

PCA Case No. 2023-01

**IN THE MATTER OF
THE INDUS WATERS WESTERN RIVERS ARBITRATION**

- before -

**THE COURT OF ARBITRATION CONSTITUTED
IN ACCORDANCE WITH THE INDUS WATERS TREATY 1960**

- between -

THE ISLAMIC REPUBLIC OF PAKISTAN

- and -

THE REPUBLIC OF INDIA

**AWARD ON THE STATUS OF THE INDUS WATERS TREATY
IN RESPECT OF INDIA'S DECISION ON ABEYANCE**

COURT OF ARBITRATION:

Professor Sean D. Murphy (Chairman)
Professor Wouter Buytaert
Professor Jeffrey P. Minear
Judge Awn Shawkat Al-Khasawneh
Dr. Donald Blackmore

SECRETARIAT:

The Permanent Court of Arbitration

31 August 2026

Redacted to reflect information subject to a confidentiality caveat arising in PCA Case No. 2023-14, <i>Indus Waters Treaty Neutral Expert proceedings (India v. Pakistan)</i>
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TABLE OF DEFINED TERMS

23 April 2025 Statement	Ministry of External Affairs, Government of India, “Statement by Foreign Secretary on the decision of the Cabinet Committee on Security (CCS)” dated 23 April 2025 (P-0697)
24 April 2025 Letter	Note Verbale No. 80/01/2025, enclosing Letter No. Y18012/1/2024-Indus from Secretary, Indian Ministry of Jal Shakti to Secretary, Pakistan Ministry of Water Resources dated 24 April 2025 (P-0700)
Amended Request for Arbitration	Pakistan’s Amended Request for Arbitration dated 28 July 2023
Annexure D, Part 3 HEP	A new Run-of-River Plant under Part 3 of Annexure D to the Treaty, excluding Small Plants as defined in Paragraph 18 of Annexure D
Articles on State Responsibility	The UN International Law Commission’s Articles on Responsibility of States for Internationally Wrongful Acts
Award on Competence	Award on the Competence of the Court dated 6 July 2023
Award on Issues of General Interpretation	Award on Issues of General Interpretation of the Indus Waters Treaty dated 8 August 2025
Commission	The Permanent Indus Commission established by Article VIII of the Treaty, comprised of India’s Commissioner and Pakistan’s Commissioner
Court	The Court of Arbitration in these proceedings, constituted pursuant to Article IX(5) and Annexure G to the Treaty
Decision on the Request for Clarification	Decision on Pakistan’s Request for Clarification of the Award on Issues of General Interpretation dated 8 November 2025
Eastern Rivers	The Sutlej, the Beas, and the Ravi Rivers and their tributaries
Hearing	The oral hearing for the Phase on Interim Measures and on the Present Status of the Treaty, held from 26 to 28 April 2026 in the Peace Palace, The Hague, the Netherlands
HEP	Hydro-Electric Plant
ICJ	International Court of Justice
ILC	UN International Law Commission
India	The Republic of India
India’s Commissioner or ICIW	Commissioner for Indus Waters appointed by India pursuant to Article VIII(1) of the Treaty
KHEP or Kishenganga Plant	Kishenganga Hydro-Electric Plant
Kishenganga or Kishenganga Arbitration	<i>Indus Waters Kishenganga Arbitration (Pakistan v. India)</i> , PCA Case No. 2011-01

<i>Kishenganga Court</i>	The Court of Arbitration in the <i>Kishenganga</i> Arbitration
<i>Kishenganga Final Award</i>	Final Award in the <i>Kishenganga</i> Arbitration dated 20 December 2013 (PLA-0004)
<i>Kishenganga Interim Measures Order</i>	Order on the Interim Measures Application of Pakistan dated 6 June 2011 in the <i>Kishenganga</i> Arbitration dated 23 September 2011 (PLA-0042)
<i>Kishenganga Partial Award</i>	Partial Award in the <i>Kishenganga</i> Arbitration dated 18 February 2013 (PLA-0003)
<i>Kishenganga/Neelum River</i>	The river called the “Kishenganga” by India and the “Neelum” by Pakistan
<i>NE Documents</i>	Pondage Logbooks and the NE PIMTS Documents
<i>NE PIMTS Documents</i>	The RHEP Construction Schedule Documents, the Updated RHEP Design Documents, and the Suspension of NE Work Programme Documents, as defined in Procedural Order No. 22 (Request by Pakistan for Directions Regarding the Disclosure of Certain Documents from the Neutral Expert Proceedings) dated 20 March 2026
<i>Neutral Expert</i>	Mr. Michel Lino, the Neutral Expert appointed on 13 October 2022 by the World Bank further to India’s Request to the World Bank for the Appointment of a Neutral Expert dated 4 October 2016 (P-0156)
<i>Neutral Expert Competence Decision</i>	Decision on Certain Issues Pertaining to the Competence of the Neutral Expert dated 7 January 2025 (corrected on 31 March 2025), PCA Case No. 2023-14 (P-0695)
<i>Neutral Expert Proceedings</i>	The proceedings conducted by the Neutral Expert
<i>Pakistan</i>	The Islamic Republic of Pakistan
<i>Pakistan’s Commissioner or PCIW</i>	Commissioner for Indus Waters appointed by Pakistan pursuant to Article VIII(1) of the Treaty
<i>Pakistan’s Final Submissions</i>	Pakistan’s Final Submissions (Phase on Interim Measures and Treaty Status) dated 28 April 2026
<i>Pakistan’s Memorial</i>	Pakistan’s Memorial for the Phase on Interim Measures and Treaty Status dated 16 April 2026
<i>Pakistan’s Submissions on Recent Developments</i>	Pakistan’s Submissions on Recent Developments Pursuant to Procedural Order No. 15 dated 11 June 2025, as amended by leave of the Court on 14 June 2025
<i>Parties</i>	The Parties to these proceedings, namely the Islamic Republic of Pakistan and the Republic of India
<i>PCA</i>	Permanent Court of Arbitration

Phase on Interim Measures and Treaty Status	The present phase of these proceedings, specific to resolving Pakistan's Request for Interim Measures and the Treaty Status Application
Pondage Logbooks	Pondage Logbooks first introduced by India into the Neutral Expert Proceedings
Procedural Order No. 6	Procedural Order No. 6 (Decision on Further Proceedings) dated 6 July 2023
Procedural Order No. 15	Procedural Order No. 15 (Recent Developments that May Bear on Matters before the Court) dated 16 May 2025
Procedural Order No. 19	Procedural Order No. 19 (Request by Pakistan for Guidance Regarding Disclosure of Information) dated 29 January 2026
Procedural Order No. 21	Procedural Order No. 21 (Phase on Interim Measures and on the Present Status of the Treaty) dated 12 March 2026
Procedural Order No. 23	Procedural Order No. 23 (Organization of the Hearing for the Phase on Interim Measures and on the Present Status of the Treaty) dated 21 April 2026
Request for Arbitration	Pakistan's Request for Arbitration dated 19 August 2016
Request for Clarification	Pakistan's Request for Clarification dated 19 September 2025, pursuant to Paragraph 27 of Annexure G to the Treaty
Request for Interim Measures	Pakistan's Request for Interim Measures dated 4 March 2026
RHEP or Ratle Plant	Ratle Hydro-Electric Plant
Run-of-River Plant or Run-of-River HEP	As defined at Paragraph 2(g) of Annexure D to the Treaty, "a hydro-electric plant that develops without Live Storage as an integral part of the plant, except for Pondage and Surcharge Storage"
Second Phase on the Merits	The second phase on the merits of these proceedings, specific to resolving the basis upon which India must determine the installed capacity and anticipated load of a proposed Annexure D, Part 3 HEP, and, once determined, how these elements are to be taken into account for purposes of the calculation of maximum Pondage
Supplemental Award on Maximum Pondage	Award Concerning Maximum Pondage Supplemental to the Award on Issues of General Interpretation of the Indus Waters Treaty dated 15 May 2026
Supplemental Award on Competence	Supplemental Award on the Competence of the Court dated 27 June 2025
Supplemental Rules of Procedure	Supplemental Rules of Procedure dated 31 March 2023

Treaty	<i>Indus Waters Treaty 1960 Between the Government of India, the Government of Pakistan and the International Bank for Reconstruction and Development</i> , signed at Karachi on 19 September 1960 (PLA-0001)
Treaty Status Application	Pakistan's Application for the Determination of the Present Status of the Indus Waters Treaty dated 4 March 2026
VCLT	<i>Vienna Convention on the Law of Treaties</i> , opened for signature at Vienna on 23 May 1969 (PLA-0005)
Western Rivers	The Indus, the Jhelum, and the Chenab Rivers and their tributaries
World Bank	International Bank for Reconstruction and Development

I. INTRODUCTION

1. The present proceedings concern certain disputes that have arisen between the Islamic Republic of Pakistan (“**Pakistan**”) and the Republic of India (“**India**”) (together, the “**Parties**”) concerning the interpretation or application of the Indus Waters Treaty of 1960 (“**Treaty**”).¹ The Treaty sets forth the respective rights and obligations of the two States concerning the use of the waters of the Indus, the Jhelum, and the Chenab Rivers and their tributaries (“**Western Rivers**”)² and the waters of the Sutlej, Beas, and Ravi Rivers and their tributaries (“**Eastern Rivers**”).³ This Award concerns an application by Pakistan on 4 March 2026 that the Court of Arbitration (“**Court**”) determine the present status of the Treaty (“**Treaty Status Application**”) prior to the final resolution of the proceedings.⁴
2. According to Pakistan, India since April 2025 has adopted a position on “abeyance” that, in effect, has resulted in India either terminating or suspending the operation of the Treaty. India’s conduct allegedly has caused serious adverse harm to Pakistan and to these proceedings, such that the lawfulness of such a position must now be addressed by the Court.
3. Pakistan initiated these proceedings by way of a Request for Arbitration dated 19 August 2016 pursuant to Article IX and Paragraph 2(b) of Annexure G to the Treaty (“**Request for Arbitration**”), which was amended on 28 July 2023. As a general matter, these proceedings concern certain disputes that have arisen between Pakistan and India concerning the interpretation or application of those portions of the Treaty that permit India to develop hydro-electric power through run-of-river hydroelectric plants (“**Run-of-River Plants**” or “**Run-of-River HEPs**”) on the Western Rivers.⁵ Specifically, Pakistan contends that the design and operation of Indian Run-

¹ **PLA-0001**, *Indus Waters Treaty 1960 Between the Government of India, the Government of Pakistan and the International Bank for Reconstruction and Development*, signed at Karachi on 19 September 1960, 419 UNTS 126 (“**Treaty**”). The Treaty entered into force on 12 January 1961, with retroactive effect from 1 April 1960.

² **PLA-0001**, Treaty, Art. I(6) (“The term ‘Western Rivers’ means The Indus, The Jhelum and The Chenab taken together”).

³ **PLA-0001**, Treaty, Art. I(5) (“The term ‘Eastern Rivers’ means The Sutlej, The Beas and The Ravi taken together”).

⁴ Pakistan’s application was filed in conjunction with a request for an order by the Court on interim measures and certain other matters. See Request for Interim Measures, Application for Determination of the Present Status of the Indus Waters Treaty, Request for Further Directions Regarding the Disclosure of Certain Documents from the Neutral Expert Proceedings, Request for Further Directions dated 4 March 2026.

⁵ The Treaty defines a “Run-of-River Plant” as “a hydro-electric plant that develops power without Live Storage as an integral part of the plant, except for Pondage and Surcharge Storage”: **PLA-0001**, Treaty, Annexure D, para. 2(g).

of-River hydro-electric plants (“**HEPs**”) are not in keeping with the provisions of the Treaty and have the effect of enabling India to exercise greater control over the waters of the Western Rivers than was envisaged or permitted by the Treaty. These disputes crystalized in the context of two specific Indian HEPs—the Kishenganga Hydro-Electric Plant (“**KHEP**” or “**Kishenganga Plant**”) on the Kishenganga/Neelum River (a tributary of the Jhelum River);⁶ and the Ratle Hydro-Electric Plant (“**RHEP**” or “**Ratle Plant**”) on the Chenab River.

4. Resolution of these disputes requires addressing both broader legal disputes over the interpretation and application of the Treaty and issues specific to the KHEP and RHEP. At this stage in the proceedings, the Court has both addressed its competence and reached conclusions as to the broader legal disputes over the interpretation and application of the Treaty. With respect to its competence, the Court has issued an Award on the Competence of the Court dated 6 July 2023 (“**Award on Competence**”)⁷ and a Supplemental Award on the Competence of the Court dated 27 June 2025 (“**Supplemental Award on Competence**”).⁸ With respect to the broader legal disputes over the interpretation and application of the Treaty, the Court has issued an Award on Issues of General Interpretation of the Indus Waters Treaty dated 8 August 2025 (“**Award on Issues of General Interpretation**”),⁹ a clarification of that Award dated 8 November 2025 (“**Decision on the Request for Clarification**”),¹⁰ and an Award Concerning Maximum Pondage Supplemental to the Award on Issues of General Interpretation of the Indus Waters Treaty dated 15 May 2026 (“**Supplemental Award on Maximum Pondage**”).¹¹
5. In parallel with the Court’s proceedings, proceedings are underway before a neutral expert, Mr. Michel Lino (“**Neutral Expert**”), who is addressing issues specific to the KHEP and RHEP. While the Court has reached no determination as to whether the Neutral Expert was properly

⁶ The Kishenganga Plant was the subject of previous arbitration proceedings between Pakistan and India, leading to a partial award in February 2013 and a final award in December 2013. See **PLA-0003**, *Indus Waters Kishenganga Arbitration (Pakistan v. India)*, PCA Case No. 2011-01, Partial Award, 18 February 2013, XXXI RIAA 55 (“**Kishenganga Partial Award**”); **PLA-0004**, *Indus Waters Kishenganga Arbitration (Pakistan v. India)*, PCA Case No. 2011-01, Final Award, 20 December 2013, XXXI UNRIAA 309 (“**Kishenganga Final Award**”).

⁷ Award on the Competence of the Court dated 6 July 2023 (“**Award on Competence**”).

⁸ Supplemental Award on the Competence of the Court dated 27 June 2025 (“**Supplemental Award on Competence**”).

⁹ Award on Issues of General Interpretation of the Indus Waters Treaty dated 8 August 2025 (“**Award on Issues of General Interpretation**”).

¹⁰ Decision on Pakistan’s Request for Clarification of the Award on Issues of General Interpretation dated 8 November 2025 (“**Decision on the Request for Clarification**”).

¹¹ Award Concerning Maximum Pondage Supplemental to the Award on Issues of General Interpretation of the Indus Waters Treaty dated 15 May 2026 (“**Supplemental Award on Maximum Pondage**”).

appointed or is competent pursuant to Article IX of the Treaty, the Court concluded in Procedural Order No. 6 (Decision on Further Proceedings) of 6 July 2023 (“**Procedural Order No. 6**”) 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 (expressed by India through its request for the appointment of a Neutral Expert and by Pakistan through its participation in the Neutral Expert process). In other words, it may be the case that both the Court of Arbitration and the Neutral Expert are presently competent to address the issues specific to the KHEP and the RHEP that have been presented in both processes, with the Court of Arbitration competent pursuant to Article IX of the Treaty and the Neutral Expert competent either by operation of that article or through the Parties’ joint consent. In such circumstances, the Court determined that there is a general duty of any international dispute resolution body to exercise its competence in such a manner as to facilitate the actual resolution of the Parties’ dispute and to avoid the risks of duplicative proceedings or conflicting decisions. Accordingly, and as a matter of mutual respect and comity towards another dispute resolution body potentially competent in respect of the same matter, the Court has not, for the time being, addressed the issues also before the Neutral Expert.¹²

6. In general, Pakistan’s Treaty Status Application concerns India’s decision on 23 April 2025 “that the Indus Waters Treaty 1960 will be held in abeyance with immediate effect”, by which India apparently regards the Treaty as either suspended or terminated.¹³ Pakistan maintains that this decision “presents a fundamental challenge to the very essence of these proceedings”,¹⁴ as it has led to “a pattern of conduct [by India] directed at disengaging from performance of its Treaty obligations, including operational changes at its HEPs, the storage and diversion of water for its own use, the acceleration and revival of HEP construction, and the withholding of data that India is obliged to share and transmit with Pakistan under the Treaty”.¹⁵ Further, Pakistan argues that the Court must decide upon the status of the Treaty, as “this issue is central to the merits of the dispute” and the remedies sought by Pakistan.¹⁶ Additionally, while India was initially participating in the proceedings of the Neutral Expert, India has stopped doing so since the adoption of its decision.

¹² See Procedural Order No. 6, paras. 23–33.

¹³ **P-0700**, 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.

¹⁴ Pakistan’s Memorial for the Phase on Interim Measures and Treaty Status dated 16 April 2026 (“**Pakistan’s Memorial**”), para. 1.7.

¹⁵ Pakistan’s Memorial, para. 4.2.

¹⁶ Pakistan’s Memorial, para. 4.2.

7. The issue presented to the Court in this phase of the proceedings—whether a long-standing treaty between two countries regarding a critical shared water resource remains in force—is an extremely important one. Treaties are essential to the maintenance of the international legal order and have a “fundamental role ... in the history of international relations”.¹⁷ States depend on them “as a means of developing peaceful cooperation among nations” and to provide stability, predictability and consistency in their relations with one another.¹⁸ Under the law of treaties, “[e]very treaty in force is binding upon the parties to it and must be performed by them in good faith”,¹⁹ subject to a possibility for suspension or termination based on the terms of the treaty,²⁰ on joint agreement of the parties,²¹ or on certain limited and highly circumscribed situations.²²
8. Moreover, international law has historically recognized that certain treaties have a special and enduring character. These treaties do not merely regulate temporary exchanges of obligations between States; they create or confirm legal situations intended to be stable over time. The clearest example concerns treaties resolving boundary disputes, which “may be taken by courts and tribunals as intended to produce a final fixing of frontiers” and thus settle the territorial limits of States.²³ As the International Court of Justice (“ICJ”) stated in *Temple of Preah Vihear (Cambodia v. Thailand)*:

In general, when two countries establish a frontier between them, one of the primary objects is to achieve stability and finality. This is impossible if the line so established can, at any moment, and on the basis of a continuously available process, be called in question, and its rectification claimed, whenever any inaccuracy by reference to a clause in the parent treaty is discovered. Such a process could continue indefinitely, and finality would never be reached so long as possible errors still remained to be discovered. Such a frontier, so far from being stable, would be completely precarious.²⁴

¹⁷ **PLA-0005**, *Vienna Convention on the Law of Treaties*, 23 May 1969, 1155 UNTS 331 (“VCLT”), Preamble.

¹⁸ **PLA-0005**, VCLT, Preamble.

¹⁹ **PLA-0005**, VCLT, Art. 26.

²⁰ **PLA-0005**, VCLT, Arts. 54, 57.

²¹ **PLA-0005**, VCLT, Arts. 54, 57.

²² **PLA-0005**, VCLT, Arts. 56, 58–64.

²³ **PLA-0017**, R. Gardiner, *Treaty Interpretation* (Oxford University Press, 2nd ed. 2015), p. 213.

²⁴ **PLA-0101**, *Temple of Preah Vihear (Cambodia v. Thailand)*, Merits Judgment, 1962 ICJ Rep. 34. In *Territorial Dispute (Libyan Arab Jamahiriya/Chad)*, the ICJ considered that, once a boundary has been agreed, international law regards it with a permanence that is not necessarily dependent on the continued operation of the treaty in which it was recorded, stating: “Once agreed, the boundary stands, for any other approach would vitiate the fundamental principle of the stability of boundaries”. **PLA-0059**, *Territorial Dispute (Libyan Arab Jamahiriya/Chad)*, Judgment, 1994 ICJ Rep. 6, paras. 72–73.

9. Other international courts and tribunals have also affirmed the critical importance of the stability of boundaries, noting as well the wider importance of boundaries being “stable and definitive to ensure a peaceful relationship between the States concerned in the long term”.²⁵
10. The historical importance of stability and predictability in treaty relations is reflected not only in boundary treaties, but also in treaties governing international watercourses. The International Law Association’s 1958 report, *The Principles of Law and Recommendations on the Uses of International Rivers*, recognized that the “positive rights and duties of riparians are evidenced by the existence of several hundred treaties and international agreements”.²⁶ In the report, which was among the sources of international law relied upon during the negotiations of the Treaty, the International Law Association stated that the “existence of a great number of agreements regulating the uses of a system of international waters, and the widespread custom of states not to act in disregard of conflicting claims by co-riparians, are weighty evidence of a requirement of law against unilateral appropriations”.²⁷
11. Favoring the stability and predictability of watercourse regimes does not mean that they are immune to evolution arising from, for example, “expanding populations, increasing demands for better standards of living and the opportunities opened up by engineering advances”.²⁸ However, any such evolution must occur in accordance with the terms of the relevant treaty and any other applicable rules of international law, with disputes between co-riparians resolved not through

²⁵ **PLA-0102**, *The Bay of Bengal Maritime Boundary Arbitration between the People’s Republic of Bangladesh and the Republic of India*, Award, 7 July 2014, XXXII UNRIAA 1, para. 216.

²⁶ **P-0121**, World Bank Group Archives, Indus Basin Negotiations Inventory List, Folder 1787922: International Law Association, *Principles of Law and Recommendations on the Uses of International Rivers* (Committee on the Uses of Waters of International Rivers of the American Branch, New York University Conference, May 1958), p. 4 (“Not only do the terms of particular agreements reflect the principle of mutuality of rights and duties, but their great number, coupled with the infrequency of instances in which riparians have disregarded the protests of interested states, testifies also to the widespread belief that no riparian is entitled to arrogate to itself the right to develop an international river oblivious of the corresponding rights of co-riparians. These treaties and conventions cover international river basins from all continents and reflect the adherence to some principles of truly world-wide application whose consistent acceptance by states gives evidence of their binding character.”).

²⁷ **P-0121**, World Bank Group Archives, Indus Basin Negotiations Inventory List, Folder 1787922: International Law Association, *Principles of Law and Recommendations on the Uses of International Rivers* (Committee on the Uses of Waters of International Rivers of the American Branch, New York University Conference, May 1958), p. 8.

²⁸ **P-0121**, World Bank Group Archives, Indus Basin Negotiations Inventory List, Folder 1787922: International Law Association, *Principles of Law and Recommendations on the Uses of International Rivers* (Committee on the Uses of Waters of International Rivers of the American Branch, New York University Conference, May 1958), p. 7.

unilateral action, but through peaceful means of dispute resolution, including negotiation, arbitration, or adjudication by an international tribunal.²⁹

12. Such considerations highlight the importance of whether the long-standing Treaty between India and Pakistan continues to regulate their rights and obligations with respect to the Western and Eastern Rivers. This Award addresses Pakistan’s Treaty Status Application. Simultaneous with the issuance of this Award, the Court issues an Order on the Interim Measures Application of Pakistan dated 4 March 2026.

* * *

²⁹ **P-0121**, World Bank Group Archives, Indus Basin Negotiations Inventory List, Folder 1787922: International Law Association, *Principles of Law and Recommendations on the Uses of International Rivers* (Committee on the Uses of Waters of International Rivers of the American Branch, New York University Conference, May 1958), p. 7 (“it is believed that the riparian proposing the change may not in effect impose its unilateral views as to the substantive rights of the parties by proceeding without arbitration over the objection of affected riparians that have demonstrated their willingness to arbitrate”).

II. PROCEDURAL HISTORY

13. The detailed history of the origin of the present dispute and the procedural history of these proceedings is set out in the prior awards issued by the Court—including the Supplemental Award on Competence, the Award on Issues of General Interpretation, and the Supplemental Award on Maximum Pondage—as well as the Court’s procedural orders and decisions. A brief account is set forth below, along with procedural aspects specific to this phase of the proceedings.

A. INITIATION OF THE ARBITRATION AND PRELIMINARY PHASE ON THE COMPETENCE OF THE COURT

14. On 19 August 2016, Pakistan initiated this arbitration by way of its Request for Arbitration, served upon India pursuant to Article IX and Paragraph 2(b) of Annexure G to the Treaty.
15. The Court was empaneled in October 2022 following a pause in the proceedings instituted by the International Bank for Reconstruction and Development (“**World Bank**”).
16. On 31 March 2023, the Court issued Supplemental Rules of Procedure (“**Supplemental Rules of Procedure**”),³⁰ further to Paragraph 16 of Annexure G to the Treaty.
17. On 6 July 2023, following written submissions and an oral hearing, the Court issued the Award on Competence, finding that the Court is competent to consider and determine the disputes set forth in Pakistan’s Request for Arbitration.
18. Having confirmed its competence, the Court issued Procedural Order No. 6, by which the Court determined that it would conduct these proceedings in a phased manner, bearing in mind the status of, and developments concerning, the proceedings taking place before the Neutral Expert.
19. On 10 August 2023, the Court issued Procedural Order No. 8 (Application to Amend the Request for Arbitration), granting an application from Pakistan to amend its Request for Arbitration. On 17 August 2023, Pakistan filed its Amended Request for Arbitration dated 28 July 2023 (“**Amended Request for Arbitration**”).

B. THE NEUTRAL EXPERT’S DECISION ON CERTAIN ISSUES OF HIS COMPETENCE

20. In parallel with these proceedings, the Neutral Expert appointed by the World Bank under Annexure F of the Treaty has conducted his proceedings (“**Neutral Expert Proceedings**”).

³⁰ Supplemental Rules of Procedure dated 31 March 2023 (“**Supplemental Rules of Procedure**”).

Among other things, on 1 December 2023, Pakistan submitted a statement on the competence of the Neutral Expert,³¹ to which India responded on 14 June 2024.³² After a meeting on the matter on 10 and 11 September 2024, the Neutral Expert issued on 7 January 2025 a Decision on Certain Issues Pertaining to the Competence of the Neutral Expert (“**Neutral Expert Competence Decision**”).³³ In that decision, the Neutral Expert found that the Points of Difference referred to him by India concerning “whether or not the design of a Plant conforms to the criteria set out in Paragraph 8” of Annexure D to the Treaty fell within the scope of Part 1 of Annexure F to the Treaty and that no separate differences had been referred to him with respect to India’s compliance with Paragraphs 2(c) and 15 of Annexure D to the Treaty. Accordingly, the Neutral Expert stated that he would proceed to render a decision on the merits of the Points of Difference, after hearing the Parties further on those merits in accordance with the work program for the proceedings.³⁴ The Neutral Expert further noted that the general issues of the interpretation of the Treaty then under deliberation by the Court were “put at a higher level than the Points of Difference” before the Neutral Expert and “would not go all the way in answering the Points of Difference in respect of the KHEP and the RHEP”.³⁵

C. SUPPLEMENTAL AWARD ON COMPETENCE

21. On 23 April 2025, following an attack by armed individuals in India-administered Jammu and Kashmir, the Foreign Secretary of India issued a statement about a decision of the Cabinet Committee on Security (“**23 April 2025 Statement**”), 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”.³⁶ On 24 April 2025, India’s Secretary of the Ministry of Jal Shakti³⁷ sent a letter to Pakistan’s Secretary of the Ministry of Water Resources (“**24 April 2025 Letter**”) communicating a decision that the Treaty “will be held in

³¹ **P-0695**, Decision on Certain Issues Pertaining to the Competence of the Neutral Expert dated 7 January 2025, PCA Case No. 2023-14 (“**Neutral Expert Competence Decision**”), para. 142.

³² **P-0695**, Neutral Expert Competence Decision, para. 183.

³³ **P-0695**, Neutral Expert Competence Decision.

³⁴ **P-0695**, Neutral Expert Competence Decision, paras. 569–570.

³⁵ **P-0695**, Neutral Expert Competence Decision, para. 563(e).

³⁶ **P-0697**, Compendium of Recent Statements, Ministry of External Affairs, Government of India, “Statement by Foreign Secretary on the decision of the Cabinet Committee on Security (CCS)” dated 23 April 2025.

³⁷ To the Court’s knowledge, India’s Ministry of Jal Shakti was formed in 2019 by the merger of the Ministry of Water Resources, River Development and Ganga Rejuvenation with the Ministry of Drinking Water and Sanitation.

abeyance with immediate effect”.³⁸ Thereafter, officials of India and Pakistan made further public statements, some reported in the media, referring to the Treaty.

22. On 16 May 2025, the Court issued Procedural Order No. 15 (Recent Developments that May Bear on Matters before the Court) (“**Procedural Order No. 15**”), inviting the Parties to address any effect of these recent developments on matters before the Court or the Neutral Expert, including their respective competence.
23. On 11 June 2025, Pakistan filed its Submissions on Recent Developments Pursuant to Procedural Order No. 15, which it subsequently corrected with leave of the Court on 14 June 2025 (“**Pakistan’s Submissions on Recent Developments**”).
24. On 27 June 2025, the Court issued a Supplemental Award on Competence, finding that India’s position on “abeyance” of the Treaty does not limit the competence of the Court over this dispute, which the Court previously affirmed in the Award on Competence, and finding that the Court has a continuing responsibility to advance these proceedings in a timely, efficient, and fair manner, notwithstanding India’s position on “abeyance”. The Court further determined that these findings apply, *mutatis mutandis*, with respect to any competence that the Neutral Expert otherwise possesses.³⁹

D. FIRST PHASE ON THE MERITS

25. On 8 August 2025, the Court issued its Award on Issues of General Interpretation, in which the Court delivered its decision with respect to certain questions concerning the overall interpretation and application of the Treaty, including questions with respect to Article III and Paragraph 8 of Annexure D, as well as a related general question concerning the legal effect of past decisions issued by dispute resolution bodies established pursuant to Article IX of the Treaty. In its Award on Issues of General Interpretation, the Court reaffirmed its findings in the Supplemental Award on Competence.⁴⁰
26. On 19 September 2025, Pakistan requested several clarifications to the Award pursuant to Paragraph 27 of Annexure G to the Treaty, and on 8 November 2025, the Court issued its unanimous Decision on the Request for Clarification.

³⁸ **P-0700**, 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.

³⁹ Supplemental Award on Competence, para. 76.

⁴⁰ Award on Issues of General Interpretation, para. 809.

E. SECOND PHASE ON THE MERITS

27. On 8 November 2025, the same date as the Decision on the Request for Clarification, the Court issued Procedural Order No. 16 (Directions on Further Proceedings), in which the Court, *inter alia*, confirmed its intention to continue these proceedings in a phased manner, bearing in mind the status of, and developments concerning, the Neutral Expert Proceedings. The Court therefore invited each Party to provide, by no later than 6 February 2026:

a submission indicating its views as to a further phase or phases in these proceedings in respect of matters raised in Pakistan's Request for Arbitration that were not resolved in the [Award on Issues of General Interpretation], with such submission to address:

3.1.1 the scope of the issues to be determined in the further phase or phases of the proceedings; and

3.1.2 the timetable for the filing of written submissions and any oral submissions of the Parties.

28. On 21 November 2025, the Court issued Procedural Order No. 17 (Second Phase of the Merits), in which the Court determined that it would conduct a further phase of the proceedings specific to “resolving the basis upon which India must determine the installed capacity and anticipated load of a proposed Annexure D, Part 3 HEP, and, once determined, how these elements are to be taken into account for purposes of the calculation of maximum Pondage” (“**Second Phase on the Merits**”), further to a request from Pakistan.
29. On 9 January 2026, Pakistan applied to the Court for directions regarding, *inter alia*, the disclosure of documents in Pakistan's possession from the Neutral Expert Proceedings, which Pakistan contended were relevant to the Court's decision in its Second Phase on the Merits, or a potential future phase of these proceedings.
30. On 17 January 2026, the Court invited Pakistan to provide a request to introduce specific information arising in the Neutral Expert Proceedings (in as much detail as possible, subject to any duty of confidentiality), indicating, *inter alia*, “the relevance of such information to the issues before the Court in the Second Phase on the Merits”. The Court indicated, in relation to the documents concerning a potential future phase of these proceedings, that the Court was “not inclined to decide the matter until a decision is reached as to the nature of the issues before the Court in such future phases of these proceedings”.
31. On 23 January 2026, Pakistan clarified that the documents from the Neutral Expert Proceedings that it sought to enter into the record of these proceedings in the Second Phase on the Merits included “a handful of exhibits and appendices, or portions thereof, filed by India in the Neutral Expert proceedings, and the analyses thereof undertaken by Pakistan”. Pakistan reiterated its

request to the Court for urgent directions or guidance on the disclosure of these documents and other information from the Neutral Expert Proceedings, as raised in its letter dated 9 January 2026.

32. On 29 January 2026, the Court issued Procedural Order No. 19 (Request by Pakistan for Guidance Regarding Disclosure of Information) (“**Procedural Order No. 19**”), in which the Court, *inter alia*, directed India to produce the logbook data for the operating pools of the Baglihar HEP and the KHEP (“**Pondage Logbooks**”), or otherwise contest the scope of Pakistan’s request. The Court deferred its decision relating to the production of documents concerning a potential future phase of these proceedings, including a possible request for interim measures of protection, until such a future phase commenced.
33. From 2 to 3 February 2026, the Hearing for the Second Phase on the Merits took place at the Peace Palace in The Hague in accordance with paragraph 2.1 of Procedural Order No. 18 (Organization of the Hearing for the Second Phase on the Merits).
34. On 4 March 2026, Pakistan informed the Court that the Neutral Expert had granted Pakistan’s application for the disclosure to the Court of the Pondage Logbooks.
35. On 15 May 2026, the Court issued its Supplemental Award on Maximum Pondage. The Court further invited the Parties to propose any redactions they considered appropriate prior to the publication of the Supplemental Award on Maximum Pondage, bearing in mind that the Award addressed certain materials concerning the utilization of the operating pools at the Baglihar HEP and the KHEP that were introduced into these proceedings from the parallel Neutral Expert Proceedings on a basis of confidentiality.
36. On 20 May 2026, Pakistan submitted its comments on the question of redactions to the Supplemental Award on Maximum Pondage.
37. On 6 June 2026, the Court notified the Parties of its decision to publish the Supplemental Award on Maximum Pondage subject to certain redactions, which the Court indicated it would review prior to the close of these proceedings, and after consultation with the Parties, to evaluate whether such redactions should be maintained, revised, or limited to a fixed period of time.

F. PHASE ON INTERIM MEASURES AND TREATY STATUS

38. On 1 February 2026, Pakistan filed its submission on further phases of the proceedings, in which it identified that there were:

(at least) two other issues that come properly within the scope of the Court’s competence which, given present circumstances, now warrant attention by the Court in a further expedited

merits phase of proceedings. These are a request by Pakistan for interim measures and, closely associated with but distinct from this, a determination by the Court that the Treaty remains in force notwithstanding India's policy of abeyance.

39. On 3 February 2026, following the conclusion of the Hearing for the Second Phase on the Merits, the Court convened an in-person case management conference in which Pakistan appeared and participated, but India did not appear or participate, to address, *inter alia*, the issues raised in Pakistan's submission on further phases of the proceedings.
40. On 9 February 2026, the Court wrote to the Parties with respect to further phases of the proceedings, noting that "the Court will issue directions for any such phase upon receipt of an application from Pakistan", including "mak[ing] orders with respect to any ancillary issues, such as the production of documents".
41. On 4 March 2026, Pakistan submitted a request for interim measures ("**Request for Interim Measures**"), an application for a determination by the Court that the Treaty remains in force notwithstanding India's "policy of abeyance" ("**Treaty Status Application**"), a request for further directions concerning the conduct of the phase of the proceedings in contemplation, and a request for directions regarding the disclosure of certain further documents from the Neutral Expert Proceedings.
42. In its Request for Interim Measures, Pakistan sought the following:
- an Order from the Court directed at ensuring that India refrains from certain defined construction steps at the Ratle Hydroelectric Plant ("**RHEP**"), the effect of which, were they to be completed, would be to render otiose and materially ineffective and irrelevant an Award of the Court and/or a Decision of the Neutral Expert finding that India had not complied with the design criteria in Paragraph 8 of Annexure D of the Treaty as regards the RHEP.⁴¹
43. In its Treaty Status Application, Pakistan sought the following:
- a determination by the Court that the Treaty remains in force notwithstanding India's policy of Abeyance, under cover of which India appears intent on accelerating construction, *inter alia*, of the RHEP in almost explicitly acknowledged disregard of the Treaty and of the pending proceedings before the Court and the Neutral Expert.⁴²
44. In its request for directions regarding document disclosure, Pakistan contended that certain documents from the Neutral Expert Proceedings appeared to be relevant and material to the Court's consideration of the Request for Interim Measures and the Treaty Status Application, and it requested such further directions as appropriate regarding their production.

⁴¹ Pakistan's Request for Interim Measures, para. 1.7.

⁴² Pakistan's Request for Interim Measures, para. 1.8.

45. On 11 March 2026, the Court invited India to provide any comments on Pakistan’s request for directions regarding document disclosure by no later than 17 March 2026. No response from India was thereafter received.
46. On 12 March 2026, the Court issued Procedural Order No. 21 (Phase on Interim Measures and on the Present Status of the Treaty) (“**Procedural Order No. 21**”), in which it decided to conduct a further phase of the proceedings specific to deciding upon the Request for Interim Measures and the Treaty Status Application (“**Phase on Interim Measures and Treaty Status**”). The Court also issued directions regarding the conduct of such phase, further to Pakistan’s request for procedural directions. Finally, the Court invited India to indicate whether it intended to participate in the Phase on Interim Measures and Treaty Status by no later than 30 March 2026. No response from India was thereafter received.
47. On 20 March 2026, the Court issued Procedural Order No. 22 (Request by Pakistan for Directions Regarding the Disclosure of Certain Documents from the Neutral Expert Proceedings), in which the Court determined, *inter alia*, that several categories of documents requested by Pakistan from the Neutral Expert Proceedings—namely, the RHEP Construction Schedule Documents, the Updated RHEP Design Documents, and the Suspension of NE Work Programme Documents (together, the “**NE PIMTS Documents**”)—appeared to be relevant and material to the Phase on Interim Measures and Treaty Status. Accordingly, the Court directed Pakistan to keep the Court apprised of the status of any application it might make to the Neutral Expert with respect to the disclosure of the NE PIMTS Documents into these proceedings. Further, the Court directed that any such documents introduced into the proceedings be maintained as confidential, except to the extent disclosure is required of a Party by legal duty, to protect or pursue a legal right, or in relation to legal proceedings before a court or other competent authority.
48. On 11 April 2026, Pakistan informed the Court that, by a decision dated 10 April 2026, the Neutral Expert had authorized Pakistan to submit the NE PIMTS Documents into the Court’s proceedings. Pakistan accordingly requested an extension of time to submit its Memorial for the Phase on Interim Measures and Treaty Status, to enable it to take into account the NE PIMTS Documents. The Court subsequently granted this request.
49. On 16 April 2026, pursuant to paragraph 2.2 of Procedural Order No. 21, as modified by the Court, Pakistan submitted its Memorial for the Phase on Interim Measures and Treaty Status (“**Pakistan’s Memorial**”), and its accompanying documents.
50. On 21 April 2026, the Court issued Procedural Order No. 23 (Organization of the Hearing for the Phase on Interim Measures and on the Present Status of the Treaty) (“**Procedural Order No.**

23”), in which the Court ordered, *inter alia*, that the Hearing for the Phase on Interim Measures and on the Present Status of the Treaty would take place in person at the Peace Palace in The Hague from 26 to 28 April 2026 (“**Hearing**”).

G. HEARING FOR THE PHASE ON INTERIM MEASURES AND ON THE PRESENT STATUS OF THE TREATY

51. The Hearing for the Phase on Interim Measures and on the Present Status of the Treaty took place at the Peace Palace in The Hague from 26 to 28 April 2026, in accordance with paragraph 2.1 of Procedural Order No. 23. The following persons were present:

Court of Arbitration

Professor Sean D. Murphy (Chairman)
Professor Wouter Buytaert
Professor Jeffrey P. Minear
Judge Awn Shawkat Al-Khasawneh
Dr. Donald Blackmore

Representatives of Pakistan

H.E. Mr. Syed Haider Shah, Acting Co-Agent for Pakistan, Ambassador of Pakistan to The Netherlands
Mr. Jamal Nasir, First Secretary, Embassy of Pakistan to The Netherlands
Sir Daniel Bethlehem KC, Counsel for Pakistan
Professor Philippa Webb KC, Counsel for Pakistan
Dr. Cameron Miles, Counsel for Pakistan
Ms. Charlotte Westbrook, Counsel for Pakistan
Mr. Abdullah Tariq, Counsel for Pakistan
Mr. Peter J. Rae, Technical Adviser and Advocate
Dr. Gregory L. Morris, Technical Adviser and Advocate

India

No Agent or representatives present

The Secretariat

Mr. Garth Schofield, Registrar and Deputy Secretary-General of the PCA
Mr. Bryce Williams, Treasurer and Legal Counsel
Mr. Sebastian King, Legal Counsel

Court Reporter

Mr. Trevor McGowan

52. The following persons presented oral arguments before the Court on behalf of Pakistan:

H.E. Mr. Syed Haider Shah, Acting Co-Agent
Sir Daniel Bethlehem KC, Counsel for Pakistan
Professor Philippa Webb KC, Counsel for Pakistan
Dr. Cameron Miles, Counsel for Pakistan
Ms. Charlotte Westbrook, Counsel for Pakistan
Mr. Abdullah Tariq, Counsel for Pakistan

53. India did not appear at, or participate in, the Hearing.

54. On 27 April 2026, the Court posed questions for Pakistan to address in its oral submissions scheduled for the third day of the Hearing.
55. On 28 April 2026, Pakistan's Acting Co-Agent, H.E. Mr. Syed Haider Shah, formally presented Pakistan's Final Submissions (Phase on Interim Measures and Treaty Status) ("**Pakistan's Final Submissions**").
56. Following the Hearing, the Court distributed the verbatim transcript for the Hearing, signed by the Chairman of the Court, which constituted minutes for the purpose of Paragraph 19 of Annexure G to the Treaty.

