

Research Project for the Degree of LL.B.

**INDUS WATERS TREATY AND BEYOND: A STUDY OF
PAKISTAN'S TRANSBOUNDARY WATER RIGHTS UNDER
CUSTOMARY INTERNATIONAL LAW**



This research project is submitted in partial fulfilment of the requirements for the degree of LL.B.

Research Project Supervisor

Saadia Zahoor Abbasi

Submitted by

Sana Taha Gondal (01-177122-031)

Saleena Umar (01-177122-030)

Shahzad Yousaf (01-177122-032)

19 May, 2017

Department of Law

Bahria University, Islamabad

Research Project for the Degree of LL.B.

SUPERVISOR'S APPROVAL

I hereby, forward this work done by

Sana Taha Gondal, Saleena Umar, and Shahzad Yousaf,

to the Research Committee for final evaluation.

Name of Supervisor: Saadia Zahoor Abbasi

Supervisor's Signature: _____

8th May, 2017

Department of Law

Bahria University, Islamabad

Research Project for the Degree of LL.B.

DECLARATION OF ETHICAL CONDUCT IN RESEARCH

We, as students of Bahria University, hereby declare that firstly, we have abided by the research ethics while writing this research project.

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Thirdly, we have subjected this work to plagiarism check before submitting the research project.

Date: 8th May, 2017

Degree: LL.B.

Department: Law

Name of Supervisor: Saadia Zahoor Abbasi

Name and Signature of Students: Sana Taha Gondal _____,

Saleena Umar _____, and

Shahzad Yousaf _____.

ACKNOWLEDGMENT

Without Allah's help, this could not have been.

Alhamdulillah

We express our gratitude to our families, whose unwavering support has been monumental at every step of the way; to our supervisor, who has guided and helped us, and without whom, this journey would have been directionless; to our teachers, who have taught us everything we know, and helped us realize the fact that we do not know much; and to our friends, who have supported us through thick and thin.

Sana Taha extends a special note of appreciation to Sahar Haroon, Mah e Laqa Meraj, and Ayesha Mahsud, who were always there to haunt her thesis-induced nightmares; and to the Research Society of International Law, Pakistan, where she had the opportunity of conducting her share of the research for this project.

We hope and pray that our efforts have produced something worthwhile. (Ameen)

Say "Have you considered: if your water was to become sunken
[into the earth], then who could bring you flowing water?"

- *The Holy Quran 67: 30, Translation by Sahih International*

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LIST OF ABBREVIATIONS

BCM.....Billion Cubic Meters

CIL.....Customary International Law

EIA.....Environmental Impact Assessment

GDP.....Gross Domestic Product

ICJ.....International Court of Justice

ICSID.....International Centre for Settlement of Investment Disputes of the World Bank

ILA.....International Law Association

ILC.....International Law Commission

IWT.....Indus Waters Treaty, 1960

PCA.....Permanent Court of Arbitration

PIC.....Permanent Indus Commission

UN.....United Nations

UNDP.....United Nations Development Project

UNECE.....United Nations Economic Commission for Europe

UNGA.....United Nations General Assembly

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ABSTRACT

Pakistan and India share the Indus basin as co-riparian states. The Indus Waters Treaty, concluded over fifty years ago, does not incorporate certain challenges faced by Pakistan today. The customary international law, on the other hand, has developed principles that govern the Indus basin in light of contemporary challenges. This research project discusses the Indus Waters Treaty, the subjects that are beyond its scope, and the possibility of interpretation of the treaty in light of customary international law. After analysing the extent to which the Indus Waters Treaty can be interpreted to incorporate the principles that emerged after its conclusion, the next subject of discussion is the rights of Pakistan with, or without, the Indus Waters Treaty under customary international law. While studying customary international law, the state practice of India is evaluated to establish reciprocity between India's state practice and principles of customary international law. It is established that Pakistan can rely, for its claims against India, on certain principles, which are now part of customary international law. These include the equitable and reasonable utilization rule, the prevention of significant harm rule, the rules pertaining to exchange of data, notification and consultation, and the principle that India and Pakistan must cooperate *vis a vis* the Indus basin in a peaceful manner. Finally, recommendations are made to Pakistan for its future course of action.