

**POLICY BRIEF, FEBRUARY 2025**

# **RESPONDING TO WATER BLOCKADES:**

## **PAKISTAN'S RECOURSE UNDER INTERNATIONAL LAW**

**MAHAM NAWEED**

**KHADIJA ALMUS KHANUM**

## Executive Summary

The Indus Waters Treaty (IWT), signed in 1960 between Pakistan and India, defines water-sharing rights by allocating the Eastern Rivers to India and granting Pakistan control over the Western Rivers, while permitting India limited non-consumptive use under strict regulations. Recent Indian efforts to modify or revoke the treaty have raised concerns for Pakistan, prompting it to reaffirm its commitment to the agreement. Abrogation of the treaty would be an extreme action, posing an existential threat to Pakistan. Any unilateral revocation by India would constitute a breach of the treaty and a violation of international law. In such an event, and to safeguard its rights under the IWT, Pakistan must be prepared to pursue legal avenues, consider countermeasures under international law, and enhance its domestic water resilience through comprehensive management and strategic planning. Pakistan would have the right of reprisal, which could be either coercive or non-coercive, and any hostile act would compel Pakistan to respond with another hostile act.

### Policy Recommendations

- **Suspension of Obligations:** Pakistan could suspend its obligations under the IWT, as permitted by Article 49 of Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA). This would involve halting any cooperative mechanisms or agreements related to water management that are currently in place.
- **International Advocacy:** Pakistan can escalate the issue to international forums such as the United Nations General Assembly (UNGA) and the United Nations Security Council (UNSC) or seek intervention from the World Bank, which brokered the original treaty. Pakistan could also publicly condemn India's actions before international forums such as the Shanghai Cooperation Organization (SCO) and through media channels, aiming to garner global support against India's unilateral decision.
- **Legal Action:** Pakistan could approach the Permanent Court of Arbitration (PCA) by utilizing the existing dispute resolution mechanisms outlined in the treaty.
- **Economic Sanctions:** Pakistan could consider imposing economic sanctions or trade restrictions on India as a form of protest against the treaty's revocation.
- **Cutting Diplomatic Ties:** Pakistan could recall its diplomats from India to signal its disapproval of India's actions. Pakistan can also expel Indian diplomats, effectively reducing diplomatic engagement and signaling a strong response to India's revocation of the treaty.

## BACKGROUND

The conflict over water sharing between India and Pakistan originated with the partition of British India in 1947. Shortly after the partition, a Standstill Agreement was signed by the governments of both countries to maintain the status quo.<sup>1</sup> The agreement expired on 31 March 1948 and India halted water supplies to Pakistan on 1 April 1948, escalating tensions between the two nations. To address this, the Inter Dominion Accord was signed in May 1948, requiring India to supply water to Pakistan in return for annual payments.<sup>2</sup> However, this accord was a temporary measure, and both nations continued to grapple with unresolved grievances.

In 1952, the World Bank stepped in as a mediator, aiming to facilitate a resolution<sup>3</sup>. A technical group comprising engineers from India, Pakistan and the World Bank conducted two years of studies and over four years of discussions and negotiations, leading to the drafting of the treaty in 1959.<sup>4</sup> On 19 September 1960, the “Indus Waters Treaty” (IWT) was signed in Karachi, between Pakistan, India and the World Bank.

### Water Sharing Mechanism

The IWT delineates water usage rights for India and Pakistan. Its water-sharing mechanism establishes a clear division, allocating the Eastern Rivers (Ravi, Beas, and Sutlej) to India<sup>5</sup> and granting Pakistan control over the Western Rivers (Indus, Jhelum, and Chenab)<sup>6</sup>. Despite this division, the treaty permits India to use the waters of the Western Rivers for non-consumptive needs such as domestic use, agriculture, and hydroelectric power generation.<sup>7</sup> However, such usage is subject to stringent regulations, particularly concerning the design, construction, and operation of hydroelectric projects. This balanced approach is designed to protect Pakistan's water interests while allowing India limited usage rights under specified conditions.

### Dispute Resolution Mechanism

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<sup>1</sup> Ijaz Hussain, *Indus Waters Treaty: Political and Legal Dimensions* (Oxford University Press 2017) 61-99.

<sup>2</sup> Ibid.

<sup>3</sup> The World Bank, ‘Indus Water Treaty’ (1960) 123 *World Affairs* 99-101 <http://www.jstor.org/stable/20669916> accessed 1 December 2024.

<sup>4</sup> Ibid.

