

Indus Water Treaty Arbitration

Battle over Water Sharing

Policy Brief

This policy brief provides an overview of the Indus Waters Treaty, including its history, mechanisms, ongoing issues, India's demand to modify the treaty, and recommendations for resolution. It explains the treaty's background, the role of the Permanent Indus Commission, neutral expert and arbitration in resolving disputes, highlight current issues between India and Pakistan, and suggest possible solutions for sustainable water management. The objective is to offer a clear understanding of the Indus Waters Treaty and provide potential avenues for peaceful resolution of water-related conflicts.

Executive Summary

The Indus Waters Treaty (IWT) is an agreement between India and Pakistan that governs the allocation and sharing of transboundary rivers in the Indus Basin. It determines how the rivers are divided between the two countries for various purposes such as irrigation, hydropower generation and other water-related uses. The treaty has been successful for over 60 years, despite tensions and conflicts between the two countries. Mechanisms such as the Permanent Indus Commission (PIC), neutral expert, and court of arbitration are established to resolve disputes. However, the ongoing issue involving disputes about Indian hydroelectric projects on the western rivers are causing concerns for Pakistan's water supply and agriculture. Talks to resolve the issue have been unsuccessful, with India demanding a modification of the treaty. India's approach is criticized for its potential negative implications on regional transboundary water relations and climate action. Possible recommendations include engaging in constructive dialogue, utilizing the role of the Pakistan Commissioner for Indus Waters (PCIW), establishing a court of arbitration, exploring water-sharing arrangements, enhancing technical cooperation, encouraging people-to-people contacts, implementing confidence-building measures, promoting sustainable

water management practices, and establishing a long-term cooperation framework. Resolving the issue requires sustained effort, collaboration, and a focus on sustainable development in the region. Compliance with rulings and a cooperative approach are crucial for the peaceful resolution of water-related disputes.

Background of IWT

The IWT is a historic transboundary river allocation and water-sharing agreement that was signed in 1960 between India and Pakistan with the assistance of the World Bank, which was also a signatory. The negotiations that led to the signing of the treaty were initiated by Eugene Black, president of the World Bank, in 1952. The IWT, which is considered one of the most successful international treaties, has provided a framework for allocation of Indus Basin rivers comprising River Indus and its five tributaries between Pakistan and India for the purposes of irrigation, hydropower development and other uses. The treaty has worked successfully for more than 60 years despite frequent tensions and conflicts between the two countries. The treaty allocates the three western rivers – Indus, Jhelum, and Chenab – to Pakistan and the three eastern rivers – Ravi, Beas, and Sutlej – to India, while also allowing each country certain uses of the rivers allocated to the other state. The IWT is a critical component of water management in the region

and has been hailed as a model for international water-sharing agreements.¹

Mechanism of IWT

The IWT treaty divides the rivers into two groups: western rivers, comprising Indus, Jhelum, and Chenab, allocated to Pakistan, and eastern rivers, comprising Ravi, Beas, and Sutlej, allocated to India. Each country is allowed certain uses of the rivers allocated to the other, subject to specific restrictions and detailed guidelines.²

The treaty also established the PIC, which is responsible for implementation of the treaty, mandated to maintain cooperative arrangements between the two countries and operate the mechanism provided in the treaty for settling any differences or disputes that may arise during its operation. The PIC consists of two commissioners, one from each country, and meets regularly to discuss and resolve issues related to the implementation of the treaty.

The IWT establishes a framework for cooperation and information exchange between India and Pakistan regarding the utilization of the rivers within the Indus River system. The PIC serves as a platform for addressing “questions” that may arise regarding the implementation of the treaty.

In cases where ‘differences’ arise between the two countries, the treaty outlines specific procedures. These differences are to be resolved through the involvement of a neutral expert, who acts as an independent party to assess and provide recommendations on the disputed matter. If the differences escalate into ‘disputes’, they are referred to a seven-member arbitral tribunal known as the court of arbitration, which plays a role in resolving more serious conflicts under the framework of the treaty.

While the World Bank played a crucial role in facilitating the negotiation and signing of the treaty, its involvement after the signing is limited and procedural. The bank’s role primarily involves designating individuals to fulfill specific roles within

the neutral expert or court of arbitration proceedings upon the request of either or both the parties.

Role of Commission, Neutral Expert and Court of Arbitration in Resolving Disputes

The IWT provides for several mechanisms to resolve disputes between India and Pakistan, including the PIC, neutral expert, and court of arbitration. The PIC is responsible for resolving any ‘question’ that may arise between the two parties concerning the interpretation or application of the treaty or the existence of any fact which, if established, might constitute a breach of the treaty and shall first be examined by the commission which will endeavor to resolve the question by agreement. The commission meets regularly to review and discuss the implementation of the treaty and resolve questions related to the treaty’s operation and has played a crucial role in maintaining cooperative arrangements between the two countries.

