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## **The Kabul River Basin Issue: Navigating International Legal Frameworks and the Path Toward Afghanistan-Pakistan Water Cooperation**

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**Abstract:** The Kabul River Basin is a shared transboundary resource by Afghanistan and Pakistan, serves as a vital source for water supply necessary for irrigation, hydropower generation, and domestic consumption. However, the lack of a binding water-sharing agreement has resulted in geopolitical tensions and issues in resource management. This study aims to analyze the legislative deficiencies and explore feasible frameworks for collaborative governance of the Kabul River Basin. This research employs a doctrinal legal analysis method to assess international water law, including the UN Watercourses Convention, the Helsinki Rules (1966), and customary international law, emphasizing principles such as equitable utilization, harm prevention, and cooperation. In bridging theory with practice, the research further incorporates comparative insights from established transboundary agreements, notably the Indus Waters Treaty (1960), to identify adaptable mechanisms. The results suggest that despite ongoing legal and political obstacles, compliance with international legal standards and collaboration with entities such as the International Court of Justice and the World Bank can facilitate conflict resolution. These findings highlight the potential for a bilateral agreement grounded in legal precedent and cooperative principles. Ultimately, the study contributes to the discourse on transboundary water governance by outlining legal pathways for sustainable, cooperative water governance in the KRB.

**Keywords:** Kabul River Basin; transboundary water issues; equitable utilization; water governance; water conflict resolution

### **Introduction**

Water is an essential natural resource that maintains life, drives commercial endeavours, and enables both environmental and social welfare. The governance of rivers shared by countries has distinct issues that require strong legal frameworks that ensure equal access, effective management, and dispute resolution (Syazwani et al., 2022). The Kabul River which originates in the Hindu Kush Mountains of Afghanistan and traverses into Pakistan's Khyber Pakhtunkhwa province, serving as a vital water resource for both countries (Mohammad et al., 2011). Afghanistan and Pakistan rely on KRB mostly for agriculture, industry, livestock, and home consumption. Both nations are significantly reliant on agriculture for sustenance and are experiencing rapid population development (Shabbir & Policy, 2022). It is essential for fulfilling water requirements for irrigation, drinking, and hydroelectric power generation, beneficial for millions of

individuals on either side of the border. Despite its importance, the Kabul River Basin continues to be one of the most challenging transboundary water issues in the region. The lack of a solid bilateral water-sharing agreement between Afghanistan and Pakistan has resulted in considerable tensions and disagreements over the allocation and control of the river's resources. As the upstream riparian state, Afghanistan has initiated extensive hydropower projects and irrigation initiatives in the Kabul River Basin (Moorthy & Bibi, 2023; Shams & Muhammad, 2023). These activities, encompassing the construction of dams and water diversion projects, have caused concerns in Pakistan, where water shortage is a significant issue exacerbated by a rapidly rising population and substantial dependence on agriculture (Munir et al., 2021). Pakistan, as the downstream riparian state, comprehends that Afghanistan's developmental initiatives may diminish the water flow into its borders, affecting its agricultural output and energy production (Panikkar et al., 2019).

Efficient management of transboundary water resources necessitates strong international legal frameworks and agreements that promote collaboration among nations sharing these essential resources. These agreements aim to govern the utilization, preservation, and distribution of water and guaranteeing that all riparian states have equitable access to water while mitigating the danger of conflict (Rizwan & Irfan, 2024). Currently, there exists no formal, comprehensive treaty between Afghanistan and Pakistan regarding the governance of the Kabul River's waters (Khan & Muhammad, 2023). The absence of such a framework is a significant concern for both states. The river's importance to both economies has led to ongoing tensions and disagreements over water allocation due to the lack of clear legal agreements, with minimal advancement towards a permanent resolution. The situation is further exacerbated by geopolitical factors and the lack of a neutral third-party mediation mechanism (Ranjan & Chatterjee, 2020; Yaqoob & Arjjumend, 2024). International law provides several principles and frameworks for transboundary water management, specifically the United Nations Watercourses Convention, 1997, and the Helsinki Rules, 1966, which underscore the principles of equitable and reasonable utilization and the prevention of significant harm to downstream states (Salman Salman, 2021). However, the effective application of these legal frameworks in the Kabul River issue has been limited. The lack of cooperation and mutual understanding between Afghanistan and Pakistan increases the issues present in the region.

