

## Evolving Role of World Bank Group as an ADR Facilitator in Indus Waters Treaty: Balancing the International Principle/Norm "Pacta Sunt Servanda" and Water Scarcity Challenges

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**Abstract:** Agreement must be kept/ treaty must be followed is a famous international law principle Pacta Sunt Servanda, this principle honors and upholds the treaties and agreements between different states. This research explores the application of this principle in the context of the Indus Waters Treaty between the two rival countries Pakistan and India. Moreover, this research probes into the historical and legal enactment of Pacta Sunt Servanda exploring its role in maintaining international stability and legal order. By detail examination of landmark cases and legal statutes, this research highlights how principle has been upheld in various legal contexts. Concentrating on the Indus Water Treaty, the research reports the challenges posed by altering socio-economic, environmental, and geopolitical circumstances.. Brief findings of the research stress the importance of securing the principle Pacta Sunt Servanda while obliging reasonable exceptions to ensure the effectiveness and sustainability of treaties like the Indus Water Treaty.

### Keywords:

Pacta Sunt Servanda, international norms/principles, Indus Waters Treaty, Water Diplomacy, Climate Change Adaptation, Transboundary Water Governance, International Arbitration, Legal Flexibility

## Introduction

### Pacta Sunt Servanda

The meaning of this Latin phrase is "agreements must be kept." International Law and civil law both cover it. According to international law, all treaties are legally binding on their signatories and must be carried out with sincerity. Being in good faith means having the true intention to fulfill duties without any ill will. To the best of their abilities, the parties to this treaty must fulfill their commitments and duties. This is contingent upon a few factors that we will address in the article's later sections.

Pacta Sunt Servanda is added as a key source in the general principles of law. Whereas, International law derives from the General Principles of Law. International Court of Justice and

Permanent Court of Justice are the key platforms upholding the doctrine of Pacta Sunt Servanda. Regarding the UN, it is thought that all of its members are "civilized" and ought to conduct themselves in accordance with Pacta Sunt Servanda when it comes to commitments, agreements, and promises. Given that international law roots from consent i.e. it is a consent-based system, this is done with consideration for the consent that the parties to these treaties and agreements have provided.<sup>1</sup>

According to *Pacta Sunt Servanda*, treaties are legally enforceable, and, in the event that they are broken, the injured party may pursue aggressive legal action under international law. Pakistan consistently uses the well-known international legal principle of *Pacta Sunt Servanda* to obtain more opportunities. Owing to this principle, Pakistan has upstretched treaty-binding rules at the forum of the United Nations General Assembly and International Court of Justice (ICJ), and applying pressure on India to fulfill its international obligations resulting from their bilateral agreement. Pakistan should take this matter to every international political, legal, and diplomatic venue; this is also very significant. In order to preserve its existence and guarantee peaceful coexistence, Pakistan is also granted the right to self-defense under the UN Charter against India's water-based aggression. The concept of non-intervention, as stated in Article 2(4) of the UN Charter prohibits any state from using force or threatening to use force against another state.<sup>2</sup>

Neutral Experts, an arbitral tribunal, and the commission oversee the Treaty's operations. The commission, which is headed by a commissioner assigned from the concerned states, lays out the mechanisms for the cooperation and sharing of information and concerns among the signatories.

### World Bank Group

World Bank commonly known as Word Bank Group is an international prime lending institute concerned with the United Nations (UN) and is introduced to finance schemes that boost up the economy of the member states, commonly for the purpose of lending to finance developmental projects Bank mostly do lend money to those poor or developing countries where developmental projects are required. World Bank has its headquarters in Washington D.C. It is the main source of financial aid to the progressing states, provides technical support, and also administers on behalf of International Creditors.<sup>3</sup>

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<sup>1</sup> Dasgupta, Millia. "Pacta Sunt Servanda." *leaders*, February 19, 2020. <https://blog.ipleaders.in/pacta-sunt-servanda/>.

<sup>2</sup> Article 2(4) UN Charter, 1945

<sup>3</sup> Chossudovsky, Michel. "Encyclopaedia Britannica, Inc." *Encyclopaedia Britannica*, May 23, 2022. <http://www.brittanica.com/print/article/290697>.

## Origin

World Bank was first originated in 1944 at Bretton Woods Conference which was the joint conference of UN Monetary and Financial which was assembled to create a post-World War II international economic system. It officially started functioning in June 1946. The very first loan was granted for the renovation of Western Europe. It also played a key role in funding the progressing members for infrastructural projects i.e. roads, dams, water and sewage treatment airports, etc.

## Working / Lending Process

World Bank is concerned with the UN. Each member from the 180 states is represented on the board of governors. The governor concerned is usually the finance minister of the state, approximately 10000 people are working under World Bank. Banks usually work with countries to establish developmental projects. Its main aim is lending money to sponsor some target or deprived developmental projects i.e. Infrastructural Projects which may be in the form of physical infrastructure or human infrastructure. Physical infrastructure is for economic developments such as roads or electrical systems and Human infrastructure promotes economic developments like education.

The lending process starts when the Bank or Government comes up with a project proposal that bears the whole details indicating economic value and sustainability. In other words, we can say that the project details are supposed to be economically feasible which the bank is supposed to finance. For example, A state or Government needs some funds from a bank for the purpose of establishing a society, the proposal must bear the particulars showing the profit generated and the increase in employment ratio will help produce sufficient revenue to repay. It mostly prefers microeconomic developments which the bank leads to acquiring about national economics in detail.

Bank has been too much focused on physical infrastructure and is sufficiently sensitive to social and environmental effects of projects which it lends. Critics are accepting principle of development lending but they do criticize the way bank lends i.e. they lends in unsuitable way. Now due to this criticism bank has now change it lending policies to deal social and environmental matters.

Bank has now introduced development of human capital and infrastructure at expense of physical infrastructure. It has also put several institutional mechanisms that is established to deal social and environmental matters.<sup>4</sup>

For example: if a bank lends money to finance a dam

1. It will conduct research on how much environmental burden the dam will bear.
2. What will be the effects of a dam on a population or society residing the
3. re?
4. How many people will be displaced by the reservoir?

