

Welcome spurt in judicial activism

A deadweight on fundamental rights about to be lifted

IN a landmark verdict, a High Court Division Bench comprising Justices Md Hamidul Haque and Salma Masud Chowdhury has made detention on suspicion illegal. The judgement is as comprehensive, leaving nothing to chance, as the abuse of law has been menacingly extensive. Invoking the power vested in them under Article 102 of the Constitution, the judges directed that the government set things right about certain provisions of the Code of Criminal Procedure (CrPC) which they have found to be inconsistent with the fundamental rights of citizens.

The verdict comes in two parts: first, the authorities have been ordered to follow a 15-point directive while applying sections 54, 167, 176, 202, 330 and 348 of the CrPC. Secondly, the court has directed the government to amend the relevant sections of the CrPC within next six months. Even if the government chooses to move the matter to the Appellate Division, the 15-point directive takes immediate effect insofar as the application of the so called legal provisions goes.

Some of the directions deserve special mention because of the safeguards they provide against violation of human rights. For instance, police officer shall furnish the reasons for arrest to the person hauled up within three hours of bringing him to the police station; if a person is arrested outside his residence or business place his nearest relative will have to be informed of the arrest within one hour of his being in the police station; and he should be allowed to consult a lawyer of his choice or meet any of his nearest relatives.

Furthermore, the ruling calls for penal action against a police officer arresting any person without warrant. It is only upon authorisation by a Magistrate duly approved by a Sessions Judge that a person can be held in police custody. But the accused must have been medically examined before being taken into custody by an investigating officer and shall also be medically examined at the expiry of the custodial period under orders of the Magistrate to determine whether he has been tortured or not. If tortured, the investigating officer will be proceeded against.

By virtue of this verdict, a major source of abuse of power by the police at the behest of the political government is nearing elimination. The government or the law ministry must now send follow-up instructions to the police and other relevant agencies to implement the directives of the High Court.

Cutting red-tape at the port

Capacity building could prove crucial

ALTHOUGH taken belatedly, we welcome the cabinet sub-committee decision to drastically cut down on bureaucratic procedures to quicken export of goods. That the process could be accelerated so much as to be shortened from seven days to three hours raises a question: why was it not attempted before? Needless to say, the port users would be happy for the government's determination to untangle the export formalities.

But setting a time-limit to completion of formalities might not be enough, the important logistical aspects have to be taken care of. First of all, it's not just the paperwork that is responsible for the delay in loading and unloading of goods. Port users had complained of the labourers' refusal to work at the drop of a hat that made things difficult at the jetties. They demanded private handling as a way out of the occasional crisis. The trade unions quite expectedly opposed this and the port authority seemed to have agreed with them.

Things had not gone too well with the Chittagong Port. Many reasons could be ascribed for that, but to be on the competitive edge, the authorities would have to take firm steps to make the port more efficient than it is today. We can't ignore the fact that the world market has become extremely aggressive and demanding where efficiency and productivity are the only clinchers. We hope the cut-back on red-tape would be the beginning of a bigger and better change with the authorities placing a greater emphasis on the physical roadblocks in the way of a smooth running of the country's premier port.

The post Iraq-war world



M ABDUL HAFIZ

THE collapse of Soviet Union and with it the end of a bipolar world did not necessarily put in place a unipolar world although an increasingly global primacy of the United States remained uninterrupted and inexorable. What we however witnessed since the end of the cold war was contradiction between unchallenged US' power viewed by the 'neorealists' only as a transitory 'unipolar moment' and a formal multipolar structure of various institutions, notably the United Nations. The intense diplomatic wrangling surrounding the question of Iraq and subsequently the Anglo American invasion of it marked the demise of that ambiguous post cold war world.

The fall of Baghdad and with it the regime of president Saddam Hussein has now heralded the advent of an yet another world order the contours of which are already formed in Iraq's battlefields by the jarring effect of a sparking new techno-blitzkrieg never experienced before. Even if French President Chirac and his redoubtable

foreign minister tried earlier to create counterweight to US' supremacy on the floor of the United Nations with great acumen and breathtaking success it failed to bend American leadership that remained, to the formers' surprise, unfazed. Notwithstanding an antiwar global public opinion -- dubbed a 'another superpower' by *New York Times* the French idea of a 'soft' balancing had few takers. At the end what prevailed was an enduring

is only expected that the US would press head with her selective pre-emptions. According to Richard Pearle, 'the hawkish adviser to the Pentagon' the US will have to fight 'many wars' to reorder the world according to its preferences (the *Economist*).

