



Water Aggression of India in Violation of Indus Water Treaty: Critical Analysis under International Law

Sania Muneer¹, Muhammad Mumtaz Ali Khan*², and Adnan Rahman³

¹SISS, University of Lahore, Lahore, Pakistan

²Director Research and Development, PHEC, Lahore, Pakistan

³Department of Law, University of Azad Jammu and Kashmir, Kashmir

*Corresponding Author: mumtaz.ali@punjabhec.gov.pk

Abstract

This paper investigates the value of freshwater and water infrastructure to human being in their ecological unit of health and the parallel execution of a commercial and industrial economy creates water and water structure intention for terrorism. Water is turning into a burning issue for Pakistan. It is a fact that the nation is confronting a terrible circumstance with respect to its quick exhausting new water assets. It is a matter of survival for Pakistan, essentially an agrarian nation; water turns into the most vital of all the common assets. Pakistan depends vigorously on the Indus Basin water to meet its local, agrarian and mechanical needs. However, the developing populace and increasing temperature is including weight the developing water requests. As water is vital for the economy of Pakistan and India is taking water of the streams, to be specific Sindh, Jhelum & Chenab, allotted to Pakistan under the Indus Water Treaty. Along these lines, Pakistan ought to be ready and India ought to be halted from doing this. Generally, in the consequence of that war may begin due to the water terrorism. This paper surveys Pakistan's rights on behalf of the "Indus Waters Treaty" (hereinafter shall be referred as IWT) under the relevant provisions of the International Law. Furthermore, it highlights the Indian infringement of the procurements of the Indus Water Treaty, while building hydropower ventures on the western rivers which prompted the war on water terrorism. This paper recognized India's dissimilar uncalled for communications with Pakistan in water-sharing. The imperative point is that, water has the capability of junction into an additional 'center issue' of significantly

more prominent unmistakable quality than Kashmir, and calls for critical consideration under the relevant provisions of International Law.

Keywords: Indus Water Treaty. Water Terrorism, War, International Liability and International Law

Introduction

The IWT was signed in 1960 and through this treaty, India and Pakistan agreed to resolve the water issues between them through the active mediation of the World Bank. The exclusive rights over the Ravi, Sutlej and Beas were granted to India and other three western Tributaries of Indus, Jhelum and Chenab were granted to Pakistan. This IWT also established a permanent Indus Water Commission (hereinafter shall be referred as IWC) comprising representatives from both India and Pakistan and has the mandate to resolve the differences upon the application and interpretation of the provisions of the IWT. But India has been consistently committing water terrorism by violating the provisions of the IWT. (Zawahiri. N& Michel. D., 2018) The consistent and aggressive water terrorism of India against the water rights of Pakistan as recognized by the IWT is the severe violations of the International law. It is obligatory in International law to respect and implement the international treaties in good faith and failure of a state to fulfil the obligations arising out of a bilateral or multilateral treaty. India has constructed many dams on the rivers allocated for Pakistan and has also diverted the water in those rivers before they enter into Azad Jammu and Kashmir.

The unilateral and unlawful violations of the Indus water treaty and the continuous water terrorism and aggression by Indian occupational forces in the IJK are the real issues in the region of South Asia which has had further jeopardized the peace, prosperity and development of this entire region. There have been many points of disagreement on the implementation and interpretation of the IWT as well as the construction of the hydropower projects in Indian administered Jammu and Kashmir by India. Pakistan invoked the conflict resolution mechanism of the Indus water treaty three times in history so far: first in 2005, second in 2010 and third in 2015 which is still pending for the final settlement between India and Pakistan through the proceedings of the Arbitration. (Akhtar.S, 2010).

Many experts in Pakistan believe that the real threat to Pakistan is the plan of India to construct thirty four Hydropower projects near the Western Rivers of the Indus Water system which can adversely affect the rights of Pakistan and can affect the flow of the waters to Pakistan. Moreover, the longstanding conflict of Jammu and Kashmir will also affect the nature and scope of the IWT. (Ahmad, A., 2011) So the water rights recognized by IWT for the exclusive use or domestic and non-consumptive use of India in the disputed territory of the Indian administered Jammu and Kashmir are also disputed as the relationships between India and

Pakistan have been hostile and both the states have fought many wars and skirmishes on the Ceasefire Line, Working boundary and International border. (Lyon, P., 2008)

