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Assessing India's Unilateral Suspension of the Indus Waters Treaty: An Appraisal under the Law of Treaties, State Responsibility, and International Water Law

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Abstract

This article critically analyzes the unilateral suspension of the Indus Waters Treaty (IWT) by India in April 2025 as a landmark agreement that governs water-sharing between India and Pakistan since 1960. It discusses whether the decision of India to place the Treaty in abeyance can be justified under international law, focusing on the Vienna Convention on the Law of Treaties (VCLT), the Articles on State Responsibility (ARSIWA) of the International Law Commission, and principles of international water law. This analysis proves that the action of India contravenes the mutual-consent clause in Article XII of the IWT and does not meet legal requirements of suspension based on doctrines of material breach, fundamental change of circumstances, or necessity. Relying on the jurisprudence, including the Gabčikovo Nagymaros Project case, and stressing the humanitarian and environmental character of river treaties, this article argues that the move by India undermines the stability of treaties and sets a worrying precedent of transboundary river management.

Keywords: IWT, VCLT, treaty, international water law, state responsibility
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1. INTRODUCTION

The Indus Waters Treaty (IWT) signed by India and Pakistan in 1960 under the facilitation of the World Bank is a pioneering case study of the long-term transboundary water management. The three eastern rivers were divided between India (the Ravi, Beas, and Sutlej) and Pakistan (the Indus, Jhelum, and Chenab), India has a limited right to non-consumptive use of the western rivers (Asiasociety.org, 2025). Although there have been numerous military conflicts and the broader geopolitical antagonism between the two countries, the Treaty has nevertheless been in existence since more than 60 years ago.

In April 2025, after a terror attack in Pahalgam, which India claimed was a result of cross-border militant activity, New Delhi declared the IWT in abeyance, in effect suspending its implementation unilaterally (Financial Times, 2025). This is the first such suspension in the history of the Treaty, which is why its legality in the face of international law is subject to strong criticism. The relocation sheds light on a complicated crossroads between bilateral treaty provisions, customary norms of treaty law, and principles of responsibility under international law and creates urgent humanitarian and

environmental issues given the livelihoods of over three hundred million people who are dependent on Indus waters (Banerji, 2024).

The discussion is based on the Vienna Convention on the Law of Treaties (VCLT) specifically the Article 26, which codifies the principle of pacta sunt servada- that all treaties that are in force are binding and should be faithfully observed by their parties (Vienna Convention on the Law of Treaties [VCLT], 1969, art. 26). India and Pakistan are not signatories to the VCLT; however, the principle reflected in Article 26 is considered as customary international law, thus giving the obligation of treaties between India and Pakistan a quasi-binding quality. In addition, in Article 12 of the Treaty itself, the same is provided that it can be terminated or amended only with mutual consent, and nothing was explicitly stated about unilateral suspension. As a result, the key issue is whether a state can legitimately suspend such a treaty due to the concerns of national security or outside influences?

The norms of state responsibility and countermeasures, which have been codified in the Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA) complicate this question further. The ARSIWA framework limits legitimate counteractions to those, which are proportional, reversible, and related to the alleged breach (International Law Commission [ILC], 2001). Where one state (such as India) wants to suspend a treaty (allegedly because it is a terrorist act by another state) the connection, proportionality, and larger effects in particular, humanitarian effects become crucially important.

Jurisprudential analysis, e.g., the 1997 decision of the International Court of Justice involving the GabčikovoNagymaros Project, reveals a deeper understanding. The ICJ pointed out that unilateral suspension of a water-related treaty regime is extremely rare and heavily restricted by the principle of necessity according to the international law (International Court of Justice, 1997). River treaties have come to be understood as so-called objective or permanent regimes, which meant to endure even in case of armed conflicts or the disintegration of a political unit. The ILC Draft Articles on the Effects of Armed Conflicts on Treaties (2011) which include many of these principles, also support this principle (International Law Commission [ILC], 2011, art. 7). The fact that the IWT was suspended by India, thus, is a test not just of a bilateral agreement but of international law order itself that how law limits state action in crises, how norms of water sharing intersect with security issues, and how humanitarian and environmental obligations weigh against unilateral claims of sovereignty.

The act of abeyance of 2025 as presented in this paper is embedded into the bigger scope of legal and normative systems. It examines the legality of the unilateral suspension of India by considering the leading sources of international law: the Vienna Convention on the Law of treaties (VCLT), the Principles of State Responsibility (ARSIWA), and the international water law, including permanent river regimes and humanitarian obligations. Through the analysis of each of these areas, the paper will criticize the viability of the suspension and come up with a conclusion on the lesson on the stability of

treaties in areas prone to conflicts.

2. LITERATURE REVIEW

The Indus Waters Treaty has been the object of a long-standing school of scholarly interest in the disciplines of law, politics, and hydrology. Initial criticism tended to see the Treaty as an unusual instance of successful collaboration between two states otherwise engaged in war. Its ability to withstand three wars and numerous crises led many analysts to describe it as a water peace treaty that scaled up hydro politics to deal with wider disputes (Wolf, 1998). In international law, the IWT was frequently invoked as having been complied with in the case of technical cooperation that could transcend geopolitics (Elhance, 1999).

