October 2015 (No. Y-11017/2/2015-IT/2162) simply reiterated India's position, so I responded on 4 November 2015 by requesting that you "send to us the best configurations you can offer in response to our objections on the design parameters of Ratle and Kishenganga Hydroelectric Plants." (Letter No. WT(132)/(7513-A)/PCIW, paragraph 14.) You ignored this request in your letter of 27 November 2015 (No.Y-11017/2/2015-IT/2169).
3. In parallel, following up on my letter of 24 July 2015, the Pakistan Ministry of Foreign Affairs sent a Note Verbale to the High Commission of the Republic of India on 12 November 2015 (No. KA(II)-2/11/2015) inviting the Government of India to propose modalities for the appointment of a Neutral Expert within 10 days. In response, the High Commissioner of India, vide its Note Verbale of 23 November 2015 (No. ISL/112/1/2015), stated that the appointment of a Neutral Expert "appears premature."
4. As reflected in the above correspondence, the Government of India has rejected the invitation of 24 July 2015 to jointly appoint a Neutral Expert pursuant to Paragraph 4(b)(i) of Annexure F of the Indus Waters Treaty, and that invitation has lapsed and is hereby formally revoked.
5. It has become apparent from the correspondence since 24 July 2015 that the issues over the Kishenganga and Ratle HEPs are substantially, if not predominantly, legal in nature. You continue to insist, for instance, that the pondage calculation for the Kishenganga and Ratle HEPs should be resolved by reference to the Neutral Expert's pondage determination in the Baglihar

**Indus Waters Treaty Court of Arbitration**  
**Islamic Republic of Pakistan – Statement on Coordination and Division of Competence**  
**23 February 2023**

case, notwithstanding the fact that the Partial Award issued by the Court of Arbitration in the Kishenganga case (i) rejected the "best practices" interpretation of the Treaty that led to the Neutral Expert's final determination on pondage and other issues in the Baglihar case and (ii) declared that a Neutral Expert's determinations do not have general precedential value beyond the specific hydro-electric plant before him.

6. Similarly, although the Court of Arbitration in the Kishenganga case ruled that drawdown flushing is not permitted under the Treaty, India insists on maintaining a design with deep orifice spillways for sediment control in both the Kishenganga and Rattle HEPs' configurations that would not be effective unless water can be drawn down to or near the streambed.

7. Your positions on these and related issues, which Pakistan rejects, present legal questions of Treaty interpretation that will inevitably recur as India proceeds with other HEP projects on the Western Rivers. In accordance with Article IX(5) of the Treaty, and in the interests of efficiency, economy, and finality, the legal and technical aspects of the disputes over the Kishenganga and Rattle HEPs should therefore be resolved by a full Court of Arbitration, comprised of experts trained in both law and engineering, which can render an award of general applicability for the parties' future guidance, and—as the Court of Arbitration clarified — "binding on the general question presented" (Partial Award, ¶470).

8. Accordingly, pursuant to Article IX(3) of the Indus Waters Treaty, I ask you to insert India's position on the points of dispute set forth in the "Statement of Points of Dispute" annexed to this letter. If you fail to do so within two week's time, the Statement of Points of Dispute will be transmitted to the Governments of Pakistan and India for their consideration in accordance with Article IX(4) of the Indus Waters Treaty.

9. Pakistan specifically notes that India has been, and still is, proceeding at its own risk with regard to the construction of works at the Kishenganga and Rattle HEPs that are the subject of *bona fide* objections from Pakistan dating back to 2009 and 2012, respectively. Any further dilatory tactics by India to prevent the resolution of these disputes in accordance with Article IX of the Indus Waters Treaty will not be countenanced.

Assuring you of my best co-operation at all times and with kind regards.

Yours sincerely,

  
(MIRZA ASIF BAIG)

Encl: As above.

Shri K. Vohra,  
Commissioner for Indus Waters,  
Government of India,  
Ministry of Water Resources,  
River Development and Ganga Rejuvenation,  
Block 11, 8<sup>th</sup> Floor,  
C.G.O. Complex, Lodhi Road,  
New Delhi – 110003,  
INDIA.

