

# Two Neighbours and a Treaty

## Baglihar Project in Hot Waters

*Pakistan has objected to several features of the Baglihar hydropower project on the Chenab river in Jammu and Kashmir contending that it violates the Indus Water Treaty. The World Bank, which brokered the IWT, has appointed a neutral expert to resolve the differences. Diplomats fear these developments might cast a shadow on the composite dialogue process as seeking arbitration on the dam means breaking out of the bilateral framework.*

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**T**his project was conceived in 1992, approved in 1996 and construction began in 1999. The Baglihar Hydro-power Project (BHP) is located on the river Chenab in Ramban tehsil of Doda district, Jammu and Kashmir (J and K). It is about 150 km from the nearest railhead, Jammu, near Batote on the Jammu-Srinagar Highway-1A on the Nasri bypass road. The BHP will have an installed capacity of 450 MW during phase I and 900 MW during phase II. It is a Rs 4,000 crore venture of the government of J and K and about Rs 2,500 crore has already been spent on it. The project is targeted to be completed by 2007.

Pakistan has objected to several features of the project, contending they violate the Indus Water Treaty (IWT) that lays down the rights and obligations of India and Pakistan for the use of waters of the Indus system of rivers. India disagreed and Pakistan approached the World Bank, which had brokered the IWT to appoint a neutral expert (NE) to resolve the differences.

### Drawing Boundaries on Water

When India and Pakistan became independent in 1947, the boundary between the two countries was drawn right across the Indus basin, with Pakistan in the lower riparian region. Two vital irrigation headworks – Madhopur on Ravi and Ferozepur on Sutlej – on which the irrigation canals of Pakistan's Punjab had been dependent were in Indian territory. The resultant dispute was resolved when negotiations facilitated by the World Bank

led to the signing of the IWT in 1960 at Karachi. The signatories were Mohammad Ayub Khan for Pakistan, Jawaharlal Nehru for India and W A B Illif of the World Bank.

The treaty has worked well for years. But since the 1980s the differences that cropped up over several projects have not been sorted out despite protracted talks. Pakistan has not only opposed the BHP on river Chenab, it has also opposed the Wullar Barrage/Tulbul navigation project on the Jhelum, the Swalakote hydroelectric project and Dul Hasti hydroelectric project on the Chenab and the Kishanganga hydroelectric project on the Kishanganga in J and K.

### Suspicious Neighbours

The dispute over the BHP centres on the design specifications. Pakistan has raised six objections relating to project configuration, free board, spillway (ungated or gated), firm power, pondage, level of intake, inspection during plugging of low level intake, and whether the structure is meant to be a low weir or a dam. The argument is based on paragraph 8 of Annexure D to the IWT. India maintains that the conditions at the Baglihar site make a gated spillway necessary but Pakistan insists that an ungated spillway will do just fine and that the plan to provide a gate contravenes the provisions of paragraph 8 (e) of Annexure D to the IWT.

Pakistan also contends that the pondage in the operating pool, at 37.722 mm<sup>3</sup>, exceeds the level agreed upon in the treaty and that the intake for the turbine is not located at the highest level as required by the treaty. It believes that the height of the

dam, at 470 feet, is excessive and that the reservoir created at the site will be more than what is required for power generation needs and it might block the flow of the river for a period of 26-28 days during the low season (January-February). This, it is argued, will cause a drop of about 200 cumecs in the river flows during this period at the point of entry into Pakistan.

Based on all these objections Pakistan insists that India should stop all work on the project till the issue is resolved. India has refused, saying there is no provision in the treaty for stoppage of work, and that past experiences in trying to find solutions by stopping construction have not been productive.

The IWT gave India exclusive rights over three eastern rivers – Sutlej, Beas and Ravi – leaving Chenab, Jhelum and Indus to Pakistan. But the treaty does allow India limited use of their waters for agriculture, domestic purposes and development projects provided there is no obstruction to the flow of waters into Pakistan.

