

Wullar and Kishenganga Projects: Ploy to Quell Kashmiri Uprising in the Garb of Development

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ABSTRACT

The Indus waters dispute is central to Pakistan-India conflict since their inception as sovereign states in 1947. A treaty — Indus Waters Treaty (IWT) — signed in 1960, under the auspices of the World Bank, is governing the flow of the Indus river system comprising six rivers: the Indus, Jhelum, Chenab, Ravi, Beas and Sutlej. Numerous issues have surfaced since the signing of the IWT including the four major disputes, namely the Salal Dam, Wullar Barrage, Baglihar and Kishenganga dams. The former was resolved bilaterally in 1978 but the latter three are not only enduring but are responsible for diplomatic deadlock in Pakistan-India relations. Throughout the 1980s and 90s the Wullar Barrage issue was limited only to the development of the Wullar Lake

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in the run of the river Jhelum Main but later India created Kishenganga Dam having linkage with it. India intends to construct a dam on another tributary of the river Jhelum—called Kishenganga in Indian-held Kashmir and Neelum river in Azad Kashmir—and plans to divert it through a 22 kilometres long tunnel into Wullar Lake near Baramulla. The Indian plans are contested by Pakistan being a violation of the IWT and also detrimental to its uses of the river Jhelum and the 969-MW Neelum-Jhelum power plant project under-construction across the Line of Control, downstream to the Kinshenganga site. This paper focuses on technical aspects of the Wullar Barrage issue [that India calls the Tulbul Navigation Project] in the light of the Indus Waters Treaty and highlights the geo-strategic importance of the Wullar and Kishenganga sites, describes the nature of the disputes, outlines Pakistani objections to the Indian plans, states the Indian justifications and highlights likely Indian intentions.

Introduction

Water has the power to move millions of people. Since the very birth of human civilization, people have moved to settle close to it. People move when there is too little of it. People move when there is too much of it. People journey down it. People write, sing and dance about it. People fight over it. All people, everywhere and every day, need it.¹

The Wullar Barrage: It is named by Pakistan after a nearby village and as Tulbal Navigation Project called by India, has been an irritant in their relations since 1985. India started construction of the barrage in 1984 without any prior notification to Pakistan — an obligation under the IWT 1960.²

1 Mikhail Gorbachev, "Out of Water", *Civilization*, 7, no. 5 (October-November 2000).

2 The Indus Waters Treaty 1960, Article VII (1), 1(c) and (2) of the Indus Waters Treaty 1960 states that "The two parties recognize that they have a common interest in the optimum development of the Rivers, and, to that end, they declare their intention to co-operate, by mutual agreement, to the fullest possible extent. In particular: (c) At the request of either Party, the two Parties may, by mutual agreement, co-operate in undertaking engineering works on the Rivers. (2) If either Party plans to construct any engineering work which would cause interference with the waters of any of

Pakistan came to know about it in 1985 through a press report that the said project was under construction by India at the Wullar Lake on River Jhelum Main in the Indian-held Kashmir. Pakistan lodged a protest for not informing it about the plan and formally asked India to immediately provide the details of the plan. On reviewing the scanty details of the plan provided by India, Pakistan lodged a strong protest invoking Annexure E to the IWT 1960 which invariably deals with the question of "Storage of Waters by India on Western Rivers."³ As the river Jhelum is categorised as a Western River in the IWT 1960 along with the Chenab and the Indus Rivers which have been allocated to Pakistan for exclusive and unrestricted use: "India shall be under obligation to let flow all the waters of the Western Rivers, and shall not permit any interference with these waters," except for some specified uses. India rejected the Pakistani objection by arguing that the project was intended to improve navigability and facilitate transportation of goods from Baramulla to Srinagar which, according to it, was allowed under the IWT. Pakistan rejected the Indian claim and raised the issue under Article IX of the IWT which deals with "Settlement of Differences and Disputes." Since then the issue has been simmering in India-Pakistan relations and has become a serious dispute.

The Kishenganga Hydro-power Project is on River Neelum which is a tributary of the Jhelum River over which Pakistan has exclusive rights under the IWT. The part of the

the Rivers and which, in its opinion, would affect the other Party materially, it shall notify the other Party of its plans and shall supply such data relating to the work as may be available and would enable the other Party to inform itself of the nature, magnitude and effect of the work. If a work would cause interference with the waters of any of the Rivers but would not, in the opinion of the Party planning it, affect the other Party materially, nevertheless the Party planning the work shall, on request, supply the other Party with such data regarding the nature, magnitude and effect, if any, of the work as may be available."

- 3 The Indus Waters Treaty named the six rivers of the system as Eastern and Western Rivers: The Indus, Jhelum and Chenab as Western Rivers, exclusively for Pakistan and Eastern Rivers: The Ravi, Beas and Sutlej exclusively allocated to India.

River Neelum in Indian-held Jammu and Kashmir (J&K) is known as the Kishenganga River. India plans to construct a 330 megawatt hydro-electric power plant on the River Kishenganga by damming the Neelum River and diverting its water through a 27 kilometre long tunnel towards the River Jhelum in the Wullar Lake, about 25 kilometres from Muzaffarabad, inside Indian-held Jammu and Kashmir. Pakistan has already planned a 969 megawatt Neelum-Jhelum hydropower project in Azad Kashmir, downstream of the Indian Kishenganga project. The diversion of the water of River Kishenganga by India will enormously reduce the flow of water and badly affect the proposed Pakistani project. Pakistan referred this issue to Permanent Court of Arbitration but the resolve was not favourable to Pakistan.

With this backdrop, the objective of the research is to signify the implications of the issue for the bilateral relations of Pakistan and India and dangers for peace in the region.

Both the issues raise many fundamental questions: Is Indus Waters Treaty 1960 failed to safeguard the lower riparian rights as enshrined in the Treaty? Is India really violating the Indus Waters Treaty? What are the likely intentions and capabilities of India? And what are the likely impacts of the water issue on India-Pakistan relations?

As concerned to methodology, generally descriptive and analytical approaches have been adopted to narrate the nature of the dispute and highlight the likely intentions of the parties to the dispute. For that purpose all types of sources have been collected from tertiary to primary; reliance on newspapers was must to narrate the facts as there is no mentionable scholarly work available on the issue so far. Much emphasis has been given to generate primary data through interviews but substantive weightage has been given to archival material.