The next American target may as well be the United Nations -- the only visible symbol of mutilateralism. The US

power lest it should create a new monster for the world to contend with. The concerns on this count is nowhere greater than what it is in the Arab world. The bruised Arab psyche over the cruelties perpetrated by the coalition's incessant bombing raids on Iraqi cities bringing in its wake untold human sufferings has already produced an anger that can explode into a prairie fire engulfing whole region in its flame. In this milieu the US' civil-

only deeply divided with conflicting aspirations but, according to a US career diplomat who dealt with them for years, they 'reek of corruption and talk nonsense'. Neither do they have any link with the Iraqis for decades. The Iraqi National Congress (INC), the umbrella organisation that speaks for eighty political groupings, is unknown to the people of Iraq. Ahmed Chalabi, a scion of royal family that was overthrown in 1958, is a convict for

in disgust, called the place 'unmanageable'.

Indeed the ethnic and religious strands that make up Iraq never came as close to a national cohesion as they did under Saddam Hussein. That delicate ethno-religious and sectarian balance painstakingly crafted by Saddam is now in shreds. An Iraqi identity -- after remaining under alien subjugation from the Greeks to Ottoman had, in fact, been Saddam's creation. Can they be remade either by the Americans on their puppet government? Can an Arab anxiety over their future, honour and security be placated by self-profession of piety and righteousness with the label of 'liberator' tagged to their predatory invasion? The road to US' victory in Iraq is paved with wanton destruction leading to the country's perdition. Can the deep wound inflicted on the country and its people be healed so easily? The coalition forces' inaction if not abatement in the plunder and destruction of Iraq's priceless archeological treasures is at once cynical and sadistic. The mankind is robbed of its heritage -- that are at places seven thousand years old.

In fact, the world that is now suffering its birth pangs on the battle field of Iraq is likely to be a world shaped foremost by American leadership and American power. It will witness the growth of new sets of paradoxes, clash of values and inevitably new conflicts. The course of history in a country or a region is essentially pushed by its own indigenous total dynamics -- a fact sadly ignored by the invaders in Iraq.

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PERSPECTIVES

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force of Pan Americana.

It is another matter whether the US would finally succeed in its gameplan in the Middle East -- albeit in its imperial drive across the world to establish its absolute hegemony, but for the moment its Iraq venture is crowned with total success -- no matter how the events there may unfold in the future. The US has attained most of the objectives it set for the invasion of Iraq -- from the regime change and having control over the oil fields to browbeating Israel's opponents and brightening up the prospects for Bush's re-election in 2004. For the rest of the world the message is loud and clear: conform to and comply with American diktat. With the incentive of Iraq enterprise, it

is loathe to the 'tyranny of the majority' in the UN and Richard Pearle has chillingly asked "if UN is better able to confer legitimacy than, say, a coalition of liberal democracies." The US may not press for shutting down the UN just now but will want it reformed with sweeping changes especially in the Security Council. The guillotine is ready for France while India, the world's largest democracy, is lobbying hard to gatercrash into the Council. After a wave of 'shock and awe' for the Iraqis unipolarism is, by all appearance, in place even if the world was passing only through 'unipolar moment' till then.

There is a growing uneasiness about a display of overwhelming American

ising mission in an oriental country -- a long standing 'while man's burden' -- will be far from easy. The Americans are not likely to engage themselves in the hard issues of their mission. They did not do it anywhere they had gone -- the most recent instance being Afghanistan where they installed a puppet government to serve their interests with reconstruction, rehabilitation and restoration of order taking a backseat. The country has slid to pre-Taliban anarchy and chaos.

In Iraq they seem to be stumbling even at the outset and finding themselves unable to craft a post-Saddam dispensation. An assorted lot of Iraqi opposition in exile on whom the Americans pinned their hope are not

embellishment and controversial politically. Apart from receiving money from US' exchequer most of them also have regional sponsor to support them. Unable to agree, Saddam still remains everybody's second choice. To many of them Saddam was the best of a bad lot.