In cases where a ‘question’ cannot be resolved through the PIC, then a ‘difference’ will be deemed to have arisen. The treaty provides for the appointment of a neutral expert if, in the opinion of either commissioner the ‘difference’ falls in a list of issues provided in the treaty, to investigate and make recommendations for its resolution. The neutral expert is appointed by the World Bank on the request of either commissioner and works independently of the two countries. The neutral expert is required to be a world-renowned engineer and his recommendations are binding upon both parties and must be implemented.

In cases where the question remains unresolved because it does not fall within the purview of a neutral expert, or he has informed the commission that in his opinion the question or a part thereof should be treated as a ‘dispute’, then a ‘dispute’ will be deemed to have arisen. The treaty provides for the resolution of dispute either at the level of the two governments by agreement or establishment of a court of arbitration. The court is made up of three members, one appointed by each country and the third appointed by the president of the World Bank. The court of arbitration

¹ “Fact Sheet: The Indus Waters Treaty 1960 and the Role of the World Bank,” The World Bank, June 11, 2018, <https://www.worldbank.org/en/region/sar/brief/fact-sheet-the-indus-waters-treaty-1960-and-the-world-bank>

² “Water conflict and cooperation between India and Pakistan,” Climate Diplomacy, <https://climate-diplomacy.org/case-studies/water-conflict-and-cooperation-between-india-and-pakistan>



has the power to make a final and binding decision on the dispute.

Over the years, these mechanisms have been used to resolve several disputes related to the implementation of the treaty. For example, in 2010 a neutral expert was appointed to resolve a dispute over the Baglihar hydroelectric project on the Chenab River. The neutral expert's decision was accepted by both countries, and the dispute was successfully resolved.

Ongoing IWT Issue

The ongoing IWT issue between Pakistan and India involves disputes over the construction of hydroelectric power projects on the western rivers (Indus, Jhelum, and Chenab) by India. Pakistan is concerned that these projects could limit water flow to its territory, negatively impacting its agriculture and hydropower sectors.

Pakistan has raised objections to several Indian hydroelectric projects, such as Kishanganga, Ratle, and Pakal Dul. As a result, both countries have requested the involvement of neutral experts and a court of arbitration to settle the disputes. The World Bank, caught in a dilemma, advised India and Pakistan to negotiate and present a joint request based on the dispute resolution mechanisms outlined in the IWT. However, the two countries could not reach an agreement due to India's reluctance.³

In March 2021, India and Pakistan agreed to resume talks on the IWT after a two-year hiatus.⁴ Unfortunately, the talks did not yield any results due to India's unwillingness to resolve the disputes and ensure proper implementation of the treaty. Disputes have arisen over specific projects undertaken by India, which Pakistan claims violate the IWT. These disagreements have led to increased tensions between the two countries. India maintains that its hydroelectric projects are in compliance with the treaty and argues that they will provide clean energy and contribute to its economic development. On the other hand, Pakistan is concerned about the impact of

these projects on its water supply, agriculture, and hydropower sectors. Pakistan seeks the involvement of neutral experts and a court of arbitration to resolve the disputes, as provided for in the IWT.

Despite their differing stances, both India and Pakistan express their commitment to the IWT and their willingness to engage in constructive dialogue to resolve the issue.⁵

India's Demand to Modify IWT and Its Implications

India's letter dated January 25, 2023, was directed to the Pakistani commissioner of the PIC. However, instead of pursuing a cooperative approach, India has adopted a narrow and self-centered stance, which is likely to deteriorate its transboundary water relations with Bangladesh, Bhutan, China, Nepal, and Pakistan. This inward-looking policy will fragment ecosystems and hinder regional efforts towards climate action as required by the Paris Agreement.

Without a climate-smart response devised by India, Pakistan, and the international community, South Asia will struggle to develop collaborative approaches to crucial climate-related challenges such as changing monsoon patterns, glacial melt, droughts, riverine floods, cloud bursts, transboundary flooding, tropical storms, and the sinking or salinization of coastal areas extending from the Arabian Sea to the Bay of Bengal. India's limited perspective on this matter has the potential to push millions of people into poverty.

India's demand to revise the treaty is rendering the well-functioning IWT dysfunctional. Although Pakistan opposes renegotiating the treaty, India's demands have unintentionally created an opening for Pakistan to initiate climate and water discussions on various issues, some of which are reportedly mentioned in the letter to Pakistan.

India's water-sharing approach lacks foresight and is supported by two primary factors. Firstly, the dispute-resolution mechanisms of the IWT are deemed

³ John Joseph Vater, "The Indus Waters Treaty: Prospects for India-Pakistan Peace," Institute of South Asian Studies, June 23, 2021, <https://www.isas.nus.edu.sg/papers/the-indus-waters-treaty-prospects-for-india-pakistan-peace/>

⁴ Naveed Siddiqui, "Pakistan, India agree to make efforts to resolve Indus water issues, conduct inspection tours," *Dawn*, March 25, 2021, <https://www.dawn.com/news/1614554>.