The water terrorism and water aggression by India against Pakistan by constructing hydropower projects, diverting water flows and technical depletion of water flow to Pakistan has caused a severe political and diplomatic tension between India and Pakistan and with the emergence of extremist political party of BJP in India, many extremists leaders of India have also threatened to revoke the IWT to stop the flow of water from India to Pakistan. The relevant experts in Pakistan considered that if India takes such a step against Pakistan that would amount to be an act of war against Pakistan by India. However, Pakistan needs to consider all the diplomatic and legal options under International law to ensure the implementation of the provisions of the IWT. (The Nation. 2010)

Nature and Scope of Indus Water Treaty

Under the International Law, the treaties are the most important source of International law and the binding force behind the treaties is *Pacta Sunt Servanda* which means agreements must be kept in good faith. After a negotiation of around eight years, the IWT was signed and the IBRD (World Bank) on September 19, 1960 in Karachi, Pakistan. (Indus Waters Treaty, 1960) Although, it is a tripartite agreement due to the signature of the representative of the World Bank, but as a matter of fact, the World Bank mediated and brokered the treaty and also had a mediatory role in the process of negotiations and signing of the IWT. Although this treaty was signed on September 19, 1960 at Karachi, Pakistan, Instruments of ratifications were exchanged between India and Pakistan on January 12, 1961 at Delhi which made the Indus Water Treaty effective with retrospective effect from April 01, 1960. (Pakistan-India. Indus Waters Treaty. Karachi, September, 1960) Moreover, the World Bank also guarantees the conflict resolution process on the interpretation and implementation of the provisions of the IWT.

As a treaty under International Law, the IWT creates and delimits the rights and obligations on the issues of water sharing with respect to the six main rivers of the Indus water system including Indus, Jhelum, Chenab, Sutlej, Ravi and Beas respectively. These rivers along with their tributaries are divided as Western Rivers and Eastern Rivers. The three main Western rivers of Indus, Jhelum and Chenab were given to Pakistan and the other three main Eastern rivers of Sutlej, Chenab and Beas were given to India for domestic, non-consumptive, agriculture, power generation and irrigation use. (Biswas. A., 1992)

The scope of the IWT to ensure the implementation of the division of water resources and to settle the differences between India and Pakistan on the implementation and interoperation of the provisions of the IWT. The IWT provides a proper legal and effective framework for the settlement of the water differences and disputes. The framework consists of four gradual modes for the settlement of the disputes. The first mode is the Permanent Indus Commission which has the representation of both India and Pakistan. If any difference in the interoperation or

implementation of the provisions of the IWT arises between the Commissioners of respective states in the Permanent Indus Commission, then they inform in writing to the Foreign office of their states for the direct negotiation process between India and Pakistan. This direct negotiation is the second mode of dispute settlement within the framework of the IWT.(Neda A. Zawahri., 2008)

The third mode is the appointment of the technical Expert who has to give his technical expertise for the settlement of the disputes involving technical aspects related to the design and nature of the hydropower projects. The last and most effective mode for the settlement of the dispute is the permanent court of Arbitration with the appointment of arbitrators and umpires. The preamble of the IWT reflects the intentions of the parties and basic objectives of the IWT which aims to recognize the rights and obligations of the parties regarding the use of waters and settlement of the disputes. The IWT has twelve articles, one protocol, and eight annexures. (Maqbool. A., 2017)

Water Terrorism by India: An overview

Water emerged as a notable scarcity according to the partition of 'British India' in 1947 and it also isolated the Indus framework. As a result of it, India originated as an upper riparian (Gupkar. K. R., 2008) with control over the trench headworks that provide water to incompressible grounds which is part of Pakistan, now a lower riparian. Subsequently, sustained arrangements, mediated by the 'World Bank' to pave the way for IWT in 1960 that divided the Indus Basin between the two neighbours. The IWT is only treaty to which the World Bank is a signatory. (Zentner. M., 2012) Though, the IWT is repeatedly referred as a model for settling water sharing conflict in a global river because it has survived in wars and political turmoil between India and Pakistan. (Dinar. A., 2007) IWT alters and delimits the rights and commitments of utilizing water for both signatories in 12 Articles and 8 Annexure. (The World Bank, 1960)

Escalating Water Scarcity of Pakistan

The escalating water terror in Pakistan and India is the emerging issue between the rival neighbours. The growth in water stresses gradually since the mid-1990s has likewise putting pressure on the IWT for its revision. (Abro. I.A., 2009)

According to the Falkenmark's Water Stress Index (WSI), India has fallen in the category of a "water stressed" nation while Pakistan a "water scarce" nation due to the Indian hindrance of Western waterways, environmental change and populace development. (Kazi. A. H., 2011)