During the mandatory British rule after the first world war, the Britons found it uphill to cobble together a pliant dispensation to look after their interest after they left the rich and strategically important country and in anger they imposed on Iraq a monarchy when its people cried for democracy. In sharp response the people's uprising was instant and had to be quelled with harsh method. Churchill,

Of lies, trickery and deception Controversy over LFO

US losing the political war



PRAFUL BIDWAI
writes from New Delhi

AS we absorb images from Iraq beyond the war's first month--including the killing and maiming of civilians, the looting and chaos, eruptions of resistance to the Anglo American troops and their imperious conduct--the aggression's real costs are unfolding. As is the truth about the "celebrations" on Day 21 from Baghdad's Firdos Square, when an enthusiastic crowd was repeatedly shown welcoming the occupation, and toppling a statue of the now-vanished President Saddam Hussein.

It turns out that the event was stage-managed (www.informationclearinghouse.info). The TV pictures "showed" Iraqis trampling on a bronze statue of Mr Hussein--which commentators compared to the Berlin Wall's fall (1989).

But the first photograph on the above website is a wide-angle shot encompassing the entire Square, not a closely cropped frame. It shows the "crowd" at only a few dozen, and the squares surrounded by Abrams tanks.

Firdos Square is across the street from the Palestine Hotel, where journalists in Baghdad were located--a fact that was "either splendid luck or brilliant planning" by the military. The stage-managing Iraqis were supporters of Pentagon favourite Ahmed Chalabi.

This is the latest in the deception, trickery and lies with which the US-UK have tried to rationalise an unjust and illegal war. Even chief UN weapons inspector Hans Blix says the war was planned "long in advance"; the US and UK "are not primarily concerned" with finding weapons of mass destruction (WMD), the threat from which "could have been contained by inspections".

Worse, says Mr Blix, the war is sending out "wrong signals," like those North Korea has picked up: if you don't have WMD, but "let in the inspectors, ... you get attacked!"

Where does that leave the war's stated objectives: disarm Iraq of WMD, and "liberate" it by destroying Mr Hussein's regime and establishing "democracy"? The first *hasn't* happened. A month on, no WMD have been found.

Secondly, the US hasn't yet defeated or captured Mr Hussein; it has merely sacked him from a job he was given as

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its client. The CIA recruited him in 1959 to assassinate Abd al-Karim Qasim, who had overthrown the monarchy. He received full-fledged US support when he usurped power in 1979 and invaded Iran the next year. (For details, *United Press International*, Iraq exclusive, April 10).

Iraqi "democracy" remains a long way away as the war becomes more vicious. Ordinary Iraqis now accuse the invaders of being only interested in oil, not people.

A historic disgrace is the pillage of the National Museum, said to be the Middle East's most precious, with 170,000 treasures, some of them 7,000 years old. This destruction of a *priceless heritage of humanity* is a graver crime than the Taliban's razing of the Bamiyan Buddhas. The US allowed it to happen. (Indeed, US soldiers also indulged in looting.)

Amidst this comes the surrender of Gen Amer Hammoudi al-Saadi, the Iraqi president's top scientific adviser. He knows the truth about Iraq's WMD programme. He told German television that Iraq has no WMD: "I ... have always told the truth about these old programmes, and only the truth. You will see, the future will show it, and nothing else will come out..."

This confirms the assessment that Iraq has no nuclear weapons (as the IAEA has repeatedly concluded), nor deliverable, stable, biological and chemical weapons.

However, what about the view that if Iraq had powerful WMD, the US wouldn't have attacked it? This holds that WMD are India's and Pakistan's sole assurance against being targeted by the US. Their nuclear weapons are instrument of "national defence" against Empire.

Doesn't North Korea, which has "successfully defied" the US with its "nuclear hardball" tactics, confirm this?

This argument is unsound. North Korea has no nuclear weapons, only nuclear spent fuel. It is threatening to restart a reactor closed under a 1994 agreement with the US--in a reckless attempt to extract a bargain. But it's months away from a first-generation nuclear weapon.

It is Pyongyang's *conventional weapons* that worry the US: they can

strike 30,000-plus American troops and also target lakhs of civilians of key allies, Japan and South Korea. Washington is currently preoccupied with Iraq. But it's not hard to construct a scenario in which it coercively "takes out" suspected N. Korean WMD.

In Iraq, the mere possession of WMD by Baghdad wouldn't have caused, nor prevented, this war. No single weapon influences such decisions totally.

Thus, the US's nuclear weapons didn't prevent China from entering the Korean War in 1950. Non-nuclear Vietnam gave nuclear China a bloody nose in 1979. Argentina wasn't deterred from fighting nuclear Britain in the Falklands in the 1980s.

