

The Indus Waters Treaty Arbitration between India and Pakistan

By Ravindra Pratap*

A Court of Arbitration rejected all of India's objections to its jurisdiction and found that it has competence to decide all questions relating to its competence and that the matters referred to arbitration by Pakistan concern a dispute or disputes within the meaning of Article IX(2) of the Indus Waters Treaty 1960 (IWT). Later, the Court found that India's position on "abeyance" of the IWT does not limit its competence and that its award and a decision of the Neutral Expert within their respective domains of authority are binding. India seems determined on a modification of the IWT which would not be easy to politically accomplish under it even while expressly within its contemplation. Cooperation between India and Pakistan in terms of the IWT seems most important so that the IWT could accommodate necessary changes/updating and relevant technological developments and address climate change since it came into force more than six decades ago.

Keywords: Indus Waters Treaty, India, Pakistan, arbitration, competence.

Introduction

Water is indispensable for agriculture, hydropower generation and drinking water for India and Pakistan. Water is primarily shared by India and Pakistan through the Indus River basin. The Indus system of rivers and their tributaries rise mainly in the Himalayan, Hindu Kush, and Karakoram Mountains and flow through Afghanistan, China, India, and Pakistan. These rivers are increasingly affected by climate change as their waters depend mainly on Himalayan snow and glacier melts. The sharing of these waters is regulated by the Indus Waters Treaty (IWT). A Court of Arbitration has given an Award under the IWT and found that it has competence to decide all questions relating to its competence and that the matters referred to arbitration by Pakistan concern a dispute or disputes within the meaning of Article IX(2) of the IWT. Later, the Court found that India's position on "abeyance" of the IWT does not limit its competence¹ and that its award and a decision of the Neutral Expert are binding.² India did not participate in the arbitral proceedings and raised six objections to the

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¹Permanent Court of Arbitration, *In the matter of an Arbitration before the Court of Arbitration Constituted in Accordance with the Indus Waters Treaty 1960 between Islamic Republic of Pakistan and the Republic of India, Supplemental Award on the Competence of the Court*, 27 June 2025, para. 76 (A) (hereafter the Supplemental Award on Competence).

²Permanent Court of Arbitration, *In the matter of an Arbitration before the Court of Arbitration Constituted in Accordance with the Indus Waters Treaty 1960 between Islamic Republic of Pakistan and the Republic of India, Award on the General Issues of Interpretation*, 08 August 2025, para. 811 (hereafter the Award on Interpretation).

jurisdiction of the Court of Arbitration.³ Below we follow a normative-juridical approach with case analysis. Accordingly, the next parts are on India's objections to the arbitration, followed by a brief and relevant recount of the IWT, India's non-participation in the Court of Arbitration, some merits issues and finally conclusion.

India's Objections

In its first objection, India stated that the Court of Arbitration is not competent to decide its competence.⁴ India argued that applicability of the principle of *kompetenz-kompetenz* follows a proper constitution of the Court of Arbitration.⁵ India further submitted that it was its sovereign right to accept the validity of the tribunal.⁶ Pakistan replied that India's objection is based on a flawed interpretation of Annexure G and the role of the Court of Arbitration under the IWT.⁷ Pakistan submitted that the Court of Arbitration is competent to decide on its own competence and that India cannot invoke sovereignty for avoiding the IWT's compulsory dispute settlement system.⁸ Pakistan explained that *kompetenz-kompetenz* is a consequence of the validity of the constitution of the Court of Arbitration⁹ and that both India and Pakistan entered into the IWT in the exercise of their sovereignty.¹⁰ Pakistan further contended that the IWT, which provides for the tribunal, is binding also on India and is required to be performed in good faith.¹¹ The Court of Arbitration made no distinction between objections concerning its constitution and objections to its jurisdiction for the purposes of its inherent power to interpret its constituent instrument,¹² i.e. the IWT, and rejected India's first objection.

India's second objection relates to a non-existence of "dispute" referable to arbitration under Article IX(2) of the IWT. According to India, in the absence of agreement of both the Commissioners, a "dispute" referable to arbitration arises where a neutral expert determines that a "difference" is a "dispute".¹³ Pakistan replied that India's objection is based on its misreading of Article IX(2) of the IWT.¹⁴ Pakistan contended that a dispute has validly arisen under Article IX of the IWT. Pakistan explained that unless a Commissioner has identified a "difference" or requested the

³Permanent Court of Arbitration, *In the matter of an Arbitration before the Court of Arbitration Constituted in Accordance with the Indus Waters Treaty 1960 between Islamic Republic of Pakistan and the Republic of India*, Award of the Competence of the Court, 6 July 2023, at 50 (hereafter the Award on Competence).

⁴*Ibid.*, at 54 *et seq.*

⁵*Ibid.*

⁶*Ibid.*, at 55.

⁷Response of Pakistan, Preliminary Phase on the Competence of the Court and the Operation of Article IX of the Indus Waters Treaty, Vol. I, at 94 *et seq.* (hereafter Response of Pakistan, Preliminary Phase).

⁸*The Award on Competence*, *supra* note 3, at 56.

⁹*Ibid.*

¹⁰*Ibid.*

¹¹*Ibid.*, at 57.

¹²*Ibid.*, at 58.

¹³*Ibid.*, at 60.

¹⁴Response of Pakistan, Preliminary Phase, *supra* note 7, at 69 *et seq.*

appointment of a neutral expert, a “dispute” has arisen under Article IX(2) of the IWT.¹⁵ Pakistan noted that its interpretation finds support in the reasoning of a prior arbitration between the parties and that India’s interpretation runs counter to the text and object and purpose of the IWT.¹⁶ Pakistan added that its 24 July 2015 request for the appointment of neutral expert was later revoked on 25 February 2017 and that India did not request for the appointment of a neutral expert on 11 August 2016.¹⁷ The Court of Arbitration noted that the Commission may direct any difference to a neutral expert or to a court of arbitration or settle the difference in any other way as agreed by it.¹⁸ It further noted that Pakistan invited India to join it in appointing a neutral expert to address those differences, India declined, and Pakistan then legally revoked that invitation. The differences therefore, the Court of Arbitration concluded, did not come within the jurisdiction of a neutral expert and qualified as disputes that could be settled through a court of arbitration.¹⁹

India’s third objection stated that the Court of Arbitration is not competent because the requirements of Article IX(3), (4) and (5) of the IWT were not met. India said that the parties never agreed to refer the matter to arbitration and never satisfied its procedural requirements.²⁰ Pakistan submitted that the relevant and applicable procedural requirements of the IWT have been met.²¹ Pakistan added that the IWT does not require a joint report for arbitration to settle a dispute.²² Relying on an ICJ judgment,²³ Pakistan argued that recourse to negotiations is not mandatory²⁴ and that it is the opinion of the requesting party which is required for recourse to arbitration.²⁵ Pakistan recalled that it informed India that the disputes are not likely to be resolved by further negotiations.²⁶ The Court of Arbitration noted that no agreement of the parties was required for referral of their dispute to arbitration.²⁷ Further, it stated that India’s participation in the negotiations was without waving its position of inadmissibility of the matter before arbitration.²⁸ Finally, the Court of Arbitration noted that the fact that the parties did not change their position during negotiations does not mean that negotiations were not held.²⁹ The Court of Arbitration therefore rejected India’s third objection.

