

PCA Case No. 2023-01

IN THE MATTER OF AN ARBITRATION

-before-

THE COURT OF ARBITRATION CONSTITUTED
IN ACCORDANCE WITH THE INDUS WATERS TREATY 1960

-between-

THE ISLAMIC REPUBLIC OF PAKISTAN

-and-

THE REPUBLIC OF INDIA

CERTIFIED TRANSCRIPT
(HEARING ON COMPETENCE)

COURT OF ARBITRATION:

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

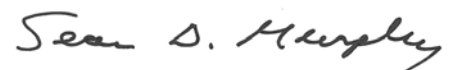
SECRETARIAT:

The Permanent Court of Arbitration

ON BEHALF OF THE COURT OF
ARBITRATION:

CERTIFIED PURSUANT
TO
PARAGRAPH 19 OF ANNEXURE G

12 May 2023



Professor Sean D. Murphy
Chairman

Arbitration pursuant to Article IX and Annexure G
of the Indus Waters Treaty 1960

Permanent Court of Arbitration
Peace Palace
The Hague
The Netherlands

Day 2
Hearing on Competence

Friday, 12th May 2023

Before:

PROFESSOR SEAN D MURPHY
HE JUDGE AWN AL-KHASAWNEH
DR DON BLACKMORE
MR JEFFREY P MINEAR
PROFESSOR WOUTER BUYTAERT

BETWEEN:

THE ISLAMIC REPUBLIC OF PAKISTAN

-and-

THE REPUBLIC OF INDIA

Certified pursuant to paragraph 19 of Annexure G

Professor Sean D Murphy
On behalf of the Court of Arbitration

Transcript produced by Trevor McGowan
Georgina Vaughn and Lisa Gulland

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THE REPUBLIC OF INDIA WAS NOT REPRESENTED

FOR THE PERMANENT COURT OF ARBITRATION

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Opening submissions on behalf of1
the Islamic Republic of Pakistan (continued)
 By Mr Fietta KC1
 By Sir Daniel Bethlehem KC16

1 Thursday, 12 May 2023
 2 (9.31 am)
 3 THE CHAIRMAN: Very good. I think we are reassembled.
 4 So we are continuing the opening submissions of the
 5 Government of Pakistan, and I believe this morning we
 6 will have presentation initially by Mr Fietta. So, sir,
 7 please proceed.
 8 Opening submissions on behalf of
 9 the Islamic Republic of Pakistan (continued)
 10 MR FIETTA: Thank you. Good morning, members of the Court.
 11 Good morning, everybody.
 12 I have three things I'd like to do, in no more than
 13 30 minutes. The first one I'll do straightaway is, just
 14 for the record, to point the Court to the exhibit: it's
 15 Exhibit P-139, which is the draft of the Treaty of 1959,
 16 subsequent to which the words "at the request of either
 17 Commissioner" were added into what became
 18 Article IX(2)(a). And the Court will remember that this
 19 was referenced by the Kishenganga Court at paragraph 479
 20 of its award.
 21 So that's for the record. I said I would point you
 22 to that.
 23 The second thing I want to do is answer one of the
 24 questions that we kept over from yesterday; others we
 25 will keep back to our closing. But the question that

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09:35 1 going to be my factual element.
 2 Legally, there is a second element to my response,
 3 which would provide a basis for the Court to adopt
 4 Article IX(5)(c) as the basis for its competence.
 5 Now, Pakistan's position, its primary position, was
 6 set out in its Request for Arbitration. And I'll quote
 7 paragraph 14, which said that:
 8 "... Pakistan invited India to resolve the Disputes
 9 by agreement as provided for by Article IX(4) of the
 10 Treaty. Inter-governmental discussions failed, however,
 11 to resolve the Disputes. Pakistan, therefore, has
 12 exercised its right to proceed as contemplated by
 13 Article IX(5)(b) of the Treaty."
 14 So the factual element of my response is that, while
 15 it is true that India attended the July 2016
 16 negotiations on a without-prejudice basis, the
 17 contemporaneous evidence around the meeting itself
 18 indicates that India's attendance was not without
 19 prejudice specifically to whether the meetings were to
 20 be conducted under paragraph (4). Rather, India's
 21 attendance was without prejudice to its position at that
 22 time that the differences under discussion could not be
 23 taken to a Court of Arbitration because they were
 24 technical issues which, on India's reading of the
 25 Treaty, could not be referred to the Court as disputes.

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09:32 1 was raised a couple of times yesterday about Article IX,
 2 paragraph (5)(c). I will try to address that question.
 3 And then the third thing I will do is complete my
 4 submission of yesterday with reference to the fifth
 5 objection of India.
 6 So moving to my second task, which is the
 7 Article IX(5)(c) question. Mr Minear asked yesterday,
 8 with respect to Exhibit P-37, about whether it would be
 9 permissible, potentially, if the Court were to accept
 10 India's point in P-37 and subsequently that the
 11 intergovernmental negotiation of July 2016 did not
 12 qualify under paragraph (4) of Article IX, if that
 13 position were accepted, would Article IX(5)(c) come into
 14 play, given that sufficient time had elapsed and
 15 negotiations had not taken place?
 16 That was at transcript page 140, lines 14 to 19
 17 where Mr Minear first raised that question, and it came
 18 up again at page 153, line 6 to page 154, line 13.
 19 We have on the screen, first of all,
 20 Articles IX(5)(b) and (c). There they are. There are
 21 two elements to Pakistan's response to this question.
 22 My first element is a factual element. If that
 23 element is accepted then, notwithstanding the
 24 without-prejudice argument of India, Article IX(5)(b)
 25 would be preserved as your basis for competence. That's

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09:36 1 See, for example, the way in which the without-prejudice
 2 position is expressed both in the minutes in July 2016
 3 and a prior note verbale.
 4 So we'll go first to the minutes (P-31),
 5 paragraph 2. The minutes record -- and these were
 6 signed by both parties:
 7 "The head of Pakistan delegation ...", et cetera.
 8 And then:
 9 "The head of Indian delegation stated that the
 10 present discussions were being held without prejudice to
 11 India's stand on inadmissibility of taking the matters
 12 to the Court of Arbitration ..."
 13 That was the way in which India expressed its
 14 without-prejudice position. And that echoed the
 15 statement made by India in a note verbale just before
 16 the meeting in accepting the invitation to attend the
 17 meeting under paragraph 4. That's at Exhibit P-29,
 18 which we can go to next: Exhibit P-29, paragraph 2.
 19 Now, this is interesting because in paragraph 2 the
 20 Government of India explicitly agrees with the offer of
 21 negotiations -- now, the offer of negotiations was very
 22 clearly pegged to paragraph 4 -- but then uses the same
 23 language:
 24 "... without prejudice to India's stand on
 25 inadmissibility of taking the matters to Court of

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09:38 1 Arbitration ..."
 2 Therefore, what India appeared to be saying at that
 3 time was that its attendance at the negotiations that
 4 had been proposed by Pakistan under paragraph (4) would
 5 not prejudice India's ability to argue in any subsequent
 6 Court proceeding that the differences between India and
 7 Pakistan did not constitute disputes under
 8 Article IX(2)(b) and would thus not fall within the
 9 competence of a Court. On such an interpretation of
 10 India's without-prejudice position, as it existed at the
 11 time of the July 2016 negotiations and prior to
 12 Pakistan's Request for Arbitration, the Court could
 13 still accept competence over the disputes under
 14 Article IX(5)(b) of the Treaty.
 15 Indeed, this interpretation is further supported by
 16 the fact that India's acceptance of Pakistan's
 17 invitation to negotiations followed the exact scheme of
 18 Article IX(4).
 19 We can go back to the note verbale of 28 April 2016
 20 (P-29). So we saw that this was an acceptance to
 21 an invitation under paragraph (4). If we go to the note
 22 verbale. At paragraph 2 there again, it's
 23 an acceptance, or they "agree with the offer of
 24 negotiation". Then at paragraph 4, India says:
 25 "The negotiations may be held between the

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09:39 1 representatives of two Governments without involvement
 2 of mediator ..."
 3 Now, that's explicitly adopting an issue raised by
 4 paragraph (4): whether or not there would be a mediator
 5 in attendance, or whether only representatives of the
 6 government. India addresses that point in its response
 7 ahead of the meeting. Again, this, we say, would
 8 support the submission that as a matter of fact, as at
 9 the time, the July 2016 meeting was deemed to be
 10 happening with reference to Article IX(4).
 11 In Pakistan's submission, it was only later, after
 12 Pakistan had referred the disputes to the Court, that
 13 for the first time India pivoted to refer specifically
 14 to Article IX(4) of the Treaty in connection with this
 15 meeting. Only then did India say that:
 16 "It cannot therefore be construed that [the
 17 July 2016 negotiations] were held under Article IX(4) of
 18 the Treaty ..."
 19 And this was the letter that Mr Minear referred to
 20 yesterday at P-37.
 21 This letter, importantly, is dated 6 September 2016,
 22 so well after the meetings and well after Pakistan had
 23 instituted the Court of Arbitration.
 24 In Pakistan's submission, such an ex-post change of
 25 position should not allow India now to deny

