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Water as a Human Right: A Case Study of the Pakistan-India Water Conflict

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**WATER AS A HUMAN RIGHT: A CASE
STUDY OF THE PAKISTAN-INDIA WATER
CONFLICT**

*Waseem Ahmad Qureshi**

The Indus Waters Treaty was signed between India and Pakistan in 1960, with the World Bank taking a mediatory role between the two countries. The treaty allocated the Ravi, Sutlej, and Bias Rivers to India, while Pakistan was assigned the water from the Chenab, Jhelum, and Indus Rivers. Nonetheless, Pakistan has alleged that India violated the Indus Waters Treaty by initiating the construction of Baglebar Dam in 1999. Pakistan further claimed that India exasperated the issue by proceeding to initiate new projects such as the Ratle Dam on the Chenab River and Kishan Ganga on the Neelum–Jhelum River. The completion of these projects, in addition to the modifications in the allocation of river waters to Pakistan, could deprive the people of the Indus Basin region the basic human right of access to water; a region strongly dependent on these rivers, and that basic right, for drinking, agricultural, and domestic purposes. Access to water is a “basic human right,” as endorsed in different international conventions and declarations. Therefore, India’s draconian act of restricting water flow to Pakistan could directly result in human rights violations.

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I. INTRODUCTION

Water is a basic human right¹ because it is essential for human survival. This paper is focused on the distribution of water between India and Pakistan and the resulting conflict. The historical and contemporary nature of the conflict, alongside the human rights issues pertinent to the conflict, will be evaluated in the first section of this paper. The Indus Waters Treaty resolved this conflict to a great extent; however, the recent statements from Indian Prime Minister Narendra Modi, regarding blocking the rivers that flow from India to Pakistan, have reignited the conflict.² India is also constructing the Kishan Ganga and Ratle Dams on the Jhelum and Chenab rivers, respectively,³ and has also completed the Baglehar Dam on the Chenab River. Pakistan has serious reservations about the construction of these dams. The implications of India's construction of dams, its attempt to revoke or modify the terms of Indus Waters Treaty ("IWT"), and its threats to block rivers to Pakistan will also be discussed in the first section of this paper. The second section will include the interpretations and positions of the international conventions and declarations, which recognize "access to water" as a fundamental human right. The role of the World Bank as a "mediator" between India and Pakistan for resolving the water conflict and, consequently, protecting the "human right to water" will be explained in the third section. The fourth section will include the options available to Pakistan, along with the proposal of a suitable strategy to overcome the water conflict with India.

II. SUMMARY OF THE CONFLICT

A. The Historical Developments Toward Water Conflict and the

¹ Amanda Cahil Ripley, *The Human Right to Water and its Application in the Occupied Palestinian Territories*, 14 (TAYLOR & FRANCIS, 2011).

² Hugh Tomlinson, *Modi Threatens to cut Pakistan's water in revenge for militant attack*, THE TIMES, September 27, 2016, <http://www.thetimes.co.uk/article/modi-threatens-to-cut-pakistan-s-water-in-revenge-for-militant-attack-j2vsgn8jf> (last visited December 22, 2016).

³ Aziz Z. Azad, *Indus Water Treaty and India's Agitation*, DAILY JANG NEWSPAPER, December 18, 2016.

IWT

At the time of the partition of the subcontinent, the British rulers assigned an independent commission, named the “Radcliffe Award” and under the supervision of Sir Cyril Radcliffe, for drawing the international boundary between India and Pakistan.⁴ As a result, India became the upper riparian state, while Pakistan became the lower riparian region.⁵ The water of six major rivers in the lower riparian Pakistan comes from the upper riparian India.

Immediately after partition, India suddenly suspended all the river water flowing to Pakistan, which threatened Pakistan’s agricultural and agrarian infrastructure because it was heavily reliant on the river water for irrigation.⁶ In response, Pakistan approached the international community and, eventually, after a decade of strained relations between India and Pakistan, the World Bank took the very noble initiative of mediating between India and Pakistan for the allocation and distribution of river water between the two countries. As a result of the mediation of the World Bank, the Indus Waters Treaty was signed by the rulers of both countries, Indian Prime Minister Jawaharlal Nehru and Pakistani Field Marshal Ayub Khan, in 1960.⁷

The IWT allocated the eastern rivers—the Ravi, Sutlej, and Bias—to India, while the western rivers—the Sindh, Chenab, and Jhelum—were allocated to Pakistan. Both countries were also given the right of conditional usage of water of each other’s rivers for domestic reasons, such as power generation, agricultural, and other non-consumptive purposes; however, it was required that such usage

⁴ Lucy Chester, *The 1947 Partition – Drawing the Indo-Pakistani Boundary*, AMERICAN DIPLOMACY, February 2002, http://www.unc.edu/depts/diplomat/archives_roll/2002_01-03/chester_partition/chester_partition.html (last visited December 20, 2016).

⁵ Miriam R. Lowi, *Water and Power: The Politics of a Scarce Resource in the Jordan River Basin*, 63 (CAMBRIDGE UNIVERSITY PRESS, 1995).

⁶ Danta Caponera, *National and International Law and Administration*, 230 (KLUWER LAW INTERNATIONAL, 2003) [hereinafter Caponera].

