

Indus Water Treaty between Pakistan and India: From Conciliation to Confrontation

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Abstract

Indus River is one of the largest river basins in the world and is a lifeline for regional economies. Owing to its essential economic value and potential, the sharing of Indus river water remained a chronic source of disputes between its users for decade. In 1947 after the partition of British India was the prelude for the water dispute between newly created India and Pakistan. It was finally mediated by the World Bank through the instrument of Indus Water Treaty in 1960. The enactment of the Indus Water Treaty brought peace and benefited two countries to expand their agriculture around areas of Indus River system. The paper analyzes the key issues and conciliation process, which led to the successful Treaty, its understanding, development in economies and political atmosphere the two countries. The paper also attempts to highlight the new issues and claims put forward by the shareholders of Indus Rivers system, which is the cause of new areas of concern. Lastly, the paper suggests ideas for resolving the dispute and relations viz-a-viz water in the light of past experience, knowledge and successful history of Indus Water Treaty.

Keywords: Indian sub-continent; Indus basin; Water dispute; Indus Water Treaty.

Introduction

South Asia is such a region where geopolitical conflicts have been the areas for distrust and also offers good scope for achieving good relationships and economic development. In the Indian sub-continent agriculture forms a chief economic activity with almost 70% of the population is dependent on it and the rivers water is

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peculiar as it is the most important determinant for stimulating the agriculture. Thus the role played by the rivers water is important. However, the region (Indian sub-continent) deals with complex orientation of the rivers that cut across a number of countries coupled with a tense and uncompromising geo-political situation amongst the fellow riparian. The increasing rate of population has led intense demand for water, which results the heated discussions over its distribution.

Indeed there is no two countries in the world have so much in common as Pakistan India and Pakistan are. Both countries have similar cultural roots, linguistic similarities and shared economic system. However, since independence they have continuously been in a state of undeclared war with uncompromised issues, especially over water. The idea of sharing water is historically constructed, emotionally stimulating, and politically divisive. Though water is technically not a core issue between the two countries, differences over the use of water of the rivers is a core issue.¹ In recent years, utilization of water has become an issue that is gaining prominence in the bilateral relationships. Water dispute history of sub-continent reveals that the water dispute is not a new phenomenon in sub-continent, even before partition of India, water disputes were not uncommon inter se the provinces and princely states of British rule. However, the substantial changes were occurred after the partition of Punjab, when the issue over the use and distribution of Indus Basin (Indus River System spreads over four countries² emerged as a principal cause of strained relationship. Partition of Punjab resulted in the redrawing of map which marked a boundary line between the newly formed states. The restructuring of the map was based on religion not geography which led to the imbalance in the sharing of water supply thereby leading to prolonged dispute between the two countries.

Problem in the Indus Basin (Confrontation)

Indus River Basin is mainly shared by India and Pakistan. Out of about 190 million people living in its proximity, 72 percent of them belong to Pakistan and 23 percent live on the India side.³ They are mainly dependent on agriculture and water of Indus river system which plays significant role in this context. Indus River and many of its tributaries get usually large flow of waters resulting in carrying silt in alluvial that make the riverine tracks very fertile and productive. Thus the lands across Indus and its tributaries are always considered as productive and vital to the socio-economic development of the region. The great change started during the

British rule, when world largest canal system was constructed to transform the barren and unoccupied lands of Punjab into productive lands. In fact, this credit goes to the British administration and engineers who not only provided the Indus Basin with most extensive irrigation system in the world⁴ but also introduced good methods for achieving maximum production.

