

An open letter to world leaders

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WE, THE citizens of Bangladesh and expatriate Bangladeshis, are urging you to stop India from constructing dams on upstream rivers that flow through Bangladesh. India's unilateral action to dam and withdraw water is against international conventions. It violates the spirit of the Millennium Declaration by 191 member states of the United Nations, which pledges: 'To stop the unsustainable exploitation of water resources by developing water management strategies at the regional, national and local levels, which promote both equitable access and adequate supplies' (Chapter IV, para 23).

You may already be aware that the Indian government has recently announced its decision to go ahead with the project of constructing a dam (hydroelectricity plant) on a river which feeds two major river systems in Bangladesh. This will have dire consequences on the economy and ecology of Bangladesh.

The proposed Tipaimukh dam is to be located 500 metres downstream from the confluence of Barak and Tuivai rivers, and lies on the south-western corner of Manipur state. It is a huge earth dam (rock-fill with central impervious core) having an altitude of about 180m above the sea level with a maximum reservoir level of 178m and 136m as the minimum drawdown level. It will have an installation capacity of 1,500MW with only a firm generation of 412MW (less than 30 per cent of installed capacity).

The proposed dam is located among six major seismically active zones of the world. Analysis of earthquake epicentres and magnitudes of 5M and above within 100-200km radii of the Tipaimukh dam site reveals hundreds of earthquakes in the last 100-200 years. It is found that within 100-kilometre radius of Tipaimukh, 2 earthquakes of +7M magnitude have taken place in the last 150 years and the last one being in 1957 at an aerial distance of about 75km from the dam site in the ENE direction. This poses a serious threat of dam's failure.

Bangladesh gets 7 to 8 per cent of its total water from the Barak in India's north-eastern states. The dam will choke up the Surma and the Kushiara rivers, and ultimately dry up the Meghna, the biggest river of the country.

We fear that this project will start desertification in Bangladesh. It will also change the ecosystem of the Sylhet region. It will affect the production of rice — the staple food, fish — the major source of protein. It will also immensely affect the flora and fauna and the entire biodiversity of the region.

We have seen the adverse environmental impacts of India's Farakka dam/barrage project at the upstream of the mighty Ganges which flows into Bangladesh as Padma. The Farakka project made the northern districts of Bangladesh

almost a desert and contributed to the arsenic contamination of ground water.

Millions of people are dependent on hundreds of water bodies, fed by the Barak, in the Sylhet region for fishing and agricultural activities. This dam will have serious impact on poverty and security in the region.

The Tipaimukh dam could play a role for Bangladesh if it was a joint project and managed in line with Bangladesh's requirements. However, neither the construction plan nor the management plan was shared with Bangladesh. There was no exchange of information or data regarding the impact of the dam on ecology, environment, fishery, wildlife, and most spectacularly on the life and living of the people living upstream and downstream of the dam.

On June 21, the former Indian high commissioner Pinak Ranjan Chakrabarty claimed that there did not exist any international law that could prevent India from constructing the Tipaimukh dam. However, this is misleading and erroneous in view of the status of the 1996 Ganges Water Treaty between Bangladesh and India as well the relevance of the applicable international customary laws.

According to Article 38 of the Statute of the International Court of Justice, bilateral or multilateral treaties are the primary expression of international law. The 1996 thirty-year Ganges Water Sharing Treaty was signed by the heads of states of Bangladesh and India and thus, according to the 1969 Vienna Convention on The Law of Treaties, it has the full backing of international law. Both Bangladesh and India are bound to abide by this treaty until 2026.

Article IX of the treaty stipulates: 'Guided by the principles of equity, fairness and no harm to either party both the governments agree to conclude water sharing Treaties/Agreements with regard to other common rivers.'

Furthermore, according to the International Laws Commission's Commentaries on the Draft of 1997 Watercourse Convention which contains pledges to apply the principle of equitable utilisation and no-harm essentially presupposes obligations of conducting prior consultation and conclusion of agreement with co-basin states before undertaking any planned measures on a shared river like the Barak.

