



GOVERNMENT OF PAKISTAN
Office of the Attorney General
for Pakistan

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Dear Mr Schofield

The Indus Waters Western Rivers Arbitration (Pakistan v. India)—*Award on Issues of General Interpretation: Request for Clarification*

1. I write with reference to the Court of Arbitration’s *Award on Issues of General Interpretation of the Indus Waters Treaty* dated 8 August 2025 (“**Award**”) and Paragraph 27 of Annexure G of the Indus Waters Treaty to request the Court’s clarification of a number of points arising out of the Award, as detailed below. Before turning to these, as an initial and overarching matter, I affirm for the record that Pakistan fully and unreservedly accepts the Award in all of its aspects and will ensure that its approach to the interpretation and application of the Treaty comports with the Court’s interpretation.

2. In raising the points for clarification addressed below, Pakistan notes the Court’s conclusions, in the Award, on the issue of *res judicata* and the binding or otherwise controlling effect of the decisions of the Court set out in its Award, notably that such principles apply to questions that “have been definitely settled by an earlier decision”.¹ Pakistan also has regard to the Court’s conclusions elsewhere in Part VII.B of its Award,² *inter alia*, that decisions of the

¹ Award, ¶ 302.

² Award, ¶¶ 294–396.

Court in its Award, including of systemic nature, are binding on the Neutral Expert in the parallel proceedings.³ Mindful of the publicly notified Fourth Meeting of the Neutral Expert, scheduled for 17–22 November 2025,⁴ during which Pakistan will address the implications of the Award for the submissions developed in its Counter-Memorial to the Neutral Expert, Pakistan also recalls the Court’s finding, in paragraph 30 of its Procedural Order No. 6 (“**PO6**”), that dispute resolution bodies must exercise their competence in such a manner as “to facilitate the actual resolution of the Parties’ dispute”. Within the context of the Court’s systemic interpretation, the requests for clarification that follow have the purpose of achieving definitive clarity from the Court on issues on which Pakistan perceives continuing uncertainty and a likelihood of on-going dispute, with the consequence that, absent clarification, the Award may not sufficiently facilitate the resolution of the Parties’ dispute on the matters in question.

3. For completeness, Pakistan avers, in requesting clarification from the Court on the issues identified below, that it is not requesting the Court to revise the Award in any way but only to “clarify its prior decision”.⁵

4. With a view to avoiding any consequential uncertainty, Pakistan requests that, alongside the substantive points of clarification that the Court may give in response to Pakistan’s request (the “**Clarifications**”), the Court also addresses for the avoidance of doubt the relationship of the Clarifications and the *res judicata* and the binding or otherwise controlling effect of the Clarifications as an integral part of the Award. In this regard, Pakistan notes that Paragraph 27 of Annexure G expressly contemplates that either Party may, within three months of the date of the Award, request the Court “to clarify or interpret its Award”, the necessary implication being that any such clarifications are to be considered as an integral part of the Award.

5. Pakistan sets out below its requested points for clarification along with a succinct explanation of the reasons for which each clarification is sought. As Pakistan fully accepts the Award, and is not seeking to reopen any aspect of it but only to secure clarification of the meaning and scope of the findings in question, Pakistan does not envisage the need for any further submissions from Pakistan to inform the Court’s deliberations on the points raised. As to the proposed timing of the Court’s Clarifications, while this is of course a matter for the Court, Pakistan would welcome the Court’s response as soon as possible, and ideally in good time before the Fourth Meeting of the Neutral Expert, to enable the Clarifications to inform the submissions that Pakistan will be required to make to the Neutral Expert at that Meeting.

Requested Clarification No.1

³ Award, ¶¶ 350–351.

⁴ <https://pcacases.com/web/sendAttach/69254>

⁵ *Kishenganga Court, Decision on India’s Request for Clarification or Interpretation dated 20 May 2013*, 20 December 2013, ¶ 23.

