CHAPTER II

THE INDUS WATERS DISPUTE AND THE NEGOTIATION PROCESS

The Indus Waters Treaty was the outcome of eight years of discussions and negotiations between the governments of India and Pakistan. The discussions and negotiations were carried on under the auspices of the World Bank. The Treaty brought to an end the long-standing dispute between India and Pakistan over the use of the waters of the Indus river systems. This chapter analyses the negotiations over the dispute and throws light on the vital factors which led to the signing of the historic Treaty.

The chapter is broadly organised into two sections. The first section is a historical account of the dispute and gives an account of the basic causes of the dispute since the partition in 1947. The section gives a description of how India and Pakistan made efforts to settle their differences with the help of the World Bank. The salient features of the treaty that was finally signed in 1960 is also briefly mentioned here. Also, this section brings to light the customary international law pertaining to river waters disputes and analyses its significance in the Indus Waters disputes. The political developments which to place in Pakistan and various other controversies that erupted from time to time and influenced the dispute has also been dealt in this section. The second section analyses the negotiations done by India and Pakistan under the aegis of the Bank, in the light of the negotiation framework outlined in the previous chapter. This section also analyses the role of the Bank especially in arranging financial assistance to be advanced to India and Pakistan to carry out canal construction and other works. This was a very vital factor in resolving this dispute and making India and Pakistan agree to the Bank’s advice.
A History of the Dispute

Before 1947, the dispute over the Indus was a domestic one between the provinces of Punjab and Sind. But with Partition, the dispute became an international issue, exacerbated by the fact that the meandering river does not care for man-made frontiers and lines. The Indus river now ran across the political boundary between India and Pakistan, leaving India the upstream riparian on five of the six rivers, namely, the Jhelum, Chenab, Ravi, Beas and Sutlej.

Two important irrigation headworks, one at Madhopur on the River Ravi, and one at Ferozpur on the River Sutlej, fell on the Indian side, leaving two irrigation canals in West Punjab completely dependent on the former. If India chose, it could easily cut off vital irrigation water from large and valuable tracts of agricultural land in West Punjab. India, the upstream riparian had already put forward the claim to use water for irrigating the vast tracts in Punjab and Rajasthan from all the six rivers so long as they were flowing outside Pakistan. This aggravated Pakistan's fears and anxieties further. If India took a tough stand, as per its upstream riparian status, Pakistan could be cut off from vital water supplies.

The Indus river originates from north of Kailash mountain and travels 200 miles in Tibet before it enters India in Ladakh, flowing down to Pakistan before emptying into the Arabian Sea. The main tributaries of the river are the Kabul, Swat and Kuran, joining it from the west, and the Jhelum, Chenab, Ravi, Beas and Sutlej from the east.1

As a result of the Partition and the division of Punjab, Pakistan got 18 million acres of irrigated land for a population of 22 million in the area around the Indus system whereas India received 5 million acres of irrigated land for a population of 20 million. The eastern rivers - the Sutlej, Beas and Ravi - carried a meager flow of water which was one-fifth of the total. The two countries entered into an agreement on

December 20, 1947 to maintain the status quo on the then existing water-sharing
arrangements on the Upper Bari Dab Canals (UBDC) and at Ferozpur. It was agreed
to negotiate on the Indus Waters before March 31, 1948 when the Standstill Agreement
ended. In the absence of any negotiations, India discontinued the flow of water from
UBDC to The Central Bari Doab Canals (CBDC) on April 1, 1948 which resulted in
the drying up of irrigation canals near Lahore². Eventually, on April 18, 1948, an
agreement was signed at Simla between the chief engineers of East Punjab and West
Punjab which appeared to the Prime Minister of Pakistan to "have far-reaching
consequences" and which were to restore, until September 30, 1948, the status quo ante
in supplies to the CBDC except for some of the very small channels which went
across from East Punjab to West Punjab and which were ignored by the engineers. The
second agreement, valid till October 15, 1948, related to the supply of water from the
Ferozpur head works in India to the non-perennial Dipalpur Canal and to the other
West Punjab and Bahawalpur Canals lower down the Sutlej at Suleimanke and Islam.
Also, in May 1948, an interim Dominion conference was held in Delhi which resulted
in an agreement. The inter-Dominion agreement of May 4, 1948 was signed by the
Prime Minister of India and the Finance Minister of Pakistan. According to the
agreement India was to resume the supply of water and Pakistan was to develop, in due
course, alternative resources for the water supply from the Eastern rivers belonging to
India.

But against the spirit of the Agreement of 1948, Pakistan did not take any
concrete steps in finding alternative resources for the water supply of the Eastern
rivers. Instead, a claim was made by it on the basis of the principle of international
law related to the right of the "lower riparian", "prior appropriation" and "equitable
distribution"³


India wanted to impress upon Pakistan the necessity of a development programme for its (Pakistan's) water resources. On the proposal of India in the inter-Dominion conference of August 1949, a preliminary negotiation committee consisting of the representatives of both the countries was appointed to conduct discussions on the establishment of a joint technical commission. However, according to the letter of Prime Minister Liaquat Ali dated August 23, 1950, Pakistan refused to accept any diminution of its share of supplies from the Eastern rivers. The agreement of May 4, 1948, was declared void by the committee on the ground that Pakistan was forced to accept it under duress. Thereafter, Pakistan, conscious of its lower riparian status, took advantage of the situation to criticise India and gain popular support at home. India had insisted on keeping the water issue out of domestic politics and settle the issue through bilateral negotiations. Pakistan insisted on third party mediation and tried to internationalise the issue at various international forums like the United Nations Security Council and the International Court of Justice. India rejected the suggestion on the grounds that there was no precedent for river disputes to be referred to the Court.

**A Turning Point: World Bank Offers Mediation.** The dispute took a new direction when the World Bank offered mediation in resolving it, inspired by David Lilienthal, former head of the Tennessee Valley Authority (TVA) who felt that the dispute was essentially "a feasible engineering and business problem and not a religious or political problem" because the Indus had enough water resources for the use of both

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India and Pakistan.⁶ Taken by the views of Lilienthal, Eugene Black, the then President of the World Bank, wrote to the Prime Ministers of India and Pakistan urging them to solve the dispute on a financial rather than political plane without regard to past prejudices and claims.

