More on the Sharing of the Indus Waters

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The important questions about the Indus waters are not about whether or not the Pakistani state is “crafty” or the Indian state a “bully”. The critical transnational issues are those stemming from the complex hydrologic interconnectivity of the Indus basin waters that are not given scope in the Indus Water Treaty. This criticism of Ramaswamy R Iyer’s article “Pakistan’s Questionable Move on Water” (27 March) argues for an understanding of the issue from a relational and context-specific perspective on law and geography.

Ramaswamy R Iyer’s article (27 March) “Pakistan’s Questionable Move on Water”, argues that the “non-paper” regarding Indus water sharing submitted by Pakistan is motivated more by mischief than legitimate grievance. Iyer’s argument, in broad strokes is that (1) the dispute resolution mechanism provided by the Indus Water Treaty (IWT), and (2) the geographical nature of the water sharing formula, precludes the possibility of a legitimate grievance outside the framework of the treaty. Through these two assumptions, Pakistan’s non-paper is interpreted as a “cleverly drafted” document that dangerously politicises (enter the tired backdrop: terrorists within Pakistan might take advantage) a treaty that works well. I discuss both parts of this argument, and explain why they constitute an unproductive approach to understanding transboundary water disputes in South Asia.

Dispute Resolution Mechanisms
I take the second part of the argument – the way the waters are divided preclude dispute – first. The IWT is unique amongst international water sharing arrangements, because its principle of water allocation is location, not quantity or managed ordering (Salman 2008). Thus, with some exceptions, Pakistan has the rights to the waters of the three eastern rivers and India to the three western rivers that constitute the IWT covered Indus tributaries. Iyer’s underlying assumption is that geography is constant, and there is little room for dispute arising from this type of allocation once it has been established: east is east, and west is west – what is there to argue about?

But location does not constitute a total geography of a river – the relationship between river and society is contingent upon much more. Population growth, advances in technology and climate change are just three dynamic factors shaping this geography. Just because the rivers do not shift relative position does not mean the socio-legal reality the treaty represents cannot change. Iyer himself acknowledges as much, when he says the people of Jammu and Kashmir are “strongly against the Indus Treaty because the treaty is perceived as hindering development in the state” (Iyer, p 11). The IWT does not recognise Kashmiri rights to the rivers – but that does not mean those rights do not exist. Law and geography are constantly shaping each other – when we freeze one or the other it imposes a rigidity of analysis that oversimplifies a complex situation.

The first part of the argument is that dispute resolution mechanisms established by the IWT are sufficient to deal with any situation – either through the Permanent Indus Commission, a neutral expert, or a court of arbitration. This argument lays an implicit faith in the structure and form of a legal document to capture all possible disputes. The IWT drafted and implemented by engineers, could be seen as especially “neutral” and objective, and therefore, any discussion outside its framework is “politicised”.

This is a view of law as a formal, abstract logic which contains principles that can be generalised to all situations. Put another way, the law operates autonomously from the social situation that produces and interprets it.

Political Climate
Several observations about the political climate that produced the IWT will suffice to deflate the notion that the treaty is complete, autonomous and neutral. First, the World Bank was intimately involved with the drafting and mediation of the IWT. This was one of the first major interventions in the history of the World Bank, and the international stakes at this time must be taken into account.

Second, the role of engineers in drafting the document and the unusual prominence they hold in the adjudication process suggests modernist presumptions about the degree of control humans have over the environment. For example, the Court of Arbitration, when Pakistan and
India cannot agree on its composition, includes the president of Massachusetts Institute of Technology and the rector of the Imperial College of Science and Technology! The IWT is a curious confluence of engineering and law-making that took place in the specific context of two new states constructing themselves in the 1950s. The widely shared belief of planners and statesmen at the time (and to a lesser degree, today) was that technology can and does resolve social and political conflict.

And third, the “Kashmir issue” is inextricable from any Indus water-sharing dispute (Ankit 2010). The disputes erupted alongside each other in the late 1940s, and although they are legally and discursively treated as separate, hydrological bonds that unify the region are not so easily buried. I do not deny that the IWT contains principles that can be abstracted from its context of production. However, it is also true that the IWT cannot be understood without reference to the social and political world of its production and interpretation.

**Alternate Understanding**

An alternate understanding of water-sharing disputes in the Indus basin would view law as always enmeshed in the politics, economics and geography of the contexts that produce and interpret it. The IWT is celebrated as an instance of the power of engineering to overcome a seemingly intractable political problem. The political geographic tensions that arise from competing upstream-downstream uses of river waters, temporally and spatially mismatched water supply and demand and territorialising imperatives of states, however, can only be deferred by technological solutions, not resolved. These are first and foremost socio-ecological problems, because they revolve around the resources that social groups recruit to mediate their expectations and interactions, provides a mutual ground for resource sharers, and has legitimacy that stems from its structured form and traditional role in adjudication. But laws are created by humans and for humans, and how they work in the world cannot be understood by any logic exclusively internal to law.

The important questions about the Indus waters are not about how the Pakistani state is crafty or the Indian state is a bully — although these are important (if here crudely stated) geopolitical considerations. What about the people of greater Kashmir? While Pakistan and India rush to build dams in the region, people who live there continue to see their land cinically territorialised by Pakistan and India. Are we to believe that one of the most heavily militarised regions in the world will benefit in a democratic and equitable way from dam construction? What of seawater intrusion in the Indus delta, which has impacted the livelihoods of a million farmers and fisherfolk? What of ground-water depletion in transnational Punjab, breadbasket and one of the most important absorbers of labour in south Asia? What of Afghanistani plans to dam the Kabul river, a major tributary of the Indus not covered in the IWT?

These are critical transnational issues stemming from the complex hydrologic interconnectivity of Indus basin waters and how they relate to society, and are not given scope within the IWT. We can begin to understand them by holding a relational and context-specific perspective on law and geography. It is easy to slip into nationalistic modes of argument and debate, because those scripts are written and available. These scripts, however, are not up to the task of understanding the complex legal, political, and geographic dimensions of sharing the waters of the Indus.

**DISCUSSION**


**REFERENCES**

