

Crucial Water Issues between Pakistan and India, CBMs, and the Role of Media

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ABSTRACT

This paper thrashes out the water issues between Pakistan and India and the recent developments that have taken place specifically in the year 2011. The disputes of building dams on cross – boundary rivers like the construction of Kishanganga Hydro – Electricity Project by India, Pakistan’s objections to the project, decision of the International Court of Arbitration, Indian response, confidence building measures and the role of media have been analysed. The study identifies India’s various unfair dealings with Pakistan in water-sharing. The water issues will attain significance greater than the Kashmir issue. Solving the Kashmir issue will lead towards solving the water issues.

KEY WORDS: Water Issues, Pakistan, India, Kishanganga Dam, CBMs, Media

Introduction

There is growing feeling in Pakistan that while India is increasingly building dams on its western rivers, it is simultaneously engaged in activities aimed at stopping Pakistan, the lower riparian, from building storage dams on Pakistani rivers. In the case of its upper riparian neighbour, Nepal, India has even deployed heavy artillery to partially destroy dams which were being constructed by the Nepalese. India’s water strategy thus boils down to construction of more and more dams on cross-boundary rivers inside its own territory while obstructing dams in lower-riparian neighbours and destroying those in upper-riparian Nepal (Kazi, 2011).

Honorary vice-president of the International Commission on Large Dams (ICOLD), Asif H. Kazi in his column titled “Misusing the Indus Treaty” argues that: “Pakistan’s farmlands have been deprived of the uses of the waters of three eastern rivers, Ravi, Beas and Sutlej. The flows of these rivers were allocated to India under the 1960 Indus Waters Treaty. Authorities on the subject accept that when rivers and canals in Pakistan’s demarcated area were classified as Pakistan’s assets under the Partition Act, 1947, it meant only one thing: that these rivers and canals were to continue to receive water in the same way as before. Under the

treaty, Pakistan was to enjoy the unrestricted use of the Indus, the Jhelum and the Chenab. However, exceptions were inserted as annexure which allowed India to develop and use certain specified quantities of water of the three western rivers as well” (Kazi, 2011).

Annexure E established Indian storage limits on the western rivers, which add up to 3.6 MAF (million acre feet). However, India deliberately followed a pattern of filling water behind Baglihar Dam constructed on the Chenab River by impounding flows in the low-flow month of September, a clear breach of the treaty which prescribes the filling period as being from June 21 to Aug 31 (Ibid).

Obviously, the foregoing was not the intent of the Indus Waters Treaty. And it is precisely for this reason that Pakistan has been insisting that India adopt well-known dam design features, especially for the outlets, which can easily ensure that the reservoir operators would not be able to manipulate flows of the western rivers at their own sweet will. India is opposing this using as an excuse the need for the prolongation of the reservoirs’ lifespan through sediment flushing (Ibid).

Backdrop: The Indus Waters Treaty (IWT)

Analysts are of the opinion that, “the highly sensitive and charged water issues between Pakistan and India have emerged out of the way the 1947 partition lines were drawn. A seemingly minor change, but one with far-reaching consequences, was introduced in the partition map, in violation of all principles laid down by the British government. It came about at the very last minute when, upon the insistence of the Indian leaders, the partition award turned over to India three vital districts that were originally allocated to Pakistan, with the sole objective of providing India with access to Kashmir. The three remaining western rivers on which Pakistan now relies upon all originate in or pass through Kashmir before entering Pakistan. In other words, India, after having obtained the waters of the three eastern rivers through Indus Waters Treaty, is now trying to take control of three western rivers as well” (Kazi, 2011).