⁷ Michael Glantz and Igor Zonn, *Scientific, Environmental, and Political Issues in the Circum-Caspian Region*, 285 (SPRINGER, 1997).

must not lower the quantity and natural flow of the water in the river of the other country.⁸

As a result of the IWT, the water conflict was resolved to a great extent until 1999, when India announced the construction of the Baglehar Dam on the Chenab River and completely disregarded Pakistan's concerns over the design of the dam. According to Pakistani government sources, the design of the dam could affect the quantity of water in the Chenab River.⁹ Meetings of the Permanent Indus Commission — a commission comprising members from both countries to discuss issues related to the IWT — were also held, but no consensus was reached¹⁰ and eventually Pakistan had to rely upon the judgment of the neutral expert of the World Bank, whose final verdict did not prevent the completion of the dam¹¹

B. The Contemporary Nature of the Conflict

At present, the buried conflict of the past between India and Pakistan seems to have been reborn after aggravated statements from Indian Prime Minister Narendra Modi that he would be bringing Indus water back to India;¹² he also announced the formation of a task force to “review” the Indus Waters Treaty.¹³ This has raised

⁸ Niranjana Das Gulhati, *Indus Water Treaty: An Exercise in International Mediation*, 148–312 (ALLIED PUBLISHERS, 1973).

⁹ Laurence Boisson, Christina Leb, and Mara Tignino. *International Law and Fresh Water: The Multiple Challenges*, 417 (EDWARD ELGAR PUBLISHING LIMITED, 2013); see also Aparna Pande, *Explaining Pakistan's Foreign Policy: Escaping India* (ROUTLEDGE, 2011).

¹⁰ UNECE, *River Basin Commissions and Other Institutions for Transboundary Water Cooperation*, 20 (UNITED NATIONS, 2009).

¹¹ 2007: Neutral expert gives his judgement on Baglihar Dam, DAWN, July 02, 2011, <https://www.dawn.com/news/640989>, (last visited April 03, 2017).

¹² Varinder Singh, *PM: Will Bring Indus Water Back*. *Tribune News Sources*, THE TRIBUNE, November 26, 2016, <http://www.tribuneindia.com/news/nation/pm-will-bring-indus-water-back/328690.html> (last visited December 5, 2016).

¹³ Hindustan Times Correspondent, *India forms task force on Indus Water Treaty*, HINDUSTAN TIMES, December 17, 2016, <http://www.hindustantimes.com/india-news/india-forms-task-force-on-indus-waters-treaty-pakistan-says-won-t-accept-changes-to-pact/story-fuzmtjvpi94ivzggp3epzn.html> (last visited December 20, 2016).

tensions for Pakistan as the Indus river was legally allocated to Pakistan under the IWT, and Modi's statement about the Indus river has been regarded by Pakistan as very contentious. Reviewing the IWT, or even modifying or changing its clauses, is also unacceptable to Pakistan: the special assistant to the Pakistani prime minister confirmed that no changes or modifications of the IWT would be accepted by Pakistan.¹⁴ The Indian threat to revoke the IWT is also alive, which has concerned Pakistan. If the treaty is cancelled, there will be no consensus between the countries on the distribution of waters. As a result, the peace of the region could be at risk.

Moreover, India has initiated the construction of dams on the western rivers—the Chenab, Jhelum, and Neelum rivers in occupied Kashmir and within the Indian territory. Pakistan has serious objections to the Ratle, Kishan Ganga, and Sawalkot Dams and the Wullar Barrage¹⁵ because they could impact the flow of the Chenab and Jhelum rivers to a great extent, which would put in danger Pakistan's irrigation system and availability of water for drinking and domestic purposes. Although, the Permanent Court of Arbitration's verdict on the Kishan Ganga Dam partially favors Pakistan,¹⁶ it also allows India to build the Kishan Ganga dam in accordance with the IWT's requirement of minimum level of water flow ($9\text{m}^3/\text{s}$) in the Chenab river.¹⁷ However, the dispute still exists in relation to other dams. These contentions are strengthening the India–Pakistan water conflict.

C. Human Rights Issues Related to the Conflict

Water is a basic human necessity and recognized as a fundamental human right. India's threats and its construction of dams on the western rivers are paving the way for the deprivation of

¹⁴ Anwar Iqbal, *Pakistan not to accept alteration in Indus Water Treaty*, DAWN, December 17, 2016, <http://www.dawn.com/news/1302848> (last visited December 18, 2016).

¹⁵ A.K. Chaturvedi, *Water: A Source for Future Conflicts*, 164 (VIJ BOOKS INDIA PVT LTD, 2013). [hereinafter Chaturvedi].

¹⁶ Robert G. Wirsing and Zafar Adeel, *Imagining Indus: Overcoming Water Insecurity in the Indus Basin*, 79. (SPRINGER, 2016).

¹⁷ Gustaf Olsson, *Water and Energy: Threats and Opportunities*, 19 (IWA PUBLISHING, 2015).

the people of Pakistan of this basic right. India has also committed violations of human rights in Kashmir and it would feel no harm in repeating the same for the people of Pakistan by depriving them of adequate water supply.

The main issue concerning the India–Pakistan water conflict is related to the “human right to access water.” The construction of dams by India on Pakistani-allocated rivers could lower the quantity of water in the western rivers,¹⁸ which will affect the “access to water” of the people who regularly consume the water of these rivers in Pakistan, especially in the Punjab region. Moreover, blocking the Indus and other rivers from India could cause a shortage of water in Pakistan, which would deprive a large number of people who are dependent on access to this river water for drinking, agricultural, and domestic needs.

