



## The Hydropolitics of the Indus Waters Treaty: A Critical Perspective



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### Abstract

*This paper discusses the hydro politics of the Indus Waters Treaty from a critical perspective. Many analysts and commentators from both India and Pakistan expressed displeasure with the treaty on the grounds of allotting more waters to the contending party. The Indian side is displeased with 'restricted' rights on western rights, whereas the Pakistani side laments the Indian rights on the western rivers as detrimental to its water security. Neutral experts consider the Indus Waters Treaty as an instance of successful water dispute resolution. However, the treaty's failure to account for future implications of the climate change for water supply and surging population for water demand as well as the absence of the other co-riparians of China and Afghanistan from the treaty and its failure to hardwire enough safeguards to ensure Kashmiri's needs are met from the waters add to the stresses and strains in the Indus Waters Treaty.*

**Key Words:** Hydropolitics, India, Indus Waters Treaty, Pakistan

### Introduction

South Asia is a region of mutual antagonisms, conflicts and geopolitical rivalries. The region faces a water crisis as well. However, water management has become a common practice of regional hydropolitics, and a large number of treaties has been reached amongst its riparian states. In maritime aspects, India alone has concluded three trilateral agreements with the Maldives and Sri Lanka, Indonesia and Thailand, Thailand and Myanmar, nine bilateral agreements with the Maldives, two bilateral agreements each with Indonesia, Thailand, and Sri Lanka. In the same perspective, Pakistan too, has signed two bilateral agreements with Iran and Oman (Biswas, 2011). Nevertheless, there still exist maritime disputes as that of Sir Creek between India and Pakistan which await an agreement. South Asian nations have also concluded river sharing treaties. India and Pakistan signed the Indus Waters Treaty in 1960 to settle the Indus water dispute. India and Bangladesh resolved the Farakha barrage issue through the Ganges Water Treaty in 1996. India and Nepal signed the Mahakali Treaty in 1996. India and Bhutan have also managed their rivers through successful negotiations and treaties.

These treaties are working smoothly and are successful to a greater extent in the prevention of interstate water crisis from snowballing into largescale water conflicts. Yet with the present trend of climate change, melting of Himalayan glaciers, ballooning population of the South Asian region, increased urbanization and driver for industrialization demand for water has increased manifold. Moreover, due to differing interpretations by the contending parties, these treaties are under stress. One such case is the Indus Waters Treaty which since the 1990s has become a source of tension between the two states of India and Pakistan. This paper is divided into the following

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three sections: 1. Historical background of the Indus Waters Treaty, 2. Recent stresses and strains in the treaty, and 3. The pros and cons of the treaty.

### Historical Background of the Indus Waters Treaty: Lessons Learnt

River Indus was a source of tension between the provinces of Punjab and Sindh even before the partition of India in 1947. The Government of India Act of 1935 made water a provincial subject. Before the act, water was regulated by executive orders. In 1939 Sindh objected upon the water withdrawal by Punjab and requested the Governor-General to review the Punjabi irrigation projects. In 1941 the Indus commission was established, and in 1942 it submitted its report in which it was stated that the withdrawals by Punjab would cause material damage to the canals in Sindh and recommended for a management system of the Indus basin as a whole. However, the report was unacceptable to both the provinces. From 1943 up till 1945, the chief engineers of both the provinces met but with no concrete results. In early 1947 the issue was referred to the Secretary of State for India in London. The issue remained in limbo till India was divided into two separate states in August 1947. The issue became international, and the inter-provincial dispute went into the backburner.

In order to maintain order between the two newly born states of India and Pakistan till the institutionalization of new agreements, an agreement- The Standstill Agreement- was signed in December 1947. The agreement allowed discharges from the headworks to Pakistan and did freeze the water allocations at two points until March 31, 1948. The agreement was incorporated into the India independence act of 1947 as well. With the expiry of the Standstill Agreement on 1<sup>st</sup> of April, 1948, India stemmed waters from two canals flowing from upstream India to downstream Pakistan (Iqbal, 2010). India justified her action on the plea that continued flow of water would establish Pakistani "right" over the said waters. This Indian action exposed Pakistani hydrological vulnerability (Sinha, 2010).