Currently bank is less sympathetic with physical infrastructure and more sympathetic wit Human infrastructure. Physical infrastructure includes dams, highways etc. and Human infrastructure

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<sup>4</sup> Sachs, Jeffrey D. "How World Bank Arbitrators Mugged Pakistan." *Project Syndicate*, November 26, 2019. <https://www.project-syndicate.org/commentary/world-bank-corrupt-arbitration-ruling-against-pakistan-by-jeffrey-d-sachs-2019-11>.

includes Education Healthcare etc. these adaptations are just for the time being i.e. these are not permanent. The basic task of bank is lending money and employees are rewarded on the basis of the money they lend.

For improving and progressing economic policy and ameliorating different public organizations in emerging countries World Bank is working together with the International Monetary Fund -IMF and the World Trade Organization. World Bank has a keen relationship with the International Monetary Fund-IMF, they are frequently known as International Financial Institutions due to their same origin at the same conference. A bank is a profit-making institution mostly it lends at market rates and is one of the seeing creditor's countries.<sup>5</sup>

### **IWT Historic Background**

After nine years of discussions between India and Pakistan with assistance from the signatory World Bank, the Indus Waters Treaty was finally concluded in 1960. Eugene Black, the previous president of the World Bank, initiated the negotiations. Known as one of the most effective international agreements, it has withstood numerous hardships, including war, and for more than 50 years has served as a foundation for the advancement of hydroelectric power and irrigation. Former US President Dwight Eisenhower described it as "one bright spot... in a very depressing world picture that we see so often."

The pact gives India sovereignty over the Eastern Rivers (Ravi, Beas, Sutlej) and Pakistan dominion over the Western Rivers (Indus, Jhelum, Chenab). Concurrently, the Treaty allows each country to use its rivers in a certain way. Freshwater and water infrastructure's importance to life as it exists in the environment. Pakistan has been dealing with a serious issue, which is water disputes. It has been noted that states are facing terrible conditions because of their water resources. For Pakistan, which is mostly an agricultural nation, finding water is important to survival. Pakistan's agrarian culture means that it relies on water from the Indus Basin to meet its demands. The demand for water has increased due to the growing population and rising temperatures. In Pakistan and India, water is now of critical economic importance due to rising water demand. Pakistan is currently resolving its water issues by using the streams that the Indus Water Treaty granted it, including Sindh, Jhelum, and Chenab.

The most important source of international law is its treaties, which are founded on the *Pacta Sunt Servanda* norm/principle, which mandates that agreements be upheld in good faith and that treaties be followed. The Indus Water Treaty was signed in Karachi, Pakistan, on September 19, 1960, as a result of the World Bank's attempts to resolve the water-related issues between India and Pakistan. The World Bank mediated and brokered the treaty and had a mediating role in consultations and the signing of the IWT (Indus Waters Treaty, 1960), even though it is a multilateral agreement due to the World Bank representative's signature. The World Bank guarantees the process of resolving disputes about the interpretation and execution of the conditions outlined in the Indus Water Treaty. The Indus Water Treaty came into force on January 12, 1961, in Delhi when India and Pakistan exchanged ratification instruments. It then went into retrospective effect on April 1, 1960.

The six major rivers of the Indus water system—the Indus, Jhelum, Chenab, Sutlej, Ravi, and Beas, respectively—have forged an international law treaty that binds rights and obligations with

<sup>5</sup> THE WORLD BANK. "Indus Water Treaty." *World Affairs* 123, no. 4 (1960): 99–101.  
<http://www.jstor.org/stable/20669916>.

regard to conflicts surrounding water sharing. Rivers were divided into two categories: Eastern (Sutlej, Chenab, and Beas) and Western (Indus, Jhelum, and Chenab). The remaining three major eastern rivers were given to India for irrigation, power generation, and domestic, non-consumptive agriculture, while the western rivers were granted to Pakistan. There are provisions in the IWT that ensure the implementation and collaboration of water resource sharing and the settlement of disputes between India and Pakistan. The IWT provides a strong and lawful framework for resolving disputes and differences over water. Within the context of IWT, there are four ways to resolve disagreements.

### **Pacta Sunt Servanda's Scope**

States are requested under Article 18 of the VLCT to abstain from any actions that could impair the treaty's results. This is contingent upon its signature and subsequent ratification of the pact. This is unless it has explicitly said that it does not wish to sign the treaty. This also depends on it not having been excessively delayed in joining the pact.

According to this theory, some laws are also deemed to be recognized and legitimate. It establishes that rules must be obeyed and validates the idea of "*lex specialis*."<sup>6</sup>

### **The Vienna Convention's Article 26**

Under the same heading, "*Pacta Sunt Servanda*" is based on its core idea. The Vienna Conventions' Section I, which enumerates all the requirements a party must follow while signing a treaty, contains this article.

According to the provision, "Parties to every treaty in force are bound by it and shall perform it in good faith." Furthermore, for this to happen, the states must have agreed to such a compact.

In order to create an environment for interstate interactions where duties are honored and carried out truthfully, the convention established such a legislation. Most often, this principle's implementations in other areas of international law involve voluntary consent and good faith.

### **Application of "Pacta Sunt Servanda"**

The obligation to act in good faith is unquestionably a general principle of international law, Lauterpacht as Judge pointed out in the 1957 case involving Norwegian loans.

Pertaining to the question of which treaties are legitimate and which are not. States are the only ones who may decide which treaties apply to them. A treaty is null and void if it contravenes fundamental rules of international law, such as the Jus Cogens. According to earlier academics, a treaty is void if it violates natural law and states' fundamental rights. "*Pacta sunt servanda*" states that a particular law must be acknowledged and is hence legitimate.

The principle that "one must obey the law" is known as *lex specialis* or special law. According to the principle "*pacta sunt servanda*," every State is required to uphold the commitments it has made under a particular treaty. Treaty norms that are still valid must be adhered to, but they may be updated through the proper channels. Treaty revision does not violate the tenet "*pacta sunt servanda*" or constitute an exception to it.

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<sup>6</sup> Lukashuk, I. I. "The Principle Pacta Sunt Servanda and the Nature of Obligation under International Law." *American Journal of International Law* 83, no. 3 (1989): 513–518.  
<https://doi.org/10.2307/2203309>.