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09:41 1 retrospectively that the July 2016 meetings were moored
 2 to paragraph 4 of Article IX. If the Court accepted
 3 this analysis of the facts, then, notwithstanding
 4 India's stated without-prejudice position at that time,
 5 the Court could still accept competence over the
 6 disputes under Article IX(5)(b).
 7 But, coming to the second part of my response, the
 8 Court could alternatively find competence over the
 9 disputes under Article IX(5)(c).
 10 The first point here is to say that, notably, the
 11 requirements under the Treaty for the institution of
 12 a Court of Arbitration under paragraph (c) are the same
 13 as they are under paragraph (b), and Pakistan met those
 14 requirements.
 15 Most notably, if we look at paragraph 2 of
 16 Annexure G, the requirements for the institution of
 17 a Court of Arbitration under subparagraph (c) of IX(5)
 18 are identical to those applicable to institution of
 19 a Court under subparagraph (b): namely, there is
 20 a request containing a statement setting forth the
 21 nature of the dispute or claim to be submitted to
 22 arbitration, the nature of the relief sought and the
 23 names of the arbitrators appointed. That's under
 24 paragraph 2(b).
 25 Then under paragraph 3, the date on which the

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09:43 1 request is received -- namely 19 August 2016 -- is still
 2 the date to be deemed as the date of institution of
 3 a proceeding, just as it was, as we submitted yesterday,
 4 under subparagraph (b).
 5 Also, of course, Pakistan's arguments which I walked
 6 through yesterday under paragraphs (2) and (3) in
 7 particular of Article IX would still apply equally to
 8 any institution of proceedings under Article IX(5)(c).
 9 It's crystal-clear on the evidence that Pakistan did
 10 invite India to revoke the dispute via negotiations
 11 specifically with reference to paragraph (4) on
 12 29 March 2016. This is clear from the exhibit on the
 13 slide, Exhibit P-28, which cited subparagraph (4), as
 14 highlighted by my colleague.
 15 It's also clear that Pakistan's delegation -- just
 16 before travelling, the Ministry of Foreign Affairs
 17 confirmed that the delegation was travelling to Delhi
 18 for this meeting under the auspices of paragraph (4)
 19 of the Treaty. That's the note verbale of 1 July 2016, so
 20 less than two weeks before the meeting, at P-102. So
 21 you can see here the Ministry of Foreign Affairs, in its
 22 note verbale, saying that:
 23 "The Pakistan side [has] agreed to travel to
 24 India ... for [the] negotiations ... to resolve the
 25 points of dispute by agreement in terms of Article IX(4)

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09:44 1 of the ... Treaty."
 2 So that's clear. Pakistan's understanding of that
 3 meeting is clear, and it was communicated to India.
 4 That specific point was not denied.
 5 However, if, as posited in the question, the
 6 July 2016 negotiations that followed were, contrary to
 7 the primary submission of Pakistan, not in fact
 8 paragraph (4) negotiations, then the circumstances as at
 9 the date of Pakistan's Request for Arbitration and the
 10 institution of this Court would have been actually
 11 identical to the circumstances that existed in the
 12 Kishenganga case when that case was initiated. Namely,
 13 in that case Pakistan had invited India to engage in
 14 negotiations about the KHEP pursuant to paragraph (4),
 15 but India had refused to enter into negotiations under
 16 paragraph (4) of the Treaty at all, and therefore that
 17 proceeding in Kishenganga was based on subparagraph (c)
 18 of paragraph (5).
 19 If there were no paragraph (4) negotiations here,
 20 based on India's position, then in effect India would
 21 similarly have refused any negotiations at all, as it
 22 had before Kishenganga, and (5)(c) could apply.
 23 There are four self-standing requirements or
 24 elements to the establishment of a Court under
 25 paragraph (c). They are:

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09:46 1 First, the making of a request -- the text is on the
 2 slide. First, there should be a request for the
 3 establishment of a Court. That was plainly done here.
 4 Second, the requesting party must have issued
 5 an invitation to enter into negotiations. As we've seen
 6 at [Exhibit] P-28, Pakistan squarely did that with
 7 reference to paragraph (4).
 8 Third, one month must have expired following the
 9 receipt by India of that invitation. This is plainly
 10 the case here, because more than one month passed
 11 between the invitation on 29 March 2016 and the RfA on
 12 19 August.
 13 And fourthly, the requesting party must have come to
 14 the conclusion that the other government is unduly
 15 delaying the negotiations. That's the fourth element.
 16 As a matter of fact, the record shows that the
 17 fourth element was also met, because Pakistan had come
 18 to such a conclusion by 19 August 2016. And we can see
 19 this again looking at the minutes of the July meeting
 20 (P-31), where Pakistan made a number of points that go
 21 to this in the minute. They are at paragraphs 6, 7
 22 and 8.
 23 At paragraph 6:
 24 "Pakistan stated that extensive discussions on all
 25 aspects of the Points of Dispute have been held on

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09:48 1 multiple occasions over a long period of time and
 2 another round is unlikely to lead to any convergence."
 3 Paragraph 7:
 4 "Pakistan reiterated its stance that the broad
 5 divergence even after various rounds of discussion is
 6 unlikely to be bridged in another meeting."
 7 And at paragraph 8, it emphasised:
 8 "... the urgent importance of resolving all
 9 outstanding disputes ... through referral to
 10 an impartial forum as provided [by] the ... Treaty ..."
 11 This can be read as Pakistan coming to the
 12 conclusion that India was unduly delaying the
 13 negotiations for the purposes of Article IX(c), because
 14 after, as it said, "various rounds of discussion", it
 15 was becoming exasperated with India's conduct, including
 16 India's long-standing delays and obfuscation. And the
 17 urgency of the situation -- which is important, and
 18 communicated there -- meant that even a short delay
 19 could be critical. This made further delays in
 20 resolving the disputes particularly intolerable,
 21 therefore, to Pakistan by this juncture.
 22 In the scenario posited by the question, Pakistan's
 23 conclusion by that time that India was unduly delaying
 24 the negotiations would be even stronger, because in that
 25 scenario the negotiations under paragraph (4) would not

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09:49 1 even have commenced, nearly five months after Pakistan's
 2 initial invitation, by September or by August. In
 3 effect, as in Kishenganga, India would have refused to
 4 enter into negotiations, as I said.
 5 Thus, on the facts as I've described, the fourth
 6 element under [paragraph] (5)(c) would plainly be met.
 7 And accordingly, Pakistan could have requested
 8 establishment of a Court of Arbitration under
 9 paragraph (5)(c).
 10 In any event, regardless of Pakistan's arguments,
 11 the Court would be fully entitled, sua sponte, to base
 12 any decision of competence on a finding that it has been
 13 established under paragraph (5)(c). Paragraph 16 of
 14 Annexure G, after all, provides the Court alone with
 15 competence to decide on its own competence. It will do
 16 so based on its assessment of the facts, its assessment
 17 of the evidence.
 18 The evidence on the record shows that each of the
 19 four elements of paragraph (5)(c) were met, as a matter
 20 of fact, as at the date of Pakistan's RfA, and
 21 particularly that they would have been met in the
 22 scenario set by the question. This was in a situation,
 23 of course, where [Article] IX(4) negotiations would be
 24 deemed never to have taken place.
 25 So we say that the Court could reach a decision that

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09:50 1 it has competence to proceed on the basis of the facts
 2 and the evidence on the record, albeit on a legal
 3 approach under the Treaty -- that is,
 4 paragraph (5)(c) -- that has not been presented in the
 5 RfA. This would be entirely legitimate.
 6 That is our answer to that question. If there's any
 7 follow-up, I'm happy to take it at this point.
 8 MR MINEAR: Mr Fietta, thank you for that very comprehensive
 9 discussion.
 10 MR FIETTA: Thank you. (Pause)
 11 So my final submission relates to India's fifth
 12 objection. I won't be using any slides for this one,
 13 and I will be brief.
 14 This was described, this objection, in Pakistan's
 15 Response as an objection that the Court has been
 16 illegally constituted and is not competent to rule on
 17 its jurisdiction and competence. We have addressed
 18 aspects of this objection already, of course.
 19 The first point to make is that India has
 20 manufactured its fifth objection out of its own
 21 decisions and conduct. India has chosen not to appoint
 22 its two arbitrators, and thus to use that as an argument
 23 that there has been no proper constitution in part of
 24 the Court, and it's done this despite repeated
 25 invitations to do so.

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09:53 1 India has, to date, chosen not to appear at any
 2 proceedings before this Court, and to forgo the multiple
 3 opportunities to provide written submissions. India has
 4 chosen to declare repeatedly that it does not accept the
 5 validity of the Court, which it describes as "illegal".
 6 As a matter of law, none of this is relevant to the
 7 constitution of the Court or its competence. Competence
 8 and jurisdiction in international proceedings are
 9 regulated by consent. In proceedings like this, under
 10 a Treaty which establishes standing consent between the
 11 parties to binding dispute resolution, India's consent
 12 is expressed through its signature and ratification of
 13 the Treaty.
 14 As we have seen, an integral part of that consent
 15 relates to Pakistan's right unilaterally to refer
 16 certain disputes to Courts of Arbitration; or at least
 17 all disputes, where the requirements are met. India
 18 cannot undo that consent simply because it does not like
 19 the fact that Pakistan has referred the present disputes
 20 to a Court of Arbitration; just as, for example, the
 21 People's Republic of China could not undo the consent it
 22 had given, through its signature and ratification of
 23 UNCLOS, to the Philippines' referral of the South China
 24 Sea disputes to an UNCLOS tribunal.
 25 Unfortunately, there is a growing number of examples