⁵ Waseem Ahmad Qureshi, "Dispute Resolution Mechanisms: An Analysis of the Indus Waters Treaty," *Pepperdine Dispute Resolution Law Journal* 18, no. 1 (January 1, 2018), <https://digitalcommons.pepperdine.edu/cgi/viewcontent.cgi?article=1388&context=drlj>

inefficient, and secondly, several new issues such as global warming have emerged since the signing of the treaty in 1960. Unfortunately, neither of these concerns have been raised by India or Pakistan in the PIC, which has conducted at least 116 meetings. Addressing these points could contribute to strengthening of the treaty.

Recommendations

Resolving the ongoing IWT issue is a complex matter that requires constructive engagement and dialogue between the two countries. Some possible recommendations that could help resolve the issue are given below.

- **Role of PCIW:** The PCIW is responsible for monitoring and implementing the provisions of the IWT between Pakistan and India, ensuring fair distribution of water resources and resolving any disputes that may arise. If a dispute arises, the PCIW can engage with its Indian counterpart, the Indus Commission, to resolve the matter through discussions and data exchange.⁶ If the issue cannot be resolved, the PCIW can refer the matter to a neutral expert or a court of arbitration, as stipulated in the treaty. Therefore, the PCIW can play a crucial role in resolving disputes related to the IWT. Furthermore, both countries can engage in meaningful negotiations and diplomatic discussions to address the concerns and disputes related to the implementation of the treaty. This would involve open dialogue, sharing of data and information, and exploring mutually acceptable solutions.
- **Establishment of Court of Arbitration:** Pakistan is reluctant to support a neutral expert in the IWT arbitration battle due to a previous instance involving the Kishanganga project. The neutral expert deviated from the treaty provisions and ruled in favor of India, citing advancements in dam technology. Pakistan believes that the neutral expert should strictly interpret and apply the treaty provisions without considering technological advancements. Pakistan seeks to ensure that the treaty's original intent and framework are upheld and prefers alternative mechanisms, such as a court of arbitration, where a panel of arbitrators can make decisions based solely on the treaty's provisions.

Pakistan argues that this approach would provide a more objective and dependable resolution to the disputes.

- **Explore Water-sharing Arrangements:** The parties could explore water-sharing arrangements that could be beneficial to both countries. This could involve the sharing of water from both the western and eastern rivers and construction of joint projects that could benefit both countries.
- **Enhance Technical Cooperation:** Technical cooperation between the two countries could help build trust and understanding. This could involve improvement in the exchange of information on hydrological data, joint research on water management, and cooperation on the management of transboundary rivers.
- **Encourage People-to-People Contacts:** Encouraging people-to-people contacts could help build goodwill and promote understanding between the two countries. This could involve cultural exchanges, educational programs, and initiatives to promote tourism.
- **Confidence-Building Measures:** Implementing confidence-building measures can help create a conducive environment for resolving disputes. This can include fostering people-to-people exchanges, cultural initiatives, and cooperation in other areas of mutual interest, which can contribute to improved relations and trust.
- **Sustainable Water Management Practices:** Promoting sustainable water management practices, including efficient irrigation techniques, water conservation measures, and joint water management initiatives, can help address water scarcity concerns and optimize water usage in the region.
- **Long-term Cooperation Framework:** Establishing a long-term cooperation framework between India and Pakistan for managing shared water resources can provide a structured approach to resolving future disputes and ensuring sustainable water sharing.

⁶ John Joseph Vater, "The Indus Waters Treaty: Prospects for India-Pakistan Peace," Institute of South Asian Studies, June 23, 2021, <https://www.isas.nus.edu.sg/papers/the-indus-waters-treaty-prospects-for-india-pakistan-peace/>

These recommendations require a sustained effort by both Pakistan and India to engage in constructive dialogue and work towards a mutually acceptable solution.

Conclusion

The IWT arbitration has been a significant challenge for river and water sharing between Pakistan and India. Despite the challenges faced, the treaty has provided a framework for the fair distribution of water resources between the two countries. The arbitration process has been a crucial mechanism for resolving

disputes and ensuring compliance with the treaty's provisions. It is recommended that both countries continue to engage constructively with the arbitration process and comply with the rulings of the neutral experts and courts. Moreover, the focus should be on long-term solutions to ensure the sustainable management of the Indus River system, given the growing challenges of climate change and increasing demand for water. Therefore, a collaborative approach, supported by effective policy interventions and sound governance mechanisms, is necessary for the peaceful resolution of water-related disputes and sustainable development of the region.

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