To explain the Indian action of stemming the flow of water, three important theories have been put forward. According to the first theory, India stopped the flow so to establish its sovereign water rights. The second theory, which is most widely believed, is that India wished to gain leverage on Kashmir issue. The third theory holds that the action of stopping the flow of water was a unilateral decision of the provincial government of Punjab and was without the consent of the federal government of India (Brennan, 2008).

Whatever the Indian motives were, this act was a great source of tension for the farmers of west Punjab and was protested vigorously by Pakistan (Mohammad, 2011). Negotiations started on April 30, 1948. The Indian government agreed that it would resume the flow of water but stated that Pakistan could not claim those waters as a "right". Pakistan stuck to its post-partition popular argument of "Historical Use of Waters" which remained its pivotal argument in the negotiations onward (Sinha, 2010). Subsequently, on 4<sup>th</sup> of May, 1948 an interim agreement-Inter Dominion (Delhi) Agreement - was reached according to which India had to release enough water to meet Pakistan immediate needs, and Pakistan in return had to pay annual payments for the water released (Swain, 2009). At this point, India also laid claim to eastern rivers' entire waters (Iqbal, 2010). However, different interpretations of the Delhi Agreement by the two states rendered it less effective (Alam, 2002). Pakistan termed the agreement a forced one, and on 16 June 1949 sent a note of displeasure to the Indian government. By 1951, water issue between the two nations soared (Swain, 2009) and negotiations started in the direction of reaching a more comprehensive treaty.

The Indian Prime Minister Jawaharlal Nehru invited David Lilienthal-ex-chairman of the Tennessee Valley Authority to India to study the ongoing water dispute between India and Pakistan. Lilienthal visited both India and Pakistan. On his return to the US, he wrote an article which was read by Eugene Black-the then president of World Bank. Eugene Black requested David Lilienthal for his recommendations and also contacted prime ministers of Pakistan and India. He offered services of the World Bank to resolve the dispute in September 1951. Both India and Pakistan agreed to the invitation. The bank's offer had three main principles. First, there are

enough waters in the Indus basin to meet the needs of both states. Second, while resolving the dispute, the basin would be treated as a single unit. Finally, all the past grievances should be kept aside, and a purely technical approach instead of a political one would be adopted.

The Indus mediation started at the bank's headquarters in Washington in May 1952. Subsequent meetings were arranged in Karachi in November 1952 and Delhi in January in 1953, but no agreement could be finalized over a common development plan of the basin. The bank then asked both the parties to submit their own proposals. However, disagreement on allocations eluded the solution once again. World Bank asked the parties to revise their proposals. India and Pakistan both gave their revised plans. The modified Indian plan asked for the allocation of all the three eastern rivers and 7 % of the western rivers to India. The modified Pakistani plan asked for all the three western rivers as well as 70 % of the eastern rivers to Pakistan ([Alam, 2002](#)).

On February 5, 1954, the bank came up with its own proposal of separating the rivers as the bank's initial proposal to get the whole basin administered as one single unit by the two states was turned down by India and Pakistan. India was allotted all the eastern rivers and Pakistan the western rivers except a small amount from river Jhelum that was also granted to India. India accepted it in March 1954; however, Pakistan only expressed qualified acceptance in July 1954. Pakistan considered the western rivers supplies insufficient as a replacement of the eastern rivers' existing supplies. In 1956, the Aide Memoir proposed storage facilities for Pakistan on the western rivers. Side by side with the main mediations through World Bank, many ad hoc agreements were also signed so to keep the water supply unabated to Pakistan for six to 12 months. Such ad hoc agreements were negotiated separately that lasted from 1<sup>st</sup> April 1955 till 31<sup>st</sup> March 1960. From May 1956 till May 1959, negotiations revolved around the financing of the replacement facilities. In May 1959 Black visited India and Pakistan and pegged a fixed cost of the replacement facility on India. The responsibility of the extra cost was pledged to be shouldered by the bank. India accepted the proposal and committed \$ 174 million. In August 1959, a donor's consortium was organized by Black, which raised \$ 893.5 million for the replacement works ([Alam, 2002](#)).