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09:55 1 in international dispute resolution where recalcitrant
 2 states have chosen not to appear to argue their
 3 objections on competence and jurisdiction, falling back
 4 instead on putative grievances about the legitimacy of
 5 the forum. But that has not prevented those cases from
 6 proceeding.
 7 So long as the Court has been duly constituted and
 8 has competence under the Treaty, the Treaty mandates
 9 that it must resolve the disputes referred to it, and
 10 that its award will be final and binding on both India
 11 and Pakistan.
 12 On the question of constitution, Pakistan explains,
 13 at paragraphs 263 to 268 of its Response, that the Court
 14 has been properly constituted in accordance with the
 15 Treaty. Importantly, and unsurprisingly, Annex G allows
 16 for the constitution of a Court of five members in
 17 circumstances where a recalcitrant party refuses to
 18 engage. The Court has not asked any questions about
 19 this issue, and I will not elaborate on it further at
 20 this point.
 21 As for the question of competence itself, Pakistan
 22 has explained in depth in its Response, and again
 23 yesterday, why the Court has competence to resolve the
 24 disputes referred to it. And of course the Court can
 25 and must decide questions relating to its own

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09:56 1 competence, as we have explained. This inherent aspect
 2 of the Court's own competence, the
 3 competence-competence, was confirmed at paragraph 471 of
 4 the partial award in Kishenganga (PLA-3).
 5 As multiple courts and tribunals in equivalent
 6 situations have observed, without the principle of
 7 competence-competence, any form of third-party decision
 8 in international adjudication could be paralysed by
 9 a recalcitrant party which challenged jurisdiction and
 10 refused to appear.
 11 That closes my submission. At this point, unless
 12 there are further questions, I will hand over to
 13 Sir Daniel Bethlehem, who will finish the opening
 14 submission of Pakistan.
 15 THE CHAIRMAN: Thank you very much, Mr Fietta. We have no
 16 further questions for you.
 17 Sir Daniel, the floor is yours whenever you're
 18 ready.
 19 SIR DANIEL: Mr Chairman, members of the Court, yesterday we
 20 thought we might be ahead of ourselves; now we find that
 21 we're fighting for time. So we're very grateful for the
 22 brief extension that you gave us this morning.
 23 My submissions will close Pakistan's first-round
 24 arguments and responses. My focus is going to be
 25 principally on the written questions that we've not yet

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09:58 1 addressed, or fully addressed, and I propose to do so
 2 under two headings, grouping the questions.
 3 First, addressing questions that go principally to
 4 issues of treaty interpretation, and in particular those
 5 are questions 1, 2, 3, 23, 28 and 36.
 6 Second, to go to questions that address way-forward
 7 issues -- of course, those also involve questions of
 8 interpretation, but they are usefully grouped
 9 together -- both the issue of whether there is a way
 10 forward under the Treaty and, if so, what that might be.
 11 And under this heading, I will address questions 26, 31,
 12 32 and 35.
 13 Mr Chairman, members of the Court, the one document
 14 that I would like to take you to at some point during
 15 the course of my submissions will be the Treaty itself.
 16 So if you've got your hard copies available, that will
 17 be helpful.
 18 As I work my way through the issues, I will also
 19 address a small number of the oral questions that arose
 20 yesterday. For reasons of time, both in these
 21 submissions but also our preparation time, we won't get
 22 to all of the questions. We have deferred most of the
 23 oral questions to tomorrow, but there are a number which
 24 I think can be usefully wrapped up in my submissions
 25 now.

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09:59 1 So I come first to questions that raise issues of
 2 treaty interpretation. Although I hesitate to make this
 3 point on the record, but in true Julie Andrews style,
 4 I'm going to start at the very beginning, which is
 5 a very good place to start.
 6 By question 1, the Court asks who is competent under
 7 the Treaty to determine, respectively, the competence of
 8 the Court and the competence of the Neutral Expert.
 9 Mr Fietta has already addressed the fifth objection, the
 10 compétence de la compétence objection, in terms of
 11 India's objection and our response. What I'd like to do
 12 retrospectively is wrap that up in the Treaty
 13 interpretation point.
 14 As the question anticipates, the starting point is
 15 the Treaty itself. As regards the Court, the issue is
 16 clear. In paragraph 16 of Annexure G -- I don't propose
 17 to take you to that now; that's just a brief
 18 provision -- but in paragraph 16 of Annexure G, this
 19 issue is addressed expressly:
 20 "Subject to the provisions of this Treaty and except
 21 as the Parties may otherwise agree, the Court shall
 22 decide all questions relating to its competence and
 23 shall determine its procedure ..."
 24 Now, the parties have not otherwise agreed. And
 25 insofar as the phrase "Subject to the provisions of

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10:01 1 [the] Treaty" qualifies the Court's competence to
 2 decide, there are a number of provisions that will be
 3 relevant.
 4 Most of all, a sufficiency of arbitrators and
 5 umpires must have been properly appointed; at least
 6 presumptively properly appointed. Pursuant to
 7 paragraph 11 of Annexure G, before the Court will be
 8 competent to transact business, there must be at least
 9 three umpires and two of the arbitrators present. So of
 10 course a truncated Court, for example composed of only
 11 four members, would not be competent either to transact
 12 business or to determine its own competence.
 13 But fundamentally, the Court is expressly imbued
 14 with a compétence de la compétence authority under
 15 paragraph 16 of Annexure G.
 16 I also note that this compétence de la compétence
 17 principle is a long-standing and very well settled
 18 principle of international law. I give you just one
 19 example, and I don't take you to any text but just cite
 20 it for the record: the International Court of Justice in
 21 the Nottebohm preliminary objections judgment of
 22 18 November 1953, which was almost contemporaneous with
 23 the conclusion of the Treaty a few years later, so it
 24 would have perhaps been in the mind of the legal
 25 drafters.

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10:02 1 The Court there, referencing back to the Alabama
 2 Claims arbitration that ended in 1872, [described] the
 3 compétence de la compétence provision as:
 4 "... a rule consistently accepted by general
 5 international law ..."
 6 And the citation there is PLA-24 at page 12.
 7 So paragraph 16 of Annexure G is simply a Treaty
 8 iteration of a wider and very robust principle of
 9 international dispute settlement: that a tribunal is
 10 competent to determine its own competence.
 11 Mr Chairman, members of the Court, this said, your
 12 question may be scratching at something more and
 13 something different; I don't know, but let me speculate.
 14 Perhaps you are positing the age-old enquiry of "Who
 15 guards the guards?", which has long exercised legal
 16 philosophers.
 17 An answer widely expressed often quotes
 18 Jeremy Bentham in response to this, to the effect that
 19 publicity is the very soul of justice. In other words,
 20 if I can interpolate for the purposes of this case, the
 21 guardian of legitimacy, in terms of your competence
 22 decision as we think about the "Who guards the guards?"
 23 question, will be a transparent and a fully reasoned
 24 process.
 25 This takes me back to my opening submissions

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10:04 1 yesterday, in which I expressed the importance, at least
 2 from Pakistan's perspective, that attaches to a full and
 3 complete reasoning from the Court in your decision on
 4 competence to come.
 5 In the context of Court of Arbitration proceedings
 6 that a party to the Treaty may claim are tainted by
 7 fundamental illegality, there may also be other
 8 backstops. And I'm not going to speculate on the
 9 hypothetical about all the other backstops that there
 10 may be, but I will address one.
 11 If the parties to the Treaty cannot themselves
 12 agree, the Bank -- which is a party to the Treaty in its
 13 own right, in respect of Annexures F and G -- is
 14 competent to request advisory opinions of the
 15 International Court of Justice pursuant to Article VIII
 16 of the Bank's specialised agency agreement with the
 17 United Nations. So if there were to be a concern about
 18 ultimate legality, if you like, the Bank could no doubt
 19 be prevailed upon, including by the Court, to request
 20 an advisory opinion on the matter.
 21 This possibility was indeed mooted by the Bank
 22 itself at some point during the pause. Pakistan engaged
 23 with the Bank, and was ready and willing to entertain
 24 an advisory opinion request. We understand that India
 25 strenuously objected.

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10:05 1 I should say very clearly and affirmatively for the
 2 record that we don't urge you to go to the Bank and try
 3 and prevail upon the Bank to request an advisory
 4 opinion. We don't think that that is necessary. But
 5 I am trying to put my arms around the "Who guards the
 6 guards?" point.
 7 As regards the scope of the Court's competence --
 8 and this is going to be relevant for looking at the
 9 competence in respect of the Neutral Expert -- but as
 10 regards the scope of the Court's competence, once the
 11 Court's competence is established, following the
 12 language of Article IX(1) of the Treaty, this extends
 13 to:
 14 "Any question which arises between the Parties
 15 concerning the interpretation or application of this
 16 Treaty or the existence of any fact which, if
 17 established, might constitute a breach of this
 18 Treaty ..."
 19 In other words, the scope of the Court's competence
 20 is coextensive when it comes to these issues of
 21 interpretation and application: it is coextensive with
 22 the competence of the Commission itself. The competence
 23 of the Court is not constrained *ratione materiae*. Its
 24 field of potential enquiry is the Treaty itself in all
 25 of its aspects. There are no dark reaches of the Treaty

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10:07 1 to which a Court of Arbitration cannot get if it is
 2 properly seized of a dispute.
 3 And this is important when we come to the issue of
 4 the competence of the Neutral Expert, where the legal
 5 framework and the issues are very different.
 6 The competence of a Neutral Expert under the Treaty,
 7 as we know well, is tightly constrained. He or she can
 8 putatively only address the 23 questions itemised in
 9 paragraph 1 of Annexure F. These do not encompass the
 10 Treaty as a whole. A Neutral Expert is not competent,
 11 for example, to render an interpretation of Article IX.
 12 Those issues do not come within the scope of Part 1 of
 13 Annexure F.
 14 There is no *compétence de la compétence* provision in
 15 Annexure F which is akin to paragraph 16 of Annexure G.
 16 That must be through design by a controlling mind,
 17 because these issues were addressed in tandem. The
 18 Treaty does not, therefore, presumptively accord
 19 a Neutral Expert competence to determine his or her own
 20 competence, save only in one respect, we would say. And
 21 this arises under paragraph 7 of Annexure F read
 22 together with Article IX(2)(b).
 23 I don't propose to take you to those provisions just
 24 at the moment, but I will talk you to them a little bit
 25 later and walk you through those provisions. So my

