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FARAKKA BARRAGE: LAWS AND POLITICS

The Ganges Water dispute between Bangladesh and India has arisen following the construction and subsequent commissioning by the latter of a huge multi-purpose barrage at Farakka, 17 miles upstream from the western border of Bangladesh near Rajshahi, for massive diversion of Ganges water to Hoogli-Bhagirathi river through a 42.5 kilometer feeder canal to improve the navigability of the Calcutta Port. This dispute has not only shaken the hearts and minds of the people of Bangladesh and the government, but has also attracted some extra-regional attention and sympathy. The constantly deteriorating effects of the massive diversion of the Ganges water at Farakka are increasingly being experienced by Bangladesh as the lower riparian country. If not properly appreciated and immediate remedies uudertaken, it may pose a serious threat to the very existance of human habitation of the area concerned which through centuries grew out of the silt deposits brought about by the Ganges and have also fashioned the economic life and culture of its people.

The Ganges flow is subject to seasonal fluctuations. Mansoon flow is sufficient for all purpose while its dry season (Feb-May) flow is insufficient even for meeting the traditional and natural needs of its basin area, not to speak of any artificial diversion of large quantum of its waters to other rivers. The barrage was commissioned in 1975 following an interim arrangement reached between Bangladesh and India about the withdrawals of water that the latter was allowed to make during a specific period of 41 days (21 April-31 May, 1975) for a test running of the barrage and feeder canal. Subsequently, India began making massive withdrawals of waters to the full capacity of

the feeder canal (40,000 cusecs) and continued the process through the 1976 lean period when the resultant fatal effects for Bangladesh were for the first time fully felt,

The effects in the lower reaches of the Ganges that were then recorded more or less repeat themselves every year inspite of agreement reached between Bangladesh and India on the sharing of waters at Farakka putting certain limits on its withdrawals by India. Among others, these are the following:

(i) acute shortage of water for irrigation and, hence, impracticability of undertaking large-scale irrigation projects and the resultant difficulty in inducing any foreign financial and technical help in such projects;

(ii) heavy silting due to weaker flow and hence raising up of river-bed;

(iii) Poor navigability due both to shortage of water and raising up of river-bed;

(iv) likelihood of increasing flood frequency during the monsoon due to raising up of river-bed;

(v) intrusion of saline water from the Bay of Bengal due to weaker interception by river water at the mouth, taking the salinity line far inland, posing direct threat to huge tracts of forestry especially in the Southern region of Bangladesh;

(vi) worsening of soil conditions;

(vii) lowering down of underground water-level of the lower Ganges basin region, which is to some extent dependent, amongst others, on the water level of the rivers;

(viii) improper breeding growth and maintenance of fisheries due to disturbance with natural river flows and abnormal lowering of water level;

(ix) problem of easy availability of drinking water;

(x) harmful effects on the flora and fauna in general; and

(xi) break of general ecological balance giving rise to numerous other problems.

These dangerous effects of water diversion are likely to further intensify with the passage of time, thus, economically paralysing 37% of the territory and 33% of the population of the country. She has very few alternatives and her land and other resources are very limited. Hence, the congenial natural conditions are prime factor for her development. Life that thrived in the Ganges delta is closely interwined with the water that flows down the Ganges. Life and nature that have grown up in and around the Ganges form one eco-system which has its own inner unity. Any break in this unity is bound to lead to negative consequences, some of which have already been mentioned. Therefore, for a comprehensive and long-term solution, the Farakka issue should be viewed with all its political, legal and technical complexities.

Since the first leakage of informotion in the early fifties about the Indian plan to construct the Farakka Barrage, formerly Pakistan and then Bangladesh always reminded the Indian Government about its possible harmful effects on the territory of Bangladesh. Inspite of all subsequent protests by Bangladesh and promises by India for negotiations the latter got through her plan, constructed the barrage and finally commissioned it. From the very beginning, her main purpose was to make the construction of the barrage a *fait accompli* and then cope with possible international legal and political implications which she could then handle from a position of strength. The crux of the matter now lies in the fact that due to a massive unilateral water diversion scheme through the construction of the Farakka Barrage any solution of the problem now has to centre round the sharing of waters of an international river, supposed to serve equitably all the co-riparian states.

The present paper is an attempt first to present a clear picture of the norms of international law regulating the problems of international rivers, to show the irregularities or illegalities, if any, in the water diversion plan of India and to make an investigation as to whether the universally accepted norms of international law can still be of any help in solving the problem; and second, to try to shed

some light on the aspects of politics being played around Farakka, to evaluate the political objectives of the countries concerned and to make an investigation as to whether *realpolitik* can have its grip over the matter.