By its fourth objection, India stated that, even if a dispute has arisen, the Court of Arbitration has not been constituted as per Annexure G to the IWT.³⁰ Pakistan replied

¹⁵*The Award on Competence*, note 3, at 64.

¹⁶*Ibid.*, at 65.

¹⁷*Ibid.*

¹⁸*Ibid.*, at 79.

¹⁹*Ibid.*, at 85.

²⁰*Ibid.*

²¹*Ibid.*, at 87.

²²*Ibid.*

²³*Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v. France)*, Judgment [2008] ICJ Rep 177, para. 145

²⁴*The Award on Competence*, *supra* note 3, at 89.

²⁵*Ibid.*, at 90.

²⁶*Ibid.*, at 91.

²⁷*Ibid.*, at 95.

²⁸*Ibid.*, at 96.

²⁹*Ibid.*, at 97.

³⁰*Ibid.*, at 99.

that India's position is legally and factually inaccurate.³¹ Pakistan submitted that the Court of Arbitration has been properly constituted despite India's refusal to participate in the constitution of the Court of Arbitration and to appoint its arbitrators.³² Pakistan added that failure by India to appoint two arbitrators did not prevent the Court of Arbitration from being constituted and competent.³³ In Pakistan's view, any other interpretation of the IWT would be contrary to the text of the IWT and its object and purpose.³⁴ The Court of Arbitration noted that India failed to appoint its arbitrators within 30 days of Pakistan's request for arbitration. It added that it recognized India's right to appoint two arbitrators up to seven days of an affirmative decision on its competence. The Court of Arbitration therefore rejected India's fourth objection.³⁵

In its fifth objection, India claimed that the Court of Arbitration is not competent because the neutral expert is dealing with the question.³⁶ Pakistan termed that India's objection is based on "assumptions".³⁷ Pakistan countered that no neutral expert is dealing with any points of difference as it had been neither appointed nor identified when the proceedings of the Court of Arbitration commenced in August 2016.³⁸ According to Pakistan, a mere indication of intention to request the appointment of a neutral expert is not enough.³⁹ Pakistan added that even if a neutral expert is appointed after the constitution of a Court of Arbitration it would not prevent from continuing with arbitral proceedings.⁴⁰ The Court of Arbitration noted that India's intention to request the appointment of a neutral expert⁴¹ and that the World Bank thereafter appointed a neutral expert⁴² were not conclusive that a neutral expert was "dealing with" the questions which are before the Court of Arbitration. The Court of Arbitration therefore rejected India's fifth objection.⁴³

India's sixth and final objection stated that the Court of Arbitration is not necessary.⁴⁴ Pakistan contended that the necessity for arbitration has arisen as it had met the prerequisites to establish a court of arbitration.⁴⁵ Pakistan explained that the necessity to establish a court of arbitration arises once a request to establish it has been filed and to determine the question of its competence.⁴⁶ Further, according to Pakistan, the necessity to establish a Court of Arbitration arose because its request for arbitration specifies questions which cannot be answered by a neutral expert.⁴⁷ Pakistan finally added that the necessity to establish a Court of Arbitration has arisen even if it is not

³¹Response of Pakistan, Preliminary Phase, *supra* note 7, at 89 *et seq.*

³²*The Award on Competence*, *supra* note 3, at 100.

³³*Ibid.*

³⁴*Ibid.*

³⁵*Id.*, at 104.

³⁶*Id.*, at 106.

³⁷Response of Pakistan, Preliminary Phase, *supra* note 7, at 64 *et seq.*

³⁸*The Award on Competence*, *supra* note 3, at 108.

³⁹*Id.*, at 109.

⁴⁰*Id.*

⁴¹*Id.*, at 113.

⁴²*Id.*, at 116.

⁴³*Ibid.*

⁴⁴*Id.*, at 117.

⁴⁵*Id.*, at 118–19.

⁴⁶*Id.*, at 119.

⁴⁷*Id.*, at 119–20.

indispensable.⁴⁸ The Court of Arbitration found that the requirements of Article IX of the IWT have been met and therefore it is necessary.⁴⁹ It added that Article IX of the IWT does not require a substantive review of whether the Court of Arbitration is needed⁵⁰ and, even if a neutral expert had been dealing with any difference, it would not bar the necessity of the Court of Arbitration unless the questions before it were the same as before the neutral expert.⁵¹ Further, according to the Court of Arbitration, the question of parallel proceeding is to be resolved by the respective bodies and not by a party. The Court of Arbitration therefore rejected India's sixth objection.⁵² We now briefly recall the relevant provisions of the IWT in the next section.

The Indus Waters Treaty

The IWT stems from a common desire of India and Pakistan of "attaining a most complete and satisfactory utilization of the waters of the Indus system of rivers... and of making provision for the settlement, in a cooperative spirit, of all such questions"⁵³ concerning its interpretation and application. While all the waters of the Sutlej, Beas and Ravi (Eastern) rivers have been made available to India,⁵⁴ those of the Indus, Jhelum and Chenab (Western) rivers have been given to Pakistan.⁵⁵ The IWT has been characterized as "the world's most generous water-sharing pact"⁵⁶ However, India can make a restricted use of the Western rivers for domestic use, non-consumptive use, agriculture use and generation of hydroelectric power.⁵⁷ The IWT has established a Commission comprising of one representative each from India and Pakistan to "make every effort to settle promptly, in accordance with the provisions of Article IX(1), any question arising thereunder."⁵⁸ The IWT provides that any "question"⁵⁹ arising between the parties shall be "first"⁶⁰ examined by the "Commission".⁶¹ A "question" unresolved by the commission is considered a "difference"⁶² by the IWT and a "difference" may become a "dispute"⁶³ to be resolved by the Commission⁶⁴ or a Court of Arbitration.⁶⁵ The importance of the IWT may be measured by the fact that the ILA

⁴⁸*Id.*, at 122. Further, see Response of Pakistan, Preliminary Phase, *supra* note 7, at 74 *et seq.*

⁴⁹*Id.*, at 123.

