

**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**

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**DECISION ON PAKISTAN'S REQUEST FOR CLARIFICATION  
OF THE AWARD ON ISSUES OF GENERAL INTERPRETATION**

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**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

**8 November 2025**

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<b>Annexure D, Part 3 HEP</b>	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
<b>Award</b>	<i>Indus Waters Western Rivers Arbitration</i> , Award on Issues of General Interpretation of the Indus Waters Treaty dated 8 August 2025
<b><i>Baglihar</i> Neutral Expert Proceedings</b>	<i>Baglihar Hydro-electric Plant (Pakistan v. India)</i> , Neutral Expert proceedings
<b>Clarifications</b>	The three substantive requests for clarification relating to the Award in Pakistan's Request for Clarification
<b>Case Management Conference</b>	Case Management Conference convened by the Court on 29 September 2025
<b>Court</b>	The Court of Arbitration in these proceedings, constituted pursuant to Article IX(5) and Annexure G to the Treaty
<b>HEP</b>	Hydro-Electric Plant
<b>India</b>	The Republic of India
<b><i>Kishenganga</i> Court</b>	The Court of Arbitration in the <i>Kishenganga</i> Arbitration
<b><i>Kishenganga</i> or <i>Kishenganga</i> Arbitration</b>	<i>Indus Waters Kishenganga Arbitration (Pakistan v. India)</i> , PCA Case No. 2011-01
<b><i>Kishenganga</i> Partial Award</b>	Partial Award in the <i>Kishenganga</i> Arbitration dated 18 February 2013 ( <b>PLA-0003</b> )
<b><i>Kishenganga</i> Decision on India's Request for Clarification or Interpretation</b>	Decision on India's Request for Clarification or Interpretation in the <i>Kishenganga</i> Arbitration dated 20 December ( <b>PLA-0021</b> )
<b>Pakistan</b>	The Islamic Republic of Pakistan
<b>Pakistan's Memorial</b>	Pakistan's Memorial dated 22 March 2024
<b>Parties</b>	The Parties to these proceedings, namely the Islamic Republic of Pakistan and the Republic of India
<b>Request for Arbitration</b>	Pakistan's Request for Arbitration dated 19 August 2016
<b>Request for Clarification</b>	Pakistan's Request for Clarification dated 19 September 2025, pursuant to Paragraph 27 of Annexure G to the Treaty
<b>Run-of-River Plant or Run-of-River HEP</b>	As defined at Paragraph 2(g) of Annexure D to the Treaty, "a hydro-electric plant that develops power without Live Storage as an integral part of the plant, except for Pondage and Surcharge Storage"
<b>Supplemental Rules of Procedure</b>	Supplemental Rules of Procedure dated 31 March 2023

<b>Treaty</b>	<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 ( <b>PLA-0001</b> )
<b>Western Rivers</b>	The Indus, the Jhelum, and the Chenab Rivers and their tributaries

## I. INTRODUCTION

1. The present Decision is issued in connection with arbitration proceedings initiated on 19 August 2016 by the Islamic Republic of Pakistan (“**Pakistan**”) against the Republic of India (“**India**”) (together, the “**Parties**”) pursuant to Article IX and Paragraph 2(b) of Annexure G to the Indus Waters Treaty 1960 (“**Treaty**”). In these proceedings, Pakistan seeks to resolve certain issues that have arisen between the Parties concerning the interpretation or application of various parts of the Treaty governing the design or operation of run-of-river hydro-electric plants (“**Run-of-River Plants**” or “**HEPs**”) on the Indus, Jhelum, and Chenab Rivers and their tributaries (“**Western Rivers**”).
2. On 8 August 2025, the Court of Arbitration (“**Court**”) issued its Award on Issues of General Interpretation of the Indus Waters Treaty (“**Award**”). On 19 September 2025, Pakistan requested several clarifications to the Award pursuant to Paragraph 27 of Annexure G to the Treaty (“**Request for Clarification**”). This Decision answers the Request for Clarification made by Pakistan.

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## II. BACKGROUND TO THE REQUEST

3. The Award details the procedural history of this arbitration from its commencement up until the date on which the Award was issued.
4. On 8 August 2025, the Court issued its Award on Issues of General Interpretation of the Indus Waters Treaty. In its Award, the Court addressed 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.
5. On 18 August 2025, the Court invited the Parties to indicate by 1 September 2025 whether they were available to attend a case management conference to be held via videoconference on 29 September 2025 ("**Case Management Conference**"). On 1 September 2025, Pakistan confirmed its availability to participate in the Case Management Conference. No response was received from India. On 18 September 2025, the Court provided the Parties with a proposed agenda for the Case Management Conference and invited the Parties to provide any comments.
6. On 19 September 2025, Pakistan filed its Request for Clarification, in which it sought "the Court's clarification of a number of points arising out of the Award". On 26 September 2025, the Court provided the Parties with an updated agenda for the Case Management Conference, including Pakistan's Request for Clarification as one item for discussion.
7. On 29 September 2025, the Court held the Case Management Conference by videoconference, in which Pakistan appeared and participated, but India did not. During the Case Management Conference, Pakistan addressed, *inter alia*, questions from the Court regarding certain aspects of its Request for Clarification. Following the conclusion of the Case Management Conference, the Court provided the Parties with copies of the transcript of the Case Management Conference.
8. On 1 October 2025, the Court invited India to indicate by 9 October 2025 whether it wished to respond to Pakistan's Request for Clarification or provide any comments in relation to any of the matters raised during the Case Management Conference. No response was received from India.
9. In accordance with Paragraph 27 of Annexure G and Article 28 of the Court's Supplemental Rules of Procedure dated 31 March 2023 ("**Supplemental Rules of Procedure**"), the Court hereby issues its Decision on Pakistan's Request for Clarification.

### III. CLARIFICATION OF THE AWARD OF 8 AUGUST 2025

10. In its Request for Clarification, Pakistan makes three substantive requests for clarification relating to the Court's Award (together, the "**Clarifications**"). As a preliminary matter, and with "a view to avoiding any consequential uncertainty", Pakistan further asks that "the Court also address[] for the avoidance of doubt the relationship of the Clarifications and the *res judicata* and the binding or otherwise controlling effect of the Clarifications as an integral part of the Award".<sup>1</sup>
11. The Court's analysis commences first with a discussion of its mandate to issue clarifications to an award. Thereafter, it addresses the preliminary issue raised by Pakistan concerning whether the Court's clarification to its Award has itself a binding or controlling effect. The Court then turns to the three Clarifications requested by Pakistan, addressing them *seriatim*. It is noted that each of the Clarifications contains multiple issues about which Pakistan seeks clarification.

#### A. THE COURT'S MANDATE TO CLARIFY OR INTERPRET ITS AWARD

12. The Court's mandate to clarify or interpret its Award arises from Paragraph 27 of Annexure G to the Treaty, which reads as follows:

At the request of either Party, made within three months of the date of the Award, the Court shall reassemble to clarify or interpret its Award. Pending such clarification or interpretation the Court may, at the request of either Party and if in the opinion of the Court circumstances so require, grant a stay of execution of its Award. After furnishing this clarification or interpretation, or if no request for such clarification or interpretation is made within three months of the date of the Award, the Court shall be deemed to have been dissolved.<sup>2</sup>

13. Article 28 of the Court's Supplemental Rules of Procedure further provides:
1. Further to paragraph 27 of Annexure G to the Treaty, a Party may request an interpretation of an Award within three months of the date of that Award. Such a request shall be addressed to the Court and copied to the other Party and the Secretariat.
  2. The Court's interpretation of an Award forms part of that Award, and the provisions of Article 26 of these Rules of Procedure apply *mutatis mutandis*.<sup>3</sup>
14. The Court observes that, in accordance with Paragraph 27 of Annexure G, the request of either Party for clarification or interpretation is to be "made within three months of the date of the

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<sup>1</sup> Pakistan's Request for Clarification, para. 4.

<sup>2</sup> **PLA-0001**, Treaty, Annexure G, para. 27.

<sup>3</sup> Supplemental Rules of Procedure, Art. 28.

Award". Pursuant to Article 2(4) of the Supplemental Rules of Procedure,<sup>4</sup> the three-month period following the issuance of the Court's Award on 8 August 2025 concludes on Monday, 10 November 2025. Accordingly, Pakistan's Request for Clarification dated 19 September 2025 is timely.