After nine (1951-1960) years of lengthy and hectic engagement both the states signed the Indus Waters Treaty on September 19, 1960, in Karachi by the then president of Pakistan, Ayub Khan and prime minister of India, Jawaharlal Nehru in partnership with World Bank and financial aid from USA, United Kingdom and other friendly states ([Swain, 2009](#)). In January 1961 the treaty was ratified by both the nations in Delhi. However, under Article XII (2) the treaty would enter into force retrospectively from the first of April 1960. The Indus Waters Treaty defined and fixed the contending water rights of India and Pakistan and is, therefore, a remarkable achievement as it settled a serious water sharing issue ([Iqbal, 2010](#)).

Following eight lessons could be learnt from the conflict management in the case of the Indus Waters Treaty. First, the power imbalance between contending powers could protract negotiations. Second, financial assistance could break the stalemate in reaching an agreement. Third, negotiations could come to fruition if it is made clear that no precedent is being set for future considerations. Fourth, a neutral location could prove fruitful in reaching a settlement. Fifth, water problems could be solved easily if it is separated from political disputes ([Wolf, 1997](#)). Sixth, the disconnection between political rhetoric and action by governments could also be a good catalyst towards an agreement ([Alam, 2002](#)). Next, an engineering perspective is also a helpful tool in resolving water issues. Finally, active involvement of a third party is also effective in conflict resolution as the World Bank facilitated resolution with its staff, funding and different proposals to break the ice ([Ali, 2008](#)).

In addition to the factors discussed above, several other factors also helped in reaching the agreement on the Indus. It is argued that financial assistance paved the way for the treaty. However, analysts disagree with this argument. It is opined that financial assistance was promised in 1951 then why the treaty was protracted for nine long years. It is further agreed that financial assistance was available only for the comprehensive plan, then why did the nations sign the ad hoc agreements. Other argue that why despite the assistance the negotiations were about to break

in 1954. Similarly, the October 1958 coup in Pakistan is also considered to be a reason for the treaty ([Alam, 2002](#)).

Instead of agreeing to the aforementioned arguments, a different school of thought explains the Indus Waters Treaty through “water rationality”. Accordingly, water rationality is defined as the actions taken by a state to secure both qualitative and quantitative water supply. According to this argument, both the states of India and Pakistan went for the treaty because of five reasons. First, water is a scarce resource, and no squabbling could be helpful in securing its incessant supply. Second, it is vital for the development of both states. Third, it poses a security issue between India and Pakistan. Fourth, water demand is increasing and supply diminishing, and most importantly, war is not a rational choice for securing its supply.

Similarly, buttressing the same argument, Wolf summarises water rationality as “the more valuable lesson of international water is as a resource whose characteristics induce cooperation and incite violence only in the exception” ([Alam, 2002](#)).

### The Stresses and Strains in the Indus Waters Treaty

Signing a treaty is easy but to implement it in its true spirit is difficult. Since its existence, the Indus Waters Treaty has been criticized by officials and water experts from both the states of India and Pakistan. Pakistani commentators consider the Indus Waters Treaty to be too generous to India ([Sinha, 2010](#)). Indian analyst holds a similar opinion that the treaty is too generous to Pakistan ([Iyer, 2005](#)). In fact, both the states take their arguments from two conflicting principles of international water management. India advocates the principle of “equitable utilization” and sees the 80 % allocation of waters to Pakistan as the violation of this very principle. On the contrary, Pakistan believes in the principle of “historical use” and “no appreciable harm” and finds the violation of this principle in the IWT as the treaty allocated only 80 % of water to Pakistan when 90% of previously irrigated land was located in Pakistan ([Ali, 2008](#)).

