

Indus Waters Treaty: A Review

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Abstract: *In a world burdened by burgeoning populations and faced with declining water resources, water is likely to trigger conflict. Since the partition of British India in 1947 and the creation of the modern states of India and Pakistan, the two South Asian countries have been involved in four wars (one undeclared), as well as many border skirmishes and military stand-offs. Yet despite being strong adversaries, India and Pakistan have had a comprehensive water treaty, the Indus Water Treaty, active for over 50 years. This chapter explores the complex, drawn-out negotiation of the treaty, from its beginnings in 1950 to its eventual creation in 1960. Furthermore, this chapter looks into the significance of the final agreement, and its implications for India and Pakistan's overall relationship.*

Keywords: Indus Treaty, South Asian Countries, Implications, Adversaries.

Introduction :

The **Indus Waters Treaty** is a water-distribution treaty between India and Pakistan, brokered by the World Bank. The treaty was signed in Karachi on September 19, 1960 by Prime Minister of India Jawaharlal Nehru and President of Pakistan Ayub Khan.

According to this agreement, control over the three "eastern" rivers — the Beas,

the Ravi and the Sutlej — was given to India, while control over the three "western" rivers — the Indus, the Chenab and the Jhelum — to Pakistan. More controversial, however, were the provisions on how the waters were to be shared. Since Pakistan's rivers flow through India first, the treaty allowed India to use them for irrigation, transport and power generation, while laying down precise regulations for Indian building projects along the way. The treaty was a result of Pakistani fear that, since the Source Rivers of the Indus basin were in India, it could potentially create droughts and famines in Pakistan, especially at times of war.

Since the ratification of the treaty in 1960, India and Pakistan have not engaged in any water wars. Most disagreements and disputes have been settled via legal procedures, provided for within the framework of the treaty. The treaty is considered to be one of the most successful water sharing endeavors in the world today, even though analysts acknowledge the need to update certain technical specifications and expand the scope of the document to include climate change. As per the provisions in the treaty, India can use only 20% of the total water carried by the Indus river.

The IWT is a technical treaty which partitions the rivers of the Indus basin. The treaty's preamble, 12 articles and 8 technical annexures (A to H), lay down in great detail the responsibilities and obligations for both the parties. The preamble states that the treaty seeks to fix and delimit the 'rights and obligations of each in relation to the other concerning the use of these waters'.¹ The treaty divided the rivers without taking the volume of water into account, and made no provisions for joint management. The treaty has no exit clause; however, it can be modified through a mutual agreement. Though an upper riparian, India has certain responsibilities with regard to the use of the waters as they are explained in articles II, III and IV. Notwithstanding the agreed water sharing formula, the IWT has seen many ups and downs in the last 50 years.² The Permanent Indus Commission has held 107 meetings and undertaken 114 tours by March 2012 to resolve many outstanding issues. Although Pakistan has used the threat of invoking the provisions relating to the settlement of differences and disputes on several projects, it has so far referred only one issue (on Baglihar) to a neutral expert. It has served notice of intention to refer issues to a neutral expert in the Kishenganga and Nimoo Bazgo projects, but has so far not acted in this regard. Pakistan has referred those aspects of Kishenganga that it feels require interpretation of the Treaty to a Court of Arbitration, since set up under the provisions of the Treaty. Apart from the data

supplied by India on various projects in accordance with the Treaty, Pakistan has also used the provisions of the Treaty to seek data on various other projects, many of which are yet to even come up and be approved.³ There is an impression in India that Pakistan takes recourse to the provisions relating to its right to raise objections, and seeks additional data and information for their resolution, in order to delay India's projects. There have been specific instances where the Treaty came under strain:

- In 1966-67, Pakistan complained that India was interfering with the flow of waters to Pakistan in contravention to the provisions relating to the transition period. It appears to have died a natural death.
- In 1974, Pakistan objected to the Indian proposal (submitted in 1968) to build the run-of-the-river Salal Dam Project on the river Chenab. After protracted negotiations, an agreement was signed in 1978. India made changes in the design of the dam by lowering its height to satisfy Pakistan. The dam faced severe siltation problems later. The power generation capacity of the dam reduced significantly due to the changes in design made by India.
- In 1986, Pakistan objected to India's move to build a small storagecum-navigational facility on the Wullar Lake in Jammu and Kashmir to improve navigation in the Jhelum River. This would have also assured a regular supply of water to Pakistan's Mangla dam downstream. The matter was

referred to the two governments in 1986. India stopped working on the project from 1987. The project has still not been completed although it would benefit both India and Pakistan. The Tulbul Navigation Project is now a matter of discussion at the government level, and is outside the scope of the Permanent Indus Commission.

