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THE GANGES WATER AGREEMENTS : A COMPARATIVE STUDY

Introduction

The long-standing controversy over the equitable apportionment of the Ganges water between India and Bangladesh remains unresolved notwithstanding its 35th year on the negotiating table. The two countries have so far succeeded in devising only temporary arrangements. A permanent solution is yet to be worked out. Ever since the launching of the South Asian Association for Regional Cooperation (SAARC) recently, both countries have been edging closer to settle their major irritants. As a first step towards this end, they have decided to join forces in developing their common river water resources. They have signed on 22 November 1985 an interim agreement on the sharing of the Ganges dry season flow with measures for finding out a scheme to augment that flow. This accord was preceded by three other agreements on the Ganges, all were interim in nature with provisions for the achievement of a long-term solution.

This paper examines and compares various provisions of the four agreements on the Ganges, particularly the shares of both countries, machineries for the execution of the short-term allocation schedules, and the measures for the attainment of a lasting solution. A comparative study of these features shows that (a) both sides have followed a policy of mutual give and take in

determining the terms of reference, (b) the shares and interests of Bangladesh have been sacrificed more than that of India in successive deals, and (c) India has benefited more than Bangladesh both during the dry season and the monsoon.

These agreements are not comprehensive providing a short as well as a long term solution. Rather these are merely short-term arrangements with measures for evolving a plan for augmenting the Ganges dry season flow as a long-term solution—a task that all earlier agreements fail to accomplish. This fact inevitably poses an apposite question : What can the new agreement offer to end the Ganges water dispute once and for all ?

Final Negotiations Leading to the Agreements

The Farakka barrage together with its feeder canal became ready for operation by the end of 1974. India felt the necessity of running the Farakka feeder canal. In a ministerial level meeting in Dhaka from 16 to 18 April 1975, the Indian delegation pointed out that while discussions on the allocation of the Ganges dry season flow were continuing, it was essential to run the Farakka feeder canal during the remaining period of the 1975 lean season. Bangladesh agreed under an adhoc accord of 18 April 1975 to the Indian proposal of running the Farakka feeder canal for the remaining lean season of 1975. It was agreed that this operation would continue for a period of altogether 41 days from 21 April to 31 May 1975. India was allowed to withdraw between 11,000 and 16,000 cusecs of the Ganges dry season flow at Farakka during the specified period and would ensure the continuance of the remaining flow to Bangladesh. This agreement expired on 31 May 1975.¹ India did not stop but continued the operation of the barrage after the termination

1. The Joint Indo-Bangladesh Press Release of 18 April 1975 ; *White Paper on the Ganges Water Dispute*, the Government of Bangladesh (Sept. 1976), p. 16.

of the agreement. This unilateral action of India generated widespread dissatisfaction in Bangladesh. India was accused of illegally diverting the Ganges dry season flow at Farakka without any agreement with Bangladesh whatsoever.

Bilateral negotiations resumed following a formal protest of Bangladesh against the unagreed withdrawal at Farakka.² In course of these negotiations, both sides came nearer to a settlement. They eventually reached an 'informal understanding' on 18 April 1977 committing to sort out and solve the most urgent problems of the moment.³ This understanding indeed furnished a firm basis on which meaningful deliberations for an agreement could be held. The talks that ensued in pursuance of the 'informal understanding' yielded positive results. In an official level talks,⁴ the two governments prepared and initialled a draft document on 30 September 1977 which was subsequently signed at a ministerial level meeting in Dhaka on 5 November 1977.⁵ This agreement quantified the Ganges dry season flow between India and Bangladesh for five years with measures of finding out a project for augmenting that flow to meet the requirements of both countries. The agreement terminated on 4 November 1982 after a full period of five years by implementing only the short-term allocation schedule in the absence of any long-term scheme.⁶

2. Bangladesh lodged a formal objection with India on 15 Jan., 1976.

3. An announcement to this effect was made on 18 April at the conclusion of their three-day talks from 16 to 18 April 1977, see *The Hindu*, Int'l. ed., 20 April 1977.

4. From 20 to 30 Sept., 1977 in New Delhi.

5. See the text of the Joint Press Release issued at the end of the talk, *The Bangladesh Times*, 28 Sept & 1 Oct 1977; *Holiday* (Dhaka), 2 Oct. 1977; *The Hindu*, Int'l. ed., 8 Oct. 1977; *The Overseas Hindustan Times*, 13 Oct. 1977; *The Statesman*, (New Delhi), 8 Oct. 1977.

