

PCA CASE NO. 2023-01
INDUS WATERS TREATY ARBITRATION (PAKISTAN v. INDIA)

Submissions of Pakistan on Recent Developments
Pursuant to ¶ 1.2 of Procedural Order No. 15

11 June 2025

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I. INTRODUCTION

1.1. By Procedural Order No. 15 (Recent Developments that May Bear on Matters Before the Court) of 16 May 2025 (“**PO15**”), the Court of Arbitration (“**the Court**”) took note of “recent developments, which may bear on matters before the Court and the Neutral Expert” and requested the Parties to provide “a submission addressing the effect, if any, of these recent developments on matters before the Court or the Neutral Expert, including their respective competence.” The “recent developments” noted by the Court were:

- (a) a statement issued by the Foreign Secretary of India “on the decision of the Cabinet Committee on Security [of India]” indicating (*inter alia*) that “[t]he Indus Waters Treaty of 1960 will be held in abeyance with immediate effect, until Pakistan credibly and irrevocably abjures its support for cross-border terrorism”; and
- (b) press articles in India and Pakistan, and general news outlets, that contain “various statements by officials of India and Pakistan that make reference to the Treaty”.¹

1.2. The broader context of these developments was the terrorist attack in Pahalgam in India-administered Jammu and Kashmir² on 22 April 2025 that left 26 people dead, and India’s allegation that Pakistan was somehow complicit or otherwise involved in the Pahalgam atrocity.

1.3. As a preliminary matter, Pakistan denies categorically any alleged involvement or complicity in the Pahalgam terrorist attack. Pakistan had no knowledge of the attack, did not and does not support it, and considers that those who committed the attack must be brought to justice. Pakistan, through its Prime Minister and other senior governmental figures,

¹ Procedural Order No. 15 (Recent Developments That May Bear on Matters Before the Court), 16 May 2025 (“**PO15**”), Preamble, ¶¶ ix–x.

² For purposes of these Submissions, Pakistan adopts the geographical designation “India-administered Jammu and Kashmir”, reflecting the approach in ¶ 55 of the Court’s Award on the Competence of the Court of 6 July 2023, which in turn reflected the terminology and analysis in the *Indus Waters Kishenganga Arbitration (Pakistan v India)*, Partial Award (2013) XXXI RIAA 55, **PLA-0003**, ¶¶ 359-363, fn. 26, having regard to Articles IV(15) and XI(1) of the Indus Waters Treaty (the “**Treaty**”).

condemned the attack and publicly proposed and indicated that it was open to participation in a “neutral, transparent and credible investigation” into the attack.³

1.4. Without offering any evidence of Pakistan’s involvement in the Pahalgam attack, India used the mantra of its allegations to express a policy of holding the Indus Waters Treaty “in abeyance”. Apart, however, from tying its stated policy of “abeyance” to a demand that “Pakistan credibly and irrevocably abjures its support for cross-border terrorism”, India has not stated, in either bilateral communications to Pakistan or in public statements by government officials, what this policy of “abeyance” is, its legal basis, or its consequences for India’s conduct on the ground with respect to the Treaty. Rather, the policy has been left to play out through what appear to be proxy, but deniable, comments by media, academic and other pundits, all of which have served to heighten the political rhetoric and real-world risks to a Treaty that has been a cornerstone of peaceful relations between the two States for six-and-a-half decades, notwithstanding previous armed clashes and wider tensions.

1.5. As the Court has noted, it is under a continuing duty to satisfy itself that it has jurisdiction over the dispute between Pakistan and India of which it is seised and in respect of which it confirmed its competence in its Award on the Competence of the Court dated 6 July 2023 (“**Award on Competence**”). On this basis, the Court has requested a submission on the recent developments which may bear on matters before the Court, including its competence.

1.6. The scope of the Court’s request also expressly extends to any bearing that recent developments may have “on matters [...] before the Neutral Expert, including [his] respective competence”. In acknowledging this element of the scope of the Court’s enquiry, Pakistan recalls the circumstances addressed in the Award on Competence concerning the parallel proceedings before the Neutral Expert, and further recalls that the Court, in its Procedural Order

³ “PM Shehbaz says Pakistan open to ‘neutral, transparent’ probe into Pahalgam attack” (*Dawn*, 26 April 2025), available at: <https://www.dawn.com/news/1906694> (last accessed 11 June 2025), **Exhibit P-0691**. Speaking at a press conference on 24 April 2025, Pakistan’s Defence Minister, Khawaja Asif, condemned the attack in the following terms: “We have very categorically condemned this [attack]. We condemn terrorism in all its forms in every corner of the world, even if it is in India, we condemn it without any hesitation. Pakistan has been a historic target of terrorism, and even today terrorism is raging in Pakistan, both in KP and Balochistan.” “Pahalgam attack: FM Dar throws down gauntlet to India, asks for evidence of allegations against Pakistan” (*Dawn*, 24 April 2025), available at: <https://www.dawn.com/news/1906315> (last accessed 11 June 2025), **Exhibit P-0692**. An MP4 video clip of Defence Minister Asif’s remarks, made in Urdu, is attached to this Submission as Video Excerpt, “Federal Ministers Ishaq Dar & Khawaja Asif Important Press Conference” (24 News HD, 24 April 2025), available at: <https://www.youtube.com/watch?v=Tzz51uFDlv0&t=150s> (last accessed 11 June 2025), **Exhibit P-0693**; along with a Transcript of Video Excerpt, **Exhibit P-0694**.

No. 6 (Decision on Further Proceedings) of 6 July 2023 (as corrected) (“**PO6**”), “expressly reserve[d] taking any position on the status of the Neutral Expert proceedings”, and concluded that “the Neutral Expert may be competent in respect of the issues presented to him on the basis, and to the extent, of the Parties’ joint consent”.⁴ Pakistan also recalls the Court’s recitation in PO6 of Pakistan’s position, then stated, concerning the competence of the Neutral Expert.⁵

1.7. Since that point, the Court will know that, by a Decision on Certain Issues Pertaining to the Competence of the Neutral Expert dated 7 January 2025⁶ (“**NE Competence Decision**”), the Neutral Expert affirmed his competence over the Points of Difference notified by India to the World Bank in a letter dated 4 October 2016 pertaining to whether or not the design of the KHEP and RHEP conform to the criteria set out in Paragraph 8 of Annexure D to the Treaty.⁷ In addition to this finding of competence, and material to the Court’s appreciation of the issues addressed in the present Submission, the Neutral Expert also expressed a number of other conclusions in the course of his analysis, going to wider limitation of his own competence,⁸ the absence of a “live challenge” to his competence other than the matters discussed in the NE Competence Decision,⁹ and the fact that any pronouncement by the Neutral Expert on the competence of the Court would fall outside the scope of his competence under the Treaty.¹⁰

1.8. In addition to these conclusions, the NE Competence Decision also addressed various issues arising from or going to the Court’s Award on Competence and PO6, doing so in terms consistent with the Award on Competence, PO6, and the Parties’ respective positions thereon.¹¹

1.9. As is evident from the preceding, both the Court and the Neutral Expert have expressly affirmed their respective competence to proceed with respect to the matters of which they are seised. Pakistan is continuing to engage fully in the Neutral Expert proceedings, *inter alia*,

⁴ Procedural Order No. 6 (Decision on Further Proceedings), 6 July 2023 (Corrected 19 May 2025) (“**PO6**”), ¶¶ 27–28.

⁵ PO6, ¶ 26.

⁶ *Indus Waters Treaty Neutral Expert Proceedings (India v Pakistan)*, PCA Case No. 2023-14, Decision on Certain Issues Pertaining to the Competence of the Neutral Expert, 7 January 2025 (“**NE Competence Decision**”), **Exhibit P-0695**.

⁷ *Id.*, ¶ 569.

⁸ *Id.*, ¶ 504.

⁹ *Id.*, ¶ 507.

¹⁰ *Id.*, ¶ 508.

¹¹ *Id.*, ¶ 563. See also *id.*, ¶¶ 564–568.

with a view to submitting its Counter-Memorial on the merits by its scheduled due date of 7 August 2025 in accordance with the work programme set by the Neutral Expert.¹²

1.10. Against this background, the primary question that arises is whether there is anything in the “recent developments” about which the Court is enquiring that undermines or ousts the competence of the Court and/or the Neutral Expert that has already been affirmed. The short answer to this is that there is not. Competence, or jurisdiction, once established at the point of the seisin of an adjudicatory body, and certainly once formally confirmed by that body, cannot be unpicked and undone by a party to the proceedings through the device of suspending, terminating, abrogating or in some other manner purporting to rid itself of its treaty obligations. Adjudicatory proceedings, once commenced, and their procedural process, cannot be ousted, suspended or terminated by the unilateral conduct of one party to the proceedings alone. There is, moreover, a due process and rule of law responsibility that rests on an adjudicatory body to stand firm in the face of attempts to suspend, terminate or otherwise oust the proceedings of which it is seised, or even simply to accommodate attempts at suspension, termination or ouster through procedural manoeuvres.

1.11. Given the importance of this principle, and the uncertainty that has been caused by India’s conduct, Pakistan requests the Court to address and rule upon the questions raised by its PO15 enquiry in the form of a dispositive decision, of binding *res judicata* authority, in accordance with Paragraph 23 of Annexure G of the Treaty, as soon as possible, including on the consequences of India’s policy of “abeyance” on the settled procedural trajectory and continuation of the Court and the Neutral Expert proceedings currently underway. This request is addressed further in Pakistan’s concluding observations and request for relief in **Part VI** below.

1.12. Against this background, Pakistan turns to address “the effect, if any, of these recent developments on matters before the Court or the Neutral Expert, including their respective competence” in greater detail under the following headings:

- (a) In **Part II**, Pakistan sets the recent developments and press and other statements

¹² The Neutral Expert’s Work Programme, its most recent iteration dated 11 March 2025, is publicly available on the PCA website for the Neutral Expert proceedings. See *Indus Waters Treaty Neutral Expert Proceedings (India v Pakistan)*, PCA Case No. 2023-14, Revised Work Programme, 11 March 2025, available at: <https://pcacases.com/web/sendAttach/69254> (last accessed 11 June 2025), **Exhibit P-0696**.

in context and addresses what is or might be intended by India’s policy of “abeyance”.

- (b) In **Part III**, Pakistan addresses the effect of “abeyance” on the competence of the Court and the Neutral Expert.
- (c) In **Part IV**, Pakistan addresses possible lawful defences or excuses that may potentially avail India with respect to its policy of “abeyance” or “suspension”.
- (d) In **Part V**, Pakistan makes some brief observations on the issue of India’s weaponisation of the waters of the Western Rivers.
- (e) In **Part VI**, Pakistan makes some brief concluding observations and sets out its requests for relief.

* * *

II. THE RECENT DEVELOPMENTS AND INDIA'S POLICY OF "ABEYANCE"

2.1. Pakistan turns, first, to address recent developments and India's policy of "abeyance".

2.2. Pakistan attaches to this Submission a collection of official public statements by the Government of India, press reports and media comments, and other publicly available statements addressing recent developments.¹³ Key statements and comments amongst these are addressed expressly in what follows.

2.3. The wider context of the recent developments is set out in a British House of Commons Library Research Briefing published on 16 May 2025.¹⁴ While Pakistan does not adopt this Briefing and all of its elements of detail, the Briefing provides a sufficiently balanced snapshot of the wider context of recent developments as may assist the Court.

A. THE PAHALGAM TERRORIST ATTACK

2.4. As noted above, the immediate context to India's stated policy of "abeyance" with regard to the Treaty was the Pahalgam terrorist attack of 22 April 2025 that left 26 people dead.

2.5. Pakistan immediately condemned the attack and pledged its full participation in a transparent, neutral, and credible investigation into the events. This remains Pakistan's position today. As it has already done, Pakistan reaffirms that it was not involved, directly or indirectly, in the atrocity of 22 April 2025. Pakistan is, presently and historically, one of the greatest victims of terrorism internationally.¹⁵

2.6. Pakistan's immediate denunciation of the attack notwithstanding, India was quick to claim—although without showing evidence—that Pakistan was responsible for the attack. On 23 April 2025, following a meeting of the Indian Cabinet Committee on Security, chaired by Prime Minister Modi, India announced a package of five initial "responses". One of these was

¹³ Compendium of official statements by the Indian government, press reports and media comments, and other publicly available statements addressing recent developments, April to June 2025 ("**Compendium of Recent Statements**"), **Exhibit P-0697**.

¹⁴ J. Curtis, *Kashmir: Renewed India-Pakistan Tensions* (House of Commons Library, Research Briefing No. 10264), 16 May 2025, available at: <https://researchbriefings.files.parliament.uk/documents/CBP-10264/CBP-10264.pdf> (last accessed 11 June 2025), **Exhibit P-0698**.

¹⁵ Pakistan currently has—at 8.374/10—the second-highest score of all states in the 2025 Global Terrorism Index, a comprehensive study analysing the impact of terrorism for 163 countries. This figure is produced on the basis of a five-year weighted average from four indicators—incidents, fatalities, injuries, and hostages, "2025 Global Terrorism Index" (*Vision of Humanity*, 4 March 2025) available at: <https://www.visionofhumanity.org/maps/global-terrorism-index/> (last accessed 11 June 2025), **Exhibit P-0699**.

a declaration that the “Indus Waters Treaty of 1960 will be held in abeyance with immediate effect, until Pakistan credibly and irrevocably abjures its support for cross-border terrorism”.¹⁶

B. INDIA’S DECLARATION OF “ABEYANCE”

2.7. India’s “abeyance” policy was communicated to Pakistan in a letter dated 24 April 2025 from India’s Secretary, Ministry of Jal Shakti, to her Pakistani counterpart, the Secretary of the Ministry of Water Resources (“**the 24 April Letter**”), although in terms that conflated the Parties’ exchanges of correspondence on India’s demand for negotiations to modify the Treaty and the issue of “cross border terrorism”—with evident care being taken, on the latter issue, not to make formal allegations against Pakistan of involvement in the Pahalgam attack. That letter stated as follows:

“This is with reference to the Government of India’s notices sent to the Government of Pakistan seeking modification of the Indus Waters Treaty 1960 (the Treaty) under Article XII(3) of the Treaty. These communications cited fundamental changes in the circumstances that have taken place since the Treaty was executed that require a re-assessment of obligations under the various Articles of the Treaty read with its Annexures.

2. These changes include significantly altered population demographics, the need to accelerate the development of clean energy and other changes in the assumptions underlying the sharing of waters under the Treaty.

3. The obligation to honour a treaty in good faith is fundamental to a treaty. However, what we have seen instead is sustained cross-border terrorism by Pakistan targeting the Indian Union Territory of Jammu and Kashmir.

4. The resulting security uncertainties have directly impeded India’s full utilization of its rights under the Treaty. Furthermore, apart from other breaches committed by it, Pakistan has refused to respond to India’s request to enter into negotiations as envisaged under the Treaty and is thus in breach of the Treaty.

