

Briscoe on the Indus Treaty: A Response

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John Briscoe's article ("Troubled Waters: Can a Bridge Be Built over the Indus?", EPW, 11 December 2010) on the implementation of the Indus Waters Treaty is a very one-sided presentation of the issues. Such perspectives are unhelpful in improving relations between India and Pakistan.

Some Preliminaries

John Briscoe is an old friend with whom I have had many disagreements. His article on the Indus Waters Treaty (IWT) in EPW provides one more occasion for disagreement – more serious than any in the past. Let me begin with some preliminary points.

(1) As Briscoe knows, I am unenthusiastic about big dams on the Himalayan rivers. However, the governments of India and Pakistan (and Briscoe himself) firmly believe in such "hydel" projects, and so does the state of Jammu and Kashmir; and the Indus treaty contains detailed provisions regarding such projects. That is the context for my comments.

(2) Briscoe's article seems to be a slightly muted version of an earlier more strident article which has been in circulation for some time. In this article, as in the earlier one, Briscoe adopts the Pakistani position completely on every issue between the two countries. He is free to do so. What matters is whether he has valid points to make. That is what I propose to examine.

(3) His comments (a) that Pakistani media present the Indian point of view, but there is no attempt in the Indian media to reflect the Pakistani view, and (b) that Indian reports and commentaries are all written to government dictation, are, to put it mildly, very strange indeed. (Even stranger was the statement in the earlier article that Indian intellectuals are not prepared to give unpopular advice to the government.) However, I shall leave it to others to respond to those observations if they wish to do so.

(4) There is considerable Indian non-governmental organisation (NGO) activity in trying to build bridges between the two countries and to initiate "Track II" dialogues, and these dialogues explore possibilities of rapprochement on all

issues including Kashmir. Many journalists, columnists, academics and others are involved in these attempts to promote mutual understanding and good relations. Briscoe's derisive references to Indian attitudes do less than justice to such people.

(5) Briscoe's article, doubtless well-intentioned, is a major negative contribution to the improvement of India-Pakistan relations. Some of us have been trying to dispel Pakistani misperceptions and doubts about Indian intentions on water, with a modest degree of success. Briscoe's articles throw a spanner into those efforts. In several Track II meetings in recent months, every Pakistani participant had a copy of Briscoe's earlier article ("War or Peace on the Indus", 5 April 2010, *The News*), and kept citing it as showing that their worst suspicions of Indian intentions were confirmed by a Harvard professor.

(6) I had written two articles on the "India-Pakistan water issue", a short one in *The Hindu*, "Water through Pakistani Eyes", 6 August 2010, which was, I believe, well received in Pakistan, and a longer one "India-Pakistan Water: An Overview", in the *South Asian Journal* (No 29, July-September 2010), Lahore. The first was an attempt to draw the attention of Indian readers to Pakistan's perceptions and concerns; the second was addressed to a Pakistani readership, and tried to dispel some misunderstandings through explanations. Briscoe has either not seen them or does not think much of them.

(7) Incidentally, Briscoe carefully uses the terms "India-held Kashmir" and "Pakistan-held Kashmir", presumably to indicate his neutrality. However, that appearance of neutrality is misleading. The parallelism in terminology in itself implies a particular position on the dispute.

Let me now proceed to my responses to Briscoe's article.

Lower Riparian Anxiety

Lower riparian anxiety is a well-known phenomenon. India has begun to feel it vis-à-vis China over the Brahmaputra. However, while India is not protected by a Brahmaputra treaty with China, Pakistan is amply protected vis-à-vis India by the IWT. Apart from the allocation of the

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Indus waters, the treaty is predominantly an instrument for the protection of Pakistan's interests. There are stringent provisions to ensure non-interference by India with water flows to Pakistan, and to protect Pakistan from a stoppage of water, reduced flows and flooding. To ensure that the treaty is properly implemented, there are institutional arrangements (the Permanent Indus Commission); and to deal with differences and disputes there is an arbitration clause, providing for a reference of "differences" to a Neutral Expert (NE) and "disputes" to a Court of Arbitration. If, after all this, there is still "lower riparian anxiety", what kind of reassurance will allay it? Is it appropriate for an "independent observer" to reinforce the Pakistani sense of insecurity?