On March 13, 1952, India and Pakistan decided that "neither side will take any action to diminish the supplies available to the other side for uses" so long as the World Bank continues to further its assistance leading to the final settlement. Very soon a Working Party of engineers, one each from India, Pakistan and the World Bank was formed to collect the relevant information.

The Working Party of the engineers completed the technical survey of the canals. On October 6, 1953, both India and Pakistan submitted their plan after the engineers finished the technical survey of all the canals, though there was a great deal of disagreement with regard to their assessment of future needs and possibilities. The Working Party of engineers' failure to evolve any mutually agreed solution forced the World Bank to submit its own plan that came forth in February, 1954.⁷ However, though the proposal was rejected by Pakistan, India accepted it. The Bank's proposal was "no arbitrary compromise" and conformed to the basis of the negotiations which had been agreed to by the two parties. It was prepared by the Bank Representative after a careful examination of the history of past developments in the basin and study of the prevalent situation. It was a sound practical and engineering approach.

New Controversies. The dispute assumed further complications on July 8, 1954, when the Bhakra Nangal Project was opened on the River Sutlej. This project

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7. For details see, J.B. Das Gupta, op.cit., pp. 171-83.
was regarded by Pakistan as a "potential threat to peace. 8 However, on August 5, 1954, Pakistan announced its readiness to consider the Bank's plan as the starting point for negotiations. Thence, provisional agreements were concluded between the two countries and the usual supply of water was continued. At the same time, Pakistan decided to go ahead with the Mangla Dam construction across the Jhelum Canal regulators. India considered it illegal and raised objections on the basis that the area concerned fell in Azad Kashmir or Pakistan Occupied Kashmir (POK) which was under the illegal occupation of Pakistan.

The Indo-Pakistani rivalry on the issue became more complicated and intense after 1955 for the following reasons. First, there was an increase in the confrontationist attitude of both sides. The Bank's proposal of February 5, 1954, was accepted by India on March 25, 1954, but Pakistan was reluctant. 9 The Bank's plan was accepted by India since it had given New Delhi the exclusive right to utilise the water resources of the eastern rivers. New Delhi was thus willing to pay for the link canals if this helped achieve an overall settlement. 10 A dissatisfied Pakistan found the allocation inadequate to meet its requirements. It also questioned India's intentions and abilities to pay in cash. Secondly, Pakistani demands were exaggerated. India was asked to pay not only for the construction of the link canal and reservoirs but also to bear with Pakistan's dilatory tactics, which meant that Pakistan could veto Indian developmental schemes. 11 Thirdly, Pakistan's insistence on claiming lower riparian

11. For an account of the Indian standpoint, see J.B.Das Gupta, op.cit., p.179.
rights was seen by India as dangerous.\(^{12}\) India considered the rivers issue to be a humanitarian problem, as millions across the border were deprived of irrigation facilities. Pakistani accusations that India was trying to turn Pakistan into either a desert or a dust bowl were seen as inflammatory.\(^{13}\)

**Welcome Developments.** Two new trends, in the meantime, appeared which considerably improved the atmosphere surrounding the negotiations. These trends related to the mediation efforts of the World Bank\(^{14}\) and the fragmentation of Pakistani opposition to the Bank's plan.\(^{15}\)

On May 21, 1956, the World Bank published an Aide Memoire on the canal waters dispute. The Aide Memoire was regarded as a significant advance made in accommodating Pakistan's objection to the Bank's proposal of February 5, 1954.\(^{16}\) It suggested that India should not only bear the cost of link canals, but also apportion the cost of storage facilities in proportion to the canal waters which India would withdraw for non-developmental purposes. In addition, it stipulated that India would continue to supply canal waters to Pakistan on the basis of ad hoc agreements. Though it meant an added financial burden, India accepted the terms and a reply was sent on June 18, 1956\(^ {17}\).

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17. Ibid.
While the World Bank was involved in working out a fair and amicable solution of the dispute, two other problems cropped up which soured the atmosphere for some time. The first related to the Government of India's demand that Pakistan arrange expeditious payment of Rs. 114 lakh for the supply of canal waters from India. Non-payment would amount to violation of the 1948 Agreement, under which India agreed to supply waters to Pakistan\(^\text{18}\). The other related to the allegation made by Pakistan that India had delayed the supply of waters in the River Sutlej for the non-perennial canals in West Pakistan. India, however, refuted the charges.\(^\text{19}\)

It was in this situation that W.B. Iliff, the Vice President of the World Bank, visited the Sub-continent in the summer of 1957 and made certain suggestions on the basis of the principle of the "division of the rivers" for the solution of the problem. Neither India nor Pakistan were very pleased with these suggestions. Being upset over the continuing deadlock, Indian Irrigation Minister S.K. Patil decided it was time that India clarified its position on this question. The position put forward was as follows.

First, India would not wait indefinitely for a settlement of the issue.\(^\text{20}\) Second, India would be free from April 1957 to make additional withdrawals from the Bhakra canals (after the transitional agreement with Pakistan terminated in March 1957).\(^\text{21}\) Third, Pakistan had constructed link canals which were capable of replacing nearly half the quantity of water that Pakistan drew from the eastern rivers. Last, India would exercise the right, conceded by the Bank, to utilise the entire waters of the Ravi, Beas and Sutlej for its own needs after 1962.\(^\text{22}\)

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21. Ibid.

22. Ibid.
This firm Indian stand had a considerable impact on Pakistan and as a result, on August 2, 1957, Pakistan accepted the Bank's proposal of 1954. Pakistan's Prime Minister Suhrawardy was allegedly quite agitated over the Indian stance. On August 25, 1957, *Dawn* reported, "He (Suhrawardy) wanted that like the Kashmir issue, the canal waters issue might also come up one day before the Security Council or the General Assembly. Therefore, it was absolutely necessary to secure the sympathies of the nations of the world. Otherwise, Pakistan's continued existence would be in jeopardy... Suhrawardy declared that he would lay down his life but would not let Pakistan be starved for want of sufficient water in the canals." 23

On October 5, 1957, the Pakistani spokesman said that in 1956 the World Bank had adjusted its 1954 proposals. The adjusted proposals were accepted by Pakistan. He added that if the adjusted proposals were not acceptable to India, the Bank's efforts to arrive at a solution of the problem might prove futile. 24

Pakistan's changed attitude encouraged the World Bank to stress the urgency of the ad hoc agreement. Hence, talks on the new ad hoc transitional arrangement were initiated by the World Bank delegation which consisted of L. Bengston, Sir K. Guineff and J. Connors in November 1957. The talks between India and Pakistan, under the auspices of the World Bank, began in New Delhi on November 28, 1957. However, the efforts failed as Pakistan insisted that India should pay for the operation of the link canals. 25 On December 30, 1957, India clarified that, while minor points of disagreement could be settled by arbitration, once an agreement was reached on the essential features of the Bank proposal, arbitration on the canal waters dispute as a whole was not acceptable to India.

