

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

PROCEDURAL ORDER NO. 12

**(ORGANIZATION OF THE HEARING
FOR THE FIRST PHASE ON THE MERITS)**

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

29 June 2024

WHEREAS on 6 July 2023, the Court of Arbitration (the “**Court**”) issued its Procedural Order No. 6, in which it decided that it would “conduct these proceedings in a phased manner” and identified the questions to be addressed in the next phase of the proceedings (the “**First Phase on the Merits**”);

WHEREAS on 22 July 2023, the Court issued its Procedural Order No. 7, in which it fixed a deadline for Pakistan to submit its Memorial for the First Phase on the Merits and a deadline for India to indicate whether it intended to submit a Counter-Memorial for the First Phase on the Merits;

WHEREAS on 22 March 2024, Pakistan submitted its Memorial for the First Phase on the Merits, together with accompanying exhibits and authorities;

WHEREAS India did not indicate an intention to submit a Counter-Memorial by the deadline fixed by the Court, nor has it done so to date;

WHEREAS in its Procedural Order No. 7, the Court envisaged that an oral hearing in the First Phase on the Merits (“**Hearing**”) would be held in the Peace Palace, The Hague, the Netherlands from 8 to 12 July 2024, with 15 to 17 July 2024 held in reserve, in the event that India did not indicate an intention to file a Counter-Memorial;

WHEREAS in its letter dated 15 May 2024, the Court requested the Parties confirm their appearance at and participation in the Hearing, and indicate their views as to the duration and schedule for the Hearing;

WHEREAS on 23 May 2024, Pakistan confirmed its intention to appear at and participate in the Hearing, and provided its views as to the duration and schedule for the Hearing;

WHEREAS India did not confirm its intention to appear at and participate in the Hearing by the deadline fixed by the Court, nor has it done so to date;

WHEREAS in its letter dated 6 June 2024, Pakistan applied for leave to call its own witness, Mr. Syed Muhammad Mehar Ali Shah, to appear at the Hearing, further to Article 24(4) of the Court’s Supplemental Rules of Procedure, and requested that Mr. Shah be permitted to make an opening presentation at the Hearing as part of his evidence in chief;

WHEREAS in its letter dated 11 June 2024, the Court granted Pakistan’s application dated 6 June 2024;

WHEREAS by letter dated 14 June 2024, Pakistan sought further guidance as to the testimony of Mr. Syed Muhammad Mehar Ali Shah, to which the Court responded by letter dated 20 June 2024;

WHEREAS on 20 June 2024, the Court provided the Parties with a draft of this procedural order on the organization of the Hearing, and invited the Parties’ comments;

WHEREAS on 27 June 2024, Pakistan wrote to the Court, providing its comments on the draft of this procedural order;

THE COURT OF ARBITRATION HEREBY DECIDES:

1. Hearing Location and Participants

- 1.1 The Hearing shall take place in-person at the Peace Palace, The Hague, the Netherlands.
- 1.2 By **Monday, 1 July 2024**, Pakistan shall communicate to the PCA and India the list of all participants who will attend the Hearing.

2. Hearing Schedule

- 2.1 The Hearing shall proceed from 8 July 2024 to 16 July 2024 in accordance with the outline of the hearing schedule contained in Annexure A (“**Hearing Schedule**”).
- 2.2 The Hearing Schedule shall be subject to any changes the Court deems necessary or appropriate for the efficient conduct of the Hearing, including any early adjournments sought by a Party.
- 2.3 Notwithstanding paragraphs 2.1 and 2.2 above, Pakistan may propose adjustments to the scheme, timing, and scope of its submissions as outlined in the Hearing Schedule.

3. Hearing Bundle and Hearing Materials

- 3.1 The electronic repository, accessible to the Parties and to the Court, shall act as the electronic hearing bundle.
- 3.2 By **Thursday, 4 July 2024**, Pakistan shall identify a list of key exhibits and/or legal authorities (or relevant excerpts) for inclusion in a core hard-copy hearing bundle to be prepared for the Members of the Court by the PCA.
- 3.3 The fact that exhibits and/or legal authorities that are already in the record of the proceedings are not included in the hard-copy core bundle to be prepared by the PCA shall not preclude their use by Pakistan during the Hearing.
- 3.4 No new documentary evidence may be presented at the Hearing except with leave of the Court, further to a reasoned application (or applications) to the Court identifying the specific materials Pakistan wishes to admit (but without annexing the documents to the application).
- 3.5 Pakistan may use PowerPoint slides and demonstrative exhibits (“**Hearing Materials**”) at the Hearing, provided that these materials reflect evidence on the record and do not introduce new evidence, directly or indirectly. Hearing Materials must include references to where the evidence referred to therein is found on the record. Hearing Materials must be clearly identified by a sequential document number (e.g. IHM-0001; PHM-0001).
- 3.6 An electronic copy of any Hearing Materials shall be sent to the other Party and the PCA at least one hour before they are deployed at the Hearing. At least 12 hard copies of any Hearing Materials shall be transmitted to the PCA before they are deployed at the Hearing.