⁵⁰*Ibid.*

⁵¹*Ibid.*

⁵²*Id.*, at 127.

⁵³Preamble to the IWT, (December 1960), online: <https://treaties.un.org/doc/Publication/UNTs/Volume%20419/volume-419-I-6032-English.pdf>.

⁵⁴Article II of the IWT.

⁵⁵Article III of the IWT. Further, see Memorial of Pakistan, First Phase on Merits, Vol. II, at 6 *et seq.*

⁵⁶Brahma Chellaney, 'Rivers of Conflict between India and Pakistan' (2016), Nikkei Asian Review, online: <https://chellaney.net/2016/08/19/rivers-of-conflict-between-india-and-pakistan/>

⁵⁷Article III (2) of the IWT.

⁵⁸Article VIII (b) of the IWT.

⁵⁹Article IX (1) of the IWT.

⁶⁰Article IX (1) of the IWT.

⁶¹Article IX (1) of the IWT.

⁶²Article IX (2) of the IWT.

⁶³Article IX (2) (b) of the IWT.

⁶⁴Article IX (3) (4) of the IWT.

⁶⁵Article IX (5) of the IWT.

used it “as context for its Helsinki Rules...”⁶⁶ The next section discusses India’s non-participation in the Court of Arbitration from the standpoints of jurisdiction and dispute before it.

India’s Non-Participation

India’s non-participation involved the question of jurisdiction of the Court of Arbitration and whether a “dispute” under the IWT existed between India and Pakistan. Each will be discussed below.

(a) *Jurisdiction*

On the issue of India’s non-participation in the arbitral proceedings, it may be recalled that non-participation of a disputant cannot affect the validity of the outcome of adjudicatory proceedings.⁶⁷ However, when a disputant fails to appear before the adjudicatory body, the body, before making its finding on the merits of the case, must establish its jurisdiction over the matter before it.⁶⁸ In the *Nuclear Tests* case, France did not appear before the Court,⁶⁹ but the Court proceeded and reached a conclusion.⁷⁰ In the *Ageing Sea Continental Shelf* case, Turkey failed to appear before the Court and the Court reiterated that, “before finding upon the merits, [it] must satisfy itself that it has jurisdiction.”⁷¹ Later, Iran did not appear before the Court and the Court had to take up “any preliminary question, ... which might constitute a bar to any further examination of the merits...”⁷² The Court therefore consistently affirmed that a non-appearing party remains a party to the proceedings.⁷³ More recently, the South China Sea Arbitration held that “[d]espite its non-appearance, China remains a Party to these proceedings...”⁷⁴ It is therefore difficult to contest the finding of the Court of Arbitration on India’s non-participation before it. India’s stance therefore seems in contrast with

⁶⁶Mary Miner et al., ‘Water Sharing between India and Pakistan: A Critical Evaluation of the Indus Waters Treaty’ (2009) 34 *Water International* 204, at 206. Further, see generally A A Michel (1967) *The Indus Rivers: A Study of the Effects of Partition* (Yale: Yale University Press); N D Gulhati (1973) *Indus Waters Treaty: An Exercise in International Mediation* (New Delhi: Allied Publishers); A K Biswas, ‘Indus Waters Treaty: The Negotiating Process’ (1992) 17 *Water International* 201; Salman M A Salman and Kishore Uprety (2002) *Conflict and Cooperation on South Asia’s International Rivers* (Washington, D.C.: World Bank).

⁶⁷*Military and Paramilitary Activities in und against Nicaragua (Nicaragua v United States of America)*, Judgment [1986] ICJ Rep. 14 at 23–24.

⁶⁸*Fisheries Jurisdiction (United Kingdom v Iceland)*, Judgment [1973] ICJ Rep 3 at 7–8.

⁶⁹*Nuclear Tests (Australia v France)*, Judgment [1974] ICJ Rep 253 at 257.

⁷⁰*Id.*

⁷¹*Aegean Sea Continental Shelf*, Judgment [1978] ICJ Rep. 3 at 7–8.

⁷²*United States Diplomatic and Consular Staff in Tehran*, Judgment [1980] ICJ Rep. 3 at 18 [hereafter *Nicaragua Case*].

⁷³*The “Arctic Sunrise” case (Kingdom of the Netherlands v Russian Federation, Provisional Measures)*, Judgment [2013] International Tribunals for the Law of the Sea, Order of 22 November 2013, at 242.

⁷⁴*A Court of Arbitration Constituted Under Annex VII to the 1982 United Nations Convention on the Law of the Sea between the Republic of the Philippines and the People’s Republic of China, Award on Jurisdiction and Admissibility*, Judgment, 29 October 2015, at 39 (hereafter the *South China Sea Arbitration*).

its stance in the Kishanganga Arbitration in which it participated while retaining objections to its jurisdiction.⁷⁵

(b) “Dispute”

While Pakistan requested for the appointment of umpires for the Court of Arbitration in accordance with Annexure G of the IWT, India requested for the appointment of a neutral expert in accordance with Annexure F of the IWT.⁷⁶ The judicial understanding of the concept of dispute is no less fairly settled. In response to the contention of the Russian Federation that there was no “dispute”, the Court did not “consider that the words “matter”, “complaint”, “dispute” and “issue” are used in Articles 11 to 16 in such a systematic way that requires that a narrower interpretation than usual be given to the word “dispute””.⁷⁷ And, relevant to the nature of the IWT, the Court found “that the content of the 1977 Treaty indicates that it must be regarded as establishing a territorial régime....”⁷⁸ Hence, the IWT continues to govern the Indus waters relationship between India and Pakistan. This “relationship is also determined by the rules of other relevant conventions to which the two States are party, by the rules of general international law and, in this particular case, by the rules of State responsibility...”⁷⁹ Clearly, the legal relationship founded between India and Pakistan by the IWT “is preserved.”⁸⁰ The Court underscored that “[w]hat is required in the present case by the rule *pacta sunt servanda*, as reflected in Article 26 of the Vienna Convention on the Law of Treaties, 1969 (VCLT), is that the Parties find an agreed solution within the cooperative context of the Treaty.”⁸¹ Later, the Court underscored it qua customary international law embodied in Article 26 of the VCLT⁸² and which also applies to “procedural obligations which are essential to co-operation between States...”⁸³ Later, in its Supplemental Award on Competence, the Court found that India’s position on “abeyance”⁸⁴ of the IWT does not limit its competence⁸⁵ and

⁷⁵*The Award on Competence*, *supra* note 3, at 50. Further, see *infra* note 86.

⁷⁶*The Award on Interpretation*, *supra* note 2, para. 218.