Then the partition of Punjab came in 1947, etched a hard border between India and Pakistan, divided the Indus river system and disrupted its well managed integrated irrigation canals network.⁵ According to Michel, dispute aroused between East and West Punjab when monsoon flows receded in the autumn of 1947. To resolve the dispute the chief engineers of East and West Punjab met and signed 'Standstill Agreement', on 18 December 1947, which froze water allocations allowing discharges from head-works on the Upper Bari Doab Canal (UBDC), the Dipalpure Canal and the Bahawalpur Canal system.⁶ This Standstill Agreement was to continue until March 31, 1948 and it was stipulated that a further agreement for any period subsequent to the aforementioned date could be negotiated.⁷ On March 31, 1948, the date of expiry of the agreement and the absence of any formal water agreement with Pakistan, the India acquired legal rights in the use of water of Ravi, Sutlej and Beas,⁸ according to the Harmon Doctrine of 1895 with the notion of 'Absolute Territorial Sovereignty'⁹ India unilaterally discontinued the delivery of water on 1st April 1948 from the Ferozepur head-works to Dipalpure Canal and two main branches of the UBDC Canal system. India's action fuelled the excessive degree of hostility between the two countries over the use of water and there was a clamour in Pakistan.¹⁰ The Indian standpoint was that under the British Rule most of the expansion and modernisation that occurred in the irrigation system took place in the territory that later went to West Punjab. Using the 1941 census, India claimed that there were 21 million people in Indian Punjab and 25 million in Pakistani Punjab, yet out of 105,000 km² irrigated annually in the Indus Basin less than 20percent or 21,000 km² was in East Punjab territory. The India wanted to develop the agriculture by establishing its own claim to the water of Eastern Rivers, the Ravi, Sutlej and Beas.¹¹ Pakistan as lower riparian country, having minimum access for water protested against the stoppage of water supply, which eventually led to an Interim Agreement known as Delhi Agreement) on May 4, 1948. As per the agreement both countries were agreed to recognize and respect the each other's needs for water to some extent.¹²

Though, the agreement was not considered as the permanent solution, it still provided some temporary basis for dealing further with the vexed problem. Therefore, the Agreement of 1948 fell apart when both countries could not resolve their differences over Sutlej River. Pakistan, as a lower riparian, later expressed in a note dated 16 June, 1949, calling for the 'equitable apportionment of all common waters' and suggesting turning jurisdiction of the case over to the International Court of Justice.¹³ But India opted to resolve the dispute by mutual understanding instead of taking recourse to the third party involvement. However, discussion over the share of water reached a stalemate by the end of 1950.

External Involvement for Resolving the Dispute

In 1951, David Lilienthal¹⁴ visited India and Pakistan, and suggested some mechanism to manage the Indus Basin by joint control. It was after David Lilienthal's suggestions that the World Bank decided to offer the negotiation to resolve the dispute between the two countries. He visited India as a functionary of the World Bank to write some articles for *Collier's Magazine* and to bring peace in the sub-continent through unified development of the Indus River system possibly in line of Tennessee Valley Authority¹⁵ as in the United States of America (USA).

Mr. Lilienthal was of the view that if the water issue is referred to the International Court, (as Pakistan had already invoked the option) it might protect Pakistan's rights, but the decision of the court would not be adequate for maintaining peace and sufficient food for the people of the Indus Basin.¹⁶ Therefore, after discussing the water management issue with Indian and Pakistani leadership and engineers, Mr. Lilienthal envisioned that the TVA water management system could have helped in the development of Indus Basin Rivers for the betterment of both the countries. On his return to the U.S., he published an article on August 4, 1951 to propagate his ideas by proposing number of suggestions including:

- The whole Indus Basin must be developed as a unit-designed, (one unite with joint system) built and operated as a unit as in the seven-state TVA system back in the United States;
- International financing be arranged, possibly by the World Bank, to fund the work and Indus Basin engineering corporation to be founded;

- Representatives are included from both countries as well as from the World Bank; Greater storage facilities and cooperative management be implemented.¹⁷
- Mr. Lilienthal proposal was based on joint management of the Indus Basin which would be helpful for the future development of the Indus Basin irrigation system and was enough to minimise the dispute between the two countries.