Enclosure to letter No.WT(132)/(7531-A)/PCIW, dated February 25, 2016

Annexure

**STATEMENT OF POINTS OF DISPUTE**

Based on the positions held by India both at the Permanent Indus Commission and in bilateral epistolary exchanges and the information furnished by India relating to the designs of the Kishenganga and Ratle Hydroelectric Plants (HEPs), the following points of dispute have arisen:

**1. DISPUTES OVER THE KISHENGANGA HEP DESIGN**

(i) Pakistan is of the considered view that the Pondage of 7.55 Mm<sup>3</sup> (million cubic meters) provided in the design of the Kishenganga HEP exceeds the maximum Pondage permitted, which according to the Treaty is twice the Pondage required for Firm Power. As per the procedure specified in the Treaty, maximum Pondage permitted comes to 1 Mm<sup>3</sup> (0.77 Mm<sup>3</sup> to be exact). Thus the Pondage provided in the design is in contravention of Paragraph 8 (c) of Annexure D to the Treaty. Subsumed in this project-specific dispute is the more general question of what is the appropriate method under the Treaty for calculating maximum Pondage for Run of River HEPs on the Western Rivers. Pakistan considers that the method specified in Paragraph 8(c) of Annexure D to the Treaty requires India to account for Minimum Mean Discharge (MMD) constantly passing through the turbines for continuous generation of Firm Power (as defined in the Treaty), while inflows to the reservoir exhibit their natural variation pattern. In accordance with Paragraph 8(c), Pondage is calculated to insure that Firm Power is generated at all times, and then it may be as much as doubled to determine a 'maximum Pondage' value. A proper calculation of Pondage would result in raising the sill level of the intakes by about 4 meters (or 7 meters if an open surface intake configuration is used). Thus the intakes of the Plant turbines as provided in the design are not located at the highest level, in contravention of Paragraph 8(f) of Annexure D to the Treaty. This point of dispute presents questions that will inevitably recur as India proceeds with other HEP projects on the Western Rivers. We observe that, in addition to resolving the issue as to the Kishenganga project, the Court's award will be (a) of general applicability and (b) "binding on the general question presented" (Partial Award, ¶1470).

India does not agree with Pakistan's position.

(ii) Pakistan is of the considered view that outlets below the Dead Storage Level provided in the design of the Plant are in contravention of Paragraph 8(d) of Annexure D to the Treaty, which requires these to be of minimum size, and located at the highest level. India has proposed using a spillway as an outlet for sediment control with design discharge of 2000 cumecs and placed it deep in the reservoir with crest 20 meters below the Full Pond Level, which contravenes the criterion. Although the Court of Arbitration in

P  
A.

Page 1 of 3

the Kishenganga case ruled that drawdown flushing is not permitted under the Treaty, India has presented designs that can only be effective if drawdown flushing is contemplated. This dispute over the binding nature of the prior award of the Court of Arbitration presents a question that will inevitably recur as India proceeds with other HEP projects on the Western Rivers; therefore, the parties need a binding determination that, in addition to resolving the issue as to the Kishenganga project, is of general applicability for the same reasons discussed under Dispute 1(i) *above*.

India does not agree with Pakistan's position.

(iii) Pakistan is of the considered view that the design of the Plant does not conform to the design criterion specified in Paragraph 8(e) of Annexure D to the Treaty, which specifies that a gated spillway can only be provided if conditions at the site of the Plant make it necessary and, if this requirement is established, then the bottom level of the gates in normal closed position must be at the highest level consistent with sound and economical design and satisfactory construction and operation of the works. As mentioned above, India has provided a gated spillway in the design with bottom level of the gates in normal closed position 20 meters below the Full Pondage Level. Pakistan is of the view that the site conditions do not make it necessary to have a gated spillway and, even if a gated spillway is considered necessary, its crest level can be raised by about 9 meters. Pakistan, therefore, considers that the design of the spillway provided by India is in contravention of the Treaty. This dispute presents a question that will inevitably recur as India proceeds with other HEP projects on the Western Rivers; therefore, the parties need a binding determination that, in addition to resolving the issue as to the Kishenganga project, is of general applicability for the same reasons discussed under Dispute 1(i) *above*.

India does not agree with Pakistan's position.

## **2. DISPUTES OVER THE RATLE HEP DESIGN**

(i) Pakistan is of the considered view that 2 meters freeboard provided by India in the design of the Plant is excessive and makes the works themselves capable of raising artificially the water level in the Operating Pool above the Full Pondage Level specified in the design, making it in contravention of the criterion specified in Paragraph 8(a) of Annexure D to the Treaty.

