

CONTEMPORARY HYDROLOGICAL WEAPONIZATION: STRATEGIC FALLOUT OF THE INDUS BASIN

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Abstract

The Indus Waters Treaty (IWT) has remained one of the most resilient bilateral water-sharing arrangements, surviving amid three major wars. Yet it now faces renewed geopolitical stress, brought on by the current hostile situation between India and Pakistan, rendering the question of its suspension and the divergence of the Indus waters of utmost importance. This paper, under the larger ambit of contemporary food security, presents a critical inquiry into the weaponisation of water. The study explores the legal permissibility and strategic ramifications of a unilateral suspension or breach of the IWT under its own terms and through the lens of the law of treaties and customary international law governing transboundary watercourses. In addition, international responsibility is held against states and their heads of state for the targeting of hydrological infrastructure indispensable to the civilian population. The paper emphasises the dispute-resolution mechanisms under the IWT and the possible recourse to the World Bank and the ICJ. A cornerstone of the paper is the integration of quantitative assessments of India's hydrological and infrastructural capacity, including technical dam specifications, the basin's sources, and seasonal effects on water levels and flow, to assess the veracity of India's claim to divert the flow of the Indus. Ultimately, the paper concludes by reaffirming that a unilateral suspension of the Treaty and the targeting of infrastructure containing dangerous forces constitute a violation of international law, while diverting the Indus remains materially unfeasible and impractical given India's current structural limitations.

Keywords: Indus Waters Treaty, Water Terrorism, Unilateral Treaty Suspension, Transboundary Water Law, Hydropolitics, India-Pakistan Conflict, River Diversion Infrastructure.

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Introduction

In the backdrop of the current conflict between Pakistan and India, the centre-stage has been occupied by India's politically charged employment of water-terrorism, which will be explored through the violation of the mutual Indus Waters Treaty (IWT), signed at Karachi in 1960, through the perspective of international law encompassing the targeting of water infrastructure in Pakistan.

A treaty is construed to mean an international agreement concluded between states in written form,¹ by an individual producing 'appropriate full powers',² or others, who by virtue of their functions do not need to produce full powers,³ whereby states duly consent to be bound by it.⁴ Brokered by the World Bank, the IWT qualifies as a treaty, as it is an international water sharing agreement, concluded between two riparian, states in written form, signed on behalf of India by the then Head of Government, Prime Minister Jawaharlal Nehru, and on behalf of Pakistan, by the then Head of State, President Field Marshal Mohammad Ayub Khan - both having 'communicated to each other their respective full powers, and having found them in good and due form'.⁵ As to the question of due consent: subsequent ratification remains a requirement, both under International law⁶ and under the IWT itself, by virtue of article XII(2), premised upon the 'exchange of the instruments of ratification at New Delhi'.⁷

Permission under the IWT of Unilateral Abeyance, and Subsequent Breach

A 'breach' under international law is construed as 'any violation by a state of any obligation, of whatever origin',⁸ an act 'contrary to the treaty right[s] of another state',⁹ and a state's 'failure to comply with its treaty obligations'.¹⁰ In the present case, India's abeyance of the IWT may result in a breach of its obligations under Article III of the IWT, which provides for Pakistan's unrestricted use of the western rivers.¹¹ Any attempts to materially change the flow in any channel of the river,¹² increase the catchment area of the river,¹³ or to divert, alter or obstruct the natural channels,¹⁴ will be breaches of the IWT. In addition, India's failure to adhere to the mutual agreement, putting the IWT in abeyance in the absence of a provision that permits such a step, may, by itself, constitute a material breach, defeating an integral part of its object and purpose.¹⁵

The IWT does not contain any provision or mechanism thereunder which may permit a unilateral suspension or termination of the treaty. However, methods of dispute resolution are present under Article IX.

Customary international law dictates that a treaty which does not contain any provisions regarding its termination, denunciation, or withdrawal, is not subject to denunciation or withdrawal unless: the intention of the parties is evinced to admit the possibility of such, or if the nature of the treaty may imply a right to do so.¹⁶ While abeyance has not been mentioned at all in the IWT, article XII(4) provides for the only method of termination of the treaty: through another duly ratified treaty.¹⁷ Prime Minister Narendra Modi and his cabinet, primarily constituting the executive arm of the state, rather than the legislative arm, are not vested with the authority to set aside the IWT, precluding parliamentary ratification - as that in itself is not only a breach of article XII(4) of the same, but purports to strike at the heart of the core democratic principle of the doctrine of separation of powers; questioning the authenticity of India's claim of being the world's largest democracy.

The Law of Treaties

1. Permissibility of Unilateral Cessation of Obligations

The Vienna Convention on the Law of Treaties 1969 is the foremost, primary instrument regulating treaty obligations, rights, and interpretations. Since it explicitly 'applies to treaties between states',¹⁸ it should be applicable to India's unilateral violations of the IWT, especially since many provisions of the VCLT have attained customary international law status. The VCLT explicitly states that 'the validity of a treaty or of the consent of a state to be bound by a treaty may be impeached only through the application of the present convention',¹⁹ reinforced by the International Court of Justice (ICJ).²⁰

A treaty can only be invalidated on account of error,²¹ fraud,²² corruption of a representative of a state,²³ coercion of a representative of a state,²⁴ coercion of a state by the threat or use of force,²⁵ or if the treaty conflicts with a peremptory norm of general international law.²⁶ Given that the IWT was brokered by the World Bank and freely agreed between India and Pakistan, the idea of any form of coercion is not grounded in facts, thereby ceasing any possibility of invalidating the IWT.