World Bank's Involvement in the Dispute

World Bank accepted the suggestion of Lilienthal and subsequently Mr. Eugene R. Black¹⁸ invited the leaders of both countries for negotiations. Contrary to what was anticipated, both the countries accepted mediation from the good office of the World Bank. Mr. Black further explicitly outlined 'essential principles' that might be followed for conflict resolution in a letter:

- The Indus Basin had enough water for both countries;
- In resolving the Sutlej river dispute, the basin would be treated as a single unit and all the rivers were to be discussed;
- The negotiations would put aside past grievances and retain a technical rather than a political focus.¹⁹

Conciliation Process: An Analysis

Pakistan persuaded the World Bank to accede to its requirements for the construction of the most compulsory storage facilities sidelined by the 1954 plan which was in need of an amendment in the light of 1956 Aide Memories-envisaging the storage facility on western rivers for Pakistan. India was, in no case in mode of acceding to any further financial obligation in favour of Pakistan. Hence, it tried to retain the discussion over the issue around 1954 plan. To minimise the hostilities separate discussions were held at many levels on various interconnected issues;

- Pakistan needed technical assistances;
- It needed finance for any super structure build up;
- It needed time to meet the various requirements for a near profitable solution but it needed and needed most immediately a continuous flow of water for its waters starved lands in the West Punjab.²⁰

India had the necessary technical know-how, financial position and/or the reputation to meet its goal ranges of water requirements. The Western Rivers, all falling in Kashmir, were a matter of

dispute between the two countries contesting for water. It was the time when India was finding itself under acute pressure over the Kashmir plebiscite issue from United Nations in general and America and his close allies in Europe in particular.²¹ India was much convinced over the Kashmir remaining its integral part for long.²²

Separate discussions were held at multiple levels on various interconnected issues, Pakistan needed technical assistance; it needed financial assistance for any super structure up (water storage and canal head-works facilities on western rivers) to be build; it needed time to meet the various requirements for a near profitable solution but it most importantly needed a continuous supply of water for its unavailability starved lands in the west Punjab. Taming of the Sindh, for the present, was a far cry. From April 1, 1955 to March 31, 1960, (save a period between) October 1, 1957 to September 30, 1958, many ad-hoc agreements were signed to ease the situation. Under such agreements India reluctantly agreed to help Pakistan with water for a specified period and in a specified quantity per year. Pertinent to mention, the period of no-negotiation for October 1, 1958 to September 30 could have created havoc in Pakistan but the floods that occurred in the interim subsequently provided some temporary relief to Pakistan with a pain to negotiate surplus water.²³

India had earlier understood the importance of its Punjab Rivers and their future utility for its developmental purposes. Western rivers were of less utility for it; both for East Punjab which was going to be the food basket of India in future and for its water starved region Rajasthan. India had already discussed the possibilities of extending eastern rivers (Sutlej, Ravi and Beas) to feed its Yumna Canal (in future) and desert lands of Rajasthan. So India gave Pakistan what it was already receiving, without much-ado, of bought prosperity for its Punjab and a life for its future water strategy. Pakistan was to accept under duress the basic basin division plan of 1954.

Table 1: Water allocations from Indus negotiations, in MAF/year 1

Plan	India	Pakistan
Initial Indian	29.0	90.0
Initial Pakistani	15.5	102.5
Revised Indian	All of the eastern rivers and 7% of the western rivers	None of the eastern rivers and 93% of the western rivers

Revised Pakistani	30% of the eastern rivers and none of the western rivers	70% of the eastern rivers and 93% of the western rivers
Bank Proposal	Entire flow of the eastern rivers 2	Entire flow of the western rivers 3

Source: Michel Aloys Arthur, The Indus Rivers: A Study of the Effects of Partition (1967).

While political circle in Pakistan was opposed to it the farmers of western Punjab were getting impatient for want of water.²⁴ Pakistan was promised suitable funds and technical know-how by the negotiators (World Bank) as was a need to realize its present position and requirements. The plan not only promised to it the help for distribution of and linking of canals but also much needed electricity for its future. The political instability, economic deterioration and alienation of the people (s) of Pakistan encouraged its military to take over the power and dismiss existing political institutions. The new military ruler Field Marshal Muhammad Ayub Khan, claimed legitimacy on the promises to rectify the law and order situation in Pakistan, put its economy on wheels and solve the pending disputes with India especially water – more importantly and was considered a huge impediment in the agriculture development of Punjab.²⁵