15. Once a timely request is made by a Party, the Court, in accordance with Paragraph 27 of Annexure G, "shall reassemble to clarify or interpret its Award".<sup>5</sup> The Court assembled on 29 September 2025 at the Case Management Conference to hear from the Parties, *inter alia*, with respect to Pakistan's Request for Clarification. While India was invited both to attend the conference and to indicate if it wished to comment in writing on the Request, no response was received by the Court. Pending the Court's decision on the Request, neither Party requested a stay of execution of the Award. As such, the procedural requirements of Paragraph 27 of Annexure G are met.
16. The Court further observes that, while Paragraph 27 of Annexure G refers to the dissolution of the Court after clarifying its award, that text refers to the final award of a court of arbitration that resolves the disputes placed before it.<sup>6</sup> As the Court remains seized of the disputes placed before it in Pakistan's Request for Arbitration, as amended,<sup>7</sup> the Court continues to exist pending a resolution of those disputes.
17. The Court, however, exercises only a limited mandate when invited to interpret or clarify its Award; while it may interpret or clarify, it may not revise the Award. In this regard, the Court notes that this is not the first time that a court of arbitration convened under the Treaty has decided upon a request to clarify or interpret its award, nor the first time one did so in the context of an award that was not a final disposition of the disputes before it. India requested the *Kishenganga* Court of Arbitration to clarify or interpret its Partial Award dated 20 May 2013. In its Decision on

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<sup>4</sup> Article 2(4) of the Supplemental Rules of Procedure provides in part that "a period of time begins to run on the day following the day when a notice is deemed to have been received. If the last day of such period is an official holiday or a non-business day in a State of the Party concerned, or in the Netherlands, the period is extended until the first business day that follows".

<sup>5</sup> **PLA-0001**, Treaty, Annexure G, para. 27. See **PLA-0021**, *Indus Waters Kishenganga Arbitration (Pakistan v. India)*, Decision on India's Request for Clarification or Interpretation (2013) XXXI UNRIAA 295 ("**Kishenganga Decision on India's Request for Clarification or Interpretation**"), para. 22.

<sup>6</sup> In the context of multiple awards, the reference is to the award that resolves the final remaining aspects of the disputes before a court of arbitration.

<sup>7</sup> Award, para. 811(V) (providing that the Court "REMAINS seized of the disputes set forth in Pakistan's Request for Arbitration").

that request, issued on 20 December 2013, the Court explained the basis of its mandate to clarify or interpret its Award and certain limitations inherent within it:

22. . . . [N]either the Treaty nor the Supplemental Rules set any condition, except the filing deadline, for a Party requesting interpretation or clarification. Once a timely request is made by a Party, the Court, in accordance with Paragraph 27 of Annexure G, "shall reassemble to clarify or interpret its Award."
23. That said, the Court's mandate to clarify or interpret its Award remains limited. It is a well established principle of international law—accepted by both Parties—that it is not the function of the Court, when asked to interpret or clarify its prior decision, to revise that decision. The Court "confines itself to explaining, by an interpretation, that upon which it has already passed judgment".<sup>8</sup>

**B. A CLARIFICATION OF THE AWARD HAS ITSELF A BINDING OR CONTROLLING EFFECT**

18. Pakistan's Request for Clarification calls upon the Court to address "for the avoidance of doubt the relationship of the Clarifications and the *res judicata* and the binding or otherwise controlling effect of the Clarifications as an integral part of the Award".<sup>9</sup>

19. Paragraph 23 of Annexure G to the Treaty provides in part:

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. . . . Any such Award rendered in accordance with the provisions of this Annexure in regard to a particular dispute shall be final and binding upon the Parties with respect to that dispute.<sup>10</sup>

20. It is in this context that Paragraph 27 of Annexure G further provides that the Court is empowered, when requested, to interpret or clarify its award. Thus, a decision interpreting or clarifying an award is a decision that is interpreting or clarifying a ruling that is itself final and binding in nature. As such, the interpretation or clarification is integral to, and therefore has the same binding or otherwise legally controlling effect as, the award itself. Further, as indicated above, Article 28(2) of the Court's Supplemental Rules of Procedure provides that the "Court's interpretation of an Award forms part of that Award, and the provisions of Article 26 of these Rules of Procedure apply *mutatis mutandis*". Article 26 provides in part that, in "accordance with paragraph 23 of Annexure G, the Court's Award shall be final and binding upon the Parties".<sup>11</sup> The Court confirms that, consistent with the Treaty and the Supplemental Rules of Procedure, the

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<sup>8</sup> **PLA-0021**, *Kishenganga* Decision on India's Request for Clarification or Interpretation, paras. 22–23 (citations omitted).

<sup>9</sup> Pakistan's Request for Clarification, para. 4; see also Case Management Conference Tr., pp. 19:5–20:4.

<sup>10</sup> **PLA-0001**, Treaty, Annexure G, para. 23.

<sup>11</sup> Supplemental Rules of Procedure, Art. 46(2).

Court's clarifications of the Award—as expressed in this Decision—have the same binding or otherwise controlling effect as the Award itself.

**C. REQUESTED CLARIFICATION NO. 1**

**1. The Parties' Arguments**

**(a) Pakistan's Request**

21. Clarification No. 1 of Pakistan's Request for Clarification seeks clarification with respect to paragraph 811(R) of the Award's *dispositif*, which provides:

FINDS, unanimously, with respect to compliance with Paragraph 8(a) of Annexure D to the Indus Waters Treaty 1960, that the prohibition in that paragraph concerns not just the design of a work as it is intended to operate at the outset, but also any design that would readily allow for future modifications that would permit the works to raise artificially the water level in the Operating Pool above the Full Pondage Level specified in the design.

22. *First*, Pakistan seeks clarification as to whether paragraph 811(R) is limited to the design of “freeboard” for a proposed Annexure D, Part 3 HEP, or whether it extends to the design of other components of the HEP.<sup>12</sup> Specifically, although “cast expressly in terms of Paragraph 8(a) of Annexure D of the Treaty”, Pakistan requests clarification that:

the issue that has been definitely settled by the Award includes the decision that any design of an Annexure D, Part 3 HEP that would readily allow for future modifications that would permit the works to raise artificially the water level in the Operating Pool above the Full Pondage Level specified in the design is precluded by the Treaty.<sup>13</sup>

23. *Second*, Pakistan characterizes as a related and “residual point” a question of whether the Court has decided that Paragraph 8(a) of Annexure D prohibits a design that allows *ab initio* for the artificial raising of the water level in the Operating Pool, given that paragraph 811(R) might be seen as addressing only a design that would readily allow for “future” modifications.<sup>14</sup>

24. *Third*, Pakistan requests the Court to clarify that:

[T]he Paragraph 8 criteria are mandatory design criteria that establish *ab initio* design constraints on an Annexure D, Part 3 HEP, that these are distinct from post-commissioning operational constraints on a HEP, and that design constraints cannot be satisfied or accommodated simply by an acknowledgement of or commitment to operational restraint.<sup>15</sup>

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<sup>12</sup> Pakistan's Request for Clarification, para. 15; Case Management Conference Tr., pp. 20:5–28:24.

<sup>13</sup> Pakistan's Request for Clarification, para. 15 (emphasis in original).

<sup>14</sup> Case Management Conference Tr., pp. 25:5–26:20.

<sup>15</sup> Pakistan's Request for Clarification, para. 16 (emphasis in original).

**(b) *India's Position***

25. India was invited by the Court to participate in the Case Management Conference and was given an opportunity to provide its written comments on Pakistan's Request for Clarification. However, India has elected not to address any submissions to the Court regarding Pakistan's Request for Clarification.<sup>16</sup> India's position on the interpretation of the underlying provisions, as understood by the Court, is set out in the relevant section(s) of the Award.<sup>17</sup>

**2. The Court's Analysis**

**(a) *Scope of the Decision at Paragraph 811(R) of the Award***

26. The first issue of Clarification No. 1 is, in essence, whether paragraph 811(R) is limited to the design of "freeboard" for a proposed Annexure D, Part 3 HEP, or whether it extends to the design of other components of the HEP.<sup>18</sup>
27. The Court begins by noting that paragraph 811(R) of the Award, by its terms, did not solely address freeboard. Rather, it expressly prohibited "any design that would readily allow for future modifications that would permit the works to raise artificially the water level in the Operating Pool above the Full Pondage Level specified in the design". Further, the text being interpreted by paragraph 811(R)—Paragraph 8(a) of Annexure D—is not directed solely at freeboard. Indeed, Paragraph 8(a) of Annexure D to the Treaty does not even mention "freeboard" directly. That provision provides:
8. Except as provided in Paragraph 18, the design of any new Run-of-River Plant ... shall conform to the following criteria:
- (a) The works themselves shall not be capable of raising artificially the water level in the Operating Pool above the Full Pondage Level specified in the design.<sup>19</sup>
28. As explained by the Court in the Award, the issue of freeboard arises as a specific example of the general rule stipulated in Paragraph 8(a) of Annexure D to the Treaty that "the works themselves shall not be capable of raising artificially the water level in the Operating Pool above the Full Pondage Level specified in the design":
768. ... [Paragraph 8(a) of Annexure D to the Treaty] limits an Annexure D, Part 3 HEP from being designed so that the works can be manipulated to raise artificially the level in the reservoir, so that it is higher than the Full Pondage Level for which the dam is

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<sup>16</sup> See Letter from the Court to the Parties dated 1 October 2025.