Furthermore, while the VCLT specifically mentions a multilateral treaty, the principles of the same can be applied to bilateral treaties, wherein suspension may only occur if the treaty has provided for it,²⁷ is not prohibited by the treaty, where suspension 'does not affect the enjoyment by the other parties of their rights under the treaty',²⁸ is not 'incompatible with the object and purpose of the treaty',²⁹ and by way of parties concluding a new treaty; through which implied consent is granted for the termination or suspension of the old one,³⁰ or by which the old treaty is rendered incompatible with the new one.³¹

Primarily, there are four ways by which a treaty can be suspended and/or terminated: material breach by one party, entitling the other 'to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part';³² supervening impossibility of performance, stemming from the 'disappearance or destruction of an object indispensable for the execution of the treaty',³³ *rebus sic stantibus* (fundamental change in circumstances), but not which existed at the time of conclusion and were not foreseen;³⁴ and the emergence of a new *jus cogens* norm, conflicting with the treaty, thereby voiding it.³⁵ The provisions of Part V of the VCLT, especially those regarding suspension, termination, and invalidation, have attained customary international law status and thus cannot be subverted.³⁶

It is duly contested, that suspension is not permissible under the IWT, any suspension directly affects Pakistan's rights upon the western rivers, which it heavily relies upon by notion of it being an agrarian economy, and doing so would be in contravention to the object and purpose of the treaty - to attain 'the most satisfactory utilisation of the waters of the Indus system of rivers'.³⁷

It is further argued that termination could not be possible under any of the provisions of the VCLT because, firstly, only Pakistan can rely on India's material breach of the IWT to terminate it, rather than India relying on their own breach to do so unilaterally. Secondly, the supervening impossibility of performance may only frustrate the mutual agreement between India and Pakistan, if stemming from a permanent loss of an object indispensable to the execution of the treaty, wherein India cannot rely on the impossibility argument if it stems from its own breach of a treaty obligation or even an independent one,³⁸ and given that no such loss has been suffered by India, the obligations are not an impossibility to perform.

Thirdly, an argument as to fundamental change in circumstances by India would also fail unless the existence of such ‘circumstances constituted an essential basis of the consent of the parties’.³⁹ India cannot rely on fundamental change arising from its own breach of a treaty or independent obligation,⁴⁰ because India has chosen to put the IWT in abeyance, on the basis of unsubstantiated accusations of cross-border terrorism, which Pakistan has categorically denied.

It is paramount to understand that even if India’s claims were somehow doctored to sound cogent, that would still not warrant the suspension or termination of the IWT because of two reasons: ‘the severance of diplomatic or consular relations between parties to a treaty does not affect the legal relations established between them by the treaty’⁴¹ and if fighting three wars with Pakistan⁴² did not constitute sufficient basis for termination, unsubstantiated claims of covert terrorist activity would be a far-fetched attempt to do the same, as the threat of war was always real.

2. Consent and the Good Faith Principle

Provided that India does not have any basis for terminating or suspending the IWT, it should remain binding and in force, by virtue of the principle of *pacta sunt servanda*. The preamble of the VCLT emphasises the importance of free consent and good faith in the formation of agreements,⁴³ making them binding and obligating their performance in good faith.⁴⁴ The IWT was signed, and that signature (along with the exchange of instruments of ratification) constituted an expression of consent to be bound, creating binding rights and obligations for the signatories.⁴⁵ The same has been reiterated in the Maritime Delimitation and Territorial Questions between Qatar and Bahrain case and the Land and Maritime Boundary between Cameroon and Nigeria case.⁴⁶

Once a treaty enters into force, further reaffirmations of consent are unnecessary, and the parties are under an obligation to conduct themselves in a manner that makes the negotiations meaningful.⁴⁷ It has long been established that a treaty should be interpreted in good faith, in accordance with the ordinary meaning of its terms, as per the *Van Bokkelen v Haiti* and *Metzger and Co v Haiti* cases.⁴⁸

The ordinary meaning of the IWT is to produce an adequate solution for sharing the waters of the Indus, and such has relatively peacefully persisted for decades, precluding India's current upheaval of legal norms. Article 18 of the VCLT further strengthens the *pacta sunt servanda* rule through the application of the good faith principle, the introduction of which into the VCLT makes it a genuine legal obligation,⁴⁹ and the absoluteness of which is demonstrable through the *Termination of employment (Austria)* case.⁵⁰

Henceforth, India should not be allowed to violate the IWT, because such treaties are an imperative source of international law⁵¹ and the basis of legal expression and state sovereignty, binding states to what they have agreed upon.⁵² In essence, a treaty cannot be unilaterally terminated at the whim of one state.⁵³

Independent responsibility under general customary international law

Hypothetically, even if India managed to make a case for termination under the VCLT, its international responsibility may arise independently, as the provisions of the VCLT or even the IWT 'shall not in any way impair the duty of any state to fulfil any obligation embodied in the treaty to which it would be subject under international law independently of the treaty.'⁵⁴ Let us now begin to dissect these international obligations, which, too, form part of customary international law and are theoretically immune to subversion, namely: the doctrines of reasonable utilisation/equitable, abus de droit (abuse of rights/no significant harm principle, the duty of cooperation and the duty of environmental protection.

1. Equitable Utilisation

The doctrine of equitable and reasonable utilisation can be traced back to Article 55 of the UN Charter,⁵⁵ and UN General Assembly resolution 1803 (XVII) of 14 December 1962, "Permanent sovereignty over natural resources".⁵⁶ Moreover, the doctrine has also been envisaged in article IV of the Helsinki Rules, 1966,⁵⁷ Rio Declaration on Environment and Development 1992, principle 3,⁵⁸ The Convention on the Law of the Non-navigational Uses of International Watercourses (hereafter referred as to 'UNWC'), 1997, article 5,⁵⁹ and the Berlin Rules on Water Resources, 2004, article 12⁶⁰ - further strengthening the doctrine, the implied inclusion of which can be seen through the preamble of, and articles VI-VIII of the IWT.