### Legal Effects of the Principle “Pacta Sunt Servanda”

According to Article 26 of the UN Convention on the Law of Treaties, international law actions must be relevant to the good faith clause before the process of validating or nullifying a treaty can begin. Signatories to a treaty are required to behave honorably and in good faith. If those promises are not kept, the strain between counterparties will be absorbed by the compact possibilities of international law sanctions. A state will be held accountable for any violations of a treaty and will have violated its international duties to the other parties to the extent of the violation. According to Article 27 of the UN Convention on the Law of Treaties, the pacta sunt servanda rule takes effect immediately. "A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty," according to Article 27 of the VCLT.

A party must guarantee that it can fulfill its commitments under a treaty, even if full domestic law implementation is not necessary. A state cannot claim that a change of administration justifies not carrying out a pact. Additionally, a state has to make sure that the new treaty duties don't clash with existing ones. (The Vienna Convention, Section 46)

A participating nation could not be forced to violate its own constitution in order to comply with the terms of a treaty, according to the ruling in the "treatment of Polish Nationals and Other Persons of Polish Origins and Speech" case.<sup>7</sup>

Therefore, the countries shall comply by the treaty's provisions even if they are rendered unenforceable by their local laws, provided that the treaty does not contravene any fundamental laws. The nations may be obliged to adopt treaty laws into their own local laws in certain situations. As per the provisions of the "Convention on the Settlement of Investment Disputes Between States and Nationals of Other States," nations must enact laws to guarantee adherence to the treaty's rules.

According to Vienna Convention Article 18, States must refrain from taking any acts that would compromise the objectives of the treaty. Only until the nation has exchanged or signed documents ratifying the treaty will this obligation become legally binding. Even if the treaty's entry becomes binding in the future, this obligation still stands. The phrase "tending to frustrate the object of a proposed treaty" was added in place of the phrase "defeat the object and purpose of the treaty," as the former seemed too ambiguous.

The Vienna Convention, Article 25 permits future changes to the treaty's provisions. This is contingent on the treaty's express declaration that such articles may be modified in the future and that doing so will not negate the agreement's goals.

A treaty is enforceable under international law, according to Pacta Sunt Servanda. The offended state may be entitled to pursue particular legal remedies under international law if the legally binding agreement is broken. The notion of Pacta Sunt Servanda in international law has given Pakistan greater chances. In order to enforce the provisions of the Indus Water Treaty (IWT) and to put pressure on India to fulfill its international obligations resulting from the bilateral agreement between India and Pakistan, treaties are needed to bring the issue before the UN General Assembly and the International Court of Justice. Pakistan should take this matter to every international political, legal, and diplomatic venue; this is also very significant. In order to preserve its existence and guarantee peaceful coexistence, Pakistan is also granted the right to self-defense

<sup>7</sup> Lulena, S. "What Does 'Pacta Sunt Servanda' Mean in Public International Law." *Academia.edu*, 2019. [https://www.academia.edu/39357308/What\\_Does\\_Pacta\\_Sunt\\_Servanda\\_Mean\\_in\\_Public\\_International\\_Law](https://www.academia.edu/39357308/What_Does_Pacta_Sunt_Servanda_Mean_in_Public_International_Law).

under the UN Charter against India's water-based aggression. The UN Charter and the Indus Water Treaty both legally require India to interfere with the water-sharing system and to uphold its terms in letter and spirit. Pakistan will have a strong legal basis on which to base any legal action under international law in the event that India breaches its legal commitments.

### **How the Treaty is Implemented**

The Treaty established the Permanent Indus Commission, which is made up of a Commissioner from each nation, to encourage collaboration and information sharing on the use of the rivers between the two nations. Furthermore, according to the Treaty, "questions" are addressed by the Commission, "differences" are to be settled by a Neutral Expert, and "disputes" are to be brought before the "Court of Arbitration," a nine-member arbitral panel.

The World Bank's involvement as a signatory to the Treaty is restricted to procedural duties. Specifically, its involvement in "differences" and "disputes" is restricted to placing individuals in designated roles within the Court of Arbitration or Neutral Expert processes in response to a request from one or both parties.

### **Hydroelectric Powerplants and its Disagreement**

The architectural elements of the 330-megawatt Kishenganga and 850-megawatt Ratle hydroelectric power facilities are the subject of dispute between India and Pakistan. While the latter is still being built, the former was opened in 2018. Neither project is being funded by the World Bank. Regarding whether the two hydropower projects' technical design elements violate the Treaty, the two nations cannot agree. The plants are found in India, specifically on the Chenab and Jhelum River tributaries.

#### **Case laws**

3.1. "Tethyan Copper Company, Pvt Limited versus Islamic Republic of Pakistan (ICSID Case No. ARB/12/1)"

#### **Facts and issues**

TCC, a collaboration between "Antofagasta, PLC of Chile" and "Barrick Gold, Corporation of Canada", was tasked with investigating and advancing the Reko Diq mine located in Pakistan's Balochistan area. The conflict started after TCC's mining lease was denied by the Balochistani government, even though the firm had a signed agreement and made a sizable investment.

**Breach of Contract:** Pakistan was allegedly in breach of the 2002 "Chagai Hills Exploration, Joint Venture Agreement (CHEJVA), as per TCC.

**Expropriation:** According to TCC, Pakistan's denial of the mining lease amounted to the company's investments being taken away from it without just compensation.

**Fair and Equitable Treatment (FET):** According to TCC, Pakistan did not handle its investors fairly or equally in accordance with the BIT between India and Pakistan

### **Application of Pacta Sunt Servanda by Tribunal**

**Contractual Duties:** TCC argued that the agreements reached between TCC and Pakistan were legally enforceable and that Pakistan was required to uphold its end of the bargain under the CHEJVA, largely relying on the Pacta Sunt Servanda principle.

Findings of the Arbitral Tribunal: The tribunal affirmed TCC's allegations, stressing the significance of abiding by the agreements reached and denouncing Pakistan for failing to fulfill its contractual obligations. The TCC was granted damages by the tribunal totaling about \$6 billion.

### 3.2. “CME Czech Republic B.V. Versus The Czech Republic (UNCITRAL, 2001)”

#### **Facts and Issues**

A Czech television firm received investment from a Dutch company called “CME, Czech Republic B.V. Ultimately, commercial value of CME's investment was destroyed as a result of the activities of the Czech Media Council.

Expropriation and FET: According to the Netherlands-Czech Republic BIT, CME, appealed that the Czech Republic's conduct amounted to expropriation and a violation of the FET criterion.