Agriculture is the only means of subsistence and earning for almost half of the Pakistani population. Forty-five percent of the Country’s labor force is associated with agriculture;¹⁹ therefore, any harm done to the agriculture of Pakistan will cause a direct negative effect on the lives of these people. Pakistan’s citizens’ well being, standards of living, employment, access to health care, food, water, and sanitation will all be directly affected. Moreover, around 70 percent of the region’s agricultural area is in the Punjab;²⁰ therefore, if India pursues its ambitions of constructing dams or barrages to deprive the Pakistani Punjab of the river water, then it would cause severe harm to the basic rights²¹ — the right to access water, food, sanitation, employment, health care, etc. — of the people who are dependent on the river water in Punjab.²²

Another issue is related to threatening the agricultural infrastructure of Pakistan. Almost the entire agricultural

¹⁸ *Id.*

¹⁹ Aaron Marcus, *Design, User Experience, and Usability: User Experience Design for Everyday Life Applications and Services*, 574 (SPRINGER, 2014).

²⁰ Peter Blood, *Agriculture – Pakistan: A Country Study*. (U.S. LIBRARY OF CONGRESS, 1994). Chapter available at: <http://countrystudies.us/pakistan/49.htm> (page 1) (last visited December 22, 2016).

²¹ *Id.*

²² *Id.*

infrastructure of Pakistan follows the canals and barrage systems for irrigation,²³ and all of the water in the canals and barrages comes from the western rivers,²⁴ of which the Indus River shares the maximum quantity of water supply. Any hindrance caused by India to the flow of the Indus river will reduce the flow of water reaching to Pakistan, and blocking the flow of this river would cause a shortage or total lack thereof water available for irrigation; this would directly threaten the very survival of the entire Pakistan population because the absence of irrigation could result in crop failure, as well as food and water shortages.

III. INTERNATIONAL CONVENTIONS & DECLARATIONS ENDORSING THE “ACCESS TO WATER” AS A BASIC HUMAN RIGHT

There are a number of internationally accepted declarations, conventions, and resolutions that shed light on the importance of the access to water for every human-being residing in any region or state. Some of these declarations explicitly mention the importance of the “right to access water,” along with other basic amenities of life, while others implicitly highlight it. In this regard, the United Nations has been an essential international body, providing a platform to the international community for issuing conventions. The notable clauses that discuss this basic human right are mentioned below with reference to the universally acclaimed declarations and conventions.

A. The United Nations Charter

The United Nations Charter²⁵ has essential goals for human development. For instance, Article 55 includes the following points:²⁶

- a. Higher standards of living, full employment, and conditions of economic and social progress and development;

²³ *Id.*

²⁴ Chenab, Jhelum, and Indus rivers.

²⁵ Charter of the United Nations, 1945.

²⁶ Chapter IX, Charter of the United Nations, 1945.

b. Solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and

c. Universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.²⁷

The need is to ensure all the required living conditions for realizing the aforementioned goals of human development, and these conditions must entail the right to water for basic life subsistence, because, the access to water is the fundamental requirement for not only the survival of life, but also human development.²⁸

On the other hand, the climactic changes, population increases, and conflicts between upper and lower riparian states over the distribution of water resources are some of the prominent challenges of the contemporary era that may hinder the progress to fulfillment of human development goals.²⁹

B. The Universal Declaration of Human Rights

The Universal Declaration of Human Rights (the “Declaration”) was adopted by the General Assembly of the United Nations in 1948³⁰ This Declaration is a fundamental part of international law; a body of law that every state heavily weighs when deciding on matters related to international jurisdiction³¹ Article 25 of this declaration states:

Everyone has the right to a standard of living adequate for the health and well-being of himself and

²⁷ *Id.*

²⁸ Stephen M. Wheeler and Timothy Beatley, *Sustainable Urban Development Reader*, 217. (ROUTLEDGE, 2014).

²⁹ Shimon Anisfeld, *Water Resources*, 100 (ISLAND PRESS, 2010). *See also* Tamin Younus and Caitlin Grady, *Climate Change and Water Resources*, 146 (SPRINGER, 2013).

³⁰ S.Prakash Sinha, *Asylum and International Law*, 93. (SPRINGER, 2013).

³¹ Burns H. Weston and Richard Pierre Claude, *Human Rights in the World Community: Issues and Action*, 94. (UNIVERSITY OF PENNSYLVANIA PRESS, 2006).

of his family, including food, clothing, housing and medical care and necessary social services.³²

This clause highlights the importance of the well-being of every human and their right to access the basic necessities of life. The word “water” has not been used explicitly in the Declaration, but it is a basic necessity for human life and well being, as human health and subsistence are impossible without it. As a result, “access to water” is required to ensure human rights.³³

C. The International Covenant on Civil and Political Rights (“ICCPR”)

The ICCPR has emphasized the importance of the right to life for every human being by stating:

The ICCPR affirms the “right to life” which has conventionally been interpreted to mean that no person shall be deprived of his or her life in a civil and political sense.³⁴

This statement implies the notion that no state or individual should create circumstances that may harm an individual’s life through any means. The ICCPR also follows the Human Rights Committee’s (“HRC”) principle that emphasizes the “right to life” and access to water in the following words:

[HRC] has noted that the right to life has been too often narrowly interpreted. The expression “inherent right to life” cannot properly be understood in a restrictive manner, and the protection of this right requires that States adopt positive measures. Disregarding this new development in the

³² Article 25, Universal Declaration of Human Rights.