India does not agree with Pakistan's position.

(ii) Pakistan is of the considered view that the Pondage of 23.86 Mm<sup>3</sup> (million cubic meters) provided in the design exceeds the maximum Pondage permitted, which according to the Treaty is twice the Pondage required for Firm Power. As per the method specified in the Treaty and explained under Dispute No. 1(1) relating to the Kishenganga HEP design *above*, the maximum Pondage permissible comes to 8.09 Mm<sup>3</sup>. Thus, the Pondage provided in the design is in contravention of Paragraph 8 (c) of Annexure D to

P.

Page 2 of 3

the Treaty. The reduction in Pondage would result in raising of the sill level of the intakes by about 8.8 meters (or 20 meters if an open surface intake configuration is used). Thus the intakes of the turbines of the Plant, as provided in the design, are not located at the highest level making these in contravention of Paragraph 8(f) of Annexure D to the Treaty.

India does not agree with Pakistan's position.

(iii) Pakistan is of the considered view that the outlets below the Dead Storage Level provided in the design of the Plant are in contravention of Paragraph 8(d) of Annexure D to the Treaty, which requires these to be of minimum size and located at the highest level. India has proposed a spillway configuration with five bays of deep orifice spillways and one bay of surface gated spillway for passage of 13,800 cumecs of design discharge, as outlets for sediment control. It is obvious that five orifices, each with a width of 10.75 m and height of 14.20 m, with crest 44 meters below the Full Pondage Level and having total discharging capacity of 10,000 cumecs cannot be termed as outlets of minimum size located at the highest level. Pakistan is of the considered view that outlets below the Dead Storage Level provided in the design of the Plant are in contravention of Paragraph 8(d) of Annexure D to the Treaty.

India does not agree with Pakistan's position.

(iv) Pakistan is of the considered view that the design of the Plant does not conform to the design criterion specified in Paragraph 8(e) of Annexure D to the Treaty, which specifies that a gated spillway, if found necessary, shall conform to the condition that the bottom level of the gates in normal closed position shall be at the highest level consistent with sound and economical design and satisfactory construction and operation of the works. As mentioned above, India has provided a gated spillway in the design with bottom level of the gates in normal closed position 44 meters below the Full Pondage Level. Pakistan considers that India can provide a surface gated spillway for passage of design flood with gates of about 20 meter height, which would result in raising the crest level of the spillways by about 24 meters. Pakistan, therefore, considers that the design of the spillway provided by India is in contravention of Paragraph 8(e) of the Treaty.

India does not agree with Pakistan's position.

P  
D \*\*\*\*\*

Page 3 of 3

**APPENDIX 2**

**Letter from the Indian Commissioner for Indus Waters, 21 August 2015**  
**No. Y-11017/2/2015-IT/2155**

*K. Vohra*  
Commissioner (Indus)



भारत सरकार  
GOVERNMENT OF INDIA  
जल संसाधन, नदी विकास और गंगा संरक्षण मंत्रालय  
MINISTRY OF WATER RESOURCES, RIVER  
DEVELOPMENT AND GANGA REJUVENATION  
BLOCK NO 11, 8TH FLOOR  
CGO COMPLEX, LODHI ROAD  
NEW DELHI 110003  
TEL/FAX 24361540

No.Y-11017/2/2015-IT/2155

Dated: 21<sup>st</sup> August, 2015

My dear Baig Sahib

Kindly refer to your letter No. WT (132)/(7496-A)/PCIW dated 24<sup>th</sup> July, 2015.

2. At the outset, I may mention that you have not given any specific technical basis for substantiating your objections as requested by me vide letter dated 16<sup>th</sup> July 2015. Pending the same, your unilateral intention to take the matter to Neutral Expert (NE) is premature. There remains ample scope of resolution within the Commission which has been highlighted by me in aforesaid letter. I regret that you have chosen to ignore the same. I would like to bring to your kind notice further facts related to matter given in the following paras.

3. You have mentioned about indication given by Pakistan in 2009 to take up issues relating to Kishenganga Hydroelectric Plant (KHEP) before a Neutral Expert (NE), except those which were submitted to Court of Arbitration (CoA). The fact that thereafter we could reach agreement on the issue of freeboard in case of Kishenganga fairly indicates that insistence of your side to take up these issues to the NE was premature.

