

# A Pak-Afghan water treaty?

The Indus River Basin is shared by four countries: Pakistan, India, Afghanistan and China. The water sector in this region faces certain challenges including the depletion of natural resources and inefficient use of water. The region's current population is 237 million and is estimated to increase to 319 million by 2025, and to 383 million by 2050.

Kabul River, a tributary of the Indus water system, runs through Afghanistan and Pakistan. It is 700 kilometres long and emerges in the Sanglakh Range of the Hindu Kush mountains in Afghanistan, ultimately emptying into the Indus River near Attock in Pakistan. It is shared by upper-riparian Afghanistan and lower-riparian Pakistan. The river contributes 25 MAF to the economy of Pakistan. There is a possibility of Afghanistan withholding the water during sowing seasons and releasing it during wet seasons.

Afghanistan needs a modern water infrastructure for its agricultural and urbanisation needs. Its 2008 development agenda indicated building of dams as an integral part of the developmental programme.

Pakistan sees Afghanistan's close ties with India as a security threat. The former is an agrarian economy; the agricultural sector makes for 22 percent of its GDP and 42 percent of its labour force is engaged in this sector. The construction of dams by Afghanistan on Kabul River will affect the lower-riparian region's economy. This controversy, if not resolved, has the potential to make Pakistan's western borders unsafe too. India is supporting the construction of 12 dams on the river. By providing finance for these dams, India can gain influence on Afghanistan's water policies.

To many observers, Afghanistan is emerging as a democratic state in South Asian politics. It lacks a sound water infrastructure and needs to develop one as it is a genuine need.

There is no Pak-Afghan treaty on the sharing and use of water from River Kabul, like the Indus Waters Treaty between India and Pakistan on the use of water from the Indus water system. In the absence of a treaty, matters between co-riparian states are regulated through international laws. Studying the customary international laws, conventions, declarations and rules, and the classic work of international experts, revealed one principle that: co-riparian states, especially upper ones, must let the water flow into the downstream areas unaffected, both qualitatively and quantitatively.

Along with the Madrid Declaration, 1911 – on using international watercourses for purposes other than navigation – the general principles of international law and teachings of highly qualified experts also stress upon this norm. An analysis of the existing rules, viz the Helsinki Rules on the Uses of Waters of International Rivers, 1966; Berlin Rules on Water Resources, 2004; and the UN's Convention on the Law of the Non-navigational Uses of International Watercourses, 1997, all highlight certain principles.

These principles include: i) equitable distribution of shared watercourses; ii) commitment not to cause 'substantial injury' to co-riparian states, iii) all basin states shall, while managing the waters of an international drainage basin in their respective territories, have due regard to 'the obligation not to cause significant harm to other basin states'; iv) each basin state is entitled, within its territory, to a reasonable and equitable share in the beneficial use of the waters of an international drainage basin...without causing substantial injury to a co-riparian state.

The largest area of the Khyber Pakhtunkhwa province lies around the Kabul and Swat rivers. Most of Peshawar, Charsadda and Nowshera are irrigated by River Kabul, through distributory channels. Damming by Afghanistan may create huge live water storages upstream, enabling it to temper with the flow of water to lower-riparian Pakistan. This will cause a dearth of water, thereby adversely affecting Pakistan's agrarian economy. Despite the World Bank and USAID supporting the idea of Pakistan and Afghanistan signing a treaty in

2006, and the US Congress issuing a report, on how water scarcity could fuel dangerous tensions, in 2011, the matter continues to remain unresolved.

Decidedly, there is a deficit of trust between Afghanistan and Pakistan, which is very likely to turn into a controversy leading to a trans-boundary water dispute. This could trigger armed clashes between them too. There is already talk about countries going to war over water issues in the future.

International treaties are the primary source of international law. In case of a dispute, if there is no treaty between the states, it becomes difficult for the victim state to seek redress from any international forum, including the International Court of Justice and International Court of Arbitration. Treaties are taken for granted as a safe and sound *modus operandi* at the international level to resolve trans-boundary disputes between countries.

The Indus Waters Treaty of 1960 is the best model. It simultaneously covers three subjects, viz legal: norms on sharing and the use of water from a single basis by co-riparians; technical: norms of hydrology, irrigation and engineering science, and politico-economic: hydro politics, hydro-electricity generation and agriculture through irrigation.

Thus, the Indus Waters Treaty may be used as a basic model to figure out new frameworks for sharing and using River Kabul . In this respect, further guidance can be sought from international laws. The Indo-Pak factor in relation to Afghanistan needs to be set apart. The reality is that a matter between Afghanistan and Pakistan alone hence, needs to be taken up accordingly. To develop a modern water infrastructure is the genuine need of Afghanistan for its economic welfare.

It is essential for both of Afghanistan and Pakistan to have a bilaterally-arranged settlement on the sharing and use of the Kabul River's water. In light of the parameters set out in the Indus Waters Treaty, subject to the canons of the international law regime, a new workable model can be figured out to resolve any water issue that may arise between the two countries. By

following these parameters the issue can be prevented from becoming a problem. The treaty will further provide an in-built mechanism of dispute resolution as well. This arrangement is necessary for regional peace and prosperity.

Political will on either side of the border, and the World Bank, will be needed to bring Afghanistan and Pakistan on the negotiating table to find out a viable solution to this rift.

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