Moreover, the same has been included in the preamble of the Agreement on sharing of the Ganges waters at Farakka and on augmenting its flow, signed at Dacca on 5 November 1977, and can also be discerned through the awards of both arbitrator McMahon and Goldsmid in the Helmand River case (river dispute between Persia and Afghanistan), wherein it was remarked that “*It is moreover to be well understood that no works are to be carried out on either side calculated to interfere with the requisite supply of water for irrigation on the banks of the Helmand*”.⁶¹ It is argued that, where India may imply a claim of territorial sovereignty, it has been made clear that the unlimited sovereignty approach to rivers purported by the Harmon Doctrine would not apply,⁶² nor did it arise in the dispute between Bolivia and Chile regarding the Lauca River,⁶³ nor in the Jordanian basin dispute.⁶⁴ Under the doctrine of equitable use, Pakistan is entitled to its fair share of the international watercourse, as now entrenched by the Kishenganga arbitral award.⁶⁵

2. Trail Smelter/No Significant Harm Principle

There is an obligation on India not to cause transboundary harm, on account of the doctrine of *abus de droit* and the no significant harm principle, reflecting the maxim, *sic utere tuo ut alienum non laedas* (use your own property so as not harm another’s), which has been encoded in UN General Assembly Resolution 2995 (XXVII), para. 3(1); “*in the exploration, exploitation and development of their natural resources, States must not produce significant harmful effects in zones situated outside their national jurisdiction*”,⁶⁶ and principle 21 of the Stockholm Declaration.⁶⁷

In addition, there is an obligation “*not to engage in military or any other hostile use of environmental modification techniques having widespread, long-lasting or severe effects as the means of destruction, damage or injury to any other State party*”,⁶⁸ where environmental modification refers to the “*deliberate manipulation of natural processes - the dynamics, composition or structure of the earth, including its biota, lithosphere, hydrosphere and atmosphere, or of outer space*.”⁶⁹ Given that the hydrosphere includes water on the surface of the planet, underground, and in the air, the object of the IWT, the Indus River and its basin, form part of the hydrosphere, whereby any modification techniques employed by India would make clear its warfare on water, and continued indulgence in water terrorism.

The obligation not to cause significant harm has also been codified in principle 2 of the Rio Declaration on Environment and Development 1992,⁷⁰ article 7 and 27 of the UNWC,⁷¹ and article 16 of the Berlin Rules on Water Resources.⁷² The judgements of the ICJ in the Corfu Channel case,⁷³ the legality of the threat or use of nuclear weapons case,⁷⁴ the Pulp Mills on the River Uruguay case,⁷⁵ and the Trail Smelter arbitration⁷⁶ make it abundantly clear that the obligation not to cause significant transboundary harm “is now part of the corpus of international law relating to the environment.”⁷⁷

Furthermore, UN Security Council Resolution 687 (1991) underscores that a state would be “liable under international law for any direct loss, damage - including environmental damage and the depletion of natural resources - or injury to foreign Governments, nationals and corporations”.⁷⁸

3. Duty of Cooperation

India is under an obligation to cooperate with Pakistan to navigate any measures to be undertaken by Pakistan regarding the Indus River, as outlined in UN General Assembly Resolution 2995 (XXVII), para. 3,⁷⁹ principles 22 and 24 of the Stockholm Declaration,⁸⁰ and article 8 and part III of the UNWC.⁸¹ Lastly, there also exists an obligation to protect the environment and the minimisation of environmental harm, which would irrefutably occur, if India tries to divert or restrict the flow of the river, because the “*opening out of new canals or the enlargement of old canals...may cause the river to divert itself entirely at such points and cause great loss to both countries.*”⁸² The duty to mitigate environmental harm has also been encapsulated in the Rio Declaration on Environment and Development 1992, principle 7; part IV of the UNWC; Chapter 14 of the Rules of the ICRC; and articles 8, 22, and 24 of the Berlin Rules on Water Resources.⁸³ Furthermore, even in a state of war, India cannot abrogate its obligation not to cause environmental harm, as explicitly underlined in Additional Protocol I of the Geneva Convention, articles 35(3) and 55.⁸⁴ Of utmost importance, therefore, is the Martens clause, which dictates that even if parties repudiate the conventions and the obligations they entail, “*the parties will remain bound by the principles of the law of nations, as they result from the usages established among civilised peoples, the laws of humanity, and the dictates of public conscience.*”⁸⁵

India's unsubstantiated claims of Pakistan sponsoring cross-border terrorist activity, which have prompted India's abeyance of the IWT, remain unsubstantiated because Pakistan denied involvement, and its invitation for an independent, impartial investigation was rejected. The matter was neither brought before the Security Council under articles 34-37 nor under chapter VII of the UN Charter.⁸⁶ Coincidentally, there is a peculiar pattern of the BJP-led Government whereby they have persistently threatened to cut off Pakistan's water⁸⁷ over unsubstantiated accusations, conveniently followed by elections in which they emerge victorious.⁸⁸ Therefore, an attempt to suspend or terminate the treaty, or to threaten to divert or block off Pakistan's access to the waters of the Indus under political pretences, would not constitute a lawful activity,⁸⁹ but would amount to weaponising food security by attempting to hold a population of 240 million hostage - an act of collective punishment.