4. The issue related to freeboard of KHEP was settled in the Commission as Pakistan side found justification in the freeboard provided for this project after discussions, which are duly mentioned at para 42 and 43 of the Record of 110<sup>th</sup> meeting of Permanent Indus Commission (PIC).

5. Your side handed over the alternate designs of Rattle HEP and KHEP during 110<sup>th</sup> meeting using ungated and surface gated spillway which may be acceptable to Pakistan side. Indian side examined the same and during the 111<sup>th</sup> meeting gave justification with technical basis regarding the non feasibility of the alternate configuration suggested by Pakistan side.

6. Further, during 110<sup>th</sup> meeting, I brought to your notice that it would not be appropriate to interpret that only the design provided by Pakistan conforms to Treaty provision. In respect of your contention regarding modification of design of KHEP in the light of Award of Court of Arbitration (CoA), please refer to the Para 33 of the Minutes of 111<sup>th</sup> meeting reproduced as below :

"ICIW further stated that most of the technical basis provided by Pakistan have been sketchy and on the basis of perception. Wherever the calculations have been provided by Pakistan side, India has amply demonstrated through correspondence and discussions the inherent flaws in the same. The ICOLD bulletin 115 does not differentiate between sluicing and flushing. Neither the Treaty nor the Court has imposed any restriction on placement of orifice. There has not been any literature which substantiates Pakistan sides view that orifice spillway can only be provided for drawdown flushing and not for sluicing. The restriction imposed by CoA is operational and India has given unequivocal assurance to abide by the same. India has right to manage the sediments within the means available and there is no provision in the Treaty which states orifice spillway cannot be provided by India. CoA has duly considered the orifice spillway configuration provided by India and has not objected to the same. India has adopted techno-economically sound design as per Treaty provisions duly considering all technical requirements including sluicing".

The design of KHEP and Rattle project is compliant with ruling of CoA, NE and Treaty provisions.

7. Further, justifications were given by Indian side in respect of KHEP design parameter during 111<sup>th</sup> meeting and you admitted that there may not be sufficient space for keeping sediment outlets below intake and you don't have objection on orifice spillway configuration per se but have objection on the depth at which they have been placed (para 65 of the record). Now your statement that the Indian side has failed to establish the "necessity" of having gated spillways on the basis of conditions at the sites of the plants is contradictory and beyond my comprehension. Please refer to my letter dated 16<sup>th</sup> July 2015 vide which I had requested you to provide technical basis for your contention that crest level of spillway can be raised by 9 m. However, the same is still missing in your letter. Therefore, the matter is required to be discussed in the next meeting of PIC.

8. Regarding your insistence on the zero freeboard in respect of Rattle HEP as proposed by you, I am of the opinion that there is a difference between what is acceptable academically and what needs to be provided, following the sound engineering practices. The technical basis for providing 2m Freeboard (which is bare minimum) has been provided by my side during 110<sup>th</sup> and 111<sup>th</sup> meeting of PIC. Moreover, with crest gate top at Full Pond Level (FPL) and FPL and MWL identical, there is no possibility to raise water level artificially. Therefore, the issue can be resolved amicably in the meeting of PIC.

9. Your extrapolation of Court's observation at para 8 of your above letter, which was actually made in context of admissibility of drawdown flushing, is not relevant to Pondage issue. Court has observed that "the Court does not see in Annexure F any indication that the Parties intended a neutral expert's determination to have a general precedential value beyond the scope of the particular matter before him" (emphasis supplied). You may appreciate that your present objections on the principle of calculation of pondage in case of Rattle HEP and KHEP are same as the one raised before the Neutral Expert in case of Baglihar, thus falling within the same scope. Indian side has always maintained that a neutral decision on the same scope obtained through Treaty-based dispute-resolution mechanism would eliminate repetitive examination of the same issue thereby serving as a template to achieve quicker and amicable resolution in the Commission itself in an expeditious manner.

10. Rejecting the approach suggested by your side in respect of Pondage, NE has also viewed that "in the context of the Treaty, the pondage volume should be calculated taking into account only the variations in load i.e. of the turbine discharge, and this, in accordance with the value of firm power fixed by the Treaty" (emphasis supplied). Further, it has been brought out by my side that the Treaty nowhere provides for determination of Pondage to meet flow variations around MMD as wrongly assumed by your side and such an assumption will render Paragraph 15 of Annexure D redundant. In fact, it was pointed out in my predecessor's letter dated September 11, 2013 and then in 109<sup>th</sup> meeting of the Commission that the approach suggested by Pakistan is highly subjective because your approach leads to weeks for which the Pondage comes out nearly zero and some weeks give as high as 20 MCM.