Geo-Strategic Importance of the Wullar Lake

In order to understand the geo-strategic significance of the Wullar Lake it is necessary to note that "The River 'Jhelum

Main' starts from Verinag."⁴ Passing through Srinagar and the district of Baramulla, it enters into Azad Kashmir near Muzafarabad⁵ (see Map 1). Here its two tributaries "the Rivers Neelum and Kunhar fall in it simultaneously and then it turns towards south and enters into Mangla Dam near Mirpur."⁶

The Wullar Lake is located approximately 25 kilometres North of Srinagar (in Indian held Kashmir) on the River Jhelum Main about 5,187.24 feet above the sea level.⁷ The river Jhelum flows into the lake from the South and flows out of it in the West.⁸ The lake is "an impediment in the way of the River Jhelum Main and not a Connecting Lake."⁹

The geo-strategic significance of the site lies in the fact that any type of water-control structure enables India to intimidate Pakistan, as it has the potential to ruin the entire system of Triple Canals Project¹⁰ (namely, the Upper Jhelum Canal, the Upper Chenab Canal and the Lower Bari Doab Canal).

4 The *Indus Waters Treaty 1960*, Article I (4): "The term 'Main' added after Indus, Jhelum, Chenab, Sutlej, Beas and Ravi means the main stem of the named river excluding its tributaries, but including all channels and creeks of the main stem of that river and such Connecting Lakes as from part of the main stem itself. The Jhelum Main shall be deemed to extend up to Verinag, and the Chenab Main up to the confluence of the River Chandra and the River Bhaga." Article I (8) defines the term connecting lake as "The Connecting Lake" means any lake which receives water from, or yields water to, any of the Rivers; but any lake which occasionally and irregularly receives only the spill of any of the Rivers and returns only the whole or part of that spill is not a Connecting Lake." See also Ashutosh Misra, "India-Pakistan" *Springer Nature* (2010) accessed on May 20, 2017. <https://link.springer.com/book/10.1057%2F9780230109780>

5 Government of Pakistan, *Location Map Indus Basin Plan*, Water & Power Development Authority.

6 Kalim Akhtar, "Indian Plan to Build a Barrage on the River Jhelum", *Nawa-i-Waqt*, September 27, 1986.

7 Shah Nawaz Niazi, "Wullar Dam", *The Nation*, October, 1989.

8 Ijaz Hussain, "Pakistan and the Wullar Barrage Project", *Regional Studies*, Vol. VI, No. 2 (Spring 1988): 47.

9 Mr. Abdul Aziz, "Wullar and the Proposed Barrage", *The Muslim*, Islamabad, October 24, 1986.

10 Aloys Arthur Michel, *The Indus Rivers: A Study of the Effects of Partition* (London & New Haven: Yale University Press, 1967), 201, 239-40.

Experts are of the opinion that the control over the flow of the River Jhelum could cripple the economies of Pakistan and Azad Kashmir. It would, for instance, lay waste hundreds of thousands of acres of fertile land in the Punjab and Sindh provinces. Furthermore, it would magnify the risk of floods and droughts, since the control of the Jhelum at its source, along with the colossal reservoir of water in the Wullar Lake, would provide India with the potential to release or obstruct the river's flow any time, causing either a deluge or drought in the land of this region.¹¹

Since the Mangla Dam near Mirpur is fed by River Jhelum, development of the Wullar Lake into a barrage would put its survival at stake.¹² The Dam produces half of the total hydro-power used in Pakistan, and interference in its functioning would cause a severe power shortage in Azad Kashmir and half of Pakistan, affecting Pakistan's economy by reducing its industrial activity and agricultural production.¹³ Moreover, "...construction of the Barrage would jeopardize irrigation of two-thirds of the cultivated area of the Punjab, and also...give India the power to flood 13 million acres whenever it wished."¹⁴

The Wullar barrage would also be detrimental to Pakistan's defence infrastructure. The control of Jhelum River by India coupled with the river Chenab through the Salal Dam (constructed by it during the 1970s and Baglihar Dam constructed in 2005) and the three eastern rivers (whose control is with it under the IWT) would give it further military advantages *vis-à-vis* Pakistan. Should a conflict situation arise between the two states, India would be able to control the mobility of Pakistani troops by flooding the

11 A. A. Salaria, "Wullar Barrage: An explosive Issue", *Dawn*, (Karachi), April 9, 1989.

12 Salaria, "Wullar Barrage".

13 Asghar Ali Abdi, Sitara-e-Khidmat, General Manager, Mangla Dam, Statement passed by him during briefing to Water and Power officers at Mangla, November 24, 1970.

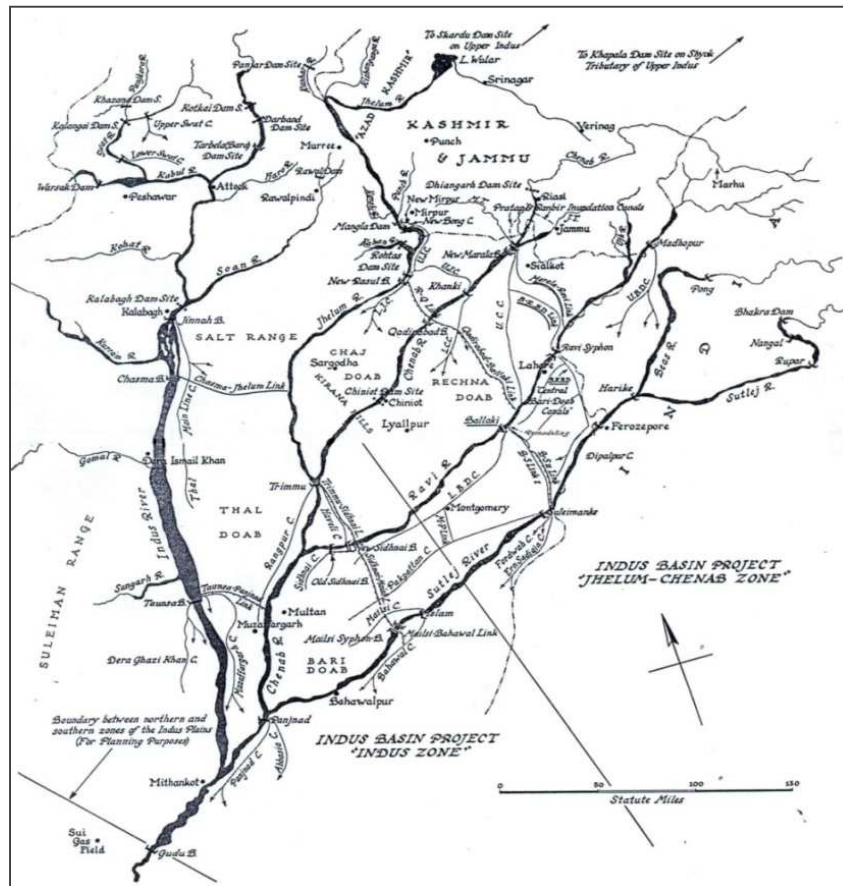
14 Nasrullah Dareshak, Irrigation Minister Punjab, "Punjab to rise against Wullar Barrage", *The Nation*, (Lahore) November 25, 1989.