6. In its Award, the Court affirms that “a key objective of the Treaty was to establish security and predictability in the generation of hydro-electric power by India on the Western Rivers, and that this could be achieved only through an instrument that delimited the Parties’ rights and obligations with finality.”⁶

7. Addressing the Treaty’s provisions on information sharing and cooperation, the Court quotes the *Kishenganga* Court’s finding that “the Treaty prescribes a formal procedure designed to bring a measure of order and certainty in the resolution of competing claims, and to questions of propriety of Plant design, *before* construction commences.”⁷ The Court similarly references the Treaty’s Preamble as signalling “a desire for clarity, certainty, and finality as to the rights and obligations of the two riparians in their utilisation of the Indus system of rivers.”⁸

8. Addressing overarching issues concerning the interpretation and application of Article III and Annexure D, the Court observes that any dispute resolution body under the Treaty – a Court of Arbitration or Neutral Expert – “is confined to the specific and detailed provisions set forth in Annexure D; nothing more and nothing less”, affirming textual certainty and that “Article III and Annexure D cannot be approached as generally ‘evolutive’ in nature.”⁹

9. Addressing the *chapeau* of Paragraph 8 of Annexure D, the Court notes its injunctive character – “the design [...] shall conform to the following criteria” – and goes on to state that this makes clear that “the ordinary meaning of [this] entails the conceptual planning of the HEP features on paper [...], with the intent and expectation that the HEP will be constructed and operated in accordance with that plan.”¹⁰

10. Addressing the issue of the interpretation and application of Paragraph 8(a) of Annexure D, the Court notes the difference between the Parties on the meaning of the phrase “shall not be capable of”, in particular “whether the prohibition in Paragraph (a) addresses solely the design of an Annexure D, Part 3 HEP as it is to be normally operated after construction (India’s position) or also addresses the design of the dam as it *might* be operated, including with future modifications (Pakistan’s position).”¹¹ Addressing this difference, the Court states, *inter alia*, as follows:

“The objective that is prohibited is ‘of raising artificially’ the water level in the dam. The adverb ‘artificially’ in Paragraph 8(a) confirms that the prohibition applies to a raising of the water level in the Operating Pool above the Full Pondage Level through human intervention, rather than by occurrences arising from nature, such as flooding (which is designed to be addressed by Surcharge

⁶ Award, ¶ 455; also, *inter alia*, at ¶¶ 299, 339, 347, 352, 360, 388.

⁷ Award, ¶ 806 (emphasis in the original).

⁸ Award, ¶ 429.

⁹ Award, ¶¶ 453–455.

¹⁰ Award, ¶¶ 560–561; 763–764; also ¶¶ 576, 584–585; 595–597.

¹¹ Award, ¶ 766 (emphasis in the original); also at ¶ 784..

Storage) or waves caused by winds.

Thus, this provision limits an Annexure D, Part 3 HEP from being **designed** so that the works can be manipulated to raise artificially the level in the reservoir, so that it is higher than the Full Pondage Level for which the dam is designed. In other words, given that the Pondage for an Annexure D, Part 3 HEP is strictly controlled by the Treaty, the dam must be **designed** in a manner that permits only such Pondage and does not permit the artificial raising of the reservoir beyond Full Pondage Level. **Paragraph 8(a) therefore has implications for any element of the dam design that could enable the artificial raising of the reservoir, including freeboard.** For instance, a crest-gated spillway with gates extending above Full Pondage Level (a matter not at issue in the present proceedings) would be inconsistent with this provision, as it would allow for increasing the amount of controllable storage beyond what the Treaty permits.”¹²

11. In the analysis that follows this finding, the Court focuses exclusively on the dispute between the Parties on the issue of freeboard and the words in Paragraph 8(a) “shall not be capable of”, stating, *inter alia*, as follows:

“The reference in Paragraph 8(a) to design of ‘[t]he works themselves’ is not directed solely at the works as they are to be operated immediately after construction or as they might normally be operated. Rather, **Paragraph 8(a) more broadly encompasses a prohibition on designing those works to be ‘capable’ of artificially raising the water level.** In this context, the term ‘capable’ means that **the works should not be designed to include components that would readily allow for artificial raising of the water level at whatever point in the future.** Additional freeboard beyond that required to prevent overtopping and for Surcharge Storage unequivocally adds to the capability of the works in this respect, and thus is prohibited.”¹³

12. The Court’s conclusion on this issue are expressed as follows:

“The Paragraph 8(a) prohibition concerns not just the design of a work as it is intended to operate at the outset, but also any design that would readily allow for future modifications that would permit the works to raise artificially the water level in the Operating Pool above the Full Pondage Level specified in the design.”¹⁴

13. This conclusion is restated in materially identical terms in the operative part of the Court’s Decision at Paragraph 811(R).¹⁵

14. Against this background, Pakistan’s request for clarification is as follows.

15. The Court’s conclusion and *dispositif* noted above are cast expressly in terms of Paragraph 8(a) of Annexure D of the Treaty. This notwithstanding, Pakistan understands that the issue that has been definitely settled by the Award includes the decision that any design of an

¹² Award, ¶¶ 767–768 (bold emphasis added).