I

Formerly Pakistan and then Bangladesh tried but failed to dissuade India from constructing the barrage. Naturally they based their arguments on the norms and principles of international law and good neighbourliness. Presently, Bangladesh's demand for a permanent settlement of the problem of equitable sharing of the Ganges water, India's appreciation to certain degree of the existence of the problem, and some interim arrangements reached between the two countries—all these stemmed or stem from the same norms and princi ples of international law. This necessitates certain acquaintance with the legal truths or, at least, legally qualified assumptions which are supposed to be seriously taken into consideration in solving any dispute amongst the states arising out of the use of the international rivers.

We may well start with the opinions of the well-known international legal experts which are presumably the authoritative deductions from numerous state practices based on the objective necessity of international community life. According to Swiss jurist Max Huber the main theoretical problem is that the principle of absolute territorial sovereignty and the right to the absolute integrity of state territory against effects emanating from other territories, are applicable to the land and river territories of a state as well. These principles sometimes cause confiicts and as a result of the mobility of water often does the same.[1]

From this situation, therefore, four alternative principles may logically follow:

(i) the principle of absolute territorial sovereignty which allows a state to freely use the water actually flowing through its territory,

1. Berber F.J, *Rivers in International Law* (The London Institute of World Affairs, 1959), p. 11

barring it at the same time from demanding its continued free flow by other ;

(ii) the principle of absolute territorial integrity giving a a state the right to demand the continuation of the natural flow of water coming from other countries;

(iii) the principle of commonly and collectively regulated use by the riparian states in such a way that would make the use of water by one riparian virtually impossible without the positive co-operation of other; and

(iv) the principle by which any restriction on the free individual usage of the waters may not be as serious as may be imposed by such common and collectively regulated use by the riparians, but which in varying degrees restricts the principle of absolute territorial sovereignty just as much as the principle of absolute territorial integrity.

The fourth principle which has certain similarities with the third is better suited to a less advanced level of international integration and co-operation, and is more abstract, though it may sometimes be of great help in solving intricate issues. The first principle, that of absolute territorial sovereignty, has originated from the well-known "Harmon Doctrine" propounded in 1895 by the then American Attorny General Judson Harmon while giving clarification to USA's politico-legal position in relation to its disputes with the neighbours, namely, Canada and Mexico, concerning the rivers common to them all.

Considering the power and strength of the USA and the international politics prevailing at the time, legal comprehension by the USA of the international disputes and their solutions offered is easily understandable. This principle of absolute territorial sovereignty, though upheld for years by comfortably situated upper riparian states, has not stood the test of time. At a later period even USA had to modify its stand coming to amicable terms with her neighbours relating to Rio Grand, Colorado, Colombia and other river systems.

Innumerable number of treaties reached between different countries throughout the world bear testimony to the progressive changes that are taking place in the concept of absolute territorial sovereignty, as far as it is applicable to international water disputes. One example of Marmon Doctrine being discorded is Indus Water Pact signed in 1960 by India and Pakistan that brought to an end one of the cardinal problems of the sub-continent. Agreements between India and Nepal on the Kosi river project (1954) and the Gandak Irrigation and Power Project (1959) are also positive examples from our sub-continent against the impracticability of applying the principle of absolute territorial sovereignty in the international river basin.

Even well-known American authority on international law C. C. Hyde, exponent of the principle of absolute sovereignty, admitted a long time ago that the most recent development in state practice seem to be on the point of turning away from this principle.[2]

The second principle, that is principle of absolute territorial integrity is mainly upheld by Max Huber[3] and also by L. Oppenheim, the leading English authority on international law, who is very much categorical on this question and gave a classic expression of his opinions that are believed to be founded on wide state practice. He wrote "..... .... it is a rule of international law that no state is allowed to alter the natural conditions of the territorry of a neighbouring state. For a state it is not only forbidden to stop or to divert the flow of a river which runs from its own to a neighbouring state, likewise to make such use of the water of the river as either causes danger to the neighbouring state or prevents it from making proper use of the flow of the river on its part....."[4]

Another well-known international Jurist J.L. Brierly maintained that "this practice of states as evidenced in the controvrsies which

2. Hyde C.C. *International Law Chiefly as Interpreted and Applied by the United States* (New York, 1945) pp. 565
3. Berber F.J. *Op. Cit.*, p, 15
4. Oppenheim, L., *International Law* (ed.) H. Lauterpacht, 8th edition (Vol, 1,London, 1955), p.475.

