

Assessing the Relevance of Indus Waters Treaty to the International Law on Non-Navigational Uses of the International Watercourses

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Abstract

Indus Waters Treaty is the most comprehensive and complex document which divides Indus Rivers System between India and Pakistan. It has continued to function through three wars and various political tensions between both neighboring states. It was signed in 1960 when no international law was available to deal the non-navigational uses of the international watercourses. Since the Helsinki rules were adopted by the International Association of Law in 1966 and the United Nations Convention on International Water Courses was approved by the United Nations General Assembly in 1997, both documents have little effect on the terms and conditions of the Indus Waters Treaty. This paper is an attempt to explore the relevance of the provisions of the Treaty to the contemporary international law on non-navigational uses of the international rivers.

Keywords: International Law, Indus Waters Treaty, India, Pakistan, World Bank, United Nations Convention on International Water Courses

Introduction

There are about 276 international river basins and freshwater lakes in the world,¹ which cover almost half of the earth's surface and are shared by

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¹ The United Nations reported in 1977 that there were 214 transboundary river basins worldwide. See, Register of the International Drainage Basins, Report of the Secretary General of the United Nations (UN DOC, E/C 7/71, 11 March 1977). The same figure was again provided in another UN document published in 1978. See, United Nations, Register of International Rivers, drafted by the Center for Natural Resources, Energy and Transport of the Department of Economics and Social Affairs. However, due to the certain changes in the international boundaries and emergence of new states, the numbers of the international river basins has also increased. Gleick estimated 261 international river basins. See, Peter Gleick, *The*

two or more than two countries². Due to the differences over the uses of shared waters and increasing demand of fresh water, international river basins have become the most critical and complex issue in the various regions of the world. After the World War-I, various states started activities to utilize shared waters other than navigational purposes. Consequently, disputes over the shared waters emerged among the riparian states and a dire need of international law was felt to address the uses of international rivers other than navigation. At that point, there were four conflicting theories to address the rights and responsibilities of riparian states. The first doctrine is 'absolute territorial sovereignty', which allows a riparian state to use the water of an international river in any way within its limits, as it deems appropriate, without considering any damage or injury to other co-riparian nations. This theory denies the water rights of down-stream states and is mostly supported by the up-stream nations. The second doctrine is 'Absolute Territorial Integrity', which is completely opposite to the 'Absolute Territorial Sovereignty'. It advocates the rights of down-stream states and demands unrestricted water flow of a river into their territories from the up-stream nations. At the same time, it establishes an obligation for upper riparian states, not to create any obstacle in the natural flow of the stream to the down-stream states. Third doctrine is 'Limited Territorial Sovereignty and Integrity', which advocates right of each riparian state to utilize an international river passing through its boundaries in such a way that its uses do not harm the right of other co-riparian. Fourth doctrine is 'Community of Interests', which considers the entire river basin as an economic unit. According to this theory, water rights of all basin states are vested in a joint body of all basin states or water is apportioned by an agreement or treaty or according to proportionality.³

As a result, some international institutions and scholarly organizations started activities to codify international law related to the

World's Water 2000-2001, The Biannual Report on Freshwater Resources (London: Oxford University Press, 2000), p. 219. Some other documents of United Nations claim that there are 263 international rivers basins. See, United Nations, International Decade for Action 'Water for Life' 2005-2015. www.un.org/waterforlifedecade/transboundary_waters.shtml, accessed 12 July 2015.

² 'United Nations Watercourses Convention Enters Into Force', Centre for Water Law, Policy and Science, University of Dundee. 17 August 2014. <http://www.dundee.ac.uk/water/news/2014/Article/united-nations-watercourses-convention-enters-into-force.php>, accessed 12 July 2015.

³ S.M. Salman and K. Uperty, *Conflict and Cooperation on South Asia's International Rivers* (Washington, DC: The World Bank, 2002), 13-17.

uses of international rivers other than navigation. The International Law Institute (IIL), International Law Association (ILA) and International Law Commission (ILC) played a vital role in the codification and development of International Water Law by adopting various rules and resolutions. The International Court of Justice (ICJ) is also considered an important body of this sort. The Helsinki Rules (1966) and the Berlin Rules (2004) are most important contributions of the ILA. It is worth mentioning that Helsinki Rules have been incorporated in United Nations Convention on International Watercourses (UNCIW), which was adopted by the UN General Assembly on May 21, 1997 and came into force in 2014, after the ratification of 35 member states.⁴

Helsinki Rules (1966) allows all riparian nations to utilize the waters of a transboundary river in an equitable and reasonable way within its territorial jurisdiction. The UNCIW also ensures conservation, development, management, protection and utilization of a transboundary river, which is largely based on the Helsinki Rules of ILA.