This article argues that the issue regarding the Kabul River Basin (KRB) between Afghanistan and Pakistan can be effectively resolved through the strategic implementation of international legal frameworks specifically, binding treaties and customary international law which provide established principles such as equitable utilization and harm prevention, demonstrated by successful transboundary water agreements in other contexts, to navigate legal and political obstacles and establish a fair, sustainable, and enforceable water-sharing arrangement. Furthermore, the article enhances the current literature by addressing a fundamental gap in legal scholarship about the KRB, an underexplored yet geopolitically important transboundary water system. Although the majority of extant work emphasizes the Indus River system or general concepts of international water law, there has been no focus on the legal interactions between Afghanistan and Pakistan concerning the Kabul River. Furthermore, the paper presents a comparative legal analysis by assessing other effective transboundary water-sharing agreements, including the Indus Waters Treaty and International Court of Justice jurisprudence, so offering a refined comprehension of legal frameworks that foster equitable and sustainable collaboration. This research enhances the global dialogue on water diplomacy and contributes a focused, legally informed viewpoint to policy talks on South Asian water security.

## Methodology

### 1. Research Design

This study uses a doctrinal legal research methodology, which is fundamental to legal scholarship and entails a systematic examination of legal concepts, statutes, treaties, and case law (Roy, 2023). The emphasis is on analysing and integrating current international legal frameworks pertinent to transboundary water conflicts, specifically with the KRB, which is jointly managed by Afghanistan and Pakistan. This research seeks to clarify how established legal standards might resolve the intricacies of the Kabul River issue by

analysing legal instruments such as the United Nations Watercourses Convention (1997), the Helsinki Rules (1966), and the Berlin Rules (2004). This method enables a thorough comprehension of the legal responsibilities and entitlements of riparian governments, establishing a basis for suggesting fair and sustainable water-sharing agreements.

## 2. Sampling Method

The study used a purposive sampling method for legal doctrinal studies to identify pertinent legal documents, treaties, and case studies that illustrate the implementation of international water law concepts (Rai & Thapa, 2015). Essential documents comprise: United Nations Convention on the Law of Non-Navigational Uses of International Watercourses (1997), Helsinki Rules on the Utilization of International River Waters (1966), Berlin Regulations on Water Resources (2004), Indus Waters Treaty (1960) and Legal principles established by the International Court of Justice (ICJ). These documents are chosen for their pertinence in demonstrating the use of international law principles in settling transboundary water conflicts, offering comparative insights relevant to the Kabul River environment.

## 3. Data Collection Process

Data collection entails the acquisition of primary and secondary legal sources relevant to international water law and transboundary water management (Hamzani et al., 2023). Primary sources consist of international treaties, conventions, and case law, whereas secondary sources comprise academic publications, legal commentary, and reports from international organizations (Cowton, 1998). The collecting procedure emphasizes the extraction of information pertinent to concepts such as equitable and reasonable utilization, the requirement to avoid major harm, and the duty to comply. Furthermore, case studies such as the Indus Water's Treaty also analysed to comprehend the practical implementation of these ideas in analogous geopolitical circumstances (Salman, 2013).

## 4. Data Analysis

The analysis utilizes qualitative doctrinal methodologies to interpret the gathered legal documents (MD, 2019). This entails a thorough analysis of the legal documents to discern the fundamental principles regulating transboundary water allocation and their relevance to the KRB. A comparative analysis is performed to evaluate the resolution of analogous issues, emphasizing the efficacy of legal frameworks (Van Hoecke, 2013)(Van Hoecke, 2013)(Van Hoecke, 2013)(Van Hoecke, 2013)(Van Hoecke, 2013)(Van Hoecke, 2013)(Van Hoecke, 2013) and dispute resolution systems. The Indus Waters Treaty is a successful bilateral agreement, highlighting the significance of international mediation and legal frameworks in fostering enduring cooperation among riparian governments (Qureshi, 2017). The analysis seeks to extract lessons and best practices to guide the establishment of a comprehensive legislative framework for the KRB.

