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"THE PRINCIPLE OF NO SIGNIFICANT HARM IN INTERNATIONAL WATER LAW: AN ANALYSIS OF INDIA'S TRANSBOUNDARY WATER PRACTICES

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ABSTRACT

The principle of "no significant harm" is a foundational obligation of contemporary international water law, requiring watercourse states to exercise due diligence in preventing substantial injury to co-riparian states. India occupies a uniquely contradictory position in South Asian hydrophilics: simultaneously an upstream state relative to Pakistan and Bangladesh, and a downstream state relative to China. This paper examines India's transboundary water practices through the lens of the no-harm principle, analysing treaty engagements, dispute resolution participation, and diplomatic postures across the Indus, Ganges, and Brahmaputra systems. The analysis reveals that India's relationship with the no-harm principle is characterised by selective acceptance and strategic ambiguity. India has consistently refused to ratify the 1997 UN Watercourses Convention, citing the undefined nature of "significant harm" as a primary objection. Yet India has formally incorporated no-harm language into bilateral treaties such as the 1960 Indus Waters Treaty and the 1996 Ganges Treaty, while resisting operationalisation of substantive obligations through third-party mechanisms. The 2025 decision to place the Indus Waters Treaty in "abeyance" represents a critical juncture, with the Permanent Court of Arbitration affirming that unilateral suspension is legally impermissible and that fundamental principles of international water law remain binding irrespective of treaty status. The paper argues that India's approach reflects a broader structural tension between upstream strategic interests and the normative

constraints of international law, and that this tension is likely to intensify as China's upstream activities on the Brahmaputra reshape the regional hydropolitical landscape.

KEYWORDS: No Significant Harm; Transboundary Water Law; India; Indus Waters Treaty; Ganges Treaty; Un Watercourses Convention.

I. INTRODUCTION

The principle of no significant harm is widely recognised as a cornerstone of customary international water law.[1] Its essence is deceptively simple: a state, in utilising an international watercourse within its territory, must take all appropriate measures to prevent the causing of significant harm to other watercourse states.[2] Yet the operationalisation of this principle has proven profoundly contentious, particularly in regions where upstream-downstream asymmetries coincide with broader geopolitical rivalries.

India presents a paradigmatic case for examining this tension. Geographically, India is at once an upper riparian state vis-à-vis Bangladesh and Pakistan, and a lower riparian state vis-à-vis China and Nepal.[3] This dual identity produces a bifurcated normative posture: when India occupies the downstream position, as with respect to China's dam-building on the Yarlung Tsangpo (Brahmaputra), it consistently invokes concerns about upstream activities harming downstream interests. When India occupies the upstream position, however, its enthusiasm for the no-harm principle becomes considerably more attenuated.

The central research question of this paper is therefore: To what extent and under what conditions does India accept and implement the principle of no significant harm in its transboundary water practices? The paper argues that India's engagement with the no-harm principle is characterised by strategic selectivity: formal treaty inclusion without substantive enforcement, rhetorical invocation when downstream, and resistance to third-party adjudication when upstream.

The paper proceeds in four parts. Part II traces the legal genealogy of the no-harm principle and India's specific objections to its codification. Part III examines India's bilateral treaty practices, analysing the Indus Waters Treaty, the Ganges Treaty, and the Mahakali Treaty. Part IV assesses the 2025 Indus Waters Treaty "abeyance" as a critical test case. Part V

[1] G. Eckstein, 'The Basic Contradiction Between the Need to "Harmonise" Existing Treaties with the Convention's Principles', International Water Law Project (2009).
[2] UN General Assembly, Convention on the Law of the Non-Navigational Uses of International Watercourses, 21 May 1997, Article 7.
[3] M. N. Islam, 'The 1997 Convention and India-Bangladesh Water Sharing Issues', Bangladesh Institute of Law and International Affairs (2021).

concludes by considering implications for India's future relationship with the no-harm principle.

II. The No-Harm Principle: Legal Status and India's Objections

2.1 The Customary Status of the No-Harm Principle

The no-harm principle emerged from the tension between two competing doctrinal frameworks: absolute territorial sovereignty (the "Harmon Doctrine," permitting unrestricted upstream use) and absolute territorial integrity (prohibiting any upstream interference with natural flow). The modern synthesis is the doctrine of limited territorial sovereignty, which holds that a state may utilise its portion of an international watercourse but must not cause significant harm to other riparian states.