have arisen about this matter, seems now to admit that each state concerned has a right to have the river system considered as a whole, and to have its own interests weighed in the balance against those of other states; and that no one state may claim to use the waters in such a way as to cause material injury to the interests of another or to oppose their use by another state unless this causes material injury to itself.[5]

The first principle is not acceptable for obvious reasons. It has been discarded by all and now a thing of the past. The second principle which tends to safeguard the rightful interests of the lower riparians, frequent infringement on whose rights usually gives rise to international water disputes, commands much greater recognition. The right to absolute territorial sovereignty, though a fundamental postulate of international law, is subject to great limitations imposed by the same. But the right to absolute integrity of state territory as a norm of international law due to its nature is subject to such limitations in a much lasser degree. In fact, this principle is often called upon to safeguard the fundamental norm of state sovereignty itself. The principle of integrity of state territory can, therefore, be a precise norm in international law. Then the specific issues can be solved according to their individual merit. And this is what is the majority opinion.

There are more than two hundred bilateral and multilateral treaties signed between different countries throughout the world which aimed at settling the delicate international river disputes. Provisions that are more or less common to all treaties have special significance for international law. The number of the basin states which are parties to these treaties, their spread both over time and space, and the fact that "in these treaties similar problems are resolved in similar ways make of these treaties and negotiaitons persuassive evidence of law-creating international practice".[6] Here within the limited volume of

5. Brierly J. L. *The Law of Nations* (London, 1955), pp. 204-205.
6. Griffin W. L. "The Use of Waters of International Drainage Basin under Customary International Law, " *American Journal of International Law* (AJIL 1959), p. 50.

the present paper any attempt of serious investigation into these treaties is not possible. But a mere acquaintance with these treaties clearly suggests that though the co-riparian states hold views, and sometimes upper riparians have often advocated absolute sovereignty

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Though the co-riparian states hold divergent views and upper riparians often advocate absolute sovereignty over their parts of the flowing rivers experience from over two hundred relevent bilateral and multilateral treaties throughout the world shows that all co-riparians behave more relationally to safeguard mutual interests.

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over their parts of the flowing rivers, they have in fact behaved more rationally contributing thereby to a growth of common practice. This seems to take a positive view of the concept of the unity of a particular international river basin and seeks to safeguard the interests of all riparians. This more importantly means taking into proper care and consideration the legitimate inierests of the lower riparians. Such conclusions made from the state practices definitely correspond to: the opinions of the overwhelming majority of the international legal experts unilateral or collective policy declarations of the different governments; resolutions, declaration, recommendations made at different internatianal fora and conferences; and recommendations and views of the competent international institutes, which are mouthpieces of actual state practices. We cite below few recent examples.

According to the unanimous decision of the New York conference of the International Law Association held in September, 1958, the agreed principles of the international law on the subject can be summed up as follows;

" . . . (i) A system of rivers and lakes in a drainage basin should be treated as as integrated whole (and not piecemeal);

(ii) Except otherwise provided for by treaty or other instruments or customs binding upon the parties each co-riparian state is entitled to a reasonable and equitable share in the beneficial uses of the waters of the drainage basin. What amounts to a reasonable and equitable share is a question to be determined in the light of all relevent factors in each particular case;

(iii) Co-riparian states are under a duty to respect the legal rights of each co-riparian state in the drainge basin . . , . " .

One recommendation of the conference is that the co-riparian states should refrain from unilateral acts or commissions that adversely affect the legal rights of a co-riparian state in the drainage basin so long as such co-riparian state is willing to resolve differences as to their legal rights within a reasonable time by consultation.

In 1961, the Institute de Droit Internationale drew up a resolution on "utilization of Non-Maritime International waters (except for navigation)", in which it recognised the existence of rules of international law regarding utilization of international rivers, namely, that every state has the right to utilize waters of international rivers subject to the limits imposed by international law and in particular, limited by the right of utilization of co-riparian states.[7]

International Law Association confirmed its earlier stand on the subject in its 52nd conference held in Helsinki in 1966 under now well-known Helsinki Rules on the uses of waters of International River. Article IV of the document declares, "each basin state is entitled within its territory, to a reasonable and equitable share in the beneficial uses of the waters of an international drainage basin."[8]

The 1977 UN Water conference at Mar del Plata has also subscribed to these views. The position paper prepared by Natural Resources Committee of the UN ECOSOC said, the rights of the lower riparian should be taken into consideration in any large scale use of the waters of the international river.[9]

7. *Annuaire de Institute de Droit Internationale,* (Vo. 49, Part-II, 1961) P. 33.
8. *Report of the 52nd Conference of the International Law Association* (ILA 1966), pp. 515-516.
9. *Holiday,* Dhaka, 20 March 1977.