## The Findings and Discussion

### 1. The Legal Framework for Transboundary Water Management

The management of shared water resources necessitates the implementation of international legal standards that guarantee equitable, sustainable, and collaborative regulation of transboundary watercourses. The Kabul River is essential for Afghanistan and Pakistan, functioning as a principal water source for irrigation, personal use, and energy production. Despite its significance, the two states have failed to formulate a comprehensive, binding bilateral treaty for water-sharing, resulting in conflicts over the allocation of water resources (Panikkar et al., 2019). This section analyses the fundamental principles of international water law, encompassing the United Nations Watercourses Convention, 1997, the Helsinki Rules, and customary international law, and their relevance to the KRB issue.

### *The Convention on the Law of the Non-Navigational Uses of International Watercourses, 1997*

The United Nations Watercourses Convention, 1997 (the Convention) is considered the most comprehensive and authoritative international instrument regulating the use and protection of transboundary watercourses (Kadhim et al., 2020). This Convention, adopted by the United Nations General Assembly, aims to ensure the equitable and sustainable utilization of international watercourses, while simultaneously addressing pollution protection and the prevention of harm to riparian states (Stephen, 1998). The Convention represented a significant advancement in international water law, establishing a framework for collaboration among states sharing common water resources. It establishes essential principles for the management of such resources, particularly in contexts such as the KRB, where its waterway is jointly utilized by Afghanistan and Pakistan, both of which have conflicting interests and substantial dependence on the river's water for agriculture, energy, and various other necessities (Azeem A, S et al., 2023).

As an important international legal instrument, the Convention seeks to balance the conflicting demands of states that share water resources. The basic objective of the convention is to ensure that watercourses are utilized in a manner that harmonizes the economic and environmental interests of all riparian states, while also preserving the long-term sustainability of these water systems. Furthermore, the Convention aims to provide frameworks for fair governance, conflict resolution, and collaboration on shared water resources (Karbic, 2024). This treaty serves as the principal reference for states and international organizations engaged in the resolution of water conflicts, offering a framework of clear and widely acknowledged principles. Despite the importance of the Convention, 1997 in regulating transboundary watercourses, neither Afghanistan nor Pakistan are signatories or have ratified the Convention. The lack of official adherence to the Convention's provisions results in a legal vacuum in the management of the Kabul River's shared water resources. Both states persist in functioning beyond this international legal framework, which affects the management of the river and the settlement of associated conflicts. The essential Provisions of the Convention, 1997 that are relevant to the issue are discussed below.

### *Equitable and Reasonable Utilization*

A fundamental principle established in the Convention is the principle of "equitable and reasonable utilization". Article 5 stipulates that riparian states sharing a watercourse must utilize the resource equitably, considering criteria such as the basin's geographical characteristics, the population dependent on the resource, existing usages, and prospective future demands. This principle underscores that the use of shared water resources must be equitable, guaranteeing that no single riparian state is disproportionately privileged or discriminated. In the context of the KRB, this idea requires a meticulous evaluation of the requirements and interests of both Afghanistan and Pakistan. Afghanistan, as the upper riparian state, has historically maintained dominance over the river's flow, being the origin of the Kabul River. Pakistan, being the downstream state, is significantly dependent on water flow for agricultural irrigation, hydroelectric production, and household consumption (Taraky et al., 2024). The idea of equitable utilization suggests that Afghanistan is entitled to utilize the river's water resources for its development, provided it does not unjustly obstruct Pakistan's access to the water of the basin. Utilization of the river's water must be based on an assessment of the broader regional requirements and mutual interests of both states.