Dams and Dangerous Forces, Permissibility of Targeting Indispensable Infrastructure

India has instigated a new phase of water-terrorism veiled behind aims of reprisal, to advance an assault on water. It is demonstrable through the targeting of the Nauseri Dam, which forms part of the Neelum-Jhelum hydropower project in Pakistan.⁹⁰ It is, as a result, imperative to outline the illegality flowing from such targeting, before proceeding to which, it may be noteworthy to mention, that simply carrying out a cross-border attack by India is violative of the core principles of the UN Charter,⁹¹ and the Edinburgh Resolution.⁹²

In international law, a distinction is drawn between military and non-military objectives,⁹³ where armed attacks on the latter are prohibited.⁹⁴ There should be adherence to the element of necessity in war, mandating refraining from destruction unless demanded by necessity,⁹⁵ which India has either refused to or failed to take into account. Even though the Nauseri dam constitutes a 'civilian object' for international law, a hydrospheric terrorist attack purporting the transformation of the Indus into a hydrological threat was carried out by India on Pakistani soil, irrefutably breaching the latter's sovereignty.⁹⁶

To determine the illegality of India's actions, it is essential to refer to the Edinburgh Resolution of 1969⁹⁷ and the Additional Protocol I to the Geneva Convention 1977,⁹⁸ whereby recourse will then be made to the consequences, through the Rome Statute⁹⁹ and Responsibility of States for Internationally Wrongful Acts (ARISWA).¹⁰⁰

Edinburgh resolution number 3(a) clearly prohibits the consideration of non-military objectives as military targets, especially those which are 'indispensable for the survival of the civilian population'.¹⁰¹ The rule of distinction has also been enumerated in article 48, 57(1) and 57(4) of the protocol.¹⁰² The protocol further mentions that attacks against the civilian population by way of reprisals are prohibited,¹⁰³ despite which India has chosen, as a method of reprisal for unsubstantiated terrorism accusations, to target water infrastructure in Pakistan, which is indispensable for the survival of its civilian population.

The Nauseri Dam constitutes a civilian object and is thus entitled to protection under international law, pursuant to article 52(1) of the protocol. As an indispensable object for the survival of the civilian population of Pakistan under Article 54(2) of the Additional Protocol, it cannot be made the 'object of reprisals' under Article 54(4) of the same. In addition, international law affords protection for installations containing dangerous forces, including dams, by way of rule 54 of the ICRC and article 56(1) of the protocol, which prohibit their classification as military objectives and their targeting by way of reprisals.

Consequences of Breaches of Territorial Sovereignty and the IWT

Having discussed Indian water-terrorism on two fronts: the abeyance of the IWT and the targeting of the Nauseri Dam, it remains pivotal to briefly discuss the possible consequences for both these acts, the former governed by ARISWA and the latter by the Rome Statute. Article 1 of ARISWA provides that "*Every internationally wrongful act of a State entails the international responsibility of that State*", where such acts exist out of conduct consisting of an action or omission 'attributable to the State under international law' and which 'constitutes a breach of an international obligation of the State.'¹⁰⁴

Conduct may be attributable to the state where any of its organs purports it, exercising any state functions,¹⁰⁵ and a breach exists “when an act of that State is not in conformity with what is required of it by that obligation, regardless of its origin or character.”¹⁰⁶

Part Two, chapters I and II of ARISWA outline the responsibility of a state that may flow from its internationally wrongful act, namely, the continued duty of performance,¹⁰⁷ cessation and non-repetition,¹⁰⁸ and reparation.¹⁰⁹ Reparation may include restitution,¹¹⁰ compensation,¹¹¹ and satisfaction.¹¹² Prime Minister Modi and his cabinet, constituting the executive organ of India, have directly prompted the abeyance of the IWT, in contravention of India’s international obligations under the IWT – thereby constituting an internationally wrongful act by India, for which liability may follow.

While the abeyance of the IWT would only attract fiscal reparation, the targeting of the Nauseri Dam may prompt individual criminal liability for Prime Minister Modi. The Rome Statute, the governing document of the International Criminal Court, in its article 5, takes cognisance of several offences to which its jurisdiction applies, including war crimes¹¹³ and the crime of aggression.¹¹⁴

An argument may be put forth in reference to the commission of war crimes under the Rome statute for: the extensive destruction of property not justified by military necessity, carried out unlawfully,¹¹⁵ intentionally directing attacks against civilian objects,¹¹⁶ intentionally launching an attack, knowing it may cause damage to civilian objects and incidental loss of life or injury to civilians,¹¹⁷ and the use of starvation as a method of warfare by depriving civilians of objects indispensable to their survival.¹¹⁸ The argument may be dispelled on account of the damage being trivial under articles 8(2)(a)(iv) and 8(2)(b)(xxv), but it may persist under articles 8(2)(b)(ii) and 8(2)(b)(iv).

Thirdly, liability for the crime of aggression may also be argued in respect of Prime Minister Modi’s actions, which entails the direction of ‘*political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations*’.¹¹⁹ An ‘act of aggression’ includes “*The invasion or attack by the armed forces of a State of the territory of another State*”.¹²⁰

As discussed above, the threat of, or the use of force, is prohibited in international law, and the same reflects in Article 2(4) of the UN Charter, rendering the carrying out of ‘Operation Sindoor’ a gross violation of the law of nations and the territorial sovereignty of Pakistan. Further attempts to divert the waters of the Indus will also be in violation of international norms.¹²¹

While we have discussed the possible legal infractions that may apply to unilateral cessation of state obligations, it is essential to recall that if an issue arises, which it undoubtedly has, the mechanisms that ought to be followed for subsequent dispute resolution.