#### **Application of Pacta Sunt Servanda by Tribunal**

Treaty Obligations: The tribunal emphasized that the Czech Republic had broken the terms of the BIT and cited Pacta Sunt Servanda as a cornerstone that guaranteed the treaty's obligations were enforceable and were to be respected.

Arbitral compensation: CME was given a \$270 million compensation, and the tribunal emphasized that states must uphold their duties under treaties.

### 3.3. “Société Générale de Surveillance S.A, versus Islamic Republic of Pakistan (ICSID Case No. ARB/01/13)”

#### **Facts and Issues**

The Islamic Republic of Pakistan and the Swiss business Société Générale de Surveillance S.A. (SGS) signed a contract for SGS to provide inspection services for imports entering Pakistan. Due to disagreements over performance and payment, SGS filed for arbitration under the terms of the Switzerland-Pakistan BIT.

Contractual Conflict: According to SGS, Pakistan violated both the BIT and the inspection services contract.

Issues with Jurisdiction: Pakistan contended that the conflict was solely to contracts and was outside the purview of the ICSID tribunal.

#### **Application of Pacta Sunt Servanda by Tribunal**

The tribunal after finding followed up the *pacta sunt servanda principle* and orders for the contractual enforcement as the contractual commitments made by Pakistan were enforceable under international law and binding upon them. The tribunal further rejected Pakistan jurisdictional claims and stressing that the dispute fall within scope of Bilateral Investment Treaty. As BIT's provisions representing *pacta sunt servanda*.

These judgments by the tribunal have proved that the common International Law principle *pacta sunt servanda* has wider applicability in numerous situations i.e. contractual agreements, Bilateral Investment Treaty provisions, and more commonly treaty obligations. In the above-mentioned cases tribunal heavily influenced the *pacta sunt servanda* principle which ensured that nations and investors could solely rely on their promises, stability, and predictability of

International treaties. The principle *pacta sunt servanda* always focused on the need for a uniform, transparent, and unambiguous legal structure that protects international norms.

### **Role of World Bank Group**

What is the role of the World Bank Group in protecting treaties?

Role of World Bank role in Providing Remedies to Pakistan

Since British India was divided in 1947, water scarcity has become a prominent problem that has separated the Indus Framework. After "British India" was divided in 1947, water became a remarkable scarce resource that also isolated the Indus framework. India developed as an upper riparian and Pakistan as a lower riparian because to its control over the trench head works that provide water to parts of Pakistan.

In 1960, the World Bank signed the Indus Water Treaty, which divided the Indus Basin between the two bordering states and acted as a mediator between them. Since it caused wars between them, IWT was referred to as a model for resolving water disputes. In 12 articles and 8 annexures, the IWT totally limits and binds the rights to exploit water. Pakistan has legal options under international law as a result of India's persistent violations of the IWT. According to Article IX of the Indus Water Treaty, if India and Pakistan are unable to reach a bilateral resolution, the matter should be brought to the World Bank. Therefore, in order to resolve disagreements between India and Pakistan in a positive way, the World Bank supervises the IWT's adherence and has the power to appoint unbiased experts or set up an arbitration procedure. Thus, the bilateral agreement's meaning and effectiveness are strengthened by the World Bank's participation as a global institution in its negotiation, signature, and execution. The direct involvement of an international institution that is also an essential part of the United Nations system—the Bretton Woods system of monetary management—led to the development of this bilateral treaty on a global scale. (Jeffrey-d-syches, 2019)

Conditions and Agreement Negotiations The World Bank offered to arbitrate the treaty talks, and India and Pakistan agreed in 1951. Washington, D.C. hosted the talks in 1952 and offered its "good offices" to help reach a consensus. Additional research has revealed that these presumptions are false, as covered in Part III. The Indus basin is now insufficient due to changes in both countries' water demands, and the treaty's technical provisions have influenced subcontinental politics in ways that the parties could not have predicted. Following fact-finding missions to the Indus basin, which accounted for a substantial portion of the first year of the negotiations, representatives from both sides presented a proposed water-sharing plan. The World Bank presented the 1954 Plan, a compromise proposal that divided the Indus basin between the two parties, after taking into consideration both of the blueprints.

In accordance with the World Bank's suggestion, the Sutlej, Beas, and Ravi rivers—which together account for around 20% of the Indus waters—would be exclusively assigned to India.— India was given limited access for non-consumptive use, while Pakistan was given nonexclusive rights to the three western rivers that comprise the other 80%: the Chenab, Jhelum, and Indus. Pakistan thought its water allocation would be insufficient, thus it rejected the 1954 Plan. As a result, in 1956, the World Bank recommended a change that guaranteed Pakistan's storage capacity on the western rivers. In order to resolve issues related to the 1956 amendment and to control water distribution until a plenary agreement was achieved, India and Pakistan had a number of talks in 1956 and 1958. 33 In a 1958 coup d'etat, Ayub Khan deposed the nation's first president, Iskander Mirza. They immediately accepted the World Bank's 1954 proposal and 1956 revision,

and two years later they ratified the treaty. The final deal gave India nearly equal rights over the eastern rivers and Pakistan authority over the western rivers, with a few small exclusions for non-consumptive Indian use. The pact called for India to provide Pakistan with £62 million over a ten-year period, mostly to help build the dams, canals, barrages, and tube wells. Data exchange, future cooperation, and the establishment of a Permanent Indus Commission to foster cooperation and serve as the main dispute resolution body were all included under the treaty. In the event that the commissioners couldn't agree, the treaty created a Court of Arbitration and a "neutral expert." The most notable feature of this water-sharing plan, according to some scholars, is its "abandonment of customary international norms governing internationally shared rivers." The Treaty specifically called for a geophysical separation of the river system itself rather than rules protecting the traditional uses of the river waters by the downstream country. Dividing the rights to international river water in this way "was conceivable only in the unique geographic and political circumstances of the Indus basin".

The division of water rights has been called a "coda to the partitioning of the land [in 1947]," by India's former Water Resources Secretary Ramaswamy Iyer. While The divide has been dubbed the "unfinished business" of the subcontinent's separation by Professor Robert Wirsing. The demand faced by the Indus basin today cannot be met by a "partition" of water, as was discussed in Part III. Although it may have been politically advantageous given the bilateral relations in the 1950s, the model itself is out of date due to its inherent inefficiencies and opportunity costs.

