

Hindustan Times - 31- January-2023

CM under fire as Shah confirms Mhadei pact

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PANAJI: Under pressure to rebut Union home minister Amit Shah's statement that Goa was part of an "agreement" to share water with Karnataka, Goa chief minister Pramod Sawant maintained a guarded silence on the issue, treading a fine line between defending Goa's cause and stopping short of contradicting the Union minister's claim of an agreement on the issue.

"Our legal case is strong. The results will be seen soon. We are certainly working to fight for our cause," Sawant said on the sidelines of an official function on Monday when asked about Shah's comments.

The Mhadei issue that continues to simmer after the Central Water Commission accorded its approval to Karnataka's project proposal to divert the west flowing tributaries that make up the Mhadei to the east flowing Malaprabha river, reignited over the



Pramod Sawant

weekend after Shah claimed that the BJP deserved credit for 'solving' the Mhadei issue. "By giving Mhadei water to Karnataka, the BJP government has done a great job for farmers in Karnataka," Shah had said.

However, Goa water resources minister Subhash Shirodkar said: "We do not agree or accept the comments of Amit Shah because no such discussions have taken place. The issue is before the court." Reacting to the development, Congress MLA Carlos Ferreira said: "The claim made by Amit Shah is shocking... the chief minister needs to clarify and strongly condemn these statements."

Millennium Post- 31- January-2023

Fresh snowfall, rains disrupt normal life in J&K, HP, U'khand

Flight operations at Srinagar Airport suspended due to poor visibility

OUR CORRESPONDENT

SRINAGAR/SHIMLA/DEHRADUN: Fresh snowfall disrupted normal life in Jammu and Kashmir, where an avalanche warning was issued in five districts, higher reaches and tribal areas of Himachal Pradesh and Garhwal region of Uttarakhand on Monday.

In Kashmir, moderate to very heavy snowfall since Sunday night stalled road, rail and air traffic, while nearly 500 roads, including three national highways, were closed in Himachal Pradesh.

Officials said flight operations at the Srinagar airport were suspended due to poor visibility and accumulation of snow on the runway. The Srinagar-Jammu National Highway was closed to traffic due to landslides at many places along the arterial road and train ser-



Commuters on a stretch during snowfall, in Srinagar

PTI

vices on the Baramulla-Banihal route were also suspended.

Srinagar received about seven inches of snowfall, Gulmarg more than a foot, Pahalgam nine inches, Gurez 1.5 feet and the plains of Kupwara around four inches, they said.

Avalanches of medium danger level are likely to occur above 2500 metres over Bandipora, Baramulla, Ganderbal, Kupwara and Ramban in the next 24 hours, officials of the

Jammu and Kashmir Disaster Management Authority said and advised people to restrict movement and evacuate unprotected settlements.

Police rescued three tourists from Uttar Pradesh who were caught in heavy snowfall near Nathatop on the Nathatop-Sanasar Road in Ramban district. The meteorological department predicted heavy snowfall, and rains with thunderstorms in the plains of

The snow led to the closure of 496 roads, including three NHs, for vehicular traffic while 908 transformers were affected in HP

Jammu, over the next 12 hours. In Himachal Pradesh, moderate to heavy snow was recorded in parts of Shimla, Kinnaur, Lahaul and Spiti, Kullu and Chamba districts, choking traffic and disrupting water and power supply in many areas. The snow led to the closure of 496 roads, including three national highways, for vehicular traffic while 908 transformers were affected in the state.

Rohtang pass, Chitkul and

the Atal Tunnel's south portal received 75 cm of snow, followed by Khadralla in Shimla district at 60 cm, Solang at 55 cm, Kufri at 16 cm, Keylong and Samdo at 14 cm each and Manali at 3 cm.

Icy winds pummelled the region with the Met Office issuing an 'orange' alert for heavy rains and snowfall at isolated places in the mid and high hills of Chamba, Kangra, Kullu, Mandi, Shimla, Lahaul and Spiti and Kinnaur later in the day. It has also predicted thunderstorms and lightning and wet weather in the lower hills till Friday. Widespread rains lashed the mid and lower hills with Dalhousie the wettest, recording 60 mm. It was followed by Rampur at 24 mm, Shimla at 21 mm, Chamba at 19 mm, Seobagh at 16 mm, Dharamshala and Dhaula Kuan at 15 mm and Manali at 14 mm.

