



Indus Water Treaty: Threats of Abrogation, Plans for Revision and Prospects of Survivability

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Abstract

Indus Basin Treaty which was brokered by the World Bank for resolving water issues between Pakistan and India. Despite persistent hostilities and wars between the two arch-rivals, the treaty has functioned well and is still crucial for Pakistan's water security and peace of the region. However, owing to increasing tension of water shortage in both Pakistan and India strains arise over the treaty. Growing Pakistani demands for water and sustained Indian construction of hydropower projects, as well as other dams on western rivers, have raised threats regarding the survivability of the treaty. Presently the treaty has come under intense threats after Uri attacks. Due to this incident some Indian commentators recommended abrogation, while some circles proposed revision of the treaty. However, questions arise whether revision of the treaty suit Pakistan's interests? Will the treaty survive in the face of current crisis? What is Pakistan's current stand on the issue?

Key Words: Distribution of Water, Violation of Indus Water Treaty, Uri attack, Abrogation or Survival of the Treaty, Water as a Weapon

Introduction

From the time of their inception, Pakistan and India have been embroiled in a serious confrontation over Kashmir and other vital issues, however, despite three wars and a number of minor conflicts both the sides managed to maintain the Indus Water Treaty, which provides a mechanism for solving conflict over water sharing. Indus Basin treaty mediated by World Bank between Pakistan and India in 1960, which had resolved water issues and survived despite major wars is now under threat in the face of the present crisis. The current Pak-India confrontation began as a result of the September 18, 2016 attack on the Indian Army base in Uri situated in Indian held Kashmir by four terrorists, where eighteen army personnel were

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killed. Immediately after the attack, India put the blame of the attack on Pakistani based militant groups without any investigation. However, Pakistan's policy circles have responded to Indian accusations in a sensible manner and appeared to resist India's efforts to bait Pakistan.

As tension is reaching to the highest level and there is the possibility of war between the two countries, some Indian analysts suggest abrogation of the treaty and advocate using water as a weapon against Pakistan. They believe that the abrogation of the treaty will be the best non-military option to exert pressure on Pakistan to keep it silent on the Kashmir issue. In case India decides to use the shared water as a weapon to punish Pakistan, the outcome will be disastrous for Pakistan in terms of human insecurity however, India will also have to face the worse consequence of its action as the dams and reservoirs she has constructed on Indus Rivers will be the genuine military targets of Pakistan's retaliation (Swain, 2016).

Since the last two decades, some Indian segments are advocating a revision of the water distribution treaty, which has given India exclusive rights over rivers on the east while Pakistan's right over the rivers on the western side has been accepted. Moreover, the treaty also guaranteed India's right to use waters of western rivers for domestic use, power generation as well as consumptive and non-consumptive use. India's heavy industrialization and urbanization process have led to excessive use of Pakistani rivers. By advocating a revision of the treaty India wants to deprive Pakistan of its remaining share of water.

The treaty has come under intense pressure especially in the aftermath of the Uri incident, there has been increasing demand within India for taking punitive action against Pakistan. Some high-level Indian leadership including Prime Minister Narendra Modi also shared the same opinion but the realization of the enormous risks attached to direct retributory action, lead them to search some other spectacular avenue which besides giving PM Modi political triumph within India, may not go out of controls. During such a situation, the treaty's abrogation in India has come under crucial considerations (Swain, 2016).

In a meeting with his officials, PM Modi said that "blood and water cannot flow simultaneously". During the meeting, the water distribution pact was reviewed and all possible ways and means were explored to use water of the Indus River that flows into Pakistan. It was also decided to "exploit to the maximum" those rivers under Pakistan's control including river Jhelum. As an offensive step against Pakistan, the Permanent Indus Commission's meeting was suspended by India. The review meeting regarding Indus Water Treaty was held as India is considering its options to retaliate on the Uri attack that triggered demands within India to scrap the treaty with the purpose of exerting pressure on Pakistan.

Theoretical Framework

The absolute territorial integrity theory provides full rights over the international

rivers to both upper and lower riparian countries. The theory affirms the right of the lower riparian country of a river to utilize as much water as it wishes without intervention in its natural flows by the upper riparian country. The upstream country will consent to the downstream country in case it wants to interfere in the natural flow of water. So the downstream country having full rights to assert continuous water flows from the upstream country. (Barandat, & Kaplan, 1998; Schroeder-Wildberg, 2002). Such a theory frequently finds support from the lower riparian states as it guarantees their unaltered right of using the water of an international river (Birnie, & Boyle, 2002).