### *Obligation Not to Cause Significant Harm*

Article 7 of the Convention mandates that riparian states must refrain from inflicting serious harm on other states that share the watercourse. This is especially pertinent to the KRB conflict, as Afghanistan has been implementing substantial hydropower and irrigation initiatives in the upper parts of the KRB. These projects possess the capacity to substantially affect the downstream water flow, impacting Pakistan's water accessibility and disrupting established water-sharing patterns (Amit & Chatterjee, 2020). The no-harm principle requires that Afghanistan must implement all necessary measures to prevent significant harm to Pakistan, especially where the downstream state might experience detrimental consequences from changes to the river's flow. This principle indicates that Afghanistan should evaluate the effects of its water utilization initiatives, such as dam construction or irrigation projects, on Pakistan's water security. If these

projects lead to reduced water availability or adverse environmental effects in Pakistan, Afghanistan may be deemed liable under international law for violating the principle of preventing serious harm. Furthermore, in the context of the Kabul River issues, the no-harm principle also requires that Afghanistan's hydropower and irrigation projects be assessed for their potential downstream effects prior to their implementation. The development of significant infrastructure in the upper basin of the Kabul River may lead to detrimental effects on Pakistan's water security (Ahmad & Nafees, 2018). Therefore, the Convention establishes a legal framework enabling Pakistan to require Afghanistan to provide prior consultation before initiating any projects that may impact the river's flow. The principle of preventing significant harm is particularly relevant in the absence of a bilateral agreement on water-sharing between the two states, since it guarantees that unilateral actions by one riparian state do not adversely affect the other.

### *Obligation to Cooperate*

Article 8 of the Convention is a vital component that establishes the principle of cooperation among riparian states. This principle underscores that states sharing a watercourse are obligated to conduct good faith consultations and establish cooperative agreements for the management and preservation of shared water resources (Patricia & Aremu, Abimbola, 2021). It is based on the notion that collaboration is the most efficient method to avert conflicts and address the issues associated with shared watercourses (Mark & Warner, 2006). The absence of a formal water-sharing agreement for the Kabul River underscores a substantial deficiency in collaboration between Afghanistan and Pakistan. The Article 8 of the Convention encourages states to share information, synchronize water management programs, and collaboratively devise solutions for the sustainable utilization of shared water resources. This involves the formation of collaborative technical entities, the execution of cooperative scientific evaluations, and the establishment of mutually acceptable regulations for water distribution, which both parties may depend upon to prevent possible disputes. In the absence of cooperative approaches, the likelihood of increasing disputes about the Kabul River remains high, especially considering the already unstable diplomatic relations between Afghanistan and Pakistan.

Although the Convention, 1997, is efficient in supporting the equitable administration of water, neither Afghanistan nor Pakistan has joined the treaty. To address the Kabul River conflict and ensure the sustainable utilization of shared water resources, both states must ratify the convention. The convention's principles of equitable utilization, harm prevention, and cooperation would establish a legal foundation for conflict resolution and collaboration. Ratification would synchronize both states with international standards, assisting in the prevention of future disputes and assuring the peaceful administration of shared water resources.

### *2. Helsinki Rules, 1966*

The Helsinki Rules on the Uses of the Waters of International Rivers, 1966, established by the International Law Association (ILA), constitute a foundational framework for the management of transboundary watercourses (Palak, 2021). Although the Helsinki Rules are not a legally binding instrument like the 1997 Convention, they are largely considered an essential instrument in the evolution of customary international law regarding shared water resources (Khaled, 2001). Their effect goes beyond theoretical debate and has shaped the practical implementation of water-sharing norms in numerous international conflicts. The Helsinki Rules were established during a period when the need for globally recognized standards for the management of shared freshwater resources had increased (Slavko, 2019). They demonstrate an awareness that international rivers function not merely as water suppliers but as essential components of a nation's economic stability, social welfare, and environmental integrity. The Rules tackle the complexities that emerge when states share rivers, especially in areas where the waters have considerable economic and strategic importance. These Helsinki rules continue to significantly impact the evaluation of normative standards about riparian conduct. In the context of the KRB, present study highlights these principles necessitate that both Afghanistan and Pakistan participate in transparent and collaborative water-sharing arrangements. Upstream development initiatives in Afghanistan, including dam and irrigation projects, must

be assessed for their effects on Pakistan's downstream water requirements, and formal notice and consultation systems must be prioritized. The key provisions of the rules are discussed below.