³³ Phillip Aston and Ryan Goodman, *International Human Rights*, 369 (OXFORD UNIVERSITY PRESS, 2013).

³⁴ Angela Cassar, John Scanlon, and Noemi Nemes, Water as a Human Right, 4 (IUCN-UNDP, 2004). *See also* Taniya Malik, *Recognition of Human Right to Water under International Law Regime*, 170, INTERNATIONAL JOURNAL OF APPLIED RESEARCH, 1(4).

understanding of Article 6 and assuming a narrow interpretation of such a right would nevertheless require the inclusion of the protection against arbitrary and intentional denial of access to sufficient water, because this is one of the most fundamental resources necessary to sustain life.³⁵

Here, the ICCPR, in accordance with the HRC, is recommending that states adopt the necessary measures for the protection of the “inherent right to life” for every human being, and classifies access to water as an integral part of the “right to life.”

D. The Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”)

CEDAW is an organization that is pro-actively working for the well being and development of womens’ lives, and has also highlighted the access to water as a fundamental right and requirement for the quality of life for women.³⁶ It also particularly articulates the importance of access to water for women residing in rural and under-developed areas where there could be fewer resources of water.³⁷ Women may require water not only for drinking, but also for essential child and family care, in addition to the other basic domestic needs.

E. The Convention on the Rights of the Child

The Convention on the Rights of the Child highlights the need to fulfill the fundamental necessities of life for the well-being of children. It mentions access to healthcare, food, and clean water, among other necessities set out in Article 24(2)(c) as follows:

³⁵ Taniya Malik, *Recognition of Human Right to Water under International Law Regime*, 170 *INTERNATIOANL JOURNAL OF APPLIED RESEARCH*, 1(4).

³⁶ Article 14(2)(h), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

³⁷ *Id.*

[To] combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution.³⁸

Therefore, every child must have access to these fundamental necessities of life to ensure their health, stability, well-being, and survival.

F. The United Nations Watercourses Convention

This UN Convention is focused on highlighting the importance of the “access to water” as a fundamental right for every human being. Above all, Article 10 of this Convention recognizes the right to access water for drinking purposes as being more important than the right to access water for agriculture or electricity generation, or any other use within a state, as well as in another riparian state.³⁹ In this regard, the states should observe this comparison and adhere to such in practice.

In light of this Convention, one country cannot deprive another country access to drinkable water, and further, that specific right must be prioritized over building infrastructure for storage, hydroelectricity generation, irrigation, or any other non-consumptive purpose. This clause is relevant to the upper riparian states, from where rivers flow to the lower riparian states.⁴⁰ If the former stops the water flow, then the availability of water in the latter will certainly decline.

³⁸ Article 24(2)(c), Convention on the Rights of the Child.

³⁹ Takele Soboka Bulto, *The Extraterritorial Application of Human Right to Water in Africa*, 260 (CAMBRIDGE UNIVERSITY PRESS, 2014). See also Antoinette Hilderling, *International Law, Sustainable Development and Water Management*, 101 (EBURON, 2006).

⁴⁰ Parasan Rangarajan, Daniel Tan, and Veronica Fynn, *International Law Journal of London*, 235 (INTERNATIONAL LAW JOURNAL OF LONDON, 2014).

Stephen McCaffrey, former Special Rapporteur on The Law of the Non-Navigational Uses of International Watercourses⁴¹, has further interpreted this clause and added the term “economic development,” stating that a country cannot stop water flow to a lower riparian state on the grounds of economic development, particularly when this could harm the subsistence of people dependent on that water in the lower riparian state.⁴²

H. The Stockholm Declaration

This declaration was approved during the United Nations Conference on the Human Environment, held in Stockholm in 1972.⁴³ Stockholm Declaration explicitly mentioned the access to water as a fundamental right for present and future generations:

The Declaration is one of the earliest environmental instruments that recognizes the fundamental right to an environment of a quality that permits a life of dignity and wellbeing [sic] and also that the natural resources of the earth including, the air, water, land, flora, and fauna ... must be safeguarded for the benefit of present and future generations.⁴⁴

I. The Mar del Plata Action Plan

The Mar del Plata Action Plan was approved during the United Nations Water Conference, held in March 1977 in Mar del Plata, Argentina. The main purpose of the conference was to evaluate the contemporary challenges related to water availability,

⁴¹ Stephen McCaffrey has been considered an expert in International Law of Watercourses and he has written on the geographical and other issues pertaining to the watercourses. For instance, see his book: *The Law of International Watercourses*, (OXFORD UNIVERSITY PRESS, 2007).

⁴² *Id.*; and see Caponera, *supra* note 7, at 41.

⁴³ David Weissbrodt and Connie de Vega, *International Human Rights Law: An Introduction*, 197 (UNIVERSITY OF PENNSYLVANIA PRESS, 2007).