H. POST-HEARING PROCEDURES

57. On 28 April 2026, following the conclusion of the Hearing, the Court held a case management conference to discuss, *inter alia*, the record of the correspondence between the Parties further to India's January 2023 request to commence negotiations to review and modify the Treaty, and the publication of Pakistan's submissions in the Phase on Interim Measures and Treaty Status in light of the need to maintain the confidentiality of the NE PIMTS Documents introduced into the proceedings. India did not appear at, or participate in, the case management conference.
58. On 1 May 2026, Pakistan applied for leave to submit into the record additional correspondence between the Parties relating to potential negotiations for the review and modification of the Treaty, which the Court subsequently granted on 5 May 2026.
59. On 4 May 2026, Pakistan requested leave to submit into the record correspondence from its Commissioner for Indus Waters concerning variations in the flow of the Jhelum River at Chakothei and variations in the flow of the Chenab River at Marala. On 6 May 2026, Pakistan sought leave to introduce into the record "an article published on 5 May 2026 by the Delhi-based Centre for Research on Strategic and Security Issues by a former long-serving Indian Commissioner for Indus Waters, Shri Pradeep Kumar Saxena". On 11 May 2026, the Court granted Pakistan's requests of 4 and 6 May 2026.
60. On 1 June 2026, Pakistan provided an update to the Court on the information published in the Neutral Expert Proceedings, including that the Neutral Expert had decided to retain specialists to assist him in modeling potential configurations of the RHEP. On 6 June 2026, the Court invited Pakistan to submit into the record of these proceedings the Neutral Expert's Terms of Reference for Modelling Specialists dated 25 May 2026, and its accompanying Annex E (Scope of Work), which Pakistan thereafter submitted.

61. On 21 July 2026, Pakistan sought leave to introduce into the record a revised Work Programme by the Neutral Expert, as well as a number of recent press articles and official statements of India's position on the issue of abeyance, which the Court subsequently granted.

* * *

III. RELEVANT FACTUAL BACKGROUND

A. THE CONCLUSION AND SCOPE OF THE INDUS WATERS TREATY

62. The Indus Waters Treaty was concluded on 19 September 1960 (with retroactive effect to 1 April 1960) and was intended comprehensively to address as between India and Pakistan the use of the Indus system of rivers. These rivers and their tributaries rise in the Himalayan, Hindu Kush, and Karakoram Mountains, and flow through Afghanistan, China, India, and Pakistan, before draining into the Arabian Sea.⁴³
63. In broad strokes, the Treaty addresses the shared use of the Indus system of rivers through the allocation to India and Pakistan of the waters of certain rivers within the system. Thus, the Treaty allocates to India the waters of the Sutlej, Beas, and Ravi Rivers and their tributaries, identified in the terminology of the Treaty as the “**Eastern Rivers**”.⁴⁴ The Treaty correspondingly allocates to Pakistan the waters of the Indus, Jhelum, and Chenab Rivers and their tributaries, identified as the “**Western Rivers**”.⁴⁵ The Indus system of rivers and its catchment area are depicted in the map on page 19 below.
64. Though allocating particular rivers to one of the two States, the Treaty also permits certain uses by the other State of the waters of those rivers. As the Western Rivers flow through territory administered by India for a significant distance before entering territory administered by Pakistan, the Treaty contains detailed provisions regulating the use by India of the waters of these rivers. In this respect, the Treaty allows India to make use of the waters of the Western Rivers for what the

⁴³ The terminology and maps used in this Award to denote geographic locations are intended to be neutral and should not be construed as the adoption by the Court of any position with regard to any matters of territorial sovereignty. See Award on Competence, Pt. III; see also **PLA-0003**, *Kishenganga* Partial Award, paras. 126–139.

⁴⁴ **PLA-0001**, Treaty, Art. I(5) (“The term ‘Eastern Rivers’ means The Sutlej, The Beas and The Ravi taken together”).

⁴⁵ **PLA-0001**, Treaty, Art. I(6) (“The term ‘Western Rivers’ means The Indus, The Jhelum and The Chenab taken together”).

Treaty defines as “Domestic Use”,⁴⁶ “Non-Consumptive Use”,⁴⁷ and “Agricultural Use”,⁴⁸ as well as for the generation of hydro-electric power.⁴⁹ Subject to detailed regulations set out in annexures to the Treaty, India may generate hydro-electric power on the Western Rivers by means of: HEPs existing when the Treaty was adopted; Run-of-River HEPs,⁵⁰ which generate hydro-electric power largely using the natural flow of a river; HEPs that are Small Plants; and storage works, which are constructed for the purpose of impounding the waters of a stream and may include a power plant (“**Storage Works**”).⁵¹ Among other things, these regulations address the design and operation of Run-of-River HEPs and Storage Works, including the size and location of outlets, spillways, and intakes, the amount of pondage, flood and surcharge storage, and other matters, with a particular attention to India’s ability to control the storage of waters on the Western Rivers. Such regulations also require India to notify Pakistan as to its intentions prior to constructing a Run-of-River HEP or Storage Work, thereby allowing Pakistan to react as to whether the proposed design is Treaty-compliant.

65. The allocation of the Eastern Rivers to India entailed substantial changes to the practice of irrigation in Pakistan, as agriculture in large areas of Pakistan had previously been dependent on the flow of those rivers. Accordingly, the Treaty included provisions for the financing and construction of substantial irrigation works within Pakistan to transfer water from the Western

⁴⁶ **PLA-0001**, Treaty, Art. I(10) (“The term ‘Domestic Use’ means the use of water for : (a) drinking, washing, bathing, recreation, sanitation (including the conveyance and dilution of sewage and of industrial and other wastes), stock and poultry, and other like purposes ; (b) household and municipal purposes (including use for household gardens and public recreational gardens) ; and (c) industrial purposes (including mining, milling and other like purposes) ; but the term does not include Agricultural Use or use for the generation of hydro-electric power”).

⁴⁷ **PLA-0001**, Treaty, Art. I(11) (“The term ‘Non-Consumptive Use’ means any control or use of water for navigation, floating of timber or other property, flood protection or flood control, fishing or fish culture, wild life or other like beneficial purposes, provided that, exclusive of seepage and evaporation of water incidental to the control or use, the water (undiminished in volume within the practical range of measurement) remains in, or is returned to, the same river or its Tributaries ; but the term does not include Agricultural Use or use for the generation of hydro-electric power”).

⁴⁸ **PLA-0001**, Treaty, Art. I(9) (“The term ‘Agricultural Use’ means the use of water for irrigation, except for irrigation of household gardens and public recreational gardens”).

⁴⁹ **PLA-0001**, Treaty, Annexure D.

⁵⁰ The Court notes that the Treaty has a specific definition of “Run-of-River Plant”, which is “a hydro-electric plant that develops power without Live Storage as an integral part of the plant, except for Pondage and Surcharge Storage”: **PLA-0001**, Treaty, Annexure D, para. 2(g).

⁵¹ **PLA-0001**, Treaty, Annexure E, para. 2(a) (“‘Storage Work’ means a work constructed for the purpose of impounding the waters of a stream ; but excludes (i) a Small Tank, (ii) the works specified in Paragraphs 3 and 4 of Annexure D, 1 and (iii) a new work constructed in accordance with the provisions of Annexure D”).



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Rivers to areas of Pakistan previously irrigated from the Eastern Rivers. As envisaged in the Treaty, these works were completed over a ten-year transition period. Now largely consumed by India for agriculture, the flow of the Eastern Rivers into Pakistan has significantly decreased.

66. To monitor and manage its complex provisions, the Treaty establishes the Permanent Indus Commission (“**Commission**”) as an intergovernmental body, composed of a Commissioner for Indus Waters appointed by India (“**India’s Commissioner**” or “**ICIW**”) and a Commissioner for Indus Waters appointed by Pakistan (“**Pakistan’s Commissioner**” or “**PCIW**”) (together, the “**Commissioners**”), who meet regularly, and at least annually, with the purpose of “establish[ing] and maintain[ing] co-operative arrangements for the implementation of this Treaty, [and] promot[ing] co-operation between the Parties in the development of the waters of the Rivers”.⁵² The Commission’s detailed responsibilities include:

- (a) to study and report to the two Governments on any problem relating to the development of the waters of the Rivers which may be jointly referred to the Commission by the two Governments : in the event that a reference is made by one Government alone, the Commissioner of the other Government shall obtain the authorization of his Government before he proceeds to act on the reference ;
- (b) to make every effort to settle promptly, in accordance with the provisions of Article IX (1), any question arising thereunder ;
- (c) to undertake, once in every five years, a general tour of inspection of the Rivers for ascertaining the facts connected with various developments and works on the Rivers ;
- (d) to undertake promptly, at the request of either Commissioner, a tour of inspection of such works or sites on the Rivers as may be considered necessary by him for ascertaining the facts connected with those works or sites ; and
- (e) to take, during the Transition Period, such steps as may be necessary for the implementation of the provisions of Annexure H.⁵³

67. Pursuant to Article VIII(1) of the Treaty, “[u]nless either Government should decide to take up any particular question directly with the other Government, each Commissioner will be the representative of his Government for all matters arising out of this Treaty, and will serve as the regular channel of communication on all matters relating to the implementation of the Treaty”.⁵⁴
68. Finally, the Treaty provides a mechanism for the settlement of all questions that may arise regarding the interpretation or application of the Treaty. Such matters are to be addressed in the first instance by the Commission. If settlement within the Commission is not achieved, the Treaty provides that certain technical questions can be placed before a highly-qualified engineer (called

⁵² **PLA-0001**, Treaty, Art. VIII(4).

⁵³ **PLA-0001**, Treaty, Arts. VIII(4)(a)–(e).

⁵⁴ **PLA-0001**, Treaty, Art. VIII(1).

a neutral expert) and that any question can be placed before an arbitral panel consisting of highly-qualified lawyers and engineers (called a court of arbitration).⁵⁵

69. The Treaty's final provisions state as follows:

Article XII

FINAL PROVISIONS

- (1) This Treaty consists of the Preamble, the Articles hereof and Annexures A to H hereto, and may be cited as "The Indus Waters Treaty 1960".
- (2) This Treaty shall be ratified and the ratifications thereof shall be exchanged in New Delhi. It shall enter into force upon the exchange of ratifications, and will then take effect retrospectively from the first of April 1960.
- (3) The provisions of this Treaty may from time to time be modified by a duly ratified treaty concluded for that purpose between the two Governments.
- (4) The provisions of this Treaty, or the provisions of this Treaty as modified under the provisions of Paragraph (3), shall continue in force until terminated by a duly ratified treaty concluded for that purpose between the two Governments.⁵⁶

B. THE DURABILITY OF THE TREATY IN THE PARTIES' BILATERAL RELATIONS

70. As the Court stated in the Award on Issues of General Interpretation, the object and purpose of the Treaty, including with respect to the Western Rivers, may be discerned from the circumstances that led to its adoption, its Preamble, and the broad substantive elements of its twelve articles and multiple annexures. In brief, due to the vulnerability of Pakistan as the downstream riparian of a critical but shared natural resource, and the potential for serious conflict between India and Pakistan in this regard, the Treaty seeks to attain the most complete and satisfactory utilization of the waters of the Indus system of rivers and, to that end, to delimit the two States' respective rights and obligations, in conjunction with effective dispute resolution procedures for whenever questions of interpretation or application of such rights and obligations arise.⁵⁷

71. Since its inception, the Treaty has proved remarkably durable: it has survived three wars, many military confrontations, and prolonged periods of disruption in diplomatic relations, offering a rare pathway for cooperation between the Parties.⁵⁸ In 1965, war broke out between India and

⁵⁵ **PLA-0001**, Treaty, Art. IX.

⁵⁶ **PLA-0001**, Treaty, Art. XII.

⁵⁷ See Award on Issues of General Interpretation, para. 420.

⁵⁸ **P-0791**, B. Bharadwaj and Dr. B. Mosell, "India and Pakistan still cannot agree to restore the Indus Waters Treaty – but re-engagement could help bring lasting peace", Chatham House dated 17 April 2026; **P-0792**, A. Kumar, "Blood and Water Cannot Flow Together: Recasting the Indus Waters Treaty After Pahalgam", Khaama Press News Agency dated 22 April 2026, p. 2; **P-0698**, J. Curtis, Kashmir: Renewed India-Pakistan

Pakistan, which lasted approximately three weeks and ended with a United Nations-sponsored ceasefire.⁵⁹ In 1971, further conflict broke out between India and Pakistan, which lasted approximately two weeks and ended with a ceasefire on 17 December 1971, which resulted in the Line of Control in Jammu and Kashmir.⁶⁰ In 1999, conflict again broke out between India and Pakistan, which lasted approximately three months.⁶¹ In 2003, Pakistan and India signed a formal ceasefire agreement.⁶²

72. Despite these conflicts, the Treaty has provided, until recently, a framework through which the Parties have continuously engaged with one another through the institutional, information-sharing, and dispute-settlement mechanisms established by the Treaty.
73. For example, the Transition Period began (retrospectively) on 1 April 1960 and ended as scheduled on 31 March 1970.⁶³ During this period, and notwithstanding the conflict in 1965 referred to above, Pakistan continued to receive for unrestricted use the waters of the Eastern Rivers, which were to be released by India pursuant to Articles II(5) to II(9) and Annexure H to the Treaty. For its part, Pakistan was required by Article IV(1) to construct a system of works capable of replacing water supplies previously received from the Eastern Rivers, while Article V provided for the financing of those works. As envisaged by the Treaty, Pakistan completed the necessary system of engineering works by March 1970.⁶⁴
74. Article VIII(5) of the Treaty provides that the Commission shall “meet regularly at least once a year”. Since the adoption of the Treaty in 1960 and until recently, the Commission has been

Tensions (House of Commons Library, Research Briefing No. 10264) dated 16 May 2025, p. 11. See also Tr., Day 2, 27 April 2026, p. 88:4–8.

⁵⁹ **P-0698**, J. Curtis, Kashmir: Renewed India-Pakistan Tensions (House of Commons Library, Research Briefing No. 10264) dated 16 May 2025, p. 23.

⁶⁰ **P-0698**, J. Curtis, Kashmir: Renewed India-Pakistan Tensions (House of Commons Library, Research Briefing No. 10264) dated 16 May 2025, pp. 4, 21, 23.

⁶¹ **P-0698**, J. Curtis, Kashmir: Renewed India-Pakistan Tensions (House of Commons Library, Research Briefing No. 10264) dated 16 May 2025, p. 24.

⁶² **P-0698**, J. Curtis, Kashmir: Renewed India-Pakistan Tensions (House of Commons Library, Research Briefing No. 10264) dated 16 May 2025, p. 25.

⁶³ **PLA-0001**, Treaty, Arts. I(16), II(5)–(6), Annexure H.

⁶⁴ **PLA-0043**, Indus Basin Development Fund Agreement between the Governments of the Commonwealth of Australia, Canada, The Federal Republic of Germany, New Zealand, Pakistan, the United Kingdom of Great Britain and Northern Ireland and the United States of America and the International Bank for Reconstruction and Development, (signed on 19 September 1960) 444 UNTS 259, Annexure D.

meeting regularly, usually at least twice a year.⁶⁵ Specifically, the Commission met for the first time from 28 to 30 March 1961, and had held 118 meetings by 31 May 2022.⁶⁶

75. Articles VIII(4)(c) and (d) of the Treaty also provide for general and special tours of inspection to be undertaken by the Commission, as part of their cooperative functions, for ascertaining the facts connected with various developments, works, or sites on the Rivers.⁶⁷ Since the adoption of the Treaty, the Commission had undertaken 119 General Tours of Inspection up until February 2019.⁶⁸
76. Meanwhile, India has undertaken construction of HEPs on each of the three Western Rivers. Specifically, beyond the pre-Treaty HEPs constructed by India, India has communicated to Pakistan information regarding the proposed construction of at least 86 HEPs on the Western Rivers, consisting of 32 Annexure D, Part 3 HEPs, 53 Small Plants under Annexure D, and one Storage Work under Annexure E.⁶⁹ Pakistan has often raised questions or objections to these proposed HEPs notified by India. The majority of these matters have been resolved either through extensive engagement via correspondence between the Commissioners, or otherwise have been resolved by agreement through the Commission pursuant to Article IX(1) of the Treaty.
77. Where questions could not be settled through the Commission, on two occasions the resulting differences or disputes were addressed through the third-party dispute settlement mechanisms under Article IX of the Treaty.⁷⁰ The present proceedings represent the third occasion on which the Parties have resorted to third-party dispute settlement mechanisms under Article IX(2) of the Treaty. The first such proceedings were the *Baglihar* Neutral Expert Proceedings, commenced on 15 January 2005 when Pakistan requested the appointment of a neutral expert to resolve differences concerning India's design of its Baglihar HEP on the Chenab River; and the second were the *Kishenganga* Arbitration Proceedings, commenced on 17 May 2010 when Pakistan

⁶⁵ See Award on Issues of General Interpretation, paras. 163–172.

⁶⁶ See **P-0647**, Records of meetings of the Permanent Indus Commission.

⁶⁷ **PLA-0001**, Treaty, Article VIII(4). See Award on Issues of General Interpretation, paras. 173–176.

⁶⁸ **P-0201**, Record of the 119th General Tour of Inspection by the Permanent Indus Commission, 27 January to 1 February 2019.

⁶⁹ These include the pre-Treaty Pahalgam and Rajouri HEPs, which Pakistan submits have since been modified by India and, thus, are regulated by Annexure D, Part 3 to the Treaty, but exclude the Badarwah HEP, with respect to which the Parties are in dispute as to its proper classification under Annexure D to the Treaty.

⁷⁰ **PLA-0001**, Treaty, Arts. IX(2)–(6). See Award on Issues of General Interpretation, paras. 194–212.

requested the appointment of a court of arbitration to resolve disputes concerning India's construction of the KHEP on a tributary of the Jhelum River.

78. Notwithstanding the questions, objections, or disputes advanced by Pakistan as indicated above, the information before the Court indicates that India has constructed 52 HEPs on the Western Rivers since adoption of the Treaty and that another 44 HEPs are currently under construction.⁷¹

C. THE PARTIES' COMMUNICATIONS CONCERNING INDIA'S REQUEST TO REVIEW AND MODIFY THE TREATY

79. Coincident with the constitution of the present Court and the active progression of these proceedings, India raised with Pakistan a request to commence bilateral negotiations under Article XII(3) of the Treaty to review and modify the provisions of the Treaty. The Parties thereafter engaged in extensive correspondence in respect of this request.
80. On 25 January 2023, India's Commissioner wrote to Pakistan's Commissioner requesting the commencement of bilateral negotiations under Article XII(3) of the Treaty to review and modify the provisions of the Treaty, stating:

The Government of the Republic of India,

Having regard to the fact that the Indus Waters Treaty (the "Treaty"), signed in 1960 between the Governments of the Republic of India and the Islamic Republic of Pakistan, has endured for more than 62 years,

Noting that so far the Treaty has been considered as one of the most successful working water sharing arrangements in the world and the role of the good faith conduct of the Republic of India as the upper riparian state towards that end,

Recognising with grave concern that recent events concerning the application of the Treaty have led to the violation of the scheme of the Treaty relating to settlement of disputes essential to the accomplishment of the object and purpose of the Treaty, thereby amounting to a material breach of the Treaty,

Recognising that the material breach results from the on-going deviation from the clear text of the Treaty,

Recognising that all treaty compliances are always persuaded by good faith and both parties act as not to derive any consequences by being in breach of the treaty scheme,

Call upon the Government of the Islamic Republic of Pakistan to

Enter into negotiations under Article XII (3) of the Treaty, to review and modify the provisions of the Treaty, with a view to clarifying any existing ambiguities and immediately rectifying the on-going material breach.

Notify a suitable date for the commencement of inter-state bilateral negotiations under Article XII(3) within the next 90 days, in order to commence the negotiations expeditiously.

⁷¹ See Award on Issues of General Interpretation, para. 189.

Notifies the Government of the Islamic Republic of Pakistan that

Failure to notify a suitable date for commencing bilateral negotiations under Article XII(3) of the Treaty will be construed as continued obstruction towards rectifying the material breach and could oblige the Government of India to pursue other measures as considered relevant by the Government of India in line with available options, including but not limited to, legal processes.

We trust that the Islamic Republic of Pakistan will act in accordance with the peremptory norm of good faith in treaty compliances which include compliance with the letter and spirit of the Treaty and its evident underlying scheme, and protect the legitimate expectations of its treaty partner that no party shall take advantage of any breach of good faith.⁷²

81. On 1 April 2023, Pakistan's Commissioner wrote to India's Commissioner, stating that "it is appropriate that any concerns of a Party relating to the operation of the scheme of the Treaty are raised in the Commission" and indicating that Pakistan's Commissioner "would be happy to engage with you as appropriate in the Commission to hear your concerns and consider the best way of taking forward our dialogue on the matters in question".⁷³
82. On 30 May 2023, India's Secretary of the Ministry of Jal Shakti wrote to Pakistan's Secretary of the Ministry of Water Resources, stating:
 1. The Government of the Republic of India (India) had issued on 25 January 2023 to the Islamic Republic of Pakistan (Pakistan) a notice under Article XII (3) of the Indus Waters Treaty 1960 (Treaty) calling upon Pakistan to enter into inter-state bilateral negotiations to review and modify the provisions of the Treaty, in the overarching backdrop of the experience of the last 60 or so years.
 2. Article XII (3) of the Treaty clearly states the "provisions of this Treaty may from time to time be modified by a duly-ratified treaty concluded for that purpose between the two Governments". It is noted with concern that, in its response dated 1 April 2023, Pakistan has failed to specify a date for the commencement of Government-to-Government bilateral negotiations, as contemplated under Article XII (3) of the Treaty.
 3. It is reiterated that India's notice to Pakistan is under Article XII (3) of the Treaty for its modification. The exercise under Article XII (3) has to be by way of a dialogue between the two Republics at an appropriate level for it involves modification of a Treaty between the two Republics. Article XII(3) recognises the intent of the framers of the Treaty to put in place a mechanism to revisit and modify its provisions, from time to time, in order to take on board developments that were unforeseen at the time of the conclusion of the Treaty.
 4. India, therefore, proposes 15 July 2023 as the date for the commencement of Government-to-Government bilateral negotiations for the modification of the Treaty under Article XII (3) in either New Delhi or Islamabad. India hopes that Pakistan will act in accordance with the letter and spirit of the Treaty, and expeditiously respond to the proposal for commencing Government-to-Government negotiations for the modification under Article XII (3) of the Treaty.⁷⁴

⁷² **P-0797-B**, Letter from the ICIW to the PCIW dated 25 January 2023 (emphasis in original).

⁷³ **P-0797-C**, Letter No. WT(94)/(8128)/PCIW dated 1 April 2023.

⁷⁴ **P-0797-E**, Letter D.O. No. Y-18012/1/2020-Indus dated 30 May 2023.

83. On 14 July 2023, Pakistan’s Secretary of the Ministry of Water Resources wrote to India’s Secretary of the Ministry of Jal Shakti, stating that Pakistan was “ready to hear India’s concerns relating to the operation of the Treaty”, and proposed “that India transmit to Pakistan a statement of its concerns arising from the operation of the Treaty and its objectives in seeking a modification thereof” after which Pakistan “would timeously reply, from its perspective”.⁷⁵ Pakistan further indicated that the “institutional arrangement provided in the Treaty—i.e. the Permanent Indus Commission—is best suited for any initial exchanges for preparation of an agenda” and proposed “the two Commissioners may be mandated to engage and discuss concerns to take further steps required in this regard”.⁷⁶
84. On 6 December 2023, India’s Secretary of the Ministry of Jal Shakti responded to Pakistan’s Secretary of the Ministry of Water Resources, expressing “serious concern at Pakistan’s reluctance to agree to commence Government to Government bilateral discussions for the purpose of reviewing and modifying the provisions of the Treaty”.⁷⁷ India also rejected Pakistan’s request for a “statement of concerns”, arguing that such a requirement is not provided for in the Treaty:

7. There is no separate provision of such a ‘statement of concerns’ in the Treaty. India cannot entertain such extra-Treaty requests. The very process of Government to Government negotiations under Article XII (3) is meant to provide a forum for comprehensive discussions regarding all such concerns. Furthermore, a dialogue to revisit and revise the Treaty — a compact between two sovereign nations — has to be through the settled mechanisms for entering into treaties and not through instruments created under Treaties.

8. Pakistan’s attention has been repeatedly drawn to the fact that fundamental changes have taken place over the decades since the Treaty was signed in 1960 in various domains including technological, environmental and security-related. The altered population demographics of the Indus Basin coupled with the need to accelerate the development of energy in that area also form compelling circumstances that call for revisiting the Treaty.

9. Added to this is the need to develop hydropower projects for generating clean energy to enable India to align with global expectations of capping carbon emissions. Utilisation of water for generating power in present times has thus assumed a dimension which could not have been anticipated at the time the Treaty was entered into.

10. The provisions of Article XII (3) are not merely enabling but would necessarily imply that where one of the parties to the Treaty wants a dialogue on the revision of the Treaty, the other party must agree to the dialogue and participate in good faith.

11. In the circumstances, and given the seriousness of the task at hand, I trust that Pakistan will appreciate the gravity of the situation and commence bilateral Government to Government discussions and negotiations, in terms of Article XII (3) of the Indus Waters Treaty.⁷⁸

⁷⁵ **P-0797-G**, Letter No.4(34)/2025-Water dated 14 July 2023.

⁷⁶ **P-0797-G**, Letter No.4(34)/2025-Water dated 14 July 2023.

⁷⁷ **P-0797-H**, Letter D.O. No. Y-18012/1/2020-Indus dated 6 December 2023.

⁷⁸ **P-0797-H**, Letter D.O. No. Y-18012/1/2020-Indus dated 6 December 2023.

85. On 30 March and 30 May 2024, India's Commissioner wrote to Pakistan's Commissioner, reiterating India's request for "Government-to-Government (G2G) negotiations for the review and modification of the Indus Water Treaty 1960 (Treaty), under Article XII (3) of the Treaty".⁷⁹
86. On 25 July 2024, Pakistan's Secretary of the Ministry of Water Resources wrote to India's Secretary of the Ministry of Jal Shakti, maintaining that a statement elaborating on the "technological, environmental and security related changes" alleged by India "is required to be transmitted to Pakistan to enable it to better understand India's position and consider any action, if needed that can be taken in accordance with the Treaty provisions including through institutions established and empowered by it".⁸⁰
87. On 30 August 2024, India's Secretary of the Ministry of Jal Shakti wrote to Pakistan's Secretary of the Ministry of Water Resources, stating:

This is with reference to your letter of 25 July 2024 relating to India's third notice for seeking Pakistan's engagement in the process of review and modification of the Indus Waters Treaty 1960 (Treaty) under Article XII (3) of the Treaty. It is disappointing that Pakistan is not considering this matter seriously and is evading meaningful engagement, in breach of the letter and spirit, specifically of an important provision of the Treaty and generally of established principles of the Treaties.

2. In the letter under reference, Pakistan has sought a 'statement of concerns' to be transmitted to it. This reverses the sequence of events. Pakistan needs to first agree to a protocol for engagement for review and modification. India had clearly conveyed in its communication of 06 December 2023 that no formal 'statement of concerns' is required as a pre-requisite under the Treaty for commencing bilateral negotiations for reviewing and modifying the provisions of the Treaty. It is inherent to the subject matter of the Treaty - a water sharing arrangement - that experience and knowledge gained in the six decades of its operations merits a review of some of its provisions.

3. Despite India's stated position that 'statement of concerns' is not a pre-requisite, in good faith, we had conveyed significant reasons for seeking immediate commencement of bilateral discussions on the working of the Treaty and acknowledged so by Pakistan. To provide clarity, we are once again highlighting some of the provisions/aspects of the Treaty, which could also be termed as 'concerns' which call for an immediate review and updation of the Treaty in order to ensure its continued workability. I want to emphasize that this is not an exhaustive listing of our concerns:

- I. Fundamental and unforeseen changes in circumstances have taken place since the Treaty was executed that require a re-assessment of obligations under various Articles of the Treaty read with its [Annexures]. These changes, inter-alia, include: (a) significantly altered population demographics coupled with the connected agricultural and other uses of waters; (b) the need to accelerate the development of clean energy to enable India to align with any commitment of capping carbon emissions; (c) the significant alteration of the security-landscape, including through cross-border terrorism in Jammu & Kashmir,

⁷⁹ **P-0797-I**, Letter No. 4 (7)/2015-IT dated 30 March 2024; **P-0797-J**, Letter No. Y-Y17011/1/2018-IT/2445 dated 31 May 2024.

⁸⁰ **P-0797-K**, Letter No. 4(38)/2015-Water dated 25 July 2024.

which has impeded the smooth operation of the Treaty as well as India's full utilization of its rights under the Treaty.

- II. The dispute resolution mechanism contemplated under Article IX requires reconsideration.
- III. Some of the provisions under Articles II, V & X and Annexure H of the Treaty were transitional in nature and for a specific duration. These have now become obsolete.
- IV. The Treaty must operate to safeguard the legitimate rights and interests of both Parties. Over the years, however, India's rights as an upper-riparian State have been unduly restricted. India has legitimate and compelling needs to go ahead with the development of resources consistent with its rights as recognized under the Treaty and accepted principles of international law. The current working of the Treaty constrains India from meeting with its legitimate development needs.

4. Accordingly, India once again calls upon Pakistan in terms of Article XII (3) of the Treaty to enter into bilateral Government-to-Government negotiations for a long overdue review and modifications to the Treaty. Article XII (3) of the Treaty which states that "provisions of this Treaty may from time to time be modified by a duly ratified treaty concluded for that purpose between the two Governments", specifically provides for such a review from time to time. The principle of *pacta sunt servanda* would require Pakistan to take India's request seriously. We urge Pakistan to respond in good faith and seriousness to these issues and notify, by 08 October 2024, its bilateral agreement and a suitable date for commencing Government-to-Government bilateral negotiations under Article XII (3) of the Treaty. In its absence, the Government of India will be compelled to consider appropriate steps to safeguard its legitimate interests.⁸¹

88. On 7 October 2024, India's Commissioner wrote to Pakistan's Commissioner, reiterating India's request "calling upon Pakistan to enter into Government-to-Government (G2G) negotiations for the review and modification of the Indus Waters Treaty 1960 (Treaty), under Article XII(3) of the Treaty".⁸²
89. On 8 October 2024, Pakistan's Secretary of the Ministry of Water Resources wrote to India's Secretary of the Ministry of Jal Shakti, stating:

This is with reference to your letter of 30 August 2024 reiterating India's desire to commence Government-to-Government negotiations for review and modification of the Indus Waters Treaty, 1960. At the outset, let me refute and address India's unfounded allegations:

- i. Firstly, the allegation that Pakistan is not considering the matter seriously and evading a meaningful engagement is unfounded. The developments since January 2023 suggest otherwise. Pakistan has remained duly engaged with India on the matter, and has responded to all the communications from India.
- ii. Secondly, I would also strongly reject the baseless assertion of "significant alteration of the security landscape, including through cross-border terrorism in Jammu and Kashmir." Pakistan is a responsible and peace-loving country, which remains a victim

⁸¹ **P-0797-L**, Letter D.O. No. Y-18012/1/2024-Indus dated 30 August 2024.

⁸² **P-0797-N**, Letter No. Y-18012/10/2020-Indus Section-MoWR/2451 dated 7 October 2024.

of terrorism. Pakistan's faithful implementation of the Treaty is a manifestation of its approach to cooperate and coexist.

- iii. Lastly and most importantly, Pakistan remains wholly committed to the Treaty. As you are aware, the regular channel of communication on all matters relating to the implementation of the Treaty, including those falling under Article XII (3), is specified in Article VIII of the Treaty, which is the Permanent Indus Commission (PIC). In this backdrop, and to enable a meaningful discussion on the matter, Pakistan has been consistently requesting India to convey its concerns, at the Commission's level. India's insistence on engaging at the Government-to-Government level, without first having deliberations at the Commission level to determine whether, to what extent, and on what grounds provisions of the Treaty are required to be modified, is inconsistent with the plain terms of the Treaty.

I must point out that India's purported grounds for modification of the Treaty have consistently evolved and lack qualification under the Treaty. The Indian Commissioner for Indus Water's first letter of 25 January 2023 quotes an unsubstantiated "material breach" followed by your letter of 6 December 2023 quoting additional elements of "altered population demographics" and "need to accelerate the development of clean energy". Your subsequent letter of 30 August 2024 now seeks to add another layer of unwarranted concerns related to provisions of the Treaty on matters of transitional duration under Articles II, V, X and Annex-H.

Notwithstanding and without prejudice to the above-stated position, Pakistan remains committed to the Treaty and would be open to hearing India's concerns at a Government-to-Government level. However, such a discussion shall not be construed, in any manner whatsoever, as start of negotiations for modifying the Treaty, unless the Parties develop a comprehensive understanding of the grounds for modifications. Additionally, the discussions should take place at a mutually agreed-upon venue.

I also avail this opportunity to highlight that the normal functioning of the PIC remains stalled due to non-cooperation by India and specifically by not adhering to the Treaty in convening obligatory meetings, conducting tours of inspections, finalization of the annual report for the year ending 31 March 2024, exchange of data and the supply of advance flood information.

Foregoing in view, India should demonstrate good faith and give precedence to reviving the normal working of the Commission which includes inter alia holding the annual meetings of the Commission and conducting pending tours of inspection as well as restoring supply of data under the provisions of the Treaty.⁸³

90. On 18 October 2024, India's Secretary of the Ministry of Jal Shakti wrote to Pakistan's Secretary of the Ministry of Water Resources, reiterating its request to Pakistan "that two sets of convenient dates in November 2024 may be conveyed to us by 30 October 2024" for an "Indian delegation ... to come to Islamabad, on dates convenient to Pakistan to hold bilateral discussions".⁸⁴
91. On 30 October 2024, Pakistan's Secretary of the Ministry of Water Resources wrote to India's Secretary of the Ministry of Jal Shakti, indicating that Pakistan was "in the process of examining your letter and our response will be shared in due course of time".⁸⁵

⁸³ **P-0797-P**, Letter No. 4 (38)/2015-Water dated 8 October 2024.

⁸⁴ **P-0797-R**, Letter D.O. No. Y-18012/1/2024-Indus dated 18 October 2024.

⁸⁵ **P-0797-S**, Letter No. 4(38)/2015-Water dated 30 October 2024.

92. On 17 January 2025, Pakistan's Secretary of the Ministry of Water Resources wrote to India's Secretary of the Ministry of Jal Shakti, stating:

2. At the outset, I must underscore Pakistan's openness to hear India's concerns at the government-to-government level was conveyed with the expectation that India would revive the stalled mechanisms mandated by the Indus Waters Treaty (IWT), including the meetings of the Permanent Indus Commission (PIC), tours of inspection, finalization of the annual report for the year ending 31 March 2024, and exchange of data etc. However, we are yet to receive your willingness for conduct of the next PIC meeting or initiation of any of the said actions.

3. I must also reiterate the position expressed in my letter of 8 October 2024 that Pakistan's openness to hear India's concerns at the government-to-government level shall not be construed as start of negotiations for modifying the Indus Waters Treaty unless the parties develop a comprehensive understanding of the grounds for modification. Without prejudice to this position, we had also stated that any government-to-government interaction should be held at a neutral venue.

4. In the interest of building mutual confidence and reviving smooth implementation of the Indus Waters Treaty, holding a meeting of the PIC is of utmost importance. We propose that the PIC meeting should be convened, preferably prior to the government-to-government interaction.

5. I avail this opportunity to reaffirm Pakistan's unwavering commitment to full implementation of the Treaty in its letter and spirit. I also look forward to a constructive engagement and cooperation from India.⁸⁶

93. On 8 April 2025, India's Secretary of the Ministry of Jal Shakti wrote to Pakistan's Secretary of the Ministry of Water Resources, expressing his "disappointment" at Pakistan's refusal "to honour the binding terms of the Treaty and accord due seriousness to our request to enter into a Government to Government negotiation for a review and modification of the Treaty as provided under Article XII (3)", and restating India's "position that a refusal to enter into negotiations would be treated by it as a breach of Treaty provisions by Pakistan".⁸⁷ India's Secretary of the Ministry of Jal Shakti "requested once again to convey, no later than May 2025, two sets of dates in May/June 2025 for holding the bilateral Government to Government negotiations either in Islamabad or New Delhi".⁸⁸ India's Secretary further stated:

3. Article XII (3) is a recognition of the fact that a Treaty for sharing of water resources needs to be revisited from time to time in order to ensure that the parameters on which the Treaty was premised remain relevant in the face of present day realities and to establish whether any changes are called for in the architecture of the Treaty. India, acting in good faith, had conveyed certain concerns regarding the Treaty (vide our fourth notice dated 30 August 2024) as requested by your side; vide my letter of 18 October 2024 we had also conveyed that the Indian delegation would be available to Islamabad at a convenient date. However, the Government of Pakistan's latest response refuses to address the key question

⁸⁶ **P-0797-T**, Letter No. 4(38)/2015-Water dated 17 January 2025.

⁸⁷ **P-0797-U**, Letter D.O. No. Y-18012/1/2024-Indus dated 8 April 2025.

⁸⁸ **P-0797-U**, Letter D.O. No. Y-18012/1/2024-Indus dated 8 April 2025.

of my last correspondence, i.e, two sets of dates to hold bilateral discussions on modification of the Treaty under the provisions of Article XII (3).

4. India calls upon Pakistan once again to abide by the terms of Article XII (3) of the Treaty to enter into bilateral Government to Government negotiations on modification of the Treaty. India restates its position that a refusal to enter into negotiations would be treated by it as a breach of Treaty provisions by Pakistan.

5. It is requested once again to convey, no later than May 2025, two sets of dates in May/June 2025 for holding the bilateral Government to Government negotiations either in Islamabad or New Delhi.⁸⁹

D. THE PAHALGAM ATTACK AND INDIA'S ANNOUNCEMENT OF A DECISION ON ABEYANCE

94. On 22 April 2025, an attack occurred in Pahalgam, located in India-administered Jammu and Kashmir, resulting in the death of 26 people and injuries to others.⁹⁰

95. On 23 April 2025, the Foreign Secretary of India issued a statement on the decisions of India's Cabinet Committee on Security in response to the attack.⁹¹ The 23 April 2025 Statement provides that "[i]n the briefing to the [Cabinet Committee on Security], the cross-border linkages of the terrorist attack were brought out" and, "recognizing the seriousness of this terrorist attack", outlines a series of measures decided upon by the Committee.⁹² Relevantly, these measures include 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".⁹³

96. On 24 April 2025, India's Secretary of the Ministry of Jal Shakti sent a letter to Pakistan's Secretary of the Ministry of Water Resources. The 24 April 2025 Letter reads 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

⁸⁹ **P-0797-U**, Letter D.O. No. Y-18012/1/2024-Indus dated 8 April 2025.

⁹⁰ **P-0697**, Compendium of Recent Statements, Ministry of External Affairs, Government of India, "Statement by Foreign Secretary on the decision of the Cabinet Committee on Security (CCS)" dated 23 April 2025, p. 5; see also **P-0698**, J. Curtis, Kashmir: Renewed India-Pakistan Tensions (House of Commons Library, Research Briefing No. 10264) dated 16 May 2025, pp. 7–9.

⁹¹ **P-0697**, Compendium of Recent Statements, Ministry of External Affairs, Government of India, "Statement by Foreign Secretary on the decision of the Cabinet Committee on Security (CCS)" dated 23 April 2025, p. 5.

⁹² **P-0697**, Compendium of Recent Statements, Ministry of External Affairs, Government of India, "Statement by Foreign Secretary on the decision of the Cabinet Committee on Security (CCS)" dated 23 April 2025, p. 5.

⁹³ **P-0697**, Compendium of Recent Statements, Ministry of External Affairs, Government of India, "Statement by Foreign Secretary on the decision of the Cabinet Committee on Security (CCS)" dated 23 April 2025, p. 6.

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.⁹⁴

97. On 26 April 2025, Pakistan's Prime Minister condemned the attack in Pahalgam and indicated a willingness to participate in a "neutral, transparent and credible investigation" into the attack.⁹⁵

98. On 8 May 2025, Pakistan's Secretary of the Ministry of Water Resources sent a letter to India's Secretary of the Ministry of Jal Shakti, stating:

2. Pakistan does not accept the premise and interpretation which India advances with respect to Article XII (3) of the Indus Waters Treaty or its assertion that a refusal by Pakistan to enter into negotiations on the modification of the Treaty could in any circumstance constitute a breach of the Treaty. Pakistan also rejects the suggestion that it lacks seriousness in engaging with India under Article XII (3) of the Treaty, a suggestion belied by Pakistan's previous correspondence to India on this subject.