¹³ Award, ¶ 785 (bold emphasis added).

¹⁴ Award, ¶ 789.

¹⁵ Award, ¶ 811(R).

Annexure D, Part 3 HEP that would readily allow for future modifications that would permit the works to raise artificially the water level in the Operating Pool above the Full Pondage Level specified in the design is precluded by the Treaty. This would seem to follow from the Court’s wider analysis and findings, including as recalled in paragraphs 6–11 above, as well as from the Court’s findings and conclusions on what falls within the scope of the binding or otherwise controlling effect of a decision of the Court.¹⁶ Pakistan’s appreciation notwithstanding, this is an issue of cross-cutting importance that properly warrants clarification.

16. Closely related to this issue, going to the Court’s reference to the “future modifications” of a HEP, Pakistan requests the Court’s clarification that the Paragraph 8 criteria are mandatory design criteria that establish *ab initio* design constraints on an Annexure D, Part 3 HEP, that these are distinct from post-commissioning operational constraints on a HEP, and that design constraints cannot be satisfied or accommodated simply by an acknowledgement of or commitment to operational restraint.

17. The importance of obtaining the Court’s clarification on these points is to ensure that there can be no residual or consequential dispute between the Parties on the scope of the Court’s binding and controlling decision and no uncertainty on the part of the Neutral Expert, in his review and application of the Court’s systemic interpretation, about the scope and content of the Court’s decision that is binding upon him.

Requested Clarification No. 2

18. In its Award, with respect to the interpretation of and application of Paragraph 8(e) of Annexure D, the Court addresses what is to be taken into account, and what is to be excluded, for the purpose of designing gated spillways.¹⁷ The Court states that the “text” of Paragraph 8(e) “indicates a starting point (or a default position) when designing an Annexure D, Part 3 HEP, which is that **an ungated spillway should be considered and used** unless a crest-gated spillway is ‘necessary’ due to conditions at the site”.¹⁸ The Court further determines that “[i]f an ungated surface spillway can be used at an Annexure D, Part 3 HEP to pass flood waters and to manage sediment, then **such a spillway should be used**, regardless of whether—absent the Treaty—India might make a different choice”.¹⁹

19. As noted in paragraph 10 above, as part of its analysis of Paragraph 8(a) of Annexure D, the Court concludes that Paragraph 8(a) “limits an Annexure D, Part 3 HEP from being designed so that the works can be manipulated to raise artificially the level in the reservoir, so that it is higher than the Full Pondage Level for which the dam is designed”.²⁰ Noting that Paragraph 8(a)

¹⁶ Award, *inter alia*, ¶¶ 315, 323–324.

¹⁷ Award, ¶¶ 584–594.

¹⁸ Award, ¶ 586 (emphasis added).

¹⁹ Award, ¶ 587 (emphasis added).

²⁰ Award, ¶ 768.

“has implications for *any* element of the dam design that could enable the artificial raising of the reservoir”, and prohibits designing works “capable” of such raising,²¹ the Court continues: “For instance, a crest-gated spillway with gates extending above Full Pondage Level [...] would be inconsistent with this provision, as it would allow for increasing the amount of controllable storage beyond what the Treaty permits.”²²

20. In considering the permissible purposes of freeboard under the Treaty, the Court concludes that “[f]reeboard necessary to address Surcharge Storage is permissible”.²³ In this context, “Surcharge Storage” is understood to be “the **uncontrollable** volume or space in the upper portion of a reservoir between the normal reservoir surface level (‘full supply level’) and the ‘maximum water level’ that the dam has been design to withstand”, and such Surcharge Storage “allows for **temporary** storage of floodwaters during the time it takes to drain them away over the spillway”.²⁴