- Pakistan was informed about the construction of a dam at Baglihar on the Chenab in 1992. It objected to the design of the dam, and the discussions between the two Indus Commissioners could not resolve the differences. Pakistan invoked the IWT provision of referring the matter to a Neutral Expert in 2005. The World Bank appointed Raymond Laffitte, a Swiss civil engineer and a neutral expert, in May 2005. Laffitte gave his findings in February 2007 after visiting the dam site, talks with both parties, and analyzing about 13,000 dams across the world. He suggested some minor modifications in the design which India readily accepted. But Pakistan was dissatisfied. The findings of this Neutral Expert, in India's view, served as a guideline for the design of future dams. There has been a lot of criticism in Pakistan of the government's handling of the Baglihar dispute. Baglihar was a bad experience for Pakistan; but it keeps the water issue alive in the public domain by accusing India of 'stealing' its water by reducing the flow of the Chenab.⁴

Treaty Under Scrutiny:

The treaty has not considered Gujarat state in India as part of the Indus river basin. The Indus river is entering the Great Rann of Kutch area and feeding in to Kori Creek during floods. At the time of the Indus Waters Treaty in 1960, the Great Rann of Kutch area was disputed territory between the two nations which was later settled in the year 1968 by sharing total disputed area in 9:1 ratio between India and Pakistan. Without taking consent from India, Pakistan has constructed Left Bank Outfall Drain (LBOD) project passing through the Great Rann of Kutch area with the assistance from the World Bank. LBOD's purpose is to bypass the saline and polluted water which is not fit for agriculture use to reach sea via Rann of Kutch area without passing through its Indus delta. Water released by the LBOD is enhancing the flooding in India and contaminating the quality of water bodies which are source of water to salt farms spread over vast area.⁵ The LBOD water is planned to join the sea via disputed Sir Creek but LBOD water is entering Indian territory due to many breaches in its left bank caused by floods Gujarat state of India being the lower most riparian part of Indus basin, Pakistan is bound to provide all the details of engineering works taken up by Pakistan to India as per the provisions of the treaty and shall not proceed with the project works till the disagreements are settled by arbitration process.

In aftermath of the 2016 Uri attack, India reviewed the treaty and its provisions and proposed several changes. In September 2016, public interest litigation was filed in the Supreme Court of India challenging the validity of the treaty as it was signed by the Prime minister of India who is not head of the Indian republic. The President of India is the official head of the state.⁶

Jammu and Kashmir Factor:

The discourse on the IWT often misses the Jammu & Kashmir factor. The three western rivers – Indus, Jhelum and Chenab – flow through J&K before entering Pakistan Occupied Kashmir (PoK). The people of J&K for long have perceived the IWT as unfair. Nehru was mindful of the needs and requirements of the J&K people.⁶⁰ During the negotiations, India had also expressed its concerns over the construction of the Mangla Dam by Pakistan in PoK, and stated that the execution of the Mangla Dam was an effort to exploit ‘the territory to the disadvantage of the people of the state, and for the benefit of the people of Pakistan.’⁷ Many decades later in interview in 2006, the Indian Minister of Water Resources, Saifuddin Soz, stated that the Treaty had taken care to safeguard India’s interest, particularly in J&K. However, perception exists that India’s generosity or rather Nehru’s desire to ‘purchase peace’ cost the Kashmiris dearly. Countering Nehru’s approach, Riyaz Punjabi writes that the treaty could not buy peace as the 1965 war demonstrated, but in the bargain, ‘genuine

economic interests of J&K state’ were surrendered. There is also an argument that the Indian projection of J&K future irrigation and hydel requirement was not sufficiently determined. J&K is a key factor in the water debate. The population in J&K has increased three times since the signing of the treaty. This has added enormous pressure on the agriculture sector. In spite of the vast hydel potential, the state has remained industrially backward. The twin issues of water and power shortages have scared away industrialists and investors, leading to unemployment, ‘which in turn provides recruits for terrorism’.⁸

The Future of IWT:

Given the political uncertainty, water sharing between India and Pakistan always draws fear of conflict, even though the IWT continues to function. In order to build the trajectory of conflict and cooperation, this section identifies six critical drivers. These are:

1. Pakistan’s attitude: Pakistan continues to be suspicious of India in so far as the implementation of the IWT is concerned, and questions the ‘fairness’ of the Treaty by taking recourse to the clause which provides for a neutral expert and the court of arbitration on different projects.
2. India’s attitude: India regards the treaty as ‘fair’ and ‘generous’; but Indian public opinion has been hardening on Pakistan – particularly

now with our greater sensitivity to domestic water needs. The issue of India conceding 80 per cent of the waters under the Treaty fails to reconcile with what the outcome of the 63 years of relationship has been with Pakistan. Constantly questioning India's projects on the western rivers through arbitration may prompt India to take a hard-line position on the Treaty.

3. Political situation: The fluctuating fortunes of India-Pakistan relations can have a major impact on the functioning of the treaty. Each time there is a precipitous fall in the relationship, as has happened since the Mumbai attacks, the pressure on the Treaty to either be 'reviewed' or even 'abrogated' will mount.
4. Kashmiri viewpoint: The people in J&K are becoming increasingly vocal in their criticism of the Treaty. Voices have been raised in the state favoring abrogation. With a population that has grown three times since the signing of the Treaty the demands and expectations are exponentially high.
5. International opinion: How the international community perceives India and Pakistan on the sharing of the Indus water system is also an important driver because the World Bank is involved in the Treaty's functioning, and has institutional interest in de-escalating tensions. Given the geo-strategic importance and climate change vulnerability of

the region, the World Bank would like to use its good offices to re-work on devising a new formula for the quantitative settlement of the shared waters.

6. Climatic factors: There is scientific evidence that climatic factors are impacting the flow of the rivers. The reduction in flows often leads to allegations that India is stealing Pakistani waters. Floods in the rivers also lead to allegations that India is deliberately flooding the other side. Inadequate understanding of climatic factors can lead to misunderstandings and misperceptions.

Based on the above drivers, water sharing—given its political, emotional and divisive texture—can either become intensely conflictual, or the benefits accruing from the principles of water sharing can act as a catalyst for strengthening further cooperation.⁹

Conclusion:

The IWT remarkably balanced the water rights of Pakistan with the needs of India without compromising on the historical usage. While allegations by Pakistan that India has violated the provisions of the IWT abound, much of the criticism appear to be motivated. Pakistan is unlikely to get such generous terms should there be a renegotiation of the Treaty. The competition today for the waters in the Indus basin is many times more than what it was in the 1950s and, therefore, claims to the Indus

waters will only become magnified on either side. The fundamental challenge, therefore, is to keep the differences within the framework of the Treaty, and evolve a mechanism of finding solutions to the immediate and many unforeseen water-related issues. Public opinion on both sides are critical of the IWT but officially neither Pakistan nor India have communicated any desire to modify the treaty. A section of public opinion in India, particularly in response to Pakistan sponsored terrorism, argues for the abrogation of the treaty. The IWT cannot be abrogated unilaterally. However, India may at some stage consider taking 'counter-measures' against Pakistan for not fulfilling its obligations (of not supporting terrorism) under international law and thereby contemplate abrogating the treaty unilaterally. Interestingly, Article XII of the treaty says that it 'may from time to time be modified by a duly ratified treaty concluded for that purpose between the two governments'. While the IWT offers a detailed format of provisions and restrictions on the Indus river system, there is also an urgent need to respond to the future water challenges that does not fall within the ambit of the treaty. A space for water cooperation, beyond the IWT, has to be created based on sharing new hydrological knowledge, experiences and best practices on trans boundary water issues. There is a need to have updated information about the environmental flows of the Indus River System, entry of effluents and seepage losses in lakes and reservoirs. Any revision to the Treaty would need to evolve a joint mechanism that is well-supported by high

quality data and analysis on water quantity, quality and identified risks and opportunities in consensus between India and Pakistan. For Pakistan it is important to focus on its domestic water management policies as well as the inter-provincial water dispute between Punjab and Sindh rather than aggressively accusing India of 'stealing' waters, which benefits the political-military class by drawing international attention. International water experts like John Briscoe, Gordon McKay Professor of Environmental Engineering, Harvard University, tend to take a sympathetic view of Pakistan ignoring the accommodation of India as an upper riparian. Briscoe's article 'War and Peace on the Indus', published in *South Asian Idea* puts the onus on India as the regional hegemon, to show restraint on the Indus basin.

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