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10:08 1 purpose here is just to make the broader point.
 2 These provisions, paragraph 7 of Annexure F and
 3 Article IX(2)(b), contemplate a preliminary procedure by
 4 a Neutral Expert to decide whether a matter
 5 characterised as a difference falls within Part 1 of
 6 Annexure F. This is, in effect, a competence
 7 determination, but it is one that does not and cannot go
 8 to issues of the validity of the appointment of the
 9 Neutral Expert. It goes, rather, to the Neutral
 10 Expert's competence to address particular issues.
 11 So this leaves the question of who, if anyone, is
 12 competent to determine the competence writ large of
 13 a Neutral Expert. And in Pakistan's submission, it can
 14 only be a Court of Arbitration that can do so, as it is
 15 only a Court that can address questions concerning the
 16 interpretation or application of the Treaty.
 17 This appreciation is underpinned, we say, by
 18 paragraph 13 of Annexure F. And again, I'm going to
 19 take you to that a little bit later; I don't need to ask
 20 you to turn it up now. But paragraph 13 of Annexure F
 21 provides that if any question arises out of a decision
 22 of a Neutral Expert that is not within his competence,
 23 this:
 24 "... shall ... be settled in accordance with the
 25 [procedures] of Article IX(3), (4) and (5)."

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10:10 1 Of which the Court is the backstop. And I will come
2 back to this point in more detail.
3 I also note, Mr Chairman and members of the Court,
4 that in Pakistan's view, this Court -- you -- are
5 competent to address the validity of the appointment of
6 this Neutral Expert, and his purported seisin by India
7 pursuant to India's Neutral Expert Request. The matter
8 need not -- and, we say, should not -- be referred back
9 to the Commission to work its way back through the
10 Article IX paragraphs (3) to (5) process.
11 The legal basis of this Court's competence to
12 address the issue is that the issue of the Neutral
13 Expert's competence is an ancillary or incidental
14 question to the task with which you are faced. In other
15 words, it is a question the resolution of which is
16 necessary for purposes of the determination of the
17 question of which you are seised pursuant to Pakistan's
18 Request for Arbitration.
19 Just to elaborate upon that briefly, there is
20 a binary dimension to the question of your competence,
21 because your competence is linked inextricably to
22 an assessment of whether the Neutral Expert was seised
23 first in time. So you have to get to that issue. So
24 the determination of the Neutral Expert's appointment is
25 ancillary to the competence enquiry with which you are

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10:11 1 faced.
2 I should say, Mr Chairman and members of the Court,
3 that there is jurisprudence in support. I don't propose
4 to get to it now. If it's an issue that you would like
5 me to unpack a little bit more, I would invite
6 a question from you at 3 o'clock and we'll address it
7 further tomorrow. But the ancillary incidental point is
8 a point that has been addressed in case law.
9 So I come next to question 2, which I can deal with
10 briefly. This asks whether it is consistent for India
11 to accept the principle of compétence de la compétence,
12 but simultaneously assert that it may determine whether
13 the Court is duly constituted.
14 The short and, I expect, unsurprising answer to this
15 question is that from Pakistan's perspective, it is
16 self-evidently not consistent for India to adopt two
17 such contradictory postures simultaneously. To do so is
18 or would be self-serving and unprincipled.
19 But I would like to be fair to India from this bar.
20 It is not clear to us that India would accept the
21 premise of the question, as India seems to take the view
22 that there is a potentially antecedent question to any
23 compétence de la compétence enquiry: namely, whether the
24 constitution of the Court passes even the most basic
25 hurdle of legitimacy so as to enable it to properly

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10:13 1 undertake a compétence de la compétence enquiry. But,
2 Mr Chairman, members of the Court, that's the "Who
3 guards the guards?" question, which I've already
4 addressed, and I don't propose to say anything more
5 about it.
6 So I then come to question 3, which I can also,
7 I think, deal with quite quickly. By this question the
8 Court enquires whether the non-appearance of a party to
9 proceedings can deprive the Court, or indeed the Neutral
10 Expert, of competence. Mr Fietta has, just a few
11 moments ago, sort of already addressed this again.
12 I just want to wrap this up in the context of Treaty
13 interpretation, rather than only India's objection.
14 The short answer to the question of non-appearance
15 is that non-appearance cannot deprive the Court, or
16 indeed the Neutral Expert, of competence to proceed.
17 And there is a clear and robust jurisprudential thread
18 that affirms the principle that the non-appearance of
19 a party to proceedings cannot prevent the adjudicative
20 body from exercising its powers.
21 I only cite to you one case that is on the record,
22 which is the Nicaragua judgment of the International
23 Court of Justice, which is at PLA-18, at paragraphs 27
24 to 28. That's on the record.
25 There are lots of other cases that are not on the

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10:14 1 record. We consider that, in line with well settled
2 international practice, you can take judicial notice of
3 them, so I mention just two. There is China's
4 non-appearance in the ad hoc UNCLOS -- law of the sea --
5 Annex VII arbitration in the South China Sea
6 arbitration. There is also Russia's non-appearance
7 before the International Tribunal for the Law of the Sea
8 in the Arctic Sunrise case at the provisional measures
9 phase. And there are very many more. So this is
10 a robust and very well-settled principle.
11 Now, addressing the issue from the perspective of
12 the Treaty -- because we've got guidance on this from
13 the perspective of the Treaty as well, which Mr Fietta
14 sort of hinted at but perhaps didn't unpack. I think
15 I don't need to sort of unpack it fully but just to give
16 you one or two aspects of the Treaty which illustrate
17 quite clearly that the Treaty, on this point, does in
18 fact indeed contemplate the possibility of
19 non-appearance by one party.
20 For example, paragraph 9 of Annexure G, which deals
21 with the drawing of lots, caters for the possibility
22 that one party doesn't appear.
23 The most important provision is paragraph 11 of
24 Annexure G, which we know well, which provides that the
25 Court:

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10:16 1 "... shall be competent to transact business ...
 2 when all the three umpires and at least two [of the]
 3 arbitrators are present."
 4 This is the situation that we face at present. It's
 5 expressly contemplated in the Treaty. There is no issue
 6 of the non-appearance of the two arbitrators whom India
 7 may have appointed.
 8 Then there's paragraph 23 of Annexure G, which
 9 provides that an award signed by four or more members of
 10 the Court shall be an award of the Court.
 11 So there is clearly an express contemplation in the
 12 Treaty itself of non-appearance.
 13 Now, with apologies for that rapid run through
 14 questions 1 to 3, I'm going to come on to question 23
 15 and its related impact on a number of other questions.
 16 And this is a question which is particularly important.
 17 I think Ms Rees-Evans yesterday anticipated that I would
 18 get to it; I am now going to get to it. It is quite
 19 a detailed and intricate series of issues that I'd like
 20 to put before you.
 21 So question 23 observes that the Kishenganga Court
 22 did not address the consequences of a party requesting
 23 the appointment of a Neutral Expert either before or
 24 after arbitration proceedings have been instituted, and
 25 then you enquire of us whether the Treaty addresses,

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10:17 1 expressly or by implication, how a Court should proceed
 2 when a Neutral Expert has also been appointed. So this
 3 is the question, question 23, which goes to the heart of
 4 the matter with which you are engaged.
 5 Mr Chairman, members of the Court, before I respond
 6 to the question directly, I would like to clear away
 7 a number of, I think, if not uncontroversial points but
 8 a number of preliminary points, and then I'll come to my
 9 response to question [23] directly.
 10 So the first of the preliminary points is that the
 11 Treaty's settlement architecture, Article IX and
 12 Annexures F and G, do not contemplate parallel
 13 proceedings. This was my fork-in-the-road variable
 14 geometry point yesterday.
 15 Mr Minear, this said, I am going to come back right
 16 at the end of my submissions to your observation about
 17 good faith parallel proceedings that you raised with
 18 Mr Fietta right at the end of the day. So I will get to
 19 it. That's the blinking light, if you'd like, at the
 20 bottom of the proposition that I've just made.
 21 The second of my preliminary points -- and this is
 22 a rather more complex point that has to be unpacked
 23 a little -- the second of my preliminary points is that
 24 the Treaty provides absolute clarity -- absolute
 25 clarity -- on when Court proceedings are deemed to have

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10:19 1 been instituted. We know that, pursuant to paragraph 3
 2 of Annexure G, this is the date on which the Request for
 3 Arbitration is transmitted to the other party:
 4 paragraph 3 says that. So for us, for you, we know that
 5 it is 19 August 2016.
 6 Now, there is no corresponding clarity about when
 7 the Neutral Expert proceedings are deemed to have been
 8 commenced. Mr Fietta touched upon this issue yesterday
 9 in his submissions on Article IX(6), but there is more
 10 to be said on the point; in particular in the light,
 11 Mr Chairman, of your concluding question yesterday to
 12 Mr Fietta about whether the fixing of the
 13 Neutral Expert's terms of retainer is the right point of
 14 crystallisation at the start of the Neutral Expert
 15 process. And this is also an issue that is raised by
 16 question 28. So questions 23 and 28 come together here.
 17 Mr Chairman, members of the Court, before I go on
 18 to, as it were, sort of lift the veil on our thinking --
 19 and you'll recall that our thinking says: terms of
 20 retainer is the point of crystallisation. Before I go
 21 on to explain why we got to where we got to, let me just
 22 say again for the record -- and I think that this is
 23 a point that I've hinted at in the first meeting, in my
 24 opening submissions yesterday and so on -- we accept
 25 unreservedly that there are some very, very difficult