Can the multiplicity of bilateral and multilateral treaties that exist, opinions of jurists and different institutions and international conferences lead to speak of any *opinion juris* amongst the states that they consciously appreciate the imperativeness of law that has taken shape to solve the international water disputes ? The question may well be answered in the positive.

There are a whole series of bilateral treaties which permit the transit and the landing of foreign aircrafts. But this, it is argued, has in no way altered the rule of customary international law whereby territorial state in the absence of a special treaty is in possession of absolute sovereignty uurestricted by any servitude or other right of transitory flight. So is the case with extradition.[10] The logical conclusion from here, they argue, are that the presence of whatever number of separate treaties necessarily do not subscribe to customary law-making.

But there is, we argue, a fundamental and serious difference between the treaties regarding the right of transitory flight or extradition and the treaties settling international water disputes. So far as the international rivers are concerned, the traditional right of the states to the natural flow of the river, right to its territorial integrity and right to the preservation of the natural conditions which are necessary for its very existence are inherent in the system. These rights are merely concretised and confirmed by the treaties for better and regulated application. In the right of transitory flight which is usually always granted, such issues are not involved. Whether there has grown any customary international law relating to such right is of secondary importance to the states concerned.

It is interesting to note here in this connection that with the gradual progress of science and technology, the enormous masses of floating clouds and their final precipitation in certain regions during particular time and season of the year might give rise to definite problems. The thing is that by air-spraying certain chemical powders in the moving clouds, precipitation may be artificially caused earlier

10. Berber F.J. *op. cit.* p. 130.

than when due and that in a place not natural to it. Naturally traditional cropping in certain areas might face serious handicaps. Interstate disputes of this nature are already issues in some courts in the USA.

The problem of flowing water or floating cloud may well form part of the general edvironmental problem of the world that is being dealt with the fast-growing International Environmental Law. The more specific internatlonal law pertaining to water pollution issues like salt pollution in Khulna region by Farakka come into consideration. The water pollution according to above mentioned 1966 Helsinki Rules may be defined as "any detirimental change resulting from human conduct in the natural composition, content or quality of the waters of an International Drainage Basin." [11]

At the Stockholm conference of 1972 on the Human Environments, one of the principles agreed upon by the participants says that "the states have, in accordance with the Charter of the UN and the principles of International Law, the sovereign right to exploit their own resources pursuant to their own environmental policies and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction." [12] Similarly, the GA Resolution No. 2995 (XXVII) of 15 December 1972 declared that in the exploitation & development of their natural resources, states must not produce significant harmful effects in zones situated outside their national jurisdiction."[13]

Above all, there are general principles of law recognised by civilised nations and hence listed in tne Article 38 of the Statute of the International Court of Justice as one of the sources of international law that seems to have direct bearing upon the relations

11. *Helsinki Rules* in the Report of the 52nd conference of ILA, *op.cit.*
12. Principle 21, Declaration on the Human Environment in report of the UN Conference on the Human Environment, UN Doc. 48/14 and Corr. 1 (1972).
13. GA office records, 27th session, supplement No. 30, p. 42; UN Doc. A/8730 (1973).

between the states regarding international waters. Though these principles are abstract and less exact, considerations of justice, equity, legal conscience and morality had been mixed in them with purely legal concepts.

We can name some of such principles e.g. non-abuse of rights, good faith, neighbourship obligations, municipal water rights etc. All of them having their roots in municipal law have been advocated to be applied in the field of international law where positive results are thereby obtained.

Like Oppenheim, M. Lauterpacht, another well-known British legal expert is one of the most resolute exponents of the view that the principle of the non-abuse of rights is a part of positive international law. He bases his exposition on the principle of Roman Law *sic utere tuo ut alienum non laedas* and asserts that international courts have frequently condemned the abuse of rights concerning federal disputes. He describes the principle invoked by him as " a comprehensive legal principle of social justice and solidarity calculated to render inoperative unscrupulous appeals to formal rights endangering the peace of the community. ' [14]

It is a commonplace of jurisprudence that the rights in general must be exercised in such a way as not to cause damage to the legitimate interests of others. Opposing views to this seem to be that he who exercises his rights does no one a wrong. When one state as a right to dispose at will of the waters situated within its territory exercises it, other riparian states may, thereby, suffer damage. The mere fact of damage to others does not constitute a breach of law as damage is not the some thing as illegality, but the introduction of this principle would brand every act of damage as illegal[15]. Such views, of course, can not make justice every time corresponding illegality automatically. Fairer view is that of striking a rational balance of rights, based on norms of international law and proper

14. Berber F.J. *op. cit.* p.197.
15. *Ibid*, p. 208

consideration of all concrete and relevant circumstances of the issue concerned.