11. In respect of Rattle HEP, Indian side had brought out that the intake for this project is aligned at right angle to the flow and such low level sediment tunnels taking off from outlets below the power intake structure as proposed by Pakistan side will need major bends (nearly 90 degree) to be connected to river. This would lead to their choking in due course jeopardizing the safety of entire structure. The Pakistan side is only making a statement in this regard without any technical basis/calculations. Indian side is keen to further discuss your response with the supporting calculations, so that issue can be resolved amicably.

12. India is cognizant of her obligations under the Treaty. CoA has observed that optimal design and operation of a hydro-electric plant is that which can practically be achieved within the constraints imposed by the Treaty. In this regard it may be mentioned that CoA has duly considered the orifice spillway configuration provided by India and has not objected to the same. Further, you yourself have concluded that you do not have objection on orifice spillway but its depth which you consider not at highest level. However, instead of giving technical basis and calculations to support why you consider the same in Rattle HEP and Kishenganga HE Plant (KHEP) not at highest level, you have proposed alternate configuration. On the other hand, Indian side had furnished the technical basis in support of their design and placement of the orifice spillway during various meetings (refer records of 109<sup>th</sup>, 110<sup>th</sup> and 111<sup>th</sup> meeting). I am waiting for supporting calculations regarding your contention in this regard and look forward to discuss the same in the next meeting of Commission for amicable resolution.

13. I reiterate that India will scrupulously honour the Court's award. Necessary arrangements would be made for uninterrupted flow below the dam as per CoA ruling in first dispute. The Court's award on second dispute imposes operational restriction and does not require any design change. Therefore, your repeated assertion of design changes due to CoA Award is beyond my comprehension.

14. I feel that your insistence for taking the matter to NE is premature and again request that the technical basis and grounds for objection raised by your side as mentioned in my letter dated 16-07-2015 and above may be provided at the earliest for examination and the same can be discussed in the meeting of the Commission for amicable resolution.

**Indus Waters Treaty Court of Arbitration**  
**Islamic Republic of Pakistan – Statement on Coordination and Division of Competence**  
**23 February 2023**

15. Regarding your remark on Court's observations made in para 444 of its Partial Award, I reiterate the views of Indian side made in 108th and 111th meeting of the Commission. These observations were made by the Court in context of what it viewed as the efforts of the parties to establish priority rights over use of waters by constructing their projects first. This has never been India's intention. Indian side is keen to have a bilateral settlement of issues within the Commission.

16. I therefore propose a meeting of the Commission in last week of September 2015 or thereafter as per your convenience exclusively to discuss your objections on Raffle HEP and KHEP and I earnestly believe that Pakistan side will come up with the response on the observations made by me earlier and elucidated in this letter so as to resolve the issues within the Commission at the earliest in the spirit of goodwill and friendship.

Assuring you of my best cooperation at all times and with kind regards.

