

No. 87. *Indus Basin Development Fund Agreement.* 1960.

INDUS BASIN DEVELOPMENT FUND AGREEMENT.

No. 87 of 1960.

An Act relating to the Indus Basin Development
Fund Agreement.

[Assented to 14th December, 1960.]

[Date of commencement, 11th January, 1961.]

BE it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, for the purpose of appropriating the grant originated in the House of Representatives, as follows:—

Short title.

1. This Act may be cited as the *Indus Basin Development Fund Agreement Act 1960*.

Definition.

2. In this Act, "the Agreement" means the Indus Basin Development Fund Agreement, being the agreement a copy of which without the annexures, is set out in the Schedule to this Act.

Appropriation.

3. The amounts required from time to time for the purpose of the making of payments in respect of Australia's contribution under the Agreement to the Indus Basin Development Fund are payable out of the Consolidated Revenue Fund, which is appropriated accordingly.

THE SCHEDULE.

Section 2.

INDUS BASIN DEVELOPMENT FUND AGREEMENT

AGREEMENT, dated this 19th day of September, 1960 between the Governments of the COMMONWEALTH OF AUSTRALIA (Australia), CANADA (Canada), the FEDERAL REPUBLIC OF GERMANY (Germany), NEW ZEALAND (New Zealand), PAKISTAN (Pakistan), the UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND (United Kingdom) and the UNITED STATES OF AMERICA (United States) and the INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (hereinafter sometimes called the Bank).

WHEREAS the Government of India (India) and Pakistan have concluded (subject to exchange of ratifications) the Indus Waters Treaty 1960 (hereinafter called the Treaty, and of which a copy is annexed hereto as Annexure A) providing, *inter alia*, for the sharing between India and Pakistan of the use of the waters of the Indus Basin;

THE SCHEDULE—*continued.*

AND WHEREAS the effective utilization by Pakistan of the waters assigned to it by the Treaty entails the construction of a system of works part of which will accomplish the replacement of water supplies for irrigation canals in Pakistan which hitherto have been dependent on water supplies from the waters assigned by the Treaty to India;

AND WHEREAS, by the terms of Article V of the Treaty, India has undertaken to make a payment of £62,060,000 towards the costs of the replacement part of such works, such sum to be paid to an Indus Basin Development Fund to be established and administered by the Bank;

AND WHEREAS, in concluding the Treaty, Pakistan has been influenced by the consideration that financial assistance of the nature and amounts specified hereinafter will be made available to Pakistan;

AND WHEREAS Australia, Canada, Germany, New Zealand, the United Kingdom, the United States and the Bank, in view of the importance which they attach to a settlement of the Indus Waters problem from the point of view both of the economic development of the area and of the promotion of peace and stability therein, have agreed, as hereinafter set forth, to make a contribution towards the costs of such system of works and also to make such contribution available through the above-mentioned Indus Basin Development Fund;

NOW THEREFORE, the Parties hereto agree as follows:

ARTICLE I

Establishment of Indus Basin Development Fund

SECTION 1.01. There is hereby established the Indus Basin Development Fund (hereinafter called the Fund), constituted by the monies which the contracting parties shall from time to time transfer to the Fund in accordance with Articles II and III of this Agreement, together with the monies to be paid to the Fund by India under the provisions of Article V of the Treaty, and any other assets and receipts therein, to be held in trust and administered by the Bank and used only for the purposes, and in accordance with the provisions, of this Agreement.

SECTION 1.02. The Fund and its assets and accounts shall be kept separate and apart from all other assets and accounts of the Bank and shall be separately designated in such appropriate manner as the Bank shall determine.

SECTION 1.03. The Bank is hereby designated Administrator of the Fund. The term Administrator will hereinafter be used to refer to the Bank acting in that capacity.