This principle finds expression in multiple international instruments. The 1997 UN Convention on the Law of the Non-Navigational Uses of International Watercourses (UNWC) codified both the equitable utilisation principle (Article 5) and the no-harm principle (Article 7).[4] Article 7 provides that watercourse states "shall take all appropriate measures to prevent the significant harm to other watercourse states" resulting from their utilisation.

The International Court of Justice has contributed significantly to operationalisation of this principle. In *Pulp Mills on the River Uruguay* (2010), the Court clarified that the no-harm obligation is one of due diligence, requiring the state to adopt appropriate rules and measures, exercise vigilance in enforcement, and conduct environmental impact assessments. The Permanent Court of Arbitration in the *Kishenganga Arbitration* further developed this principle, requiring both India and Pakistan to provide environmental impact assessment reports even though the Indus Waters Treaty itself does not require them.

2.2 India's Objections to Codification

Despite the customary status of the no-harm principle, India abstained from voting on the UNWC at the General Assembly and has consistently declined to ratify it.[5] India's stated objections are illuminating. First, India cited the "ambiguity of the meaning" of the term "significant harm" as a primary reason for abstention. The threshold for what constitutes "significant" versus "appreciable" or "substantial" harm is left undefined in the Convention, and India argued this indeterminacy could lead to unpredictable obligations.

[4] UN Watercourses Convention, above n 2, Articles 5 and 7.
[5] Islam, above n 3.

Second, India objected to Article 33's dispute settlement provisions, specifically the inclusion of mandatory third-party procedures. India's preference for bilateral resolution mechanisms is longstanding and reflects both a general suspicion of external adjudication and a specific concern that third-party involvement could internationalise disputes it prefers to manage through diplomatic channels.

Third, India noted that Article 3 of the Convention, which affirms the right of watercourse states to enter into specific agreements, contradicts India's domestic constitutional framework. Under India's federal structure, water is a state subject, meaning the central government can negotiate international treaties but implementation requires cooperation from state governments. This domestic constraint introduces a layer of complexity that India argued the Convention failed to accommodate.

Fourth, India objected to the Convention's definition of "sustainable utilisation" as insufficiently defined. The cumulative effect of these objections is that India positions itself outside the principal global framework for transboundary water governance while simultaneously claiming adherence to the customary principles that framework embodies. This position of normative "opt-out" while claiming customary compliance is central to understanding India's ambivalent relationship with the no-harm principle.

III. The No-Harm Principle in India's Bilateral Treaty Practices

3.1 The Indus Waters Treaty (1960): Partition by Geography, Not Volume

The Indus Waters Treaty (IWT), signed in 1960 under World Bank auspices, represents the most significant transboundary water agreement in South Asian history.[6] Its origins lie in the hydrological absurdity of Partition: the Radcliffe Line divided the Punjab's irrigation system such that Pakistan received 85 percent of the irrigated area while India controlled the headwaters.

During negotiations, India and Pakistan advanced competing legal principles. India claimed 24 percent of river flows based on the principle of equitable utilisation; Pakistan argued for 12 percent based on the principle of no appreciable harm. The treaty resolved this tension not by applying either principle in its pure form but through a geographic allocation: the three eastern rivers (Ravi, Beas, Sutlej) were assigned to India; the three western rivers (Indus, Jhelum, Chenab) to Pakistan, with limited Indian rights for domestic use, non-consumptive use, agricultural use, and hydroelectric generation.

[6] World Politics Review, 'Global Insider: The India-Pakistan Water Dispute' (2010).

The no-harm principle appears in the IWT in a qualified form. Article IV provides that each Party will use its best endeavours to maintain the natural channels of the Rivers "in such condition as will avoid, as far as practicable, any obstruction to the flow in these channels likely to cause material damage to the other Party." As interpreted by the PCA, maintenance of natural channels does not extend to maintenance of environmental flows. The expression "material damage" under Article IV only extends to the other Party and not harm to the environment of the river basin itself, which is consistent with the Treaty's lack of environmental considerations.