The articles and newspapers write-ups of this period in Pakistan could easily be divided into politically motivated and economy oriented ones. The East Pakistan, too had a (potential) water sharing problem with India therefore, the Pakistan had limited options. The needs of Indian Punjab could not be ignored. India had unilaterally taken many water rechanneling projects (canals head-works) in hand. Pakistan Military ruler Ayub Khan took the advice of his economic advisors. Pakistan agreed to 1954 plan, four years after in October 1958 and 1956 Aide-Memoires in December 1958.²⁶

India's stand was clear and found by the 'technical mediating power' on water more practical and pragmatic, at that particular time, and hence offered to Pakistan with the commitment of appropriate financial assistance of \$ 174 million. The India had by its political and practical action already divided the Indus Basin system into two – the Eastern under its possession and the Western Indus river system, out of India's control. The World Body (World Bank) gave legitimacy to what had already, virtually happened after, convincing Pakistan on the postponement of its political issues with India. Pakistan well understood its economic gains and

accepted the division of rivers as an only alternative feasible and pragmatic solution.

It was in October 1958 when Pakistan unconditionally accepted the 1954 plan (the division of the basin) and the 1956 Adie-Memoire (storage facilities on the western rivers in December 1958).²⁷ Though India had already favoured 1954 plan but to settle various modalities and supplementary debates and questions it took two more years to draft the final version of treaty ready to be signed by the parties concerned. Karachi, the capital city of united Pakistan was destined to play host for this much publicized and bilaterally debated Indus Water Treaty, which was formally signed on 19th September 1960. The treaty was inked by Jawaharlal Nehru, the Prime Minister of India, Muhammad Ayub Khan, the President of Pakistan and Sir William Iliff of the World Bank.²⁸

As per the Treaty, the use of the western rivers, namely the Indus, the Chenab and the Jhelum, was assigned to Pakistan, with a provision for limited volume of water from these rivers for India's consumption.²⁹ The Article III (2) (d) of the Indus Water Treaty allows India to utilise the water of western rivers for (i) domestic use, (ii) non-consumptive use, (iii) agriculture use (iv) generation of hydroelectric power from run-of-the river projects,³⁰ while the waters of the eastern rivers, the Ravi, the Sutlej and the Beas, which constitute 19 percent of the overall supply of the Indus Basin, was exclusively available for India.³¹ The Indus Water Treaty was an arrangement to bring two countries together, enter a compromise and work for better future and developmental avenues. It was a compromise to ease the situation and let the two countries initiate their practical arrangements for the appropriate water management projects under their control.

The Treaty provided a transitional period of ten years to enable Pakistan to undertake the replacement of works on western rivers, through the international financial assistance. The financial assistance made by the World Bank, which was received from some of the friendly countries, and India also facilitated the agreement. Fund (IBDF) of \$ 894 million. Out of the total, \$ 640 was contributed by friendly countries, such as Australia, Canada, West Germany, New Zealand, the United Kingdom and the United States. To facilitate the agreement, India also contributed \$ 174 million, and \$ 80 million was given from the proceeds of the World Bank loan to Pakistan.³² The Indus Treaty is widely considered one of important water treaties of the world. The World Bank helped the two countries to work as far as possible in an

environment of peace and harmony. Among other components, the treaty also included a dispute-resolution mechanism that relies primarily on bilateral mechanisms; it also possesses a provision for comprehensive external apparatus, in case agreement could not be reached bilaterally.

Current Issues and Challenges/Confrontation over the use of Indus Rivers Water

Although the Indus Treaty has been an emblem for maintaining water dispute and achieving the bilateral relations, but last one and half decades are witnessed that the Treaty has been under strain. The growing economies and the energy needs are nurturing a different set of challenges. Though, water is technically not a core issue between the two countries, differences over the use of water of the rivers is a core issue.³³ The Treaty allows India to take water for run-of-the river projects, on western rivers. However, India has constructed many projects on western rivers, which Pakistan claims as the violation of the Treaty and considers as the threat to its economic security, as the stoppage of water from western rivers could devastate Pakistan's agriculture.