5. The Government of India has hereby decided that the Indus Waters Treaty 1960 will be held in abeyance with immediate effect.”¹⁷

2.8. Neither India’s initial public statement of 23 April 2025 nor its 24 April Letter indicated what India meant by the term “abeyance”; noting that the term is not known to international law concerning the application or performance of treaties. Further, while India, by its

¹⁶ Compendium of Recent Statements, **Exhibit P-0697**, p. 5 (Ministry of External Affairs, Government of India, “Statement by Foreign Secretary on the decision of the Cabinet Committee on Security (CCS)”, 23 April 2025).

¹⁷ Note Verbale No. 80/01/2025, enclosing Letter No. Y-18012/1/2024-Indus from Secretary, Indian Ministry of Jal Shakti to Secretary, Pakistan Ministry of Water Resources dated 24 April 2025, **Exhibit P-0700**.

reference to its allegations of cross border terrorism, and the temporal proximity of its “abeyance” policy to the Pahalgam attack, appeared to link the new policy to the events at Pahalgam, it also, no doubt intentionally, muddled the waters by referring to alleged fundamental changes of circumstances, alleged (but unspecified) breaches of the Treaty committed by Pakistan, Pakistan’s alleged bad faith, and Pakistan’s alleged refusal to respond to India’s “request to enter into negotiations” to modify the Treaty.

2.9. Seen in this light, it appears that India’s hastily expressed policy of “abeyance” was in reality an attempt by India to take advantage of the Pahalgam atrocity to apply pressure on Pakistan to enter into negotiations to modify the Treaty on what Pakistan considers are spurious fundamental change of circumstances grounds.

2.10. As a tangential point, on the issue of negotiations, Pakistan has expressed its willingness to engage in negotiations with India on water-related issues in the context of the Permanent Indus Commission and has sought clarification from India about the precise nature of its concerns.

2.11. The situation between Pakistan and India deteriorated in late April and through May, including with an armed attack by India against Pakistan on the night of 6–7 May 2025, which left many civilians dead and injured and places of worship desecrated, to which Pakistan subsequently responded. Other measures were taken on both sides, including further military skirmishes, border and airspace closures, trade restrictions and diplomatic measures. As these are not relevant to the issues before the Court (or Neutral Expert), Pakistan refrains from addressing them further herein save for noting that the Neelum-Jhelum Hydroelectric Plant was damaged by Indian shelling across the Line of Control.¹⁸

2.12. Although not addressed to Pakistan directly, there have been a number of other official statements by Indian government officials that have addressed India’s “abeyance” policy in respect of the Indus Waters Treaty.

2.13. By way of example, in a press briefing on 8 May 2025,¹⁹ the Indian Foreign Secretary, Mr Vikram Misri, the most senior official in the Indian Ministry of External Affairs, addressed

¹⁸ Compendium of Recent Statements, **Exhibit P-0697**, p. 82 (T. Naqash, “Wapda takes stock of damage to Neelum-Jhelum dam” (*Dawn*, 9 May 2025)).

¹⁹ Compendium of Recent Statements, **Exhibit P-0697**, p. 7 (Ministry of Foreign Affairs, Government of India, “Foreign Secretary’s Statement: Special Briefing on Operation Sindoor”, 8 May 2025).

the issue as follows:

“[In English] Finally, I want to address some issues that have been raised related to the Indus Waters Treaty, and the disinformation that has been raised in this regard as well. The fact is that there have been fundamental changes in the circumstances in which the Indus Waters Treaty was concluded. And they required, they called for a reassessment of the obligations under the treaty. Over the last year and a half to two years, India has been in communication with the Government of Pakistan. We’ve sent several notices to them requesting for negotiations to discuss a modification of the treaty.

India has, for six plus decades now, honoured the treaty, even during periods when Pakistan imposed multiple wars on us, and even when relations were adversarial. Pakistan is the one that has been acting in violation of the treaty, deliberately creating legal roadblocks in India exercising its legitimate rights on the Western Rivers. Any projects that India sought to build on the Eastern Rivers, and even on the Western Rivers, which we are allowed to by the treaty, were always challenged by Pakistan, thereby, hampering our rights to utilise our legitimate waters under the treaty.

In fact, if you see the preamble of the treaty itself states that the treaty was concluded in a spirit of goodwill and friendship. Mark those words, concluded in a spirit of goodwill and friendship.

[In Hindi] India’s patience and tolerance have meant that despite such provocation, we have been abiding by the Treaty for the past 65 years.

[In English] However, as has been made clear earlier as well, Pakistan has not responded to our request to enter into negotiations for a reassessment of the obligations under the treaty. A number of conditions have changed. This is a treaty that was based on the engineering techniques of the 50s and the 60s. We are living through the first quarter of the 21st century. Technological changes and technological advancements have to be taken into account.

There are demographic changes. There are climate changes that have taken place. There is the imperative of clean energy. And, of course, the terrorism that Pakistan has wreaked in the state of Jammu and Kashmir itself has hampered India’s ability to exercise its rights under the treaty.

Pakistan’s persistent refusal to respond to our request to enter into Government-to-Government negotiations on the modification of the treaty is in a sense itself a violation of the treaty. And, therefore, India has taken the step of putting the treaty in abeyance until Pakistan abjures irrevocably its support for cross-border terrorism.”²⁰

2.14. Speaking in similar terms, the Indian Ministry of External Affairs spokesperson, in a

²⁰ *Id.*. An MP4 video clip of Secretary Misri’s remarks is attached to this Submission as Video, “Press Briefing on Operation Sindoor by Ministry of External Affairs” [24:07-28:13], available at: <https://www.youtube.com/live/WwbxRRWSw-E> (last accessed 11 June 2025), **Exhibit P-0701**.

press briefing on 13 May 2025,²¹ stated, *inter alia*, as follows:

“[Y]ou had a question on IWT. The other day you saw that after the CCS decision, this Indus Waters Treaty has been put in abeyance. I would also like to take you back a little. The IWT, the Indus Waters Treaty, was concluded in the spirit of goodwill and friendship as specified in the preamble of the treaty. However, Pakistan has held these principles in abeyance by its promotion of cross-border terrorism for several decades now.

Now, as per CCS decision that I referred to of 23rd April, India will keep the treaty in abeyance until Pakistan credibly and irrevocably, abjures its support for cross-border terrorism. Please also note that climate change, demographic shifts and technological changes have created new realities on ground as well.”²²

2.15. Speaking again in similar though more developed terms, the Permanent Representative of India to the United Nations, speaking in a UN Security Council Arria-formula Meeting on 23 May 2025 (“**the 23 May Statement**”) convened to discuss, *inter alia*, the protection of water resources and related infrastructure in situations of armed conflict, stated as follows:²³

“Mr President, we are constrained to respond to the disinformation being carried out by the delegation of Pakistan with regard to the Indus Waters Treaty. India has always acted in a responsible manner as an upper riparian State. I would like to highlight four aspects to expose the disinformation of Pakistan.

FIRST, India had entered into the Indus Waters Treaty, 65 years ago, in good faith. The Preamble of the Treaty describes that the Treaty was concluded ‘in a spirit of goodwill and friendship’. Throughout these six and a half decades, Pakistan has violated the spirit of the treaty by inflicting three wars and thousands of terror attacks on India. In the last four decades, more than 20,000 Indian lives have been lost in terror attacks, the most recent of which was the dastardly targeted terror attack on tourists in Pahalgam last month. India has shown extraordinary patience and magnanimity through this period. Pakistan’s state sponsored cross-border terrorism in India seeks to hold hostage the lives of civilians, religious harmony and economic prosperity.

SECOND, in these 65 years, far-reaching fundamental changes have taken place not

²¹ Compendium of Recent Statements, **Exhibit P-0697**, p. 13 (Ministry of Foreign Affairs, Government of India, “Transcript of Weekly Media Briefing by the Official Spokesperson”, 13 May 2025).

²² *Id.*. An MP4 video clip of the spokesperson’s remarks is attached to this Submission as Video, “Weekly Media Briefing by the Official Spokesperson” (*Ministry of External Affairs, India*), available at: <https://www.youtube.com/watch?v=Q22mebxZK-M> (last accessed 11 June 2025), **Exhibit P-0702**.

²³ Arria-formula meetings of the UN Security Council are informal meetings of the Council convened at the initiative of one or more members of the Council to enable debate on and hear the views of non-Council members on matters within the competence of the Council, including individuals, organisations or institutions. *See*, “Arria-Formula Meetings”, (*United Nations Security Council Report*, 16 December 2020), available at: <https://www.securitycouncilreport.org/un-security-council-working-methods/arria-formula-meetings.php> (last accessed 11 June 2025), **Exhibit P-0703**; and Compendium of Recent Statements, **Exhibit P-0697**, p. 27 (Permanent Mission of India to the UN, “Arria Formula Meeting: Protecting Water in Armed Conflict – Protecting Civilian Lives – Statement by Ambassador Parvathaneni Harish, Permanent Representative”, 23 May 2025).

only in terms of escalating security concerns through cross-border terror attacks but also growing requirements for producing clean energy, climate change and demographic change. Technology for dam infrastructure has also transformed to ensure safety and efficiency of operations and water use. Some of the old dams are facing serious safety concerns. However, Pakistan has continued to consistently block any changes to this infrastructure and any modifications of the provisions, which is permissible under the Treaty. In fact, in 2012 terrorists even attacked the Tulbul Navigation Project in Jammu and Kashmir. These cynical acts continue to endanger safety of our projects and lives of civilians.

THIRD, India has formally asked Pakistan to discuss the modifications of the Treaty on several occasions in the past 2 years. However, Pakistan continues to reject these. Pakistan's obstructionist approach continues to prevent the exercise of full utilisation of legitimate rights by India.

FOURTH, it is against this backdrop that India has finally announced that the Treaty will be in abeyance until Pakistan, which is a global epicenter of terror, credibly and irrevocably ends its support for cross-border terrorism.

It is clear that it is Pakistan which remains in violation of the Indus Waters Treaty.”²⁴

2.16. Although there have been other public statements by Indian officials, they all hew closely to the points set out in the above statements, adding nothing further to what India means by “abeyance”, whether in legal or policy terms, other than linking it to the mantra that Pakistan must “credibly and irrevocably end its support for cross-border terrorism”. This strapline pays no heed to Pakistan's condemnation of the Pahalgam atrocity and its call for a neutral, transparent and credible investigation into the attack.

2.17. A number of other features of these and related official Indian government statements warrant comment.

2.18. **First**, the careful repetition by India of the term “abeyance” to describe its declared policy, in circumstances in which overwhelming Indian media commentary, including through semi-official networks and print outlets, has characterised the policy as “suspension” of the Treaty by India, is noteworthy. Had India wished and intended its policy of “abeyance” to be something different from “suspension”, it would have been expected to clarify its position in

²⁴ Compendium of Recent Statements, **Exhibit P-0697**, p. 27 (Permanent Mission of India to the UN, “Arria Formula Meeting: Protecting Water in Armed Conflict – Protecting Civilian Lives – Statement by Ambassador Parvathaneni Harish, Permanent Representative”, 23 May 2025). An MP4 video clip of Ambassador Harish's remarks is attached to this Submission as Video, “United Nations Security Council Arria Formula Meeting: Freshwater Resources and Related Infrastructure under Attack - Protecting Water in Armed Conflict – Protecting Civilian Lives” (*WebTV.UN*, 23 May 2025) [2:46:18-2:48:44], available at: <https://webtv.un.org/en/asset/k1v/k1v96gaem9> (last accessed 11 June 2025), **Exhibit P-0704**.

the face of these public comments, whether by saying that “abeyance” does not mean “suspension” or by giving content to the term “abeyance” in its official statements. It has done neither. On the contrary, India has evidently been intent on maintaining a posture of destructive ambiguity, characterising its policy in ambiguous terms while in actuality threatening and implying “suspension” of the Treaty. This, it appears, has been calculated to escalate the drumbeat of existential conflict while using legally ambiguous language in official statements to mask India’s true intent. As there is no provision in the Treaty that allows for its suspension, nor any other basis in international law on which India could properly rely to sustain a claim to a lawful suspension of the Treaty, India’s repeated refrain of “abeyance”, alongside carefully nurtured “suspension” hyperbole in the public characterisation of India’s approach, exposes a calculated political intent on India’s part.

2.19. This intent was exposed by a well-considered statement by World Bank President Ajay Banga on 9 May 2025, a day after meeting Indian Prime Minister Modi on 8 May 2025.²⁵ Speaking to Indian news channel CNBC-TV18, in remarks that were widely reported, President Banga said the (*inter alia*) following:

“The Treaty is not suspended. It’s technically called something in abeyance, is how the Indian government worded it. There is no provision in the Treaty to allow for suspension. The way it was drawn up, it either needs to be gone or it needs to be replaced by another one. That requires the two countries to want to agree.”²⁶

2.20. Mr Banga is correct. There is no provision in the Treaty that allows for its suspension. Moreover, as noted above, and addressed more fully below, there is no basis in international law more generally on which India could properly rely to sustain a credible claim to lawful suspension of the Treaty by reference to any of the legal ‘hooks’ that have been mooted in public comment, either in statements by Indian officials or in media, academic and other comment.

2.21. **Second**, when addressing its “abeyance” policy, it is notable that Indian officials,

²⁵ Compendium of Recent Statements, **Exhibit P-0697**, p. 75 (“World Bank President Ajay Banga Meets PM Modi” (*NDTV*, 8 May 2025) and p. 76 (R. Shukla, “World Bank President Ajay Banga meets PM Modi in New Delhi” (*India TV*, 8 May 2025)).

²⁶ Compendium of Recent Statements, **Exhibit P-0697**, p. 79 (“‘We Have No Role To Play...’: World Bank Chief Ajay Banga on India-Pakistan’s Indus Waters Treaty” (*News18*, 9 May 2025)). An MP4 video clip of Mr Banga’s remarks is attached to this Submission as Video, “World Bank President On Indus Water Treaty Suspension” (*CNBC*, 8 May 2025), available at: https://www.youtube.com/watch?v=yAsBxd2h_Gk (last accessed 11 June 2025)), **Exhibit P-0705**.

drawing from common talking points, are simply throwing mud against the wall through their invocation of legal epithets, without elaboration, with a view to seeing what might stick. So, for example, taking the carefully formulated statement of India’s Permanent Representative in the UN Security Council Arria-formula Meeting, a carefully prepared formal statement in a multilateral setting, India asserted a number of bare legal propositions in support of its “abeyance” case, as follows:

- India has always acted in good faith and in a responsible manner as an upper riparian State.
- Pakistan “has violated the spirit” of the Treaty “by inflicting three wars and thousands of terror attacks on India”.
- Since the Treaty was concluded, “far reaching fundamental changes” have taken place not only in terms of escalating security concerns, but also growing requirements for producing clean energy, climate change and demographic change.
- Technology for dam infrastructure has transformed to ensure safety and efficiency of operations and water use. However, Pakistan has continued to block consistently any changes to the infrastructure of the Treaty and any discussion about modification of its terms.
- Pakistan’s obstructionist approach to India’s modification negotiations demand is preventing the exercise of full utilisation of legitimate rights by India.
- It is therefore Pakistan which is in violation of the Treaty.
- It is against this backdrop that India has finally announced that the Treaty will be in abeyance until Pakistan credibly and irrevocably ends its support for cross-border terrorism.

2.22. A legal assessment of India’s key putative claims is given in **Part IV** below. For the moment, Pakistan limits its observations to the following.