Illegal mining in Yamuna, NGT sets up probe panel

BHARTESH SINGH THAKUR
TRIBUNE NEWS SERVICE

CHANDIGARH, JANUARY 30

To investigate illegal mining in the middle of the Yamuna riverbed on the Haryana-Uttar Pradesh border, the National Green Tribunal (NGT) has formed a team with officials from both states under a Joint Secretary-rank officer of the Jal Shakti Ministry.

The NGT order came on January 25 in response to a petition filed by a Yamunanagar resident in 2021 against private company Star Mines, alleging illegal mining in Belgarh village of Yamunanagar.

The Haryana Government, in its report sent to the NGT dated January 23, confirmed that illegal mining was being conducted “in the middle of the Yamuna” along its border with UP. The area illegally mined in the Yamuna riverbed is 300

metres from the area leased to Star Mines for mining in the adjoining Saharanpur district of UP. The report added that an FIR on June 3, 2021, was lodged in this regard and action had

been initiated against the investigating officer for failing to take a remedial action. Haryana, however, said that due to the flow of water in the river, the quantum of mining could not be ascertained, and “thus, it is difficult to assess the environmental compensation”.

On the other hand, UP told the NGT that there was no illegal mining on their side of the Yamuna where Star Mines had been granted a mining lease.

Earlier, too, Star Mines had come under the NGT scanner as its environmental clearance for operations in UP was held illegal for want of a replenishment study. In May 2022, the NGT had issued a directive to recover compensation for illegal mining from the company. Star Mines had then approached the



Haryana confirms
unlawful excavation

COMPLAINT AGAINST STAR MINES

- NGT directive came last week after a plea was filed against Star Mines for “illegal mining” in Yamunanagar
- Haryana report confirmed that illegal mining was being conducted “in middle of the Yamuna”, 300 metres from area leased to Star Mines in Saharanpur (UP)

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CONTINUED ON PAGE 9

Supreme Court, which stayed the order in August 2022, subject to the deposit of a penalty of Rs 2 crore with the NGT.

In another matter too, the NGT had passed an order against the firm. An appeal is pending in the Supreme Court regarding the case.

The NGT in its last week's order said that after Haryana's report it was difficult to rule out the role of the firm in illegal mining.

To investigate the issue, the NGT-formed committee will be assisted by a nominee of IIT-Roorkee and DMs of Saharanpur and Yamunanagar.

It will submit its report within one month, looking at ways to help check illegal mining. It will also examine whether drone mapping and CCTV cameras could be helpful tools.

The Tribune- 31- January-2023

Renegotiate Indus treaty to optimise water use



BHARAT H. DESAI

JAWAHARLAL NEHRU CHAIR & PROFESSOR
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In order to harness the hydropower potential of the shared water courses in the Indus basin, both countries need to consider a joint design and implementation of hydroelectric power projects. It requires taking a holistic hydrological view and maintaining the environmental integrity of the entire Indus basin without compromising the developmental needs of the riparian states. The current chill in bilateral ties makes the treaty's immediate modification a difficult task.

A long-awaited yet unprecedented development finally took shape with India sending a notice to Pakistan for modification of the 1960 Indus Waters Treaty (IWT). This treaty has weathered various twists and turns in bilateral relations, three wars and multiple terror attacks from launch pads in Pakistan, including the attack on Parliament (2001) and the incidents in Uri (2016) and Puharna (2019).

Article XII (3) of the IWT provides that this "treaty may from time to time be modified by a duly ratified treaty concluded between the two governments."

The IWT is a unique experiment in hydro diplomacy and treaty law. The Karachi treaty was signed on September 19, 1960, by the then Prime Minister of India and the President of Pakistan. The IWT has a preamble, 12 Articles and eight detailed Annexures (A to H). It features the World Bank as a third party and guarantor.

"The Indus Waters Treaty was a great achievement of Pakistan and India and of the World Bank, and it remains so," said Judge Stephen M. Schwebel, Chairman of the seven-member Court of Arbitration that delivered the final award in the Kishenganga arbitration case on December 20, 2013.

