



## Policy Brief

# Indus Waters Treaty and the Myth of Fundamental Change - A Legal and Policy Assessment

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## Executive Summary

India is pushing for modification of the Indus Waters Treaty (“IWT”), a long-standing water-sharing instrument between India and Pakistan. However, its arguments—based on population growth and climate change—fail to meet the legal criteria under international law for invoking the doctrine of *rebus sic stantibus* (fundamental change of circumstances). These factors were foreseeable and do not radically alter the treaty’s obligations. Such issues can be addressed within the treaty’s existing framework. Article 62 of the Vienna Convention on the Law of Treaties (“VCLT”) and the *Gabcikovo-Nagymaros* case establish strict conditions for invoking *rebus sic stantibus*, which India’s claims do not meet. Rather than altering the IWT, its existing mechanisms—particularly the Permanent Indus Commission (“PIC”)—is equipped to deal with such issues. At the same time, Pakistan must enhance its technical and scientific capabilities for water management while implementing a strategic communication plan to counter misinformation and reaffirm its commitment to the IWT and international treaty law.

## Policy Recommendations

- **Reaffirming Pakistan’s Stance:** Pakistan should actively highlight, on domestic and international platforms, that the doctrine of fundamental change of circumstances is inapplicable to India’s claims.
- **Reviving the Permanent Indus Commission:** Regular meetings of the PIC, as mandated under the IWT, should be held to address emerging concerns. This platform should be actively used to address any emerging challenges or perceived threats to treaty implementation, including climate-related concerns, population growth and other demographic issues.
- **Technical and Scientific Strengthening:** Pakistan should enhance its water management by investing in real-time hydrological monitoring systems to track water flow and usage accurately. Expanding domestic water storage and conservation infrastructure is crucial for long-term resilience.
- **Public and Strategic Communication:** A strong narrative strategy should be implemented to highlight Pakistan’s adherence to international treaty law and responsible water management. Additionally, a targeted media strategy should inform both domestic and international audiences about the legal flaws in India’s stance.

## INTRODUCTION

The Indus Waters Treaty (“IWT”), signed in 1960 between India and Pakistan, established a water-sharing mechanism between the two countries. Under the treaty, India was allocated rights over the Eastern Rivers (Ravi, Beas, and Sutlej), while Pakistan was apportioned the Western Rivers (Indus, Jhelum, and Chenab).<sup>1</sup> Over the years, the two states have found themselves at crossroads a few times, prompting them to utilize the treaty’s dispute resolution mechanism to address disagreements. Despite its continued relevance and validity, after 64 years, India appears to view it differently. In 2023 and 2024, India sent notices to Pakistan seeking a “review and modification” of the treaty, citing “fundamental changes” in the geopolitical and environmental landscape. India’s argument rests on factors such as population growth, evolving agricultural demands, and shifting water usage patterns since the treaty’s signing in 1960.<sup>2</sup>

### *Rebus Sic Stantibus* under International Law

India’s plea of “fundamental changes” corresponds to the doctrine of *rebus sic stantibus* (Latin for “things thus standing”). This doctrine in international treaty law allows for the termination or withdrawal from a treaty if there has been a “fundamental change in circumstances” from those existing at the time of its conclusion.<sup>3</sup> Rooted in customary international law, it is codified in Article 62 of the Vienna Convention on the Law of Treaties 1969 (“VCLT”).<sup>4</sup> The doctrine serves as an exception<sup>5</sup> to the principle of *pacta sunt servanda* (Latin for “agreements must be kept”), which is enshrined in Article 26 of the VCLT.<sup>6</sup>

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<sup>1</sup> Indus Waters Treaty (signed 19 September 1960, entered into force 1 April 1960) 419 UNTS 126.

<sup>2</sup> India Issues Second Notice to Pakistan for a 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 5 March, 2025.

<sup>3</sup> D Sidik Suraputra, ‘Doctrine of Rebus Sic Stantibus and Law of International Treaty’ (2014) 11(4) Indonesian Journal of International Law, art 5 <https://scholarhub.ui.ac.id/ijil/vol11/iss4/5/> accessed 5 March, 2025.

<sup>4</sup> Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, art 62 [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 5 March, 2025.

“A fundamental change of circumstances which has occurred with regard to those existing at the time of the

<sup>5</sup> Mahendra Pratap Singh Shekhawat and Manvendra Singh Shekhawat, ‘Doctrine of Rebus Sic Stantibus’ (2022) 2(3) Indian Journal of Integrated Research in Law <https://ijirl.com/wp-content/uploads/2022/05/DOCTRINE-OF-REBUS-SIC-STANTIBUS-.pdf> accessed 5 March, 2025.

