

The Farakka Problem: Seeking a Solution

In a speech to the Special Political Committee of the United Nations in 1976, The Indian Foreign Secretary stated, "Problem of Calcutta port has been studied for more than a century. Enquiries into the problem were stated as early as 1853 by Sir Arthur Cotton and continued by a long series of experts and expert commissions. All of them concluded that the only means of saving the port from its impending destruction was by increasing and regulating the head water supply through the construction of a barrage over the Ganga near Farakka."

The question of whether the Hoogly was deteriorating by silting up was taken by the Government of India in 1853. Since then upto 1946 a number of committees and experts were engaged for the purpose but their findings were not unanimous. Of the three-person Hoogly Commission appointed to investigate the matter in 1853, one member differed from his colleagues on the question of deterioration stating, "I find nothing to lead us to anticipate any future deterioration beyond such as may arise from a temporary shallowing of some of the difficult channels while a change is going on near it."

LP Vernon-Harcourt carried out two surveys for the commissioners of the Port of Calcutta in 1896 and in 1905, and concluded that any slow deterioration could be remedied by river training, that is by concentrating the river and tidal currents into a single channel. As late as 1939, TM Oag, a Deputy River Surveyor working for the Commissioners of the Port of Calcutta concluded that there was no evidence of deterioration in the river and added "It is definitely established that the navigability of the river has improved during the last hundred years and, while in more recent years improvement must be attributed largely to the Commissioners' dredging policy, the capacity of the river and tidal conditions show no indications of general deterioration."

Thus at least none of the above experts noted remarkable deterioration in the Hoogly and concluded that a barrage across the Ganga near Farakka was the ONLY solution. Rather some of them suggested for river training, and dredging for improving the navigability of the river. (It may be noted here that the lower Hoogly has been continuously dredged since 1906). The aforesaid statement of the Indian Foreign Secretary in 1976 was therefore a distortion of facts.

The 'Harmon Doctrine' of absolute territorial sovereignty over international river, which originated in the US in 1895 has in fact never been followed and practised by any state, not even by the US. Thus while resolving the Rio Grondo dispute, the US did agree to provide Mexico with water equivalent to that which Mexico had used before the diversion of waters from the Rio Grondo for irrigation purposes in the US took place. The 1933 Montevideo Declaration adopted by the Seventh International Conference of American States limits the right of utilization of common waters by the obligation not to infringe the legal right of utilization of other states. Similar views are also expressed by the Inter-American Bar Association, the Insti-

tute of International Law and the International Law Association, the 1977 UN water Conference at Mar del Plata has also accepted this view of basin states' responsibility in dealing with common waters.

Besides, in a number of court cases the US Supreme Court (e.g. Kansas vs Colorado (1902), North Dakota vs Minnesota, (1923), New Jersey vs New York (1931), etc.), the Swiss federal court (e.g. Aargan v. Zurich (1878), Schiff Nausen vs Zurich (1897), etc.) and the German Court (Wathemberg and Prussia vs Baden (1927) asserted that they invoked the principles of equitable apportionment and limited territorial sovereignty as established principles of international law. Similarly the Italian Court of Cassation asserted that International Law recognizes the right on the part of every riparian state to enjoy as a participant of a kind of partnership created by the river. In view of these court decisions, any claims by India of absolute territorial sovereignty over the Ganges water are against all national and international case laws and international conventions and practices.

India started constructing the Farakka barrage on or before January 30, 1961, without giving prior notice and information to Pakistan about the project in total disregard to Article 7 of the 1933 Montevideo Declaration of American States, which provides that "The works which a state plans to perform in international waters shall be previously announced to the other riparian states". The 1957 Buenos Aires Resolution of Inter-American Bar Association requires the consent of a co-basin state when that state may suffer damage or injury as a result of a proposed work. Pakistan opposed the construction as it had a right to the waters of the Ganges, which rested primarily on the Ganges Kobadak Project. At this stage India should have suspended the construction and maintained the status quo pending settlement of the dispute as required by the provisions of the 1933 Montevideo Declaration, the 1965 draft convention, the 1961 Salzburg Resolution etc. But India did not suspend the construction but followed from the very beginning the strategy of procrastination by holding a series of fruitless discussions and meetings with Pakistan during the period 1961 to 1970. Pakistan raised the dispute to United Nations and informed the superpowers of the dispute.