3. Without prejudice to this position, and as stated in earlier correspondence, Pakistan remains open to hearing India's concerns and committed to a constructive engagement between the two sides.

4. I hereby nominate Pakistan's Commissioner for Indus Waters as Government of Pakistan's principal point of contact and invite you to nominate a principal point of contact for the Government of India to work out details of the proposed meeting. It would be helpful to have your response by no later than 23rd May 2025.⁹⁶

99. Pakistan's Secretary of the Ministry of Water Resources sent a further letter to India's Secretary of the Ministry of Jal Shakti on 8 May 2025, stating:

⁹⁴ **P-0700**, 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.

⁹⁵ **P-0691**, "PM Shehbaz says Pakistan open to 'neutral, transparent' probe into Pahalgam attack" Dawn dated 26 April 2025; **P-0692**, "Pahalgam attack: FM Dar throws down gauntlet to India, asks for evidence of allegations against Pakistan" Dawn dated 24 April 2025; **P-0693**, Video Excerpt, "Federal Ministers Ishaq Dar & Khawaja Asif Important Press Conference" 24 News HD dated 24 April 2025.

⁹⁶ **P-0797-Y**, Letter No. 4(38)/2015-Water dated 8 May 2025.

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. It 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 effects 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.⁹⁷

100. Pakistan has indicated that, to date, it had received no response from India to this letter.⁹⁸

101. From 6 to 10 May 2025, military strikes occurred between India and Pakistan, following which a ceasefire was agreed on 10 May 2025.⁹⁹

102. Subsequent statements were made by officials of India and Pakistan with reference to the Treaty, including in press briefings and official statements, such as speeches at the UN Security

⁹⁷ **P-0706**, 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.

⁹⁸ Pakistan Memorial, para. 4.14; Tr., Day 2, 27 April 2026, p. 32:3–24.

⁹⁹ **P-0760**, UN Special Procedures Communication to India Concerning Human Rights Impacts of Military Response and Suspension of the Indus Waters Treaty (Ref. AL IND 10/2025), dated 16 October 2025, p. 3; **P-0698**, J. Curtis, Kashmir: Renewed India-Pakistan Tensions (House of Commons Library, Research Briefing No. 10264) dated 16 May 2025, pp. 4, 13–15. See also Pakistan’s Submissions on Recent Developments, para. 2.11.

Council.¹⁰⁰ Indian and Pakistani media reported on these developments, and further statements regarding the Treaty have been attributed to Indian and Pakistani officials.¹⁰¹

E. THE EFFECT OF THE DECISION ON ABEYANCE ON THE NEUTRAL EXPERT PROCEEDINGS

103. On 26 May 2025, India wrote to the Neutral Expert, informing him that “India has taken a considered decision to keep the Treaty in abeyance” and requesting that the Neutral Expert “vacate the dates fixed for further hearing, and the time table under the existing Work Programme may be put on hold”.¹⁰²
104. On 27 May 2025, Pakistan responded to India’s letter, stating that India’s abeyance decision had “no legal effect” and that the “Treaty remain[ed] in full force for all legal purposes”, and thus there was “no basis” for the Neutral Expert to vacate the dates in his Work Programme.¹⁰³
105. On 5 June 2025, India wrote to the Neutral Expert, reiterating its request that the Neutral Expert vacate the procedural timetable in the Neutral Expert Proceedings, in light of “India’s decision to place the Treaty in abeyance”.¹⁰⁴
106. The Neutral Expert rejected India’s request on 17 June 2025.¹⁰⁵ [REDACTED]

¹⁰⁰ See **P-0697**, Compendium of Recent Statements, pp. 30–132; **P-0698**, J. Curtis, Kashmir: Renewed India-Pakistan Tensions (House of Commons Library, Research Briefing No. 10264) dated 16 May 2025, pp. 10–12; **P-0772**, Keynote Remarks by Ambassador Asim Iftikhar Ahmad, Permanent Representative of Pakistan, At the High-Level Event on “Indus Waters Treaty and Pakistan’s Water Crisis: Challenges and the Way Forward” Organized at the UN Headquarters dated 11 September 2025, pp. 1–2; **P-0773**, Address by the Prime Minister at the 80th Session of the UN General Assembly, 26 September 2025; **P-0774**, Letter from the Permanent Representative of Pakistan to the UN addressed to the President of the Security Council dated 12 December 2025, pp. 2–3.

¹⁰¹ See, e.g., **P-0697**, Compendium of Recent Statements, pp. 27–28, 30–132; **P-0698**, J. Curtis, Kashmir: Renewed India-Pakistan Tensions (House of Commons Library, Research Briefing No. 10264) dated 16 May 2025, pp. 10–12.

¹⁰² **P-0731**, Neutral Expert (*Indus Waters*), Letter to the Parties (India’s Request for Suspension of Work Programme) (redacted) dated 17 June 2025.

¹⁰³ **P-0731**, Neutral Expert (*Indus Waters*), Letter to the Parties (India’s Request for Suspension of Work Programme) (redacted) dated 17 June 2025, p. 2. See also [REDACTED]

¹⁰⁴ **P-0731**, Neutral Expert (*Indus Waters*), Letter to the Parties (India’s Request for Suspension of Work Programme) (redacted) dated 17 June 2025, p. 2. See also [REDACTED]

¹⁰⁵ **P-0731**, Neutral Expert (*Indus Waters*), Letter to the Parties (India’s Request for Suspension of Work Programme) (redacted) dated 17 June 2025.

106 [REDACTED]
107 [REDACTED]

107. On 28 July 2025, India wrote to the Neutral Expert, informing him that India “will not be in a position to move forward with or participate in the Neutral Expert proceedings”.¹⁰⁸ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]¹⁰⁹

108. On the same date, Pakistan responded to India’s letter, requesting that the scheduled Fourth Meeting with the Neutral Expert go ahead, despite India’s withdrawal.¹¹⁰ India reiterated its position in another letter on 13 August 2025.¹¹¹ In a letter of the same date, the Neutral Expert confirmed that the Work Programme remained in place.¹¹²

109. On 29 September 2025, India wrote to the World Bank as follows:

On 23 April 2025, India had notified its decision to keep the Indus Waters Treaty, 1960 in abeyance with immediate effect.

It is India’s considered and firm position that while the Treaty is in abeyance, all its provisions are inoperative, including those relating to the design and operation of Hydroelectric Plants. The Neutral Expert process, which is a part of the dispute resolution mechanism under the Treaty for resolution of differences arising in relation to these provisions, must as of necessity be in abeyance.

In the correspondence with the Neutral Expert and Pakistan, India had informed Mr. Lino unequivocally of its position and invited him to place the proceedings in abeyance. India expects that the Neutral Expert will acknowledge the strength of India’s stand and will not

106 [REDACTED]
107 [REDACTED]
108 **P-0732**, Neutral Expert (*Indus Waters*), Letter to the Parties (India’s Restated Request for Suspension of Work Programme) (redacted) dated 13 August 2025, p. 1. See also [REDACTED]
[REDACTED]
109 [REDACTED]
110 **P-0732**, Neutral Expert (*Indus Waters*), Letter to the Parties (India’s Restated Request for Suspension of Work Programme) (redacted) dated 13 August 2025, p. 1. See also [REDACTED]
[REDACTED]
111 **P-0732**, Neutral Expert (*Indus Waters*), Letter to the Parties (India’s Restated Request for Suspension of Work Programme) (redacted) dated 13 August 2025, p. 2. See also [REDACTED]
[REDACTED]
112 **P-0732**, Neutral Expert (*Indus Waters*), Letter to the Parties (India’s Restated Request for Suspension of Work Programme) (redacted) dated 13 August 2025, p. 2.

move any further with his proceedings. It is further understood that with the Treaty being in abeyance, all parties to the Treaty will also cease to act under the Treaty.¹¹³

110. From 17 to 21 November 2025, the Fourth Meeting of the Neutral Expert was held without India's participation. During this meeting, Pakistan made an application to the Neutral Expert that he bifurcate the proceedings, requesting him to render a partial decision on certain aspects of the differences pertaining to outlets, spillways, intakes, and freeboard at the RHEP, relative to a hypothetical Dead Storage Level, in light of the Court's Award on Issues of General Interpretation and Decision on the Request for Clarification.
111. On 15 December 2025, Pakistan wrote to the Neutral Expert, highlighting reports in the Indian press that "[c]onstruction activity [at the RHEP] had gathered momentum after the [Indian] government suspended the Indus Waters Treaty following the [Pahalgam] terror attack ... allowing India to proceed with projects on the Indus river system without objections or clearances from Pakistan".¹¹⁴
112. On 18 December 2025, the Neutral Expert rejected Pakistan's application for bifurcation, ruling that "the effectiveness of the process would not be served by bifurcating the determination of the issues in the manner proposed by Pakistan, or in any other manner presently within the Neutral Expert's contemplation", and that with regard to the Updated RHEP Construction Schedule, "the potential gain of a few months in the timetable of these proceedings would not justify the risk" of "fatally compromis[ing] the quality of the Neutral Expert's decision".¹¹⁵ The Neutral Expert also considered the press reports identified by Pakistan to be "vague and somewhat contradictory".¹¹⁶

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¹¹³ **P-0782**, Letter from the World Bank to Pakistan dated 12 November 2025, enclosing Letter from India to the World Bank dated 29 September 2025, p. 1.

¹¹⁴ **P-0770**, Letter No. WT(132)/(8198-A)/PCIW from the PCIW to the ICIW dated 15 December 2025, p. 1.

¹¹⁵ **P-0726**, Neutral Expert (*Indus Waters*), Letter to the Parties (Bifurcation, Work Programme, and Publication of Decisions) (redacted) dated 18 December 2025, p. 3.

¹¹⁶ **P-0726**, Neutral Expert (*Indus Waters*), Letter to the Parties (Bifurcation, Work Programme, and Publication of Decisions) (redacted) dated 18 December 2025, p. 4.

IV. REQUEST FOR RELIEF

113. In its Treaty Status Application dated 4 March 2026, Pakistan sought the following from the Court regarding the status of the Treaty:

[A] determination by the Court that the Treaty remains in force notwithstanding India's policy of Abeyance, under cover of which India appears intent on accelerating construction, *inter alia*, of the RHEP in almost explicitly acknowledged disregard of the Treaty and of the pending proceedings before the Court and the Neutral Expert.¹¹⁷

114. On 28 April 2026, following the Hearing on Pakistan's Treaty Status Application, Pakistan's Acting Co-Agent, H.E. Mr. Syed Haider Shah, formally presented Pakistan's Final Submissions, which outlined Pakistan's requests to the Court with respect to the status of the Treaty as follows:

With respect to its Application for the Determination of the Present Status of the Indus Waters Treaty, Pakistan requests the Court, in the form of an award, to adjudge and declare that:

- A. the Indus Waters Treaty remains in force notwithstanding India's policy of Abeyance declared on 23 April 2025 and communicated to Pakistan on 24 April 2025; and
- B. India remains bound by and must observe, without exception, all of its obligations under the Treaty, including those relating to the design and operation of Hydroelectric Plants and the dispute resolution mechanisms of the Treaty.¹¹⁸

* * *

¹¹⁷ Treaty Status Application, para. 1.8.

¹¹⁸ Pakistan's Final Submissions, p. 2. *See also* Pakistan's Memorial, para. 6.9.

V. PRELIMINARY MATTERS

A. APPLICABLE LAW

115. A preliminary matter for consideration is the law to be applied by the Court of Arbitration in this Award.

116. The Treaty establishes the law to be applied by the Court when addressing Pakistan's Treaty Status Application. Specifically, Paragraph 29 of Annexure G to the Treaty provides:

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

(a) International conventions establishing rules which are expressly recognized by the Parties.

(b) Customary international law.¹¹⁹

117. As noted in the Award on Issues of General Interpretation¹²⁰ and the Supplemental Award on Maximum Pondage,¹²¹ Paragraph 29 of Annexure G to the Treaty establishes a hierarchy of legal sources to be applied by a court of arbitration, which prioritizes the application of the Treaty while permitting, in order of hierarchy, recourse to international conventions and customary international law.

118. Thus, the primary source of law to be applied by the Court in this Award is the Treaty. While the Court may look beyond the terms of the Treaty to other sources, it may do so only when this is "necessary" for the interpretation or application of the Treaty, and then "only to the extent necessary for that purpose". Two sources of customary international law that are necessary for the decisions reached in this Award are the law of treaties and the law on the responsibility of States for internationally wrongful acts.

119. With respect to customary international law rules concerning the law of treaties, such rules are well-developed in the widespread and consistent practice of States, undertaken out of a sense of legal obligation. Such rules are largely codified in the VCLT, which identifies, *inter alia*, rules relating to the interpretation, termination, and suspension of the operation of treaties. Neither India nor Pakistan is a party to the VCLT; moreover, even if India and Pakistan were parties to

¹¹⁹ PLA-0001, Treaty, Annexure G, para. 29.

¹²⁰ Award on Issues of General Interpretation, Pt. VI.

¹²¹ Supplemental Award on Maximum Pondage, para. 70.

the VCLT, the VCLT by its own terms does not apply to treaties that pre-date the VCLT,¹²² which is the case for the 1960 Treaty.

120. Even so, most of the rules of the VCLT are regarded as reflecting customary international law. In the case of the rules on treaty interpretation, the Court has previously noted that “Article 31 (‘General rule of interpretation’) and Article 32 (‘Supplementary means of interpretation’) are generally considered by international courts, expert bodies, and publicists to reflect rules of customary international law, and have been acknowledged as such by the Parties”.¹²³ Regarding the rules on termination or suspension of the operation of a treaty, such rules are addressed at VCLT Part V, Sections 1 and 3–5.¹²⁴ Two of those rules—Article 60 (concerning breach) and Article 62 (concerning changed circumstances)—are pertinent to the Court’s analysis below; whether they reflect customary international law is addressed at Part VII(D).¹²⁵
121. Additional rules on the effect of armed conflict on treaties are also pertinent to this Award. A relevant instrument in this regard is the Articles on the Effects of Armed Conflict on Treaties, which were adopted by the UN International Law Commission (“ILC”) in 2011;¹²⁶ the status of these rules as customary international law is also addressed at Part VII(D).¹²⁷
122. With respect to rules on the responsibility of States for internationally wrongful acts, of particular relevance for this Award are the rules on the permissibility of countermeasures by an injured State in response to the antecedent wrongful act of another State. In this regard, a relevant instrument is the Articles on Responsibility of States for Internationally Wrongful Acts (“**Articles on State**

¹²² **PLA-0005**, VCLT, Art. 4.

¹²³ Award on Issues of General Interpretation, para. 270 (citations omitted). See also Award on Issues of General Interpretation, paras. 271–272 (discussing the various elements of VCLT Articles 31–32 and their status as customary international law, including good faith interpretation of the terms in their context and in light of the treaty’s object and purpose, together with the subsequent practice of the parties in the application of the treaty, other relevant rules of international law applicable in the relations between the parties, and supplementary means of interpretation, such as the *travaux préparatoires*).

¹²⁴ **PLA-0005**, VCLT, Arts. 42–45, 54–71.

¹²⁵ See paras. 237–269 (breach), 270–276 (changed circumstances), *infra*.

¹²⁶ **PLA-0150**, ILC, Draft Articles on the Effects of Armed Conflict on Treaties, with Commentaries, Yearbook of the International Law Commission, 2011, Vol. II, Pt. Two, pp. 108–130.

¹²⁷ See paras. 292–294, *infra*.

Responsibility”), which were adopted by the ILC in 2001.¹²⁸ To the extent that those Articles are applied, the customary international law status of the rules therein is addressed in Part VII(E).¹²⁹

B. THE RELEVANCE OF THE COURT’S SUPPLEMENTAL AWARD ON COMPETENCE

123. A further preliminary matter concerns the relevance to this Award of the Court’s Supplemental Award on Competence, aspects of which bear upon, and provide context to, the issues for determination before the Court.

124. In the Supplemental Award on Competence, the Court addressed the implications, if any, of India’s position that the Treaty was being held in “abeyance” on the competence of the Court and on the continuation of these proceedings.¹³⁰ Responding to an inquiry from the Court about India’s statements, Pakistan did not request that the Court rule on the effect of India’s position on the status of the Treaty more broadly. Rather, in its submissions to the Court at that time, Pakistan requested the following relief:

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.¹³¹

¹²⁸ **PLA-0149**, Articles on State Responsibility. The Articles on State Responsibility were accompanied with ILC commentary. See Articles on the Responsibility of States for International Wrongful Acts, with Commentary, Yearbook of the International Law Commission, 2001, Vol. II, Pt. Two, pp. 31–143 (“**Articles on State Responsibility Commentary**”).

¹²⁹ See paras. 301–305, *infra*.

¹³⁰ Supplemental Award on Competence, para. 51.

¹³¹ Pakistan’s Submissions on Recent Developments, para. 6.8.

125. At the outset, the Court recalled that, pursuant to Paragraph 16 of Annexure G to the Treaty, it is for the Court to decide all questions relating to its competence (*compétence de la compétence*), and that the source of such competence lies in the standing consent of the Parties, including India, given at the time of signature and ratification of the Treaty.¹³² Accordingly, having established that the Court is properly seized of the disputes raised in Pakistan’s Request for Arbitration, the question before the Court was “whether any event post-dating Pakistan’s Request for Arbitration—in particular, a unilateral claim by a Party that the Treaty is in ‘abeyance’ (which may or may not mean ‘suspension’)—can deprive the Court of its competence”.¹³³
126. In addressing the issues before it, the Court commenced with the text of the Treaty, observing that the Treaty contains no provision for the “abeyance” or “suspension” of the Treaty, either unilaterally or by agreement, and to the contrary, Article XII(4) provides that the Treaty shall continue in force until terminated by a duly ratified treaty concluded for that purpose between the two Governments.¹³⁴ The Court opined that the text of the Treaty reflects an intention to prevent unilateral action from altering “the rights, obligations, and procedures established by the Treaty, including the Treaty’s dispute settlement procedures”.¹³⁵ The Court further considered that the object and purpose of the Treaty—including the compulsory resolution of questions concerning its interpretation or application—would be undermined if either Party, by unilateral action, could suspend an ongoing dispute settlement proceeding.¹³⁶ The Court therefore concluded that “the text of the Treaty, read in light of its object and purpose, does not allow either Party, acting unilaterally, to hold in abeyance or suspend an ongoing dispute settlement process”.¹³⁷
127. The Court considered it appropriate to consider relevant rules of customary international law,¹³⁸ which confirmed that jurisdiction is to be assessed by reference to the situation existing at the date on which proceedings were instituted, and that events occurring after the initiation of

¹³² Supplemental Award on Competence, para. 52, citing **PLA-0001**, Treaty, Annexure G, para. 16; Award on Competence, para. 154.

¹³³ Supplemental Award on Competence, para. 53.

¹³⁴ Supplemental Award on Competence, para. 54.

¹³⁵ Supplemental Award on Competence, para. 55.

¹³⁶ Supplemental Award on Competence, para. 56 (“It is difficult to see how this object and purpose of the Treaty—compulsory dispute resolution for definitive resolution of disputes arising between the Parties—could possibly be achieved if it were open to either Party, acting unilaterally, to suspend an ongoing dispute settlement process. Such an interpretation would fundamentally undermine ‘the value and efficacy of the Treaty’s compulsory third-party dispute settlement process.’”).

¹³⁷ Supplemental Award on Competence, para. 58.

¹³⁸ Supplemental Award on Competence, para. 59.

proceedings (such as subsequent unilateral action by a Party) shall have no effect on jurisdiction.¹³⁹

128. Applying this rule, the Court held that India's position that it is holding the Treaty in "abeyance", however characterized as a matter of international law, does not deprive the Court of competence, stating:

Given the rule identified above, the Court finds it unnecessary to determine what exactly India means by "abeyance" in the 23 April Statement or 24 April Letter, including whether that term reflects an assertion that the Treaty is suspended. Nor is it necessary for the Court to determine whether any such suspension may be justified by India based on the law of treaties (such as due to a material breach of the Treaty by Pakistan or a fundamental change of circumstances) or based on the law concerning the responsibility of States for internationally wrongful acts (such as rules on countermeasures). The relevant question here is whether a unilateral act by India that postdates the filing of Pakistan's Request for Arbitration can have any effect upon the competence of the Court. Since it cannot, the Court's competence remains intact, regardless of how one characterizes or justifies India's position that it is holding the Treaty in "abeyance".¹⁴⁰

129. With respect to the Neutral Expert, the Court continued to refrain from taking a position on the Neutral Expert's competence. Nevertheless, the Court held that the principle identified in the Supplemental Award applies *mutatis mutandis* to any competence otherwise possessed by the Neutral Expert: once proceedings have been initiated in accordance with the Treaty, neither Party, by unilateral action, may deprive the Neutral Expert of any competence that otherwise validly exists.¹⁴¹
130. Accordingly, for the purposes of the present phase of the proceedings, the Court established in the Supplemental Award on Competence that a Party's unilateral declaration that a Treaty is in "abeyance" does not deprive a court of arbitration or a neutral expert of its competence over proceedings that have already been properly commenced. While deciding that India's decision on abeyance did not preclude the Court's competence in these proceedings, the Court did not go further in addressing the effect, if any, of that decision on the overall status of the Treaty. Thus, the Court's Supplemental Award on Competence does not constitute a precedent that directly speaks to the issue now before the Court. At the same time, the reasoning of the Court in the Supplemental Award on Competence may be taken into account in the present phase of the proceedings, as aspects of that reasoning are relevant to the overall status of the Treaty.

¹³⁹ Supplemental Award on Competence, para. 59.

¹⁴⁰ Supplemental Award on Competence, para. 69.

¹⁴¹ Supplemental Award on Competence, paras. 70–75.

C. EVIDENTIARY CONSIDERATIONS

131. A third preliminary matter concerns Pakistan's reliance on different types of evidence in support of its application.¹⁴²
132. Because India is not participating in these proceedings, the Court has not received directly from India its views as to what is meant, exactly, by its decision on abeyance, what consequences flow from it, and the legal basis for such a decision. Accordingly, Pakistan has relied on evidence from April 2025 to the present principally in the form of: Indian government communications to Pakistan, to the Neutral Expert, and to the World Bank; Indian government official statements to the UN Security Council or during press briefings; an interview of India's Home Minister with the press; other statements of Indian government officials as reported in the press; and more general press reports.
133. The Court regards the diplomatic communications by the Indian government to Pakistan, the Neutral Expert, and the World Bank as reliable evidence, as they are official written statements by the government as to its decision on abeyance. Indeed, diplomatic communications of a party have regularly been relied upon in situations involving the non-appearance of that party, including on fundamental matters such as the jurisdiction of a court¹⁴³ or tribunal.¹⁴⁴ Similarly, the Indian government's statement delivered orally before the UN Security Council is reliable evidence as to India's position.¹⁴⁵
134. The statements of Indian government officials made as part of lengthy interviews with the press, or during press briefings, also should normally be considered reliable evidence, although the less structured setting should be considered. Statements of Indian government officials quoted in news

¹⁴² See paras. 179–185, *infra*.

¹⁴³ Award on Competence, paras. 25, 30, *referring to P-0001*, Letter from India to the World Bank dated 21 December 2022.

¹⁴⁴ See, e.g., **PLA-0080**, *The Arctic Sunrise Arbitration (Netherlands v. Russia)*, PCA Case No. 2014-02, Award on Jurisdiction of 26 November 2014, para. 48 (referring to a diplomatic note from Russia to the Permanent Court of Arbitration); **PLA-0178**, *The South China Sea Arbitration (The Republic of Philippines v. The People's Republic of China)*, PCA Case No. 2013-19, Award on Jurisdiction and Admissibility of 29 October 2015, paras. 10, 68 (referring to diplomatic notes from China to the Philippines and to the Permanent Court of Arbitration).

¹⁴⁵ See, e.g., **PLA-0018**, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits Judgment, 1986 ICJ Rep. 14, paras. 88–89, 91 (placing reliance on a party's statements before the UN Security Council). See also **PLA-0018**, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits Judgment, 1986 ICJ Rep. 14, para. 73 (placing reliance on a non-appearing party's report circulated to the members of the UN Security Council and the UN General Assembly).

reports may be reliable evidence, but should be approached with greater caution, as the context, meaning, and accuracy of the quotation are less readily discerned. The Court's attention has also been drawn to statements and articles concerning India's positions written by India's former Commissioner for Indus Waters, Shri Pradeep Kumar Saxena, which have been disseminated by the Indian Government. While these concern the statements of a former official, the Court considers that such dissemination gives them relevance for the Court's efforts to discern India's position.

135. Of course, when any such statements appear designed to place the government in a favorable light, they must be considered with caution. Yet, when the statement is neutrally asserting a government's official position, or casts doubt on the credibility of its official position, such evidence should be regarded as reliable. Surveying the evidence of statements by government officials before it in *Military and Paramilitary Activities in and against Nicaragua*, the ICJ stated:

The material before the Court also includes statements by representatives of States, sometimes at the highest political level. Some of these statements were made before official organs of the State or of an international or regional organization, and appear in the official records of those bodies. Others, made during press conferences or interviews, were reported by the local or international press. The Court takes the view that statements of this kind, emanating from high-ranking official political figures, sometimes indeed of the highest rank, are of particular probative value when they acknowledge facts or conduct unfavourable to the State represented by the person who made them.¹⁴⁶

136. The ICJ further stated that it "must take account of the manner in which the statements were made public; evidently, it cannot treat them as having the same value irrespective of whether the text is to be found in an official national or international publication, or in a book or newspaper".¹⁴⁷
137. The Court also approaches with caution more general press reports or other secondary sources purporting to indicate the Indian government's position, absent some form of corroborating evidence. In regard to such secondary sources, the ICJ "has been careful to treat them with great caution; even if they seem to meet high standards of objectivity, the Court regards them not as evidence capable of proving facts, but as material which can nevertheless contribute, in some circumstances, to corroborating the existence of a fact, i.e., as illustrative material additional to

¹⁴⁶ **PLA-0018**, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits Judgment, 1986 ICJ Rep. 14, para. 64. See generally Anna Riddell and Brendan Plant, *Evidence before the International Court of Justice* (British Institute of International and Comparative Law, 2016).

¹⁴⁷ **PLA-0018**, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits Judgment, 1986 ICJ Rep. 14, para. 65.

other sources of evidence”.¹⁴⁸ Indeed, the ICJ has cautioned that: “Widespread reports of a fact may prove on closer examination to derive from a single source, and such reports, however numerous, will in such case have no greater value as evidence than the original source”.¹⁴⁹ At the same time, the ICJ has noted that, “although it is perfectly proper that press information should not be treated in itself as evidence for judicial purposes, public knowledge of a fact may nevertheless be established by means of these sources of information, and the Court can attach a certain amount of weight to such public knowledge”.¹⁵⁰

138. Pakistan placed before the Court information on whether the Treaty is terminated or suspended as expressed by the President of the World Bank, by certain UN Special Rapporteurs, and by scholars. While the Court acknowledges the existence of such information, it is the Court that is empowered to interpret issues arising in relation to the Treaty and therefore does not place weight on such statements or legal analyses. By contrast, the Court regards as relevant and reliable the information and the opinions contained in the report by the UN Special Rapporteurs as to the potential effects in Pakistan, including to human rights, from a termination or suspension of the operation of the Treaty, given that such matters are within the Special Rapporteurs’ particular expertise.
139. Finally, Pakistan also has placed before the Court various types of information that it refers to as “circumstantial evidence” as to India’s intentions in adopting its decision on abeyance.¹⁵¹ This information falls into four general categories: (1) information concerning alleged releases of water from India’s HEPs on the Western Rivers; (2) information as to alleged withholding of data by India; (3) information as to alleged potential diversion of the Western Rivers by India; and (4) information as to India’s alleged accelerated development of its Run-of-River HEPs on the

¹⁴⁸ **PLA-0018**, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits Judgment, 1986 ICJ Rep. 14, para. 62. See *Application in the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, 2008 ICJ Rep. 3, para. 239 (“Evidence of this kind and other documentary material (such as press articles and extracts from books) are merely of a secondary nature and may only be used to confirm the existence of facts established by other evidence”).

¹⁴⁹ **PLA-0018**, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits Judgment, 1986 ICJ Rep. 14, para. 63.

¹⁵⁰ **PLA-0018**, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits Judgment, 1986 ICJ Rep. 14, para. 63 (quoting *United States Diplomatic and Consular Staff in Tehran* to the effect that facts that “are, for the most part, matters of public knowledge which have received extensive coverage in the world press and in radio and television broadcasts from Iran and other countries”).

¹⁵¹ See Pakistan Memorial, pp. 73–80.

Western Rivers. The Court has reviewed and considered all such evidence, but has not found it necessary to rely upon such evidence for reaching the decisions set forth in this Award.

D. STEPS TAKEN TO ENSURE CONFIDENTIALITY OF 28 NEUTRAL EXPERT DOCUMENTS

140. Following the submission of the Pondage Logbooks and the NE PIMTS Documents (together, the “**NE Documents**”) into these proceedings,¹⁵² the Court has taken steps to ensure that those documents are subject to strict confidentiality and treated consistently with the confidentiality arrangements applicable in the Neutral Expert Proceedings. Specifically, the Neutral Expert has established a rule governing the transparency and confidentiality of the Neutral Expert Proceedings, which provides that certain information is to be public, other information is to be confidential, and the treatment of confidential information is subject to the direction of the Neutral Expert. Rule 14 of his Supplementary Rules of Procedure provides:

TRANSPARENCY AND CONFIDENTIALITY

- 14.1 The appointment of the Neutral Expert and the existence of these Neutral Expert proceedings are matters already in the public domain. Accordingly, the Registry shall identify on its website the names of the Parties, the Neutral Expert, and the designated (authorized) representatives, representatives and counsel for the Parties. The Parties will have an opportunity to review the content of any website relating to these proceedings prior to publication by the Registry.
- 14.2 These Rules and procedural and substantive decisions of the Neutral Expert shall be made publicly available, including on the website of the Registry.
- 14.3 Unless the Neutral Expert directs otherwise after ascertaining the views of the Parties, the Parties, the Neutral Expert, the Registry and any assistants engaged by the Neutral Expert shall maintain strict confidentiality in respect of all other aspects of the proceedings.¹⁵³
141. In light of this decision, the Court has taken specific measures to ensure that the NE Documents are treated consistently with the confidentiality arrangements applicable in the Neutral Expert Proceedings. *First*, the Court notes that it has not permitted the unrestricted introduction of documents from the Neutral Expert Proceedings into these proceedings, and has instead only permitted those documents that appear to be relevant and material to the matters before the Court.¹⁵⁴ The Court also declined to consider requests for the production of documents relating to a potential future phase of these proceedings, so as to limit the scope of documents to be disclosed

¹⁵² See paras. 47–49, *supra*.

¹⁵³ Supplemental Rules of Procedure in the Neutral Expert Proceedings under the Indus Waters Treaty 1960 in Respect of the Ratle and Kishenganga Hydroelectric Plants, *Indus Waters Treaty Neutral Expert Proceedings (India v. Pakistan)*, 1 June 2023, Rule 14.

¹⁵⁴ Procedural Order No. 22, paras. 64–66.

to those relevant and material to the Court's determinations for phases that the Court has decided to commence.¹⁵⁵

142. *Second*, the Court sought to preserve the role of the Neutral Expert in relation to any materials subject to the confidentiality regime of the Neutral Expert Proceedings. Specifically, the Court contemplated that Pakistan would first apply to the Neutral Expert for disclosure of the documents into these proceedings, and that the Neutral Expert could determine whether the documents fell within the relevant categories, whether any further contextual documents should also be disclosed, and whether any reduction in the scope of disclosure was appropriate.¹⁵⁶
143. *Third*, with regard to the NE Documents introduced into these proceedings, the Court determined in Procedural Order No. 20 (Submission of Pondage Logbooks from the Neutral Expert Proceedings) and Procedural Order No. 22 (Request by Pakistan for Directions Regarding the Disclosure of Certain Documents from the Neutral Expert Proceedings) that the documents from the proceedings of the Neutral Expert shall be kept confidential in the present proceedings, and the Court and the Parties shall refrain from making them public, except to the extent that disclosure is required of a Party by legal duty, to protect or pursue a legal right, or in relation to legal proceedings before a court or other competent authority.
144. In light of the need to maintain the confidentiality of the NE Documents introduced into the proceedings, the Court addressed the issue of the publication of Pakistan's submissions in the Phase on Interim Measures and Treaty Status at the case management conference on 28 April 2026, and further invited the Parties to provide their written comments on this issue. Furthermore, on issuing the Supplemental Award on Maximum Pondage, the Court similarly invited the Parties to indicate any redactions they considered appropriate prior to the publication of the Award, bearing in mind that the Supplemental Award addressed certain materials that were introduced into these proceedings from the Neutral Expert Proceedings. The Court thereafter published the Supplemental Award on Maximum Pondage subject to certain redactions, which the Court indicated it will review prior to the close of these proceedings, and after consultation with the Parties.¹⁵⁷
145. The Court will follow the same approach with respect to redactions to this Award.

¹⁵⁵ Procedural Order No. 19, para. 53.

¹⁵⁶ Procedural Order No. 22, paras. 56–63.

¹⁵⁷ See paras. 35–37, *supra*.

E. STEPS TAKEN TO ENSURE PROCEDURAL FAIRNESS TO BOTH PARTIES

146. Despite its non-participation, India is a Party to these proceedings and has given standing consent in the Treaty to be bound by its terms, including its dispute resolution provisions, and consequently any awards rendered by the Court. The Court at all times has proceeded on an assumption that the possibility of India's participation in these proceedings in due course should be preserved, while also bearing in mind the need to ensure due process in these proceedings.
147. The Court has therefore sought to conduct the arbitration in such a manner that ensures that the Parties are treated with equality and that at each stage of the proceedings each Party is given a full opportunity to be heard and to present its case.¹⁵⁸ To this end, the Court has ensured that all communications, procedural orders, submissions, evidence, transcripts, and other materials have been made available to both Parties, including through electronic means and an online repository, and have been promptly delivered, both electronically and physically, to representatives of India.¹⁵⁹ India has been afforded the same opportunities as Pakistan to submit written submissions and comment on draft procedural orders, applications, proposed procedural steps, hearing and site-visit arrangements, and other matters arising in the proceedings. The Court has also provided timely notice of all meetings, hearings, and procedural steps, extended the time for India to exercise its right to appoint arbitrators, and repeatedly confirmed that India may participate in the proceedings.¹⁶⁰
148. While India is not participating in this arbitration, in assessing the merits of the positions of the Parties, the Court has also sought to take into account India's positions to the extent they are discernible from the statements and conduct of India available to the Court. India previously has stated its positions in relation to the issues before the Court in various fora, including Indian government communications to Pakistan, to the Neutral Expert, and to the World Bank, and Indian government official statements to the UN Security Council or during press briefings. Throughout the proceedings, the Court has drawn upon India's statements and conduct to comprehend India's positions on the issues for determination, in accordance with the Court's standing duty to satisfy itself that Pakistan's claims are well founded in fact and law.¹⁶¹

¹⁵⁸ Supplemental Rules of Procedure, Art. 10(1).

¹⁵⁹ **PLA-0001**, Treaty, Annexure G, para. 18; Supplemental Rules of Procedure, Art. 5.4.

¹⁶⁰ Award on Issues of General Interpretation, para. 241.

¹⁶¹ Supplemental Rules of Procedure, Art. 25(2).

149. While seeking to ensure that the possibility of India's participation in these proceedings is preserved, the Court has further sought to conduct the arbitration in a way that avoids unnecessary delay and expense, and that provides a fair and efficient process for resolving the Parties' disputes.¹⁶² On that basis, the Court determined that it would conduct these proceedings in a phased manner, bearing in mind the status of, and developments concerning, the proceedings taking place before the Neutral Expert.¹⁶³ In particular, the Court conducted the Second Phase on the Merits in an expedited manner, at the request of Pakistan, to avoid possible conflict between the Court and the Neutral Expert with respect to the same or related matters. The Court further conducted the Phase on Interim Measures and Treaty Status in an expedited manner, cognizant of the need to ensure the effectiveness of any decision bearing on the Parties' rights and obligations under the Treaty.

* * *

¹⁶² Supplemental Rules of Procedure, Art. 10(2).

¹⁶³ Procedural Order No. 6, para. 34.

VI. THE PARTIES' POSITIONS

A. PAKISTAN'S POSITION

1. The Competence of the Court

150. Pakistan submits that the Court is competent to address Pakistan's Treaty Status Application pursuant, *inter alia*, to its authority under Paragraphs 16, 23, and 28 of Annexure G to the Treaty.¹⁶⁴ In support of its position, Pakistan argues that the Court's competence under the Treaty includes the power to implement measures necessary to safeguard the integrity of the proceedings, and a continuing duty to ensure the effectiveness of any resulting final award. Moreover, Pakistan claims that the Court is competent to decide and must determine all questions concerning its own competence and its procedure, and further maintains that the final award must address the issues in dispute and provide reasons in support of the award, including any relief claimed.¹⁶⁵ Consequently, given the specific relief sought in its Amended Request for Arbitration, Pakistan contends that an affirmative and dispositive determination on the status of the Treaty is essential to ensure that both the Court's final award and the Neutral Expert's final decision are legally effective and practically meaningful.¹⁶⁶
151. Pakistan submits that the above conclusions regarding the competence of the Court under Annexure G to the Treaty are underpinned and reinforced by four closely related considerations.¹⁶⁷
152. *First*, Pakistan submits that the Court is competent to determine the present status of the Treaty as this issue is central to the merits of the dispute of which the Court is seized and the remedies sought in Pakistan's Amended Request for Arbitration.¹⁶⁸ Pakistan identifies nine requests for relief set out in its Amended Request for Arbitration, which "address[] remedies in respect of the KHEP and the RHEP, which are beyond the competence of the Neutral Expert", and are therefore, in Pakistan's view, pending and awaiting determination by the Court following the issuance of

¹⁶⁴ See Pakistan's Memorial, paras. 5.2–5.34.

¹⁶⁵ Pakistan's Memorial, para. 5.6, citing **PLA-0001**, Treaty, Annexure G, para. 28; **PLA-0042**, *Indus Waters Kishenganga Arbitration (Pakistan v. India)*, Order on the Interim Measures Application of Pakistan dated 6 June 2011 (2013) XXXI UNRIAA 6 ("**Kishenganga Interim Measures Order**"), paras. 137–139.

¹⁶⁶ Pakistan's Memorial, para. 5.7.

¹⁶⁷ Pakistan's Memorial, paras. 5.8–5.34.

¹⁶⁸ Pakistan's Memorial, para. 5.9.

the Neutral Expert's final decision.¹⁶⁹ Pakistan maintains that a determination of whether the Treaty remains in force is "a necessary predicate" to the Court's ability to grant these forms of injunctive relief, as the Court cannot compel performance of obligations that no longer bind the Parties.¹⁷⁰ Similarly, Pakistan contends that the declaratory relief sought in the Second Phase on the Merits regarding systemic questions of Treaty interpretation would be deprived of legal or practical effect if the Treaty were no longer in force.¹⁷¹

153. *Second*, Pakistan argues that the Court is also competent to determine its Treaty Status Application on the basis of the settled principle that an international court or tribunal with jurisdiction over a dispute is also competent to decide incidental or ancillary questions necessary to resolve that dispute.¹⁷² Pakistan asserts that determining whether the Treaty remains in force is not an extraneous issue but directly concerns the interpretation and application of the Treaty, making it the "true object" of Pakistan's claims in these proceedings.¹⁷³
154. *Third*, Pakistan contends that even if a particular "dispute" has not been formally submitted to the Court under Article IX of the Treaty, the Court retains the competence—and indeed the obligation—to consider such issues when they are relevant to the proper application of Treaty provisions that are before it.¹⁷⁴ On this basis, Pakistan submits that determining whether the Treaty remains in force is indispensable to the Court's determination of India's continuing obligations under it and is, accordingly, "not only appropriate but essential" for the Court to address.¹⁷⁵

¹⁶⁹ Pakistan's Memorial, paras. 5.14–5.16, *citing* Pakistan's Submission on Further Phases of the Proceedings dated 1 February 2026, paras. 13(c), 17; Request for Arbitration, paras. 96(b), 96(d), 98(b), 100(b), 101(b).

¹⁷⁰ Pakistan's Memorial, paras. 5.16, 5.17.

¹⁷¹ Pakistan's Memorial, para. 5.18.

¹⁷² Pakistan's Memorial, para. 5.19.

¹⁷³ Pakistan's Memorial, paras. 5.19–5.27, *citing* **PLA-0022**, *Certain German Interests in Polish Upper Silesia (Germany v. Poland)*, Judgment, 1926 PCIJ Series A, No. 7, p. 18; **PLA-0174**, *Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)*, PCA Case No. 2011-03, Award, 18 March 2015, para. 220; **PLA-0177**, *The "Enrica Lexie" Incident (Italy v. India)*, PCA Case No. 2015-28, Award, 21 May 2020, paras. 808–809; **PLA-0147**, *Legal Consequences for States of the Continued Presence in South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 267 (1970)*, Advisory Opinion 1971 ICJ Rep. 16, paras. 1, 89.