ARTICLE II

Contributions to Fund

SECTION 2.01. Each of the Governments specified below undertakes, as a party to this Agreement, subject to such parliamentary or congressional action as may be necessary, to make a contribution to the Fund in its own currency of the nature and in the amount specified opposite its name below:—

			<i>Grant</i>	<i>Loan</i>
Australia	..	..	£A 6,965,000	—
Canada	..	..	Can. \$ 22,100,000	—
Germany	..	..	DM. 126,000,000	—
New Zealand	..	..	£NZ 1,000,000	—
United Kingdom	..	..	£ 20,860,000	—
United States	U.S. \$ 177,000,000	Proceeds of a U.S. dollar loan to Pakistan (repayable in rupees) in an amount not exceeding U.S. \$70,000,000 (hereinafter referred to as the United States loan).

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THE SCHEDULE—*continued.*

SECTION 2.02. The following contribution (hereinafter referred to as the Bank loan) will also be made to the Fund:—

The proceeds of a loan to Pakistan from the Bank in an amount not exceeding U.S.\$80,000,000 equivalent, of which the terms and conditions are set out in the Loan Agreement annexed hereto as Annexure B.

SECTION 2.03. The United States, in addition to its contributions specified in Section 2.01 above, undertakes, subject to any necessary Congressional action, to make a contribution to the Fund of an amount in Pakistan rupees (hereinafter called rupees) equivalent to U.S.\$235 million. This contribution shall be in the form of grants or loans or both to Pakistan in amounts and under conditions to be agreed between the United States and Pakistan.

SECTION 2.04. Pakistan undertakes to make the following contributions to the Fund:—

- (a) a contribution in pounds sterling of £440,000, and
- (b) a contribution in rupees in an amount equivalent to ₹9,850,000.

ARTICLE III

Provisions regarding Payment of Contributions

SECTION 3.01. Upon the entry into force of this Agreement the Administrator shall promptly notify each Party of the amount required to be contributed by it to the Fund to cover estimated disbursements of the Fund during the half-year period commencing 1st October, 1960, and shall before the beginning of each succeeding half-year period commencing 1st April or 1st October thereafter (at a time to be agreed in each case between the Administrator and the Party concerned) notify each Party of the amount so required to be contributed by it for such period. Each Party undertakes to make the payment specified in such notice at the time and in the amounts specified therein. The payments of the contributions under Section 2.01 hereof shall be made in the currency of the Party concerned, freely useable or convertible for purchases anywhere, or in such other currency or currencies as may be agreed between the Party and the Administrator. Each payment to the Fund shall be made to or on the order of the Administrator as specified in the notice covering the same.

SECTION 3.02. It is understood and agreed that:—

- (a) the payment to be made to the Fund by Pakistan in pounds sterling shall be £22,000 in each half-year,
- (b) the payment to be made to the Fund by New Zealand shall be £NZ. 50,000 in each half-year,
- (c) in each half-year the amount called up for payment to the Fund from the sources specified in Sections 2.01 and 2.02 hereof shall (after leaving out of account the payment by Pakistan under (a) above and the payment by New Zealand under (b) above) be divided between grants and loans in the ratio of 65 to 35: Provided that:

- (i) the aggregate payments from grants, as so determined, shall be apportioned among the contributing Parties according to the percentages set out below:

			%
Australia	..	..	5.13
Canada	..	..	7.63
Germany	..	..	9.86
United Kingdom	..	..	19.20
United States	..	..	58.18
			<hr/> 100.00

- and (ii) the aggregate payments from loans, as so determined, shall be apportioned between the Bank loan and the United States loan in the ratio of 80 to 70, or in such other ratio as the Bank and the United States may, from time to time, agree.

THE SCHEDULE—continued:

SECTION 3.03. It is understood and agreed that the aggregate rupee requirements of the Fund during each half-year shall be met as follows:

- (a) By a payment to the Fund by Pakistan in rupees in the equivalent of £492,500.
- (b) The balance thereof:—
 - (i) as to 60%, from contributions to the Fund under Section 2.03 hereof, and
 - (ii) as to 40%, from rupees which the Administrator shall cause the Fund to purchase, against foreign exchange, from the State Bank of Pakistan.

SECTION 3.04. A preliminary estimate of the annual amounts to be contributed to the Fund by each Party to this Agreement is annexed hereto as Annexure C. The Administrator will keep such estimate as up-to-date as possible and will promptly notify the Parties of any material changes therein.