Limited territorial-sovereignty theory suggests that each state can freely use water of the common rivers, which flows in their own territories providing that such use of the shared rivers does not prejudice the interests and rights of the co-riparian. In this situation, the co-riparian possess relative or qualified sovereignty over the shared rivers. While using International rivers' waters, the co-riparian has mutual rights and obligations and each state is qualified to receive a reasonable share of its benefits. The theory recognizes the rights and obligations of both lower and upper riparian countries and guarantees the reasonable and equitable use of international watercourse. The theory also asserts that the co-riparian will not cause any harm to each other (Schroeder-Wildberg, 2002, p.14).

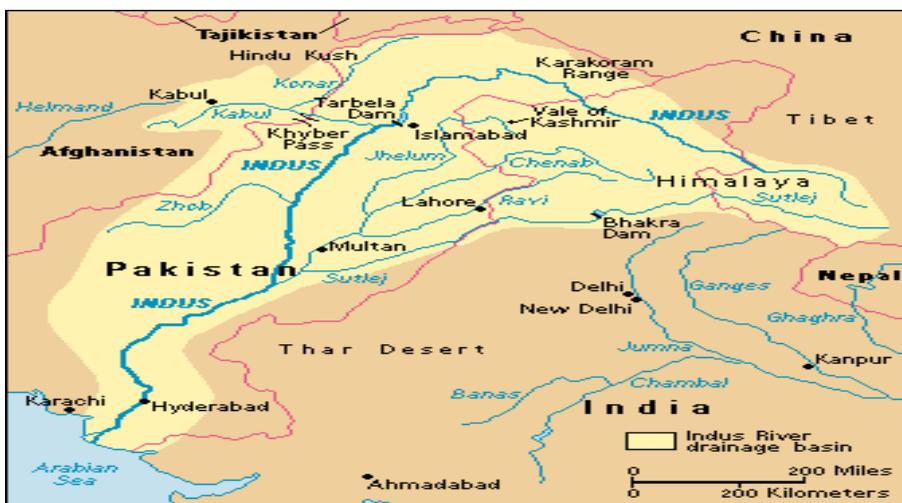
The Indus Water treaty which resolved water disputes in-between Pakistan and India by providing a mechanism for water utilization in the future of the shared rivers resembles in some respect with some of the principles of the theory absolute territorial integrity as well as with theory limited territorial sovereignty. The treaty bears a resemblance to the principle of absolute territorial integrity. At the same lines, the treaty resembles the principles of limited territorial sovereignty as the treaty makes it binding on India to let the flow of western rivers uninterrupted except domestic, agriculture, and non-consumptive use as well as hydro-power generation, similarly Pakistan is bound to let the unrestricted flow of water except non-consumptive and domestic use.

Contextual View of the Treaty

The creation of a wide-spread network of waterways and the world's largest irrigation system in British India was a valuable effort of British rule. After the division of India into two independent states in 1947, all existing water supplies were given to provinces and princely states according to the principle of fair sharing of waters. The Indus Basin consists of Indus and five tributary rivers which include Ravi, Chenab, Jhelum Sutlej and Beas. All these rivers combine together into a single river at Mithan Kot in Pakistan and move to the Arabian Sea. Most of the lower reaches of these rivers flow in Pakistan and the upper portion in Jammu and Kashmir, China and India (Chandio, & Yasmin, 1999). At a patrician time in 1947, Sir Cyril Radcliffe was assigned the responsibility of boundaries

demarcation, divided the land as well as water and the integrated system of Indus Basin. Consequently, the two states had to find an appropriate mechanism for future water-sharing (Vaid & Maini, 2012). As a consequence of boundary division, the canals' head-works were placed in India, despite the fact that 80 percent of the area irrigated by these canals was in Pakistan. Adding affront to damage, demand for propriety rights on Punjab Rivers' water was started by India, thus negating Pakistan's due share of water as a lower riparian.