⁷⁷*Case Concerning Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v Russian Federation)*, [2011] ICJ Rep. 70 at 84.

⁷⁸*Gabčíkovo-Nagymaros Project (Hungary v Slovakia)*, Judgment [1997] ICJ Rep 7 at 71 (hereafter the Gabčíkovo-Nagymaros Project Case).

⁷⁹*Ibid.*, at 76.

⁸⁰*Ibid.*

⁸¹*Ibid.*, at 78.

⁸²*Pulp Mills on the River Uruguay (Argentina v Uruguay)*, Judgment [2010] ICJ Rep. 14 at 67 (hereafter *Pulp Mills on the River Uruguay Case*).

⁸³*Id.*

⁸⁴See *infra* section V (b). See also *infra* note 108, statement of the Foreign Secretary dated 23 April 2025.

⁸⁵*The Supplemental Award on Competence*, *supra* note 1. Further, see *infra* sub-section V(b) on operation of the IWT. In reaching its decision, the Court also relied on *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v Colombia)*, *Preliminary Objections* [2016] ICJ Rep 3, para. 33; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v Serbia)*, *Preliminary Objections*, Judgment [2008] ICJ Rep 412, para. 80; *Compañía de Aguas del Aconquija SA (formerly Aguas del Aconquija) and Vivendi Universal SA (formerly Compagnie Générale des Eaux) v Argentine Republic (I)*, ICSID Case No. ARB/97/3, Decision on Jurisdiction, 14 November 2005, para. 60. The Court also reasoned that “[t]he rule of

that India's non-participation in the proceedings does not prevent such proceedings from moving forward."⁸⁶ Clearly, the finding of the Court of Arbitration on the existence of dispute does not appear to suffer from any legal infirmity. We now turn to some merits issues in the next section.

Some Merits Issues

The key issues of merits concerned the project's design and water flow, the operation of the IWT, interpretation of the IWT and the suspension of the Permanent Indus Commission (PIC) talks. Each invites some discussion.

(a) *Project's design and water flow*

Since the Court of Arbitration has unanimously rejected each of India's six objections to its competence, the stage is now set for consideration of the merits of the matter relating to Pakistan's concerns about India's hydroelectric project's design and operation. While Pakistan believes that the designs of India's project allow it more control over the waters and to the detriment of Pakistan, India considers that it is allowed to construct its projects in accordance with the contemporary scientific knowledge than the technology existed at the time of conclusion of the IWT. Accordingly, on 25 January 2023, India issued to Pakistan its "notification for modification"⁸⁷ and followed its long-running disputes with Pakistan over the construction of its hydroelectric power projects over the Western rivers Chenab and Jhelum's tributary Kishanganga (known as Neelum in Pakistan). Article XII(3) of the IWT provides for its modification.⁸⁸ While India believes that its projects are of run-of-the-river nature and hence do not violate the reservoir provisions of the IWT, Pakistan alleges that the designs of the Indian dams constrict the flow of the rivers to Pakistan⁸⁹ It is believed that cooperation between India and Pakistan is to be preferred to a third-party dispute resolution which "can undermine future cooperation"⁹⁰ on the Indus water sharing between India and Pakistan.

customary international law that unilateral acts post-dating the filing of a dispute have no effect on competence typically arises in the context of an international court or tribunal." *The Supplemental Award on Competence*, *supra* note 1, para. 73.

⁸⁶*The Award on Interpretation*, *supra* note 2, para. 238. In reaching its decision, the Court relied on *Arbitral Award of 3 October 1899 (Guyana v Venezuela)*, *Jurisdiction of the Court*, Judgment, [2020] ICJ Rep 455, paras. 26–27; *Nicaragua Case*, *supra* note 72; the *South China Sea Arbitration*, *supra* note 74; *Arctic Sunrise (Kingdom of the Netherlands v Russian Federation)*, PCA Case No. 2014-02, Award on Jurisdiction, 26 November 2014.

⁸⁷Rezaul H Laskar, 'India Issues Notice to Pakistan to Modify Indus Waters Treaty', (January 2023), online: <https://www.hindustantimes.com/india-news/india-issues-notice-to-pakistan-to-modify-indus-waters-treaty-101674839706437.html>.

⁸⁸The provision states: "The provisions of this Treaty may from time to time be modified by a duly ratified treaty concluded for that purpose between the two Governments."

⁸⁹Further, see Memorial of Pakistan, First Phase on Merits, Vol. I, at 83 *et seq.*

⁹⁰Miner et al., *supra* note 66, at 211.

The Indus basin covers nearly 71 per cent of Pakistan's territory.⁹¹ Therefore, Pakistan is heavily dependent on the Indus waters.⁹² However, for Pakistan, it is stated that "run-of-the-river dams arrest silt, depriving Pakistani fields of vital nutrients and lowering their productivity."⁹³ Pakistan believes that, "[b]y demanding its revision, India is rendering the well-functioning Indus Waters Treaty dysfunctional."⁹⁴ Pakistan asserts that India's "attempts to gain control over the three western rivers allocated to Pakistan [is] in violation of the IWT."⁹⁵ It is claimed that "[c]utting water to Pakistan would result in widespread famine and drought..."⁹⁶ It is argued that "any intention to modify [the] IWT by India, may threaten Pakistan's national security."⁹⁷ In India's view, Pakistan from time to time objected to India's hydroelectric projects ever since it started building them in 1970s.⁹⁸ Pakistan's persistent allegations of violations of the IWT are "entrenched distrust and compulsions of domestic politics".⁹⁹ Pakistan "has repeatedly used the Treaty provisions to block projects by India."¹⁰⁰ It is argued that rather than "solving the issues around these projects in a constructive and cooperative manner, Pakistan's objective was to kill the projects by rendering them unworkable."¹⁰¹ Further, climate change has the potential to complicate life along the Indus River¹⁰²

⁹¹Khursheed Ahmad Wani and P Moorthy, 'Indus Waters Treaty: An Emerging Flashpoint between India and Pakistan' (2014) 67 Pakistan Horizon 41, at 48

⁹²About 70% of irrigated agriculture of Pakistan is provided by Pakistan's Indus Basin irrigation system.

⁹³John Joseph Vater, 'The Indus Waters Treaty: Prospects for India-Pakistan Peace' (2021) at 6, online: <https://www.isas.nus.edu.sg/papers/the-indus-waters-treaty-prospects-for-india-pakistan-peace/>.

⁹⁴Ali Tauqeer Sheikh, 'India's Myopic Bid to Renegotiate Indus Waters Treaty will Hurt all of South Asia', (April 2023), online: <https://scroll.in/article/1046934/opinion-indias-myopic-bid-to-renegotiate-indus-water-treaty-will-hurt-all-of-south-asia>.

