

# South Asia: The Indus Water Treaty

Tuesday 24 September 2024, by [ATHAR Mohammad Ebad](#), [BHAN Mona](#) (Date first published: 1 September 2024).

**RISING TEMPERATURES, EXPERTS argue, will cause substantial changes to the trans-Himalayan Indus River System by 2050, and lead to water scarcity, erratic droughts and floods, loss of biodiversity, and deleterious impacts on 300 million people in India and Pakistan who depend on its rivers for sustenance.**

## Contents

- [Mother India in Labor](#)
- [The IWT Negotiations and \(...\)](#)
- [International Law and Its \(...\)](#)
- [The Hindu Right and the IWT](#)
- [Climate Devastation and \(...\)](#)

To minimize these impacts, experts recommend climate-proofing the Indus Water Treaty (IWT), a treaty that was brokered by the World Bank in 1960 to avert water wars between India and Pakistan over their shared transboundary rivers. The treaty allocated the three Eastern rivers of the Indus River basin — the Sutlej, Ravi and Beas — to India, and the Western rivers of the basin which included the Jhelum, Chenab and Indus, to Pakistan.

But scholars have argued that the allocation of the rivers was a diversionary tactic, meant to undermine Kashmiri sovereignty in the international dispute over Kashmir's contested territory. [1]

The IWT reconciled significant legal concerns with water rights through technical-engineering resolutions, a concessionary approach that erased any meaningful and long-lasting conversations on equitable and sustainable water-sharing approaches in the sub-continent.

The Indus Water Treaty ended up privileging India and Pakistan's sovereign control over Kashmir's rivers, while making it impossible for Kashmiris to exert their legal and political rights over critical river resources. That legacy continues in current debates about climate proofing the IWT.

*Kashmir exists in the crosshairs of climate change and Indo-Pakistani geopolitical tensions. Climate-proofing the IWT, we argue, will only serve to greenwash India and Pakistan's extractive control over the Indus River Basin.*

## Mother India in Labor

On July 8<sup>th</sup>, 1954, Indian Prime Minister Jawaharlal Nehru gave an impromptu speech at the opening ceremony for the Bhakra Canal. He praised the canal's construction noting that "Mother India is in labor" and "producing things big and small."

Awed by his country's ability to construct such a large-scale infrastructure, Nehru compared the project to "the noblest temples, Gurdwaras, churches and mosques to be found anywhere.... I feel more religious minded when I see these works," he proclaimed. [2]

Several months later, at the official inauguration ceremony for the Bhakra-Nangal dam, Nehru's remarks still articulated wonder and pride for the project. The Prime Minister thanked and congratulated the engineers and foreign advisers involved in the construction, but he also devoted a significant portion of his speech to "all the people," acknowledging "their hard toll and sacrifice."

Reminding the crowd to "remember them and all those who have put their sweat and blood" into the dam's construction, Nehru implored India to "befriend the river Sutlej." Laying down concrete as part of the ceremony, he exclaimed how the dam was "one of the great victories over nature." [3]

Nehru's celebratory language and the sacredness attributed to the dam camouflaged the Indian state's colonial appetite for Kashmir and its rivers, a Muslim-majority territory over which both India and Pakistan claimed sovereignty. The popular imaginaries of dams as India's modern-day temples aligned well with Hinduized narratives of the river Indus as a male warrior God, and of the Indus and Kashmir as cradles of Hindu civilization. [4]

Yet the ceremonies and Nehru's remarks omitted some key stakes. In the early 1950s, Pakistan was entirely dependent on the waters of the Indus, which flowed through India and Kashmir before reaching Pakistan. During his July remarks, Nehru did not mention how India, without Pakistan's knowledge, withheld the flow of the Sutlej River to Pakistan "in order to accumulate a good head of water for the opening ceremony." [5]

This not only contributed to an increased anxiety in Pakistan that India would take control of the entire basin, but also impacted Pakistani farmers who relied on that water supply.