6. See the agreement between India and Bangladesh on the sharing of the Ganges water at Farakka and on augmenting its flows, signed on 5 Nov. 1977 reprinted in *Int'l. Leg. Mat.*, vol. 17, 1978, p 103.

The Prime Minister of India and the Chief Martial Law Administrator of Bangladesh met in New Delhi in a three-day talks from 6 to 8 October 1982. A Joint Communique was issued at the conclusion of this talks where both sides decided not to extend the 1977 interim accord. Instead, they agreed to initiate fresh attempts towards arriving at a permanent settlement through a joint study—a task to be finished within 18 months by the Indo-Bangladesh Joint Rivers Commission.⁷ This Communique allocated between India and Bangladesh almost the same quantity of the Ganges dry season flow available at Farakka as had been guaranteed under the 1977 accord. This arrangement also ended on 31 May 1984 after executing the short-term arrangement in a similar vein. All rounds of talks of the Joint Rivers Commission within the ambit of the 1982 Communique were utterly unsuccessful in selecting a plan for augmenting the Ganges dry season flow.⁸

Confronted with successive dry seasons with their cumulative adverse effects on its economy, Bangladesh pressed for an extension of the 1982 arrangement.⁹ Two ministerial level meetings, held alternately in New Delhi in December 1984 and in Dhaka in June 1985, although raised hopes for an agreement, ended inconclusively without making any progress towards a solution.¹⁰ However, hopes for an expeditious settlement became apparent when the Prime Minister of India expressed his keen interest to settle all bilateral issues including the Ganges water problem at the conclusion of his visit to Bangladesh on 2 June 1985.¹¹ This visit was followed by the visit to

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7. See *Far Eastern Economic Review*, 15 Oct. 1982, pp. 28-29; *Asiaweek*, 22 Oct. 1982, p. 19, col. 1; *The Statesman*, New Delhi, 9 Oct. 1982, p. 7, col. 1.
 8. Two successive meetings of the Joint Rivers Commission held on 13-16 Feb. in New Delhi and on 29-31 Mar., 1984 in Dhaka were unsuccessful, *The Bangladesh Observer*, 23 Feb., 1984, editorial; *ibid.*, 31 Mar. 1984, p. 1, col. 4; *The Bangladesh Times*, 31 Mar., 1984, p. 1, col. 8.
 9. See *The Bangladesh Observer*, 5 June 1985, p. 1.
 10. See *The Bangladesh Observer*, 3 & 5 June 1985 p. 1; *The Bangladesh Times*, 5 June 1985, p. 1; *Holiday* (Dhaka), 5 June 1985, p. 1.
 11. The Prime Minister of India made this visit in the aftermath of a severe cyclone in Bangladesh on 24 May 1985.

Bangladesh of a Special Envoy of the Prime Minister of India in July 1985. The Special Envoy disclosed that question of the sharing of the Ganges water would be taken up and resolved by a summit meeting between the Prime Minister of India and the President of Bangladesh.¹² In mid-October 1985, the two leaders met in the Bahamas during the Commonwealth summit. They decided to improve their good neighbourly friendly relationship before the ensuing first SAARC summit in Dhaka on 7 December 1985. In a spirit of cooperative endeavour, they agreed to conclude an agreement on the sharing of the Ganges dry season flow.¹³ Accordingly a Memorandum of Understanding was signed at a ministerial level meeting on 22 November 1985 on the sharing of the Ganges dry season flow for the next three years (1986-88) with provisions for working out a scheme to enhance that flow through a joint study within a year.¹⁴

The Short-Term Allocation Schedules

Dependable Supplies of the Ganges Dry Season Flow at Farakka: The allocation schedules of the four agreements referred to have been worked out on the basis of dependable supplies of the Ganges dry season flow at Farakka as shown in column 2 of the table below. These figures have been recorded by India at Farakka on various dates of the dry season from November to May every year over a period of 25 years between 1948 and 1973. These figures represent 75 per cent of the total available flow at Farakka as computed and supplied by India to Bangladesh and published by Bangladesh as mutually accepted dependable supplies of the Ganges dry season flow at Farakka.¹⁵

12. See *The New Nation*, (Dhaka), 21 Sept. 1985, p. 1.

13. See *Holiday* (Dhaka), 1 & 7 Nov. 1985, p. 1; *The Bangladesh Observer*, 18 Nov. 1985, p. 1.

14. The Indo-Bangladesh Memorandum of Understanding, (New Delhi), 22 Nov. 1985; *The Bangladesh Times*, 23, 25 & 28 Nov. 1985, p. 1; *The Bangladesh Observer*, 23 & 28 Nov. 1985, p. 1.