Under the IWT, India was granted limited consumption of Pakistan's streams for cultivation purpose and the benefit to collect hydro electronic dams on the off chance that they do not store or have a significant degree of water. Ironically, India is constructing chain of dams in clear encroachment of the IWT and violating annexure E. Moreover, Pakistan has transformed into the driest countries on planet due to the late insufficiencies of water. However, the Indian

powers denounce any decrease in water to the ecological transformation and denies any objective to cut off Pakistani waters. (Jain., et al., 2007)

Controversial Issue with the India

Against the IWT, India started the clear violation of the provisions and build the dams which escalated tension with Pakistan. This move of India is clear violation of treaty and depiction of Indian policy to undermine and manipulation of the IWT due to the water and energy deficiency.(Iqbal.R.A., 2011) In 1992, Pakistan protested over the construction of the dam and demanded a halt to its design. Taking cue from the Baglihar verdict, it is clear that IWT has to adapt the new realities in the Indus Basin.(Haines.D., 2018)

Violations of Indus Water Treaty by India and remedies of Pakistan under International Law

The violations of the provisions of the IWT by India give an array of legal options to Pakistan under International law. The Article IX of the Indus water treaty states that an issue should be referred to the World Bank when India and Pakistan fail to resolve it bilaterally. So, under the IWT, the World Bank supervises the compliance of the IWT and can appoint neutral experts or can set up an arbitration mechanism to amicably resolve the difference between India and Pakistan. So this involvement of an international organization in the negotiation, signing and implementation of the procedures of the bilateral treaty enhances its significance and effectiveness. So this bilateral treaty becomes international in character due to the direct involvement of an International Organization which is also an important part of the United Nations system being the Bretton Woods system of monetary management.

A treaty is legally binding under International law and violations of the legally binding agreement can give claim to the aggrieved state to take certain legal actions under International law. So the consistent and gross violations of the Indus water treaty gives wider legal options to Pakistan to go to the forums of the United Nations General Assembly and International Court of Justice for the implementation of the provisions of the Indus Water Treaty (IWT) and for pressurizing the India for the performance of its International obligations arising out of the bilateral agreement between India and Pakistan.

As far as the issues of Water Terrorism and Water aggression are concerned, these can also be responded by Pakistan. (Akhter. M., 2015) If India intends to manipulate the Indus water treaty or announce to withdraw from or revoke the Indus water treaty, then Pakistan has also to take possible measures and actions to survive any possible attack of India under International law. In that scenario, Pakistan can invoke the relevant provisions of International law to impose state responsibility against India for committing an internationally wrongful act. Article 2 (4) of the UN Charter (UN Charter, 1945) forbids all the states to not use any force or threat to use force against the other state. This principle is called the principle of non-

intervention. As the acts of water terrorism and aggression as well as threat to revoke Indus water treaty to enhance the water scarcity of Pakistan to ultimately attack the lives of the people and agrarian system of Pakistan can be considered as an indirect intervention and threat to attack the integrity and survival of Pakistan. So it is important that Pakistan should present this case in all the international political, legal and diplomatic forums in its rights context and with its actual implications. India is bound under UN Charter and Indus water treaty to sabotage the water sharing mechanism and is bound to implement it in its letter and spirit and if India acts otherwise or omits from her responsibility to perform her legal obligations, then that international wrong becomes a well-founded legal basis for Pakistan to invoke any legal forum under International law. Besides, the UN Charter also gives the right to self-defence to Pakistan against the water aggression of India to protect its survival and ensure its peaceful coexistence.

Conclusion

The Indus Water Treaty is a landmark document that has managed the water issues between India and Pakistan and has prevented any water between these two rival states so far. As this Treaty also involves the disputed territory of Jammu and Kashmir which is contested by both India and Pakistan so the issue of water resources management would need a review on the final settlement of the conflict of Jammu and Kashmir. The IWT provides an effective mechanism for the conflict resolution between India and Pakistan on the interpretation and implementation of the provisions of the Indus Water Treaty with the active role of the World Bank which is also the signatory to the IWT.

Pakistan has been facing acute challenges due to the consistent and gross violations of the provisions of the IWT by India and after the Government of BJP, the challenges of Pakistan have been aggravated. It is important for Pakistan to plan an aggressive and effective legal policy under International law on the implementation of the provisions of the IWT in their letter and spirit to prevent any possibility of water war or political; unrest with India. There are many legal options available to Pakistan under International law to defend and protect its rights as well as to compel India to continue discharging its obligations under International Law. Moreover, Pakistan should also exercise its all the political and diplomatic options to engage India in a meaningful and result oriented bilateral negotiations but it would not be easy for Pakistan to develop any cordial and friendly agreement with India on the implementation of the IWT without addressing the longstanding and violent conflict of Jammu and Kashmir.