This tale becomes more convoluted and structurally constrained, with contentious readings, in later research. The hydropower projects of the western rivers of India have always been controversial amongst the scholars on the question of whether the hydropower projects meet the requirements of Annexure D and Annexure E of the Treaty (Abas et al., 2019). The case examples of litigation brought to neutral experts and arbitration courts, including the Baglihar (2007) and Kishenganga (2013) cases indicate that these conflicts are not peripheral or easy; they are highly legal and political (Salman, 2008). In the meantime, the mediating aspect of the World Bank is also being questioned as Pakistan feels like it is not being aggressive enough to make treaty commitments (Mustafa, 2010).

Although the political and hydrological dimensions of IWT have been explored widely by scholars, the legal discourse regarding unilateral suspension or termination is limited. The prevailing literature views the Treaty as long-lasting and presupposes its perpetual validity. Critical works tend to concentrate on power imbalances, and hydro-hegemony, but fail to tackle doctrinal issues in treaty law (Zeitoun 2008/Mirumachi, 2008). There are some analyses that doubt that India or any state that is signatory to a river treaty could suspend it unilaterally. Consequently, a significant disconnect of treaty law in doctrinal terms still exists.

The period of treaty-law debate has been followed by the growth of scholarly research on international water law, notably with the publication of the UN Watercourses Convention in 1997 and the Helsinki Rules in 1966 (International Law Association [ILA], 1966). These treaties focus on the fair use of water, the non-infliction of severe damage, and the humanitarian nature of water-sharing obligations (McCaffrey, 2019). In its 2011 Draft Articles on the Effects of Armed Conflicts on Treaties, the International Law Commission further emphasized the notion that water treaties are part of a special category of so-called permanent regimes that persist even in times of hostility. Nonetheless, these materials are rarely included in legal discussions about IWT suspension, even though the materials relate to the problem.

The lacuna in the law is particularly apparent in light of recent events. In 2025, the Ministry of External Affairs of India stated that the Indo-Pakistan Water Treaty (IWT) would be suspended due to security reasons following

the Pahalgam attack. Pakistan denounced the action as unlawful, sought a fair investigation, and appealed to the dispute-settlements mechanisms of the treaty. The Permanent Court of Arbitration soon followed with a supplemental award, which states that it could proceed to hear the claims of Pakistan, despite India attempting to stay the case and demonstrating that unilateral abeyance cannot prevent dispute resolution. However, this new legal precedent has not been adequately studied by the scholars yet, and thus there is need to conduct further studies on the same.

The law of treaties, state responsibility, and the international water law have never been incorporated into any comprehensive doctrinal appraisal to evaluate the unilateral suspension of the IWT by India. Although the political and hydro-political effects are well-known, the legality of unilateral suspension under binding international norms has been an under-theorized issue. This article addresses this gap by offering a doctrinally grounded evaluation of the abeyance announcement through the lenses of treaty law, countermeasures, and water law regimes.

3. RESEARCH METHODOLOGY

The research methodology is doctrinal research methodology which mainly relies on the analysis of primary and secondary sources of international law. The main sources are the Vienna Convention on the Law of Treaties, the Indus Waters Treaty, the Articles on Responsibility of States to Internationally Wrongful Acts and the jurisprudent cases like the Gabckikovo-Nagy maros Project Case. Secondary sources consist of articles in the academic literature, reports and commentaries on the international water law and treaty law. The study is analytical, critical, considering whether unilateral suspension of the Indus Waters Treaty by India can be justified on the basis of the established principles of the international law. This doctrinal analysis is supplemented by a case-study approach that takes into account the 2025 abeyance to test the interaction between the treaty obligations, the state responsibility, and the humanitarian consideration.

4. THE TREATY FRAMEWORK OF THE INDUS WATERS TREATY

The Indus Waters Treaty, of 1960 is one distinctive in its method of allocation. Whilst most river treaties emphasize joint usage, IWT adheres to an allocation approach. Article II assigns the three eastern rivers, namely Ravi, Beas, and Sutlej to India and the three western rivers, namely the Indus, Jhelum, and Chenab, are assigned to Pakistan. India has limited rights to utilize the western rivers as a domestic, non-consumptive and hydroelectric power source (India, Pakistan and International Bank for Reconstruction and Development, 1960 art. II)). This separation was because Pakistan still needed to receive most of the Indus waters, which were especially important to irrigate crops. Such an asymmetric yet stable compromise, between the upstream position of India and the downstream reliance of Pakistan as a riparian state, was entrenched in the Treaty. The rigid allocation model has since been praised as being clear but criticized as locking the basin into a partition framework which prevents

integrated basin-wide management (Salman, 2008).

4.1 Dispute Resolution Mechanisms

Article IX of the IWT contains a list of recovery-dispute mechanisms listed in order of approaching the sphere of greater formality. The bilateral settlement of the technical differences is initially carred out through the Permanent Indus Commission (PIC) which is made up of India, Pakistan and the International Bank of Reconstruction and Development (1960, art. IX). In the event that no solution has been found, then the dispute may be submitted to a Neutral Expert chosen by the World Bank to resolve the technical issues (Article IX(2)(a)) or to a Court of Arbitration to resolve the wider legal or interpretative issues (Article IX(2)(b)). This design demonstrates that the Treaty favors legal and technical mechanisms as opposed to political bargaining. The system has been invoked in a number of high profile cases, such as the Baglihar Dam dispute (20052007), where a Neutral Expert ruled in favour of India on drawdown flushing (Robins, 2013), and the Kishenganga Arbitration (20102013), where the PCA found that India had the right to divert waters with restrictions on minimum flows (Raman, 2014). These precedents demonstrate the strength and effectiveness of the Treaty as an autonomous legal system.