Dispute Resolution: Finding the Appropriate Forum

The IWT established a dispute resolution mechanism under the auspices of the World Bank, which serves as a facilitator rather than an adjudicator.¹²² Any “question” or “difference” arising from the treaty’s interpretation or application must therefore firstly be referred to the Permanent Indus Commission, a bilateral body of one commissioner appointed from each state.¹²³ Suppose the Commission cannot come to a resolution of a technical difference defined in Annexure F. In that case, either party may unilaterally refer the matter to a Neutral Expert whose findings on design parameters are then deemed to be final and binding, including upon any future Court of Arbitration.¹²⁴ For broader “disputes” or treaty interpretation issues, either state may invoke Article XII to constitute a seven- member Court of Arbitration, whose award is final and binding with no right of appeal.¹²⁵

The Permanent Indus Commission serves as an early warning and scoping forum. It exchanges river data, seeks amicable solutions and documents unresolved issues for escalation.¹²⁶ Historical records show that India’s Kishanganga project was first flagged in Commission meetings in the 1990s, with Pakistan’s formal dispute notification lodged in 2006 after years of technical dialogue.¹²⁷ Under the treaty, commissioners can agree to skip tiers, but in practice, disagreements over forum choice have led to deadlock, leaving it with no binding authority; it can only facilitate negotiation and record points of impasse.¹²⁸

A Neutral Expert may be invoked for differences strictly concerning Annexure F matters, such as spillway design or flow calculations.¹²⁹ The World Bank appoints the expert if parties cannot agree.

His rulings are final on those technical questions and cannot be reopened by an arbitral tribunal.¹³⁰ The Baglihar Dam Neutral Expert in 2007, for example, mandated reduced freeboard for India's project and both states implemented the decision.¹³¹ If legal or interpretative questions fall outside the Expert's mandate, a Court of Arbitration may be convened under Annexure G. Each state appoints two arbitrators and three neutral experts, with the Bank's administrative role stepping in if appointments stall.¹³² The tribunal issues a reasoned award, which under Article XII must be complied with by both parties.¹³³ The Kishanganga Arbitration of 2013 permitted India's diversion for power generation but required a minimum downstream flow of 9 cubic meters per second to protect Pakistan's uses.¹³⁴

Though not a court, the Bank can employ its convening power and lending authority to encourage treaty compliance.¹³⁵ It has paused competing proceedings to foster negotiations, as in 2016-2017, and could condition project financing on compliance audits under the treaty.¹³⁶ However, overt sanctions might exceed the Bank's apolitical mandate and face resistance from member states.¹³⁷

Lex Specialis and Conflicting Judgments

The *lex specialis* doctrine holds that a specific regime supersedes general rules on the same subject. The IWT's dispute mechanism is the exclusive forum for Indus issues, so an ICJ judgment, even if rendered, would yield to the treaty's Court of Arbitration award on technical and legal questions.¹³⁸ International comity suggests that the ICJ would either decline to hear the case or frame its judgment to avoid contradicting the IWT tribunal's findings.¹³⁹

Enforcement and Supremacy

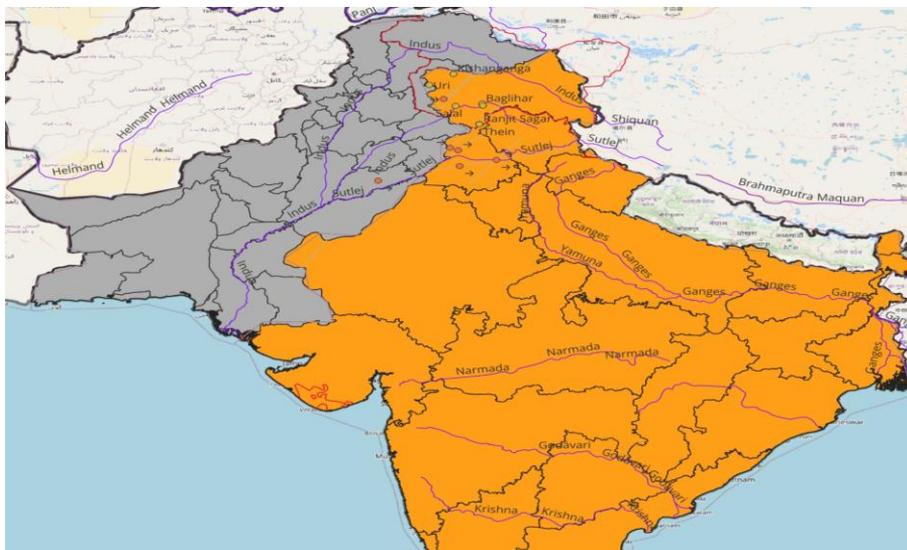
Neither PCA awards nor ICJ judgments are self-enforcing; compliance relies on state consent and external pressure.¹⁴⁰ An ICJ judgment could be referred to the UN Security Council under Article 94 of the UN Charter. Still, enforcement depends on political will and the veto power of Security Council members.¹⁴¹ Pakistan could also present India's non-compliance to the Council under Chapter VI or VII, arguing that a water crisis threatens regional peace.¹⁴² The Permanent Indus Commission could serve as a forum for ongoing accountability, while the World Bank and other lenders might suspend funding for non-compliant projects as an informal sanction.¹⁴³

The IWT mechanism is a purpose-built system that combines technical expertise and final arbitration and has produced enforceable decisions.¹⁴⁴ It is faster to activate and is directly tied to treaty obligations than the ICJ, which remains inaccessible due to India's jurisdictional reservations. An ICJ judgment would carry greater symbolic weight and allow Security Council enforcement but is practically foreclosed by *lex specialis* and India's optional clause reservations.¹⁴⁵ Pakistan's best recourse, thus, lies through the IWT forums.

Very recently, following its deliberations, the Court of Arbitration issued an award in Pakistan's favour, and under the principle of good faith, India is bound to that decision. This does not diminish India's sovereignty; rather, it reflects India's sovereign choice to embrace a dispute-resolution process whose outcomes are final.