⁴⁴ Declaration of the United Nations Conference on the Human Environment.

management,⁴⁵ efficiency of usage, cleanliness, and agricultural and socioeconomic uses, and to devise a plan to meet these challenges and avert future global water crises.⁴⁶ The Mar del Plata Action Plan, presented by this conference, identified “water as a [fundamental human] right, declaring that all people have the right to drinking water in quantities and of a quality equal to their basic needs.”⁴⁷

J. The Dublin Statement

The Dublin Statement was the result of the International Conference on Water and Environment held in Dublin, Ireland in January of 1992.⁴⁸ The main purpose of this conference was to evaluate the scarcity and inefficient use of water, and any scarcity-related threats to sustainable development.⁴⁹ Experts from the varying states in attendance arrived at the mutual consensus that “access to clean water and sanitation” is among the basic rights of human beings.⁵⁰

The four principles of the Dublin Statement highlight the importance of water for all human beings⁵¹ The first principle evaluates the essentiality of water for life and environments and confirms that the resource is in-fact finite⁵² The second principle suggests a participatory approach for better management of water usage. The third principle discusses the role of women in the

⁴⁵ Malin Falkenmark, UN Water Conference: Agreement on Goals and Action Plan, 222–227 (SPRINGER, 1977).

⁴⁶ WHO, *United Nations Conference on Water (Mar del Plata 1977)* (WORLD HEALTH ORGANIZATION, 2005.)

⁴⁷ United Nations Division for Economic and Social Information, *Mar del Plata Action Plan: United Nations Water Conference, Mar del Plata, Argentina*, 78. UN DESI/DPI, 1983.

⁴⁸ Ana Maria Daza-Clark, *International Investment Law and Water Resources Management: An Appraisal of Indirect Expropriation*, 39. (BRILL, 2016). See also: Takele Soboka Bulto, *The Extraterritorial Application of the Human Right to Water in Africa*, 48. (CAMBRIDGE UNIVERSITY PRESS, 2013).

⁴⁹ *The Dublin Statement on Water and Sustainable Development – UN Documents: Gathering of a Body of Global Agreements*, UNGO, January 31, 1992.

⁵⁰ *Id.*

⁵¹ Hannatjie Jacobs, Jo-Ansie van Wyk, and Richard Meissner. *Future Challenges of Providing High-Quality Water*, 152. (EOLSS PUBLICATIONS, 2009).

⁵² Tim Davie, *Fundamentals of Hydrology*, 157. (TAYLOR & FRANCIS, 2008).

management and usage of water. The fourth and final principle sheds light on the economic value of water, along with the importance of clean water and sanitation.⁵³

Hence, the Dublin Statement explicitly discusses the importance of water and urges states to evaluate the Statement's suggestions and principles so that states may devise and implement effective measures to manage water resources and fulfill the basic water needs of humanity⁵⁴

K. Agenda 21

“Agenda 21” is an international action plan that was devised by the United Nations for achieving sustainable human and economic development worldwide⁵⁵ The Agenda includes the fundamental principles and requirements for sustainable development.⁵⁶ It also mentions that adequate water resources are essential for achieving sustainable development.⁵⁷ Agenda 21 further highlights the importance of maintaining good quality of pure and fresh water resources in order to fulfill the human needs related to water, and for the protection of the natural ecosystem.⁵⁸

In this regard, Chapter 18 of Agenda 21 considers “access, quality, and quantity” as the three basic elements of the “right to water.”⁵⁹ It also highlights the importance of maintaining an adequate water supply for the entire population.⁶⁰

⁵³ *Id.*

⁵⁴ Desheng Hu, *Water Rights*, 112. (IWA PUBLISHING, 2006).

⁵⁵ Raymond Charles Rauscher and Salim Momtaz, *Brooklyn's Bushwick - Urban Renewal in New York, USA: Community, Planning and Sustainable Environments*, 50. (SPRINGER, 2014).

⁵⁶ Delyse Springett and Michael Redclift, *Routledge International Handbook of Sustainable Development*, 137. (ROUTLEDGE, 2015).

⁵⁷ Donald A. Brown and J. Lemons, *Sustainable Development: Science, Ethics, and Public Policy*, 201. (SPRINGER, 2013).

⁵⁸ *Id.*

⁵⁹ *Chapter 18, point 47: Agenda 21*, UNEP, October 2011.

⁶⁰ *Id.*

L. The Political Declaration in 2016

The last Political Declaration meeting held in accordance with Resolution 70/183 of the UN General Assembly took place at the United Nation's New York headquarters in September of 2016.⁶¹ The main focus of this meeting was related to antimicrobial resistance.⁶² In addressing antimicrobial resistance, the U.N determined that access to clean water, improved health care and sanitation facilities, antimicrobial medications, and the protection of biodiversity were considered among the essential goals for the millennium and recognized as basic human rights.⁶³

All of the aforementioned declarations and agendas classify "access to water" as a basic human right. This basic right should be implicit when considering other fundamental non-water related human rights, all of which having already been accepted in the Declaration of Human Rights, the UN Charter, and the various conventions discussed above.⁶⁴

In light of these declarations, India's plan to block Indus waters to Pakistan is a direct threat to the fundamental human right of access to water for the people residing in those regions of Pakistan where the population is entirely dependent on the river's accessibility and ability to provide consumable water. The resultant harm of such an act could also negatively impact domestic, agriculture, and sanitation initiatives effectuated by the harmed region⁶⁵ More

⁶¹ *Draft Political Declaration of the High-level Meeting of the General Assembly on Antimicrobial Resistance*, 2 (UNITED NATIONS GENERAL ASSEMBLY, 2016).