The Berlin Rules (2004) of ILA is a more detailed and comprehensive document consisting of 73 Articles and 14 parts. It addresses issues of management related to the both national and international watercourses in a comprehensive, unified and integrated way. The Berlin Rules differ from Helsinki Rules (1966) and UNCIW (1997) in a sense that the both of the former documents deal with only the management of international watercourses but the scope of the Berlin Rules was extended to the national and international watercourses. Both Helsinki Rules and UNCIW develop the right to reasonable and equitable share of each riparian state while the Berlin Rules establish the obligation for every riparian nation to administer a common waterway in a reasonable and equitable manner.⁵

In addition to the contributions of IIL, ILA and ILC, the communities of the basins also contributed very well to the management and development of international river basins. Based on mutual interests and mutual understanding, these communities have signed several agreements and treaties that are considered an important source of international water law for the uses of international waterways. Among these treaties, the Indus Waters Treaty (IWT) is the most significant document which India and Pakistan signed on 19th of September 1960 in Karachi with the remarkable efforts of the World Bank. Being a

⁴ *Ibid.*

⁵ S.M. Salman, 'The Helsinki Rules, The UN Watercourses Convention and the Berlin Rules: Perspectives on International Water Law', *Water Resources Development*, 23:4 (2007), 625-40.

signatory of the IWT, responsibilities of the Bank have also been specified in Article V,⁶ X⁷ and Annexure F, G and H.⁸

Relevance of Indus Waters Treaty to International Water Law

The IWT is the most comprehensive and complex document. Its origin, its integration to the customary international law and its mechanism of water allocation make it a unique instrument. Furthermore, the Treaty has involved various legal processes and numerous rules and principles of water sharing and management have been adopted in its mechanism. Several agreements, treaties and water laws have been guided by its successful mechanism. This paper is an effort to trace out the relevance of international water laws, conventions and treaties with IWT.

To establish friendly relationship between India and Pakistan, without addressing the Indus waters dispute, was not an easy task for both riparian countries. However, IWT made it possible for both countries to develop their part of the IRB. Indeed, the Treaty proved to be the most successful instance of peace in the region, and resultantly, it opened the ways of development in the both riparian states. Both states agreed in the text of the Treaty that 'nothing contained in this treaty shall be construed by the parties as in any way establishing a general principle of law or any precedent'⁹. The IWT was adopted by the ILA in the context of its Helsinki rules (1966) on the use of water from international waterways. The Treaty was signed about six years before the Helsinki Rules, so the Helsinki Rules had little effect during the negotiations that led to the IWT or the terms and conditions of the agreement.¹⁰

Indus River basin (IRB) is spread over the territories of four countries.¹¹ Unlike the UNCIW (1997) and Helsinki Rules (1966), the IWT does not take into account the concept of 'drainage Basin' which considers the entire Basin as a single unit. During the process of negotiations, the World Bank presented the river basin approach and idea

⁶ *Indus Waters Treaty*, Article V, Financial Provisions, Lahore: Pakistan Printing Corporation, 1960, 7.

⁷ *Ibid.*, Article X, Emergency Provisions, 9.

⁸ Annexure F contains provisions regarding the appointment of Neutral Expert, Annexure G provides details about the composition and procedure of Court of Arbitration and Annexure H contains provisions about the Transitional Arrangements (For more details see, *Draft of the Indus Waters Treaty*).

⁹ *Indus Waters Treaty*, Article XI (2), 5.

¹⁰ N.D. Gulhati, *Indus Waters Treaty: an Exercise of International Mediation* (New Delhi: Allied Publishers, 1973), 329.

¹¹ Indus Basin covers the territories of Afghanistan, China, India and Pakistan.

of integrated water management. The Indus Rivers System was divided into eastern and western groups between Pakistan and India.