2.23. **First**, India has by no means always acted in good faith under the Treaty, as Pakistan’s

submissions to the Court, both in the Competence and First Phase on the Merits proceedings show—whether relating to the Treaty-mandated provision of data, the facilitation of tours of inspection and site visits, engagement on Article IX processes, participation in the proceedings before the Court, and more. Moreover, the Court itself has already reached this conclusion. In its Award on Competence, it took note of India’s deliberate commencement of the Neutral Expert proceedings after Pakistan had seised the Court of Arbitration, noting that India’s conduct was “at odds with the underlying cooperation of the Parties that the Treaty fosters and upon which it depends”.²⁷

2.24. **Second**, there is no basis, in either fact or law, to sustain India’s claim that Pakistan is in violation of the Treaty. Pakistan, as the lower riparian, is entirely dependent on good faith implementation of the Treaty and has always meticulously observed its Treaty obligations. It has never, whether directly or indirectly, violated its Treaty obligations, including its obligation of good faith on which the Treaty is based.

2.25. **Third**, regarding India’s new technology contention with respect to run-of-river hydroelectric dam design, Pakistan has made it abundantly clear in its formal submissions to the Court that it considers that India is bound, indeed obliged, to use the most advanced technology for its HEP designs, and that the Treaty not only permits this but requires it.²⁸ Western River HEP design, and the subsequent construction and operation of the dams, must take place within the framework of the Treaty. The Treaty, though, did not crystallise technology and innovation in 1960. On the contrary, language such as “sound and economical design” and “accepted practice of design”, in Paragraph 8 of Annexure D of the Treaty, requires India to use best practices. But this does not give India cover to abrogate a long-settled cornerstone water allocation and utilisation arrangement that spans the six rivers of the Indus Basin that flow across India and Pakistan. India, as the upper riparian, cannot adopt unilateral policies that would keep more of the water for itself or utilise the water that traverses its territory but is allocated to Pakistan under the Treaty in a manner that is inconsistent with the Treaty. India’s contention that Pakistan is in some way blocking India from state-of-the-art

²⁷ Award on Competence, ¶ 312.

²⁸ See, e.g., Pakistan’s Memorial for the First Phase on the Merits (“**Pakistan’s Memorial**”), ¶ 9.99: “[D]esign and operational practices, including innovative best practice approaches, must be taken into account by India when it comes to designing, constructing, and operating Treaty-complaint Annexure D.3 HEPs on the Western Rivers. [...] What cannot be done, however, is for India to use an appeal to what it terms ‘best practice’, a claim that is invariably specious, to enable it to escape its obligations under the Treaty.”

HEP design and construction technology is simply nonsense; politics dressed up as law.

2.26. In any event, and significantly, these issues of technology and best practices are in active contention before both the Court, as a matter of systemic Treaty interpretation, and before the Neutral Expert, as a matter of the design of the KHEP and the RHEP. India cannot therefore oust the application of the Treaty by reference to a self-serving interpretation that is under active deliberation before both the Court and the Neutral Expert. Given this, this aspect of India's allegations cannot in any form provide a basis for India's stated policy of "abeyance".

2.27. **Fourth**, a claim of "fundamental change of circumstances" does not avail India. This issue is addressed more fully in **Part IV** below by reference to the legal requirements of the fundamental change of circumstances doctrine. For the moment, Pakistan observes simply that the fact that India has not sought to develop this contention in any way, resting simply on a bald assertion of "far reaching fundamental changes", belies the credibility of this claim.

2.28. **Fifth**, there is, in India's opportunist linkage of its policy of "abeyance" to the Pahalgam attack—"until Pakistan credibly and irrevocably ends its support for cross-border terrorism"—an implied "lawful countermeasures" contention. However, as Pakistan addresses in **Part IV** below, none of the conditions that would justify countermeasures are present in this case, whether procedural or substantive. And again, India's failure to lay out, in its own voice, a purported countermeasures argument is telling. It has failed to do so because there is no credible case for it to make. Pakistan denied, immediately and absolutely, any linkage to the Pahalgam attack. It called for, and committed itself to participate in, a neutral, transparent and credible investigation into the attack. India has offered no evidence of Pakistani involvement in the attack. India has failed to comply with the procedural prerequisites for a lawful countermeasure. India's contention must be seen for what it is, political hyperbole to achieve a long-held objective of India's Prime Minister of moving away from the Treaty and the restrictions it places on India's ambitions to extend its utilisation of the waters of the Western Rivers.

2.29. Looking beyond India's position as expressed through an official voice, the relative paucity and opacity of governmental statements have been offset by public commentators, who, with often increasing hyperbole, have characterised India's approach as one of "suspension", "termination", "abrogation" or some other legal epithet that India itself has expressly refrained

from using. Amongst the most notable of such comments was one sourced to the Indo-Asian News Service published on 30 April 2025 initially by an institution called the Indian Defence Research Wing but subsequently in identical form by a number of other media outlets.²⁹ This piece asserts that “New Delhi’s actions are firmly grounded in the customary international law of *clausula rebus sic stantibus* and countermeasures” and goes on to address in some detail Article 62 of the Vienna Convention on the Law of Treaties³⁰ (“VCLT”), the caselaw of the International Court of Justice (“ICJ”), India’s “notification to its Pakistani counterpart”, and the customary international law of countermeasures, concluding that “[t]he careful wording of the Cabinet Committee on Security implies that India is temporarily suspending its treaty obligations”.³¹ It thereafter addresses the potential avenues of recourse available to Pakistan, concluding that there are none that would be effective. The piece closes with the comment: “Thus, by using lawfare as a viable instrument to further its political interests, India has reaffirmed its previous stand that blood and water cannot flow together”.³²

2.30. While it cannot be stated with certainty that this apparently independent comment is a proxy voice setting out India’s position, the piece stands out as a statement of India’s putative position, even if there remains space between India’s official statements of position and those expressed by public commentators. India, though, has self-evidently been content to tread a line of intentional ambiguity about what it intends, about its conduct on the ground, and about how it proposes to proceed.

C. PAKISTAN’S FORMAL RESPONSE TO INDIA’S POSITION

2.31. Pakistan responded formally to India’s 24 April Letter, noted above, by a letter on 8 May 2025 from Pakistan’s Federal Secretary of the Ministry of Water Resources, Mr Syed Ali Murtaza, to his counterpart at India’s Ministry of Jal Shakti, Ms Debashree Mukherjee, as

²⁹ Compendium of Recent Statements, **Exhibit P-0697**, p. 35 (“Blood and water cannot flow together: India’s deft use of lawfare in suspending Indus Waters Treaty”, (*Indian Defence Research Wing*, 30 April 2025), and; and *in passim*, see, *id.*, p. 38 (A.S. Srinivas, “Blood and water cannot flow together: India’s deft use of lawfare in suspending Indus Waters Treaty” (*IANS Live*, 30 April 2025)).

³⁰ Vienna Convention on the Law of Treaties (adopted on 22 May 1969 and opened for signature on 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331 (“VCLT”), **PLA-0005**.

³¹ Compendium of Recent Statements, **Exhibit P-0697**, p. 35 (“Blood and water cannot flow together: India’s deft use of lawfare in suspending Indus Waters Treaty”, (*Indian Defence Research Wing*, 30 April 2025)). Pakistan notes that the piece appears to have been deleted from the website of the Indian Defence Research Wing since its initial publication on 30 April 2025.

³² *Id.*

follows:

“I refer to your letter dated 24 April 2025 by which you convey that the Government of India has decided ‘that the Indus Waters Treaty will be held in abeyance with immediate effect.’

2. As an initial matter, I note that the term ‘abeyance’ is not a term of international law with respect to the application of treaties. It is therefore obscure what India intends by its stated policy. That said, for the avoidance of doubt, Pakistan states unambiguously that there is no basis whatever in international law for any purported holding in abeyance of the Treaty. The Treaty accordingly continues in force as enshrined in Article XII(4) of the Treaty. India’s statement that it is holding the Treaty in abeyance is therefore of no legal effect whatsoever. The Treaty remains in full force for all legal purposes.

3. Pakistan condemns terrorism in all its forms and manifestations. It also unequivocally rejects the baseless accusation of cross-border terrorism both in context and in its attempted linkage to the operation of a water sharing treaty.

4. As India knows well, the Treaty provides a clear, comprehensive and robust mechanism under Article IX for the resolution of any question concerning its interpretation or application, or the existence of any fact which, if established, might constitute a breach. **If India considers that there is a conduct by Pakistan that either affects the application of the Treaty or constitutes a breach, it is open to India to pursue these claims under the mechanisms established by Article IX of the Treaty. Were India to do so, Pakistan would engage fully and without hesitation, including as appropriate by agreeing to the urgent empanelment of a Court of Arbitration to address such matters without delay.**

5. Pakistan also firmly rejects India’s allegation that it is, *inter alia*, in breach of the Treaty by failing to engage with the Government of India under Article XII(3) of the Treaty. At no point has Pakistan refused to engage. On the contrary, Pakistan has consistently conveyed its openness to hear and discuss India’s concerns.

6. Pakistan continues to faithfully comply with its obligations under the Treaty. It expects India to do the same.”³³

2.32. Pakistan draws particular attention to its invitation to India, in the highlighted portion of the letter quoted above, to pursue any grievance it might have through the settlement mechanisms of Article IX of the Treaty and Pakistan’s commitment to fast track the empanelment of a Court of Arbitration to address the issues without delay.

2.33. Pakistan has received no reply to the above letter, now more than a month later. Indeed,

³³ Note Verbale No. Ind(II)-11/01/2025, enclosing Letter No 4(38)/2015-Water from Secretary, Pakistan Ministry of Water Resources to Secretary, Indian Ministry of Jal Shakti dated 8 May 2025, **Exhibit P-0706** (emphasis added).

since India's 24 April Letter, Pakistan has heard nothing from India on government-to-government channels that either seeks to engage with Pakistan or materially advances the position set out by India therein.

D. THE REALITY OF INDIA'S POSITION

2.34. Against this background, an assessment needs to be made of the reality of India's position on the application of the Treaty. For purposes of this Submission, in reaching a view on this issue, Pakistan confines its assessment only to recent developments, Pakistan's position being that India has long been in breach of the Treaty through its failure to provide data to Pakistan as required by the Treaty, its failure to facilitate tours of inspection and site visits, its failure to comply with the design criteria of Paragraph 8 of Annexure D, and more. The present focus, however, is on the implications of the narrower spectrum of events, from 23 April 2025, reflecting India's policy of "abeyance".

2.35. For reasons that follow, Pakistan's assessment is that India's policy of "abeyance" must properly be seen as a policy of unlawful suspension or of breach or abrogation of the Treaty by India. India has clearly signalled that it does not consider itself bound by the Treaty during this period of "abeyance". While India's policy of ambiguity, through its use of the term "abeyance", is seeking to have it both ways in the debate about what precisely India intends, there is mounting evidence that India is in fact acting in breach of its Treaty obligations on the ground. This being the case, there is no escaping the conclusion that India's policy of "abeyance" is in fact in breach of the Treaty. The question, addressed in **Part IV** below, is whether there is any lawful excuse that India can muster to justify its conduct. Pakistan does not believe that there is.

2.36. Since India's declaration of "abeyance", reports have appeared of plans, *inter alia*, for India to, accelerate construction of new HEPs on the Western Rivers that will enable it to truncate the flow of water into Pakistan.³⁴ There are also reports about initiatives to double the length of the Ranbir Canal, allowing some 20% of the Chenab's flow to be diverted for agricultural use in India-administered Kashmir.³⁵ On a shorter timescale, India is now asserting

³⁴ Compendium of Recent Statements, **Exhibit P-0697**, p. 55 ("Reservoir Flushing: 6 New Projects: India Acts After Indus Treaty Suspension", (NDTV, 5 May 2025)).

³⁵ Compendium of Recent Statements, **Exhibit P-0697**, p. 94 ("Why Ranbir Canal matters as India plans to choke water flow to Pak?" (India Today, 16 May 2025)).

that it can legitimately (a) withhold flood and other flow data from Pakistan, (b) use the low-level outlets in its HEPs to carry out monthly drawdown flushing, and (c) deploy both the Pondage in its Operating Pools and Dead Storage to deprive Pakistan's agriculture of irrigation at critical moments. One seemingly well-sourced and credible report has put the situation in stark terms:

“Recently, the Indian government released water by opening the gates of the Baglihar and Salal dams on the Chenab river, announcing that the sediment-flushing will be carried out as a monthly exercise [...]. This incident marks a significant development in the ongoing water-based tensions between India and Pakistan.

More than 90% of Pakistan's agricultural production comes from irrigated lands. Due to its arid to semi-arid climate, farming without irrigation is impossible in most of the Indus basin. The Chenab, with a basin area of 22,500 sq km, serves as a significant source of surface water for the most populous Punjab province in Pakistan.

The criticality of this action lies not in the release of water itself but in the unpredictable nature of India's decisions in reservoir and dam management. Under the current circumstances [of Treaty ‘abeyance’], Pakistan faces a major information gap, as it no longer receives real-time data about when these dam gates might be opened. This leaves the downstream regions inadequately prepared for sudden water releases or shortages. While sudden water release can cause enhanced siltation or flash floods due to the overflow, restricted water flow during crucial sowing periods can potentially disrupt the entire agricultural cycle for the region. This is particularly consequential because following extensive canal networks, farmers have become increasingly reliant on data from the water authorities regarding scheduled water releases. With diminished control over this river discharge data, crop planning and hence food security will become significantly more challenging. The infrastructural capacity of hydropower projects and barrages will be difficult to gauge without sufficient hydrological data from upstream.

As the monsoon season approaches, similar incidents are likely to become more frequent, potentially extending beyond the Baglihar dam to other projects such as the Kishenganga or Ratle and the challenges for Pakistan could intensify, creating cascading disruptions across multiple sectors and threatening food security and basic livelihood.”³⁶

2.37. The conduct here addressed mirrors that apprehended by Professor Briscoe in the wake of the decision of the *Baglihar* Neutral Expert, to which Pakistan has referred previously.³⁷

³⁶ Compendium of Recent Statements, **Exhibit P-0697**, p. 116 (S. Kalyani, “Hydropolitics a new reality for Pakistan”, (*Deccan Herald*, 27 May 2025)).

³⁷ Pakistan's Memorial, ¶ 5.24:

“Using Baglihar as a reference, simple back-of-the-envelope calculations suggest that once it has constructed all of the planned hydropower plants on the Chenab, India will have an ability to effect major damage on Pakistan. First, there is the one-time effect of filling the new dams. If done during the wet

2.38. The threats noted above do not emanate solely from non-government commentators. Prime Minister Modi himself has indicated that something like this is precisely what India intends. Speaking publicly, he declared that “Pakistan will not get a single drop of water that belongs to India”.³⁸ He has also stated:

“And I haven’t done much yet. Right now, we have said that we have kept [the Treaty] in abeyance. They are terrified there [in Pakistan] and we have started cleaning by opening the dam a little bit, we are removing the garbage that was there. Even this much floods the place [in Pakistan].”³⁹

2.39. Of perhaps greater concern is that Pakistan has now gathered concrete and demonstrable evidence showing a number of *prima facie* Treaty-inconsistent release-and-store events on the Chenab, Jhelum and Kishenganga/Neelum rivers during the month of May 2025. These indicate that India is actively weaponising its control of water through its HEPs on these rivers. This appears to be a “flexing-of-muscles” by India aimed at escalating anxiety amongst downstream users dependent on the regularity of the flow of these waters and sending a signal to Pakistan that India is willing and able to go much further in implementing its threats.