21. Pakistan understands the Court’s analysis to entail that, to ensure the uncontrollable character of Surcharge Storage, the design of an Annexure D, Part 3 HEP must include a free overflow structure or ungated spillway at the Full Pondage Level. This, though, is not expressly stated, leaving room for dispute as to what the Court means on this issue. Pakistan accordingly requests the Court’s clarification that, to ensure compliance with Paragraph 8(e), and Paragraph 8(a), the design of an Annexure D, Part 3 HEP must always include an ungated spillway to ensure that the design maintains the uncontrollable character of Surcharge Storage. This is particularly important as gated spillways nearly always make provision for stoplogs, flashboards or fusegates that would be capable of raising artificially the water level in the Operating Pool above the Full Pondage Level specified in the design.

22. The importance of obtaining the Court’s clarification on this point is to ensure that there can be no residual or consequential dispute on the interpretation of Paragraph 8(e) and no uncertainty on the part of the Neutral Expert, in his review and application of the Court’s interpretation, about the scope and content of the Court’s decision that is binding upon him.

Requested Clarification No. 3

23. In its Award, the Court determines that “the calculation of ‘maximum Pondage’ in Paragraph 8(c) requires, *inter alia*, consideration of the proposed HEP’s installed capacity and anticipated load.”²⁵

²¹ Award, ¶¶ 768, 785.

²² Award, ¶ 768.

²³ Award, ¶ 774.

²⁴ Award, ¶ 474 (emphasis added).

²⁵ Award, ¶ 741’ also ¶ 737.

24. In reaching this determination, the Court considers, *inter alia*, that both the operational obligations in Paragraph 15 of Annexure D and the Paragraph 9 and Appendix II obligations concerning the transmission of information to Pakistan provide relevant context supporting the Court’s Paragraph 8(c) determination.²⁶ The Court also notes in support of the determination, *inter alia*, the differences “in the nature of” Annexure D Run-of-River HEPs and Annexure E Storage Works, rather than in the methodology for the calculation of Pondage.²⁷

25. Having addressed the relevance of installed capacity and anticipated load for purposes of the calculation of maximum Pondage, the Court emphasises that the Treaty imposes on India “an obligation *inter alia* to convey to Pakistan, at an early stage,” specified “information and an explanation relating to its calculation of maximum Pondage pursuant to paragraph 8(c).”²⁸ The information noted by the Court in this regard is data and information itemised in Paragraphs 2(b), 3(b), 4(a), 4(h) and 4(i) of Appendix II of Annexure D.²⁹

26. Addressing installed capacity and anticipated load, the Court states, *inter alia*, that “Pondage required for Firm Power shall be calculated **based on a realistic, well-founded, and defensible projection of the proposed Annexure D, Part 3 HEP’s installed capacity and anticipated load**, reflecting the fluctuations in the discharge of the turbines arising from variations in the daily and weekly loads of the plant, as set forth in Paragraph 2(c) of Annexure D.”³⁰

27. In its *dispositif* addressing this issue, the Court marginally varies its language on this element, stating that Pondage required for Firm Power shall be calculated “based on a realistic projection of the proposed HEP’s installed capacity and anticipated load, reflecting the fluctuations in the discharge of the turbines arising from variations in the daily and weekly loads of the plant, as set forth in Paragraph 2(c) of Annexure D”.³¹

28. Having addressed these and other elements relevant to the calculation of maximum Pondage, the Court refrains from addressing “the basis on which India may determine such installed capacity and anticipated load”. It nonetheless expressly leaves open the possibility that

²⁶ Award, *inter alia*, ¶ 738.

²⁷ Award, *inter alia*, ¶ 738.

²⁸ Award, ¶ 742.

²⁹ Pakistan observes that the itemised information identified by the Court in ¶ 742 of the Award is an incomplete list of the data and information that India is required to convey to Pakistan, including as may have a bearing on the calculation of maximum Pondage, having regard to the requirement to take into account the installed capacity and anticipated load of the Plant and the constraints that the Treaty may implicitly place on these elements (addressed further below). For the avoidance of doubt, Pakistan accordingly requests the Court’s clarification of this issue and that the items indicated in ¶ 742 of the Award are indicative rather than comprehensive.