But the second and perhaps most significant consequence of this state building effort was how it further subjugated and silenced Kashmiri sovereignty over the Western rivers of the Indus Basin — Jhelum, Chenab, and the Indus — portions of which flow through Jammu and Kashmir.

As India remained invested in building the Indian state through dams, it was simultaneously cementing its colonial control over the disputed territory of Kashmir, whose unpopular Hindu ruler had provisionally acceded to India in 1947.

Although Nehru had promised Kashmiris that a UN-mandated free and impartial plebiscite would allow them to choose their own political fate, a series of interventions, including arrests and detentions of dissident Kashmiris, clamping down of free press, and the election of pliant client regimes, scuttled people's rights to self-determination.

At the same time, the IWT became an instrument to dilute Kashmiri sovereignty over their land and water.

While the Indian state celebrated the construction of the Bhakra-Nangal Dam in 1954, control over the Indus River basin remained unresolved. Pakistan feared that the Bhakra Nangal project was part of a larger Indian objective to take full control of the basin's water. The Chief of Staff of the Pakistan Air Force anticipated that "the summer of 1954 would be a most dangerous time as regards war with India." [6]

Taking stock of this escalating situation, the British framed the Indus dispute as potentially "more dangerous than Kashmir," claiming that the coming conflict in conjunction with Kashmir would further contribute "to a prolonged stalemate" over the political future of the disputed territory. [7]

Therefore, avoiding war in 1954 was paramount for the British, even at the expense of Kashmiri self-determination. The British believed that a negotiated settlement for the Indus dispute would serve that purpose.

## **The IWT Negotiations and Kashmir**

The IWT was negotiated throughout the 1950s; as early as 1952 the British Foreign Office and the World Bank agreed that India and Pakistan should be dissuaded from negotiating along legalistic lines and instead encouraged to keep the deliberations at a technical level.

For example, when Pakistan hired the renowned American lawyer John Laylin to assist in its negotiations, Eugene Black, the lead American negotiator for the World Bank, advised Laylin against influencing the Pakistanis “along stiff and legalistic lines.” [8]

Rather, Black believed that “if this business can be left to the technical experts under the tactful management of the International Bank and with the prospect of some hard cash from the Bank for development if agreement can be reached, the discussion should go fairly smoothly.” [9]

The World Bank maintained it was of paramount importance to “reach an equitable agreement about the division of present water resources” and that to achieve this “it would be necessary to provide, partly at India’s expense ... extensive water storage in Pakistan.” [10]

We might ask why both the British and American negotiators pushed for technical solutions in the Indus dispute despite the little progress that was made “in finding a solution either to the financial or to the engineering difficulties.” [11]

Why were technical solutions favored over legalistic ones, especially when Pakistani and Indian attitudes reflected a “right to water” approach? Majed Akther argues that American negotiators such as David Lilienthal and Eugene Black saw the Cold War development of the Indus River basin as the means to avert war between India and Pakistan. [12]

Here the context of impending war in 1954 remains important. The British realized that the “settlement of the Canal Waters dispute” was “becoming increasingly urgent since if it remains unsolved it will go on adding to the friction between India and Pakistan.” “If it were solved,” the British argued, “the resulting release of tension would be considerable, and this would provide a better atmosphere in which to try to settle the Kashmir problem.” [13]

Daniel Haines argues that although the Kashmir issue and the Indus dispute were inextricably linked, the Americans and British had to disentangle Kashmir from the river dispute — and working with technically based solutions while trying to avoid legality did just that. Crafting an international management scheme for the Indus relied on relegating the question of Kashmir’s political future as indeterminate. [14]

Thus, water was political and “truly a matter of life and death” for Pakistan and India, but was considered apolitical when discussed in relation to Kashmir. [15]

As negotiations continued, international management schemes that relied on technical solutions found it difficult to reach a compromise between India and Pakistan. Indeed, the Indus dispute still lingered as of January 1, 1959, with India and Pakistan having failed “in negotiations (to find a compromise) in their dispute over the use of the Indus River.” [16]

