



PRINCIPLES OF TREATY INTERPRETATION

Professor Philippa Webb

9 July 2024

2024

Treaty Event



Strengthening the Multi-
Treaty Framework



Paragraph 29 of Annexure G

No. 6032

INDIA, PAKISTAN and INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT

The Indus Waters Treaty 1960 (with annexes). Signed at
Karachi, on 19 September 1960

Protocol to the above-mentioned Treaty. Signed on 27 No-
vember, 2 and 23 December 1960

Official text: English.

Registered by India on 16 January 1962.

INDE, PAKISTAN et BANQUE INTERNATIONALE
LA RECONSTRUCTION ET LE DÉVELOPPEMENT

Traité de 1960 sur les eaux de l'Indus (avec annexes)
à Karachi, le 19 septembre 1960

Protocole relatif au Traité susmentionné. Signé
novembre, 2 et 23 décembre 1960

Texte officiel: anglais.

Enregistrés par l'Inde le 16 janvier 1962.

29. Except as the Parties may otherwise agree, the law to be applied by the Court shall be this Treaty and, whenever necessary for its interpretation or application, but only to the extent necessary for that purpose, the following in the order in which they are listed :

- (a) International conventions establishing rules which are expressly recognized by the Parties.
- (b) Customary international law.



Outline of submissions

1. Article 31, VCLT
2. Article 32, VCLT
3. Paragraph 29 of Annexure G, Indus Waters Treaty
4. Interpretation of peace and boundary treaties



Article 31, VCLT

Article 31

General rule of interpretation

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:

(a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;

(b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

3. There shall be taken into account, together with the context:

(a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;

(b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;

(c) any relevant rules of international law applicable in the relations between the parties.

4. A special meaning shall be given to a term if it is established that the parties so intended.



Article 31(1), VCLT

Article 31

General rule of interpretation

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.



Article 31(1), VCLT

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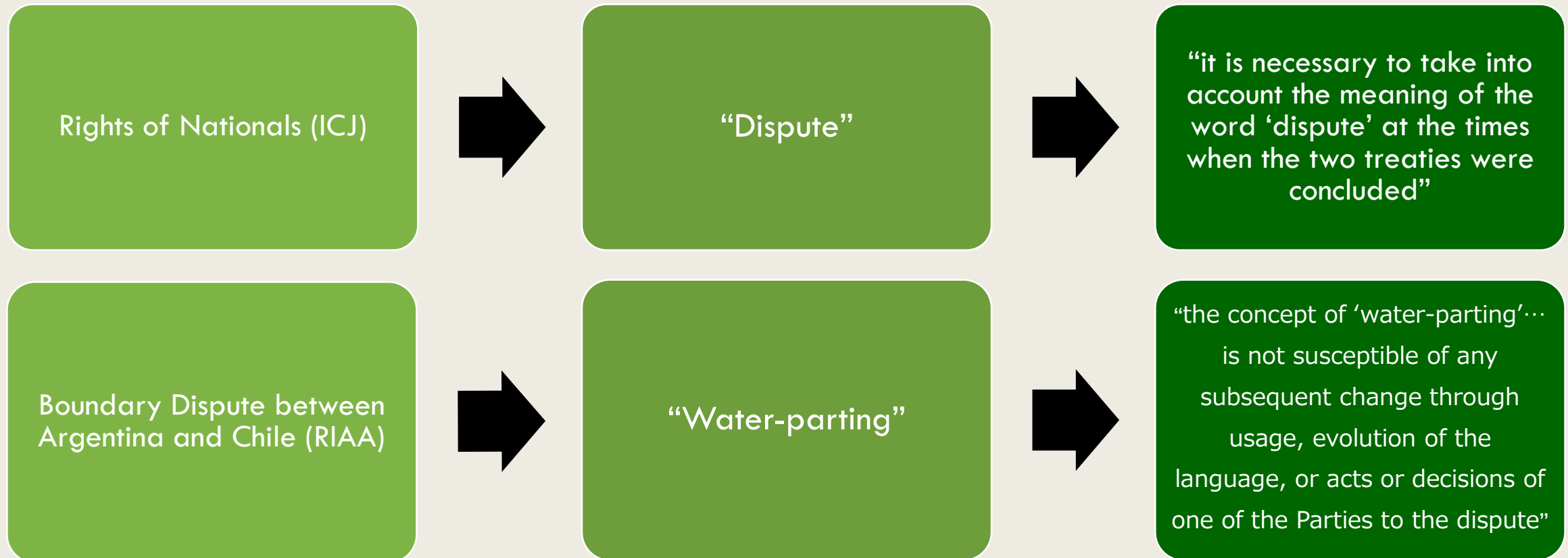
Sir Gerald Fitzmaurice, ILC Special Rapporteur on Treaties