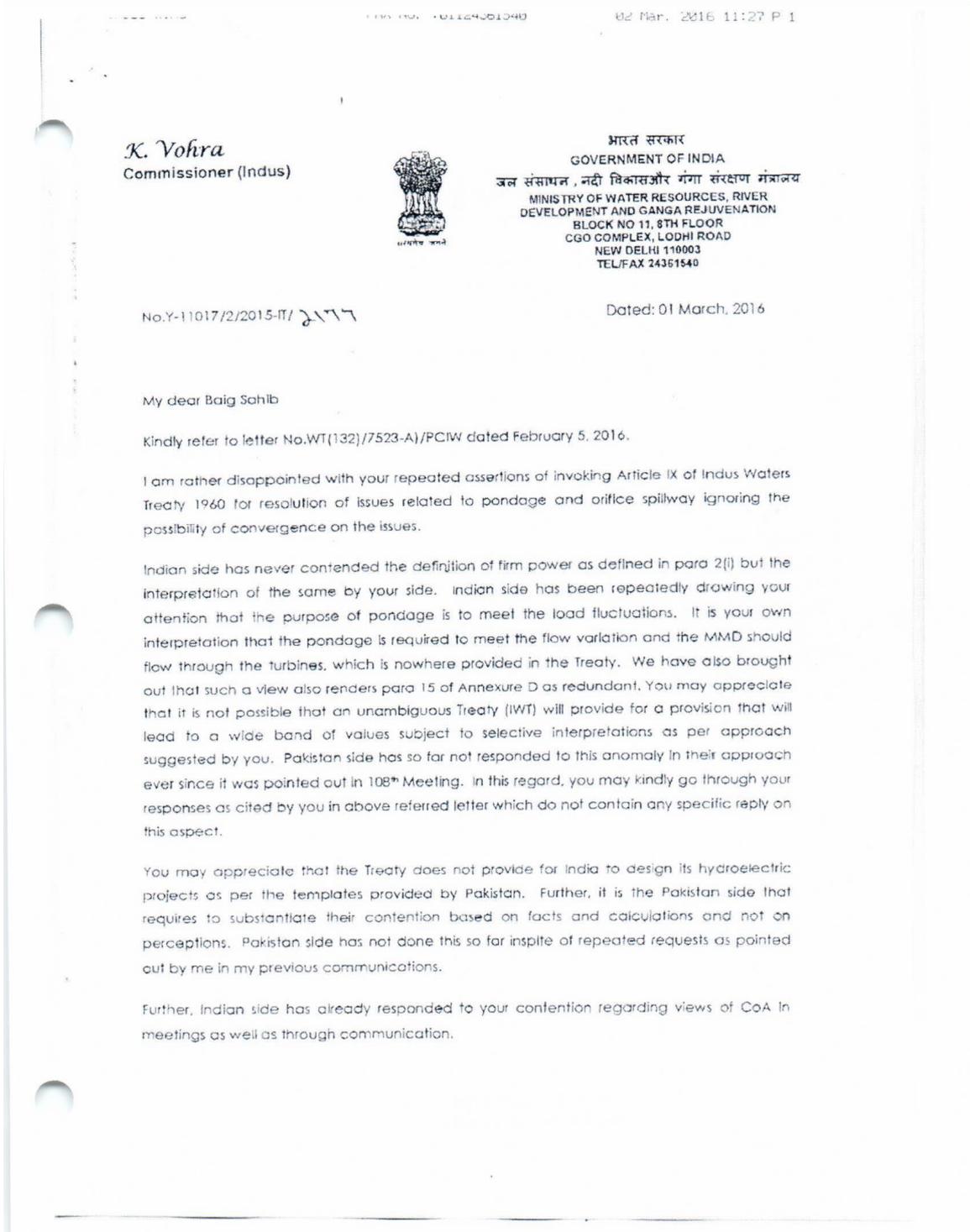
Yours sincerely,

  
(K. Vohra)

Mr. Mirza Asif Baig,  
Pakistan Commissioner for Indus Waters,  
Government of Pakistan,  
Building No. 2, Block No. 3,  
4 - Lytton Road,  
LAHORE, PAKISTAN 54000

जल संरक्षण - जीवन संरक्षण  
Conserve Water - Save Life

**APPENDIX 3**  
**Letter from the Indian Commissioner for Indus Waters, 1 March 2016**  
**No. Y-11017/2/2015-IT/2177**



**Indus Waters Treaty Court of Arbitration**  
**Islamic Republic of Pakistan – Statement on Coordination and Division of Competence**  
**23 February 2023**

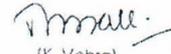
02 Mar. 2016 11:27 P 2

Nevertheless, my side is willing to discuss these issues as mentioned in my letter dated 29<sup>th</sup> Nov. 2015 for amicable resolution with an open mind and I request the same from your side.

I convey my earnest desire to have a bilateral settlement of issues within the Commission and reiterate my proposal for a meeting of the Commission in this regard so as to resolve the issues in the spirit of goodwill and friendship.

Assuring you of our best cooperation at all times and with kind regards.

Yours sincerely,

  
(K. Vohra)

**Mr. Mirza Asif Baig,**  
Pakistan Commissioner for Indus Waters,  
Government of Pakistan,  
Building No. 2, Block No. 3,  
4 – Lytton Road,  
LAHORE, PAKISTAN 54000

जल संरक्षण – जीवन संरक्षण  
Conserve Water – Save Life