<sup>17</sup> See Award, paras. 244–249; 755–758.

<sup>18</sup> Pakistan's Request for Clarification, para. 15; Case Management Conference Tr., pp. 22:9–25:21.

<sup>19</sup> **PLA-0001**, Treaty, Annexure D, para. 8(a).

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

769. Given that freeboard is the principal concern advanced by Pakistan, the following analysis will emphasize how Paragraph 8(a) regulates that particular element of dam design. ...<sup>20</sup>

29. In this regard, the Court notes that Pakistan's Request for Arbitration and its subsequent pleadings with respect to Paragraph 8(a) of Annexure D identify that provision's application to freeboard as the principal concern, but both the Request for Arbitration<sup>21</sup> and Pakistan's pleadings thereafter<sup>22</sup> further referred to the application of Paragraph 8(a) more broadly.
30. Paragraph 811(R) is based upon the Court's analysis that appears in Part XII of the Award. The title of Part XII reads "General Interpretation of Annexure D, Paragraph 8(a) ... *Including* the Use of Freeboard",<sup>23</sup> indicating that Part XII is addressing Paragraph 8(a) more capaciously than just freeboard. In the section of Part XII containing the Court's analysis, the Court assessed the language found in Annexure D, Paragraph 8(a)—the "works themselves"—and explained that the term covers "all aspects of the engineering works as a whole, as well as individual components of a plant".<sup>24</sup> Thus, the Court indicated that the scope of Paragraph 8(a) extended beyond just freeboard.
31. Further, the Court found that "Paragraph 8(a) therefore has implications for *any* element of the dam design that could enable the artificial raising of the reservoir, including freeboard".<sup>25</sup>

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<sup>20</sup> Award, paras. 768–769 (emphasis in original).

<sup>21</sup> See, e.g., Request for Arbitration, para. 93 ("For a dam operator, freeboard can be an instrument for artificially raising the water level above Full Pondage Level, particularly if gates are designed or subsequently modified to allow the water level to exceed the Full Pondage Level").

<sup>22</sup> See, e.g., Pakistan's Memorial, para. 13.29, at B(ix) and B(X)(b) (requesting a finding concerning freeboard but also "any other findings as the Court may consider to be necessary or warranted for purposes of providing controlling guidance on the interpretation and application of ... Paragraph 8(a) of Annexure D of the Treaty"); Hearing for the First Phase on the Merits Tr., (Day 7), 16 July 2024, pp. 231–232 (Pakistan's final submissions requesting "any other findings as the Court may consider necessary or warranted for purposes of providing controlling guidance on the interpretation and application of ... Paragraph 8(a) of Annexure D of the Treaty").

<sup>23</sup> Award, Part XII (emphasis added).

<sup>24</sup> Award, para. 765.

<sup>25</sup> Award, para. 768.

Moreover, the Court indicated that its “analysis will emphasize how Paragraph 8(a) regulates” freeboard, but did not foreclose any finding with respect to Paragraph 8(a) applying more generally by its terms.<sup>26</sup> Indeed, various aspects of the Court’s analysis of Paragraph 8(a) of Annexure D were not limited to freeboard, such as with respect to notification requirements.<sup>27</sup>

32. Pakistan indicates that the potential uncertainty as to the meaning of paragraph 811(R) of the Award relates to the conclusions expressed in the Court’s analysis in Part XII of the Award.<sup>28</sup> Those particular conclusions, however, relate both to the general rule stipulated in Paragraph 8(a) of Annexure D (captured in paragraph 811(R) of the Award’s *dispositif*),<sup>29</sup> and to its application to the specific issue of freeboard (captured in paragraph 811(Q) of the Award’s *dispositif*).<sup>30</sup> Specifically, mirroring the language contained in paragraph 811(R), the Court concluded in paragraph 789 of the Award that the Annexure D, Paragraph 8(a) prohibition concerns “not just the design of a work as it is intended to operate at the outset, but also any design that would readily allow for future modifications that would permit the works to raise artificially the water level in the Operating Pool above the Full Pondage Level specified in the Design”.<sup>31</sup>
33. By contrast, the conclusions of the Court contained in paragraphs 787 and 788 relate to paragraph 811(Q) of the Award’s *dispositif*, which is directed specifically at freeboard. Here, the Court concluded that “Paragraph 8(a) does not prohibit the designing of an Annexure D, Part 3 HEP to have minimum freeboard for addressing the overtopping of the dam, nor prohibit further freeboard (when necessary) to accommodate Surcharge Storage. Paragraph 8(a), however, prohibits any other freeboard”.<sup>32</sup> To the extent that other components of the proposed HEP are being assessed in relation to Paragraph 8(a), then the same analysis of whether the component is

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<sup>26</sup> Award, para. 769.

<sup>27</sup> See Award, para. 786.

<sup>28</sup> See, in particular, Award, paras. 787–789; Case Management Conference Tr., p. 24:1–24.

<sup>29</sup> See Award, para. 811(R) (the Court “FINDS, unanimously, with respect to compliance with Paragraph 8(a) of Annexure D to the Indus Waters Treaty 1960, that the prohibition in that paragraph concerns not just the design of a work as it is intended to operate at the outset, but also any design that would readily allow for future modifications that would permit the works to raise artificially the water level in the Operating Pool above the Full Pondage Level specified in the design”).

<sup>30</sup> See Award, para. 811(Q) (the Court “FINDS, unanimously, for the reasons set out in paragraphs 759 to 789, that when designing an Annexure D, Part 3 HEP and to ensure compliance with Paragraph 8(a) of Annexure D to the Indus Waters Treaty 1960, India is limited to a minimum freeboard of only a height necessary to address the safety of the dam as a whole from overtopping, as determined after reference to internationally-recognized standards and in the context of the particular dam site at issue”).

<sup>31</sup> Award, para. 789.

<sup>32</sup> Award, para. 787.

necessary for the safety of the dam as a whole or permitted by another provision of the Treaty would apply to those components as well.

34. In light of the above, the Court clarifies that the decision at paragraph 811(R) of the Award is not limited to freeboard; it extends to all components of a proposed Annexure D, Part 3 HEP that would permit the works to raise artificially the water level in the Operating Pool above the Full Pondage Level specified in the design.

**(b) *Application of Paragraph 8(a) to the Ab Initio Design of a HEP***

35. The second issue of Clarification No. 1 is whether paragraph 811(R) of the Award only prohibits any design that would readily allow for *future* modifications that would permit the works to raise artificially the water level in the Operating Pool above the Full Pondage Level specified in the design, or whether it also prohibits any design that *ab initio* would allow the works themselves to be capable of raising artificially the water level in the Operating Pool above the Full Pondage Level specified in the design.<sup>33</sup>
36. This question concerning the scope of paragraph 811(R) must be understood in the context of the provision of the Treaty that was being interpreted, which is Paragraph 8(a) of Annexure D. That paragraph clearly addresses a design that, at the outset, would allow for artificial raising of the water level, saying: “The works themselves shall not be capable of raising artificially the water level in the Operating Pool above the Full Pondage Level specified in the design”.<sup>34</sup> Thus, while the term “*ab initio*” is not used in the Award, Paragraph 8(a) provides that the design of a proposed HEP *ab initio* cannot be one that makes the works capable of raising artificially the water level in the Operating Pool above the Full Pondage Level. In paragraph 768 of the Award, the Court recognized this when it found that “the dam must be designed in a manner that permits only such Pondage and does not permit the artificial raising of the reservoir beyond Full Pondage Level”.<sup>35</sup>
37. That finding is embodied in paragraph 811(R), which states that the prohibition of Annexure D, Paragraph 8(a) “concerns *not just the design of a work as it is intended to operate at the outset, but also ...*”. Pakistan’s uncertainty appears to arise from the subsequent language in paragraph 811(R), where the Court went on to say “but also any design that would readily allow for future modifications that would permit the works to raise artificially the water level”. Pakistan

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<sup>33</sup> Pakistan’s Request for Clarification, para. 16; Case Management Conference Tr., pp. 25:5–26:20.

<sup>34</sup> **PLA-0001**, Treaty, Annexure D, para. 8(a).

<sup>35</sup> Award, para. 768 (citations omitted).

seeks clarity that paragraph 811(R) is not solely addressing future modifications, given the emphasis of the latter part on the issue of future modifications. Certainly, the issue of future modifications has been an important element of the questions that have arisen between the Parties. However, paragraph 811(R) is not limited to that aspect. Rather, it addresses both a design that *ab initio* makes the works capable of artificially raising the water level and a design that would readily allow for future modifications that would permit the works to raise artificially the water level above the Full Pondage Level specified in the design.