Principles of International Water Law

Keeping in view the various theories, several general and customary principles of international law emerged during the last two centuries to deal with the issues of transboundary water resource management. These principles have been incorporated and recognised by several international agreements, treaties and conventions of the modern regimes. For instance, the Helsinki Rules of ILA, (1966) and UN Watercourses Convention (1997) are largely based on these principles.¹²

Principle of Reasonable and Equitable Utilization

This Principle is generally recognised as the fundamental principle of international law on the uses of transboundary rivers other than navigational purposes. It is considered as the subset of the doctrine of limited territorial sovereignty. Both the UN Watercourses Convention (1997) and the Helsinki Rules (1966) incorporated it.¹³

Equality of rights and shared territorial sovereignty are the foundations of this principle. It does not mean that all co-riparians have equal share of waters of the same international watercourse. To determine the reasonable and equitable share, relevant factors¹⁴ must be taken into account. It recommends balance in interests of all parties to adjust their requirements and usages. This principle has generally been endorsed by various judicial bodies in their decisions, international codifications and state practices.¹⁵

This principle was endorsed by the ICJ in *Gabcikovo-Naymaros* Project case in 1997. It was also incorporated in Articles IV, V, VII, X

¹² Muhammad M. Rahaman, 'Principles of International Water Law: Creating Effective Transboundary Water Resources Management', *International Journal of Sustainable Society*, 1:3 (2009), 207-23.

¹³ Richard Paisley, 'Adversaries into Partners: International Water Law and the Equitable Sharing of Downstream Benefits', *Melbourne Journal of International Law*, 3:2 (2002), 280-300.

¹⁴ These relevant factors are the geography and hydrology of the basin, population dependent on waters, social and economic needs of the each basin state, existing uses of waters, future needs of the each basin state, availability of other resources and climatic and ecological factors. See, 1966 Helsinki Rules and 1997 UN Convention on International Watercourses. See also, Rahman, 2009, 214.

¹⁵ Patricia Birnie, Alan Boyle and Cathrine, *International Law and the Environment* (New York: Oxford University Press, 2009), 356.

and XXIX (4) of the UN Watercourses Convention (1997), Articles 5, 6, 7, 15, 16, 17 and 19 of the Helsinki Rules (1966), Articles 10.1, 12, 13, 14 and 16 of Berlin Rules (2004) and Article 2.2c of the 1992 UNICEF Water Convention.¹⁶

The principle of 'equitable and reasonable utilization' was also adopted in the IWT and indeed, the mechanism provided by the Treaty on the basis of this principle, played a vital role in the development of the Indus Basin. However, real allocation to India and Pakistan under the Treaty was not equal. It was 20 and 80 percent respectively. But the allocation of water is equitable on the basis of factors, described in Article 5 of the UNCIW.¹⁷ Table 1 shows the relevance of IWT with international water law.

Table 1: Relevance of Indus Water Treaty with Internationally Accepted Principles of Water Management¹⁸

Internationally Accepted Principles of Water Management	Indus Waters Treaty	Helsinki Rules (1966)	UN International Watercourses Convention (1997)
Equitable & Reasonable Uses	Equitable water utilization, i.e., 20:80 percent based on demand and population	Articles iv, v, vii, x and xxix (4)	Articles 5, 6, 7, 15, 16, 17 and 19
Not to cause Significant Harm	Article IV (2)	Articles v, x, xi and xxix (2)	Articles 7, 10, 12, 15, 16, 17, 19, 20, 21(2), 22, 26(2), 27, 28(1) and 28(3)
Exchange of Information and	Articles VI, VII and VIII	Articles xxix (1), xxix (2) and	Articles 5(2), 8, 9, 11, 12, 24(1), 25(1), 27, 28(3)

¹⁶ Rahman, 2009, 207-23.

¹⁷ Trilochan Upreti, *International Watercourses Law and Its Application in South Asia* (Kathmandu: Pairavi Prakasha Publishers & Distributors, 2006), 62.

¹⁸ Mary Miner, 'Water Sharing between India and Pakistan: A Critical Evaluation of the Indus Waters Treaty', *Journal of Water International*, 34:2 (2009), 204-16. See also, Rahman, 2009, 207-23.