Momin Iftikhar provides further detail: “The Indus Waters Treaty (IWT) signed in Karachi on September 19, 1960, by India’s Prime Minister Jawaharlal Nehru, Pakistan’s President Muhammad Ayub Khan and Mr W.A.B. Illif of the World Bank has shown a remarkable endurance and resilience in withstanding the jolts of the Indo-Pak turbulent relations. The treaty allocates the water of the three western rivers of the Indus Basin (Indus, Jhelum and Chenab) to Pakistan, while the eastern rivers (Ravi and Sutlej) have been assigned to India for utilisation. The treaty allows India to tap the hydroelectric potential of the Pakistan specific rivers; with the important proviso that generation of power should not interfere with the timings and the quantity of flow of waters into Pakistan” (Iftikhar, 2011).

In his column titled “Tackling the Kishanganga knot” Iftikhar held the view that: “If India and Pakistan had normal and trustful relations, with a credible

monitoring mechanism in place, this would not have been too demanding a task to accomplish within the parameters provided by the IWT. However, with emerging water shortages for agriculture in Pakistan, and the sensitivity of timings to the flow of water in the rivers that feed the defense-oriented canals and sustains the capacity for the generation of hydroelectric power, it is easier said than done” (Ibid).

Construction of Kishanganga Hydro – Electricity Project (KHEP)

The water sharing environment in South Asia is fast deteriorating. The Pakistani frustration at Indian inflexibility was evident when it referred the matter of Baghliar Dam on River Chenab to the World Bank in January 2005. The verdict by a neutral expert, appointed by the bank ultimately settled the issue in February 2007. The decision accommodated both the parties and each country felt that its respective stance had been addressed and vindicated. The problem did not end there; within four years, the two countries are back for arbitration over the water issue and the bone of contention this time is construction by India of the Kishanganga Storage-cum-Hydroelectric Power Project on River Neelum (Indians call it Kishanganga), which is a major tributary of River Jhelum. Iftikhar (2011) points out that: “The matter is sensitive because not only the dam will curtail the flow of water for agriculture, but Pakistan is also constructing the Neelum-Jhelum Hydroelectric Project on River Neelum, downstream of Kishanganga Project.”

Pakistan’s fundamental objection to Kishanganga is that it involves diverting the water of Neelum River through a 21km long tunnel towards the Wullar Lake to generate 330MW power. This is manifestly not allowed by the IWT. Iftikhar indicates: “This diversion is against the provisions of the IWT and has not only serious consequence for the 969MW power generation capability of Neelum-Jhelum Hydroelectrical Project, but will also reduce the water supply for agriculture in the areas of Azad Kashmir, which are dependent on the Neelum River flow. It is estimated that the diversion of water towards Wullar Lake will reduce flow into Pakistan by 27 percent (Ibid).

According to the available data, it is estimated that, “the dry spell is likely to extend to eight months per year. The lack of water is going to have an adverse impact on the agriculture in over thousands of acres in Azad Kashmir, which are dependent upon the flow of River Neelum, besides causing damage to the environmental aspects of flora and fauna nurtured by the rivers flow in the Neelum Valley” (Ibid).

Kazi (2011) supports the view that, “the proposed Kishenganga project violates the treaty in a most glaring way. Firstly, the hydroelectric plant is not located on the Kishenganga but way off the channel at the end of a long tunnel that discharges into another tributary. And, secondly, the recipient tributary ultimately

outfalls upstream of the Wullar Lake, and this completely changes the patterns of the flows of both Kishenganga and Jhelum Rivers.”

The International Court of Arbitration’s Decision

In response to Pakistan’s appeal for ‘interim measures’ against the dam which may inhibit the restoration of the river flow to its natural channel, “The International Court of Arbitration (ICA) barred India from any permanent works on the controversial Kishanganga hydro-electricity project (KHEP) on River Neelum at Gurez in occupied Kashmir” (Raza, 2011).

Farhatullah Babar, Spokesman for President Asif Ali Zardari, said that, “The arbitration court took the decision on an appeal filed by Pakistan that India was diverting the flow of the river and violating Indus Water Treaty (IWT) between the two countries” (Ibid).

The court order said: “India shall not proceed with the construction of any permanent works on or above the Kishanganga/Neelum River bed at the Gurez site that may inhibit the restoration of the flow of the river to its natural channel. Pakistan and India shall arrange for periodic joint inspections of the dam site at Gurez in order to monitor the implementation of the court’s order” (Ibid).