Indian Stand over Projects

India says that the construction of projects is endorsed by the treaty and all projects are within the limitations of the Treaty's criteria. India replied, citing the norms of the treaty and Indian experts have expressed frustration over long delays in approval of these projects due to objections held by Pakistan, as around 27 projects on the western rivers have been questioned by Pakistan.³⁴ Indian analysts and media are of the view that the provision of neutral experts should be the last option and not the recourse for each and every project that India proposes. The reference does cost time, money and efforts, in terms of delaying the projects, thereby increasing the cost of not only construction but also related expenditures in not making use of the hydro potential.³⁵

Pakistani Apprehensions over the Projects

First, Pakistan, as lower riparian has apprehensions over the projects such as Salal, Baglihar, Kishanganga, Wullar Barrage, Uri Nimo-bazgo etc. and it considers them as the existential threat to its inhabitants, as stored water can flush out the land and property. Secondly, Pakistan also fears that these projects will reduce the water flow in critical times, especially during the sowing seasons. From a security point of view, some strategic analysts in Pakistan

are of the view that the Indian intentions are directed towards flooding Pakistan during military action and that flood waters could destroy Pakistani defences. Pakistan has also certain economic and defensive apprehension on the construction of projects, especially on Jhelum and Chenab River.

In 2008, after filing of the Baglihar project and subsequent reduction of the water flow in Pakistan, the project has drawn serious concerns and gained critical attention in Pakistan's political circles. With regard to Wullar Barrage, it has also incurred political and strategic voices from Pakistan, as it fears that with the construction of the Wullar Barrage in Indian Occupied Kashmir (IOK), India could close the gate of Wullar Barrage during a war-like situation, enhancing the ability of Indian troops to enter Pakistan.³⁶ The project is also frequently criticized in farming communities of Punjab and Sindh. The technical difficulties in interpretations of the Treaty can be attributed to political motives rather than to differences over technical and engineering aspects of water management. Some non-state actors, especially radical extremist groups from two countries have their vested interests in the complex issue of water sharing and the treaty. Some are of the view that if the gap between water availability and requirements widens, terrorist operations and recruitment in the region will increase.³⁷

Analysis over Current Water Sharing Issues

Control of water from western rivers has received considerable attention from both the sides. It is because of the construction of the projects on western rivers, Pakistan fears that India is exercising 'hydro hegemony' on these projects and it will use these projects as a bargaining tool with Pakistan to settle other related issues. In addition, the political mobilization on dam construction on the western rivers has stimulated anti-Indian sentiments among farmer associations, military consortium, politicians, and fundamentalist groups in Pakistan. But in reply to Pakistan's apprehensions on western rivers, Indian position is that it is not violating the spirit of the treaty. Secondly, Pakistan's security fears are misconceived as India cannot flood Pakistan without flooding it first within its territory.

Conversely, India's concern is to improve its energy efficiencies and economy, for which it is endeavouring to utilise the full power potentialities. Its booming economy, waves of globalization, overwhelming urbanization push India to generate more and more electricity from hydro-power projects on

Himalayan Rivers.³⁸ Its peak power demand in the year 2007-08 was 108,886 MW, while the peak power demand met was 90,793 MW; there was a shortage of 18,093 MW or 16.6 percent of peak demand. The projects on western rivers are a crucial part of India's plan to close that gap. The hydro-power sector is also an attractive revenue earner for Himalayan states, which are underdeveloped in the industrial sector as compared to other states. Therefore, the exploitation of hydro power from Himalayan Rivers is the only source to boost their industrial sector.³⁹

In 1960, both governments had agreed to sign the Indus Water Treaty, but public reaction to the treaty was very different. People in Pakistan criticised the loss of three eastern rivers to India, although Pakistan received a huge amount of financial aid in lieu of this loss even though this loss imposed heavy financial and ecological penalties upon Pakistan.⁴⁰ In 1964, political circle in Pakistan criticised on President Ayub Khan, and used the term as 'selling' the historical rights of the country over the common rivers.⁴¹ While in India, the public often criticised the loss of its three western rivers to Pakistan and the treaty makes it impossible for India to utilise the full power potentialities on three western rivers.⁴² The outcomes of the on-going disputes have broader implications not only for future water development but also about India-Pakistan relations. The Indus Treaty has served both the countries and stood with the test of time, but the growing economies of both countries and the energy needs are nurturing a different set of challenges. Multiplying problems related to acute water supply have also put on serious burdens on the Indus Basin Rivers. Exploitation of water with the last drops means the violation of the treaty.

