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PURPORTED “ABEYANCE” OF THE INDUS WATERS TREATY LEGAL OPTIONS ON THE WAY FORWARD

Executive Summary

Introduction

In the wake of the Pahalgam attack, India baselessly alleged Pakistan’s involvement and unilaterally declared the Indus Waters Treaty, 1960 (“IWT”) to be held in “abeyance.” However, the IWT contains no provision for such an action. Under international law—particularly the Vienna Convention on the Law of Treaties (“VCLT”)—such unilateral action by India is impermissible. Moreover, India has long expressed dissatisfaction with the IWT, eyeing modifications to gain greater control over the western rivers. Pakistan, on the other hand, remains committed to resolving issues through the Treaty mandated dispute resolution mechanisms. This move by India not only undermines a historic water-sharing framework but also threatens regional peace and stability. To respond effectively, Pakistan must strengthen its diplomatic outreach and engage relevant international fora to safeguard its water rights.



Policy Recommendations

Invoke the Dispute Resolution Mechanism Provided Under the IWT: Initiate CoA proceedings under Article IX of the IWT through the World Bank to reaffirm the Treaty’s binding legal status.

Advocate for an Advisory Opinion by the International Court of Justice: Mobilize international institutions to seek an advisory opinion by the ICJ on the legality of India’s purported “abeyance” of the IWT.

Engage with the World Bank to Mediate: Urge the World Bank to mediate as a neutral facilitator and ensure compliance with the IWT’s dispute resolution framework.

Internationalize the Issue through the UNSC: Escalate India’s actions to the UNSC as a threat to regional peace and stability under the UN Charter.

Mobilize Diplomatic Support through Bilateral and Multilateral Channels: Leverage key alliances and multilateral forums to build diplomatic pressure for adherence to international water agreements.

Frame the Narrative as a Global Precedent in Transboundary Water Cooperation: Position India’s actions as a dangerous precedent for global transboundary water governance and regional ecological stability.

Prepare a Legal White Paper on Treaty Violations: Draft a detailed legal white paper documenting India’s IWT breaches to support international advocacy and litigation.

Disclaimer

The views expressed in this Policy Brief are of the author(s) alone and do not necessarily reflect policy of the IPRI.

Background

The Indus Waters Treaty (“IWT”), brokered by the World Bank, has been the primary framework for water-sharing between India and Pakistan since 1960, surviving several wars and diplomatic breakdowns. In recent years, however, India has shown growing dissatisfaction with the treaty—at times through unfounded threats, such as Prime Minister Modi’s remark that “water and blood cannot flow together”¹, and at other times through formal written communications.

In 2023, 2024, and 2025 India issued notices to Pakistan seeking to modify the treaty, citing various concerns—such as the evolving demographic landscape and increasing water demands—as constituting a fundamental change in circumstances.² Pakistan, however, consistently maintained that the treaty remains a viable mechanism for resolving any emerging issues.³

On 24 April 2025, following the Pahalgam attack in Indian-occupied Jammu and Kashmir, India unilaterally held the Treaty in “abeyance”⁴. This action lacks legal justification and constitutes a violation of international law and India’s obligations under the IWT.

India’s Stance

India conveyed to Pakistan that it seeks a government-to-government dialogue for the review and modification of the IWT, citing the following main concerns:

Pakistan is in material breach of the Treaty, owing to the simultaneous proceedings taking place before the Court of Arbitration (“CoA”) and the Neutral Expert (“NE”).

Fundamental and unforeseen developments have taken place since the Treaty’s conclusion, necessitating a reassessment of its provisions.

Demographic shifts, along with changes in agricultural and other water-related demands require modification of the Treaty.

India’s commitment to clean energy development and the need to reduce carbon emissions present a justification for proposed changes.

Evolving security situation in Jammu and Kashmir, along with cross-border terrorism, have hindered the effective operation of the Treaty.

The existing dispute resolution mechanism needs revision. Certain provisions of the Treaty were intended to be time-bound and are now obsolete.

India’s rights, as the upper riparian state, have been unduly restricted and the Treaty impedes India’s ability to develop and manage water resources to meet its needs.

Pakistan’s Stance

In response to India’s position, Pakistan maintains the following:

India’s argument of fundamental change, are neither unforeseen nor fundamental enough to warrant a modification of the IWT.