24. 'No Breakup of One Unit, PM's Pledge at Lahore Meeting', *Dawn* October, 7, 1957.
The continuing controversy over the ad hoc agreement, however, had already justified the need and urgency for an overall settlement of the canal waters dispute. Pakistan had started to realise that it would gain nothing if the efforts of the World Bank were to break down. Therefore, while it demanded India's consent to the claim based on a "master Plan" containing the blueprint of a mammoth irrigation development project for the whole country, it began showing signs of compromise. Growing signals of rapprochement encouraged Iliff to hold talks with India and Pakistan in 1958 which were kept secret.

Reportedly the new proposals squared with the viewpoints of both India and Pakistan. Iliff suggested further talks in Rome. On April 24 and May 14, 1958, India and Pakistan, represented by N.D. Gulhati and Mueenuddin, respectively, as chief delegates, held talks. The talks proved inconclusive.

A new controversy now arose between India and Pakistan. India was criticised for withholding the water of the canals and issuing an ultimatum for the unilateral withdrawal of Pakistan's share of supplies by 1962, which was denied by India. Letters were exchanged between Nehru and Noon to convince Pakistan of New Delhi's bonafides. India suggested that engineers from Pakistan and India should make an on-the-spot study of the flow of water in the Sutlej and Beas rivers. Pakistan accepted the proposal.

In the meantime, Pakistan appealed to the World Bank to intervene and as a result talks were held in London from July 7 to 31, 1958. The main objectives of the talks were to reach a settlement of the dispute and decide on a deadline for India's stoppage of water supplies to Pakistan. The Bank also invited Pakistan to present its

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28. Ibid. Also see 'Another Canal Dispute', The Hindu, 14 June, 1958.
plan. Pakistan presented a plan which broadly accepted the division of the waters of the Indus Basin as envisaged in the 1954 proposals. The plan provided for the construction of storage and link canals in Pakistan in order to replace the present supply of 10 million acre feet of water by India to Pakistan. The estimated cost was around Rs. 300-350 crores, over a period of 15 years. The talks did not lead to an acceptable solution, and Indo-Pakistani relations worsened after that. The crisis affected all aspects of the canal water dispute.

Showing a firm resolve, Prime Minister Nehru in his letter to the President of the World Bank, Eugene Black, written on June 5, 1958, reiterated India's desire to settle the canal water dispute before 1962. He also asked that Patil's statement in Parliament not be taken as an ultimatum but as a statement of policy. Pakistan argued that the deadline of 1962 was an ultimatum served by India on Pakistan. On September 4, 1958, the then Prime Minister of Pakistan, Feroz Khan Noon, declared in the National Assembly that Pakistan had told the United Nations that the agreement of May 4, 1948 was signed by representatives under duress, and as such Pakistan was repudiating it. Pakistan also made a subtle attempt to build up the international legal opinion against India's right to draw more water.

A New Political Atmosphere in Pakistan. In the meantime, a significant political development took place. Marshal Law was imposed in Pakistan which intensified the struggle with regard to the canal waters dispute. General Ayub Khan came to power in October 1958 and assumed a more threatening posture vis-a-vis India.

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After the takeover, when the dust of political turmoil settled down, Ayub diverted his attention to the dispute and talks resumed on December 2, 1958 in Washington. During the talks India rejected Pakistan's plan yet again. The talks led the two sides nowhere and ended in accusations and counter accusations pertaining to an alternative for the diversion of some waters of the Chenab river, a proposal made by India. This, according to Pakistan, would place it further at the mercy of India. Seeing no solution in sight, the Bank, therefore, proposed to frame its own proposals, and asked the two to accept them.

Sensing that an international agreement was finally coming their way, India and Pakistan agreed to sign an interim agreement on sharing canal waters during the period from April 1, 1959 to March 31, 1960. This agreement was signed in Washington on April 17, 1959. The signatories on the occasion were Aziz Ahmed, the Pakistan Ambassador to the U.S., and N.D. Gulhati, the Additional Secretary to the Government of India and the leader of the Indian delegation. The Agreement provided for additional withdrawals of waters to the tune of 3.5 million acre feet by India from the three eastern rivers during the period covered by the Agreement.

Interestingly, in 1959, certain developments, the Tibet episode in particular between India and China, proved to be a turning point in leading to the settlement of the canal water dispute. Pakistan was being drawn closer towards India. The reason behind this was that tension had heightened between India and China in relation to the contested border. The rising tensions, particularly in the aftermath of Nehru's firm refutation of Chinese claims, provided Ayub Khan with an opportunity to propose some kind of security system for the whole subcontinent as in pre-partition days. He conjectured that growing tensions with China would bring India closer to Pakistan in order to have peaceful relations on one front at least. It is interesting to note that increasing tensions between China and India raised concerns in Pakistan as well. It was

against this backdrop that Ayub Khan gave India a proposal for a 'joint defence of the subcontinent.' In addition, the US at this time was desirous of settling the dispute. The advantages of a settlement were captured by the Christian Science Monitor: "Now at last there appears to be a propitious moment to aid both nations simultaneously and erase the nagging diplomatic trouble. If Washington can quietly extend its good offices and money from its long term low-interest loan fund to help India and Pakistan harness the Indus by joint agreement, it will signally aid the amity moves now under way."34

After another round of talks in London, Eugene Black in his statement on May 18, 1959 apprised India and Pakistan of efforts to get financial aid from other friendly governments. "Money alone will not solve the difficulty but without money it cannot be solved," he said.35

Black was received in India with certain misgivings, though Pakistan seemed satisfied. In a statement issued by the Pakistan Government hopes were expressed that donor countries - the U.K., Canada, Australia and the US - would provide "adequate financial aid" to enable Pakistan to construct the necessary canals.36 After Ayub's rise to power, an earnest desire on both sides to erase diplomatic troubles had evolved which was duly supported by the Bank's effort to arrange for the financial aid. As a result, when the World Bank finally brought out its compromise plan it was accepted by India and Pakistan.

