

INDUS WATER TREATY: RECENT DEVELOPMENTS

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(Views expressed in the brief are those of the author, and do not represent those of ISSI)



Introduction:

On 25 January 2023, India issued a notice to Pakistan conveying its intent to amend the Indus Water Treaty (IWT) within 90 days to guarantee that disputes would be handled between the two nations without any outside interference.¹ The notice of negotiation was issued just two days before the Court of Arbitration (COA), established at Pakistan's request under the IWT, was to commence and which had been boycotted by India. According to the Attorney General of Pakistan (AGP) office, on April 5, 2023, Pakistan sent a reply to the Indian notice in which it was stated that Pakistan was ready to listen to New Delhi's concerns about the prevalent treaty at the level of the Permanent Commission of Indus Waters (PCIW). The decision about the parleys on changes to the Treaty will be taken once Pakistan hears India's concerns at the PCIW level. However, under Article XII, the existing Treaty will continue to reign unless the parties to the dispute, Pakistan and India, bilaterally introduced changes to the pact.²

1 Maham Naweed, "The World Bank and the Indus Waters Treaty," The Nation, April 9, 2023, <https://www.nation.com.pk/09-Apr-2023/the-world-bank-and-the-indus-waters-treaty>

2 Khalid Mustafa, "Pakistan responds to Indian notice on Indus Treaty," The News, April 5, 2023, <https://www.thenews.com.pk/print/1057496-pakistan-responds-to-indian-notice-on-indus-treaty>

An overview of the Indus Water Treaty:

The Indus Basin system is the major water reservoir in the subcontinent. It comprises six major rivers: three western rivers (Indus, Jhelum, and Chenab) and three eastern rivers (Sutlej, Beas, and Ravi). It cuts across both Pakistan and India. The geography of partition was done in such a way that headworks of the rivers entering Pakistan fell within the Indian territory. Thus, India emerged as an upper riparian with control over the canal headworks that supplied water to the province of Pakistani Punjab, once the breadbasket of British India and now a lower riparian. This left Pakistan with a feeling of water insecurity from the very beginning.³

In 1960, after almost 10 years of tedious negotiations, both sides came to an agreement and the Treaty was signed by Pakistani President Ayub Khan and Indian Prime Minister Jawaharlal Nehru. Under the terms of the Treaty, the water use of three eastern rivers, which comprised almost 20 percent of all water in the Indus Basin, was given to India, and the use of the western rivers was allocated to Pakistan. Two further provisions were added regarding the allocation of limited water for consumptive use in Jammu and Kashmir, and allowance for India to use water from western rivers for hydropower generation.⁴

A dispute-resolution mechanism was added to the IWT to deal with any future disputes. Holistically, the dispute resolution mechanism enshrined in Article IX of the Treaty, prescribes a multilayered mechanism to resolve water conflicts between the two countries. According to the relevant IWT provisions, there are three steps in the process: PCIW, Neutral Expert, and the COA, mediated by the World Bank. The Treaty, therefore, protects the rights of signatories and offers an elaborate mechanism for resolving all differences.⁵

Factors of the ongoing water disputes between Pakistan and India:

Pakistan and India both have dozens of hydropower projects in the Indus Basin currently operational or under construction. The IWT permits India to build run-of-the-river projects, which are small-scale hydroelectric projects that require no dam, reservoir or flooding to generate electricity – the natural flow and elevation of a river are used to create power. The ongoing water dispute centres around Pakistan's opposition to India's 330 megawatt (MW) Kishanganga project on the Jhelum River and

3 Mian Ahmad Naeem Salik, "Water Security: Challenges of Transboundary Water Issues between Pakistan and India," *Strategic Studies*, July 11, 2016, <https://issi.org.pk/water-security-challenges-of-transboundary-water-issues-between-pakistan-and-india/>

4 Ozer Khalid, "India's weaponisation of the Indus Water Treaty," *Express Tribune*, February 7, 2023, <https://tribune.com.pk/story/2399677/indias-weaponisation-of-the-indus-water-treaty>

5 Ali Tauqeer Sheikh, "Saving the IWT," *Dawn*, February 9, 2023, <https://www.dawn.com/news/1736167>

the 850 MW Ratle project on the Chenab River. Pakistan's objections to the run-of-the-river projects pertain to violations of the design criteria suggested in the IWT, and the storage projects that India is building on the western rivers. These projects can have serious repercussions for the downstream country. There have been apprehensions on the Pakistani side that these projects will let India acquire manipulative control over water flows into Pakistan.⁶

Following a disagreement on the designs of the Kishanganga and Ratle hydropower projects, in 2016, Pakistan and India both made two different requests to the World Bank. Pakistan made a request for empanelment of COA under Annexure G of the IWT. This was followed by India's request for appointment of a Neutral Expert under Annexure F of the IWT. The World Bank decided to start both processes simultaneously; however, due to problems related to continuing with the two processes concurrently, in December 2016, the World Bank "paused" the dispute resolution mechanism of the Treaty. A settlement could not be reached between the two countries. In April 2022, the World Bank decided to continue with both empanelment of the Court of Arbitration and appointment of the Neutral Expert. India boycotted the COA proceedings, having previously suggested appointing a neutral expert while blaming Pakistan for dragging out the complaints process.⁷

