

## An enduring agreement bridging India-Pakistan ties

(GS Paper 2, International Relation)

### Why in news?

- Recently, the 118th meeting of the Permanent Indus Commission (PIC) comprising the Indus Commissioners of India and Pakistan was held in New Delhi.
- Following this, it is important to reflect on the struggles and the high stakes that the two countries have experienced to ensure a long-lasting treaty on the one hand and the lessons that can be drawn to address multiple concerns pending in the region on the other.



### A bright spot:

- The Indus Waters Treaty (IWT) is an established water-distribution treaty between India and Pakistan to use water in the Indus and its tributaries.
- In the words of former U.S. President Dwight Eisenhower, the treaty has since its existence in 1960, served as “one bright spot ... in a very depressing world picture that we see so often”, resolving the long-standing differences between India and Pakistan since Partition.

### **Cooperative mechanism under Indus Waters Treaty:**

- After years of arduous negotiations, the Indus Waters Treaty was signed in Karachi on September 19, 1960, by then Indian Prime Minister Jawaharlal Nehru and then Pakistani President Ayub Khan, negotiated by the World Bank.
- The treaty establishes a **cooperative mechanism** for exchanging information between the two countries regarding the use of the western rivers (Indus, Jhelum, Chenab) allocated to Pakistan and **the eastern rivers (Ravi, Beas, Sutlej) allocated to India**.
- However, the treaty also underlines provisions allowing each country to use the rivers allocated to the other for certain purposes such as irrigation and hydroelectricity.
- The Permanent Indus Commission, which has a commissioner from each country, oversees the cooperative mechanism and ensures that the two countries meet annually (alternately in India and Pakistan) to discuss myriad issues emerging from the treaty.
- In 2022, the commission met twice, in March in Islamabad, Pakistan, and then in New Delhi, in May.

### **Causes of contention:**

- India-Pakistan relations have most often been embroiled in the high politics of the region's history resulting in a **political stalemate between the two countries**. It is a rare feat that despite the many lows in India-Pakistan relations, talks under the treaty have been held on a regular basis.

### **Differences over hydroelectric power plants:**

- Nonetheless, throughout its existence, there have been many occasions during which differences between the two countries were discernible.
- For instance, both countries held different positions when **Pakistan raised objections regarding the technical design features of the Kishanganga (330 megawatts) and Ratle (850 megawatts) hydroelectric power plants located on the tributaries of the Jhelum and the Chenab**, respectively, designated as "Western Rivers".
- However, under Articles III and VII of the treaty, India is permitted to construct hydroelectric power facilities on these rivers (subject to constraints specified in Annexures to the Treaty).

### **Pakistan approached the World Bank in reference to Article IX Clause 5 of the treaty:**

- Differences were also discernible when Pakistan approached the World Bank to facilitate the setting up of a court of arbitration to address the concerns related to these two projects referred to in Article IX Clause 5 of the treaty, and when India requested the appointment of a Neutral Expert referent to Clause 2.1 of Article IX on the settlement of differences and dispute of the treaty, respectively. Disagreements continued on the issue with many meetings brokered by the World Bank to resolve their disagreements. But it was without any success.

### **Resolution by World Bank:**

- **Eventually, on March 31, 2022**, the World Bank, in view of the differences, decided to resume two separate processes by **appointing a neutral expert and a chairman for the court of arbitration**. However, the two parties have not been able to find an acceptable solution.
- The appointment of a neutral expert will find precedence to address the differences since under Article IX Clause 6 of the treaty provisions, Arbitration 'shall not apply to any difference while it is being dealt with by a Neutral Expert'. Therefore, the two separate processes are more likely to generate technical and legal repercussions.

### **Invoking Article VII Clause 2 on future cooperation by Pakistan:**

- Similarly, Pakistan, invoking Article VII Clause 2 on future cooperation, raised objections on the construction and technical designs of the **Pakal Dul and Lower Kalnai hydropower plants** located on Marusudar river, a tributary of the Chenab, in Kishtwar district of Jammu and Kashmir.
- The 117th and the 118th meetings of the Permanent Indus Commission held in 2022 deliberated this issue. Here, India has assured Pakistan that all the concerned projects are treaty compliant.

### **Indian concerns:**

- Similarly, India has raised concerns on issues such as Pakistan's blockade of the Fazilka drain, which resulted in water contamination in the border areas, referent to Article II Clause 3 and Article IV Clause 4 and 6 of the treaty.

- During the 117th bilateral meeting in March, Pakistan assured India of all possible actions to ensure the free flow of the Fazilka drain into the Sutlej.
- Notwithstanding the differences, both countries have so far endeavoured to amicably address all such issues with both sides assuring to implement the treaty in letter and spirit.

#### **Lessons from the treaty:**

- Although there are many outstanding issues, the treaty is important and many lessons can be drawn. The treaty is **an illustration of a long-standing engagement** between the conflicting nations that has stood the vagaries of time. It has withstood tensions, including conflict, providing a framework for cooperation.
- The treaty, therefore, is considered one of the oldest and the most effective examples of water management cooperation in the region and the world. The 118th bilateral meeting corroborates its effectiveness.
- With the exception of differences on a few pending issues, both countries have avoided any actions resulting in the aggravation of the conflict or acted in a manner causing conflict to resurface. The recent bilateral meeting points to mutual respect, communication and a sharing of information, despite differences.

#### **Way Forward:**

- The treaty can serve as an edifice to address the challenges of climate change. Recognising common interests and mutual benefits, India and Pakistan can undertake joint research on the rivers to study the impact of climate change for ‘future cooperation’ (underlined in Article VII).
- The Indus Waters Treaty also offers great potential for cooperation and development in the subcontinent which can go a long way in ensuring peace and stability.
- Given that both India and Pakistan have been committed to manage the rivers in a responsible manner, the Treaty can be a reference point to resolve other water-related issues in the region through regular dialogue and interaction.