15. It may be recalled here that in the first expert level meeting between India and Pakistan from 28 June to 3 July 1960 at New Delhi, it was decided that there would be exchange of data on the available supply of the Ganges dry season flow at Farakka in India and at the Hardinge Bridge in East Pakistan (now Bangladesh): Accordingly, there had been a series of continuous exchange of data.

The Lean Season of the Ganges: It has been decided in all agreements that the place of the sharing of the Ganges dry season flow would be at Farakka wherefrom India would release the share of Bangladesh. The 1975 agreement commissioned the Farakka feeder canal 'during the current (1975) lean period'. But it did not define the extent of the lean period. In fact, the determination of the Ganges lean period was one of the contentious issues between India and Bangladesh.¹⁶ The agreement merely stated that the operation of the Farakka Barrage would continue for the remaining lean period of 1975. The 1977 agreement for the first time determined the range of the Ganges lean season. According to Article II(i) of this agreement, the lean season of the Ganges covers altogether five months 'from the 1st January to the 31st May every year'. The Article further states that the crucial driest part of the Ganges lean season is the last ten days of April (from 21 to 30) every year. This limit to the Ganges-lean season has been accepted and incorporated in the subsequent agreements. In all agreements, the five months lean season has been divided into various ten-day segments and the sharing of the Ganges dry season flow has been made with varying discharges in every ten-day segment as shown in column 1 of the table below.

The Shares of India and Bangladesh : In all agreements, India agrees to release to Bangladesh the Ganges water by ten-day segments in quantity shown in column 4 below. The shares of India in these agreements are shown in column 3 below.

16. India proposed that the Ganges lean season should cover only two months from mid-March to mid-May every year, see Indian letter of 11 Feb. 1976 to Bangladesh. Bangladesh maintained that the normal lean season prior to the Farakka water withdrawal was from December to May every year. But due to the Farakka water withdrawal, the lean season of the Ganges started from November to May every year, see the Bangladesh note of 17 Mar. 1976 to India, *The Time*, 6 Dec. 1976; *The Bangladesh Observer*, 14 Sept. 1976; the text of an interview of Mr. B. M. Abbas, Adviser to the President of Bangladesh on Flood Control, Irrigation and Power with the BBC London on 4 Mar. 1976 and with the Radio Bangladesh on 6 April 1976, *The Bangladesh Observer*, 8 Mar. 1976 and 7 April 1976 respectively.

Table: The Short-Term Allocation Table

1		2	3			4		
Ten-day periods: days and months		Dependable supplies at Farakka (in cusecs)	The share of India (in cusecs)			The share of Bangladesh (in cusecs)		
			1975	1977	1982/85	1975	1977	1982/85
1-10	January	98,500	—	40,000	40,000	—	58,500	58,500
11-20	„	89,750	—	38,500	38,000	—	51,250	51,750
21-31	„	82,500	—	35,000	35,000	—	47,500	47,000
1-10	February	79,250	—	33,000	33,000	—	46,250	46,250
11-20	„	74,000	—	31,500	31,250	—	42,500	42,750
21-28/29	„	70,000	—	30,750	31,000	—	39,250	39,000
1-10	March	65,250	—	26,750	26,500	—	38,500	38,750
11-20	„	63,500	—	25,500	25,500	—	38,000	38,000
21-31	„	61,000	—	25,000	25,250	—	36,000	35,750
1-10	April	59,000	—	24,000	24,000	—	35,000	35,000
11-20	„	55,500	—	20,750	20,750	—	34,750	34,750
21-30	„	55,000	11,000	20,500	20,500	44,000	34,000	34,500
1-10	May	56,500	12,000	21,500	21,500	44,500	35,000	35,000
11-20	„	59,250	15,000	24,000	24,250	44,250	35,250	35,000
21-31	„	65,500	16,000	26,750	26,500	49,500	38,750	39,000