battlefield or canals, and could equally enhance manoeuvrability of its own troops by closing the barrage gates, rendering the canal system dry and easy to traverse.¹⁵ It is a proven fact that during the 1965 War, the Indian army failed to cross the BRB (Bombanwala-Ravi-Bedian-Dipalpur) link canal because it was in full flow¹⁶, which averted the rapid advancement of Indian troops to capture Lahore city of Pakistan giving sufficient reaction time to Pakistani troops to counter the attack. Otherwise, India would have been in a position to bargain for Kashmir with Lahore.

Map-1: The Development Plan, showing dams and canals network

15 Dareshak, "Punjab to rise against Wullar Barrage".

16 Ch. Muhammad Anwar Ali Sarya, "Wullar Barrage", *The Nation*, November 17, 1989.



SOURCE: Michel, *The Indus Rivers: A Study of the Effects of Partition* 266).

To India, the Wullar Barrage would be of enormous significance, since the Wullar Lake could serve as a transportation infrastructure linking Baramulla with Srinagar.¹⁷ It would facilitate the transportation of 0.5 million tons of apples and other fruits from the orchards adjacent to Baramulla along with a huge quantity of timber from Baramulla forests to Srinagar.¹⁸ India claims that the

17 M. G. Srinath, "India denies Pak Charge on Jhelum", *The Hindustan Times*, September 27, 1986.

18 Author's personal discussion with an expert from water and power ministry, Government of Pakistan, on November 22, 1989.

adjacent land's topography hardly permits construction of a metalled road or railway line,¹⁹ and furthermore, the construction cost of a road would be many times greater than the building of the Barrage.²⁰ India claims that the Tulbal Navigation Project would be 90 per cent beneficial to Pakistan, as it would regulate the water supply to the Mangla Dam, increase the capacity for power generation, and regulate the supply to its triple canals system for greater irrigation in the Punjab.²¹ They also contend that the project could not be used for any purpose other than navigation as any type of significant storage would not only submerge Srinagar but also cause salinity and water-logging in a vast tract of land.²²

An analyst has observed that, "the lay of land around Wullar lake is such that there is a little possibility of the stored water being put to agricultural use."²³ India has argued that the barrage would in fact be beneficial to Pakistan, since it would reduce the velocity of the flow in the river Jhelum, which, during the flood season, rises as high as 67 km per hour, compared to the lean season's flow of 32 km per hour.²⁴ According to another analyst India has not been able to create an infrastructure for the last thirty years with which to maintain the general storage of 0.3 million acre-feet."²⁵

These explanations appear amazing when juxtaposed with a careful analysis of the impact of the Wullar Lake on the adjacent land, taking into account the general physical geography of the area and the topography of the river Jhelum catchment area, including recent man-made

19 Author's personal discussion.

20 Author's personal discussion.

21 Author's personal discussion.

22 Author's personal discussion. The fact is also highlighted by Michel, *The Indus Rivers: A Study of the Effects of Partition*, 35.

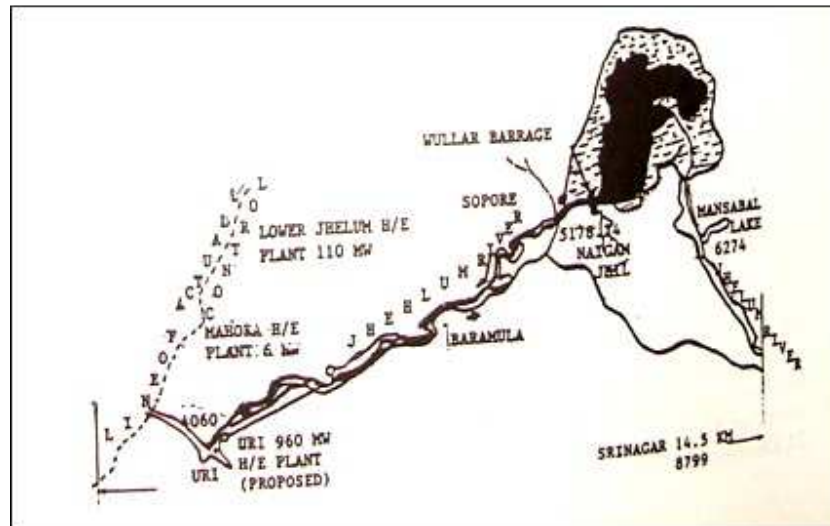
23 Altaf A. Shaikh, "Wullar Barrage" *The Muslim*, Islamabad, March 25, 1989.

24 Salamat Ali, "Propaganda Barrage", *Far Eastern Economic Review* (December 21, 1989).

25 Niazi, "Wullar Dam".

structures. An analyst has claimed: "I have seen the lake and it presents a spectacle of an inland sea."²⁶ Moreover, "India is already using the water from the Jhelum Main for their 105-110 megawatt power station on lower Jhelum and a 6-megawatt plant, run-of-river at Mohora."²⁷ The "Tulbal Navigation Project" is a two-phase project: a barrage at the mouth of Wullar Lake at Ningali... and; a 960-megawatt hydroelectric power station at Uri, close to the Line of Actual Control in Kashmir"²⁸ (see Map 2).

Map-2



The Dispute

The Indian Government started the construction of the Wullar Barrage in December 1984²⁹ without prior information or notification to Pakistan, obligatory on the part of India under the IWT.³⁰ Pakistan came to know in 1985 through a press report that India is working on such a project. The

26 Niazi, "Wullar Dam".

27 "True Story of Wullar Barrage", *Pakistan Times*, December 20, 1989.