<sup>5</sup> Indus Waters Treaty 1960 (India-Pakistan) (signed 19 September 1960, entered into force 1 April 1960) art 2.

<sup>6</sup> Indus Waters Treaty 1960 (India-Pakistan) (signed 19 September 1960, entered into force 1 April 1960) art 3.

<sup>7</sup> Ibid.

The IWT establishes a structured framework for managing conflicts over water resources between India and Pakistan. It provides for the establishment of the Permanent Indus Commission (PIC), which consists of one Commissioner from each country.<sup>8</sup> The PIC is responsible for promoting cooperation and resolving questions arising under the treaty.<sup>9</sup> The treaty also outlines procedures for settling differences and disputes that may arise between the two countries regarding its interpretation or application. If the PIC, as the primary body for addressing questions and facilitating consultations, cannot resolve an issue, it will be deemed a difference and referred to a Neutral Expert.<sup>10</sup> If the matter falls outside the Neutral Expert's jurisdiction, it will be classified as a dispute, and a Court of Arbitration shall be established to resolve it.<sup>11</sup>

The dispute resolution mechanisms of the IWT have been invoked in several significant cases, notably the Baglihar Dam and the Kishenganga projects. In the Baglihar Dam case, India and Pakistan engaged in discussions through the Permanent Indus Commission, but when disagreements arose regarding the dam's design, Pakistan sought the intervention of a Neutral Expert, leading to a resolution that allowed India to proceed with modifications.<sup>12</sup> The Kishenganga I arbitration involved Pakistan initiating proceedings against India at the Permanent Court of Arbitration (PCA) over India's construction of a hydroelectric project, resulting in a 2013 award that upheld certain rights for Pakistan while allowing India to continue its project under specific conditions.<sup>13</sup> In 2016, Pakistan initiated the Kishenganga II arbitration, focusing on India's Kishenganga and Ratle projects and their compliance with the treaty, which remains pending.<sup>14</sup>

The current issue has its roots in 2016, when Pakistan made a Request for Arbitration under Article IX(5) and Annexure G of the Treaty. Within a month, pursuant to Article IX(2)(a) and Annexure F of the Treaty, the Indian Commissioner in the Permanent Indus Commission

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<sup>8</sup> Indus Waters Treaty 1960 (India-Pakistan) (signed 19 September 1960, entered into force 1 April 1960) art 8.

<sup>9</sup> Ibid.

<sup>10</sup> Indus Waters Treaty 1960 (India-Pakistan) (signed 19 September 1960, entered into force 1 April 1960) art 9.

<sup>11</sup> Ibid.

<sup>12</sup> '2007 Neutral Expert Gives His Judgement on Baglihar Dam' (Dawn, 2 July 2011)

[www.dawn.com/news/640989/2007-neutral-expert-gives-his-judgement-on-baglihar-dam](http://www.dawn.com/news/640989/2007-neutral-expert-gives-his-judgement-on-baglihar-dam) accessed 1 December 2024.

<sup>13</sup> 'Indus Waters Kishenganga Arbitration (Pakistan v India)' (Permanent Court of Arbitration) <https://pca-cpa.org/ru/cases/20/> accessed 1 December 2024.

<sup>14</sup> 'Kishenganga, Ratle Hydropower Projects: Court of Arbitration Concludes First Phase on Merits' (The News, 20 July 2024) [www.thenews.com.pk/print/1211468-kishenganga-ratle-hydropower-projects-court-of-arbitration-concludes-first-phase-on-merits](http://www.thenews.com.pk/print/1211468-kishenganga-ratle-hydropower-projects-court-of-arbitration-concludes-first-phase-on-merits) accessed 5 December 2024.

submitted a request to Pakistan and India that they appoint a Neutral Expert to deal with these same matters.

The Bank's initial response to these two separate requests was to carry out its assigned role under both Annexure F (for a Neutral Expert) and Annexure G (for the Court of Arbitration) of the Treaty. However, after much back and forth in the selection of the candidates for the Neutral Expert and the Court of Arbitration, on 12 December 2016, the World Bank decided to pause the dispute resolution process.

The dispute resolution mechanism of the Treaty remained "paused", until in April 2022, the World Bank announced that it had decided to "resume the two separate processes requested by India and Pakistan in relation to the Kishenganga and Ratle hydroelectric power plants." The proceedings before the Court of Arbitration began on 27 January 2023, in the Hague, but are being boycotted by India.