Stats vs The Facts

The foregoing legal analysis establishes, unequivocally so, that India neither possesses the legal authority nor finds support in the Indus Waters Treaty or in any body of international law to justify a unilateral suspension of the Treaty's obligations. No provision within the IWT, nor any principle derived from treaty law or state practice, confers upon India the competence to unilaterally derogate from its commitments. Yet, legality alone does not capture the full measure of India's limitations. The subsequent section, through a critical evaluation of hydrological and infrastructural data, demonstrates that beyond the absence of legal capacity, India also lacks the structural and operational means to effectively execute any such suspension. This synthesis of doctrinal and empirical analysis underscores that the impracticality of weaponising transboundary water flows is not merely a matter of legal restraint but also of physical and institutional incapacity, rendering the notion of unilateral suspension both normatively untenable and pragmatically implausible.



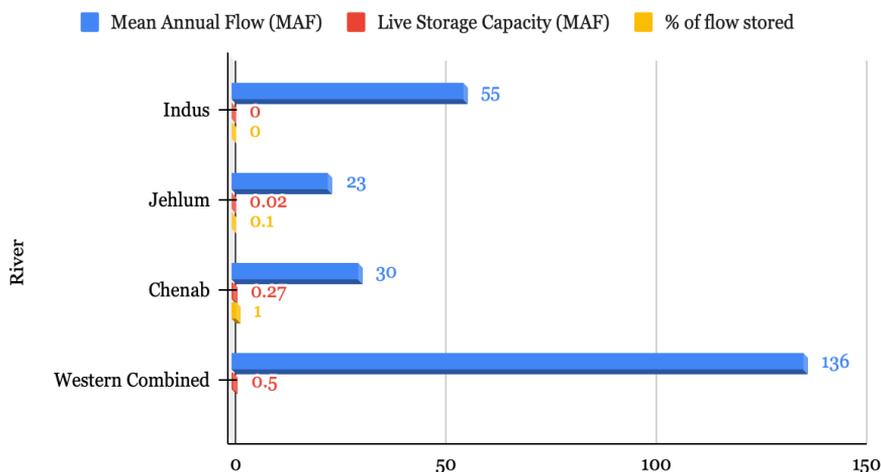
Source: Created by the Authors¹⁴⁶

Critical Data Overview

A quantitative study is needed to determine whether the legal incapacity reflects the ground realities.

Roughly 50-80% of the basin's annual runoff originates from glacier and snow melt in the Hindu Kush-Karakoram-Himalaya ranges,¹⁴⁷ while the remainder supplied by erratic monsoonal rains,¹⁴⁸ causing abundant water in the summer Kharif season, approximately 85% of annual flow occurs between April and September,¹⁴⁹ followed by severe scarcity in the winter Rabi months when only 15% of the flow remains.¹⁵⁰ The result is a hydrological vacuum precisely when Pakistan most needs water for its Rabi crops.¹⁵¹

Mean Annual Flow (MAF), Live Storage Capacity (MAF) and % of flow stored (India)

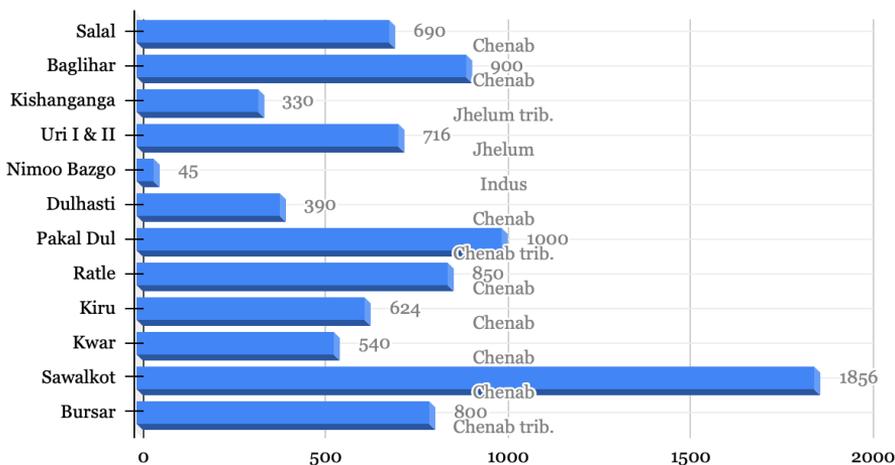


Source: Ministry of Water Resources¹⁵²

Despite repeated fears of India “turning off the tap,” India’s physical capacity to disrupt the Indus system in summer is essentially nil. Under the IWT, India may build run-of-river projects on the western rivers, limited to roughly 3.6 MAF of total storage.¹⁵³ In practice, India has constructed only about 0.5 MAF on these rivers, less than one per cent of the roughly 136 MAF average annual flow.¹⁵⁴ This small reservoir volume cannot meaningfully buffer the vast summer surges, which often exceed 150 MAF during the peak monsoon. Any attempt to impound a significant share of monsoon flows would result in upstream flooding in Indian-held Kashmir, where steep, seismic-prone terrain makes large reservoirs both hazardous and unpopular.

India’s limited storage does grant it **temporary leverage in winter**, when the Chenab can drop to as little as 5000 cusecs.¹⁵⁵ Under such conditions, India’s run-of-river dams, Salal, Baglihar, Dul Hasti, and the new Pakal Dul project (with approximately 108 million m³ of live storage) can cumulatively withhold a noticeable portion of water for days at a time.¹⁵⁶ Pakistan’s own assessments confirm that a coordinated drawdown could obstruct up to 10% of the flow for short periods.¹⁵⁷ In December 2024, India briefly reduced the Chenab’s flow by 90% at the border by adjusting the Baglihar dam’s gates.¹⁵⁸ While Baglihar holds only 24 million m³ (≈0.02 MAF), the strategic timing of its operations exemplifies how **even small storages can pinch** downstream water supplies when the river is at its seasonal low.