India's notice is a tactical step for modification of the IWT. As an instrumentality of international law, the IWT is a global model for shared transboundary water resources' governance. The IWT provides India unrestricted access to the eastern rivers (Sutlej, Beas and Ravi), while the water of the western rivers



HARSH REALITY: The pressures of growing population and developmental needs have been exacerbated by shrinking water availability in the Indus river basin due to climatic change. PH

(Indus, Jhelum and Chenab) can be used in a non-consumptive manner for agriculture and generation of hydroelectric power. However, India does not fully utilise all accessible water of the eastern rivers and the irrigation and hydropower potential of the western rivers.

The growing number of disputes raised by Pakistan on the Tulbul project, Baglihar Dam and the Kishenganga hydroelectric project have affected the spirit of the IWT. How to tame Pakistani discontent remains a challenge. It makes resolution through negotiations difficult and the Permanent Indus Commission (Article VIII) remains stranded. A 'difference' or a 'dispute' is left to a neutral expert or expensive international arbitration. All major projects suggested by India became a bone of contention. The pressures of a growing population and developmental needs have been exacerbated by the shrinking water availability in the Indus river basin due to climatic change.

In the changed circumstances, the use of cutting-edge technology such as remote-sensing satellites, geographical information system and artificial intelligence could play an important role in the planning, construction and maintenance of large hydropower projects.

The 2021 report of the Standing

Committee on Water Resources suggested, "There is a need to renegotiate the treaty so as to establish some kind of institutional structure or legislative framework to address the impact of climate change on water availability in the Indus basin and other challenges which are not covered under the treaty." Hence, the committee recommended that the Indian government should take necessary diplomatic measures to renegotiate the treaty with Pakistan. In 2016, the Pakistani senate passed a resolution that suggested a 'revisit' of the IWT. However, after a formal notice by India, Pakistan's sharp response is on expected lines.

The indicators of climate change seem to be quite visible in the Indus basin. The receding glaciers, scanty snowfall, the changing land system patterns and the increasing demand for water to meet irrigation, industrial and domestic needs — all appear to impact water availability in the Indus basin. This harsh reality due to climatic change has now set the stage for India raising the issue with Pakistan to reach an understanding on common hydrological resources. Climate change is now considered the most potent threat to the sustainability of global water resources.

There have been calls for renegotiation of the IWT on the ground that the treaty "does not reflect all of the main and future challenges" such as climate change, population growth, environmental flow needs, transboundary aquifer management, and the growing water needs

in the Indus basin. This would necessitate the adoption of a benefit-sharing approach instead of an engineering river-dividing approach so that water management can deliver mutual benefits.

Since there is no provision in the IWT for unilateral withdrawal by a party, reneging from the treaty commitment could be only on the ground of a 'fundamental change of circumstances', as provided in Article 62 of the 1969 Vienna Convention on the Law of Treaties (VCLT). The IWT was crafted before the advent of the VCLT. Since the VCLT contains the time-tested principle of customary law, it can still be applicable to the IWT. However, the threshold laid down in Article 62 is tough for any of the parties to meet.

In order to harness the hydropower potential of the shared water courses in the Indus basin, both countries need to consider a joint design and implementation of hydroelectric power projects. It requires taking a holistic hydrological view and maintaining the environmental integrity of the entire Indus basin without compromising the developmental needs of the riparian states.

Taking the IWT forward would require political sagacity and sensitivity towards the legacy of shared waters by jettisoning misplaced animosity. The current chill in bilateral relations makes immediate modification of the IWT difficult. The beleaguered Pakistani establishment is expected to remain recalcitrant by resorting to legalese to sidestep the laudable Indian initiative.

The Indian Express- 31- January-2023

Let diplomacy flow

On Indus Water Treaty, entrenched attitudes from both India and Pakistan are a reminder that technical agreements are only a partial solution. They can put strains on the ecosystem for years to come



MEDHA BISHT

A FORTNIGHT AGO, Pakistan Prime Minister Shahbaz Sharif expressed the desire for a diplomatic handshake from across the border. The environment conducive to the thawing of relations between the two countries is far from appropriate and reconciling rhetoric with practice remains a challenge. As of now, both countries have opted for diplomatic hedging. This attitude has framed the water diplomacy between the two countries as well. By raking up the issue of hydroelectric projects, Pakistan has reiterated its desire for third-party mediation while India has reinforced its call for revisiting the Indus Water Treaty (IWT).