This allocation table divulges that the minimum share of India and of Bangladesh is 20,500 and 34,500 cusecs respectively. They receive this minimum amount of the Ganges dry season flow during the driest part of the lean season commencing from 21 to 30 April every year. This comes to a sharing of 37.5 per cent by India and 62.5 per cent by Bangladesh of the available flow of the Ganges during the last ten days of April. In this critical driest part of the lean season, India seems to have sacrificed more than Bangladesh. But if the 1975 agreement is compared with the subsequent agreements, it is evident that Bangladesh has also made a considerable concession. The dependable supplies of the Ganges at Farakka during the last ten days of April is identical in all of the four allocation schedules. The minimum share of Bangladesh during this ten-day segment was 44,000 cusecs under the 1975 agreement, which has reduced to 34,500 cusecs in the subsequent agreements. In other words, the minimum share of India during the critical driest part of the lean season (21-30 April) has increased from 11,000 cusecs in the 1975 agreement to 20,500 cusecs in the subsequent deals. Similarly, a comparison of the sharing of the Ganges flow during the remaining lean season (i.e. May 1975, 1977, 1982 and 1985) discloses that the share of Bangladesh has reduced and that of India has increased in successive arrangements.

The rate of increase and decrease in the shares of both countries is also not equal. The rate of increase in the share of Bangladesh is lower than that of India over every ten-day segment. Consequently, India receives 20,500 cusecs as the minimum share for the shortest possible period of the ten days driest part of the lean season. After this ten-day period is over, the share of India increases at a rapid rate over every ten-day segment and reaches 40,000 cusecs within the lean season. The maximum share of India in the beginning of the lean season is 40,000 cusecs which is nearly double what India receives as the minimum share during the leanest period. On the other hand, after the same time gap and under

identical conditions, Bangladesh receives 58,500 cusecs in the lean season as the maximum share which is far less the beginning of the lean season as the maximum share which is far less than double what Bangladesh receives as the minimum share (34,500 cusecs) during the leanest period. This distinctly reveals that the rate of increase in the share of India is faster than that of Bangladesh. If the rate of increase is equal for both sides, it would mean that Bangladesh would receive a comparatively greater share and India would receive a correspondingly smaller share than what they receive under the present arrangements. The maximum share of India in the lean season would not certainly reach 40,000 cusecs.

The Monsoon Flow of the Ganges : The sharing of the Ganges water under the agreements mentioned above also indirectly protect the interest of India during the monsoon. The arrangements cover only five lean months and do not specify any amount of water that

The Ganges is an organic unity and its continuous flow around the whole years does not admit any piece-meal, compartmental, or periodic arrangements of its distributions. As such, an arrangement covering both lean and non-lean periods would have safeguarded the maximum possible interests of both sides. In the absence of such an arrangement, Bangladesh, being the downstream state, shall have to bear the full brunt of the huge monsoon discharges of the Ganges.

India would draw off during the monsoon from June to December every year. Under the existing arrangement, Bangladesh would have to service the entire flow of the Ganges in the monsoon. Such an unlimited release of the monsoon flow to Bangladesh would obviously intensify the flood problem in Bangladesh. Since India is not required to divert any fixed quantity of the monsoon flow, India

cannot be held responsible for any monsoon release even if the flood hazard in Bangladesh is aggravated as a result of such release.

Admittedly, the sharing of the Ganges monsoon flow may appear superfluous due to the abundance of water in the Ganges in the monsoon. Nevertheless, the quantity of water that India would draw off and release to Bangladesh at Farakka during the monsoon is a matter of concern for Bangladesh. Both Bangladesh and India suffer from flood problem during the monsoon. The Ganges flood situation in Bangladesh directly depends on and varies with the amount of water India diverts upstream in the monsoon. It may be noteworthy that the parties agree in all agreements that the lack of sufficient water in the Ganges during the lean season imposes sacrifices on them both. Similarly, it may well be argued that the parties ought to share the sufferings inflicted by devastating floods in the monsoon. The Ganges is an organic unity and its continuous flow around the whole year does not admit any piece-meal, compartmental, or periodic arrangements of its distributions. As such, an arrangement covering both lean and non-lean periods would have safeguarded the maximum possible interests of both sides. In the absence of such an arrangement, Bangladesh, being the downstream state, shall have to bear the full brunt of the huge monsoon discharges of the Ganges.