<sup>6</sup> Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, art 26 [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 5 March, 2025.

Article 62 of the VCLT outlines the conditions under which the doctrine of *rebus sic stantibus* can be invoked. These conditions are as follows:

1. **Fundamental Change of Circumstances:** The change must be fundamental and have occurred with regard to the circumstances existing at the time of the treaty's conclusion.
2. **Unforeseen by the Parties:** The change must not have been foreseen by the parties at the time the treaty was concluded.
3. **Essential Basis of Consent:** The existence of the circumstances must have constituted an essential basis of the consent of the parties to be bound by the treaty.
4. **Radical Transformation of Obligations:** The effect of the change must be to radically transform the extent of obligations still to be performed under the treaty.
5. **Non-Applicability to Boundary Treaties:** Article 62(2)(a) specifies that treaties establishing boundaries cannot be subject to unilateral termination under a fundamental change of circumstances.

These conditions ensure that the doctrine is applied only in exceptional cases. The alleged change has to be significant, not anticipated by the parties, and should fundamentally alters the treaty's obligations.

## WHY INDIA'S ARGUMENT IS LEGALLY UNTENABLE?

### Population Growth and Climate Change Are Foreseeable Events

The doctrine of *rebus sic stantibus* applies only when a change is fundamental, unforeseen, and radically alters treaty obligations. However, population growth in India was a predictable trend and entirely foreseeable at the time of signing the IWT in 1960. This is evident from India's early initiatives to manage population growth, such as the family planning program launched in 1952, following the 1951 census<sup>7</sup>. This proactive measure indicates that policymakers were well aware of the growing population trends and their implications. Furthermore, the increase in agricultural demand was also a predictable factor, as a vast majority of India's population depends on agriculture.<sup>8</sup> The direct proportionality between

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<sup>7</sup> <https://censusindia.gov.in/nada/index.php/catalog/28409>

<sup>8</sup> Food and Agriculture Organization of the United Nations (FAO), 'India at a Glance' <https://www.fao.org/india/fao-in-india/india-at-a-glance/en/> accessed 7 March, 2025.

population growth and agricultural needs means that rising food demands were inherently linked to demographic changes, making them equally foreseeable. Therefore, India's invocation of *rebus sic stantibus* based on these factors is not justified, as they do not meet the criteria of being unforeseen or radical changes.

Climate change, much like population growth, is a predictable trend and therefore does not justify invoking *rebus sic stantibus* for treaty modification. The concept of climate change due to human activities was first proposed in the late 19th century, and by the 1950s, evidence of CO<sub>2</sub>'s warming effect had become increasingly convincing. This period saw a growing recognition of human activities' impact on climate.<sup>9</sup> The fact that climate change was already being discussed and researched decades before the treaty's signing indicates that it was not an unforeseen circumstance. The scientific community was aware of the potential for human-induced climate change, making it a foreseeable development rather than an unpredictable shift.

Given this historical context, invoking *rebus sic stantibus* on the basis of climate change fails to meet the criterion of unpredictability. Climate change is a global challenge, not an exceptional circumstance unique to one state. Since climate trends are predictable, treaty obligations should be adapted within existing frameworks rather than through unilateral modifications. The Permanent Indus Commission ("PIC")—established under Article VIII of the IWT—provides a structured mechanism for bilateral cooperation. Rather than using climate change as a justification to alter the treaty, this cooperative framework could be leveraged to address and manage climate-related concerns.

### Limitations of *Rebus Sic Stantibus* in Treaty Law

A fundamental principle of treaty law is that agreements are meant to be upheld according to their terms, especially when those terms explicitly outline mechanisms for termination, rather than relying on unilateral claims of changed circumstances. The Second Report on the Law of Treaties for the International Law Commission ("ILC") served as a key preparatory work for the draft articles on the law of treaties, which later became the foundation for the VCLT.<sup>10</sup> Among other topics, the report discussed the principle of *pacta sunt servanda*

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<sup>9</sup> Marc Hudson, 'Climate Change First Went Viral Exactly 70 Years Ago' (The Conversation, 12 May 2023) <https://theconversation.com/climate-change-first-went-viral-exactly-70-years-ago-205508> accessed 7 March, 2025.

<sup>10</sup> Sir Humphrey Waldock, 'Second Report on the Law of Treaties' (1963) UN Doc A/CN.4/156 and Add.1–3, Yearbook of the International Law Commission 1963, vol II [https://legal.un.org/ilc/documentation/english/a\\_cn4\\_156.pdf](https://legal.un.org/ilc/documentation/english/a_cn4_156.pdf) accessed 8 March, 2025.