¹⁷⁴ Pakistan's Memorial, para. 5.29, *citing* Award on Competence, para. 792 ("Pakistan has not placed before the Court a 'dispute' concerning the application of the Treaty provisions on information sharing or notification as such. The Court notes that the procedures of the Commission do not presently appear to be functioning as intended by the drafters of the Treaty, but the Court makes no findings regarding the compliance of either Party with these provisions. *Given, however, the importance of information sharing and cooperation in the intended application of the Treaty provisions that are before the Court in this phase of the proceedings, the Court considers it not only appropriate but essential to address these matters in general terms.*") (emphasis added by Pakistan).

¹⁷⁵ Pakistan's Memorial, para. 5.30.

155. *Fourth*, Pakistan submits that the resolution of the issue of the present status of the Treaty is essential to the Court’s consideration of Pakistan’s Request for Interim Measures, particularly in defining the scope of any measures to be indicated and ensuring their effectiveness in the light of India’s policy of abeyance.¹⁷⁶ Pakistan contends that the Court cannot safeguard Pakistan’s interests under the Treaty or “secure the integrity and effectiveness of its own proceedings, as well as those of the Neutral Expert, ... without first satisfying itself that those interests continue to subsist and have not been displaced or negated by India’s policy of Abeyance”.¹⁷⁷ Accordingly, before ordering interim measures aimed at preserving the *status quo*, Pakistan submits that “the Court must, at a minimum, be satisfied that the *status quo* to be preserved is one in which the Treaty continues to bind the Parties”.¹⁷⁸
156. For all of these reasons, Pakistan asserts that this Court is competent to consider Pakistan’s Treaty Status Application.¹⁷⁹

2. The Current Status of the Treaty

157. Pakistan submits that the term “abeyance”, as used by India in its initial 23 April 2025 Statement and its 24 April 2025 Letter, has no meaning under the Treaty or international law and therefore cannot have any implications for the competence of the Court or the Neutral Expert.¹⁸⁰
158. In Pakistan’s view, the Treaty remains in force and that India’s policy of “abeyance” has no legal effect on the continued operation of the Treaty’s obligations. Pakistan contends that, as recognized by the Court in its Supplemental Award on Competence, the Treaty can be terminated only by a duly ratified treaty concluded for that purpose between the two Governments pursuant to Article XII(4).¹⁸¹ In this regard, Pakistan submits that Article XII(4) of the Treaty confirms that the drafters and signatories to the Treaty intended for it to endure notwithstanding disputes between the two principal Parties.¹⁸² In Pakistan’s view, the purpose of the Treaty is to address “once and for all the looming and continuing presence of such disputes by providing for the

¹⁷⁶ Pakistan’s Memorial, para. 5.31.

¹⁷⁷ Pakistan’s Memorial, para. 5.32.

¹⁷⁸ Pakistan’s Memorial, para. 5.33.

¹⁷⁹ Pakistan’s Memorial, para. 5.34.

¹⁸⁰ Pakistan’s Memorial, paras. 5.35–5.47; Pakistan’s Submissions on Recent Developments, paras. 2.8, 3.1–3.2, 4.2.

¹⁸¹ Pakistan’s Memorial, paras. 5.35–5.36, *citing* Award on Competence, para. 54; **PLA-0001**, Treaty, Art. XII(4).

¹⁸² Pakistan’s Memorial, para. 5.44.

delimitation of the waters of the Indus Basin and the resolution of disputes in respect of such waters through the mechanisms of the Treaty”.¹⁸³

159. Given that it is undisputed that India and Pakistan have not concluded any agreement suspending or terminating the Treaty, Pakistan submits that “India’s unilateral policy of Abeyance—whatever meaning this Court may ultimately attribute to that term—has no legal effect on the continued force of the Treaty”.¹⁸⁴ Specifically, Pakistan endorses the assessment of the UN Special Rapporteurs dated 16 October 2025, who made the following statement:

Even if there were room to apply the default rules on suspension and termination of treaties under the VCLT, we emphasize two points. Firstly, under the law of treaties, assuming valid notice has been given, if the other party objects then the parties must seek a solution through the dispute settlement means indicated in article 33 of United Nations Charter (VCLT, article 65(3)); and this procedure for invoking any grounds for suspending or terminating a treaty is still subject to the dispute settlement procedures of the treaty itself (VCLT, article 65(4)). As such, unilateral suspension or termination by India, without first submitting to the Treaty’s dispute settlement procedures (including its provisions for binding determination) would be unlawful.¹⁸⁵

160. On the basis of the statements made by India in its communications, Pakistan regards India as “tak[ing] advantage of the Pahalgam atrocity to apply pressure on Pakistan to enter into negotiations to modify the Treaty”, and thus uses the Pahalgam atrocity as a “pretext for the action that India took and is taking with respect to the Treaty”.¹⁸⁶ Consequently, Pakistan assesses 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”,¹⁸⁷ which is designed to support the construction of works and other measures on the Western Rivers that are inconsistent with India’s obligations under the Treaty.¹⁸⁸ Pakistan further argues that the repeated use by India of the term “abeyance”, in the face of repeated use of the word “suspension” in the media and elsewhere, reflects India’s “posture of destructive ambiguity, characterising its policy in ambiguous terms while in actuality

¹⁸³ Pakistan’s Memorial, para. 5.44. See also **P-0760**, UN Special Procedures Communication to India Concerning Human Rights Impacts of Military Response and Suspension of the Indus Waters Treaty (Ref. AL IND 10/2025) dated 16 October 2025, p. 9.

¹⁸⁴ Pakistan’s Memorial, para. 5.37.

¹⁸⁵ Pakistan’s Memorial, para. 5.45, *citing* **P-0760**, UN Special Procedures Communication to India Concerning Human Rights Impacts of Military Response and Suspension of the Indus Waters Treaty (Ref. AL IND 10/2025) dated 16 October 2025, p. 9.

¹⁸⁶ Tr., Day 1, 26 April 2026, pp. 54:23–55:7; Pakistan’s Submissions on Recent Developments, paras. 2.9, 2.13–2.16.

¹⁸⁷ Pakistan’s Submissions on Recent Developments, para. 2.35.

¹⁸⁸ Pakistan’s Submissions on Recent Developments, paras. 2.36–2.44.

threatening and implying ‘suspension’ of the Treaty”.¹⁸⁹ In this regard, Pakistan submits that the “obscurity of India’s position” is “a design feature of India’s policy of Abeyance”.¹⁹⁰ In Pakistan’s view, “whatever label India attaches to its policy—be that suspension, Abeyance, termination—the practical meaning is identical: total non-performance of treaty obligations”.¹⁹¹

(a) *Lawful Defenses or Excuses that Might be Invoked by India do not Justify “Abeyance”, Suspension, or Termination*

161. Pakistan maintains that “there are neither relevant and applicable principles of the law of treaties, nor circumstances precluding wrongfulness under the customary international law of State responsibility that could conceivably be said to avail India in its Abeyance claim”.¹⁹²

(i) *Material breach*

162. Pakistan turns to the legal requirements under Article 60 of the VCLT, arguing that India has failed to establish a material breach of the Treaty to justify its policy of abeyance.¹⁹³ In this regard, Pakistan argues that a material breach requires either the repudiation of the treaty or the violation of “a provision essential to the accomplishment of the object or purpose of the treaty”, neither of which has occurred in the present circumstances.¹⁹⁴
163. In this instance, Pakistan notes that it has not repudiated the Treaty, such that India would have to show that Pakistan violated a provision “essential to the accomplishment of the object or purpose of the Treaty”.¹⁹⁵ According to Pakistan, this requirement cannot be met by a claimed violation of a preamble,¹⁹⁶ by an alleged failure to negotiate a new treaty,¹⁹⁷ or by alleged acts unrelated to the Treaty (such as accusations of support for cross-border terrorism).¹⁹⁸ Specifically, regarding

¹⁸⁹ Pakistan’s Submissions on Recent Developments, para. 2.18. See also Pakistan’s Submissions on Recent Developments, paras. 2.29–2.30.

¹⁹⁰ Tr., Day 1, 26 April 2026, p. 70:20–24.

¹⁹¹ Tr., Day 2, 27 April 2026, p. 34:9–12.

¹⁹² Pakistan’s Memorial, para. 5.38; Pakistan’s Submissions on Recent Developments, Ch. 4.

¹⁹³ Pakistan’s Memorial, paras. 5.71–5.81, citing **PLA-0005**, VCLT, Art. 60. See also Pakistan’s Submissions on Recent Developments, para. 4.26.

¹⁹⁴ Pakistan’s Memorial, para. 5.72, citing **PLA-0005**, VCLT, Art. 60(3). Tr., Day 2, 27 April 2026, pp. 108:17–111:20.

¹⁹⁵ Pakistan’s Submissions on Recent Developments, para. 4.27.

¹⁹⁶ Pakistan’s Submissions on Recent Developments, para. 4.28.

¹⁹⁷ Pakistan’s Submissions on Recent Developments, paras. 4.30–4.31.

¹⁹⁸ Pakistan’s Submissions on Recent Developments, para. 4.32.

India's allegation that Pakistan refused to negotiate modifications to the Treaty, Pakistan maintains that Article XII(3) of the Treaty "does not require Pakistan to agree to an Indian proposal to modify the Treaty",¹⁹⁹ and it notes that "to the contrary, Pakistan has offered to engage in discussions, has tried to organise the 119th meeting of the Permanent Indus Commission, in direct response to these concerns being raised by India, and [has] been met with silence".²⁰⁰ Furthermore, Pakistan submits that India's allegation regarding Pakistan's support for cross-border terrorism is factually unsubstantiated and legally irrelevant as the Treaty does not address terrorism and contains no provisions related to such conduct.²⁰¹ In any event, Pakistan submits that Article 60(5) of the VCLT provides that provisions relating to the protection of the human person in treaties of a humanitarian character are not subject to the relevant material breach provisions. In Pakistan's view, the Treaty provisions guaranteeing Pakistan's rights to the flow and unrestricted use of the Western Rivers are analogous to such provisions.²⁰²

(ii) Fundamental change of circumstances

164. Pakistan submits that India cannot rely on a fundamental change of circumstances to justify the termination or suspension of the operation of the Treaty. Pakistan assesses the threshold for suspending a treaty under the Vienna Convention on the Law of Treaties ("VCLT") as being "punishingly high",²⁰³ contending that it precludes a fundamental change of circumstances as a ground for suspension in all but the most highly exceptional cases.²⁰⁴ Specifically, Pakistan submits that, under Article 62 of the VCLT, read in conjunction with the *Gabčíkovo-Nagymaros Project* case, the requirements for a fundamental change of circumstances depend upon the following cumulative preconditions: (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

¹⁹⁹ Pakistan's Memorial, para. 5.76, citing **PLA-0001**, Treaty, Art. XII(3); **P-0706**, 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.

²⁰⁰ Tr., Day 2, 27 April 2026, p. 111:15–20.

²⁰¹ Pakistan's Memorial, paras. 5.78–5.79. See also **P-0760**, UN Special Procedures Communication to India Concerning Human Rights Impacts of Military Response and Suspension of the Indus Waters Treaty (Ref. AL IND 10/2025) dated 16 October 2025, p. 9. See also Tr., Day 2, 27 April 2026, pp. 113:15–118:7.

²⁰² Pakistan's Memorial, para. 5.81, citing **PLA-0005**, VCLT, Art. 60(5); **P-0760**, UN Special Procedures Communication to India Concerning Human Rights Impacts of Military Response and Suspension of the Indus Waters Treaty (Ref. AL IND 10/2025) dated 16 October 2025, p. 9.

²⁰³ Pakistan's Submissions on Recent Developments, paras. 4.4–4.8.

²⁰⁴ Pakistan's Memorial, para. 5.54, citing **PLA-0180**, R. Kolb, *The Law of Treaties: An Introduction* (2nd ed. Edward Elgar 2023), p. 257; Pakistan's Submissions on Recent Developments, paras. 4.11–4.15.

basis of the parties' consent to be bound by the treaty; (c) the effect of the change of circumstances must be radically to 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 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; and (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.²⁰⁵

165. Pakistan contends that any such claim by India “would suffer from multiple and insurmountable difficulties”.²⁰⁶
166. *First*, Pakistan submits that the doctrine of fundamental change of circumstances could not be invoked by India because the Treaty is “akin, in significance and permanence, to a boundary treaty”.²⁰⁷ Relying on Article 62(2)(a) of the VCLT,²⁰⁸ Pakistan maintains that the exclusion for treaties establishing a boundary applies to treaties of a similar delimiting character that allocate transboundary sovereign rights without temporal limitation.²⁰⁹ In Pakistan’s view, allowing unilateral assertions of fundamental change in this context would cause the Treaty to become “a source of dangerous frictions”.²¹⁰
167. *Second*, Pakistan contends that the circumstances cited by India—including population growth, clean energy needs resulting from climate change, and developments in dam technology—were all foreseeable and foreseen at the time of the conclusion of the Treaty.²¹¹ In support of its position, Pakistan points to evidence of early family planning initiatives in India, changes in dam

²⁰⁵ Pakistan’s Memorial, para. 5.52, *citing* **PLA-0005**, VCLT, Art. 62; **PLA-0094**, *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, 1997 ICJ Rep. 7, paras. 46, 99.

²⁰⁶ Pakistan’s Submissions on Recent Developments, para. 4.16. Pakistan’s Memorial, paras. 5.55–5.70.

²⁰⁷ Pakistan’s Memorial, paras. 5.53, 5.57–5.58, *citing* Award on Issues of General Interpretation, para. 430. See also Pakistan’s Submissions on Recent Developments, para. 4.17; Tr., Day 2, 27 April 2026, pp. 85:19–96:19.

²⁰⁸ **PLA-0005**, VCLT, Art. 62(2)(a) (“A fundamental change of circumstances may not be invoked as a ground for terminating or withdrawing from a treaty: (a) if the treaty establishes a boundary; ...”).

²⁰⁹ Pakistan’s Memorial, para. 5.58, *citing* **PLA-0059**, *Territorial Dispute (Libyan Arab Jamahiriya/Chad)*, Judgment, 1994 ICJ Rep. 6, paras. 72–73; **PLA-0101**, *Temple of Preah Vihear (Cambodia v. Thailand)*, Merits Judgment, 1962 ICJ Rep. 6, p. 34.

²¹⁰ Pakistan’s Memorial, para. 5.58.

²¹¹ Pakistan’s Memorial, paras. 5.55, 5.59, *citing* **P-0700**, 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, paras. 1–2. See also Pakistan’s Submissions on Recent Developments, para. 4.18; Tr., Day 2, 27 April 2026, pp. 96:20–101:8.

technology in existing hydropower texts, and long-standing scientific understanding of anthropogenic CO₂ emissions.²¹² Pakistan further notes that the ICJ in the *Gabčíkovo-Nagymaros Project* case rejected the argument that “progress of environmental knowledge and the development of new norms and prescriptions of international environmental law” represented a fundamental change of circumstances.²¹³

168. *Third*, Pakistan submits that none of the circumstances invoked by India constitute an “essential basis” for the consent of the Parties to be bound, nor have they “radically transformed” the extent of obligations under the Treaty.²¹⁴ Specifically, Pakistan maintains that India’s obligations have remained stable and that advances in dam technology are compatible with the Treaty when deployed within its constraints.²¹⁵ Regarding allegations of cross-border terrorism, Pakistan rejects these claims and argues that such concerns are “entirely unconnected” to the purpose of the Treaty, which is to delimit rights and obligations regarding the utilization of the Indus system of rivers.²¹⁶
169. *Finally*, Pakistan contends that India has failed to notify Pakistan of its reliance on the doctrine within a reasonable time after the occurrence of the alleged change.²¹⁷ Pakistan argues that “[p]opulation growth, climate change and developments in dam technology are long-term phenomena that have been known for decades”, and that allegations concerning terrorism have been made by Indian politicians for a decade.²¹⁸

²¹² Pakistan’s Memorial, para. 5.59, *citing* **P-0710**, R. Ledbetter, “Thirty Years of Family Planning in India” (1984) 24 *Asian Survey* 736; **P-0711**, George H.T. Kimble, “The Changing Climate” (1950) 182(4) *Scientific American* 48; **P-0652**, W.P. Creager & J.D. Justin (eds), *Hydro-Electric Handbook* (1st ed. John Wiley & Sons 1927); **P-0309**, W.P. Creager & J.D. Justin (eds), *Hydro-Electric Handbook* (2nd ed., John Wiley & Sons 1950).

²¹³ Pakistan’s Memorial, para. 5.60, *citing* **PLA-0094**, *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, 1997 ICJ Rep. 7.

²¹⁴ Pakistan’s Memorial, paras. 5.65–5.67. See also Pakistan’s Submissions on Recent Developments, paras. 4.19, 4.22; Tr., Day 2, 27 April 2026, pp. 101:9–104:23.

²¹⁵ Pakistan’s Memorial, paras. 5.65–5.67.

²¹⁶ Pakistan’s Memorial, para. 5.67.

²¹⁷ Pakistan’s Memorial, paras. 5.68–5.70. See also Pakistan’s Submissions on Recent Developments, para. 4.23.

²¹⁸ Pakistan’s Memorial, para. 5.68.

(iii) Suspension or termination on grounds of armed conflict

170. Pakistan maintains that any armed conflict between the Parties is not a basis for suspension of the Treaty.²¹⁹ Pakistan cites the work of the ILC on the effects of armed conflict on treaties, which classify the types of treaties that are presumed to continue in operation during armed conflict as including those that: (a) declare, create, or regulate a permanent regime or status or related permanent rights; (b) relate to international watercourses and related installations and facilities; and (c) relate to the international settlement of disputes by peaceful means.²²⁰
171. Pakistan further relies on the character of the Treaty as a “Peace Bargain” containing a robust dispute settlement mechanism designed to promote long-term cooperation and prevent serious conflict.²²¹ On this basis, Pakistan submits that “there is at the very least a strong presumption that the Treaty will remain in force and operative even in circumstances of armed conflict”, which cannot be displaced by *sub silentio* conduct.²²² Finally, Pakistan argues that the historic practice of the Parties—including “three armed conflicts and multiple armed skirmishes between the Parties across contested territory and a disputed boundary over its 65-year history”—supports the presumption that the Treaty remains operative during armed conflict.²²³

(iv) Lawful countermeasures

172. Pakistan submits that India’s decision on abeyance cannot be excused as a countermeasure in response to an antecedent wrongful act of Pakistan. In this respect, Pakistan assesses the legal requirements identified by the ILC in the Articles on State Responsibility.²²⁴ Pakistan concludes that, for the reasons that follow, India has not satisfied any of the conditions that would justify countermeasures, whether procedural or substantive.²²⁵

²¹⁹ Pakistan’s Memorial, paras. 5.118–5.136; Pakistan’s Submissions on Recent Developments, paras. 4.44–4.50. See also Tr., Day 2, 27 April 2026, pp. 133:6–143:5.

²²⁰ Pakistan’s Submissions on Recent Developments, para. 4.48; Pakistan’s Memorial, para. 5.134; Tr., Day 2, 27 April 2026, pp. 135:20–137:13.

²²¹ Pakistan’s Memorial, para. 5.132, *citing* Award on Issues of General Interpretation, paras. 403, 406, 425.

²²² Pakistan’s Memorial, para. 5.132.

²²³ Pakistan’s Memorial, para. 5.133.

²²⁴ Pakistan’s Memorial, paras. 5.83–5.117; Pakistan’s Submissions on Recent Developments, para. 4.34 *citing* **PLA-0149**, International Law Commission, “Articles on the Responsibility of States for Internationally Wrongful Acts” (2001) (“**Articles on State Responsibility**”), Arts. 49–54.

²²⁵ Pakistan’s Memorial, para. 5.83; Tr., Day 2, 27 April 2026, pp. 118:10–133:3.

173. *First*, Pakistan argues that India cannot demonstrate an internationally wrongful act by Pakistan under Article 49(1) of the Articles on State Responsibility, noting that Pakistan has denied involvement in the Pahalgam attack, offered to participate in a “neutral, transparent and credible investigation”, and that India has produced no evidence of Pakistani involvement.²²⁶ In these circumstances, Pakistan contends, “India falls far short of meeting its burden of establishing that ‘the first and most fundamental requirement’ of a lawful countermeasure has been met”.²²⁷
174. *Second*, Pakistan further contends that India’s policy of abeyance does not satisfy the requirement that countermeasures be directed at inducing compliance by the responsible State, suggesting instead that India’s justification is “mere pretext” for its objective of disengagement from the Treaty regime.²²⁸ In Pakistan’s view, by advancing its policy of abeyance without identifying specifically how it seeks to induce compliance by Pakistan with international law, India leaves unclear both the nature of the alleged wrongful act and the steps purportedly required to remedy it, thereby placing Pakistan in “an impossible position”.²²⁹
175. *Third*, Pakistan contends that India’s conduct fails to meet the requirement that countermeasures must be temporary and reversible so as to “permit the resumption of performance of the obligations in question”.²³⁰ In this regard, Pakistan cites “inherently irreversible” steps taken by India that risk creating a *fait accompli*, including: reported Treaty-inconsistent water release and storage events on the Chenab, Jhelum and Kishenganga/Neelum Rivers, use of low-level outlets to conduct drawdown flushing, the withholding of Pondage to curtail flows into Pakistan during

²²⁶ Pakistan’s Memorial, paras. 5.88–5.92, citing **PLA-0181**, James Crawford, *The International Law Commission’s Articles on State Responsibility Introduction, Text and Commentaries* (Cambridge University Press, 2002), p. 284; **PLA-0182**, *Corn Products International, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/04/1, Decision on Responsibility of 15 January 2008, para. 185. See also Pakistan’s Submissions on Recent Developments, para. 4.37.

²²⁷ Pakistan’s Memorial, para. 5.92; Tr., Day 2, 27 April 2026, pp. 119:10–17, 122:8–123:13.

²²⁸ Pakistan’s Memorial, paras. 5.93–5.96, citing **PLA-0183**, *Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia v. Greece)*, Judgment of 5 December 2011, 2011 ICJ Rep. 644, para. 164; **P-0697**, Compendium of Recent Statements, Ministry of External Affairs, Government of India, “Statement by Foreign Secretary on the decision of the Cabinet Committee on Security (CCS)” dated 23 April 2025. See also Tr., Day 2, 27 April 2026, pp. 119:18–120:2.

²²⁹ Pakistan’s Memorial, para. 5.96; Tr., Day 2, 27 April 2026, p. 123:14–19.

²³⁰ Pakistan’s Memorial, para. 5.97, citing **PLA-0149**, Articles on State Responsibility, Art. 49(3); **P-0760**, UN Special Procedures Communication to India Concerning Human Rights Impacts of Military Response and Suspension of the Indus Waters Treaty (Ref. AL IND 10/2025) dated 16 October 2025, p. 10. See also Pakistan’s Submissions on Recent Developments, para. 4.41. See also Tr., Day 2, 27 April 2026, p. 120:3–9.

critical agricultural periods, and the acceleration of contested hydropower projects.²³¹ In Pakistan’s view, “[m]easures of this character plainly do not lend themselves to reversal” and instead impermissibly “obstruct the resumption of the operation of the [Treaty]”.²³²

176. *Fourth*, Pakistan submits that, in any event, India’s measures are “manifestly disproportionate”, because they lack a sufficiently close nexus to the alleged breach.²³³ Specifically, while “the gravity of the Pahalgam atrocity is not in dispute”, Pakistan regards the Indus Basin as “a critical and irreplaceable source of water for Pakistan, and the lives and livelihoods of millions of its inhabitants”.²³⁴ In these circumstances, Pakistan maintains that “measures affecting the flow and management of those waters cannot readily be regarded as commensurate, particularly in the absence of any established attribution”.²³⁵
177. *Fifth*, Pakistan contends that India cannot lawfully refuse to participate in proceedings before the Court or the Neutral Expert by invoking countermeasures, as States remain bound by applicable dispute settlement procedures even when challenging the validity of a treaty.²³⁶ In this regard, Pakistan alleges that India’s allegations concerning “cross border terrorism” are mere pretext for a dispute regarding Pakistan’s alleged refusal to negotiate under the Treaty.²³⁷ In Pakistan’s view, this dispute falls squarely within the dispute settlement procedures of the Treaty, such that India’s purported reliance on countermeasures must fail.²³⁸
178. *Finally*, Pakistan submits that India’s unilateral suspension of the Treaty cannot constitute a lawful countermeasure because it affects obligations relating to the protection of fundamental human rights and obligations arising under peremptory norms of general international law.²³⁹ Relying on the UN Special Rapporteurs’ communication, Pakistan contends that “holding the Indus Waters

²³¹ Pakistan’s Memorial, paras. 5.97–5.99. See also Pakistan’s Memorial, paras. 4.34–4.54; Pakistan’s Submissions on Recent Developments, paras. 4.39–4.40; Tr., Day 2, 27 April 2026, p. 120:10–16.

²³² Pakistan’s Memorial, para. 5.99, citing **PLA-0005**, VCLT, art. 72(2).

²³³ Pakistan’s Memorial, paras. 5.101–5.102, citing **PLA-0184**, *Air Service Agreement of 27 March 1946 between the United States of America and France*, Decision of 9 December 1978, UNRIAA XVIII 417, para. 3. See also Tr., Day 2, 27 April 2026, p. 120:10–16.

²³⁴ Pakistan’s Memorial, para. 5.107; Tr., Day 2, 27 April 2026, pp. 126:3–131:6.

²³⁵ Pakistan’s Memorial, para. 5.107.

²³⁶ Pakistan’s Memorial, para. 5.107. See also Pakistan’s Submissions on Recent Developments, paras. 4.42, 4.35; Tr., Day 2, 27 April 2026, pp. 120:17–121:23.

²³⁷ Pakistan’s Memorial, para. 5.111.

²³⁸ Pakistan’s Memorial, para. 5.111. See also Tr., Day 2, 27 April 2026, pp. 131:8–133:3.

²³⁹ Pakistan’s Memorial, paras. 5.112–5.116, citing **PLA-0149**, Articles on State Responsibility, art. 50(1)(b). See also Tr., Day 2, 27 April 2026, pp. 116:18–118:7, 120:10–16.

Treaty in ‘abeyance’ could severely affect the human rights of millions of people in Pakistan”, including “by undermining their rights to work and livelihood, water, food, an adequate standard of living, a clean and healthy environment, economic self-determination of peoples, and the right to development”.²⁴⁰ Pakistan therefore argues that because “India’s policy of Abeyance constitutes a direct interference with Pakistan’s enjoyment of fundamental human rights and peremptory norms of international law, it cannot be considered a lawful countermeasure”.²⁴¹

(b) *India’s Disengagement from Performance of Its Obligations under the Treaty*

179. Pakistan’s position is that “there is a pattern of conduct [by India], day after day after day after day, which may not give clarity on precisely what ‘Abeyance’ means, but it absolutely gives clarity on what India intends in terms of the consequences of Abeyance”.²⁴² In Pakistan’s view, “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”.²⁴³ Specifically, Pakistan maintains that India’s “policy of abeyance” has resulted in its assertion that it may, with respect to existing Western Rivers HEPs: (a) use the low-level outlets of its HEPs to conduct drawdown flushing; (b) deploy the Pondage in both its Operating Pools and Dead Storage to withhold water for irrigation in Pakistan at critical times; (c) accelerate construction of existing HEPs and revive construction of dormant projects; and (d) withhold vital flood and other flow data from Pakistan.²⁴⁴
180. At the outset, Pakistan submits that evidence of India’s conduct *vis-à-vis* the Western Rivers following its decision on abeyance is largely circumstantial, and therefore relies on a combination of instances of conduct, press information, and official statements to evidence these facts, which Pakistan asserts are mutually reinforcing and consistent.²⁴⁵ Pakistan argues that, while “press information” may not be considered “evidence”, it can establish “public knowledge of a fact” to

²⁴⁰ Pakistan’s Memorial, para. 5.113, citing **P-0760**, UN Special Procedures Communication to India Concerning Human Rights Impacts of Military Response and Suspension of the Indus Waters Treaty (Ref. AL IND 10/2025) dated 16 October 2025, p. 7.

²⁴¹ Pakistan’s Memorial, para. 5.116; Tr., Day 2, 27 April 2026, pp. 126:3–131:6.

²⁴² Tr., Day 1, 26 April 2026, p. 80:12–17. See also Tr., Day 2, 27 April 2026, pp. 49:23–50:3.

²⁴³ Pakistan’s Submissions on Recent Developments, para. 5.14.

²⁴⁴ Pakistan’s Memorial, para. 4.33; Pakistan’s Submissions on Recent Developments, para. 5.9. See also Tr., Day 2, 27 April 2026, pp. 32:3–24, 50:10–21.

²⁴⁵ Pakistan’s Memorial, para. 4.4; Tr., Day 2, 27 April 2026, pp. 50:23–52:8.

which a court or tribunal can “attach a certain amount of weight”.²⁴⁶ Pakistan further submits that statements by “high-ranking official political figures” can be of a “particular probative value when they acknowledge facts or conduct unfavourable to the State represented by the person who made them”, and may be “construed as a form of admission”.²⁴⁷ On this basis, Pakistan maintains that the evidence it relies on—comprising press information, official statements, and primary materials—is mutually reinforcing and provides an authentic, reliable account of India’s position.²⁴⁸ Pakistan states that “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”.²⁴⁹

(i) India’s large releases of water

181. First, Pakistan argues that India uses low-level outlets in its HEPs on the Western Rivers to conduct unannounced drawdown flushing.²⁵⁰ Specifically, Pakistan argues that in May 2025, reports emerged of India having used low-level outlets to conduct drawdown flushing at the Salal²⁵¹ and Baglihar HEPs on the Chenab River, noting that flow data showed a significant rise followed by a sharp decline between 1 and 5 May 2025. Pakistan asserts this pattern is consistent with the emptying of an upstream reservoir.²⁵² Pakistan further alleges that on 8 October 2025,

²⁴⁶ Pakistan’s Memorial, para. 4.7, citing **PLA-0018**, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits Judgment, 1986 ICJ Rep. 14, para. 63 (“Widespread reports of a fact may prove on closer examination to derive from a single source, and such reports, however numerous, will in such case have no greater value as evidence than the original source. It is with this important reservation that the newspaper reports supplied to the Court should be examined in order to assess the facts of the case, and in particular to ascertain whether such facts were matters of public knowledge.”).

²⁴⁷ Pakistan’s Memorial, paras. 4.5–4.9, citing **PLA-0018**, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits Judgment, 1986 ICJ Rep. 14, para. 64. See also **PLA-0171**, *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Reparations, Judgment, 2022 ICJ Rep. 13, para. 150; **PLA-0172**, *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, 2005 ICJ Rep. 168, paras. 61, 78; **PLA-0173**, *Rouhollah Karubian v. The Government of the Islamic Republic of Iran*, IUSCT Case No. 419, Award (Award No. 569-419-2), 6 March 1996, para. 136. See also Tr., Day 1, 26 April 2026, pp. 80:11–81:4.

²⁴⁸ Pakistan’s Memorial, para. 4.10.

²⁴⁹ Pakistan’s Submissions on Recent Developments, para. 5.12.

²⁵⁰ Pakistan’s Memorial, paras. 4.34–4.38; Tr., Day 2, 27 April 2026, pp. 52:9–54:22.

²⁵¹ Pakistan’s Memorial, fn. 262 (“The operation of the Salal HEP is subject to a separate agreement between the Parties (Agreement Between the Government of the Islamic Republic of Pakistan and the Government of the Republic of India Regarding the Design of the Salal Hydro-Electric Plant on the Chenab River Main, 14 April 1978, **PLA-0053**) and any references to India’s post-Abeyance conduct with respect to the Salal HEP have only been included in this submission in the interest of completeness.”).

²⁵² Pakistan’s Memorial, paras. 4.34–4.35, citing **P-0759**, Compendium of Indian Government statements and news reports about India’s post-Abeyance conduct, June 2025 – April 2026, p. 55 (*NDTV*, “Reservoir Flushing, 6 New Projects: India Acts After Indus Treaty Suspension” dated 5 May 2025), pp. 104–111

India released water into the Sutlej River, which, according to the Flood Forecasting Division of the Provincial Disaster Management Authority (Punjab), caused a “medium flood” at the Ganda Singh Wala headworks in Pakistan.²⁵³ Furthermore, Pakistan contends that, in December 2025, India released a “sudden and unannounced surge of water into the Chenab River”, followed by a sharp reduction in the releases,²⁵⁴ which Pakistan contends “was reportedly caused by India emptying and later refilling the reservoir of the Baglihar HEP”.²⁵⁵ Pakistan argues that although it has sought to raise these issues with India’s Commissioner, it has not received any responses to date.²⁵⁶

(ii) India’s potential storage and diversion of water

182. *Second*, Pakistan contends that, since “announcing its policy of Abeyance, India has deployed both the Pondage in its Operating Pools and Dead Storage to withhold irrigation from Pakistan’s agriculture at critical times”.²⁵⁷ Pakistan argues that India has adopted a strategy of intermittently holding and then suddenly releasing water in a manner “aimed at altering Pakistan’s crop patterns and threatening [its] food security”.²⁵⁸ In this regard, Pakistan further notes that its Water and Power Development Authority reported a 91,000-cusec drop in Chenab River flows at Marala Headworks in June 2025, maintaining that similar reductions were observed across the other

(*India Today*, “One month since Indus Waters Treaty suspension: What satellite images reveal” dated 23 May 2025); **P-0709**, Letter No. WT(132)/(8188-A)/PCIW from the PCIW to the ICIW dated 27 May 2025.

²⁵³ Pakistan’s Memorial, para. 4.36, *citing* **P-0759**, Compendium of Indian Government statements and news reports about India’s post-Abeyance conduct, June 2025 – April 2026, pp. 89–90 (*The Nation*, “Sutlej River in medium flood after water released from India: PDMA” dated 8 October 2025).

²⁵⁴ Pakistan’s Memorial, para. 4.37, *citing* **P-0759**, Compendium of Indian Government statements and news reports about India’s post-Abeyance conduct, June 2025 – April 2026, pp. 89–90 (*The Nation*, “Sutlej River in medium flood after water released from India: PDMA” dated 8 October 2025).

²⁵⁵ **P-0759**, Compendium of Indian Government statements and news reports about India’s post-Abeyance conduct, June 2025 – April 2026, p. 132 (*Pakistan Today*, “Water flow in River Chenab returns to normal after hitting 10-year low” dated 20 December 2025); **P-0770**, Letter No. WT(132)/(8198-A)/PCIW from the PCIW to the ICIW dated 15 December 2025, p. 1.

²⁵⁶ Pakistan’s Memorial, para. 4.37, *citing* **P-0770**, Letter No. WT(132)/(8198-A)/PCIW from the PCIW to the ICIW dated 15 December 2025; **P-0709**, Letter No. WT(132)/(8188-A)/PCIW from the PCIW to the ICIW dated 27 May 2025.

²⁵⁷ Pakistan’s Memorial, para. 4.39; Tr., Day 2, 27 April 2026, pp. 63:24–67:9.

²⁵⁸ Pakistan’s Memorial, para. 4.42, *citing* **P-0759**, Compendium of Indian Government statements and news reports about India’s post-Abeyance conduct, June 2025 – April 2026, p. 33 (*The Truth International*, “India Manipulating Flow of Indus River To Disrupt Pakistan’s Crop Patterns: Minister” dated 10 June 2025).

Western Rivers.²⁵⁹ Pakistan states that on 16 June 2025, reports show a 16.87% year-on-year decrease in water released to the Sindh province via the Indus River system.²⁶⁰

183. Pakistan further relies on reports in May 2025 of “initiatives to double the length of the Ranbir Canal, enabling the diversion of approximately 20% of the Chenab’s flow for agricultural use in Indian-administered Kashmir”;²⁶¹ reports in June 2025 that “India had launched a pre-feasibility study for the construction of the Chenab-Ravi-Beas-Sutlej link canal project”;²⁶² and reports “that an Indian team had begun assessing existing canal structures across Jammu, Punjab, Haryana, and Rajasthan to ensure diverted water ‘is being delivered in proper condition’, and that ‘India is fast-tracking several new storage and run-of-river projects to support these initiatives’”.²⁶³

(iii) India’s accelerated development of HEPs

184. *Third*, Pakistan submits that India is accelerating “construction of existing HEPs and reviv[ing] construction of dormant projects on the Western Rivers”.²⁶⁴ In support of its position, Pakistan submits that India is expediting existing projects, including fast-tracking the Pakal Dul, Kiru, Kwar, and Ratle HEPs, with directions issued to commission the Pakal Dul and Kiru HEPs by December 2026 and the Kwar HEP by March 2028.²⁶⁵ Pakistan further submits that India is

²⁵⁹ Pakistan’s Memorial, paras. 4.41–4.42, *citing* **P-0759**, Compendium of Indian Government statements and news reports about India’s post-Abeyance conduct, June 2025 – April 2026, pp. 17–18 (*Financial Express*, “Pakistan claims 91,000 cusecs drop in Chenab inflows from India in two days” dated 1 June 2025); pp. 25–26 (*News18*, “Pakistani Data Shows 15% Indus Basin Water Flow Drop In Punjab, Dams Near Dead Level Exclusive” dated 8 June 2025).

²⁶⁰ Pakistan’s Memorial, para. 4.44, *citing* **P-0759**, Compendium of Indian Government statements and news reports about India’s post-Abeyance conduct, June 2025 – April 2026, p. 45 (*NDTV*, “Indus Water Flow From India To Pakistan’s Sindh Drops 17%, Crops Hit” dated 17 June 2025).

²⁶¹ **P-0697**, Compendium of Recent Statements, Ministry of External Affairs, Government of India, p. 94 (*India Today*, “Why Ranbir Canal matters as India plans to choke water flow to Pak?” dated 16 May 2025).

²⁶² Pakistan’s Memorial, para. 4.43, *citing* **P-0759**, Compendium of Indian Government statements and news reports about India’s post-Abeyance conduct, June 2025 – April 2026, pp. 23–24 (*Indian Express*, “India launches pre-feasibility study to divert Chenab water” dated 7 June 2025); pp. 30–31 (*International News*, “India plans to connect rivers to stop water flow to Pakistan” dated 10 June 2025), pp. 41–43 (*NDTV*, “A 113 Km-Long Canal: Inside India’s Big Indus Waters Treaty Plan” dated 16 June 2025).

²⁶³ Pakistan’s Memorial, para. 4.43, *citing* **P-0759**, Compendium of Indian Government statements and news reports about India’s post-Abeyance conduct, June 2025 – April 2026, p. 42 (*NDTV*, “A 113 Km-Long Canal: Inside India’s Big Indus Waters Treaty Plan” dated 16 June 2025).

²⁶⁴ Pakistan’s Memorial, para. 4.45; Tr., Day 2, 27 April 2026, pp. 68:11–74:6.

²⁶⁵ Pakistan’s Memorial, paras. 4.46, 4.48, *citing* **P-0759**, Compendium of Indian Government statements and news reports about India’s post-Abeyance conduct, June 2025 – April 2026, p. 70 (*Reuters*, “India advances Kashmir hydro projects after suspending pact with Pakistan, document shows” dated 6 May 2025); p. 59 (*Greater Kashmir*, “Pakal Dul powers ahead” dated 13 July 2025); p. 159 (*Deccan Chronicle*, “India Fast-Tracks J&K Hydel Projects With Indus Water Treaty in Abeyance” dated 5 January 2026).

planning to revive dormant projects, including the Tulbul Navigation Lock (said to have been abandoned in the 1980s due to Pakistan's objections under the Treaty),²⁶⁶ and the Sawalkot HEP (initially conceived in the 1980s).²⁶⁷ Finally, Pakistan submits that India is expanding existing HEP capacities, including through the approval and implementation of the Dul Hasti Stage II and Uri-I Stage II projects,²⁶⁸ and a new water pumping scheme to be initiated on the Chenab River to provide drinking water to Jammu city.²⁶⁹ In relation to these projects, Pakistan maintains that India has failed to provide required information six months prior to commencing construction as prescribed by Appendix II of Annexure D to the Treaty.²⁷⁰

(iv) India's withholding of data

185. *Fourth*, Pakistan argues that, under the cover of its “policy of abeyance”, India is withholding vital flood and flow data from Pakistan in breach of the Treaty’s information-sharing requirements.²⁷¹ Pakistan highlights reports that “both major disruptions in Chenab River flows in 2025” occurred without prior notification or data sharing, in breach of the Treaty’s requirements.²⁷² Pakistan contends that India’s failure to utilize the information-sharing procedures can “have significant implications for Pakistan’s security”, citing an incident in late

²⁶⁶ Pakistan’s Memorial, paras. 4.47, 4.53, *citing* **P-0759**, Compendium of Indian Government statements and news reports about India’s post-Abeyance conduct, June 2025 – April 2026, p. 38 (*Kashmir Life*, “Power Projects in Jammu and Kashmir To Get In Fast Mode as Indus Waters Treaty Put in Abeyance” dated 13 June 2025); pp. 227–231 (*NDTV*, “India Set to Resume Work on Wular Barrage, Stalled by Indus Waters Treaty” dated 14 February 2026).

²⁶⁷ Pakistan’s Memorial, paras. 4.49, 4.52, *citing* **P-0759**, Compendium of Indian Government statements and news reports about India’s post-Abeyance conduct, June 2025 – April 2026, pp. 71–72 (*Kashmir Observer*, “India Revives Strategic Chenab Dam Project Amid Indus Water Shift” dated 30 July 2025); pp. 74–76 (*Times Now*, “India pushes ahead with mega 1856 MW Chenab hydro project amid Indus Waters Treaty freeze” dated 31 July 2025); pp. 80–81 (*Pakistan Observer*, “India’s hydro drive on Chenab” dated 4 August 2025).