In a recent notice to Islamabad via the Indus Commissioners, New Delhi claimed that the "intransigence" of Pakistan had made the communication channels over shared waters defunct. New Delhi has asserted that in light of this "material breach" of the agreement, it would like to "update the Treaty to incorporate the lessons learnt over the last 62 years". It has given a 90-day notice to Islamabad — this has opened space, both legally and politically, for discussing, debating, interpreting and possibly also analysing the faultlines of water diplomacy of both countries.

Conversations on renegotiating and upgrading the IWT began a few years ago. In 2021, a parliamentary standing committee report suggested renegotiating the Treaty. Under Article 60 of the Vienna Convention on the Laws of the Treaties, a party can criticise an agreement and give notice of its intention to terminate it if the other party violates its fundamental provisions. India has adopted the moderate approach of not terminating but modifying the IWT.

India has attributed the "material breach" to Pakistan's unilateral decision to approach the Permanent Court of Arbitration, bypassing the mandate of Indus Commissioners. The arbitration proceedings started on January 27. India boycotted this hearing. New Delhi claims that Islamabad has violated the dispute settlement mechanisms, as mandated by Articles 8 and 9 of the Treaty. Article 8 specifies the roles and responsibilities of the Permanent Indus Commission — a regular channel of communication for matters relating to the implementation of the Treaty. Article 9 is relevant for addressing any difference or dispute that might emerge between the two countries.

Article 9 offers a graded pathway to address any issue related to the implementation or interpretation of the IWT — for instance, it provides for the appointment of a neutral expert in case there is a lack of consensus among the Commissioners. If the neutral expert believes that the difference should be treated as a dispute, it can be referred to the Court of Arbitration. However, it adds that the Commission has to report the facts to the two governments. The report must state the points of concord in the Commission, the views of each Commissioner on these issues and also mention the issues of disagreement. Only after receiving such a report can either of the governments address the issue bilaterally or through the Court of Arbitration. Some



C R Sasikumar

sources claim that Pakistan was reluctant to discuss these issues under the Permanent Indus Commission from 2017-2022. The significance of the "material breach" and calls for terminating the Treaty should be seen in this context.

However, any analysis of international diplomacy will be incomplete if it looks only at legal aspects. The practice of diplomacy and the use of law for explaining and justifying government actions are equally important. The reasoning put forward by India and Pakistan requires scrutiny. Ecological and economic concerns are also important to understand the diplomatic fault lines.

The history of the Kishanganga Hydel Power Project — the Kishanganga is called Neelum in Pakistan — is a case in point. In 2013, in a 52-page document, the Court of Arbitration gave a partial award on the project, upholding India's right to divert water for the project. The Court refused to set a bar on the release of water, as demanded by Pakistan. However, it also restrained from making KHEP immune to environmental considerations. After the completion of the project, Pakistan objected to it again in 2014.

Pakistan has also contested the Ratle project on the Chenab river on grounds of design and violations of the IWT. The project was delayed but work resumed on it in

2019. Meanwhile, Pakistan asked the World Bank to establish a Court of Arbitration to look into the project. The Bank has started a parallel process for appointing a neutral expert. India objected to this process, claiming it was a unilateral move.

Pakistan has shown a penchant for third-party mediation, arguing that this could be the best route for overcoming the impasse in the relations between the two countries. India has seen Pakistan's objection to the hydel projects as a tactic to delay them. Such positions are tantamount to diplomatic hedging. They are a reminder that technically-negotiated agreements are only partial solutions and can put incremental strains on transboundary rivers and their ecosystems for years. The two countries should use bilateral dispute settlement mechanisms to discuss the sustainable uses of water resources. Given the broad contours of the Indus Water Treaty — particularly Article 7 that talks about future cooperation — discussing and broadening transboundary governance issues in holistic terms could be the starting point for any potential diplomatic handshake.