4.2 Permanent Indus Commission to Neutral Expert to Court of Arbitration

The main component of the treaty is the Permanent Indus Commission (PIC) that is consist of one commissioner each of the two countries and an international bank that will assist in the reconstruction and development of the two countries (India, Pakistan & International Bank for Reconstruction and Development, 1960, art. VIII). It convenes at least once annually and provides a permanent platform through which to share information technically scrutinize matters and resolve disputes at an early stage. In case disputes cannot be solved in the PIC, it may be transferred to a Neutral Expert who may answer technical interpretation questions. In the case of legal conflicts or other larger disagreements, a seven-member Court of Arbitration may be formed under Annexure G, two members nominated by each party and three by third-party nominating authorities. This multi-level system provides flexibility and legal certainty (World Bank, 1960).

4.3 Termination and Modification by Mutual Consent

Article 12 of IWT declares that the treaty must remain in force unless terminated by mutual agreement of both parties (India, Pakistan & International Bank for Reconstruction and Development, 1960, art. XII). This is the essence of the current dispute as it outlaws unilateral termination or suspension. Another clear provision of the treaty is that such continuity exists unless otherwise agreed upon by the two parties, rather than admitted only to the limited exceptions to suspension, which are found in the Vienna Convention on the Law of Treaties. This was a deliberate inclusion by the

parties who noted that they are highly dependent on shared waters and a need to ensure the treaty is not exposed to changing political relations. Consequently, the unilateral suspension would be a direct violation of Article XII.

4.4 The World Bank's Role as Guarantor and Facilitator

The World Bank played a decisive role in mediating and financing the IWT. Beyond its role as signatory to the Treaty's Annexures, the Bank continues to act as a facilitator and appoint authority for Neutral Experts and members of the Court of Arbitration. Although it does not adjudicate on disputes, its presence makes sure that the dispute resolution process is impartially overshadowed (World Bank, 2018). Pakistan has used the Bank on several occasions to initiate arbitration, most recently as part of the Kishenganga and Ratle disputes. India has however, challenged the neutrality of the Bank resulting in deadlocks in the procedure at times. However, the fact that the Bank has continued to play a role enhances the institutional soundness of the Treaty.

5. LAW OF TREATIES PERSPECTIVE

5.1 The Principle of Pacta Sunt Servanda under VCLT

The principle of pacta sunt servada, established in Article 26 of the Vienna Convention on the Law of Treaties (VCLT) is one of the pillars of the international law of treaties. It confirms that all treaties that are in force are binding on the parties and must be performed in good faith (United Nations, 1969, art. 26). This principle is believed to reflect a peremptory norm of international law, which reflects not only treaties law, but also general international legal obligation (Scobbie, 2002). The stability of treaty is based on performance, which has been repeatedly emphasized by the ICJ even in the cases of Nuclear Tests (ICJ, 1974).

When applied to the Indus Waters Treaty, the principle will disallow any one of the parties to invoke political or security considerations to justify suspension, unless the reasons are recognized under the law of treaties. The fact that the IWT does not include a clause that would allow unilateral suspension is contradictory to this principle since India has tried to place the Treaty in abeyance, but there is no such clause in the Treaty. By bypassing the mutual-consent clause in Article XII, India will be at risk of violating, not only the specific text of the treaty itself but also the larger doctrine of pacta sunt servada, which assures the reliability of international agreements (Zhifeng, 2022). This principle of law, therefore, forms the point on which the action of India will have to be evaluated.

5.2 Grounds for Suspension or Termination under VCLT

The VCLT offers a fastidious number of grounds for suspension or termination of treaties, which are enshrined in Articles 60-62. These are indicative of a stability of treaty obligation and the low acknowledgment of extraordinary circumstances that may justifiably warrant non-performance (United Nations, 1969, arts. 60–62).

5.3 Material Breach of Treaty

The VCLT article 60 acknowledges material breach as a basis for termination or suspension of treaties. Essential to the achievement of the object and purpose of the treaty, a material breach is defined as a breach of the treaty which was not authorized by the Convention (Giegerich, 2018). The doctrine represents a balance and as such, it ensures that serious violations are not left unanswered, it also helps in ensuring that treaty stability is maintained at high level. In the Gabčikovo Nagymaros Project (1997), the ICJ indicated that not every breach results in a suspension, but only the violation that undermines the main foundation of the treaty can be considered (International Court of Justice [ICJ], 1997).

Using this to the case of Indus Waters Treaty, India has not complained that Pakistan has failed to abide by its water-sharing commitments under the Treaty. Its assertions are about the presence of Pakistan in cross-border militancy, which is out of the scope of the treaty. As Article 60 provides that there must be a direct nexus between the alleged breach and the treaty regime itself, India cannot legally invoke material breach as the basis to justify suspension. This would not only misinterpret the provision but would also undermine the stability of the treaties.