The principle of good faith though abstract and prone to divergent interpretations had definitely amassed in itself certain common standards of civilisation and culture, and hence supplies one of the cornerstones of the foundation of international community life. Protection of trust from its basis. This principle asserts that each subject of law has the right not to be disappointed in the development of a legal relationship to which it is a party. These expectations will be quite legitimate as long as they are founded either on a reliance on the declarations or the behoviour of other parties, about their friendly, peaceful and constructive attitude in the bilateral and multilateral affairs, or on a normal development conforming to the intrinsic laws of social or community relationship in question, which the other parties are obligated not to disturb Bangladesh's legitimate expectations from India, which the latter will definitly not dispute, are a natural corollary to Bangladash's own behaviour towards India.

We have tried to recapitulate the main legal issues and problems relating to international rivers and have also tried to present a set of their possible solutions. The Republic of India as a respectable, responsible and reasonable member of the international community is definitely aware of these norms and her international legal obligations. Has India acted in contravention of the universally accepted norms and customs ? Or does India have a different perception of the process of customary law-making in the field of international rivers ? So far India did not come forward to present anything of the nature.

Surely, in the absence of clear treaty provisions, customary laws may often pose problems as to their interpretation and practical application. Even firm conviction of the parties to their existence may not always help. And this is the eternal problem not only of any particular branch of international law, but of the whole complex of norms and principles, customary or treaty, that consti-

tute its subject-matter. International law is always haunted by the ghost of international politics. Lesser the degree of concreteness in the norms of international law, more is this ghostliness. Since there is no universal convention laying down the concrete provisions aimed at solving innumerable delicate issues that might arise between the states in their uses of waters of the International Rivers and since reference is always to be made to certain facts pointing to the matter of customary law-making, political manoeverings from the

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position of strength have sometimes been a sad reality. Here arises the need for a positive political will of the parties concerned. In view of the still developing character of international law and of the fact that water disputes are matters not best suited for the application of international judicial process, but for the application of international legislation (treaties), the conclusion of specific water treaties remain by far the best solution. Treaty-making represents the application of that highest form of political wisdom which may conditionally be termed as "Compromise."[16] The term 'Compromise' though associated with the concept of voluntarism, the legal-moral imperatives of the contemporary world would impose upon the states certain obligations to make compromise in a manner ensuring international peace and stabiltty.

II

So far as Farakka is concerned the question is how would we evalnate India's diplomatic and political behaviour ? Planning the project, India definitely knew the international legal norms rela-

16. *Ibid'* pp. 170—171.

ting to international river. She probably also knew the traditional 'weakness' of the international law and thought that in the absence of a universal convention, law could, considering the geographical location of India and other advantages for her, be placed at the mercy of politics. India's geographical location, the territorial realities of Pakistan, Pakistan's first preference approach to her western wing, eastern wing's apparent helplessness, overall political situation in the sub-continent—all these combined encouraged India to undertake the planning of the project. This was done despite India's knowledge that it would definitely lead to serious complications of already sour relationships with Pakistan. But India was confiident. She knew for sure the Ganges in the East was not the Indus in the west. She definitely could not, but engage herself in various speculations as to the possible degrees of sacrifices Pakistan would be ready to make for a rightful settlement in case India was adamant in going ahead with her Farakka Plan. She set forth her objective accordingly and pursued a policy of its gradual realisation. Indian Plan was to complete the construction of the barrage at any cost whatsoever, moral or political, achieve a *fait accompli'* and then to deal with the consequences. For that she adopted a delaying and complicating tactic in negotiation with her counterpart during the whole period of Farraka's construction when she formally could not ignore Pakistan's protests and had to sit at the negotiating table. India's diplomatic and political behaviour during the whole period since 1951 when the information about the construction of the barrage was first available till date bears testimony to the views just expressed.

There are certain universally recognised procedural principles of international law which every state is supposed to follow before undertaking any major construction work in the international rivers. They are : (1) effective and adequate notice and information to the other reparian states about such construction so that they could give their own estimation about possible consequences for themselves, (2) consultations and negotiations for agreement in case of conflicting interests, and (3) suspension of the project pending peaceful settlement.

Not to follow these principles would amount to disregarding the principles of natural justice. The principles of natural justice are noble legal virtues that our human civilisation has evolved through centuries and are applicable not only to the cases of municipal law Competent international authorities and institutions like the Inter-American Bar Association (Buenos Aires Resolution, 1967, article 1/3), International Law Association (Helsinki Rules, 1966, article 29/2), the famous Lake Lanoux Arbitral Tribunal between France and Spain[17] and and many others have confirmed the legal necessity for applying these procedural principles in international water problems.