“The terms of a treaty must be interpreted according to the meaning which they possessed, or which would have been attributed to them, and in the light of current linguistic usage, **at the time when the treaty was originally concluded.**”



Principle of contemporaneity



Case concerning rights of nationals of the United States of America in Morocco, Judgment of August 27th, 1952: I.C.J. Reports 1952, p. 176, PLA-0064, p. 189.

Boundary Dispute between Argentina and Chile concerning the Frontier Line between Boundary Post 62 and Mount Fitzroy (Argentina/Chile) Decision (1994) XXII RIAA 3, PLA-0067, ¶¶ 128-130.



Article 31(4), VCLT

4. A special meaning shall be given to a term if it is established that the parties so intended.



Special meaning of "Firm power"

Firm Power

Calculated by
reference to demand,
plotted on a load
curve

Para 2(i) of Ann D: "the hydro-
electric power corresponding to
the minimum mean discharge at
the site of a plant".



Article 31(1), VCLT

Article 31

General rule of interpretation

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.



Kishenganga Partial Award

“It would make little sense, and cannot have been the Parties’ intention, to read the Treaty as permitting new Run-of-River Plants to be designed and built in a certain manner, but then prohibiting the operation of such a Plant in the very manner for which it was designed. Such an interpretation of the various paragraphs of Part 3 in isolation from one another would render ineffective those provisions that specifically permit the development of hydro-electric power in accordance with the design constraints of Annexure D.”



Article 31(2), VCLT

2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:

- (a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;
- (b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.



Article 31(1), VCLT

Article 31

General rule of interpretation

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.



Article XII(1) and Preamble, IWT

No. 6032

INDIA, PAKISTAN and INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

The Indus Waters Treaty 1960 (with annexes).
Karachi, on 19 September 1960

Protocol to the above-mentioned Treaty. Signed
November, 2 and 23 December 1960

Official text: English.

Registered by India on 16 January 1962.

INDE, PAKISTAN et BANQUE INTERNATIONALE DE LA RECONSTRUCTION ET LE DÉVELOPPEMENT

Traité de 1960 sur les eaux de l'Indus (avec annexe
à Karachi, le 19 septembre 1960

Protocole relatif au Traité susmentionné. Signé
novembre, 2 et 23 décembre 1960

Texte officiel: anglais.

Enregistrés par l'Inde le 16 janvier 1962.

Article XII

FINAL PROVISIONS

(1) This Treaty consists of the Preamble, the Articles hereof and Annexures A to H hereto, and may be cited as "The Indus Waters Treaty 1960".

PREAMBLE

The Government of India and the Government of Pakistan, being equally desirous of attaining the most complete and satisfactory utilisation of the waters of the Indus system of rivers and recognising the need, therefore, of fixing and delimiting, in a spirit of goodwill and friendship, the rights and obligations of each in relation to the other concerning the use of these waters and of making provision for the settlement, in a cooperative spirit, of all such questions as may hereafter arise in regard to the interpretation or application of the provisions agreed upon herein, have resolved to conclude a Treaty in furtherance of these objectives, and for this purpose have named as their plenipotentiaries :



Kishenganga Partial Award

“The deliberate division and allocation of the six main watercourses of the Indus system of rivers between the Parties is a defining characteristic of the Treaty. The inevitable conclusion is that Pakistan is given priority in the use of the waters of the Western Rivers, just as India has priority in the use of the waters of the Eastern Rivers.

