

## **4. THE GANGES WATER TREATY OF 1996: AN ANALYSIS**

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### **4-1 Introduction**

Bangladesh and India signed a historic Treaty on December 12, 1996 [1] on the sharing of the Ganges water, ushering a new chapter in the relation between the two close neighbors. The paper analyzes the salient features of the epoch-making Treaty and provides an independent evaluation of the terms of the Treaty.

### **4-2 It's a Treaty, not an Agreement**

It has been said that it was a treaty like the Indus Basin Treaty, which has more legal status than an agreement. Unlike in an agreement, a treaty is normally signed by the Heads of State, in this case the Prime Ministers.

### **4-3 Duration of the Treaty (Article 12)**

The duration of the Treaty is 30 years and is renewable on the basis of mutual agreement on the expiry of the 30-year term. The question arises why it was not a permanent treaty. Until the last moment, Bangladesh pushed for a permanent treaty but India resisted. The Chief Minister of West Bengal Jyoti Basu was of the opinion that the agreement should be signed for a period of two to three years on an experimental basis and based on the results of the initial agreement a permanent treaty could be signed. However, on Bangladesh's persistence India first agreed to a 20-year and then increased to a 25-year term, which was widely reported in many newspapers. Finally, a 30-year term Treaty was agreed upon with a provision for renewal. A permanent treaty would have been better, but a 30-year renewable term treaty is not a bad one, particularly considering the 1977 Agreement [2], which was for five years only. Besides, a 30-year term is a long enough time to construct all the planned projects like the Ganges Barrage that will mitigate the adverse effects of low river flows.

### **4-4 Periodic Review at Five Years Intervals (Article 10)**

This is a unique provision in the Treaty. In October 1996 when Foreign Minister Abdus Samad Azad visited New York, the writer, on behalf of the International Farakka Committee, had a two and half hour discussion with the Minister. At the meeting two aspects of a permanent agreement were discussed in detail:

(1) the permanent agreement should not be "close-ended", that is, based on the current low flow of the Ganges a treaty assuring 35,000 cusec (cubic feet per second) may be an excellent

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agreement. However, in the future when India and Nepal will jointly develop projects like Pancheswar, Karnali and High Kosi Dam, the low flow of the Ganges will increase fourfold and Bangladesh must have a legitimate share of the increased flow. This Article reflects those points that the sharing arrangement under this Treaty shall be reviewed by the two governments at five year intervals or earlier, as requested by either party. It would be open to either party to seek the first review after two years to assess the impact and working of the sharing arrangement as contained in this Treaty. The two-year review cycle, in case of an emergency, was apparently included in the Treaty to address the concerns of Mr. Jyoti Basu.

(2) There must be a provision for arbitration in the permanent agreement. Currently, the Treaty does not have a provision for arbitration. India's point of view is that the Treaty has no commercial value or financial implications, hence there is no need for arbitration. Unlike the recently signed Treaty with Nepal on the Mohakhali Basin Development (Pancheswar Project), where India has a power purchase agreement, the financial institution will not provide a loan in the tune of \$2 billion unless there is a provision for arbitration. As to the Ganges water Treaty, India feels that no court can give water and any litigation will take forever to resolve the issue. It is the cooperation and mutual trust that are the essence of this Treaty. Besides, there is a provision in the Treaty to resolve disputes through the newly formed Joint Committee, Joint Rivers Commission (JRC) and at the highest levels of government (Article 7).

#### **4-5 Schedule of Share (Article 2)**

The schedules of shares for the 1996 Treaty [1] and 1977 Agreement [2] differ in two aspects. For the leanest period of March 1 to May 10, Bangladesh's share in 1977 Agreement was 60 percent, whereas the 1996 Treaty provided 50 percent of the Ganges flow, yet the quantum of water in 1996 Treaty is larger than that of the 1977 Agreement. This is because of the fact that the 1996 Treaty is based on actual river flow, whereas the 1977 Agreement was based on a fictitious flow of 75 percent availabilities. Another unique feature of 1996 Treaty is that during the leanest period a minimum 35,000 cusec will be alternated every 10-day period between Bangladesh and India. Comparing with 1977 Agreement, we see that India's share has been increased from a minimum of 20,500 cusec to 25,992 cusec and Bangladesh's share has been reduced from 34,500 cusec to 27,633 cusec for a 10-day period. Although it seems that India benefited more under this Article, yet the impact of reduced flow for such a short period of 10 days will be insignificant on the river morphology. Historically, no alluvial river like the Ganges can react to a reduced flow within such a short time. In reality, the flow section of the river will probably adjust to a flow which is between 27,633 cusec and 35,000 cusec. Again, the construction of the Ganges Barrage will remove this anomaly and provide the river with a regulated uniform flow.