Indian Concerns

There was genuine bewilderment and dismay in India (in both official and non-official circles) early in 2009 when the water issue was projected by Pakistan as a major one between the two countries, and given the same salience as Kashmir. In the past, official Pakistani criticisms about particular Indian projects such as Baglihar had found echoes in the media and even in civil society, but no one attributed water shortage in Pakistan to Indian wrongdoing, and no one said "India is stealing Pakistan's water". This is a new, very recent phenomenon, and it has rapidly spread and now forms the general climate of opinion in Pakistan, undoing years of patient work in both countries to promote goodwill and understanding. Hence the profound uneasiness in India.

Briscoe, who is extremely sensitive to Pakistan's lower-riparian anxiety and insecurity, is not only thoroughly insensitive to that Indian concern, but caricatures and ridicules Indian attitudes. Is it entirely unreasonable for India to wonder whether the manufacture of a new "core issue" (potentially more powerful than Kashmir) and the building up of a sense of insecurity in Pakistan (that affects liberal civil society as well as the more rabid elements) is a deliberate strategy on the part of the army to maintain and strengthen its hold over the country, and to prevent the relations between the two countries from improving?

Baglihar and the Expert Report

Turning to the findings of the NE on the Baglihar differences, which Briscoe severely criticises, let me say first that in echoing and indeed reinforcing Pakistan's dissatisfaction with the NE's verdict, Briscoe seriously undermines the arbitration process and the functioning of the IWT. I find this deeply regrettable.

What is Briscoe's criticism of the NE's findings? He thinks that the NE reinterpreted the IWT and removed the protection that the treaty had conferred on Pakistan. Consider the charge of reinterpretation. The NE gave precise answers to the specific questions put to him, based on the existing treaty provisions. He accepted the design flood proposed by India, considered gated spillways necessary in the circumstances of the case, upheld the placement of the gates, slightly raised the placement of the water-intake, made a small reduction in the capacity of the pondage, correspondingly raised the dead storage level, and slightly reduced the freeboard. None of this involved any re-interpretation of the treaty. The charge of reinterpretation has reference to two assumptions made by the NE; one, that conformity to a treaty signed in 1960 did not mean that dams and reservoirs should be built in 2007 to the technology of 1960; and two, that an overall understanding of the treaty should take into account the positive elements in it as much as the negative and restrictive provisions. Are these unreasonable assumptions? Perhaps Pakistan would say "yes", and evidently Briscoe would say so too. However, it is difficult to imagine a reputed engineer making recommendations on the basis that the treaty freezes everything to 1960. Besides, the treaty itself says "consistent with sound and economical design and satisfactory construction and operation"; those words cannot be ignored. To do so would amount to a reinterpretation of the treaty.

The one new element that the NE introduced (and this could be described as "reinterpretation of the treaty") was his stress on the need for periodical flushing of the reservoir for desilting purposes. The possibility of non-maintenance or inadequate maintenance must have been inconceivable to him as a professional.

Briscoe thinks that this removes the protection that Pakistan had under the treaty. This is a misreading of the treaty. Where does the treaty say "protect Pakistan by abandoning maintenance"? On the contrary, it makes its prescription of "no outlets below the dead storage level" subject to the proviso "unless sediment control or other technical considerations necessitate this". It also makes all its engineering conditions and restrictions subject to sound and economical construction and satisfactory operation. In any case, how could the NE, a leading international expert, say "ignore maintenance"? (However, this issue is now being placed again by Pakistan before the Court of Arbitration in the Kishenganga case.)

Let me add a footnote to that discussion. Assuming that Briscoe is right and reservoir flushing is ruled out, what will be the consequence? The reservoir will silt up very fast and the project will soon become inoperable. No hydroelectric project can be built on that basis. To say "Don't maintain the project" is the same thing as saying "Don't build the project". This will nullify the provision in the IWT permitting India to construct hydroelectric projects on the western rivers. Would Briscoe say that that conclusion must be accepted?