Dam Storage Capacity (India) MW



Source: International Commission on Large Dams (ICOLD)¹⁵⁹

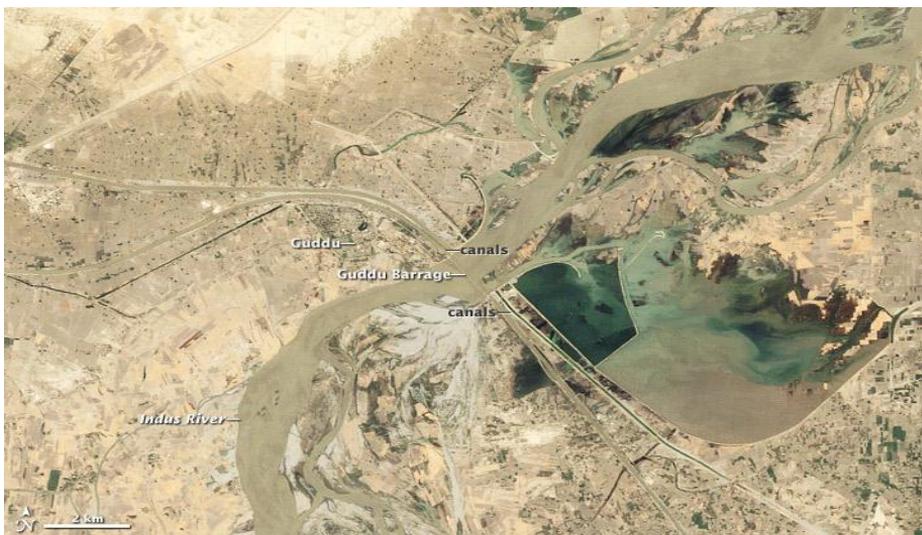
India’s capacity to withhold water during the winter season may increase further as new projects are initiated. By 2030-2035, dams under construction, Ratle, Kiru, Kwar, and Sawalkot, could add nearly 10 MAF of active storage on the western rivers.¹⁶⁰ Suppose all these storages were to be filled sequentially during low-flow months. In that case, India might temporarily control up to 20% of the Indus’s winter discharge, enough to disrupt Pakistan’s irrigation and energy supplies.

Yet even this enhanced capacity remains **time-bound**: these reservoirs can be emptied and refilled only within the limits of natural inflows, and cannot create new water beyond what falls in the basin. **The following NASA Earth Observatory imagery¹⁶¹ from 2009-2010 vividly illustrates the Indus River's dramatic seasonal flow variations.**

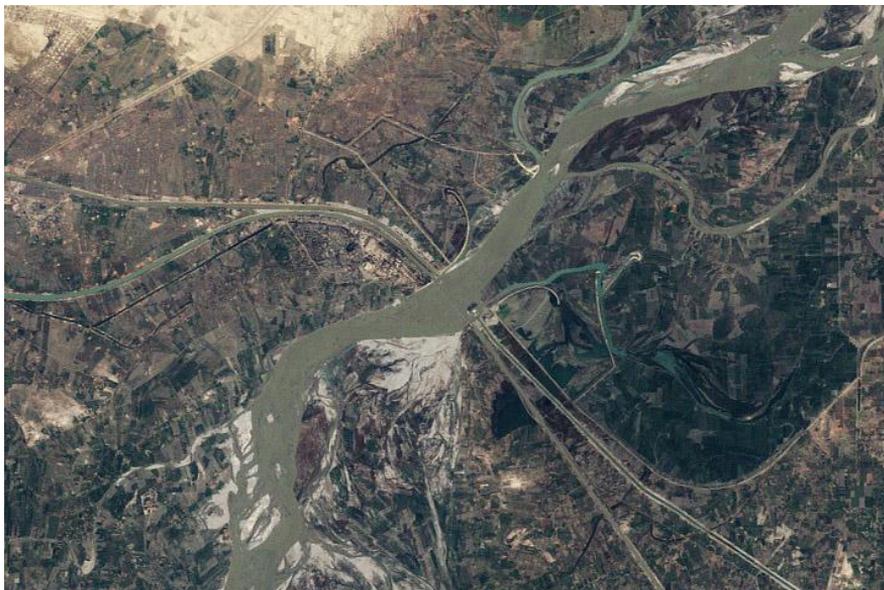
June 6th



August 25th



December 15th



February 1st



April 22nd



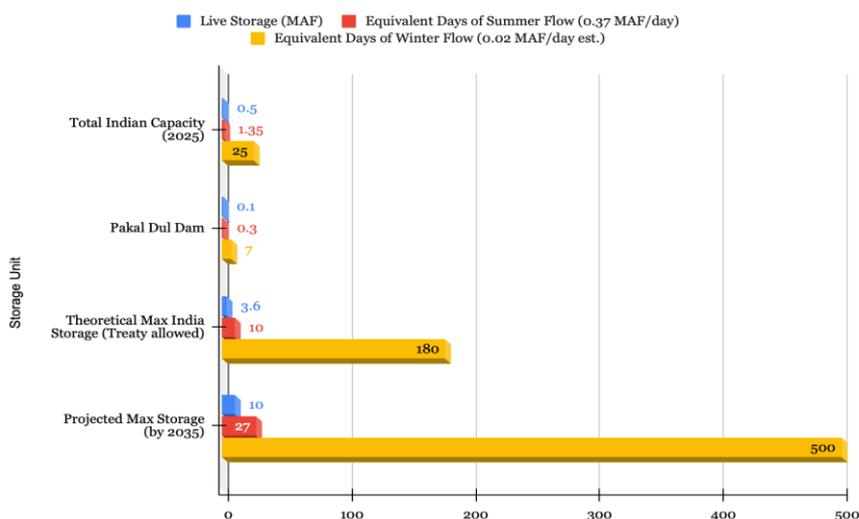
May 24th



India's only operational inter-tributary diversion, the Kishanganga project, illustrates the potential and limits of infrastructure-enabled leverage, rerouting part of the Neelum River via a 23-kilometre tunnel into the Jhelum basin, diverting approximately 0.65 MAF annually¹⁶², curtailing Neelum's flows by over 30%, crippling the Neelum-Jhelum power station.