The USSR President Kosygin wrote a letter to Mrs. Gandhi urging a settlement along the lines of the Indus Waters Treaty (i.e. through the mediation of the World Bank). But India openly rejected the suggestion. Pakistan also planned to construct a parallel Ganges Barrage in the vicinity of Hardinge Bridge which would irrigate an area of 6.35 million acres in the west and south west of East Pakistan. (In 1969, East Pakistan irrigated only 2.6 million acres). The barrage was also intended to store water for dry season use. India reacted to it and protested stating that the project if executed "will cause harm to large tracts of territory belonging to India by way of submergence and erosion etc." India urged that "no construction should be undertaken on the Padma which may

injure the upstream area of India."

On December 16, 1971, Bangladesh became independent. Because of the role played by India during the war of liberation, an euphoria of friendship for India swept the simple and peace-loving people of Bangladesh, who felt a debt of gratitude to it. India was quick to take the full advantage of the situation and won from Bangladesh its acceptance that India has a right to use the Farakka Barrage without concluding a permanent treaty to share the Ganges waters with Bangladesh, which the author feels, was a technical blunder! Not only that, shortly after the construction of Farakka Barrage and its feeder canal in 1974, India secured an interim agreement, dated April 18, 1975 with Bangladesh allowing the former to run for experimental purpose the Farakka feeder canal for a stipulated period of 41 days from April 21 to May 31 1975. According to the terms of agreement, India would withdraw between 11,000 cusecs and 16,000 cusecs of water during the specified period to run the Farakka feeder canal and ensure the continuance of remaining flows to Bangladesh. The agreement had provision for extension. After the expiry of the agreement, India should have stopped withdrawing even a drop of water. But without any further agreement, India completed full commissioning of the project by di-

verting 40,000 cusecs of water, the full extent of the capacity of the barrage, flouting all international laws and practices in this regard.

In March 1977, Mrs. Indira Gandhi's Congress was defeated by the Janata Party. The new Government took concrete steps towards reviving good neighbourly relationship with Bangladesh and felt the urgency of resolving the Farakka problem. Within weeks, an understanding was reached with Bangladesh on the sharing of the Ganges waters. After six months of detailed negotiations the Ganges Water Agreement of 1977 was signed. According to this agreement, the sharing of the Ganges water between Bangladesh and India would be from 1st January to the 31st May every year. The minimum levels of India and Bangladesh entitlement was 20,000 cusecs and 34,500 cusecs respectively to be received during the last ten days of April every year. The minimum quantum would increase at a gradual rate over every ten day segment of the 'lean-period' until it reached the maximum level of 40,000 cusecs for India and 58,500 cusecs for Bangladesh in the event of an exceptionally low flow of the Ganges at Farakka. This clause was omitted from the 1982 memorandum of understanding. This means that the minimum share of Bangladesh during the lean month is no longer fixed and secured. As such in the absence of guarantee clause, very little or even nothing will remain below Farakka for Bangladesh after the withdrawal of the share of India at Farakka in case of an exceptionally low flow of water or diminishing level of water as a

result of irrigation development in India and Nepal.

In accordance with Article 6 of the 1972 Indo-Bangladesh friendship treaty, the Indo-Bangladesh Joint Rivers Commission was established to develop these common water resources on cooperative basis. In the joint Indo-Bangladesh Prime Ministerial Declaration of May 16, 1974, it was recognized that the Ganges dry season flow would have to be augmented and decided that the Joint Rivers Commission should study the best means of such augmentation. Accordingly, the JRC met monthly from June 1974 but its discussion came to a standstill as the Bangladesh Team supported one method of increasing the flow and the Indians another. Bangladesh proposed that the dry season flow of one of Bangladesh's two major rivers, the proposed Brahmaputra Barrage could give India control over the other. (*Sharing the Ganges* by Ben Crowl). This contention is further substantiated by the fact that India planned to construct a dam at Tipaimukh on the river Barak, which would certainly not augment the flow of the Brahmaputra (or for that matter, the Ganges), but would enable India to control the waters of Meghna the third major river of our country and with it to complete the control of the entire river system of Bangladesh.

The Indian teams opposed the concept, apparently because, in that event the control of the Ganges waters would mainly vest upon Nepal and the Farakka Barrage would be redundant. The Indian proposal for augmenting the dry season flow of the Ganges consisted of a barrage across the river Brahmaputra at

Goghoga and a canal to take water from that river through the northern area of Bangladesh to Farakka. At a later stage India intended to construct three storage reservoirs by constructing three dams, one on the river Dihang, another one on the Subansiri and the last one, the Tipaimukh Dam on the Barak, a tributary of the river Meghna. The Indian scheme was not acceptable to Bangladesh because (i) it would entail a loss of large tracts of precious agricultural land; (ii) a large number of people would be uprooted in the most densely populated region of north Bengal; (iii) it would represent a threat to the sovereignty of Bangladesh. The Farakka Barrage gave India nearly complete control over the dry season flow of one of Bangladesh's two major rivers; the proposed Brahmaputra Barrage could give India control over the other. (*Sharing the Ganges* by Ben Crowl). This contention is further substantiated by the fact that India planned to construct a dam at Tipaimukh on the river Barak, which would certainly not augment the flow of the Brahmaputra (or for that matter, the Ganges), but would enable India to control the waters of Meghna the third major river of our country and with it to complete the control of the entire river system of Bangladesh.