²⁶⁸ Pakistan’s Memorial, para. 4.54, *citing* **P-0759**, Compendium of Indian Government statements and news reports about India’s post-Abeyance conduct, June 2025 – April 2026, pp. 324–326 (*KashmirLife*, “NHPC, Jammu Kashmir Power Corporation Sign Pact for 500 MW Hydropower Expansion Amid Ongoing Ownership Debate” dated 29 March 2026).

²⁶⁹ Pakistan’s Memorial, para. 4.43, *citing* **P-0759**, Compendium of Indian Government statements and news reports about India’s post-Abeyance conduct, June 2025 – April 2026, p. 230 (*NDTV*, “India Set to Resume Work on Wular Barrage, Stalled by Indus Waters Treaty” dated 14 February 2026).

²⁷⁰ Pakistan’s Memorial, para. 4.52, *citing* **P-0771**, Letter No. WT(134)/(8203-A)/PCIW from the PCIW to the ICIW dated 11 February 2026, paras. 4–5.

²⁷¹ Pakistan’s Memorial, para. 4.55, *citing* Award on Issues of General Interpretation, paras. 436–437. See also Tr., Day 2, 27 April 2026, pp. 54:23–61:9.

²⁷² Pakistan’s Memorial, para. 4.55, *citing* **P-0759**, Compendium of Indian Government statements and news reports about India’s post-Abeyance conduct, June 2025 – April 2026, p. 138 (*The Tribune*, “Pakistan accuses India of violating Indus Waters Treaty” dated 20 December 2025).

August 2025 whereby a technical fault at the Ravi headworks in India resulted in significant flooding in the Shahdara area near Lahore, “displacing thousands of people and submerging agricultural lands”.²⁷³

B. INDIA’S POSITION

186. India has not addressed any submissions to the Court regarding its decision to hold the Treaty in “abeyance” or the status of the Treaty. Consequently, the Court must rely on reasons identified in India’s 23 April 2025 Statement and 24 April 2025 Letter, as well as related correspondence between the Commissioners, public statements made by Indian officials, and other available materials to glean India’s position. While those materials indicate certain underlying reasons for India’s policy of abeyance, they are limited in scope and do not provide a detailed analysis as to why the policy is consistent with the Treaty and with international law, nor a detailed statement of the facts deemed relevant to that analysis.

1. The Competence of the Court

187. The Court is cognizant that India has not, to date, accepted the determinations made in the Court’s Award on Competence.²⁷⁴ Indeed, India has continued to reiterate its objections to the jurisdiction of the Court on the same bases addressed by the Court in its Award on Competence, stating that: (1) the “Neutral Expert proceedings are the only Treaty consistent proceedings at this juncture”; (2) a “Neutral Expert is already seized of the differences pertaining to the Kishenganga and Ratle projects”; (3) the “Treaty does not provide for parallel proceedings on the same set of issues”; and (4) “India cannot be compelled to recognize or participate in illegal and parallel proceedings not envisaged by the Treaty”.²⁷⁵

²⁷³ Pakistan’s Memorial, para. 4.57, *citing* **P-0759**, Compendium of Indian Government statements and news reports about India’s post-Abeyance conduct, June 2025 – April 2026, pp. 82–83 (*Geo News*, “Fault at Ravi headworks in India triggers flooding in Lahore” dated 29 August 2025).

²⁷⁴ **P-0803**, Compendium of Official or Semi-Official Statements of the Government of India, April – July 2026, p. 10 (Government of India Ministry of External Affairs, Press Release, “Official spokesperson’s response to media queries on matters pertaining to the illegally constituted so-called Court of Arbitration” dated 16 May 2026).

²⁷⁵ See, e.g., Government of India Ministry of External Affairs, Press Release, “Matters pertaining to the Indus Waters Treaty” dated 6 July 2023; Government of India Ministry of External Affairs, Press Release, “Matters pertaining to the illegally-constituted so-called Court of Arbitration” dated 27 June 2025. See also

P-0803, Compendium of Official or Semi-Official Statements of the Government of India, April – July 2026, p. 10 (Government of India Ministry of External Affairs, Press Release, “Matters pertaining to the illegally-constituted so-called Court of Arbitration” dated 27 June 2025), pp. 32–33 (Embassy of India to Finland, “The Indus Waters Treaty: Legal Analysis with Special Reference to the Dispute Settlement Mechanism”, *Daily Finland*, 3 July 2026).

188. Moreover, according to India, its “decision to place the Treaty in abeyance is in exercise of its right as a sovereign national party to an international treaty which considers the other party as being in serious breach of international law”.²⁷⁶ In this regard, India contends that [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
²⁷⁷ Specifically, India argues that [REDACTED]
[REDACTED]
²⁷⁸ Accordingly, India considers that “while the Treaty is in abeyance, all its provisions are inoperative, including those relating to the design and operation of Hydroelectric Plants” as well as any body constituted pursuant to the dispute resolution mechanism under the Treaty.²⁷⁹

2. The Current Status of the Treaty

189. India [REDACTED]²⁸⁰ and reiterates its “firm position that while the Treaty is in abeyance, all its provisions are inoperative, including those relating to the design and operation of Hydroelectric Plants”.²⁸¹ In this regard, India contends
[REDACTED]
[REDACTED]
[REDACTED]²⁸² [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
²⁸³ [REDACTED]

²⁷⁶ **P-0731**, Neutral Expert (*Indus Waters*), Letter to the Parties (India’s Request for Suspension of Work Programme) (redacted) dated 17 June 2025, pp. 1–2. See also [REDACTED]

²⁷⁷ [REDACTED]

²⁷⁸ [REDACTED]

²⁷⁹ **P-0782**, Letter from the World Bank to Pakistan dated 12 November 2025, enclosing Letter from India to the World Bank dated 29 September 2025, p. 1.

²⁸⁰ [REDACTED]

²⁸¹ **P-0782**, Letter from the World Bank to Pakistan dated 12 November 2025, enclosing Letter from India to the World Bank dated 29 September 2025, p. 1.

²⁸² [REDACTED]

²⁸³ [REDACTED]

[REDACTED]
[REDACTED]²⁸⁴

190. In support of this position, India’s various statements contend that the Treaty is no longer binding due to India’s sovereign right to hold the Treaty in abeyance, due to fundamental changes in circumstances, and due to material breaches by Pakistan, including regarding sustained cross-border terrorism.²⁸⁵

(a) *India’s Sovereign Right to Hold the Treaty in Abeyance*

191. India’s position is that it has exercised its sovereign right to hold the Treaty “in abeyance with immediate effect”.²⁸⁶ In doing so, India contends [REDACTED]
[REDACTED]
[REDACTED]²⁸⁷ [REDACTED]
[REDACTED]
[REDACTED]²⁸⁸

(b) *Pakistan’s Breach of the Treaty Justifies the Decision on Abeyance*

192. India has indicated, implicitly if not expressly, that Pakistan breached the Treaty in three ways.²⁸⁹

²⁸⁴ [REDACTED]

²⁸⁵ It is noted that India’s statements have not invoked the provisions on the suspension of treaties found in the VCLT, nor has it invoked the permissibility of countermeasures under the Articles on State Responsibility.

²⁸⁶ **P-0697**, Compendium of Recent Statements, Ministry of External Affairs, Government of India, “Statement by Foreign Secretary on the decision of the Cabinet Committee on Security (CCS)” dated 23 April 2025, p. 6; **P-0700**, 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; **P-0782**, Letter from the World Bank to Pakistan dated 12 November 2025, enclosing Letter from India to the World Bank dated 29 September 2025, p. 1; [REDACTED]
[REDACTED]

²⁸⁷ [REDACTED]
[REDACTED]

²⁸⁸ [REDACTED]
See also **P-0803**, Compendium of Official or Semi-Official Statements of the Government of India, April – July 2026, p. 28 (Dr. P. Kumar Saxena, “Response to the Article titled ‘India and Pakistan still cannot agree to restore the Indus Waters Treaty - but re-engagement could help bring lasting peace’”, *Daily Finland*, 26 May 2026).

²⁸⁹ **P-0700**, 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; **P-0797-B**, Letter from the ICIW to the PCIW dated 25 January 2023; **P-0797-U**, Letter D.O. No. Y-18012/1/2024-Indus dated 8 April 2025; **P-0797-L**, Letter D.O. No. Y-18012/1/2024-Indus dated 30 August 2024.

(i) Breach arising from Pakistan's refusal to negotiate modifications to the Treaty

193. *First*, India alleges that “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”.²⁹⁰ Specifically, India considers that Article XII(3) of the Treaty provides a mechanism for the Parties to modify the Treaty through a duly ratified treaty concluded between the two Governments.²⁹¹ India maintains that Article XII(3) “is a recognition of the fact that a Treaty for sharing of water resources needs to be revisited from time to time in order to ensure that the parameters on which the Treaty was premised remain relevant in the face of present day realities and to establish whether any changes are called for in the architecture of the Treaty”.²⁹²
194. On this basis, India indicated to Pakistan that a “[f]ailure to notify a suitable date for commencing bilateral negotiations under Article XII(3) of the Treaty will be construed as continued obstruction towards rectifying the material breach”, which India stated “could oblige the Government of India to pursue other measures ... including but not limited to, legal processes”.²⁹³ However, India submits that, despite having “conveyed certain concerns regarding the Treaty” in good faith, Pakistan refused to enter into meaningful discussions.²⁹⁴ India therefore characterizes Pakistan’s refusal to discuss modifications of the Treaty as “prevent[ing] the exercise of full utilisation of legitimate rights by India”²⁹⁵ and a breach of the Treaty.²⁹⁶

(ii) Breach arising from Pakistan's obstruction of India's rights under the Treaty

195. *Second*, India maintains that Pakistan has violated the Treaty by obstructing, through tactics within the Commission and in invoking Treaty dispute resolution procedures, India’s ability to exercise its legitimate rights on the Western Rivers. Specifically, India has stated:

²⁹⁰ **P-0700**, 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.

²⁹¹ **P-0797-E**, Letter D.O. No. Y-18012/1/2020-Indus dated 30 May 2023.

²⁹² **P-0797-U**, Letter D.O. No. Y-18012/1/2024-Indus dated 8 April 2025.

²⁹³ **P-0797-B**, Letter from the ICIW to the PCIW dated 25 January 2023; **P-0797-U**, Letter D.O. No. Y-18012/1/2024-Indus dated 8 April 2025.

²⁹⁴ **P-0797-U**, Letter D.O. No. Y-18012/1/2024-Indus dated 8 April 2025.

²⁹⁵ **P-0697**, Compendium of Recent Statements, Ministry of External Affairs, Government of India, “Statement by Ambassador Parvathaneni Harish, Permanent Representative at the Permanent Mission of India to the UN, New York” dated 23 May 2025, p. 28.

²⁹⁶ **P-0797-B**, Letter from the ICIW to the PCIW dated 25 January 2023; **P-0797-U**, Letter D.O. No. Y-18012/1/2024-Indus dated 8 April 2025; **P-0797-L**, Letter D.O. No. Y-18012/1/2024-Indus dated 30 August 2024.

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.²⁹⁷

196. India maintains that the Treaty “must operate to safeguard the legitimate rights and interests of both Parties”. In its view, “India has legitimate and compelling needs to go ahead with the development of resources consistent with its rights as recognized under the Treaty and accepted principles of international law”.²⁹⁸ However, over the years, “India’s rights as an upper-riparian State have been unduly restricted” and “its legitimate development needs” constrained.²⁹⁹

(iii) Breach arising from Pakistan’s support for cross-border terrorism

197. *Third*, India maintains that Pakistan has violated the Treaty through its support of cross-border terrorism. In this regard, India notes that “[t]he obligation to honour a treaty in good faith is fundamental to a treaty”³⁰⁰ and that India entered into the Treaty “in good faith”, and “in a spirit of good will and friendship”, as reflected in the Treaty’s Preamble.³⁰¹ Yet, India contends, Pakistan “violated the spirit of the treaty” through Pakistan’s “state-sponsored cross border terrorism”.³⁰²

²⁹⁷ **P-0697**, Compendium of Recent Statements, Ministry of External Affairs, Government of India, “Foreign Secretary’s Statement: Special briefing on OPERATION SINDOOR” dated 8 May 2025, p. 11.

²⁹⁸ **P-0797-L**, Letter D.O. No. Y-18012/1/2024-Indus dated 30 August 2024.

²⁹⁹ **P-0797-L**, Letter D.O. No. Y-18012/1/2024-Indus dated 30 August 2024. See also **P-0803**, Compendium of Official or Semi-Official Statements of the Government of India, April – July 2026, p. 21 (Dr. P. Kumar Saxena, *Daily Finland*, “The Indus Waters Treaty, Asymmetric Obligations, Unequal Concessions and Pakistan’s Weaponisation – Part II”, 8 May 2026) (“Since the Treaty’s signing, Pakistan has consistently used its dispute resolution provisions as a strategic tool to delay and effectively obstruct development rather than genuine dispute resolution. Virtually every significant hydropower project India has proposed on the Western rivers—even those explicitly permitted under the Treaty’s terms—has faced formal Pakistani objection, technical challenge, or referral to arbitration.”), p. 28 (Dr. P. Kumar Saxena, “Response to the Article titled ‘India and Pakistan still cannot agree to restore the Indus Waters Treaty - but re-engagement could help bring lasting peace’”, *Daily Finland*, 26 May 2026), pp. 32–33 (Embassy of India to Finland, “The Indus Waters Treaty: Legal Analysis with Special Reference to the Dispute Settlement Mechanism”, *Daily Finland*, 3 July 2026).

³⁰⁰ **P-0700**, 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.

³⁰¹ **P-0697**, Compendium of Recent Statements, Ministry of External Affairs, Government of India, “Statement by Ambassador Parvathaneni Harish, Permanent Representative at the Permanent Mission of India to the UN, New York” dated 23 May 2025, p. 27. See also [REDACTED]

³⁰² **P-0697**, Compendium of Recent Statements, Ministry of External Affairs, Government of India, “Statement by Ambassador Parvathaneni Harish, Permanent Representative at the Permanent Mission of India to the UN, New York” dated 23 May 2025, p. 28; **P-0700**, 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. India has also contended that “Pakistan has held these principles [of goodwill and friendship] in abeyance by its promotion of cross-border terrorism for several decades now”;

India states that the resulting “security uncertainties have directly impeded India’s full utilization of its rights under the Treaty”.³⁰³ In numerous statements, India has asserted that it is holding the Treaty in abeyance “until Pakistan credibly and irrevocably abjures its support for cross-border terrorism”.³⁰⁴ In this regard, India stated [REDACTED]

[REDACTED]

* * *

(c) *Fundamental Change of Circumstances Justifies the Decision on Abeyance*

198. India contends that there have been “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”.³⁰⁶ These changes are said to 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”.³⁰⁷ In this regard, India submits that it is repeatedly drawn Pakistan’s attention “to the fact that fundamental changes have taken place over the decades since the Treaty was signed in 1960 in various domains including technological, environmental and security-related” and that the “altered population

P-0697, Compendium of Recent Statements, Ministry of External Affairs, Government of India, “Transcript of Weekly Media Briefing by the Official Spokesperson” dated 13 May 2025, p. 15.

³⁰³ **P-0700**, 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.

³⁰⁴ **P-0697**, Compendium of Recent Statements, Ministry of External Affairs, Government of India, “Statement by Foreign Secretary on the decision of the Cabinet Committee on Security (CCS)” dated 23 April 2025, p. 6; Ministry of External Affairs, Government of India, “Transcript of Weekly Media Briefing by the Official Spokesperson, (May 7, 2026)”, p. 6; **P-0803**, Compendium of Official or Semi-Official Statements of the Government of India, April – July 2026, p. 12 (Ministry of External Affairs, Government of India, “Transcript of Weekly Media Briefing by the Official Spokesperson (July 03, 2026)”), p. 12.

³⁰⁵ [REDACTED]

³⁰⁶ **P-0700**, 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.

³⁰⁷ **P-0700**, 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.

demographics of the Indus Basin coupled with the need to accelerate the development of energy in that area also form compelling circumstances that call for revisiting the Treaty”.³⁰⁸

* * *

³⁰⁸ **P-0797-H**, Letter D.O. No. Y-18012/1/2020-Indus dated 6 December 2023. See also **P-0803**, Compendium of Official or Semi-Official Statements of the Government of India, April – July 2026, p. 28 (Dr. P. Kumar Saxena, “Response to the Article titled ‘India and Pakistan still cannot agree to restore the Indus Waters Treaty - but re-engagement could help bring lasting peace’”, *Daily Finland*, 26 May 2026).

VII. THE COURT'S ANALYSIS

A. THE COMPETENCE OF THE COURT TO DECIDE THIS ISSUE

199. Pakistan's application seeks a decision by the Court as to the present status of the Indus Waters Treaty. Such a decision would extend beyond what was decided in the Court's Supplemental Award on Competence, which addressed only whether India's decision on abeyance deprives the Court of competence over these proceedings (and, *mutatis mutandis*, deprives the Neutral Expert of any competence he possesses). That Award essentially found that because the Treaty was fully in force at the time these proceedings commenced, any subsequent unilateral termination or suspension of the operation of the Treaty by a Party could have no effect on the Court's competence (nor, *mutatis mutandis*, on any competence possessed by the Neutral Expert). That Award did not, however, address whether the Treaty remained in force after the commencement of these proceedings, including after the adoption of India's decision on abeyance.

200. In considering whether the Court is now competent to reach a decision as to the present status of the Treaty, the Court recalls Paragraph 16 of Annexure G to the Treaty, which provides that "[s]ubject to the provisions of this Treaty and except as the Parties may otherwise agree, the Court shall decide all questions relating to its competence". Thus, the Court possesses *compétence de la compétence*. The source of such competence is the consent of the Parties when signing and ratifying the Treaty, including the consent of India. As the Court has previously observed:

In sum, the validity of the Court's competence to decide upon its competence is based on the standing consent given by India at the time of its signature and ratification of the Treaty. The interpretation of the limit and conditions of that consent, by force of Paragraph 16 of Annexure G and of necessary logic, falls to be decided by the Court itself and not by either Party alone.³⁰⁹

201. Accordingly, it falls to the Court to determine whether it is competent to decide on the current status of the Treaty.³¹⁰ For the following three reasons, the Court concludes that it possesses such competence.

202. *First*, at present, the Court has before it Pakistan's Request for Interim Measures, by which Pakistan seeks, *inter alia*, a temporary prohibition on certain concreting works at the RHEP, in addition to the imposition of a reporting requirement on India in relation to the RHEP. The necessity and effectiveness of those requested measures presuppose continuing obligations upon India under the Treaty concerning the design and construction of its HEPs on the Western Rivers.

³⁰⁹ Award on Competence, para. 154.

³¹⁰ Supplemental Award on Competence, para. 53.

Assessing those requests requires establishing whether the Treaty has been terminated or its operation suspended. For example, were the Treaty to have been terminated, the Court would only need to assess whether laying down measures is necessary in relation to any right, obligation, or legal situation of the Parties created through the execution of the Treaty prior to its termination. By contrast, were the Treaty not terminated, then the Court would assess whether laying down measures is necessary in relation to Pakistan's rights and India's obligations from the entry into force of the Treaty to the present and into the future.

203. *Second*, uncertainty as to the present status of the Treaty has implications for the types of relief that may be granted in future Awards of the Court in these proceedings. For example, Pakistan seeks in its Request for Arbitration (as amended) not just the declaration of a past breach by India or an award of damages in relation to such a breach; rather, it also seeks further declaratory and injunctive relief in relation to India's conduct concerning the KHEP, the RHEP, and other Run-of-River HEPs on the Western Rivers.³¹¹ Indeed, the Court previously has recognized that Pakistan's requests for "corresponding declaratory and injunctive relief in respect of each of the seven 'Disputes'" are "important aspects of Pakistan's Request for Arbitration", and it has noted that such relief cannot be granted by the Neutral Expert.³¹² Further, the Treaty requires that the "Court shall render its Award in writing, on the issues in dispute and *on such relief*, including financial compensation, *as may have been claimed*".³¹³ Yet, precisely what relief may be granted in a future Award in these proceedings turns at least in part on whether the Treaty is still in force notwithstanding India's decision on abeyance. The reason is similar to that relating to interim measures. For example, as noted by Pakistan:

[T]he Court plainly would be incapable of ordering, as requested by Pakistan, that the RHEP's Pondage and freeboard designs be brought "into conformity with the Treaty" if, at the time such relief is granted, the Treaty's design criteria are no longer binding. In such a scenario, there would be no enforceable standard against which conformity could be assessed, and the relief sought would be deprived of any legal or practical meaning.³¹⁴

204. *Third*, the disagreement between the Parties as to the present status of the Treaty is having an effect on the dispute resolution procedures of the Treaty. India has not participated in these proceedings from their inception but, until its decision on abeyance, the reason for not doing so related principally to India's initiation of parallel proceedings before the Neutral Expert to address questions relating to the KHEP and RHEP. At one time, India indicated that the only way to

³¹¹ Amended Request for Arbitration, paras. 95–101.

³¹² Award on Competence, paras. 10, 309.

³¹³ **PLA-0001**, Treaty, Annexure G, para. 23 (emphasis added).

³¹⁴ Pakistan's Memorial, para. 5.16.

address the “error” of parallel proceedings was for the Court “to hold its hands until the Neutral Expert decides on the issues being dealt by him”,³¹⁵ which left open India’s participation in these proceedings after the Neutral Expert completed his proceedings. Further, the Court decided in Procedural Order No. 6 that it would conduct these proceedings in a phased manner, bearing in mind the status of, and developments concerning, the proceedings taking place before the Neutral Expert. Yet, since its decision on abeyance, India also has declined to participate not just in the Court’s present proceedings, but in the Neutral Expert Proceedings as well. Accordingly, it appears that India is now using its decision on abeyance as a reason for not participating in either of the dispute resolution procedures under the Treaty that seek to resolve the questions that have arisen with respect to the KHEP and RHEP. As a matter of well-established law, the absence of a party from dispute resolution proceedings does not alter their binding character or legal effect for that party. Yet, as a practical matter, both these proceedings and those of the Neutral Expert would benefit from active participation by India, the better to apprehend India’s arguments and positions. And the objective of dispute resolution proceedings in actually bringing the Parties to a shared understanding of the legal relationship between them would be furthered by India’s participation. Consequently, clarification as to the present status of the Treaty has become relevant for identifying whether India’s decision on abeyance justifies its non-participation in the dispute resolution procedures under the Treaty, including these proceedings.

205. The Court notes that the issue of the present status of the Treaty was not previously raised before the Commission; indeed, India’s decision is now precluding any functioning of the Commission. The issue also was not included in Pakistan’s original or Amended Request for Arbitration, both of which were formulated prior to India’s decision. Even so, the Court regards resolving the present status of the Treaty as a matter inescapably tied to the resolution of the matters raised in the Request for Arbitration, for the three reasons indicated above. The present status of the Treaty must be determined before deciding on interim measures or deciding on declaratory and injunctive relief, and more broadly, must be determined to maintain the integrity of these proceedings. International courts and tribunals regularly reach determinations on such incidental matters that, during the course of the proceedings, are deemed necessary for resolving the disputes before them.³¹⁶

³¹⁵ **P-0001**, Letter from India to the World Bank dated 21 December 2022, Enclosure, para. 9.

³¹⁶ See, e.g., **PLA-0022**, *Certain German Interests in Polish Upper Silesia (Germany v. Poland)*, Judgment 1926 PCIJ Series A, No. 7, p. 18; **PLA-0147**, *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 267 (1970)*, Advisory Opinion, 1971 ICJ Rep. 16, para. 89; **PLA-0174**, *Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)*, PCA Case No. 2011-03, Award of 18 March 2015, para. 220; **PLA-0177**,

206. For the above reasons, the Court concludes that it is competent to determine the present status of the Treaty.

B. THE MEANING OF “ABEYANCE” IN INDIA’S DECISION

207. India’s decision is expressly one of holding the Treaty in “abeyance”.³¹⁷ An issue that arises is what is meant by the term “abeyance” for purposes of analyzing the present status of the Treaty.

208. Unfortunately, India has not provided to the Court, nor apparently in any other setting, an analysis as to the meaning of “abeyance” in its decision. Several of the statements made by Indian officials since April 2025, however, appear to express a view that the Treaty is suspended, not terminated. For example, on 22 May 2025, India’s Official Spokesperson of the Ministry of External Affairs said (in translation) that the Treaty “will remain in abeyance—suspended—until Pakistan” takes certain actions to address cross-border terrorism.³¹⁸ On 21 June 2025, India’s Home Minister said that “[i]nternational treaties can’t be annulled unilaterally” but that “we had the right to put it in abeyance”.³¹⁹ On 5 June 2026, the Official Spokesperson of the Ministry of External Affairs again stated (in translation) that “[r]egarding the Indus Waters Treaty, as you know, we have suspended it and placed it in abeyance”.³²⁰ All of those statements express a view that the Treaty has been suspended, as opposed to terminated, the latter of which India’s Home Minister acknowledged India cannot do unilaterally.

209. Other statements by India are more ambiguous. For example, India’s letter to the World Bank of 29 September 2025 states that “all [the Treaty’s] provisions are inoperative” and “all parties to

The “Enrica Lexie” Incident (Italy v. India), PCA Case No. 2015-28, Award of 21 May 2020, paras. 808–809; **PLA-0175**, *CMS Gas Transmission Company v. Argentine Republic*, ICSID Case No. ARB/01/8, Decision of the Tribunal on Objections to Jurisdiction of 17 July 2003, paras. 116–120. See also **PLA-0095**, Bin Cheng, *General Principles of Law as Applied by International Courts and Tribunals* (Cambridge University Press, reissued 2006), p. 266 (“Where a tribunal has jurisdiction in a particular matter, it is also competent with regard to all relevant incidental questions, subject to express provision to the contrary.”).

³¹⁷ **P-0700**, 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.

³¹⁸ **P-0785**, Ministry of External Affairs, Government of India, “Transcript of Weekly Media Briefing by the Official Spokesperson” dated 22 May 2025.

³¹⁹ **P-0759**, Compendium of Indian Government statements and news reports about India’s post-Abeyance conduct, June 2025 – April 2026, Permanent Mission of India to UN “World Water Day 2026 – Water and Gender Equality Statement by Ambassador Parvathaneni, Permanent Representative” dated 19 March 2026, p. 53.

³²⁰ Transcript of Weekly Media Briefing by the Official Spokesperson, 5 June 2026, *available at* <https://www.mea.gov.in/media-briefings?dtl/41271/Transcript_of_Weekly_Media_Briefing_by_the_Official_Spokesperson_June_05_2026>.

the Treaty will also cease to act under the Treaty”,³²¹ which might suggest that the Treaty is terminated. Similarly, India’s letter to the Neutral Expert of 5 June 2025 asserts that as a result of its decision on abeyance, it considered itself “under no obligation to perform any of its commitments under the Treaty (including in relation to the Neutral Expert proceedings)” [REDACTED]

[REDACTED]³²²

210. Therefore, as a factual matter, the Court finds that India’s statements regarding its decision on abeyance are ambiguous as to its exact meaning.

211. The Treaty provides no useful context for understanding what is meant by India’s decision, as the term “abeyance” appears nowhere in the Treaty, including in relation to the possibility of suspension or termination. Further, the term “abeyance” is not one that is commonly used in international law, nor one that is understood as having a particular or technical meaning, whether in conventional or customary international law.³²³ The 1969 VCLT, which addresses background rules on treaty law, including formation, operation, suspension, and termination, nowhere employs the term “abeyance”. The ILC’s 1966 articles on the law of treaties, which served as the basis for the VCLT, also contain no reference to “abeyance”, nor does the ILC’s commentary that accompanied those articles.

³²¹ **P-0782**, Letter from the World Bank to Pakistan dated 12 November 2025, enclosing Letter from India to the World Bank dated 29 September 2025, p. 1.

³²² **P-0731**, Neutral Expert (*Indus Waters*), Letter to the Parties (India’s Request for Suspension of Work Programme) (redacted) dated 17 June 2025, pp. 1–2; [REDACTED]

³²³ Where the term has been used in the records of the ILC, something that is in “abeyance” has been synonymous with, among other things, something that is *suspended* (“It would be preferable if *controversial measures remained in abeyance* so long as the [arbitral] commission has not rendered its award” (ILC, Comments by Governments on the provisional articles concerning the regime of the high seas and the draft articles on the regime of the territorial sea (Comments by the Government of Belgium), Yearbook of the International Law Commission, 1956, Vol. II, p. 39)); *unresolved or undetermined* (“In so far as the sovereignty of States over fishing grounds is concerned, two methods have been adopted. Certain States have proceeded to a determination of their territorial frontiers, especially for fishing purposes. Others, on the other hand, *have left the question of the territorial frontier in abeyance* and have contented themselves with asserting their exclusive right over fisheries independently of such a frontier” (ILC, Comments by Governments on the draft articles on the continental shelf and related subjects (Comments by the Government of Iceland), Yearbook of the International Law Commission, 1953, Vol. II, p. 253)); *dormant* (“Rights and claims to territories have traditionally been regarded as synonymous with the vital interests of States and the codification of certain principles *might lead to a revival of territorial claims which have long been in abeyance*” (ILC, Future work in the field of the codification (Working Paper), Yearbook of the International Law Commission, 1962, Vol. II, p. 93, para. 112)); or *disapplied/inapplicable* (on the withdrawal of a reservation in the context of state succession, “[t]his means that third States would not be obliged to accord to the new State, and to its subjects, *the rights kept in abeyance by the reservation during the interval* [between the creation of the new State and the notification of withdrawal of the reservation]” (ILC, Succession of States and Governments (Working Paper), Yearbook of the International Law Commission, 1963, Vol. II, p. 295)) (emphasis added in all)).

212. The reports of the ILC (recording the preparation of the 1966 articles), and of the Conference on the Law of Treaties (recording the preparation of the VCLT) similarly do not reflect any discussion of “abeyance” as a potential “status” of a treaty. Where the term was used by members of the Commission or delegates to the Conference, it referred to a situation that was (temporarily) unresolved.³²⁴ For example, in considering a draft provision on the provisional application of treaties, Dr. Manfred Lachs, a member of the Commission, observed that:

in some cases the position as to ratification or non-ratification by a State would never become clear. Where a treaty involved only one action [required to ratify the treaty], the position might be clarified soon, but where a number of different actions were involved, the matter might remain *in abeyance* for a long time ... the point could be covered by specifying that a State must clarify its position within a certain period of time.³²⁵

213. Likewise, the term appears to have little salience in relation to conventional or customary rules on the responsibility of States for internationally wrongful acts. The ILC’s 2001 articles and commentary make no reference to the term.

214. The reports of the ILC (recording the preparation of the 2001 articles) do record the use of the term on at least one occasion by Special Rapporteur James Crawford when distinguishing the effect of countermeasures (where the *performance* of an obligation is suspended) from the suspension of *an obligation* itself. In that context, Special Rapporteur Crawford equates a “situation of abeyance” to a situation in which an *obligation* has been *suspended*:

[Special Rapporteur Crawford] had endeavoured to deal with [the issue of reversion to legality if countermeasures were successful] through the notion of *suspension of the performance* of an obligation, and *not suspension of the obligation itself*. The obligation

³²⁴ See ILC, Summary record of the 53rd meeting (Law of Treaties), Yearbook of the International Law Commission, 1950, Vol. I, p. 96, para. 109 (with respect to when and if States that had signed but not ratified a treaty could object to a reservation made by another State, under the proposed drafting, “the question whether the reservation was accepted or not *would be kept in abeyance for a time*”); ILC, Summary record of the 698th meeting (Law of Treaties), Yearbook of the International Law Commission, 1963, Vol. I, p. 169, para. 94 (with respect to the potential removal of the procedure for resolving an objection to a notice of treaty termination or suspension arising by operation of law, “If that second part were deleted, for example, all the provisions concerning the *clausula rebus sic stantibus* [that is, detailing the substantive basis upon which a State may invoke this principle] *might be left in abeyance*”).

³²⁵ ILC, Summary record of the 790th meeting (Law of Treaties), Yearbook of the International Law Commission, 1965, Vol. I, p. 108, para. 102 (emphasis added). The term was also used in a procedural context to defer consideration or a decision on a matter to a later point in time (see, e.g., ILC, Summary record of the 482nd meeting (Law of Treaties), Yearbook of the International Law Commission, 1959, Vol. I, p. 17, paras. 64, 66 (“The question of the limitation by certain treaties of the treaty-making capacity in relations between certain States might, however, be left in abeyance for the time being...He agreed with Mr. Bartos that the question might be left in abeyance until the Commission discussed that report”); ILC, Summary record of the 637th meeting (Law of Treaties), Yearbook of the International Law Commission, 1962, Vol. I, p. 46, para. 10 (“As there were arguments both for and against the inclusion of such a chapter, he would suggest that the Commission leave that particular subject in abeyance until it saw what progress it made on the remainder”)).

remained in force, and there was *no situation of abeyance*. The obligation was there as something by reference to which the countermeasures could be assessed.³²⁶

215. A search of the principal treatises of international law reveals no indication that the term “abeyance” has a particular meaning in international law, including with respect to treaty relations. The term is occasionally used in passing by some international jurists,³²⁷ such as in reference to “sovereignty in abeyance” when speaking of a League of Nations mandate or a UN trusteeship;³²⁸ when so used, the term refers to a temporary situation.
216. Rather than “abeyance”, the terms commonly used in international law to address the possibility of a treaty no longer requiring its parties to abide by their rights and obligations are either “suspension” or “termination”.³²⁹ The first term refers to a temporary pause in the treaty’s

³²⁶ ILC, Summary record of the 2645th meeting (State responsibility), Yearbook of the International Law Commission, 2000, Vol. I, p. 265, para. 69 (emphasis added). See also, ILC, Report of the International Law Commission on the work of its fifty-second session, Yearbook of the International Law Commission, 2000, Vol. II, p. 51, para. 298. Much earlier in the development of the Articles, the expression is used in a different context, but with what appears to be a similar meaning. Professor Nikolai A. Ushakov, a member of the Commission, when considering a draft article on the effect of the consent of an injured State, contrasted the “cancellation” of an obligation (where an obligation “no longer existed”) with an obligation “in abeyance” for a specific period, that would then be “revived”:

“For example, where a State relieved another State of an obligation towards it, the obligation ceased to exist and there was no longer an unlawful act. If, for instance, a State agreed to the stationing of another State’s troops in its territory, it cancelled, in that specific case, the obligation on the part of the other State not to send troops into the territory of a foreign State. As the obligation no longer existed, the presence of foreign troops in the territory of the first State was not an unlawful act. If the State had authorized the presence of foreign troops in its territory only for a specific period, *the obligation was simply in abeyance*; on the expiry of that period, the obligation revived, and the stationing of foreign troops in the territory of that State became an unlawful act” (ILC, Summary record of the 1538th meeting (State responsibility), Yearbook of the International Law Commission, 1979, Vol. I, p. 33, para. 34) (emphasis added).

³²⁷ See, e.g., Lord McNair, *The Law of Treaties* (Oxford University Press, 1986), p. 519 (“The correct view is believed to be that Germany did not become extinct at the end of the Second World War and that her treaties were not *ipso facto* terminated by the unconditional surrender and related events. Beyond that it would be dangerous to generalize, and each treaty would require separate consideration. Some of them are probably *in abeyance* as a result of the present division of Germany; some of them may be in operation as regards only West, or only East, Germany.”) (emphasis added).

³²⁸ See, e.g., *International Status of South West Africa*, Advisory Opinion, 1950 ICJ Rep. 128 (separate opinion of Judge Arnold McNair), p. 150 (“Sovereignty over a Mandated Territory is in abeyance; if and when the inhabitants of the Territory obtain recognition as an independent State, as has already happened in the case of some of the Mandates, sovereignty will revive and vest in the new State.”); J. Crawford, *Brownlie’s Principles of Public International Law* (Oxford University Press, 9th ed. 2019), p. 235 (“Although an undivided sovereignty is the normal mode of territorial administration, exceptional situations exist which cannot be forced into the sovereignty straitjacket. Thus, sovereignty may be held jointly by two states, as in a condominium, or distributed in time, as with a leasehold or other grant of sovereign rights subject to an ultimate right of reversion. Or it may be *in abeyance*, as with the mandate and trusteeship systems.”) (emphasis added).

³²⁹ **PLA-0005**, VCLT, Pt. V, Sections 1, 3–5.

operation, while the latter term refers to a permanent end to the treaty. Certain other, related terms are also used, such as a party's "denunciation" or "repudiation" of a treaty, or a party's "withdrawal" from a treaty. If a treaty is found to be "invalid", that can also lead to its termination.³³⁰ If the operation of a treaty is to be temporarily halted, as might be suggested by the term "abeyance", then the commonly used term in international law is "suspension" of the operation of the treaty.

217. The Court notes that, under the VCLT, a party does not, solely by its unilateral act, actually terminate or suspend the operation of a treaty. In other words, a party merely deciding that it wishes a treaty to be "suspended" or "terminated" (or held in "abeyance"), does not result in suspension or termination. Rather, a party "invokes" a ground for termination or suspension of the operation of the treaty,³³¹ after which the other party or parties are entitled to object, which in turn leads to resolution of the matter through international dispute resolution.³³² The detailed VCLT procedural rules requiring compulsory dispute settlement are not customary international law,³³³ but the rule that the State party invoking a ground for termination or suspension of the operation of a treaty must notify the other State party or parties is generally regarded as a procedural principle based on an obligation to act in good faith.³³⁴ Further, the rule that invocation of a ground for termination or suspension of the operation of a treaty does not affect provisions of the treaty with regard to settlement of disputes is also customary international law.³³⁵
218. In national law, the term "abeyance" is typically understood as indicating a temporary suspension of the operation of an instrument, such as of a constitution, a statute, or a regulation, after which the instrument resumes having force. Thus, *Black's Law Dictionary*, a resource dating back to

³³⁰ **PLA-0005**, VCLT, Pt. V, Sections 1–2.

³³¹ **PLA-0139**, ILC, Draft Articles on the Law of Treaties with Commentaries, Yearbook of the International Law Commission, 1966, Vol. II, p. 254, para. (6) ("The formula 'invoke as a ground' is intended to underline that the right arising under the article is not a right arbitrarily to pronounce the treaty terminated.").

³³² **PLA-0005**, VCLT, Pt. V, Section 4.

³³³ See, e.g., *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda)*, Jurisdiction of the Court and Admissibility of the Application, Judgment, 2006 ICJ Rep. 6, para. 125 ("the rules contained in Article 66 of the Vienna Convention are not of this [customary international law] character.").

³³⁴ See, e.g., **PLA-0005**, VCLT, Art. 65(1); M. Prost, "Article 65", in O. Corten *et al.* (eds.), *The Vienna Conventions on the Law of Treaties: A Commentary* (2nd ed., Oxford University Press, 2025), p. 1682.

³³⁵ See, e.g., Supplemental Award on Competence, paras. 60–67.

1891 that is regularly used in common law jurisdictions, such as Pakistan and India, defines “abeyance” in that way.³³⁶

219. The same appears to be true under the national law of India. For example, P. Ramanatha Aiyar, based on a review of Indian laws and the interpretation and construction put upon different terms by the courts in India, defines “abeyance” in part as a “state of suspension”.³³⁷ The highest courts of Indian states appear to have made reference to the ordinary meaning of the term as set out in dictionary definitions, equating matters that are “in abeyance” with matters that are in “a state of suspension”.³³⁸ For its part, the Supreme Court of India appears to have used the term “abeyance” in the context of judicial proceedings, where it has been used synonymously with a temporary “stay” of proceedings,³³⁹ or a temporary “stay” of the effect of an order.³⁴⁰
220. In light of the above, India’s use of the term “abeyance” appears to have no definitive meaning in India’s statements, and no technical meaning under either the Treaty or international law more generally. Given the general meaning of “abeyance” in national law, including the national law of India, as well as certain statements made by India’s government officials, India’s decision on

³³⁶ Bryan A. Garner, *Black’s Law Dictionary* (Thomson Reuters, 12th ed. 2024) (“Temporary inactivity; suspension”).

³³⁷ P. Ramanatha Aiyar, *Advanced Law Lexicon: The Encyclopaedic Law Dictionary with Words & Phrases, Legal Maxims, and Latin Terms*, Vol. 1 (LexisNexis, 7th ed. 2024), p. 19.

³³⁸ See, e.g., *T.N. Mahajan v. Union of India*, Punjab and Haryana High Court, 25 May 1965, PLR 1965 67 P&H 845 (“The mere fact that the impugned order mentions that the action should be kept in abeyance and not under suspension does not improve the respondents’ case. The Oxford Dictionary gives the meaning of ‘abeyance’ as ‘state of suspension’.”); *Himachal Shoddy Mills Ltd. and Ors. v. Union of India*, 14 June 1976, High Court of Himachal Pradesh, ILR 1976 5 HP 475 (“in the present case it can be held that the power to keep in abeyance was nothing short of a power to suspend which could only be exercised under Clause 8-A and the sponsoring authority could not exercise that power”); *Anuradha @ Chanchal Kumari v. Santosh Nath Khanna*, 9 April 1975, ILR 1976 I Delhi 267 (in construing an order that “during the period the petitioner hereinafter takes in producing her evidence the order of maintenance *pendente lite* should remain in abeyance”, the Court found that the “the learned Judge has used the expression ‘abeyance’ in the same sense as has been used in Halsbury’s Laws of England by expression ‘Suspension temporarily’. [T]he word ‘suspend’ or ‘suspension temporarily’ imply that the suspension is for a temporary period and on the cessation of the suspension order or fulfilment of the necessary conditions, the original order revives without any further directions.”).