Initial Filling of Baglihar

In August-October 2008, a huge controversy erupted over the initial filling of the completed Baglihar reservoir. Major deviations from the treaty provisions were alleged; the general impression was created that India had stopped the flows of the Chenab and caused serious harm to Pakistan; and mala fides on the part of India were implied if not explicitly attributed. Here again, Briscoe adopts the

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Pakistani position completely, including the implication of mala fides. I am referring to the language of his earlier article ("India chose to fill Baglihar exactly at the time when it would impose maximum harm on farmers in downstream Pakistan"). The EPW article makes the following reference to this episode: "From the Pakistan perspective, salt was rubbed into this raw wound when India did not (in Pakistan's view) comply with the IWT-specified process for filling Baglihar". Please note the language. The "raw wound" refers to Pakistan's disappointment over the NE's findings on the Baglihar difference, discussed above. The words "salt was rubbed" seem to imply deliberate action by India. (Indeed, there is a categorical statement that India did not comply with the IWT-specified process; this is not even presented as Pakistan's point of view.) The apparent disclaimers ("from Pakistan's perspective", "in Pakistan's view") are disingenuous: Briscoe clearly thinks that Pakistan was right.

What exactly did happen in August 2008? I have explained this more than once but perhaps Briscoe has not seen my explanation. Let me repeat it.

During the initial filling of a reservoir on the Chenab, the IWT requires a minimum flow of 55,000 cusec to be maintained above Merala in Pakistan; and it requires the filling to be done between 21 June and 31 August (the monsoon period).

There is a problem in regard to the first condition. After the diversion outlets, if any, are closed, and the filling of the reservoir begins, there is bound to be a brief interruption of flows to the other side until the waters rising against the dam wall reach the outlets, i.e., the spillway gates. (If, as desired by Pakistan, the gates had been placed higher, the water would have taken still longer to reach them.) However, the treaty also requires a minimum flow to be maintained during the initial filling. How are these two provisions to be reconciled? There seems to be a conundrum here. However, let us leave that

aside and consider the question of compliance with the treaty.

Period: The treaty requires the filling to be done between 21 June and 31 August. *The filling was completed by 28 August 2008. There was no deviation here.* (Briscoe quotes Pakistani reports that the filling continued into September. Did he try to check the accuracy of those reports?)

Minimum Flow of 55,000 Cusec: (Please note that the minimum flow stipulation is for flows above Merala in Pakistan and not for releases from Baglihar.) Apart from flows through Baglihar, there are other inflows into the Chenab beyond the dam. Based on Indian calculations of those flows, it appeared that while the flows at Merala might have fallen briefly below 55,000 cusec, they might still have been around 25,000-30,000 cusec. (These are my numbers, not official ones.) Pakistan reported a lower figure. (The treaty provides no joint monitoring of flows at

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Merala, as exists for instance on the Ganga at Farakka.) However, I do not wish to enter into an argument on these numbers, because any flow figure below 55,000 cusec at Merala is undoubtedly a deviation from the treaty. There can be no difference of views on that point. Yes, there was a lapse, but how serious was it, and could it have been avoided?

My answers are as follows. First, this kind of one-time shortfall at the time of initial filling – *for less than a day* – might indeed have caused some difficulty but can hardly be described as a disaster or as a major deviation from the treaty. Second, even that brief shortfall in flows at Merala could perhaps have been avoided if the filling had been done a bit earlier, say in July, when the flows beyond the dam might have been higher, but this was not possible because the project works were still going on. The filling was done as soon as it was possible to do so, and within the period prescribed by the treaty.

When the dam was ready for filling in August 2008, the options before the Indian engineers were: to leave the completed dam unfilled (i.e., abandon the project); or postpone the filling by one year; or fill it within the prescribed period but accept the likelihood of a brief shortfall in flows above Merala. They chose the last option. Again, it is for the readers to consider whether this was a deliberate violation of the treaty, and whether the brief shortfall in flows (for less than a day) amounted to the infliction of a major hardship on Pakistani farmers warranting the huge controversy created in 2008, and the strong denunciation (with a clear implication of malevolent intent) by Briscoe.