Initially, World Bank was of the opinion to divide the Indus Basin into 2 parts :

Pakistan, which is made up of three rivers that are known as western rivers (the Indus, Jehlum, and Chenab) and three eastern rivers (the Ravi, Sutlej, and Beas) that flow into India, rejected this plan in 1958 and wasn't prepared to sign it until 1960 when they did so because of its significance for the forests, agricultural lands, and other areas because these rivers originate in Pakistan. The terms of the treaty provide that water use will follow the 20:80 ratio, meaning that India may utilize up to 20% of the Indus River's total water supply, while Pakistan will use 80% of it.

### **Disputations involving Pakistan and India**

Canals By 1948, India had cut off supplies to Pakistan through the majority of its canals. But later on, it was restored.

1951: Pakistan charged India with severing the water supply to multiple Pakistani villages.

1954: Both nations received a water-sharing formula from the World Bank.

In the 1970s, India began constructing hydroelectric dams in Kashmir, which alarmed Pakistan.

In 1984, when Pakistan objected to India constructing the Tulbul barrage on the Jhelum, India unilaterally stopped development.

Pakistan voiced concerns in 2007 about the Kishanganga Hydroelectric Plant.

2008: An offensive against India was initiated by Lashkar-e-Taiba. Hafiz Saeed, its leader, charged India with water terrorism.

2010: India was accused by Pakistan of regularly cutting off water supplies.

2016: In response to cross-border terrorism (the Uri assault), India examines how the Indus Water Treaty is operating.

The government has decided to restrict India's share of the Indus River system's waters from flowing into Pakistan in response to the terror attack in Pulwama by Jaish-e-Mohammed in 2019. The water disputes between Pakistan and India should be resolved.

Pakistan, freed from the danger of drought, signed the IWT under duress.

Pakistan's survival depends on the western rivers continuing to flow freely.

The Conflict and the World Bank's Role Mr. Eugene R. Black<sup>18</sup> accepted Lilienthal's suggestion and invited the presidents of both countries to hold discussions. Contrary to expectations, the World Bank's good offices offered mediation. In a letter, Mr. Black went on to clearly lay out "fundamental principles" that may be applied to conflict resolution:

The Indus Basin supplied both countries with an abundance of water.

The Sutlej River dispute would be settled by treating the Indus Basin as a single entity and talking about all of the rivers.

The negotiations would put aside old grievances and keep a technical rather than a political emphasis.

### **Conciliation Procedure**

An Investigation Pakistan was able to persuade the World Bank to grant its requests for the construction of the most important storage facilities, which were not included in the 1954 plan. The 1956 Aide Memories required the building of a storage facility on the western rivers of Pakistan, therefore this was required. India never had any intention of committing to assume any further financial obligations to Pakistan. Therefore, it made an effort to keep the conversation over the 1954 plan going. Pakistan needed time to meet the numerous requirements for a near-profitable solution, technical support, funding for any superstructure build-up, and—most importantly—a steady flow of water for its water-starved areas in the West Punjab. To reduce the hostilities, separate discussions were held at many levels on a variety of interconnected issues.

India had the financial capacity, reputation, and/or technological know-how to meet its desired water needs. The Western Rivers, all of which fall in Kashmir, were the source of the conflict between the two countries. On the issue of the Kashmir plebiscite, India was under tremendous pressure at the time from the US, the UN, and his close European friends. There was a strong belief that Kashmir would remain an integral part of India. Separate talks on a number of related topics were held at different levels. Pakistan required financial support in order to build any superstructure, including water storage and canal headworks facilities on western rivers. Technical assistance was also required. It took time to meet all the requirements for a practically workable solution, but the most important one was a consistent supply of water since western Punjab was starving due to its scarcity. But taming the Sindh appeared to be a far-off ideal for the time being. Between April 1, 1955, and March 31, 1960 (save for the period between October 1, 1957, and September 30, 1958), numerous ad hoc agreements were made to ease the situation. India reluctantly agreed to supply Pakistan with water under these arrangements for a set period of time and once a year. It is important to note that Pakistan might have experienced chaos between the October 1, 1958, to September 30, non-negotiation period. However, the floods that transpired during that time gave Pakistan some brief respite, albeit at the cost of negotiating excess water. India had previously recognized the value of the Punjab Rivers and its potential for future development. Rajasthan, which was water-starved, and East Punjab, which was to become India's food basket in the future, both benefited less from the western rivers. India had previously talked

about the possibility of using the Sutlej, Ravi, and Beas, three eastern rivers, to supply its Yumna Canal and the Rajasthan desert region in the future.

India's position on water was unambiguous and deemed more practical and pragmatic by the "technical mediating power" at that specific moment. As a result, India granted Pakistan the promised financial aid of \$174 million. India had already split the Indus Basin system in two by its political and practical actions: The Western Indus River System was outside of India's jurisdiction, and the Eastern Indus Basin system was under its control. The World Bank (the World Body) persuaded Pakistan to put off its political problems with India by giving legitimacy to what had essentially already occurred. Pakistan saw the split of rivers as the only workable and reasonable alternative, and it was fully aware of its economic rewards. The 1954 plan, which split the basin, and the 1956 Adie-Memoire, which established storage facilities on the western rivers in December 1958, were formally adopted by Pakistan in October 1958. Despite India's prior support for the 1954 plan, it took a further two years to draft a formal treaty that the parties could sign, resolving various issues and allowing for additional debates and inquiries. On September 19, 1960, in Karachi, the capital of unified Pakistan, both nations finally signed the much-discussed and fiercely debated Indus Water Treaty. The agreement was signed by Pakistani President Muhammad Ayub Khan, Indian Prime Minister Jawaharlal Nehru, and World Bank official Sir William Iliff. The Treaty gave Pakistan the right to use the western rivers, the Indus, the Chenab, and the Jhelum, with the caveat that India might use a certain amount of water from these rivers for domestic use. The purpose of the Indus Water Treaty was to unite the two nations, reach a consensus, and explore more promising futures and opportunities for development. It was intended to diffuse the tension and give the two countries the opportunity to begin developing practical strategies for the pertinent water management initiatives that are within their jurisdiction. The Treaty provided a ten-year transitional time so that Pakistan could replace the western rivers' construction with foreign funding. The accord was also assisted by India and the World Bank's financial support, which came from a few of the friendly nations. Fund (894 million dollars) (IBDF). Of the total, \$640 came from friendly countries like the United States, Canada, West Germany, Australia, New Zealand, and the United Kingdom. In addition, India contributed \$174 million to the agreement, and Pakistan received \$80 million in repayment of a World Bank loan. The Indus Treaty is widely regarded as one of the most important water agreements in history. The World Bank helped the two countries work together as much as possible in a calm and cooperative environment. One of the treaty's many elements is a dispute-resolution procedure that mostly relies on bilateral approaches. It also provides for a thorough external apparatus in case bilateral agreements are not able to be reached.