The US State Department Memorandum on the "Legal Aspects of the use of systems of International waters" prepared in 1958 in connection with hearings on the Columbian River dispute with Canada, observed, "in current international practice no riparian goes ahead with exploitation of its part of a system when a co-riparian may possibly be adversely affected, without consulting the latter, and coming to an understanding with it.....The Crux of this aspect of the matter is that friendly states desirous of conducting their mutual relations in good faith under the rule of law do in fact seek solution by negotiation, inquiry, mediation, conciliation".[18] As is evident, the principle of suspension of work is reflected in this important cogressional document.

What was India's attitude to these principles ? Justice H.R. Kulz (FRG) in his article "Further Water Disputes Between India and Pakistan" in 1969, observed, "India has already failed to give notice of her proposed Farakka constructions to Pakistan, and afford her the reasonable period for submitting her views on the project. The Indian information was forthcoming only at the request of Pakistan.....and with considerable delay, part of it coming only after construction had already been started."[19] Justice Kulz further

17. Macchesney B., *Judicial decision*: *Lake Lanoux case* AJIL, 1959.
18. Prepared by w. Griffin; *Senate Documents* NO. 118, 85th Congress, 2nd sessign, p. 91.
19. *International and Comparative Law Quarterly*, Vol. 18, 1969, p. 733.

observed, "The Indian attitude.....is.....disappointing, and once again one can not help having certain suspicions as to India's way of handling the dispute. The constant and ever increasing delay in her answers to Pakistan's notes (increasing from months to years !), the evasive nature of nearly all the Indian statements and the contradictions in some of her replies to Pakistan (experts of both sides satisfied about exchange of data; Nehru, the then Prime Minister of India, not satisfied about it; Nehru in 1951 in favour of meeting of ministers as soon as possible, but after fourteen years (!) still not prepared to give effects to his the then undertaking, etc), all this strongly support the Pakistani view that India's attitude and procedure has from the beginning been calculated with the sole aim of gaining time and establishing a *fait accompli* with her Farakka project without openly repudiating the principle of cooperation.[20]

At some early stage India even ventured going to the extent of denying the international character of the Ganges river[21]. Due to the apparent baselessness of this contention, India could not go far with it. She had to sit at the negotiating table. But her tactics during the whole period was no better, its sole purpose being the following (i) unnecessary prolonging and delaying of negotiation through her slow reaction to any move taken or proposed by her counterpart; (ii) exclusion of any other basin states participation in the possible solution of the problem, adhering strictly to the doctrine of "bilateralism" (iii) exclusion of any mediation procedure which could be initiated by some third party, any state or competent authorities like the world Bank or the UN (iv) undermining or at least trying to undermine the importance of Ganges water for the lower riparian; and (v) exaggerating the techincal aspect of the problem.

Resuscitating the Calcutta port is not the only thing that hovered in the minds of the Indian strategists while planning the

20. Ibid, PP. 734-735.
21. B.M. Abbass A. T., *The Ganges Waters Dispute* (University Press Limited, Bangladcsh 1982) p. 3.

construction of of the Barrage. By certain reliable estimates, Farakka Barrage will have little positive effects for the Calcutta Port. That is why there are already proposals in India of a new dircet route from the port to the Sea. Though much costlier, such an alternative will definitely be more viable and effective, and more importantly, not beyond India's financial and technical capacity.

The political leverage which the barrage would be capable of giving India in her dealings with Bangladesh was a more important consideration for India than anything else.

In this context, other possible purposes of the Barrage that come for consideration, one of them being control of the Ganges for supplying water to the Indian States of UP and Bihar. The Barrage also provides a good communication link across the river. But more important factor which caught sight of the Indian strategists was the political leverage which the Barrage was capable of giving India in in her dealings with the lower co-riparian neighbour. Not surprisingly therefore, the Indian Budget of 1965-66 characterised the Farakka Barrage project as of strategic and international importance"[22], It may be added that Indian Policy was formulated during a period of political distrust and antagonism in the sub-continent. She shared not one disputed issue with Pakistan. In the political chess board of trouble spots India wanted to add one more which could fortify India's position.