⁹⁵Institute of Policy Studies, 'Indus Water Treaty Arbitration—Battle over Water Sharing' (2023), online: <https://www.ips.org.pk/indus-water-treaty-arbitration-battle-over-water-sharing/>; Waseem Ahmad Qureshi, 'Indus Waters Treaty: An Impediment to the Indian Hydro-Hegemony' (2017) 46 Denver Journal of International Law and Policy 45, online: <https://digitalcommons.du.edu/cgi/viewcontent.cgi?article=2449&context=djilp>.

⁹⁶Evan D Gumas, 'The Use of Water as a Weapon against Public Health in Palestine and Kashmir' (2021), Online:https://research.library.fordham.edu/cgi/viewcontent.cgi?article=1051&context=international_senior.

⁹⁷Nazia Sheikh, 'Indian Overture to Alter Indus Water Treaty' (2023), online: <https://www.pakistanday.com.pk/2023/02/19/indian-overture-to-alter-indus-water-treaty/>.

⁹⁸Further, see Zubair Ahmad Dar, 'Power Projects in Jammu and Kashmir: Controversy, Law and Justice (2011–2012), LIDS Working Paper, Harvard University, at 6.

⁹⁹Bharat H Desai, 'Sixty Years of the Indus Waters Treaty in the Era of Climate Change: A Look Ahead in Hydro-Diplomacy and Treaty Law' (2021) 51 Environmental Policy and Law 175, at 179.

¹⁰⁰Pankaj Saran and P K Saxena, 'The Indus Waters Treaty: Time to Move Ahead' (2023), online: <https://www.natstrat.org/articledetail/publications/the-indus-waters-treaty-time-to-move-ahead-78.html#>.

¹⁰¹Sushant Sareen, 'Indus Waters Treaty: Opening the Water Front' (2023), online: <https://www.orfonline.org/expert-speak/indus-waters-treaty>.

¹⁰²Natalie A Nax (2016) *Looking to the Future: The Indus Waters Treaty and Climate Change*, Thesis, University of Oregon, <https://transboundarywaters.ceoas.oregonstate.edu/sites/transboundarywaters.ceoas.oregonstate.edu/files/Publications/Nax%20-%2020216%20-%20Indus%20Treaty%20and%20Climate%20Change%20-%20Thesis.pdf>; Kate Diamond, 'Adil Nazam: Pakistan's Security Problems Distract from Climate Vulnerabilities', New securitybeat, online <https://www.newsecuritybeat.org/2014/06/adil-najam-pakistans-security-problems-distract-climate-vulnerabilities/> Further, see A Khan and M H Idrees, 'The Impact of Climate Change on the Indus Basin: Challenges and Constraints' in Mahmood Ahmad (ed.) (2023) *Water Policy in Pakistan* (Berlin: Springer) 231; Veronika Stolbova et al., 'Tipping Elements of the Indian Monsoon: Prediction of Onset and Withdrawal' (2016) Geographical Research Letters, online: <https://agupubs.onlinelibrary.wiley.com/doi/epdf/10.1002/2016GL068392>;

and on which both India and Pakistan must engage¹⁰³ as the IWT lacks mechanism to address this critical and growing challenge.¹⁰⁴

Water is not without giving India some leverage over Pakistan as the Indus system rivers that originate in the Himalayas pass through India and before entering Pakistan. And it was not without and before stoppage of water by India flowing across Pakistan on 1 April 1948 that the IWT was signed on 19 September 1960.¹⁰⁵ Evidently, India and Pakistan did not fight a war but negotiated a treaty over water. India's relations with Pakistan have been anything but good for decades. Both countries have witnessed a troubled past and an acrimonious present mainly over the issues of terrorism and self-determination raised by them, respectively, relative to a geographical reality.¹⁰⁶ It is argued for India and Pakistan, respectively, that the spirit of the IWT would require "rethinking the use of terrorism as an instrument of state policy"¹⁰⁷ and that "water has been central to the Kashmir dispute..."¹⁰⁸ It is in this context that we briefly discuss the operation of the IWT in the next subsection.

Aparna Roy and Radhey Wadhwa, 'The Indus Waters Treaty in a Warming World' (2026), Observer Research Foundation, online: <https://www.orfonline.org/expert-speak/the-indus-waters-treaty-in-a-warming-world>; Mohammad Khizar et al., 'Climate Change Impacts on the Indus River Basin: Hydrology, Water Quality, and Treaty Implications' (2025) 6 Journal of Energy and Environment 112, online: <https://journals.internationalrasd.org/index.php/jee/article/view/2848/1880>; Rameez Mohammad Bhat, 'The Indus Waters Treaty: Climate Change and Its Growing Threat' (2020) 24 World Affairs 70, online: <https://www.jstor.org/stable/48622908>; Bushra Bibi et al., 'Melting Glaciers and the Indus Waters Treaty: A Looming Crisis' (2023) VIII Global Legal Studies Review, online: <https://www.humapub.com/admin/alljournals/glsr/papers/M29q7W2AQC.pdf>; Ghulam Sarwar and Armaghan Farid, 'The Indus Under Pressure: Hydro-Politics, Climate Change, and Strategic Anxiety in South Asia' (2025) 3 Journal of Political Stability Archive, online: <https://journalpsa.com.pk/index.php/JPSA/article/view/192/205>.

¹⁰³Dhanasree Jayaram 'Why India and Pakistan need to review the Indus Waters Treaty', online: <https://climate-diplomacy.org/magazine/cooperation/why-india-and-pakistan-need-review-indus-waters-treaty> <https://agupubs.onlinelibrary.wiley.com/doi/full/10.1002/2016GL068392>; Pintu Kumar Mahla, 'Breaking the Flow: Ecological Risks of the Indus Waters Treaty in Abeyance', online: <https://snu.edu.in/centres/centre-of-excellence-for-himalayan-studies/research/breaking-the-flow-ecological-risks-of-the-indus-waters-treaty-in-abeyance/en/>.

¹⁰⁴Muthukumara Mani (2021) *Glaciers of the Himalayas: Climate Change, Black Carbon, and Regional Resilience*, online: <https://documents1.worldbank.org/curated/en/976841622778070962/pdf/Glacier-s-of-the-Himalayas-Climate-Change-Black-Carbon-and-Regional-Resilience.pdf>.

¹⁰⁵Further, see Ijaz Hussain (2018) *Indus Waters Treaty: Political and Legal Dimensions* (Oxford: Oxford University Press) Chapter 2.

