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Chairman: Mr. SIBAHI (Syrian Arab Republic)

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The meeting was called to order at 11 a.m.

AGENDA ITEM 121: SITUATION ARISING OUT OF UNILATERAL WITHDRAWAL OF GANGES WATERS AT FARAKKA (A/31/195 and Add.1 and 2)

1. Mr. KHAN (Bangladesh) said that including the item under discussion in its agenda, the General Assembly had explicitly recognized that there was a dispute and had endorsed the relevance of Article 14 of the United Nations Charter. The Assembly had also implicitly taken note of the validity of the other articles of the Charter governing the responsibilities of the Assembly, particularly those in Chapter VI which enjoined Member States to seek a solution to disputes by peaceful means.
2. The Assembly's decisions validated his delegation's contention that the issue was multidimensional in scope and multijurisdictional in nature. The item under discussion had manifold ramifications of universal importance. It was a test case for international co-operation and concern and, above all, for the international responsibility inherent in the United Nations Charter. Turning to the basic elements in the problem, he said that the dispute arose from the construction by India of a barrage on the Ganges River at Farakka, a few miles from its border with Bangladesh, for the purpose of diverting the flow of the river into the Hooghly River in India. Bangladesh had a claim on the Ganges, not only because of its historic flow through Bangladesh but also because of the latter's dependence on the river.
3. The main source of Ganges water was melting snow from the Himalayas and rainfall. The Ganges was characterized by wide seasonal fluctuations with a flow rate varying from an average of about 2 million cusecs during the wet period to a mere 55,000 to 60,000 during the driest period. The core of the problem was the dry season. Most of the water available to Bangladesh both through surface waters in the rivers and through precipitation was concentrated from June to October in the monsoon season. The flows in the river and the total volume of water available fell significantly in the other months when there was no melting snow and rainfall was extremely scarce. As a result, there was a problem of floods during the monsoon period and dire lack of water during the remaining long dry period from November to May. India's contention that Bangladesh had enough water, through abundant rainfall and three major river systems, to cover the entire country with water 30 feet deep must be viewed as a distortion of the facts.
4. Irrigation was only one of the purposes for which Bangladesh required water. In fact, the entire dry season flow was being put to manifold uses. During the dry months, the available flow from November to May was only 15 per cent of the total annual flow of the Ganges. During the monsoon season, the abundant flow kept the salinity close to the sea. To reduce the Ganges flow, which directly affected the movement of the salinity front, would have drastic and irreversible consequences for the ecology of Bangladesh.
5. The ostensible purpose of the unilateral diversion of waters was to flush out

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deposits of silt in the Hooghly River so as to improve the navigability of the port of Calcutta. The critical point at issue was the urgency of the situation created by the continuing daily withdrawal of water, particularly with the beginning of another dry season in November. The impact on Bangladesh had been devastating. The damage was cumulative and permanent. A meaningful solution therefore required the focusing of attention on those unilateral withdrawals and a search for ways and means of alleviating the immediate adverse consequences.

6. Bangladesh's dependence on the Ganges was preponderant. The Ganges directly affected 37 per cent of the area of Bangladesh, and 33 per cent of the country's population inhabited the basin. In addition to agricultural production, the area contained approximately 25 per cent of the nation's total industrial capacity. His country's dependence on the waters of the river for drinking, navigation, irrigation, industry, fishery, preclusion of saline intrusion and the preservation of the entire ecological balance of the area was manifest. It could be said that the uneasy balance between man and nature that had been established in the delta of the Ganges turned essentially on water.

7. Against those historical and life-sustaining uses of the Ganges waters must be weighed the totally new use by India involving the diversion of three quarters of the dry season flow for the wasteful purpose of flushing out the Hooghly and the port of Calcutta. That contrast assumed added significance when the following factors were considered: First, the original project sanctioned by the Government of India had fixed the discharge of the feeder canal from the Ganges at Farakka at up to 20,000 cusecs when available. The Planning Commission of India, in approving the scheme, had observed that it was technically sound even with full suspension of the withdrawals in the period from March to May. That requirement had been arbitrarily increased to 40,000 cusecs. Secondly, many experts had questioned the practicality of the diversions for the purpose of removing silt. The need to improve the navigability of the Hooghly could be met by other, more viable methods. Thirdly, a close examination of monthly deep draught charts issued by the Calcutta port authorities revealed that in spite of the huge withdrawals the Hooghly river channel had shown no marked improvement.