5.4 Fundamental Change of Circumstances

Rebus Sic Stantibus (Fundamental Change of Circumstances) is a customary principle of International Law, which may be inferred from Article 62 of the treaty. It allows termination or suspension where there has been a fundamental change of circumstances that (1) was unforeseen, (2) constituted an essential basis of the parties' consent, and (3) radically transforms treaty obligations (Khan 1973). The ICJ has repeatedly emphasized the restrictive scope of this doctrine, notably in the Fisheries Jurisdiction cases (International Court of Justice [ICJ], 1973), where it declined to accept Iceland's reliance on changed economic and environmental conditions as sufficient grounds.

India may argue that the rise in terrorism and the altered security scenario since 1960 is a paradigm shift. However, Article 62(2) specifically excludes situations in which a treaty establishes a boundary regime. Water-sharing arrangements are permanent and because they are humanitarian, they are classified as permanent regimes, which are difficult to modify with changes in politics. Moreover, the constant warfare and enmity at the time of signing the IWT in 1960 was not easily foreseeable. Thus, the conditions of the application of Article 62 are not satisfied, and the Indian claim is not legally valid.

5.5 Customary Status of These Norms

Even though neither India nor Pakistan is a party to the VCLT, the material breach and fundamental change of circumstances provisions are widely considered as representative of customary international law. The basic rules contained in the VCLT, in particular pacta sunt servanda, material breach and rebus sic stantibus, have achieved customary status, meaning that they are binding on all states regardless of formal ratification (Solape, 2024). The

International Law Commission has likewise confirmed their customary character through state practice and opinio juris (Elias, 1995).

Such traditional acknowledgement supports the restraints to unilateral suspension. States may not avoid the obligations under the pretext of not being VCLT parties because the underlying rules are based on general international law. India is, thus, subjected to the traditional norms that limit termination or suspension to strictly defined reasons. In trying to suspend the IWT without a breach of a treaty, or a fundamental change, India is violating the customary international law. This highlights the fact that the legal authority of the IWT is not solely based on its text but the broader normative framework that protects the stability of the treaty.

5.6 The Gabčíkovo–Nagymaros Project Case

The decision of the ICJ in Gabckiikovo-Nagymaros Project has been cited as the most authoritative in the area of termination and suspension of treaties under the international law. Hungary had requested to cancel its contract with Slovakia to build a dam project grounding its argument on environmental, basic change of circumstances, inability to perform and necessity. These arguments were dismissed by the Court, which believed that none of the reasons as stipulated in the VCLT could be used to support the action of Hungary in terminating unilaterally. (International Court of Justice [ICJ], 1997).

This case is instructive in the IWT dispute, first it demonstrates that the ICJ enforces a rigid rule on Articles 60 and 62, the court ruled that only direct breaches of a treaty, or radical and unforeseen changes may qualify. Further, in such occurrences the burden of proving rests heavily on the shoulders of the party that suspended. Second, the Court emphasized that long-term treaties governing shared resources should be persisting. Cooperation structures and environmental protection should not be discarded casually. Third, the Court reinstated the notion of proportionality, it also demanded negotiated solutions as conflicts were on the rise.

The act of suspension of the IWT in India is strikingly similar to the unsuccessful arguments of Hungary in Gabcikovo-Nagymaros. Similar to Hungary, India is also relying on the non-treaty related factors (terrorism, security conditions) to survive. Like in that case, international law does not rejoice with unilateral intervention with collaborative regimes that govern common natural resources.

6. STATE RESPONSIBILITY AND COUNTERMEASURES

The Articles on Responsibility of States for Internationally Wrongful Acts (International Law Commission [ILC], 2001) offer the framework of countermeasures. Articles 49-54 stipulate the circumstances under which a state can take action; that is, a response to a wrongdoing by another state. These provisions affirm that counter action should be temporary, reversible and should be intended to induce compliance with the international obligations, but not to cause punishment (International Law Commission [ILC], 2001, arts. 49–54). These limits have been strengthened by the ICJ in

case Gabčikovo Nagymaros Project (1997) with the ICJ highlighting that the countermeasures should be commensurate and geared towards ensuring performance of obligations.

Article 50 forbids actions which weaken the obligations under the humanitarian law, peremptory norms (jus cogens), or environmentally protective obligations. Article 54 underlines the collective character of the responsibility, saying that when a state commits a grave violation of duties towards the Erga omnes, all states can demand responsibility, but within the limits of the law.

The case of the Indus Waters Treaty (IWT) of India wherein India suspended the treaty following alleged involvement of Pakistan in terrorism does not come within the sphere of ARSIWA. The countermeasures should be linked to the breach in question, as the IWT regulates water-sharing and not counter-terrorism, suspension cannot be justified as a lawful countermeasure. Instead, it contravenes the very stability of treaties as well as the law of state responsibility.

6.1 Proportionality, Reversibility, and Relation to the Breach

The principle of proportionality involves that countermeasures must not be disproportionate to the level of the violation (ARSIWA, Art. 51). Further on, Article 49 provides that countermeasures should be reversible that is upon the cessation of the wrongful act the countermeasures must be reinstated. Any disturbance of water flows may lead to irreparable humanitarian and ecological damage, which is contrary to this requirement. Lastly, Article 49(1) stipulates that there must be a nexus between the breach and the countermeasure. Terrorism charges are not covered by the terms of the IWT, i.e., the response of India does not have the necessary legal relationship.