³³⁹ See, e.g., *S.G. Vombatkere v. Union of India*, Supreme Court of India, 11 May 2022, (2022) 7 *Supreme Court Cases* 433, para. 8.4 (“All pending trials, appeals and proceedings with respect to the charge framed under Section 124-A IPC *be kept in abeyance*. Adjudication with respect to other sections, if any, could proceed if the courts are of the opinion that no prejudice would be caused to the accused.”) (emphasis added).

³⁴⁰ See, e.g., *Re: Definition of Aravalli Hills and Ranges and Ancillary Issues*, Supreme Court of India, 29 December 2025, (2025) *Supreme Court Cases* 2997 (“[the Court] deem[s] it necessary to direct that the recommendations submitted by the Committee, together with the findings and directions stipulated by this Court in its judgment dated 20.11.2025, *be kept in abeyance*. *This stay* shall remain in effect until the present proceedings *reach a state of logical finality*”) (emphasis added).

abeyance may be best understood as indicating that India regards the Treaty as temporarily suspended, not that it is terminated. Even so, given the lack of a formal legal analysis by India as to how its decision is to be understood with respect to international law, the Court will proceed with its analysis on the basis that India's decision may be a claim that the Treaty is either suspended or terminated.

C. SUSPENSION/TERMINATION UNDER THE TERMS OF THE TREATY

221. In addressing any claim that the Treaty has been either suspended or terminated, it is necessary to commence with consideration of the terms of the Treaty.

222. The Treaty does not provide that one of the Parties may unilaterally suspend or terminate the Treaty (or otherwise hold it in "abeyance"). No such provision was included in the Treaty. Rather, the procedural requirements for the Treaty's ratification, entry into force, amendment, and termination, are addressed in Article XII of the Treaty.³⁴¹ That article speaks directly to how the Treaty might lose its force after it has come into operation, requiring the consent of *both* Parties. Article XII(4) provides:

The provisions of this Treaty, or the provisions of this Treaty as modified under the provisions of Paragraph (3), shall continue in force until terminated by a duly ratified treaty concluded for that purpose *between the two Governments*.³⁴²

223. Thus, the text of the Treaty does not provide for the unilateral "abeyance", "suspension", or "termination" of the Treaty. On the contrary, the Treaty provides for its continuation in force until terminated by the mutual consent of India and Pakistan, rather than by unilateral action by either Party. As the Court has previously noted: "Such text definitively indicates an intent by the drafters not to allow for unilateral action to alter the rights, obligations, and procedures established by the Treaty, including the Treaty's dispute settlement procedures".³⁴³

224. The Court further notes that, at the time of the Treaty's adoption, the drafters also took account of the possibility that circumstances might change over time, which might necessitate modification of the Treaty. This, too, was expressly addressed; specifically, Article XII(3) provides:

The provisions of this Treaty may from time to time be modified by a duly ratified treaty concluded for that purpose *between the two Governments*.³⁴⁴

³⁴¹ Supplemental Award on Competence, para. 54.

³⁴² **PLA-0001**, Treaty, Art. XII(4) (emphasis added).

³⁴³ Supplemental Award on Competence, para. 55.

³⁴⁴ **PLA-0001**, Treaty, Art. XII(3) (emphasis added).

225. The prospect of modifications to the operation of the Treaty due to changes over time is not a theoretical one. India and Pakistan have concluded certain “amendments”, agreements, or arrangements over the years to address their interpretation or application of the Treaty.³⁴⁵
226. The Treaty’s provisions on termination and modification indicate that, when the Parties adopted the Treaty, they expressly addressed the manner in which it might change over time. The Treaty is not silent on the issue. Moreover, in addressing such possibilities, the Treaty is clear that such termination or modification can only be done by means of an agreement reached “between the two Governments”.
227. It is undisputed that India and Pakistan have not concluded any subsequent treaty or other form of agreement that modifies, suspends, or terminates the Treaty.³⁴⁶ Consequently, there is no basis, under the Treaty itself, to regard India’s unilateral decision on abeyance as having any effect on the status of the Treaty.
228. Given that it cannot rely on the Treaty, if India’s decision on abeyance is to have any legal effect, then India’s position must rely instead on rules of international law found outside the Treaty. Indeed, in a letter to [REDACTED] India stated [REDACTED]
[REDACTED]³⁴⁷ Based on the statements of India to date regarding its decision, the two sets of rules outside the Treaty upon which India may be relying to support its suspension or termination of the Treaty are: (1) the law of treaties; and (2) the law on countermeasures. The Court proceeds to address each set of rules in turn.

D. SUSPENSION OR TERMINATION UNDER THE LAW OF TREATIES

229. India has not provided—neither to the Court nor apparently in any other setting—an analysis as to why it is entitled, under the law of treaties, to suspend or terminate the Treaty further to its decision on abeyance.
230. A recurrent assertion in India’s statements, however, has been that its “sovereignty” allows it to place the Treaty in abeyance, without regard to the position of Pakistan or of any dispute

³⁴⁵ See, e.g., Award on Issues of General Interpretation, paras. 165, 267.

³⁴⁶ See, e.g., Pakistan Memorial, para. 5.37 (“It is uncontroverted that India and Pakistan have not concluded any agreement, treaty or otherwise, that purports to terminate the Treaty.”).

³⁴⁷ [REDACTED]
See also **P-0731**, Neutral Expert (*Indus Waters*), Letter to the Parties (India’s Request for Suspension of Work Programme) (redacted) dated 17 June 2025, pp. 1–2.

settlement body.³⁴⁸ Thus, after stating that [REDACTED]

[REDACTED] India asserted that [REDACTED]

[REDACTED]³⁴⁹ [REDACTED]

[REDACTED]³⁵⁰

231. Yet, there is no rule under the law of treaties allowing a State to unilaterally suspend or terminate a Treaty based on its “sovereignty”; if that were possible, then the entire system of treaties would be illusory. If India’s assertion were true, then, notwithstanding having solemnly entered into a treaty, any State could readily discard its treaty obligations simply by invoking a mantra of “sovereignty”. That is not how international law works, nor could it be so for the international legal system to have any efficacy.
232. Rather, all States, including India, are bound to their treaties based on the fundamental rule of *pacta sunt servanda*, which is that “[e]very treaty in force is binding upon the parties to it and must be performed by them in good faith”.³⁵¹ Instead of a State party abandoning a treaty, as the ICJ has noted, the “principle of good faith obliges the Parties to apply [the treaty] in a reasonable way and in such a manner that its purpose can be realized”.³⁵² Moreover, no State, including India, may invoke the provisions of its internal law, let alone the provisions of an internal decision, as justification for its failure to perform a treaty.³⁵³ Rather, the only means for “exiting” from a treaty under the law of treaties is as follows.

³⁴⁸ See para. 187, *supra*.

³⁴⁹ [REDACTED]
Despite the wording used in this communication, India does not appear to be invoking Article 51 of the UN Charter, which provides that nothing in the Charter impairs the inherent right of individual or collective self-defense if an armed attacks occurs against a UN Member State, until the Security Council has taken measures necessary to maintain peace and security. See UN Charter, Art. 51. Were India to invoke Article 51 as a legal justification for its policy of abeyance, India would report to the Security Council that it was taking such a measure in self-defense, and India’s conduct would then be assessed under *jus ad bellum*, including the requirement of necessity and proportionality contained therein.

³⁵⁰ [REDACTED]
[REDACTED] P-0731, Neutral Expert (*Indus Waters*), Letter to the Parties (India’s Request for Suspension of Work Programme) (redacted) dated 17 June 2025, pp. 1–2.

³⁵¹ See PLA-0005, VCLT, Art. 26.

³⁵² See PLA-0094, *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, 1997 ICJ Rep. 7, para. 142.

³⁵³ See PLA-0005, VCLT, Art. 27.

233. Under the law of treaties, a treaty is expected to continue in force in accordance with its terms, unless a party that seeks to terminate or suspend the operation of a treaty demonstrates that the specific grounds for doing so exist.³⁵⁴ As one scholar has observed, “[p]acta 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”.³⁵⁵ Thus, the party seeking to terminate/suspend a treaty may not do so unless it is shown to be: in accordance with the treaty’s terms;³⁵⁶ with the consent of the parties;³⁵⁷ or on one of a relatively few and highly circumscribed other grounds.³⁵⁸ As explained above,³⁵⁹ the terms of the Treaty do not permit India unilaterally to terminate or suspend the Treaty, and both Parties have not consented to suspension of its operation or its termination.
234. Therefore, India must rely on one of the relatively few and highly circumscribed other grounds for terminating or suspending a treaty by operation of law (i.e., as a result of a legal rule and independently of the Parties’ intentions). Those grounds are: (1) termination or suspension of the operation of a treaty implied by conclusion of a later treaty;³⁶⁰ (2) termination or suspension of the operation of a treaty as a consequence of its breach;³⁶¹ (3) supervening impossibility of performance;³⁶² (4) fundamental change of circumstances;³⁶³ (5) severance of diplomatic or

³⁵⁴ See **PLA-0094**, *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, 1997 ICJ Rep. 7, para. 100 (“[T]he parties not having agreed otherwise, the Treaty could be terminated only on the limited grounds enumerated in the [VCLT].”); **PLA-0005**, VCLT, Art. 42; **PLA-0139**, ILC, Draft Articles on the Law of Treaties with Commentaries, Yearbook of the International Law Commission, 1966, Vol. II, p. 236, para. (1) (“[The Commission] considered it desirable, as a safeguard for the stability of treaties, to underline in a general provision at the beginning of this part that the validity and continuance in force of a treaty is the normal state of things which may be set aside only on the grounds and under the conditions provided for in the present articles.”). At the same time, the VCLT does not “prejudge any question that may arise in regard to a treaty from a succession of States or from the international responsibility of a State or from the outbreak of hostilities between States”: **PLA-0005**, VCLT, Art. 73.

³⁵⁵ **PLA-0145**, Robert Kolb, *The Law of Treaties: An Introduction* (Edward Elgar 2016), pp. 206–207.

³⁵⁶ See **PLA-0005**, VCLT, Arts. 42(2), 54(a). Where a treaty contains no provision regarding its termination, there is a presumption that it cannot be terminated, absent certain conditions. See **PLA-0005**, VCLT, Art. 56. As the Treaty is not silent on the issue of termination, this possibility does not arise.

³⁵⁷ See **PLA-0005**, VCLT, Arts. 54(b), 57. For consent in the context of a multilateral treaty, see **PLA-0005**, VCLT, Art. 58.

³⁵⁸ See **PLA-0005**, VCLT, Arts. 42(2), 57–64.

³⁵⁹ See paras. 221–228, *supra*.

³⁶⁰ See **PLA-0005**, VCLT, Art. 59.

³⁶¹ See **PLA-0005**, VCLT, Art. 60.

³⁶² See **PLA-0005**, VCLT, Art. 61.

³⁶³ See **PLA-0005**, VCLT, Art. 62.

consular relations indispensable for the application of the treaty;³⁶⁴ (6) emergence of a new peremptory norm of general international law (*jus cogens*);³⁶⁵ or (7) termination or suspension of the operation of a treaty due to the effect of armed conflict.³⁶⁶

235. Four of those grounds do not appear to be the basis for India's decision on abeyance. With respect to (1), India and Pakistan have not concluded a later treaty that might have impliedly terminated or suspended the Treaty. With respect to (3), India does not appear to argue that its compliance with the Treaty is impossible; it has made no claim that an impossibility has arisen resulting "from the permanent disappearance or destruction of an object indispensable for the execution of the treaty".³⁶⁷ With respect to (5), there has been no severance of diplomatic or consular relations between India and Pakistan. Even if there were such a severance, it would not affect the legal relations established between India and Pakistan by the Treaty, as such diplomatic and consular relations are not indispensable for the Parties to fulfill their Treaty obligations. With respect to (6), there does not appear to have emerged any relevant rule of *jus cogens* that has made the Treaty void and therefore terminated.
236. Three of those grounds, however, might be regarded by India as the justification for termination or suspension of the operation of the Treaty, specifically those grounds relating to breach, changed circumstances, or the effect of armed conflict. Consequently, the Court considers next whether India can invoke any of those grounds for the termination or suspension of the operation of the Treaty.

1. Breach as a Ground for Suspension/Termination of the Treaty

237. A party to a bilateral treaty may invoke the breach of the treaty by the other party as a ground for terminating the treaty or suspending its operation. To do so, however, the breach must be a material breach, which requires the other party either to repudiate the treaty³⁶⁸ or to violate a

³⁶⁴ See **PLA-0005**, VCLT, Art. 63.

³⁶⁵ See **PLA-0005**, VCLT, Art. 64.

³⁶⁶ The ILC opted not to codify the effect of armed conflict on treaties in its Articles on the Law of Treaties, consequently the issue was left unaddressed in the VCLT. See **PLA-0005**, VCLT, Art. 73 (the provisions of the VCLT "shall not prejudice any question that may arise in regard to a treaty ... from the outbreak of hostilities between States.").

³⁶⁷ See **PLA-0005**, VCLT, Art. 61(1).

³⁶⁸ **PLA-0005**, VCLT, Art. 60(3)(a). The "repudiation" of a treaty is understood as the clear and definitive rejection by a State party of a treaty as a whole. See *In the Matter of an Arbitration under the Arbitration Agreement between the Government of the Republic of Croatia and the Government of the Republic of Slovenia, signed on 4 November 2009 (Croatia/Slovenia)*, PCA Case No. 2012-04, Partial Award, 30 June 2016, paras. 213–214.

provision essential to the accomplishment of the object or purpose of the treaty.³⁶⁹ Thus, a non-material breach of a treaty is not a ground for invoking the termination or suspension of the operation of a treaty.³⁷⁰

238. The rules governing a material breach are set forth in VCLT Part V at Article 60,³⁷¹ which the Court—like other international courts and tribunals, including the ICJ—regards as codifying customary international law.³⁷² The Court notes that Pakistan maintains that the rules in VCLT Article 60 reflect customary international law.³⁷³ For its part, India has stated in a written pleading to the ICJ that international law recognizes “termination or suspension in accordance with the rules of general international law”, and that the “substantive law on the subject has, to a large

³⁶⁹ See **PLA-0005**, VCLT, Art. 60(3)(b); B. Simma and C. Tams, “Article 60”, in O. Corten *et al.* (eds.), *The Vienna Conventions on the Law of Treaties: A Commentary* (2nd ed., Oxford University Press, 2025), pp. 1539–1541. Unlike the law on countermeasures (see paras. 296–317, *infra*), where a countermeasure by a State in the form of the termination/suspension of a treaty can be in response to a wrongful act of another State that is unrelated to the treaty, that is not true in the context of invoking a ground of material breach. In this area of international law, India must identify a provision of the Treaty that Pakistan has violated and, moreover, one that is essential to the accomplishment of the object and purpose of the Treaty.

³⁷⁰ See, e.g., **PLA-0094**, *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, 1997 ICJ Rep. 7, para. 106 (“[T]he Court is of the view that it is only a material breach of the treaty itself, by a State party to that treaty, which entitles the other party to rely on it as a ground for terminating the treaty. The violation of other treaty rules ... does not constitute a ground for termination under the law of treaties.”). See generally Maria Xiouri, *The Breach of a Treaty: State Responses in International Law* (Brill, 2021).

³⁷¹ See **PLA-0005**, VCLT, Art. 60.

³⁷² See **PLA-0094**, *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, 1997 ICJ Rep. 7, paras. 46, 99 (noting that the ICJ “has several times had occasion to hold that some of the rules laid down in [the VCLT] might be considered as a codification of existing customary law. The Court takes the view that in many respects this applies to the provisions of the Vienna Convention concerning the termination and the suspension of the operation of treaties, set forth in Articles 60 to 62”). See also **PLA-0147**, *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, para. 94 (“The rules laid down by the Vienna Convention on the Law of Treaties concerning termination of a treaty relationship on account of breach (adopted without a dissenting vote) may in many respects be considered as a codification of existing customary law on the subject.”); *Difference between New Zealand and France concerning the interpretation or application of two agreements, concluded on 9 July 1986 between the two States and which related to the problems arising from the Rainbow Warrior Affair*, Decision of 30 April 1990, XX UNRIAA 215, para. 75 (referring to “certain specific provisions of customary law in the Vienna Convention” as “relevant in this case, such as Article 60, which gives a precise definition of the concept of a material breach of a treaty”). For scholarly treatment, see B. Simma, “Reflections on Article 60 of the Vienna Convention on the Law of Treaties and Its Background in General International Law” (1970) *Österreichische Zeitschrift für öffentliches Recht*, Vol. 20, p. 5; M.E. Villiger, “Article 60”, in *Commentary on the 1969 Vienna Convention on the Law of Treaties* (Brill, 2009), p. 742, para. 14; B. Simma and C. Tams, “Article 60”, in O. Corten and P. Klein (eds.) *The Vienna Convention on the Law of Treaties: A Commentary*, Vol. II, (Oxford University Press, 2011), p. 1359, para. 19.

³⁷³ See Pakistan Memorial, para. 5.72 (“The legal requirements for material breach are codified in Article 60 VCLT. These requirements have also been held by the ICJ in *Gabčíkovo-Nagymaros* to be declaratory of customary international law.”).

extent, been codified in Part V of the Vienna Convention on the Law of Treaties, 1969”.³⁷⁴ Further, India stated in its written pleading that the rules on “unilateral termination or suspension of a multilateral treaty due to material breach” are, as recognized by the ICJ, “laid down by the Vienna Convention on the Law of Treaties concerning termination of a treaty relationship on account of breach”,³⁷⁵ and thereafter quoted the full text of Article 60.³⁷⁶

239. There is no indication either in India’s statements or in the facts in the record of these proceedings that Pakistan has repudiated the Treaty. To the contrary, in these proceedings, Pakistan seeks to vindicate rights it claims under the Treaty. Consequently, India’s basis for invoking a breach of the Treaty by Pakistan must be predicated on an alleged violation of a provision of the Treaty by Pakistan that is essential to the accomplishment of the Treaty’s object and purpose.
240. With respect to a potential breach, India has made various statements indicating that it regards Pakistan as having breached the Treaty. In those statements, however, India has not identified any operative provision of the Treaty that Pakistan allegedly has breached, let alone a provision essential to the accomplishment of the object or purpose of the Treaty. Rather than refer to any operative provision of the Treaty, India has asserted that certain types of conduct by Pakistan have breached the “cooperative spirit” of “goodwill and friendship” between the Parties indicated in the preamble to the Treaty.

(a) *Alleged Breach Arising from Pakistan’s Unwillingness to Enter into Negotiations to Modify the Treaty*

241. India has asserted that Pakistan has breached the Treaty by being unwilling to enter into negotiations to modify the Treaty. Thus, India’s 24 April 2025 Letter to Pakistan announcing its decision on abeyance says that “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”.³⁷⁷ In a statement

³⁷⁴ See *Appeal Relating to the Jurisdiction of the ICAO Council (India v. Pakistan)*, ICJ Pleadings, Memorial submitted by the Government of India, 22 December 1971, paras. 33–34.

³⁷⁵ See *Appeal Relating to the Jurisdiction of the ICAO Council (India v. Pakistan)*, ICJ Pleadings, Memorial submitted by the Government of India, 22 December 1971, para. 37, quoting *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, para. 94.

³⁷⁶ See *Appeal Relating to the Jurisdiction of the ICAO Council (India v. Pakistan)*, ICJ Pleadings, Memorial submitted by the Government of India, 22 December 1971, pp. 39–40. See also Annex E (Minutes of the ICAO Council), para. 37 (statement of India to the ICAO Council that Article 60 “is an existing rule of customary international law, which is merely codified by the Vienna Convention”).

³⁷⁷ **P-0700**, 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, para. 4.

made on 8 May 2025, India's Foreign Secretary maintained that "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".³⁷⁸ To similar effect, in a statement to the UN Security Council, India's Permanent Representative to the UN indicated that, as part of the "backdrop" for its decision on abeyance, Pakistan has declined to discuss modifications of the Treaty. Specifically, he said:

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.³⁷⁹

242. At the outset, the Court notes that there is no operative provision of the Treaty that expressly obligates Pakistan to enter into negotiations with respect to modification of the Treaty. While Article XII(3) of the Treaty provides that the Treaty may be modified by a treaty concluded by India and Pakistan, it does not require Pakistan to enter into negotiations for that purpose.³⁸⁰ Further, there does not appear to be any—and India has identified no—operative provision of the Treaty that implicitly requires Pakistan to agree to negotiate its modification. Accordingly, a failure of Pakistan to agree to modifications to the Treaty cannot constitute a breach of an operative provision of the Treaty, let alone a material breach.
243. India's position appears to be that, while the Treaty contains no operative provision requiring Pakistan to negotiate its modification, given changes in circumstances over time, Pakistan is

³⁷⁸ **P-0697**, Compendium of Recent Statements, Ministry of External Affairs, Government of India, "Foreign Secretary's Statement: Special Briefing on OPERATION SINDOOR" dated 8 May 2025, pp. 11–12.

³⁷⁹ **P-0697**, Compendium of Recent Statements, 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" dated 23 May 2025, pp. 27–28.

³⁸⁰ The Court notes that it is not uncommon for treaties to have provisions that call for a review and possible amendment of the treaty by the parties after a particular period of time. No such provision exists in the Treaty, though such provisions have been included in other bilateral agreements between India and Pakistan. See, for example, Article VIII of the 1976 India-Pakistan Agreement relating to Rail Communication, which provides that the "Agreement may be reviewed periodically in such a manner as the two Governments may determine on a mutual basis from time to time. The purpose of this review shall be to ensure the smooth working of this Agreement and to make recommendations to the two Governments about its modification, if any"; Article 7 of the 2007 India-Pakistan Agreement on Reducing the Risk from Accidents Relating to Nuclear Weapons ("The Parties may hold consultations, as mutually agreed upon, to review the implementation of the provisions of this Agreement as well as to consider possible amendments aimed at furthering the objectives of this Agreement"). Other bilateral agreements, including those pre-dating the Treaty, expressly provide a mechanism for a Party unilaterally to request consultations to amend the agreement – see Article X(B) of the 1948 India-Pakistan Agreement relating to Air Services, which provides that "[e]ither Contracting Party may at any time request consultation with the other with a view to initiating any amendments of this Agreement which may be desirable. Such consultation shall begin within a period of sixty days from the date of the request".

obligated under the preamble of the Treaty to engage in good faith negotiations toward that end. Such an obligation exists, according to India, because Pakistan's unwillingness to modify the Treaty jeopardizes accomplishing the Treaty's object and purpose, which, as indicated in the preamble, calls for a "cooperative spirit" of "goodwill and friendship" between the Parties.

244. The Court notes that the material breach of a treaty, if not based on repudiation, concerns the violation of a *provision* of the treaty, not a violation of the treaty's object and purpose. Accordingly, the Court cannot find a material breach by Pakistan in the form of a breach of the object and purpose of the Treaty.
245. Further, preambles generally are not capable of creating binding legal effects upon parties. Typically, preambles are not used to lay down legal obligations; they are formulated in general wording; and they express the policy rationale that led to the conclusion of the treaty. The preamble is available as context when interpreting the operative provisions of the treaty, and it may help identify the object and purpose of the treaty, but it is not normally an operative provision of the treaty.
246. In this particular instance, the Court finds that the preamble to the Treaty contains no text expressly or implicitly requiring that a Party agree to negotiate modifications to the Treaty at the request of the other Party. To the contrary, the clauses India identifies serve a different function entirely. The preambular clause "in a spirit of goodwill and friendship" refers to the disposition of the two governments when agreeing in 1960 to fix and delimit rights and obligations *in the Treaty* concerning the use of the waters of the Indus system of rivers. The clause is not addressing, expressly or implicitly, that such goodwill and friendship require a Party, at some later time, to enter into negotiations for modification of the Treaty. The Preamble also indicates the desire of the Parties, "in a cooperative spirit", to provide for dispute settlement of "all such questions as may arise in regard to the interpretation or application" of the Treaty's provisions. That clause speaks to the cooperative spirit that led to the agreement of the Parties in 1960 on inclusion within the Treaty of provisions for the settlement of disputes; it does not refer to any requirement for a Party, at some later time, to enter into negotiations for modification of the Treaty.
247. For avoidance of doubt, the Court affirms that it is only a material breach by Pakistan *of the Treaty itself* that could entitle India to rely on that breach as a ground for suspending or terminating the Treaty.³⁸¹ The violation of other rules outside the Treaty cannot be relied upon by India as a ground for suspension or termination of the Treaty under the law of treaties. As there is no provision

³⁸¹ See **PLA-0094**, *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, 1997 ICJ Rep. 7, para. 106.

anywhere in the Treaty requiring Pakistan to agree to enter into negotiations on modifying the Treaty, its failure to do so cannot constitute a breach of the Treaty, let alone a material breach.

248. The Treaty does provide a means for each Party to raise with the other Party “all matters arising out of this Treaty” and that is through the Commission. Article VIII of the Treaty provides that: “[u]nless either Government should decide to take up any particular question directly with the other Government, each Commissioner will be the representative of his Government for all issues arising out of this Treaty, and will serve as the regular channel of communication on all matters relating to the implementation of the Treaty ...”.³⁸² Further, the “purpose and functions of the Commission shall be to establish and maintain co-operative arrangements for the implementation of this Treaty, to promote co-operation between the Parties in the development of the waters of the Rivers and, in particular, ... to make every effort to settle promptly, in accordance with Article IX(1), any question arising thereunder...”.³⁸³ Article XI(1), in turn, is the first step in the Treaty’s dispute settlement procedures, providing that “[a]ny question which arises between the Parties concerning the interpretation or application of this Treaty or the existence of any fact which, if established might constitute a breach of this Treaty shall first be examined by the Commission, which will endeavour to resolve the question by agreement”.³⁸⁴
249. India is within its rights to decide not to take up any particular matter in the Commission and instead to raise it directly with Pakistan. But there is no obligation in Article VIII for Pakistan to agree to address the question through inter-governmental negotiations prior to it being addressed in the Commission. Failing Pakistan’s willingness to engage in inter-governmental negotiations, for whatever reason, India’s Commissioner could raise with Pakistan’s Commissioner the position of India that the Treaty should be modified. As such a matter appears to “arise out of the Treaty”, it would be a matter that Pakistan’s Commissioner would be obligated to consider and respond to with Pakistan’s position. In the event that India regarded the response or engagement of Pakistan’s Commissioner as raising a question concerning the interpretation or application of the Treaty, or as a breach of the Treaty, then the Treaty provides that such a question may be taken up through inter-governmental negotiations³⁸⁵ or, failing that, before a court of arbitration.³⁸⁶

³⁸² **PLA-0001**, Treaty, Art. VIII(1).

³⁸³ **PLA-0001**, Treaty, Art. VIII(4).

³⁸⁴ **PLA-0001**, Treaty, Art. IX(1).

³⁸⁵ **PLA-0001**, Treaty, Art. IX(4).

³⁸⁶ **PLA-0001**, Treaty, Art. VIII(5).

250. Based on the record before it, the Court does not see any basis for finding that Pakistan has violated the Treaty by refusing to engage in this manner. The Court has reviewed twenty-six exchanges between the Parties starting on 26 January 2023 and continuing through 8 May 2025, in the form of diplomatic notes and letters and generally recounts those exchanges as follows:³⁸⁷
- (a) India sought inter-governmental negotiations starting in January 2023 under Article XII(3) of the Treaty (on modification of the Treaty by a duly ratified treaty concluded for that purpose) to address what it said was Pakistan’s “violation of the scheme of the Treaty relating to settlement of disputes essential to the accomplishment of the object and purpose of the Treaty, thereby amounting to a material breach of the Treaty”.³⁸⁸
 - (b) Pakistan responded in April 2023 that any concerns relating to the operation of the Treaty should be raised in the Commission (hence, under Article IX(1) of the Treaty on any question concerning the interpretation or application of the Treaty that might constitute a breach), and that it was willing to engage in that manner.³⁸⁹
 - (c) Thereafter, there are exchanges over the course of some 18 months where both Parties essentially stood by those positions: Pakistan seeking inter-Commissioner examination of any claimed breach, as well as an Indian statement as to India’s concerns regarding operation of the Treaty and its objectives in seeking its modification, as a prelude to any negotiation on modification of the Treaty; India seeking inter-governmental negotiations under Article XII(3) based on a listing of its concerns, including reconsideration of the Article IX dispute resolution mechanism.³⁹⁰
 - (d) In October 2024, Pakistan maintained that India’s insistence on inter-governmental negotiations without consideration first in the Commission was inconsistent with the Treaty, but indicated that “without prejudice to the above-stated position, Pakistan remains committed to the Treaty and would be open to hearing India’s concerns at a Government-to-Government level”, with such discussions taking “place at a mutually-agreed neutral venue”. Further, Pakistan noted “that the normal function of the [Commission] remains stalled due to non-cooperation by India” and that “[f]oregoing in view, India should demonstrate good faith and give precedence to reviving the normal working of the

³⁸⁷ See Pt. II, *supra*.

³⁸⁸ **P-0797-B**, Letter from the ICIW to the PCIW dated 25 January 2023.

³⁸⁹ **P-0797-C**, Letter No. WT(94)/(8128)/PCIW dated 1 April 2023.

³⁹⁰ See paras. 79–93, *supra*.

Commission which includes *inter alia* holding the annual meetings of the Commission and conducting pending tours of inspection as well as restoring supply of data under the provision of the Treaty”.³⁹¹

- (e) India responded on 18 October 2024 by indicating a willingness to meet in Islamabad and requesting that Pakistan propose dates for November 2024.³⁹²
- (f) In January 2025, Pakistan responded that “Pakistan’s openness to hear India’s concerns at the government-to-government level had been expressed in the expectation that India would revive the stalled mechanisms mandated by the Indus Waters Treaty”, including meetings of the Commission, which had not occurred. Pakistan proposed that a Commission “meeting should be convened, preferably prior to the government-to-government interaction”.³⁹³
- (g) On 8 April 2025, India responded by again requesting dates for a government-to-government meeting,³⁹⁴ but then on 24 April 2025 informed Pakistan of its decision on abeyance.³⁹⁵

251. Those exchanges do not demonstrate that Pakistan was or is unwilling to address the issue of Treaty modifications through the means provided for in the Treaty, which is pursuant to Articles VIII and IX. Rather, Pakistan has maintained correspondence with India on such a possibility throughout the relevant time period of January 2023 to April 2025. Pakistan initially envisaged doing so through discussions in the Commission and requested information on the specific concerns at issue. It later sought to accommodate India’s position of having government-to-government negotiations, but apparently expected such negotiations to occur in tandem with India resuming cooperation under the Treaty through meetings of the Commission, tours of inspection, and the sharing of data. Obviously, throughout this period, the Parties had differing views as to what was necessary to address their respective concerns under the Treaty but, as the Court found above, there is no obligation under Articles VIII or XII(3) for Pakistan to agree to enter into negotiations concerning modification of the Treaty. Rather, the only relevant obligations

³⁹¹ **P-0797-P**, Letter No. 4 (38)/2015-Water dated 8 October 2024.

³⁹² **P-0797-R**, Letter D.O. No. Y-18012/1/2024-Indus dated 18 October 2024.

³⁹³ **P-0797-T**, Letter No. 4(38)/2015-Water dated 17 January 2025.

³⁹⁴ **P-0797-U**, Letter D.O. No. Y-18012/1/2024-Indus dated 8 April 2025.

³⁹⁵ **P-0700**, 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.

relate to cooperation within the Commission under Article VIII on matters arising under the Treaty, which the record demonstrates that Pakistan was prepared to fulfill, and to the dispute settlement procedures of Article IX. With regard to those obligations, the Court finds Pakistan's response on 8 May 2025 to India's final communication (its 24 April 2025 Letter) to be accurate, when stating that: "At no point has Pakistan refused to engage. On the contrary, Pakistan has consistently conveyed its openness to hear and discuss India's concerns".³⁹⁶

252. Further, it bears noting that even if inter-governmental negotiations had occurred, as sought by India, any inability of India and Pakistan to agree upon modifications to the Treaty, standing alone, is also not wrongful; rather, "something more must appear than the failure of particular negotiations".³⁹⁷ Indeed, in the *Interim Accord* case, the ICJ found "that the failure of the Parties to reach agreement [on the 'name difference'], 16 years after the conclusion of the Interim Accord, does not itself establish that either Party has breached its obligation to negotiate in good faith. Whether the obligation has been undertaken in good faith cannot be measured by the result obtained".³⁹⁸ Moreover, to the extent that India's complaint is that Pakistan is failing to negotiate toward modifications of the Treaty, it also bears noting that India's decision on abeyance has contributed to a situation that is not conducive to achieving such modifications.³⁹⁹

(b) *Alleged Breach Arising from Pakistan's Objections in the Commission and Recourse to Dispute Settlement*

253. India may be asserting that, by raising objections in the Commission regarding the design of India's Run-of-River HEPs or other works, and by pursuing dispute settlement procedures under

³⁹⁶ **P-0706**, 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. Pakistan has informed the Court that it has not received a response from India to that letter. Pakistan Memorial, para. 4.14; Tr., Day 2, 27 April 2026, p. 32:3–24.

³⁹⁷ **PLA-0183**, *Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia v. Greece)*, Judgment, 2011 ICJ Rep. 644, para. 132, quoting *Arbitration on the Tacna-Arica Question (Chile/Peru)*, 1925 II UNRIAA 921, p. 930.

³⁹⁸ **PLA-0183**, *Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia v. Greece)*, Judgment of 5 December 2011, 2011 ICJ Rep. 644, para. 134.

³⁹⁹ For a similar conclusion, see **PLA-0094**, *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, 1997 ICJ Rep. 7, para. 107 (noting that relevant articles of the bilateral treaty at issue "expressly provide that the obligations they contain shall be implemented by the means specified in the Joint Contractual Plan. The failure of the parties to agree on those means cannot, on the basis of the record before the Court, be attributed solely to one party. ... In this regard it cannot be left out of consideration that Hungary itself, by suspending the works at Nagymaros and Dunakiliti, contributed to the creation of a situation which was not conducive to the conduct of fruitful negotiations.").

the Treaty, Pakistan has acted in violation of the Treaty. In a statement made on 8 May 2025, India's Foreign Secretary maintained that:

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.⁴⁰⁰

254. India's contention that challenges to its construction on the Eastern or Western Rivers constitute "legal roadblocks" suggests that it views the exercise by Pakistan of its right to object to the design of India's projects, as permitted by the Treaty, constitutes an interference with India's legitimate right to utilize the waters. The Court emphasizes, however, that the object and purpose of the Treaty was not to accord either Party absolute rights, but to delimit rights and obligations within a framework of cooperation, so that the interests of both Parties would be secured.⁴⁰¹ With respect to the Western Rivers, India agreed in the Treaty to "let flow" the waters of the Western Rivers for Pakistan's unrestricted use. While India retained a right to use the Western Rivers to generate hydro-electric power, that right is not absolute. For example, the design of any new Run-of-River Plant on the Western Rivers must be in accordance with Paragraph 8 of Annexure D to the Treaty.⁴⁰² Further, Paragraph 9 imposes an obligation on India to provide Pakistan with information, prescribed in Appendix II, to enable Pakistan to satisfy itself that a proposed Annexure D, Part 3 HEP complies with the requirements of Paragraph 8. The prescribed information includes: (1) "Location of Plant"; (2) "Hydrologic Data"; (3) "Hydraulic Data"; (4) "Particulars of Design"; and (5) other "General" information.⁴⁰³ Having been notified of such information, Pakistan is to communicate to India within three months any objection that the design is not in accordance with Annexure D.⁴⁰⁴ If no such objection is received, then Pakistan is deemed to have none. If a question arises as to whether or not the design of a Plant conforms to the criteria set out in Paragraph 8, then either Party may proceed to have the question resolved in the Commission and, if necessary, through binding dispute resolution.⁴⁰⁵ Similar obligations of

⁴⁰⁰ **P-0697**, Compendium of Recent Statements, Ministry of External Affairs, Government of India, "Foreign Secretary's Statement: Special Briefing on OPERATION SINDOOR" dated 8 May 2025, pp. 11–12.

⁴⁰¹ Award on Issues of General Interpretation, para. 428.

⁴⁰² See also **PLA-0001**, Treaty, Annexure D, paras. 19–21 with respect to Small Plants.

⁴⁰³ **PLA-0001**, Treaty, Annexure D, Appendix II.

⁴⁰⁴ **PLA-0001**, Treaty, Annexure D, para. 10.

⁴⁰⁵ **PLA-0001**, Treaty, Annexure D, para. 11.

notification exist with respect to Small Plants constructed under Annexure D, Part 3⁴⁰⁶ and with respect to Storage Works constructed under Annexure E.⁴⁰⁷

255. The Court notes that India has presented no dispute to a court of arbitration as to an alleged abuse by Pakistan of the mechanisms for raising objections regarding HEPs under Annexure D or Storage Works under Annexure E to the Treaty. Nevertheless, the Court has reviewed the correspondence and records of meetings between the Commissioners that are in evidence before the Court regarding such questions and objections made by Pakistan under the Treaty. These include objections made with respect to HEPs and Storage Works on the Western Rivers that were in operation or under construction as on the Effective Date of the Treaty (under Annexure D and Annexure E);⁴⁰⁸ Annexure D, Part 3 HEPs notified pursuant to Paragraph 9 of Annexure D,⁴⁰⁹ Small Plants notified by India pursuant to Paragraph 19 of Annexure D,⁴¹⁰ and Storage Works notified by India pursuant to Paragraph 19 of Annexure E.⁴¹¹
256. The Court notes that the bases for the objections raised by Pakistan are various and include, *inter alia*, allegations of incomplete data and missing information;⁴¹² disagreements concerning the status and classification of Plants;⁴¹³ and ongoing disagreements concerning the interpretation and

⁴⁰⁶ See **PLA-0001**, Treaty, Annexure D, paras. 19–22, Appendix III.

⁴⁰⁷ See **PLA-0001**, Treaty, Annexure E, paras. 13–16, Appendix.

⁴⁰⁸ **PLA-0001**, Treaty, Annexure D, para. 4, Annexure E, para. 4. See also **P-0649.0130** (Chinani); **P-0649.1728**.

⁴⁰⁹ See, e.g., **P-0649.0137** (Stakna); **P-0649.0136** (Sumbal); **P-0647.40** (Salal-I&II); **P-0649.0283** (Lower Jhelum); **P-0649.0425** (Chinani-I); **P-0649.0411** (Dul Hasti); **P-0649.0503** (Upper Sind-II); **P-0649.0528** (Uri-I); **P-0649.0543** (Kargil); **P-0649.0649** (Pahalgam); **P-0649.0679** (Bhadarwah); **P-0649.0703** (Parnai); **P-0649.2047** (Baglihar-I&II); **P-0056** (Kishenganga); **P-0649.1029** (Uri-II); **P-0649.1072** (Nimo Bazgo); **P-0649.1117** (Chutak); **P-0649.1256** (Ranja-Ala-Dunadi); **P-0649.1343** (Miyar); **P-0649.1350** (Lower Kalnai); **P-0078** (Ratle); **P-0649.1382** (New Ganderbal); **P-0649.1713** (Nimu Chilling); **P-0649.1713** (Durbuk Shyok); **P-0216** (Kiru); **P-0649.1633** (Kargil Hunderman); **P-0649.1631** (Kulan Ramwari); **P-0649.1632** (Phagla); **P-0649.1636** (Mandi); **P-0649.1668** (Mangdum Sangra); **P-0649.1669** (Sankoo); **P-0649.1670** (Ans-II); **P-0649.1723** (Kwar).

⁴¹⁰ See, e.g., **P-0649.0019** (Billing); **P-0649.0056** (Shansha); **P-0649.0068** (Sissu); **P-0649.0082** (Khardung); **P-0649.0081** (Dras); **P-0649.0550** (Killar); **P-0649.0557** (Karnah); **P-0649.0787** (Thirot); **P-0649.0613** (Haftal-I&II); **P-0649.0614** (Shaker Chicktan (Sanjak)); **P-0649.0615** (Matayin); **P-0649.0624** (Matchil); **P-0649.2035** (Keran); **P-0649.0637** (Asthan Nallah); **P-0649.0655** (Chinani-II); **P-0649.0722** (Rajouri); **P-0649.0756** (Bazgo); **P-0649.0755** (Sumoor Nobra); **P-0649.0758** (Hunder Nobra); **P-0649.1199** (Athawatto); **P-0649.1206** (Tangmarg); **P-0649.1210** (Brenwar); **P-0649.1267** (Dumkhar); **P-0649.1270** (Marpachoo); **P-0649.1280** (Kehmil); **P-0649.1297**; **P-0649.1165** (Dah); **P-0649.1298** (Hanu); **P-0649.1319** (Boniyar); **P-0649.1713** (Durbuk-II); **P-0216** (Tamasha); **P-0649.1683** (Baltikulan); **P-0216** (Kalaroos-II); **P-0649.1669** (Sankoo).