#### **4-6 Guaranty Clause ( Article 11 )**

The 1996 Treaty [1] does not have a clear guaranty clause as in the case of 1977 Agreement [2]. The 1977 Agreement clearly stated that Bangladesh's share shall not be less than 80 percent of the committed minimum flow of 34,500 cusec, i.e., 27,600 cusec, irrespective of the flow at Farakka.

Article 11 of the 1996 Treaty states that if there is no mutual agreement to adjust each party's share at the five-year review meeting, then a minimum of 90 percent of the scheduled release will be guaranteed as the share of Bangladesh. In other words, Bangladesh's share shall not be less than 24,870 cusec, which is 2,730 cusec less than what was provided under 1977 Agreement.

#### **4-7 Absolute Minimum Flow of 50,000 cusec at Farakka (Article 2)**

If the flow at the Farakka point reaches unprecedented 50,000 cusec, the Treaty calls for an immediate emergency meeting between the parties to resolve the issue amicably through discussions. Now the question remains how the flow at Farakka point can reach such a low figure. There are two possibilities:

(1) The lowest flow in the upper reaches of the Ganges is in the order of 150,000 cusec, of which only 60,000 cusec reaches Farakka and the rest (90,000 cusec) is diverted in Uttar Pradesh and Bihar. If Uttar Pradesh and Bihar keep on increasing their withdrawal, the flow at the Farakka point will obviously reduce. However, Article 2, Section 2 of the Treaty states that the sharing schedule has been established on the basis of 40 years flow records between 1949 and 1988 and to maintain this flow all necessary actions will be taken in the upper reaches of the river. In other words, no additional withdrawal can take place in the upper reaches. Otherwise, any additional withdrawal in the upper reaches will not only adversely affect Bangladesh but West Bengal as well.

(2) The other reason for the absolute low flow is the natural phenomena like a severe drought or reduced snow-melt in the Himalayas. The Treaty is meant to address such natural phenomena, not manmade calamities.

#### **4-8 Joint Monitoring (Article 4)**

Unlike in 1977 Agreement [2], Article 4 of the 1996 Treaty [1] calls for the formation of a Joint Committee consisting of equal number of representatives of the two governments to observe and record daily flows at three points at the Farakka Barrage (Feeder Canal, Downstream of the Barrage and the Navigational Lock) and one point at the Hardinge Bridge. This will eliminate all past confusions and controversies regarding the quantity of flow and misleading flow statistics maintained by two countries. From now on there will be only one set of authentic flow data maintained by both parties.

#### **4-9 The Treaty is not Contingent upon Augmentation (Article 8)**

This is another unique feature in the Treaty. The 1977 Agreement [2] emphasized the augmentation of the Ganges flow. We all know too well that the link-canal concept of India and the storage reservoir concept of Bangladesh stalemated the entire process for last two decades. At long last, the link-canal monster has been dropped and the Treaty instead calls for the recognition of the necessity to find a long term solution to dry season flow augmentation of the Ganges River. The Treaty is not contingent upon augmentation.

#### 4-10 Conclusions

In conclusion, no treaty is going to benefit only one party exclusively. A treaty is always based on the concept of give and take. It is true that Bangladesh wanted to have a permanent treaty and provision for arbitration. Then again the essence of all treaties are cooperation, mutual trust and will to work together. Without trust and cooperation a treaty is nothing but a piece of paper.

Finally, the major irritant between the relation of Bangladesh and India is behind us. We must now proceed forward to resolve the remaining river related issues. Besides the Ganges, we still have 53 shared rivers. Article 9 of the Treaty calls for sharing of other undivided rivers on the basis of equality, justice and no harm to other party. It may be noteworthy to refer to the recent publication, "Sharing the Ganges" by Ben Crow [3], where the author stated that there was an understanding between the governments of Bangladesh and India to share all common rivers except the Brahmaputra on 50:50 basis. For the Brahmaputra River Bangladesh's share was established at 75 percent and that of India at 25 percent. Each country could use maximum 25 percent of the flow for irrigation and the remaining 50 percent would be allotted to salinity control and environmental stability. This was a good beginning in 1984 and 1986, which should now be pursued to arrive at a comprehensive solution to share all undivided rivers. This we must do now when the iron is still hot.

#### 4-11 References and Notes

1. The Ganges Water Treaty of 1996, Government of Bangladesh, December 12, 1996.
2. The Ganges Water Agreement of 1977, Government of Bangladesh, November 5, 1977. Also, see B.M. Abbas A.T., *The Ganges Water Dispute*, 2nd. Edition, University Press Limited, Dhaka, Bangladesh, 1984 and B.M. Abbas A.T., "Bangladesh-India Negotiation on Ganges Waters", in *Bangladesh Foreign Relations: Changes and Directions*, edited by Muzaffer Ahmad and Abul Kalam, University Press Limited, Dhaka, Bangladesh 1989, pp. 20-37.
3. Crow, Ben, *Sharing the Ganges*, University Press Limited, Dhaka, Bangladesh 1995.