Pakistan’s right to the Western Rivers is not absolute since it relates only to those waters of the Western Rivers ‘which India is under an obligation to let flow under the provisions of [Article III(2) of the Treaty].’ **The right is subject to expressly enumerated Indian uses on the Western Rivers, including the generation of hydro-electric power to the extent permitted by the Treaty.**

[...] although the chapeau of Annexure D confirms India’s right to generate hydro-electric power on the Western Rivers in language similar to that of Pakistan’s unrestricted ‘let flow’ right, **it is circumscribed by the terms of Annexure D itself.”**



Kishenganga Partial Award

“The Treaty allocates the use of the waters of the Western Rivers (including the Jhelum and its tributaries) to Pakistan, **curtailing, sometimes quite severely, India’s freedom to utilize the waters of the Western Rivers for the generation of hydro-electric power** and limiting, for the most part, the use of those waters to certain agricultural uses, and to domestic and non-consumptive uses.”



Kishenganga Partial Award

“**[O]ne of the primary objectives of the Treaty is to limit the storage of water by India on the Western Rivers** (and, correspondingly, to prohibit entirely the storage of water by Pakistan on the upper reaches of the Eastern Rivers). [...] The outcome was significant in that it achieved a **careful balance between the Parties’ respective negotiating positions**, allowing India hydro-electric use of the waters of the Western Rivers while protecting Pakistan against the possibility of water storage on the upstream reaches of those Rivers having an unduly disruptive effect on the flow of water to Pakistan...

[I]n many instances the Treaty does not simply restrict the Parties from taking certain actions, but also constrains their entitlement to construct works that would enable such actions to be taken. Thus, India is not only restricted in storing water on the Western Rivers; it is also prohibited from constructing Storage Works except within the limited capacity permitted by the Treaty.”



Kishenganga Partial Award

“In carrying out this evaluation, the Court emphasizes that it is not considering whether the development of hydro-electric power without recourse to drawdown flushing is preferable for India. **It is not for the Court to apply ‘best practices’ in resolving this dispute. [...] [A]ny exercise of design involves consideration of a variety of factors**—not all of them technical. Hydrologic, geologic, social, economic, environmental and regulatory considerations are all directly relevant, and **the Court considers the Treaty restraints on the construction and operation by India of reservoirs to be such a regulatory factor.** For the Court, **the optimal design and operation of a hydro-electric plant is that which can practically be achieved within the constraints imposed by the Treaty.**”



Travaux préparatoires, VCLT

- Delegate of Iran: exceptions to the general rule that the consent of a State to be bound by signature should be **“treated very strictly, like all exceptions”**.
- Delegate of Poland: it was “common knowledge that **no exception allowed of extensive interpretation**”



Certain German Interests in Upper Silesia, PCIJ

SÉRIE A — N° 7

RECUEIL DES ARRÊTS

PUBLICATIONS DE LA
COUR PERMANENTE DE JUSTICE INTERNATIONALE

N° 7. Affaire relative à certains inté-
rêts allemands en Haute-S
polonaise (Fond)

same person. It should be observed, moreover, that the liability to expropriation of rural property constitutes, under the Geneva Convention, an exception ; in case of doubt as to the scope of this exception, its terms must therefore be strictly construed.

COLLECTION OF JUDGMENTS

PUBLICATIONS OF THE
PERMANENT COURT OF INTERNATIONAL JUSTICE

No 7. Case concerning certain
German interests in Polish
Upper Silesia (The Merits)



Constitution of the Maritime Safety Committee, ICJ

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

CONSTITUTION OF THE
MARITIME SAFETY COMMITTEE OF THE
INTER-GOVERNMENTAL MARITIME
CONSULTATIVE ORGANIZATION
ADVISORY OPINION OF 8 JUNE 1960

1960

COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

COMPOSITION DU COMITÉ DE LA
SÉCURITÉ MARITIME DE L'ORGANISATION
INTERGOUVERNEMENTALE CONSULTATIVE
DE LA NAVIGATION MARITIME
AVIS CONSULTATIF DU 8 JUIN 1960

The meaning of the word “elected” in the Article cannot be determined in isolation by recourse to its usual or common meaning and attaching that meaning to the word where used in the Article. The word obtains its meaning from the context in which it is used. If the context requires a meaning which connotes a wide choice, it must be construed accordingly, just as it must be given a restrictive meaning if the context in which it is used so requires.