⁴¹¹ See, e.g., **P-0649.1374**, Letter No. WT(140)/(7332-A)/PCIW, 12 March 2013.

⁴¹² See, e.g., **P-0649.1270**; **P-0649.0019** (Billing Nallah); **P-0056** (Kishenganga).

⁴¹³ See, e.g., **P-0649.0636** (Pahalgam); **P-0649.0679** (Bhadarwah); **P-0647.45** (Chinani).

application of the Treaty to specific Plants.⁴¹⁴ The Court does not consider it necessary to comment on the appropriateness of these requests and objections raised by Pakistan. For present purposes, it suffices to note that the Treaty expressly contemplates the possibility of Pakistan raising such objections as to whether the design of a plant conforms to the criteria set out in Annexure D and Annexure E, and that questions may arise that either Party may resolve in accordance with the provisions of Article IX(1) and (2), including before the Commission, a neutral expert, or a court of arbitration.

257. Accordingly, to the extent that India is making an allegation that Pakistan is exercising its rights to make objections under Annexure D and Annexure E to the Treaty in bad faith or otherwise in an improper manner that extends beyond the scope of the rights prescribed to Pakistan under the Treaty, the appropriate course is for India to raise such issues concerning the interpretation or application of the Treaty in the Commission in accordance with Articles IX(1) and (2). Indeed, based on its review of the correspondence and meetings between the Commissioners, the Court notes that questions concerning the scope of the data and information that Pakistan is entitled to ask India to supply have previously been raised by the Parties in the Commission for resolution.⁴¹⁵ If resolution within the Commission is not possible, then the matter may be placed before a court of arbitration. Relatedly, India has maintained that Pakistan's initiation of proceedings before a court of arbitration that is not truly a "dispute" could be a violation of the Treaty,⁴¹⁶ presumably also on the basis that such initiation is being done in bad faith. *First*, it is noted that Pakistan has only initiated a court of arbitration under the Treaty on two occasions; in both instances, India raised directly or indirectly objections to jurisdiction or admissibility, which were rejected, respectively, by the *Kishenganga* Court and by this Court.⁴¹⁷ Accordingly, Pakistan's initiation of

⁴¹⁴ In relation to Annexure D, Part 3 HEPs, see, e.g., **P-0587** (Baglihar); **P-0059** (Kishenganga). In relation to Small Plants, see, e.g., **P-0649.0019** (Billing Nallah); **P-0649.0614** (Shaker Chicktan); **P-0649.0557** (Karnah).

⁴¹⁵ **P-0647.21**, Record of the 21st Meeting of the Permanent Indus Commission, 28 September to 4 October 1966, pp. 6–7 (“(i) Whether under Article VI(2), Article VI(2) read with Article IV(2) and IV(3), and Article VII(2) of the Indus Waters Treaty 1960, Pakistan is entitled to ask India to supply the data requested by the Pakistan Commissioner in his letter No. WT(38/2)/(807-A)/PCI dated the 8th June, 1963?” and “(ii) Whether the schemes for which the Pakistan Commissioner had requested data in his letter dated 8th June 1963, can be identified or not?”).

⁴¹⁶ See, e.g., **P-0803**, Compendium of Official or Semi-Official Statements of the Government of India, April – July 2026, pp. 30–33 (Embassy of India to Finland, “The Indus Waters Treaty: Legal Analysis with Special Reference to the Dispute Settlement Mechanism”, *Daily Finland*, 3 July 2026) (“If a dispute has not arisen in accordance with the Treaty, a unilateral decision by either party to initiate the process for the creation of a court of arbitration could amount to violation of the Treaty, hence illegal. The other contracting party would obviously look for remedial options.”).

⁴¹⁷ See, e.g., **PLA-0003**, *Kishenganga* Partial Award, paras. 472–491; Award on Competence, paras. 136–318; Supplemental Award on the Competence of the Court, paras. 51–76.

those proceedings cannot be viewed as a breach or otherwise contrary to the provisions of the Treaty. *Second*, even if India had prevailed on one or more of its objections, that alone would not constitute a violation by Pakistan of the Treaty. International dispute resolution typically entails one party prevailing on its views, but that alone does not mean that the other party has acted in bad faith or, in this instance, acted in violation of the Treaty.

258. To the extent that India’s allegations concern the *delays* caused by the efforts to resolve questions in the Commission or differences/disputes through the other dispute settlement procedures under Article IX of the Treaty, it would appear that this concern is shared by both Parties.⁴¹⁸ Further, the Court notes that the process for the resolution of questions within the Commission has previously been discussed by the Parties, with it accepted that such questions about process could be resolved in accordance with Article IX(3), (4) and (5) of the Treaty.⁴¹⁹ In any event, such delays may be attributable to a variety of factors, including, *inter alia*, local concerns over proposed projects,⁴²⁰ [REDACTED]⁴²¹ and the need to make alterations and adjustments based on the site conditions and to ensure compliance with both domestic and international obligations, including those under the Treaty. Despite such delays, however, the Parties have been able to resolve questions, differences, and disputes through the Commission and the dispute resolution mechanisms under Article IX of the Treaty, while India concomitantly has been able to pursue considerable Run-of-River HEP development on the Western Rivers.⁴²²
259. In light of the above, the Court cannot discern, on a proper interpretation of the Treaty or on the evidence before it, a basis for finding that Pakistan breached the Treaty by raising objections under Annexure D and Annexure E to the Treaty, by pursuing questions within the Commission, or by invoking the compulsory dispute settlement procedures under the Treaty.

⁴¹⁸ Pakistan’s Memorial on the First Phase on the Merits, Appendix B, Statement of Syed Muhammad Mehar Ali Shah, para. 72 (“Article VIII (4)(b) makes clear that one of the functions of the Commission is to ‘make every effort to settle promptly, in accordance with the provisions of Article IX (1) any question arising thereunder’. Unfortunately, efforts to settle have been anything but prompt.”).

⁴¹⁹ See, e.g., **P-0647.21**, Record of the 21st Meeting of the Permanent Indus Commission, 28 September to 4 October 1966, pp. 4–5; **P-0647.22**, Record of the 22nd Meeting of the Permanent Indus Commission, 17 to 24 January 1967, pp. 2–3.

⁴²⁰ **PLA-0003**, *Kishenganga* Partial Award, para. 148.

⁴²¹ [REDACTED]

⁴²² See Award on Issues of General Interpretation, paras. 163–219.

(c) *Alleged Breach Arising from Terrorist Acts*

260. India appears to regard Pakistan’s alleged sponsorship of terrorist attacks as a breach of the Treaty and has linked such attacks to the operation of the Treaty. Thus, India’s 24 April 2025 Letter to Pakistan announcing its decision on abeyance, which came in the immediate wake of the Pahalgam attack, refers to “sustained cross border terrorism by Pakistan targeting the Indian Union Territory of Jammu and Kashmir” and says that the “resulting security uncertainties have directly impeded India’s full utilization of its rights under the Treaty”.⁴²³ Further, India’s representative to the UN Security Council, in explaining India’s decision on abeyance, asserted that “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”.⁴²⁴ As previously noted, India has also raised the “significant alteration of the security landscape” in India-administered Jammu and Kashmir as a fundamental change in circumstances necessitating the renegotiation of the Treaty. Pakistan has denied any responsibility for these attacks, and stresses that such a “grave allegation against Pakistan cannot be sustained as a factual matter”.⁴²⁵
261. The Court is aware of reports of attacks over recent decades in India-administered Jammu and Kashmir that have resulted in the death of, or serious injury to, civilians and security personnel, including the incidents referred to above as well as a number of other incidents.⁴²⁶ The Court recalls the observations of the UN Security Council that “any acts of terrorism are criminal and unjustifiable, regardless of their motivation, wherever, whenever and by whomsoever committed”.⁴²⁷ Further, the Court recalls the recognition by the UN General Assembly that

⁴²³ **P-0700**, 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, paras. 3–4.

⁴²⁴ **P-0697**, Compendium of Recent Statements, 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” dated 23 May 2025, pp. 27–28.

⁴²⁵ Pakistan Memorial, para. 5.78; See **P-0781**, Remarks by Ambassador Asim Iftikhar Ahmad, Permanent Representative of Pakistan to the UN, at the Press Briefing with UN Correspondents Association dated 2 May 2025 (denying Pakistan’s involvement, declaring India’s allegations to be unsubstantiated, and calling for an independent investigation of the attack); **P-0706**, 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, para. 3. See also Pakistan Memorial, paras. 2.27 (and sources cited), 5.91, 5.126; Submissions of Pakistan on Recent Developments Pursuant to para. 1.2 of Procedural Order No. 15, 11 June 2025 (as corrected, 12 June 2025), para. 4.37.

⁴²⁶ Reuters, “List of major terror attacks in India’s Kashmir over the years” dated 22 April 2025 (referring to attacks in September 2016, July 2017, February 2019, May 2024, June 2024, October 2024, and November 2024); **P-0698**, J. Curtis, Kashmir: Renewed India-Pakistan Tensions (House of Commons Library, Research Briefing No. 10264) dated 16 May 2025, pp. 12, 25–26.

⁴²⁷ UN Security Council, “Press Statement on Terrorist Attack in Jammu and Kashmir” dated 25 April 2025, SC/16050. See also, UN Security Council, Resolution 1269 (Responsibility of the Security Council in the

terrorism not only has a direct impact on the victims of attacks and their families, but also a “detrimental effect on the full enjoyment of all human rights and fundamental freedoms, and impedes the full enjoyment of political, civil, economic, social and cultural rights”.⁴²⁸ Accordingly, the Court takes extremely seriously the concerns expressed by India with respect to the safety of its people and of its infrastructure arising from the threat of terrorism.

262. For purposes of this Award, however, it is not necessary for the Court to determine whether such attacks occurred, whether they can be attributed to Pakistan, or whether Pakistan was otherwise involved in such attacks. Even if India’s allegations could be proven as true, they would not establish a material breach of the Treaty by Pakistan—namely, breach of a provision essential to the accomplishment of the object or purpose of the Treaty—that could support the suspension or termination of the Treaty by India.
263. *First*, the Court notes that India has not identified any operative provision of the Treaty that Pakistan has violated by way of the alleged cross-border terrorism. Specifically, India has identified no operative provision in the Treaty that addresses obligations relating to cross-border activities that constitute terrorism or involve the use of force, either expressly or implicitly. To the contrary, the Treaty expressly states that it “governs the rights and obligations of each Party in relation to the other with respect *only* to the use of the waters” of the Eastern and Western Rivers, and that nothing in the Treaty could be construed as recognizing, waiving, or supporting *other* rights.⁴²⁹ India does refer to the preamble of the Treaty, and specifically to the clauses relating to “a spirit of goodwill and friendship” and “cooperative spirit”. But, as previously explained, the first of those preambular clauses refers to the disposition of the two governments when they agreed to fix and delimit in the Treaty rights and obligations concerning the use of the waters of the Indus system of rivers. The second preambular clause is indicating that, “in a cooperative spirit”, the Parties agreed to provide for dispute settlement of “all such questions as may arise in regard to the interpretation or application” of the Treaty’s provisions. Neither clause speaks to matters arising outside the confines of the Treaty, whether they relate to security, economic, or political matters in the Parties’ relationship.

maintenance of international peace and security) dated 19 October 1999, S/RES/1269 (1999), para. 1; UN Security Council, Resolution 1456 (High-level meeting of the Security Council: combating terrorism) dated 20 January 2003, S/RES/1456 (2003).

⁴²⁸ UN General Assembly, Resolution 72/246 (Effects of terrorism on the enjoyment of human rights) dated 18 January 2018, A/RES/72/246 (2018).

⁴²⁹ **PLA-0001**, Treaty, Art. XI(1) (emphasis added).

264. *Second*, in certain statements, India has linked “security uncertainties” with the impedance of its rights under the Treaty. The Court observes that the majority (if not all) of the attacks in India-administered Jammu and Kashmir over the past decade, including the Pahalgam attack on 22 April 2025, have had no apparent direct connection to any of India’s Run-of-River HEPs. The Court is aware of the Permanent Representative of India’s statement to the Security Council regarding an attack in 2012 on the Tulbul Navigation Project. Yet, India did not pursue the Tulbul incident before the Treaty’s dispute resolution procedures at the time (though such procedures were invoked on other questions relating to that project).⁴³⁰ Further, in the evidence before the Court, including India’s statements within the Commission and its public statements, there is no indication of any other incidents directly affecting its HEP infrastructure on the Western Rivers. Accordingly, India has not demonstrated through evidence that cross-border attacks have directly impeded its ability to design, construct, or operate its Run-of-River HEPs on the Western Rivers.
265. *Third*, the Court acknowledges that the threat of terrorism may have *indirect* effects on the design, construction, and operation of infrastructure projects,⁴³¹ including Run-of-River HEPs. For instance, additional costs and/or delays may be incurred to increase security at HEP sites, to enhance the resilience of HEPs to physical attacks, and to obtain necessary insurance. Projects may need to be relocated to avoid particular high-risk areas, and access to finance and to labor resources may be affected where terrorism-related risks are perceived as too high. Yet, here too, India did not pursue any such questions of indirect effects before the Treaty’s dispute resolution procedures. Further, in the evidence before the Court, including India’s statements within the Commission and its public statements, there is no indication of such indirect effects on its ability to construct and operate its Run-of-River HEPs on the Western Rivers. Nor is it clear that such indirect effects would have been so severe as to preclude the exercise of India’s rights under the Treaty.
266. *Fourth*, rather than demonstrating any direct or indirect effects from alleged terrorist attacks upon India’s ability to construct or operate its Run-of-River HEPs on the Western Rivers, the evidence before the Court indicates that, regardless of the security situation in India-administered Jammu and Kashmir, India has successfully completed many Run-of-River HEPs on the Western Rivers

⁴³⁰ Award on Issues of General Interpretation, paras. 168, 191.

⁴³¹ See A. Jiménez and N. Lupton, “Terrorism hazard and infrastructure projects: The moderating role of home experience and institutions”, (2021) 135 *Journal of Business Research* 721.

in recent years. Moreover, the Court understands that a large number of further projects are at advanced stages of construction or planning.⁴³²

267. For the above reasons, the Court cannot conclude that the alleged terrorist attacks—even if, for present purposes, they are assumed to have occurred and to be attributable to Pakistan—are having a direct or indirect effect on the accomplishment of the object and purpose of the Treaty. Given that there appears to be no “violation of a provision essential to the accomplishment of the object and purpose of the treaty”,⁴³³ the alleged attacks cannot be invoked by India as a material breach of the Treaty by Pakistan and therefore a ground for terminating or suspending the operation of the Treaty.

(d) *Potential Application of Exceptio Non Adimpleti Contractus*

268. The Court has considered the possible application of a principle of *exceptio non adimpleti contractus* (“exception of a non-performed contract”), which might allow India to withhold its performance under the Treaty until Pakistan fulfills its side of the bargain. Whether such a general principle operates as a rule of customary international law is not settled; no international court or tribunal has relied on it when reaching a decision, and the principle might well be regarded as subsumed within contemporary rules on the law of treaties, such as VCLT Article 60.⁴³⁴ While the ICJ has not definitively addressed the issue, ICJ Judge Bruno Simma found that VCLT “Article 60 regulates the legal consequences of treaty breach in an exhaustive way; thus no version of the *exceptio* has survived the codification of the law of treaties — may it rest in peace”.⁴³⁵ In any event, in light of the analysis above, there is no prior breach of a provision of the Treaty by Pakistan that would support application of the principle. Further, the principle is commonly understood as one calling for strict reciprocity, whereby a party to a treaty is restricted to non-application of the same or a closely related treaty obligation that the other party is allegedly violating.⁴³⁶ In this instance, India is not seeking to avoid an obligation under a provision of the Treaty due to Pakistan’s non-application of that or a related provision.

⁴³² Award on Issues of General Interpretation, paras. 180–190.

⁴³³ VCLT, Art. 60(3)(b).

⁴³⁴ See fn. 354, *supra*.

⁴³⁵ **PLA-0195**, *Application of the Interim Accord of 13 September 1995 (former Yugoslav Republic of Macedonia v. Greece)*, 2011 ICJ Rep. 695, para. 29 (separate opinion of Judge Simma).

⁴³⁶ *Application of the Interim Accord of 13 September 1995 (former Yugoslav Republic of Macedonia v. Greece)*, 2011 ICJ Rep. 709 (declaration of Judge Bennouna) (finding that the *exceptio* principle “can only be contemplated, in general international law, under a strict construction of reciprocity in the

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269. In sum, for the reasons indicated above, the Court concludes that India has not demonstrated the existence of any breach of the Treaty by Pakistan that can serve as a ground for India unilaterally to terminate or suspend the operation of the Treaty.

2. Changed Circumstances as a Ground for Suspension/Termination of the Treaty

270. A party to a treaty may also invoke a fundamental change of circumstances as a ground for terminating the treaty or suspending its operation.⁴³⁷ To do so, however, certain stringent conditions must be met.

271. *First*, a fundamental change of circumstances may not be invoked as a ground for terminating a treaty or suspending its operation if those changes were foreseeable at the time the treaty was concluded.⁴³⁸ *Second*, a fundamental change of circumstances may not be invoked as a ground for terminating a treaty or suspending its operation unless the existence of those circumstances constituted an essential basis of the consent of the parties to be bound by the treaty.⁴³⁹ *Third*, a fundamental change of circumstances may not be invoked as a ground for terminating a treaty or suspending its operation unless the effect of the change is radically to transform the extent of obligations still to be performed under the treaty.⁴⁴⁰ *Fourth*, a fundamental change of circumstances may not be invoked as a ground for terminating a treaty or suspending its operation if the treaty establishes a boundary.⁴⁴¹

272. Such conditions are codified in Part V of the VCLT at Article 62. The Court regards Article 62 as codifying customary international law, as have other international courts and tribunals, including the ICJ.⁴⁴² Indeed, the ICJ in the *Gabčíkovo-Nagymaros Project* case found that “Article 62 of the

implementation of certain international obligations, where the implementation of one is inconceivable without the other. These are obligations of a strictly interdependent nature.”).

⁴³⁷ See **PLA-0005**, VCLT, Art. 62.

⁴³⁸ See **PLA-0005**, VCLT, Arts. 62(1), (3).

⁴³⁹ See **PLA-0005**, VCLT, Arts. 62(1)(a), (3).

⁴⁴⁰ See **PLA-0005**, VCLT, Arts. 6(1)(b), (3).

⁴⁴¹ See **PLA-0005**, VCLT, Arts. 62(2)(a), (3).

⁴⁴² See **PLA-0094**, *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, 1997 ICJ Rep. 7, paras. 46, 99 (noting that the ICJ “has several times had occasion to hold that some of the rules laid down in [the VCLT] might be considered as a codification of existing customary law. The Court takes the view that in many respects this applies to the provisions of the Vienna Convention concerning the termination and the suspension of the operation of treaties, set forth in Articles 60 to 62”). See also **PLA-0094**, *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, 1997 ICJ Rep. 7, para. 104 (“A fundamental change of

Vienna Convention on the Law of Treaties ... may in many respects be considered as a codification of existing customary law on the subject of the termination of a treaty relationship on account of change of circumstances”.⁴⁴³ The Court notes that, in these proceedings, Pakistan has relied on the rules set forth in VCLT Article 62 as customary international law.⁴⁴⁴ For its part, India has stated to the ICJ that international law recognizes “termination or suspension in accordance with the rules of general international law”, and that the “substantive law on the subject has, to a large extent, been codified in Part V of the Vienna Convention on the Law of Treaties, 1969”.⁴⁴⁵ Further, India has invoked Article 62 as relevant when advocating for its rights in other inter-State proceedings, including in particular the rule that a boundary, once established, is to be final and definite despite changed circumstances relating to climate change.⁴⁴⁶

273. Given the stringency of such conditions, the ICJ also has maintained that any termination or suspension in treaty relations due to changed circumstances must be regarded as uncommon and, indeed, exceptional. The ICJ has found that the “negative and conditional wording of Article 62 of the Vienna Convention on the Law of Treaties is a clear indication moreover that the stability

circumstances must have been foreseen; the existence of the circumstances must have constituted an essential basis of the consent of the parties to be bound to the Treaty.”); **PLA-0194**, *Fisheries Jurisdiction (United Kingdom v. Iceland)*, Jurisdiction of the Court, Judgment, 1973 ICJ Rep. 18, para. 36 (“This principle, and the conditions and exceptions to which it is subject, have been embodied in Article 62 of the Vienna Convention on the Law of Treaties, which may in many respects be considered as a codification of existing customary law on the subject of the termination of a treaty relationship on account of change of circumstances.”). For scholarly treatment, see **PLA-0146**, 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* (Oxford University Press, 2011), p. 1411.

⁴⁴³ **PLA-0094**, *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, 1997 ICJ Rep. 7, para. 104, quoting with approval **PLA-0194**, *Fisheries Jurisdiction (United Kingdom v. Iceland)*, Jurisdiction of the Court, Judgment, 1973 ICJ Rep. 3, para. 36.

⁴⁴⁴ See Pakistan Memorial, paras. 5.49–5.51 (“The doctrine of fundamental change of circumstances is codified in Article 62 of the VCLT. ... Insofar as Pakistan refers to and invokes principles set out in the VCLT, it does so on the basis that the given principle is commonly regarded as reflective of customary international law.”).

⁴⁴⁵ See *Appeal Relating to the Jurisdiction of the ICAO Council (India v. Pakistan)*, ICJ Pleadings, Memorial submitted by the Government of India, 22 December 1971, para. 33.

⁴⁴⁶ See *The Bay of Bengal Maritime Boundary Arbitration (Bangladesh v. India)*, PCA Case No. 2010-16, Rejoinder of India dated 31 July 2013, para. 4.41, fn. 201 (noting VCLT Art. 62(2)(a) when maintaining that a maritime boundary, once delimited, is “final and definite” notwithstanding possible changes, such as sea-level rise from climate change). The tribunal in that instance concluded that “neither the prospect of climate change nor its possible effects can jeopardize the large number of settled maritime boundaries throughout the world”, and it further concluded that the “importance of stable and definitive maritime boundaries is all the more essential when the exploration and exploitation of the resources of the continental shelf are at stake”: **PLA-0102**, *The Bay of Bengal Maritime Boundary Arbitration between the People’s Republic of Bangladesh and the Republic of India*, Award, 7 July 2014, XXXII UNRIIA 1, paras. 217–218.

of treaty relations requires that the plea of fundamental change of circumstances be applied only in exceptional cases”.⁴⁴⁷

274. India has asserted various and disparate types of changes as a reason for its decision on abeyance. In no instance, however, has India sought to explain why those changes satisfy the conditions necessary under the law of treaties for termination or suspension of the operation of the Treaty. The following are a sampling of India’s statements relating to changed circumstances, which are recounted more thoroughly in Parts II and VI.B, *supra*. India’s 24 April 2025 Letter to Pakistan announcing its decision on abeyance refers to “fundamental changes in the circumstances that have taken place since the Treaty was executed”, which “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”.⁴⁴⁸ In a statement of 8 May 2025, India’s Foreign Secretary maintained that there “are demographic changes. There are climate changes that have taken place. There is the imperative of clean energy”.⁴⁴⁹ India’s Ministry of External Affairs Spokesperson on 13 May 2025 stated that “climate change, demographic shifts and technological changes have created new realities on ground as well”.⁴⁵⁰ In its statement of 23 May 2025, India pointed to “escalating security concerns through cross-border terror attacks”, as well as transformations in “[t]echnology for dam infrastructure ... to ensure safety and efficiency of operations and water use”.⁴⁵¹ India’s representative to the UN Security Council made reference to “fundamental changes” over the life of the Treaty as part of the “backdrop” for its decision on abeyance. In particular, India’s representative said:

[I]n these 65 years, far-reaching fundamental changes have taken place not 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,

⁴⁴⁷ **PLA-0094**, *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, 1997 ICJ Rep. 7, para. 104.

⁴⁴⁸ **P-0700**, 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, paras. 1–2.

⁴⁴⁹ **P-0697**, Compendium of Recent Statements, Ministry of External Affairs, Government of India, “Foreign Secretary’s Statement: Special Briefing on OPERATION SINDOOR” dated 8 May 2025, pp. 11–12.

⁴⁵⁰ **P-0697**, Compendium of Recent Statements, Ministry of External Affairs, Government of India, “Transcript of Weekly Media Briefing by the Official Spokesperson” dated 13 May 2025, p. 15.

⁴⁵¹ **P-0697**, Compendium of Recent Statements, 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” dated 23 May 2025, p. 27.

Pakistan has continued to consistently block any changes to this infrastructure and any modifications of the provisions, which is permissible under the Treaty.⁴⁵²

275. Thus, the changed circumstances that India appears to be invoking fall into the following categories: (1) demographic changes in India; (2) India's need for clean energy; (3) changes in the technologies for dam infrastructure; (4) escalating cross-border terrorist attacks; and (5) the effects of climate change.⁴⁵³
276. The Court concludes, for the following reasons, that none of these asserted changed circumstances are a sufficient basis under the stringent conditions of the law of treaties for the unilateral termination or suspension of the operation of the Treaty.
277. *First*, India has not demonstrated that the first three of the asserted changes of circumstances were not foreseeable at the time the Treaty was concluded.⁴⁵⁴ With respect to the foreseeability of demographic changes in India, both India and Pakistan were aware of the potential for such changes at the time of the Treaty's conclusion. For example, India has engaged in family planning initiatives to address population growth since at least the 1950s.⁴⁵⁵
278. With respect to foreseeing a need for clean energy due to greater appreciation of its environmental benefits, the desire of both India and Pakistan for hydro-electric energy was well understood at the time the Treaty was concluded. Indeed, India's principal objective in negotiating toward rights under the Treaty to develop Run-of-River HEPs on the Western Rivers was precisely to allow it to take advantage of such an energy source. The arguably greater appreciation today of the benefits of such energy as "clean" energy is not a fundamental change of circumstances. The Court recalls, in this regard, an analogous finding by the ICJ in the *Gabčíkovo-Nagymaros Project* case, where it rejected Hungary's argument that the "progress of environmental knowledge and the development of new norms and prescriptions of international environmental law" represented

⁴⁵² **P-0697**, Compendium of Recent Statements, 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" dated 23 May 2025, pp. 27–28.

⁴⁵³ For a scholarly effort to make the case for changed circumstances based on climate change, see **P-0778**, A. Nath and M. Gupta, "Rationalising Gabčíkovo–Nagymaros as India's Basis to Terminate the Indus Waters Treaty: Revisiting the 'Standard' of Unforeseeability in Article 62 of the Vienna Convention on the Law of Treaties" (March 2026) *Liverpool Law Review*, PDF p. 1 (arguing for a "lower, more practicable threshold" for establishing a change as being unforeseen than has been applied by the ICJ, while recognizing that theirs is a novel reading).

⁴⁵⁴ See **PLA-0005**, VCLT, Arts. 62(1), (3).

⁴⁵⁵ See, e.g., **P-0710**, R. Ledbetter, "Thirty Years of Family Planning in India" (1984) *Asian Survey*, Vol. 24, p. 736.

a fundamental change of circumstances.⁴⁵⁶ To the contrary, greater appreciation of environmental benefits may be relevant when interpreting and applying the Treaty, rather than abandoning it.⁴⁵⁷

279. As for whether changes in technologies for dam infrastructure were foreseeable, the drafters of the Treaty included highly experienced dam engineers who, during the course of their lifetimes, saw remarkable advances in dam technology. They no doubt would have foreseen such advances to continue into the future. Likely for that reason, the Treaty does not mandate the use of any particular dam technology, such as that used in 1960. Rather, the Treaty identifies broad parameters within which India's design and operation of its Run-of-River HEPs must operate, parameters that include, for example, placement of dam components in a manner that is "consistent with sound and economical design and with satisfactory operation of the works" or with "customary and accepted practice of design".⁴⁵⁸ Such standards allow for, and indeed call for, the use of contemporary dam technologies, not those of the past.
280. Moreover, as is also true for the institutional and dispute settlement provisions of the Treaty, the ICJ took note that the treaty provisions in the *Gabčíkovo-Nagymaros Project* case "made it possible for the parties to take account of such developments and to apply them when implementing those treaty provisions".⁴⁵⁹ Under its institutional and dispute settlement procedures, the Treaty embraces a joint responsibility of the Parties, through a process of consultation, negotiation, and—as necessary—compulsory dispute settlement, to take account of any changed circumstances relevant to their performance under the Treaty.
281. *Second*, none of the circumstances that have purportedly changed, either individually or collectively, constituted an essential basis of the consent of India and Pakistan to be bound by the Treaty.⁴⁶⁰ For example, whether or not India is correct that there are cross-border terrorist attacks against it that are attributable to Pakistan, there is nothing in the Treaty or in its *travaux préparatoires* to indicate that the absence of such attacks was deemed an essential basis of the

⁴⁵⁶ **PLA-0094**, *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, 1997 ICJ Rep. 7, para. 104.

⁴⁵⁷ For example, the Court of Arbitration in the *Kishenganga* Arbitration had recourse to contemporary customary international environmental law on sustainable development when considering questions relating to the KHEP. See **PLA-0003**, *Kishenganga* Partial Award, paras. 445–454.

⁴⁵⁸ **PLA-0001**, Treaty, Annexure D, paras. 8(d), 8(f).

⁴⁵⁹ **PLA-0094**, *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, 1997 ICJ Rep. 7, para. 104. See also **PLA-0094**, *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, 1997 ICJ Rep. 7, para. 112 (newly developed norms of environmental law may be taken into account through the procedures of the treaty and by having such provisions the treaty is open to adaptation).

⁴⁶⁰ See **PLA-0005**, VCLT, Arts. 62(1)(a), (3).

consent of the Parties to be bound to the Treaty. To the contrary, the Treaty was concluded at a time when there were concerns, by both India and Pakistan, relating to national security, including serious disputes regarding sovereignty in the area where the Treaty addresses their respective water rights. Yet, there is no text in the Treaty that seeks to resolve those concerns, to resolve questions of sovereignty, or to otherwise prevent low-intensity conflict or international armed conflict.⁴⁶¹

282. Therefore, neither India nor Pakistan can be said to have entered into the Treaty on a basis that those concerns would disappear based on the commitments reached in the Treaty. Rather, the Treaty was designed to operate notwithstanding the continuation of those concerns after the conclusion of the Treaty. Indeed, the Treaty expressly states that it “governs the rights and obligations of each Party in relation to the other with respect *only* to the use of the waters” of the Eastern and Western Rivers, and that nothing in the Treaty could be construed as recognizing, waiving, or supporting *other* rights.⁴⁶² And, in fact, the Treaty operated successfully for decades notwithstanding instances of serious armed conflict between India and Pakistan.⁴⁶³ In sum, prevention of any such attacks cannot be regarded an essential basis of the consent of India to be bound by the Treaty.
283. *Third*, none of the purported changed circumstances, individually or collectively, have had the effect of radically transforming the extent of India’s obligations under the Treaty.⁴⁶⁴ For example, while India has referred to the effects of climate change, it has not shown that any such effects in fact have transformed India’s obligations under the Treaty. Rather, India’s obligations under the Treaty have remained stable throughout its life. As explained in greater detail in the Award on Issues of General Interpretation, India secured a right under the Treaty to virtually the entirety of the Eastern Rivers and in exchange accepted an obligation to “let flow” the waters of the Western Rivers into Pakistan.⁴⁶⁵ At the same time, India secured a right to operate Run-of-River HEPs on

⁴⁶¹ The Court recalls, in this regard, an analogous finding by the ICJ in the *Gabčíkovo-Nagymaros Project* case, where it found that changes in the prevailing political situation or the economic system were “not so closely linked to the object and purpose of the Treaty that they constituted an essential basis of the consent of the parties and, in changing, radically altered the extent of the obligations still to be performed.” **PLA-0094**, *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, 1997 ICJ Rep. 7, para. 104.

⁴⁶² **PLA-0001**, Treaty, Art. XI(1).

⁴⁶³ See para. 71, *supra*.

⁴⁶⁴ See **PLA-0005**, VCLT, Arts. 6(1)(b), (3). See **PLA-0194**, *Fisheries Jurisdiction (United Kingdom v. Iceland)*, Jurisdiction of the Court, Judgment, 1973 ICJ Rep. 3, paras. 37–38 (finding that the changes must imperil the existence or vital development of one of the parties, increasing the burden on that party so as to render the treaty obligation essentially different from that originally taken).

⁴⁶⁵ Award on Issues of General Interpretation, paras. 419–459.

the Western Rivers, which allow for the generation of hydro-electric power (while not interfering, generally, in the flow of the river), subject to certain obligations as to how those HEPs are designed and operated. At present, there are no changes due to a potentially warming global climate that have transformed these obligations of India under the Treaty, let alone changes that have caused a radical transformation.

284. Even if, due to the possible effects of climate change, at some point in the future the waters of the Western Rivers decrease (or increase) in their flow, India's obligations and rights under the Treaty remain the same. India must generally let flow whatever waters exist in the Western Rivers, while at the same time it may take advantage of whatever hydro-electric energy may be harnessed from that flow under the terms of the Treaty. Further, to the extent that India's position is expressing a concern that, due to climate change, water is generally becoming scarcer, the same concern applies for Pakistan.⁴⁶⁶ But for neither does that concern radically transform the extent of their obligations under the Treaty.

285. *Fourth*, a fundamental change of circumstances may not be invoked as a ground for terminating a treaty or suspending its operation if the treaty establishes a boundary.⁴⁶⁷ The Treaty is not by its terms a boundary treaty; indeed, it expressly avoids creating any implications with respect to either State's sovereignty over territory. At the same time, the Court has observed that:

While the Treaty is not a boundary treaty, it addresses a critical relationship between the two Parties along their frontier concerning a shared resource, and does so by an instrument that allows for termination only "by a duly ratified treaty concluded for that purpose between the two Governments". As suggested by Pakistan, from Preamble to final provisions, the Treaty possesses an objective that is akin, in significance and permanence, to a boundary treaty.⁴⁶⁸

286. The Court finds that the same rationale for not allowing changed circumstances to be invoked for a boundary treaty disfavors its invocation as well in the context of the Treaty, which has a special character under international law in its delimitation of rights and obligations of a water resource that crosses the frontier between India and Pakistan. The rationale for the rule that precludes invoking changed circumstances for boundary treaties is that "otherwise the rule, instead of being

⁴⁶⁶ See **P-0778**, A. Nath and M. Gupta, "Rationalising Gabčíkovo–Nagymaros as India's Basis to Terminate the Indus Waters Treaty: Revisiting the 'Standard' of Unforeseeability in Article 62 of the Vienna Convention on the Law of Treaties" (March 2026) *Liverpool Law Review*, p. 24 (acknowledging that "Pakistan is at least as vulnerable to these climate stresses" as India).

⁴⁶⁷ See **PLA-0005**, VCLT, Arts. 62(2)(a), (3). See **PLA-0101**, *Temple of Preah Vihear (Cambodia v. Thailand)*, Merits, Judgment, 1962 ICJ Rep. 6, p. 34 ("In general, when two countries establish a frontier between them, one of the primary objects is to achieve stability and finality. This is impossible if the line so established can, at any moment, ... be called into question").

⁴⁶⁸ Award on Issues of General Interpretation, para. 430.

an instrument of peaceful change, might become a source of dangerous frictions”.⁴⁶⁹ Here, allowing the Treaty—which was designed to address on a permanent basis the sharing of a critical transboundary resource and that entailed in its first decade a massive infrastructure project to reroute the waters of the Indus Rivers—to be swept aside due to a unilateral claim of changed circumstances, rather than based on mutual consent, readily entails those same dangerous frictions.

287. In sum, for the reasons indicated above, the Court concludes that the changes asserted by India do not serve as a ground for India unilaterally to terminate or suspend the operation of the Treaty.

3. Effect of Armed Conflict as a Ground for Suspension/Termination of the Treaty

288. As a third ground for terminating or suspending the operation of the Treaty, India might be invoking an alleged armed conflict between India and Pakistan as having an effect on the Treaty. For example, India’s representative to the UN Security Council made reference to armed conflict, as well as terrorist attacks, as part of the “backdrop” for its decision on abeyance. In particular, India’s representative said:

Throughout these six and a half decades [since adoption of the Treaty], 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.⁴⁷⁰

289. If this is a ground being invoked by India, there are two impediments that arise, one relating to the relevant facts and the other relating to the relevant international law.
290. With respect to the relevant facts, India and Pakistan are not, at present, engaged in an international armed conflict. There have been significant hostilities at times between the Parties, including a four-day period of aerial combat and missile strikes in 2025 in the aftermath of the Pahalgam attack, which then ended in a ceasefire on 10 May 2025.⁴⁷¹ India has also alleged that Pakistan bears responsibility for sporadic terrorist attacks in India and India-administered Jammu

⁴⁶⁹ **PLA-0139**, ILC, Draft Articles on the Law of Treaties with Commentaries, Yearbook of the International Law Commission, 1966, Vol. II, p. 259, para. (11).

⁴⁷⁰ **P-0697**, Compendium of Recent Statements, 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” dated 23 May 2025, pp. 27–28.

⁴⁷¹ U.S. Department of State, Press Statement, “Announcing a U.S.-Brokered Ceasefire between India and Pakistan” dated 10 May 2025, <https://perma.cc/2KL9-MQJE>. The Court notes that India’s policy of abeyance was announced prior to the May 2025 hostilities and therefore appears not to be based on those hostilities.

and Kashmir. But, at present, there is no international armed conflict between India and Pakistan as that concept is understood as a matter of international law.⁴⁷²

291. Further, there appears no basis for finding, as a factual matter, that the Treaty cannot operate due to the existence of an armed conflict or cross-border terrorist attacks. Sporadic armed conflict, as well as alleged cross-border terrorist attacks, has been an unfortunate reality of the Parties' relations from the Treaty's inception in 1960. Indeed, the Treaty has survived three armed conflicts (in 1965, 1971, and 1999) between India and Pakistan,⁴⁷³ as well as multiple armed skirmishes across contested territory for some 66 years. Throughout this period, the Treaty has functioned largely as expected, with implementation of the transitional arrangements,⁴⁷⁴ regular meetings of and communications within the Commission,⁴⁷⁵ tours of inspection,⁴⁷⁶ the design and construction of India's Run-of-River HEPs within the constraints of the Treaty,⁴⁷⁷ and the resolution of disputes through the procedures of the Treaty.⁴⁷⁸ There does not appear to be any basis to claim, as a factual matter, that the circumstances today are different from the circumstances of the past, a lengthy period during which India never claimed that armed conflict or alleged terrorist attacks had the effect of terminating or suspending the operation of the Treaty.
292. Separately, with respect to the relevant international law, a party to a treaty in some circumstances may invoke the effect of armed conflict as a ground for terminating the treaty or suspending its operation, but in other circumstances it may not. While the rules in this regard were not codified by the ILC in the 1960s so as to appear in the VCLT,⁴⁷⁹ the ILC in 2011 produced a series of articles seeking to codify such rules.⁴⁸⁰ The Court does not regard those rules, at least in their entirety, as settled customary international law. The UN General Assembly, however, has

⁴⁷² **PLA-0150**, ILC, Draft Articles on the Effects of Armed Conflict on Treaties, with Commentaries, Yearbook of the International Law Commission, 2011, Vol. II, Pt. Two, p. 110, Art. 2(b) (defining armed conflict as "a situation in which there is resort to armed force between States or protracted resort to armed force between governmental authorities and organized armed groups.").

⁴⁷³ See para. 71, *supra*.

⁴⁷⁴ See Award on Issues of General Interpretation, paras. 157–162.

⁴⁷⁵ See Award on Issues of General Interpretation, paras. 163–172.

⁴⁷⁶ See Award on Issues of General Interpretation, paras. 173–176.

⁴⁷⁷ See Award on Issues of General Interpretation, paras. 180–190.

⁴⁷⁸ See Award on Issues of General Interpretation, paras. 191–212.

⁴⁷⁹ See **PLA-0005**, VCLT, Art. 73 ("The provisions of the present Convention shall not prejudice any question that may arise in regard to a treaty ... from the outbreak of hostilities between States.").

⁴⁸⁰ **PLA-0150**, ILC, Draft Articles on the Effects of Armed Conflict on Treaties, with Commentaries, Yearbook of the International Law Commission, 2011, Vol. II, Pt. Two, pp. 108–130.

“[e]mphasize[d] the value of the [Articles on the Effects of Armed Conflict on Treaties] in providing guidance to States, and invite[d] States to use the articles as a reference whenever appropriate”.⁴⁸¹ Thus, while the entirety of these articles may not reflect customary international law, certain articles may. Further, even if other articles do not reflect settled customary international law, they may serve as useful guidance with respect to customary rules in this area of the law of treaties.

293. Having considered State practice, including the practice of India and Pakistan under the Treaty,⁴⁸² the ILC codified a rule that certain kinds of treaties, because of their subject matter, entail “an implication that they continue in operation, in whole or in part, during armed conflict”.⁴⁸³ The ILC provided an indicative list of such treaties that includes: (1) treaties declaring, creating, or regulating a permanent regime or status or related permanent rights; (2) treaties relating to international watercourses and related installations and facilities; and (3) treaties relating to the international settlement of disputes by peaceful means.⁴⁸⁴ Such categories are not mutually

⁴⁸¹ **PLA-0188**, UN General Assembly Resolution 72/121, “Effects of armed conflicts of treaties”, A/RES/72/121, 7 December 2017, para. 2. See **PLA-0189**, J. Zrilić, “Armed Conflicts and the Law of Treaties: Recent Developments and Reappraisal of the Doctrine in Light of the Wars in Syria and Ukraine” (2022) *Japanese Yearbook of International Law*, Vol. 65, p. 114 (“[T]he ILC Draft Articles present a valuable guide on the subject matter, and at the most, some parts of it could be taken as a reflection of customary international law.”).