Given the present political atmosphere viz-a-viz water, it seems that water has gained a critical value within the two countries and none of the parties are ready to compromise. It seems that the temperament of the political systems, interests of non-state actors and the regional political atmosphere determine the state of affairs of India-Pakistan conflict over water. Indo-Pak water relations can be well understood taking into consideration the statement of former President of Pakistan Asif Ali Zardari in the Washington post. According to Asif Ali Zardari,

*"The water crisis in Pakistan is directly linked to relations with India. Its relations with India could prevent an environmental upheaval in South Asian region, but failure to do so could fuel the fires of discontent that may lead to extremism and terrorism."*⁴³

The Indus water dispute is overtly linked with Jammu and Kashmir, (a disputed territory) where the major rivers of disputed water originate. It is quite vividly expressed by the US Assistant Secretary of State, George McGhee, in his letter to David Lilienthal, in 1951.

“A settlement of the canal waters question would signify those basic reversals of policy by the governments of both India and Pakistan without which there can be no political rapprochement. Thus, the canal waters question is not only a functional problem, but also a political one linked to the Kashmir dispute.”⁴⁴

In 1960, it was hoped that water dispute settlement would pave the way for resolving the Kashmir dispute.⁴⁵ In fact, at the time of signing of Indus Treaty Jawaharlal Nehru the Indian Prime Minister, before coming to Pakistan expressed in the Indian parliament that he was ready to resolve any issue including Kashmir.⁴⁶ Similar views and hopes were also expressed by Muhammad Ayub Khan the Pakistani President.⁴⁷ Hitherto, three wars has been fought between India and Pakistan over multiple issues, but the dispute still remains unresolved and problematic. Until and unless the Kashmir issue is settled, both countries will not be able to develop good relations in the future. If, the countries came up with an agreement to settle the Kashmir dispute, nothing will prevent them from building good relationships.

Conclusion

In the beginning of 19th century there was only one political issue in the Indian subcontinent, i.e. to get independence from British rule, but after independence, the sub-continent faced more grave geopolitical issues, which includes the distribution of Indus rivers water as well. The dispute over the water of the Indus Basin between India and Pakistan is notable not only for its size, significance and complexity but also in that it was brought to conclusion by a comprehensive Treaty. The dispute lasted for twelve years from 1948 to 1960 but fortunately the World Bank's intervention brought the parties together and guided them towards a solution. The resolution of dispute was made with the landmark agreement of Indus Water Treaty. This monumental treaty was the outcome of eight years of discussions and negotiations between the governments of two countries under the aegis of the World Bank. In fact, the Indus River, a basic source and a powerful stimulant to economic development of the shareholders and has also linked the

riparian countries and their people together. On the other hand, water sharing mechanism is a complex issue which has multiple parameters and addressed economic, social, political and ecological gains. Under these circumstances any suggestion is to be honestly implemented on the existing Treaty with spirit of good will and cooperation. The Article VII (I) of the Indus Water Treaty states that the two parties recognize that they have a common interest in the optimum development of the Rivers and calls upon both sides to cooperate, by mutual accord, to the fullest possible extent, in undertaking engineering works in the Rivers.⁴⁸ Moving forward on Indus Basin rivers dispute with particular thinking or mind set can never see the end of path. The complexities involved in the water sharing issue such as lack of political will, geographical based stands, high level of mistrust between the people of two countries, and linkage of Kashmir issue and deep buried hostilities offer formidable obstacles to minimise the issue. Therefore, any move forward on the use of water between two countries will need a deep analysis of mind sets on both sides.

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