2.40. The evidence supporting this allegation is addressed in **Part V** below, notably with respect to the sharp and material fluctuations in the flow of the Chenab River, which has been the most amenable of the Western Rivers to precise and accurate monitoring over the past weeks. On the basis of the available evidence in respect of the flow fluctuation in the Chenab in late April 2025, the PCIW wrote to his Indian counterpart on 27 May 2025, setting out the data gathered by Pakistan and requesting the ICIW to:

“[U]rgently furnish all daily gauge and discharge data relating to flow of the Chenab, Neelum/Kishenganga and Jhelum Rivers at all observation sites as well as daily extraction for or releases from Dul-Hasti, Baglihar, Salal and Uri-II for the period 30th

season this would have little effect on Pakistan. But if done during the critical low-flow period, there would be a large one-time effect (as was the case when India filled Baglihar). Second, there is the permanent threat which would be a consequence of substantial cumulative live storage which could store about one month’s worth of low-season flow on the Chenab. If, God forbid, India so chose, it could use this cumulative live storage to impose major reductions on water availability in Pakistan during the critical planting season.”

³⁸ Compendium of Recent Statements, **Exhibit P-0697**, p. 101 (“From Bikaner, PM Narendra Modi’s ‘not a single drop’ message to Pakistan on Indus Waters Treaty”, (*Hindustan Times*, 22 May 2025)).

³⁹ Compendium of Recent Statements, **Exhibit P-0697**, p. 126 (Government of India, Press Information Bureau, “English rendering of PM’s speech at the celebrations of 20 years of Gujarat Urban Growth Story in Gandhinagar”, 27 May 2025). An MP4 video clip of Prime Minister Modi’s remarks, delivered in Hindi, is attached to this Submission as Video, “PM Modi takes a dig at Pakistan on Indus Water Treaty; ‘Only opened small gates yet, there is flood’” (*The Print*, 27 May 2025), available at: <https://www.youtube.com/watch?v=0nh39mX4d4k> (last accessed 11 June 2025), **Exhibit P-0707**; along with a transcript, as **Exhibit P-0708**.

April 2025 to 21st May 2025, as required by Articles VI(1)(a), VI(1)(b) and VIII(1)(a) of the Treaty.”⁴⁰

2.41. The PCIW further requested the cooperation of the ICIW “pursuant to Articles VIII(4)(b) and IX(1) of the Treaty to hold immediate consultations within the framework of the Permanent Indus Commission to enable us to address the issues arising from the above-noted data with respect to the application of the Treaty”. He also requested that:

“India refrain from contravening any of the Treaty’s provision, and, insofar as it has any questions that it considers should be raised with Pakistan regarding the interpretation or application of the Treaty, or the existence of any fact which, if established, might constitute a breach of this Treaty, that it does so forthwith within the framework of the Permanent Indus Commission, this being the channel designated under the Treaty for such engagement.”⁴¹

2.42. India’s Commissioner has so far failed to respond to the PCIW’s letter.

2.43. In the light of these developments, Pakistan is compelled to conclude that, while India’s stated policy of “abeyance” is intentionally seeking to obscure its legal position in order to allow itself flexibility, it is in fact acting in breach of its Treaty obligations in an egregious manner. The evidence supports a conclusion that, on the Chenab River, India is using the Baglihar HEP, through its very significant Operating Pool and its low-level orifice spillway, and perhaps also the Dul Hasti HEP, as well as other HEPs on the Western Rivers, to weaponise water through Treaty-inconsistent manipulated fluctuating flow patterns. Pakistan returns to this issue in **Part V** below.

2.44. The upshot of this assessment is that India, through its recent actions, is in breach of the Treaty and that there is no sustainable lawful excuse available to India to justify, excuse or mask its actions. India’s policy of “abeyance” is simply cover behind which India is acting in breach of its Treaty obligations.

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⁴⁰ Letter No. WT(132)/(8188-A)/PCIW from the PCIW to the ICIW dated 27 May 2025, **Exhibit P-0709**, ¶ 11.

⁴¹ *Id.*.

III. THE EFFECT OF “ABEYANCE” ON THE COMPETENCE OF THE COURT AND THE NEUTRAL EXPERT

3.1. The principal question raised by the Court in PO15 is whether “recent developments”—India’s policy of “abeyance”—have any implications for the already affirmed competence of the Court and the Neutral Expert. The short answer to this question is ‘no’, for the reasons that follow.

3.2. Taken at face value, as expressed by India, “abeyance” has no meaning in international law. The term “abeyance” appears nowhere in the VCLT, nor in the work of the International Law Commission⁴² (“ILC”) that led to the VCLT. It is also absent from the major commentaries on treaty law and the main international law encyclopaedias and dictionaries. Nor is it found in the Treaty itself, which provides in Article XII(4) that its provisions “shall continue in force until terminated by a duly ratified treaty concluded for that purpose between the two Governments”.⁴³ Indeed, India appears to fully accept that this is the case in terms that take on particular significance in the current circumstances. In the course of the Neutral Expert proceedings, in submissions that are expressly recalled in the NE Competence Decision, India’s Designated Representative declared that ““there can be no abeyance or suspended animation of [the] proceedings [as] [t]his is not envisaged in the Treaty””.⁴⁴

3.3. At its most superficial level, therefore, India’s policy of “abeyance” cannot have any implications for the competence of the Court or the Neutral Expert because India does not itself either state or imply any such effects through the use of the term it has chosen to describe its policy. This appreciation is reinforced by India’s failure to clarify what “abeyance” means—including in response to Pakistan’s letter of 8 May 2025.

3.4. Looking beyond the superficial, India’s policy of “abeyance” can have no effect on the competence of the Court or the Neutral Expert in circumstances in which each has expressly affirmed its own competence, with *res judicata* effect, in respect of various questions of which they are respectively seised.

⁴² ILC, “Draft Articles on the Law of Treaties with Commentaries” (1966) available at: https://legal.un.org/ilc/texts/instruments/english/commentaries/1_1_1966.pdf (last accessed 11 June 2025), **PLA-0139**.

⁴³ Treaty, **PLA-0001**, Article XII(4).

⁴⁴ NE Competence Decision, **Exhibit P-0695**, ¶ 446.

3.5. Both the Court and Neutral Expert proceedings are rooted in express provisions of the Treaty, the Court proceedings in Article IX and Annexure G of the Treaty, the Neutral Expert proceedings in Article IX and Annexure F of the Treaty. Leaving aside questions of historic dispute, the seisin of the Court took place on 19 August 2016 and of the Neutral Expert on 4 October 2016.

3.6. Absent agreement between the parties to a dispute, post-seisin events cannot remove or otherwise diminish the competence of an adjudicatory body. This principle, described as “obvious and elementary”,⁴⁵ is long and well-settled in international law and applies even more forcefully in circumstances in which competence (or jurisdiction) has been affirmed by the adjudicatory body in question following seisin and a challenge to competence that has resulted in a formal decision of the body in question, in exercise of its *compétence de la compétence* authority, affirming its competence. This is the case with respect to the proceedings before both the Court and the Neutral Expert.

3.7. This appreciation is not, of course, inconsistent with the Court’s continuing obligation to assess its competence in the light of evolving circumstances. It does, however, mean that the bar will be set exceptionally high where questions that may be said to go to competence arise post-seisin.

3.8. The basis of this well settled rule was addressed by the ICJ in the *Croatia v Serbia* case:

“It is easy to see why this rule exists. [...] If at the date of filing of an application all the conditions necessary for the Court to have jurisdiction were fulfilled, it would be unacceptable for that jurisdiction to cease to exist as the result of a subsequent event. In the first place, the result could be an unwarranted difference in treatment between different applicants or even with respect to the same applicant, depending on the degree of rapidity with which the Court was able to examine the cases brought before it. Further, a respondent could deliberately place itself beyond the jurisdiction of the Court by bringing about an event or act, after filing of an application, as a result of which the conditions for the jurisdiction of the Court were no longer satisfied — for example, by denouncing the treaty containing the compromissory clause. **That is why the removal, after an application has been filed, of an element on which the Court’s jurisdiction is dependent does not and cannot have any retroactive effect. What is at stake is legal certainty, respect for the principle of equality and the right of a State which**

⁴⁵ G. Fitzmaurice, *The Law and Procedure of the International Court of Justice*, Volume II (Grotius 1986), PLA-0140, pp. 441–445.

has properly seised the Court to see its claims decided, when it has taken all the necessary precautions to submit the act instituting proceedings in time.”⁴⁶

3.9. This principle is of general application, and, as the present Court found expressly in its Award on Competence, is applicable in the case of the Treaty.

3.10. As the Court will recall, India’s Fifth Objection was that India’s later-in-time commencement of the parallel Neutral Expert proceedings engaged Article IX(6) of the Treaty and deprived the Court of competence.⁴⁷ The Court expressly rejected this contention, however, holding that it was competent regardless of India’s subsequent purported seisin of the Neutral Expert on the basis that international law provides:

“that the jurisdiction of the international court or tribunal is to be determined as of the date that the proceeding commences, typically when the claimant has filed its application before the court or its request for arbitration. Thus, any acts that occur subsequent to that date, such as a State’s termination or withdrawal from a treaty or other instrument that was used to establish the court or tribunal’s jurisdiction, have no effect on that jurisdiction. To similar effect, **once a proceeding before a court of arbitration proceeding is properly initiated (as in the present case), there must be a strong presumption against the incidental loss of jurisdiction over the matters placed before it by subsequent acts**, such as the appointment of a neutral expert.”⁴⁸

3.11. It is notable, also, that this principle was echoed by the ICJ in proceedings between India and Pakistan in 1972 in the *Jurisdiction of the ICAO Council* case. In that case, a question arose as to whether a purported unilateral suspension of the operation of a treaty could prevent another party from commencing proceedings on the basis of its compromissory clause on the ground that the treaty was no longer operative. The ICJ addressed this as follows:

“This contention, if it were put forward, would be equivalent to saying that questions that *prima facie* may involve a given treaty, and if so would be within the scope of its jurisdictional clause, could be removed therefrom at a stroke by a unilateral declaration

⁴⁶ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v Serbia)*, Preliminary Objections [2008] ICJ Rep 412, **PLA-0013**, ¶ 80 (emphasis added). See also (among many other cases): *Nottebohm (Liechtenstein v Guatemala)*, Preliminary Objections [1953] ICJ Rep 111, **PLA-0024**, p. 123; *Right of Passage over Indian Territory (Portugal v India)*, Preliminary Objections [1957] ICJ Rep 125, **PLA-0141**, pp. 141–142; *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)*, Judgment [1986] ICJ Rep 14, **PLA-0018 (resubmitted)**, ¶ 36; *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v United States of America)*, Preliminary Objections [1998] ICJ Rep 9, **PLA-0012**, ¶ 37; *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v Belgium)*, Judgment [2002] ICJ Rep 3, **PLA-0028**, ¶ 26; *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v Colombia)*, Preliminary Objections [2016] ICJ Rep 3, **PLA-0071**, ¶ 33.

⁴⁷ Providing that “[t]he provisions of [Article IX] Paragraphs (3), (4) and (5) shall not apply to any difference while it is being dealt with by a Neutral Expert”. See the Treaty, **PLA-0001**, Article IX(6).

⁴⁸ Award on the Competence of the Court, 6 July 2023, ¶ 292 (emphasis added) (internal citation omitted)..

that the treaty was no longer operative. The acceptance of such a proposition would be tantamount to opening the way to a wholesale nullification of the practical value of jurisdictional clauses by allowing a party first to purport to terminate, or suspend the operation of a treaty, and then to declare that the treaty being now terminated or suspended, its jurisdictional clauses were in consequence void, and could not be invoked for the purpose of contesting the validity of the termination or suspension, whereas of course it may be precisely one of the objects of such a clause to enable that matter to be adjudicated upon. Such a result, destructive of the whole object of adjudicability, would be unacceptable.”⁴⁹

3.12. The principle here expressed is wholly germane to the present circumstances. There is nothing in the Treaty that would permit or provide a basis for a Party, acting unilaterally, to undermine the competence of either the Court or the Neutral Expert, once established. The competence of both has been established and has been affirmed. Just as the Court affirmed in its Award on Competence, which addressed India’s unilateral conduct at an earlier stage of the proceedings, there is no basis at this point for India, acting unilaterally in the context of the “recent developments”, to oust the competence of the Court. This assessment applies equally with regard to the competence of the Neutral Expert, seised by the Request of India. The Neutral Expert proceedings cannot be held in “abeyance” in pursuit of India’s policy of “abeyance” in respect of the Treaty.

3.13. In this regard, Pakistan notes that Annexure F of the Treaty contains no provision that permits the unilateral discontinuation of Neutral Expert proceedings. To the extent that modalities for discontinuation may arise in other contexts of inter-State adjudication, they require the consent of all the parties to the proceedings.⁵⁰ As the ICJ pointed out in the *Barcelona Traction* case, the right of a respondent to refuse an applicant’s unilateral application to discontinue the proceedings it had commenced is “protective” in character, intended to enable the respondent to “insist on the case continuing, with a view to bringing about a situation

⁴⁹ *Appeal relating to the Jurisdiction of the ICAO Council (India v Pakistan)*, Judgment [1972] ICJ Rep 46, **PLA-0142**, ¶ 32. ⁵⁰ See e.g., Rules of the Court of the International Court of Justice, adopted on 14 April 1978 and entered into force on 1 July 1978, available at: <https://www.icj-cij.org/rules> (last accessed 11 June 2025), **PLA-0143**, Article 89(2):

⁵⁰ See e.g., Rules of the Court of the International Court of Justice, adopted on 14 April 1978 and entered into force on 1 July 1978, available at: <https://www.icj-cij.org/rules> (last accessed 11 June 2025), **PLA-0143**, Article 89(2):

“If, at the time when the notice of discontinuance is received, the respondent has already taken some step in the proceedings, the Court shall fix a time-limit within which the respondent may state whether it opposes the discontinuance of the proceedings. If no objection is made to the discontinuance before the expiration of the time-limit, acquiescence will be presumed and the Court shall make an order officially recording the discontinuance of the proceedings and directing the removal of the case from the list. If objection is made, the proceedings shall continue.”

of *res judicata*; or [...] to enable it to ensure that the matter is finally disposed of for good.”⁵¹ This is precisely the case with regard to Pakistan’s right to resist any holding in “abeyance” of the Neutral Expert proceedings in consequence of India’s policy of “abeyance” with respect to the Treaty. Pursuant to Paragraph 6(a) of Annexure F of the Treaty, the Neutral Expert is required to afford each Party a fair hearing. This precludes any effect on the competence of the Neutral Expert in consequence of India’s policy of “abeyance”.

3.14. The upshot of this is that, having confirmed his competence, the Neutral Expert is bound to decide the Points of Difference of which he has confirmed he is seised “as soon as possible”, this being the injunction imposed on the Neutral Expert by Paragraph 9 of Annexure F of the Treaty. The Neutral Expert cannot, therefore, give any substantive or procedural effect to India’s 24 April Letter—much less discontinue or materially stay his proceedings.