The Sharing of the Low Flows of the Ganges at Farakka : If the actual flow of the Ganges available at Farakka in a ten-day segment is higher or lower than the amount shown in column 2 of the table above, the 1977, 1982 and 1985 accords state that the actual available flow would be shared in the proportion applicable in that segment.¹⁷ In the event of an exceptionally low flow at Farakka, Article II of the 1977 agreement protected at least eighty percent of the minimum entitlement of Bangladesh. But the 1982 and 1985 agreements differ from the 1977 agreement in this respect. The 1982

17. Article II of the 1977 agreement and paragraph 5(1) of the 1985 accord.

agreement did not specify any fixed quantity of water to be released by India at Farakka for Bangladesh in the case of an exceptionally low flow condition. It provided only for bilateral talks in the case of such an eventuality. Similarly, the present accord does not assure any minimum fixed share of Bangladesh in the case of an exceptionally low flow at Farakka. Should such a low situation arise during any of the next three dry seasons, the two governments will hold immediate consultations and decide how to minimise the burden to either country (paragraph 5). This implies that the minimum share of Bangladesh during the five lean months is no longer fixed and assured. As the Ganges varies considerably, there is every possibility that the Ganges flow may well fall below

If these abnormally low flow conditions repeat during any of the next three dry seasons, in the absence of any guarantee clause for the minimum fixed share of Bangladesh, very little or even nothing will remain below Farakka for Bangladesh after the withdrawal of the share of India at Farakka.

the amount shown in column 2 as the dependable supplies at Farakka during the lean months. This has precisely happened in April and May 1953 when the average flow of the Ganges at Farakka were 44,500 and 49,400 cusecs respectively. In the same two months in 1954 both averaged under 54,000 cusecs. The Ganges dry season flow fell as low as 42,000 cusecs at the end of April 1953 and has been below 52,000 cusecs on five occasions since 1934.¹⁸ If these

18. The following are some actual low flow data of the Ganges lean season :

Month and year	Discharges (in cusecs)
April 1936	48,200
May 1939	51,800
April 1941	50,000
May 1953	42,000
April 1954	49,000

For these data and the data cited in the accompanying text, see H.R. Khan, 'Effects of Farakka Barrage on Bangladesh' *The Bangladesh Times*, 11 April 1976.

abnormally low flow conditions repeat during any of the next three dry seasons, in the absence of any guarantee clause for the minimum fixed share of Bangladesh, very little or even nothing will remain below Farakka for Bangladesh after the withdrawal of the share of India at Farakka.

However, in a separate arrangement of the sharing of exceptionally low flows at Farakka for 1986-88, the two governments agree that if the low flow at Farakka is upto and above 75 per cent of the available flow shown in column 2 for the corresponding ten-day period shown in column 1, the share of Bangladesh would be calculated on a pro-rata basis. If the available flows at Farakka is below 75 per cent for the corresponding ten-day period, the share of Bangladesh would be calculated as follows :

- (a) calculate the pro-rata share of Bangladesh at 75 per cent and above of the available flow, and
- (b) calculate the pro-rata share of Bangladesh at actual flow which is below 75 percent of the available flow.

The difference between (a) and (b) would be regarded as the 'burden, to be shared equally by both India and Bangladesh. Therefore, the net release to Bangladesh in the case of any exceptionally low flow would be the pro-rata share of Bangladesh at actual available (below 75 percent) flow plus fifty per cent of the 'burden' shared by India¹⁹.

Machineries for the Implementation of the Short-Term Arrangements

The agreements on the Ganges also spell out self-executing machineries for the implementation of the short-term allocation schedules. These mechanisms ensure an uninterrupted flow of the agreed amount of the Ganges dry season flow at and below Farakka.

19. Agreement on sharing of exceptionally low flows at Farakka for 1986-88 signed by the Secretaries of the Ministry of Water Resources of both countries at New Delhi on 22 Nov. 1985.