The compromise plan was basically an extension of the Bank's proposal of 1954 and the Aide Memoire of 1956. It accommodated most of Pakistan's demands, in particular that replacement works should be located within its territories. It also


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requested India to supply water to Pakistan beyond 1962 for another 10 years. The total estimated cost was 350 million pounds, of which 125 million pounds was Pakistan's share. To India, the Bank assured the necessary financial assistance to enable construction of storage areas on the Beas. This was to meet the full requirements of the Rajasthan and other new Indian canals which would be ready to withdraw water long before the end of the transition period.37

Later, to facilitate the development of the Indus Basin Water supplies, an organisation called "Pakistan Water and Power Development Authority" was set up on June 1, 1959. The Bank also proposed to set up an Indus Valley Fund to which the donor countries would contribute. The Indian press attributed the plan's success to India. The Hindu said, "advance has been made possible to a great extent by the anxiety of India to secure a settlement of this vexed dispute, even if it meant giving away something more and taking much less."38

In Pakistan, too, attempts were made to narrow differences with India. On August 3, 1959, the Finance Minister of Pakistan, Amjad Ali, said that there seemed to be a desire in New Delhi to move towards a settlement which was lacking in the past.39 It was apparent that Pakistan had reversed its previous tactics, namely, to insist on the settlement of the Kashmir dispute before taking up other issues. The Pakistani press, while appreciating the role of Pakistan, maintained that ultimately success was achieved due to the financial assistance promised by friendly countries. The World Bank also came in for appreciation.


39. Ibid.
**Last Minute Efforts and the Final Agreement.** India and Pakistan signed an interim treaty for a five year period. The Agreement was signed pending the finalisation of the international water treaty. This was necessitated to regulate water supplies between the two countries. While the Bank was busy seeking a solution, talks were held in Washington on October 9, 1959 where Pakistan raised serious objections pertaining to India's use of the Chenab waters in the Jammu area of Kashmir state, since Jammu and Kashmir, in the Pakistani view, was a disputed area. Any concession to India on this point would prejudice Pakistan's interest in Kashmir. However, on the World Bank's request, Pakistan finally agreed not to raise this question. Another objection of Pakistan, related to the demand for more water supplies from India for the next ten years, however blocked further negotiations. Mohammad Shoib, the Finance Minister of Pakistan, was hurriedly called to settle the deadlock. There were hectic diplomatic activities. Iliff, the Vice President of the Bank, all of a sudden came to the Subcontinent along with two World Bank engineers, Sir Kenelemn Guinness and Irwin Lorber, but to no avail. Finally, Nehru intervened and this produced the settlement. On September 4, 1960, expressing satisfaction over the outcome, President Ayub Khan thanked Nehru for his role and contribution and said that" the solution was not ideal but it is the best we could get under the circumstances many of which, irrespective of the merits of the case, are against us." One such circumstance was related to the Kashmir dispute. He said, "The very fact that we will have to be content with the waters of three western rivers will underline the importance

of having physical control on the upper reaches of these rivers to secure their maximum
utilisation for the ever growing needs of West Pakistan.\textsuperscript{43}

A comprehensive treaty was signed between India and Pakistan on September
19, 1960. Apart from the river treaty, two other agreements were also signed. The
first was an International Financial Agreement to finance the construction of irrigation
and other works in Pakistan through the Indus Basin Development Fund. The second
was an Agreement between Pakistan and the Bank for a loan of US $ 90 million. The
protracted negotiations for 8 years had cost India and Pakistan over Rs. 30 million,
most of it in foreign exchange. The Treaty consisted of a Preamble, Articles, and eight
Annexures. The signatories were Jawaharlal Nehru, the Prime Minister of India,
General Ayub Khan, the President of Pakistan, and W.B. Iliff, the Vice President of
the World Bank. The Treaty came into force after ratification retrospectively from
April 1, 1960.\textsuperscript{44}

\textbf{Highlights of the Treaty}

The Preamble of the Treaty states that the Treaty allots the waters of the Indus,
Jhelum and Chenab (the western rivers) to Pakistan, except for essential uses in their
own basins while they flow in India, and the waters of the Ravi, Beas and Sutlej (the
eastern rivers) to India except for a transition period of 10 years which may be
extended up to a maximum of 13 years during which Pakistan would build works to
replace the waters received by her from these rivers\textsuperscript{45}. The Treaty further elaborates

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\textsuperscript{43} Khursheed-ul-Hasan, 'Kashmir Acquiring New Urgency, Ayub Hopeful of Solution',

\textsuperscript{44} The Treaty was ratified in New Delhi on 12 January, 1961. At the function, the
representative of India, Pakistan and the World Bank were N.D.Gulhati, G.

\textsuperscript{45} Preamble (The Text of the Treaty used here is the one published in \textit{Pakistan Review}), 8
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these provisions through Articles II, III and IV. Articles V, VII, VIII, IX, X and XI pertain to such questions as might arise in future, particularly on the interpretation and application of the Treaty. Article VI deals with the exchange of data.

The other important features of the treaty were as follows: 46

1. The Treaty allotted the exclusive use of the eastern and western rivers to India and Pakistan, respectively.

2. India agreed to contribute £62,062,000 towards the cost of the replacement works for the Pakistani canals.

3. Pakistan would compensate India for the extension of the transition period which it was permitted in the Treaty for a maximum period of three years.