### Treaty Working

Neutral Experts, an arbitral tribunal, and the commission oversee the Treaty's operations. Under the direction of a commissioner assigned from the concerned state, the commission lays up the mechanisms for the cooperation and sharing of information and concerns among the signatories. The disparities between them are settled by neutral experts, and the seven-member "Court of Arbitration" arbitrates the disputes that result from those resolutions. The World Bank's involvement is largely formal and restricted. It only goes as far as a neutral expert or court of arbitration and only happens upon request from one of the parties.<sup>8</sup>

<sup>8</sup> Zawahri, N., and D. Michel. "Assessing the Indus Waters Treaty from a Comparative Perspective." *Water International* 43, no. 5 (2018): 696–712. <https://doi.org/10.1080/02508060.2018.1498994>.

## **Disparity Between India and Pakistan**

The true difference in electricity between Pakistan and India is the Kishenganga (330 megawatts) and Ratle (850 megawatts) hydroelectric power projects. In 2018, Kishenganga was opened, and Ratle is now being built. These plants were planted in India along the Jhelum and Chenab streams, which the IWT designated as Western Rivers, and Pakistan is permitted to use them for its beneficial purposes. The World Bank, a signatory to the IWT, will not fund any projects that go against the guidelines in the treaty's appendices.

Role of World Bank Group Providing Remedies and Obeying the Principle of Pacta Sunt Servanda Implementing Indus Water Treaty.

## **Indus Water Treaty**

Twelve articles, one protocol, and eight annexures make up the IWT. Following the treaty's signing in 1960, Pakistan and India came to an understanding of its terms and conditions as well as the decision to use the World Bank's active mediation to settle their differences over water. Pakistan was given rights over the Jhelum, Chenab, and the other three western Indus River Tributaries, while India was given exclusive rights over the Ravi, Sutlej, and Beas. After it was put into effect, the IWT established a permanent Indus Water Commission (henceforth referred to as IWC), which is made up of representatives from both India and Pakistan and whose job it is to settle disputes about how to interpret and apply the IWT's provisions. However, India began engaging in water intimidation by routinely breaking the IWT's restrictions, just as they did. On the rivers that belong to Pakistan, India has constructed numerous dams and diverted the water in those rivers before it enters Azad Jammu & Kashmir. India routinely violates international law by using violent water intimidation against Pakistan's water rights, which the IWT has recognized. As per the principle known as "Pacta Sunt Servanda," a state would be penalized for its failure to respect and implement bilateral or multilateral treaties in good faith if it fails to keep its end of the bargain.<sup>9</sup>

The Delhi Agreement just "acknowledged there was a dispute in which both sides had legitimate claims" since India and Pakistan were unable to come to an agreement on how to divide the Sutlej fairly. Pakistan persisted in worrying that India would misuse its superior riparian status. Because of this anxiety, Pakistan protested the Delhi Agreement by materially breaking its conditions about reimbursements. Reluctant to let its ambitions for building on the Sutlej be derailed, India persisted in claiming that the Delhi Agreement applied to its waterworks and that Pakistan lacked the right to unilaterally withdraw from it. The World Bank offered to mediate the dispute since both countries had applied to it for funds to build irrigation projects on the Sutlej, which they were unable to start while the case was still unresolved. In 1951, the World Bank made its offer against the backdrop of fruitless bilateral negotiations. Pakistanis were afraid of running out of water. The Indians were afraid of having to restrict development because they were afraid of running out of water. Negotiations were dominated by the potential losses for both parties involved, rather than the benefits of working together. The reasons behind India's agreement to negotiate a compromise arrangement, as the upper riparian, are a matter of debate among scholars. The financial inducement, which was approximately \$1 billion through the Indus Basin Development Fund, was too good to refuse for both India and Pakistan, which were in dire need

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<sup>9</sup> Akhtar, S. "Emerging Challenges to Indus Waters Treaty: Issues of Compliance & Transboundary Impacts of Indian Hydro Projects on the Western Rivers." *Vol. XXVIII* (Islamabad: Institute of Regional Studies, 2010). <https://irs.org.pk/f310.pdf>.

of large-scale irrigation projects to meet their agricultural demands, according to a number of scholarly studies on the Indus Waters Treaty. Other scholars, however, have rejected a financial justification, contending that pressure to guarantee a consistent water supply or to prevent future roadblocks to ongoing development projects on the Indus was the driving force for the countries' submission to World Bank mediation.<sup>10</sup>

### **Relation of Kashmir Issue with IWT**

India's ongoing acts of water terrorism and aggression in the Kashmir region, along with its unilateral and unlawful violations of the Indus Water Treaty, have further threatened the peace, prosperity, and growth of the whole South Asian region. Numerous hydroelectric plants were built in Jammu & Kashmir, which is administered by India. Pakistan has used the Indus Water Treaty's conflict resolution mechanism three times in history: once in 2005, again in 2010, and again in 2015 as a result of India's obstacles.<sup>11</sup>

Experts believe that India is planning to construct several hydropower projects close to rivers that belong to Pakistan under the terms of the Indus Water Treaty. This could put Pakistan in a water crisis and have an impact on its agricultural resources. IWT continues to face obstacles because of the ongoing war in Jammu and Kashmir. Due to a persistent international problem and the fact that both India and Pakistan have engaged in several skirmishes and battles on the Ceasefire Line over the years, the dispute between them over the territory of Kashmir is well-known worldwide. Therefore, this conflict leads to the violation of rights recognized by the IWT for the exclusive use or residential and non-consumptive use of water in the disputed area of Indian-administrated Jammu and Kashmir.

The first method is the Permanent Indus Commission. There are representatives from Pakistan and India on this commission. When there is any uniformity amongst the Permanent Indus Commission commissioners for the direct negotiating procedure, they do report it in writing to the foreign office of their respective states.

Direct negotiation is the second mode. The purpose of this direct negotiation is to settle disputes inside the IWT framework.