28 "True Story of Wullar Barrage".

29 Editorial, *Daily Jang* (Rawalpindi), November 24, 1989.

30 The Indus Waters Treaty 1960, Article VII (1), 1(c) and (2).

Government of Pakistan asked India to provide immediately detailed design of the project. India provided some details, based on which Pakistan, through its Commissioner, conveyed its objections to the proposed project and sought further details in the spring of 1985.³¹ The Indian Government then supplied the required information, though vague, in Spring of 1986.³² After careful scrutiny of the details provided by India, on the basis of the provisions of the Indus Waters Treaty, the Government of Pakistan strongly objected to the proposed plan.

According to the scanty engineering details made available, "the project comprises barrage of 439.33 feet in length located at the outfall of the lake with two under-sluices of 39.37 feet each and six gated weir of 39.37 feet each, and a 12 meters wide navigational lock. The barrage on completion would create a storage of about 0.328 million acre-feet (MAF); it would have a discharge capacity of 50,000 cusecs and would enable point level in the lake to be raised and maintained at an elevation of 5,178.24 feet above sea level" (for details see Table-1).³³

31 Ijaz Hussain, "Pakistan and the Wullar Barrage Project".

32 Hussain, "Pakistan and the Wullar Barrage Project".

33 Altaf A. Shaikh, "Wullar Barrage", *The Nation*, Lahore: October 5, 1989. See also Aslam Sheikh, "India Told to Stop Work on Jhelum Barrage", *The Muslim*, September 29, 1986.

TABLE-1: Salient Features of Wullar Barrage

| | | |
|----|---|---|
| 1. | Type of Structure | Barrage |
| 2. | Designed Flood Discharge | 50,000 cusecs |
| 3. | Pond Level (Max. Operating Level) | 5178.24 ft |
| 4. | Width between Abutments | 439.33 ft |
| 5. | Navigational Lock | 39.37 ft |
| | a) Floor Level Upstream | 5,158.39 ft |
| | b) Floor Level Downstream | 5,152.81 ft |
| 6. | Under Sluices (Overflow Portion 1): | |
| | Two Spans of | 39.37 ft |
| | Crest Level | 5,165.81 ft |
| | Upstream Floor Level | 5,158.39 ft |
| 7. | Estimated Cost: Indian Rs. 380 million (1990 estimates) | |
| 8. | STORAGE CAPACITY OF WULLAR LAKE | |
| | Elevation | Surface Area Volume (Acre-Feet) |
| | 5167 ft | 14172 sq km 055,569 |
| | 5170 ft | 22874 sq km 110,478 |
| | 5174 ft | 32365 sq km 247,235 |
| | 5180 ft | 48031 sq km 347,235 |

Capacity at Maximum Operating Level (5,178.24 ft) = 0.328 MAF

As the project was started in December 1984, by around 1986 work on the foundations of the navigation lock under-sluides, excavation of the adjoining lay of the barrage, and the iron sheet piling was nearing completion.³⁴ However, after repeated and strong protests by Pakistan, later in November 1987, India agreed to suspend further construction until a settlement was reached.³⁵

The Kishenganga Dam Issue

The part of the River Neelum in Indian-held Jammu and Kashmir (J&K) is known as the Kishenganga River. The Kishenganga River (called Neelum in Pakistan) is a tributary of the Jhelum River over which Pakistan has exclusive rights under the IWT. India plans to construct a 330-megawatt hydro-electric power plant on the river Kishenganga by damming the Neelum River and diverting its water through a 27-kilometre long tunnel towards the river Jhelum Main in

34 Shaikh, "Wullar Barrage", and Sheikh, "India Told to Stop Work on Jhelum Barrage".

35 Spokesman, Government of India, *Daily Jang*, January 1989. See also Dixit, "India Stopped Wullar Barrage Construction in 87" Staff Report, *The Nation*, December 5, 1989.

the Wullar Lake, about 25 kilometres from Muzaffarabad, inside Indian-held Jammu and Kashmir. Pakistan has already started a 969-megawatt hydro-electric plant at Neelum River as it enters in Pakistan in Azad Jammu and Kashmir territory, downstream of the Indian Kishenganga project. The diversion of the Kishenganga by India will enormously reduce the flow of water and badly affect the proposed Pakistani project.

The river originates and flows through a valley situated in the central area of Jammu & Kashmir, intersected by the Line-of-Control that divides the Pakistani and Indian administered parts of J&K. The Kishenganga Valley is separated from the wide Kashmir Valley by a mountain range which runs West from Zoji La Pass in northern Kashmir. The catchment area of the Kishenganga River in the North is delimited by the Great Himalayan range as some of its tributaries flow down the slopes of the Nanga Parbat (8,126 meters). Rising in the mountain complex to the west of Dras and to the south of the Deosai Plateau, the Kishenganga River receives the waters of a number of tiny tributaries, including a stream flowing from Koubal. At Shardi, it makes a sharp bend proceeding southwest until finally merging with the Jhelum River at Muzaffarabad. The Kishenganga has a narrow and elongated basin, the width in many places spanning only twenty meters.

India has established a Kishenganga Group of Contractors which consists of a Swedish consortium, Skanska International, and Indian companies, including the Power Development Corporation. The project aims at constructing a 103-metre-high dam on the Kishenganga River in the Gurez Valley. Once completed, the lake of the Kishenganga dam will inundate the entire Gurez Valley with water, destroying its ecology and driving out more than 25,000 Dard Shin people, a unique and virtually unexposed culture, from their ancient homeland. The project plans to dam the Kishenganga in the Gurez Valley, creating a large reservoir from which a channel and a 27-km tunnel dug south through the North Kashmir mountain range will re-

direct the Kishenganga waters to the Wullar Lake at Bandipur, where a 960-MW hydro-electric power plant will be installed at the Wullar Barrage. The total distance by which the river will be diverted is 100 km.

In addition to destroying the entire Gurez Valley, such a project would reduce the flow of river Kishenganga below the dam to a mere trickle, negatively affecting the environment of the lush green valleys from Neelum to Muzafarabad. Also, the diversion of the river Kishenganga would increase the level of the Wullar Lake, forcing the displacement of inhabitants from the Muslim majority areas of the Kashmir Valley.