4. India would also be compensated for the use of present facilities by Pakistan in the interim period.

5. A Permanent Indus Commission was created to deal with the problems arising out of the Treaty.

6. Future co-operation was also envisaged in the Treaty.

7. It was provided that "if India continued to release her surplus water from the eastern rivers to Pakistan, Pakistan would not claim any right whatever by prescription or otherwise." 47 It further made clear that "nothing in this treaty shall be construed by the Parties as in any way establishing any general principles of law or any precedent." 48

8. Moreover, it was decided that the Treaty could not be terminated unilaterally even if a state might be entitled to denounce it according to customary rules of international law. 49

9. Finally, the Treaty was based upon the Bank proposal of 1954 and the Aide Memoire of 1956. With this treaty coming into force, the India-Pakistan Agreement of 1948 automatically expired. 50

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47. J.S. Bains, op.cit., p.69.

48. Ibid.

49. Ibid.

In India, the Treaty was regarded as the culmination of a healthy process of realistic reappraisal of the mutual relations of India and Pakistan. One of the leading Indo-Pakistani problems had thus been solved satisfactorily and it was thus expected that it would play a role in convincing Pakistan of India’s sincere acceptance of Partition. Pakistan had repeatedly complained that India had not reconciled itself to Partition, based on communal lines. Moreover, the Treaty enabled India to plan the future agricultural development of her northwestern regions independently. Further, the Treaty did not have a bearing on any other dispute. This discarded Pakistan’s claim that Kashmir was vital because of the western rivers flowing through it. On the negative side, India was seen as a loser in the sense that the Treaty curtailed India’s right to use the waters of the western rivers. In addition, India had to bear an extra cost of Rs. 83 crores for the replacement works in Pakistan.

Pakistan had reason to celebrate. The benefits from the Treaty accruing to Pakistan were that it was ensured a complete measure of independence from any control of India in the matter of 74 vital irrigation needs. The interlinking of Pakistani rivers rationalised the utilisation of water resources. The Treaty provided for the development of water sources as against mere replacement. Flood hazards would be controlled due to the construction of the Mangla and Tarbela dams. New sources of electric power were also secured. The Sutlej canals would be better fed in the period of transition. The tubewells and drainage schemes would help reclamation of water-logged areas. More irrigation facilities would be given to areas west of the Indus. Moreover, there would be very little Indian offtake from the Chenab waters. Lastly, Pakistan would increase its capacity to around 110 million acre feet of water as against 74.5 million acre feet.


At the same time, the treaty meant that Pakistan had to be content with the three western rivers. The sedimentation was bound to limit the life of proposed storages facilities and besides, the newly-constructed link canals faced the dangers of floods. Pakistan would also lose some water in transit while bringing it from the western rivers to the areas now supplied by the eastern rivers. The expenditure incurred by the Indus Basin works would also strain Pakistani resources and technical personnel. On balance, however, Pakistan considered itself a gainer, and this was quite a widespread perception in Pakistan.

It is necessary to highlight the international dimensions of the dispute. The good offices of the World Bank were only one dimension of it. The other dimension related to the two-fold international pressure on India. The first was China's infiltration in the eastern part of Kashmir in Ladakh and the claims over the north-eastern border territories of India. The other was the American willingness to play a constructive role in the wake of the new direction of its foreign policy in South Asia. Moreover, Ayub Khan was also making an all-out effort to rope in India for his proposal of joint defence. Although India was apparently conscious of these pressures, it did not want to force the issue to a point from where no retreat was possible. In framing its tactical line, India, therefore, discovered a correct approach to this complex problem despite its reservation on some of the items in the Treaty.53

Analysis of the Negotiations

The Indus Waters Treaty is considered as one of the classical examples of negotiations between two hostile neighbours which makes it an interesting Treaty to be analysed from the point of view of negotiations as a process. The Indus Waters Treaty is also one of the few examples of a successful settlement of a major international river

basin conflict. The question is how did it happen? Let us try to answer the question in terms of our negotiation framework.

**Ripeness.** Of all the major Indo-Pakistani disputes the issue of the Indus waters was one in regard to which both nations were anxious to reach a settlement. There were a few occasions when one nation or the other sought to delay settlement for a short period, but these were the strategic demarches to secure better terms and did not alter the overall desire for an early settlement of the dispute. Persons in authority in London and Washington were reported to have said "India and Pakistan can go on shouting on Kashmir for all time to come but an early settlement on the Indus Waters is essential for the maintenance of peace in the subcontinent." 54

This feeling, in the highest quarters, was undoubtedly a factor in ripening the issue and thus influencing the World Bank, India and Pakistan to agree to resolve the problem. After the Treaty was signed, Ayub Khan said, "We had no alternative but to make a genuine and determined effort to assist the International Bank to find an engineering solution of this grave problem which imperilled the relations between the two countries, a solution with which we could live and which would provide financial and technical resources to enable us to take waters of the western rivers to feed our canals taking off from the eastern rivers which would become dry ditches after their water had been taken away by India." 55

In other words, there seemed to be a shared perception of the desirability of an accord. India and Pakistan were eager to solve the problem as they knew that, in the absence of an agreement, time would go against their interest and they would be worse off in absolute terms or relative terms or both. Besides, both Ayub Khan and Jawaharlal Nehru were strong enough politically to conclude an accord and agree to it

54. Ibid., p.16.
55. Ibid., p.339.
as well. So the dispute had reached the maturity point, with both parties willing to go in for negotiations.

**Prenegotiation.** Ever since 1948, discussions had been taking place on the issue. When David Lilienthal visited India at the invitation of Prime Minister Nehru and wanted Pakistan's fears of its economic future to be assuaged, he argued that by using modern engineering skills and building storage dams and linked canals on the Indus and its tributaries, the benefits for both countries could be enormously augmented. He even hoped that by developing the full potential of the Indus system, the ongoing Kashmir problem could be muted, if not resolved. He argued, "Rivers pay no attention to partitions; the Indus just keeps rolling along through Kashmir and India and Pakistan."\(^{56}\) He had urged that India and Pakistan should jointly administer a comprehensive plan, financed by the World Bank. His standing evoked widespread interest, and hence Eugene Black, the President of the World Bank, was persuaded to explore the possibilities.

The parties had some hesitation in accepting, without reservation, the proposal made by Lilienthal. Correspondence and conversations, therefore, followed. These involved Black, Lilienthal and the representatives of the two countries. Black visited New Delhi to discuss the matter personally with the Prime Minister whom he met on February 11, 1952. At this meeting, B.K. Nehru, the Indian Director on the World Bank, was present. Engene Black also visited Karachi to meet the Prime Minister of Pakistan, Nazimuddin. Ultimately, the agreement that was reached during separate discussions and recorded in Black's letter of 13 March, 1952 was as follows:

> ... I am happy to say that I have found common understanding as to the base on which we can go forward under the Lilienthal proposal.