3.15. On the basis of the foregoing, Pakistan’s response to the Court’s principal inquiry is that recent developments, including India’s policy of holding the Treaty in “abeyance”, has no legal impact on the competence of either the Court or the Neutral Expert. Were the situation to be otherwise, it would be akin to the World Bank’s “Pause” between 2016 and 2022 that so materially prejudiced Pakistan’s interests. Whilst the World Bank Pause allowed construction of the KHEP to be completed, and a *fait accompli* to be created, a further “pause” in proceedings in consequence of India’s policy of “abeyance” would heap further material injustice on that highly damaging episode, potentially allowing the completion of the construction of the RHEP without scrutiny.

3.16. As noted in paragraph 1.11 above, given the importance of this issue for the continuation of both the Court and the Neutral Expert proceedings, and the uncertainty that has been caused by India’s conduct, Pakistan requests the Court to address and rule upon the issue of the effect, if any, of “recent developments” on the competence of the Court and the Neutral Expert in a dispositive decision, of binding *res judicata* authority, as soon as possible, including as regards the consequences, if any, of India’s policy of “abeyance” on the settled procedural trajectory and continuation of the Court and Neutral Expert proceedings currently underway.

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⁵¹ *Barcelona Traction, Light and Power Company Limited (New Application: 1962) (Belgium v Spain)*, Preliminary Objections [1964] ICJ Rep 6, **PLA-0144**, p. 20.

IV. LAWFUL DEFENCES OR EXCUSES THAT MAY POTENTIALLY AVAIL INDIA WITH RESPECT TO ITS POLICY OF “ABEYANCE” OR “SUSPENSION”

4.1. Pakistan turns now to address whether there are any lawful defences or excuses that may avail India with respect to its policy of “abeyance” or “suspension” of the Treaty.

4.2. At the outset, Pakistan reiterates that, pursuant to Article XII(4) of the Treaty, the Treaty is to continue in force from its Effective Date of 1 April 1960⁵² “until terminated by a duly ratified treaty concluded for that purpose between the two Governments”.⁵³ As the Chairman of the Court noted during its First Procedural Meeting, “it looks [...] as though there is not a provision that allows a state to unilaterally terminate the Treaty”.⁵⁴ The Treaty, also, contains no provision permitting its unilateral suspension, absent agreement of the Parties. Nor can India rely simply on its sovereign rights to unilaterally suspend or terminate the Treaty. The Treaty, just as with a boundary treaty, is a fetter on India’s sovereign right to unilateral suspension or termination. India’s right to lawfully suspend or terminate the Treaty is governed by and subject to international law.

4.3. Given the absence of any term in the Treaty on which India can rely, it follows that India’s policy of “abeyance”, or of “suspension” of the Treaty, this being the term of international law that most accurately describes India’s conduct, if it is to be lawful, must be rooted in and comport with some basis in customary international law that would permit such conduct. For present purposes, customary international law is largely and uncontroversially reflected in the terms of the VCLT (which does not apply *qua* treaty as between the Parties),⁵⁵ in the ILC’s Articles on the Responsibility of States for Internationally Wrongful Acts (“**ARSIWA**”), and in the jurisprudence of the ICJ and other authoritative courts and tribunals of international law.

4.4. The threshold for the application of potential bases of lawful excuse to justify the suspension of a treaty are punishingly high. As Professor Robert Kolb has noted:

“The gist of the problem with termination, suspension and withdrawal is that these entail in many cases unilateral powers by a party to put treaty obligations and rights to

⁵² As this is defined in the Treaty, **PLA-0001**, Article 1(16).

⁵³ Treaty, **PLA-0001**, Article XII(4).

⁵⁴ Transcript of First Procedural Meeting, Day 1 (27 January 2023), p. 151, lines 23–25 (The Chairman).

⁵⁵ Unlike Pakistan, India is not a party to the VCLT, and so it can have recourse to its terms only to the extent that those terms reflect customary international law.

an end. In brief terms, the treaty ceases to apply on account of unilateral decision. The danger to the stability of treaties is significant. *Pacta sunt servanda* would be heavily jeopardized if treaty commitments could be terminated [or suspended] all too easily, on too many grounds and by an exclusively unilateral assessment. Limitations have here to be imposed by international law, in consideration of the fact that stability of treaty relations is one of the greatest reasons to conclude treaties in otherwise somewhat chaotic international relations. From this vantage point, treaties resemble internal legislation more than contracts. They indeed functionally take the place of legislation on many matters, some of which are even of the greatest international concern. It cannot be imagined such matters could be left to the free and unchecked will or whim of the parties to put an end to their obligations without any strict legal straitjacket.”⁵⁶

4.5. Given the cornerstone and almost constituent character of the Treaty in relations between Pakistan and India, Professor Kolb’s cautionary injunction against the unilateral suspension or termination of treaties applies with even greater force. As Article XII(4) of the Treaty makes clear, the Treaty was intended by its drafters and its signatories to endure, and, indeed, it has survived the conflicts and disputes that have bedevilled the Parties since the partition of the sub-continent in 1947.

4.6. This assessment finds authoritative support in the judgment of the ICJ in the *Gabčíkovo-Nagymaros* case with respect to the suspension of water rights. Addressing a Czechoslovakian proposal to construct a dam that would enable it to take control of the Danube, and thereby dictate Hungary’s ability to access the resources of that river, the Court held as follows, in terms that can be readily adapted to relations between Pakistan and India in the Indus Basin:

“The Court considers that [India], by unilaterally assuming control of a shared resource, and thereby depriving [Pakistan] of its right to an equitable and reasonable share of the natural resources of the [Indus Basin]—with the continuing effects of the diversion of these waters on the ecology of the riparian area of the [Punjab]—failed to respect the proportionality which is required by international law.”⁵⁷

4.7. While the ICJ was here addressing the application of the law on countermeasures, its assessment holds good more generally. The principle is clear. India cannot assume unilateral control of a shared water resource. The Treaty acts, in Professor Kolb’s words, as a “strict legal straitjacket” that constrains the unilateral suspension of treaties under customary international law.

⁵⁶ R. Kolb, *The Law of Treaties: An Introduction* (Edward Elgar 2016), **PLA-0145**, pp. 206–207.

⁵⁷ *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment [1997] ICJ Rep 7, **PLA-0094 (resubmitted)**, ¶ 85.

4.8. As noted above, through its public statements, India purports to justify its “abeyance” policy by reference to obliquely framed propositions that might conceivably be said to justify or excuse the suspension of the Treaties under customary international law, namely, fundamental change of circumstances, repudiatory breach, and lawful countermeasures. Pakistan considers each of these putative legal bases to be without any merit. While India has not advanced a considered case under any of these heads, in case it may assist the Court, Pakistan addresses below in summary form each of these putative justifications that might be said to avail India. Needless-to-say, in the event that India does advance any such case, or indeed any other, Pakistan stands ready to address this, and reserves the right to do so.

A. FUNDAMENTAL CHANGE OF CIRCUMSTANCES

4.9. Turning, first, to the doctrine of fundamental change of circumstances. In its 24 April Letter India purported to identify “fundamental changes [of] circumstances” arising from “significantly altered population demographics, the need to accelerate the development of clean energy and other changes in the assumptions underlying the sharing of waters under the Treaty”.⁵⁸ In the 23 May Statement, India added to this list “escalating security concerns through cross-border terror attacks”, and transformations in “[t]echnology for dam infrastructure [...] to ensure safety and efficiency of operations and water use”.⁵⁹

4.10. These statements appear to allude to the doctrine of fundamental change of circumstances in international law—also known by the Latin maxim *rebus sic stantibus*.

1. Legal requirements for a fundamental change of circumstances

4.11. The doctrine of fundamental change of circumstances is reflected in the terms of Article 62, VCLT as follows:

“1. A fundamental change of circumstances which has occurred with regard to those existing at the time of the conclusion of a treaty, and which was not foreseen by the parties, may not be invoked as a ground for terminating or withdrawing from the treaty unless:

⁵⁸ Note Verbale No. 80/01/2025, enclosing Letter No. Y-18012/1/2024-Indus from Secretary, Indian Ministry of Jal Shakti to Secretary, Pakistan Ministry of Water Resources dated 24 April 2025, **Exhibit P-0700**, ¶¶ 1–2.

⁵⁹ Compendium of Recent Statements, **Exhibit P-0697**, p. 27 (Permanent Mission of Indus to the UN, “Arria Formula Meeting: Protecting Water in Armed Conflict – Protecting Civilian Lives – Statement by Ambassador Parvathaneni Harish, Permanent Representative”, 23 May 2025).

- (a) [t]he existence of those circumstances constituted an essential basis of the consent of the parties to be bound by the treaty; and
 - (b) [t]he effect of the change is radically to transform the extent of obligations still to be performed under the treaty.
2. A fundamental change of circumstances may not be invoked as a ground for terminating or withdrawing from a treaty:
- (a) [i]f the treaty establishes a boundary; or
 - (b) [i]f the fundamental change is the result of a breach by the party invoking it either of an obligation under the treaty or of any other international obligation owed to any other party to the treaty.
3. If, under the foregoing paragraphs, a party may invoke a fundamental change of circumstances as a ground for terminating or withdrawing from a treaty it may also invoke the change as a ground for suspending the operation of the treaty.”⁶⁰

4.12. In its *Gabčíkovo-Nagymaros* judgment, the ICJ accepted that this formulation was declaratory of customary international law.⁶¹

4.13. Drawing on the express terms of Article 62, VCLT and the *Gabčíkovo-Nagymaros* case, it is uncontroversial that the doctrine of fundamental change of circumstances rests on several cumulative preconditions.⁶²

- (a) The circumstances existing at the time of a treaty’s conclusion must have changed fundamentally in a manner that was not foreseen by the parties at that time.
- (b) The existence of the circumstances in question must have constituted an essential basis of the parties’ consent to be bound by the treaty.
- (c) The effect of the change of circumstances must be to radically transform the extent of the obligations still to be performed under the treaty.
- (d) A party may not invoke a fundamental change of circumstances which results

⁶⁰ VCLT, **PLA-0005**, Article 62.

⁶¹ *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment [1997] ICJ Rep 7, **PLA-0094 (resubmitted)**, ¶¶ 46, 99.

⁶² M. Shaw and C. Fournet, “1969 Vienna Convention: Article 62—Fundamental change of circumstances” in O. Corten and P. Klein (eds), *The Vienna Conventions on the Law of Treaties: A Commentary*, Volume II (OUP 2011) 1411, **PLA-0146**, ¶¶ 24–30.

from a breach, by the party invoking the fundamental change, of either the treaty or of any other international obligation owed to a party to the treaty.

- (e) The party seeking to rely on the change of circumstances must have notified the other party of that reliance within a reasonable time after the date of occurrence or completion of the change.

4.14. In addition to the foregoing, international law also precludes the invocation of fundamental change of circumstances in the case of particular treaties, treaties establishing a boundary being the archetypical example.

4.15. The cumulative preconditions noted above operate to preclude the operation of fundamental change of circumstances in all but the most highly exceptional cases. Indeed, Pakistan is aware of no case in which a State has been able to successfully rely on the doctrine in proceedings before an international court or tribunal.⁶³

2. India has not met the requirements for a fundamental change of circumstances in the present case

4.16. Any claim by India relying on fundamental change of circumstances to justify Treaty suspension would suffer from multiple and insurmountable difficulties.

4.17. A preliminary question would be whether, drawing on the principle set out in Article 62(2)(a), VCLT with respect to boundary treaties, the doctrine of fundamental change of circumstances could properly be invoked with regard to the Indus Waters Treaty, the Treaty being akin to a boundary treaty. In Pakistan's view, the Article 62(2)(a) exclusion could and should properly be read as applying to treaties of a similar character to boundary treaties, such as treaties delimiting for all time sovereign rights and entitlements to transboundary resources. This appreciation follows both from the analogous character of such treaties to boundary treaties and from the *raison d'être* given in the ILC commentaries to the draft articles that led to the VCLT which rooted the exclusion of boundary treaties in the appreciation that "otherwise the rule, instead of being an instrument of peaceful change, might become a source of

⁶³ R. Kolb, *The Law of Treaties: An Introduction* (Edward Elgar 2016), **PLA-0145**, p. 229.

dangerous frictions”.⁶⁴ This reasoning applies precisely to the Indus Waters Treaty, a treaty that delimited for all time sovereign rights and entitlements in transboundary water resources. On this basis, India would struggle even to rely on the doctrine of fundamental change of circumstances to justify its suspension of the Treaty.

4.18. Assuming, however, *arguendo*, that the Article 62(2)(a) principle did not avail the Treaty, the substantive preconditions identified above would operate to comprehensively preclude India’s reliance on fundamental change of circumstances in support of its policy of “abeyance”. The changes in circumstances that India invokes, between the Treaty’s conclusion in 1960 and today—population growth, clean energy needs resulting from climate change, and changes in dam technology—were both foreseeable and foreseen. India was undertaking family planning initiatives to manage population growth as early as 1952.⁶⁵ The contribution of anthropogenic CO₂ emissions to the warming of the planet was first proposed in the 19th century and well-understood as early as the 1950s.⁶⁶ Changes in dam technology were also plainly foreseeable and foreseen, demonstrable by the scope and content of successive editions of a leading hydropower text at the time the Treaty was concluded—Creager and Justin’s *Hydro-Electric Handbook*.⁶⁷

4.19. The more important appreciation, however, is that none of the circumstances cited by India constituted an essential basis for the Parties’ consent to be bound by the Treaty in 1960. Nor can it credibly be said that the developments in these areas are of such a nature as to radically transform the extent of the obligations still to be performed by India under the Treaty. This is plainly not the case here, with India’s obligations under the Treaty remaining entirely stable between 1960 and today.

4.20. The reality is that both Pakistan and India are facing parallel, elevating challenges from population growth and climate change, to which both must adjust under the Treaty framework of the division of the waters of the rivers of the Indus Basin that traverse their territories. Pakistan, indeed, is facing greater water stress, and to a larger population served by the Western

⁶⁴ ILC, “Draft Articles on the Law of Treaties with Commentaries” (1966) available at: https://legal.un.org/ilc/texts/instruments/english/commentaries/1_1_1966.pdf (last accessed 11 June 2025), **PLA-0139**, Article 59, ¶ 11.

⁶⁵ See e.g., R. Ledbetter, “Thirty Years of Family Planning in India” (1984) 24 *Asian Survey* 736, **Exhibit P-0710**.

⁶⁶ See e.g., George H.T Kimble, “The Changing Climate” (1950) 182(4) *Scientific American* 48, **Exhibit P-0711**.

⁶⁷ W.P. Creager & J.D. Justin (eds), *Hydro-Electric Handbook* (1st Edition: John Wiley & Sons 1927) [897 pages], **Exhibit P-0652**; W.P. Creager & J.D. Justin (eds), *Hydro-Electric Handbook* (2nd Edition: John Wiley & Sons 1950) [1191 pages], **Exhibit P-0309 (resubmitted)**.

Rivers, than is India. Moreover, India is already fully utilising its share of the divided waters, running dry the Eastern Rivers.