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10:20 1 questions of interpretation here, and that the Treaty is
 2 not always a model of clarity on some of these points.
 3 At the end of the day, a conclusion has to be reached.
 4 And I want to take you through the thinking that led us
 5 to the point of the retainer, the fixing of the terms of
 6 retainer conclusion.
 7 So there are a number of possible points at which it
 8 might be said that a Neutral Expert proceeding should be
 9 deemed to have been commenced. One point may be when
 10 the Neutral Expert Request is made. But this raises the
 11 question of exactly when that is, given both that
 12 an expression of intention to request a Neutral Expert
 13 is manifestly, under the Treaty, not a request for the
 14 appointment of a Neutral Expert.
 15 Mr Chairman, I am not going to take the detour here
 16 to address your question yesterday about: where do we
 17 get the point that intention to request is not a request
 18 itself? The Court in Kishenganga said that. In short,
 19 it's in paragraph (5)(b) of Annexure G. But I'll come
 20 back to that, I think, tomorrow.
 21 So one possibility is that the commencement of the
 22 Neutral Expert proceedings may be deemed to have taken
 23 place at the point at which the Neutral Expert request
 24 is made. But this raises the possibility of when that
 25 is, the space between the declaration of the intention

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10:22 1 to request and the actual request.
 2 There is also in the Treaty the issue of default
 3 mechanisms for the appointment of a Neutral Expert under
 4 paragraph (4). And both of these aspects -- the default
 5 mechanisms and when exactly the request for a Neutral
 6 Expert appointment is made -- have the potential to
 7 introduce dispute into the process of when the
 8 proceedings commenced, unlike under paragraph 3 of
 9 Annexure G.
 10 It is no doubt for this reason that Annexure F
 11 contains no equivalent deemed date of institution
 12 principle akin to that which is found in paragraph 3 of
 13 Annexure G. It cannot be that this was just overlooked,
 14 because it's there in Annexure G but it's not there in
 15 Annexure F. So it cannot be, we say, under the Treaty,
 16 the date of the request.
 17 So a second possibility for the commencement date
 18 for the Neutral Expert process might be said to be the
 19 date on which the Neutral Expert is actually appointed.
 20 I say candidly to you: this has some attractions,
 21 because the date of actual appointment will invariably
 22 be on a date certain: we will know when the Neutral
 23 Expert is appointed.
 24 But it stumbles, potentially at least -- and I'm, as
 25 it were, sort of revealing for you the way the sausage

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10:23 1 is made, the way that we got to our different
 2 conclusion -- so it stumbles, potentially, in the face
 3 of the express terms of Article IX(6), because
 4 Article IX(6) says explicitly that the Neutral Expert's
 5 dispositive decision-making authority only operates from
 6 the point at which a difference "is being dealt with" by
 7 a Neutral Expert.
 8 Now, a Neutral Expert cannot deal with a difference
 9 until his or her terms of retainer are fixed. The date
 10 of the appointment of a Neutral Expert may therefore not
 11 be the appropriate date for the date of the deemed
 12 institution of the proceedings.
 13 There is also a textual point to be made here. The
 14 point of request and the point of appointment of
 15 a Neutral Expert are expressly referred to elsewhere in
 16 the Treaty: notably, in paragraphs 4 and 5 of
 17 Annexure F. And it follows from this that if the
 18 drafters had intended either of these two dates -- the
 19 date of request or the date of appointment -- to be the
 20 point at which Article IX(6) was triggered, they would
 21 have said so.
 22 But they didn't. Instead, they chose for
 23 Article IX(6) the concept of "dealing with". And we say
 24 that that choice, that language in Article IX(6), the
 25 "dealing with" language, has to be given a meaning and

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10:25 1 it has to be given an impact, and it has to mean
 2 something other than the date of appointment.
 3 So this leaves two other possibilities for the date
 4 of crystallisation of the start of the Neutral Expert
 5 process: one is the date on which the Neutral Expert's
 6 terms of retainer are fixed, and the other is the date
 7 on which the Neutral Expert may properly be said to be
 8 "dealing with" a difference for purposes of
 9 Article IX(6).
 10 Under the scheme of Annexure F, it is reasonable --
 11 very reasonable, we say -- to proceed on the basis that
 12 the fixing of a Neutral Expert's terms of retainer will
 13 usually, almost invariably, take place in close temporal
 14 proximity to the date on which the Neutral Expert is
 15 appointed. But for the intervention of a malfunctioning
 16 event, such as the pause, but for the intervention of
 17 a malfunctioning event, that temporal proximity will
 18 normally be the case.
 19 Both for this reason and for the reason that while
 20 the fixing of terms of retainer will invariably take
 21 place on a date certain, whereas the point at which the
 22 Neutral Expert begins to deal with a difference may not
 23 be quite so clear, Pakistan settled on the view that the
 24 point at which the start of a Neutral Expert process
 25 crystallises is the date on which the Neutral Expert's

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10:27 1 terms of retainer are fixed.
 2 There's lots of room for debate about that, and we
 3 consider that there is legitimate debate. But what
 4 I wanted to illuminate for you is the, we hope, very
 5 carefully and bona fide and genuinely reasoned-out
 6 process to arrive at terms of retainer, rather than any
 7 of the other possibilities.
 8 I should say -- and obviously this is not something
 9 that I can give evidence on as I stand here -- but the
 10 appreciation that we have from Mr Lino, the Neutral
 11 Expert, is that he proceeded on that assumption, because
 12 he's moved as fast as he felt able to to fix his terms
 13 of retainer and he hasn't done anything else. And we've
 14 now got the terms of retainer and we are moving forward.
 15 Mr Chairman, I detect that you have a question that
 16 you want to put to me, or maybe you're just leaning
 17 forward in pain at the analysis!
 18 THE CHAIRMAN: No, I was leaning forward with great interest
 19 in the analysis. And I do have some small questions,
 20 but I think it best not to put them to you because
 21 you've been quite candid in saying there's some room for
 22 debate about how one might approach this, and I think
 23 that's probably an accurate way to consider it.
 24 So I will not put my small questions. I'll think
 25 about whether to pose them as a part of questions we'll

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10:28 1 give you later today. I'm going to invite you to just
 2 continue.
 3 SIR DANIEL: Thank you very much. And I should say, we
 4 would welcome questions on this, because we would like
 5 to come to a conclusion that it's a kind of "eat-safe
 6 sausage", rather than something that's got bits of
 7 plastic in it or whatever.
 8 I never know how these remarks come out on the
 9 transcript!
 10 I then come to the third of my preliminary
 11 observations. And it is that, in contemplation of your
 12 question 23 about how a Court should proceed when
 13 a Neutral Expert has been appointed, there are two
 14 points of threshold enquiry that arise. The first is:
 15 are the parties in agreement that there should be two
 16 parallel procedures? Because the parties can agree on
 17 anything. And: do the questions of which the Court and
 18 the Neutral Expert are purportedly seized overlap
 19 exactly, or do they cover different ground?
 20 As I've just suggested, under the terms of the
 21 Treaty, party agreement trumps everything, and this is
 22 often expressed through the language of "unless the
 23 parties otherwise agree". And in this respect, just to
 24 tick off the box, I draw your attention to the
 25 chaussette, the rider of Article IX(2), which addresses

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10:29 1 this explicitly. But even in the absence of express
 2 language about parties' agreement, this principle of
 3 party agreement is implicit.
 4 So that's the first question: is there agreement
 5 between the parties?
 6 If the parties disagree, and there is an exact
 7 overlap of issues, then we have a clear situation of
 8 duelling proceedings, with a potential for inconsistent
 9 outcomes. And this is the objectionable scenario that
 10 the Bank, Pakistan and India all highlighted in
 11 correspondence on duelling procedures which I drew to
 12 your attention yesterday.
 13 If, however, there is not an exact overlap of
 14 issues, absent other considerations -- to which I will
 15 come momentarily -- there may be scope to navigate
 16 a coordinated approach to avoid inconsistent outcomes.
 17 Mr Minear, I think that your observation yesterday was
 18 sort of hinting at that or enquiring at that. But this
 19 would require both mechanisms, the Court and the Neutral
 20 Expert, to engage in such an exercise. And I'm going to
 21 come back to that in my later submissions.
 22 My fourth and last preliminary point is that if the
 23 circumstance in contemplation is that of the appointment
 24 of a Neutral Expert after Court proceedings have been
 25 instituted -- in other words, the situation with which

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10:31 1 we are faced now -- and there is a concordance of
 2 issues, then the question may very well arise -- as it
 3 does in this case -- about whether the Bank acted
 4 properly in appointing the Neutral Expert, and did so in
 5 a manner that is consistent with the Treaty. So there
 6 may be questions going to the Bank's responsibility and
 7 competence under paragraph 4 of Annexure F.
 8 Now, against the background of these preliminary
 9 observations, I turn to question 23 more directly. How
 10 should a Court proceed when a Neutral Expert has also
 11 been appointed? And there of course are two scenarios
 12 in contemplation, the first being that the Neutral
 13 Expert is appointed before the Court proceedings; in
 14 other words, the Neutral Expert is first in time, which
 15 is not the case here. The second, which is the case
 16 here, is that the Neutral Expert is appointed after the
 17 Court proceedings have been instituted.
 18 So let me address first the Neutral Expert first in
 19 time scenario; in other words, the hypothesis or the
 20 hypothetical scenario that is not in play here.
 21 In this scenario, the Treaty does have something to
 22 say. Mr Minear, to some extent this is edging towards
 23 your observation yesterday. Article IX(6) addresses the
 24 situation in which a Neutral Expert is dealing with
 25 a difference before a Court is seized of a dispute.

