

**10TH BALAJI LAW COLLEGE ALL INDIA MOOT COURT COMPETITION
2014-15**

MOOT PROBLEM - 1

Following the partition of British Lidia in 1947, Lidia and Palookistan have engaged in three major wars and countless diplomatic commotions. However, the most important issue that divides these longtime enemies is not necessarily nuclear arms or territorial disputes or a hundred other contentious subjects rather, the dominant overriding conflict between Lidia and Palookistan lies with the simplest, but most crucial, necessity of life: water. Water emerged as a major fault line between Palookistan and Lidia as the partition of British Lidia in 1947 divided the Hindas basin system. Lidia emerged as an upper riparian with control over the canal head works that supplied water to vast lands which became part of Palookistan, now a lower riparian. After protracted negotiations, mediated by the World Bank, Lidia and Palookistan signed the Hindas Water Treaty (HWT) in 1960 that divided the rivers of the Hindas basin system between the two countries. Lidia gained full control over the three Eastern Rivers the Aqua, the Marina and the Hydra, while Palookistan was given exclusive rights on the western rivers, i.e. the Hindas, the Sagar and the Neer. Thus Hindas Water Treaty of 1960 governs transboundary water rights and obligations of Lidia and Palookistan in relation to each other. It assigned full use of waters of the Hindas, Sagar and Neer rivers to Palookistan. This gave Palookistan 75 per cent of the waters of the Hindas Basin system and allowed Lidia, under carefully specified conditions, to tap the considerable hydropower potential of the three Western rivers, before they entered Palookistan. HWT has normative as well as functional values as it contains, in addition to the substantive rules regarding the regime of the Hindas system of rivers, provisions for the implementation of an administrative and institutional mechanism and the management of the basin resources. With its preamble, twelve articles and eight annexure (including appendices dealing with technical issues) the Treaty attempts to deal comprehensively with the issues of water allocation and the flow of water in the Hindas basin, and mechanisms to deal with disputes. The Treaty is often cited as a model settling water sharing conflict in an international river basin. It has survived major wars and many ups and downs in their bilateral relations. In the past decade or so, Lidia started building a number of hydroelectric projects on the western rivers that has set off alarm bells in Palookistan which strongly feels that the Lidian projects do not follow the criteria specified in the HWT and that unlimited proliferation of dams and diversion of water would badly disturb flow of the western rivers into Palookistan. This has sparked debate in Palookistan that Lidia is “stealing” Palookistan’s water, while the Lidian media and officials argue that Lidia is not violating the HWT and only utilizing the amount of water allocated to it under the Treaty. Lidia also blames Palookistan for its water woes that Lidia says are emanating from poor management of water resources. Intra-state conflicts over water sharing in both the countries are also at its peak. One of the arguments of Palookistan is that vulnerability to the transboundary impacts of Lidia’s ambitious hydro projects on the Western rivers goes unrecognized and underappreciated in Lidia and it is not only violation of the spirit of the HWT but also ignoring

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the huge transboundary impacts on hydrology and ecology of the rivers assigned to Palookistan under the HWT.

Palookistan is one of the world's driest countries, with an average rainfall of under 240 mm a year. The country's water resources consist mainly of rainfall, rivers, glaciers and ground water. The population and economy are heavily dependent on an annual influx into the Hindas river system (including the Hindas, Sagar, Neer, Aqua, Marina, and Hydra rivers) of about 180 billion cubic meters of water flowing mainly through Lidia and heavily depends on glacier melt in the western mountains. The gap between water supply and demand is widening. Nearly 62% of the country's population resides in rural areas, and is directly or indirectly linked with agriculture for their livelihood. Further, Palookistan has very little water storage capacity, barely storing 30 days of water in the Hindas basin, while Lidia can store for 120-220 days. In 1960, Palookistan signed the Hindas Water Treaty with Lidia which gives it exclusive rights to the three Western Rivers Hindas, Sagar and Neer. The average runoff of the western rivers is 140 MAF.

Lidia is a semi-arid country. It is relatively in a better position than Palookistan due to its proximity to other water resources which makes it practically upper riparian in the Hindas, three major river basins, all forming part of the main mountain river systems. Besides, Lidia has the Deccan Rivers. Coastal rivers and rivers of the inland drainage basin. Lidia also plans to build a big river-linking-project that includes diversion of vast quantities of water from the major river basins through transfer of water from "surplus river basins" to "deficit river basins" in the country. The proposed project has become a source of tension between Lidia and the upstream nations and the downstream nations which would be adversely affected by the diversion. The dominant perception in Lidia is that "the growth of population, pace of urbanization and economic development will accentuate the pressure of increasing demand on a finite resource, and that the answer lies in large supply-side projects and long-distance water transfers. In Lidia, the basic driver for hydropower is the growing demand for electricity which mainly comes from the need to meet the power demands of the 9-per cent-plus annual growth rate of the economy. Although there is a strong push for large hydro projects in Lidia, the fact is that 89 per cent of its large projects generate power below the designed capacity.