¹⁰⁶Further, see more recently Amit Ranjan, 'Indus Waters Treaty Negotiations: Geopolitics, Disputes and Cooperation' (2024) 45 South Asia Research 1, 13 *et seq.*; Hamir K Sahni, 'The Politics of Water in South Asia: The Case of the Indus Waters Treaty' (2006) 26 SAIS Review of International Affairs 153.

¹⁰⁷Brahma Chellaney, 'South Asia's Looming Water War', (February 2023), online: <https://www.project-syndicate.org/commentary/india-pakistan-indus-waters-treaty-renegotiation-by-brahma-chellaney-2023-02>.

¹⁰⁸Roberts J Wirsing & Christopher Jasparro (2005) *River Rivalry: Water Disputes, Resource Insecurity, & Diplomatic Deadlock in South Asia* (Honolulu: Asia-Pacific Center for Security Studies) at 59; Muhammad Nasrullah Mirza (2016) *Indus Waters Disputes and India-Pakistan Relations* (Heidelberg: Heidelberg University) 1.

(b) *The IWT operation*

The IWT does not expressly provide for its suspension or “abeyance”.¹⁰⁹ The VCLT, which greatly reflects customary international law, contemplates treaty suspension by provision or consent,¹¹⁰ impliedly by conclusion of a new treaty,¹¹¹ as a consequence of its breach,¹¹² and for a fundamental change of circumstances.¹¹³ India has not yet expressly or clearly claimed that Pakistan has violated a provision essential to the accomplishment of the object or purpose of the IWT¹¹⁴ while Pakistan has alleged that India has failed to fulfil its IWT obligation with respect to information-sharing.¹¹⁵ No express provision in the IWT seems applicable in the event of its breach. An unforeseen terrorism may hardly be claimed as a fundamental change of circumstances unless it is proved that it constituted an essential basis of the consent of the parties to the IWT, which India has not yet expressly or clearly claimed even while holding the IWT in “abeyance until Pakistan credibly and irrevocably abjures its support for cross-border terrorism”.¹¹⁶ Lauterpacht held the view that the doctrine *rebus sic stantibus* is “not a talisman for revising treaties...”¹¹⁷ The ICJ has equated a fundamental change to “a radical transformation”¹¹⁸ and “of the extent of the obligations still to be performed”.¹¹⁹ Later, the Court stated that “the stability of treaty relations requires that the plea of fundamental change of circumstances be applied only in exceptional cases.”¹²⁰ Fitzmaurice was quite realistic when he noted that “in international life, circumstances *are* constantly changing. But these changes are not, generally

¹⁰⁹Statement by Foreign Secretary on the decision of the Cabinet Committee on Security (CCS), dated 23 April 2025 (hereafter the “Statement by the Foreign Secretary”), <https://www.mea.gov.in/speeches-statements?dtl/39442/statement+by+foreign+secretary+on+the+decision+of+the+cabinet+committee+on+security+ccs>; *The Supplemental Award on Competence*, *supra* note 1, footnote 27; Kallol Bhattacharjee, Vijaita Singh and Nistula Hebbar, ‘Pahalgam terror attack: Indus Treaty with Pakistan put on hold’, *The Hindu*, 24 April 2025, online: <https://www.thehindu.com/news/national/pahalgam-terror-attack-india-decides-to-keep-indus-water-treaty-in-abeyance-close-attari-border-post/article69483916.ece>; *The Supplemental Award on Competence*, *supra* note 1, para. 54.

¹¹⁰VCLT, Article 57. This provision does not in principle foreclose the possibility of an implicit provision for suspension. See Olivier Corten and Pierre Klein (2011) *The Vienna Conventions on the Law of Treaties: A Commentary* (Oxford: Oxford University Press) vol. II, 1285.

¹¹¹*Id.*, Article 59.

¹¹²*Id.*, Article 60. Further, see Bruno Simma and Christian Tams (2011) *The Vienna Convention on the Law of Treaties: A Commentary* (London: Oxford University Press) 1351.

¹¹³*Id.*, Article 62(3). India stated that there have been “fundamental changes in the circumstances that have taken place since the Treaty was executed that require a re-assessment of obligations under the various Articles of the Treaty read with its Annexures.” Statement by the Foreign Secretary, *supra* note 109.

¹¹⁴On 08 May 2025, India however stated, “Pakistan is the one that has been acting in violation of the treaty...” *The Supplemental Award*, *supra* note 1, para. 47.

¹¹⁵Further, see Memorial of Pakistan, First Phase on Merits, Vol. I, at 169 *et seq.*

¹¹⁶Statement by the Foreign Secretary, *supra* note 109.

¹¹⁷Hersch Lauterpacht (1982) *The Development of International Law by the International Court* (Cambridge: Grotius Society) at 85.

¹¹⁸*Fisheries Jurisdiction (Federal Republic of Germany v Iceland)*, Judgment [1973] ICJ Rep. 49 at 63.

¹¹⁹*Id.*, at 65.

¹²⁰*Gabčíkovo-Nagymaros Project Case*, *supra* note 78, at 64.

speaking, of a kind that can or should affect the continued operation of treaties.”¹²¹ Further, the International Law Commission (ILC) and the International Court of Justice (ICJ) in the 1997 *Gabčíkovo-Nagymaros Project Case*¹²² clarify that suspension of the operation of a treaty and suspension of performance of obligations are not the same as a countermeasure for an internationally wrongful act.¹²³ In other words, it is the applicable international law which is determinative of wrongfulness, such as the United Nations Security Council Resolution 1373 adopted expressly under Chapter VII of the UN Charter.¹²⁴ Any terrorist acts instructed, directed or controlled by Pakistan would also be attributable to Pakistan.¹²⁵ Non-conformity of a Pakistan’s act with its international obligation may be constitutive of its breach of that obligation.¹²⁶ India’s suspension of the PIC¹²⁷ talks is evidently till terror comes to an end and is therefore taken apparently or presumably as a countermeasure against Pakistan’s apparent or presumed breach of its international obligations, including those apparently or presumably arising under the Security Council Resolution 1373.¹²⁸ If India’s suspension of the PIC talks is a countermeasure, then it is permitted to only induce Pakistan to comply with its international obligations and without prejudice to India’s obligations to compensate Pakistan for any material loss caused,¹²⁹ to refrain from the threat or use of force for the protection of fundamental human rights of a humanitarian character prohibiting reprisals, under peremptory norms of general international law¹³⁰ under any dispute settlement procedures applicable between India and Pakistan,¹³¹ including under the IWT, to respect the inviolability of diplomatic or consular agents, premises, archives and documents of Pakistan,¹³² to fulfil any obligation embodied in the IWT to which India would be subject under international law independently of the IWT,¹³³ without prejudice to any applicable international customary law¹³⁴ and qua

¹²¹Second Report on the Law of Treaties by Gerald G Fitzmaurice, Special Rapporteur, A/CN.4/107, Yearbook of International Law Commission (1957), vol. II, at 56–7 (italics in the original).