Was Pakistan really serious about a rightful solution of the problem ? She was definitely conscious of the serious implication of the Barrage for East Pakistan's economy and of the reaction of the people there. She proposed various ways and means for a rightful solution including third party participation and mediation[23]. All

22. *Ibid.* p. 14.
23. *The Pakistan Times*, 30 May, 1968

were duly rejected by India. Pakistan was however, too preoccupied with her problems with India in the western wing to have brought forth any real pressure upon India relating to Farakka. Mr. B.M. Abbas who had been for a long time associated with ihe negotiations on Farakka issue wrote ".....the time when the Indus Basin Treaty was signed by President Ayub and Pandit Nehru could have been propitious for a move, for an understanding between the two countries regarding the Ganges Water also. However, the oppurtunity was not availed of"[24]. After four expert level meeting held between India and Pakistan in the early sixties, there followed a long pause to be broken by four secretary level meetings only in the late sixties. No real steps were taken to make India conscious in the practical sense of the serious consequences that the construction of the Barrage might lead to.

Would the change of time and circumstances change Indian policy objectives ? And have they been changed so far ?

Situation in the sub-continent changed radicaily with the dismemberment of Pakistan in 1971, but broad Indian Policies regarding Farakka remained more or less the same. Of course, the main difficulty was that the Barrage was nearing completion and any settlement was to take inio consideration the existence of it with all obvious implications. Contrary to the common hope and belief, India demonstrated little flexibility in her Farakka Policies. The government of newly-independent Bangladesh for reasons different in scope and nature could not or did not press hard. According to Mr. B.M. Abbas, 'the Planning Commission of Bangladesh went a long way with the Indian thinking of planning. In its first Five-year Plan, the Commission accepted that what Bangladesh required for increasing food production was extensive use of tubewells and lowlift pumps. The Plan virtually excluded major projects of surface water development."[25]

However, that Bangladesh agreed under an interim arrangement in April-May, 1975, to the test running of the feeder canal of Farakka

24. B M. Abbas A. T. *op. cit.* p. 28
25. *Ibid.* p. 33.

for a period of 41 days, was no proof of her desire to surrender legitimate water rights. In the changed situation, in the interest of good neighbourliness and in a spirit of cooperation, Bangladesh agreed to sacrifice its rights over the flow of Ganges water temporarily. Bangladesh waited for an agreement on the permanent settlement of the water problem. Relationships between the two countries at that time were such that Bangladesh could only hope for the best. Following the internal political changes in Bangladesh, it became evident, however, that Barrage could be used by India as an instrument of political manoverings.

India continued throughout the 1976 dry season with its unilateral withdrawal of Ganges water at Farakka to the full capacity of the feeder canal. Though with much delay for reasons of political instability during the second half of 1975, vehement protest by the Bangladesh Government followed but with little effect on Indian side. Only under pressure from the world community at the 31st Session of the UNGA, India could be induced to starting fresh negotiations.

Pursuant to the UN concensus statement agreed upon by Bangladesh and India and formally read out at the plenary session (80th meeting) of the 31st session of the UNGA,[26] the two countries held three rounds of ministerial level talks, but all in vain. Bangladesh proposed that the quantum of water agreed upon in April, 1975, for the test running of the feeder canal should be the basis of further negotiations. But India maintained that the 1975 agreement was signed under different circumstances and was not acceptable now. The message was clear enough to Bangladesh leadership.

Then again came political change, this time in India. The new Indian Government's policies to pump in new blood into India's approach to her close neighbours in an apparent bid to present something new and to create an atmosphere of mutual confidence in the region were well-timed. Constructive and fruitful negotiations followed. The 1977 November Agreement for a period of five years was

26. UN GA, 31st session 80th meeting, *Agenda item 121* Nov. 26 1976.

the outcome. Though not a permanent solution, this agreement provided sufficient time during which water interests of both the countries could more or less be safeguarded and at the same time intensive efforts put in to find a permanent solution.

Again in the words of Mr. Abbas, "..... The Ganges water dispute has shown that though technical, legal and economic aspects of the problems are important, yet ultimately a solution depends on the political goodwill of the Government concerned."[27] Thus a permanent solution of the Farakka problem which consists not merely of the equitable sharing of the Ganges water between India and Bangladesh, but also of the augmentation of the Ganges flow at Farakka during dry season has become an integral point of politics of the region.

Is mutual understanding and a subsequent permanent solution possible ? Much will depend on India's political strategy in the region. She has sufficient alternatives to tilt the general course of things to this or that direction, for the better or the worse. Bangladesh's policy objectives and alternatives seem relatively limited. Judged on the basis of the overall objective circumstances, the logical conclusion is that Bangladesh can never pursue a Policy that would mar the prospects for a rational settlement. Her maximum readiness for a deal is easily conceivable. Naturally much will depend on India doing her bit.

