

IN NATURE'S WARNING SIGNS, A NUDGE TO RIPARIAN STATES

Relevant for: Environment | Topic: Disaster and disaster management

In Sohbat Pur city, a district in Pakistan's southwestern Baluchistan province | Photo Credit: AP

There has been an increase in the magnitude, the frequency and the intensity of floods in many parts of the world. As an example, nearly [a third of Pakistan is experiencing devastation](#), with a spread of diseases and severe shortage of potable water after intense flooding. In June this year [Assam experienced one of its worst floods](#) in living memory which affected over 30 districts. In some districts in Assam and Bihar, flooding is a recurrent feature, and thus a major impediment in ensuring poverty alleviation and meeting Millennium Development Goals.

Flooding is still considered to be a natural phenomenon that cannot be entirely prevented. But it is compounded by the lack of transparency in the sharing of hydrological information and also information relating to activities (such as by one riparian state) that are transboundary in their effect (affecting other riparian states), thus serving as an obstacle in understanding the magnitude of flooding.

In accordance with customary international law, no state has to use its territory in a manner that causes harm to another state while using a shared natural resource; this amounts to saying that there is a binding obligation on all states not to release water to cause floods in another co-sharer of the river water. This obligation gives rise to other procedural norms that support the management of floods, which include notification of planned measures, the exchange of data and information, and also public participation.

The International Court of Justice (ICJ), in the Pulp Mills on the River Uruguay (Argentina vs Uruguay) case (2010), upheld that conducting a transboundary environmental impact assessment (TEIA) of a planned measure or projects on the shared water course is part of customary international law. In fact, the ICJ noted that the acting state must notify the affected party of the results of TEIA to "enable the notified party to participate in the process of ensuring that the assessment is complete, so that it can then consider the plan and its effects with a full knowledge of the facts".

Closer home, there is the case of China being the upper riparian in the Brahmaputra, which spans India and Bangladesh, enjoying apparent leverage *vis-à-vis* lower riparian India. During the monsoon, flooding has been the recurrent feature in the last several decades in Assam. India faces other woes in the form of the construction of dams by China. China's excessive water release, as a "dam controller", in violation of customary international law has the potential to exacerbate flooding in Assam in future. India's main concern is that there is no comprehensive sub-basin or all basin-level mechanism to deal with water management of Brahmaputra. Neither India or China are party to the United Nations Convention on the Law of the Non-Navigational Uses of International Watercourses (UNWC) 1997 or the United Nations Economic Commission for Europe (UNECE) on the Protection and Use of Transboundary Watercourses and International Lakes 1992 (Water Convention).

The UNWC contains a direct reference to floods, which covers harmful conditions and emergency situations. Article 27 of the Convention says: "Watercourse States shall, individually and, where appropriate, jointly, take all appropriate measures to prevent or mitigate conditions ...that may be harmful to other watercourse States, whether resulting from natural causes or

human conduct, such as floods or ice conditions, water-borne diseases, siltation, erosion, salt-water intrusion, drought or desertification.”

In the absence of any mechanism, India relies on its memorandum of understanding (MoU) with China in 2013 with a view to sharing hydrological information during the flood season (June to September). The MoU does not allow India access to urbanisation and deforestation activities on the Chinese side of the river basin. With the MoU in the background, India by becoming a party to either the UNWC and the Water Convention could lay the groundwork for a bilateral treaty on the Brahmaputra but subject to the reservation that it should not insist on the insertion of a dispute settlement mechanism provision.

Floods are also a recurrent problem in the Koshi and Gandak river basins that are shared by India and Nepal. The intensity and magnitude of flooding is rising because of heavy seasonal precipitation as well as glacial retreat due to global warming and human-induced stressors such as land use and land cover changes in the river basin area of Nepal (Terai) and Bihar. It is important that the two neighbours view the river basins as single entities, which will help in facilitating an integrated approach for improved basin and flood risk management. The India-Nepal Koshi agreement 1954 (revised in 1966) is aimed at reducing devastating flooding in the river basin. The treaty-based joint bodies have also tried to refine the early warning systems for flood forecasting. In contravention of procedural customary international law obligation, India considers data on transboundary rivers as classified information, which is one of the key challenges in developing cross-border flood warning systems. In light of the cataclysmic floods in Pakistan and the visible effects of climate change, it is important that all riparian states must comply with all the procedural duties pursuant to the no harm rule. They must also think of becoming a party to either the UNWC or the UNECE Water Convention.

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