¹²²*Gabčíkovo-Nagymaros Project Case*, *supra* note 78.

¹²³International Law Commission, Articles on the Responsibility of States for Internationally Wrongful Acts, Chapter II, Article 49 *et seq.* and the *Gabčíkovo-Nagymaros Project Case*, *supra* note 78, at 39 and 65.

¹²⁴United Nations Security Council Resolution 1373 (28 September 2001).

¹²⁵International Law Commission, Articles on the Responsibility of States for Internationally Wrongful Acts, Article 8.

¹²⁶*Id.*, Article 12.

¹²⁷Article VIII of the IWT.

¹²⁸International Law Commission, Articles on the Responsibility of States for Internationally Wrongful Acts, Article 49 and its preceding commentary.

¹²⁹*Id.*, Article 27.

¹³⁰See in particular Articles 53 and 64 of the VCLT; International Law Commission, Third Report on peremptory norms of general international law (*jus cogens*), 12 February 2018.

¹³¹Further, see *Appeal Relating to the Jurisdiction of the ICAO Council (India v Pakistan)*, Judgment [1972] ICJ Rep. 46.

¹³²International Law Commission, Articles on the Responsibility of States for Internationally Wrongful Acts, Articles 27 and 50.

¹³³VCLT, Article 43.

¹³⁴*Id.*, Article 34–38.

the 1997 Watercourses Convention¹³⁵ and the *Gabčíkovo-Nagymaros Project Case* ICJ Judgment,¹³⁶ equitable and reasonable use of waters by India and no significant harm to Pakistan to the extent that it is reflective of customary international law.¹³⁷ It is in this light that it would be appropriate to briefly address the question of the legality of and/or justification(s) for the appointment of a Neutral Expert and the establishment of a Court of Arbitration in the next subsection and which turn on the relevant interpretation of the IWT.

(c) *The IWT interpretation*

Contrary to India's consistent position, that a prior appointment of a Neutral Expert bars a subsequent establishment of a Court of Arbitration and pending disposal of the matter by the Neutral Expert, the Court of Arbitration pointed out that there is no such bar unless the question to be considered by the Court of Arbitration is the same as before the Neutral Expert. As in the *Kishanganga Arbitration*,¹³⁸ the parties' arguments bring to the fore the importance of treaty interpretation¹³⁹ and consideration in it of the principles of international environmental law.¹⁴⁰ While India stated that the "[t]reaty does not provide for parallel proceedings on the same set of issues"¹⁴¹ and while the Court of Arbitration did not find it to be the case,¹⁴² that India "cannot remain a permanent victim of Pak sponsored terrorism and yet live with a treaty which the Indian public regards as unfair and inequitable"¹⁴³ takes the matter to a different plane and invites some reflection in the next subsection on the legality of and/or justification for its suspension of the PIC talks upon serving a notice¹⁴⁴ on Pakistan and

¹³⁵ Convention on the Law of the Non-navigational Uses of International Watercourses, 1997, https://legal.un.org/ilc/texts/instruments/english/conventions/8_3_1997.pdf (hereafter Watercourses Convention).

¹³⁶ *Gabčíkovo-Nagymaros Project Case*, *supra* note 78.

¹³⁷ See, in particular, Stephen C McCaffrey, 'Convention on the Law of the Non-navigational Uses of International Watercourses' (2008), online: https://legal.un.org/avl/pdf/ha/clnuw/clnuw_e.pdf.

¹³⁸ John R Cook, "In re Indus Waters Kishenganga Arbitration (Pakistan v. India), Final Award" (2014) 108 American Journal of International Law 308, 314.

¹³⁹ See Articles 31 and 32 of the VLCT, which reflect customary international law. Further, see Memorial of Pakistan, First Phase on Merits, Vol. I, at 209 *et seq.*

¹⁴⁰ *Indus Waters Kishenganga Arbitration (Pakistan v India)*, Partial Award, PCA Case Repository Case No. 2011-01, para. 452 (18 February 2013).

¹⁴¹ 'Matters Pertaining to the Indus Waters Treaty' (July 2023), online: <https://www.mea.gov.in/press-releases.htm?dtl/36761/Matters+pertaining+to+the+Indus+Waters+Treaty>.

¹⁴² The Court of Arbitration found that its award and a decision of the Neutral Expert are binding in their respective domains of authority and that the object and purpose of the IWT is to delimit the rights and obligations of Pakistan when utilizing the Indus systems of rivers in conjunctions with mutual cooperation between the Parties and effective dispute resolution procedures. *The Award on Interpretation*, *supra* note 2.

¹⁴³ Arvind Gupta, 'Time to Reconsider 1960 Pact', (September 2020), online: <https://www.vifindia.org/article/2020/september/19/the-indus-water-treaty-60-precariously-poised>.

¹⁴⁴ Suhasini Haider and Kallol Bhattacharjee, 'India sends notice to Pakistan to amend 1960 Indus Waters Treaty' (27 January 2024), online: <https://www.thehindu.com/news/national/india-notifies-pakistan-on-modification-of-indus-waters-treaty/article66438780.ece>.

until India and Pakistan and until India and Pakistan “meet and discuss renegotiation of the Indus Waters Treaty”.¹⁴⁵

(d) Suspension of the PIC Talks

The PIC under the IWT is required to meet at least once every year.¹⁴⁶ The PIC last met on 30 and 31 May 2022.¹⁴⁷ The PIC is to first examine and endeavour to resolve by agreement between the parties¹⁴⁸ any question of interpretation or application of the IWT and the existence of any fact which, if established, would constitute a breach of the IWT. A difference is deemed to have arisen between the parties¹⁴⁹ which shall be dealt with by a Neutral Expert at the request of either commissioner¹⁵⁰ and which shall be treated as a dispute if not within the provision on Neutral Expert¹⁵¹ and shall be settled by Fact-finding by the PIC,¹⁵² direct negotiations between India and Pakistan,¹⁵³ mediation between India and Pakistan,¹⁵⁴ and a court of arbitration upon agreement between India and Pakistan or at the request of India or Pakistan.¹⁵⁵ We recall that the issue between the Neutral Expert and the Court of Arbitration was found by the Court of Arbitration to be different and not the same and that there seems therefore nothing in the IWT that precludes the appointment of a Neutral Expert and the establishment of a Court of Arbitration.¹⁵⁶ On the other hand, India held its 6th meeting of the Steering Committee on matters related to the IWT on 17 April 2023 and “took stock of the ongoing modification process of the Indus Waters Treaty.”¹⁵⁷ It thus seems clear that India is determined on a modification of the IWT which would not be easy to politically accomplish under it even while expressly within its contemplation.¹⁵⁸ But, given the relevant international practice,¹⁵⁹ the potential role of the PIC cannot be

¹⁴⁵Suhasini Haider and Jacob Koshy, ‘No more Indus Commission meetings till Treaty negotiated’ (18 September 2024), online: <https://www.thehindu.com/news/national/india-serves-notice-to-pakistan-seeking-review-of-indus-water-treaty/article68655577.ece>.