The Mullar Barrage, which Lidian refers to as Kulbul Navigation project, is a Lidian project that became controversial in the light of HWT. The proposed barrage is located on the Sagar. Lidia wants to build a barrage on the mouth of the Mullar Lake where it meets the Sagar River in the border state with a storage capacity of 300,000 acre feet. According to Lidia, the project is aimed at regulating the flow of water in the Sagar to facilitate navigation between Baramullah and Mullar in the border state which is permitted in the HWT. The barrage would provide for storage of water and its controlled release would make the Sagar navigable throughout the year that is why the Lidians refer to it as Kulbul Navigation Lock project. Lidia did not provide information

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on the project in time and started unilateral construction on the project in 1984. When Palookistan came to know about it, it raised objections and requested Lidia to stop work on it. Three years later Lidia stopped work but has not abandoned the project. Palookistan has raised objections on the ground that firstly under HWT Lidia is not allowed to build storage for navigational purposes on the Sagar main and secondly since several improved communication links, serving as better alternatives to river navigation, have come up in the area; therefore, Lidia has lost the rationale to build the barrage. The Lidian position is that, notwithstanding the broad principle in Article 3 of the HWT, it has the technical endorsement to build a barrage on Mullar in the light of the Article 3 Para 4 of the Treaty. The said article broadly prohibits all attempts to store or restrict flow of water on the Sagar, but as an exception allows construction under certain conditions and technical specifications which are enlisted in Annex D and E of the 1960 Treaty. The Lidian view is that if they do comply with the conditionality's and technical specifications of Annex D and E to the Treaty, then, they can legally go ahead and build the barrage. This is again contested by Palookistan. According to Palookistan the barrage envisaged 32 times more storage capacity against 0.1 million acre feet storage permitted under the HWT. Thus the barrage would convert the natural lake into a man-made storage of 0.324 MAF, instead of 0.01 MAF allowed to Lidia under the Treaty. Thereby the project would "cause interference in the flow of water, which is not permitted under the treaty." The Mullar Lake has been Asia's largest freshwater reservoir and feeds the Sagar River and fills Palookistan's Mangla Dam. Palookistani apprehensions were based on the following reasons:

- (1) A barrage may damage Palookistan's own triple-canal project linking Sagar and Neer with the Upper Canal;
- (2) A barrage would be a security risk enabling the Lidian Army to make crossing the river either easy or difficult, at will, by the controlled release of water;
- (3) After constructing the dam, Lidia would control the flow of water into the Sagar, creating drought and flood situations at will in Palookistan; and
- (4) It would ruin Palookistan's agriculture.

According to the Lidian government, the project is designed to be a control structure aimed at improving navigation in the Sagar during winter to connect Trinagar with Baramulla for transporting fruits and timber. Lidia has underlined that the barrage would not reduce the quantum of water flow, and that it would also be beneficial to Palookistan for regulating water flow to the Mangla Dam by controlling floods. It would also improve Palookistan's Triple-canal irrigation system as well as increase Palookistan's capacity for power generation at Mangla. However, the Mullar barrage is not a storage project but a control project allowed under the treaty. Moreover, the suspension of work is harming the interests of the people of Jammu and

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Kashmir and depriving people in Palookistan of irrigation and power benefits that may accrue from the regulated release of water. Palookistan and Lidia have had 13 rounds of talks on the Mullar Barrage, but the issue remains unresolved. It is believed that both sides had reached some understanding in 1991 and a draft agreement was prepared but could not be signed. Palookistan says that there was no draft agreement and the issue still needs discussions on all legal and technical aspects. According to the reported draft understanding exchanged in October 1991 Lidia would have been allowed to keep 6.2metres of the barrage ungated with a crest level of 1574.90m (5167 ft.), and would also forego the storage capacity of 300,000 acre feet. In return, the water level in the barrage would have been allowed to attain the full operational level of 5177.90 ft. Lidia is insisting on revival of work on the project while Palookistan has asked Lidia to abandon it. Palookistan had handed over a non-paper to Lidia in February 1994 and made it clear that there could be no agreement with Lidia, allowing it to start construction work on the project. In August 2007 at the secretaries level talks, both sides agreed to refer the matter to the technocrats and set up a technical-level mechanism to move on the issue. This was the first time that the two sides had agreed on such a mechanism. However, it eventually failed and in February 2009, the Lidian government initiated extensive consultations among the relevant ministries to revive the Mullar Barrage/Kulbul navigation project. Palookistan alleges that the Mullar barrage has become a political tool in Lidia's hand to coerce Palookistan. Palookistan's foreign secretary on a press meet stated that "It is now clear that the basic idea behind the Mullar Barrage project is not navigation, but its use as a geostrategic tool to achieve geopolitical goals with Palookistan."Further, the "idea of water transportation on the Sagar will create a basis for Lidia's geopolitical strategists to manufacture arguments for improving navigation on the river and thus necessitate creation of more Mullar barrages which would neither help the people of the border state nor help the cause of confidence building and durable peace between Lidia and Palookistan."

Frustrated over prolonged talks over the Kulbul navigation project, Lidia, which has been keen to resolve the dispute because of which the project over river Sagar has been pending since 1986 resorted to international arbitration to resolve the two-decade old dispute in international court of arbitration. Lidia thus instituted arbitral proceedings against the Republic of India under Paragraph 2(b) of Annexure G to the Hindas Waters Treaty 1960. A Court of Arbitration composed of seven members has been constituted pursuant to Annexure G. The Permanent Court of Arbitration acted as Secretariat to the Court of Arbitration pursuant to Paragraph 15(a) of Annexure G.

(The Republic of Lidia, its laws, territory, treaties and so forth are in pari materia with the laws, territory and similar aspects of the Republic of India and the Islamic republic of Palookistan corresponds to the Islamic Republic of Pakistan)