The reason may be not far to seek. Many opine that Pakistan is a formidable power, and India can not withdraw Indus Waters more than has been allocated under the Indus Treaty without risking a devastating war. Many even tend to think that has Bangladesh been as militarily strong as Pakistan, India would perhaps not have withdrawn Ganges waters unilaterally, and terrible damages to its agriculture, industry, fishing and ecology could have been averted.

However, now India should be given a fixed period of time, say, three months, to conclude a water treaty with Bangladesh on permanent basis. If it failed to do so, the following steps should be taken:

A Ganges Barrage should be built near Hardinge Bridge at the off-take of the River Gorai-Madhumati. It is estimated that it will irrigate a gross area of 635 million acres. The Barrage should also store water for dry season use.

The Ministry of Law may even explore the possibility of charging India in International Court of Justice or an international tribunal for the economic damage caused to Bangladesh by the operation of the Farakka Barrage as was done by Spain for resolving the Lake Lanoux dispute, which was eventually settled by the Laka Lanoux Arbitral Tribunal. While rejecting France's claim for absolute territorial sovereignty over its river, the lake Lanoux, it held, "Territorial sovereignty plays the part of a presumption. It must bend before all international obligations, whatever their origin". It further added, "the upstream state has according to the rules of good faith, the obligation to take into consideration the different interests at stake, to strive to give then all satisfactions compatible with the pursuit of its own interests, and to demonstrate that on this subject, it has a real solicitude to reconcile the interests of the other riparian with its own."

by Mohammad Mujibur Rahman

Suspicions Run Deep over 'Poison' Water Deal

Sceptics in Nepal are reluctant to believe that a key water-sharing treaty with India will be as mutually beneficial as the government makes out. The accord now faces a potential parliamentary hurdle, with the main opposition party making allegations about "secret deals."

Jan Sharma writes from Kathmandu

Shared rivers



liament for approval.

That deal has now been incorporated into the new treaty covering the 236-kilometre Mahakali river, which flows through western Nepal and India.

Water Resources Minister Pashupati Shumshere J B Rana attributes the agreement to the new Nepali government's determination to resolve the Tanakpur issue and create better understanding with India.

Foreign Affairs Minister Dr Prakash Lohani says the most important feature of the treaty is that it shares water "on the

international boundary, and neither country will reduce its flow or level except by mutual agreement.

A Mahakali River Commission will be established, "guided by the principles of equality, mutual benefit and no harm to either party".

Despite government assurances that the agreement is a constructive way forward, Ganesh Raj Sharma's criticisms show that selling it to the country will not be easy.

Some critics say India "sabotaged" Nepal's ambitious plan for the \$800 million Arun III hydroelectric project — which the World Bank pulled out of last year — because New Delhi felt it would be more in control of the proposed power scheme that forms part of the new treaty.

Meanwhile, the main opposition party, the Communist Party of Nepal — Unified Marxist Leninist (UML), which initially supported the accord, is now having second thoughts and has not decided whether to endorse the treaty when it is presented to parliament for ratification in June.

Nepal's three-party coalition survived a no-confidence vote at the end of March, but the government's lacklustre performance and sharp divisions among the coalition partners could precipitate a snap election at any time. The new water agreement would be a major campaign issue — ensuring that the issue which has soured relations between India and Nepal for so many years will continue to cause damage.

The Daily Star Entertainment Guide

CHANNEL V

Tuesday 18th June
(All programmes are in local time. We recommend programmes printed in bold. There may be changes in the programmes.)

