

Water Wars and the U.N. Watercourse Convention: The Indo-Pak Story

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Introduction

South Asia is home to nearly a quarter of the world's population,¹ but [has only five percent of the global renewable water resources within its geographical territory](#). Consequently, water scarcity has become a pressing concern for the region, with [per capita availability of water fallen by nearly 80 percent in the last six decades](#). The region hosts three major watercourse systems—the Indus, the Brahmaputra and the Ganges. All the stakeholders depend heavily on these transboundary water resources to meet their domestic and industrial needs.

A major instrument of water sharing in the region is the [Indus Water Treaty](#) (“[IWT](#)”) between India and Pakistan. For years, an underlying sentiment of doubt, distrust and dissatisfaction has existed between the parties to the [IWT](#). The [IWT](#), originally touted as one of the strongest instruments of international cooperation, has ultimately failed to provide a strong institutional and legal arrangement for conflict-free distribution of the shared resources.

[The Convention on the Law of Non-Navigational Uses of International Watercourses](#) (“[Watercourses Convention](#)”), to which no South Asian country is a party, codified the international law on the sharing of transboundary watercourses.

This Essay argues that the [IWT](#) needs to be revisited and brought in line with extant international law. It proposes two more solutions to establish an efficient water-sharing regime in South Asia, and particularly for the Indus River, by analyzing the conflict surrounding the [IWT](#).

I. Brief History

The Indus River originates in Tibet and flows for a distance of [approximately 2880 km](#), covering China, Afghanistan, India and Pakistan. The main river, Indus, has five major tributaries from the East—the Jhelum, the Chenab, the Ravi, the Beas and the Sutlej.

The sharing of the Indus has been a contentious issue between India and Pakistan for decades. In the pre-partition era, disputes over the sharing of the Indus, though not uncommon, were always adequately [addressed through inter-state negotiation or arbitration](#). When, in 1947, the Indian subcontinent was partitioned into the dominions of India and Pakistan, the border cut right

1. According to the World Bank Data Report, the population in South Asia was 1.836 billion as of 2019, <https://data.worldbank.org/region/south-asia>.

across the Indus system. However, the [Indian Independence Act of 1947](#) made no specific provisions for the manner of division of the Indus.

In December 1947, [East Punjab \(India\) and West Punjab \(Pakistan\) concluded a Standstill Agreement](#) to continue the pre-partition allocation of the Indus waters until March 31, 1948. On April 1, 1948, the date of expiry of the agreement, East Punjab completely cut off the supply of water to West Punjab. Though the flow of water was restored on April 30, 1948, this incident marked the beginning of international conflict over the Indus River. Eugene Black, the erstwhile President of the World Bank, [offered the offices of the Bank to both the countries so they could arrive at a mutually acceptable arrangement](#).

[The Indus Mediations began in 1952](#) at the Bank's headquarters in Washington D.C. In 1954, owing to political tension, the Bank abandoned the strategy of integrated development of the river by India and Pakistan. [It put forth an alternate proposal](#) to reserve the three rivers lying to the West (Indus, Jhelum and Chenab) for the exclusive consumptive use of Pakistan and the three river lying to the East (Ravi, Beas and Sutlej) for the exclusive consumptive use of India.

Ultimately, the Government of India, the Government of Pakistan and the World Bank signed the [IWT](#) on September 19, 1960.

II. The Indus Water Treaty

The [IWT](#) applies to the Ravi, the Beas and the Sutlej (“**Eastern rivers**”) and the Indus, the Chenab and the Jhelum (“**Western rivers**”) including all their tributaries.

Under [Article II](#), India has the right of unrestricted use of the Eastern rivers, allowing Pakistan only domestic, non-consumptive and agricultural use of these rivers and their tributaries before they finally cross into Pakistan. The agreement granted Pakistan unrestricted use of the leftover water of the rivers, once they finally cross into its territory, without any right or claim over the same.

[Article III](#) grants to Pakistan the right of unrestricted use of the Western rivers. The treaty permits India to use the water of these rivers only for domestic, non-consumptive, agricultural use and for the generation of hydroelectric power. The ratio of division of water between India and Pakistan is 20:80, respectively.

[Article IX](#) of the [IWT](#) provides an elaborate and detailed dispute resolution mechanism. It provides a step-by-step approach for resolution of disputes—first, through the Permanent Indus Commission, thereafter by a neutral expert appointed by the World Bank and, failing that, by a Court of Arbitration.