Irfan Raza reports that, “Islamabad had submitted its version in the World Bank’s arbitration court in July (2011). The major contention was that under the law India cannot divert the route of River Neelum. Pakistan fears that the Kishanganga dam would rob it of 15 per cent water share – a violation of the Indus Water Treaty. Islamabad accused Delhi of trying to divert the water of Neelumriver in order to harm Pakistan’s Neelum-Jhelum hydro-electricity project (Ibid).

In its request Pakistan had required: “A stop work order; An order that any steps India has taken or may take in respect of the KHEP are taken at its own risk without prejudice to the possibility that the court may order that the works may not be continued, be modified or dismantled, that India be ordered to inform the court and Pakistan of any imminent and actual developments on the Kishanganga Dam that may adversely affect the restoring of the status quo ante or that may jeopardise Pakistan’s rights and interests under the treaty; Any further relief the court considered necessary” (Ibid).

Indian Response

Indian experts denied the allegations raised by the Pakistani Government on building Kishanganga Dam. Former Secretary, Water Resources, Ramaswamy R Iyer in his column titled “Pakistan: Water on the Boil Again” writes: “ So far as one knows, India has not built any storage, not even the 3.6 MAF permitted by the

Treaty, nor does it intend to cause harm to Pakistan by diverting Indus waters. In any case, there is such a thing as the Permanent Indus Commission. How can India store or divert waters to the detriment of Pakistan under the watchful eyes of the Indus Commissioner for Pakistan” (Iyer, 2011)?

On violations of the provisions of the Indus Treaty by India, Iyer elaborates that, “The Treaty envisages and permits Indian projects on the western rivers, and so the projects in themselves cannot be violations of the Treaty. They can be violations of the Treaty if they deviate from certain restrictive provisions, but that will be questioned by the Indus Commissioner for Pakistan. The questions may be resolved within the Commission, or become differences and get referred to a Neutral Expert (as happened in the Baglihar case), or may be in the nature of disputes to be referred to a Court of Arbitration (as has now happened in the Kishenganga case)”.

Vibha Sharma in a column titled “India confident of winning Kishanganga dispute” writes: “India today termed as “favourable” the International Court of Arbitration (ICA) order last week which prevents the country from undertaking permanent works above the riverbed level at the Gurez site of the Kishanganga hydropower project. The final orders are expected either in 2012-end or in early 2013” (Sharma, 2011).

Water Resources Minister Pawan Bansal asserting that “the stay was merely an interim legal position and in no way signified any “loss of position” for India, as was being projected by Pakistan. Bansal told The Tribune that “the neighbouring country had raised two issues-stopping the work and dismantling the construction already done -and the court did not agree to either of its two contentions” (Ibid).

“India can go ahead with construction of powerhouses, tunneling works, coffer dams, temporary bypass tunnel and concretisation under the riverbed for the dam. The only thing we cannot do is go above the surface of the river bed, which is not a problem since we would only be able to complete these works by 2012-end and 2013 beginning, by when the court will give its final decision,” Bansal said (Ibid).

For now, India is compiling a rejoinder to emphasize its point before the International Court of Justice. “The Hague-based ICA has directed India to submit a report on environmental hazards to the ecosystem due to this project” (Ibid).

Former Secretary, Water Resources, Ramaswamy R Iyer also maintained that “the ruling was neither a win nor a loss for either country. It is just a temporary stay. India can still continue with related works except constructing the dam” he said (Ibid).

However, taking into account political and environmental consequences of the project, Sharma is of the view that “there appears to be some amount of skepticism with an expert saying that investments could go waste if the final award goes against India, which in other words also means that the power problem in Kashmir will continue. “India will be taking a risk by carrying out with other

works till the final ruling,” said the water resources expert, who did not wish to be quoted” (Ibid).