Cooperation		xxxi	and 30
Negotiations, Consultations and Notification	Article IV (10)	Articles xxix sub clauses (2), (3) and (4), xxx, xxxi	Articles 3 (5), 6 (2), 11-19, 24 (1), 26 (2), 28, 30
Disputes Settlement by Peaceful Means	Article IX, Annexure F and G	Articles xxvi, xxxvii, xxix, xxxi, xxxiv	Paragraph 1, Article 33.

IWT (Articles II and III) establishes the distribution of water between India and Pakistan and creates a sort of territorial division that has been adopted and defined by UNCIW in 1997.¹⁹ Besides the mechanism of water distribution, the utilization of waters of the Indus River System was the most laborious task but it was done by dividing the IRB into two parts. Although, the IWT did not take into account the ‘watercourse’ or ‘drainage basin’ concept which considered the entire basin as a single unit but it had been incorporated in both Helsinki Rules (1966) and UNCIW (1997). Rather, the rivers of the Indus System were divided into eastern and western groups with specified consumptive and non-consumptive uses. The concept of consumptive and non-consumptive use is contradictory to the Lake Lanoux decision.²⁰ Other treaties like Kosi, Gandaki and Mahakali between Nepal and India, and the Ganges between India and Bangladesh specify water shares of concerned states but the IWT does not support the concept of water sharing from the common watercourse.

¹⁹ Muhammad Siyad, ‘Helsinki Rules and Indus Waters Treaty’, *Journal of Himalayan and Central Asian Studies*, 9:3 (2005), 79-95.

²⁰ The decision is related to the rights and utilization of waters of the Lake Lanoux between France and Spain. See for details, Bolla Petren, de Luna, Reuter, and De Visscher, ‘Lake Lanoux Arbitration (France v. Spain)’, *Ecolex*. 16 November 1957. <http://www.ecolex.org/ecolex/ledge/view/RecordDetails?id=COU-143747&index=courtdecisions>, accessed 17 October 2015.

Principle of Obligation of Riparian States not to Cause Significant Harm

Eckstein regards this principle as a subset of the doctrine of ‘limited territorial sovereignty’.²¹ It states that no riparian nation can be allowed to utilise an international stream passing through its boundaries in such a manner that would cause serious injury to the other riparian nations or their environment, human safety and health, living organisms of river system and to the beneficial use of waters. This principle is widely accepted by the scholars and experts of the international law.²² It is a moral and legal obligation of every riparian nation to report any development in its part of the watershed that could cause serious damage to other co-riparian states. The principle of ‘not doing significant damage’ (*sic utere*)²³ derives from Roman law, which is recognized by all river communities, but is generally rejected by the up-stream countries. However, the question ‘how ‘harm’ becomes “significant harm”’ requires a detailed answer. It is also recognized by many international treaties, agreements and conventions and now it has become important portion of customary international water law.²⁴ It can be traced in the Articles V, X, XI, and XXIX (2) of the 1966 Helsinki Rules, Articles 7, 10, 12, 15, 16, 17, 19, 20, 21.2, 22, 26.2, 27, 28.1 and 28.3 of the 1997 UN Watercourses Convention, Articles 2.1, 2.3, 2.4 and 3 of the 1992 UNESCO Convention and many more.²⁵

In case of IWT, this principle has been accepted by both India and Pakistan and it ensures water rights of the both states. Article IV (2) of the Treaty binds both states to avoid any material damage to other party and Albert E. Utton declared it consistent with corfu Channel and Trail Smelter cases.²⁶ As decision of Trail Smelter case states that

²¹ Gabriel Ekstein, ‘Development of International Water Law and the UN Watercourse Convention’, in Anthony Turton and Roland Henwood, *Hydropolitics in Developing World: A Southern African Perspective* (Pretoria, South Africa: University of Pretoria, African Water Issues Research Unit, 2002), 81-96.

²² Abu Raihan Muhammad Khalid, ‘The Interlinking of Rivers Projects in India and International Water Law: An Overview’, *Chinese Journal of International Law*, Vol. 3, 553-70.

²³ The principle ‘not to do significant harm’ is identified with Roman law; *sic utere tuo ut alienum non ladeas* (so use your property as not to harm another).

²⁴ Ekstein, 2002, 81-96.

²⁵ Rahaman, 2009, 207-23.