38. In light of the above, the Court clarifies that paragraph 811(R) of the Award decided that Annexure D, Paragraph 8(a) both prohibits any design that *ab initio* would allow the works themselves to be capable of raising artificially the water level in the Operating Pool above the Full Pondage Level specified in the design, and prohibits any design that would readily allow for future modifications that would permit the works to raise artificially the water level in the Operating Pool above the Full Pondage Level specified in the design.

**(c) Paragraph 8 as Establishing Design or Operational Constraints**

39. The third issue of Clarification No. 1 is whether the:

[Annexure D,] Paragraph 8 criteria are mandatory design criteria that establish *ab initio* design constraints on an Annexure D, Part 3 HEP, that these are distinct from post-commissioning operational constraints on a HEP, and that design constraints cannot be satisfied or accommodated simply by an acknowledgement of or commitment to operational restraint.<sup>36</sup>

40. The Court understands that Pakistan seeks clarification that the findings by the Court with respect to Paragraph 8 of Annexure D to the Treaty concern design constraints that are mandatory in nature, that apply at the outset of the process for a proposed HEP, that are distinct from operational constraints, and that cannot be satisfied through an acknowledgment of or commitment to operational constraints.
41. With respect to whether the Court was addressing “design” constraints, the Court in the *dispositif* of the Award provided general interpretations of Annexure D, Paragraphs 8(a),<sup>37</sup> 8(c),<sup>38</sup> 8(d),<sup>39</sup>

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<sup>36</sup> Pakistan's Request for Clarification, para. 16 (emphasis in original).

<sup>37</sup> Award, paras. 811(Q), (R), (S).

<sup>38</sup> Award, paras. 811(O), (P).

<sup>39</sup> Award, paras. 811(E), (F), (G), (H), (I).

8(e),<sup>40</sup> and 8(f).<sup>41</sup> Those findings repeatedly referred to India's obligations when "designing" an Annexure D, Part 3 HEP and to India's obligations to convey the "particulars of design" to Pakistan.<sup>42</sup> Further, those findings regarding the "design" of the proposed HEP are mirrored at the conclusions reached in Part X on the design of low-level outlets,<sup>43</sup> the design of gated spillways,<sup>44</sup> and the design of intakes for the turbines,<sup>45</sup> in Part XI on the design of the maximum Pondage,<sup>46</sup> and in Part XII on the design of the works in relation to the artificial raising of the water level above the Full Pondage Level specified in the design.<sup>47</sup> In support of its conclusions, the Court's analysis in the Award with respect to those sub-paragraphs repeatedly stated that they concerned the *design* of the relevant components of the HEP.<sup>48</sup> Thus, the Court can clarify that its conclusions regarding Annexure D, Paragraphs 8(a), 8(c), 8(d), 8(e), and 8(f) are on the design of the components of the HEP addressed in those paragraphs.

42. With respect to whether these design constraints are mandatory in nature, the Award's *dispositif* and the underlying analysis, including the conclusions reached in that analysis, all indicate that they are. The relevant portions of the Award's *dispositif* relating to low-level outlets,<sup>49</sup> gated

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<sup>40</sup> Award, paras. 811(E), (F), (G), (J), (K).

<sup>41</sup> Award, paras. 811(E), (F), (G), (L), (M), (N).

<sup>42</sup> The Court notes that the *dispositif* of the Award did not address the meaning of Paragraphs 8(b) or (g) of Annexure D to the Treaty.

<sup>43</sup> Award, paras. 582–583.

<sup>44</sup> Award, paras. 593–594.

<sup>45</sup> Award, paras. 607–608.

<sup>46</sup> Award, paras. 745–748.

<sup>47</sup> Award, paras. 787–789.

<sup>48</sup> See, e.g., Award, paras. 531, 555 (regarding low-level outlets, gated spillways, and intakes for the turbines), 535 (pondage), 764 (works capable of artificially raising the water level). Indeed, the Court noted that these sub-paragraphs are preceded by the *chapeau* of Paragraph 8, see Award, paras. 560 (low-level outlets), 584 (gated spillways), 595 (intakes for the turbines), 765–769 (works capable of artificially raising of the water level), which reads in part that "the *design* of any new Run-of-River Plant 'shall conform to the following criteria'". PLA-0001, Treaty, Annexure D, para. 8 (*chapeau*; emphasis added). In that regard, the Court stated in its Award, para. 561:

[T]he *chapeau* makes clear that the sub-paragraphs to follow are addressing the "design" of Run-of-River Plants, the ordinary meaning of which entails the conceptual planning of the HEP features on paper (i.e., rendering it as part of a technical drawing), with the intent and expectation that the HEP will be constructed and operated in accordance with that plan.

See also Award, para. 764.

<sup>49</sup> Award, para. 811(H).

spillways,<sup>50</sup> and intakes for the turbines,<sup>51</sup> all provide that, when designing a HEP, India “shall” take particular steps. The relevant portions relating to maximum Pondage and the artificial raising of the water level provide that India “is limited” based on certain “restrictions”<sup>52</sup> or is subject to a “prohibition”.<sup>53</sup> Further, with respect to conveying the particulars of the design to Pakistan, the Award’s *dispositif* repeatedly provides that India “is obliged” to take certain steps.<sup>54</sup> While the term “mandatory” was not used in the Award in this regard, the Court can clarify that the design constraints established by Annexure D, Paragraphs 8(a), 8(c), 8(d), 8(e), and 8(f) are mandatory in nature.

43. As for whether these design criteria apply at the outset, both in the Award’s *dispositif*<sup>55</sup> and in the Court’s analysis<sup>56</sup> of the subparagraphs of Annexure D, Paragraph 8, the Court refers to “when” designing the HEP, the design “at the outset”, and the conveyance by India of the particulars of the design to Pakistan prior to construction of the HEP.<sup>57</sup> Consequently, the Court can clarify that such language means that the design constraints established by Annexure D, Paragraphs 8(a), 8(c), 8(d), 8(e), and 8(f) are to be applied at the time that the proposed HEP is being planned by India and prior to its construction. The Court notes that alterations thereafter in the original design are subject to the same constraints and notification requirements.<sup>58</sup>
44. With respect to whether these mandatory design constraints are distinct from operational constraints, the Court in several places in the Award contrasted the Paragraph 8 “design” criteria or limitations with “operational” criteria or limitations. For example, with respect to maximum Pondage, the Court stated that it “agrees that Paragraph 8(c) identifies a design criterion, while Paragraph 15 sets out an operational criterion”.<sup>59</sup> Likewise, the Court noted that “Paragraph 8(a)

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<sup>50</sup> Award, para. 811(J).

<sup>51</sup> Award, para. 811(M).

<sup>52</sup> Award, paras. 811(O), (Q).

<sup>53</sup> Award, para. 811(R).

<sup>54</sup> Award, paras. 811(I), (K), (N), (P), (S).

<sup>55</sup> See, e.g., Award, paras. 811(H) (“when designing an Annexure D, Part 3 HEP”), (R) (“at the outset”).

<sup>56</sup> See, e.g., Award, paras. 562 (“the provision at the outset”), 789 (“at the outset”), 805 (“outset of the design process”).

<sup>57</sup> See, e.g., Award, para. 786 (“the deadline of *at least* six months before construction in Paragraph 9 of Annexure D should be seen as a minimum”).

<sup>58</sup> Thus, India shall communicate particulars of a change if “any alteration proposed in the design of a Plant before it comes into operation” or “after it comes into operation” would “result in a material change in the information furnished to Pakistan”. See **PLA-0001**, Treaty, Annexure D, para. 12; see also Award, para. 798.

<sup>59</sup> Award, para. 680.

is not an operational limitation but a design limitation”.<sup>60</sup> Moreover, the Court compared these Annexure D design constraints to analogous ones in Annexure E to the Treaty and, in doing so, distinguished them from operational constraints.<sup>61</sup> As such, the Court can clarify that the mandatory design constraints found in Annexure D, Paragraphs 8(a), 8(c), 8(d), 8(e), and 8(f) are distinct from post-commissioning operational constraints.

45. At the same time, the Court noted in the Award that, for some components of a proposed HEP, the design of the component has a connection to the later “operation” of the HEP, such as in the context of interpreting Paragraph 8(d) on the design of low-level outlets.<sup>62</sup> Yet, even then, the constraint remains one relating to how the component is to be *designed* so as to cohere with the suitable and workable operation of the Annexure D, Part 3 HEP.
46. With respect to whether these mandatory design constraints can be satisfied or accommodated by an acknowledgement of or a commitment to operational restraint, the Court in the *dispositif* of the Award and associated analysis indicated all relevant factors that could be considered when applying the design constraint. For example, the Court indicated that one factor for whether a crest-gated spillway might be used is if it is “necessary for flood control or sediment management, meaning that there is no other method (or methods) for addressing floods or sediment that is equally effective or only marginally less effective”.<sup>63</sup> Only those factors listed in the Award’s *dispositif* and its associated analysis are permissible bases for satisfying or accommodating the mandatory design constraints. Consequently, the existence or acknowledgement of an operational constraint is not a basis for satisfying or accommodating a design constraint established by Annexure D, Paragraphs 8(a), 8(c), 8(d), 8(e), and 8(f), nor is a commitment by a Party to operating the proposed HEP only in a certain way. Such factors are not part of the criteria found

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<sup>60</sup> Award, fn. 1299.