### *Equitable Utilization*

The principle of equitable utilization, established in Article 4 of the Helsinki Rules, asserts that each riparian state has the right to utilize the waters of an international river. This right is, however, subject to multiple restrictions in order to prevent any state's utilization from causing significant harm to others (Vick Margaret, 2012). This principle asserts that the rights to utilize the river are not unconditional but must be exercised equitably, taking into account the requirements and interests of all riparian states. In short both the UN Convention and the Helsinki Rules mention the core principles of equitable utilization. Thus, necessitates collaboration between the two states to guarantee that water usage does not unfairly disadvantage Pakistan, which faces the risk of water scarcity due to upstream development initiatives such as hydropower projects and irrigation systems (Ahmad & Nafees, 2018). This provision of the Helsinki Rules encourages Afghanistan and Pakistan to collaborate in the management of the Kabul River, facilitating a cooperative strategy for water-sharing, which is crucial for enduring regional peace and sustainable development. This collaboration can mitigate the tensions and establish trust, essential for resolving conflicts about water supplies. Relevant important provisions from the Helsinki Rules are analyzed in the following;

### *Obligation to Prevent Substantial Injury*

Article 10 of the Helsinki Rules imposes a duty on riparian states to implement measures that prevent substantial damage through water pollution to other states when utilizing the waters of an international river. This principle is a fundamental aspect of international water law and aligns with the no-harm rule established in Article 7 of the Convention. As mentioned the development of hydropower plants and the extension of irrigation systems in the KRB by Afghanistan may significantly affect the water flow into Pakistan therefore, if not effectively managed or coordinated with Pakistan, these projects could intensify water quality downstream, especially in the Khyber Pakhtunkhwa province, where agriculture and domestic usage of water rely significantly on the river (Ahmad & Nafees, 2018). Under the principle of the duty to prevent substantial injury requires a proactive strategy in the administration of the Kabul River, requiring both states to make sure that their respective initiatives do not inflict irreversible damage on the downstream riparian state (Shah & Shah, 2022). This is especially relevant for Afghanistan, which predominantly governs the water quality and quantity of the Kabul River due to its control of the basin's upper parts. Afghanistan is thus legally and ethically compelled to evaluate the potential downstream consequences of its infrastructure initiatives and to eliminate any negative effects. This principle is consistent with customary international law and is fundamental to international water law, as it guarantees that no state may unilaterally exploit common watercourses to the detriment of others. For Afghanistan and Pakistan, this means carrying out collaborative consultations, exchanging technical data, and deliberating potential conflicts prior to initiating any large-scale projects that may affect the river's flow or quality.

Throughout the decades, the Helsinki Rules have been integrated into national legislation and regional agreements, and their concepts have been utilized in numerous international conflicts concerning transboundary watercourses. Articles 26 to 36 of the Helsinki Rules offer a significant framework for informal conflict resolution and collaboration between conflicting states. Although Afghanistan and Pakistan lack an explicit water-sharing agreement, the Helsinki Rules provide a framework of principles to facilitate negotiations and debates. By applying these principles, both states can pursue a more collaborative strategy for managing the Kabul River, potentially resulting in the establishment of a formal water-sharing treaty.

### **3. Lack of Bilateral and Regional Agreements**

A significant obstacle in addressing the Kabul River issue is the lack of a formal bilateral agreement between Afghanistan and Pakistan addressing the equitable use and management of the river's water resources (Miriam, 2022). This absence has led to sporadic conflicts, especially around hydropower development in Afghanistan and its effects on the downstream water supply in Pakistan. The absence of an

agreement obstructs the establishment of a collaborative framework, jeopardizing initiatives for the long-term sustainable management of the shared watercourse.

The legal argument of both nations demonstrates divergent views of water sovereignty. Afghanistan, as the upstream riparian, frequently adheres to the principle of absolute territorial sovereignty, claiming its entitlement to use Kabul River resources without external constraints (Sakhi, 2023). This is apparent in its hydroelectric and irrigation initiatives, such as the *Shahtoot* Dam, financed by international entities, notably India and the World Bank, which Pakistan regards with scepticism (Ranjan, 2021). Conversely, Pakistan, as the downstream riparian, underscores the principle of total territorial integrity, contending that any upstream water diversions could jeopardize Pakistan's agricultural sector and water security, especially in Khyber Pakhtunkhwa (KP) (Mustafa et al., 2013). The divergent legal claims, along with historical conflicts and strategic considerations, have hindered both nations from participating in substantive legal negotiations about water-sharing arrangements.