6.2 Application of "Terrorism" Allegations

India has tried to justify itself on the grounds of its suspension of its treaty by linking Pakistan to a cross-border terrorism with particular reference to the Pahalgam attack. But ARSIWA says an act of countermeasure can be taken only in the case of a violation of an international duty by a state. Pakistani country may have been supportive of the terrorists but this is not a violation of the International Water Law Treaty (IWT) which is concerned with water distributions. India is compromising between two rules of law by suspending the treaty: the counter-terrorism obligations of the international law and the water-sharing obligations of the treaty. This misunderstanding defrauds the concept of the responsibility of the state. Thus, the terrorism accusations in India simply cannot be utilized to a legal justification of a unilateral suspension of its water commitments.

6.3 Humanitarian Impact of Suspending Water-Sharing Duties

The humanitarian impacts of suspending the IWT are far reaching, the right to life, health, and food security is directly connected with water access because international human rights documents like the International Covenant on Economic, Social and Cultural Rights ensure these rights. The UN Human

Rights Committee has also insisted that states should not employ essential resources as instruments of coercion (UN Human Rights Committee, 2019). Pakistan has been relying on the Indus basin to irrigate, get food, and drink water and thus anything India does is threatening the livelihoods of millions. Since ARSIWA prohibits any countermeasures that undermine basic human rights (Art. 50), suspending the IWT is an infringement of this protection.

6.4 Countermeasures versus Erga Omnes Obligations

The ban on impairment of obligations owed Erga omnes is another obstacle to the suspension of India. Transboundary water regimes are more classified under the category of obligations of collective concern as reflected in the UN Watercourses Convention (1997) and the jurisprudence of the ICJ on the protection of the environment as a community interest (Pulp Mills on the River Uruguay, 2010). All states have a right to require that such obligations be met under ARSIWA Article 54. Thus, the fact that the IWT is unilaterally suspended does not only impact Pakistan but also the wider obligation to protect common resources and populations reliant upon them. In that regard, the act of India is a breach of the duties that one owes to the entire international community.

While the VCLT itself does not codify necessity, Article 25 of the International Law Commission's Articles on State Responsibility (ARSIWA) permits it as a defense where a grave and imminent peril threatens the essential interest of the state, and suspension is the only means of safeguarding it. However, necessity cannot justify impairing essential interests of the other state or obligations arising under peremptory norms. Given Pakistan's humanitarian dependence on Indus waters, India's suspension cannot meet this proportionality test. Likewise, countermeasures under ARSIWA require a nexus to the breach being remedied, which is absent here.

The decision of India to suspend the treaty on its own is not highly supported by the treaty law. The IWT provides in Article 12 that termination is only possible by mutual agreement, which makes it difficult to terminate the treaty on unilateral basis. Exceptions The standard exceptions of material breach, fundamental change of circumstances, or necessity are not applicable under the general law of treaties. Therefore, the unilateral suspension by India is not only against terms in the treaty but also the larger provisions of treaty law.

7. INTERNATIONAL WATER LAW AND CONTINUITY DOCTRINES

7.1 Doctrine of Equitable and Reasonable Utilisation

The UN Convention on the Law of the Non-Navigational Uses of International Watercourses (UN Watercourses Convention) of 1997 establishes two cardinal principles of international water law, equitable and reasonable utilisation (Article 5), and obligation not to cause significant harm (Article 7) (United Nations, 1997). These twin norms establish a balance between a state's sovereign right to use transboundary waters and its duty to respect the rights of other riparians. In Gabcmkovo Nagymaros Project (1997),

the International Court of Justice (ICJ) affirmed that equitable utilisation should be understood in the context of sustainable development and environmental protection, thus instilling fairness into the utilisation of resources.

As applied to the Indus Waters Treaty (IWT), these norms enable continuity of the obligations. Although India may suspend the Treaty, customary international law places an obligation on India to avoid causing severe damage to the water consumption in Pakistan. States cannot enforce transboundary waters as political tools since water-sharing involves critical human rights and environmental sustainability (UNGA, 1997). As such, the attempt of India to suspend the IWT would be against the general principle of international water law, that of fairness and harm-prevention over the pursuit of unilateral benefit.

7.2 Doctrine of Objective Regimes and Permanent Regimes for Rivers

The water-sharing treaties are largely categorized as objective regimes, and they are binding not just as a reciprocal agreement but as a legal framework which is permanent. In the case of Upper Savoy case (1932) in its Permanent Court of International Justice (PCIJ) the regimes created by treaties can be enforced against the successor states and third parties (Permanent Court of International Justice [PCIJ], 1932).

The IWT, and other river treaties, are under this doctrine as a result of their humanitarian and environmental nature. These regimes are irrevocable once in place, as the role of these regimes is to stabilize relationships over common natural resources (Rathod, 2023). By stating the Treaty in abeyance, India flouts the principle of objective regime by not only flaunting its duty towards Pakistan but also the collective interest of the global community in maintaining a predictable rule over transboundary waters.

7.3 Draft Articles on the Effects of Armed Conflicts on Treaties (2011)

According to International Law Commission in its Draft Articles on the Effects of Armed Conflicts on Treaties, there are certain types of treaties which remain in effect even during war like situations. Article 7 of the Annex talks about treaties on the administration of international water courses and associated environmental obligations as treaties which do not cease to exist when hostilities are engaged in (ILC, 2011). It is typical of a shared view of the core purpose of water-sharing treaties is not merely political warfare.