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10:33 1 Mr Fietta has addressed the interpretation and
 2 application of Article IX(6) in such circumstances, and
 3 I would also, for the record, like to refer you to
 4 paragraphs 162 to 177 and also to paragraphs 183 to 191
 5 of Pakistan's Response. As I have just addressed,
 6 Pakistan's view is that a Neutral Expert can only be
 7 said to be dealing with a difference once his or her
 8 terms of retainer have been fixed.
 9 Now, for completeness, I add that Article IX(6) does
 10 not preclude the institution of Court proceedings. It
 11 doesn't say that. It only precludes a Court from
 12 dealing with a difference while the Neutral Expert is
 13 dealing with that difference. Article IX(6) also does
 14 not preclude a Court from addressing a question that is
 15 not before or could not be before a Neutral Expert.
 16 So this is our response to the hypothetical scenario
 17 in which the Neutral Expert is seized of differences
 18 first in time. We then come to the actual scenario in
 19 this case: that Court proceedings are first in time and
 20 a Neutral Expert is subsequently appointed. And for
 21 purposes of this scenario, the points of difference of
 22 which the Neutral Expert is putatively seized are wholly
 23 subsumed within the questions raised by the dispute.
 24 We say that the Treaty does not expressly address
 25 how a Court should proceed in such circumstances. This

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10:34 1 is the situation of system malfunction that I described
 2 yesterday. We are therefore, we contend, in the realm
 3 of good faith interpretation, having regard to the wider
 4 Treaty context and the object and purpose of the Treaty,
 5 rather than placing heavy reliance on the ordinary
 6 meaning of the terms. On this scenario, there are no
 7 express terms to be given an ordinary meaning.
 8 This said, there are though, we would say,
 9 principles that may assist in addressing these
 10 circumstances.
 11 First, the Neutral Expert, assuming that he or she
 12 is sensitive to and informed about these issues, might,
 13 through their Annexure F, paragraph 7 competence
 14 process, relinquish any overlapping issues to the Court.
 15 I note though, in line with what I said in response to
 16 question 1, that a Neutral Expert is not competent to
 17 determine his or her own competence, as this doesn't
 18 come within the scope of Part 1 of Annexure F.
 19 The Court though is and would be fully competent to
 20 address the validity of the later-in-time purported
 21 seisin of the Neutral Expert. And this is a view that
 22 Pakistan has consistently held, and indeed articulated,
 23 from the very early days of the pause.
 24 In the first meeting, I in fact took you to some of
 25 that correspondence in which Pakistan urged the Bank to

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10:36 1 empanel the Court and appoint the Neutral Expert because
 2 it wanted the pause lifted; it was causing irreparable
 3 damage. And Pakistan observed in the correspondence to
 4 the Bank that the Court would then be empowered to
 5 address the validity of the purported seisin of the
 6 Neutral Expert.
 7 So there is an element of pristine consistency, in
 8 our view.
 9 Now, I'm not going to leave question 23, but I want
 10 to pivot also to bring into focus questions 28 and 36,
 11 because they go to an overlapping issue here.
 12 The Court asked in question 28 whether Pakistan has
 13 retained its reservation or objection to the competence
 14 of the Neutral Expert. And in question 36, you ask
 15 essentially what the Neutral Expert's source of
 16 competence would be in the event that the Court finds
 17 that it is competent and determines to proceed in
 18 a coordinated fashion, leaving plant-specific issues for
 19 decision by the Neutral Expert.
 20 On the issue of Pakistan's reserved issues, you
 21 heard from Pakistan's Agent in his opening remarks
 22 yesterday, having regard to where we now are, that
 23 Pakistan has moderated its position. As I noted in my
 24 opening submissions yesterday, while Pakistan considers
 25 that India's Neutral Expert Request was improper and

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10:37 1 invalid, it has also resolved -- and here on the
 2 record -- it has resolved to cure that invalidity
 3 through a forum prorogatum approach. And the forum
 4 prorogatum approach is an approach which, as a matter of
 5 principle, cures invalidity or lack of competence or
 6 jurisdiction by participation in the process. But our
 7 forum prorogatum approach of participation remains
 8 subject to a caveat, which I will come on to
 9 momentarily.
 10 So that's our answer to question 36: the source of
 11 the Neutral Expert's competence to proceed, from
 12 Pakistan's perspective, will be Pakistan's participation
 13 in the Neutral Expert process, which cures the
 14 invalidity and the impropriety of the way in which the
 15 process began.
 16 So this said, I come to our caveat. And here, in
 17 a moment, I am going to ask you to turn up the Treaty,
 18 if I may. And the caveat is that Pakistan's
 19 participation in the Neutral Expert process is subject
 20 to the controlling principle that this participation
 21 cannot deprive the Court of competence to address
 22 systemic or other questions that do not, and cannot on
 23 any reading, come within the competence of the Neutral
 24 Expert under Part 1 of Annexure F.
 25 Pakistan accordingly maintains a residual

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10:39 1 reservation on one important issue, the procedural
 2 aspects of which are straightforward and I will come on
 3 to explain. But on the headline issue of question 28,
 4 Pakistan has moved a long way towards relinquishing its
 5 reserved issues and its objection to the validity of the
 6 Neutral Expert's appointment and his competence, and
 7 will participate fully in the Neutral Expert process
 8 going forward.
 9 So I then come on to the procedural aspect of
 10 Pakistan's residual reservation. And as I have said,
 11 this is straightforward, we believe, and it is firmly
 12 rooted in the Treaty. And it concerns the interaction
 13 between Article IX(2)(b) and paragraphs 7, 11 and 13 of
 14 Annexure F.
 15 As this is an intricate point, and appreciating that
 16 I'm going through this at speed, it would be useful to
 17 take you through the provisions carefully, and I would
 18 be grateful if you would turn them up, please.
 19 So we come first to IX(2)(b). Mr Chairman, I am
 20 going to get to your question that you put to Mr Fietta
 21 yesterday, about the opening language of IX(2)(b), in
 22 just a moment in this context. So we've got IX(2)(b),
 23 and IX(2)(b) provides:
 24 "If the difference [referred to a Neutral Expert]
 25 does not come within the provisions of Paragraph (2)(a),

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10:40 1 or if a Neutral Expert, in accordance with the
 2 provisions of Paragraph 7 of Annexure F ..."
 3 And those are the key words for these purposes, "in
 4 accordance with the provisions of Paragraph 7 of
 5 Annexure F".
 6 "... if a Neutral Expert ... has informed the
 7 Commission that, in his opinion, the difference, or
 8 a part thereof, should be treated as a dispute, then
 9 a dispute will be deemed to have arisen which shall be
 10 settled in accordance with the provisions of
 11 Paragraphs (3), (4) and (5) ..."
 12 I note here simply the invocation of the provision
 13 of paragraph 7 of Annexure F., and it is to that that
 14 I would now like to take you. And I think that you will
 15 find on page 208 of your document, the top corner.
 16 Paragraph 7 provides -- and, Mr Chairman, I am
 17 inviting you to look at the first few words:
 18 "Should the Commission be unable to agree ..."
 19 Now, Mr Chairman, I pause here because a moment ago
 20 I referenced your question to Mr Fietta yesterday, where
 21 you drew attention to the kind of apparent discordance
 22 between the formulation of IX(2)(a) and IX(2)(b).
 23 IX(2)(a) referred to the disagreement within the
 24 Commission or the Commissioners. And you said: why
 25 doesn't IX(2)(b) open with the same words? It doesn't

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10:42 1 open with the same words, but IX(2)(b) has an express
 2 reference to paragraph 7, and paragraph 7 says
 3 explicitly: "Should the Commission be unable to agree".
 4 So maybe that's an answer to your drafting question: it
 5 may have been an infelicity in drafting, but the
 6 intention is abundantly clear, we would say.
 7 But paragraph 7 says -- I go on and quote it in
 8 full:
 9 "Should the Commission be unable to agree that any
 10 particular difference falls within Part 1 of this
 11 Annexure ..."
 12 And I interpolate here: that is the position in this
 13 case.
 14 "... the Neutral Expert shall, after hearing both
 15 Parties, decide whether or not it so falls. Should he
 16 decide that the difference so falls, he shall proceed to
 17 render a decision on the merits ..."
 18 And I don't need to quote the rest of it, but you
 19 will have the rest of it in mind.
 20 This is the Neutral Expert's preliminary competence
 21 process, to which I alluded earlier. It is a mandatory
 22 process: "the Neutral Expert shall ... decide"; and
 23 he -- in this case -- shall decide whether the
 24 differences characterised by India properly come within
 25 the scope of Part 1 of Annexure F.