SECTION 3.05. The Parties hereto agree to accept the Administrator's decision as to estimated requirements and receipts of the Fund for the purposes of Sections 3.01, 3.02 and 3.03 hereof, and as to the best practical method of accomplishing the apportionment provided for in Sections 3.02 and 3.03 hereof, using approximate amounts and estimates provided, however, that no Party shall be obligated to make any payment to the Fund except to the extent it shall have undertaken so to do either by the provisions of this Agreement or otherwise. By agreement among the Parties, changes may be made in the apportionment, including changes to take account of any contributions arising under Article XII.

ARTICLE IV

Special Reserve

SECTION 4.01. It is understood and agreed that the Administrator shall retain in the Fund, out of each payment to the Fund by India, such amount as the Administrator may estimate to be necessary to build up a special reserve in pounds sterling (hereinafter called the Special Reserve) to meet the maximum obligations of the Fund under Article V (5) of the Treaty.

SECTION 4.02. If, at the request of Pakistan, the Transition Period provided for in the Treaty is extended in accordance with the provisions of Part 8 of Annexure H thereto, the Administrator shall pay to India in pounds sterling out of the Special Reserve such amounts as shall be payable to India pursuant to the provisions of Article V (5) of the Treaty. After the amounts, if any, payable to India pursuant to this Section shall have been finally determined, the Administrator shall pay to Pakistan in pounds sterling the amount of the Special Reserve, less such amounts, if any, as shall have become so payable to India.

SECTION 4.03. Income from investments of the Special Reserve shall be used by the Administrator to purchase rupees from the State Bank of Pakistan; and such rupees shall be treated as payments to the Fund pursuant to Section 3.03(a).

ARTICLE V

Disbursements from Fund

SECTION 5.01. Amounts in the Fund may be disbursed to Pakistan by the Administrator, and shall be used by Pakistan, exclusively to finance the cost of equipment, supplies, other property and services (hereinafter called "goods") required to construct the system of works described in Annexure D to this Agreement, such system of works being herein collectively called the Project. The specific items to be financed from the Fund shall from time to time be determined by agreement between Pakistan and the Administrator, and the agreed list thereof may be changed from time to time by agreement between them.

SECTION 5.02. (a) Subject to the provisions of this Agreement, there shall be disbursed from the Fund: (i) such amounts as shall be required by Pakistan to reimburse it for the reasonable cost of goods to be financed from the Fund and (ii); if the Administrator shall so agree, such amounts as shall be required to meet the reasonable cost of such items.

THE SCHEDULE—*continued.*

(b) Except as otherwise provided herein or as shall be otherwise agreed between Pakistan and the Administrator, no disbursement shall be made on account of: (i) expenditures prior to April 1, 1960, or (ii) expenditures in the territories of any country which is not a member of the Bank (except New Zealand and Switzerland) or for goods produced in, or services supplied from, such territories.

SECTION 5.03. Disbursements from the Fund shall be in such currencies as the Administrator shall elect: Provided that disbursements on account of expenditures in rupees or for goods produced in, or services supplied from, Pakistan shall be in rupees, except as the Administrator may otherwise agree.

ARTICLE VI

Applications for Disbursements

SECTION 6.01. When Pakistan shall desire to receive any disbursement from the Fund, Pakistan shall deliver to the Administrator a written application in such form, and containing such statements and agreements, as the Administrator shall reasonably request in accordance with the Bank's usual procedures, and as may be necessary or desirable to enable the Administrator to furnish the information and make the reports provided for in Section 8.01 of this Agreement.

SECTION 6.02. Pakistan shall furnish to the Administrator such documents and other evidence in support of each such application as the Administrator shall reasonably request in accordance with the Bank's usual procedures, whether before or after the Administrator shall have permitted any withdrawal requested in the application.

SECTION 6.03. Each application and the accompanying documents must be sufficient in form and substance to satisfy the Administrator that Pakistan is entitled to receive from the Fund the amount applied for, that the amount to be disbursed by the Fund is to be used only for the purposes specified in this Agreement, that the goods on account of which disbursement is requested are suitable for the Project, and that the cost thereof is not unreasonable.