²⁶ Albert E. Utton, ‘International Water Quality Law’, *Natural Resources Journal*, 13:4 (1973), 282-313.

International Water Law does not allow any riparian nation to utilise an international stream passing through its boundaries in such a manner that would cause serious damage to the territory or properties of other riparian nations, when the case is of serious consequences and have clear evidence.²⁷ Trail Smelter arbitration has been widely recognized by the international community and it has been incorporated in various international agreements to protect the riparian nations from significant harm. At present, it is viewed as the part of customary international water law. Keeping in view its positive results, its mechanism was applied in the IWT. Article IV (2)²⁸ of the Treaty binds both India and Pakistan to avoid any material damage and significant harm to the other party by using a water channel.

Article VI (10)²⁹ of the IWT stated that each party would take possible measures to prevent undue pollution of the rivers and to treat the industrial waste before throwing into the rivers. Afterwards, this Article was adopted by the ILA in chapter (3) of Helsinki Rules (1966) regarding the prevention of river pollution. Article VI, paragraph 11³⁰ of the IWT requires the parties concerned to take the necessary measures to recover and restore the wood or other property of an owner, floated or floating in rivers, subject to the corresponding expenses paid by the owners. This Article was also incorporated in provisions regarding timber floating and navigation of chapter 5 of the Helsinki Rules (1966).

²⁷ Upreti, 2006, 62.

²⁸ Article VI (2) states: 'Each party agrees that any Non-Consumptive Use made by it shall be so made as not to materially change, on account of such use, the flow in any channel to the prejudice of the uses on that channel by the other party under the provisions of this Treaty. In executing any scheme of flood protection or flood control each Party will avoid, as far as practicable, any material damage to the other Party, any such scheme carried out by India on the Western Rivers shall not involve any use of water or any storage in addition to that provided under Article III'.

²⁹ Article VI (10) states: 'Each Party declares its intention to prevent, as far as practicable, undue pollution of the waters of the Rivers which might affect adversely uses similar in nature to those to which the waters were put on the Effective Date, and agree to take all reasonable measures to ensure that, before any sewage or industrial waste is allowed to flow into the Rivers, it will be treated, where necessary, in such manner as not materially to affect those uses: Provided that the criterion of reasonableness shall be the customary practice in similar situations on the Rivers'.

³⁰ Article VI (11) states: 'The Parties agree to adopt, as far as feasible, appropriate measures for the recovery and restoration to owners, of timber and other property floated or floating down the Rivers, subject to appropriate charges being paid by the owners'.

Principles of Information Exchange and Cooperation in International River Basins

These principles demand cooperation of the every riparian nation for the development of the river basin, exchanging information about present state of the watercourse and their proposed utilization of the river in future.³¹

These principles have also been incorporated in several modern international legal instruments, for example, Articles XXIX sub clause (1), XXIX sub clause (2) and XXXI of 1966 Helsinki Rules, Articles 5.2, 8, 9, 11, 12, 24.1, 25.1, 27, 28.3 and 30 of the 1997 UN Watercourses Convention, Articles VI and VIII of the 1960 Indus Water Treaty and Articles 6, 9, 11, 12, 13, 15 and 16 of the 1992 UNESCO Water Convention.³²

The role of PIC, established under the Article VIII of IWT, is very important in preventing concerned states from indulging into water war. The system of data exchange and future cooperation, provided in the Indus Waters Treaty, was inspired by the various treaties and agreements, such as US-Mexico Treaty of 1946 regarding the uses of the Colorado, Tijuana and Rio Grande Rivers. These agreements have a great impact in the evolution of norms, especially regarding the process of dispute settlement, which was later incorporated in the Indus Waters Treaty.³³ Article VI of the Indus Waters Treaty (regarding the exchange of data), Article VIII (about the institution of PIC) and Article IX (providing details about the procedure of dispute settlement) provide precedent for chapter 6 of the Helsinki Rules (1966) of ILA.³⁴ In addition, the principle of data exchange and future cooperation has also been incorporated by the various legal instruments and treaties, such as UNCWI (1997), the Mekong River Agreement (1995) and the Ganges River Waters Treaty (1996).