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We all agree that the function of the working party is to work out, and the ultimate objectives is to carry out, specific engineering measures by which the supplies effectively available to each country will be increased substantially beyond what they have ever been.

It should be understood that the three main principles set forth in my letter of November 8, 1951 provide the broad basis on which the engineers will meet but are not intended as rigidly fixed terms of reference. Within the broad outline of the basic framework the engineers should be free to put forward or consider proposals in pursuance of the general objective. 57

India and Pakistan then formally agreed to participate in the meeting of engineers; they welcomed the association of the World Bank as a 'good officer', and a Working Party was formed. The Bank thus found a way out of the impasse reached in bilateral discussions between the parties.

Initially, both sides were cautious at the working party's meeting. This is revealed by the fact that, at the formal meetings, the two generally spoke from previously prepared statements. There were frequent adjournments of meetings and most of the agreement was obtained through Raymond Wheeler, the Bank representative. The latter played the difficult role of the 'good officer' with neutrality and good humour. Frequently, when the dialogue threatened to collapse Wheeler and his colleagues kept things going by telling amusing stories and anecdotes. 58 The patient and calm attitude of Indian and Pakistani representatives also helped considerably in this early phase. While they were still far away from a favourable final outcome, at least the talks had not broken down and the two sides were able to agree to continue the discussions in the Working Party.

The initial stages of the whole negotiation process shows that before the broad base of negotiations or formal negotiations started, there had been a systematic approach on the part of India and Pakistan to formulate a basic framework, with the

help of the World Bank. The period from February 1951 (when Lilienthal visited India) upto March 1952 (when formal negotiations started) was marked by India, Pakistan and the World Bank "defining the problem", "developing commitment to negotiation" and "arranging the negotiations." Harold Saunders calls these elements "prenegotiation" as they centre about the creation of a political commitment to solve a problem and crystallise the intent or search for a concrete agreement.\textsuperscript{59} William Zartman and Maureen Berman identify this stage as the diagnostic stage, i.e. bringing about negotiations long before the first formal session opens. Although both admit that the limits of this phase are blurred, it goes on until each party has perceived the other to be serious about finding a negotiated solution.\textsuperscript{60} Louis Kriesberg and his colleagues also consider this stage a prenegotiation phase in which, besides other redefining and exploratory approaches, parties consider a potential third-party role.\textsuperscript{61} As we have seen, in this case the World Bank happened to be that potential third party.

In short, in this period, India and Pakistan moved from considering conflicting unilateral solutions to a search for a cooperative multilateral or joint solution.

\textbf{Negotiations}. The first thing that made for success in the negotiations was the determination to stick to a pragmatic, rational rather than a political approach. The broad basis of the discussions initiated in March 1952, with the participation of the Bank, was as follows: "The water resources of the Indus Basin should be cooperatively developed and used in such a manner as most effectively to promote the economic

\textsuperscript{59} Saunders, op.cit., 1985, pp.158-63.

\textsuperscript{60} For a detailed discussion on the negotiation process, see William Zartman and Maureen Berman, \textit{The Practical Negotiator}, Yale University Press, New Haven and London, 1982.

\textsuperscript{61} Also see Louis Kriesberg and S.J. Thorson (eds.), \textit{Timing and the Deescalation of International Conflicts}, Syracuse University Press, Syracuse, 1991.
development of the Indus basin viewed as a unit." There was also a broad understanding that the "The problem of development and use" of these waters "should be solved on a functional and not a political plane.... independently of political issues." Unlike inter-state water disputes in the United States and also in India, after 1951, codified law, legal principles and procedures were not in the forefront of the Indus question; instead principles of water resources development, irrigation engineering and economies were the basic considerations. The principal negotiators on behalf of the contending nations were neither professional diplomats nor political leaders. Instead, engineers and administrators of the permanent services manned the delegations to the Indus negotiation. The World Bank was likewise represented by its engineers and later by its top management. The Indus diplomacy was neither like the highly stylised diplomacy of the old days nor of the "gold-fish bowl" variety. There was no mass audience to address, no occasion for rhetoric or for inflammatory debating tactics. Instead, the approach was functional and highly professional in character. The negotiators were not just playing with opinions and views; all parties measured and proved ideas by facts and figures.

A second factor is that despite an interest in pragmatism both sides began with caution, fully aware of the need to safeguard their positions. Thus, even though it had been agreed that the legal rights of the two sides would not be affected by the discussions in the Working Party, neither party would agree to anything which might prejudice its earlier stand. The two designees, A.N. Khosla of India and Abdul Hamid of Pakistan, therefore, started on their work haltingly and cautiously. Instead of open discussion across the table, the Pakistani Designee started to route his suggestions through Raymond Wheeler, the Bank Representative. The Working Party consisted of

62. Gulhati, p.245.
63. Ibid.
64. Ibid., p.3.
engineers who dealt with the technicalities of the dispute, the discussions were controlled by the lawyers of the parties, each anxious to safeguard the position of his side, and, if possible, to erode that of the other. 65 Considerable emphasis was placed by both sides on the need to secure agreement on at least some part of the work to be done jointly; but it was obvious that neither party was at this stage willing to depart from the approach which was appropriate to the stand it had taken earlier in the bilateral discussions between the two Governments. 66

Regarding the success of the negotiations it should, thirdly, be kept in mind that the negotiators possessed intimate knowledge of the subject matter of the negotiations. They had come to understand and respect one another. Their experience saw them through occasional frustrations. And they were trained not to seek undue publicity for the work done. Not guided and influenced by public opinion, they had greater autonomy of action and decision making than politicians who generally care far more about public opinion. In short, the critical decisions were taken at the political level, but the protracted and complex negotiations were conducted by senior professional officers or engineers.