⁶² Antimicrobial resistance is an activity induced by the micro-organisms like bacteria, etc. to prevent the nurturing and spread of hazardous bacteria. For details, see Mark H. M. M. Montforts and Patricia L. Keen, *Antimicrobial Resistance in the Environment*, (JOHN WILEY & SONS, 2012). See also I.W. Fong and Karl Drlica, *Antimicrobial Resistance and Implications for the 21st Century*, (SPRINGER, 2007).

⁶³ *Draft Political Declaration of the High-level Meeting of the General Assembly on Antimicrobial Resistance*, 2 (UNITED NATIONS GENERAL ASSEMBLY, 2016).

⁶⁴ *Id.*

⁶⁵ Natalie Nax, *Looking to The Future: The Indus Waters Treaty and Climate Change*, 17 (UNIVERSITY OF OREGON, 2016), <http://www.transboundarywaters.orst.edu/publications/publications/nax%20-%202016%20%20indus%20treaty%20and%20climate%20change%20-%20thesis.pdf> (last visited December 24, 2016).

importantly, there are no alternate sources of water with the capability to fulfill the threatened region's needs in terms of water usage and supply.⁶⁶

Therefore, India's government should reevaluate the decision to construct dams on the western rivers of the Indus Basin and revise the language of the IWT to avoid modifying the rivers' paths, as these actions can result in the deprivation of the fundamental human right of access to water for the rural populations of Pakistan as a whole.

IV. THE WORLD BANK AND THE INDIA–PAKISTAN WATER CONFLICT

The World Bank has an essential role related to the implementation of Indus Waters Treaty. The major responsibilities of the World Bank are discussed below.

A. Responsibilities:

The World Bank is tasked with the role of “facilitator”⁶⁷ for IWT related matters between India and Pakistan. The World Bank brokered the IWT between India and Pakistan in 1960⁶⁸ In addition, it also plays the role of mediator whenever a staunch conflict arises between India and Pakistan related to the IWT.⁶⁹ Particularly, it follows a procedure suggested in the IWT to resolve water related conflicts between both countries through the following steps.

⁶⁶ *Id.*

⁶⁷ It facilitated the signing of IWT back in 1960.

⁶⁸ Deepa Viswam, *Role of Media in Kashmir Crises*, 66 (GYAN PUBLISHING HOUSE, 2010).

⁶⁹ World Bank Urges Mediation for India, Pakistan over Indus, THE WORLD BANK – WORLDBANK.ORG, November 10, 2016, <http://www.worldbank.org/en/news/press-release/2016/11/10/world-bank-urges-mediation-for-india-pakistan-over-indus> (last visited April 2, 2017).

1. *Appointment of a Neutral Expert*⁷⁰

The World Bank appoints a “neutral expert” when severe disagreements occur between the relevant parties and the Permanent Indus Commission becomes unable to resolve these disagreements.⁷¹ After being appointed, the neutral expert obtains opinions from both parties and makes their determination on the matter at issue in accordance with the principles illustrated in the IWT that is the governing body of law for water related conflicts between the two states.⁷² In this type of scenario, the judgment of the neutral expert is considered binding on both parties.⁷³ However, if the neutral expert is unable to resolve the disagreement between the two parties, the matter becomes a “dispute” and is then referred to the Court of Arbitration.⁷⁴

India has requested the World Bank to appoint a neutral expert for the IWT.⁷⁵ In response, the World Bank has sent an official⁷⁶ as its envoy, but has not appointed the neutral expert yet, to mediate between India and Pakistan⁷⁷ The envoy will attempt to reduce tensions between the two countries in hopes of reestablishing some form of dialogue.⁷⁸

⁷⁰ Annexure F, Indus Waters Treaty, 1960.

⁷¹ See Article IX, Indus Waters Treaty, 1960.

⁷² *Id.*

⁷³ Deepa Viswam, *Role of Media in Kashmir Crises*, 135 (KALPAZ PUBLICATIONS, 2010).

⁷⁴ Article IX, Indus Waters Treaty, 1960.

⁷⁵ Alex Ferguson, *World Bank Urges Mediation for India, Pakistan over Indus*. THE WORLD BANK, November 10, 2016.

⁷⁶ Mr. Ian H. Solomon, a senior official of World Bank, has been sent by the World Bank as an envoy to India and Pakistan.

⁷⁷ Moushumi Das Gupta, *World Bank envoy to meet India, Pakistan officials over Indus water dispute*, HINDUSTAN TIMES, January 05, 2017, <http://www.hindustantimes.com/india-news/world-bank-official-to-meet-india-pakistan-officials-over-indus-waters-treaty/story-OVBkJH6P83uY0sVZ3iCjFO.html> (last visited April 5 2017).

⁷⁸ Wajid Ali Syed, *World Bank appoints an envoy to save Indus Waters Treaty*. GEO.TV, December 18, 2016, <https://www.geo.tv/latest/124192-world-bank-appoints-envoy-to-save-indus-waters-treaty> (last visited December 29, 2016) [Hereinafter: Syed].