The IWT continues to serve as a viable and effective mechanism for addressing disputes and evolving concerns.

The Permanent Indus Commission (“PIC”) is the appropriate forum for communication and resolution under the Treaty.

All issues should be raised at the level of the PIC, rather than resorting directly to government-to-government negotiations.

Any discussion on modification must be preceded by a formal statement of concern from India, clearly identifying the specific provisions of the Treaty it seeks to amend.

Understanding “Abeyance” and Treaty Obligations

In a press briefing by the Ministry of External Affairs, India’s Foreign Secretary declared: “The Indus Waters Treaty of 1960 will be held in abeyance with immediate effect, until Pakistan credibly and irrevocably renounces its support for cross-border terrorism.”⁵ Following this statement, Indian media widely echoed the term “suspension,” repeatedly stating that the IWT had been suspended. Both the terms “abeyance” and “suspension” have been used strategically by India, despite neither of the two terms being part the text of the IWT.

Mutuality Over Unilateralism: Legal Constraints Set by the Treaty

The IWT is built on the foundation of mutual agreement between the parties and does not contain any sunset or exit clause. Article XII of the treaty clearly stipulates that any “modification” or “termination” must occur through a “duly ratified treaty concluded for that purpose between the two Governments.”⁶ Notably, the IWT does not entertain the concept of “suspension”. Any attempt to suspend the Treaty, outside its provisions, is extraneous to the scope of the IWT’s legal framework and therefore constitutes a breach.

Moreover, because the IWT aims to facilitate cooperation over shared water resources, it repeatedly underscores the importance of cooperation. By placing the Treaty in “abeyance”, India has not only breached the Treaty’s provisions but also disregarded its cooperative spirit and foundational intent. The Treaty, in the absence of mutually agreed modification or termination, continues to remain legally valid and binding.

Vienna Convention on the Law of Treaties (“VCLT”)

VCLT, the primary legal framework governing the formation, interpretation and termination of treaties, does not contain any provision dealing with “abeyance”. It does, however, address the concept of “suspension” in clear terms. Article 57 titled, “Suspension of the operation of a treaty under its provisions or by consent of the parties”, stipulates that a treaty may be suspended “in conformity with the provisions of the treaty; or [...] by consent of all the parties [...]”.⁷ In light of this provision, India’s unilateral decision to place the IWT in abeyance constitutes a clear breach of the Treaty.

Additionally, Article 60 of the VCLT allows for the termination or suspension of a treaty only in response to a material breach by one of the parties.⁸ In the case of the IWT, Pakistan has not committed any such breach. For instance, if Pakistan had obstructed or significantly reduced the flow of waters allocated to India in violation of Article IV(2) of the IWT, such as by constructing unauthorized irrigation or diversion works on tributaries flowing into India, this could constitute a breach of the Treaty. In practice, however, Pakistan has consistently abided by its obligations under the IWT and has not engaged in any conduct that could be characterized as a material breach. Therefore, India’s action not only lacks procedural legitimacy under Article 57 but also fails to meet the substantive criteria outlined in Article 60.

India’s plea of a “fundamental change in circumstances” corresponds to the doctrine of *rebus sic stantibus*, as articulated in Article 62 of the VCLT.⁹ However, this doctrine applies only in exceptional cases where the change is fundamental, unforeseen and radically transforms the extent of obligations originally undertaken by the parties. None of the reasons cited by India meet this high threshold. Moreover, the argument has never succeeded in international practice, and the International Court of Justice (“ICJ”) has never accepted it as valid grounds for terminating or suspending a treaty. Therefore, India’s reliance on this doctrine lacks legal merit and cannot serve as a valid basis for suspending or terminating its obligations under the IWT.¹⁰

India and Pakistan are not parties to the VCLT; Pakistan signed but never ratified it, while India did not sign it at all. Moreover, the VCLT is generally not retroactive¹¹, so it could be argued that its provisions do not strictly apply to the IWT, which predates the Convention. However, courts and tribunals often use the Convention as an interpretive tool for older treaties—particularly its provisions on treaty formation, interpretation, application and termination. For instance, the ICJ applied VCLT principles to interpret the Heligoland-Zanzibar Treaty of 1890 between the United Kingdom and Germany in the *Kasikili/Sedudu Islands* case (1999), despite the treaty predating the VCLT and neither party being a signatory.¹² As a result, while the VCLT may not govern the IWT directly, its principles remain relevant

interpreting and clarifying the treaty’s terms and obligations.