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10:43 1 We hope and expect that the Neutral Expert will make
 2 a robust and clear assessment when it comes to his
 3 paragraph 7 process. And I believe we don't yet have
 4 the supplemental rules of procedure and the procedural
 5 orders, but we believe that the Neutral Expert is firmly
 6 committed to that paragraph 7 competence process: it's
 7 quite clear from everything that has gone to this point,
 8 and you will see a lot of that discussion in the
 9 transcript of the proceedings.
 10 So we hope and expect that the Neutral Expert will
 11 make a robust and clear assessment, when it comes to
 12 this paragraph 7 process, that he has no competence to
 13 address questions of systemic treaty interpretation; and
 14 that questions of this nature, that are engaged by
 15 India's Neutral Expert request, are in fact disputes or
 16 should be deemed to be disputes.
 17 If he does so -- as we hope he will do, and as we
 18 consider that he should do -- this will immediately
 19 differentiate his process from the process of the
 20 Baglihar Neutral Expert, who, at the beginning of his
 21 determination, set out provisions of law and provisions
 22 of Treaty interpretation and essentially purported to be
 23 a legal adjudicatory body.
 24 In the event that the Neutral Expert does not do so,
 25 however, Pakistan reserves its right to challenge his

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10:45 1 competence to proceed. And this is our residual
 2 reserved issue. This reservation of position is rooted
 3 in the express terms of paragraph 13 of Annexure F. And
 4 let me take you to this provision and, for good measure,
 5 alongside it to paragraph 11 of Annexure F. And I don't
 6 think that we've looked at these provisions before, so
 7 I hope that this will be illuminating.
 8 First of all, coming to paragraph 11 of Annexure F.
 9 Straightforward:
 10 "The decision of the Neutral Expert on all matters
 11 within his competence shall be final and binding, in
 12 respect of the particular matter on which the decision
 13 is made, upon the Parties and upon any Court of
 14 Arbitration established under the provisions of
 15 Article IX(5)."
 16 This is a semi-straightforward res judicata clause,
 17 a final and binding provision. And I say that it is
 18 a "semi-straightforward" res judicata clause because it
 19 is qualified by the phrase "on all matters within his
 20 competence". That's relatively unusual, to see a final
 21 and binding clause qualified in those terms.
 22 Now, that qualification raises the issue of what
 23 happens in circumstances in which there is a dispute
 24 about whether a matter is within the Neutral Expert's
 25 competence. And this brings us to paragraph 13. And

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10:46 1 again, if I may just pause here to highlight that this
 2 is where we're seeing this rather complex variable
 3 geometry of the interaction of all of the provisions.
 4 So paragraph 13, which is immensely interesting
 5 quite apart from its practical consequences about how
 6 the Treaty works. And it says as follows:
 7 "Without prejudice to the finality of the Neutral
 8 Expert's decision ..."
 9 So it's undoing paragraph 11: without prejudice to
 10 paragraph 11.
 11 "... if any question ... which is not within the
 12 competence of a Neutral Expert should arise out of his
 13 decision, that question shall, if it cannot be resolved
 14 by agreement, be settled in accordance with the
 15 provisions of Article IX(3) (4) and (5)."
 16 So any question of competence that arises out of
 17 a Neutral Expert's decision is ultimately one to be
 18 addressed by the Court. That's what paragraph 13 says.
 19 It's a long-stop provision that essentially provides
 20 that disputes about a Neutral Expert's competence are
 21 ultimately a matter for the Court.
 22 I add that Pakistan considers that paragraph 13
 23 applies also to procedural decisions of the Neutral
 24 Expert, as the language is not qualified by reference to
 25 the Neutral Expert's final decision. And I note in

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10:48 1 support of this that paragraph 7, which is the Neutral
 2 Expert's preliminary competence procedure, clearly
 3 characterises the outcome of that preliminary competence
 4 procedure as a "decision" of the Neutral Expert.
 5 For the avoidance of doubt and for completeness,
 6 I should say that we have put all of these issues
 7 squarely before the Neutral Expert and before India in
 8 the Neutral Expert proceedings, and you will see this in
 9 the transcript, lots and lots of discussion. These are
 10 Exhibits P-40(C) and P-41(C).
 11 Now, Mr Chairman, members of the Court, this has
 12 been a complex response to what may have been perceived
 13 to be a number of quite straightforward questions, and
 14 my apologies for the intricacy of the arguments, but
 15 I think it's been dictated by the intricacy of the
 16 provisions. And this is our reply to questions 23, 28
 17 and 36. Of course, we look forward to further questions
 18 from you at 3 o'clock this afternoon to be address those
 19 issues further.
 20 Mr Chairman, members of the Court, I'm conscious of
 21 time. I'm moving on to the way-forward questions. The
 22 way-forward questions are not going to take me very
 23 long, and we had the brief hiatus, so perhaps you will
 24 give me the latitude just to conclude these before we
 25 break.

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10:49 1 So I'm turning now to your way-forward questions:
 2 questions 26, 31, 32 and 35. I propose to take them
 3 together, to give a composite response, as they address
 4 different aspects of the same issue. And, Mr Minear,
 5 saving the best for last, I'm going to come to your
 6 question at the end of all of this, to try and wrap
 7 things up neatly.
 8 Question 26 asks whether the Treaty or principles of
 9 international law impose any duty upon the Neutral
 10 Expert and the Court to cooperate.
 11 Question 32 enquires about the possibility of
 12 a number of Neutral Experts, seriatim, each answering
 13 individual plant design questions in separate silos; and
 14 it further asks whether design criteria questions are
 15 best left to a Neutral Expert rather than to a Court.
 16 Question 31, referring to Pakistan's Statement on
 17 Coordination, asks: what kind of systemic guidance can
 18 the Court provide? And you reference paragraphs 25 to
 19 31 of our Coordination Statement.
 20 Then finally, in a rather long and very important
 21 question 35 you ask: in the event that the Court
 22 concludes that it is properly established and competent
 23 to address all of the matters addressed in Pakistan's
 24 Request for Arbitration, what are the options for the
 25 Court with respect to the next phase? And you set down

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10:51 1 three options and then you invite a response: tell us
 2 about the rest of the universe. I'm going to refrain
 3 from telling you about what we think of the rest of the
 4 universe, but I would like to engage with that question.
 5 Now, I say that these are big questions, and indeed
 6 these are questions that could have merited a hearing in
 7 its own right all by themselves, not just the tail-end
 8 response that they are receiving from me now.
 9 I note that Pakistan -- not India but Pakistan --
 10 has set out its views on what it considers to be
 11 a workable way forward, based on an analysis of the
 12 Treaty and of the parties' respective requests, in its
 13 Statement on Coordination. And with all the time that
 14 has gone since we put in our Statement of Coordination,
 15 this remains the approach, in every jot and comma, that
 16 Pakistan urges the Court to adopt, for the very careful
 17 and considered reasons set out therein. So we are not
 18 stepping away from that at all. We understand that, in
 19 the absence of a similar statement from India, it is
 20 entirely appropriate that you ask these questions.
 21 So then we come to question 26: whether the Treaty
 22 or principles of international law impose any duty upon
 23 the Neutral Expert and the Court to cooperate with one
 24 another. Our response is that, while the Treaty does
 25 not in terms impose an obligation on the Neutral Expert

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10:52 1 and the Court to cooperate with one another, the
 2 imperative of cooperation that runs throughout the
 3 Treaty, which I addressed in some detail yesterday, does
 4 indeed impose such a duty of cooperation on the Neutral
 5 Expert and the Court.
 6 Now, there is no need for me to reprise all the duty
 7 of cooperation provisions; I hope that they were clear
 8 enough. As settlement modalities under the Treaty,
 9 whose task and responsibility is to bridge a breakdown
 10 in the Treaty-mandated duties of cooperation of the
 11 parties, the Neutral Expert and the Court, we say, have
 12 a special duty of cooperation, including, importantly,
 13 to avoid dysfunction in the Treaty and the remedying of
 14 any malfunction that there is in the Treaty's settlement
 15 modalities under Article IX and Annexures F and G.
 16 There is, in our view, wider support, beyond the
 17 Treaty, for such a proposition. I note, for example --
 18 and again, I say candidly, this is not in the record but
 19 it is manifestly out there in the public domain, so we
 20 believe you can take judicial notice of it -- the
 21 Mox Plant case between Ireland and the United Kingdom,
 22 an Annex VII arbitral tribunal, which took place in this
 23 very room -- I have a recollection because I was sitting
 24 over there -- having regard to potentially conflicting
 25 proceedings between itself, the Annex VII tribunal, and

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10:54 1 the European Court of Justice.
 2 That tribunal, a very illustrious tribunal indeed,
 3 suspended its proceedings; and in so doing, it noted
 4 that it would be inappropriate to proceed further with
 5 its own proceedings, with its own hearing, given the
 6 risk of conflicting decisions on the same issue by the
 7 tribunal and by the European Court of Justice. And in
 8 this case, it concluded ultimately that it was the
 9 European Court of Justice that properly had
 10 jurisdiction. This is to be found in the tribunal's
 11 Order No. 3 on Suspension of 24 June 2003 at
 12 paragraph 28. And there are other arbitral decisions
 13 that we could draw to your attention if this is a point
 14 that takes your interest.
 15 So in our view, while the Neutral Expert and the
 16 Court are not subject to an express duty to cooperate,
 17 we say that they are subject to an implied duty to
 18 cooperate which has deep roots both in the Treaty and in
 19 international arbitral practice.
 20 Then we come to question 32, which I think I can
 21 deal with relatively briefly, and that is whether
 22 cascading plant design questions could be left to be
 23 addressed seriatim by different Neutral Experts each in
 24 their own silos.
 25 Now, this may be theoretically possible, but it

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10:56 1 would be an absolute anathema to the coherent
 2 interpretation and application of the Treaty. There
 3 would be no certainty, there would be no predictability
 4 in the Treaty relations between the parties. Neither
 5 party would be able to plan coherently into the future.
 6 And while such an approach may be marginally more
 7 predictable than a roulette wheel, with dozens of
 8 run-of-river plants planned by India, it would not be
 9 much different than such a gamble.
 10 This goes to the heart of the issue that was raised
 11 in the February 2016 letter by Pakistan to India (P-23)
 12 where it withdrew its Neutral Expert request and moved
 13 to a Court of Arbitration request because it said, "We
 14 have to have these issues addressed systemically,
 15 because if not, we're going to kill the Treaty". And we
 16 say that the premise at the heart of question 32 would
 17 effectively kill the Treaty as a cornerstone instrument
 18 of cooperation between the parties. We cannot conceive
 19 of any universe in which such an approach should
 20 recommend itself.
 21 The question also asks whether design questions are
 22 better left to a Neutral Expert rather than the Court.
 23 And the answer to this question is equally simple: no.
 24 That is not the scheme of the Treaty. While the Treaty
 25 contemplates a Neutral Expert addressing design