Despite the fact that India and Pakistan are not at war, the Draft Articles indicate that treaties such as the IWT are resilient in nature. These commitments are not ended when there is conflict and cannot be canceled solely on the basis of the peacetime terrorism claims. The humanitarian and environmental security of water treaties also enforce their security against the withdrawal of water treaties unilaterally. The suspension of India, is, therefore, not only contrary to the law of the treaty, but also the still more recognisable principles of the International Law Commission which are watercourse regimes here to stay.

7.4 Environmental and Humanitarian Character of Water Treaties

It is becoming more accepted that water-sharing agreements play both humanitarian and environmental roles and thus are subject to the Erga omnes obligations. The Pulp Mills on the River Uruguay (2010) by the ICJ highlighted the responsibility to preserve international watercourses since it is a common environmental interest (ICJ, 2010).

This duality is portrayed in the IWT, it started off as an allocative treaty; today it has become a savior of agriculture, drinking, and energy security in Pakistan. Anyway, its suspension would jeopardize fundamental rights that are guaranteed by such treaties as the International Covenant on Economic, Social and Cultural Rights. The application of the principles of the environmental law, i.e., intergenerational equity and precautionary approach should be used to maintain such treaties. Therefore, the IWT is not to be seen as simply a bilateral bargain but rather as an environmental-humanitarian regime. The suspension of India is a normative violation of this change, revealing its action as antithesis not only to the law of treaties, but also to larger normative frameworks of human rights and environmental protection.

8. APPLICATION TO INDIA'S 2025 ABEYANCE

On 23 April 2025, the Ministry of External Affairs India declared that it would straight away suspend the Indus Waters Treaty of 1960. Suspension will be made until Pakistan ceases its assistance in cross-border terrorism. It was issued after a security cabinet meeting and was a composite of a national security justification on the one hand, and an indictment of Pakistan on the other, that Pakistan violated the goodwill on which the Treaty is based (Ministry of External Affairs, Government of India, 2025). The next day this decision was officially delivered to Pakistan, strengthening the connection between the issues of security and the water-sharing governance of India. During parliamentary briefings, the officials emphasized that the moves taken by Pakistan had rendered the spirit of cooperation, as embodied by the Treaty, useless.

8.1 PCA's Supplemental Award on Competence (2025)

In response to these developments, on 27 June 2025 in response to an Article IX and Annexure G to the Treaty arbitration that was initiated by Pakistan, the Permanent Court of Arbitration (PCA) rendered a Supplemental Award on Competence. The PCA said that, regardless of the Court's competence to proceed with adjudication of the dispute, the Indian declaration of unilateral 'abeyance' does not have any effect on the competence of the Court to continue adjudicating the dispute and the Court affirmed its competence as established in its prior 2023 Award on Competence. The Tribunal underlined that the continuation of arbitral proceedings cannot be stopped by unilateral claims, which are made after the fact (Permanent Court of Arbitration, 2025). It also clarified that this holding does extend to the competency of the Neutral Expert and reinforces the idea that procedural processes in the Treaty must go on unhindered, even in the face of a security-motivated suspension of India.

The IWT acts as a key towards continuation of the treaty as article twelve of the IWT says that the treaty shall continue in force until it is terminated by the mutual consent of both parties. In this provision, it is apparent that the unilateral suspension or abeyance is not covered. This was supported by the PCA that stressed that any measure to derail the dispute resolution machinery under the pretext of the so-called abeyance is fundamentally against the systemic integrity of the Treaty. This interpretation is in line with the doctrine of pacta sunt servada in the Vienna Convention and that the modification or termination should follow prescribed procedures. The fact, that India has already decided to suspend the treaty, alone disregards the clear wording and intention of the treaty and violates the principle of mutual consent, which maintains the existence of the treaty (Lekkas & Tzanakopoulos, 2014).

The excuse that India gave that it suspended the Treaty as a response to the allegations by Pakistan that India was perpetrating terrorism backfires on two pivotal fronts. To begin with, in the ARSIWA approach, countermeasures that are lawful must be related to the breach of the treaty, reversible, in proportion and not undermine humanitarian obligations. Terrorism is not an area of concern to the IWT and therefore any link that can be established between the two is far flung. Second, the necessity doctrine is also not offered: and such defense will not justify destroying civilian populations or neglecting duties that are related to essential resources. Moreover, the humanitarian implications of offering Pakistan a way to sustain its agricultural activities and drinking water supply, make the suspension immensely disproportional and illegal under both the treaty-text and the principles of international responsibility.

9. PAKISTAN'S LEGAL OPTIONS

After the unilateral suspension of the Indus Waters Treaty (IWT) by India, there are a number of viable legal avenues on the side of Pakistan. First of all, it can invoke Article IX of the Treaty to proceed to seek arbitration before the Permanent Court of Arbitration (PCA), which has already determined that it has jurisdiction despite India claiming that it is suspended. Another option available to Pakistan could be to bring a case before the International Court of Justice (ICJ) and frame the actions of India as a breach of the customary international law of treaties and watercourses. Moreover, Pakistan may ask the World Bank to play the role of a facilitator in accordance with the IWT, to seek the diplomatic intervention in support of the integrity of the Treaty. Another possibility is the appeal to the principle of Erga omnes obligations- the argument that access to water is a fundamental human right, and that this implicates broader humanitarian law issues (Bhatti, Mustafa, and Waris, 2019). Even though these remedies may not compel an immediate compliance, the fact that Pakistan has adopted a strategy of using various forums such as arbitral, ICJ and UN bodies to enhance its position. By taking the dispute international, Pakistan makes India appear to have taken a step towards not only weakening the bilateral relation but the stability of

international treaty obligations as well.