4.21. Seen in these terms, it is plain that India’s invocation of fundamental change of circumstances is little more than an excuse for a “water grab”, a specious justification to support India’s claim to greater upper riparian rights than were accorded to it under the Treaty.

4.22. The same analysis applies to changes in dam technology and Pakistan’s supposed support for cross-border terrorism. As to the first, India does not explain how advances in dam technology render the burdens of the Treaty more onerous—let alone so onerous that performance of the Treaty has radically transformed. As for the second, Pakistan both rejects the allegations levelled against it and questions the basis on which India’s assertion even reaches the operation of the Treaty, the driving purpose of which was and remains to resolve conflicts between the Parties and which has endured as a cornerstone agreement between the Parties through armed conflicts in 1965, 1971 and 1999, as well as other smaller skirmishes.

4.23. Beyond these substantive elements, India has failed as a procedural matter to assert a fundamental change of circumstances case in a timely manner from the point at which the alleged changes of circumstances were said to have first manifested themselves.⁶⁸ Population growth, climate change and developments in dam technology are long-term phenomena that have been known for decades. As regards India’s allegations in respect of support for cross-border terrorism, even assuming it had substance and connection to the Treaty, this has been part of Prime Minister Modi’s political rhetoric for a decade.

4.24. India has so far only alluded obliquely to a fundamental change of circumstances justification in support of its policy of “abeyance”. The reason for this is clear. India does not have a sustainable case to advance under this head, and articulating one would only show the poverty of its claim. There is no credible basis on which India can justify its policy of “abeyance” by reference to the doctrine of fundamental change of circumstances.

B. MATERIAL BREACH OF THE TREATY

4.25. India’s 24 April Letter also suggests that India is inclined to justify its “abeyance”

⁶⁸ M. Shaw and C. Fournet, “1969 Vienna Convention: Article 62—Fundamental change of circumstances” in O. Corten and P. Klein (eds), *The Vienna Conventions on the Law of Treaties: A Commentary* (OUP 2011) 1411, PLA-0146, ¶ 29.

policy by asserting that Pakistan is in material breach of the Treaty. In particular, India alleges that Pakistan has breached the Treaty by “refus[ing] to respond to India’s request to enter into negotiations as envisaged under the Treaty”,⁶⁹ and, further, that Pakistan had failed “to honour [the Treaty] in good faith” through “sustained cross border terrorism [...] targeting the Indian Union Territory of Jammu and Kashmir”.⁷⁰ Similar sentiments appear in the 23 May Statement.

1. Legal requirements for a material breach of treaty

4.26. The doctrine of material breach is addressed in Article 60, VCLT, also held by the ICJ in *Gabčíkovo-Nagymaros* as to be declaratory of customary international law.⁷¹ While a party to a treaty may suspend (or terminate) a treaty in response to a material breach of the treaty, this ground can only be sustainably relied upon in very limited circumstances, namely, where:

- (a) the treaty has been repudiated—i.e., rejected outright—by another treaty party in a manner not otherwise sanctioned by international law; or
- (b) the other treaty party has violated “a provision essential to the accomplishment of the object or purpose of the treaty”.⁷²

4.27. There is no suggestion or evidence to sustain a repudiation claim. The question, therefore, is whether India can credibly advance a claim that Pakistan has violated “a provision essential to the accomplishment of the object or purpose of the treaty”.

4.28. As a preliminary matter, given India’s repeated invocation of the Preamble of the Treaty, Pakistan notes that, while the preamble of a treaty forms part of the interpretative context of the treaty, it does not constitute an operative term of the treaty in its own right.⁷³ A claimed violation of the preamble of a treaty could not therefore rise to the level of either a

⁶⁹ Note Verbale No. 80/01/2025, enclosing Letter No. Y-18012/1/2024-Indus from Secretary, Indian Ministry of Jal Shakti to Secretary, Pakistan Ministry of Water Resources dated 24 April 2025, **Exhibit P-0700**, ¶ 4.

⁷⁰ *Id.*, ¶ 3.

⁷¹ *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment [1997] ICJ Rep 7, **PLA-0094 (resubmitted)**, ¶¶ 46, 99. See earlier *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion [1971] ICJ Rep 16, **PLA-0147**, ¶ 92.

⁷² VCLT, **PLA-0005**, Article 60(3).

⁷³ See e.g., H.D. Treviranus, “Preamble” in R. Bernhardt (ed), *Encyclopedia of Public International Law*, Volume III (North-Holland 1997) 1097, **PLA-0148**, p. 1098: “Preambular provisions, cast in general wording, are generally not intended to constitute substantive stipulations. Since they are mere statements, preambles do not create any legal commitment above and beyond the actual text of a treaty”.

repudiation of the treaty or of a violation of a provision essential to the accomplishment of the object or purpose of the treaty.

2. India cannot establish a material breach of the Treaty by Pakistan

4.29. Neither of India's professed breaches of the Treaty by Pakistan meets the threshold of material breach.

4.30. As to the first alleged breach, arising from Pakistan's supposed failure to respond to Indian entreaties to renegotiate the Treaty, Article XII(3) of the Treaty does not require Pakistan to agree to an Indian proposal to modify the Treaty, still less to Indian coercion to do so.⁷⁴ It simply provides that the Treaty "may from time to time be modified by a duly ratified treaty concluded for that purpose between the two Governments".⁷⁵ This does not require Pakistan to accede to Indian demands to re-negotiate the Treaty. In any event, as a factual matter, Pakistan has indicated its willingness to engage in discussions with India about the application of the Treaty, including its potential modification, within the Permanent Indus Commission.

4.31. Further, and in addition, even were Pakistan to be obliged to engage with India to modify the Treaty, the matter does not end there. As noted above, to sustain a case for material breach, India would have to show that Pakistan had repudiated the Treaty or had otherwise violated a provision essential to the accomplishment of the Treaty's object or purpose. Pakistan has done neither. Any argument that Pakistan's conduct could give India the right to suspend the Treaty on grounds of material breach would, accordingly, be hopeless.

4.32. As to India's second asserted material breach levelled against Pakistan, Pakistan's alleged support for cross-border terrorism, this also fails. Not only can it not be sustained as a factual matter, but it is entirely disconnected from the Treaty. The Treaty effects a division of entitlement to the waters of the six rivers of the Indus Basin that flow across the territories of Pakistan and India. It does not address cross-border terrorism. There is no provision of the Treaty, whether essential to the accomplishment of the Treaty's object or purpose or otherwise,

⁷⁴ Article 52 of the VCLT, which undoubtedly reflects customary international law, provides: "A treaty is void if its conclusion has been procured by the threat or use of force in violation of international law embodied in the Charter of the United Nations." Read together with Article 51, VCLT, which addresses the coercion of a representative of a State, it is axiomatic that coercive demands to conclude a treaty, which would include the modification of a treaty already concluded, would render the outcome void and without legal effect.

⁷⁵ Treaty, **PLA-0001**, Article XII(3).

that India has even claimed that Pakistan has violated. There is accordingly no possible foundation for a claim by India of material breach of the Treaty by Pakistan.

C. LAWFUL COUNTERMEASURES

4.33. In the stable of putative Indian arguments, this leaves only the contention that India’s “abeyance” policy constitutes a lawful countermeasure, a purported entitlement to suspend the Treaty in response to breaches of international law by Pakistan based on Pakistan’s alleged support for cross-border terrorism.

1. Legal requirements for lawful countermeasures

4.34. Countermeasures are an acknowledged basis for treaty suspension under customary international law, the conditions for which are reflected in Articles 49–54, ARSIWA.⁷⁶ In its *Gabčíkovo-Nagymaros* judgment, the ICJ relied again on the first reading of these Articles in identifying the preconditions for lawful countermeasures under customary international law.⁷⁷ These include, but are not limited to, the following:

- (a) Countermeasures can only be taken by an injured State in response to a breach of international law by another State and must have the purpose of inducing that other State to comply with its international obligations.
- (b) Countermeasures must be limited to the non-performance for the time being of international obligations owed to the other State, and be implemented in a manner that will permit the resumption of performance of the obligations in question.
- (c) Countermeasures must be strictly proportionate to the breach of international law by the other State in respect of which they constitute a response.
- (d) Countermeasures cannot include the threat or use of force or affect certain peremptory obligations under international law, such as those for the protection

⁷⁶ ILC, “Articles on the Responsibility of States for Internationally Wrongful Acts” (2001), available at: https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf (last accessed 11 June 2025), **PLA-0149**, Articles 49–54.

⁷⁷ *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment [1997] ICJ Rep 7, **PLA-0094 (resubmitted)**, ¶ 83.

of fundamental human rights.

- (e) A State taking countermeasures is not relieved from fulfilling its obligations under any dispute settlement procedure applicable between it and the other State.
- (f) Before taking countermeasures, a State must (i) call on the other State to comply with its obligations, and (ii) notify the other State of the decision to take countermeasures and offer to negotiate.
- (g) Countermeasures may not be taken, or if already taken must be suspended without undue delay if (i) the breach of international law that prompted the countermeasures has ceased, and (ii) the dispute is pending before an international court or tribunal which has the authority to make decisions binding on the parties.

4.35. What these principles show is that countermeasures are not a form of punishment and can only be taken on the basis of a demonstrable breach of international law by the State against which the measures are taken. They are a means to encourage compliance with international law. Significantly, in present circumstances, the fact of having taken countermeasures does not relieve the State taking the countermeasures of its obligations under dispute settlement procedures applicable between it and the other State.

2. India has not met and cannot meet the requirements of lawful countermeasures against Pakistan

4.36. As with the other possible bases for suspension of the Treaty, an argument that India is entitled to suspend the Treaty as a lawful countermeasure is not credible for multiple reasons, of which the following are simply examples.

4.37. **First**, Pakistan denies all responsibility for involvement in the Pahalgam attack and has proposed and committed itself to cooperate with a neutral, transparent and credible investigation into the attack. A claim of lawful countermeasures by India, premised on an alleged internationally wrongful act by Pakistan, would therefore fail from the outset for lack of a factual foundation.

4.38. **Second**, India has not engaged with Pakistan’s offer to cooperate with a neutral, transparent and credible investigation into the Pahalgam attack. Even were there to be a factual foundation to India’s allegations, Pakistan’s commitment to cooperate with a neutral, transparent and credible investigation is exactly the kind of action that would see a return to compliance with international obligations. India’s failure to engage with Pakistan’s proposal thus vitiates a predicate requirement for lawful countermeasures.

4.39. **Third**, the claimed countermeasures, i.e., unilateral suspension of the Treaty, are not proportionate to the Pahalgam attack, even more so as the attack cannot be attributed to Pakistan. Without for a moment minimising the horrors of the Pahalgam atrocity, Pakistan relies on the Western Rivers for 80% of its agricultural land and 70% of its potable water, affecting hundreds of millions of people.

4.40. This self-evident disproportion is echoed in the *Gabčíkovo-Nagymaros* judgment in which the ICJ addressed the proportionality of countermeasures taken by Czechoslovakia in the form of unilaterally assuming control of Hungary’s right to “an equitable and reasonable share of the natural resources of the Danube”, concluding that this action “failed to respect the proportionality which is required by international law.”⁷⁸ As in that case so would it be in this. India’s purported unilateral assumption of control over the waters of the Western Rivers, in breach of a fundamental treaty obligation, could not meet the proportionality requirement for a lawful countermeasure.

4.41. **Fourth**, as part of its policy of “abeyance”, India is threatening to take, and appears to be taking forward, long-term structural plans to deprive Pakistan of its rights to the waters of the Western Rivers. Given the permanent or near-permanent character of such actions, this policy is at odds with the requirement that countermeasures must be readily reversible.

4.42. **Fifth**, it is axiomatic that a State taking countermeasures is not relieved from its obligations under applicable dispute settlement procedures. Even apart from other considerations, India cannot therefore, in pursuit of its policy of “abeyance”, lawfully abjure engagement in the Court and Neutral Expert proceedings, or disregard Pakistan’s invitation, in its letter of 8 May 2025, to pursue any grievances it may have with Pakistan under the Treaty

⁷⁸ *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment [1997] ICJ Rep 7, **PLA-0094 (resubmitted)**, ¶ 85.

through the settlement modalities in Article IX of the Treaty.

4.43. It follows from the preceding that any Indian argument purporting to justify its “abeyance” policy by reference to the law on countermeasures could not succeed.

D. THE EFFECT OF ARMED CONFLICT ON THE TREATY

4.44. Although India has not, in its public statements, linked its threat of armed force against Pakistan, the armed attack it launched against Pakistan on 6/7 May 2025, the armed action that followed that attack, and the ceasefire that is now in place, to its policy of “abeyance”, a brief observation is warranted about the law on the effect of armed conflict on treaties.

4.45. The Treaty does not address the effect of armed conflict on the Parties’ obligations thereunder. It has, however, survived three armed conflicts and multiple armed skirmishes between the Parties across contested territory and a disputed boundary over its 65-year history. It is clear from the Parties’ conduct over this period that they shared a common appreciation that the Treaty stood above armed conflict as a beckon of the “spirit of goodwill and friendship” that animated the Treaty and is referenced in its Preamble. India, with its present policy, is seeking to tear down this edifice.

4.46. The ILC addressed the effect of armed conflict on treaties in its Draft Articles and commentaries adopted by the Commission and transmitted to the UN General Assembly in 2011.⁷⁹

4.47. For present purposes, it is not necessary to undertake a detailed assessment of the status of these Draft Articles and their implications for the Parties. By way of overview, Pakistan notes simply that the ILC, in the Draft Articles, sets out a framework for addressing the application of a treaty in circumstances of armed conflict between two or more parties to the treaty. Whether a given treaty will continue in force in such circumstances, and whether presumptions of applicability will apply, will turn on various factors.

4.48. What is germane for present purposes is that the ILC, in Article 7 and the Annex to the Draft Articles, identified certain kinds of treaties which, because of their subject-matter,

⁷⁹ ILC, “Draft Articles on the Effect of Armed Conflict on Treaties, with Commentaries” (2011), available at: https://legal.un.org/ilc/texts/instruments/english/commentaries/1_10_2011.pdf (last accessed 11 June 2025), **PLA-0150**.

involved “an implication that they continue in operation, in whole or in part, during armed conflict”.⁸⁰ The indicative list of such treaties given in the Annex is instructive as it identifies, in at least three of its subject-matter categories, treaties that encompass the scope of the Indus Waters Treaty that are presumed to continue in operation even in the most dire circumstances of armed conflict between their parties, viz:

- treaties declaring, creating or regulating a permanent regime or status or related permanent rights;
- treaties relating to international watercourses and related installations and facilities; and
- treaties relating to the international settlement of disputes by peaceful means.

4.49. That the Indus Waters Treaty falls within each of these categories of treaties that are to be presumed to remain in operation even in circumstances of armed conflict is highly significant. It is a statement about the foundational, cornerstone character of the Treaty in relations between the Parties. It is a statement about the permanency of the rights and obligations that are established by the Treaty. It is a statement about the high sanctity of a treaty that creates and addresses an international watercourse regime and its related installations and facilities. And it is a statement about the importance of a treaty that has at its core and pivot international dispute settlement modalities.