While the World Bank’s reputation took a hit for failing to resolve the dispute, so too did the UN Security Council, which had tried unsuccessfully to settle the conflict throughout the 1950s. For the UN Security Council, the Indus dispute was an “undignified wrangle” and “damaging both to relations between India and Pakistan and to the prestige of the Security Council.” [17]

The British Commonwealth, alongside the World Bank and the Security Council, therefore attempted

to “dissuade the Pakistanis from pursuing the idea of staging another row on Kashmir” by assuring Pakistan of the Commonwealth’s “readiness to consider” making “a reasonable financial contribution to the implementation of a settlement.” [18]

These international institutions strived for a resolution to the Indus dispute and attempted to avoid a “row” over Kashmir. Although the two issues were entangled, for peace between India and Pakistan, Kashmir had to be extricated from the Indus dispute discussions. The question of Kashmiri sovereignty and self-determination had to be avoided.

## **International Law and Its Limitations**

The IWT is often framed as an international peace treaty that mitigates a large-scale war between India and Pakistan. However, while both states’ sovereignty over the Indus is protected and affirmed, Kashmiri legal rights are completely ignored.

As Fozia Lone observes, the treaty ignores the detrimental effect of non-participation on Kashmiris’ right to self-determination and sovereignty over their natural resources. [19]

When examining the treaty itself, this erasure is blatant. The principal actors, according to the treaty’s preamble, are “The Government of India and the Government of Pakistan,” both of which are “equally desirous of attaining the most complete and satisfactory utilisation of the waters of the Indus system of rivers.” [20]

Throughout the text of the treaty, the Kashmir issue is never mentioned nor is people’s sovereignty over waters located in Jammu Kashmir recognized.

This erasure operates beyond merely excluding Kashmir from formal international legal structures. As Mona Bhan argues, the IWT, and the subsequent construction of multiple dams along the Indus River basin in Jammu and Kashmir, allows the Indian state to assert its sovereignty over the disputed territory.

In other words, dams become tools of occupation for the Indian nation-state that are legalized by international mechanisms such as the IWT. [21]

In their work on the Mekong Basin, Chris Snedden and Coleen Fox illuminate how river basin institutions in the region manipulate discourses of cooperation in the creation of legal arrangements that are motivated by geostrategic aims. [22]

Like the IWT, the 1995 Mekong Agreement sets out to equitably distribute the Mekong waters to the basin’s principal actors (the riparian states along the basin) but also legalizes the ability of those states to utilize dams in counterinsurgency strategies, as is the case in Thailand with the Pak Mun dam. [23]

The IWT’s and international law’s routine failure to affirm Kashmir’s sovereignty and right to self-determination over resources located within its territory has resulted in significant consequences for the region. Massive Indian infrastructural investments and dams have transformed Kashmir’s landscape, displaced indigenous communities, and led to substantial changes in local weather conditions. [24]

Yet the IWT does not acknowledge environmental risks, and contains no mechanisms to combat the increase in earthquakes, floods, and avalanches as result of increased dam infrastructure. [25]

Furthermore, the IWT contains no provisions to address the predicament and proper compensation

of displaced communities. Although international legal frameworks such as the 1962 UN Charter on the “Permanent Sovereignty over Natural Resources” and the 2007 UN Declaration on the Rights of Indigenous Peoples affirm a people’s permanent sovereignty over their natural resources, India continues to invest in water infrastructures that undermine Kashmiri sovereignty. [26]

## **The Hindu Right and the IWT**

At 5:30 am on September 18, 2016, armed militants attacked an Indian army base at Uri in Indian-occupied Jammu and Kashmir, close to the Pakistani border. A heavily forested area, Uri is crisscrossed by the Jhelum River and several other streams of the Indus River basin. Seventeen Indian soldiers were killed in the attack.

