**Kishanganga Conundrum**

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On July 6, 2023, the Permanent Court of Arbitration (PCA) rejected India’s objections to the international court’s assumption of jurisdiction over the Kishanganga and Ratle Hydroelectric projects pursuant to the Indus Waters Treaty (IWT). This development came after India’s refusal to communicate directly with or appear before the court on the grounds that it considers the court not competent enough to decide upon the questions placed in front of it. However, after a prolonged oral hearing and written submissions in The Hague in May, the court issued a verdict on its competency and refuted India’s objection. Progress on this issue occurred after a pause of several years in the legal proceedings of the Kishanganga project; thus, the arrival of this ruling is perceived as good tidings for Pakistan.
India started working on the 330-megawatt Kishanganga project in 2007 and the 850-megawatt Ratle project in 2012. Pakistan has reservations over these projects owing to their controversial designs, which would disrupt water supply into the country and violate the six-decade-old Indus Water Treaty. Nonetheless, Annexure D of the treaty specifically mentions the conditions and technical details that India is required to uphold while constructing hydroelectric power projects on the western rivers, including adherence to run-of-river design.
The dispute arose due to India’s deviations from these conditions, consequently making the Kishanganga and Ratle projects a matter of extreme significance to the national security of Pakistan over the years. Since the two plants have been claimed as run-of-river, the PCA has already declared the diversion of the river by the Kishanganga hydroelectric plant legal under the IWT in its 2013 award. Pakistan’s current request for arbitration identifies seven disputes that pertain to the pondage size, low-level sediments outlets, and design for the gated spillways for flood control of the two plants.
India is planning to build 150 run-of-river plants on the western rivers. In the process, the same designs will be replicated, which can harm the water resources of Pakistan. Hence, the question of the legality of their designs for these projects is of extreme significance to the water security of Pakistan. In this particular situation, besides the Permanent Indus Commission given in Article VIII, the IWT offers two alternatives for the resolution of disputes in its Article IX; technical questions can be placed before a highly-qualified engineer (a neutral expert) or before a panel consisting of highly-qualified lawyers and engineers (court of arbitration).
Pakistan has relentlessly sought the World Bank to appoint a court of arbitration that can review the designs of these two projects, whereas India has staunchly defended its view that the matter should be reviewed by a neutral expert. Pakistan argues that the decisions by the neutral expert were non-binding. Given the gravity of the situation, Pakistan has been sending its high-level delegates to the United States to reiterate Pakistan’s demand for constituting an international court of arbitration.
India has been successfully avoiding the court’s proceedings by citing its desire to opt for a neutral expert. Now that the PCA has finally initiated its proceedings ex-parte, Pakistan has an opportunity to effectively halt Indian attempts to diminish the downstream water flow. Pakistan has formulated concise and clear questions for the court to review, leaving no room for escape or ambiguity. There will be a re-emphasis on the PCA’s final award from 2013, which outlined strict conditions, including amendments to the Indian design and operation of these dams.
India will resume its illegal designs with all of its other projects unless Pakistan successfully obtains a ruling from PCA in its favor. In this regard, Pakistan needs to ensure the availability of national data complying with international standards on water resource usage, including environment, hydro-electric usages, and agriculture, which was lacking on Pakistan’s side in the previous Kishanganga award. To achieve this goal, Pakistan must urgently construct and strategize water storage facilities while enhancing institutional capabilities to secure its rightful share under the IWT.