The Expanse of the Indus Basin



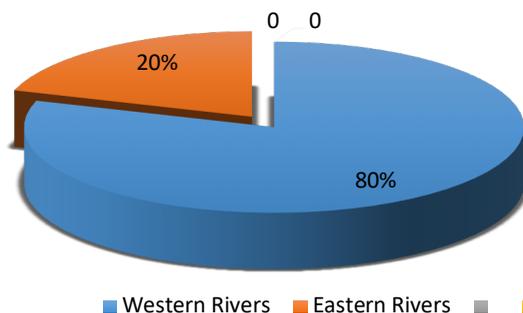
(Source:<http://www.rifah.org/site/the-indus-accord-1960>)

The first dispute related to water in-between both nations broke out on 1st April 1948, while India cut-off the supplies of waters to Pakistan. The abrupt action by India despite the assurance that it will not interfere whatever at that time prevailing flow of water, created distress and insecurity in Pakistan. The sense of vulnerability and insecurity caused by this Indian interruption became an enduring feature of the Pakistani psyche which influence Pakistani thinking even today (Kakakhel, 2014). This unexpected closing of the gates of irrigation water by India stressed the crucial need for the formulation of a mechanism concerning the distribution and use of water.

Negotiations on issues soon began in-between the two nations with the World Bank's (W.B) effective mediation, which resulted in the Indus Basin Treaty on 19th September 1960 in Karachi and was signed by the then Pakistan's president, India's Prime Minister, and World Bank's vice president. Both countries accepted each other's' rights and obligations regarding the water's utilization of the Indus Basin through this treaty (Khan, 1967). Under this treaty Pakistan got outright

control over three western rivers and India got absolute right over three eastern rivers. The treaty enabled both countries to operate water supplies of their specific share. The graph below shows Water distribution in-between both countries under the treaty.

Water Distribution under IWT



The treaty reduced strains in the Pak-India bilateral relationship as it introduced a reliable mechanism in the course of seasonal variations. A Permanent Indus Commission was also established for resolving disputes in the future between the two countries. The main provisions of the treaty are given below.

Key Provision of the Treaty

- Pakistan shall have an unobstructed right to use all the water of the western rivers.
- It shall be compulsory responsibility of India to let the unrestricted water flows except for non-consumptive use, domestic use, use for agriculture and hydroelectric power generations.
- India shall have exclusive rights over the waters of the eastern rivers.
- It shall be a binding obligation of Pakistan to let the unhindered flow of water except for domestic as well as non-consumptive use.
- By utilizing its potentials in the best manner Pakistan has to build and operate such a scheme of work which will complete the replacement from those rivers which were given to Pakistan under the treaty, the supplies of water for Pakistan's irrigation canals which were previously dependent on others.

- Both Pakistan and India declared their limitation to prevent undue water pollution in so far as it is practicable and made sure that before the discharge of any waste necessary treatment will be made in such a manner that not essentially distress those uses.

There is no provision in the Indus Water Treaty regarding its abrogation or termination. The treaty does not mention any time limit and can be replaced by another water treaty signed and ratified by the mutual consent of both parties (Dilogue, 2012). Indus Basin Treaty which is simply based on the distribution of rivers not on the quantity of water, gave each country independent control over the supplies of waters within their territory as well as eradicated the conflicting demands of both parties regarding water distribution (Salman & Uprety, 2003). The treaty recognizes the interests of both countries and provides for future cooperation between them.

Permanent Indus Commission and Conflict Resolution Mechanism

A permanent Indus commission and provisions for resolution of conflict were provided in the treaty. Article IX, Annexures F, and G provide for conflict resolution mechanism, the permanent Indus Commission is to decide questions, Neutral Experts are to resolve differences and the International Court of Arbitration is to settle the disputes. In case of any disagreement between the two countries, the PIC tries to resolve the issue, however, if it fails in resolving the issue, the case is extradited to Neutral Experts if again the case remained unsettled, then the dispute will be resolved by International Court of Arbitration. The ICA while considering the case will follow the law within the framework of the IWT itself (Indus Water Treaty 1960, 1960). The main purpose of the Commission was the promotion of collaboration in the development of waters of the Indus Basin. Other objectives include reviewing the matters in which the commission help is required as well as resolving questions regarding the application and interpretation of the treaty (*Ibid*).