Examples of International Transboundary Water Treaties:

According to the Food and Agriculture Organisation (FAO), more than 3,600 treaties related to international water resources have been drawn up since 805 C.E, the majority of which deal with navigation and boundary demarcation; however, over the last 50 years focus has shifted towards the use, development, protection, and conservation of water resources.⁸

There are many examples where legal agreements on water issues between upper and lower riparian countries have been upheld, even as conflicts have persisted over other issues. These cases highlight two important elements of water cooperation: the need for effective institutions within countries to develop a process of engagement over time, and involvement of a third-party trusted by all parties.

6 Athar Parvaiz, "ANALYSIS-Could focus on climate ease water woes between India and Pakistan?" Reuters, February 23, 2023, <https://www.reuters.com/article/india-pakistan-water/analysis-could-focus-on-climate-ease-water-woes-between-india-and-pakistan-idUKL8N34T24M>

7 Khalid Mustafa, "Legal battle on disputed Kishenganga, Ratle projects: India issues notice for changes in waters treaty," The News, April 9, 2023, <https://www.thenews.com.pk/print/1038929-legal-battle-on-disputed-kishenganga-ratle-projects-india-issues-notice-for-changes-in-waters-treaty>

8 "Transboundary waters," UN Waters, Accessed on April 12, 2023, https://www.un.org/waterforlifedecade/transboundary_waters.shtml

1. The Mekong River Commission (MRC) is an inter-governmental organisation that works directly with the governments of Cambodia, Laos, Thailand, and Vietnam to jointly manage the shared water resources and the sustainable development of the Mekong River. The four countries have been able to cooperate since 1957 within the framework of the Mekong River Commission, and they conducted technical exchanges throughout the Vietnam War.⁹
2. The Aras and Mil-Mugan dams between Azerbaijan and Iran is a 50-year-old transboundary water operation that has largely served the socio-economic interests of both countries and is seen as being a symbol of the increasing interstate cooperation and friendly relations between the two countries.¹⁰
3. The Itaipu Hydroelectric Dam located on the Paraná River on the border between Brazil and Paraguay was developed during a period of conflict over land at the border between Brazil and Paraguay in the 1960s, as both countries perceived the untapped energy potential of the Paraná River. The joint signature of the Act of Iguazu in 1966 and the Treaty of Itaipu in 1973 enabled the project to emerge as a binational and coordinated effort to build and manage the dam while sharing its costs and benefits.¹¹

Conclusion:

The IWT is widely considered to be the most important water Treaty in the world and has endured despite more than six decades of troubled relations between Pakistan and India. For Pakistan, the Indus is its lifeline as the river's tributaries are the source of almost all freshwater resources. The dispute-resolution mechanism under the IWT undertakes both juridical and non-judicial techniques to settle differences and disputes between Pakistan and India. The proposed Indian changes in the Treaty will bring the future of regional water relations to the brink. Legally, the IWT can only be modified, through another treaty, particularly drafted for that purpose. Article XII of the Treaty, dealing with termination and modification, clearly states that neither modification nor termination can take place without the consent of both Pakistan and India. The Treaty is clear that a modification treaty must be drafted by both states and then ratified by both, to change the IWT. If India unilaterally claims to have modified the IWT and refuses to abide by any of its provisions, the effect

⁹ "Mekong River Commission," MRC, Accessed April 12, 2023, <https://www.mrcmekong.org/>

¹⁰ "Azerbaijan, Iran Transboundary Water Management Success Story," The Water Diplomat, July 10, 2021, <https://www.waterdiplomat.org/story/2021/07/azerbaijan-iran-transboundary-water-management-success-story>

¹¹ "Itaipu Hydroelectric Dam," Global Infrastructure Hub, November 30, 2020, <https://www.gihub.org/connectivity-across-borders/case-studies/itaipu-hydroelectric-dam/#:~:text=The%20Itaipu%20Hydroelectric%20Dam%20is,maximum%20height%20of%20196%20m.>

of that will be that the Treaty will remain valid in its original form and a violation of the Treaty would have taken place.

Pakistan's strategy to counter the Indian move to undermine the IWT should be based inter alia on a comprehensive, objective appraisal of the effectiveness of the Treaty; the inadequacies of the Treaty to address the impacts of climate change; and the suggestions made by experts and stakeholders of Pakistan and India. There have been voices stressing that the changing environmental and demographic realities on both sides of the border require thinking about how these can be brought in line with contemporary international watercourse law, which pertains to the use and conservation of all waters that cross international boundaries, including both surface and groundwater. At the appropriate time, these aspects would also need to be part of the talks between Pakistan and India, within the framework of PCIW, and bilaterally.