However, recent criticism from both sides went severe. Pakistan terms the Indian projects on the western rivers as against the spirit of the treaty and blames India for “stealing” and “diverting waters and using it as a geostrategic weapon” ([Sinha, 2010](#)). Indian leaders and writers too criticize the treaty for one reason or another. In the wake of 2002 military standoff, such voices for the abrogation of the treaty are heard in Pakistan though India denies any such threat at the governmental level ([Iyer, 2005](#)). In the least instance, Indian hydro experts have frequently written about Indus-II which manifests Indian side unhappiness with the treaty. In order to evaluate such a stress on the treaty, separate perspectives from Pakistan and India are discussed in detail.

IWT has been criticized by the Pakistani side since the signing of the treaty as a “sell-out” and “an act of treason” ([Sinha, 2008](#)). With the present construction of Indian projects on the western rivers Pakistani water experts, professional and politicians have shown their discontent with the implementation of the treaty. The Indian projects are criticized as against the spirit of the treaty on so many grounds especially on the reduced downstream flow and threat to Pakistan’s national security due to the storage capacity of the dams (Miner et al., 2009). However, two merits of the treaty facilitated Pakistan. Firstly, the storage structures being made under the treaty made water available for use in the winter season and increased total withdrawal from 67 MAF to 104.5 MAF. Secondly, canal storage capacity also reduced chances of flooding as 80% of the inflow in the river occurs in the monsoon period.

The demerits from the Pakistani perspective are six. First, with the development of the three eastern rivers, the traditional method of irrigation through flood water would disappear in the areas watered by the eastern rivers. Second, due to the decrease in flow, the silt load has increased in eastern rivers which have resulted in horrible floods along with the problem of pollution. Third, the maintenance of the new replacements canal and storages is a heavy burden ([Shah, 2005](#)). Four, Pakistan can’t use river Ravi and Sutlej, which before making a final exit from India flows across the Pak-India border (Miner et al., 2009). Next, the Indian right to non-consumptive uses of the

western rivers has put Pakistan in eternal frustration. Last, Pakistan gave her centuries-old lower riparian right on its eastern rivers. Moreover, Pakistan is expected to face water scarcity (1000 m<sup>3</sup> per capita per year of renewable supply) in about 2035, and it considers such a scarcity due to Indian water aggression on the western rivers ([Iqbal, 2010](#)).

Similar angst towards the Indus Waters Treaty is found in India as well. It is opined that objections raised by Pakistan have caused long delays in the completion of Indian projects and in some cases, its abandonment as well ([Iyer, 2005](#)). Moreover, the modifications made due to such Pakistani objections have badly affected the life span and efficiency of Indian projects like Salal I (Miner et al., 2009). India counts the merits and demerits of the treaty as follows. According to Ramaswamy Iyer, the Indus Waters Treaty gave India right over the three eastern rivers which were important to meet the needs of the Indian provinces of Punjab and Rajasthan. If these rivers were not allocated to India, Pakistan would have had the usual lower riparian rights, and any development by the Indian side of these rivers would have been objected by the Pakistani side. In other words, the treaty legitimized the Bhakra – Nangal and Rajasthan canal projects ([Iyer, 2005](#)).

The demerits of the Indus Waters Treaty from the Indian perspective are four. First, the treaty has limited the Indian capacity to tap the potential of the Indus (Miner et al., 2009). Second, the treaty was generous to Pakistan as it was allotted 80 % of waters from the six rivers while only 20 % was reserved for India. Third, India had to pay £ 60 million for the replacement works of Pakistan which were unjustified. Fourth, in practice, India can't avail the opportunity granted to them under the non-consumptive clause due to repeated objection from Pakistan ([Sinha, 2010](#)).

Both of these perspectives of Pakistan and India are biased towards the country of expression. Neutral analysts view the Indus Waters Treaty as the best option available to reduce water-related tensions between the two neighbours. Such a neutral analysis based on the pros and cons of the treaty is given as under. The two neighbours. Such a neutral analysis based on the pros and cons of the treaty is given as under.