Therefore, construction of the Tipaimukh dam by India on the upstream of the Barak, which, after entering Bangladesh, continues to flow as Kushiara and Surma, will be illegal unless it is preceded by prior consensus with Bangladesh. Although India has not yet ratified the 1997 Watercourse, there is every reason to argue that the Convention, being adopted by a vote of 103-3 in the UN General Assembly, is applicable as 'evidence of international customary law' to Tipaimukh or any such project on shared rivers.

This convention was drafted by the International Law Commission, which was constituted under Article 13(1) of the United Nations Charter. The draft law produced by this commission represents either existing or emerging rules of international law (ILC Statute, Article 15); various verdicts of the International Court of Justice have already expressed such a view (for example, the 1997 ICJ verdict regarding the River Danube dispute between Hungary and Slovakia).

The 1997 convention is supported by recent state practices in different parts of the world. By the terms of 1992 Trans-boundary Watercourses Convention, adopted under the auspices of the UN Economic Union for Europe, there is no scope to undertake planned measures on shared rivers without conducting a comprehensive environmental impact assessment, providing full information to all the concerned basin states and ensuring that there are no serious harmful effects on the ecology as well as the co-riparian states.

In the last two decades, various countries in Africa (e.g. 1995 Zambezi River Protocol, 1997 Lake Victoria Program), South East Asia (e.g. 1995 Mekong River Agreement), and South America (e.g. 2004 Program for the Pantanal and

Upper Paraguay River) have emphasised basin-wide cooperation for ensuring sustainable utilisation and management of international watercourses.

The cooperation and no-harm principles are more emphatically endorsed in a number of international environmental instruments to which both Bangladesh and India are parties. Among them, Article 5 of the 1972 Ramsar Convention requires the contracting parties to consult each other about implementing obligations arising under the Convention in respect of trans-boundary wetlands, shared watercourses and coordinated conservation of wetland flora and fauna, and Article 3 of Biodiversity Convention provides that ‘states have 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.’

Provisions for preventing and mitigating harm related with the utilisation of shared water systems are also found in other conventions, including the 1992 Framework Convention on Climate change and the 1994 Convention on Desertification.

This is no wonder that India does not want to ratify the 1997 Convention. It has been continuing to construct dams on 53 common rivers that flow through Bangladesh. Among the common rivers, the most rivers affected by Indian barrages and their networks of canals, reservoirs and irrigation schemes are the Ganges, the Meghna and the Teesta.

As the World Commission on Dam observed in its report, the hazards of dam construction outstrip the benefits. The World Commission on Dams analysed the environmental, economic and social impact of the world’s 45,000 large dams, and the result unveiled by Nelson Mandela, Chairman of the Commission, in the later part of 2000 is quite bleak. Overall costs of dams, to both man and nature, are mostly negative. They are notorious for creating great environmental change. They force massive human resettlements, mostly of people who live where the lake is due to appear. It concluded, ‘an unacceptable and unnecessary price has been paid to secure ... benefits.’ The World Bank estimated in 1994 that 300 large dams forced some four million people to leave their homes.

Hydroelectric dams, once regarded as clean renewable energy source, turned out to be significant generators of greenhouse gases given off by decomposing vegetation in tropical reservoirs. The constant and reliable irrigation hydroelectric dams can waterlog the ground. The water brings underground salt to the surface, which is left behind when the water evaporates. Eventually, the soil becomes too salty for crops to survive. Even the prevention of flood is a mixed blessing. The salt which was once carried downstream by a swollen river replenishing the soil and nutrients, no longer makes its journey to the sea. Instead it clogs up the reservoir.

We appeal to you, in the name of humanity, for the sake of the environment and ultimately for regional and global security, to stop India from this act of vandalism. We also urge you to demand on India to agree to shared-management of all common rivers in the spirit of the Millennium Declaration.

— Atiqur Rahman Khan Eusufzai and Syed Tipu Sultan

President and secretary respectively of the International Farakka Committee