Enron v Argentina, ICSID

INTERNATIONAL CENTRE FOR SETTLEMENT
OF INVESTMENT DISPUTES

WASHINGTON, D.C.

IN THE PROCEEDINGS BETWEEN

ENRON CORPORATION
PONDEROSA ASSETS, LP

(CLAIMANTS)

AND

ARGENTINE REPUBLIC

(RESPONDENT)

ICSID Case No. ARB/01/3

AWARD

Members of the Tribunal:

Professor Francisco Orrego-Vicuña, President

Professor Albert Jan van den Berg, Arbitrator

Mr. Pierre-Yves Tschanz, Arbitrator

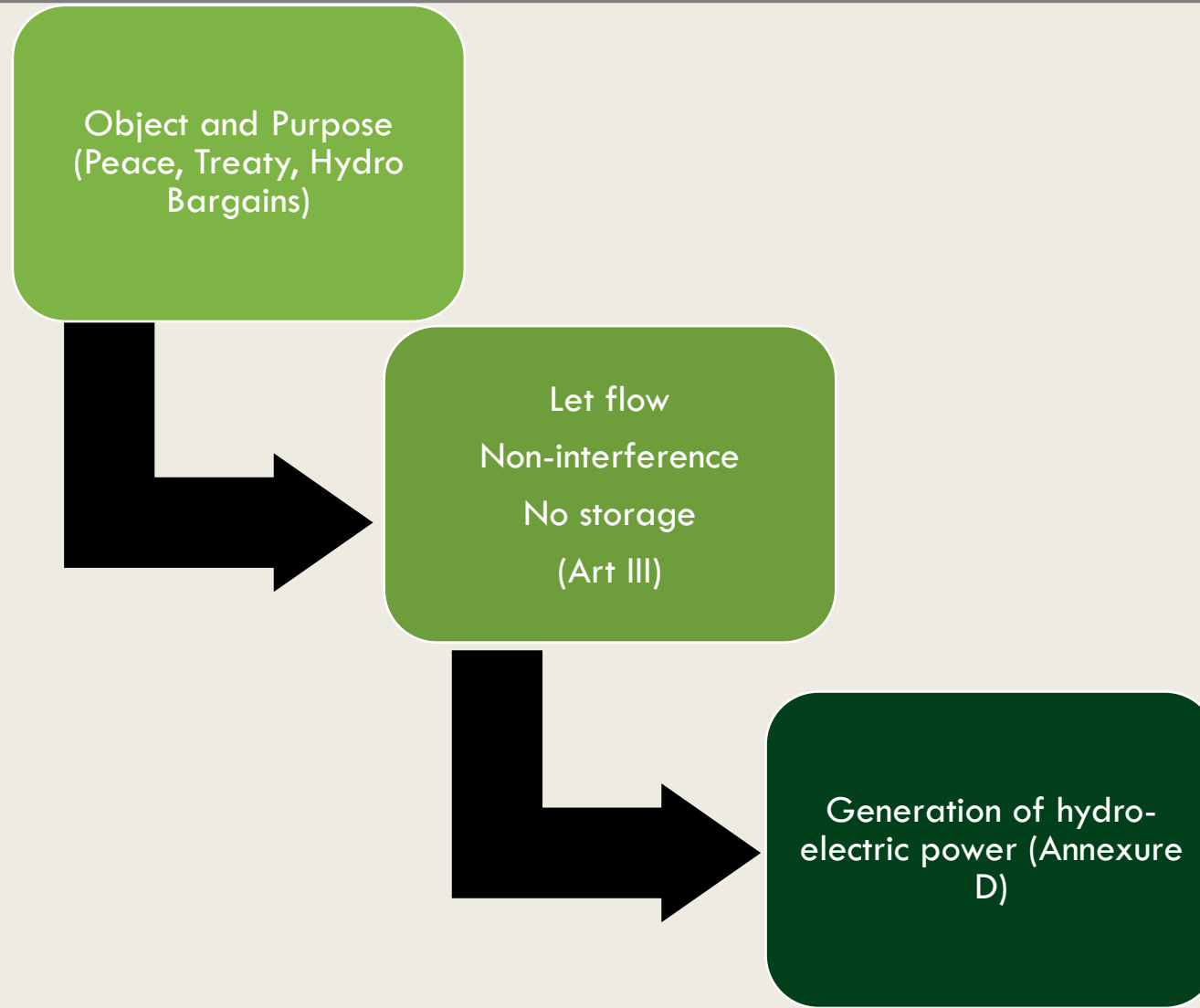
Secretary of the Tribunal:

Ms. Claudia Frutos-Peterson

331. In examining this discussion, the Tribunal must first note that the object and purpose of the Treaty is, as a general proposition, to apply in situations of economic difficulty and hardship that require the protection of the international guaranteed rights of its beneficiaries. To this extent, any interpretation resulting in an escape route from the obligations defined cannot be easily reconciled with that object and purpose. Accordingly, a restrictive interpretation of any such alternative is mandatory.



Object-Rule-Exception





Article 31(1), VCLT

Article 31

General rule of interpretation

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.



Article 26, VCLT

Article 26

"Pacta sunt servanda"

Every treaty in force is binding upon the parties to it and must be performed by them in good faith.



Article 31(3), VCLT

3. There shall be taken into account, together with the context:

- (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;
- (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;

Resolution of the Disputes Concerning Article IX(1) of the Indus Waters Treaty 1960



From

- (i) Shri B. Sen and Shri O.P. Chadha
Negotiators of the Government of India and
- (ii) Sheikh Ghias Mohammad and Mian Khalil-ur-Rahman
Negotiators of the Government of Pakistan.

To

- (i) The Government of India,
New Delhi.
- (ii) The Government of Pakistan,
Islamabad.

SUBJECT:- RESOLUTION OF THE DISPUTES CONCERNING ARTICLE IX(1)
OF THE INDUS WATERS TREATY 1960.

Sir,

The Permanent Indus Commission had, on 31st March 1967, submitted to the Government of India and the Government of Pakistan, under the provisions of Article IX(3) of the Indus Waters Treaty 1960, its report on the five disputes concerning Article IX(1) of the Treaty.

2. The Ministry of Foreign Affairs, Government of Pakistan had, under the provisions of Article IX(4) of the Treaty, invited the Government of India to resolve the said disputes by agreement and had, for this purpose, appointed Sheikh Ghias Mohammad and Mian Khalil-ur-Rahman, as the Government of Pakistan's Negotiators. The Government of India appointed Shri B. Sen and Shri P.R. Ahuja, as the Government of India's Negotiators. For the fourth meeting of the Negotiators Shri O.P. Chadha was appointed as Negotiator in place of Shri P.R. Ahuja.



1978 Agreement Regarding the Design of the Salal Hydro-Electric Plant on the Chenab River Main

**AGREEMENT¹ BETWEEN THE GOVERNMENT
OF INDIA AND THE GOVERNMENT OF THE
ISLAMIC REPUBLIC OF PAKISTAN
REGARDING THE SALAL HYDRO-
ELECTRIC PLANT
New Delhi, 14 April 1978**

Article III

Any question which arises between the Parties concerning the interpretation or application of this Agreement or the existence of any fact which, if established, might constitute a breach of this Agreement shall be dealt with under the provisions of Article IX of the Treaty.

Article IV

Matters not expressly provided for in this Agreement shall be governed by the provisions of the Treaty.