Principles of Prior Notification, Negotiation and Consultation

These principles provide rights of prior notice, negotiation and consultation to all riparian nations, in a case, where proposed utilization by a riparian nation may cause serious injury or harm to the interests and

³¹ Birnie, Boyle and Cathrine, 2009, 322.

³² Rahaman, 2009, 207-23.

³³ V.G. Hedge, 'Neutral Expert and Indus Waters Treaty', *Journal of Himalayan and Central Asian Studies*, 9:3 (2005), 47-59.

³⁴ Mary Miner, 'Water Sharing between India and Pakistan: A Critical Evaluation of the Indus Waters Treaty', *Journal of Water International*, 34:2 (2009), 204-16.

rights of other co-riparian. All the above mentioned principles are also recognised by several international agreements, treaties and conventions.³⁵ However, these are often opposed by the upper riparian states. As Birnie & Boyle describe that during the deliberations on the UN Watercourse Convention (1997) in UN General Assembly, three upper riparian states (Ethiopia, Rwanda and Turkey) opposed these principles.³⁶

The International Law Association (ILA) adopted Article 3 of its complementary rules on international resources in 1986 at Seoul Conference. It says that if a riparian nation suggests to undertake, or allows to undertake a project that may cause substantial effect on the rights of other co-basin states, it will be the duty of such state to give a notice of the project to other co-basin states that has adequate data, information and specification for proper assesment of the effects of that project.³⁷

So, these principles have also been incorporated in several legal instruments of regional and international level, for example, Articles XXIX sub clause (2), XXIX sub clause (3), XXIX sub clause (4), XXX and XXXI of the Helsinki Rules (1966), Articles 3.5, 6.2, 11-19, 24.1, 26. 2, 28 and 30 of UN Watercourses Convention (1997), Articles VII (2) and VIII of the Indus Water Treaty (1960), Articles 57, 58, 59 and 60 of Berlin Rules (2004) and Article 10 of the UNESCO Water Convention (1992).³⁸

Principle of Peaceful Settlement of Disputes

This principle requires peaceful settlement of conflicts over the management and water apportionment of an international watercourse between or among the co-basin nations, in a case, concerned nations cannot reach an agreement by negotiations.³⁹ This principle has provided a base to many international agreements, conventions and treaties for peaceful settlement of riparian conflicts. For example, it has been incorporated in Articles XXVI and XXXVII of Helsinki Rules (1966) of

ILA, Article 33 of 1997 UN Watercourses Convention and Article IX with Annexures F and G of the Indus Water Treaty (1960).⁴⁰

It is very important to restore peace and cooperation in a region to achieve the target of development and for this purpose an institutional mechanism is generally established. The IWT has also a complex mechanism of dispute settlement. Initially, all disputes are examined by the Permanent Indus Commission (PIC) which has been established according to the Articles VI, VII and VIII of the IWT. From there onward, two methods are provided in the Treaty: the disputes of purely technical nature are addressed by the neutral expert, and disputes of serious and grave nature that neutral expert cannot examine, are addressed by the International Court of Arbitration.

The PIC is composed of two Commissioners,⁴¹ one from the each, India and Pakistan. It was established to make cooperation between the both countries for the implementation of the Treaty. It is also responsible for the management of the Indus Basin, sharing of information and exchange of data on regular basis. The PIC has to meet once a year on regular basis, alternatively in India and Pakistan.⁴² The Commission presents its report on its work for the year ending on March 31 to the respective governments before June 1 of each year.⁴³ The institution of PIC was envisaged by the International Court of Joint Commission, provided in the boundary water treaty between Canada and the United States of America.⁴⁴

Article IX of the IWT describes mechanism of disputes resolution. It states, if any question arises regarding the interpretation or implementation of IWT, shall be first examined by the PIC and decision will only be made by agreement. There is no procedure of voting involved and the both commissioners have to agree or disagree. If the Commission does not agree on any solution and one of the commissioners opines that matter falls under the scope of 23 areas, provided in part one of the Annexure F⁴⁵ then, it will be deemed that a difference has arisen and it will be referred to a Neutral Expert for final

³⁵ Rahaman, 2009, 207-23.

³⁶ Birnie, Boyle and Cathrine, 2009, 322.

³⁷ Rahaman, 2009, 207-23.