The appointment of the technical expert is the third mode. Using his technical expertise to mediate disagreements, a technical expert addresses technical problems pertaining to the nature and design of hydroelectric projects.

Permanent Court of Arbitration is the final and fourth method. Arbitrators and umpires are chosen by the Permanent Court of Arbitration to decide disputes.

The IWT's preamble expresses the parties' intents as well as the fundamental goals of the agreement, which are to identify the parties' rights and obligations with regard to the use of waterways and the resolution of disputes.<sup>12</sup>

### **Controversial Issues with India**

<sup>10</sup> Nova, E. "Bhaglihar Decision to Be Released to India." *World Bank*, 2007.

<sup>11</sup> "The Nation." "Indian Water Aggression." *The Nation*, February 12, 2010. <https://nation.com.pk/12-Feb-2010/indian-water-aggression-pakistan-on-brink-of-disaster>.

<sup>12</sup> *Vienna Convention on the Law of Treaties*. 1969. Application and Interpretation of Treaties, Section 1, Article 27, 339. <https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf>.

Tensions with Pakistan, which is now dealing with a water and energy crisis, were made worse by India's act of constructing dams on rivers in contravention of the IWT Provisions. Political and diplomatic tensions between the two nations were caused by India's persistent water aggression and intimidation, which included the construction of hydropower facilities against Pakistan, the redirection of water flows, and the technical depletion of water flows to Pakistan. To halt the supply of water from India to Pakistan, a number of radical politicians, especially those affiliated with the BJP party, have threatened to withdraw the IWT. This is a step toward a potential conflict between the two states. At that time, a large number of professionals examined every avenue available to ensure that the terms of the IWT were carried out.<sup>13</sup>

The growing problem between the rival governments is the rising water tension in Pakistan and India. The IWT is under pressure to be revised as a result of the water tension's steady increase since the mid-1990s. India is now classified as a "water-stressed" country and Pakistan as a "water scarce" country due to its blockage of Western waterways, environmental changes, and population expansion, according to Falkenmark's Water Stress Index (WSI)."<sup>14</sup>

India was required by IWT Annexure E to refrain from storing or possessing a significant amount of water from the streams that are assigned to Pakistan; yet, they disregarded this agreement by building a series of dams that clearly intruded on IWT territory. Pakistan's streams were only partially made available to them for agricultural use. Conversely, Pakistan has become parched and integrated into the global community as a result of the recent water shortages. Pakistan began contesting the construction of the dams in 1992, claiming that the design had been put on hold. It is evident from the Baglihar ruling that IWT must adjust to the new circumstances in the Indus Basin.<sup>15</sup>

### **Treaty Mechanisms Sought by India and Pakistan**

The IWT (World Bank, 2012) has experienced a number of strains over the years, including the recent challenges related to upper basin development. The IWT provision that requires the appointment of an unbiased expert on issues that cannot be resolved by the parties was used for the first time in the 2007 Baglihar Dam on the Chenab River dispute. In 2010, an International Court of Arbitration heard Pakistan's challenges to the Kishanganga project under Article IX and Annexure G of the IWT. As worries about food production, water availability, and climate risk become transboundary issues, the IWT will probably continue to be put to the test. While some have questioned the IWT's long-term viability in view of the growing hydropower development and other factors, it has, thus far, performed about as expected in relation to international disputes. Interestingly, scientists, academics, and former officials in India and Pakistan are working on multiple tracks, which could have more potential than has been recognized thus far. The joint and cumulative hydrologic and environmental effects of the climate, runoff, and hydropower development processes in the upper basin may be analyzed stochastically to help find ways to share data, foster confidence, engage in data-driven negotiations, and provide more options for management.<sup>16</sup>

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<sup>13</sup> Rese, J. S. "Water Aggression of India in Violation of Indus Water Treaty." *Journal of Statistics* (2021): 255-262.

<sup>14</sup> Gupta, K. *Water Rises in India*. New Delhi: Atlantic Publishers, 2008.

<sup>15</sup> Jain, E. *Hydrology and Water Resources of India*. London: Springer, 2007.

<sup>16</sup> Van Steenberg, F. A. "Groundwater Development and Management in Pakistan." Washington, DC: World Bank and Oxford University Press, 2005.

The permanent Indus Commission was occupied with consultations throughout the time. In 2016, Pakistan asked the World Bank to help them by establishing a Court of Arbitration to investigate hydroelectric power dams. He aggressively pushed both nations to reach a peaceful agreement on a system to deal with the problems.

December 12, 2016, Washington Jim Yong Kim, President of the World Bank Group, declared that the World Bank would wait to proceed with any of the two processes that the Parties had requested. In the best interests of both nations, the Bank made the declaration in order to safeguard the Treaty.

"We are announcing this pause to protect the Indus Waters Treaty and to help India and Pakistan consider alternative approaches to resolving conflicting interests under the Treaty and its application to two hydroelectric power plants," said Jim Yong Kim, president of the World Bank Group."

Kim stressed that the Bank was moving to enforce the Treaty and announced the pause in letters to the finance ministers of India and Pakistan. The Bank would postpone the appointment of the Neutral Expert and the Chairman of the Court of Arbitration. The consultations were already scheduled for December 12 by the Bank.

The World Bank has been working to find a peaceful solution ever since. A number of initiatives have been explored and several high-level meetings have been called. Nevertheless, after five years of collaboration, no answer has been found. As a result, the World Bank made the decision to pick a Chairman and a Neutral Expert for the Court of Arbitration again on **March 31, 2022**. For this reason, the World Bank is nonetheless concerned, as are the Parties, that executing the two appointments concurrently could present dangers, both legally and practically. Nevertheless, even with the greatest of intentions from all concerned Parties, If a compromise cannot be reached, the treaty itself may be in danger. As it continues to support the nations and carry out its obligations under the Treaty, the World Bank is dedicated to acting in good faith, with total impartiality and transparency.

### **World Bank Statement on Indus Waters Treaty after Consultation with Pakistan**

Washington- 22 May 2018, at the invitation of the Government of Pakistan, senior World Bank officials met with a delegation on May 21–22 to talk about problems pertaining to the Indus Waters Treaty and opportunities within the Treaty to seek a peaceful resolution.

The Bank was also informed by the Pakistani government team of their worries regarding the recent opening of the Kishenganga hydroelectric facility.