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The Hindu- 31- January-2023

Water woes

Opening up the entire Indus Waters Treaty could come with its challenges

The government's decision to issue notice to Pakistan, calling for negotiations to amend the Indus Waters Treaty, must be considered carefully. New Delhi says this extreme step is due to Pakistan's intransigence over objections to two Indian hydropower projects in Jammu and Kashmir: the 330MW Kishanganga hydroelectric project (Jhelum) and the 850MW Ratle hydroelectric project (Chenab). India has argued since 2006, when the objections began, that the projects were within the treaty's fair water use. However, Pakistan has refused to conclude negotiations with India in the bilateral mechanism – the Permanent Indus Commission of experts that meets regularly – and has often sought to escalate it. As a result, the World Bank appointed a neutral expert, but Pakistan pushed for the case to be heard at The Hague. India has objected to this sequencing, as it believes that each step should be fully exhausted before moving on to the next. While India was able to prevail over the World Bank to pause the process in 2016, Pakistan persisted, and since March 2022, the World Bank has agreed to have both a neutral expert and a Court of Arbitration (CoA) hear the arguments. India attended the hearings with the neutral expert last year, but has decided to boycott the CoA at The Hague that began its hearing on Friday. New Delhi says as talks have hit a dead-end, it wants the entire treaty to be opened up for amendments and renegotiations. India's accusations against Pakistan may be valid, given that Islamabad has failed to provide material evidence of the two projects hampering its water supply. The World Bank's decision to hold two parallel adjudication processes is also perilous as there could be contradictory rulings. However, opening up the treaty for review has its own problems that India must deliberate on with a cool mind.

To begin with, the Indus Waters Treaty that decided the distribution of the six tributaries of the Indus or Sindhu between the two nations took nearly a decade to negotiate originally before its signing in 1960. Built in were mechanisms for coordination and dispute resolution that have held the treaty in good stead for at least half a century, and it has often been used as a template between upper riparian and lower riparian states worldwide. That it has endured despite conflict and political rhetoric between India and Pakistan is a testament to its text. In addition, if India and Pakistan have not been able to resolve issues over one case in their Indus Commission talks over 16 years, what guarantees are there that they can renegotiate the whole treaty within any reasonable time-frame? At a time when there is no political dialogue, trade and air or rail connectivity between them, reopening negotiations could open a new flank for India-Pakistan confrontation.

IN LIGHT OF INDIA LOOKING TO EXPLOIT RESOURCES FOR MORE ELECTRICITY

The Indus Question: India, Pak and Rivers of Concern

As per estimates, up to 16,000 MW can be produced by setting up run of the river projects on Chenab

ET ANALYSIS

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New Delhi: India's decision to call for a modification in the Indus Waters Treaty 1960 points not just to a widening rift between New Delhi and Islamabad on sharing river waters, but also to a larger political divide that could cast a shadow on the treaty itself.

While Pakistan continues to frame each run of the river (RoR) project, mainly on Chenab and Jhelum, in security terms fearing that India will flood its territories in an adversarial situation, India is looking to exploit these resources for producing more electricity in J&K. The fight is usually over regulating water flow in these dams.

Chenab, more than Jhelum, lends itself to considerable opportunity. Estimates suggest that up to 16,000 MW can be produced on Chenab by setting up just plain RoR projects — upheld in the case of Baglihar and Kishanganga — which according to India is permissible in the treaty. Chenab, which originates in Himachal Pradesh, travels northwards and then bends into the Jammu region, traverses through ravines and features, which create falls at many places that are apt for RoR projects.

The immediate trigger for this notice is the 850 MW Ratle project on Chenab. Interestingly, Pakistan has

The Ratle Project And Beyond...



World Bank found itself dealing with two requests on Ratle project, one by India for appointing a neutral expert and the other by Pakistan for setting up a CoA; it granted both



India has opposed CoA and refused to nominate its mandatory two members, also boycotted the first meeting

India intends to cooperate with the neutral expert, whose meeting is slated for mid-Feb

Immediate concern is that CoA does not stay the project



Larger concern is what this means for the many other RoR hydro power projects that J&K is planning

India wants to modify the treaty to recognise a graded approach to dispute resolution:

- 1 First, bilateral mechanism
- 2 If that fails, then appointment of a neutral expert
- 3 If that too doesn't succeed, then setting up a CoA



always clubbed both Kishanganga and Ratle projects. It all started with a list of seven objections in the late 2000s. Of these, two issues were settled by a Court of Arbitration (CoA), set up by the World Bank, which is designated in the treaty as the body to resolve differences and disputes.