1989 Arrangements for the Communication of Information about Flood Flows

during the period 1st July to 10 October 1989,



ARRANGEMENTS FOR THE COMMUNICATION OF
INFORMATION ABOUT FLOOD FLOWS DURING
THE PERIOD 1ST JULY TO 10TH OCTOBER 1989

The two Commissioners further discussed the arrangements for the communication of information about flood flows during the period 1st July to 10th October 1989 and agreed as follows:-



Article IV(14), IWT

No. 6032

INDIA, PAKISTAN and INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT

The Indus Waters Treaty 1960 (with annexes). Signed at
Karachi, on 19 September 1960

Protocol to the above-mentioned Treaty. Signed on 27 No-
vember, 2 and 23 December 1960

Official text: English.

Registered by India on 16 January 1962.

(14) In the event that either Party should develop a use of the waters of the Rivers which is not in accordance with the provisions of this Treaty, that Party shall not acquire by reason of such use any right, by prescription or otherwise, to a continuance of such use.

INDE, PAKISTAN et BANQUE INTERNATIONALE POUR
LA RECONSTRUCTION ET LE DÉVELOPPEMENT

Traité de 1960 sur les eaux de l'Indus (avec annexes). Signé
à Karachi, le 19 septembre 1960

Protocole relatif au Traité susmentionné. Signé les 27
novembre, 2 et 23 décembre 1960

Texte officiel: anglais.

Enregistrés par l'Inde le 16 janvier 1962.



Article 32, VCLT

Article 32

Supplementary means of interpretation

Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:

- (a) leaves the meaning ambiguous or obscure; or
- (b) leads to a result which is manifestly absurd or unreasonable.



Paragraph 29 of Annexure G

No. 6032

INDIA, PAKISTAN and INTERNATIONAL BANK FOR
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The Indus Waters Treaty 1960 (with annexes). Signed at
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Protocol to the above-mentioned Treaty. Signed on 27 No-
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INDE, PAKISTAN et BANQUE INTERNATIONALE
LA RECONSTRUCTION ET LE DÉVELOPPEMENT

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29. Except as the Parties may otherwise agree, the law to be applied by the Court shall be this Treaty and, whenever necessary for its interpretation or application, but only to the extent necessary for that purpose, the following in the order in which they are listed :

- (a) International conventions establishing rules which are expressly recognized by the Parties.
- (b) Customary international law.



Kishenganga Final Award

“87. Taken as a whole, the task facing the Court ... is to determine a minimum flow that will mitigate adverse effects to Pakistan’s agricultural and hydro-electric uses throughout the operation of the KHEP, while preserving India’s right to operate the KHEP and maintaining the priority it acquired from having crystallized prior to the NJHEP. **At the same time, in fixing this minimum flow, the Court must give due regard, in keeping with Paragraph 29 of Annexure G, to the customary international law requirements of avoiding or mitigating trans-boundary harm and of reconciling economic development with the protection of the environment...**

111. As the Court noted with approval in its Partial Award, the Tribunal in the Iron Rhine Arbitration, building on the judgment of the International Court of Justice in the Case concerning the Gabčíkovo-Nagymaros Project, held that principles of international environmental law must be taken into account even when interpreting treaties concluded before the development of that body of law. In implementing this holding, the Court notes that the place of customary international law in the interpretation or application of the Indus Waters Treaty remains subject to Paragraph 29. Unlike the treaty at issue in Iron Rhine, **this Treaty expressly limits the extent to which the Court may have recourse to, and apply, sources of law beyond the Treaty itself.**”



Kishenganga Final Award

“112. As the Court held in its Partial Award, “States have ‘a duty to prevent, or at least mitigate’ significant harm to the environment when pursuing large-scale construction activities. In light of this duty, the Court has no difficulty concluding that the requirement of an environmental flow (without prejudice to the level of such flow) is necessary in the application of the Treaty. At the same time, **the Court does not consider it appropriate, and certainly not “necessary,” for it to adopt a precautionary approach and assume the role of policymaker in determining the balance between acceptable environmental change and other priorities, or to permit environmental considerations to override the balance of other rights and obligations expressly identified in the Treaty—in particular the entitlement of India to divert the waters of a tributary of the Jhelum. The Court’s authority is more limited and extends only to mitigating significant harm. Beyond that point, prescription by the Court is not only unnecessary, it is prohibited by the Treaty. If customary international law were applied not to circumscribe, but to negate rights expressly granted in the Treaty, this would no longer be “interpretation or application” of the Treaty but the substitution of customary law in place of the Treaty.** Echoing the Court’s caution in the Partial Award, the prioritization of the environment above all other considerations would effectively “read the principles of Paragraph 15(iii) [of Annexure D] out of the Treaty.” **That Paragraph 29 does not permit.”**