The Treaty established a dispute-resolution mechanism that relies primarily on bilateral mechanisms through the Permanent Indus Commission, but provides clear external mechanisms Neutral Expert and Court of Arbitration if bilateral agreement is not reached. This architecture has proven remarkably resilient, surviving three wars and numerous diplomatic ruptures over sixty-five years.

3.2 The Ganges Treaty (1996): Limited Procedural Duties

The 1996 Ganges Treaty between India and Bangladesh represents a different approach to the no-harm principle.[7] Unlike the IWT, which divides rivers geographically, the Ganges Treaty allocates the dry-season flow of the Ganges at Farakka between the two states.

The Treaty incorporates limited procedural duties of information sharing, consultation, and dispute settlement, but these obligations are constrained. As one analysis notes, "Ganges Treaty does not exclude principles of information sharing, consultation and dispute settlement. But the obligations assumed under these principles are limited in the 1996 Treaty." This repetitive treaty practice confirms the components of *lex specialis* between the parties, meaning the general principles of the UNWC do not automatically apply where a specific bilateral agreement exists.

The 1997 Convention itself preserves existing agreements irrespective of whether they have inadequately applied its principles. Article 3 allows contracting parties to "adjust" its provisions in subsequent treaty practice, including implicit acceptability of derogation from the Convention's principles in existing treaty instruments. This suggests that the customary rules on procedural duties have not developed to the level of peremptory norms from which deviation is not allowed.

The scarcity of Ganges dry-season flows influenced both Bangladesh and India to establish a limited or loose legal relationship. This loose relationship has exempted India from

[7] Islam, above n 3.

considering measures to control the expansion of upstream uses of the Ganges. At the same time, it has shielded Bangladesh from the possibility that reconciliation with upstream uses may require it to accept a lower flow than what it can claim as its equitable share.

3.3 The Mahakali Treaty (1996): Project-Specific Arrangements

India also entered into project-specific agreements with other neighbours like Nepal and Bhutan, but these essentially do not constitute comprehensive sharing arrangements. A treaty was signed with Nepal on the Integrated Development of Mahakali River including Sarda Barrage, Tanakpur Barrage, and Pancheshwar Project. These arrangements focus on specific infrastructure projects rather than basin-wide allocation, further illustrating India's preference for bilateral, project-specific engagement over comprehensive multilateral frameworks.

IV. The 2025 Indus Waters Treaty "Abeyance": A Critical Test Case

4.1 The Pahalgam Attack and Unilateral Suspension

On 22 April 2025, a terrorist attack in Pahalgam in India-administered Jammu and Kashmir killed 26 people. Without offering evidence of Pakistan's involvement, India announced it would hold the IWT in "abeyance." India's External Affairs Minister declared that "terror and talks cannot go together; terror and trade cannot go together. And water and blood cannot flow together."[8]

The legal basis for this "abeyance" was never clearly articulated. As Pakistan's submissions to the PCA noted, "apart from tying its stated policy of 'abeyance' to a demand that 'Pakistan credibly and irrevocably abjures its support for cross-border terrorism', India has not stated, in either bilateral communications to Pakistan or in public statements by government officials, what this policy of 'abeyance' is, its legal basis, or its consequences for India's conduct on the ground with respect to the Treaty."

India subsequently curtailed Chenab River flows, accelerated dam construction, and suspended hydrological data-sharing. These actions, if sustained, would imperil Pakistan's early-warning systems and raise the spectre of both drought and flash flooding.

4.2 The PCA's Response: Affirming Treaty Sanctity

On 27 June 2025, the Permanent Court of Arbitration in The Hague delivered a supplemental award that reaffirmed its jurisdiction over Pakistan's 2016 case against India concerning the Kishanganga and Ratle hydropower projects. The tribunal ruled that India's unilateral

[8] M. A. N. Salik, 'Re-anchoring the Indus Waters Treaty after The Hague Court's Supplemental Award', Institute of Strategic Studies Islamabad (2025).

decision to place the IWT in "abeyance" has no legal effect on the Treaty itself or on the Court's competence.