Treaty Modification

In its notices to Pakistan, India has cited its growing population and increasing demands for irrigation, drinking water, and hydropower as grounds constituting fundamental change of circumstances. India argues that the IWT is outdated and insufficiently responsive to contemporary challenges such as climate change and groundwater depletion.¹³ India has also expressed a desire to construct additional storage and hydropower projects on the western rivers—Indus, Jhelum, and Chenab. Furthermore, it has accused Pakistan of prolonging the dispute resolution processes over the Kishenganga and Ratle hydroelectric projects and now seeks modification of the dispute resolution mechanism to avoid similar delays in the future.¹⁴ At its core, India appears to be pursuing greater autonomy over the western rivers, both to meet its developmental goals and to enhance its leverage as the upper riparian state.

Pakistan, on the other hand, relies heavily on the waters of the western rivers for most of its agriculture and hydropower needs.¹⁵ It views the IWT as a crucial guarantee for its water security. Any attempts by India, to withhold or divert water, would severely harm Pakistan’s agriculture and economy. Hence, Pakistan has warned that any attempts to tamper water flows will be considered as an act of war.¹⁶ Pakistan has expressed willingness to hear India’s concerns and to resolve the issues through Treaty mandated mechanisms.¹⁷

Prospects and Pitfalls of Treaty Modification

If Pakistan agrees to a modification of the treaty, what would the process entail? According to Article 12(3) of the treaty, any modification can only be effected through a mutually agreed and duly ratified treaty between India and Pakistan.¹⁸ This means both countries must enter into negotiations in good faith and formally agree to the proposed changes. These changes will then need to be reflected in a new treaty, concluded for that purpose. Both governments must then ratify the new treaty in order for it to become legally binding on Pakistan and India.

The issues or provisions that might be subject to modification—especially from India’s perspective—are worth considering. Based on India’s previous arguments, potential areas for modification could include the dispute resolution mechanism under Article IX, as both countries interpret it differently. India views it as a sequential process, whereas Pakistan sees it as consequential. Additionally, technical provisions—particularly those in Annexure D, which govern India’s construction of hydroelectric and irrigation projects on the western rivers—have long been points of contention. India may push for greater flexibility in these areas. India has also expressed dissatisfaction with its current rights to water use and storage and may seek

increased control over the waters of the western rivers, which are allocated to Pakistan. Furthermore, contemporary issues such as environmental sustainability, climate variability, and technological advancements in water management may also come up for discussion in any proposed amendments.

Indian concerns and objections stem from its desire to retain greater options and flexibility in the design of run of the river projects and irrigation channels. The permissible design features of the hydroelectric projects specified in the relevant Annexures of the IWT according to India need revision due to technological advancements after the signing of the treaty that afford India leverage to flush out the sediments and prolong the useful life of the hydroelectric structure. Pakistan, contrarily contends that the solution to such technical issues can be found within the original treaty and any changes that permit India larger water storage might enable India to manipulate the river water flow as a coercive tool against Pakistan. Pakistan is also wary of adverse environmental impact of hydroelectric projects, especially on the forest cover and soil stabilization. At Ratle alone 70 hectares of forest cover has been removed due to hydroelectric project.

Pakistan's apprehension about opening the treaty for modification is rooted in uncertainty. For that purpose, Pakistan has consistently conveyed its openness to hear and discuss India's concerns prior to any formal engagement on the matter. This is to ensure that the parameters of any conversation on modification of the IWT are clearly defined.

Policy Recommendations and Options for Pakistan

Invoke the Dispute Resolution Mechanism Provided Under the IWT

Pakistan can frame the issue as a legal dispute under Article IX of the IWT and initiate proceedings before a CoA, empanelled by the World Bank. Taking this route would not only demonstrate Pakistan's commitment to resolving issues within the Treaty mandated framework but also reinforce the position that the IWT remains valid and binding despite India's unilateral declaration.

Advocate for an Advisory Opinion by the International Court of Justice

While Pakistan cannot unilaterally take the matter to the ICJ under its contentious jurisdiction, international organizations can be engaged with to seek an advisory opinion from the ICJ.