Kishenganga Final Award

“115. The Court therefore concludes that a minimum flow criterion of 9 cumecs is consistent with Pakistan’s analysis of environmental flows, given the need to balance power generation with environmental and other downstream uses, and, based on India’s data, would maintain the natural flow regime in the most severe winter conditions.”



Kishenganga, Order on Interim Measures

Paragraph 29 of Annexure G is a “**kind of *lex specialis*** prescribed by the framers of that provision that makes unnecessary the imposition of further requirements” of the kind set out in Article 41 of the ICJ Statute.



Conclusion of the Indus Waters Treaty





Temple of Preah Vihear, ICJ

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

CASE CONCERNING THE
TEMPLE OF PREAH VIHEAR
(CAMBODIA *v.* THAILAND)
MERITS

JUDGMENT OF 15 JUNE 1962

1962

COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

AFFAIRE DU TEMPLE DE
PRÉAH VIHÉAR
(CAMBODGE *c.* THAÏLANDE)
FOND

ARRÊT DU 15 JUIN 1962

In general, when two countries establish a frontier between them, one of the primary objects is to achieve stability and finality. This is impossible if the line so established can, at any moment, and on the basis of a continuously available process, be called in question, and its rectification claimed, whenever any inaccuracy by reference to a clause in the parent treaty is discovered. Such a process could continue indefinitely, and finality would never be reached so long as possible errors still remained to be discovered. Such a frontier, so far from being stable, would be completely precarious. It must be asked why the Parties in this case provided



Bay of Bengal, Annex VII, UNCLOS

IN THE MATTER OF
THE BAY OF BENGAL MARITIME BOUNDARY ARBITRATION

- between -

THE PEOPLE'S REPUBLIC OF BANGLADESH

- and -

THE REPUBLIC OF INDIA

AWARD

The Arbitral Tribunal:

Judge Rüdiger Wolfrum (President)

Judge Jean-Pierre Cot

Judge Thomas A. Mensah

Dr. Pemmaraju Sreenivasa Rao

Professor Ivan Shearer

Registry:

Permanent Court of Arbitration

The Hague, 7 July 2014

216. The Tribunal notes that maritime delimitations, like land boundaries, must be stable and definitive to ensure a peaceful relationship between the States concerned in the long term. As the International Court of Justice noted in its decision in the *Temple of Preah Vihear* case, “[i]n general, when two countries establish a frontier between them, one of the primary objects is to achieve stability and finality” (*Merits, Judgment of 15 June 1962, I.C.J. Reports 1962*, p. 6 at p. 34). The same consideration applies to maritime boundaries.



Baglihar, Pakistan's Reply, p. 12, para. 1.2(I)

India's version of the Preamble is not just a misreading but rather a rewriting of the Treaty which flies in the face of all evidence to the contrary. It is an admitted historical fact that attempts to evolve an integrated regime for the Indus basin failed miserably. It is an admitted historical fact that the proposal submitted by the World Bank in 1954 specifically intended to maximize the independence of each party with respect to its share of the Indus basin. The Preamble to the Treaty itself records that the parties intended to achieve the development of the Indus basin not through cooperative development but through the "fixing and delimiting" of each other's rights and obligations. It is this statement of intent which self-evidently governs the whole Treaty, not any other.