Furthermore, the relationship between Afghanistan and Pakistan has been historically tense due to border disputes (Durand Line), political instability, and security issues (Ranjan & Chatterjee, 2020). These disputes have hindered the two nations from participating in substantive negotiations over water-sharing arrangements (Atef et al., 2019). Afghanistan has requested Indian support for dam building, including the *Shahtoot* Dam project, heightening Pakistan's security apprehensions (Ranjan & Chatterjee, 2020). Pakistan, apprehensive about water shortages, has contested extensive Afghan water initiatives, resulting in diplomatic confrontations (Panikkar et al., 2019).

Additionally, Pakistan contends that Afghanistan must conduct prior consultations and talks before initiating such projects, referencing principles from the Convention and the Helsinki Rules (Panikkar et al., 2019). Afghanistan has traditionally opposed external interference in its water governance, perceiving it as an issue of national sovereignty (Ranjan 2020). The absence of formalized water-sharing frameworks has exacerbated distrust between the two countries (Sadeqinazhad et al., 2018). Moreover, Pakistan's apprehensions regarding prospective water shortages have prompted it to seek official negotiations, as it fears that Afghanistan's upstream developments may irrevocably affect water availability.

Nevertheless, in the absence of a treaty, Pakistan has intermittently attempted to apply general principles of international law, such as prior notification and no-harm requirements, to contest Afghanistan's unilateral water development initiatives (Ranjan & Chatterjee, 2020). Nonetheless, due to Afghanistan's past instability and constrained institutional capability for transboundary water control, legal conflicts concerning the KRB predominantly remain diplomatic rather than judicial. The absence of a formal dispute resolution process, such as arbitration or third-party mediation, intensifies uncertainty in legal enforcement (Ranjan & Chatterjee, 2020).

However, the Indus Waters Treaty, 1960, between Pakistan and India is a significant regional precedent for the management of shared water resources. This agreement established a structure for the fair distribution of the Indus River's waters, with technical guidelines for conflict resolution and data exchange between the two states (Siyad Muhammed, 2005). The Indus Waters Treaty, despite encountering difficulties, is often cited as a paradigm for transboundary water governance in the region. Pakistan has frequently expressed its desire to negotiate an agreement with Afghanistan, acknowledging the prospective advantages of a collaborative strategy for water management, similar to the one established between Pakistan and India under the Indus Waters Treaty (Fawad, 2022). This agreement might establish a systematic framework for the distribution of water and methods for dispute resolution. However, Afghanistan's hesitance to engage in a similar accord has posed a considerable impediment (News, 2017). Furthermore, Afghanistan has exhibited reluctance owing to apprehensions regarding sovereignty, management of water resources, and the political interplay between the two states.

The Kabul River serves as both a resource and a symbol of wider national interests; therefore, both states consider control over water resources as essential to their political and economic sovereignty, rendering discussions for a water-sharing agreement. Additionally, Afghanistan's advancement of hydropower initiatives in the upper part of the Kabul River, including the Kunar and Panjshir dams, has caused concerns in Pakistan regarding the possible diversion and diminishment of water flow, hence

intensifying mistrust (Ravichandran & Bibi, 2023). However, despite these obstacles, the hope for a bilateral agreement remains. Based on the Indus Waters Treaty and other international water-sharing agreements, it is evident that collaboration founded on the principles of equality, appropriate utilization, and the prevention of severe harm is both achievable and beneficial. If Afghanistan and Pakistan can establish a set of guiding principles, such as transparency, data sharing, and collaborative water management mechanisms, a framework for sustained collaboration over the Kabul River may be developed. Both states must build mutual trust and exhibit a dedication to enduring collaboration, acknowledging that the river's shared nature requires coordinated management for the advantage of both parties.

#### 4. The Role of International Institutions and Dispute Resolution Mechanisms

The complex and sensitive nature of the Kabul River issue between Afghanistan and Pakistan necessitates the engagement of international institutions, organizations, and dispute resolution mechanisms to support a peaceful and collaborative resolution of the issue. The contention pertains not just to fair water distribution but also encompasses substantial geopolitical, economic, and security issues. Consequently, it is improbable that a resolution can be attained exclusively through bilateral negotiations without external participation and supervision. This section analyses the prospective functions of international organizations, such as the United Nations (UN), the World Bank, and the International Court of Justice (ICJ), in reducing the conflict and facilitating sustainable water governance processes.