4. Witness Examination

- 4.1 Further to Article 24(6) of the Supplemental Rules of Procedure, the procedure for the examination of Mr. Shah at the Hearing shall be as follows:
 - 4.1.1 prior to Mr. Shah giving evidence, the Chairman of the Court shall administer the following declaration: ‘I solemnly declare upon my honor and conscience that I shall speak the truth, the whole truth and nothing but the truth’;
 - 4.1.2 Pakistan may then conduct a brief direct examination of not more than 5 minutes, limited to introducing Mr. Shah, confirming his written evidence, and identifying any corrections that Mr. Shah might wish to make;

- 4.1.3 Mr. Shah shall then be permitted to make an opening presentation of not more than 45 minutes as part of his evidence in chief, to elaborate on the issues presented in his witness statement (including any relevant subsequent developments). Mr. Shah may use Hearing Materials during his opening presentation, subject to the provisions of paragraphs 3.5 and 3.6 above concerning the use, content, and distribution of Hearing Materials;
- 4.1.4 the Court may then examine Mr. Shah; and
- 4.1.5 following the Court's examination of Mr. Shah, Pakistan may undertake a re-examination of Mr. Shah confined to issues arising from his examination by the Court.
- 4.2 Further to Article 24(6) of the Supplemental Rules of Procedure, the Court remains in control of Mr. Shah's examination at all times, and may put further questions to Mr. Shah at any stage during his examination. The Court may require the retirement of Mr. Shah or may recall Mr. Shah for further examination at any point during the Hearing.
- 4.3 It shall not be improper for counsel for Pakistan to meet with Mr. Shah to prepare him for examination at the Hearing.
- 4.4 Mr. Shah, as a Party representative, shall be allowed in the hearing room at any time during the Hearing, but shall not make oral submissions on behalf of Pakistan, save with the leave of the Court.
- 4.5 Once his examination has begun, Mr. Shah shall have no contact with Pakistan's representatives, counsel, lawyers, or technical advisers during any recesses or interruptions that may arise, until he has completed his examination.

5. Post-Hearing Submissions

- 5.1 The Court shall consider the necessity of any post-hearing briefs at the conclusion of, or following, the Hearing.

6. Transcription and Audio Recording

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

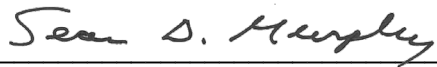
7. Publication of Information

- 7.1 The PCA may issue press release(s) concerning the Hearing in the form to be directed by the Court, after seeking the views of the Parties.
- 7.2 The Court shall revisit the question of the publication of written submissions, accompanying documents, hearing transcripts and other materials at the close of the Hearing in accordance with Article 14(4) of the Supplemental Rules of Procedure

8. Leave to Apply

- 8.1 Any Party has leave to apply to the Court for a variation of this Order, giving particulars of the variation sought and the reason for it.
- 8.2 Any Party may, at any point in these proceedings, request that the Court convene a conference with the Parties to address any procedural aspect of these proceedings. The Court shall arrange to confer with the Parties in person or by videoconference, according to the circumstances.

Dated: 29 June 2024



Prof. Sean D. Murphy
Chairman

On behalf of the Court of Arbitration

ANNEXURE A: Outline of Hearing Schedule

Monday, 8 July 2024	
09:30 – 09:45 (CEST)	Introductory Remarks, <i>Chairman of the Court</i>
09:45 – 11:00	Opening Statements, <i>Agent / Deputy Agent of Pakistan, Minister for Water Resources, Attorney General for Pakistan</i>
	Opening Submissions, <i>Sir Daniel Bethlehem KC</i>
11:00 – 11:30	<i>Break</i>
11:30 – 13:00	Opening Submissions [<i>continued</i>], <i>Sir Daniel Bethlehem KC</i>
13:00 – 14:00	<i>Lunch Break</i>
14:00 – 15:30	Testimony of Mr. Syed Muhammad Mehar Ali Shah
15:30 – 16:00	<i>Break</i>
16:00 – 18:00	Testimony of Mr. Syed Muhammad Mehar Ali Shah [<i>continued</i>]

Tuesday, 9 July 2024	
09:30 – 11:00	Day 2 focus of submissions, <i>Sir Daniel Bethlehem KC</i>
	Negotiating the Treaty, <i>Ms. Laura Rees-Evans</i>
	Principles of Treaty Interpretation, <i>Professor Philippa Webb</i>
11:00 – 11:30	<i>Break</i>
11:30 – 13:00	Principles of Treaty Interpretation [<i>continued</i>], <i>Professor Philippa Webb</i>
	Water usage and sustainability, <i>Mr. Stephen Fietta KC</i>
13:00 – 14:00	<i>Lunch Break</i>
14:00 – 15:30	Water usage and sustainability [<i>continued</i>], <i>Mr. Stephen Fietta KC</i>
	Himalayan Run-of-River HEP design and operation issues: an engineering perspective, <i>Dr. Gregory Morris</i>
15:30 – 16:00	<i>Break</i>
16:00 – 17:30	Himalayan Run-of-River HEP design and operation issues: an engineering perspective [<i>continued</i>], <i>Dr. Gregory Morris</i>