³⁰ Award, ¶ 747(b) (emphasis added).

³¹ Award, ¶ 811(O)(2)(ii). Having regard to the marginally different formulations used by the Court, Pakistan requests the Court to clarify which formulation is controlling and/or whether both formulations are intended to have the same meaning and, if so, whether that meaning is to be informed by the terms of ¶ 747(b) of the Award.

this question may be pursued including through “a further phase of these proceedings.”³²

29. While refraining from addressing the basis on which India may determine the installed capacity and anticipated load of a proposed HEP, the Court nevertheless makes it explicitly clear that a HEP’s installed capacity and anticipated load “**must correspond to how the plant will actually be operated; it cannot be hypothesised in a manner that serves to inflate the amount of maximum Pondage.**”³³

30. While the Court holds back from completing its reasoning on this issue, it is implicit from its analysis and conclusions that the Treaty imposes constraints on India’s determination of the installed capacity and anticipated load of a proposed Annexure D, Part 3 HEP. The basis of those constraints, however, and how they operate, are left unaddressed, as is also how installed capacity and anticipated load are to be taken into account for purposes of the calculation of maximum Pondage. On the latter issue, Pakistan notes that each of the other elements that the Court identifies as relevant to the calculation of maximum Pondage are readily amenable to precise and incontestable calculation by reference to the elements identified by the Court in its *dispositif* on this aspect, rooted in Paragraphs 2(i), 8(c) and 15 of Annexure D.³⁴

31. Against this background, Pakistan’s request for clarification is as follows.

32. Pakistan acknowledges that the Court did not accept Pakistan’s submissions on the methodology relevant to the calculation of maximum Pondage and emphasises that it is not any part of Pakistan’s intention, through this request for clarification, to reopen this issue. Pakistan unreservedly accepts the Court’s determination that the installed capacity and anticipated load of a proposed HEP are relevant to the calculation of maximum Pondage. The sole purpose of Pakistan’s request for clarification is now to understand how these elements are to be taken into account for purposes of the calculation of maximum Pondage and the basis and operation of the implied Treaty constraints on India’s determination of the installed capacity and anticipated load of a proposed Annexure D, Part 3 HEP. As this issue has historically been amongst the most contentious between the Parties, any continuing uncertainty on these points would likely give rise to further dispute and frustrate the objective identified in Paragraph 30 of PO6. Subject to the further observations that follow, Pakistan’s request is accordingly that the Court clarifies its reasoning on this issue as the unaddressed elements are the very nub of the Parties’ dispute over Pondage.

33. The Court refrained from addressing these issues in its Award on the ground that Pakistan’s position in the proceedings had been that installed capacity and anticipated load were

³² Award, ¶ 743.

³³ Award, ¶ 743 (emphasis added).

³⁴ Award, ¶ 811(O).

not relevant to the calculation of maximum Pondage. Acknowledging this, the explanation for Pakistan's position on this issue was (as expressed in its submissions) that the installed capacity and anticipated load of a proposed HEP were matters solely within India's unilateral appreciation, were variable and unconnected to the hydrology of the river, and were accordingly open to abuse. Pakistan also perceived a brighter line between the design criteria in Paragraph 8 of Annexure D and the operational criteria in Paragraph 15 of Annexure D than the Court has now determined is the case.

34. On the latter issue, i.e., the relevance of the operational criteria in Paragraph 15 to issues of design, following the Award, Pakistan fully accepts this consideration.

35. On the former issue, i.e., that installed capacity and anticipated load are matters for India's unilateral appreciation, Pakistan now understands from the Award that, while India has a margin of appreciation in respect of these elements, the Treaty imposes limits on that appreciation that guard against abuse. The basis of those limits, however, and how they operate, are unclear from the Award.

36. Pakistan has no submissions to make on these issues beyond what follows below by way of appreciation of what the Court may have intended. Pakistan does not, accordingly, request an opportunity to address the Court on these issues beyond this request for clarification. As the Court has canvassed India's position on these issues in its Award, Pakistan apprehends that the Court has as complete a record on these issues as it is likely to get, although India must of course be given an opportunity to respond to this request for clarification.