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10:57 1 criteria, and expert engineers -- and we have two very
 2 eminent expert engineers with us -- are certainly
 3 competent to undertake such tasks, the Treaty does not
 4 favour Neutral Experts over Courts of Arbitration.
 5 On the contrary, the fact that paragraph 4 of
 6 Annexure G requires that one of the umpires sitting with
 7 you here -- requires that one of the umpires appointed
 8 to the Court must be a highly qualified engineer affirms
 9 beyond contention that a Court will be at least as
 10 competent as a Neutral Expert to address technical
 11 design issues. And this Court, in its composition,
 12 would be expertly competent on multiple levels to
 13 address all of the questions raised in Pakistan's
 14 Request for Arbitration, including the design questions,
 15 given that the Court includes two highly qualified
 16 engineers on its panel.
 17 Now, we of course recognise unreservedly Mr Lino's
 18 high expertise as well. And in the circumstances in
 19 which we find ourselves, we consider that he has
 20 an important role to play. So in responding to your
 21 question, I do not take anything away from Mr Lino's
 22 expertise. But in direct response to the Court's
 23 question, questions of technical design cannot be said
 24 to be better left to a Neutral Expert rather than
 25 a Court of Arbitration.

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10:59 1 This brings me to question 31, which I can also deal
 2 with briefly: the Court's enquiry about the systemic
 3 guidance that we consider that a Court can and should
 4 provide. And I do respond to it very briefly, because
 5 the question itself references paragraphs 25 to 31 of
 6 our Statement on Coordination. And we consider that the
 7 six questions identified in those paragraphs as systemic
 8 interpretative questions are exactly the questions that
 9 would benefit from an award of the Court.
 10 And I add that in the event that the Court affirms
 11 its competence, as we hope you will do, and that you
 12 direct a filing of a memorial by Pakistan on the issues
 13 addressed by those questions, Pakistan would of course
 14 readily do so. And in the course of doing so in such
 15 a memorial, as would be common, we would make more
 16 concrete and practical all the issues engaged by that
 17 question. This is just a standard way in which
 18 proceedings unfold.
 19 So I then come to the big question -- and I've got
 20 perhaps five more minutes or so, Mr Chairman --
 21 question 35, with all of its possible variables on the
 22 options available to the Court if you conclude that you
 23 are properly established and competent to address all
 24 the matters addressed in Pakistan's Request for
 25 Arbitration.

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11:01 1 Each of the options that you lay out, that you posit
 2 in that question, are of course possible. Each of them
 3 is possible. They range from the Court declaring itself
 4 to be exclusively competent, on one end of the spectrum,
 5 to the Court sitting on its hands and waiting for the
 6 Neutral Expert to conclude his work, at the other end of
 7 the spectrum, and a more centred scenario, in the
 8 middle, which posits an approach that reflects that set
 9 out in Pakistan's Coordination Statement.
 10 It will be no surprise to you to hear that Pakistan
 11 urges upon you this more centred approach. And I need
 12 not address the reasons for this: they are set out
 13 carefully, and in considered form, in our Statement on
 14 Coordination, which we continue to commend for your
 15 attention.
 16 So this leaves only the very important question --
 17 and this is the point on which I'm going to conclude --
 18 this leaves only the very important question, as part of
 19 our question 35, of whether the Court is able to -- and
 20 if so, whether it should -- provide direction to the
 21 Neutral Expert; and if so, in what terms.
 22 Taking all of the responses to the questions that
 23 I've just addressed together, Pakistan considers that
 24 the Court is able to provide direction to the Neutral
 25 Expert. The principle of cooperation under the Treaty

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11:02 1 is a legal imperative that we say gives rise to a duty
 2 to cooperate on the part of the Neutral Expert and the
 3 Court in the circumstances with which we are faced.
 4 Finding, construing and declaring that duty is
 5 a matter of special responsibility that rests with the
 6 Court alone; it is not a matter that is within the
 7 competence of the Neutral Expert. And we consider that
 8 the Court is duty-bound to address these issues in terms
 9 that will reach the attention of the Neutral Expert, and
 10 be appreciated and understood as statements of law.
 11 The medium of doing so would properly be your
 12 decision on competence, or perhaps some associated
 13 self-standing decision. Pakistan is cautious about
 14 stepping too much further into this issue, as it may not
 15 be helpful for us to do so.
 16 The same goes also for the issue of the terms of
 17 such a direction. On this, I would only observe that
 18 a direction may have an addressee, but it also may be
 19 an unaddressed statement of interpretation or of
 20 application or of principle or of law. Questions of
 21 medium and message will be equally important. And
 22 Pakistan does not presume -- and I do not presume to do
 23 so from this microphone -- to advise you on how best to
 24 calibrate those issues.
 25 I note only in this regard that, while Pakistan

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11:04 1 hopes very much that the Neutral Expert process will
 2 unfold in a sober, serious and considered way, the
 3 transcript of the Neutral Expert first meeting -- which
 4 again I urge on you for your attention -- that
 5 transcript will show you that the Neutral Expert is
 6 having to traverse a less than easy process.
 7 We of course regret that the Neutral Expert felt the
 8 need to respond, Mr Chairman, to your letter of outreach
 9 to him in the terms that he did, closing the door on, as
 10 he put it, a coordinated process between the Court and
 11 the Neutral Expert "at this time". We read his letter
 12 carefully. He said what he said plainly, clearly.
 13 There is no reading between the lines.
 14 Pakistan will engage in the Neutral Expert process
 15 on the basis I set out earlier. When all is said, we
 16 consider that our Statement on Coordination, and indeed
 17 also our Matrix on Coordination, remain the right
 18 analysis and, in key elements, the right way forward.
 19 Mr Minear, I've saved the best for last. I would
 20 like to respond briefly to your observation, and you put
 21 it in terms of an observation rather than a question.
 22 And I have to say, sitting in the cheap seats, I took it
 23 to be more in hope than in expectation, your
 24 observation, when you said that the drafters of the
 25 Treaty -- and I quote you here (Day 1, page 247,

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11:06 1 lines 6-10):
 2 "... must have understood that there might be some
 3 need for coordination or resolution of these two
 4 respective dispute resolutions being instituted at about
 5 the same time."
 6 They did, at some level. And there are the various
 7 fork-in-the-road arrangements that I addressed in my
 8 opening submissions yesterday; that's at transcript
 9 Day 1, page 57. And this is coordination at some level:
 10 fork in the road is coordination at some level.
 11 But we have struggled with these issues, as you
 12 indicated on the record that you have struggled with
 13 them. And our conclusion is that the drafters of the
 14 Treaty seem not to have contemplated the possibility of
 15 malfunction or dysfunction of the order that we are
 16 seeing in these proceedings. The text of the Treaty,
 17 the words of the Treaty do not provide much joy here.
 18 But we do agree with you unreservedly that the
 19 answer must be in coordination, whether that is
 20 expressed or whether that is sub silentio. We continue
 21 to believe that the approach we have proposed in our
 22 Statement on Coordination is both right and workable,
 23 and we put ourselves in your hands. I'm sorry I can't
 24 be more illuminating in response.
 25 Mr Chairman, members of the Court, you will no doubt

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11:09 1 there anything further you feel we should take up at
 2 this point?
 3 MR ASLAM: No, sir. Thank you.
 4 THE CHAIRMAN: Okay, very good. Then we will resume
 5 tomorrow morning, I believe, at 9.30, and I wish you
 6 well until then.
 7 (11.09 am)
 8 (The hearing adjourned until 9.30 am the following day)
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11:07 1 have many more questions for us to think about at
 2 3.00 pm today for response tomorrow. I should say that
 3 if you feel that you do not have any questions when you
 4 get to 3.00 pm, please don't think that tomorrow is
 5 going to go to waste, because we have been assiduously
 6 going through the transcript and picking up all of your
 7 oral questions, and we will respond to your questions
 8 tomorrow already raised, whether or not you send us any
 9 more. So I don't urge you to send us any more, because
 10 we will have lots to say in any event. But of course we
 11 would be very happy to receive your further questions.
 12 So, Mr Chairman, members of the Court, unless there
 13 is anything more with which I can help you at this
 14 stage, I think that brings Pakistan's opening
 15 submissions to an end, and I thank you very much for
 16 your kind attention and wish you good deliberations.
 17 THE CHAIRMAN: Thank you very much, Mr Bethlehem.
 18 I suspect that we will have a few questions to pass
 19 your way, hopefully in advance of 3.00 pm, so you can
 20 have as much time as possible to reflect upon them
 21 before tomorrow. But certainly we also anticipate that
 22 you'll be picking up some outstanding questions if they
 23 haven't yet been answered sufficiently.
 24 So I think that does conclude the opening
 25 submissions of the Government of Pakistan. Mr Aslam, is

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ARBITRATION PURSUANT TO ARTICLE IX AND ANNEXURE G OF THE INDUS WATERS TREATY 1960

Day 2 -- Hearing on Comptence

THE ISLAMIC REPUBLIC OF PAKISTAN -v- THE REPUBLIC OF INDIA

Friday, 12 May 2023

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