³⁸ *Ibid.*

³⁹ United Nations, *Handbook on the Peaceful Settlement of Disputes between States* (New York: United Nations Organization, 1992), 9-13. United Nations Organization, <http://www.un.org/law/books/HandbookOnPSD.pdf>, accessed 13 February 2013.

⁴⁰ Rahaman, 2009, 207-23.

⁴¹ The Commissioner has to be a high ranking engineer, especially competent in the field of hydrology and water use. (Indus Waters Treaty 1960, Article VIII, 1960).

⁴² *Indus Water Treaty*, Article VIII [5].

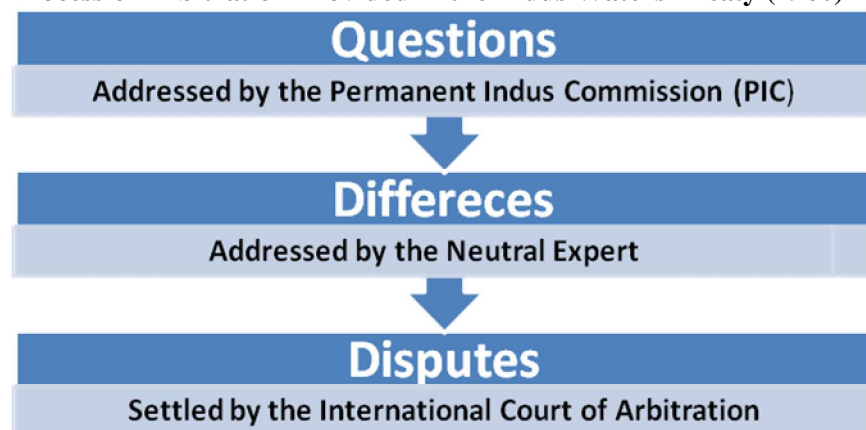
⁴³ *Ibid.*, Article VIII [8].

⁴⁴ Siyad, 2005, 60-95.

⁴⁵ For details of the 23 areas see draft of the Indus Water Treaty 1960.

settlement according to Annexure F, part two⁴⁶ of Treaty. And if the 'difference' does not fall within the scope of 23 areas or the Neutral Expert declares a difference as a 'dispute' the both governments will negotiate with the assistance of mediators if they so desire. If the issue remains again unresolved, it will be submitted to the International Court of Arbitration⁴⁷ for final decision.⁴⁸

Process of Arbitration Provided in the Indus Waters Treaty (1960)



It is worth noting that any possible arbitration has to remain within the parameters of IWT.⁴⁹ Most of the international treaties, agreements and conventions have recognized and incorporated the principle of dispute settlement, provided by the Indus Waters Treaty, e.g., Article XXVII of the Helsinki Rules (1966) and Article 33 (1) of the UNCITW (1997). It has also been recognized by the important treaties of the modern era; for instance, Articles 34 and 35 of the Mekong River Basin Agreement (1995), Article 7 of the Shared Watercourse System in South African

Community Protocol (1995), and Articles 22 to 24 of the Sava River Basin Agreement 2002.⁵⁰

Conclusion

The effectiveness of the Indus water treaty in the research literature has been discussed by repeating the previous discussion on its history, nature, implementation and subsequent management procedures, but a little work was done on the scope and relevance of IWT with particular reference to International Water Law on non-navigational uses of the international waterways. Taking into consideration different principles of international water law, it can be concluded that IWT has great relevance for international law on non-navigational uses of international waterways. The treaty has several provisions similar to international law, agreements and treaties, since some of its provisions are incorporated by previous agreements and some of its provisions have been incorporated into different conventions, treaties and agreements that have been formulated after the treaty.

⁴⁶ For details see part 2 of the Annexure F of the Indus Waters Treaty 1960.

⁴⁷ The Court of Arbitration is to consist of seven members, two to be designated by each of the states, and other three to be selected by the agreement of the parties concerned, or failing that, by the designated individuals. One of the neutral members must be a person, qualified for the chairmanship of the Court of Arbitration and other two should be an engineer and international lawyer respectively (*Indus Waters Treaty 1960*, Annexure G [4]).

⁴⁸ *Indus Waters Treaty*, Articles IX [1][2][3][4][5].

⁴⁹ *Indus Waters Treaty*, Annexure G (2).

⁵⁰ Rahaman, 2009, 207-23.