

Annex: Government of Pakistan's Final Submissions

FINAL SUBMISSIONS

(1) Having regard to the submissions advanced and evidence adduced in the Memorial, and to the submissions advanced and evidence adduced during the Hearing, and to any submissions that may be advanced and evidence adduced in any post-Hearing submissions that may be directed by the Court, Pakistan respectfully requests the Court, in one or more partial awards:

A. To set out its findings on the issues engaged by this First Phase on the Merits of the proceedings in a narrative *dispositif* that elaborates in detail and in prescriptive terms the overall interpretation and application of Article III and Paragraph 8 of the Treaty, and in particular what is required for purposes of compliance with the design criteria of Paragraph 8 of Annexure D and other relevant and related provisions of the Treaty;

B. Having regard to the facts, evidence and law adduced in the Memorial, its associated Appendices, and accompanying exhibits and annexes, in the Hearing, and its accompanying exhibits and annexes, and in any post-Hearing submissions that may be directed by the Court, to adjudge and declare:

(i) the nature and character of the Treaty, and the bargains reflected in the Treaty in terms addressed in **Chapter 7** of, and elsewhere in, the Memorial, in the Hearing, and in any post-Hearing submissions that may be directed by the Court;

(ii) the binding or otherwise controlling effect of the decisions of past dispute resolution bodies in terms addressed in **Chapter 8** of, and elsewhere in, the Memorial, in the Hearing, and in any post-Hearing submissions that may be directed by the Court, with respect to:

(a) the Parties;

(b) the present proceedings before the Court;

(c) the present proceedings before the Neutral Expert; and

(d) future proceedings before a court of arbitration or a neutral expert;

(iii) the relationship, for interpretative purposes, between (a) the headline obligations contained in Article III(1), the *chapeau* to Article III(2) and Article III(4) of the Treaty, and (b) the exception thereto contained in Article III(2)(d) and Part 3 of Annexure D, in

terms addressed in **Chapters 8 and 9** of, and elsewhere in, the Memorial, in the Hearing, and in any post-Hearing submissions that may be directed by the Court;

- (iv) that engineering “best practices” can and must be used for purposes of complying with the design criteria and operational constraints in Part 3 of Annexure D of the Treaty, but that “best practices” cannot be relied upon to circumvent the requirements of the Treaty, in terms addressed in **Chapter 9** of, and elsewhere in, the Memorial, in the Hearing, and in any post-Hearing submissions that may be directed by the Court;
- (v) with respect to the interpretation and application of Paragraph 8(d) of Annexure D of the Treaty, what is to be taken into account, and what is to be excluded, for purposes of designing low-level sediment and other outlets for an Annexure D.3 HEP in terms addressed in **Chapter 10** of, and elsewhere in, the Memorial, in the Hearing, and in any post-Hearing submissions that may be directed by the Court;
- (vi) with respect to the interpretation and application of Paragraph 8(e) of Annexure D of the Treaty, what is to be taken into account, and what is to be excluded, for purposes of designing gated spillways for an Annexure D.3 HEP in terms addressed in **Chapter 10** of, and elsewhere in, the Memorial, in the Hearing, and in any post-Hearing submissions that may be directed by the Court;
- (vii) with respect to the interpretation and application of Paragraph 8(f) of Annexure D of the Treaty, what is to be taken into account, and what is to be excluded, for purposes of designing power intakes for an Annexure D.3 HEP in terms addressed in **Chapter 10** of, and elsewhere in, the Memorial, in the Hearing, and in any post-Hearing submissions that may be directed by the Court;
- (viii) with respect to the interpretation and application of Paragraph 8(c) of Annexure D of the Treaty, what is to be taken into account, and what is to be excluded, for purposes of calculating maximum Pondage for an Annexure D.3 HEP in terms addressed in **Chapter 11** of, and elsewhere in, the Memorial, in the Hearing, and in any post-Hearing submissions that may be directed by the Court;
- (ix) with respect to the interpretation and application of Paragraph 8(a) of Annexure D of the Treaty, what is to be taken into account, and what is to be excluded, for purposes of designing the freeboard for an Annexure D.4 HEP in terms addressed in **Chapter 12** of, and elsewhere in, this Memorial, in the Hearing, and in any post-Hearing submissions that may be directed by the Court;

- (x) any other findings as the Court may consider to be necessary or warranted for purposes of providing controlling guidance on the interpretation and application of, and relationship between:
 - (a) Article III of the Treaty;
 - (b) Paragraph 8(a) of Annexure D of the Treaty;
 - (c) Paragraph 8(c) of Annexure D of the Treaty;
 - (d) Paragraph 8(d) of Annexure D of the Treaty;
 - (e) Paragraph 8(e) of Annexure D of the Treaty;
 - (f) Paragraph 8(f) of Annexure D of the Treaty; and

 - (xi) such other findings as the Court may consider to be necessary or warranted.
- (2) Pakistan further requests the Court:
- A. To convene a case management conference of the Parties for purposes of considering:
 - (i) the status of the parallel proceedings before the Neutral Expert;
 - (ii) what engagement, if any, the Court should undertake with the respect to the Neutral Expert and his proceedings, having regard in particular to the general duty of mutual respect and comity applicable to both the proceedings before the Court and the proceedings before the Neutral Expert;
 - (iii) the need for directions for the conduct of further phases of these proceedings;
 - B. To give such directions as may be necessary and warranted for the scheduling and conduct of further phases of the proceedings before the Court;
 - C. To reserve any issue of costs in respect of the present phase of the proceedings for decision by the Court in due course;
 - D. To remain seised of the dispute.