III. Analysis

For years, the [IWT](#) was considered to be an [outstanding example of water conflict resolution](#). However, increase in water scarcity in recent years coupled with existential hostility between the two nations has [brought the IWT under severe strain](#). Although a prudent short-term solution at the time,

the [IWT](#) now seems to be failing the current needs of both states.

A. Dissatisfaction Over Water Apportionment

The [IWT](#) divides the Indus and its tributaries between Pakistan and India, such that Pakistan enjoys exclusive use of the Western rivers which comprises 80 percent of the water of the river system and India enjoys use of the Eastern rivers which comprises the remaining 20 percent. Both parties have expressed dissatisfaction over this system of division. [Many in India feel that the allocation of 80 percent of the waters to Pakistan was an unfair settlement.](#) On the other hand, [many in Pakistan argue that India was historically using less than 10 percent of the Indus waters](#) and in this context, the [IWT](#) is excessively generous to India.

The root cause for the dissatisfaction is that the [IWT](#) is designed to “[settle with one stroke](#)” any controversy over the allocation of the Indus waters. The arrangement, not being based on relevant objective criteria such as population, socio-economic needs, and available alternatives leaves itself vulnerable to the doubt and scepticism of states.

[The Watercourses Convention](#) lays down a non-exhaustive list of factors to be considered while determining equitable entitlement of international watercourses. An arrangement based on clear, objective, and specific criteria will ensure that neither party feels cheated, and will bring the treaty in line with customary international law.

In addition to putting an end to the argument of dissatisfaction, the incorporation of these criteria will make the distribution flexible and sensitive to changes in population, social needs, and other relevant conditions of the states, thereby allowing a dynamic arrangement between the parties.

B. Absence of Integrated Management

The [IWT](#) does not envisage the joint utilization of water nor does it encourage cooperation over developing and sharing the Indus water system. Instead, it bluntly divides the rivers, [granting the exclusive rights over certain sections](#). Interestingly, the only clause that encourages interaction between the states is the [dispute resolution clause](#).

Both countries have criticized this aspect of the IWT. For example, Ramaswamy Iyer, India’s former Secretary for Water Resources has dubbed the treaty “[a negative, partitioning treaty, a code to the portioning of the land.](#)”

Given the already strained relations between India and Pakistan, the [IWT](#) ought to emphasize a joint and integrated approach in the management of the Indus River. [The Watercourses Convention](#) provides for such an approach by insisting on general cooperation between the watercourse states, establishment of a joint management mechanism for the watercourse system, and making provisions for notifications and consultations relating to planned measures.

C. Lack of Adequate Environmental Safeguards

A [major shortcoming](#) of the [IWT](#) lies in the realm of environmental protection, preservation, and management. The [IWT](#) [only addresses the](#)

[prevention of undue pollution](#), leaving other environmental concerns unaddressed. The requirement of transboundary Environmental Impact Assessment, which has been formally codified in numerous conventions is missing under the [IWT](#).

[The Watercourses Convention](#), in contrast, contains elaborate provisions on the prevention of pollution, preservation of ecosystems, the protection and preservation of the marine environment as well as an environmental impact assessment.

D. Threats of Abrogation

The legal effect of the [IWT](#) is weakened by India's repeated threats to unilaterally abrogate the treaty. After the Uri attacks in September 2016, [Prime Minister Narendra Modi met with experts to discuss the IWT](#), leading to speculation over the possibility of opting out of the bilateral arrangement with Pakistan. Similarly, after the Pulwama terrorist attacks of 2019, the [Indian Minister of Water Resources threatened to divert the water of the Eastern rivers and completely cut off flow to Pakistan](#). In fact, it has been pointed out that [India has attempted to diplomatically strong arm Pakistan](#) by threatening to cut off river waters during every major conflict.

E. Repeated Conflicts

The [IWT](#) has been unsuccessful in forging conflict-free water relations between India and Pakistan. Pakistan has gone as far as calling the treaty an [inefficient forum for resolving water issues](#).

India and Pakistan have been in disagreement over whether the Kishenganga Project on River Jhelum and the Rattle Project on River Chenab, initiated by India, are in violation of the [IWT](#). Thus, an inherent flaw in the Treaty is ambiguity, which makes room for conflict. As pointed out by [Ramaswamy Iyer](#), one party can claim to be in full conformity with the criteria laid down in the treaty, and the other party can say that this is not the case.

IV. The Way Forward

A. Revisiting the Treaty in Light of the Watercourses Convention

The [IWT](#) must adopt certain essential provisions which are incorporated in [the Watercourses Convention](#). Using [the Convention](#) as a reference point, the countries should revisit the [IWT](#), and bring it in line with [the Convention](#).