Fourth, the role of the third party was vital, Jagat Mehta, former India Foreign Secretary and a negotiator in the Salal Dam project, suggests that the “World Bank, in coming forward with its mediating position, gave up the optimal solution too readily. It could have canvassed its own proposal based on the Lilienthal approach more strongly with the political leadership.” 67 Yet he agrees that the success in hammering out the agreement was due to the skill and ability of the World Bank team and crucially the

financial leverage to underwrite the agreement.\textsuperscript{68} The Bank was able to commit 1 billion dollars for the replacement canals which was an important consideration for Pakistan in the final outcome. During the course of discussions, Iliff repeated that, in his view, a settlement of the Indus problem would not be possible except with a large block of external assistance thrown in.\textsuperscript{69}

While none would doubt that over a very long period the vital interests of India and Pakistan were involved in the dispute and both had to make adjustments to their long term irrigation goals, an immediate inducement was that huge foreign assistance was available for development programmes in the Indus river system the like of which has not been attempted anywhere. The Treaty was not only the solution of a dispute but also ensured a vast constructive programme in the field of agriculture, especially in Pakistan.

In the following ten years, a total of one billion dollars was spent in a comprehensive development-cum-replacement programme comprising storage reservoirs, barrages, link canals, tube wells, drainage and hydro-electric installations. The breakup was as follows:

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<tr>
<td>Pakistan</td>
<td>Rs. 70 crores.</td>
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<td>India</td>
<td>Rs. 83 crores.</td>
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<tr>
<td>World Bank</td>
<td>$ 103 million</td>
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<td>United Kingdom</td>
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<td>West Germany</td>
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The United States was to contribute a further $ 177 million as grants and $ 103 million as loans. About 700 million cubic feet of earth was to be excavated, 2 million tons of cement, 250,000 tons of steel and 1 billion bricks and tiles would be consumed. Pakistan was to spend altogether 870 million dollars and India 200 million dollars.\textsuperscript{70}

\textsuperscript{68} Ibid., p.175.

\textsuperscript{69} Gulhati, p.238.

\textsuperscript{70} These aspects of the treaty can be seen in the World Bank's Statement published in the Indian and Pakistani newspapers of 20 September, 1960.
The third party played more than a financial role. The World Bank did not have any political leverage, but its ability to bring in friendly countries with financial commitments was a kind of "quasi-imperial" third party inducement to the successful resolution of the dispute. Gulhati highlights the role played by the Bank and also explains why the two parties agreed to its mediation, which ultimately helped in resolving the conflict. He explains:

That the World Bank had no political axe to grind was certainly a major consideration with the parties in accepting its good offices. ... as an international organisation forbidden by its statutes from being influenced by political considerations, with India and Pakistan as its members and possessing expertise in technical and engineering problems, the World Bank represented a happy way out of the stalemate into which the two sides had landed themselves with five years of bilateral negotiations. The Bank was in no way an unconcerned third party but an agency of both Governments (and of others) constitutionally committed to the welfare and economic development of the contending nations.

Taking the Bank's role as an ideal one, Gulhati comments that a mediator must be impartial which he admits is not easy and is full of complications. The mediator must be as impartial as a judge to be successful, but he or it must not be as distant as a judge. It must listen to and offer its advice and not feel perturbed in case the advice is not accepted. The Bank, in Gulhati's opinion, was careful not to sit in judgement on the respective attitudes adopted, or actions taken, by the parties from time to time; it carefully avoided apportioning blame to one side or the other. As an unbiased mediator, the Bank, in all its statements and communications treated the parties at par.

71. Mehta, op.cit., p.175.
72. Gulhati, op.cit, p.331.
73. Ibid.
Having said that at various stages, the World Bank politely threatened that it could withdraw from negotiations if its independent proposals were not accepted. This worked because Pakistan, being the lower riparian, was not prepared to risk such a breakdown. India's own second five-year plan depended on massive economic aid from the World Bank and from the other developed countries which were also members of the Bank.

The venue of the negotiations was also important and was a subject of discussions on several occasions. The negotiations were eventually held in Washington, far from New Delhi and Karachi, the capital cities. Most of the negotiations were held at the seat of the World Bank. This enabled the negotiators to pay full attention to the work, away from distractions at home and saved them from daily reporting to their governments. Not much public debate occurred, since the negotiators could not be approached by their national media. The role of the Bank as a mediator was central throughout.

A fifth factor which helped in both the prenegotiation and negotiation phase was political stability in both countries at crucial moments. It should also be noted that during the thirteen years from 1947 to 1960, that is, the period of the dispute, India had throughout a stable government under Prime Minister Jawaharlal Nehru, a statesman wedded to democracy and democratic procedures, yet a 'totalitarian' in respect of realistic thinking and in maintaining high moral standards. The adoption of a new constitution, which came into effect on 26 January 1950, and the general elections thereafter, in 1951-52 and 1957, did not disturb Nehru's hold on the people or the government. On the other hand, Pakistan, during this period had a chequered political career, starting with Mohammed Ali Jinnah, the architect of Pakistan. Great political uncertainties prevailed during the regimes of Liaquat Ali Khan (1948-51), Nazimuddin (1951-53), Mohammad Ali Bogra (1953-55), Chaudhary Muhammad Ali, H.S. Suhrawardy, I.I. Chundrigar, Firoz Khan Noon (1955-58).
On October 7, 1958, President Mirza declared a coup d'etat, abrogated the constitution, dismissed the Central and Provincial Governments, dissolved the National Parliament and Provincial Assemblies, abolished all political parties and declared martial law. He assumed power with the help of General Mohammad Ayub Khan. But within three weeks, Ayub displaced Mirza and took over as President and head of government. Martial law, continued until a new constitution was promulgated and came into force in June 1962. Thus, even in Pakistan, during the crucial final phase, there was a relatively stable internal political situation.

Although the two parties, at the insistence of the Bank, had pledged to settle the dispute on a functional rather than political plane, yet this should not amount to the assumption that the political climate and political developments had no influence on the whole gamut of negotiations. The negotiations had obviously to be carried out in the prevailing political conditions, which initially were not very promising and conducive to breakthroughs. Subsequently, the situation improved drastically, with Ayub's rise to power. In him, Pakistan had a strong central government with greater stability and a more direct, systematic approach.