##### *United Nations (UN)*

The United Nations is essential in promoting dialogue and strengthening international collaboration on transboundary water challenges. The UN, through its specialized agencies like the UN Environment Programme (UNEP) and UN Water, has offered technical expertise, advisory assistance, and diplomatic avenues for states in dispute over shared water resources (Alexander et al., 2004). Considering that the Kabul River conflict involves two states with conflicting political interests, the UN could provide mediation services to facilitate negotiations between the parties. Furthermore, the UN General Assembly and Economic and Social Council (ECOSOC) have adopted multiple resolutions highlighting the significance of equitable water-sharing and the prevention of harm to other riparian states, principles that are in accordance with international water law (Russell, Anna, 2010). The UN Convention on the Law of the Non-Navigational Uses of International Watercourses, 1997, though lacking universal ratification, establishes a set of standards for the management of transboundary watercourses and urges states to formulate agreements based on equality, sustainability, and harm prevention. Therefore, the participation of the UN may facilitate long-term negotiations between Afghanistan and Pakistan to establish a water-sharing agreement that addresses the interests of both states.

##### *The World Bank*

The World Bank, employing its significant experience in managing shared water resources, could meaningfully contribute to technical and financial assistance for any prospective water-sharing agreement between Afghanistan and Pakistan. The World Bank has previously served as a mediator in similar disputes, such as the Indus Waters Treaty between Pakistan and India, when it offered financial assistance for the development of water infrastructure projects (Waseem, 2017). Moreover, the World Bank could provide financial assistance for projects such as hydropower and irrigation systems, as well as technical expertise in evaluating the effects of hydrological projects on the Kabul River. The World Bank might also enable the establishment of a collaborative monitoring system to evaluate water availability, pollution levels, and project benefits, thereby helping transparency and trust between Afghanistan and Pakistan. As a neutral entity, the World Bank may assist both states in formulating a legally robust and mutually advantageous agreement that conforms to international standards in water management.



### *International Court of Justice (ICJ)*

The International Court of Justice (ICJ) possesses considerable potential as a venue for adjudicating legal issues involving shared water resources. The ICJ has previously adjudicated numerous prominent transboundary water disputes, establishing significant precedents relevant to the Kabul River matter. Prominent cases encompass the Danube River case between Hungary and Slovakia. In the verdict, the Court reaffirmed the principle of equitable use and highlighted the obligation to prevent harm to both upstream and downstream states (Bukhosi & Madai, 2001). These verdicts were based on fundamental concepts of equitable use and the prevention of significant harm which are essential principles in international water law. Keeping in view the issue in hand, the ICJ could provide binding decisions regarding the distribution of water between Afghanistan and Pakistan in the Kabul River issue. In case of bringing the matter either state to the Court, it could employ these principles to formulate a ruling that reconciles the interests of all parties. Furthermore, the ICJ could serve as a neutral platform for addressing persistent grievances, facilitating an opportunity for both states to reconcile their disputes within a structured legal framework.

Although the ICJ provides a neutral and authoritative forum for adjudicating transboundary water disputes; yet, certain practical problems may impede its efficacy in the context of the KRB. Firstly, the ICJ's authority relies on the assent of both parties, necessitating mutual agreement between Afghanistan and Pakistan to present their dispute to the Court, a politically delicate and frequently improbable situation due to the historical hostilities and mutual distrust between the two nations. Secondly, even with consent, litigation at the ICJ is protracted and resource-demanding, potentially rendering it impractical for any nation given their internal political and economic limitations. Thirdly, there exists the risk of non-compliance with ICJ rulings, particularly in instances when national interests or political pressures supersede legal requirements, possibly compromising the enforceability of any decision. Additionally, the ICJ lacks scientific and hydrological expertise, necessitating dependence on external experts, which might prolong proceedings and compromise the perceived impartiality of the process. Ultimately, resorting to an international court may be perceived by either party as a forfeiture of sovereignty or as the internationalization of a bilateral matter, thereby intensifying diplomatic tensions instead of alleviating them. These problems indicate that although the ICJ possesses theoretical potential, alternative or supplementary mechanisms such as bilateral discussions, regional mediation, or technical cooperation via impartial international organizations may be more pragmatic and politically viable in the short term.