The Indian director general of military operations, Lt. Gen. Ranbir Singh predictably denounced the militants as “foreign terrorists, supported and sent by Pakistan.” Mohammad Nafees Zakaria, a spokesman for the Pakistani Ministry for Foreign Affairs, denied Singh’s allegations, instead asserting that India was trying to divert attention away from its oppression of Kashmir. [27]

For those observers familiar with the Kashmir dispute and Pakistan’s and India’s role within it, the Uri attack presents a familiar story in which attacks aimed at the Indian occupation of Jammu and Kashmir are framed by the Indian state as Pakistani-sponsored and sanctioned terror acts, with Pakistan denying Indian allegations, and Kashmiris left to deal with the subsequent consequences.

On the surface, it seems like the Uri attack would have nothing to do with India’s and Pakistan’s long-standing dispute over control of the Indus River basin. Yet Uri’s position along the Jhelum River became significant in the aftermath of the attack. Indian Prime Minister Narendra Modi, in a meeting to discuss the future of the IWT, declared that “blood and water can’t flow together.” [28]

Modi threatened to punish Pakistan diplomatically for its perceived involvement in the Uri attack by taking advantage of its geographic position along the Indus to cut off water flows into Pakistan. Modi essentially suggested that India violate the terms of the IWT and exert its full sovereignty over the Indus.

Modi’s infamous “blood and water cannot flow simultaneously” comment and the suspension of the Indus Water Commission meeting echoed previous arguments for isolating Pakistan diplomatically and legitimizing India’s “rightful” capture of water flowing into Pakistan. These comments contribute to growing Pakistani anxieties that India will act on its threat to cut off water flows into Pakistan.

Pakistan’s Advisor on Foreign Affairs and Security, Sartaj Aziz, responded to Modi’s call for India to block “Pakistan’s” water by calling it an act of war. Pakistan’s Indus Water Commissioner, Jamaat Ali Shah, responded by stating “What should we believe of what the Indian PM says: ending poverty or blocking flow of water into Pakistan. This is open economic terrorism.” [29]

Writing in *Pakistan Today*, Abbas Hasan cautioned that “the recent threat emanating from India not to honor the Indus Water Treaty (IWT) is a threat to Pakistan’s source of life and must be taken seriously.”

Hasan further argued that “Unless immediate measures are taken we will be risking the source of life in Pakistan.” [30] In an attempt to resolve this issue, Pakistan repeatedly sought out World Bank mediation in the Court of Arbitration. [31]

Kashmir, Pakistani pundits argue, remains the “jugular vein of Pakistan,” and any threat to

“Kashmir’s accession to Pakistan” would significantly harm Pakistan’s economy and viability as an independent nation. [32]

## **Climate Devastation and Kashmiri Rights**

India and Pakistan’s competitive sovereignties over the Indus basin ignore the devastating impacts of climate change on the future of the entire subcontinent.

While the IWT did not anticipate climate-induced changes in the basin, more recently experts have urged that the IWT must “evolve” in order to confront climate catastrophes, which could trigger extreme water scarcity, uncertain floods and droughts, unprecedented heat waves, migrant crises, and even a nuclear war in the sub-continent. [33]

Such reasoned arguments as Betsy Joles outlines to protect “the second-most overstressed aquifer in the world” by renegotiating the terms of the IWT run counter to Modi’s belligerent policies. We worry, however, that the outcomes are very similar for Kashmiris who find their rights and claims to their rivers ignored once again, this time under the pretext of environmental protection and impending climate disasters.

Such seemingly progressive demands to renegotiate the IWT must account for the rights of indigenous Kashmiri communities over their rivers and water bodies.

A just and meaningful “path to sustainability and stability” cannot ever be paved without accounting for the erasure of Kashmiris from the terms of the Indus Water Treaty. Nor can concerns of ecological health camouflage dominant political and economic interests of two nuclear powered states. [34]

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### **P.S.**

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