⁴⁸² The practice of the Parties is relied upon in a memorandum produced by the ILC Secretariat for use in the ILC’s work on the topic. See **PLA-0191**, Memorandum by the Secretariat, “The effect of armed conflict on treaties: an examination of practice and doctrine”, UN Doc. A/CN.4/550, 1 February 2005. For example, the ILC Secretariat’s study noted an arbitration award of the International Chamber of Commerce of 18 December 1967 between an Indian company and the State-owned National Bank of Pakistan, which found that treaties between the two States, including the Treaty, remained in operation during the 1965 India-Pakistan armed conflict:

[N]one of the treaties concluded by India and Pakistan before September 1965 seems to have been considered, on either side, as cancelled; at least no contention and no evidence to that effect has been forthcoming from the Defendant [National Bank of Pakistan]. On the contrary, evidence may be found to show that both countries have viewed their treaties as still in force. On the claimant’s side, reference was made to the fact that India continued to effect payments to Pakistan under the Indus River Treaty.

See **PLA-0191**, Memorandum by the Secretariat, “The effect of armed conflict on treaties: an examination of practice and doctrine”, UN Doc. A/CN.4/550, 1 February 2005, p. 37, para. 95, *quoting* **PLA-0192**, *Dalmia Cement Ltd. v. National Bank of Pakistan*, Award on Jurisdiction of 18 December 1976, 67 ILR 611, para. 49. The memorandum further noted that an underlying report relied upon for evidence of State practice “did not find any indications as to [the 1971 India-Pakistan armed conflict having] effects on treaties.” **PLA-0191**, Memorandum by the Secretariat, “The effect of armed conflict on treaties: an examination of practice and doctrine”, UN Doc. A/CN.4/550, 1 February 2005, p. 37, para. 97.

⁴⁸³ **PLA-0150**, ILC, Draft Articles on the Effects of Armed Conflict on Treaties, with Commentaries, Yearbook of the International Law Commission, 2011, Vol. II, Pt. Two, p. 114, Art. 7.

⁴⁸⁴ **PLA-0150**, ILC, Draft Articles on the Effects of Armed Conflict on Treaties, with Commentaries, Yearbook of the International Law Commission, 2011, Vol. II, Pt. Two, pp. 119–120, Annex.

exclusive; in its commentary, the ILC noted that treaties relating to international watercourses are a subset of the category of treaties declaring, creating, or regulating a permanent regime or status or related permanent rights.⁴⁸⁵

294. The Court finds such categories as useful guidance for indicating that the Treaty does not, as a matter of law, become suspended or terminated merely upon the outbreak of armed conflict. Rather, the Treaty should be regarded as one that normally remains operational during an armed conflict, given that it creates and regulates a permanent regime of rights; that it relates to an international watercourse and related installations and facilities; and that it contains provisions for the international settlement of disputes. Indeed, because of their importance, international watercourses and associated works or installations are to be protected from the effect of armed conflict as a matter of international humanitarian law, so that they can continue to function in serving civilian needs.⁴⁸⁶
295. In sum, for the reasons indicated above, the Court concludes that the facts do not support the existence of an armed conflict at present between India and Pakistan. Further, by its nature, the Treaty is not one that normally can be regarded as terminated or its operation suspended due to the effect of such conflict. Therefore, the effect of such conflict does not serve as a ground for India unilaterally to terminate or suspend the operation of the Treaty.

E. SUSPENSION OR TERMINATION AS A COUNTERMEASURE

296. In its official statements, India has not expressly framed its decision on abeyance as a “countermeasure” under international law in response to an antecedent wrongful act by Pakistan.

⁴⁸⁵ **PLA-0150**, ILC, Draft Articles on the Effects of Armed Conflict on Treaties, with Commentaries, Yearbook of the International Law Commission, 2011, Vol. II, Pt. Two, p. 128, para. (56).

⁴⁸⁶ See Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, Arts. 14–15 (prohibiting attacks on works or installations containing dangerous forces such as dams and dykes), 54 (prohibiting any “attack, destroy, remove or render useless objects indispensable to the survival of the civilian population”); **PLA-0190**, *Convention on the Law of the Non-navigational Uses of International Watercourses*, UN Doc. A/51/869, 17 August 2014, Art. 29 (affirming that international watercourses “shall enjoy the protection accorded by the principles and rules of international law applicable in international and non-international armed conflict”). See also Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, Arts. 35, 55 (protection of the environment generally, to include water resources).

Some Indian commentators and press reports, however, have characterized India's decision as such.⁴⁸⁷

297. Within international law, a countermeasure consists of the temporary non-performance of international obligations of one State (the injured State) towards another State (the responsible State) that is violating international law, for the purpose of inducing the responsible State into ceasing its wrongful action.⁴⁸⁸ While the injured State's own non-performance normally would be internationally wrongful, such non-performance is excused for a temporary period given that the injured State seeks to bring about compliance by the responsible State.⁴⁸⁹ Thus, if this constitutes India's legal position, then it is predicated on India's decision on abeyance being itself a violation of international law, but one that India seeks to excuse by reference to an antecedent wrongful act of Pakistan.
298. One important difference between the law of treaties and the law on countermeasures for the termination or suspension in operation of a treaty is that, under the law of treaties, the termination or suspension in operation of the treaty is based on a ground (e.g., breach or changed circumstances) that is specific to that treaty; by contrast, under the law of countermeasures, the countermeasure by the injured State may be in reaction to the non-performance by the responsible State of *any* international obligation. Another important difference is that termination or suspension in operation of a treaty under the law of treaties deprives the treaty obligations of their legal force, while a countermeasure does not do so; the latter merely excuses *temporarily* non-compliance with the treaty's obligations, which remain in force.⁴⁹⁰ Some Indian officials may understand this distinction; it is recalled that the Indian Home Minister stated: "[i]nternational

⁴⁸⁷ See, e.g., **P-0697**, Compendium of Recent Statements, Indian Defence Research Wing, "Blood and water cannot flow together: India's deft use of lawfare in suspending Indus Waters Treaty" dated 30 April 2025, p. 35; **P-0697**, Compendium of Recent Statements, A.S. Srinivas, "Blood and water cannot flow together: India's deft use of lawfare in suspending Indus Waters Treaty" dated 30 April 2025, pp. 38–39.

⁴⁸⁸ **PLA-0182**, *Corn Products International, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/04/1, Decision on Responsibility of 15 January 2008, para. 185 (finding that the "requirement of a prior violation of international law is an absolute precondition of the right to take countermeasures.").

⁴⁸⁹ For general scholarly treatment, see generally E. Zoller, *Peacetime Unilateral Remedies: An Analysis of Countermeasures* (Brill, 1984); O. Elagab, *The Legality of Non-Forcible Counter-Measures in International Law* (Oxford University Press, 1988); D. Bederman, "Counterintuiting Countermeasures" (2002) *American Journal of International Law* Vol. 96(4) 817; D. Alland, "The Definition of Countermeasures", in J. Crawford, A. Pellet, and S. Olleson (eds), *The Law of International Responsibility* (Oxford University Press, 2010), p. 1127.

⁴⁹⁰ See Articles on State Responsibility Commentary, pp. 128–129, introductory commentary on countermeasures, para. (4). See also **PLA-0005**, VCLT, Art. 73 ("The provisions of the present Convention shall not prejudice any question that may arise in regard to a treaty ... from the international responsibility of a State").

treaties can't be annulled unilaterally but we had the right to put it in abeyance, which we have done".⁴⁹¹ Thus, if India is advancing a countermeasures argument, India *is not limited* to identifying an antecedent wrongful act of Pakistan in the form of a violation of the Treaty but, if such an act is established, India *is limited* solely to *suspending* the operation of (not terminating) the Treaty, thereby allowing its operation to resume once Pakistan comes back into compliance with its obligation.

299. Since India has not identified the law of countermeasures as the legal basis for its decision, India has not definitively identified any antecedent wrongful act by Pakistan as the basis for a countermeasure such that, if Pakistan came back into compliance with that obligation, the countermeasure would be lifted. The three acts of Pakistan indicated above in relation to alleged material breach of the Treaty⁴⁹² appear to be the most likely candidates for India's position as to such an antecedent act, specifically: (a) Pakistan's alleged failure to negotiate modifications of the Treaty;⁴⁹³ (b) Pakistan's raising of objections in the Commission with respect to India's design and construction of Run-of-River HEPs, and its pursuit in that regard of dispute settlement under the Treaty;⁴⁹⁴ or (c) Pakistan's alleged sponsorship of terrorist attacks against India.⁴⁹⁵
300. India also has not definitively explained its decision on abeyance as being in the nature of a countermeasure under international law, nor how, exactly, that decision seeks to induce Pakistan's compliance. Based on the statements by India to date, however, any such countermeasure appears to be one whereby the entire Treaty is suspended for an indefinite period of time, until India unilaterally decides that Pakistan has come into compliance with its antecedent obligation.⁴⁹⁶ Moreover, "while the Treaty is in abeyance, all of its provisions are inoperative, including those

⁴⁹¹ **P-0759**, Compendium of Indian Government statements and news reports about India's post-Abeyance conduct, June 2025 – April 2026, p. 53 (*The Times of India*, "India's gone from despair to optimism in 11 yrs: Home minister Amit Shah" dated 25 June 2025).

⁴⁹² See paras. 241–267, *supra*.

⁴⁹³ **P-0700**, 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, para. 4.

⁴⁹⁴ **P-0697**, Compendium of Recent Statements, Ministry of External Affairs, Government of India, "Foreign Secretary's Statement: Special Briefing on OPERATION SINDOOR" dated 8 May 2025, pp. 11–12.

⁴⁹⁵ **P-0700**, 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, paras. 3–4.

⁴⁹⁶ See, e.g., **P-0731**, Neutral Expert (*Indus Waters*), Letter to the Parties (India's Request for Suspension of Work Programme) (redacted) dated 17 June 2025; [REDACTED]

[REDACTED] **P-0782**, Letter from the World Bank to Pakistan dated 12 November 2025, enclosing Letter from India to the World Bank dated 29 September 2025, p. 1 ("all Parties to the Treaty will also cease to act under the Treaty").

relating to the design and operation of Hydroelectric Plants”.⁴⁹⁷ If so, then it would appear that India considers that such HEPs can be designed with whatever components (outlets, intakes, pondage, or freeboard) that India chooses, notwithstanding the constraints agreed upon in the Treaty. Further, India might consider that such HEPs need not even be run-of-river HEPs, as agreed upon in the Treaty, and that India can divert the waters of the Western Rivers in whole or in part so that they remain in India, though doing so is prohibited under the Treaty.

301. In certain circumstances, the right of a State to engage in countermeasures is generally accepted as permissible under customary international law.⁴⁹⁸ The exact contours for when and how countermeasures may be used, however, has been the subject of debate among States and others. In applying customary international law in the *Gabčíkovo-Nagymaros Project* case, the ICJ indicated that a countermeasure must meet certain conditions,⁴⁹⁹ citing in that regard to its prior jurisprudence,⁵⁰⁰ other jurisprudence,⁵⁰¹ and the work of the ILC.⁵⁰² With respect to the latter, the ILC’s 2001 Articles on State Responsibility⁵⁰³ have not been adopted by States as a treaty, and thus cannot apply as a matter of treaty law. Even so, the Articles have been widely but not uniformly relied upon by States, as well as by international courts and tribunals, as reflecting customary international law. The rules on countermeasures in the Articles on State

⁴⁹⁷ **P-0782**, Letter from the World Bank to Pakistan dated 12 November 2025, enclosing Letter from India to the World Bank dated 29 September 2025, p. 1. One Indian commentator has asserted that “India can make the treaty irrelevant by changing the ground position during the period of suspension of the treaty to create infrastructure and present Pakistan with *fait accompli*”: see **P-0779**, Brigadier V. Sharma, “Leveraging Indus Water Treaty as a Coercive Instrument Against Pakistan’s State Sponsored Terror” (2025) 4(3) *Journal of Contemporary Politics* 117, pp. 117–118.

⁴⁹⁸ See *Naulilaa (Responsibility of Germany for Damage Caused in the Portuguese Colonies in the South of Africa) (Portugal/Germany)*, Award of 31 July 1928, II UNRIAA 1011, pp. 1025–1026; *Cysne (Responsibility of Germany for Acts Committed Subsequent to 31 July 1914 and Before Portugal Entered the War) (Portugal/Germany)*, Award of 30 June 1930, II UNRIAA 1035, p. 1052; **PLA-0184**, *Air Services Agreement of 27 March 1946 (United States v. France)*, Decision of December 9, 1978, XVIII UNRIAA 417, para. 81 (“If a situation arises which, in one State’s view, results in the violation of an international obligation by another State, the first State is entitled, within the limits set by the general rules of international law pertaining to the use of armed force, to affirm its rights through ‘counter-measures’.”).

⁴⁹⁹ See **PLA-0094**, *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, 1997 ICJ Rep. 7, para. 83.

⁵⁰⁰ **PLA-0018**, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits Judgment, 1986 ICJ Rep. 14, para. 249.

⁵⁰¹ **PLA-0184**, *Air Services Agreement of 27 March 1946 (United States v. France)*, Decision of December 9, 1978, XVIII UNRIAA 417, p. 443 *et seq.*

⁵⁰² At the time of the *Gabčíkovo-Nagymaros Project* judgment, the ILC had completed only the first reading of its Articles on State Responsibility. See Yearbook of the International Law Commission 1996, Vol. II, Pt. Two, pp. 58–73.

⁵⁰³ See para. 122, *supra*.

Responsibility⁵⁰⁴ have attracted both support⁵⁰⁵ and criticism⁵⁰⁶ as reflecting customary international law, such that any given rule should be assessed individually in that regard.⁵⁰⁷

302. In addition, the Court has taken into consideration the Parties' positions with respect to the rules on countermeasures. Pakistan has taken the position before the Court that the "conditions governing the lawful invocation of countermeasures are set out in Articles 49 to 54 of the [Articles on State Responsibility]". India has not informed the Court of its views as to the law on countermeasures. As the Articles on State Responsibility were being finalized at second reading, India's representative to the Sixth Committee of the UN General Assembly expressed a preference to exclude countermeasures from the scope of the Articles, leaving the issue to be dealt with under general international law,⁵⁰⁸ and further that the articles on countermeasures seemed more akin to progressive development than codification of the law.⁵⁰⁹ Yet, in addressing the substance of the law in this area, both during the period of the drafting of the Articles and when they were being finalized, India repeatedly expressed concern that countermeasures could be abused by States if their application was not carefully circumscribed. For example, in October 1995, India's representative to the Sixth Committee observed that:

⁵⁰⁴ For the ILC's articles on countermeasures, see **PLA-0149**, Articles on State Responsibility, Arts. 49–54.

⁵⁰⁵ See, e.g., **PLA-0182**, *Corn Products International, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/04/1, Decision on Responsibility of 15 January 2008, para. 145 ("It is generally agreed ... that the conditions which a countermeasure is required to meet are as set out in the ILC Articles on State Responsibility (notably Articles 22 and 49–53)."); *Archer Daniels Midland Company and Tate & Lyle Ingredients Americas, Inc. v. the United Mexican States*, Award, 21 November 2007, ICSID Case No. ARB(AF)/04/5, para. 125 ("The Tribunal takes as an authoritative statement of customary international law on countermeasures the position of the International Court of Justice [in the *Gabčíkovo-Nagymaros Project* case], as confirmed by the ILC Articles.").

⁵⁰⁶ See **PLA-0181**, James Crawford, *The International Law Commission's Articles on State Responsibility: Introduction, Text and Commentary* (Cambridge University Press, 2002), p. 48 (explaining that the controversial aspects of the ILC's rules on countermeasures were: (1) whether to include such rules in the project; (2) certain formulations of the rules; and (3) the rule on "collective" countermeasures).

⁵⁰⁷ For materials on their use since adoption, see UN Legislative Series, "Materials on the Responsibility of States for Internationally Wrongful Acts", UN Doc. ST/LEG/SER.B/25/Rev.1 (2nd ed. 2023), pp. 497–531.

⁵⁰⁸ UN General Assembly (Sixth Committee), Fifty-Fifth Session, Summary Record of the 15th Meeting, A/C.6/55/SR.15 (13 November 2000), para. 29 (India's representative noted that he "would have preferred to exclude that question [countermeasures] altogether from the scope of State responsibility, leaving issues concerning such measures to be dealt with under general international law, especially under the Charter").

⁵⁰⁹ UN General Assembly (Sixth Committee), Fifty-Fifth Session, Summary Record of the 14th Meeting, A/C.6/56/SR.14 (13 November 2001), para. 39 (India's representative, apparently referring to Chapter II of Part Three, noted that "the articles seemed to be more akin to progressive development than to codification.").

The practice of a claimant State acting as a judge in its own cause was suspect, and for that reason should be restricted carefully. It was important that States should not be allowed to take the law into their own hands.⁵¹⁰

Similarly, in 2000, as the draft Articles were being finalized, India's representative to the Sixth Committee noted that:

The question of the right of States to take countermeasures was open to serious abuse... They should not be used to punish a State, and their humanitarian consequences and the need to protect civilian populations from their adverse effects must be kept in mind... countermeasures could not be taken and, if taken, must be immediately suspended, if an internationally wrongful act had ceased or if the dispute had been submitted to a court or tribunal with authority to hand down binding decisions.⁵¹¹

303. Moreover, India's representative also commented on some specific aspects of the substantive rules on countermeasures. India's representative maintained that countermeasures could not include measures against a State or its nationals in violation of principles relating to the protection of human rights.⁵¹² He maintained that countermeasures must always be reasonable and proportionate to the seriousness of the alleged wrongful act; indeed, they must be designed to secure cessation of the wrongful act and settlement of the dispute.⁵¹³ In the event of a disagreement between two States as to whether a wrongful act had occurred warranting a countermeasure, India's representative maintained that there should be prompt resort to available dispute settlement procedures.⁵¹⁴

304. While acknowledging the views of the Parties as to the customary status of the rules on countermeasures, it falls to the Court to determine such status, in relation to any rules deemed

⁵¹⁰ UN General Assembly (Sixth Committee), Fiftieth Session, Summary Record of the 19th Meeting, A/C.6/50/SR.19 (20 October 1995), para. 57.

⁵¹¹ UN General Assembly (Sixth Committee), Fifty-Fifth Session, Summary Record of the 15th Meeting, A/C.6/55/SR.15 (13 November 2000), para. 29.

⁵¹² UN General Assembly (Sixth Committee), Forty-Seventh Session, Summary Record of the 25th Meeting, A/C.6/47/SR.25 (2 November 1992), para. 78 (“[India] supported the view that any self-help measures which States would take against so-called offending States could not include measures against the States or nationals in violation of principles relating to the protection of human rights and the treatment of foreign nationals”); UN General Assembly (Sixth Committee), Fiftieth Session, Summary Record of the 19th Meeting, A/C.6/50/SR.19 (20 October 1995), para. 61.

⁵¹³ UN General Assembly (Sixth Committee), Forty-Seventh Session, Summary Record of the 25th Meeting, A/C.6/47/SR.25 (2 November 1992), para. 76 (“countermeasures must always meet the test of reasonableness or proportionality, and thus should be proportional to the seriousness of the alleged wrongful act and should be designed to achieve the objectives of cessation of the alleged wrongful act and settlement of the dispute”).

⁵¹⁴ UN General Assembly (Sixth Committee), Forty-Seventh Session, Summary Record of the 25th Meeting, A/C.6/47/SR.25 (2 November 1992), para. 76 (“third, in the event of disagreement as to the wrongfulness of the act in question and the response demanded, there should be prompt resort to procedures for the settlement of differences if there was reason for such resort. All dispute settlement procedures acceptable to the two parties should be sought out in good faith”).

pertinent to the issue now before the Court. Under the rules on countermeasures, a State that regards itself as injured by another State's internationally wrongful act must call upon that other State to fulfill its obligations.⁵¹⁵ Further, the injured State must notify the other State of any decision to take countermeasures and offer to negotiate with that State, so that the latter has an opportunity to resume compliance and avoid the countermeasures.⁵¹⁶

305. Thereafter, if compliance is not forthcoming, the injured State may engage in a countermeasure to induce compliance by the responsible State, but only subject to a series of requirements, which include the following. *First*, the countermeasure shall not affect the injured State's obligations for the protection of fundamental human rights.⁵¹⁷ The Court regards such a requirement as a rule of customary international law.⁵¹⁸ *Second*, the countermeasure "shall, as far as possible, be taken in such a way as to permit the resumption of performance of the obligations in question".⁵¹⁹ The Court also regards this requirement as a rule of customary international law.⁵²⁰ *Third*, the State taking the countermeasure is not relieved from fulfilling its obligations under any dispute

⁵¹⁵ **PLA-0149**, Articles on State Responsibility, Arts. 43, 52(1)(a). Such a requirement finds support in State practice and international jurisprudence. See *Naulilaa (Responsibility of Germany for Damage Caused in the Portuguese Colonies in the South of Africa) (Portugal/Germany)*, Award of 31 July 1928, II UNRIAA 1011, pp. 1025–1026; **PLA-0184**, *Air Services Agreement of 27 March 1946 (United States v. France)*, Decision of December 9, 1978, XVIII RIAA 417, para. 17; Articles on State Responsibility Commentary, p. 136, commentary to Article 52, para. (3) ("This requirement (sometimes referred to as 'sommation') was stressed both by the tribunal in the *Air Service Agreement* arbitration and by ICJ in the *Gabčíkovo-Nagymaros Project* case. It also appears to reflect a general practice.").

⁵¹⁶ **PLA-0149**, Articles on State Responsibility, Art. 52(1)(b). See Y. Iwasawa and N. Iwatsuki, "Procedural Conditions", in J. Crawford, A. Pellet, and S. Olleson (eds), *The Law of International Responsibility* (Oxford University Press, 2010), p. 1149.

⁵¹⁷ **PLA-0149**, Articles on State Responsibility, Art. 50(1)(b).

⁵¹⁸ See Articles on State Responsibility Commentary, p. 132, commentary to Article 50, paras. (6)–(7). See also Eritrea-Ethiopia Claims Commission, *Prisoners of War—Eritrea's Claim 17 (Eritrea v. Ethiopia)*, Partial Award, 1 July 2003, XXVI UNRIAA 23, paras. 159–160 (finding that an argument based on Article 50 is "well founded in law"). On how countermeasures in the form of sanctions must take account of human rights obligations, see UN Committee on Economic, Social and Cultural Rights, General Comment No. 8: The Relationship between Economic Sanctions and Respect for Economic, Social and Cultural Rights, UN Doc. E/C.12/1997/8 (1997), para. 1 (sanctions, even those authorized by the UN Security Council, must take full account of the provisions of the UN Covenant on Economic, Social and Cultural Rights). See also S. Borelli and S. Olleson, "Obligations Relating to Human Rights and Humanitarian Law", in J. Crawford, A. Pellet, and S. Olleson (eds), *The Law of International Responsibility* (Oxford University Press, 2010), p. 1177.

⁵¹⁹ **PLA-0149**, Articles on State Responsibility, Art. 49(3).

⁵²⁰ See **PLA-0094**, *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, 1997 ICJ Rep. 7, para. 87 (stating that a condition for the permissibility of a countermeasure is that "its purpose must be to induce the wrongdoing State to comply with its obligation under international law, and that the measure must therefore be reversible."); Articles on State Responsibility, p. 131, commentary to Article 49, para. (9) ("States should as far as possible choose countermeasures that are reversible.").

settlement procedure applicable between it and the responsible State.⁵²¹ Here, too, the Court regards such a requirement as a rule of customary international law.⁵²²

306. The Court finds that India cannot invoke the law of countermeasures as a basis for suspension of the Treaty because any countermeasure fails to meet each of these three requirements.
307. *First*, the Court finds that any countermeasure by India would affect its obligations for the protection of fundamental human rights⁵²³ and therefore would be impermissible. As noted at the ILC in the course of codifying this requirement on the use of countermeasures, it is intended to ensure that “the effects of countermeasures [are] limited to the injured State and the responsible State and should have only minimal effects on individuals”.⁵²⁴ Yet, the unilateral suspension of the Treaty by India, at its essence, would be a claim that India no longer has an obligation to “let flow” the waters of the Western Rivers into Pakistan or Pakistan-administered territory and can act in a manner that diverts such waters in whole or in part so that they remain in India. Such withholding or diversion of these waters would have very serious effects on the human rights, and indeed the subsistence, of the people of Pakistan. That would not be a permissible exercise of the law of countermeasures.
308. The Court takes note in this regard of the correspondence to India of four UN Special Rapporteurs in October 2025, which stated in part:

We are deeply concerned that any disruption of the flow of water to Pakistan that may result from holding the Indus Waters Treaty in “abeyance” could severely affect the human rights of millions of people in Pakistan who rely on the river for agriculture, industry, drinking water and sanitation, and healthy ecosystems, by undermining their rights to work and

⁵²¹ **PLA-0149**, Articles on State Responsibility, Art. 50(2)(a).

⁵²² See **PLA-0142**, *Appeal relating to the Jurisdiction of the ICAO Council (India v. Pakistan)*, Judgment, 1972 ICJ Rep. 46, para. 16 (“Nor in any case could a merely unilateral suspension per se render jurisdictional clauses inoperative, since one of their purposes might be, precisely, to enable the validity of the suspension to be tested.”); *United States Diplomatic and Consular Staff in Tehran*, Judgment, 1980 ICJ Rep. 3, para. 53 (“In any event, any alleged violation of the Treaty [of Amity] by either party could not have the effect of precluding that party from invoking the provisions of the Treaty concerning pacific settlement of disputes.”); Articles on State Responsibility Commentary, p. 133, commentary to Art. 50, para. (13) (“It is a well-established principle that dispute settlement provisions must be upheld notwithstanding that they are contained in a treaty which is at the heart of the dispute and the continued validity or effect of which is challenged.”).

⁵²³ **PLA-0149**, Articles on State Responsibility, Art. 50(1)(b).

⁵²⁴ **PLA-0187**, Yearbook of the International Law Commission, “Summary records of the meetings of the fifty-second session, 1 May – 9 June and 10 July – 18 August 2000”, UN Doc. A/CN.4/SER.A/2000, Vol. 1, 2000, p. 397, para. 71.

livelihood, water, food, an adequate standard of living, a clean and healthy environment, economic self-determination of peoples, and the right to development.⁵²⁵

309. These rights identified by the Special Rapporteurs—the rights to water, food, an adequate standard of living, and a healthy environment—are generally accepted as falling within the scope of “fundamental human rights”.⁵²⁶ Further, both India and Pakistan are States parties to the International Covenant on Economic, Social and Cultural Rights.⁵²⁷ When interpreting the obligations of States parties under the Covenant, principally Article 11 (right to an adequate standard of living) and Article 12 (right to health), the Committee on Economic, Social and Cultural Rights stated in General Comment No. 15 on the right to water:

31. To comply with their international obligations in relation to the right to water, States parties have to respect the enjoyment of the right in other countries. International cooperation requires States parties to refrain from actions that interfere, directly or indirectly, with the enjoyment of the right to water in other countries. Any activities undertaken within the State party’s jurisdiction should not deprive another country of the ability to realize the right to water for persons in its jurisdiction.

32. States parties should refrain at all times from imposing embargoes or similar measures, that prevent the supply of water, as well as goods and services essential for securing the right to water. Water should never be used as an instrument of political and economic pressure. In this regard, the Committee recalls its position, stated in its General Comment No. 8 (1997), on the relationship between economic sanctions and respect for economic, social and cultural rights.⁵²⁸

310. In sum, since India’s decision on abeyance is likely to result in interference with the enjoyment by the people of Pakistan of fundamental human rights, such a decision cannot be considered a lawful countermeasure.

311. *Second*, with respect to whether such a countermeasure is being taken, as far as possible, in such a way as to permit the resumption of performance of India’s obligations under the Treaty, the Court finds that it is not and is therefore impermissible. The law of countermeasures is designed to allow for India to depart temporarily from its obligations under international law, not to abandon them entirely. Consequently, any countermeasure must be reversible so as to “permit the

⁵²⁵ **P-0760**, UN Special Procedures Communication to India Concerning Human Rights Impacts of Military Response and Suspension of the Indus Waters Treaty (Ref. AL IND 10/2025) dated 16 October 2025, p. 7.

⁵²⁶ See, e.g., **PLA-0186**, Ricardo P. Mazzeschi, *International Human Rights Law: Theory and Practice* (Springer, 2021), pp. 309–328.

⁵²⁷ International Covenant on Economic, Social and Cultural Rights, 16 December 1966, 993 UNTS 3. India acceded to the Covenant on 10 April 1979. Pakistan ratified the Covenant on 17 April 2008.

⁵²⁸ **PLA-0185**, UN Committee on Economic, Social and Cultural Rights, General Comment No. 15: The Right to Water (Articles 11 and 12 of the Covenant), UN Doc. E/C.12/2002/11 (2002), paras. 31–32 (citations omitted).

resumption of performance of the obligations in question”.⁵²⁹ Further, India “must not, during the suspension, do anything to preclude the treaty from being brought back into force”.⁵³⁰

312. Yet, by such a countermeasure, as previously noted,⁵³¹ India would be taking the position that it may proceed with the design and construction of HEPs on the Western Rivers without any of the constraints of the Treaty, thereby allowing it to set in concrete HEP components (outlets, intakes, pondage, or freeboard) that cannot readily be reversed once Pakistan were to come into compliance with its alleged obligation. That irreversibility would be even more stark if India were to proceed, notwithstanding the constraints agreed upon in the Treaty, to build works that provide India the ability to store and release as much water as it wishes on the Western Rivers, or if India were to proceed to build major works that divert the waters of the Western Rivers to India’s advantage. Were any of that to unfold, the core obligation of India with respect to the Western Rivers to “let flow” the waters would be eviscerated, rendering the object and purpose of the Treaty impossible.⁵³²
313. In sum, since India’s decision on abeyance would appear to claim a right to construct works on the Western Rivers that, as a practical matter, would not be reversible and thus would not permit the resumption of India’s obligations under the Treaty, such a decision cannot be considered a lawful countermeasure.
314. *Third*, the Court finds that any countermeasure by India would be impermissible to the extent that it purports to relieve India from fulfilling its obligations under the dispute settlement procedures applicable between it and Pakistan under the Treaty. The Treaty contains a “robust method of dispute settlement involving potential dispute resolution processes (the Commission, the governments, a neutral expert, and a court of arbitration), regulated both through Article IX and the detailed provisions of Annexures F and G”,⁵³³ which India accepted when ratifying the Treaty. Moreover, “an element of the object and purpose of the Treaty, as seen in the impetus to the negotiations, was to address the vulnerability of Pakistan as the downstream riparian of a critical

⁵²⁹ **PLA-0149**, Articles on State Responsibility, Art. 49(3).

⁵³⁰ Articles on State Responsibility Commentary, p. 131, commentary to Art. 49, para. (9).

⁵³¹ See para. 300, *supra*.

⁵³² See **PLA-0094**, *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, 1997 ICJ Rep. 7, para. 48 (“The effect of Hungary’s conduct was to render impossible the accomplishment of the system of works that the Treaty expressly described as ‘single and indivisible’.”).

⁵³³ Award on Issues of General Interpretation, para. 435. See also, **PLA-0003**, *Kishenganga* Partial Award, paras. 269–271, 444, 472–474.

but shared natural resource, as a means of promoting long-term cooperation and concomitantly of preventing serious conflict between the two States”.⁵³⁴

315. Even if India were to believe a countermeasure warranted, India is not relieved from fulfilling its obligations under the dispute settlement procedures applicable between it and Pakistan,⁵³⁵ including those available under the Treaty. Rather, such dispute settlement procedures “must be upheld notwithstanding that they are contained in a treaty which is at the heart of the dispute and the continued validity or effect of which is challenged”.⁵³⁶ The reason for this is obvious; in its absence, a countermeasure would have the effect of displacing a treaty provision agreed to between the Parties precisely to resolve the dispute giving rise to the countermeasure.⁵³⁷
316. In sum, since India’s decision on abeyance would appear to preclude the operation of the dispute settlement procedures between India and Pakistan provided for in the Treaty, such a decision cannot be considered a lawful countermeasure.
317. In light of the above, India’s decision on abeyance cannot be regarded as a permissible countermeasure and therefore cannot excuse India’s conduct in suspending the Treaty through such a decision.

F. CONCLUSION ON THE CURRENT STATUS OF THE TREATY

318. For the reasons indicated above, India’s decision on abeyance is not permissible under the Treaty or other applicable rules of international law.
319. India’s decision on abeyance is not permissible under the Treaty. The Treaty provides for termination or modification, but only on the basis of an agreement reached through the consent of both Parties. As no such agreement has been reached, the Treaty does not provide for its termination or modification.
320. India’s decision on abeyance is not permissible based on a claim of sovereignty, as there is no rule under the law of treaties allowing a State to unilaterally suspend or terminate a Treaty based on

⁵³⁴ Award on Issues of General Interpretation, para. 425.

⁵³⁵ **PLA-0149**, Articles on State Responsibility, Art. 50(2)(a).

⁵³⁶ Articles on State Responsibility Commentary, p. 133, commentary to Art. 50, para. (13).

⁵³⁷ Articles on State Responsibility Commentary, p. 133, commentary to Art. 50, paras. (12)–(13).

its “sovereignty”. Rather, all States, including India, are bound to their treaties based on the fundamental rule of *pacta sunt servanda*, and must perform them in good faith.⁵³⁸

321. India’s decision on abeyance is not permissible based on the law of treaties relating to breach, as there is no material breach by Pakistan, whether in the form of a failure of Pakistan to negotiate modifications to the Treaty or in the form of Pakistan’s pursuit of dispute resolution procedures under the Treaty. Equally, there is no material breach of the Treaty in the form of cross-border terrorist attacks that are allegedly sponsored by Pakistan, as India has neither identified a provision of the Treaty that such sponsorship violates, nor demonstrated through evidence that such attacks have impeded its ability to design, construct, or operate its Run-of-River HEPs, thereby undermining provisions essential to the accomplishment of the object or purpose of the Treaty.
322. India’s decision on abeyance is not permissible based on the law of treaties relating to changed circumstances. Several of the circumstances referred to in India’s statements—the demographic changes in India, the need for clean energy, and changes in the technologies for dam infrastructure—were all foreseeable at the time the Treaty was adopted in 1960. None of the purported changes, including the allegation that Pakistan is responsible for cross-border terrorist attacks, constituted an essential basis of the consent of India and Pakistan to be bound by the Treaty. And none of the purported changed circumstances, including the effects of climate change, have had the effect of radically transforming the extent of India’s obligations under the Treaty.
323. India’s decision on abeyance is not permissible based on the effect of armed conflict on the Treaty. As a factual matter, there is no armed conflict at present between India and Pakistan. Further, the circumstances today are no different from the circumstances of the past when, for a lengthy period involving three wars and sporadic armed conflict or terrorist attacks, India never claimed that such conflict or attacks precluded the operation of the Treaty. Moreover, as a matter of international law, the Treaty is of a type that remains in force even during armed conflict: it creates and regulates a permanent regime of rights; it relates to an international watercourse and related installations and facilities; and it contains provisions for the international settlement of disputes.
324. Finally, India’s decision on abeyance is not a permissible countermeasure because it fails to satisfy three of the requirements established by the law for countermeasures. Specifically, such a countermeasure is contrary to India’s obligations to protect fundamental human rights; such a countermeasure is not, as far as possible, taken in such a way as to permit the resumption of

⁵³⁸ See **PLA-0005**, VCLT, Art. 26.

India's performance once Pakistan has ceased with its allegedly wrongful act; and such a countermeasure purports to relieve India from fulfilling its obligations under the dispute settlement procedures of the Treaty. Since it is not a permissible countermeasure, India's decision on abeyance cannot excuse India's conduct through suspension of the Treaty.

325. Consequently, the Court concludes that the Indus Waters Treaty has not been suspended or terminated, and remains fully in force.

* * *

VIII. DECISION

326. With respect to the circumstances of the case, and having reviewed the grounds asserted by India for its decision on abeyance, the Court of Arbitration unanimously:

- A. FINDS, for the reasons set out in paragraphs 199 to 206, that it is competent to decide upon the present status of the Indus Waters Treaty 1960.
- B. FINDS that India's decision that it is holding the Indus Waters Treaty 1960 in "abeyance", declared on 23 April 2025 and communicated to Pakistan on 24 April 2025, has no meaning under the Treaty or in international law and can only be understood as a claim that the Treaty is either suspended or terminated.
- C. FINDS with respect to the Indus Waters Treaty 1960 that:
 - (1) for the reasons set out in paragraphs 222 to 228, the Indus Waters Treaty 1960 does not permit a Party unilaterally to suspend, terminate, or hold in abeyance the Treaty; and
 - (2) there has been no subsequent treaty by India and Pakistan that has the effect of expressly or implicitly suspending, terminating, or holding in abeyance the Indus Waters Treaty 1960.
- D. FINDS with respect to the circumstances publicly asserted by India as justifying its decision on abeyance that:
 - (1) for the reasons set out in paragraphs 230 to 233, India may not suspend the operation of or terminate the Indus Waters Treaty 1960 based on the bare invocation of its sovereignty;
 - (2) for the reasons set out in paragraphs 237 to 269:
 - (i) there are no grounds to find a material breach by Pakistan of the Indus Waters Treaty 1960 arising from the exchanges between Pakistan and India concerning the potential modification of the Treaty;
 - (ii) there are no grounds to find a material breach by Pakistan of the Indus Waters Treaty 1960 arising from Pakistan's objections in the Permanent Indus Commission to India's design of Run-of-River HEPs or other works, or in Pakistan's recourse to dispute settlement pursuant to Article IX of the Treaty;
 - (iii) there are no grounds to find a material breach by Pakistan of the Indus Waters Treaty 1960 arising from alleged support for terrorist acts; and
 - (iv) consequently, there has been no material breach of the Indus Waters Treaty 1960 by Pakistan that India may invoke as a ground for terminating or suspending the operation of the Treaty;
 - (3) for the reasons set out in paragraphs 270 to 287, there is no fundamental change of circumstances that India may invoke as a ground for terminating or suspending the operation of the Indus Waters Treaty 1960;
 - (4) for the reasons set out in paragraphs 288 to 295, there is no armed conflict between India and Pakistan that may be invoked as a ground for terminating or suspending the operation of the Indus Waters Treaty 1960; and

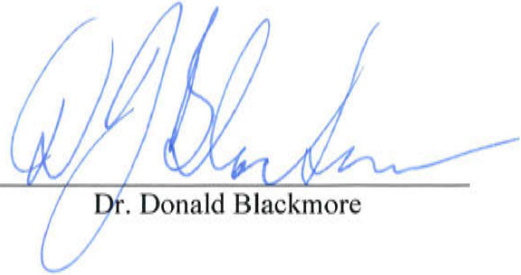
- (5) for the reasons set out in paragraphs 233 to 235, there is no other ground under the law of treaties that has been invoked by India for terminating or suspending the operation of the Indus Waters Treaty 1960.
- E. FINDS, for the reasons set out in paragraphs 296 to 317, that:
- (1) the requirements are not met for India to suspend the Indus Waters Treaty 1960 as a countermeasure responding to an antecedent wrongful act of Pakistan; and
- (2) consequently, India's decision on abeyance cannot be excused based on the law on the responsibility of states for internationally wrongful acts.
- F. DISMISSES any defense by India that its decision on abeyance is justified as a matter of the law of treaties or excused as a matter of the law on the responsibility of states for internationally wrongful acts.
- G. DECLARES that, notwithstanding India's decision on abeyance, the Indus Waters Treaty 1960 remains fully in force and has not been terminated or its operation suspended.
- H. FINDS that India remains bound by and must observe its obligations under the Indus Waters Treaty 1960, including those relating to the design and operation of Run-of-River Hydro-Electric Plants and the dispute resolution mechanisms of the Treaty.
327. The Court of Arbitration further:
- I. RESERVES the costs of the proceedings to be awarded by the Court pursuant to Paragraph 26 of Annexure G to the Indus Waters Treaty 1960 for determination in the Court's Final Award.
- J. RESERVES for further consideration and directions all issues not decided in this Award.
- K. REMAINS seized of the disputes set forth in Pakistan's Request for Arbitration.

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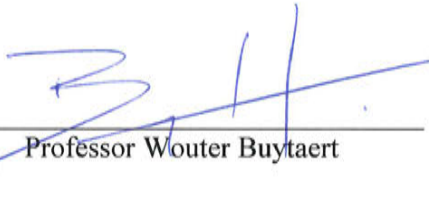
Done this 31st day of August 2026:



Judge Awn Shawkat Al-Khasawneh



Dr. Donald Blackmore



Professor Wouter Buytaert



Professor Jeffrey P. Minear



Professor Sean D. Murphy
Chairman



Mr. Garth Schofield
Registrar