The remaining five differences were to be settled bilaterally. The two parties could only resolve one, which led Pakistan to again knock the doors of the World Bank for the remaining four points of difference — first, with a request to appoint a neutral expert and then change it to setting up another CoA. India, meanwhile, went ahead and completed the Kishanganga project, which then just left Ratle in the picture.

However, India's efforts at building the Ratle project have been riddled with problems. First, it went to the GVK group, which could not complete the project and went into a commercial arbitration with the J&K government. While that took

INDIA'S RATLE PROBLEM



India's efforts at building the Ratle power project have been riddled with problems

time, the J&K government explored possibilities through various joint ventures but eventually settled on an EPC model. The contract was finally awarded last year.

It has taken more than a decade to get the project off the ground. Going by the progress now, Pakistan wants a stay on the project. So, it's no longer interested in a neutral expert process but on a CoA, which is legally empowered to order a stay. At first, India was against escalating the matter but after assessing Pakistan's political intent decided to request for a neutral

INDIA NOW SEEKS EXPERT



At first, India was against escalating the matter but after assessing Pak's intent decided to request for a neutral expert because that at least won't stay the project

expert to be appointed because that would at least not stay the project.

Eventually, the World Bank found itself dealing with two requests, one by India for appointing a neutral expert and the other by Pakistan for setting up a CoA. At first, the bank first put a pause on the process for over five years. Last year, it lifted the pause to initiate both tracks, appointing Michel Lino as neutral expert and Sean Murphy as chairman of the CoA.

India has opposed the CoA and has refused to nominate its mandatory two members. It also boycotted the first meeting held at The Hague last week. New Delhi, however, intends to cooperate with the neutral expert, whose meeting is slated for mid-February.

But now, India wants to modify the treaty to recognise a three-step graded approach to dispute resolution by bringing clarity in Article 9 of the pact — first the bilateral mechanism, if that fails then appointment of neutral expert and if that too doesn't succeed, then setting up a CoA.

The immediate concern is that the Ratle CoA does not stay the project, but the larger concern is on what this means for the many other RoR hydro power projects that J&K is planning. Which is why the notification also mentions that both sides need to discuss the future of the treaty in the context of past experiences. That's why this notice could well be a turning point. Either way, one thing is clear that India cannot be tardy in executing projects if it wants to win the race by changing facts on the ground.

PAK WANTS A STAY



Going by the progress on Ratle project, Pakistan now wants a stay on the project. So, it's no longer interested in a neutral expert process but on a CoA

The Pioneer- 31- January-2023

BJP slams CM for seeking 1.3K MGD water from Centre

Kejriwal's promise of round-the-clock water to Delhiites a bluff: Bidhuri

STAFF REPORTER ■ NEW DELHI

Delhi BJP on Monday slammed Delhi Chief Minister Arvind Kejriwal for requesting the Centre to give 1,300 MGD water to the city, calling his "promise" of round-the-clock water to the city residents a "bluff".

"Even when Kejriwal made this promise, he knew it was not possible due to scarcity of water in Delhi.

"But he promised it anyway, just as he made other false promises and bluffs, to win the



election," Leader of opposition in Delhi Assembly, Ramvir Singh Bidhuri, said in a press conference.

"No immediate reaction was available from AAP government on the allegation.

Delhi Chief Minister on Sunday urged the Centre to provide 1,300 million gallons per day (MGD) of water to Delhi saying it will help ensure round-the-clock water supply to the city households.

Delhi's requirement of

water was fixed by the Centre and other agencies way back in 1997-98 when its population was 80 lakh, and the same amount of water was being supplied to the city even though its population reached around 2.5 crore, he had said.

Bidhuri in the press conference said the central government has no source of water, and Kejriwal is only trying to create an "illusion" and mislead people into believing that it was because of the centre they were not getting water round-the-clock. In the last eight years, the demand for water in Delhi has increased to 2,200 MGD but only 900 MGD of water is locally sourced, he said.

"The Delhi government failed to take any steps to increase the water supply. All schemes made or announced by it have proved to be hollow promises," he charged.