2. *The Expenses of the Neutral Expert*

The World Bank is also responsible for establishing and maintaining a trust fund for meeting the expenses of the neutral expert. Both India and Pakistan provide funds as reimbursements for that trust fund.⁷⁹

3. *The Establishment of a Court of Arbitration*⁸⁰

The World Bank also facilitates both countries by referring cases to the Court of Arbitration when the neutral expert cannot reach a conclusion. For such cases, the World Bank provides assistance in selecting judges with relevant legal expertise to comprise the panel that will ultimately issue the final ruling in the dispute.⁸¹ However, the World Bank does not participate itself in the hearings.⁸²

3.2. *Human Rights and the World Bank's Role of "Mediator"*

The World Bank should effectively fulfill its role as the "mediator" between India and Pakistan, and should further "facilitate" in assuring the protection of basic human rights. For this, the World Bank should try to create an opportunity to arrive at a mutual consensus on the water conflict between India and Pakistan. It should prevent India from breaking or suspending the treaty and from blocking river water flowing to Pakistan. If successful this could help to protect the "right to access water" for people living around the Indus Basin.

Moreover, if the World Bank is able to stop India from constructing dams on the western rivers, then the other basic human rights—the access to water for domestic, agriculture, and drinking purposes—as well as amenities such as sanitation and health care for the rural population, will be protected as well. This population is largely reliant on the river water for meeting their aforementioned

⁷⁹ The Acting Secretary of World Bank, *Supplemental President's Report and Recommendations*, 2 (THE WORLD BANK, April 25, 1960).

⁸⁰ Annexure G, Indus Waters Treaty 1960.

⁸¹ *Id.*

⁸² *Id.*

needs. Therefore, the role of the World Bank is crucial in protecting the basic human rights of the population residing on the Indus Basin in Pakistan. The World Bank should take note of this situation and place importance on the protection of human rights over other economic needs, which are put forth by India as the basis behind constructing dams and as a rationale for the Country's ambition to modify the IWT to change the course of rivers toward its lands.

V. OPTIONS AND PROPOSED STRATEGIES FOR PAKISTAN

A. Options Available to Pakistan

At the moment, there are three options available to Pakistan.

1. *Bilateral Talks*

The first option is that Pakistan can accept India's offer⁸³ and try to resolve the conflict bilaterally. For this purpose, Pakistan would need to provide opportunities for sessions of dialogues with India. Both countries can assign representatives for the discussions and decide on IWT related issues mutually.

2. *World Bank Mediation*

The second option that is available to Pakistan is approaching the World Bank to resolve the water conflict with India. The World Bank has the role of a mediator,⁸⁴ but not an arbitrator or guarantor,⁸⁵

⁸³ Indian Prime Minister Narendra Modi has offered to resolve the water conflict bilaterally instead of via mediation from the World Bank.

⁸⁴ Narottam Banskota, *South Asia Trade and Energy Security: The Role of India*, 81 (UNIVERSAL PUBLISHERS, 2012).

⁸⁵ Daily Times, 'WB not a guarantor of Indus Water Treaty'. DAILY TIMES, September 30, 2016, <http://dailytimes.com.pk/pakistan/30-sep-16/wb-not-a-guarantor-of-indus-water-treaty> (last visited December 20, 2016). *See also* (Indian source): It's not a guarantor of Indus Water Treaty: World Bank, *Zeenews*, http://zeenews.india.com/news/south-asia/its-not-a-guarantor-of-indus-treaty-world-bank_197037.html (last visited December 20, 2016).

for matters involving the IWT; therefore, the World Bank's role is limited as it can only propose ways for the countries to resolve the water conflict as the mediator in negotiations, but ultimately lacks any real enforcement ability.⁸⁶

Currently, the World Bank has appointed a special envoy to hold meetings with officials of both countries in an attempt to establish a bilateral dialogue between the two regarding the IWT.⁸⁷ Pakistan can accept the suggestions of the envoy to maintain the dialogue with India so that both countries can agree on certain points; the envoy may also be present during the dialogue meetings, if both countries permit such, to avoid any severe disagreements between the officials of the two states. However, if consensus is not reached, Pakistan can either request the World Bank to appoint a neutral expert, whose judgment will be binding on both states, or alternatively, Pakistan may take its case to the Court of Arbitration.

3. *Approaching China*

The third and last option for Pakistan is to request its closest ally, China, to pressure India to not obstruct water flow in the western rivers. The water that flows into a major Indian river — the Brahmaputra — comes from the Yarling Tsango river in China.⁸⁸ As a result, China has the upper riparian position and India is the lower riparian state in this river system.⁸⁹ It is pertinent to mention here that China has already blocked one tributary, which had flows from China's Tibet region and had previously reached the Brahmaputra, for the construction of a hydroelectricity project.⁹⁰ If China stops all of the major tributaries' flow of water to India this would threaten

⁸⁶ Guatem Sen, *Conceptualizing Security for India*, 181 (ATLANTIC PUBLISHERS & DISTRIBUTORS, 2007).

⁸⁷ See Syed, *supra* note 50.

⁸⁸ Verghese Koithara, *Managing India's Nuclear Forces*, 37 (BROOKINGS INSTITUTIONS PRESS, 2012).

⁸⁹ See Chaturvedi, *supra* note 15, at 190.

⁹⁰ Jagran josh, *Current Affairs*, 50 (2016).