### **The Pros and Cons of the Indus Waters Treaty: A Neutral Perspective**

The Indus Waters Treaty is acknowledged at many hands to be a "remarkable achievement" ([Iqbal, 2010](#)). It is recognized that in the then political atmosphere between the two nations, the treaty was the best feasible instrument ([Alam, 2002](#)). This fact is summarized by the then president of Pakistan-Ayub Khan-as; "we have been able to get the best that was possible...very often the best is the enemy of the good, and in this case, we have accepted the good after careful and realistic appreciation of our entire overall situation... the basis of this agreement is realism and pragmatism" ([Ali, 2008](#)).

The pros of the Indus Waters Treaty are as follows. First, it is successful in conflict prevention as the treaty escaped three wars between India and Pakistan and even at the hardest of the time the Permanent Indus Commission met with the same cordiality as ever ([Iyer, 2005](#)). Second, the division of the rivers made both the states independent of one another ([Bakshi & Trivedi, 2011](#)). It reduced chances of the dispute by reducing mutual interference in one another's allotted rivers. Now each country could utilize its rivers as it deems suitable. Third, no doubt both the states consider their share as less than its actual right, yet most of the analysts agree that it was the best sharing in the then times.

On the contrary, the Indus Waters Treaty is labelled to have many flaws as well, even in the neutral circle of experts. Such cons of the treaty are as under. First is restricted cooperation. Even neutral experts consider the claim of the successful resolution of disputes as inflated. It is argued that the treaty divided the rivers, and there was nothing left to cooperate between the two nations ([Iyer, 2005](#)). Division of the rivers, in fact, made cooperation on joint management of the Indus basin virtually impossible ([Bakshi & Trivedi, 2011](#)). The best course, as suggested by many analysts, would have been the joint management of the river system though it looked an anachronism at that political juncture. It is said that if joint management was not feasible at that very time, then

the second-best option must have been availed which is to share the river on an individual basis which would have been less contentious and technically more feasible.

Second is tensions over the share of waters. Both the nations blame their governments for their failure in garnering more waters and call the treaty as unfair, unequal and poorly negotiated. Pakistani side objects that it was very generous to India as historically India was using only 10 % of the river waters whereas in the IWT it received 20 per cent of the share. The Indian side, on the contrary, has their own objections in this regard. India side regrets the receiving of only 20 % of waters, whereas the lions share been taken by Pakistan ([Iyer, 2005](#)).

The third is the exclusion of other co-riparians. Since the Indus and Sutlej originate in Tibetan plateau in China and the Kabul and Kurram-the main tributaries of the Indus-originate and flows in Afghanistan before entering into Pakistan therefore both China and Afghanistan are co-riparian of the Indus river system. Both these states are not a part of this treaty and at present are demanding their share in the Indus River System ([Brennan, 2008](#)). Fourth is no provision for the future changed environment. The treaty failed to apprehend the changed future of the economic, political, demographic, and ecological and energy environments ([Bakshi & Trivedi, 2011](#)). No provisions are included in this regard which makes the treaty limited in time and climate.

The fifth is a lack of consideration for future climatic variations and water demands. The treaty has created non-interference between the two states, but it has ignored the creation of mechanisms to address issues other than given in the treaty. Issues like climate change and population surge and its impacts upon groundwater, rainfall variability, the flow of rivers, and increased demand for water are the ignored aspect (Miner et al., 2009). These issues are a major source of the present-day stress and strain over the treaty. Sixth is no reference of Kashmir issue and Kashmiris in the Indus Waters Treaty. Kashmir and Kashmiris have an important stake in the waters flowing through their disputed territory. Instead of having consideration for the issue and Kashmiris the treaty altogether separates waters from the issue of Kashmir, which makes the treaty less satisfactory and viable. Last is the technicalities in the treaty. The IWT is a very technical treaty which creates enough room for misinterpretations and differences.

The very first issue that came under the aegis of the treaty was non-delivery of waters from the Indian side in 1965-66, but it was successfully resolved through mutual consultations. Another issue emerged over the construction of the Salal dam in the 1970s. This issue, too, was solved in 1978 through successful bilateral negotiations ([Iqbal, 2010](#)). However, some other issues in the shape of Indian projects on western rivers like the Baglihar, Wullar and Kishenganga dams including 27 other such controversial projects have put the treaty to a litmus test. It is mostly because of these Indian projects that the treaty is found in choppy waters.

