

# Revisiting the Indus Water Treaty in turbulent times

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India can consider re-evaluating and reforming the treaty in the backdrop of continuing cross-border terrorism.



India can diplomatically engage for a revised water-sharing agreement that includes modern safeguards and security clauses. Rodney Topor, CC BY-NC-SA 2.0, Flickr.

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The Indian government took a considered decision to act when it was confronted with an alleged terror strike at a tourist site in Kashmir on April 22. The following day, the government announced five measures against Pakistan which was suspected of being involved in the terror attack that took the lives of 26 tourists.

The suspension of the Indus Water Treaty – originally signed in September 1960 – was considered a strong enough response against a country that India has consistently accused of aiding and abetting terrorism in Kashmir. This decision marked a watershed moment in South Asia's geopolitical landscape. The terror strike severely impacted national security, Indian sovereignty and evolving regional realities.

In the wake of rising nationalism, increasing regional unrest and fluctuating political climate, the treaty regime's importance assumes particular significance. The IWT is one of the longest-standing and enduring treaty documents between India and Pakistan. Yet,

now, the IWT has come under renewed scrutiny as it was formed under different circumstances 65 years ago.

In view of today's realities, there is an urgent need to re-evaluate the IWT in the backdrop of current challenges, including persistent cross-border terrorism and a deteriorating bilateral framework. The necessity of reform is pressing for the region's stability, as the treaty is at the centre of a complex debate regarding water sharing arrangements between the two countries.

The IWT was initially claimed as a remarkable example of cooperation between India and Pakistan in the aftermath of the 1947 partition, leading to the division of the contentious Indus River Basin between the two countries, which are primarily agrarian economies.

The treaty granted Pakistan control over the western rivers (Indus, Jhelum and Chenab). India retained rights over the eastern rivers (Ravi, Beas, and Sutlej), with limited use of the western rivers for non-consumptive purposes. The potential for conflict over water resources has been high, considering the importance of the rivers and their tributaries in the heavily water-dependent agricultural sectors in both countries.

#### **The treaty's mechanism**

The IWT identified a mechanism for cooperation and information exchange between India and Pakistan, related to their use of the rivers. This mechanism is the Permanent Indus Commission with a commissioner in each country. The treaty includes distinct procedures for handling "questions", "differences" and "disputes" that are to be resolved at three levels – by the commission, neutral expert and an ad hoc 'Court of Arbitration', respectively.

While the treaty's foundational values, including mutual trust, peaceful co-existence and the absence of sustained conflict, have largely been resilient, it is at the crossroads of a highly volatile regional landscape, increasingly characterised by heightened India-Pakistan tensions over cross-border terrorism.

India's decision to suspend its participation in the IWT appears to be based on the doctrine of rebus sic stantibus which is a recognised principle in international law that allows for treaties to be terminated or suspended when there is a fundamental change of circumstances.

In the current context, the rise in cross-border terrorist violence and the diplomatic impasse between the two nations collectively constitute such a fundamental change. More importantly, the current Indian dispensation sees a strategic goal – at the international and domestic levels – in applying pressure on Pakistan by adopting a tough stance on treaty regimes.

The IWT, in its present form, does not provide any mechanism to address terrorism, coercive diplomacy or asymmetric warfare, thus necessitating reform for the contemporary regional security environment as it was conceived and negotiated in a

different geopolitical and ecological landscape. Scholars have argued that the treaty provisions must be revisited to account for these environmental and geopolitical shifts.

Some commentators hold that the term 'abeyance' is not legally recognised under international treaty law. Abeyance is not a basis for suspending treaty obligations, including the IWT or the 1969 Vienna Convention on the Law of Treaties to which India is not a signatory state.

However, India's position gains some legitimacy when examined through comparative international lens. Several nations have either suspended or withdrawn from international agreements, citing national security concerns, thereby setting a precedent for such actions.

To illustrate, Egypt repeatedly challenged the Cooperative Framework Agreement over Nile waters, refusing to cede its historical rights, citing national security and livelihood concerns. In the three-way Nile waters dispute between Egypt, Ethiopia and Sudan, the former fears that a proposed dam by Ethiopia on the Nile will "drastically reduce water flow downstream and thus imperil its national security".

Egypt, like India, argued that its existential needs – or water security – overrode multilateral pressure for treaty adherence. Negotiations between the three countries remain deadlocked. But Egypt's securitisation of the issue demonstrates it is prepared to keep core national interests at the centre of negotiations on the Nile water dispute. India's decision must be evaluated in the same light, particularly as it faces aggression from across the border.

In the 1970s, India took a unilateral decision on suspending water-sharing arrangements with Bangladesh that halted Ganges water flow to that country. This dispute was, however, resolved as a consequence of the signing of the 1977 Farakka Agreement.

### **Security-resource nexus**

Water is not just an ecological issue in the case of India and Pakistan; it is linked to food security, energy generation and internal stability. By suspending the treaty, India has sent a clear diplomatic signal: peace and cooperation cannot exist in a vacuum devoid of trust and reciprocity.

This action should not be seen as weaponising water, but as asserting a legitimate right to ensure regional stability as the IWT's current framework does not accommodate provisions to penalise state-sponsored violence, which must be included to ensure international peace and security for any treaty to function.

In the global community, a nuanced understanding is required that contextualises India's decision within the broader discourse of state responsibility, territorial integrity and the fight against terrorism.

International actors, especially multilateral institutions and regional powers, should focus on the root causes of the breakdown in trust: existence of terror networks, non-compliance with international counterterrorism standards and disengagement with credible peace-building efforts. This is a time when international cooperation is not just beneficial, but essential for resolving conflicts and ensuring peace.

For its part, India can complement its suspension of the IWT with diplomatic engagement, aimed at developing a revised water-sharing agreement that includes modern safeguards and security clauses. This would not only demonstrate India's willingness to uphold the spirit of cooperation but also underline the crucial role of trust and mutual accountability in international relations.

India's suspension of its participation in the IWT is a reasoned assertion of sovereignty in the face of sustained aggression. It is not an "unlawful response" move, as argued by legal analysts. Precedents from across the globe, such as Egypt, support the view that treaties, however sacred, must evolve, or be reconsidered when confronted with grave threats to a nation's peace and security.

As South Asia stands at the crossroads of a geopolitical upheaval, it is time for a future-oriented approach to transboundary water governance that prioritises peace, justice and the legitimate security concerns of sovereign nations like India.

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