Why did Pakistan decide to raise a huge controversy over a relatively minor matter? My speculative answer is that nursing a disappointment over the NE's report, Pakistan jumped at the opportunity presented by a real deviation from the treaty provisions, however brief and minor, and decided to put India in the dock. I can understand Pakistan's action, but not Briscoe's wholesale adoption of the Pakistani view of the episode.

This is now a closed issue. At a recent meeting of the Indus Commission, Pakistan is reported to have said that it would not pursue the Baglihar filling issue any

further, and India is reported to have said that it would evolve a proper consultation procedure to obviate such controversies in the future.

Kishenganga Project

This is not a “flashpoint” as mentioned by Briscoe. Pakistan has proposed the reference of some “differences” to a NE and a couple of others (regarded by Pakistan as “disputes”) to a Court of Arbitration. My own view has been that these matters could have been resolved through inter-governmental discussions. However, now that the arbitration process has been initiated, it will have to run its course.

Cumulative Impact

Briscoe makes a point about India acquiring control through a significant quantum of “manipulable live storage” resulting from the cumulative effect of a large number of projects. One has also heard this point in Track II discussions. The point that is made is that even if each individual Indian project conforms to the treaty provisions, a large number of run-of-the-river projects on the western rivers might cumulatively spell trouble for Pakistan. One does not wish to dismiss this apprehension lightly. Two questions arise here: the number of projects that India is planning, and their cumulative potential for harm to the lower riparian. Some Pakistani writings talk about a hundred projects. There seems to be no basis for that number. It appears that India has in mind some 33 projects. It is not clear whether all those projects will in fact be undertaken, but assuming that they are, it is necessary to consider whether all of them will together give India a greater degree of control; enable large storage; make it possible for India to withhold water from Pakistan, or release stored waters and flood Pakistan. The Indian answer would be that most of these will be small projects; that all these are run-of-the-river projects; that given the restrictive provisions of the treaty, there is hardly any scope either for the retention of waters to the detriment of the lower riparian or for flooding the lower riparian. India might add that if it were to try to hold back all the waters and let nothing go through to Pakistan, such an act would be

disastrous for itself. As for causing floods, Pakistan need really be concerned only with waters coming out of the last project before the border; and that is subject to limits. Assuming that India wants to harm Pakistan it can do so only by openly violating the treaty and by harming itself and its own projects (built at great cost) first. In any case, the eastern rivers stand allocated to India, and the treaty imposes no restrictions or conditions on Indian projects on those rivers; what harm has India done to Pakistan through those rivers?

Having taken note of the positions of both sides, I would still say that the hypothetical fear of “cumulative impact” needs to be looked at, not only because of Pakistan's apprehensions, but also because of India's own concerns, ecological and other. This is roughly what I have been saying in Track II meetings, as also in my articles in *The Hindu* and in the *South Asia Journal*. I have also said this to the Government of India.

Reduced Flows

India is of course not “stealing Pakistan's water”, and some sane voices in Pakistan have said so. (One wishes that Briscoe had added his voice too.) However, Pakistani participants in Track II meetings have reported observations of reduced flows in the western rivers. I have suggested that there should be a joint study of this phenomenon to establish whether in fact this has happened and if so what factors have caused it.

A Final Word

Pakistani worries about a present or impending water scarcity and the readiness to believe that India has something to do with it, and its apprehensions about the cumulative impact of planned Indian projects on the western rivers, may be well-founded or baseless, but they have the potential of causing serious strains in the relationship between the two countries at every level. India needs to dispel misperceptions, if any, reassure Pakistan that it has no intention of harming that country, and if necessary, undertake some joint studies. Those efforts have to be made at both official and non-official levels. Initiatives on these lines are not helped by articles such as Briscoe's.