India's crop production in the Assam and Arunachal Pradesh states, both of which are dependent on these rivers' for water.⁹¹

Nonetheless, Pakistan can exercise its option to push China to stop the flow of its river water to India if favorable results do not come from World Bank arbitration attempts. Being a staunch supporter of human rights, Pakistan cannot deprive the population of India the basic human right of "access to water"; however, if India attempts to steal this basic human right from the Pakistani people, who are dependent on the Indus River and other western rivers, then Pakistan may have to utilize this third option to ensure its own survival.

B. A Proposed Strategy for Pakistan

To clarify its position, Pakistan should cooperate with the World Bank's special envoy and show its willingness to hold talks with India. This will demonstrate a positive and peaceful image of Pakistan.

Pakistan should officially provide notice to the World Bank of the human rights violations that could arise from India's construction of dams and blockage of water flow from the western rivers, so that they may then appoint a neutral expert or refer the conflict to the Court of Arbitration to resolve it in accordance with the IWT's principles under a proper jurisdiction.⁹² In this regard, Pakistan's showing of the violation of human rights needs to be in accordance with the human rights endorsements provided by the UN Charter, the Universal Declaration of Human Rights, the Stockholm Declaration, the Dublin Statement, and other international conventions, which categorize the "right to access water" as one of the most fundamental human rights; one which must be provided to all human beings.

Furthermore, should share with the Court of Arbitration – if the dispute reaches to the Court for hearing – the current statistics

⁹¹ Aziz Zafar Azad, *Indus Water Treaty and India's Agitation*, DAILY JANG, December 18, 2016.

⁹² Indus, Chenab, and Jhelum rivers.

related to the total number of people that would lose access to water if India blocks river waters flowing into Pakistan.

In addition, Pakistan must also stress the totality of the size of the Agrarian area of two million acres⁹³ that will be directly affected by India's harmful conduct; this conduct includes the construction of dams on the Chenab, Jhelum, and Indus rivers and the current work being done in the Ratle, Wuller, and Sawalkot projects.⁹⁴ All of these projects have the potential to affect water flow in the Jhelum and Chenab rivers.⁹⁵ Pakistan should emphasize the need to halt these projects or even just change the design of these projects so that affected rivers could still provide adequate quantities of water to the Pakistani people to use for drinking, domestic, and irrigation purposes.

Pakistan should also express its fears related to the violations of human rights and international law arising from the revocation or cancellation of the IWT⁹⁶. The Country should point out that the revocation of the treaty could give birth to another, and potentially even more intense, conflict between India and Pakistan. The unbearable severity of the conflict that would arise could create warlike situations with detrimental consequences for the South Asian region, especially because both countries possess nuclear weapons⁹⁷.

VI. CONCLUSION

The "access to water" has been universally recognized as being one of the most fundamental human rights. All human beings should have access to an adequate water supply for consumption, irrigation, sanitation, and domestic purposes. Most international

⁹³ Bilal Shafiq, *Atomic Pakistan and Indus Water Treaty*, DUNIYA, December 2016.

⁹⁴ A.K. Chaturvedi, *Water: A Source for Future Conflicts*, 164 (VIJ BOOKS INDIA PVT LTD, 2013).

⁹⁵ *Id.*

⁹⁶ Sartaj Aziz, *Revocation of Indus Waters Treaty can be taken as an act of war*, DAWN, September 27, 2016, <https://www.dawn.com/news/1286437>, (last visited 2 April 2017).

⁹⁷ *Id.*

states have signed the UN Charter, the Universal Declaration of Human Rights, the Political Declaration, the ICCPR, the United Nations Watercourses Convention, and other relevant declarations;⁹⁸ therefore, these states should express their approval of basic human rights, including the right to access water, and no state should cause the hindrance of such for any other state's residents.

However, India is harboring ambitions that are otherwise in compliance with international declarations on human rights. For instance, India plans to build dams on its western rivers, which are allocated to its neighboring country, Pakistan, for hydroelectric power generation. Although, the power generation projects can be good for the public of India, simultaneously, these projects deprive the people of Pakistan, and residents of the Punjab region especially, the "right to access water."⁹⁹ Therefore, India's actions constitute a human rights violation.

The World Bank should play the role of "facilitator," to mediate and lessen tensions between India and Pakistan, as it did in the past when the World Bank facilitated the promulgation of the IWT in the 1960's¹⁰⁰ Without mediation, it may be difficult for the two states to reach a consensus. However, resolution of this conflict is vital to the region for the retention of peace and to ensure the protection of residents' fundamental human rights, including the fundamental human right to access water.

⁹⁸ *Draft Political Declaration of the High-Level Meeting of the General Assembly on Antimicrobial Resistance*, 2 (UNITED NATIONS GENERAL ASSEMBLY, 2016).

⁹⁹ Russ Wellen, *Will Pakistan Counter India's "Water bomb" With a Nuclear Bomb?* FOREIGN POLICY IN FOCUS, December 31, 2011, http://fpif.org/will_pakistan_counter_indias_water_bomb_with_a_nuclear_bomb (last viewed December 24, 2016).

¹⁰⁰ Fact Sheet: the Indus Waters Treaty 1960 and the World Bank, THE WORLD BANK – WORLDBANK.ORG, January 24, 2017, <http://www.worldbank.org/en/region/sar/brief/fact-sheet-the-indus-waters-treaty-1960-and-the-world-bank>, (last visited 3 April 2017).