<sup>61</sup> Award, para. 147. Although the Award does not cite to it, the *Kishenganga* Court also found in its Partial Award that “Part 3 of Annexure D sets out a deliberate sequence of design restrictions (Paragraphs 8 to 12) and operational constraints (Paragraphs 13 to 17)”: **PLA-0003**, *Kishenganga* Partial Award, para. 416.

<sup>62</sup> The Court noted in its Award, para. 579:

The very last clause of Paragraph 8(d), however, does turn to the issue of “operation”, saying that the size and location of the low-level outlet shall be consistent with the “satisfactory operation of the works”. In this context, the ordinary meaning of “satisfactory operation” entails that the design for the minimum size and highest level of the low-level outlet must cohere with the suitable and workable operation of the HEP as a whole once it has been constructed.

To similar effect, see Award, paras. 590–591 (regarding gated spillways); paras. 602–603 (intakes for the turbines).

<sup>63</sup> Award, para. 811(J)(2)(ii).

in Paragraphs 8(a), 8(c), 8(d), 8(e), and 8(f) and thus cannot be employed to circumvent the design constraints that those sub-paragraphs establish.

47. In light of the above, the Court clarifies that the references in paragraphs 811(H) to (K) and (M) to (S) to “designing an Annexure D, Part 3 HEP” or to the “design” of such a HEP are references to design criteria that: (1) are mandatory in nature; (2) are to be applied at the outset, meaning at the time that the proposed HEP is being planned by India and prior to its construction; (3) are distinct from post-commissioning operational constraints on an Annexure D, Part 3 HEP; and (4) cannot be satisfied or accommodated simply by an acknowledgement of or commitment to operational restraint.

#### **D. REQUESTED CLARIFICATION NO. 2**

##### **1. The Parties' Arguments**

###### **(a) Pakistan's Request**

48. Clarification No. 2 of Pakistan's Request seeks clarifications regarding the analysis of the Court of Paragraphs 8(a) and 8(e) of Annexure D to the Treaty.<sup>64</sup> As the basis for Clarification No. 2, Pakistan cites the Court's analysis that Paragraph 8(a) “has implications for any element of the dam design that could enable the artificial raising of the reservoir”, and prohibits designing works “capable” of such raising.<sup>65</sup> Pakistan notes that, in this context, the Court stated: “For instance, a crest-gated spillway with gates extending above Full Pondage Level ... would be inconsistent with this provision, as it would allow for increasing the amount of controllable storage beyond what the Treaty permits”.<sup>66</sup>
49. Pakistan's Clarification No. 2 raises two issues. *First*, Pakistan requests the Court to clarify whether the Court determined that a crest-gated spillway with gates extending above Full Pondage Level is prohibited by Paragraphs 8(a) and 8(e) of Annexure D to the Treaty.<sup>67</sup> *Second*, Pakistan requests the Court to clarify that, “to ensure compliance with Paragraph 8(e), and Paragraph 8(a), the design of an Annexure D, Part 3 HEP must always include an ungated spillway to ensure that

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<sup>64</sup> Pakistan's Request for Clarification, paras. 18–22.

<sup>65</sup> Pakistan's Request for Clarification, para. 19, *referring to* Award, paras. 768, 785.

<sup>66</sup> Pakistan's Request for Clarification, para. 19, *referring to* Award, para. 768.

<sup>67</sup> Pakistan's Request for Clarification, paras. 10, 19; see also Case Management Conference Tr., pp. 26:21–27:25.

the design maintains the uncontrollable character of Surcharge Storage”.<sup>68</sup> Pakistan submits that these clarifications are necessary to ensure that “there can be no residual or consequential dispute on the interpretation of Paragraph 8(e) and no uncertainty on the part of the Neutral Expert, in his review and application of the Court’s interpretation, about the scope and content of the Court’s decision that is binding upon him”.<sup>69</sup>

**(b) *India’s Position***

50. India was invited by the Court to participate in the Case Management Conference and was given an opportunity to provide its written comments on Pakistan’s Request for Clarification. However, India has elected not to address any submissions to the Court regarding Pakistan’s Request for Clarification.<sup>70</sup> India’s position on the interpretation of the underlying provisions, as understood by the Court, is set out in the relevant section(s) of the Award.<sup>71</sup>

**2. The Court’s Analysis**

51. Clarification No. 2 of Pakistan’s Request addresses two issues that concern the Court’s findings relating to both Annexure D, Paragraph 8(a) (on artificial raising of the water level in the Operating Pool) and Annexure D, Paragraph 8(e) (on gated spillways).<sup>72</sup>

**(a) *Application of Paragraphs 8(a) and 8(e) to Crest-Gated Spillways***

52. The first issue of Clarification No. 2 is whether the Court determined that a crest-gated spillway with gates extending above Full Pondage Level is prohibited by Paragraphs 8(a) and 8(e) of Annexure D to the Treaty.<sup>73</sup>
53. In the course of analyzing Paragraph 8(a) of Annexure D, the Court stated in its Award that “[f]or instance, a crest-gated spillway with gates extending above Full Pondage Level (a matter not at issue in the present proceedings) would be inconsistent with [Paragraph 8(a)], as it would allow for increasing the amount of controllable storage beyond what the Treaty permits”.<sup>74</sup> Pakistan’s

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<sup>68</sup> Pakistan’s Request for Clarification, paras. 18, 21; Case Management Conference Tr., pp. 26:21–27:25.

<sup>69</sup> Pakistan’s Request for Clarification, para. 22; Case Management Conference Tr., p. 27:15–25.

<sup>70</sup> See Letter from the Court to the Parties dated 1 October 2025.

<sup>71</sup> See Award, paras. 244–249; 525–528; 755–758.

<sup>72</sup> Pakistan’s Request for Clarification, paras. 18–22; see also Case Management Conference Tr., pp. 26:21–27:25.

<sup>73</sup> Pakistan’s Request for Clarification, para. 10; see also Case Management Conference Tr., pp. 26:21–27:25.

<sup>74</sup> Award, para. 768.

uncertainty arises because it considers this to be a “very important and well-grounded ... conclusion in respect of crest-gated spillways” that was made by the Court, but not explicitly re-asserted in the Award’s *dispositif*, either in paragraphs 811(J) to (K) (on spillways) or in paragraph 811(R) (on artificial raising of the water level).<sup>75</sup>

54. In the *dispositif* of the Award, the Court found that crest-gated spillways must be compliant not only with Annexure D, Paragraph 8(e), but also with the other provisions of the Treaty,<sup>76</sup> including Annexure D, Paragraph 8(a). The Court did not attempt to catalog the specific ways that a design for a crest-gated spillway would be inconsistent with those other provisions, such as Paragraph 8(a) of Annexure D and, indeed, it did not receive any submissions from the Parties that called upon it to do so. As such, application of the general interpretation to specific components was not (at least yet) a part of these proceedings. However, with the objective of providing useful context for the Court’s general interpretation of Paragraphs 8(a) and 8(e), the Court indicated an element of the dam design that would appear non-compliant with the general interpretation: a design for a crest-gated spillway with gates extending above Full Pondage Level that “would allow for increasing the amount of controllable storage beyond what the Treaty permits”.<sup>77</sup> In indicating that example, however, the Court stressed that such a component was not at issue in these proceedings, by which it meant at that phase of the Court’s dispute resolution process.
55. In light of the above, the Court is not able to clarify the Award in the manner requested by Pakistan, given that no final determination was reached on this first issue.

**(b) Application of Paragraphs 8(a) and 8(e) to Ungated Spillways**

56. The second issue of Clarification No. 2 is whether the Court found in its Award that an Annexure D, Part 3 HEP must always include an ungated spillway.
57. In this regard, Pakistan observes that the Court found that an ungated spillway should be considered and used for a proposed Annexure D, Part 3 HEP, unless a crest-gated spillway is necessary.<sup>78</sup> Further, Pakistan notes that the Court stated that “[i]f an ungated surface spillway can be used at an Annexure D, Part 3 HEP to pass flood waters and to manage sediment, then such

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<sup>75</sup> Case Management Conference Tr., pp. 26:21–27:25.

<sup>76</sup> Award, para. 811(J)(2)(i).

<sup>77</sup> Award, para. 768.