4.50. India, with its policy of “abeyance”, and the destructive ambiguity with which it is pursuing it, is playing fast and loose with a treaty of a seminal character, not simply in relations between Pakistan and India but as an exemplar of an instrument that should stand above the fray, because of its subject-matter and because of what the ILC described in addressing the precursor to Article 62(2)(a) of the VCLT that, if a treaty of this character is not elevated and sanctified and protected, instead of being an instrument of peace, it will become a source of dangerous friction.

* * *

⁸⁰ *Id.*

V. INDIA’S WEAPONISATION OF THE WATERS OF THE WESTERN RIVERS

5.1. In PO15, the Court requested a submission addressing the effect, if any, of recent developments “on matters before the Court or the Neutral Expert, including their respective competence.” The preceding observations have gone largely to the issue of competence, while also addressing in summary the fundamental flaws in the arguments trailed in India’s public statements justifying its policy of “abeyance”. The reasons for addressing this latter aspect are not simply to give the Court assistance and comfort, in the event that it considers that such elements should usefully be addressed and that it wishes to be better informed about the broader legal dimension, but also because they go to wider excuses that India has been deploying or may deploy to pursue or justify a policy of non-engagement with respect to the proceedings of either the Court or the Neutral Expert.

5.2. Beyond these issues, there is another that is before both the Court and the Neutral Expert, albeit in different forms, that warrants comment by Pakistan in this Submission. It is the issue of the weaponisation of water by India through its abuse of the rights that it is afforded under Article III and Annexure D of the Treaty and the correlative obligations by which it is bound. The issue arises before the Neutral Expert, albeit indirectly, as he is seised of points of difference with respect to the design of the KHEP and the RHEP that address elements of design that have the capacity to either enlarge or constrain India’s ability to abuse the water it is permitted to store in the form of pondage to control both downstream flow and sediment releases to Pakistan’s risk and disadvantage.

5.3. Before the Court, the issue of weaponisation, in which the Court, through its questions, has expressed notable interest, was addressed largely as a hypothetical, although rooted in the real-world events of 1948, which ultimately spawned and informed the Treaty. The rest was largely a reflection of Pakistan’s deeply held fear that India, through its very considerable long-term HEP construction programme on the Western Rivers, and its attempts to shoe-horn enlarged Article III and Annexure D rights from the Treaty, could strangle Pakistan’s life-blood.

5.4. With shocking clarity and effect, India’s policy of “abeyance” since 23 April 2025, together with public rhetoric, has stoked the threats and perhaps reality of its new approach: use dams to manipulate or deny downstream releases to Pakistan. Such flow manipulations

have already been observed by Pakistan’s monitoring, unambiguously illustrating the reality of what might heretofore have been perceived as exaggeration or hyperbole by Pakistan.

5.5. Pakistan addressed the issue of weaponisation in its Memorial,⁸¹ in its oral submissions during the hearing of the First Phase of the Merits,⁸² and in its Post-Hearing Brief.⁸³

5.6. “Weaponisation” in this context is an omnibus term for three concerns regarding India’s control over the waters of the Western Rivers: (a) the interruption of water supply used for downstream irrigation through the filling of sizeable pondage pools and other reservoirs; (b) the opening of dam gates to release stored water in excessive volumes in a manner that causes flooding downstream; and (c) the rapid, mass release of sediment impacting rivers, land, infrastructure and people living downstream.⁸⁴ The first two actions, combined, would enable India to cause significant variations in the flow of water, potentially prolonged over considerable periods, in a manner that would be both unpredictable and damaging to those downstream. India is steadily growing its leverage and scope for flow manipulation through its growing cascade of dams, such as the planned, under-construction, and already-operational dams on the Chenab, i.e., Dul Hasti and Baglihar. The third concern becomes a potential threat when there is sediment accumulation in the reservoir combined with design features such as low-level outlets that enable its mass release downstream. The Court will recall that, in the course of the hearing of the First Phase on the Merits, Dr Morris modelled some of the options available to India to weaponise, in particular, the flow of the Chenab.⁸⁵ These incorporated future as well as existing dams, and demonstrated the potential scale of harm that India could wreak upon Pakistan as a result of the aggressive dam-building programme on the Western Rivers.

5.7. The rhetoric of India’s officials and stoked clamour of the Indian media in the period

⁸¹ Pakistan’s Memorial, ¶¶ 1.7, 3.46-3.57, 11.10-1.11.

⁸² Transcript of Hearing for the First Phase on the Merits, Day 1 (8 July 2024), p. 13, line 21 – p. 14, line 1 (Mr Akbar); Transcript of Hearing for the First Phase on the Merits, Day 1 (8 July 2024), p. 84, line 25 – p. 85, line 10 (Sir Daniel Bethlehem KC); Transcript of Hearing for the First Phase on the Merits, Day 2 (9 July 2024), p. 25, lines 2–7 (Ms Rees-Evans); Transcript of Hearing for the First Phase on the Merits, 11 July 2024 (Day 4), p. 73, lines 1-6 (Dr Morris); of Hearing for the First Phase on the Merits, Day 4 (11 July 2024), p. 83, lines 5–16 (Dr Morris).

⁸³ Pakistan’s Post-Hearing Submission dated 1 November 2024, Section III.C.

⁸⁴ Transcript of Hearing for the First Phase on the Merits, Day 4 (11 July 2024), p. 72, line 2 – p. 88, line 19 (Dr Morris).

⁸⁵ G. L. Morris, *Approaching Paragraph 8 from the Perspective of an Engineer*, 11 July 2024, **PHM-0011**, slides 22–24.

since 23 April now shows that weaponisation scenarios are far from hypothetical.

5.8. There are also more subtle ways in which India could use its control over the Western Rivers to cause downstream damage and injury in Pakistan in violation of the Treaty. As pointed out in Pakistan’s Memorial, the withholding of water by India during the low-precipitation and low-flow *kharif* planting period, even for a handful of days, could have a significant impact on Pakistani agriculture.⁸⁶ On the basis of the Pondage allocation by the Neutral Expert in the *Baglihar* proceedings, the Operating Pool of the Baglihar HEP alone is sufficient to hold three days of water when the Chenab Main is flowing at the relevant minimum mean discharge.⁸⁷ Such interference could be operationalised by India with ease—simply by discarding the daily and weekly operating ordinances contained in Paragraph 15 of Annexure D of the Treaty.

5.9. Pakistan monitors the flow of the Western Rivers into Pakistan. These data show *prima facie* that, since India’s 23 April “abeyance” policy declaration, it has been acting in material disregard of the operational constraints in Paragraph 15 of Annexure D, causing—without doubt intentionally—significant variations in the downstream flow of water to Pakistan.

5.10. Flow manipulation is readily apparent in the flow data for the Chenab as it enters Pakistan, as illustrated by the following hydrographs—both based on the same hourly data but presenting two types of analysis. The data show two significant flow variation episodes, one at the start of May and the second at the end of the month and extending into June. **Figure 1** calculates the volumes of water released from upstream reservoir storage, and then held back to refill the emptied storage thereby causing flow reductions to almost zero. This release-and-holdback pattern in early May was followed by an almost identical, although even more accentuated release-and-holdback pattern three weeks later. In **Figure 2**, the 2025 flow data are compared to the highest, mean, and lowest flows over the past ten years, clearly showing that both the highs and the lows during these two flow manipulation periods fall well outside the envelope of the historical extremes. Basin-averaged CHIRPS satellite rainfall data are also presented in **Figure 2**, but Pakistan has no gauge data from India against which to compare the

⁸⁶ Pakistan’s Memorial, ¶¶ 3.54, 3.63.

⁸⁷ Pursuant to the *Baglihar* Neutral Expert decision, the minimum mean discharge at the Baglihar HEP site is 125.68.m³/sec. In circumstances where the Neutral Expert fixed the size of that HEP’s Operating Pool at 32.56Mm³, it will take 72 hours for it to fill from empty when the river is flowing at the minimum mean discharge: *Baglihar Hydroelectric Plant (Pakistan v India)*, Indus Waters Treaty Annexure F, Neutral Expert Determination, 12 February 2007, **PLA-0002 / BR-0001**, § 6.5, Determination D 5.

satellite data.

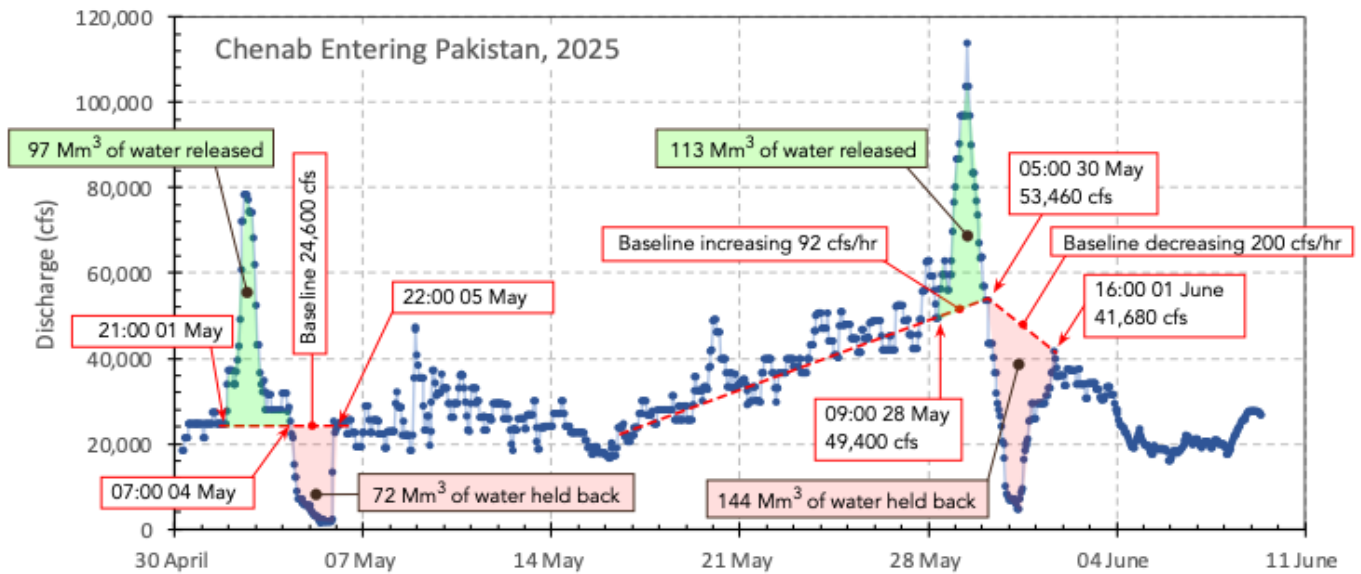


Figure 1 – Flow data for Chenab entering Pakistan, with estimation of flow volume released and then held back by emptying and refilling upstream storage capacity

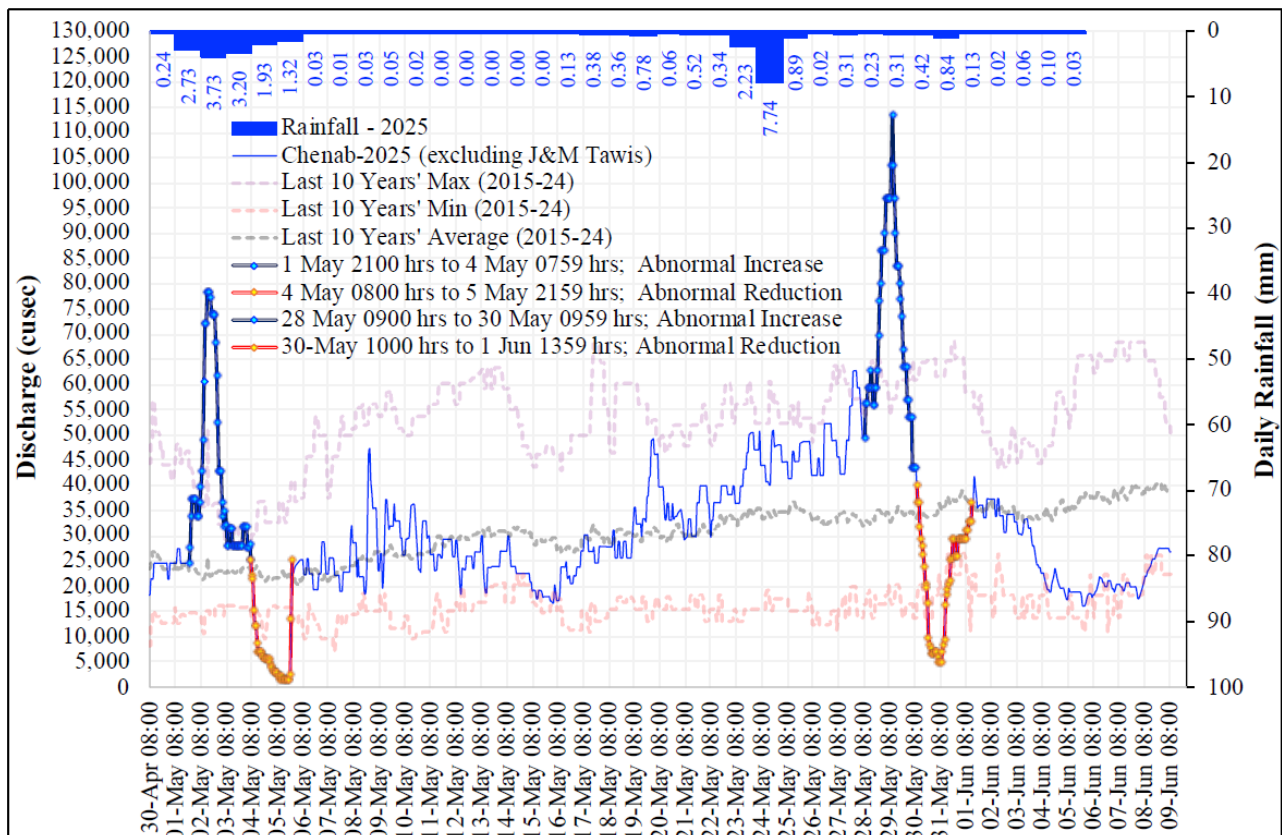


Figure 2 – Flow data for Chenab entering Pakistan comparing 2025 data to flows during the prior 10 years, showing two flow manipulation events that exceed historical extremes for both high and low flows; basin-averaged CHIRPS satellite rainfall data are also shown

5.11. The flow variations indicated in these hydrographs is almost certainly the result of the emptying and filling of the Baglihar HEP reservoir, involving both its 37.5Mm³ of allocated Pondage and, in all likelihood, a significant volume of dead storage as well. Pakistan has also observed spikes in sediment concentration coincident with the high flows, which indicates that both were likely drawdown flushing events. It is also possible that the Baglihar HEP and Dul Hasti HEP reservoirs were operated in tandem, in a cascade, to achieve these results.

