

**PRESS RELEASE****INDUS WATERS TREATY NEUTRAL EXPERT PROCEEDINGS
(REPUBLIC OF INDIA V. ISLAMIC REPUBLIC OF PAKISTAN)**

VIENNA, 20 JANUARY 2025

Neutral Expert Issues Decision on Certain Issues Pertaining to his Competence

On 7 January 2025, Mr. Michel Lino, the Neutral Expert appointed under the Indus Waters Treaty 1960 (the “Treaty”) in proceedings commenced by the Republic of India (“India”) against the Islamic Republic of Pakistan (“Pakistan” and, together with India, the “Parties”), issued a Decision on Certain Issues Pertaining to the Competence of the Neutral Expert (the “Decision”).

The Treaty governs the Indus system of rivers and sets forth the mutual rights and obligations of the Parties concerning the use of the waters of these rivers. Article III(2)(d) of the Treaty read with Annexure D to the Treaty permits India to use the waters of the Western Rivers, *i.e.* The Indus, The Jhelum and The Chenab, for the generation of hydroelectric power, subject to design and operation criteria set out in that Annexure. Article IX of the Treaty also sets forth a system for the settlement of questions, differences and disputes that may arise under the Treaty, which may be resolved by the Parties themselves, a neutral expert appointed under Annexure F to the Treaty or a court of arbitration constituted under Annexure G to the Treaty.

The present Neutral Expert proceedings concern India’s Kishenganga Hydroelectric Plant (the “KHEP”), located on the Kishenganga/Neelum River in the Gurez Valley, and its Ratle Hydroelectric Plant (the “RHEP”), under construction on the Chenab River in the Chenab Valley.

The mission of the Neutral Expert is defined by the Treaty and the “Points of Difference” notified by India to the World Bank in a letter dated 4 October 2016 (the “Points of Difference”), which is reproduced in Annex 1 to the Neutral Expert’s Supplemental Rules of Procedure, found [here](#).

In summary, the Points of Difference, as formulated by India, call upon the Neutral Expert to determine, with respect to each of the KHEP and the RHEP:

- (a) whether the pondage provided in the design is within the maximum pondage permitted in accordance with Paragraph 8(c) of Annexure D to the Treaty and Paragraph 2(c) of Annexure D, whether the pondage provided by India meets the operational restriction imposed by Paragraph 15 of Annexure D, and whether the intakes for the turbines provided in the design are in accordance with Paragraph 8(f) of Annexure D;
- (b) whether the outlets below Dead Storage Level provided in the design are in accordance with Paragraph 8(d) of Annexure D to the Treaty; and
- (c) whether the design of each plant in respect of its gated spillways is in accordance with Paragraph 8(e) of Annexure D to the Treaty.

The Points of Difference also call upon the Neutral Expert to determine whether the freeboard provided in the design of the RHEP is in accordance with Paragraph 8(a) of Annexure D.

The Decision addresses the competence of the Neutral Expert to decide the Points of Difference, as initially stated and then developed in the Parties' submissions, pursuant to Article IX(2)(b) of the Treaty and Paragraph 7 of Annexure F to the Treaty.

Paragraph 7 of Annexure F to the Treaty provides:

Should the [Permanent Indus] Commission be unable to agree that any particular difference falls within Part 1 of this Annexure, the Neutral Expert shall, after hearing both Parties, decide whether or not it so falls. Should he decide that the difference so falls, he shall proceed to render a decision on the merits: should he decide otherwise, he shall inform the Commission that, in his opinion, the difference should be treated as a dispute. Should the Neutral Expert decide that only a part of the difference so falls, he shall, at his discretion, either:

- (a) proceed to render a decision on the part which so falls, and inform the Commission that, in his opinion, the part which does not so fall should be treated as a dispute, or
- (b) inform the Commission that, in his opinion, the entire difference should be treated as a dispute.

In the phase of the proceedings dedicated to the Neutral Expert's competence under Paragraph 7 of Annexure F, Pakistan requested that the Neutral Expert adjudge and declare: (i) that the Points of Difference, as raised by India and developed in its Memorial dated 31 August 2023, do not fall, or do not fall in material part, within Part I of Annexure F and should accordingly be treated as disputes; (ii) in the alternative, that the question of whether the Points of Difference fall within Part I of Annexure F should be deferred, pending the issuance of the award or awards by the 2022 Court of Arbitration constituted under Annexure G to the Treaty in parallel proceedings instituted by Pakistan against India, on their first phase on the merits, and following consultations with the Parties, or (iii) in the further alternative, that the Points of Difference fall within Part I of Annexure F to the extent indicated in the detailed guidance and directions to the Parties included as part of the Neutral Expert's Paragraph 7 decision. In contrast, India argued that the Points of Difference fall squarely and entirely within Part 1 of Annexure F, and consequently, in terms of Paragraph 7, the Neutral Expert is duty-bound to render a decision on the merits. India also argued that it does not accept the validity of setting up of the 2022 Court of Arbitration.

The Parties made submissions on the issues arising under Paragraph 7 of Annexure F to the Treaty both in written submissions and orally at the Third Meeting held by the Neutral Expert with the Parties on 10 and 11 September 2024.