A joint observation team consisting of experts of both countries was set up under the 1975 agreement. The team was stationed at Farakka to measure and observe (a) the discharges at Farakka, (b) withdrawals by India, (c) flows to Bangladesh, and (d) the effects of withdrawals. The team was required to prepare a report on its observations and submit the report to both governments for consideration.²⁰

The continued withdrawal of the Ganges water at Farakka after the expiry of the agreement engendered a new problem relating to the status of the joint observation team stationed at Farakka. The team was supposed to leave the station immediately after the termination of the agreement. As the withdrawal of the Ganges dry season flow at Farakka continued, Bangladesh proposed that the team should remain at Farakka on a continuing basis to measure and observe the withdrawals even after the expiry of the agreement. India declined to allow the team, especially the Bangladeshi members of the team, to remain at Farakka after expiry of the agreement. Bangladesh alleged that India also refused to inform about the quantity of water being diverted at Farakka.²¹ The unagreed and unknown amount of water withdrawal by India was understandably a source of potential injury and anxiety for Bangladesh. As a result, Bangladesh either wanted its officials to remain at Farakka to observe the withdrawals, or wanted to be informed about the quantum of water being diverted. What is the legal basis of this claim of Bangladesh? Did the 1975 agreement contain any provision permitting the joint observation team to remain at Farakka to perform its assigned task even after the termination of the agreement?

Strictly speaking, the 1975 agreement contained no provision empowering the joint observation team to remain at Farakka after

20. See above note 1.

21. *The Economist*, 27 Mar. 1976, p. 59; the speech delivered by the leader of the Bangladesh delegation to the 31st UN General Assembly session held in Nov. 1976, *The Bangladesh Observer*, 18 Nov. 1976.

the expiry of the agreement. The authorisation behind the right of the Bangladesh officials to remain at Farakka was the 1975 agreement. The agreement did not specifically mention the period of time the joint observation team would remain at Farakka. Consequently, it may easily be argued that the parties did not intend the team to remain at Farakka beyond the terminal date of the agreement.

Such a plain understanding of the provision concerning the joint observation team appears to be contrary to the purpose of the creation of the team. The joint observation team was established for a definite purpose, namely, to observe and measure the discharges and withdrawals at Farakka. In other words, the team was functionally related to and exclusively involved in the water withdrawal affair at Farakka. A logical exposition of the terms of the agreement regarding the joint observation team may be that the parties desired the team to remain at Farakka as long as the water withdrawal continued which, according to the agreement, was agreed to be ceased on 31 May 1975 at the latest under any circumstances. The observation and recording would therefore be needed only during this period. For this obvious reason the parties probably did not explicitly require the team to remain at Farakka beyond 31 May 1975. Any withdrawal beyond this date would necessarily warrant the team to stay at Farakka and perform its assigned duty. Viewed from this perspective it may be a distortion to argue that the authority of the team to remain at Farakka exhausted with the termination of the agreement. Rather, the continuation of water withdrawal at Farakka after the expiry of the agreement was an act which in turn furnished some degree of strength and sanction that might be relied on to justify the claim of Bangladesh for the continuous presence of the team at Farakka to perform its assigned task.

The 1977 and 1985 agreements each set up a Joint Committee composed of an equal number of representatives nominated by

the two governments for the joint inspection and monitoring of the sharing arrangements.²² These Joint Committees are responsible for the execution of the short-term allocation schedules. These Joint Committees would establish suitable working teams to be stationed at Farakka and at the Hardinge bridge to observe and record the Ganges daily flows (i) at Farakka, (ii) in the Farakka feeder canal, (iii) below Farakka and (iv) at the Hardinge bridge. They are also empowered to decide their own procedure and methods of functioning. They are required to submit to the two governments all data and information collected and a yearly report.

The Joint Committees are authorised to examine any difficulties arising out of implementing the shares embodied in the schedules and of the operation of the Farakka barrage. Any difference or dispute emanating from these functions, if not resolved by the Joint Committees, would be considered by a panel of an equal number of representatives of both governments. If the difference or dispute still remains unresolved it should be referred to the two governments for urgent discussion at the appropriate level.

The Long-Term Solution through Joint Study

The 1977, 1982 and 1985 agreements provide same measures for a long-term solution through joint studies. The terms of reference for a joint study vary from one agreement to another. The Indo-Bangladesh Joint Rivers Commission was vested with the task of conducting a techno-economic feasibility study of a scheme for augmenting the Ganges dry season flow under the 1977 and 1982 agreements.²³ Under the 1977 accord, the Commission was simply a recommending body in selecting and implementing a scheme for the purpose. It did not possess any final decision-making power, which remained with the two governments (Art. X).