37. Given this, and with the appreciation that the Court's reasoning on these issues is incomplete and, as such, unclear, Pakistan considers that the Court can and should properly clarify its reasoning on these issues. Absent such clarification, the question for systemic interpretation of which the Court was seised will remain in dispute.

38. As an initial matter, on the issue of the determination of the "anticipated load" of an Annexure D, Part 3 HEP, Pakistan notes the Court's reference to and reliance on, *inter alia*, leading engineering texts in its discussion of engineering concepts and terminology relevant to run-of-river HEPs in Part IX of its Award. Pakistan notes, further, the Court's conclusion that, to the extent that Annexure D, Part 3 leaves certain concepts undefined, "the ordinary understanding of such concepts and meaning of such terms must be considered as they are typically used for the design and operation of run-of-river HEPs, and especially as they were used at the time the Treaty was adopted."³⁵

39. On the issue of the load of a run-of-river HEP, a term that is not defined in the Treaty,

³⁵ Award, ¶ 498.

the Court cites copiously to the authoritative 1954 text by J.J. Doland, *Hydro Power Engineering: A Textbook for Civil Engineers*, including for the proposition that “the demand for electric power or ‘load’ varies throughout the day, with some additional day-to-day variability.”³⁶ As Pakistan understands this concept, having regard to the text in question (at page 51), this is a reference to what is called a “unit load”. For the avoidance of doubt and future contention, however, Pakistan requests the Court’s clarification that, for purposes of the determination of the anticipated load of an Annexure D, Part 3 HEP, what is required is the determination of the “unit load” of the proposed HEP.

40. The Court’s conclusion that the Treaty imposes limits on India’s margin of appreciation in determining the installed capacity and anticipated load of a proposed HEP is rooted, *inter alia*, in the following findings:

- (a) India must undertake a “realistic, well-founded, and defensible projection” of the proposed HEP’s installed capacity and anticipated load.
- (b) That projection must reflect the fluctuations in the discharge of the turbines arising from variations in the daily and weekly loads of the proposed HEP.
- (c) The projection must also (implicitly) be based on the information relevant to the calculation of maximum Pondage that India is required to convey to Pakistan.
- (d) The projection must correspond to how the HEP will actually be operated and cannot be hypothesised in a manner that serves to inflate the amount of maximum Pondage.

41. Beyond these elements, Pakistan apprehends other elements of the Treaty that may also impose implicit limits on India’s margin of appreciation in determining the installed capacity and anticipated load of a proposed HEP, including:

- (a) Paragraph 8(a) of Annexure D, insofar the works in question would themselves allow raising artificially the water level in the Operating Pool above the Full Pondage Level specified in the design.
- (b) Paragraph 8(b) of Annexure D, insofar as this requires the design of the works to take account of the requirements of Surcharge Storage and of Secondary Power.
- (c) Relevant both generally and to the preceding, the requirement that India conveys to Pakistan, *inter alia*, the following data and information, the fact of which, read

³⁶ Award, ¶ 467.

together with Paragraph 9 of Annexure D, imposes on India an obligation to compile the specified design data and information with respect of which the Plant in question is required to conform:³⁷

- (i) Observed or estimated daily river discharge data on which the design is based [App. II, ¶ 2(b)];
- (ii) Flood data, observed or estimated (with details of estimation) [App. II, ¶ 2(c)];
- (iii) Full Pondage Level, Dead Storage Level and Operating Pool together with the calculations for the Operating Pool [App. II; ¶ 3(b)];
- (iv) Estimated evaporation losses in the reservoir, Regulating Basin, head-race, forebay and tail-race [App. II, ¶ 3(d)];
- (v) Maximum designed flood discharge and maximum designed flood level [App. II, ¶ 3(e)];
- (vi) Designated range of operation [App. II, ¶ 3(f)];
- (vii) Type of dam, length and height above mean bed of river [App. II, ¶ 4(b)];
- (viii) Cross-section of the river at the site; mean bed level [App. II, ¶ 4(c)];
- (ix) Head-race and tail-race: length, size, maximum designed capacity [App. II, ¶ 4(f)];
- (x) Outlet works: function, type, size, number, maximum designed capacity and sill levels [App. II, ¶ 4(g)];
- (xi) Discharge proposed to be passed through the Plant, initially and ultimately, and expected variations in the discharge on account of the daily and the weekly load fluctuations [App. II, ¶ 4(h)];
- (xii) Maximum aggregate capacity of power units (exclusive of standby units) for Firm Power and Secondary Power [App. II, ¶ 4(i)]; and

³⁷ The items in blue font reflect the information identified in ¶ 742 of the Award. The items in red font were omitted from the Court's list but are nonetheless subject to India's obligations under Paragraph 9 and Appendix II of Annexure D.