Nevertheless, Kishanganga's small storage (7.5 million m³) prevents withhold flows exceeding hours or days at a time; its annual diversion volume is under 1% of the total runoff.¹⁶³

Reservoir Holding vs Daily River Flow Comparison



Beyond concrete infrastructure, India's most potent non-structural lever is **data withholding**. The IWT mandates regular hydrological data exchange, which Pakistan relies on for reservoir operations and flood forecasting.¹⁶⁴ India's limited data will lead to uncertainty, forcing Pakistan to maintain higher buffer stocks in its reservoirs, effectively a "precautionary tax" on water use.¹⁶⁵ Such informational coercion can be as disruptive as physical withholding, especially in winter.

Policy Implications

The policy implications of these findings are crucial for regional governance and for maintaining the legal and structural equilibrium that underpins the Indus Basin. The IWT is not a relic of the postcolonial division of resources but the foundation of regional stability in South Asia. Its strength lies in its balance between sovereign equality and ecological interdependence.

India's lack of both legal and structural capacity to unilaterally suspend the Treaty confirms that regional stability is not maintained by coercion or strategic deterrence, but through the consistent observance of cooperative legal norms. The Treaty embodies the modern philosophy of international environmental law, in which procedural cooperation, equitable use, and ecological reciprocity take precedence over unilateral political manoeuvres.

Pakistan must continue to consolidate its institutional and diplomatic capacity to preserve the sanctity of the Treaty. Pakistan's adherence to the Treaty and its consistent engagement with dispute resolution mechanisms must remain central to its foreign policy narrative. These acts of restraint should be articulated not as defensive positions but as assertions of Pakistan's legal maturity and commitment to regional stability.

India's recurring attempts to reinterpret or dilute the Treaty's scope create a condition of strategic uncertainty that undermines the credibility of cooperative regimes in South Asia. Such behaviour threatens to normalise a precedent of selective compliance in transboundary law. Pakistan's response must therefore move beyond reactive diplomacy. It should assume a leadership position by advocating for regional frameworks of water cooperation through platforms such as SAARC, SCO, and the United Nations Water Convention. By taking the initiative to frame water diplomacy as a shared security issue, Pakistan can convert compliance into leverage and position itself as a stabilising actor in the regional security architecture.

At the global level, the Indus regime demonstrates how international treaties can endure when legal obligation and ecological necessity align. The IWT reflects the principles of equitable utilisation and the duty to prevent significant harm, which remain cornerstones of international water law. Pakistan's insistence on adherence to these norms strengthens its standing as a state that operates within the rule-based international order. This alignment between law and policy provides Pakistan with a unique platform to advocate for more vigorous international enforcement of environmental and climate-related obligations.

Conclusion

After an exhaustive examination of the Indus Waters Treaty, relevant international instruments, and hydrological data, this study reaffirms that India's unilateral suspension or diversion of the Indus Waters Treaty constitutes a grave violation of international law and the Treaty itself. Provisions of the Vienna Convention on the Law of Treaties and the general principles of *pacta sunt servanda* make clear that a state cannot suspend or terminate a treaty at will, particularly one establishing permanent territorial and resource-sharing arrangements; attempting to do so would breach both procedural and substantive safeguards within the IWT, including its dispute resolution mechanism that obliges continued engagement through neutral expert review, arbitration, and the recourse to the World Bank.

The paper's findings demonstrate that the weaponisation of water through threats of suspension or manipulation of flow timing falls outside the bounds of lawful state conduct. Such measures, when directed against essential civilian infrastructure, give rise to state responsibility under international law and, in some cases, to individual criminal liability under international humanitarian law. Deliberate targeting or manipulation of the hydrosphere for coercive or military purposes is unjustified under any accepted doctrine of necessity, self-defence, or countermeasure.

Technical data integrated into this analysis reveal that India's physical and infrastructural capacity to execute any substantial diversion of the Indus is severely limited. Existing dams and reservoirs within the Indian-controlled basin are incapable of storing or diverting sufficient volumes to sustain hydrological disruption. The basin's geography and seasonal flow dynamics impose natural constraints, making claims of large-scale diversion more rhetorical than real. Hydropolitical power in the Indus Basin lies not in domination but in timing, cooperation, and legal continuity. The real weapon is not damming the river but damming the moment.¹⁶⁶

From a policy perspective, this paper underscores the resilience of the IWT as a cornerstone of regional stability and food security. Pakistan's adherence to the treaty's procedural mechanisms and its reliance on legal recourse reinforce its position as a responsible actor in the international order.

Pakistan's path forward lies in strengthening hydrological monitoring, enhancing diplomatic engagement through the Permanent Indus Commission, and internationalising the discourse on the inviolability of transboundary water treaties. By reinforcing the IWT's legitimacy as a stabilising legal instrument, Pakistan ensures that the governance of the Indus Basin remains grounded in law rather than power.

In conclusion, the IWT endures not by coincidence, but by design. It embodies the legal, ecological, and moral logic that peace in shared river systems depends on restraint, procedural integrity, and the rule of law. India's attempts to reinterpret, suspend, or weaponise the treaty contradict these principles and are constrained by both international law and the basin's natural architecture. The Indus, therefore, remains governed not by coercion but by covenant, reminding both nations that true sovereignty over shared waters lies in their lawful stewardship.

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This principle, and the conditions and exceptions to which it is subject, have been embodied in Article 62 of the Vienna Convention on the Law of Treaties, which may in many respects be considered as a codification of existing customary law on the subject of the termination of a treaty relationship on account of change of circumstances.”

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