That the policies once pursued by India in the pre-1971 years under a different sub-continental circumstances can not, however hold good, emanates from the factors stated below :

(i) Pakistan before 1971 counted a lot in the power rivalry against India, and they both needed different balancing or counter-balancing elements against each other. Even if we suppose, contrary to the common belief, that there has not been any substantial change in the original situation and the policies of the two countries towards each other have remained basically the same, yet it does not or

27. B. M. Abbas A. T. *op. cit.* p. xv.

should not have any direct bearing upon India's policy towards her eastern nighbour :

(ii) Taking a confrontational attitude, neither side can in any way serve their national interests :

(iii) Bangladesh's ardent desire and subsequent pursuing of a policy of maintaing friendly relation with India since her independence, has definitely set the stage for a much improved show of intercourse between them;

(iv) Bangladesh is unlikely to pose any potential threat to India. Some of the obvious reasons are ; (a) smallness of the territory and relatively smaller size of her population, (b) disadvantageous spread of her borders with India, (c) lower riparian position of Bangladesh as against India in relation to all the major rivers that are life-lines for Bangladesh:

(v) Prospect of a close economic cooperation and subseqent manifold gains by both will far outweigh any isolated economic or or political gain that may accrue to either party from implementing any particular disputable project;

(vi) The practice of regional economic cooperation has justitified itself all the world over. Countries of the region in question are increasingly realising the importance of such cooperation. SARC movement has added new dimension to this;

(vii) New social and political values that have been created in Bangladesh after independence bear much affinity with the values India is well acquainted with.

These factors make it difficult to understand why the parties concerned should not be able to come to a broader understanding for stabilising the relations between them that could make the solution of existing problems easy and obvious. Objective conditions are in existance for laying down a strong foundation on which to build an intimate relationship. Not that India and Bangladesh do not understand it. From the time when we had the Joint Indo-Bangladesh Declaration of the two Prime Ministers (16 May, 1974) right upto

General Ershad's visit to India in October, 1982 and the signing of the Memorandum of Understanding, we mark certain unity of intentions expressed by the parties during different circumstances. But this unity of intentions was not infrequently clouded by incidents and

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Objective conditions are in existance for laying down a strong foundation on which to build an intimate relationship between Bānglgdesh and India.

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occurances, barring actions to follow intentions. Now what is important is a fresh appreciation and evaluation of the situation and subsequent taking of initiatives. Its time that politics of leverage, pressure and counter-pressure be replaced by mutual trust and confidence.

In case of India's not wanting to fully appreciate the realities relating to Farakka, what may be the alternatives left to Bangladesh ? How she may come out of this Farakka knot ? Of course at whatever risk, Bangladesh will have to devise new ways and means for safeguarding her national interests. Bangladesh's economic or political strength or her international position is surely not destined to remain for ever where it is now. She may well mature taking sufficient measures to shake off the effects of an alien policy of which Bangladesh has become an easy prey. Counter barraging is one example to say the least. Friends may not be wanting. But the situation of confrontation in the near or remote future is useful to none. It is 'anti-Realpolitik'. It is time for self-realisation before the trees of poison are planted to reap the worst fruits.

Developments in the last few months are not discouraging. Indo-Bangladesh Joint Rivers Commission has been putting in their best efforts for a final breakthrough. As is well known, the question of permanent settlement has long been associated with the idea of augmentation of water flow at Farakka in the lean period for meeting the needs of both countries. But the parties in conflict have their own proposals for such augmentation, construction of Storage

Dams in the upper reaches of the Ganges as advocated by Bangladesh and digging of "Link Canal" connecting Brahmaputra and the Ganges through the territory of Bangladesh, as suggested by India.[28] Technical feasibilities of these widely diverging in nature and scope approaches are under study and consideration by the technical committees of the JRC. All possible alternatives are also being considered. In case of a failure to come to any agreement on augmentation, what can be the basis of a final settlement ? This and other relevant questions are being studied. But the time is running out. Time schedule (18 months) fixed for JRC by the Memorandum of Understanding signed at the October 1982 Summit to place before the Governments concerned concrete proposals for a final settlement may not be sufficient. But any encouraging progress in the working of the Commission will be a genuine ground for a long-term settlement. Otherwise not.

Any solution now may well usher in a new era not only in the relations between India and Bangladesh, but also in the politics of the whole region. In case of failure, one has only to sit uneasily and anxiously for an atmosphere of desperation, distrust and antagonism to let develop with a chain of adverse reactions.

28. For details see M. Rafiqul Islam, Long Term Resolution of the Ganges Water Dispute, *BIISS Journal*, Dhaka, Vol. 4, number-3, 1983. pp. 1-22.