(xiii) **Regulating Basin and its outlet works: type, number, size, sill levels and designed maximum discharge capacity** [App. II, ¶ 4(j)].

- (d) Paragraph 15 of Annexure D, insofar as this imposes mandatory operational constraints on the proposed HEP by reference to the actual flow of the river at the site of the Plant.
- (e) The differences in the nature of Annexure D Run-of-River HEPs and Annexure E Storage Works and that the installed capacity and anticipated load of a proposed Annexure D Run-of-River HEP cannot in effect lead to a design outcome in which what is characterised as an Annexure D Run-of-River HEP is in fact closer in character to an Annexure E Storage Works.

42. Having regard to the preceding, Pakistan apprehends that a “realistic, well-founded, and defensible projection” of the installed capacity and anticipated load of a proposed HEP, that comports to how the HEP “will actually be operated”, and that does not serve to “inflate the amount of maximum Pondage”, will be necessarily be tied closely, precisely and unavoidably to the hydrology of the river at the site of the proposed HEP.

43. By way of illustration of the preceding, Pakistan apprehends that a proposed HEP with an installed capacity of, say, 2 GW, to be located at a site on a Western River in respect of which the maximum observed or estimated daily river discharge, the estimated flood data, and the maximum designed flood level could never ever in reasonable contemplation accommodate the proposed installed capacity of the Plant, would not meet the Court’s “realistic, well-founded, and defensible” standard.

44. Against this background, Pakistan requests the Court’s clarification on how the Treaty regulates the basis upon which India must determine the installed capacity and anticipated load of a proposed Annexure D, Part 3 HEP, including the limits, if any, arising from the Treaty on the determination of such installed capacity and anticipated load. Further, Pakistan requests the Court’s clarification of how, once the installed capacity and anticipated load of the proposed Plant have been determined, these elements are to be taken into account for purposes of the calculation of maximum Pondage.

45. The importance of obtaining clarity from the Court on these issues is to provide certainty to the Parties on what has been historically the most contentious issue of the Parties’ engagement under the Treaty. Such clarification is essential if residual or consequential disputes between the Parties on the meaning and scope of the Court’s decision on the issue of maximum Pondage are to be avoided and the Neutral Expert, in the parallel proceedings, in his review and application

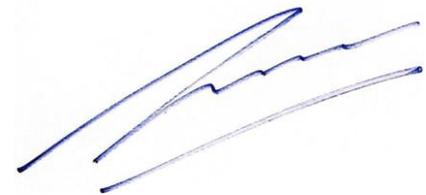
of the Court's Award, is to be clear about the Court's decision on this element that is binding upon him.

Concluding observations

46. In raising these requests for clarification, Pakistan has a high appreciation of the systemic importance of the Court's Award not simply for purposes of the dispute of which the Court is seised or for purposes informing the Neutral Expert of issues that are relevant to his task. Both aspects are important and necessary. Beyond this, however, the Court's Award on systemic issues provides the Parties with a controlling insight into what the Treaty was intended to achieve and in fact secured over decades. Of material forward-looking importance, therefore, Pakistan hopes that this aspect of the Award may provide a baseline for a new engagement between the Parties aimed at refreshing their engagement on water-related issues in the Indus Basin for the future.

47. Pakistan stands ready to address issues arising from this request at the procedural conference scheduled for Monday, 29 September 2025 and/or in writing as directed by the Court.

Yours sincerely,



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

Cc.

Ms. D. Mukherjee, Secretary, Department of Water Resources, River Development and Ganga Rejuvenation, Ministry of Jal Shakti, India

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Mr Raja Naeem Akhbar, Federal Secretary, Ministry of Law and Justice, Pakistan; Deputy Agent of Pakistan

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