<sup>78</sup> Pakistan’s Request for Clarification, para. 18, *referring to* Award, para. 586.

a spillway should be used, regardless of whether—absent the Treaty—India might make a different choice”.<sup>79</sup> Finally, Pakistan connects those statements with observations relating to Annexure D, Paragraph 8(a), which limits the design of the works with respect to the artificial raising of the water level. In particular, Pakistan notes that the Court observed that a crest-gated spillway with gates extending above Full Pondage Level may be impermissible, as it would allow for an increase in controllable storage.<sup>80</sup> Pakistan also notes that the Court observed that the permissible purpose of freeboard includes addressing the temporary storage of uncontrollable floodwaters as Surcharge Storage.<sup>81</sup> From these statements, Pakistan deduces that the Court may have found, in effect, “that, to ensure compliance with Paragraph 8(e), and Paragraph 8(a), the design of an Annexure D, Part 3 HEP must always include an ungated spillway to ensure that the design maintains the uncontrollable character of Surcharge Storage”.<sup>82</sup>

58. The Court confirms that, in the Award’s *dispositif* and associated analysis in relation to the express language of Paragraph 8(a) of Annexure D to the Treaty, it concluded that the artificial raising of the water level (i.e., controllable storage) above Full Pondage Level is prohibited.<sup>83</sup> However, the Court did not find in its Award that an Annexure D, Part 3 HEP must always include an ungated spillway. To the contrary, the Court found that India shall “as a starting point, endeavor to design the HEP so that it does not have any gated spillways” and “only include a crest-gated spillway if it” is compliant with the provisions of the Treaty and “necessary for flood control or sediment management”.<sup>84</sup> Further, as the issues before the Court did not involve interpretation of Annexure D, Paragraph 8(b) on Surcharge Storage,<sup>85</sup> the Court did not address design constraints that directly concerned Surcharge Storage in its Award.<sup>86</sup>

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<sup>79</sup> Pakistan’s Request for Clarification, para. 18, *referring to* Award, para. 587.

<sup>80</sup> Pakistan’s Request for Clarification, para. 19, *referring to* Award paras. 768, 785.

<sup>81</sup> Pakistan’s Request for Clarification, para. 20, *referring to* Award, paras. 474, 774.

<sup>82</sup> Pakistan’s Request for Clarification, para. 21.

<sup>83</sup> Award, para. 768 (“[Paragraph 8(a) of Annexure D to the Treaty] limits an Annexure D, Part 3 HEP from being designed so that the works can be manipulated to raise artificially the level in the reservoir, so that it is higher than the Full Pondage Level for which the dam is designed. In other words, given that the Pondage for an Annexure D, Part 3 HEP is strictly controlled by the Treaty, the dam must be designed in a manner that permits only such Pondage and does not permit the artificial raising of the reservoir beyond Full Pondage Level”). See also Award, paras. 785, 811(Q)–(R).

<sup>84</sup> Award, paras. 811(J)(1)–(2), 586.

<sup>85</sup> See Pakistan’s Memorial, para. 12.37 (“Pakistan does not, in these proceedings, ask the Court to give a dispositive interpretation of Paragraph 8(b)”).

<sup>86</sup> Award, fn. 1302.

59. In light of the above, the Court is not able to clarify the Award in the manner requested by Pakistan, given that no finding was reached on this second issue.

## E. REQUESTED CLARIFICATION NO. 3

### 1. The Parties' Arguments

#### (a) *Pakistan's Request*

60. Clarification No. 3 of Pakistan's Request seeks clarification of three issues with respect to the Court's findings and analysis concerning maximum Pondage under Annexure D, Paragraph 8(c) of the Treaty.

61. *First*, Pakistan seeks clarification from the Court that the list of data and information India is required to convey to Pakistan, as indicated in paragraph 742 of the Award, is "indicative rather than comprehensive".<sup>87</sup> Here, Pakistan submits, the Court emphasized that the Treaty imposes on India "an obligation *inter alia* to convey to Pakistan, at an early stage", specified "information and an explanation relating to its calculation of maximum Pondage pursuant to paragraph 8(c)".<sup>88</sup> In this regard, Pakistan notes that the listed items are an "incomplete list of the data and information that India is required to convey to Pakistan, including as may have a bearing on the calculation of maximum Pondage, having regard to the requirement to take into account the installed capacity and anticipated load of the Plant and the constraints that the Treaty may implicitly place on these elements".<sup>89</sup>

62. *Second*, Pakistan requests the Court to clarify paragraph 811(O)(2)(ii) of the Award's *dispositif*, which states:

"Pondage required for Firm Power" shall be calculated based on a realistic projection of the proposed HEP's installed capacity and anticipated load, reflecting the fluctuations in the discharge of the turbines arising from variations in the daily and weekly loads of the plant, as set forth in Paragraph 2(c) of Annexure D [...]<sup>90</sup>

63. Pakistan refers to the Court's analysis of this issue, in which the Court adopted a marginally different formulation, stating:

Pondage required for Firm Power shall be calculated **based on a realistic, well-founded, and defensible projection of the proposed Annexure D, Part 3 HEP's installed capacity**

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<sup>87</sup> Pakistan's Request for Clarification, para. 25, fn. 29, *referring to* Award, para. 742.

<sup>88</sup> Pakistan's Request for Clarification, para. 25, *referring to* Award, para. 742.

<sup>89</sup> Pakistan's Request for Clarification, fn. 29.

<sup>90</sup> Pakistan's Request for Clarification, para. 27, *referring to* Award, para. 811(O)(2)(ii).

**and anticipated load**, reflecting the fluctuations in the discharge of the turbines arising from variations in the daily and weekly loads of the plant, as set forth in Paragraph 2(c) of Annexure D.<sup>91</sup>

64. In this context, Pakistan requests the Court to clarify “which formulation is controlling and/or whether both formulations are intended to have the same meaning and, if so, whether that meaning is to be informed by the terms of [paragraph] 747(b) of the Award”.<sup>92</sup>
65. *Third*, Pakistan requests the Court’s clarification on “how the Treaty regulates the basis upon which India must determine the installed capacity and anticipated load of a proposed Annexure D, Part 3 HEP, including the limits, if any, arising from the Treaty on the determination of such installed capacity and anticipated load”.<sup>93</sup> Among other things, Pakistan requests the Court’s clarification that, “for purposes of the determination of the anticipated load of an Annexure D, Part 3 HEP, what is required is the determination of the ‘unit load’ of the proposed HEP”.<sup>94</sup> Furthermore, and relatedly, Pakistan requests the Court to clarify “how, once the installed capacity and anticipated load of the proposed Plant have been determined, these elements are to be taken into account for purposes of the calculation of maximum Pondage”.<sup>95</sup> In this regard, Pakistan confirms that it “unreservedly accepts the Court’s determination that the installed capacity and anticipated load of a proposed HEP are relevant to the calculation of maximum Pondage”, but requests the Court to clarify “how these elements are to be taken into account for purposes of the calculation of maximum Pondage and the basis and operation of the implied Treaty constraints on India’s determination of the installed capacity and anticipated load of a proposed Annexure D, Part 3 HEP”.<sup>96</sup>
66. Pakistan submits that the Court’s clarifications on these issues are necessary “to provide certainty to the Parties on what has been historically the most contentious issue of the Parties’ engagement under the Treaty”, and that “[s]uch clarification is essential if residual or consequential disputes between the Parties on the meaning and scope of the Court’s decision on the issue of maximum

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<sup>91</sup> Pakistan’s Request for Clarification, para. 26, *referring to* Award, para. 747(b) (emphasis added by Pakistan).

<sup>92</sup> Pakistan’s Request for Clarification, fn. 31; Case Management Conference Tr., pp. 37:12–38:14.

<sup>93</sup> Pakistan’s Request for Clarification, para. 44; Case Management Conference Tr., pp. 37:12–46:13.

<sup>94</sup> Pakistan’s Request for Clarification, para. 39, *referring to* Award, para. 467. Paragraph 467 cites an engineering text, J.J. Doland, *Hydro Power Engineering: A Textbook for Civil Engineers* (Ronald Press Company, 1954), for certain background engineering principles. That text, at page 51, refers to “unit load curve”.

<sup>95</sup> Pakistan’s Request for Clarification, para. 44.

<sup>96</sup> Pakistan’s Request for Clarification, para. 32.

Pondage are to be avoided and the Neutral Expert, in the parallel proceedings, in his review and application of the Court's Award, is to be clear about the Court's decision on this element that is binding upon him".<sup>97</sup>

**(b) India's Position**

67. India was invited by the Court to participate in the Case Management Conference and was given an opportunity to provide its written comments on Pakistan's Request for Clarification. However, India has elected not to address any submissions to the Court regarding Pakistan's Request for Clarification.<sup>98</sup> India's position on the interpretation of the underlying provisions, as understood by the Court, is set out in the relevant section(s) of the Award.<sup>99</sup>

**2. The Court's Analysis**

68. Clarification No. 3 of Pakistan's Request seeks clarification with respect to the *dispositif* of the Award and associated analysis in Part XI concerning the calculation of maximum Pondage for a proposed Annexure D, Part 3 HEP, and specifically that part of the calculation that concerns the "anticipated load and installed capacity" of the proposed HEP.<sup>100</sup> This clarification raises three issues.