There are reports that the \$500 million project is to be completed with the assistance of 85 per cent international funding. The building contractors, such as Skanska International of Sweden, have pledged to arrange 85 per cent of the costs of the project from international financial institutions at nominal five to six per cent interest rates. The debt will be paid over a twelve-year period. The balance of



fifteen per cent is to be contributed by the Jammu and Kashmir Government from its internal resources.

Map-3

SOURCE: K.E.W.A (Kashmir Environmental Watch Association)

The inhabitants of the Gurez Valley are protesting that they were not consulted before the Indian Government

entered into the deal with the Swedish Consortium; the project is in its early stages.

The Dard Shin Locals have been given two options: to leave on their own or to evacuate through a government plan which will settle the people in housing projects in an urban setting. Twenty-five villages, 6 summer high-altitude habitats for shepherds, and 8 camping sites will be consumed by the dam construction project. With the completion of the project, approximately 25,000 Dard Shin people will be forced to quit the Gurez Valley.

Pakistani Objections and Indian Justifications

Relating to the Wullar Barrage issue, Pakistan contends that the provisions of the IWT cannot be read in isolation and that the document must be interpreted in the light of its object and purpose. As an upper riparian, according to IWT, India is under an unambiguous obligation to allow the water to flow downstream unhindered.³⁶ If the barrage were to be completed, India would be in a position to release or withhold water. India is entitled to construct an incidental storage work on river Jhelum if it does not exceed 10,000

36 The Indus Waters Treaty 1960, Article III (2) states that: "India shall be under an obligation to let flow all the waters of the Western Rivers, and shall not permit any interference with these waters, except for the following uses, restricted (except as provided in Item (c) (ii) of the Paragraph 5 of Annexure C in the case of the each of the Rivers — The Indus, the Jhelum and the Chenab to the drainage basin thereof: (a) Domestic use; (b) Non-Consumptive use; and (c) Agricultural use, as set out in Annexure C; and (d) Generation of hydropower use, as set out in Annexure D." The IWT reiterates in Article III (4) that "Except as provided in Annexures D & E, India shall not store any water of, or construct any storage works, on the Western Rivers." Article I (9) defines that "The term 'Agricultural Use' means the use of water for irrigation, except for irrigation of household gardens and public recreational gardens." Article I (10) defines that "The term 'Domestic Use' means the use of water for: (a) drinking, washing, bathing, recreation, sanitation (including the conveyance and dilution of sewage and of industrial and other wastes), [live]stock and poultry, and other like purposes; (b) household and municipal purposes (including use for household gardens and public recreational gardens), and (c) industrial purposes (including mining, milling and other like purposes, but the term does not include Agricultural Use or use for the generation of hydro-electric power."

acre-feet of water.³⁷ The Indian plan to store 300,000 acre-feet is thirty times larger than the volume permitted under the IWT.³⁸

India rebuts the Pakistani charge that “the structure she is building is not a ‘storage work’ but only a control structure envisaging use of natural storage.”³⁹ India also justifies building the barrage on the ground that it is meant for navigational purposes during the winter months which, in its view, draws support from the “non-consumptive use” clause of IWT.⁴⁰

India contends that it is permitted four distinct kinds of uses of the western rivers: domestic use, for drinking, washing etc.; agricultural use, for irrigation; restricted use for the generation of hydro-electric power in “run-of-river” plants; and what is called “non-consumptive use”. Thus, according to India, it is allowed such “non-consumptive use” of the Western rivers, including the Jhelum Main and its “Connecting Lake,” the Wullar Lake⁴¹. However, the central issue under dispute is whether the Wullar Barrage is

37 The Indus Waters Treaty 1960, Paragraph 8(b) and (h) of Annexure E states that: “The figures specified in Paragraph 7 (Annexure E)* shall be exclusive of the following:

(a) Any natural storage in the connecting lake, that is to say storage not resulting from a man-made works.”

(b) Storage incidental to a barrage on the Jhelum Main or on the Chenab main not exceeding 10,000 acre-feet.

38 Hussain, “Pakistan and the Wullar Barrage Project”, 49.

39 Srinath, “India denies Pak Charge on Jhelum”.

40 The Indus Waters Treaty 1960, Article 1(11) defines the term “‘Non-consumptive Use’ to mean any control or use of water for navigation, floating of timber or other property, flood protection or flood control, fishing or fish culture, wildlife or other like beneficial purposes, provided that, exclusive of seepage and evaporation of water incidental to the control or use, the water (undiminished in volume within the practical range of measurement) remains in, or is returned to, the same river or its Tributaries; but the term does not include agricultural use or use for the generation of hydroelectric power.” See also Ashutosh Misra, “India-Pakistan” *Springer Nature* (2010) accessed on May 20, 2017.
<https://link.springer.com/book/10.1057%2F9780230109780>.

41 Srinath, “India denies Pak Charge on Jhelum”.

essentially a project for the “control or use of water for navigation” or whether it constitutes a “storage work”.

The term ‘storage work’ is defined as a work constructed “...for the purpose of impounding the waters of a stream”.⁴² Is the barrage being constructed for “the purpose of impounding”, i.e. the collection or confinement of the waters of the Jhelum or as a “control of water for navigation”? The Indian standpoint is that the water will indeed be “confined” for some time in order to raise the level of the lake, and then to regulate supply by “control” of the water for navigation or construct any storage works on, the western rivers”.⁴³ One such exception is for ‘run-of-river’ hydro-electric projects. The other, pertinent to the dispute, takes the form of limited permission for the storage of the waters of the western rivers, as spelt out in Annexure E of the IWT.⁴⁴ India is

42 *Indus Waters Treaty, 1960*, Annexure E Paragraph 2(a).

43 “India Defends Jhelum Project”, *Telegraph*, New Delhi, October 27, 1986. “Wullar Barrage not to be shelved”, *The Hindu* (Madras), October 29, 1987.

44 The Indus Waters Treaty 1960, Paragraph 8(b) and (h) of Annexure E states that: “The figures specified in Paragraph 7 (Annexure E)* shall be exclusive of the following:

Any natural storage in the connecting lake, that is to say storage not resulting from a manmade works.”

(h) Storage incidental to a barrage on the Jhelum Main or on the Chenab Main not exceeding 10,000 acre-feet.