Confidence Building Measures

Daily *The Telegraph* reports that “Ahead of another round of Indo-Pak water talks scheduled in mid-September (2011), the Jammu and Kashmir government quietly abandoned the controversy-ridden plan to construct a concrete barrage where the Jhelum meets the Wullarlake in north Kashmir” (Thakur, 2011).

Thakur, Sankarshan (2011) believes that: “It’s a small move with big implications: a persistent irritant in bilateral ties, the dumping of the barrage could prove a significant confidence-building measure between India and Pakistan”.

Giving further details Thakur writes that “Work on the venture, christened the Tulbul Navigation Project by New Delhi but better known as the Wullar barrage, was stopped two years after it commenced in 1984 upon strong objections from Pakistan which argued the lock-cum-control barrage would not only deprive it of water but could also be used as a “natural weapon” against it” (Ibid).

The Jammu and Kashmir minister for irrigation and flood control, Taj Mohiuddin, confirmed that “the state government had resorted to alternative measures to prevent flooding in the Jhelum’s upper catchments and ensure navigability in the river” (Ibid).

“We have given up the barrage project in favour of temporary rubber dams, which can work as effectively,” Mohiuddin told *The Telegraph*. “Why should we want to erect a huge concrete structure when modern technology allows us to solve problems with more flexible methods” (Ibid)?

He did say the barrage had become “an unnecessary source of tension and suspicions” between the neighbours. “We had not been able to move on the project, it was stalled, this new rubber damming technique can probably help us a win-win way out,” he said (Ibid).

Mohiuddin appeared convinced that “the new initiative would address reservations that Pakistan has had with the erection of a concrete barrage” (Ibid).

Role of Media

Zahra (2011) argues that the “Paucity of direct communication between the two states has increased the role of the media. The two nuclear neighbours are caught in a warp where the status quo in bi-lateral relations vacillates between improvement and deterioration but does not sway beyond a certain point — either way — so as to achieve anything decisive.”

This part of the study glimpses at the role of the media on the water issues between Pakistan and India during 2011. Excerpts from the editorials and news reports of two leading newspapers from each country i.e. daily *Dawn* and *The*

Nation from Pakistan and *The Tribune* and *The Kashmir Times* from India have been included.

Pakistani Media

An elite Pakistani newspaper daily *Dawn* in its editorial captioned “Controversial Project” expressed concerns on the Kishanganga hydropower project being constructed by India. The paper reads: “A series of disputes on hydropower generation projects initiated by India has given rise to concerns that New Delhi is trying to control the river water and thus ‘strangulate’ Pakistan’s agriculture and economy. Many experts also believe that, given the situation, a future war over water between India and Pakistan cannot be ruled out” (‘Controversial Projects’, 2011).

Dawn extends its comments by saying that: “Repeated Indian attempts in the past to find loopholes and technical flaws in the 50-year-old water treaty that can be used to New Delhi’s advantage have hardly been helpful in easing tensions over water-sharing between the two neighbours” (Ibid).

In its course of discussion the paper writes, “We will have primarily ourselves to blame in case of such an eventuality. Successive governments in Islamabad have failed to raise and resolve crucial water issues, including this one, that have arisen from time to time with India to the peril of Pakistan’s agriculture and economy. While Islamabad must vigorously pursue the case at international forums to protect its economic interests, India should remember that the failure to satisfy Pakistani concerns will only delay the realisation of the dream of a prosperous South Asia whose various parts are at peace with one another” (Ibid).

Another leading English language Pakistani newspaper *The Nation* criticizes Indian policy on water sharing. In its news report *The Nation* reads, “The Treaty has in great detail covered a just distribution of water of rivers flowing from India to Pakistan. Under the Treaty India in no case can hold the water or hamper the flow of water during various seasons to Pakistan” (‘Pakistan likely to win’, 2011).

The paper further writes, “The Kishanganga project is a part of the India move to build a series of water reservoirs on all the three major rivers including river Chenab to utilize water at the upstream for the purposes of irrigation and power generation depriving a huge agricultural lands of waters which have been irrigating from these sources for centuries” (Ibid).