8. It was in the context of those contrasting uses of the Ganges waters that members must view India's claim that the Ganges was essentially an Indian river and that Bangladesh had no right to a veto on the use of water by India in its own territory. Closely interconnected was India's contention that at the present time general international law contained no rules accepted by all States on the subject.

9. The Ganges River basin spread over the territory of China, Nepal, India and Bangladesh and was thus an international river geographically as well as for legal purposes. Under contemporary customary international law, a river which flowed through the territory of two or more States was governed to some degree by such law. The portion of the river that flowed through the territory of a particular State was thus not exclusively within the jurisdiction of that State. On the question of international rivers, there did exist a persistent pattern of State

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practice and expectations reflected in the recurrence of identical provisions in a considerable number of treaties. The multiplicity of bilateral and multilateral treaties concluded by States with respect to international rivers was clear evidence that they felt an obligation to work on the basis of mutuality and co-operation in the use of the waters of such rivers. Furthermore, the number of treaties concluded by riparian States was sufficient indication that those countries were responding to a natural imperative sanctified by law and that prohibition of unrestricted diversion of waters corresponded to a universal legal principle.

10. In contesting Bangladesh's so-called exercise of a veto over the use of waters by India and asserting that the Ganges was an Indian river, India had implied that it was fully entitled to withdraw whatever amount of water it wanted. That was tantamount to claiming sovereignty over the waters of an international river in contradiction to existing State practice. Customary international law clearly recognized the community of interests of the riparian States in the waters of an international river and placed the riparians on a basis of mutuality with respect to the use of such waters. Indeed, international lawyers were virtually unanimous in their opposition to the view that a State in the exercise of its rights was unrestricted in its use of the waters of an international river.

11. In the apportionment of waters, at any rate in the dry season or months of scarcity, Bangladesh was entitled to the natural flow of the Ganges in order to satisfy existing human and ecological needs that could not be met in any other way. The unilateral diversion of the Ganges waters effected since 1975 left Bangladesh with no alternative source of water. However, there were alternative sources for India which could be exploited without much delay. The new use of the water by India contrasted with the existing multiple and interconnecting beneficial uses to which it was put by Bangladesh. The injury caused to Bangladesh by the diversion of water from the Ganges during the dry months was clear and substantial. India's need was the protection of the Hooghly from silting, but that could be met by dredging the channel without causing injury to Bangladesh.

12. India had also harmed the environment of Bangladesh and was fully accountable for the injury which it had wrongfully caused. Bangladesh's justification in calling upon India to refrain from causing such injury could not be characterized as a veto. The question which arose was essentially whether any country would give up its inherent right not to be injured by another State because that State accused it of exercising a right of veto.

13. With regard to the scope and content of bilateral negotiations on the issue, he said that, contrary to India's contention, the history of negotiations concerning the sharing of the Ganges River waters was a quarter century old. The problem had first emerged 25 years previously when the Government of Pakistan had drawn the attention of the Indian Government to reports of India's plan to divert the dry season flow of the Ganges. India had replied that the project was only under preliminary investigation and had characterized Pakistan's concern over the

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probable effects as purely hypothetical. A series of protracted negotiations at the official level between the two countries and an exchange of voluminous technical data had followed with little result.

14. The Government of Bangladesh had taken up the matter with the Government of India at the technical, official and ministerial levels. At various times, the Government of India had given the solemn assurance that, before the Farakka barrage was operated, a mutually acceptable solution would be arrived at. At the ministerial level meeting held in April 1975, Bangladesh had agreed to an Indian Government request to run the feeder canal of the Farakka barrage during the period from 21 April to 31 May 1975 with discharges varying from 11,000 to 16,000 cusecs. In that agreement there had been no provision for any withdrawal beyond 31 May 1975. However, India had continued to operate the feeder canal after that date to its full capacity of 40,000 cusecs without any consultation with or the concurrence of Bangladesh.