* Paragraph 7 of Annexure E lays down the aggregate storage capacity of all single purpose and multi-purpose reservoirs which may be constructed by India ...for each of the categories shown in columns (3), (4) and (5), with the quantities specified therein.

| | | |
|-----------------|---------------|-----------------------|
| General Storage | Power Storage | Flood Control Storage |
|-----------------|---------------|-----------------------|

(b) The Jhelum Main Nil Nil. As provided in Para (9)**

(c) The Jhelum (excluding the Jhelum Main) 0.5 MAF 0.25; MAF 0.75 MAF

** Paragraph 9 of Annexure E reads as: “India may construct on the Jhelum Main works as it may consider necessary for flood control of the Jhelum Main and may complete any such works as were under construction on the Effective Date of the IWT 1960.

Provided that:

any storage which may be effective by such works shall be confined to off-channel storage in side valleys, depressions or lakes and will not involve any storage in the Jhelum Main itself; and except for the part held in lakes, burrow-pits or natural depressions, the stored waters shall be released as

allowed “any natural storage in connecting lake,” like the Wullar Lake but it must be “storage not resulting from any man-made works”.

Some Indian sources state that the Wullar Lake is in a pathetic state — a “patient on the death bed,”⁴⁵ and has “halved in its size over the past five decades,”⁴⁶ and become “flatter and shallower.”⁴⁷ The Wullar impedes navigation, especially during the winter, from late October to mid-February. According to India the Barrage is not intended to add to storage as such, but to regulate depletion in order to ensure navigability all year round.⁴⁸ This is sought by the Tulbal Navigation Project, which would see the construction of a 440-foot long barrage, with a navigation lock, at the mouth of the Wullar Lake.⁴⁹

India offered assurances that the “Tulbal Navigation Project is to control and regulate the depletion from Wullar Lake to provide the requisite flow in the Jhelum; the volume of water that flows into the Jhelum as it enters Pakistan will not be diminished nor will be any material change in the flow in any channel;” and “these precautions envisaged in the project will be in the interests of Pakistan as well.”⁵⁰ Pakistan strongly objects that it is not a work for navigational “control,” but of “storage”. It will be an interference with the waters⁵¹ of

quickly as possible after the flood recedes and returned to the Jhelum Main lower down.”

45 *The Kashmir Times*, February 24, 1989.

46 *The Kashmir Times*, February 24, 1989.

47 A. G. Noorani, “The Wullar Barrage Dispute”, *The Muslim*, Islamabad, May 20, 1989.

48 Indian government stand as reflected by Noorani. See also Srinath.

49 Indian government stand as reflected. See also *The Times of India*, February 24.

50 Indian government stand as reflected. Also confirmed by VOA as quoted in UNI, *The Muslim*, Islamabad, October 2, 1986 and “Indo-Pak Talks on Wullar Lake soon”, *Amrita Bazar Patrika* (Calkatta) May 25, 1987.

51 The Indus Waters Treaty 1960, Article I(15) defines that “The term ‘interference with waters’ means: (a) Any act of withdrawal from; or (b) Any man-made obstruction to their flow which causes a change in the volume (within the practical range of measurement) of the daily flow of the waters:

the Jhelum Main and will affect the volume of water flowing into the river and apprehends that under the cover of a navigation project, India is in fact attempting to gain control of the water of the “Jhelum Main” for hydroelectric power production.

Relating to the Kishenganga project Pakistan rejects the Indian plan on the basis that it will adversely affect its 969-MW Neelum-Jhelum hydro-electric power project underway across the Line of Control down-stream the site of the Indian plan. India argues that under the IWT it can store waters of the Neelum river which is a tributary to the Jhelum River. India justifies its project and claims that the principle of “prior appropriation”, as per Paragraph 15 (iii), Part-3, Annex-D of the IWT states that:

where a Plant is located on a Tributary of the Jhelum on which Pakistan has any Agricultural use or hydroelectric use, the water released below the Plant may be delivered, if necessary, into another Tributary but only to the extent existing Agricultural use or hydroelectric use by Pakistan on the former Tributary would not be adversely affected.⁵²

Since Pakistan has not developed such uses on the River Neelum thus India is justified to divert waters under the principle of prior appropriation envisaged in the IWT. India also claims that the waters will ultimately reach Pakistan through Jhelum though not through Kishenganga (Neelum).

The Process of Negotiations

The “IWT contains a self-executing procedure for resolving the differences and disputes relating to the interpretation and application of its provisions.” Procedures are agreed upon under Article IX which is as under:⁵³

Provided however that an obstruction which involves only an insignificant and incidental change in the volume of the daily flow, for example, fluctuations due to the afflux caused by bridge piers or a temporary by-pass, etc., shall not be deemed to be an interference with the waters.”

52 “Sarasvati sarovar, Ad badri seen from Space”, *Sarasvati Research Center Blog Archive*, accessed on May 22, 2017.
<http://sarasvati97.blogspot.com/2008/02/vedic-sarasvati-channel-at-bhor-sayidan.html>

53 *The Indus Waters Treaty 1960*, Article IX.

The IWT also enunciated a mechanism to exchange regularly flow-data of rivers, canals and streams. A Permanent Indus Commission (PIC) was constituted, headed by two Commissioners, one from each country. The PIC is expected to meet at least once a year alternately in India and Pakistan and submit an annual report to their respective Governments before June, 30th every year.

“The IWT also sets out the procedures for settlement of differences and disputes both bilaterally and through International arbitration.” Given below is an abridged version of the dispute settlement process that may be of interest in the present context:⁵⁴

- a. “Any question that might be a breach of IWT shall be first examined by the PIC.
- b. A difference is deemed to have arisen if the PIC could not reach an agreement.
- c. The difference shall be dealt with by a neutral expert who may opine if it is a dispute or not. If not, he shall resolve it. Such a neutral expert shall be a highly qualified engineer and appointed by the two Governments in consultation, or failing which, by the Bank. Such a neutral expert can deal with any of the questions mentioned in Part-I of Annex-F. The expert’s decision is final and binding.
- d. In case of a dispute, the Commissioners report to their respective Governments which shall then strive to resolve the dispute.
- e. A Court of Arbitration shall be setup to resolve the dispute, if no decision is reached by the above process.
- f. Such a Court will consist of seven members, two from each party and three including a Chairman from a panel to be chosen by the two Governments. If no consensus on names can be arrived at, the IWT has given a list of persons from whom to choose such as the Secretary General of the U.N. or International Bank for Reconstruction and Development (IBRD) for the

54 “Sarasvati Sarovar, Ad Badri Seen from Space”, Sarasvati Research Center Blog Archive, accessed on May 22, 2017.
<http://sarasvati97.blogspot.com/2008/02/vedic-sarasvati-channel-at-bhor-sayidan.html>

Chairmanship and the President of M.I.T., Cambridge, the Rector of Imperial College, London, the Chief Justice of the USA, or the Lord Chief Justice of England for panel membership.”