BTV

3:00 Opening Announcement All-Quran Programme Summary 3:10 Recitation From the Quran 3:15 Documentary Film: Cinema Europa 4:00 News in Bangla 4:15 Echo Para Shikhi: Mass Education 4:45 Cartoon Series: The Annals of Parthengon 5:00 News in Bangla 5:20 Sangeeta: "Modern Songs" 6:00 News in Bangla 6:05 National Television Debate Competition 7:00 The News 7:05 Open University 7:25 Comedy Series: Senthil 8:00 News in Bangla 8:40 Drama Serial 10:00 News in English 10:30 Ghore: Women's Magazine 10:55 Mini Series: Return To Eden 11:30 News in Bangla 11:35 Wednesday's programme 11:40 Close down

STAR PLUS

6:30am Vulcra 7:00 Teenage Mutant Ninja Turtles 7:30 GI Joe 8:00 Saber Rider And The Star Sheriff 8:30 The Adventures of Black Beauty 9:00 Aerobics Oz Style 9:30 Nanny and The Professor 10:00 Mr Belvedere 10:30 You Can't Cook 11:00 For Your Entertainment 11:30 Gabriella 12:30 Santa Barbara 1:30 The Bold & The Beautiful 2:00 The Oprah Winfrey Show 2:30 Remington Steele 4:00 You Can Cook 4:30 For Your Entertainment 5:00 Teenage Mutant Ninja Turtles 5:30 The New Lassie 6:00pm Lost in Space 7:00 Home and Away 7:30 Entertainment Tonight 8:00 MASH 9:30 The Flying Doctors 9:30 The Extraordinary 10:30 The Bold & The Beautiful 11:30 Santa Barbara 12:00pm Hard Copy 12:30 Baywatch 1:30 Kriket 2:30 Entertainment Tonight 3:00 The Oprah Winfrey Show 4:00 Hard Copy 4:30 Home and Away 5:00 The Sullivans 5:30 Close down

STAR MOVIES

7:30am Action: Assault on Prey 8:00 Arabic Subtitles 9:30 Family Heart of a Child PG? (Arabic Subtitles) 11:30 Classic Baby Takes A Bow PG (Hindi Subtitles) 1:30 Comedy: Doctor in Clover 15 (Hindi Subtitles) 3:30 Family Movie: The Singing Dog 12 (Hindi Subtitles) 5:30 Classic White Feather 12 (Hindi Subtitles) 7:30 Family A Summer to Remember 12 (Hindi Subtitles) 9:00 Hollywood 1:30 9:30 Action: The Boys from Brazil (Hindi Subtitles) 11:15 The Bulletin 11:30 MASH 9:30 The Flying Doctors 9:30 The Extraordinary 10:30 The Bold & The Beautiful 11:30 Santa Barbara 12:00pm Hard Copy 12:30 Baywatch 1:30 Kriket 2:30 Entertainment Tonight 3:00 The Oprah Winfrey Show 4:00 Hard Copy 4:30 Home and Away 5:00 The Sullivans 5:30 Close down

STAR Sports

5:30am Entertainment (TMM) 6:00 News 6:30 Jagran 7:00 ZED Maya A To Z 7:30 ZED Networking 8:00 ZED Maya A To Z 8:30 Hamro Hone 9:00 Insight 9:30 Gaane Kaamyaav 9:30 Insight 9:30 Gaane Aamyaav 10:00 Lata Khanna 9:10 Dhanak & Health

ZEE TV

7:30 World Wrestling Federation Action Zone 8:30 WLF Highlights 9:00 The Asian Football Show 10:00 Formula One World Championships 1996 Canadian Grand Prix

STAR Sports

2:30 Time Out: Auction 3:00 BBC World News 9:15 Panorama 10:00 BBC World News 10:30 Time Out: Film '96 11:00 The World Today 1:00 BBC World Headlines 1:05 Panorama 2:00 BBC World News 2:30 Time Out: Auction 3:00 BBC World Report 24 Hours 5:00 BBC World News 5:10 Newsnight

ZEE TV

6:00am BBC Newsround inc. World Business Report 1:00 Asia Today/24 Hours 8:00 BBC World Headlines 9:05 Panorama 10:00 BBC Newsday 1:00 BBC World News 1:15 Panorama 2:00 BBC World News 2:30 Time Out: Nature 3:00 BBC World News 3:30 Time Out: Tomorrow's World 4:00 BBC Newsdesk 4:00 BBC World News 5:15 BBC News 6:15 The Money Programme 7:00 BBC World News 7:15 World Business Report 7:30 BBC Newsround Asia & Pacific 8:30 Time Out: The Travel Show 9:00 BBC World News 9:15 Panorama 10:00 BBC World News 10:30 Time Out: Film '96 11:00 The World Today 1:00 BBC World Headlines 1:05 Panorama 2:00 BBC World News 2:30 Time Out: Auction 3:00 BBC World Report 24 Hours 5:00 BBC World News 5:10 Newsnight

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