There was discussion of several procedural possibilities to settle the dispute over how to interpret the Treaty's clauses. The World Bank will keep working with both nations to find a peaceful solution that complies with the terms of the treaty, even though an agreement on the course of action was not achieved at the end of the sessions.

The Indus Waters Treaty is a critically significant international agreement that offers India and Pakistan the necessary foundation for cooperation in addressing present and future obstacles to efficient water management in order to meet human needs and realize development objectives.

As a signatory to the Treaty, the World Bank's participation is limited and formal. In particular, the function with respect to "differences" and "disputes" is limited to designating people to particular responsibilities in response to requests made by one or both sides.

The World Bank is unwavering in its resolve to act in good faith and fulfill its duties under the Treaty with complete impartiality and transparency as it continues to assist the countries.

## **Conclusion**

The United Nations Convention on the Law of Treaties, specifically Article 26, affirms that the concept "pacta sunt servanda" applies to rules that have been entered into and are still in effect. Subjects of international law are bound by the norm of "pacta sunt servanda," which includes good faith. The fairness rule, which dictates how legal norms are implemented, is prescribed by the principle of good faith fulfillment of obligation. Good faith adds components that are morally and legally sound to "pacta sunt servanda." If commitments are broken and duties are not performed, the international community has previously employed sanctions such as expelling a party from the community, denouncing the use of an embargo, expressing diplomatic reservations, and abandoning a party in the dark. Building harmonious relationships and fostering a culture of civility are made possible by the "pacta sunt servanda" idea.

The International notable norm pacta sunt servanda is highlighted in many legal statutes like the Vienna Convention on Law of Treaties, the UN Charter, and many other BITs (Bilateral Investment Treaty). Due to the application of this norm in the Arbitrating procedure while arbitrating and Awards by different tribunals treaties became more binding. The most common cases like "Tethyan Copper Company, Pvt Limited versus Islamic Republic of Pakistan (ICSID Case No. ARB/12/1)", "CME Czech Republic B.V. Versus The Czech Republic (UNCITRAL, 2001)", and "Société Générale de Surveillance S.A, versus Islamic Republic of Pakistan (ICSID Case No. ARB/01/13)" tribunals followed up this principle while making decisions. These cases proved how essential is to maintain International stability in a disagreement situation by prioritizing contractual and treaty obligations.

Pacta sunt servanda always promoted a predictable and stable international environment, it guaranteed that nations, states, and other entities can be trusted with the contracts they make. Mutual trust in upholding agreements is essential for international cooperation and the working of international institutions. In the Legal systems, this concept is acknowledged globally both in civil law traditions and common law traditions, it has little difference in its application but its main aim is to honor agreements. While preserving the pacta sunt servanda principle it will lead to preserving International Legal order, predictability, and encouraging confidence in international relations.

In order to safeguard equity and justice in foreign affairs this principle encourages the binding nature of the treaties and also allows for flexibility in case of necessity for important developments. This happens due to climatic or any other natural changes in situations which makes the situation worse and allows flexibility in agreement to ensure fair fulfillment of the agreement. The water issues between India and Pakistan are managed by a historic arrangement called the Indus Water Treaty, which has prevented any water from flowing between these two adversarial countries up to this point. Since this Treaty also covers the disputed territory of Jammu and Kashmir, which is claimed by India and Pakistan, the topic of water resources management needs to be examined before the conflict in that region is resolved. With the active participation of the World Bank, a signatory, the Indus Water Treaty (IWT) offers a successful process for resolving disputes between India and Pakistan on the interpretation and application of the treaty's provisions.

Pakistan has been confronted with severe difficulties as a result of India's persistent and flagrant breaches of the IWT, and these difficulties have only gotten worse under the BJP government. To avoid the prospect of a water war or political instability with India, Pakistan must

develop a strong and successful legal strategy under international law for implementing the provisions of the IWT in their entirety. According to international law, Pakistan has a wide range of legal options at its disposal to protect and defend its rights and compel India to continue fulfilling its obligations. Furthermore, Pakistan should start substantive and fruitful bilateral talks with India by using all political and diplomatic avenues at its disposal. However, without first settling the long-running and bloody war in Jammu and Kashmir, Pakistan would find it difficult to reach a peaceful and agreeable agreement on the implementation of the IWT.

### **Recommendations:**

#### **Encouraging procedures for Dispute-resolving**

Arbitration and Mediation processes as known commonly for its speedy resolving mechanism boost up settling the disputes which will shift the issues to either side. Most probable funds should be provided for training of arbitrator and mediator to ensure fair and efficient dispute resolving problems. By appointing Technical experts in the tribunals or committee will provide best suggestions on certain hydrological and engineering issues. Furthermore, the tribunal shall issue strict orders for increasing the scientific modeling and distribution of water.

#### **Process for Evaluation and Consulting International Communities**

Regular evaluation and analysis of the treaty to evaluate its application under the circumstances of natural disasters, economic and environmental changes, political issues, etc.

To assess a thorough examination for modification or enhancement at certain regions.

For the purpose of fostering candid cooperation and communication between the contracting parties propose different meetings for settling disputes.

#### **Collaboration Beyond Border**

For tackling issues relating water ensure border communication and make joint efforts on different projects. These collaboration will sort out mutual understanding, promote trust.

The local groups, farmers and stakeholders shall not be left deprived of their opinion while making decision for water management policies.

#### **Adoption of Water Management Techniques**

Adoption of latest modern systems and techniques for distribution of water in canals in equal ration to overcome issues like hydrological, population expansion, socioeconomic advancements, environmental hazards.

To add flexible clauses in treaty to for the climatic changes like harsh weather conditions, floods, natural disasters and promoting water sustainability.

#### **Supervisory Mechanisms**

To adopt a special supervisory mechanism for evaluation and monitoring the terms and conditions of the treaties. Also rules and terms of the treaty should be modified as per the requirements on the basis of current issues. And held the parties liable to adhere to the treaty rules.

### **Conflict Preventing Methods**

Adopt immediate conflict-resolving methods to avoid harsh arguments and conflict between parties. The parties should be engaged in a such a way that cooperation and trust-building must be promoted.

By implementing these recommendations, the concept of *pacta sunt servanda* while legislating the treaty keeping in view clauses for the environmental and natural situations shall allow flexibility to policymakers. This approach can lead to cooperation between states and will strengthen water management by which reconciliation can be increased in Indus basin.