Many analysts consider IWT-one way or the other- as responsible for the emergence of the dispute over the projects. According to Danish Mustafa, these disputes have propped up because of different level of interpretations of the treaty and different approaches to Indian projects on the western rivers. He says that Pakistani engineers adopt a very literal interpretation of the treaty whereas the Indian engineers draw their argument from the clause that asks for the techno-economical sound designs of the projects ([Bakshi & Trivedi, 2011](#)). As the treaty permits for the consideration of techno-economic soundness of the projects, Indian engineers prioritize this aspect over the limitation imposed under Annexure D and E of the Indus Waters Treaty. On the contrary, Pakistan gives first priority to the consideration of the limitations and treats the techno-economic soundness of the projects on a secondary basis. As a consequence, stalemate happens on the projects.

Similarly, Ramaswamy Iyer also considers these disputes as to the inevitable outcomes of the Indus Waters Treaty. He builds his argument on two grounds. First is technical complexities in the treaty. According to him, the main body of the treaty is clear, yet the annexures and appendices are complex enough that the treaty looks like a treaty between two sets of engineers. These technical mixes have provided enough room for misunderstanding and misinterpretations. One such example could be the differences over the interpretations of the run-of-the-river projects the Indian side is allowed to construct on the western rivers. Second is the nature of the division

of the rivers. The second reason-according to Iyer- for the emergence of the disputes between India and Pakistan is the allotment of the western rivers to Pakistan and simultaneously limited rights for India to use it. This grant of limited rights of using the western rivers has led to the erection of many Indian projects on the western rivers which Pakistan objects as against the Indus Waters Treaty ([Iyer, 2005](#)).

Owing to the flaws discussed above, there are suggestions from many quarters for the revision of the treaty. It is suggested that demographic, ecological, environmental and agricultural and energy environment have changed. In the changing environments the treaty is outdated as it is not coping with the situation, so a new treaty-mostly referred as Indus II- in accordance with the present and future needs must be devised between the two states. It is suggested that the new treaty must be based on the principle of the joint governance of the Indus river basin ([Mohammad, 2011](#)). However, such an Indus II could only come into existence when drastic changes in the political landscape of Indo- Pak relations occur. There still exist many nettlesome political issues between the two riparians of India and Pakistan, which makes such a lofty dream merely a pipe dream. Particularly, unless and until the issue of Kashmir is resolved water would stand divided between the two nuclear powers of the volatile region of South Asia.

## Conclusion

This paper concludes that India and Pakistan signed the Indus treaty despite their cold relationship, which emboldens water rationale. Though the treaty worked well for the first forty years of its inception as it prevented water conflicts from snowballing into a larger conflict. However, the recent construction of Indian projects on the rivers allocated to Pakistan under the treaty made it controversial to a greater extent. Both India and Pakistan interpret the treaty in contradictory terms which has pushed the treaty towards choppy waters. In order to pressurize Pakistan on certain political issues, India has threatened Pakistan of abrogating the treaty unilaterally. Similarly, different water analysts from India have also echoed the suggestions of managing a new treaty with Pakistan, which is commonly referred to as Indus II. However, it is agreed at all hands that the present treaty is the best channel through which different water disputes could be resolved. As for as the present disputes are concerned, the treaty should be interpreted in such a manner as acceptable to both the nations. Moreover, the greater role must be granted to the Indus water commissioners of the two states ([Iqbal, 2010](#)).

Such remedies could help in the resolution of many water disputes between the two regional giants. For the time being, as Iyer suggests, it is better to leave the things as they are ([Iyer, 2005](#)). Indeed, the Indus Waters Treaty is the best hope for the management of water disputes between India and Pakistan as World Commission on Dams praises the treaty as; “The Indus Waters Treaty represents the only ongoing agreement between India and Pakistan that has not been disrupted by wars or periods of high tension. Cooperation that builds on this treaty could not only present opportunities for better water management between those two countries but also serve as a model for water-sharing arrangements between India, Bangladesh and Nepal” ([Ali, 2008](#)).

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