ARTICLE VII

Undertakings of Pakistan

SECTION 7.01. (a) Pakistan shall cause the Project to be carried out with due diligence and efficiency and in conformity with sound engineering and financial practices, and shall accord appropriate priority, satisfactory to the Administrator, to that part of the Project whose purpose is replacement.

(b) All goods required for the Project shall be procured on the basis of international competition under arrangements satisfactory to the Administrator, except as the Administrator shall otherwise agree on grounds of efficiency or economy.

SECTION 7.02. Pakistan shall cause all goods financed out of monies disbursed by the Fund to be used exclusively in the carrying out of the Project, except as the Administrator may otherwise agree in respect of goods no longer required for the Project.

SECTION 7.03. (a) Pakistan shall cause to be furnished to the Administrator, promptly upon their preparation, the plans and specifications, cost estimates and construction schedules for the Project, and any material modifications subsequently made therein, in such detail as the Administrator shall from time to time request.

(b) Pakistan shall maintain or cause to be maintained records adequate to identify the goods financed out of monies disbursed by the Fund, to disclose the use thereof in the Project, to record the progress of the Project (including the cost thereof) and to reflect in accordance with consistently maintained sound accounting practices the operations and financial condition of the agency or agencies of Pakistan responsible for the construction of the Project or any part thereof; shall enable the Administrator's representatives to inspect the Project, the goods used or acquired for the Project, and any relevant records and documents; and shall furnish to the Administrator all such information as the Administrator shall reasonably request concerning the expenditure of the monies disbursed by the Fund, the Project, and the operations and financial condition of the agency or agencies of Pakistan responsible for the construction of the Project or any part thereof.

THE SCHEDULE—*continued.*

SECTION 7.04. (a) Pakistan and the Administrator shall cooperate fully to assure that the purposes of this Agreement will be accomplished. To that end, each of them shall furnish to the other all such information as it shall reasonably request with regard to the general status of the Project.

(b) Pakistan and the Administrator shall from time to time exchange views through their representatives with regard to matters relating to the purposes of this Agreement. Pakistan shall promptly inform the Administrator of any condition which interferes with, or threatens to interfere with, the accomplishment of the purposes of this Agreement, and the Administrator shall forward a report thereon to each of the other Parties to this Agreement.

SECTION 7.05. Without detracting from the obligations assumed under this Agreement by the Central Government of Pakistan, Pakistan may, from time to time, designate a government agency or agencies to carry out on behalf of the Central Government such duties incidental to the implementation of this Agreement as the Central Government may deem appropriate.

ARTICLE VIII

The Administrator

SECTION 8.01. The Administrator shall, within 30 days after 31st December 1960 and after each 30th June and 31st December thereafter, send to each Party a report containing appropriate information with respect to the receipts and disbursements of, and balances in, the Fund, the progress of the Project, and other matters relating to the Fund, the Project and this Agreement. The Administrator will consult with the respective Parties from time to time concerning the form and substance of such reports.

SECTION 8.02. The Administrator may invest monies held by the Fund pending disbursement in such short-term securities as it shall deem appropriate. This provision will apply primarily to the Special Reserve. The Administrator will, however, have power to invest on a short-term basis any monies from the contributors which are surplus to its immediate requirements on the understanding that the Administrator will take all reasonable steps under Article III of this Agreement to avoid building up balances in the Fund in excess of the amounts necessary to enable disbursements for the Project to be made as required. Subject to the provisions of Section 4.03, the income from such investments shall become part of the assets of the Fund.

SECTION 8.03. Whenever it shall be necessary for the purposes of this Agreement to value one currency in terms of another currency, such value shall be as reasonably determined by the Administrator in accordance with the Bank's usual procedures.

SECTION 8.04. The Administrator shall receive no compensation other than for expenses incurred solely because of services rendered under this Agreement, for which it shall be entitled to reimburse itself out of the Fund.

SECTION 8.05. The Bank, in acting as Administrator, shall exercise the same care in the administration and management of the Fund and in the discharge of its other functions under this Agreement, as it exercises in respect of the administration and management of its own affairs.