- The World Bank can seek an advisory opinion from the ICJ on the legality of India's purported "abeyance" of the Treaty.
- An advisory opinion can be sought from the United Nations General Assembly ("UNGA"), by framing the issue as one that affects the stability of the entire South Asian region.

However, this will depend on the voting composition of the Assembly.

- An advisory opinion can be sought from the United Nations Security Council ("UNSC") by framing the issue as one that deals with international peace and security.

Engage with the World Bank to Mediate

As the original broker of the IWT, the World Bank has a central and ongoing role in facilitating dispute resolution. Pakistan should actively urge the World Bank to uphold its fiduciary responsibilities and ensure impartial implementation of the Treaty's dispute resolution mechanisms.

Internationalize the Issue through the UNSC

Pakistan can escalate the issue to the UNSC by framing India's actions as a potential threat to international peace and an act of aggression. Under the UN Charter, the UNSC is empowered to make recommendations or decide on provisional measures to maintain international peace and security in cases involving such threats or breaches.

Mobilize Diplomatic Support through Bilateral and Multilateral Channels

Engagement with key allies such as Turkey and China, as well as multilateral organizations like the Organization of Islamic Cooperation ("OIC") and Shanghai Cooperation Organization ("SCO"), can help Pakistan build diplomatic pressure on India. Coordinated diplomatic efforts will reinforce the legitimacy of Pakistan's position and demand adherence to international norms.

Frame the Narrative as a Global Precedent in Transboundary Water Cooperation

153 countries have territory within at least one of the 286 transboundary river and lake basins and 592 transboundary aquifer systems in the world. India's actions will set a dangerous precedent in transboundary water governance and management. Pakistan should publicly articulate India's actions as undermining international law and a historic transboundary water agreement. Emphasizing the humanitarian and ecological risks to millions in the region can attract global attention and support for Pakistan's stance.

Prepare a Legal White Paper on Treaty Violations

Pakistan should develop a comprehensive legal white paper outlining India's actions, documenting violations of the IWT, and analyzing potential breaches under international law. This white paper can serve as both a domestic reference and a tool for international advocacy and litigation.

Notes

¹ ‘Delhi decides to suspend Indus Water Commission talks’ (Dawn, 27 September 2016) <https://www.dawn.com/news/1286293> accessed 2 May 2025.

² ‘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 2 May, 2025.

³ ‘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 May 2025.

⁴ ‘Statement by Foreign Secretary on the decision of the Cabinet Committee on Security (CCS)’ (Ministry of External Affairs, 23 April 2025) https://www.mea.gov.in/Speeches-Statements.htm?dtl%2F39442%2FStatement_by_Foreign_Secretary_on_the_decision_of_the_Cabinet_Committee_on_Security_CCS accessed 2 May 2025.

⁵ Ibid.

⁶ Indus Waters Treaty 1960 (India-Pakistan) (signed 19 September 1960, entered into force 1 April 1960) art 12 <https://treaties.un.org/doc/Publication/UNTS/Volume%20419/volume-419-I-6032-English.pdf> accessed 3 May, 2025.

⁷ Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, art 57 https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf accessed 3 May, 2025.

⁸ Ibid, art 60.

⁹ Ibid, art 62.

¹⁰ See Maham Naweed and Khadija Almus Khanum, Indus Waters Treaty and the Myth of Fundamental Change – A Legal and Policy Assessment (Islamabad Policy Research Institute, April 2025) <https://ipripak.org/indus-waters-treaty-and-the-myth-of-fundamental-change-a-legal-and-policy-assessment/> accessed 3 May 2025.

¹¹ Vienna Convention on the Law of Treaties (n 5) art 28.

¹² Anthony Aust, ‘Vienna Convention on the Law of Treaties’ (Max Planck Encyclopedia of Public International Law, Oxford Public International Law, March 2023) <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1498> accessed 3 May 2025.

¹³ Abid Hussain, ‘Is the Indus Waters Treaty the latest India-Pakistan flashpoint?’ (Al Jazeera, 22 September 2024) <https://www.aljazeera.com/news/2024/9/22/is-the-indus-waters-treaty-the-latest-india-pakistan-flashpoint> accessed 4 May 2025.