Conflict Resolution Mechanism under the Indus Basin Treaty

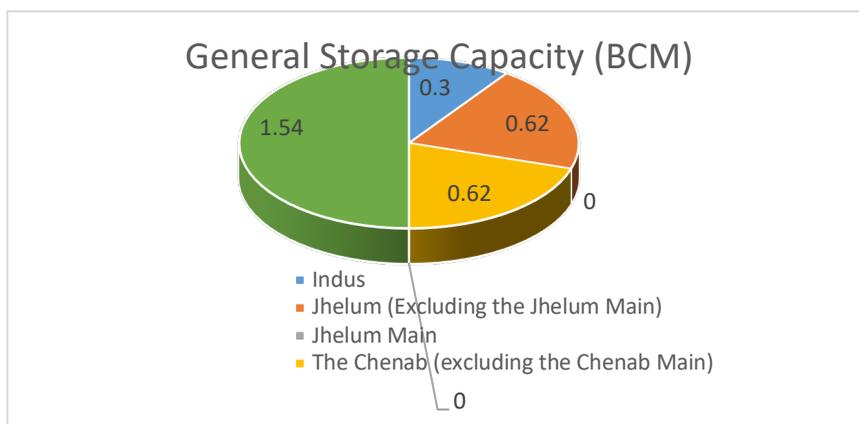


In the view of many analysts, the complex water issue emerged when the partition line was drawn between Pakistan and India in 1947. A seemingly little change was made in the partition map when three important districts which were originally given to Pakistan under the plan of partition but in the last minutes were allocated to India on the insistence of Hindu leaders. The underlying objective behind this was to pave the way for India's access to Kashmir. Those rivers given to Pakistan under the Indus Basin Treaty originate in Kashmir or pass through it before flowing down into Pakistan. When India got rights with the signing of the treaty, it is now harassing western rivers and planning to take control of the water of western rivers as well (Kazi, 2011). The treaty which was concluded after a decade of hard work to reconcile the differences over water sharing is now under threat due to various challenges.

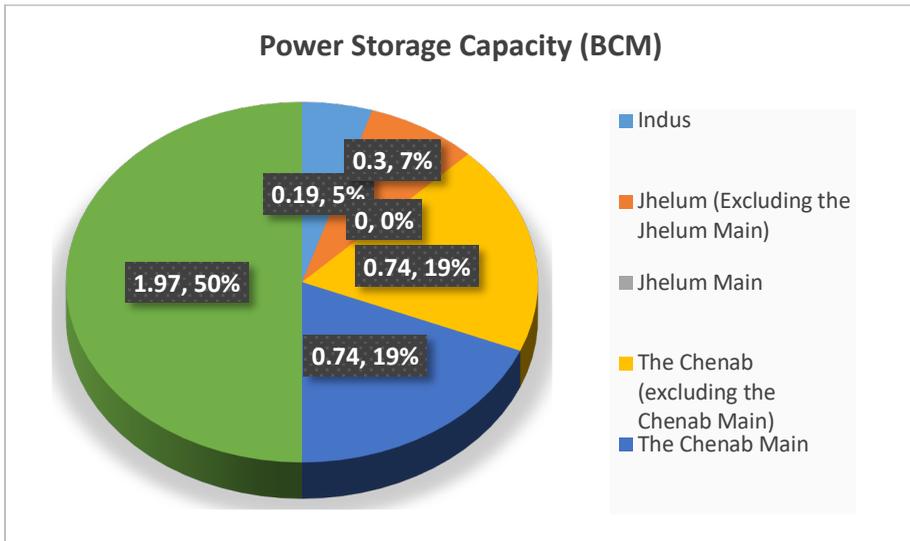
Treaty's Violation by India and its Impact on Pakistan:

The Treaty continues to exist in the midst of conflicts and wars but its violation by India has created stress in Pakistan. Although this treaty has allowed India to utilize water given to it for generating hydro-electric powers, but there are also clear provision in Annexure D. part 3 of the treaty which clarifies that the construction of any hydro-power plan on the rivers given to Pakistan by the treaty, shall be a run-of-the-river plan with no live storage as an essential part of the project excluding surcharge or bondage storages (Indus Water Treaty 1960, 1960). However, Indian projects on western rivers are not according to the provision of the treaty and will impose huge damage on Pakistan. These projects will have serious consequences for Pakistan by holding the flow of water or releasing the stored water thereby causing flood in the country. The following graphs show the provision of general storage and power capacity:

Provisions of General Storage Capacity on western rivers to India



Provision of Power Storage Capacity on Western Rivers to India



India has started various projects on Pakistani rivers such as the Kishanganga project, Wular Barrage, Baghlihar Dam and Salal Dam which amounts to treaty violations. Although two countries concluded an agreement on the issue however, Indian future actions cannot be anticipated. Currently, India can hold waters for a period of 25-26 days that can create a severe crisis of water shortage for the crops of the winter season in Pakistan (Chandio, 2014). This besides affecting Punjab's wheat crop produced electricity shortage.