This would mean incorporating provisions regarding the factors determining equitability, and devising a sharing regime based on those factors as opposed to the current mechanical divisions of rivers. It would also require India and Pakistan to incorporate adequate provisions for protection of the environment, as well as for integrated management of rivers by the two nations.

An example of a treaty that has incorporated the provisions of the Convention is the [2010 Nile Framework Agreement](#). Although none of the parties to [the Nile Framework Agreement](#) are parties to [the Convention](#),

several provisions of the agreement are analogous.

B. Ratification of the Watercourses Convention by the South Asian nations

The second solution proposed to address the Indus water-sharing crisis is the ratification of the existing [Watercourses Convention](#) by India and Pakistan.

A common concern that would arise is whether ratifying [the Convention](#) would affect the [IWT](#) as it stands today. To address this, [the Convention](#) provides that it shall not affect agreements already in force on the date on which a State becomes party to the Convention. At the same time, it does suggest that states consider harmonizing their treaties with the basic principles of [the Convention](#). This gives States enough freedom to modify their existing treaties, according to special circumstances in each case.

When [the Watercourses Convention](#) was being voted upon, [both India and Pakistan chose to abstain](#). Though bilateral arrangements have been the preferred in the South Asian region, it has been [pointed out](#) that a multilateral arrangement in the region is imperative to to approach water through a lens of cooperation and mutual benefit. [The Watercourses Convention](#), being a multilateral mechanism, will increase the adherence and accountability of the states and ensure that the parties are not in a position to use abrogation as a political weapon

C. Adoption of a Regional Convention

The third plausible solution is the establishment of a regional convention, drawing from the success of the [1992 United Nations Economic Commission for Europe Convention on the Protection and Use of Transboundary Watercourses and International Lakes](#) (hereinafter “[UNECE](#)”), to address the water concerns over the Indus, amongst others in South Asia. Such a convention, much like the [UNECE](#), would be broadly-based on [the Watercourses Convention](#), but at the same time tailored to suit the unique needs of the region.

Establishment of a regional institution for shared water resources would provide mechanisms and processes for exchange of data and information, for planning and coordinating actions, measures and projects on the shared watercourses, as well as for dealing with emergencies, such as floods. This would require a major paradigm shift, from a state-centric to a regional approach, and from separate to integrated water resources management.

While determining the viability of a regional water convention in South Asia, it is prudent to examine the working and success of the [UNECE](#), which is completely compatible with the Watercourses Convention. The [UNECE](#) has, for 28 years, been a successful example of water sharing. [It played a key role in the negotiation of several treaties such as the 2011 Memorandum of Understanding for the Drin River Basin and the 2012 Dniester River Treaty between Ukraine and Moldova](#). It also brought about the establishment of the [Chu-Talas Commission between Kyrgyzstan and Kazakhstan](#).

It is arguable that the success of the [UNECE](#) was possible only because

the European countries operate in a climate of trust, and hence it cannot be likened to the South Asian situation. [The U.N. Guide to Implementing the UNECE](#) addresses this concern of uncertainty and lack of trust among the riparian states. It explains that becoming a party to [the Convention](#) may precisely remove this kind of uncertainty paving the way for collective and assisted action. If all riparians to a transboundary water body join in a Convention, then due to the institutional framework set up under it, [each riparian State is not left alone in its dealings with the other riparians](#).

The adoption of a South Asian regional convention for the sharing of water resources, can be the instrument of cooperation, dialogue and integration that the region currently lacks. It is important to note that the three solutions elucidated above are not alternatives to each other. In fact, an ideal solution to the Indus conflicts and other conflicts in the region would require the harmonisation of all the three solutions.

Conclusion

Having identified the lacuna in the existing legal framework under the [IWT](#) and having delved into the potential ways forward, we propose three distinct solutions to address the longstanding water disputes between India and Pakistan. *Firstly*, the states must revisit the Treaty in light of [the Watercourses Convention](#) and harmonise it with the principles embodied in [the Convention](#). *Secondly*, India and Pakistan should ratify [the Watercourses Convention](#). In fact, ratification of [the Watercourses Convention](#) by all the South Asian nations will ensure that all water-sharing arrangements in the region are in line with the Convention. *Lastly*, India and Pakistan, along with the other South Asian nations must come together to tailor an elaborate water sharing convention suited to their regional needs, which is nevertheless compliant with international norms.

There is one roadblock common to all these solutions: political will. For far too long, States have suffered at the altar of political differences. Moving forward, the will to implement these solutions will be crucial in breaking the deadlock.