¹⁴⁶Art. VIII:5 of the IWT.

¹⁴⁷“118th Meeting of the India-Pakistan Permanent Indus Commission”, (May 2022), online: <https://www.mea.gov.in/press-releases.htm?dtl/35375/118th+meeting+of+the+IndiaPakistan+Permanent+Indus+Commission>.

¹⁴⁸Article IX:1 of the IWT.

¹⁴⁹Article IX:2 of the IWT.

¹⁵⁰Article IX:2:a of the IWT.

¹⁵¹Article IX:2:b of the IWT.

¹⁵²Article IX:3 of the IWT.

¹⁵³Article IX:4 of the IWT.

¹⁵⁴Article IX:5 of the IWT.

¹⁵⁵*Id.*

¹⁵⁶*The Award on Competence, supra* note 3, at 309.

¹⁵⁷“6th Meeting of the Steering Committee on Matters Related to the Indus Waters Treaty” (April 2023), online: <https://www.mea.gov.in/press-releases.htm?dtl/36495/6th+meeting+of+the+steering+committee+on+matters+related+to+the+indus+waters+treaty>.

¹⁵⁸The IWT states in Article XII(3): “The provisions of this Treaty may from time to time be modified by a duly ratified treaty concluded for that purpose between the two Governments.” Further, see Anuttama Banerji, ‘A Shared Interest: Why India and Pakistan Should Strengthen the Indus Waters Treaty’ (2024), online: <https://www.stimson.org/2024/a-shared-interest-why-india-and-pakistan-should-strengthen-the-indus-waters-treaty/>.

¹⁵⁹Agreement on the Establishment of the Zambezi Watercourse Commission, 2004, online: <https://africanlii.org/en/akn/aa-sadc/act/agreement/2004/establishment-of-the-zambezi-watercourse->

underestimated in addressing such an important issue as climate change appropriately by reference to the international law considerations of reasonable and equitable use¹⁶⁰ and no harm.¹⁶¹

Conclusion

It is not that the IWT was never tested before by India and Pakistan for the settlement of their disputes.¹⁶² India's non-participation in the Court of Arbitration has not changed its status relative to Pakistan.¹⁶³ The Court of Arbitration found that India's position on "abeyance" of the IWT does not limit its competence and that its award and a decision of the Neutral Expert are binding. However, it is important to note that it was the Neutral Expert, not India, which first pointed out that the IWT uses the technology of 1950s.¹⁶⁴ It is therefore not unreasonable to suppose that the Indus waters sharing would become more challenging in future¹⁶⁵ and that the IWT would have to become more cooperative.¹⁶⁶ India and Pakistan would be called upon to devise necessary means consistent with the IWT¹⁶⁷ whose unilateral modification or denunciation is hardly acceptable or practicable.¹⁶⁸ This however is not to undermine the importance of considerations that may suggest revision of the IWT¹⁶⁹ following

commission/eng@2004-07-13; International Commission for the Protection of the Rhine, 1976, online: <https://treaties.un.org/doc/Publication/UNTS/Volume%201840/volume-1840-I-23469-English.pdf>.

¹⁶⁰Article 5, Watercourses Convention, *supra* note 135; *Territorial Jurisdiction of the International Commission of the River Oder, Judgment*, 1929 PCIJ (Series A) No. 23, at 27 (10 September 1929).

¹⁶¹Article 5, Watercourses Convention, *supra* note 135; *Pulp Mills on the River Uruguay Case*, *supra* note 82. Further, see Sahana Rao, 'Governance of Water Resources Shared by India and Pakistan under the Indus Waters Treaty: Successful Elements and Room for Improvement' (2017) 25 New York University Environmental Law Journal 108, 136; Tejal S Shirsat et al., 'Past present and future of the indus waters treaty: Implications for transboundary governance challenges and modernization prospects' (2026) 28 Water Security, online: <https://www.sciencedirect.com/science/article/abs/pii/S2468312426000040>.

¹⁶²See *In the Matter of the Indus Waters Kishanganga Arbitration between The Islamic Republic of Pakistan and The Republic of India, Final Award, Permanent Court of Arbitration*, 20 December 2013; Salman M A Salman, "The Baglihar difference and its resolution process – a triumph for the Indus Waters Treaty?" (2008) 10 Water Policy 105.

¹⁶³hafqat Kakakhel, 'Indus Waters Treaty under Threat: Part I' (March 2023), online: https://sdpi.org/indus-waters-treaty-under-threat-part---i-/news_detail.

¹⁶⁴Further, see Dar, *supra* note 98, at 6.

¹⁶⁵Further, see Miner et al., *supra* note 66, at 214.

¹⁶⁶Further, see Dar, *supra* note 98, at 6; Undala Z Alam, 'Questioning the waters war rationale: A case study of the Indus Waters Treaty (2002) 168 Geographical Journal, online: <https://www.jstor.org/stable/3451476>.

¹⁶⁷Further, see Miner et al., *supra* note 66, at 213.

¹⁶⁸Further, see Anurag Jyoti and Raj Kamal Kapur, 'Analysing the Indus Waters Treaty 1960: Beyond the Hype, Hoopla and the Hyperbole' (2023) USI Occasional Paper, at 9.

¹⁶⁹Further, see Tahira Mumtaz et al., 'Indus Waters Treaty and Water Scarcity in India: Implications for Pakistan' (2023) 11 Journal of South Asian Studies 11, at 17.

an appropriate reassessment of its suitability.¹⁷⁰ Among the many suggestions to this end¹⁷¹ cooperation between India and Pakistan in terms of the IWT seems indispensable so that it could accommodate necessary changes and relevant technological developments and address climate change since it came into force more than six decades ago.

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¹⁷⁰Further, see S K Singh, 'India's Approach to Indus Waters Treaty: National Security Perspective', (January 2024), online: <https://cenjows.in/indias-approach-to-indus-water-treaty-national-security-perspective/>.

¹⁷¹See, for instance, Wani and Moorthy', *supra* note 91, at 59.

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