15. While Bangladesh had had no alternative but to participate in sterile negotiations, India had gone ahead with the planning, execution and operation of the Farakka barrage. Bangladesh had made every possible effort to solve the dispute in a spirit of friendship, mutual accommodation and good-neighbourly relations. Even after requesting the inclusion of the item in the agenda of the thirty-first session of the General Assembly, Bangladesh had not hesitated to respond to an invitation by India to hold bilateral talks at New Delhi in September 1976. However, the outcome of those discussions had been very disappointing.

16. The current situation must be viewed in the broader context of increasing global concern over the question of the rational use and distribution of scarce natural resources, particularly those common to two or more States. Over the past few years, the General Assembly had been developing norms and principles governing the question of co-operation in the field of the environment and of such shared resources.

17. In seeking the active support of the United Nations to provide the necessary impetus to find a just and expeditious solution to the problem, his country was fulfilling the obligation implicit in the United Nations Charter to explore all avenues for the pacific settlement of disputes. It could not understand why India felt that recourse to the United Nations was bound to complicate the situation, delay a solution and worsen relations between the two countries. India's position would seem to militate against the obligations imposed by the United Nations Charter and also against a fundamental principle of State policy embodied in its own Constitution to the effect that the State should endeavour to encourage the settlement of international disputes by arbitration. Furthermore, several precedents existed under which India had accepted recourse to third party intervention.

18. Turning to the reasons why Bangladesh had raised the issue in the General Assembly, he said that certain overriding factors might be stressed. First of all,

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there was his country's genuine apprehension that after 25 years of fruitless bilateral negotiations the continued state of deadlock did not warrant any hope that such efforts would produce a settlement in the foreseeable future. The will to reach agreement must be viewed against the record of India's violation of solemn commitments, the continuing daily injury being done to Bangladesh without jeopardy to India, and the relatively wasteful use of waters by India in the face of more viable alternatives. While his country did not eschew bilateral approaches, it had reached a stage where only third party impetus such as that of the United Nations would speed up the process towards an early and equitable settlement. Secondly, his country was concerned that, failing a mutually acceptable solution, it would have no other recourse than to accept without redress the dictates of a more powerful neighbour. It believed that the moral pressure of the United Nations could forestall such a possibility. Thirdly, there was the closely interrelated humanitarian issue. What was at stake was the very survival of millions of people inhabiting perhaps the most densely populated region in the world. The United Nations and the international community, which had channelled millions of dollars of aid through relief programmes, could not remain unconcerned. Fourthly, his country had raised the issue because of its belief that no State should be denied the right to a fair and impartial hearing in the world forum, which constituted for smaller States not only the most objective but the only forum in which to air their grievances.

19. With regard to the question of a possible framework for action by the General Assembly, it was clear that the Assembly could not enter into the specific technical elements and that the parties must engage in continuing bilateral talks. If Assembly action was to be meaningful, it must provide the momentum which could promote an expeditious and fair solution of the problem. What was of cardinal importance was that the current situation should not be condoned through reluctance on the part of Member States to take a stand. In such an event, a smaller country would be left with no redress in the face of continuing injury from unilateral actions by its neighbour. Moreover, under the mandate entrusted by the Charter to the General Assembly and implicit in Article 14, Assembly responsibility could not be confined to discussion, consideration and the initiation of studies. It must lead to some fruitful action.

20. In that regard, his delegation would welcome constructive suggestions from any member of the Committee. For its part, it would like to see the following five major elements reflected in any draft resolution that was submitted: First, the General Assembly must call upon and encourage the parties concerned, in the interests of peace and prosperity in the region, to arrive at an immediate resolution of the dispute; secondly, it must recognize that an immediate resolution of the dispute was an essential prerequisite for any future permanent settlement; thirdly, the Assembly should recommend that in the meantime no unilateral action should be taken that would adversely affect the historic and traditional uses of the Ganges River waters; fourthly, the Assembly should request the Secretary-General of the United Nations to assist the parties concerned in the immediate resolution of the dispute and in reaching a fair and expeditious settlement, using, as appropriate, such assistance as might be available through

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the relevant elements of the United Nations system; and finally, the Assembly should remain seized of the problem by requesting the Secretary-General to follow up the implementation of the proposals just referred to and to report thereon to it at the next regular session.

21. In the light of consultations which it had held with a majority of representatives, his delegation would circulate a draft resolution which incorporated its ideas and which it hoped would receive the support of the Committee.

The meeting rose at 11.45 a.m.