(agreements must be kept) and the doctrine of *clausula rebus sic stantibus* (fundamental change of circumstances). The report states that if parties have already included provisions on how a treaty can be terminated or suspended, those provisions take precedence over *rebus sic stantibus*. Article XII of the IWT specifies that the treaty can be terminated through a duly ratified agreement. This weakens India's argument of invoking the 'fundamental change in circumstances' doctrine, as the treaty itself provides a clear mechanism for its suspension and termination.

### **Precedent: *Gabcikovo-Nagymaros Project Case***

In 1997, the International Court of Justice ("ICJ") decided the *Gabčíkovo-Nagymaros* case, which involved a dispute between Hungary and Slovakia over a joint dam project. The 1977 Treaty between Hungary and Czechoslovakia aimed to construct a joint hydropower system on the Danube River, enhancing hydroelectricity production, navigation, and flood protection. Hungary suspended and later abandoned its part of the project in 1989 due to environmental concerns and political changes. Following Czechoslovakia's dissolution in 1993, Slovakia became the successor state to the treaty obligations. Czechoslovakia had unilaterally implemented "Variant C"—a modified dam system—after Hungary abandoned the project in 1989, and Slovakia continued this provisional solution post-independence, exacerbating tensions. The dispute was brought before the ICJ, where Hungary argued that the treaty was terminated due to Czechoslovakia's dissolution. However, the ICJ rejected this claim, emphasizing that state succession does not automatically void treaties unless explicitly renegotiated.<sup>11</sup>

The Court acknowledged Czechoslovakia's breakup as a political change but ruled it did not constitute a fundamental change of circumstances (*rebus sic stantibus*) under international law. The treaty's core purpose—joint environmental and economic management of the Danube—remained achievable. Moreover, Slovakia's actions (continuing "Variant C") were deemed unlawful, as unilateral modifications violated the treaty's requirement for mutual consent. However, Hungary's prior suspension of work also breached its obligations, creating shared liability. Ultimately, the ICJ ordered both countries to negotiate in good faith and establish a joint operational regime for the dam system, emphasizing the importance of environmental considerations in treaty implementation.<sup>12</sup>

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<sup>11</sup> *Hungary v Slovakia* (Judgment)[1997] ICJ Rep 7 <https://www.icj-cij.org/case/92> accessed 10 March 2025.

<sup>12</sup> *Ibid.*



India's reliance on the "fundamental change of circumstances" argument, akin to Hungary's in the *Gabčíkovo-Nagymaros* case, is untenable. The ICJ's ruling emphasized that even significant and unforeseeable political shifts—such as the dissolution of Czechoslovakia—do not automatically justify treaty termination unless they fundamentally alter the treaty's underlying conditions. The ICJ requires that such changes "radically transform the extent of obligations".<sup>13</sup> Similarly, India's claim that population growth or climate change constitutes unforeseen circumstances is flawed, as these are long-term, predictable phenomena. Unlike the geopolitical upheaval in Eastern Europe, environmental and demographic shifts can often be addressed through collaboration rather than termination. Critically, the ICJ's strict criteria for invoking *rebus sic stantibus* suggest that India's argument is unsubstantiated, as it does not meet the threshold of rendering treaty obligations objectively impossible to fulfill.

The doctrine of *rebus sic stantibus* has never successfully invalidated a treaty in modern international law. This doctrine, codified in Article 62 of the VCLT, allows for treaty termination due to fundamental changes in circumstances, but its application is strictly limited to ensure treaty stability. The ICJ and the ILC have consistently emphasized the importance of maintaining treaty obligations over unilateral withdrawal, as seen in cases like *Gabčíkovo-Nagymaros*, where significant geopolitical changes did not justify treaty termination. Accepting India's argument based on *rebus sic stantibus* would set a dangerous precedent for global water-sharing agreements, potentially destabilizing international relations and undermining the principle of *pacta sunt servanda*. This precedent could encourage other states to unilaterally terminate treaties based on foreseeable changes, threatening the stability of international law and cooperation.

## POLICY RECOMMENDATIONS

- **Reaffirming Pakistan's Stance:** Pakistan should actively highlight on domestic and international platforms that the doctrine of fundamental change of circumstances is inapplicable in this case. India's argument is inconsistent with Article 62 of the VCLT and fails to meet its strict criteria. Emphasizing this will reinforce Pakistan's legal position and prevent any misleading narratives that could undermine the treaty's stability.

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<sup>13</sup> Kieron Beal, 'Article 62 of the Vienna Convention on the Law of Treaties: Foreseeing the Unforeseen' (Blackstone Chambers, 15 March 2019) <https://www.blackstonechambers.com/news/article-62-vienna-convention-law-treaties-foreseeing-unforeseen/> accessed 10 March, 2025.