**(a) Data and Information to be Conveyed by India**

69. The first issue of Clarification No. 3 is whether the list of data and information that India is required to convey to Pakistan indicated in paragraph 742 of the Award is "indicative rather than comprehensive".<sup>101</sup>
70. The Court begins by noting that paragraph 742 of the Award is part of the summary of the Court's analysis of Part X on the calculation of maximum Pondage. As context, it is convenient to recall both paragraph 741 and the relevant part of paragraph 742 of the Award, which read as follows:

741. Therefore, in light of the various elements of the interpretive approach called for by Articles 31 and 32 of the VCLT, the Court determines that the calculation of "maximum Pondage" in Paragraph 8(c) requires, *inter alia*, consideration of the proposed HEP's installed capacity and anticipated load.

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<sup>97</sup> Pakistan's Request for Clarification, para. 45.

<sup>98</sup> See Letter from the Court to the Parties dated 1 October 2025.

<sup>99</sup> See Award, paras. 244–249; 631–648.

<sup>100</sup> Pakistan's Request for Clarification, paras. 23–45.

<sup>101</sup> Pakistan's Request for Clarification, fn. 29.

742. In light of that determination, the Court wishes to emphasize three points. First, consistent with the notification requirements set forth in Appendix II of Annexure D, India is under an obligation *inter alia* to convey to Pakistan, at an early stage, the “[o]bserved or estimated daily river discharge data”, “the calculations for the Operating Pool”, and the “particulars of design”, including the dimensional plan, the “[d]ischarge proposed to be passed through the Plant, initially and ultimately, and expected variations in the discharge on account of the daily and weekly load fluctuations,” and the “[m]aximum aggregate capacity of power units ... for Firm Power and Secondary Power”. Thus, to fulfill its Treaty obligations, India must include information and an explanation relating to its calculation of maximum Pondage pursuant to Paragraph 8(c). ...<sup>102</sup>

71. Thus, paragraph 742 was not seeking to identify all the types of information that India is obligated to provide to Pakistan under Annexure D of the Treaty. Rather, it sought to indicate aspects of the required information that were of particular value when calculating maximum Pondage. It did not exclude the relevance of other required information in calculating maximum Pondage, nor did it identify all information that India is obligated to convey to Pakistan under the Treaty, including under Annexure D.

72. Further, the Court more broadly stated in the *dispositif* of the Award:

P. FINDS, *unanimously*, with respect to compliance with Article VII(2), with Paragraph 8(c) of Annexure D to the Indus Waters Treaty 1960, and with Paragraph 9 of Annexure D to the Treaty, that India is obliged:

- (1) to convey, at an early stage, “hydrologic data”, “hydraulic data”, and the “particulars of design” to Pakistan, including the estimated river discharge rate, the dimensional plan, and the installed capacity and anticipated load of the plant, along with the calculations for the Operating Pool; ...<sup>103</sup>

73. In light of the above, the Court clarifies that the data and information referred to in paragraph 742 of the Award are not comprehensive, whether as to the information that India is required to convey to Pakistan in relation to the calculation of maximum Pondage, in relation to Annexure D more generally, or in relation to the Treaty as a whole.

**(b) *Standard When Projecting the Installed Capacity and Anticipated Load of an Annexure D, Part 3 HEP***

74. The second issue of Clarification No. 3 regards the meaning of paragraph 811(O)(2)(ii) of the Award's *dispositif*, which states:

“Pondage required for Firm Power” shall be calculated based on a realistic projection of the proposed HEP's installed capacity and anticipated load, reflecting the fluctuations in the

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<sup>102</sup> Award, paras. 741–742 (citations omitted).

<sup>103</sup> Award, para. 811(P).

discharge of the turbines arising from variations in the daily and weekly loads of the plant, as set forth in Paragraph 2(c) of Annexure D; ...<sup>104</sup>

75. Pakistan contrasts the term “realistic projection” found in the Award’s *dispositif* with a marginally different formulation found in the Court’s analysis of this issue, at paragraph 747(b) of the Award, which refers to a “realistic, well-founded, and defensible projection”.<sup>105</sup>

76. In its Request for Clarification, Pakistan states:

Having regard to the marginally different formulations used by the Court, Pakistan requests the Court to clarify which formulation is controlling and/or whether both formulations are intended to have the same meaning and, if so, whether that meaning is to be informed by the terms of [paragraph] 747(b) of the Award.<sup>106</sup>

77. When analyzing Paragraph 8(c) of Annexure D to the Treaty, the Court touched on, in various places, the standard to be applied when projecting a proposed Annexure D, Part 3 HEP’s installed capacity and anticipated load. Thus, while acknowledging that including the installed capacity and anticipated load as part of the calculations introduced greater uncertainty, the Court found that India’s projection must be “realistic and defensible”.<sup>107</sup> Specifically:

[W]hile use of the proposed HEP’s installed capacity and anticipated load when calculating maximum Pondage results in some greater uncertainty in the calculation, the installed capacity and anticipated load advanced by India must be realistic and defensible under the Treaty, in the same way that the use and exact positioning of low-level outlets, crest-gated spillways, power intakes, and freeboard must be defensible.<sup>108</sup>

78. Further, while not using the term “well-founded” or “defensible”, the Court maintained that it was ultimately India that must establish that the proposed maximum Pondage complies with Paragraph 8(c), and in that sense its projection must be well-founded and defensible. The Court said:

[I]f a difference emerges in this regard between the Parties, it is for India, as the proponent of the design and construction of the HEP, to establish that the proposed maximum Pondage satisfies the requirements of Paragraph 8(c), bearing in mind any Pakistani position that a more Treaty-compliant alternative exists.<sup>109</sup>

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<sup>104</sup> Award, para. 811(O)(2)(ii).

<sup>105</sup> Award, para. 747(b); see Pakistan’s Request for Clarification, para. 26.

<sup>106</sup> Pakistan’s Request for Clarification, fn. 31.

<sup>107</sup> Award, para. 705.

<sup>108</sup> Award, para. 705.

<sup>109</sup> Award, para. 742. See also Award, para. 811(P)(5) (providing that “as the proponent of the design and construction of the HEP, [India is obliged] to establish that the maximum Pondage satisfies the requirements of Paragraph 8(c)”).

79. To similar effect, the Court stated that the calculation could not be hypothesized in a manner that serves to inflate Pondage and must correspond to how the Annexure D, Part 3 HEP would be operated, and in that sense India's projection must be well-founded and defensible:

As a general matter, the plant's installed capacity and anticipated load must correspond to how the plant will actually be operated; it cannot be hypothesized in a manner that serves to inflate the amount of maximum Pondage.<sup>110</sup>

80. Then, when concluding the Part XI analysis of Paragraph 8(c), the Court indicated India's projection of the installed capacity and anticipated load must be "realistic, well-founded, and defensible",<sup>111</sup> as Pakistan points out.

81. The *dispositif* of the Award did not intend to depart from the standard of "realistic, well-founded, and defensible" that appears in the analysis of the Award.<sup>112</sup> The term "realistic" at paragraph 811(O)(2)(ii), which refers back, *inter alia*, to paragraph 747(b), was meant to capture that standard in full even though the precise language did not do so explicitly.<sup>113</sup>

82. In light of the above, the Court clarifies that the *dispositif* of the Award, at paragraph 811(O)(2)(ii), and the associated analysis, decided that Pondage required for Firm Power shall be calculated based on a realistic, well-founded, and defensible projection of the proposed Annexure D, Part 3 HEP's installed capacity and anticipated load, reflecting the fluctuations in the discharge of the turbines arising from variations in the daily and weekly loads of the plant, as set forth in Paragraph 2(c) of Annexure D.

**(c) Calculation of Installed Capacity and Anticipated Load**

83. The third issue of Clarification No. 3 is for guidance as to how, under the Treaty, installed capacity and anticipated load for a proposed Annexure D, Part 3 HEP are to be determined, and once determined, how these elements factor into the calculation of maximum Pondage.<sup>114</sup> Specifically:

Pakistan requests the Court's clarification on how the Treaty regulates the basis upon which India must determine the installed capacity and anticipated load of a proposed Annexure D, Part 3 HEP, including the limits, if any, arising from the Treaty on the determination of such installed capacity and anticipated load. Further, Pakistan requests the Court's clarification of how, once the installed capacity and anticipated load of the proposed Plant have been

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<sup>110</sup> Award, para. 743.

<sup>111</sup> Award, para. 747(b).