As stated earlier, Pakistan became aware of the Tulbal Navigation Project through a tender notice submitted by the Indian government in February 1985. The then military government under Ziaul Haq treated the matter urgently. Later, in May 1986, during an annual meeting between the Indus Waters Commissioners, India argued that the Wullar Barrage/Tulbal Navigation Project was being constructed for “non-consumptive uses” and, under the IWT, such a barrage could be built on the Wullar Lake for navigational purposes. India further attempted to clarify the issue by adding that the water stored at the barrage would not be used for the purposes of power generation.

In the second round of discussions in December 1987, India adopted another stance, saying that the Wullar Lake was not a part of the river Jhelum and as such it had every right to construct a “dam” or “barrage” on it. Islamabad reacted quite sharply to this assertion. Meanwhile, in October 1987, a committee constituted by the Junejo government, including some British and American experts, strongly recommended that Pakistan approach the International Court of Justice. The matter was under consideration when the Indian government agreed to discuss the issue directly and abandoned the construction work until an accord was reached.⁵⁵ Later, the Indian ambassador contacted Prime Minister Benazir Bhutto, requesting negotiations in February 1989. Pakistan accepted the request and the first round of government-level bilateral talks was held between Pakistan’s envoy in New Delhi and the Indian official in March 1989.

During these negotiations, Islamabad expressed its apprehensions that India planned to divert water from River

55 Author’s personal discussion with a legal expert on December 12, 1989. See also Altaf Shaikh.

Kishenganga into the Wullar Barrage which would seriously affect its proposed 969 MW hydroelectric plant.⁵⁶

The Indian Commissioner for the Indus gave an assurance that the water stored in the barrage would not be used for the generation of electricity but for navigation only. However, India had already completed feasibility reports for the setting up of a power plant in the vicinity of the Wullar Lake while two other power plants were in operation at Mohra and lower Jhelum, a few kilometres downstream of the lake.

Nonetheless, India offered that in lieu of the barrage it would forgo its rights under the IWT to use equivalent storage of 0.3 million acre feet out of 0.5 MAF under "General Storage" clause from the tributaries of Jhelum River.⁵⁷ Pakistan ignored the offer.

In March 1989, the Government of Pakistan sent a delegation to New Delhi. A draft was reportedly presented to Indian officials.⁵⁸ Following these inconclusive talks, Federal Minister for Water and Power, Sardar Farooq Leghari, denied that Pakistan had presented a draft to India and stated that the government would approach the International Court of Justice in case of a complete failure of negotiations.

The then Punjab government, however, lodged a protest with the Federal government in April 1989 and asked the government not to negotiate any further. A committee was entrusted the task of revising the said "draft" and submit it to the Ministry of Water and Power by August 31, 1989.

On August 18, 1989, the Federal government wrote a letter to the Punjab government that an agreement would be signed between Pakistan and India on October 31, 1989. The Punjab government refused to support the agreement.

56 *The News* (Islamabad) July 14, 2006.

57 Special Correspondent; See also, Salamat Ali, "Propaganda Barrage", *Far Eastern Economic Review*, December 21, 1989.

58 Munir Ahmed, "Wullar Barrage: Pakistan's Case", *The Nation*, February 26, 1990.

On October 11, 1989, the Chief Minister of Punjab, Mian Nawaz Sharif, wrote a letter to President Ghulam Ishaq Khan, requesting him to intervene in the Wullar issue, as the PPP government wanted to sign an agreement which was against the national interests.

Meanwhile, a mass uprising in Indian-occupied Kashmir took place and the issue was pushed into the background. On August 6, 1990, the Bhutto government lost its legitimacy under the presidential order and Pakistan underwent a process of new elections. In India, Prime Minister V.P. Singh was removed in a successful no-confidence move by the opposition.

During the new governments of Prime Minister Nawaz Sharif and Mr. Chandra Shekhar efforts were made to break the impasse and in August 1992 another round of talks was held but without any development, both the parties reiterated their earlier positions.

In January 1994, India resorted to informal diplomacy and circulated a Non-Paper No. 4, asking for resumption of the talks. The paper stated that:

The Governments of India and Pakistan have since 1987 held eight rounds of Secretary level talks for resolving differences in the way of bilateral settlement of the Tulbal (Wullar) Navigational Project. These discussions, apart from providing a useful opportunity for a detailed exchange of views resolved all technical and legal aspects concerning the project. In October 1991 at Islamabad, the two sides finalized a draft agreement on the Tulbal (Wullar) Navigation Project. An Indian delegation is willing to visit Islamabad in the month of February 1994 for the conclusion of an agreement.

Pakistan responded to the Indian Non-Paper that:

The Indian Non-Paper on the Wullar Barrage dubbed by India as the 'Tulbal Navigation Project', claims that at the previous round of talks all technical and legal aspects of the issue were resolved. This is contrary to the factual position at the last round of talks held in New Delhi in 1992. All aspects of this issue need to be discussed comprehensively in accordance to the Indus Waters Treaty.

The Pakistani response provides evidence that both the parties totally differed in their approach as well as respective viewpoints. The phrase 'dubbed' could have been avoided. One can refer to the internal instability and international

scenarios of the time. As at that time Pakistan was being accused by India of its involvement in ongoing uprising in Kashmir, the Gulf crisis and the internal turmoil in both states also contributed towards the Pakistani response on the issue. However, the issue was discussed on November 5, 1998 on the basis of agreed agenda of June 23, 1997, as a part of the Composite and Integrated Dialogue between India and Pakistan under which Working Groups were formed to investigate and discuss all the outstanding bilateral issues.