In the international community, India has justified its stand on building dams and water storages on western rivers on two grounds firstly; Pakistan is incapable of securing its water by sufficient storages and construction of dams, as a result, an enormous amount of waters flow down to the Arabian Sea, for that reason India is preserving water. Secondly, these storages and dams are for the usage of the people of Indian occupied Kashmir either for irrigation or production of electricity. However, these Indian justification of using Pakistani share of water are lacking logic. Kashmir's current electricity requirement is 5000 MWs and its land is mostly arid and a limited portion of land is left for irrigation. By utilizing Pakistan's share of water India will be able to produce 43,000 MWs electricity that will be used mostly for industrialization of India (Nosheen & Begum, n.d.). Actually, India wants to deny water to Pakistan and to convert Pakistan's agricultural land into a desert. It is also true that due to many reasons Pakistan has not yet constructed sufficient water storages to preserve a sufficient amount of water, however, this is not a genuine logic to encroach over the water of western rivers.

India's Desire for Treaty Revision

This Treaty was an original and unique document which conciliated the controversies over the right of using water as well as enhance the availability of water between India and Pakistan. However, regardless of worldwide appreciation, the treaty received criticism from different segments. The common view is that the water-sharing mechanism between the countries isn't fair. The majority of people in India believe that the provision of 80 percent water of the Indus basin to Pakistan and just 20 percent to India is discriminatory (Iyer, 2005). Some Indian scholars opine that the Indus water should be distributed on the basis of drainage area, cultivated land and population which would allow India to utilize 42.8 percent of water, but the treaty has allocated 80 to Pakistan.

Some Indians also criticize the treaty on the ground that a heavy financial burden was imposed upon India by the treaty as it doesn't permit India to fully exploit water of the three western rivers. India believes that undue concession has been given to Pakistan under the Indus Water Treaty. They consider that Prime Minister Nehru signed the treaty to 'purchase peace' and as IWT failed to bring reconciliation to the problem of Kashmir, so revision of the treaty would deny the concession which Pakistan received under the IWT. The treaty is also under pressure due to several internal and regional concerns. The most significant one is the view of Kashmiri people who view the treaty as an economic liability for them therefore they demanded its annulment. The people of Jammu and Kashmir consider that both Pakistan and India exploit their rights under the treaty (Wasi, 2009).

On the other hand, there are also some converging interests of both countries which suggest a revision of the treaty, as provisions of the Indus Water Treaty were based on the expertise and knowledge of that time. The adverse effects of environmental and climate change, the rapid growth of population as well as outdated irrigation system are putting pressure on the Basin rivers and in turn on the treaty which governs the use of the water of the Indus Basin. Since 1960 the combine population of both countries has become tripled, water demand for the production of electricity and supply of irrigation has become greater, therefore, water security is at risk in both countries (Piesse, 2015). Moreover, the situation will be greatly affected by climate change as the Indus Rivers that originate in the highlands of Tibet, on its way the melting glaciers of the region influence these rivers. Therefore concerns arise that initially, the rapid melting of glaciers will lead to heavy flooding, but then within the following 50 years, there will at least 40-percent fall in the glacial melt as these glaciers will have receded (Wasi, 2009). The Indus will become a seasonal river by 2040, thereby making Pakistan's province of Punjab prone to drought. Climate change will potentially lead to extreme weather events such as devastating floods etc (Piesse, 2015).

The Indus Water Treaty does not provide any provision regarding flood control infrastructure. In this regard, such a mechanism would minimize the risk of extreme weather events as well as the cost of humanitarian aid required after any such happening. A revised treaty would take climate change and other environmental factors as well as population growth into greater consideration. However, any such revision requires mutual consent, common purpose and a spirit of goodwill between the two countries which are currently not possible (*Ibid*).