The Indian move to suspend the IWT could be a slippery slope, which has serious consequences on the international law of water. The transboundary treaties such as the Danube Convention (1994) and the UN Watercourses Convention (1997) are based on continuity and predictability. In case unilateral suspensions were accepted, states that conflicted on geopolitical grounds could use the value of freshwater resources as a weapon to the detriment of the principle of equitable and reasonable use, this would also directly erode the doctrine that water treaties have a quasi-permanent character. Moreover, such unilateral actions might encourage other riparian states to ignore old agreements, creating imbalance in the delicate basins such as the Nile, Mekong, and Jordan Rivers. The stability of treaties depends on denying the practice of India and reasserting that issues should be solved through the mechanisms established by the treaties rather than through political statements unilaterally issued by India. The implications are not confined to South Asia but are also related to the global governance of common rivers, and the validity of international law itself.

10. CONCLUSION

As the analysis shows, with India, there is by no means the legal power to unilaterally suspend or cancel the Indus Waters Treaty (IWT). The text of the treaty, especially Article XII, can only be ended or changed through mutual consensus leaving no possibility of unilateral withdrawal (World Bank, 1960). The material breach (Article 60) or fundamental change of circumstances (Article 62) cannot be credibly invoked to support the position of India especially when the alleged justifications are extraneous to water-sharing obligations (Vienna Convention on the Law of Treaties, 1969). Moreover, the efforts to frame suspension as a countermeasure do not work under the Articles on State Responsibility by the International Law Commission which states that countermeasures should be proportionate, reversible, and linked to the wrongful act in question (International Law Commission, 2001). The abeyance of India is thus inconsistent with the framework of the treaty, and the settled doctrines of international law.

This only highlights the strength of the IWT as a mainstay of transboundary water governance. It has survived wars, political crises, and repetitive disputes over more than sixty years under international law, reaffirming a quasi-permanent nature of water treaties. This can be attributed to the fact that this principle is characterized by the fact that treaties that regulate common natural resources, especially rivers, cannot be easily ousted by political contingencies (ILC, 2011). Further evidence of the fact that continuity and cooperation are the key to protecting ecological and humanitarian interests across borders is provided by the UN Watercourses Convention (1997) and the jurisprudence of the ICJ in GabčikovoNagymaros (1997). The rejection of unilateralism by the IWT is an example of how stability in the international water law can contribute to peace and security in volatile regions. Therefore, the suspension effort by India is, on the one hand,

a legal failure; and, on the other hand, it shows the long-term significance of the cooperative and rules-based management of shared water resources.

REFERENCES

Abas, N., Khan, N., Saleem, M. S., & Raza, M. H. (2019). Indus Water Treaty in the doldrums due to water–power nexus. *European Journal for Security Research, 4*(2), 201–242. https://doi.org/10.1007/s41125-019-00047-8

Asiasociety.org. (2025). *The Indus Waters Treaty: South Asia's most durable accord faces tough test.* Retrieved from https://www.asiasociety.org/

Banerji, A. (2024, June 27). *A Shared Interest: Why India and Pakistan Should Strengthen the Indus Waters Treaty.* Stimson Center. https://www.stimson.org/2024/a-shared-interest-why-india-and-pakistan-should-strengthen-the-indus-waters-treaty/

Bhatti, M. N., Mustafa, G., & Waris, M. (2019). Challenges to Indus Waters Treaty and options for Pakistan. *Global Regional Review, 4*(4), 249–255. https://doi.org/10.31703/grr.2019(IV-IV).27

Corten, O. (2021). *The law against war: The prohibition on the use of force in contemporary international law*. Bloomsbury Publishing.

Elhance, A. P. (1999). *Hydropolitics in the Third World: Conflict and cooperation in international river basins*. United States Institute of Peace Press.

Elias, O. (1995). The nature of the subjective element in customary international law. *International & Comparative Law Quarterly, 44*(3), 501–520. https://doi.org/10.1093/iclqaj/44.3.501

Giegerich, T. (2018). Article 60: Termination or suspension of the operation of a treaty as a consequence of its breach. In O. Dörr & K. Schmalenbach (Eds.), *Vienna Convention on the Law of Treaties: A commentary* (pp. 1095–1125). Springer Berlin Heidelberg. https://doi.org/10.1007/978-3-662-55160-8_63

International Law Association. (1966). *The Helsinki Rules on the Uses of the Waters of International Rivers*. Report of the Fifty-Second Conference, Helsinki. https://www.internationalwaterlaw.org/documents/intldocs/Helsinki_Rules_with_comments.pdf

International Law Commission. (2001). *Draft articles on responsibility of States for internationally wrongful acts, with commentaries*. United Nations, Yearbook of the International Law Commission, 2001, Vol. II (Part Two). https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf

International Law Commission. (2011). *Draft articles on the effects of armed conflicts on treaties, with commentaries*. United Nations, Yearbook of the International Law Commission, 2011, Vol. II (Part Two). https://legal.un.org/ilc/texts/instruments/english/commentaries/1_10_2011.pdf

India, Pakistan & International Bank for Reconstruction and Development. (1960, September 19). *The Indus Waters Treaty 1960 (with annexes)*. United Nations. *United Nations Treaty Series*, *Vol. 419*, No. 6032. Retrieved from https://treaties.un.org/doc/Publication/UNTs/Volume%20419/volume-419-I-6032-English.pdf

International Court of Justice. (1974). *Nuclear Tests (Australia v. France), judgment of 20 December 1974, ICJ Reports 1974* (p. 253). https://www.icj-cij.org/case/58

International Court of Justice. (1997). *Gabčíkovo–Nagymaros Project (Hungary v. Slovakia), judgment, ICJ Reports 1997* (p. 7). https://www.icj-cij.org/case/92

International Court of Justice. (2010). *Pulp Mills on the River Uruguay (Argentina v. Uruguay), judgment of 20 April 2010, ICJ Reports 2010* (p. 14). https://www.icj-cij.org/case/135

Khan, R. M. (1973). Vienna Convention on Law of Treaties—Article 62 (Fundamental change of circumstances). *Pakistan Horizon, 26*(1), 16–28.

Lekkas, S.-I., & Tzanakopoulos, A. (2014). Pacta sunt servanda versus flexibility in the suspension and termination of treaties. In C. J. Tams, A. Tzanakopoulos, & A. Zimmermann (Eds.), *Research handbook on the law of treaties* (pp. 312–340). Edward Elgar Publishing. https://doi.org/10.4337/9781781004708.00025

Permanent Court of International Justice. (1932). *Free Zones of Upper Savoy and the District of Gex, order of 19 August 1929 and judgment of 7 June 1932, PCIJ Series A/B No. 46* (p. 167). https://www.icj-cij.org/pcij-series-a-b

Permanent Court of Arbitration. (2025, June 27). *Press release: The Indus Waters Western Rivers Arbitration (Islamic Republic of Pakistan v. Republic of India)—Supplemental Award on Competence of the Court*. https://pcacases.com/web/sendAttach/76022

Raman, D. (2014). Review of the Indus Waters Kishenganga arbitration (final award) 2013: An ecological perspective. *Indian Journal of Arbitration Law, 3*, 43–56.

Rathod, V. P. S. (2023). Water right and climate change: An analysis of transboundary water conflicts amidst environmental challenges in the Indus region with specific reference to the Indus Waters Treaty of 1960. *LawFoyer International Journal of Doctrinal Legal Research, 1*, 152–165. https://lawfoyer.in/water-right-and-climate-change-an-analysis-of-transboundary-water-conflicts-amidst-environmental-challenges-in-the-indus-region-with-specific-reference-to-the-indus-waters-treaty-of-1960/

Salman, S. M. (2008). The Baglihar difference and its resolution process—A triumph for the Indus Waters Treaty? *Water Policy, 10*(2), 105–117. https://doi.org/10.2166/wp.2008.132

Solape, O. A. (2024). *The relationship between the law of treaties and the law of state responsibility with reference to non-performance of treaty* (Doctoral dissertation, Golden Gate University). ProQuest Dissertations Publishing.

Scobbie, I. (2002). The invocation of responsibility for the breach of

'obligations under peremptory norms of general international law'. *European Journal of International Law, 13*(5), 1201–1220. https://doi.org/10.1093/ejil/13.5.1201

United Nations. (1969). *Vienna Convention on the Law of Treaties*. United Nations Treaty Series, 1155, 331. https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXIII-1&chapter=23

United Nations. (1997). *Convention on the Law of the Non-Navigational Uses of International Watercourses*. 36 ILM 700 (UN Doc A/RES/51/229, entered into force 17 August 2014). https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=XXVII-12&chapter=27

United Nations Human Rights Committee. (2019). *General Comment No. 36 on article 6 of the International Covenant on Civil and Political Rights, on the right to life* (CCPR/C/GC/36). United Nations. https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-36-article-6-right-life

Water or blood: tensions grow over India and Pakistan's shared rivers. (2025, April 30). *Financial Times*. https://www.ft.com/content/1edf1989-8d31-4c0b-8982-1edefcedf01f

Wolf, A. T. (1998). Conflict and cooperation along international waterways. *Water Policy, 1*(2), 251–265. https://doi.org/10.1016/S1366-7017(98)00019-1

World Bank. (2018, June 11). *Fact sheet: The Indus Waters Treaty 1960 and the role of the World Bank*. Retrieved from https://www.worldbank.org/en/region/sar/brief/fact-sheet-the-indus-waters-treaty-1960-and-the-world-bank

World Bank. (1960). *The Indus Waters Treaty, 1960*. World Bank.

Zeitoun, M., & Mirumachi, N. (2008). Transboundary water interaction I: Reconsidering conflict and cooperation. *International Environmental Agreements: Politics, Law and Economics, 8*(4), 297–316. https://doi.org/10.1007/s10784-008-9083-5

Zhifeng, J. (2022). Pacta sunt servanda and empire: A critical examination of the evolution, invocation, and application of an international law axiom. *Michigan Journal of International Law, 43*, 745–790. https://repository.law.umich.edu/mjil/vol43/iss3/5.