### *The Importance of Neutrality and Trust-building*

The efficacy of a dispute resolution mechanism will significantly rely on the impartiality of the mediating institution and the mutual trust between Afghanistan and Pakistan. Both states have historically encountered considerable political conflicts, which caused further complications in discussions over the issues (Atef et al., 2019). The participation of international organizations such as the UN, World Bank, and ICJ may give a feeling of neutrality and equity, motivating both parties to engage in meaningful dialogue. Trust-building initiatives, including collaborative data-sharing systems about water flow, water quality, and hydropower projects, could significantly contribute to creating a cooperative atmosphere (Wishal & Nafees, 2020). Furthermore, the significance of regional cooperation in South Asia is crucial. Multilateral forums like the South Asian Association for Regional Cooperation (SAARC) may serve as a forum for diplomatic interaction and the establishment of a regional agreement on water-sharing standards. Joint initiatives may facilitate the alignment of Afghanistan and Pakistan on broader regional concerns, including climate change and water security, which are increasingly recognized as global challenges.

### **Conclusion**

The KRB dispute represents a critical challenge for transboundary water governance between Afghanistan and Pakistan. Despite the river's vital significance for both states, functioning as a crucial resource for irrigation, domestic use, and energy production, persistent disputes regarding its governance highlight the lack of a comprehensive, binding bilateral treaty. The upstream development in Afghanistan, including hydropower and irrigation initiatives, generates valid apprehensions for Pakistan regarding decreasing water

availability downstream, therefore impacting its agriculture and general water security. This situation underscores the necessity for a comprehensive legislative framework and collaborative approaches to ensure fair, sustainable, and advantageous water-sharing arrangements.

The International legal principles, including those established in the United Nations Watercourses Convention, 1997, the Helsinki Rules, 1966, and customary international law, provide a robust framework for resolving the conflict. These instruments underscore the values of equitable utilization, non-harm, and the obligation to cooperate, which may facilitate negotiations between Afghanistan and Pakistan in achieving a just and sustainable resolution. The application of these principles for the Kabul River requires that both parties overcome political and historical grudges, prioritizing the permanent advantages of collaboration over unilateral measures.

Afghanistan and Pakistan should commence official negotiations to develop a bilateral water-sharing agreement based on international legal criteria. Proposed actions encompass: firstly, forming a joint river basin commission with equitable representation, secondly, implementing transparent and cooperative hydrological data sharing, thirdly, reaching consensus on mutual notification and consultation protocols for proposed infrastructure projects, and lastly, enlisting third-party mediation from impartial international entities, such as the World Bank or UN, to promote trust-building and provide technical support. Furthermore, both states must investigate confidence-building initiatives, like collaborative irrigation and energy projects that exemplify the concrete advantages of cooperation.

Furthermore, International organizations, including the United Nations, the World Bank, and the International Court of Justice (ICJ), play a crucial role in promoting discussion and ensuring the implementation and adherence to agreements. These entities may provide essential technical expertise, facilitate mutual dialogues, and offer avenues for dispute resolution when problems arise. Moreover, the comparative analysis of similar transboundary water conflicts, such as the Indus Waters Treaty between Pakistan and India, can provide significant insights into strategies for collaboration and conflict resolution. Moreover, the development of a bilateral agreement between Afghanistan and Pakistan over the water-sharing of the Kabul River would resolve existing problems and promote a culture of cooperation in regional water governance. By conforming to international legal standards, committing to fair usage, and prioritizing harm prevention, both states can ensure that the Kabul River serves as a source for sustainable development and mutual prosperity.

Future research may investigate the socio-political impediments to treaty formulation in South Asia, evaluating the ecological repercussions of unilateral water initiatives on downstream populations, and create predictive models for collaborative versus adversarial water-sharing situations in light of climate change forecasts. Such studies would enhance the legal and policy dialogue on transboundary water governance and facilitate the creation of flexible, equitable frameworks for managing shared rivers in the region.

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