The Permanent Indus Commission (PIC) set up under the IWT by the two countries has been meeting regularly to sort out any differences that arise. This is the first time the committee has failed to resolve a crisis forcing Pakistan to invoke the provision to approach the World Bank. The World Bank scrutinised Pakistan's record of actions taken before the request and acknowledged that it has the mandate to appoint a NE but is not a guarantor to the treaty and therefore, will not directly participate in any discussion or exchange on the subject. And so Raymond Lafitte was appointed as the NE and the arbitration clause is in operation for the first time in the 45-year history of the treaty.

### **Pakistan's View**

Underlying the dispute are suspicions and apprehensions resulting in much rhetoric. Claiming the project will affect the flow of river waters to its territory in violation of the IWT, an upset Pakistan says that India planned the dam and began construction without its approval as mandated by the treaty.

The gates are another big issue. Pakistan feels the closure may adversely affect irrigation in its territory. They argue that 450 megawatts of electricity can be generated even with the gates open. Pakistan fears that tampering with the flow of the river may create floods or drought downstream. The allegation is that India has not

been taking it into confidence about the project's technical details and has been adopting evasive tactics right from the beginning. Some sharing of data took place at a pretty late stage of construction (in 2003). Pakistani engineers believe that calling Baglihar a "hydroelectric" project is a misnomer. The structure will create a reservoir at the site and hence should be properly termed "dam" and a dam is not allowed as per the terms of the treaty. At a briefing after the decision to approach the World Bank was taken, Pakistan foreign office spokesman Masood Khan said, "Pakistan was left with no choice but to go to the World Bank. Pakistan tried every channel provided by the treaty, but India did not change its stance and refused to meet Pakistan's legitimate concerns."

Pakistan alleged that New Delhi denied Islamabad's repeated demand for an on-site inspection by its members of the Indus Waters Commission for four years. The treaty provides for an inspection tour once every five years or on request. Only when threatened with approaching the World Bank did India allow an on-site inspection in October 2003. Among the reasons given for Pakistan's concern was a drought that had compelled it to economise on water. With insufficient storage capacity and inadequate rainfall, water shortage in Pakistan reached critical proportions and was a major source of inter-provincial disharmony. The Pakistan government's inability to make India bend on the Baglihar dam and Wullar barrage projects came in for severe criticism not only from the farming community but also from politicians in the ruling coalition.

India claims BHP is a fully legal scheme that involves no water storage. It denies allegations that it violates the IWT or that it will affect the flow in the river since the IWT allows power generation projects to be built on any of the three western rivers of the Indus river system, as long as they benefit the local people and do not interrupt the flow of the river.

India says that reduction in the height of the dam will impact the power generation capacity of the project and render it worthless. India also argues that the statistics provided by Pakistan on decrease in the river water flow are faulty. The rejoinder over the gate issue goes thus: An ungated spillway will require a higher crest and the silting level will also increase. The gates will enable the flushing of silt. India asserts that it made all efforts to dispel Pakistan's apprehensions. It claims to have

consistently expressed its willingness to engage its counterpart in technical discussions in PIC meetings; arranged the Pakistani team visits to Baglihar and provided necessary explanations/clarifications to the queries raised by them during the 100th PIC tour.

India claims that information on this project was sent to the Pakistan Commissioner in 1992 as required by the IWT. Since Pakistan feels that the design of this project contravenes the IWT provisions, the matter has been discussed during the 84th, 85th and 86th meetings of the PIC held in 1999, 2000 and 2001. India feels that Pakistan has been taking a rigid stand despite being informed about changes in the design of the plant and that they should have first conveyed their views/observations on these changes to India. Instead they chose to invoke relevant articles in the treaty and sought intervention of a NE.

Meanwhile India has refused to stop work on the project on the basis of its experience with the Tulbul navigation project (Pakistan calls it Wullar barrage), proposed to be built on the river Jhelum at the mouth of the Wullar lake near Sopore in Kashmir valley. After India stopped construction of the Tulbul project in response to Pakistan's objections a decade ago, it has not been possible to take it up again. India says that Pakistan's objections to BHP are based on apprehensions rather than technical reality. India's Foreign Secretary Shyam Saran observed that "The 1960 Indus Water Treaty under which the reference was made couldn't deal with suspicions of this nature."