Baglihar Determination, p. 14

6. As has been pointed out by both Parties, the Treaty was negotiated and concluded during a period of tension between India and Pakistan. However, in the view of the NE, because of this tension, those who drafted the Treaty aimed for predictability and legal certainty in the drafting of the Treaty so as to ensure its sound implementation. The wish for predictability and legal certainty is well illustrated by the technicalities of the Treaty and particularly of its Annexures. The Treaty contains clear language and wording on how and to which extent India and Pakistan may be allowed to utilize the waters of the Indus system of rivers. The rights and obligations deriving from the Treaty with regard to hydro-electric plants are clearly specified and unambiguous. The Treaty also gives a clear indication of the rights and obligations of both Pakistan and India. Sovereign rights cannot be exercised without consideration of the limits imposed by the Treaty. In this context, it is not appropriate for the NE to qualify the Treaty as, *inter alia*, a “delimitation” or a “boundary” Treaty. The task of the NE with respect to the present difference is not to qualify the Treaty but to decide on a question posed by Pakistan with respect to Annexure D, Part 3 of the Treaty which deals with New Run-of-River Plants.

Kishenganga Hearing on the Merits, 28 August 2012



“The fact is -- and this is the point of the word “therefore” in the preamble -- **it was only by fixing and delimiting the allocation of waters that the agreement had, in Gulhati's words, a reasonable chance of success,** a reasonable chance to survive. And central to that delimitation, a sort of hydraulic boundary treaty, was the obligation on India to let flow the waters of the Western Rivers subject only to the expressly permitted uses as per Annexures C, D and E. That is what the **second part of the preamble refers to,** the part of the preamble that India doesn't like and won't read.

Well, **it says “most complete”.** The fact is there isn't enough water to go around, and therefore there is some need for compromise. The question was whether the compromise was to be achieved through the ongoing work of an executive commission, with presumably tie-breaking rules, and so on, or whether it was **to be done a priori, by delimitation. That's why I describe the treaty as a hydraulic boundary treaty. “**

Kishenganga Hearing on the Merits, 31 August 2012



“I said in opening that the Indus Waters Treaty was like a **hydraulic boundary treaty**, and I come back to that idea. Its concern was to delimit the uses of the Western Rivers, and of course to give to India the very considerable benefit of the use of the Eastern Rivers, which has been taken to its full extent.”

Kishenganga Hearing on the Merits,
31 August 2012



“Professor Crawford also stated in rebuttal that the treaty was a hydraulic boundary treaty; his own assessment. I respectfully submit it is not, see Article XI: it is a **treaty for water uses**, not a boundary treaty”



Article XI(2), IWT

No. 6032

**INDIA, PAKISTAN and INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT**

**The Indus Waters Treaty 1960 (with annexes). Signed at
Karachi, on 19 September 1960**

**Protocol to the above-mentioned Treaty. Signed on 27 No-
vember, 2 and 23 December 1960**

Official text: English.

Registered by India on 16 January 1962.

(2) Nothing in this Treaty shall be construed by the Parties as in any way establishing any general principle of law or any precedent.

**INDE, PAKISTAN et BANQUE INTERNATIONALE POUR
LA RECONSTRUCTION ET LE DÉVELOPPEMENT**

**Traité de 1960 sur les eaux de l'Indus (avec annexes). Signé
à Karachi, le 19 septembre 1960**

**Protocole relatif au Traité susmentionné. Signé les 27
novembre, 2 et 23 décembre 1960**

Texte officiel: anglais.

Enregistrés par l'Inde le 16 janvier 1962.



Treaty as "living instrument"

Gabčíkovo-Nagymaros Project (Hungary/Slovakia) (Judgment) (1997) ICJ Rep, §112 (PLA-0094): Treaty of 16 September 1977 concerning the construction and operation of the Gabčíkovo-Nagymaros System of Locks → specific provisions (Arts 15 and 19) on taking into account environmental norms.

Iron Rhine (Belgium v. The Netherlands) (Award) (2005) 27 UNRIAA 35, see §§79-82 [cited in Kishenganga Final Award, §111] 1839 Treaty between Belgium and the Netherlands relative to the Separation of their Respective Territories → object and purpose called for new technological developments

Dispute Concerning Navigational and Related Rights (Costa Rica v. Nicaragua) (Judgment) (2009) ICJ Rep 213: 1858 Treaty of Limits → deliberate use of generic terms