Commenting on the World Court of Arbitration’s decision that stayed India’s construction of a dam across the Neelum at Kishenganga, *The Nation* in its editorial “Kishanganga stayed” reads: “This stay order is not a final injunction, though it is the first sign that Pakistan is taking India’s constant violations of the Indus Waters Treaty (IWT) with some seriousness. Earlier this year, in bilateral secretary-level talks, Pakistan had conceded acceptance of a revised Indian design of the Wuller Barrage, something which only encouraged Indian ambitions in this

direction, and which furthered its ambitions to turn Pakistan into a barren wasteland, by using its illegal occupation of Kashmir to stop Pakistan's water from getting to it" ('Kishanganga stayed', 2011).

The Nation suggests the Pakistani government to follow a two-pronged strategy. "First, to pursue this case with full vigour, and ensure that the stay is confirmed; second, to utilize this breathing space to start building irrigation-cum-generation projects on the Indus, and thus rid itself of this charge which is justified only because certain pro-Indian lobbies have been working against the Kalabagh Dam. The stay order, when confirmed, will also provide a useful precedent which will help stop Indian depredations on the Indus. However, a permanent solution will involve a settlement of the Kashmir issue. It would mean a general Indo-Pak settlement, ridding us of threat of water projects in Held Kashmir" (Ibid).

Indian Media

Daily *The Tribune* is published from Chandigarh. In news report it provides details about Pakistan's stance in the ICA. The paper writes, "Pakistan has moved the Court of Arbitration asking it to direct India to stop work at the 330-MW Kishenganga hydropower project in Jammu and Kashmir. The project is likely to be completed by 2015. A seven-judge Bench has started arbitration proceedings from January 14 this year in the Hague" ('Pakistan wants India', 2011).

The report further reads, "Incidentally, this is the first case referred for international arbitration under the provisions of the Indus Water Treaty, 1960. Earlier, India and Pakistan had sought the services of a neutral expert appointed by the World Bank to resolve their differences over the Baglihar Dam under construction on the Chenab. The Bench – comprising Justice Stephen M Schwebel (head), Justice Sir Franklin Beman, Prof Howard S Wheeler, Justice Bruno Simma, Jan Paulsson, Justice Peter Tomka and Lucius Caflisch – has three neutral umpires, including the head of the Bench, and four arbitrators nominated by India and Pakistan. Noted lawyer and expert on International law Shankar Das and legal luminary Fali s Nariman, both of whom had argued India's case in the Baglihar dam issue, are representing India" (Ibid).

Another newspaper *The Kashmir Times* from Jammu published a news report on the Nimoo-Bazgo hydropower project being built by India on the Indus River. It reads, "Pakistan wants to raise objections to the project, saying it allegedly violates the Indus waters treaty. The decision to approach the ICJ on the Nimoo-Bazgo project was made after Pakistani officials made their first visit to the project site and concluded it was allegedly in "total violation" of the Indus waters treaty of 1960, a senior unnamed member of Pakistan's Indus Waters Commission told the media. The unnamed official claimed India would be able to complete the Nimoo-Bazgo project by July 2012 and thus "suffocate" the water flow in the Indus. The design of its gated spillways and the depth of the dam allegedly breach the Indus

waters treaty. The Pakistani side has raised five objections to the design of the project” (Ibid).

Conclusion

This paper identified India’s various unfair dealings with Pakistan in water-sharing. The important point is that water has the potential of becoming a new ‘core issue’ of even greater prominence than Kashmir, and calls for urgent attention (Iyer, 2011). India-Pakistan relations in the previous decade have piercingly been affected by the crucial disputes on water-sharing. A permanent solution will involve a settlement of the Kashmir issue. This concern needs to be taken seriously and should be jointly studied. Environmental concerns and climate change are post-Treaty developments and call for urgent inter-country consultations, not only at the governmental level but also at academic and expert levels (Iyer, 2011).

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Biographical Note

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