

# World Bank Neutral Expert says 'competent' to judge Indus Water Treaty dispute

Decision does not help resolve a demand by India to renegotiate Indus Water Treaty, which was implemented in 1960

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A view of the Indus River at the Leh-Hanle Route at Ladakh. | Photo Credit: The Hindu

The Neutral Expert (NE) appointed under terms of the Indus Water Treaty (IWT), 1960, decided that he was “competent” to decide on differences between India and Pakistan on the design of hydroelectric projects built on the Indus Treaty-rivers. India, in a statement, on Tuesday “welcomed” the move.

The decision on January 7 by Michel Lino, the World Bank appointed NE, and made public via a press release on Monday, however, does not help resolve a demand by India in January 2023 to renegotiate the IWT but only keeps alive the differences between the two countries on the dispute resolution mechanism, laid out under the terms of the IWT.

Last September, *The Hindu* had reported that India decided there would be no more meetings of the Permanent Indus Commission (PIC), made up of representatives of both countries until the IWT was renegotiated. The last meeting happened in Delhi in May 2022. Since January 2023, India has written four times to Pakistan to initiate talks on revising the treaty but is yet to receive a formal response.

The dispute resolution mechanism laid out under the terms of the IWT — as India interprets it — says that disputes must first attempt to be resolved by the PIC. If they do not succeed, the matter would be weighed by the World Bank-appointed Neutral Expert. If this fails too, the matter would be decided by a Court of Arbitration.

However, while India has held that each step must be fully exhausted before both sides agree to moving on to the next step, Pakistan has moved on without waiting for India's concurrence.

While both countries first seemed to agree on the World Bank appointing a 'neutral expert', Pakistan in 2016 asked for a Court of Arbitration. The World Bank first ruled that having a neutral expert and court together could lead to "contradictory outcomes". However, in 2022, it facilitated the setting up of both an expert as well as a chairman to the Court of Arbitration. India has refused to attend proceedings in the Court of Arbitration at The Hague. Pakistan has maintained that it is working within the terms of the treaty, whereas India says the treaty does not allow such parallel dispute mechanisms.

The press statement, issued on Tuesday, said that while the NE, could under the terms of the treaty, decide on technical disputes it did not invalidate the existing Court of Arbitration. "With respect to Pakistan's first alternative submission, the Neutral Expert notes that he does not address any issues pertaining to the competence of the 2022 Court of Arbitration. The Neutral Expert concludes that the fact that the 2022 Court of Arbitration is presently considering certain matters that partially overlap with the points of difference does not affect his competence over differences..." the NE-issued press statement noted.

In the days ahead Mr. Lino is expected to hear both India and Pakistan and decide on whether design parameters of the Kishenganga and Ratle hydroelectric projects conform with the IWT.

“The latest decision is significant to India because the Neutral Expert has decided that all seven issues — and they are all technical — are in his remit. This means that none of those issues can be taken up by a Court of Arbitration. In previous disputes involving the IWT, whenever the NE has decided on a matter, it has been accepted by both parties. The CoA isn't an appellate body,” a senior official, familiar with IWT proceedings, told *The Hindu* on condition of anonymity.

India, in a statement, said that it “welcomes the decision...which upholds and vindicates India's stand that all seven questions that were referred to the Neutral Expert, in relation to the Kishenganga and Ratle hydroelectric projects, are differences falling within his competence under the Treaty”. Pakistan so far has not responded to Mr. Lino's decision.

“Having upheld his own competence, which comports with India's view, the Neutral Expert will now proceed to the next (merits) phase of his proceeding. This phase will culminate in a final decision on the merits of each of the seven differences... India will continue to participate in the Neutral Expert process so that the differences are resolved in a manner consistent with the provisions of the Treaty... India does not recognise or participate in the illegally constituted Court of Arbitration proceedings...The Governments of India and Pakistan also remain in touch on the matter of modification and review of the Indus Waters Treaty,” the India statement added.

The treaty, that divided up the six Himalayan rivers equally between India and Pakistan, allows India the unrestricted use of all water from the three eastern tributaries of the Indus river (Sutlej, Beas and Ravi) while Pakistan receives use of the western tributaries (Indus or Sindhu, Jhelum and Chenab).

Pakistan had first raised objections to India's construction of the 330 MW Kishenganga hydroelectric project on the Jhelum river back in 2006, and then objected to plans to construct the 850 MW Ratle Hydroelectric Project on the Chenab river as well. Both India and Pakistan differ on whether the technical details of the hydel projects conform with the treaty, given that the Jhelum and Chenab were part of the “western tributaries”.

*(With inputs by Suhasini Haidar)*

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