### **IWT and Jammu and Kashmir**

To Kashmiris the BHP is a project for and by Jammu and Kashmir, a state in dire need of power. They believe Pakistan wants to deny J and K the right to use its own rivers, citing the situation in Pakistan-occupied Kashmir where they believe people have no rights over Mangla Dam on Jhelum, built to meet the power and water needs of Punjab and other parts of Pakistan.

London-based moderate separatist leaders Syed Nazir Gilani and Shabir Choudhry reacted sharply to Pakistan's appeal to the World Bank to resolve the controversial Baglihar project and questioned Islamabad's "legal or moral right" over the natural resources of J and K. Gilani even justified chief minister Mufti Mohammed Sayeed's claim that the IWT had greatly harmed the interests of the

people of the state. Sayeed had appealed to Pakistan before the secretary-level meeting between the two countries in New Delhi in the second week of January, to facilitate economic growth in the state by not objecting to projects started on its own water resources. He described the IWT as discriminating against the people of J and K. But, he was quick to add, the BHP had not violated the IWT.

J and K has never been very happy with the IWT. On March 2, 2003, the J and K assembly passed a resolution asking the central government to review the IWT. Public health minister Qazi Mohammed Afzal said that but for the terms of the treaty, over and above the 33,000 ha which was under irrigation before 1960, the state could have increased the area under irrigation by another 40,000 ha.

J and K finance minister Muzzaffar Hussain Beig, pointed out that the farmers in the state have requested the government to take a strong stand against it. The state has been facing severe water scarcity as a result of a six-year dry spell.

### Chronology of Events

*2001:* Contact between the PIC officials is broken off following tension at the border.

*July 12, 2003:* PIC meeting between India and Pakistan makes little headway. A follow-up meeting is convened in August to break the logjam. Pakistan serves its first notice threatening to seek intervention.

*October 2003:* A team of Pakistan's technical experts inspects the project site. Pakistan expresses its objections to the design and India refuses to make any changes. Pakistan serves a second notice on the Indian government to settle the dispute by December 31 that year saying it would otherwise approach the World Bank to appoint a NE.

*January 18, 2005:* A three-day meeting between the Indus Water Commissioners of Pakistan and India is concluded without finding a solution. Pakistan approaches the World Bank. Kashmir decides to go ahead with the construction of the dam. India terms Pakistan's decision to seek World Bank arbitration as "premature" and "hasty".

*April 2005:* World Bank sends a panel of three experts to both countries.

*May 10, 2005:* World Bank names Swiss national Raymond Lafitte as the NE.

*June 9-10, 2005:* Lafitte, in the course of his first meeting with Indian and Pakistani delegations, turns down Pakistan's

demand that India stop work on the project till he delivers a verdict. It is decided that a Pakistani team would visit the project site in July before submitting its report. India would respond with a "counter report". Lafitte would then visit the site in October.

### Fingers Crossed

The issue has gained momentum at a time when India and Pakistan are trying to build mutual understanding and trust. Both countries have made statements offering full cooperation to the NE and have agreed to abide by his decision. The NE is not concerned with any deeper issues and anxieties underlying Pakistan's technical objections.

The NE has to answer specific questions posed to him, about whether certain features conform to the conditions laid

down in the IWT. He is not expected to make any judgment or propose alternatives. Only if either of the two parties put in a request can he suggest measures to compose a difference or to implement his decision. He is also free to conclude that the matters referred to him fall outside his purview or that the differences amount to a dispute, better handled by a court of arbitration. There is also the possibility that the two countries might actually reach a compromise, which makes the NE's job easier.

Diplomats fear that these developments might cast a shadow on the composite dialogue process; seeking arbitration on the Baglihar dam means breaking out of the bilateral framework, even though it will not lead to the collapse of the dialogue process. [\[PW\]](#)

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