- **Reviving the Permanent Indus Commission:** Regular meetings of the PIC, as mandated under Article 8 of the IWT, should be held to address emerging concerns. The Commission has not met since May 2022, despite its role in facilitating cooperation. Instead of seeking to alter the treaty, this existing mechanism should be effectively utilized to ensure continued dialogue. This platform should be actively used to address any emerging challenges or perceived threats to treaty implementation, including climate-related concerns, population growth, and other demographic issues.
- **Technical and Scientific Strengthening:** Pakistan should enhance its water management by investing in real-time hydrological monitoring systems to track water flow and usage accurately. Expanding domestic water storage and conservation infrastructure is crucial for long-term resilience. Additionally, collaboration with international scientific institutions can help develop climate-adaptive strategies, ensuring sustainable water management amid evolving environmental challenges.
- **Public and Strategic Communication:** A strong narrative should be developed to highlight Pakistan's adherence to international treaty law and responsible water management. Strategic media outreach can help counter misinformation and expose legal inconsistencies in India's claims. Organizing academic conferences and policy dialogues will further solidify expert consensus on Pakistan's position. Additionally, a targeted media strategy should inform both domestic and international audiences about the legal flaws in India's stance.



Action Matrix				
Options for Pakistan				
Option	Pathways to Solution	Implementation of Solution	Actors Responsible	Implementation Timelines
<b>Reaffirming Pakistan's Stance</b>	Pakistan should highlight, on domestic and international platforms that the doctrine of fundamental change of circumstances is inapplicable and India's argument is inconsistent with Article 62 of the VCLT.	Organize legal and policy briefings for diplomats, policymakers, and legal scholars. Engage legal experts to publish scholarly articles and op-eds. Include this argument in official diplomatic exchanges and multilateral discussions.	<ul style="list-style-type: none"> <li>Ministry of Foreign Affairs, Pakistan</li> <li>Ministry of Law and Justice, Pakistan</li> <li>Legal experts and policymakers</li> <li>Diplomatic missions</li> </ul>	<ul style="list-style-type: none"> <li>3-6 months for initial legal publications and briefings.</li> <li>6-12 months for sustained diplomatic engagement</li> </ul>
<b>Reviving the Permanent Indus Commission</b>	Regular meetings of the PIC, as mandated under Article 8 of the IWT, should be convened to address emerging concerns, ensuring continued dialogue rather than treaty renegotiation.	Pakistan should formally request a meeting through diplomatic channels. A structured agenda should be prepared, incorporating climate-related concerns, demographic shifts, and evolving challenges in treaty implementation.	<ul style="list-style-type: none"> <li>Ministry of Water Resources, Pakistan</li> <li>Ministry of Foreign Affairs, Pakistan</li> <li>Pakistan Commissioner for Indus Waters</li> <li>Indian Commissioner for Indus Waters</li> </ul>	<ul style="list-style-type: none"> <li>1-3 months to issue a formal request and finalize an agenda.</li> <li>6-12 months to hold the first commission meeting and initiate discussions.</li> </ul>
<b>Technical and Scientific Strengthening</b>	Pakistan should enhance its water management capacity by investing in real-time hydrological monitoring systems and expanding water storage and conservation projects. Collaboration with international scientific institutions can aid in developing climate-adaptive strategies.	Implement real-time monitoring through satellite-based hydrological tracking. Develop national water conservation projects, including small and large-scale reservoirs. Engage with global institutions for technical assistance and policy recommendations.	<ul style="list-style-type: none"> <li>Ministry of Water Resources, Pakistan</li> <li>Pakistan Council of Research in Water Resources ("PCRWR")</li> <li>International water governance institutions</li> </ul>	<ul style="list-style-type: none"> <li>6-12 months to conduct feasibility studies and secure funding.</li> <li>1-3 years for infrastructure expansion and monitoring system deployment.</li> </ul>
<b>Public and Strategic Communication</b>	A strong narrative should be developed to highlight Pakistan's adherence to international treaty law and responsible water management, countering misinformation and exposing legal inconsistencies in India's claims.	Launch a strategic media campaign using print, digital, and broadcast media. Organize academic conferences and policy dialogues to reinforce Pakistan's legal position. Conduct targeted international outreach to policymakers and think tanks.	<ul style="list-style-type: none"> <li>Ministry of Foreign Affairs, Pakistan</li> <li>Ministry of Information and Broadcasting, Pakistan</li> <li>Think tanks and universities</li> <li>Media</li> <li>Diplomatic missions</li> </ul>	<ul style="list-style-type: none"> <li>3-6 months for campaign initiation and expert dialogues.</li> <li>6-12 months for sustained engagement and global outreach.</li> </ul>