ARTICLE IX

Consultation

SECTION 9.01. The following are hereby specified as Events for the purposes of this Article IX:

- (a) an extraordinary situation shall have arisen, which shall make it improbable that Pakistan will be able to complete the Project;
- (b) at any time amounts likely to be available for the Project shall not be sufficient to complete the Project;
- (c) a default shall have occurred in the performance of any undertaking on the part of Pakistan under this Agreement.

THE SCHEDULE—*continued.*

SECTION 9.02. (a) If any of the Events specified in Section 9.01 shall have happened and in the judgment of the Administrator shall be likely to continue, the Administrator shall promptly notify the other Parties hereto and, in the case of an Event specified in Section 9.01 (c), may by notice to Pakistan suspend disbursements from the Fund.

(b) The Parties hereto shall forthwith consult with one another concerning the measures to be taken to correct the Event or Events. A majority of the Parties shall have the power to decide that any suspension imposed by the Administrator pursuant to sub-section (a) of this Section shall be continued or removed. The Administrator shall act in accordance with any such decision.

(c) If any such Event shall continue, and a majority of the Parties hereto shall decide that it is not likely to be corrected and that the purposes of this Agreement are not likely to be substantially fulfilled, and so inform the Administrator, the obligations of the Parties hereto to make contributions to the Fund shall cease and, subject to the provisions of Section 11.03 hereof, this Agreement shall terminate.

ARTICLE X

Settlement of Disputes

SECTION 10.01. Any dispute between any of the Parties hereto concerning the interpretation or application of this Agreement, or of any supplementary arrangement or agreement, which cannot be resolved by agreement of such Parties, shall be submitted for final decision to an arbitrator selected by such Parties, or, failing such selection, to an arbitrator appointed by the Secretary-General of the United Nations.

ARTICLE XI

Termination

SECTION 11.01. Subject to the provisions of Section 11.03 hereof this Agreement, unless sooner terminated pursuant to Section 9.02(c) hereof, shall terminate upon the completion of the Project or upon the disbursement from the Fund of all amounts due to be disbursed from it for the Project, whichever is the earlier.

SECTION 11.02. (a) If at termination there shall remain in the Fund any amounts derived from the contributions of the Parties (including interest), the Parties shall consult together as to their disposal.

(b) Any amounts remaining in the Fund which shall not have been derived from the contributions of the Parties, other than the Special Reserve, shall be paid at termination by the Administrator to Pakistan.

SECTION 11.03. Notwithstanding any termination pursuant to the provisions of Sections 9.02(c) and 11.01 hereof, this Agreement shall remain in force for the purpose of receiving into the Fund any amounts due from India under the provisions of the Treaty, which amounts, except such part thereof as shall be retained for the Special Reserve, shall be paid to Pakistan by the Administrator as they are received. The provisions of Article IV shall continue to apply to the Special Reserve.

ARTICLE XII

Additional Parties

SECTION 12.01. Any other Government or institution may, with the prior approval of the Parties hereto and in accordance with such arrangements as they shall agree, become a Party to this Agreement, upon deposit with the Bank of an instrument stating that it accepts all the provisions hereof and that it agrees to be bound thereby.

SECTION 12.02. The Administrator may receive on behalf of the Fund from any Government or institution, whether or not a party hereto, amounts not provided for herein to be held and used as part of the Fund subject to the provisions hereof, in accordance with such arrangements, not inconsistent herewith, as the Parties hereto may approve.

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~~THE SCHEDULE—continued.~~

ARTICLE XXI

Entry Into Force

~~SECTION 13.01. This Agreement shall enter into force on the date on which the Treaty enters into force pursuant to the provisions thereof, and will then take effect retrospectively as from the first April, 1960.~~

ARTICLE XIV

Title

~~SECTION 14.01. This Agreement may be cited as "The Indus Basin Development Fund Agreement, 1960."~~

DONE AT Karachi, this 19th day of September, 1960, in a single original to be deposited in the archives of the International Bank for Reconstruction and Development, which shall communicate certified copies thereof to each of the Governments signatory to this Agreement.

(Here follow signatures on behalf of the following parties to the Agreement:—Commonwealth of Australia, Canada, Federal Republic of Germany, New Zealand, Pakistan, United Kingdom of Great Britain and Northern Ireland, United States of America and the International Bank for Reconstruction and Development.)