5.12. On the data presently available, while Pakistan is not in a position to say with certainty that India has been acting in breach of requirement (a) of the chapeau of Paragraph 15 of Annexure D,⁸⁸ it is in a position to say with a high degree of confidence that India's conduct is in breach of Paragraph 15(ii) of Annexure D.⁸⁹

5.13. As noted in paragraph 2.44 above, in the light of this evidence, Pakistan concludes that, while India is intentionally seeking to obscure its position with the use of the term "abeyance", it is in fact acting in breach of its Treaty obligations. The evidence noted above supports the conclusion that, on the Chenab, India is using the Baglihar HEP, through its very significant storage capacity and its low-level orifice spillway, and perhaps also the Dul Hasti HEP, to implement Treaty-inconsistent flow manipulation. These flow variations, together with the corresponding rhetoric disseminated through the Indian press, is consistent with weaponisation.

5.14. Through these actions, it is plain that, whatever might have been the intention initially, India's policy of "abeyance" is now simply cover behind which India is acting in breach of its Treaty obligations.

5.15. On 27 May 2025, given the evidence available to him at that point, the PCIW wrote to the ICIW seeking information and an explanation with respect to these flow variations.⁹⁰ To date, the ICIW has not responded to this letter.

* * *

⁸⁸ "(a) [T]he volume of water received in the river upstream of the Plant, during any period of seven consecutive days, shall be delivered into the river below the Plant during the same seven-day period".

⁸⁹ "[W]here a Plant is located at a site on the Chenab Main above Ramban, the volume of water delivered into the river below the Plant in any one period of 24 hours shall not be less than 50% and not more than 130%, of the volume received above the Plant during the same 24-hour period".

⁹⁰ Letter No. WT(132)/(8188-A)/PCIW from the PCIW to the ICIW dated 27 May 2025, **Exhibit P-0709**, ¶ 11. For ease of reference, this letter is attached as an Appendix to this Submission.

VI. CONCLUDING OBSERVATIONS AND REQUESTS FOR RELIEF

6.1. The key conclusions that emerge from the preceding analysis and discussion can be simply stated.

6.2. **First**, India's policy of "abeyance" in respect of the Indus Waters Treaty has no effect on the competence of either the Court or the Neutral Expert, the competence of each having been crystallised long before the "recent developments", the controlling principle being that post-seisin developments cannot, absent agreement of the parties, oust or otherwise undermine or affect competence / jurisdiction already established.

6.3. **Second**, this applies whether India's policy is assessed in the terms in which India seeks to characterise it, through its official statements, as a policy of holding the Indus Waters Treaty in "abeyance", or whether it is seen for what it is in reality, namely, the unlawful suspension, breach or abrogation of the Treaty.

6.4. **Third**, both the Court and the Neutral Expert have a continuing responsibility to advance their proceedings in a timely, efficient and fair manner without regard to India's policy of "abeyance", and that a failure to do so would be inconsistent with the obligations of each under, respectively, Annexure G and Annexure F of the Treaty.

6.5. **Fourth**, on the basis of India's public statements, and the propositions that it has advanced in support of its "abeyance" policy, there is no basis in international law on which India can sustain a case for the lawful suspension, termination or other non-compliance of its obligations under the Treaty. In these circumstances, both India's obligations and its rights under the Treaty are continuing. Both India and Pakistan are required to honour their obligations under the Treaty.

6.6. **Fifth**, on the evidence available to Pakistan, it can be concluded, with a high degree of confidence that India, through its manipulation of the flow of waters of the Chenab, that India is in violation of its obligations under Paragraph 15 of Annexure D of the Treaty.

6.7. **Sixth**, through its policy of "abeyance", its intentional manipulation of the flow of the waters of the Western Rivers, and its public rhetoric, India is weaponising the waters of the Western Rivers in a manner that is inconsistent with its obligations under the Treaty and antithetical with the Treaty's animating spirit of goodwill and friendship and cooperation in

the settlement of differences and disputes.

6.8. Having regard to the importance of the issues raised in this Submission, in response to enquiry by the Court, and the uncertainty that has been caused by India's conduct, Pakistan formally requests the Court of Arbitration to address and rule upon the questions raised by its enquiry in the form of a dispositive decision, of binding *res judicata* authority, in accordance with Paragraph 23 of Annexure G of the Treaty, as soon as possible, including, but not necessarily limited to the following:

- (a) that India's policy of "abeyance" in respect of the Indus Waters Treaty has no effect on the competence of either the Court or the Neutral Expert;
- (b) that this applies however India's policy of holding the Treaty in "abeyance" is characterised;
- (c) that both the Court of Arbitration and the Neutral Expert have a continuing responsibility to advance their proceedings in a timely, efficient and fair manner without regard to India's policy of "abeyance", and that a failure to do so would be inconsistent with the obligations of each under the Treaty; and
- (d) to make such other findings, determinations and rulings as may be warranted or appropriate by reference to the facts, evidence and arguments indicated in this Submission, including its appendices, exhibits and authorities, having regard to the Court's Award on Competence, the Neutral Expert's Decision on Competence, including the limitations on the Neutral Expert's competence, both generally and as identified in the Neutral Expert's Decision on Competence, and the Court's Procedural Order No. 6, including the general duty of mutual respect and comity indicated therein.

Respectfully submitted:



(MANSOOR USMAN AWAN)
Attorney General for Pakistan
Agent of Pakistan

**Submissions of Pakistan on Recent Developments
Pursuant to ¶ 1.2 of Procedural Order No. 15
11 June 2025 (as corrected, 12 June 2025)**

**APPENDIX: LETTER NO. WT(132)/(8188-A)/PCIW FROM THE PCIW TO THE
ICIW DATED 27 MAY 2025, EXHIBIT P-0709**

SYED MUHAMMAD MEHAR ALI SHAH
PAKISTAN COMMISSIONER FOR INDUS WATERS



**GOVERNMENT OF PAKISTAN
MINISTRY OF WATER RESOURCES**

*No.WT(132)/(8188-A)/PCIW
Islamabad the 27th May 2025*

My dear Talwar Sahib:

The Attorney General for Pakistan, Pakistan's Designated Representative in the *Indus Waters Treaty Neutral Expert Proceedings (India v. Pakistan)*, has today written to the Neutral Expert in response to the letter of yesterday's date (26th May 2025) to the Neutral Expert. As both that correspondence and the letter dated 8th May 2025 from Pakistan's Secretary, Ministry of Water Resources to his Indian counterpart make clear, Pakistan considers that the Indus Waters Treaty remains fully in force notwithstanding India's declared, but unexplained, policy of holding the Treaty in "abeyance".

2. Under the express terms of the Treaty, the two Commissioners of Indus Waters – you and I – are charged both with promoting cooperation between the Parties and with making every effort to settle promptly, in accordance with the provisions of Article IX(1) of the Treaty, any questions that arise thereunder. It is in this spirit that I write to you and request your urgent response.

3. I write with specific regard to Articles III, IV, VI, VIII and IX of the Treaty to address what appears, on Pakistan's present analysis, to be abnormal, seemingly Treaty-inconsistent flow variations in the discharge of the Chenab River at Marala, as well as of the Neelum/Kishenganga and Jhelum Rivers, all Western Rivers governed by Articles III and IV of the Treaty, and to request the provision of data pursuant to Articles VI(1) and VIII(1)(a) of the Treaty and your cooperation pursuant to Articles VIII(4)(b) and IX(1) of the Treaty.

4. As elaborated below, the documented significant variation of flows in the discharges of Chenab River at Marala in the first half of the month of May 2025 highlight Pakistan's urgent and serious concern. I note that similar variations were also observed in the discharges of Neelum/Kishenganga and Jhelum Rivers.

5. Regarding the significant variation in the discharge of the Chenab River at Marala, the flow data available to Pakistan evidences a significant rise followed by a sharp decline in the discharge of Chenab River in the period from 1st to 5th May 2025. The details are given in the table and figures below:

Table 1: Details of abnormal rise and decline in flows of the Chenab River at Marala in the period 1st to 5th May 2025

Condition	Prior to abnormal flows		Abnormal rise in flows		Abnormal decline in flows	
From	30-4-25 (2100 hrs)		01-5-25 (2100 hrs)		04-5-25 (0800 hrs)	
To	01-5-25 (2059 hrs)		04-5-25 (0759 hrs)		05-5-25 (2159 hrs)	
Duration	24 hours		59 hours		38 hours	
Comparison	2015-2024	2025	2015-2024	2025	2015-2024	2025
Average	23,644 cusec	24,691 cusec (4.4% above last 10-yr avg)	22,886 cusec	41,824 cusec (82.7% above last 10-yr avg)	22,134 cusec	5,882 cusec (73.4% below last 10-yr avg)
Maximum	48,284 cusec	27,448 cusec (43.2% below last 10-yr max)	50,858 cusec	78,276 cusec (53.9% above last 10-yr max)	-	-
Minimum	12,607 cusec	21,446 cusec (70.1% above last 10-yr min)	-	-	9,576 cusec	1,527 cusec (84.1% below last 10-yr min)

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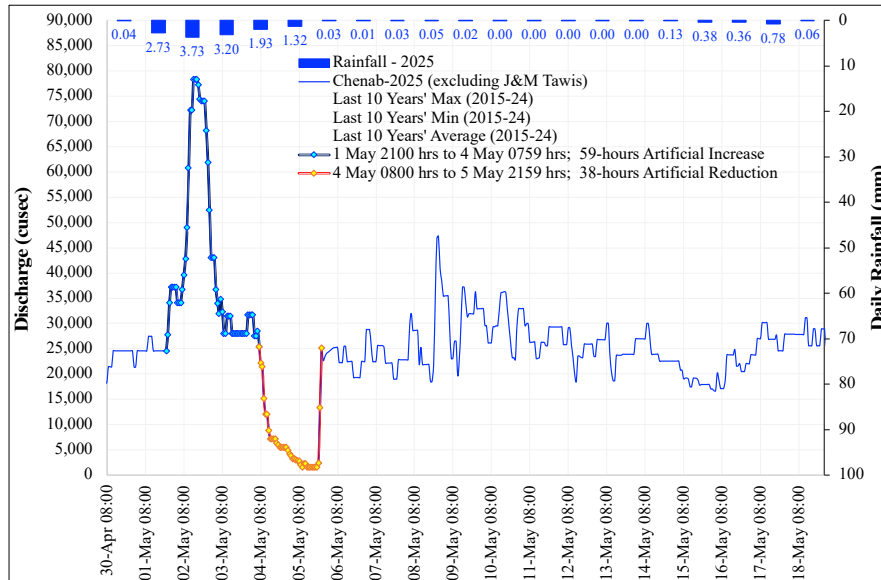


Figure 2: Hydrograph of Chenab River showing artificial increase and reduction in natural flows of the river as shown in red line.

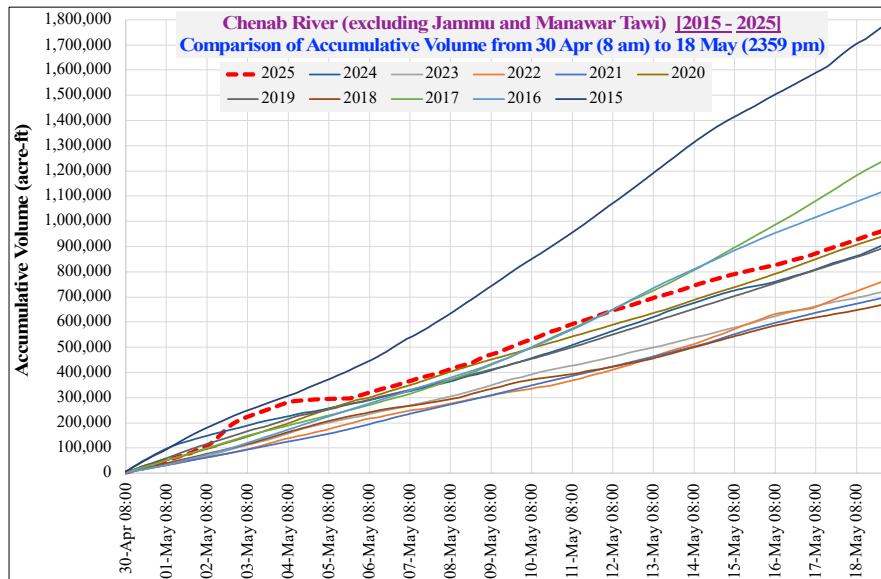


Figure 3: Mass curves showing accumulative volume corresponding to Chenab River flows entering into Pakistan

6. The above table and figures clearly indicate that the rise in flows of Chenab River as observed at Marala on from 1st to 5th May 2025 peaked to 78,276 cusec which were 53.9% higher than the

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maximum discharge observed at Marala during the same period in last ten years. It is important to mention that from the rainfall records available from various satellite products indicate that there was insignificant rainfall during this period in the catchment of Chenab basin. Hence in the absence of any scientific evidence suggesting it as a natural cause this increase is not natural and significantly abnormal.

7. Immediately after the increase, a decline in flows was observed from 4 May 0800 hrs which lasted up to 5 May 2025 at 2200 hrs when the flows at Marala became normal. The minimum discharge of Chenab River in this period reduced to 1,527 cusec which was 84.1% less than the ever-minimum discharge observed during the last ten years in the same period. This decline in flow appears a logical consequence of an upstream reservoir operation where initially a reservoir was emptied followed by its filling.

8. In the instant case, I understand that Baglihar Hydroelectric Plant's reservoir has a controllable storage capacity of around 168,000 acre-ft which if used either in full or partially – depending upon the operator's decision – would explain the above-described variation in the discharge of the flow.

9. Similar abnormal discharge variations have been observed along the Neelum/Kishenganga River and the Jhelum River.

10. The discharge variations noted above give rise to a serious cause of concern for Pakistan, particularly against the background of historic non-cooperation from your side in fulfilling the Treaty's obligations including but not limited to not holding meetings of the Permanent Indus Commission, no exchange of Article VI data and advance flood information, denying Pakistan's right to conduct general and special tours of inspections, and the bilateral resolution of outstanding issues relating to Pakistan's objections on Pakal Dul, Kiru and Kwar hydropower projects.

11. In the light of the above, I request that you urgently furnish all daily gauge and discharge data relating to flow of the Chenab, Neelum/Kishenganga and Jhelum Rivers at all observation sites as well as daily extraction for or releases from Dul-Hasti, Baglihar, Salal and Uri-II for the period 30th April 2025 to 21st May 2025, as required by Articles VI(1)(a), VI(1)(b) and VIII(1)(a) of the Treaty. I further request your cooperation pursuant to Articles VIII(4)(b) and IX(1) of the Treaty to hold immediate consultations within the framework of the Permanent Indus Commission to enable us to address the issues arising from the above-noted data with respect to the application of the Treaty. I also take this opportunity to request that India refrain from contravening any of the Treaty's provision, and, insofar as it has any questions that it considers should be raised with Pakistan regarding the interpretation or application of the Treaty, or the existence of any fact which, if established, might constitute a breach of this Treaty, that it does so forthwith within the framework of the Permanent Indus Commission, this being the channel designated under the Treaty for such engagement.

12. Given the urgency and seriousness of the issues raised above, I request your response to this enquiry and entreaty by no later than 3rd June 2025 and, as per earlier correspondence dated 10th March 2025, urge you to convey a set of two convenient dates no later than 15th June 2025 to hold the meeting of the Permanent Indus Commission in the month of June 2025 or latest in the first week of July 2025.

Assuring you of my best cooperation and with best regards,

Yours sincerely,



(SYED MUHAMMAD MEHAR ALI SHAH)

Shri Darpan Talwar,
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