

MATRIX 1: DECISIONS OF PAST COURTS OF ARBITRATION

Colour code:

Binding decisions	
Binding decisions with respect to “matters within his competence”	
Non-binding decisions	

Question (a) Part I: response on decisions of past courts of arbitration (i.e. <i>Kishenganga I</i>)	(a) the Parties	(b) the present proceedings before the Court	(c) the present proceedings before the Neutral Expert	(d) future proceedings before a court of arbitration or a neutral expert
(i) Competence	Paras 16 and 23 of Annexure G: binding, also for <i>res judicata</i> and good faith reasons. Confirmed in Competence Award paras 123, 189, 316.	Paras 16 and 23 of Annexure G: binding, also for <i>res judicata</i> and good faith reasons	Paras 16 and 23 of Annexure G: binding, also for <i>res judicata</i> and good faith reasons	Paras 16 and 23 of Annexure G: binding, also for <i>res judicata</i> and good faith reasons
(ii) Matters of Fact	Para 23 of Annexure G: binding, also for <i>res judicata</i> reasons. Confirmed in Competence Award para 123.	Para 23 of Annexure G: binding, also for <i>res judicata</i> and good faith reasons	Para 23 of Annexure G: binding, also for <i>res judicata</i> and good faith reasons	Para 23 of Annexure G: binding, also for <i>res judicata</i> and good faith reasons
(iii) Interpretation of the Treaty	Para 23 of Annexure G: binding, also for <i>res</i>	Para 23 of Annexure G: binding, also for <i>res</i>	Para 23 of Annexure G: binding, also for <i>res</i>	Para 23 of Annexure G: binding, also for <i>res judicata</i> and good

	<p><i>judicata</i> and good faith reasons. Binding nature extends to all Treaty interpretations rendered, including the “general questions presented in the proceedings” [i.e., the legality under the Treaty of India’s proposed diversion of the Kishenganga and of drawdown flushing generally at HEPs on the Western Rivers. Confirmed in <i>Kishenganga I</i>: Partial Award paras. 466, 468, 470; and Decision on India’s Request for Clarification or Interpretation [PLA-0021], paras 25, 27, 33-34. Confirmed also in Competence Award paras 123, 189.</p>	<p><i>judicata</i> and good faith reasons. Binding with respect to all Treaty interpretations rendered, including the “general questions presented in the proceedings” as to the prohibition of drawdown flushing under the Treaty (<i>Kishenganga I</i>, Partial Award paras. 466, 468, 470 and Decision on India’s Request for Clarification or Interpretation [PLA-0021], paras 25, 27, 33-34) save as regards pre-existing HEPs including Baglihar (Partial Award, paras 469, 523 and <i>dispositif</i> B(4).</p>	<p><i>judicata</i> and good faith reasons. Binding with respect to all Treaty interpretations rendered, including the “general questions presented in the proceedings” as to the prohibition of drawdown flushing under the Treaty (<i>Kishenganga I</i>, Partial Award paras. 466, 468, 470 and Decision on India’s Request for Clarification or Interpretation [PLA-0021], paras 25, 27, 33-34) save as regards pre-existing HEPs including Baglihar (Partial Award, paras 469, 523 and <i>dispositif</i> B(4).</p>	<p>faith reasons. Binding with respect to all Treaty interpretations rendered, including the “general questions presented in the proceedings” as to the prohibition of drawdown flushing under the Treaty (<i>Kishenganga I</i>, Partial Award paras. 466, 468, 470 and Decision on India’s Request for Clarification or Interpretation [PLA-0021], paras 25, 27, 33-34) save as regards pre-existing HEPs including Baglihar (Partial Award, paras 469, 523 and <i>dispositif</i> B(4).</p>
<p>(iv) Application of the Treaty “in particular circumstances”</p>	<p>Para 23 of Annexure G: binding, also for <i>res judicata</i> and good faith reasons. Binding nature extends to all applications of the Treaty “in the particular circumstances” of that case. Confirmed in</p>	<p>Para 23 of Annexure G: binding, also for <i>res judicata</i> and good faith reasons. Binding with respect to all applications of the Treaty “in the particular circumstances” of that case. Follows</p>	<p>Para 23 of Annexure G: binding, also for <i>res judicata</i> and good faith reasons. Binding with respect to all applications of the Treaty “in the particular circumstances”</p>	<p>Para 23 of Annexure G: binding, also for <i>res judicata</i> and good faith reasons. Binding with respect to all applications of the Treaty “in the particular circumstances” of that case. Follows from the above.</p>

	Competence Award para 123. Subject only to variation in an application where the reasoning given in the prior Court of Arbitration decision “no longer accords with reality” due to factors beyond the Parties’ control: <i>Kishenganga I</i>: Final Award paras 117-118	from the above. Subject only to variation in an application where the reasoning given in the prior Court of Arbitration decision “no longer accords with reality” due to factors beyond the Parties’ control: <i>Kishenganga I</i>: Final Award paras 117-118	of that case. Follows from the above.	
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MATRIX 2: DECISIONS OF PAST NEUTRAL EXPERTS

Colour code:

Binding decisions	
Binding decisions with respect to “matters within his competence”	
Non-binding decisions	

Question (a) Part II: response on past neutral expert decisions (i.e. <i>Baglihar</i>)	(a) the Parties	(b) the present proceedings before the Court	(c) the present proceedings before the Neutral Expert	(d) future proceedings before a court of arbitration or a neutral expert
(i) Competence	Part 1 and paras 7 and 11 of Annexure F: binding, also for <i>res judicata</i> and good faith reasons, with respect only to “matters within his competence”. Confirmed in Competence Award, para 316.	Part 1 and paras 7 and 11 of Annexure F: binding or otherwise controlling, also for <i>res judicata</i> and good faith reasons, with respect only to “matters within his competence”, assuming no challenge and no contrary decision of a court of arbitration. Confirmed in Competence Award, para 316.	Part 1 and paras 7 and 11 of Annexure F: binding or otherwise controlling, also for <i>res judicata</i> and good faith reasons, with respect only to “matters within his competence”, assuming no challenge and no contrary decision of a court of arbitration. Confirmed in Competence Award, para 316.	Part 1 and paras 7 and 11 of Annexure F: binding or otherwise controlling, also for <i>res judicata</i> and good faith reasons, with respect only to “matters within his competence”, assuming no challenge and no contrary decision of a court of arbitration. Confirmed in Competence Award, para 316.
(ii) Matters of Fact	Part 1 and para 11 of Annexure F: Binding only with respect to “matters within his	Not “binding or otherwise controlling” because the present proceedings relate to	Not “binding or otherwise controlling” because the present proceedings relate to	Not binding or otherwise controlling” unless the same factual “matters”

	competence” [i.e., as regards the <i>Baglihar</i> Neutral Expert decision, only with respect to matters of fact relevant to compliance of Baglihar plant design with Annexure D paras 8(a) (freeboard), 8(c) (pondage), 8(e) (gated spillways) and 8(f) (turbine intakes)]. Confirmed in <i>Kishenganga I</i>, Partial Award para. 470 and in Competence Award, para 316. <i>Res judicata</i> and good faith reasons also apply.	a different “matter”/HEPs (i.e. KHEP, RHEP and HEPs generally on the Western Rivers). Confirmed in <i>Kishenganga I</i>, Partial Award para. 470.	a different “matter”/HEPs (i.e. KHEP and RHEP)	arise in future proceedings related to the Baglihar plant (in which case para 11 of Annexure F, <i>res judicata</i> and good faith factors would apply). Confirmed with respect to future Court of arbitration proceedings in <i>Kishenganga I</i>, Partial Award para. 470.
(iii) Interpretation of the Treaty	Part 1 and para 11 of Annexure F: Binding only with respect to “matters within his competence” [i.e., as regards the <i>Baglihar</i> Neutral Expert decision, only with respect to matters of treaty interpretation relevant to compliance of Baglihar plant design with Annexure D paras 8(a) (freeboard), 8(c) (pondage), 8(e) (gated spillways) and 8(f) (turbine intakes)]. Confirmed in <i>Kishenganga I</i>, Partial Award paras. 469-470 and in Competence Award, para 316.	Not “binding or otherwise controlling” because a neutral expert has no general or systemic interpretative competence and the present proceedings relate to a different “matter”/HEPs (i.e. KHEP, RHEP and HEPs generally on the Western Rivers). Confirmed in <i>Kishenganga I</i>, Partial Award para. 470.	Not “binding or otherwise controlling” because a neutral expert has no general or systemic interpretative competence and the present proceedings relate to a different “matter”/HEPs (i.e. KHEP and RHEP).	Not “binding or otherwise controlling” unless the same “matters” of technical interpretation arise in future proceedings related to the Baglihar plant (in which case para 11 of Annexure F, <i>res judicata</i> and good faith factors would apply). Confirmed with respect to future Court of arbitration proceedings in <i>Kishenganga I</i>, Partial Award para. 470.
(iv) Application of the Treaty “in	Part 1 and para 11 of Annexure F: Binding only with	Not “binding or otherwise controlling” because the	Not “binding or otherwise controlling” because the	Not “binding or otherwise controlling” unless the

particular circumstances”	respect to “matters within his competence” [i.e., as regards the <i>Baglihar</i> Neutral Expert decision, only with respect to application of the Treaty to Baglihar plant design with respect to freeboard, pondage, gated spillways and turbine intakes. Confirmed in <i>Kishenganga I</i>, Partial Award paras. 469-470 and in Competence Award, para 316.	present proceedings relate to a different “matter”/HEPs (i.e. KHEP, RHEP and HEPs generally on the Western Rivers). Confirmed in <i>Kishenganga I</i>, Partial Award para. 470.	present proceedings relate to a different “matter”/HEPs (i.e. KHEP and RHEP)	same “matters” related to the application of the Treaty arise in future proceedings related to the Baglihar plant (in which case para 11 of Annexure F, <i>res judicata</i> and good faith factors would apply) Confirmed with respect to future Court of arbitration proceedings in <i>Kishenganga I</i>, Partial Award para. 470.
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