22. Articles IV-NII of the 1977 accord and paragraph 5(2-3) of the 1985 accord.

23. Articles IX of the 1977 accord.

The Commission was required to submit its report to the two governments within three years (Art. IX). It was empowered under Article XI to solve any difficulty, deference or dispute arising from or with regard to the assumed task. In the event of a failure to resolve these disputes, the matter could have been referred to the two governments for a solution by mutual discussion at the appropriate level.

The 1982 agreement initiated fresh attempts towards evolving a scheme or schemes for augmenting the Ganges dry season flow through joint study, a task once again to be completed by the Indo-Bangladesh Joint Rivers Commission within 18 months. In this respect, one new aspect was that the two governments agreed in principle to confer the final decision-making authority upon the Joint Rivers Commission.²⁴ The community concerned with the sharing of the Ganges water might see the 1982 agreement promising as it provided for the automatic adoption and implementation of any plan approved by the Joint Rivers Commission.

Whilst the joint studies under the 1977 and 1982 agreements were aimed at evolving a long-term scheme or schemes for augmenting the Ganges dry season flow alone, the joint study under the 1985 agreement purports to find out alternatives for sharing the available river water resources common to them both including the augmentation of the Ganges dry season flow. This time, however, the Joint Rivers Commission has not been assigned the job of carrying out the joint study. Instead, a Joint Committee of Experts is entrusted with the task of conducting the joint study to be finished within a year. The Joint Committee of Experts is composed of the Secretaries of the Ministry of Water Resources of both governments and the two Engineering Members of the Joint Rivers Commission from each side. The Joint Committee of Experts is empowered to determine its own

24. See above note 7.

procedure and to adopt such other steps as it deems necessary, (paragraphs 3 and 4).

Extension and Review of the Agreements

The 1975 agreement contained no provision for any further extension of the agreement after 31 May 1975. The 1977 agreement provided for further extension for a mutually agreed upon period beyond the stipulated five years. The 1982 and 1985 agreements embrace no provision for any further extension beyond the specified 18 months and three years period respectively. Article XIII of the 1977 agreement provided for periodic reviews of the agreement, first, at the end of three years and second, six months prior to the expiry of the agreement, or at any mutually agreed upon time. In the course of reviews, they would examine the works, impact, implementation and progress of the short and long term arrangements incorporated in the agreement (Art. XIV). The 1985 accord also provides for a review of the progress of the joint study at the ministerial level at the end of six months from the date of the accord. At the end of 12 months, a summit level meeting between the leaders of the two countries will take place to adopt a decision on the scheme of augmenting the Ganges dry season flow (paragraph 4). However, unlike these two agreements, the 1975 and 1982 agreements prescribed no provision for a periodic review.

Conclusion

Strictly speaking, these agreements are not comprehensive affording both short and long term sharing of the Ganges dry season flow at Farakka between India and Bangladesh. They are in fact interim accords on the sharing of the Ganges dry season flow together with built-in provisions for working out a scheme or schemes for augmenting that flow as a long-term solution. In apportioning the Ganges dry season flow, the parties appear to have adhered to a policy of shared sacrifices, in one way or another, to the best of their judgement

and ability. For the allocation schedules contained in these agreements safeguard the maximum possible interests of both sides within the definite framework of limited supplies of the Ganges dry season flow at Farakka.

In view of the short-term allocation schedules, it may be asserted that though India has surrendered more than Bangladesh during the leanest period covering only ten days, India has gained far more than Bangladesh during the remaining five months of the lean season. Hence viewed from the overall 12 months, it is evident that the shares and interests of Bangladesh have been immolated more than that of India in successive arrangements. These agreements do not prescribe any specific long-term scheme. They merely stress on the task of evolving such a scheme through joint study. This necessarily indicates that a long-term solution is yet to be worked out in stages in the future.

