

Some Issues for Trans-boundary River Basin Management/Planning

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SIX ISSUES

- Accessing information
- Public/community hearing to participation
- Environmental management and mitigation
- Compensation and resettlement
- Securing rights and interests of local peoples/communities
- Ensuring benefits and their sharing for local/affected communities/basins

Legal Framework ... 1

- Insufficient domestic policies, laws and regulations, and ineffective in implementation
- Bi-lateral treaties and agreements are not covering these issues except dividing/sharing the water and related benefits as irrigation and hydropower (the argument to say “this is how the governments have agreed” has no any meaning or relevance if it is to promote a principle-based framework and avoid misunderstanding and conflict)

Legal Framework ...2

- Few international human rights and environmental treaties are ratified but they are applicable or applied only within the territory of respective countries that address some of the above issues in a form of **human right or environmental obligation**
- **The only international treaty on trans-boundary watercourses, the UN Convention on the Law of Non-Navigational Uses of International Watercourses, 1997 is not ratified by any South Asian countries, nor China**

Legal Framework ...3

- The non-binding framework such as 1966 Helsinki Rules and the criteria and guidelines such as of World Commission on Dams only exist in papers unless our governments decide to adopt and implement them as they are appropriate in our national and regional planning and cooperation
- World Bank, ADB and some bi-lateral donors have some less-binding policies and guidelines but implementations are weak unless they are effectively monitored

Legal Framework ...4

- There is no collective desire of our governments to come up with their/our own multi-lateral and regional norms, principles, standards and framework as they exist in other regions/basins such as Mekong
- There are various non-governmental and civil society declarations and plan of actions (e.g. Kathmandu, Dhaka, Nirjuli etc.) supposed to be adopted or recognised by our governments
- But they are completely ignored as there is not even a dialogue between the governments and these non-governmental actors on these issues

Legal Framework ...5

- Certain principles such as of 'equal', 'equitable', 'reasonable', 'no harm', 'prior use right', 'future use right' etc. related to the sharing of river waters and benefits being evolved through certain bi-lateral treaties are declared as not to be replicated in case of other rivers or treaties or countries concerned so it is a serious problem
- Same is the case non-application of judicial principles established by various domestic inter-state dispute settlement tribunals or courts, e.g. the case of India

Institutional Arrangements

- Some bi-lateral treaty bodies such as Joint River Commission/Committee exist but they are more technical or virtually defunct
- SAARC and other regional institutions or committees have not yet addressed trans-boundary waters and rivers as issues of multi-lateral or regional concerns for problem-solving and prosperity-making
- As to date, we have completely ignored the concerns of the third co-riparian countries when bi-lateral agreements or projects are signed, e.g. Bangladesh and China in the case of old Koshi Agreement and proposed new Koshi High Dam

Some Acute Problems of Non-Cooperation

- Construction of series of water 'control' structures, embankments, barrages and dams, such as those built by India mostly unilaterally near its northern border with Nepal, without any prior notice or consultation or participation or approval of Nepal and communities from both sides
- In such a situation, all six issues mentioned above have no any legal or institutional remedies available in the total absence of bi-lateral legal and institutional arrangements for complaints

Some Acute Problems of Non-Cooperation

- And, no Nepali or Indian citizens can exercise the jurisdiction of another country for any remedies that may be available within those countries
- Many existing treaties need a thorough review in the light of the above six issues but that is not happening and is very unlikely to happen in the near future unless we act collectively
- We still do not have any desire or any plan to apply any principles or criteria in the future for any river basin or individual river or project negotiation

What is the Main Problem Then?

- It is not about we do not know or the governments and bureaucrats do not know
- It is not that the principles, criteria and framework do not exist
- It is all about not having any interest for a principle/framework-based regional cooperation in our river/basin/water management, conservation and sharing

Our Options

- Meet, talk, protest and confront with our governments and agencies BUT FOR HOW LONG without any results?
- Do we have or can we play any better or different role than what we have been doing till today?
- How can we make our governments/agencies listen to these concerns or at least have regular dialogue for a paradigm shift?

Future Expectations

- Before we go to our governments/agencies, what are the basic principles, criteria and framework we can agree upon (in this room) in the light of above SIX ISSUES (and others) in managing or planning our trans-boundary river basins in the future?
- Can we have a new beginning for a new thinking or approach for a truly regional/trans-boundary cooperation, including China, when it comes to the conservation and utilisation of trans-Himalayan river basins also to address the challenge of climate change in the Himalayan region?

One Concrete Thing

- Can we come up with the most reasonable and agreeable set of a framework with principles, guidelines and criteria that we believe in and want to promote for single basin, inter-state basin and intra-state or trans-boundary river basin in the future?
- If so then we can also come with a regional document or handbook as a tool to discuss and dialogue further at various levels in the future until something is achieved!

If not ... then!

- We will be talking about the same things all over again with all kinds of problems and knowledge we all know already
- We should move on beyond “vested” state, inter-state, national and bi-lateral interests
- This is time to go for a mutually negotiated multi-lateral and regional framework of river basin management, planning, conservation, cooperation for conservation and benefits

Fundamental Question

- Who is going to lead for such a regional/multi-lateral framework-based approach?
 - All together?
 - India?
 - India and China?
 - All other riparian countries other than India if it is not interested to lead?
 - How feasible will it be to do so without India in the lead or in full cooperation?
- We don't have a definite answer!
- But are we interested to talk?