In his Decision, having carefully considered and analysed the Parties' submissions, the Neutral Expert concludes that (i) the Points of Difference pertain to "whether or not the design of a Plant conforms to the criteria set out in Paragraph 8" of Annexure D to the Treaty and fall within Part 1 of Annexure F to the Treaty; and that (ii) no separate differences are being referred to the Neutral Expert with respect to India's compliance with Paragraphs 2(c) and 15 of Annexure D to the Treaty. The Neutral Expert also finds that, while the Points of Difference raise certain incidental questions, including as to the interpretation of the Treaty, and the implications of past decisions of dispute resolution bodies under the Treaty, those incidental questions do not take the Points of Difference comprehensively, or in material part, outside the scope of Part 1 of Annexure F. The Neutral Expert accordingly finds that, pursuant to Paragraph 7 of Annexure F, he should proceed to render a decision on the merits of the Points of Difference. In the light of the foregoing, the Neutral Expert also finds no need to address Pakistan's second alternative submission.

With respect to Pakistan's first alternative submission, the Neutral Expert notes that he does not address any issues pertaining to the competence of the 2022 Court of Arbitration. The Neutral Expert concludes that the fact that the 2022 Court of Arbitration is presently considering certain matters that partially

overlap with the Points of Difference does not affect his competence over differences that fall within the scope of Part 1 of Annexure F. Additionally, having examined the circumstances of parallel dispute-resolution proceedings before a court of arbitration constituted under Annexure G to the Treaty the Neutral Expert concludes that the present situation is not one where, in the exercise of procedural discretion, one dispute resolution body ought to defer its consideration and decision on certain matters that will be addressed by another dispute resolution body in the interests of efficiency and economy.

In the operative part of his Decision, the Neutral Expert states as follows:

570. For all of the reasons set out above, the Neutral Expert finds that (i) the Points of Difference notified by India to the World Bank in a letter dated 4 October 2016 pertain to “whether or not the design of a Plant conforms to the criteria set out in Paragraph 8” of Annexure D to the Treaty and fall within Part 1 of Annexure F to the Treaty; and that (ii) no separate differences are being referred to the Neutral Expert with respect to India’s compliance with Paragraphs 2(c) and 15 of Annexure D to the Treaty.

571. The Neutral Expert will accordingly proceed to render a decision on the merits of the Points of Difference, after hearing the Parties further on those merits in accordance with the Work Programme (as it may be amended from time to time in consultation with the Parties).

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Background on the Proceedings

On 13 October 2022, the International Bank for Reconstruction and Development (the World Bank), pursuant to Article IX and Annexure F of the Indus Waters Treaty 1960, and after consultation with each of the Parties, appointed Mr. Michel Lino as Neutral Expert in proceedings commenced by the Republic of India against the Islamic Republic of Pakistan concerning the KHEP and the RHEP.

The Neutral Expert convened a first meeting with the Parties on 27 and 28 February 2023 at the headquarters of the Permanent Court of Arbitration (the “PCA”) at the Peace Palace, in The Hague.

Following the first meeting, the Neutral Expert’s Terms of Retainer were fixed on 2 May 2023. The Terms of Retainer also recorded the appointment of Mr. Luc Deroo as the Neutral Expert’s Technical Assistant.

On 1 June 2023, the Neutral Expert issued Supplemental Rules of Procedure, including a Work Programme, which was subsequently revised on 21 August, 11 October and 2 November 2023, and most recently on 29 May and 4 June 2024.

On 5 June 2023, the PCA was appointed as Registry and Secretariat by the Neutral Expert. The proceedings are administered by the Vienna Office of the PCA, in cooperation with its Mauritius Office.

On 31 August 2023, India submitted its Memorial.

A second meeting with the Parties was held on 20 and 21 September 2023 at the Imperial Hofburg Palace in Vienna. Matters discussed at that meeting included the organization of a first site visit, questions arising from India’s Memorial, and amendments to the Work Programme for the proceedings.

Following the second meeting, Pakistan submitted its Statement under Paragraph 7 of Annexure F to the Treaty on 1 February 2024 and India submitted its Reply to Pakistan’s Paragraph 7 Statement on 14 June 2024.

From 20 to 28 June 2024, the Neutral Expert conducted a site visit of the KHEP and the RHEP, preceded by a 3-day preparatory visit by the Technical Assistant and a 2-person engineering team from each Party.

A third meeting with the Parties was held on 10 and 11 September 2024 at the Imperial Hofburg Palace in Vienna. During this meeting, each Party made oral submissions on the competence of the Neutral Expert under Paragraph 7 of Annexure F to the Treaty.

More information about the proceedings can be found at <https://pca-cpa.org/en/cases/297/>.

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Background on the Permanent Court of Arbitration

The Permanent Court of Arbitration is an intergovernmental organization established by the 1899 Hague Convention on the Pacific Settlement of International Disputes. The PCA has 124 Contracting Parties. Headquartered at the Peace Palace in The Hague, the Netherlands, the PCA facilitates arbitration, conciliation, fact-finding, and other dispute resolution proceedings among various combinations of States, State entities, intergovernmental organizations, and private parties. The PCA’s International Bureau is currently administering 7 inter-state arbitrations, one other inter-state proceeding, 95 arbitrations arising under bilateral or multilateral investment treaties or national investment laws, 109 arbitrations arising under contracts involving a State or other public entity, and 4 other proceedings.

More information about the PCA can be found at www.pca-cpa.org.

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