Uri Attacks and Indian Threat to Stop Pakistan's Water

In the aftermath of the Uri attack, India's high-level officials have planned to accelerate the pace of constructing new projects of hydro-power generation that will heighten the already existing strains in Pak-India bilateral relations. Differences over water-sharing of the Indus Basin have dogged relations between nuclear-armed Pakistan and India for decades. However, water dispute gained utmost attention when Indian Prime Minister Narendra Modi, in a meeting with his high-level officials, expressed his intentions to use more water resources of western rivers. A week after the Uri incident when four terrorists attacked the Indian army base in India's occupied Kashmir for which India blamed Pakistan, Prime Minister Modi and his officials discussed the ways and means to intensify the work on exploiting the water of river Indus, Jhelum and Chenab but not to abrogate the Indus Basin Treaty. In their words "We want to see that all these (hydropower) projects are put on a really fast-track basis" (Reuters, 2016).

Anti-Pakistan elements in India suggest using water as a coercive instrument against Pakistan. In view of belligerent segments of India, though conflict over waters is not an option and propose strong arm's strategies while dealing with Pakistan, however, using waters as a weapon would prove an effective bargaining tool to achieve India's politico-strategic objectives (Chandio, 2014). India has long blamed Pakistan for supporting militant groups who operate in Jammu and Kashmir where the flow of rivers is shared by several countries. Pakistan has denied the accusation and says that adequate proof has not been provided by India in support of her claims.

Approach to the World Bank

As tension is growing in-between both nations due to India's determination of creating water problems for Pakistan, World Bank has been contacted by both countries to play its role in resolving the dispute. On September 26, 2016, in a meeting with his officials, Prime Minister Modi stressed on exploiting maximum water of Pakistani controlled rivers including Jhelum and Chenab. On the next day, Pakistani officials approached the World Bank and discussed the issue with the body (*Ibid*).

Abrogation of Indus Basin Treaty

The Indus Basin Treaty had successfully resolved water disputes between Pakistan and India, however, the construction of so many Indian hydro-power plans on the rivers over which Pakistan had got unrestricted right under the IBT has raised serious reservations in Pakistan's policy circles and academia. In response to Uri attacks, some Indian officials have suggested abrogation of the treaty and proposed the prevention of Pakistan's water. However, speaking on the issue Ashok Swain, who teaches at Uppsala University, Sweden, said that India cannot hold Pakistan's water as India lacks the necessary storage facility to make immediate water problems for Pakistan.

Since the happening of Uri incident, several Indian segments have been advocating India's unilateral withdrawal from the Indus Water Treaty. This growing demand for abrogation of the treaty has become a matter of serious consideration in Indian public discourse and policy circles. The threat to abrogate the treaty or stop sharing waters of the Indus Basin with Pakistan can be depicted as a strong response (Swain, 2016). However, according to some Pakistani scholars, if India unilaterally withdraws from the IWT, Pakistan will move towards the World Bank for resolution of the dispute. The abrogation of the treaty will provoke further anxiety in Pakistan (Parvaiz, 2016).

It is a unique international accord signed by the World Bank also; India's unilateral withdrawal from it will result in worldwide condemnation and Pakistan's approach to the World Bank. This action on the part of India will draw W.B to conflict with probability in supporting Pakistan. In case India selects the option of withdrawal, the other side can approach ICJ which will possibly decide in favor of Pakistan. Above all one thing is clear that the treaty will remain safe because such treaties continue to exist not just for the reason of goodwill, trust, and cooperation between the parties but also because there involved the interests of the concern parties.

Conclusion

The Indus Basin Treaty has given a pathway for the successful resolution of water disputes in-between both nations. Both countries consider the treaty a valuable document that withstood the periods of conflicts and tensions but currently due to India's hegemonic designs in the region, its survival cannot be guaranteed. At the time of its formulation, the world opinion was favorable for Pakistan but the situation has changed now, therefore abrogation of the treaty by India could be considered as a serious matter of concern for Pakistan. Currently, the treaty is under threat owing to Pak-India tension in the aftermath of the Uri attack as some Indian commentators advocate abrogation of the treaty while some are in favor of

its revision. However, in case of its unilateral abrogation by India, Pakistan will move to the World Bank or International Court of Justice.

The Indus Water Treaty was at best in its time and could be effectively adapted according to the changing circumstances. However, any such modification should be in line with ecological sustainability, contemporary universal waterway, climate change, emerging concerns with water quality as well as principles of equitable water sharing. However, revision of the treaty will be possible only by the mutual consent of both countries which is presently impossible due to persistent hostilities and mistrust.

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