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Changing Course of the Indus Waters Treaty

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With India insisting that Pakistan revise the agreement on how the waters of the six rivers that make up the Indus Basin are shared, the Indus Waters Treaty (IWT) has entered choppy waters. While there have been disagreements, in the past, regarding the sharing of water, this time the dispute resolution process itself is under question. The step to give Pakistan notice and ask for a response within 90 days is a significant move that could result in the unravelling and renegotiation of the water-sharing agreement. The treaty is frequently regarded as a unique illustration of the India-Pakistan consensus during a period when the two countries had ceased their commerce, cultural, and most bilateral talks.

Understanding the Indus Waters Treaty

On September 19, 1960, India and Pakistan signed the IWT following more than nine years of negotiations, brokered by the World Bank.¹ The Indus River system encompasses the Beas, Ravi, Sutlej, Indus, Chenab, and Jhelum. The treaty primarily established and regulated the rights and obligations of both countries for the use of the water from these rivers. When the agreement was signed, a framework for communication and collaboration between the two countries was outlined in the treaty. The Beas, Ravi, and Sutlej, collectively known as the 'three eastern rivers,' have been ceded to India under the terms of the treaty.² While Pakistan was given jurisdiction over the three western rivers- Indus, Chenab, and Jhelum. Of the entire water carried by the Indus system, India receives roughly 20 per cent while Pakistan receives 80 per cent.³ According to the treaty, India is permitted to utilise the western river waters for unrestricted non-consumptive uses, including power generation, navigation, fish farming, and others, as well as limited agricultural usage.⁴

Why is India Seeking to Revise Indus Waters Treaty?

On January 25, the Indian side delivered the 'notice for revision' of the treaty via the two sides' respective Indus Waters Commissioners. India has always been a steadfast supporter and a responsible partner in executing the IWT in law and spirit. India was forced to issue a notice of amendment due to Pakistan's adamant stance on the treaty.⁵ India said that the notification was sent in response to Pakistan's ongoing 'intransigence' in carrying out the terms of the treaty by repeatedly objecting to the development of hydroelectric projects on the Indian side.⁶ The notice for amendment is intended to give Pakistan the chance to engage in intergovernmental consultations within 90 days to address the significant IWT breach. Additionally, via this process, the treaty will be updated to reflect the lessons learnt during the previous 62 years.⁷ The notice was given in accordance with Article XII (3) of the treaty, which reads: "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".⁸

India is requesting changes to the IWT that are likely to address concerns with the agreement's dispute resolution process. The notice appears to be a result of the long-running conflict over two hydroelectric power projects that India is constructing; one on the Chenab and the other on the Kishanganga river, a tributary of the Jhelum.⁹ However, the Indian projects are of run-of-the-river nature, hence it doesn't violate the reservoir provision of the treaty. Though the dispute settlement procedures outlined in the treaty have been used numerous times in response to Pakistan's objections to these projects, but no resolution has been found. Pakistan has expressed worries about the design of the Indian dams, which are intended to generate electricity, and has accused India of infringing the treaty by allegedly obstructing the flow of the rivers that supply water for 80 per cent of its irrigated crops.¹⁰ These accusations have been refuted by India. India has instead charged Pakistan with abusing and even breaching dispute settlement provisions set forth in the treaty.¹¹

The mechanism for resolving conflicts is outlined in Article IX of the treaty and is divided into three categories: questions, disagreements, and disputes.¹² The agreement includes a graded mechanism to deal with such matters; 'questions' are handled by the two Indus Waters Commissioners, 'differences' are settled by a neutral expert appointed by the World Bank, and 'disputes' are brought before the Court of Arbitration, a seven-member arbitral tribunal whose chair is also appointed by the World Bank. Pakistan requested the appointment of a neutral expert in 2015 to address its concerns with the two hydropower projects, but unilaterally withdrew that request in 2016 and asked for a Court of Arbitration instead. India submitted a separate application, requesting the appointment of a neutral expert, which is a lower level of the dispute resolution process provided in the treaty. India maintained that Pakistan's bid for a Court of Arbitration breached the treaty's graded mechanism of dispute settlement. Consequently, the arbitrator's chair and a neutral expert were both chosen by the World Bank in 2016. However, both processes were put on 'hold' by the World Bank in 2016, but this was lifted at Pakistan's request in March 2022, and work on them has since resumed. The World Bank terminated the parallel processes in 2016, citing the possibility of inconsistent results that would jeopardize the pact itself.¹³ On February 3, however, the World Bank announced that it was allowing the two distinct processes to proceed concurrently. Despite the best efforts of all parties concerned over the years, the World Bank believes that the treaty itself is at risk because no satisfactory solution has been found. It has consequently decided to resume the two distinct processes that Pakistan and India have both sought. However, India has maintained that

having two concurrent dispute-resolution procedures is against the terms of the treaty and that the World Bank is not in a position to interpret the treaty.¹⁴ India has constantly raised the prospect that the two processes could result in conflicting decisions, which could create an unusual and legally untenable situation. India has therefore been forced to submit a notice of modification of the treaty due to this infringement of the IWT requirements.