All the Working Groups met in New Delhi on November 5, 1998. Interestingly, the respective delegations from both the countries were headed by Hussains: Syed Shahid Husain from Pakistan and Mr. Z. Hussain, Secretary to the Government of India, Ministry of Water Resources. Unfortunately, the talks which were scheduled for four hours duration ended within 15 minutes. Both sides being miles apart, as ever, took a quick note of each other and later prepared a joint statement comprising two paragraphs saying:

The discussions were held in a frank and constructive atmosphere. While reaffirming their continued commitment to the Indus Water Treaty of 1960, both sides exchanged views and took note of the previous discussions on the subject from October 1987 to August 1992. It was agreed that the discussions would continue at the first round of the dialogue process with a view to finding a solution to the issue consistent with the provisions of the Treaty.

A situation of stalemate prevailed till the start of Composite Dialogue in January 2004 when both the heads of governments agreed to discuss all the outstanding disputes including Kashmir. In the 10th round of talks, on July 29-30, 2004, after highlighting the non-viability of the Indian project and its long-term impacts on Pakistan's agricultural and hydro-power usage suggested that it should be abandoned and alternative solutions be sought to navigational problems.

Since then there have been three rounds of talks held under the umbrella of Composite Dialogue on June 28-29, 2005, June 22-23, 2006 and June 30-31, 2007 in which both

the parties have reiterated their respective positions although record of the discussions was signed, for the first time, in 2005. The latest round of talks was held in New Delhi on August 30-31, 2007. The secretary-level delegation was led by Mrs. Gauri Chatterji and Mr. Muhammad Ismail Qureshi, from India and Pakistan respectively and resultantly the following Joint Statement was produced and signed by the parties:

The talks were held in a cordial and constructive atmosphere. The two sides further discussed their respective positions on the project and had a better appreciation of each other's views. They affirmed their commitment to the Indus Waters Treaty of 1960.

The two sides emphasized the need for an early and amicable resolution of the issue in accordance with the provisions of the Indus Waters Treaty of 1960 for the socio-economic development of the peoples of the two countries. The Secretaries agreed to hold discussion including at technical-level on mutually acceptable dates. Both sides looked forward to the next round of talks under the Composite Dialogue with a view to resolving the issue at an early date.

The Pakistan delegation also called on H. E. Saifuddin Soz, Minister for Water Resources, Government of India.

The above latest Joint Statement shows that nothing came out of the last 13 rounds of talks and both the parties are miles away from resolving the Wullar Barrage/Tulbal Navigation Project. Virtually, the parties have arrived at a diplomatic deadlock on all the outstanding water issues: Baglihar, Wullar and the Kishenganga etc., and there are reports that Pakistan may resort to arbitration to secure its treaty rights and resolve its water issues with India.

The Indian Intentions

Pakistan perceives that India has clandestine motives in the guise of water resource development in Jammu and Kashmir.

First and foremost, its aim is to convert Indo-Kashmir hostility into Pakistan-Kashmir confrontation. It is exploiting this issue to defame Pakistan among the inhabitants of Indian-held Kashmir by propagating that India is interested in their welfare but Pakistan is creating hurdles. This fact can

be observed by the Indian Strategic Foresight's 2005 report projecting that Indo-Pakistan rivalry over Kashmir would be story of the past but Pakistan and Kashmiris would soon fight over the Indus Rivers.⁵⁹

The second hidden objective is forcing Kashmiris to leave the valleys, with the Kishenganga and Wullar Barrage issues constituting vivid examples. By constructing a diversion infrastructure in the shape of the Kishenganga dam, thousands of Kashmiri Muslims would have no option but to migrate, and the huge storage reserves of the Wullar Lake would inundate the entire Kashmir valley,⁶⁰ the main areas of Muslim population. Deprived of their source of livelihood the Kashmiri people would not be able to resist the Indian occupation.

The third overriding objective is to control Pakistan's life-line of water resource upstream for military, political and economic purposes. The upper riparian status possesses all these potentials, and in asserting them, India can browbeat Pakistan on all the bilateral issues, especially Kashmir.

The rivers Jhelum and Chenab are crucial to the agrarian economy of Pakistan and are a matter of life and death for the farming communities of Punjab. These rivers solely compensate for the shortfall from the three eastern rivers that Pakistan relinquished to India under the IWT in 1960. Any upstream control structure would be detrimental to Pakistan's economy and security. Pakistan is already building a 969 MW hydroelectric power station on the river Neelum and raising the height of the Mangla Dam; both of these projects would become useless before their completion.

The Indian objective of 'solving the navigation problem' between Baramullah and Srinagar by constructing the "Tulbal Navigation Project" is most likely a cover up. The "Project" is not merely a "barrage" but a proper "storage work" for a complete "dam". "India would be able to stop the

59 Sundeep Waslekar, *Final Settlement*.

60 Michel, *The Indus Rivers*, 35.

water flow of river Jhelum for 20-30 days completely.”⁶¹ This could greatly reduce the production of hydro-power at Mangla and thereby adversely affect agricultural productivity in the Punjab province. Since the river Jhelum is an important tributary of the Indus,⁶² any reduction in its flow would automatically reduce the flow of water in river, and thereby not only inflict damage upon the agricultural sector in the Sindh but also exacerbate Punjab-Sindh tensions.⁶³

Conclusion

The Indian plans to construct water control structures on the Jhelum Main at the mouth of Wullar Lake and also on its down-stream by diverting Kishenganga through a tunnel of about 22 kilometres is not only a blatant violation of the Indus Waters Treaty 1960 but surly is an attempt to deprive Pakistan of its water rights as enshrined in the Treaty. India can divert a tributary if water comes back to the main river but cannot construct any type of storage work far away from the diversion point as India is doing in Kishenganga and Wullar Barrage cases. Moreover, the Kishenganga Hydro-electric plant will not only reduce river Neelum's flow downstream to Pakistan badly affecting the Pakistan's Neelum-Jhelum Project of 969 MW capacity but will also affect the ecology of downstream valley on the one hand and will inundate the Wullar Lake and its adjoining Srinagar valley [the main reason the British shelved Wullar Lake site for any water development purpose] which is abundantly populated by Muslims of Kashmir. Such projects could not only be detrimental to the lower riparian rights but also seems to quell uprising by displacing Kashmiris under the garb of development.

61 Muhammad Anwar Sanga, "Wullar Barrage", *The Nation* (readers column), November 22, 1989.

62 Asghar Ali Abdi, *Sitara-e-Khadmat*.

63 Muhammad Anwar Sanga.