**Indus Waters Treaty under threat: Part - I**

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On January 25, the Indian government proposed, through a communication from the Indian Indus commissioner to his Pakistani counterpart, bilateral negotiations – to commence within ninety days – on modifying the Indus Waters Treaty (IWT) signed in September 1960. The text of the Indian communication is not in the public domain. However, in line with past practice, Indian officials briefed their news media whose extensive coverage disclosed the rationale behind New Delhi’s move.

Indian officials pointed out that the notice for negotiations had been issued just two days before a Court of Arbitration (COA) established at Pakistan’s request under the IWT was to commence its work and which had been boycotted by India. They claimed that, while India has always been a steadfast supporter and responsible partner in implementing the IWT in letter and spirit, “Pakistan’s intransigence on the treaty had forced India to send a notice for its modification”. The notice was meant to give an opportunity to Pakistan “to enter into negotiations within ninety (90) days” to “rectify the material breach of the IWT”. Indian officials claimed that “this process (negotiations) will also update the treaty to incorporate the lessons learned over the last sixty-two ( 62) years”.

The Indian notice was issued in line with Article 12(3) of the IWT) which states: “The provisions of this Treaty may from time to time be modified by a duly ratified treaty concluded for that purpose between the two governments”. The text of Article 12(3) neither mentions the process for negotiating another treaty nor prescribes a timeframe for the commencement of negotiations in response to a notice by either party. But the Indians have demanded the start of the negotiations proposed by them within 90 days. However, they have not indicated how they will react to a rejection of their proposal. Some Indian commentators have mentioned that Pakistan’s negative response will free India from compliance with the provisions of the IWT.

Indian officials told their media that the notice for negotiations had been prompted by “Pakistan’s actions since 2015 in handling disputes over the Kishanganga and Ratle hydropower plants in Jammu and Kashmir”. They referred to the “graded mechanism” provided in the treaty for dispute settlement – while “differences” are to be referred to a ‘neutral expert’ appointed by the World Bank, “disputes” are to be settled by a ‘Court of Arbitration’ whose chair is appointed by the World Bank.

Indian officials recalled that in 2015 Pakistan had proposed that the unresolved issues concerning the Kishanganga and Ratle projects be referred to a neutral expert. India accepted the proposal. In 2016, Pakistan withdrew its request and sought recourse to a Court of Arbitration.The World Bank decided to ‘pause’ its decision on the mode of arbitration, hoping that the two parties would bilaterally resolve their differences concerning the mode of arbitration. (In fact, the World Bank had unsuccessfully tried to promote a compromise). In April 2022, in the wake of a five-year long stalemate the World Bank decided to positively act on the demands of both countries. In November last year, it announced the appointment of Professor Sean Murphy as neutral expert and Michel Lino as chair of the Court of Arbitration to resolve the differences between India and Pakistan.

On January 27, Indian and Pakistani media reported the statement of Pakistan’s attorney general rejecting the Indian notice for negotiations as an illegal move aimed at diverting attention from the ongoing proceedings of the Court of Arbitration.

The Indian call for negotiations on modifying the dispute settlement mechanism of the IWT is the first shot aimed at one of the world’s most successful and widely acclaimed agreements on transboundary rivers. Curiously, Indian External Affairs Minister Jaishankar declined to comment on what he described as “a matter for the two Indus Commissioners to sort out”. Evidently, Indians feel outraged by Islamabad’s insistence on utilizing the highest mode of arbitration provided by the IWT.

India’s decision to boycott the Court of Arbitration is an eloquent example of its arrogance in handling issues concerning transboundary rivers shared with neighbours. India shares with Bangladesh the waters of the Ganges (Ganga in India and Padma in Bangladesh), the Jamuna (the Brahmaputra) and Meghna as well as fifty-four (54) other rivers which flow from India into Bangladesh, defining their borders. The 1996 Ganges Agreement dealing with flows during the dry or lean period is widely resented in Bangladesh.

India also shares – as a lower riparian – the Kosi, Karnali, and Mahakali rivers. Indian negotiators made sure that the Mahakali Agreement of 1996, which consolidated earlier agreements on water sharing, preserved India’s historic rights conceded by Nepal in agreements with the powerful British Indian government. Both Bangladesh and India lament the absence of a robust dispute settlement mechanism similar to that enshrined in the IWT in their water-sharing agreements with India.

Islamabad has rightly spurned the Indian notice for negotiations which is evidently ill- conceived. However, Pakistan must realize that the Indus Waters Treaty which ensures Pakistan’s water security is too important a matter to be dealt with in as cavalier a manner as has been attempted by the Indians. Both India and Pakistan are water-stressed countries. Pakistan’s plight is worse because unlike India it depends on a single river basin while its water needs are growing exponentially. The looming threat of reduced flows of the Indus rivers thanks to the effects of climate change amplify Pakistan’s water woes. Finally, being a lower riparian, Islamabad must strive to not only salvage the IWT but also seek to enhance its efficacy to ensure optimum benefit sharing by the two major riparians of the Indus Basin.

The Indian print media has reported their officials’ accusations of intransigence on the part of Pakistan which allegedly caused the Indian Indus commissioner to seek negotiations for modifying the IWT according to the official briefing. There have been no editorial comments on the subject . The on-line publication, ‘The Diplomat’, has noted that Sushant Samreen, a senior fellow at the Observer Research Foundation (ORF) has “cautioned against setting any precedent that could encourage China to intensify its water aggression and a Himalayan Dam-building spree.”

Daniel Haines, US academic and author of ‘Rivers Divided: Indus Basin Waters in the Making of India and Pakistan’ has in a comment published by the United States Institute for Peace ( USIP) on February 23 expressed serious concern over India’s as yet unclear intentions. Haines fears that India “might even be looking for an excuse to repudiate the treaty and press on with upstream project development, willing to accept whatever reputational cost might follow”. He thinks that “if India abrogates the treaty, Pakistani leaders could view it as a deliberate attempt to destroy their country.” He rules out Pakistan agreeing to modification of the treaty.

Further, he is aware that the BJP “stands to gain domestically from taking a tough line on Pakistan” and recalls the significant electoral benefits for the BJP from India’s air attack against Balakot in 2019. He adds that while “discarding the treaty could harm India’s international reputation…the BJP has consistently prioritized domestic politics over international opinion. In this regard, he cites the changes in the constitutional status of Jammu and Kashmir and new laws that are widely seen as targeting Muslims.

Prof Haines concludes by making an ominous conjecture: “Perhaps India could declare itself free to press with upstream construction, undermining the treaty even if the text does not change.”

To be continued…

The writer is a retired ambassador and former UN assistant secretary-general.