The Indian delegation had firm and united government backing, whereas in Pakistan it lacked this until 1955 when the State Governments of West Punjab and Sind and for some time North West Frontier Provinces and Bhawalpur merged into one entity, West Pakistan. The weak and changing governments in Pakistan often put its negotiators in a difficult position. Sometimes, the government gave conflicting instructions and assigned roles to foreign engineers and lawyers. Before Ayub's accession to power, weakness on the part of the central leadership in Pakistan led to inflammatory publicity campaigns which made negotiations difficult. Fortunately, the sound and stable Indian government under Jawaharlal Nehru resisted the temptation to indulge in polemics and thereby kept the conflict to manageable proportions.

Sixth, vital to the success of the negotiations was India's decision to be accommodating above and beyond anything demands by customary international law. As
irrigation on an extensive scale has been resorted to only during the last sixty-odd years, the practice of states has not evolved any positive rule of international law imposing limitation on the freedom of a state to use such waters at their own discretion. Both custom and treaties fail to point to a customary norm. The lack of a positive rule of customary international law is quite evident from the standard treatise on the subject which even fail to discuss the problem. Those who have made a passing mention of the problem have tried to formulate a rule without investigating the material. They have been carried away by emotional bias and wishful thinking.

There is no conventional or customary international law that directs a state to behave in a certain way and as per the rule of international law the state concerned has the unrestricted right to the water flowing through its territory. Hans Kelsen remarks, "That there is no rule referring to a case can only mean that there is no rule imposing upon a state... the obligation to behave in this case in a certain way. He who assumes that in such a case the existing law cannot be applied ignores the fundamental principle that what is not legally forbidden to the subject of law, is legally permitted to them..." 74

In the matter of diversion of international rivers, an upper riparian state is not obliged under international law to cater to the needs of the lower states. But there is nothing which prevents it from being voluntarily conferred. Despite no legal directives to do so the states enter into these treaties due to political considerations, good neighbourliness, humanitarian feelings or international comity. This should not delude us into thinking that customary international law stands redundant. The states are entitled by that law to accept limitations on their freedom of action. 75


75. Permanent Court of International Justice, Series A/1, p.25, cited in Bains, 1962, p.35.
It is instructive to note that in some of the most important treaties, namely, the US-Mexican Treaty of 1906, Great Britain-U.S. Boundary Waters Treaty of 1909 and Indo-Pakistan Treaty of 1948 recognition of the interest of lower riparian states in the waters of the river have not deprived the upper riparian states of the sovereign rights guaranteed by customary international law.76

Thus, according to the customary rule of international law a state has exclusive jurisdiction and control over waters of international rivers which pass through its territory. On the grounds of political, economic, strategic, humanitarian and many other considerations, however, the upper riparian states have not rigidly adhered to this rule. Keeping in view their own national self interest, they have voluntarily conferred benefits on the lower riparian states by signing bilateral or multilateral treaties. The existing rights and duties regarding the waters of a particular international river must, therefore, be determined on the basis of existing treaties.77

It is fair to observe that the theory and practice of the law reveals very clearly that India had not violated the waters of the Indus river system in order to make up for the loss of fertile lands suffered as a consequence of partition. But Indian leaders, it seems, had not been carried away by legal subtleties and rigid or juristic thinking. They had viewed the problem of water as a human problem capable of being solved on the basis of humanitarian considerations. That is why it was been felt that with the help of modern engineering devices both India and Pakistan could use the existing supply of water which otherwise would go waste by flowing into the Arabian Sea.78

76. Bains, op.cit., p.36.
The contents of the Treaty show that it was India rather the Pakistan which, in the interest of good neighbourliness and peace, climbed down from a position legally unassailable and economically beneficial. It made a substantial concession by agreeing to Pakistan using virtually all the waters of the western rivers and also a substantial flow from the eastern rivers for the duration of the transition period. The financial assistance which India gave to Pakistan, to a certain extent, affected its own already depleted foreign exchange stock and had an adverse strain on its financial condition. These concessions, together with the possibility that Pakistan might attempt to get the transition period extended after the maximum time limit of thirteen years allowed under the treaty, made this bargain overwhelmingly favourable to Pakistan. Even on an equitable basis, India would have been allowed more water.⁷⁹

Seventh both parties but Pakistan in particular agreed in this instance to de-link the dispute from resolution of Kashmir. Although the press in both the countries pointed out the impossibility of miraculous solutions in the remaining Indo-Pakistani problems, there was no doubt that each country expected concessions from the other in lieu of the concessions they had made in the canal water treaty. The Treaty itself, however, dealt with the water problem in isolation and provision was made in Article XI to the effect that the water settlement would not constitute any recognition or waiver of any rights or claims whatsoever other than those expressly recognised in the Treaty. It was essential that the problem of waters should be separated from the intricate legal and political issues involved in the Kashmir question: the elimination of one explosive item from the list of disputes could facilitate a realistic appraisal of the other issue. The spirit of compromise displayed in regard to this problem, it was hoped, would eventually permeate the consideration of other issues.⁸⁰

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⁷⁹. There were voices in India too that were, critical of the government's policy. See Lok Sabha Debates, 30 November 1960, Cols. 3191, 3214.

**Agreement.** Concluding without any reference to the Kashmir dispute would be incomplete. The Kashmir dispute often figured during the negotiations and on several occasions led to stalemates and brinkmanship. But it should be underlined here that realism and pragmatism ultimately gained over sentimentalism and the Indus waters negotiations successfully bypassed the Kashmir dispute. Gulhati writes that because of the deep mistrust and suspicion marking the Indo-Pakistani relationship, the Indus Treaty came to be written with extreme care and precision so that its implementation has not presented any major difficulty and has withstood the test of time.81

Although it is not necessary that every negotiation ends in agreement, this one did. Agreements were reached on almost all the outstanding issues, and provisions were made to deal with problems that would arise out of its interpretation and application. The two parties were aware of the problems pertaining to the treaty's application well in advance. Hence, a Joint Indus Waters Commission was also set up to tackle the problems that would arise from time to time, out of the treaty. A look at the treaty's provisions reveals the farsightedness of the negotiators who covered the entire gamut of disputes. For every possible problem that might arise, there was a provision to deal with. This is the reason why the agreement has withstood the test of time in spite of wars, crises, diplomatic breakdowns and doubts about bits and parts of the treaty itself.