The PCA observed that Article XII(4) of the IWT states unambiguously that the Treaty shall remain in force until terminated by mutual agreement. No clause permits unilateral suspension. Invoking established precedent, the Court held that once proceedings are validly seized, no party may withdraw jurisdiction through subsequent acts. Allowing one side to press pause on arbitration would vitiate the Treaty's compulsory third-party settlement machinery.

India had argued that "fundamental change" of circumstances and a "material breach" justified putting the Treaty in "abeyance." The PCA rejected that stance. The ruling clarified that its logic also binds the Neutral Expert proceedings that India initiated in parallel, closing a loophole by which either party might engage in forum-shopping to delay final adjudication of dam-design disputes.

In a subsequent Final Award announced in August 2025, the Court declared that India shall "let flow" the waters of the Western Rivers for Pakistan's unrestricted use. The specified exceptions for generation of hydro-electric plants must conform strictly to the requirements laid down in the Treaty, rather than to what India might consider an "ideal" or "best practices" approach.

4.3 India's Rejection and Continued Defiance

India's Ministry of External Affairs reacted to the PCA's supplemental ruling with thinly veiled scepticism and rejected it. The official statement reiterated India's earlier claim that extraordinary circumstances following the April 2025 incident had necessitated placing the Treaty in "abeyance." The MEA also questioned the continued appropriateness of third-party adjudication under the IWT in light of what it termed persistent misuse of the dispute-resolution mechanism.

India has rejected every ruling and boycotted the proceedings entirely. Tenders for the 1,856MW Sawalkote project went out within weeks of the abeyance declaration. Dulhasti Stage-II was approved unilaterally in January 2026 without notifying Pakistan, in direct breach of the treaty's consultation requirements. These actions suggest that India is pursuing a policy of fait accompli, seeking to create facts on the ground that would be difficult to reverse through legal processes.

The PCA's rulings have established four settled points: India's non-appearance does not paralyse proceedings; the abeyance posture does not deprive the court of jurisdiction; the awards are final and binding; and India must let the western rivers flow, with treaty

exceptions applied strictly. India's continued defiance represents a significant challenge to the international legal order governing transboundary waters.

V. CONCLUSION

India's relationship with the no-harm principle is characterised by strategic selectivity and normative ambivalence. As a downstream state relative to China, India consistently invokes concerns about upstream activities harming its interests. As an upstream state relative to Pakistan and Bangladesh, India resists the operationalisation of substantive no-harm obligations through third-party mechanisms, preferring bilateral management that preserves its strategic flexibility.

This selectivity is not merely opportunistic but reflects a deeper structural tension. India's objection to the 1997 UNWC's definition of "significant harm" as ambiguous served as a convenient justification for non-participation in a framework that would constrain its upstream activities. Yet India has formally incorporated qualified no-harm language into bilateral treaties, creating a two-tier system: rhetorical acceptance of the principle coupled with resistance to its substantive enforcement.

The 2025 Indus Waters Treaty crisis represents a critical juncture. India's unilateral "abeyance" decision and subsequent rejection of binding PCA awards challenge the fundamental principle that treaties must be honoured and that unilateral suspension of shared-resource agreements is impermissible. The PCA's rulings affirm that fundamental principles of international water law remain binding irrespective of treaty status, but India's defiance raises questions about the enforceability of these norms in the absence of coercive mechanisms.

Looking forward, two developments are likely to intensify pressure on India's position. First, China's continued development on the Yarlung Tsangpo (Brahmaputra) will progressively transform India from a relatively secure upstream state into a downstream state facing significant upstream impacts. This may compel India to reconsider its resistance to binding third-party mechanisms and comprehensive no-harm obligations. Second, Bangladesh's potential accession to the UN Watercourses Convention could strengthen the normative framework in South Asia, creating new expectations for India's conduct on shared rivers.

The no-harm principle, despite its ambiguities, remains the most viable foundation for equitable transboundary water governance. India's long-term interests may ultimately align with stronger, rather than weaker, adherence to this principle, particularly as its downstream

vulnerabilities increase. The question is whether India will embrace this principle proactively or be compelled to do so reactively as regional hydropolitical dynamics evolve.

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