Both the 1977 and 1982 agreement expired only after executing the short-term arrangements without selecting a long-term scheme. Despite repeated failures in working out a long-term scheme, the parties once again have agreed under the existing 1985 agreement to embark on a joint study for finding out a lasting solution. Someone who has been following the developments of the Ganges water dispute since more than a quarter-century may be reluctant to regard the present accord as new and promising. The signing of this accord only days before the first SAARC summit (in Dhaka on 7 December 1985) may led to see the accord as essentially a stop-gap measure to improve the climate of relationship between the two neighbouring countries prior to the first SAARC summit. Moreover, the present accord is substantially similar to the previous agreements, particularly the 1977 and 1982 agreements.²⁵ Inherent in this similarity is the

25. While evaluating the 1985 accord, the signatory minister of Bangladesh said that the provisions of the new accord were similar to that of the 1982 accord. In fact, the short-term allocation schedules of both accords are identical, see *The Bangladesh Observer*, 25 Nov. 1985, p. 1.

fact that parties are not yet ready to move away from their set positions and thus a permanent solution may be endlessly deferred in the hope of a better bargain. This explains why the parties successively agree only on short-term arrangements in spite of renewed recognition of the urgency of devising a long-term project. By signing another interim accord, the fourth, the parties perhaps once again fail to realise realistically that a short-term arrangement is no substitute for a long-term arrangement. The arrival of the parties after a protracted and intensive negotiations once again at the starting point tends to conform that the dispute is yet to receive from both sides a

Experience shows that the Joint Rivers Commission failed to prepare a long term scheme for the Ganges alone within time periods much longer than one year. As such, one year time limit may be insufficient to complete the proposed joint study. The most vital omission in this respect is that the accord does not spell out what would happen if the Joint Committee of Experts fails to perform its assumed task within a year, or after 31 May, 1988, the terminal date of the accord.

better appreciation with a brighter prospect for an early mutually agreed upon long-term solution.

The Joint Committee of Experts is required to suggest a long-term scheme within a year. The joint study under the present accord is a wider and complex one involving the identification of long-term schemes for sharing all common river waters including the Ganges. Experience shows that the Joint Rivers Commission failed to prepare a long term scheme for the Ganges alone within time periods much longer than one year.²⁶ As such, one year time limit may be insufficient to complete the proposed joint study. The most vital omission in this respect is that the accord does not spell out what would

26. The Joint Rivers Commission was given three years under Art. IX of the 1977 accord and 18 months under the 1982 accord.

happen if the Joint Committee of Experts fails to perform its assumed task within a year, or after 31 May, 1988, the terminal date of the accord. Would there be an extension of the time limit beyond the stipulated 12 months? Or would there be another fresh interim accord? Nobody knows. The 1985 accord is totally silent on this issue. This omission may in turn generate a vacuum after the termination of the present accord and presumably India may, as it did in the past, continue its withdrawal at Farakka even in the absence of any agreement with Bangladesh.

Hopeful aspects of the present accord is that it fills in the vacuum and removes anomaly that have existed for more than a year after the expiry of the 1982 accord. The conclusion of this accord in an atmosphere of SAARC spirit may possess a potential for cooperation in solving the Ganges water dispute permanently. It indeed reflects the 'wind of change' in the Indo-Bangladesh relationship.²⁷ Following this accord, the prospects of a permanent solution appear promising.²⁸ Viewed from these perspectives, the present accord may afford a firm basis on which positive steps could be taken for the adoption of a realistic long-term plan for augmenting the Ganges dry season flow through the proposed joint study.

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27. On his return to Dhaka after signing the accord, the signatory minister of Bangladesh made a statement to this effect, see *The Bangladesh Times* 23 Nov. 1985, p. 1.
 28. Following this accord, India for the first time expressed its willingness to include Nepal, a co-basin state of the Ganges, in the Ganges talks and to study the feasibility of a joint regional approach to the problem of augmenting the Ganges dry season flow. The Prime Minister of India made such a statement on 10 December 1985 in Dhaka after the conclusion of the first SAARC summit, see *The Bangladesh Times*, 11 Dec. 1985, p. 1. This is indeed a significant deviation from its earlier stand that only India and Bangladesh should be the two countries involved in the Ganges talks and no other third state. The first meeting of the Joint Committee of Experts held on 16 January 1986 in Dhaka made considerable progress in preparing the modalities and programme for the proposed joint study of the Ganges and other common river waters for sharing purposes, see *The New Nation*, 17 Jan. 1986, p. 1. During the second meeting of the Joint Committee of Experts held on 27-28 February 1986 in New Delhi, both sides exchanged some hydrological data and decided that technical experts of both countries would review the exchanged data soon. The next meeting of the JCE is scheduled to be held in Dhaka in the last week of April 1986, see *The Bangladesh Observer*, 2 March 1986, p. 1.