<sup>112</sup> Award, para. 747.

<sup>113</sup> Award, paras. 747(b), 811(O)(2)(ii).

<sup>114</sup> Pakistan's Request for Clarification, paras. 23–45; Case Management Conference Tr., pp. 37:12–46:13.

determined, these elements are to be taken into account for purposes of the calculation of maximum Pondage.<sup>115</sup>

84. Pakistan's Request for Clarification notes various ways that the Court expressed that there were limits to what India could do in making this calculation, but that the Court stopped short of itself explaining where those limits lie. Pakistan raises various points as to what the limits might be, with an emphasis on a view that India is limited to identifying the anticipated load through calculations made on a "unit-load basis", rather than on some other basis (such as peak load).<sup>116</sup> Among other things, Pakistan asserts that this concept of a unit-load basis (using unit load and a unit load curve) may be discerned in the treatise by J.J. Doland that was cited in the Award.<sup>117</sup> Further, Pakistan represents that, in the *Baglihar* Neutral Expert Proceedings, India advocated for determining "anticipated load" based on peak load hours, and that the *Baglihar* Neutral Expert rejected that approach.<sup>118</sup>
85. Beyond its general findings,<sup>119</sup> the Court did not decide how a proposed Annexure D, Part 3 HEP's installed capacity and anticipated load shall be determined, or how that determination factors into the calculation of maximum Pondage. To the contrary, the Court stated:

[A]s Pakistan has maintained that the proposed HEP's installed capacity and anticipated load is not relevant to the determination of "maximum Pondage", the Court does not address in detail in this Award whether and how the Treaty regulates the basis upon which India may determine such installed capacity and anticipated load. The neutral expert in the *Baglihar* Neutral Expert Proceedings addressed the question of the appropriate projection of load with respect to the Baglihar HEP, but his determination is not controlling outside of that proceeding. If a question has arisen or arises between the Parties in this regard, either generally or in the specific context of the KHEP or RHEP, Pakistan or India may seek to pursue the matter through the Treaty's dispute resolution procedures, including a further phase of these proceedings. As a general matter, the plant's installed capacity and anticipated load must correspond to how the plant will actually be operated; it cannot be hypothesized in a manner that serves to inflate the amount of maximum Pondage.<sup>120</sup>

86. As such, the Court did not address in detail "whether and how the Treaty regulates the basis upon which India may determine such installed capacity and anticipated load". At the same time, the Court recalls that it concluded that "Pakistan or India may seek to pursue the matter through the

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<sup>115</sup> Pakistan's Request for Clarification, para. 44.

<sup>116</sup> Case Management Conference Tr., pp. 30:23–46:13.

<sup>117</sup> Case Management Conference Tr., pp. 32:18–35:25, referring to J. J. Doland, *Hydro Power Engineering: A Textbook for Civil Engineers* (Ronald Press Company, 1954).

<sup>118</sup> Case Management Conference Tr., p. 40:2–21.

<sup>119</sup> Award, para. 811(O)(2)(ii). See also paragraphs 74 to 82 above.

<sup>120</sup> Award, para. 743 (citations omitted).

Treaty's dispute resolution procedures, including a further phase of these proceedings".<sup>121</sup> Were either Party to seek leave in that regard, the Court is open to conducting a further phase of these proceedings on this issue. Such a phase would provide an opportunity for written submissions from both Parties on this issue that, *inter alia*, identify the relevant Treaty provisions, the relevant documents in the record, and the Parties' current and past positions and practice, including in the *Baglihar* Neutral Expert Proceedings. The Court takes note in this regard of Pakistan's statement at the Case Management Conference that:

We would much rather that you deliberate fully and properly, and that you come to the best reliable conclusions that you can come to. And if that means on this particular issue that there needs to be another procedure, well, of course, then there absolutely needs to be another procedure.<sup>122</sup>

87. In light of the above, the Court is not able to clarify the Award in the manner requested by Pakistan through this Decision.

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<sup>121</sup> Award, para. 743.

<sup>122</sup> Case Management Conference Tr., p. 51:8–13.

#### IV. DECISION

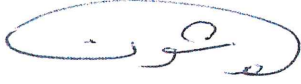
88. Having considered the written and oral submissions, the Court of Arbitration unanimously:

- A. FINDS, for the reason set out in paragraph 14, that Pakistan's Request for Clarification is timely;
- B. DECLINES, for the reasons set out in paragraphs 52 to 59 and 83 to 87, to provide clarifications with respect to the following requests by Pakistan:
  - (1) Pakistan's request for a clarification that the Court has determined that a crest-gated spillway with gates extending above Full Pondage Level is prohibited by Paragraphs 8(a) and 8(e) of Annexure D to the Treaty;
  - (2) Pakistan's request for a clarification that the Court has found that the design of an Annexure D, Part 3 HEP must always include an ungated spillway to ensure that the design maintains the uncontrollable character of Surcharge Storage; and
  - (3) Pakistan's request for a clarification as to how the Treaty regulates the basis upon which India must determine the installed capacity and anticipated load of a proposed Annexure D, Part 3 HEP, and, once determined, how these elements are to be taken into account for purposes of the calculation of maximum Pondage.
- C. FINDS, for the reasons set out in paragraphs 18 to 20, that the following clarifications to the Award have the same binding or otherwise controlling effect as the Award itself.
- D. FINDS, for the reasons set out in paragraphs 26 to 34, that the decision reached at paragraph 811(R) of the Award and the associated analysis are not limited to freeboard but rather extend to all components of a proposed Annexure D, Part 3 HEP that would permit the works to raise artificially the water level in the Operating Pool above the Full Pondage Level specified in the design.
- E. FINDS, for the reasons set out in paragraphs 35 to 38, that paragraph 811(R) of the Award and the associated analysis decided that Annexure D, Paragraph 8(a) prohibits:
  - (1) any design that *ab initio* would allow the works themselves to be capable of raising artificially the water level in the Operating Pool above the Full Pondage Level specified in the design; and
  - (2) any design that would readily allow for future modifications that would permit the works to raise artificially the water level in the Operating Pool above the Full Pondage Level specified in the design.
- F. FINDS, for the reasons set out in paragraphs 39 to 47, that the references in paragraphs 811(H) to (K) and (M) to (S) of the Award and the associated analysis to "designing an Annexure D, Part 3 HEP" or to the "design" of such a HEP are references to design criteria that:
  - (1) are mandatory in nature;
  - (2) are to be applied at the outset, meaning at the time that the proposed Annexure D, Part 3 HEP is being planned by India and prior to its construction;
  - (3) are distinct from post-commissioning operational constraints on an Annexure D, Part 3 HEP; and

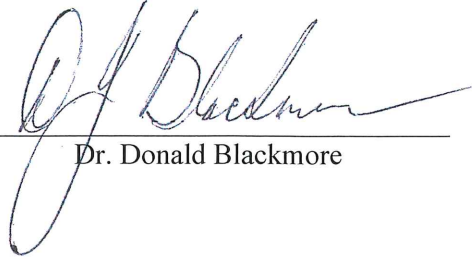
- (4) cannot be satisfied or accommodated simply by an acknowledgement of or commitment to operational restraint.
- G. FINDS, for the reasons set out in paragraphs 69 to 73, that the data and information referred to in paragraph 742 of the Award are not comprehensive, whether as to the information that India is required to convey to Pakistan in relation to the calculation of maximum Pondage, in relation to Annexure D more generally, or in relation to the Treaty as a whole.
- H. FINDS, for the reasons set out in paragraphs 74 to 82, that paragraph 811(O)(2)(ii) of the Award and the associated analysis decided that Pondage required for Firm Power shall be calculated based on a realistic, well-founded, and defensible projection of the proposed Annexure D, Part 3 HEP's installed capacity and anticipated load, reflecting the fluctuations in the discharge of the turbines arising from variations in the daily and weekly loads of the plant, as set forth in Paragraph 2(c) of Annexure D.
- I. RESERVES for further consideration and directions all issues not decided in this Decision.
- J. REMAINS seized of the disputes set forth in Pakistan's Request for Arbitration.

\* \* \*

Done this 8th day of November 2025:



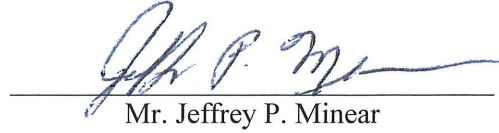
Judge Awn Shawkat Al-Khasawneh



Dr. Donald Blackmore



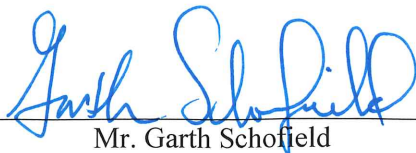
Professor Wouter Buytaert



Mr. Jeffrey P. Minear



Professor Sean D. Murphy  
Chairman



Mr. Garth Schofield  
Registrar