¹⁴ Sarita Chaganti Singh and Ariba Shahid, ‘What is the Indus Waters Treaty between India and Pakistan?’ (Reuters, 24 April 2025) <https://www.reuters.com/world/asia-pacific/what-is-indus-waters-treaty-between-india-pakistan-2025-04-24/> accessed 4 May 2025.

¹⁵ Ibid.

¹⁶ Prime Minister’s Office, ‘Prime Minister Shehbaz Sharif Chairs National Security Committee Meeting’ (24 April 2025) https://www.pmo.gov.pk/press_release_details.php?pr_id=6034 accessed 5 May 2025.

¹⁷ Ministry of Foreign Affairs Pakistan (n 3).

¹⁸ Indus Waters Treaty 1960 (India-Pakistan) (signed 19 September 1960, entered into force 1 April 1960) art 12 <https://treaties.un.org/doc/Publication/UNTS/Volume%20419/volume-419-I-6032-English.pdf> accessed 3 May, 2025.

Action Matrix

Options for Pakistan

Option	Pathways to Solution	Implementation of Solution	Actors Responsible	Implementation Timelines
Invoke the Dispute Resolution Mechanism Provided Under the IWT	Frame the issue under Article IX of the IWT and request the World Bank to empanel the CoA.	Submit formal notice to India and the World Bank initiating the dispute resolution procedure; appoint legal counsel and prepare case materials.	<ul style="list-style-type: none"> Ministry of Foreign Affairs Ministry of Law and Justice Ministry of Water Resources Office of the Attorney General Pakistan Commissioner for Indus Waters (“PCIW”) 	<ul style="list-style-type: none"> 3–6 months for initiation and empanelment 12–24 months for arbitration proceedings.
Advocate for an Advisory Opinion by the ICJ	Engage with international organizations to request an advisory opinion from the ICJ.	Build diplomatic support among member states, prepare a formal legal brief, and coordinate with international institutions to sponsor the request to the ICJ	<ul style="list-style-type: none"> Permanent Missions of Pakistan to the UN Ministry of Foreign Affairs Office of the Attorney General World Bank UNGA UNSC 	<ul style="list-style-type: none"> 6–12 months for diplomatic coordination 12–18 months for ICJ opinion.
Engage with the World Bank to Mediate	Urge the World Bank to actively facilitate mediation between Pakistan and India.	Formally engage with the World Bank’s legal and operational teams to facilitate dispute resolution under the Treaty framework.	<ul style="list-style-type: none"> Ministry of Foreign Affairs Ministry of Law and Justice 	<ul style="list-style-type: none"> 3–6 months for diplomatic engagement; ongoing follow-up required.
Internationalize the Issue through the UNSC	Frame India’s actions as a threat to international peace under the UN Charter.	Present the case to UNSC members; draft and propose a resolution calling for India’s compliance with international obligations.	<ul style="list-style-type: none"> Ministry of Foreign Affairs Pakistan’s Permanent Representative to the UN. 	<ul style="list-style-type: none"> 1–3 months for issue elevation 3–6 months for UNSC action (depending on consensus).
Mobilize Diplomatic Support Bilaterally and Multilaterally	Build regional and global support through key allies and international platforms.	Launch a coordinated diplomatic campaign; raise the issue in OIC, SCO, and bilaterally with strategic partners.	<ul style="list-style-type: none"> Ministry of Foreign Affairs Relevant Embassies and Consulates of the Government of Pakistan 	<ul style="list-style-type: none"> 6–12 months for coalition-building ongoing diplomatic efforts.
Frame the Narrative as a Global Precedent in Transboundary Water Cooperation	Highlight global implications of India’s actions at international forums.	Publish op-eds, organize side-events at international conferences, and engage civil society and media.	<ul style="list-style-type: none"> Ministry of Foreign Affairs Ministry of Climate Change, Think-tanks Civil society organizations 	<ul style="list-style-type: none"> 3–6 months for communication s strategy long-term for narrative shift

Develop a Legal White Paper Documenting Treaty Violations	Legally document India’s actions and violations under the IWT and international law.	Research and draft legal paper; disseminate to international legal bodies and media.	<ul style="list-style-type: none">• Office of the Attorney General• Ministry of Foreign Affairs• Ministry of Law and Justice	<ul style="list-style-type: none">• 2–4 months for drafting and review; ongoing use for strategic communication and legal action
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