## REQUEST FOR MODIFICATION BY INDIA

India issued two separate notices to Pakistan in 2024: first in January and the second in August, seeking changes to the IWT.<sup>15</sup> India cited "fundamental and unforeseen changes" in geopolitical and environmental circumstances as the basis for modification. Three specific concerns have been raised by India. The first is that the population demographics have significantly altered in both countries, coupled with connected agricultural and other uses of the waters. The second is the need to accelerate the development of clean energy to meet India's emission targets. The third underlines the impact of persistent cross-border terrorism.

In response, Pakistan has consistently reaffirmed its commitment to the treaty and expressed reliance on treaty-mandated mechanisms for bilateral talks.<sup>16</sup> Moreover, Pakistan has regarded the treaty as the "gold standard" for transboundary water agreements.<sup>17</sup>

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<sup>15</sup> 'India Issues Second Notice to Pakistan for 64-Year-Old Indus Waters Treaty' (The Express Tribune, 19 September 2024) <https://tribune.com.pk/story/2497213/india-issues-second-notice-to-pakistan-for-a-64-year-old-indus-waters-treaty> accessed 2 December 2024.

<sup>16</sup> 'Ready to Discuss India's Concerns on Indus Waters Treaty, Says FO' (*Dawn*, 20 September 2024) <https://www.dawn.com/news/1859926> accessed 2 December 2024; 'Transcript of the Press Briefing by the Spokesperson on Thursday 19 September 2024' (*Ministry of Foreign Affairs Pakistan*) <https://mofa.gov.pk/press-releases/transcript-of-the-press-briefing-by-the-spokesperson-on-thursday-19-september-2024> accessed 2 December 2024.

<sup>17</sup> *Ibid.*

## OPTIONS FOR PAKISTAN IF INDIA UNILATERALLY REVOKES THE TREATY

While Pakistan has consistently reaffirmed its commitment to the treaty, the threat of India unilaterally revoking it continues to loom large. Such an abrogation would be an extremely severe action, posing an existential threat to Pakistan. In this scenario, Pakistan would have the right of reprisal, which could be either coercive or non-coercive in nature. However, any hostile act would compel Pakistan to respond with another hostile act. Under international law, such a reprisal would be deemed legitimate.

In such an event, Pakistan must remain cognizant of its options under international law.

### Article XII of The Indus Waters Treaty

If India unilaterally revokes or modifies the treaty, it will be in perpetual violation, while the treaty will remain valid. Article XII (3) of the treaty stipulates:

*“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.”*

Article XII (4) further specifies:

*“The provisions of this Treaty, or the provisions of this Treaty as modified under the provisions of Paragraph (3), shall continue in force until terminated by a duly ratified treaty concluded for that purpose between the two Governments.”*

These provisions clearly state that any modification or termination requires the agreement of both states and must be ratified by both as well. Any unilateral attempt to alter the treaty would constitute a breach and will lead to repercussions under international law.

### Vienna Convention on the Law of Treaties (VCLT)

If India were to unilaterally claim revocation of the IWT, the application of the Vienna Convention on the Law of Treaties (VCLT)<sup>18</sup> would be significant in assessing the legality and implications of such an action.

Article 54 of the VCLT states that a treaty may be terminated, either in accordance with its provisions or by the consent of all parties. Since the IWT explicitly requires mutual

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<sup>18</sup> Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331 [https://legal.un.org/ilc/texts/instruments/english/conventions/1\\_1\\_1969.pdf](https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf) accessed 3 December 2024

agreement for termination under Article 12(4), any unilateral action by India would contradict this provision, rendering it legally untenable.

Furthermore, Article 62 of the VCLT allows for “fundamental change of circumstances” as a basis for terminating or withdrawing from a treaty. The VCLT emphasizes that such changes must be unforeseen and fundamentally alter the obligations under the treaty. India has referenced this argument in its second notice to Pakistan; however, the concerns raised by India do not meet the threshold required for considering a modification.

### **Draft Articles on Responsibility of States for Internationally Wrongful Acts**

If India were to revoke the IWT, it would constitute a breach of the Treaty, and being in breach of a treaty is considered an internationally wrongful act under international law. According to the Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA), a state is liable for actions or omissions that violate its international obligations, including those arising from treaties.<sup>19</sup> In such a scenario, India would have an obligation under Article 30 of the ARSIWA to cease the wrongful act, and provide assurances against future violations, and offer reparations or compensation if Pakistan seeks redress for damages caused by the revocation.