Wednesday, 10 July 2024	
09:30 – 11:00	Day 3 focus of submissions, <i>Sir Daniel Bethlehem KC</i>
	Incorporating a run-of-river HEP into an integrated power system, <i>Mr. Peter Rae</i>
	<i>Baglihar</i> and <i>Kishenganga</i> systemic interpretation issues and response to Q.(a), <i>Mr. Stephen Fietta KC</i>
<i>11:00 – 11:30</i>	<i>Break</i>
11:30 – 13:00	<i>Baglihar</i> and <i>Kishenganga</i> systemic interpretation issues and response to Q.(a) [<i>continued</i>], <i>Mr. Stephen Fietta KC</i>
	The Western Rivers Run-of-River Hydro Bargain, the Controlling Effect of Article III, and response to Q.(b), <i>Professor Philippa Webb</i>
<i>13:00 – 14:00</i>	<i>Lunch Break</i>
14:00 – 15:30	The Western Rivers Run-of-River Hydro Bargain, the Controlling Effect of Article III, and response to Q.(b) [<i>continued</i>], <i>Professor Philippa Webb</i>
<i>15:30 – 16:00</i>	<i>Break</i>
16:00 – 17:30	Contingency time
Thursday, 11 July 2024	
09:30 – 11:00	Construing the design criteria of Paragraph 8 of the Treaty, <i>Sir Daniel Bethlehem KC</i>
	Approaching Paragraph 8 from the perspective of an engineer, <i>Dr. Gregory Morris</i>
<i>11:00 – 11:30</i>	<i>Break</i>
11:30 – 13:00	Approaching Paragraph 8 from the perspective of an engineer [<i>continued</i>], <i>Dr. Gregory Morris</i>
	Freeboard, <i>Dr. Cameron Miles</i>
<i>13:00 – 14:00</i>	<i>Lunch Break</i>
14:00 – 15:30	Outlets, spillways and power intakes, <i>Professor Philippa Webb</i>
<i>15:30 – 16:00</i>	<i>Break</i>
16:00 – 17:30	Outlets, spillways and power intakes [<i>continued</i>], <i>Professor Philippa Webb</i>
	Situating the calculation of Pondage within the scheme of the Treaty, <i>Sir Daniel Bethlehem KC</i>

	Contingency time
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<i>Friday, 12 July 2024</i>	
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09:30 – 11:00	The calculation of maximum allowable pondage, <i>Dr. Cameron Miles</i>
<i>11:00 – 11:30</i>	<i>Break</i>
11:30 – 13:00	The calculation of maximum allowable pondage [<i>continued</i>], <i>Dr. Cameron Miles</i>
	Contingency time
<i>13:00 – 14:00</i>	<i>Lunch Break</i>
14:00 – 15:30	Response to the Court’s pre-hearing questions 1(a) and (b) and 2(b), <i>Dr. Cameron Miles</i>
	The permissibility and utility of a narrative dispositive, <i>Professor Attila Tanzi</i>
	Concluding observations and request for relief, <i>Sir Daniel Bethlehem KC</i>
<i>15:30 – 16:00</i>	<i>Break</i>
16:00 – 17:30	Concluding observations and request for relief [<i>continued</i>], <i>Sir Daniel Bethlehem KC</i>
	Final submissions, <i>Attorney General for Pakistan</i>
	Closing submissions, <i>Agent / Deputy Agent of Pakistan</i>
	Contingency time

<i>Saturday, 13 July 2024</i>	
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<i>By 12:00</i>	Directions in relation to the written questions of the Court to be transmitted to the Parties by e-mail (Chairman / PCA)
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<i>Monday, 15 July 2024</i>	
09:30 – 11:00	Second Round Submissions/Responses to the Court's Questions (Pakistan)
<i>11:00 – 11:30</i>	<i>Break</i>
11:30 – 13:00	Second Round Submissions/Responses to the Court's Questions (Pakistan)
<i>13:00 – 14:00</i>	<i>Lunch Break</i>
14:00 – 15:30	Second Round Submissions/Responses to the Court's Questions (Pakistan)
<i>15:30 – 16:00</i>	<i>Break</i>
16:00 – 17:30	Second Round Submissions/Responses to the Court's Questions (Pakistan)

<i>Tuesday, 16 July 2024</i>	
09:30 – 11:00	Second Round Submissions/Responses to the Court's Questions (Pakistan)
<i>11:00 – 11:30</i>	<i>Break</i>
11:30 – 13:00	Second Round Submissions/Responses to the Court's Questions (Pakistan)
<i>13:00 – 14:00</i>	<i>Lunch Break</i>
14:00 – 15:30	Second Round Submissions/Responses to the Court's Questions (Pakistan)
<i>15:30 – 16:00</i>	<i>Break</i>
16:00 – 17:15	Second Round Submissions/Responses to the Court's Questions (Pakistan)
17:15 – 17:45	Concluding Remarks (Chairman of the Court)