Acknowledgement

Authors are thankful to the editorial team for their scholarly support and cooperation.

References

- Zawahri, .N. & Michel, D., (2018). Assessing the Indus Waters Treaty from a Comparative Perspective. *Water International*. DOI: 10.1080/02508060.2018.1498994.
- Akhtar, S. (2010). Emerging Challenges to Indus Waters Treaty: Issues of Compliance & Transboundary Impacts of Indian Hydro projects on the Western Rivers. Vol.XXVIII, (Islamabad: Institute of Regional Studies).
- Ahmad, A. (2011). Indus Waters Treaty A Dispassionate Analysis. *Policy Perspectives*. 8(2), 73–83. <http://www.jstor.org/stable/42909289>.
- Lyon, P. (2008). *Conflict between India and Pakistan: An Encyclopaedia (Roots of Modern Conflict)*. ABC-CLIO, Inc.
- Indian Water Aggression: Pakistan on Brink of Disaster. (2010). *The Nation*, retrieved from, <https://nation.com.pk/12-Feb-2010/indian-water-aggression-pakistan-on-brink-of-disaster>.
- Indus Waters Treaty, 1960.
- Pakistan-India. Indus Waters Treaty. Karachi, September, 1960; Ratifications Exchanged January 12, 1961. (1961). *The American Journal of International Law*, 55(3), 797–822. <https://doi.org/10.2307/2195927>.
- Biswas, A.K. (1992) Indus Water Treaty: The Negotiating Process, *Water International*, 17:4, 201-209, DOI: 10.1080/02508069208686140
- Zawahri, NA. (2008) Designing River commissions to implement treaties and manage water disputes: the story of the Joint Water Committee and Permanent Indus Commission, *Water International*, 33:4, 464-474, DOI: 10.1080/02508060802474566
- Maqbool, A. (2017). The Indus Waters Treaty: Pakistan's Case for a Revision. *Environmental Policy and Law*. Vol.47:2. DOI 10.3233/EPL-170017
- Gupta, K.R. (2008). *Water Crises in India*. New Delhi: Atlantic Publishers. p 257.
- Zentner, M. (2012). *Design and impact of water treaties: Managing climate change*. New York: Springer Heidelberg Dordrecht London, 2012.p. 130.
- Dinar, A., et.al. (2007). *Bridges over Water: Understanding Transboundary Water Conflict: Negotiation and cooperation*. Singapore: World Scientific Publishing Co.Pte.Ltd, 2007.p.279.
- The World Bank. (1960). Indus Water Treaty. *World Affairs*, 123(4), 99–101. <http://www.jstor.org/stable/20669916>.
- Kazi, A.H. (2011). Misusing the Indus Treaty. *The News*. Islamabad.
- Brown, A. (2011). A Review of Water Scarcity Indices and Methodologies. University of Arkansas: The Sustainability Consortium, 2011. p.1.
- Jain., et.al. (2007). *Hydrology and Water Resources of India*. Springer, London.p.872.
- Abro, I. A. (2009). Evolution of Pakistan's water infrastructure and analysis of water policy processes (Order No. 3361687). Available from ProQuest Dissertations & Theses Global.

- (304847243). Retrieved from <https://www.proquest.com/dissertations-theses/evolution-pakistans-water-infrastructure-analysis/docview/304847243/se-2?accountid=135034>. p.65.
- Iqbal, .R.A. (2011). Water Wars and Navigation Peace over Indus River Basin. *ISSRA*. Vol.1 issue 2, p.11.
- Haines, D. (2018). Indus Divided: India, Pakistan and the River Basin Dispute. *Penguin Books*.
- Miner, M. et. al. (2009). Water sharing between India and Pakistan: a critical evaluation of the Indus Water Treaty, *Water International*, 34:2, 204-216, DOI: 10.1080/02508060902902193.
- Heimsath, C. H. (1974). Review of Indus Waters Treaty: An Exercise in International Mediation. by N. D. Gulhati. *The Journal of Asian Studies*, 34(1), 255–256. <https://doi.org/10.2307/2052449>.
- Akhter, M. (2015). The Hydro Political Cold War: The Indus Waters Treaty and State Formation in Pakistan. *Political Geography*. 46: 1. <https://doi.org/10.1016/j.polgeo.2014.12.002>. UN Charter, 1945