Further, India has significant technical and legal grounds to ask for treaty amendments. Despite being a thorough document that addressed almost every aspect of dam construction and water usage, the IWT's letter has started to diverge from its original intent. Many of the technical requirements outlined in the treaty no longer follow its spirit, which was to promote collaboration between India and Pakistan and ensure the best possible use of water resources in the Indus River basin. The treaty was established decades ago, therefore it is not designed to account for the development of hydropower plants using new techniques, technologies, and studies that extend their lifespan and efficiency.¹⁵ More crucially, Pakistan has utilised the treaty to escalate disagreements over designs to the level of disputes rather than working to resolve any such disagreements, which India claims adhere to the treaty's stipulations. This causes the Indian projects to be delayed, raising their costs and jeopardising their techno-economic sustainability.

India has issued a notice regarding its intent to modify the IWT. However, it remains to be seen if Pakistan is willing to engage in negotiations to amend the treaty or if it will revert to its old tactics and increasingly deteriorating strategy of impeding any action by India.

NOTES:

¹ Basudha Das, "Indus Waters Treaty: India issues fresh notice to Pakistan for modification in water-sharing deal," *Business Today*, January 27, 2023, <https://www.businesstoday.in/latest/world/story/indus-waters-treaty-india-issues-fresh-notice-to-pakistan-for-modification-in-water-sharing-deal-367796-2023-01-27>. Accessed on February 20, 2023.

² "The Indus Waters Treaty 1960", *Ministry of Jal Shakti*, <https://jalshakti-dowr.gov.in/sites/default/files/INDUS%20WATERS%20TREATY.pdf>. Accessed on February 20, 2023.

³ Ibid.

⁴ Ibid.

⁵ "India issues notice to Pakistan to modify Indus Waters Treaty", *Hindustan Times*, January 28, 2023, <https://www.hindustantimes.com/india-news/india-issues-notice-to-pakistan-to-modify-indus-waters-treaty-101674839706437.html>. Accessed on February 20, 2023.

⁶ Suhasini Haider and Kallol Bhattacharjee, "India sends notice to Pakistan to amend 1960 Indus Water Treaty," *The Hindu*, January 27, 2023, <https://www.thehindu.com/news/national/india-notifies-pakistan-on-modification-of-indus-waters-treaty/article66438780.ece>. Accessed on February 20, 2023.

⁷ Ibid.

⁸ Ministry of Jal Shakti, n. 2.

⁹ Harikishan Sharma and Amitabh Sinha, "The Indus Waters Treaty, and why India has issued notice to Pakistan seeking changes", *The Indian Express*, January 28, 2023, <https://indianexpress.com/article/explained/india-pakistan-notice-indus-waters-treaty-8408109/>. Accessed on February 20, 2023.

¹⁰ Nachiket Deuskar, "Explainer: Why India wants to modify the Indus Water Treaty after 62 Years", *Scroll*, February 8, 2023, <https://scroll.in/article/1043303/explained-why-india-wants-to-modify-the-indus-water-treaty-after-62-years>. Accessed on February 20, 2023.

¹¹ Brahma Chellaney, "South Asia's looming water war", *Project Syndicate*, February 16, 2023, <https://www.project-syndicate.org/commentary/india-pakistan-indus-waters-treaty-renegotiation-by-brahma-chellaney-2023-02>. Accessed on February 20, 2023.

¹² Ministry of Jal Shakti, n. 2.

¹³ "World Bank Declares Pause to Protect Indus Waters Treaty", *The World Bank*, <https://www.worldbank.org/en/news/press-release/2016/12/12/world-bank-declares-pause-protect-indus-water-treaty>. Accessed on February 20, 2023.

¹⁴ Nachiket Deuskar, n. 11.

¹⁵ Sushant Sareen, "Indus Waters Treaty: Opening the water front", *Observer Research Foundation*, January 28, 2023, <https://www.orfonline.org/expert-speak/indus-waters-treaty/>. Accessed on February 20, 2023.