Countermeasures in international law, as outlined in Article 49 of the ARSIWA, allow an injured state to take actions against a state responsible for an internationally wrongful act, with the aim of inducing compliance with its obligations.<sup>20</sup> As explained by the ICJ in the *Gabcíkovo-Nagymaros Project* case, countermeasures might justify otherwise unlawful conduct “taken in response to a previous international wrongful act of another State and [...] directed against that State.”

### **POLICY RECOMMENDATIONS**

- **Suspension of Obligations:** Pakistan could suspend its obligations under the IWT, as permitted by Article 49 of ARSIWA. This would involve halting any cooperative mechanisms or agreements related to water management that are currently in place.

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<sup>19</sup> International Law Commission, *Responsibility of States for Internationally Wrongful Acts* (adopted 2001, Yearbook of the International Law Commission 2001, vol II (Part Two)) GA Res 56/83, UN Doc A/56/49 (Vol I) Corr.4 [https://legal.un.org/ilc/texts/instruments/english/draft\\_articles/9\\_6\\_2001.pdf](https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf) accessed 3 December 2024.

<sup>20</sup> *Ibid.*

- **International Advocacy:** Pakistan can escalate the issue to international forums such as the United Nations General Assembly (UNGA) and the United Nations Security Council (UNSC) or seek intervention from the World Bank, which brokered the original treaty. Pakistan could also publicly condemn India's actions in international forums such as Shanghai Cooperation Organization (SCO) and through media channels, aiming to garner global support against India's unilateral decision.
- **Legal Action:** Pakistan could approach the Permanent Court of Arbitration (PCA) by utilizing the existing dispute resolution mechanisms outlined in the treaty.
- **Economic Sanctions:** Pakistan could consider imposing economic sanctions or trade restrictions on India as a form of protest against the treaty's revocation.
- **Cutting Diplomatic Ties:** Pakistan could recall its diplomats from India to signal its disapproval of India's actions. Pakistan can also choose to expel Indian diplomats, effectively reducing diplomatic engagement and signaling a strong response to India's actions.



## Action Matrix

### Options for Pakistan

Option	Pathways to Solution	Implementation of Solution	Actors Responsible	Implementation Timelines
<b>Suspension of Obligations</b>	Utilize Article 49 of ARSIWA to justify the suspension of obligations under the IWT. Halt cooperative mechanisms and agreements related to water management.	Issue a formal statement citing Article 49. Notify relevant international bodies and India about the suspension of obligations.	<ul style="list-style-type: none"> <li>Ministry of Foreign Affairs (MOFA) Pakistan</li> <li>Pakistan Commissioner for Indus Waters</li> </ul>	1-3 months for formal notification process.
<b>International Advocacy</b>	Escalate the issue to forums like the UNGA and UNSC and World Bank. Publicly condemn India's actions in international platforms like SCO. Use media channels to raise awareness globally.	Raise the issue at the UNGA and UNSC. Draft and submit resolutions at both forums. Request World Bank intervention. Coordinate public awareness campaigns with media outlets to highlight Pakistan's stance.	<ul style="list-style-type: none"> <li>MOFA Pakistan</li> <li>Permanent Mission of Pakistan to the UN</li> <li>Media Regulatory Authorities</li> </ul>	6-12 months for UN and World Bank engagement.
<b>Legal Action</b>	File a case at the PCA under the treaty's dispute resolution mechanisms.	Assemble a legal team specializing in international law. Submit detailed evidence and documentation of treaty violations to the PCA. Engage diplomatic channels to support the legal action.	<ul style="list-style-type: none"> <li>MOFA Pakistan</li> <li>Pakistan Commissioner for Indus Waters</li> <li>International Disputes Unit of Attorney-General Office</li> </ul>	12-24 months for arbitration proceedings.
<b>Economic Sanctions</b>	Impose sanctions or trade restrictions on India as a protest against the treaty's revocation.	Identify trade dependencies and target areas for sanctions. Announce and implement trade restrictions through official channels. Monitor the economic impact and communicate objectives to the public and businesses.	<ul style="list-style-type: none"> <li>Ministry of Commerce</li> </ul>	3-6 months for implementation.
<b>Cutting Diplomatic Ties</b>	Recall Pakistani diplomats from India and expel Indian diplomats to signal strong disapproval of India's actions.	Issue formal recall orders to diplomats. Announce the reduction of diplomatic engagement via public statements and press conferences.	<ul style="list-style-type: none"> <li>MOFA Pakistan</li> <li>High Commission for Islamic Republic of Pakistan, India</li> </ul>	1-3 months for complete implementation.

