

Unilateral construction of Tipaimukh Dam: A Serious Breach of Trust
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The visit of Prime Minister Sheikh Hasina to New Delhi in January 2010 is considered to have unfolded a new era of relationships with India, characterized by mutual trust and cooperation in all possible sectors.

The joint communiqué issued after the visit on 13th January 2010 in its paragraph 14 states: “The two Prime Ministers agreed to put in place a comprehensive framework of cooperation for development between the two countries”.

Furthermore, the Framework Agreement on Cooperation for Development between the two countries which was signed by the two Prime Ministers in Dhaka on 6th September 2011 in its clause 2 speaks of enhancing “cooperation in sharing of the waters of common rivers”.

Given the above background, the proposed unilateral construction of Tipaimukh dam (39-metre long and 162.5 metre high) for generating hydro-power 1500MW on the trans-boundary Barak River constitutes a serious breach of the above agreements reached at the highest political level.

No wonder India’s decision in going ahead unilaterally with the proposed project has raised hue and cry among people of Bangladesh, irrespective of political affiliations.

All we suggest to India that before proceeding to construct the dam, a joint study of experts from both Bangladesh and India is imperative and they will examine among others, the impact of geographic, geological, hydrographic, hydrological, climatic, ecological and other factors on both countries. In other words, Bangladesh experts would arrive at a conclusion whether any harm would be done to Bangladesh by the project.

Precedents of suspension of dam project:

There are many precedents that due to objection or opposition from a co-riparian country construction of dams have been cancelled or suspended pending a joint study of the project.

For example, on December 8, Laos has suspended a \$3.5 billion dam project on the lower Mekong River while Japan leads a study into the environmental impact, after activists and some neighbouring states said it would harm the livelihoods of millions of people.

The four countries-- Laos, Thailand, Vietnam and Cambodia-- share the lower stretches of the 4,900 km (3,044 mile) Mekong and last April, they had failed to reach an agreement on construction of the 1,260 megawatt Xayaburi dam.

Vietnam and Cambodia had called for the project to be postponed pending further studies, and media in Vietnam had been critical of Laos

The project, which would bring the first dam across the lower Mekong, is being led by Thai builders, power firms and banks and Thailand would take about 95 percent of the electricity generated.

Environmentalists have warned that damming the main stream of the river would trap vital nutrients, increase algae growth and prevent dozens of species of migratory fish swimming upstream to spawning grounds.

An earlier Environmental Impact Assessment by the Lao government was criticised as inadequate by environmentalists and activists. Experts had warned that dozens of migratory fish species would become extinct if the dam was built. Fish stocks would dwindle, hitting the income of fishermen and the food supply of people residing along the Mekong River.

The dam could also prevent the movement of fertile silt needed to replenish agricultural land and as a result crops such as rice that are vital to domestic consumption and exports would be starved of nutrition

Myanmar suspended a dam construction:

Even within countries, dam construction is seen as disaster to environment. Myanmar in September suspended a \$3.6 billion China-aided dam project which was proposed to be built at the head of the Irrawaddy - the confluence of the Mali and N'Mai rivers - in Kachin state for hydro-power. The vast bulk of the electricity generated - some reports say as much as 90% - was destined for export to China.

It's an area of rich biodiversity, less than 100km from a tectonic fault line. Scheduled for completion in 2019, the dam would have created a reservoir some 766 sq km (296 square miles) - an area slightly bigger than Singapore.

International law & practice:

Some 200 treaties are now existence for the management of trans-boundary rivers (rivers which are shared by two or more states). According to a UN Survey, out of 200 trans-boundary rivers, 148 (70%) are shared by two countries.

Under customary international law, a state does not have the right to interfere with the natural inflow of a trans-boundary river by its unilateral action. Furthermore that state has a responsibility to ensure that agreement of co-riparian state is obtained before any artificial structure is built on the river. It has to respect the historic inflow of a trans-boundary river.

The principle of law was affirmed in 1957 in the Lake Lanoux Case between France and Spain in which the Tribunal ruled that the interests of the co-riparian states must be taken into account before carrying out any work on international rivers or lakes.

However, the formulation of law regarding trans-boundary rivers was taken up by the UN International Law Commission for global application by the UN member-countries and in 1997, the UN General Assembly adopted, for the first time on a global scale, legal norms on cooperative use of waters of trans-boundary Rivers, known as the Convention on the Law of Non-Navigational Uses of International Watercourses.

The salient features of the Convention are, briefly:

- It recognises no party can adversely affect uses of other countries without the consent of that country
- It recognises relevant factors in equitable utilisation of waters, taking into account geographic, hydrographic, hydrological, climatic, ecological and other factors.
- It requires co-riparian countries to exchange data and information on trans-boundary rivers;
- It envisages co-riparian countries taking appropriate measures to prevent harm to other co-riparian states;
- It creates a legal framework for equitable utilisation of the waters of trans-boundary rivers;
- It also calls for development, conservation, management and protection of international watercourses, and optimal and sustainable utilisation for the present and future generations;
- It affirms the importance of cooperation and good neighbourliness of all riparian states.

India has not become a party and can argue that they are not obliged to comply with the provisions of the UN Convention.

It is noted India wants to be counted not only as the “largest democracy” in the world but also a global power and such claim comes with responsibilities and rights. One of its responsibilities is to respect UN laws and norms including the 1997 UN Convention on trans-boundary rivers, overwhelmingly approved by UN member-countries.

Furthermore it is strongly argued that India wishes to become a permanent member of the UN Security Council (it was elected last year as a non-permanent member in the 15-member Council for a two year period), India has the obligation to comply a set of laws of the UN on trans-boundary rivers under Articles 1 and 2 of the UN Charter.

Conclusion:

Finally, commercialisation of rivers (dam construction is one of them) arises because of the erroneous attitude that any river water passing to the sea is a waste and needs to be commercially used. The fate of the Colorado River provides an example of commercial approach. This fabled river reportedly dries up in the South Californian desert.

The modern concept is called “Ecological Approach” as distinct from commercialisation of rivers. This means the river resources must be harvested in a way that no serious damage is done to the natural flow and course of the rivers and the eco-system they support, more so during the time of Global Climate Change. India should be the pioneer in the field in South Asia to adopt the modern “ecological” approach and not to proceed with the Tipaimukh dam project.