What would make a *big difference* is if an adversary has an *assured* means of delivering WMD. Iraq did not.

This is true of India and Pakistan too. Even China has at most a handful of missiles that can reach continental America--never mind their accuracy. These countries are just not in the "deter-America" league.

To imagine that mere WMD possession by Iraq could have averted war is to delude oneself. It's also to misunderstand WMD. They are instruments of mass annihilation, not defence. They aren't "anti-imperialist", but cause indiscriminate destruction.

It is unforgivable to legitimise WMD and undermine the strong case for *universal* disarmament, no matter who possesses the weapons. In 1996, the International Court of Justice, the highest global authority on international law, held nuclear weapons possession illegal, and declared that *all* states are legally obliged to abolish them.

The present war is being waged *hypocritically*--in the name of WMD disarmament by states which haven't the least intention of disarming their WMD. To fight these double standards we need a single yardstick: universal, global WMD abolition.

India and Pakistan would be desperately ill-advised to imitate the US/UK or conduct fresh nuclear/ missile tests, as they plan to do, according to trade journal *Nuclear Fuel*. That way lies self-destruction.

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Political stability not in sight



M.J. ZAHEDI

THE Pakistan government is currently faced with a controversy over the Legal Framework Order. The LFO is a package of constitutional amendments introduced by the previous military regime in August 2002, which effectively institutionalised the military's role in the government of Pakistan and reduced executive powers of the prime minister. The opposition parties, led by the Muttahida Majlis-e-Amal (MMA) and the Pakistan People's Party Parliamentarians (PPPP) are against the LFO. They challenge its legality and constitutionality in parliament. A prolonged impasse could hamper the Pakistan government's law making ability.

A cursory view of the new parliament and the presence of previously tainted politicians must convince many that Pervez Musharraf has still not fulfilled his pledge of delivering a sham-free democracy. Political manoeuvrings of the past year has remained unsuccessful. Pakistan remains short of taking the first tangible steps towards a thriving and tangible democratic order; it is clear that the political manoeuvrings of the past year have only left the country worse off.

Pakistan's new breed of ruling politicians and charges of horse-trading and controversy surrounding role of the proverbial angels in cobbling together a new ruling coalition only convinces many that a stable government is yet to arrive.

While the new parliament has been formed, the opposition parties continue to cry foul in clamouring for the all too divisive issues surrounding the so-called LFO. The charges and counter-charges which flew across during the last session of the parliament best illustrated the extent to which newly-elected politicians are now probing around for opportunities to break the shackles of political constraints. While Pakistan politicians offer little encouragement to emerge as the ideal alternative to a military regime, their agitation on the LFO issue offers an insight into a deepening political challenge faced by the country. For now such rancour continues without much attention in the streets of Pakistan, where large

LETTER FROM KARACHI

General Musharraf has to make certain that Pakistan remains clear of the prospect of a political deadlock which risks undermining the country's newly emerging politics and its emerging economic prospects. So far there has been little to suggest that Pakistan is embarking on the road to political stability by virtue of a new path laid out for its future.

segments of public opinion remain disillusioned with politics.

But it would be naive for ruling politicians to become complacent in believing that the opposition's agitation would go down without any consequence. As opposition politicians are now braced for the current session of the parliament, another opportunity to press the government hard on the LFO issue, it is clear that Pakistan's future outlook is bound to suffer heavily in at least three ways, with relations between the ruling regime and the opposition becoming intensely bitter over a new constitutional arrangement.

First, a series of bitter and acrimonious exchanges within the parliament promise to carry both a powerful and symbolic message. At the same time it will also give credence to the view that the country is indeed heading towards a deadlock. Symbolically, the opposition is unlikely to be cowed down by the mere view that anti-government politicians who chose to contest elections must now also conform.

Second, the controversy surrounding the LFO is just one in a list of events that have almost sounded the death knell for finally marking a long awaited transition to the best ideals of democracy. When General Musharraf took over in October 1969, he was widely welcomed across Pakistan amid expectations of the beginning of a long awaited clean up. Amid the many expectations attached to the post-coup environment, one was that of taking Pakistan towards a settlement of its centre-provincial discord.

While General Musharraf, to his credit, has promised Pakistan's smaller provinces their due right, his ability to do so must ultimately rest on the quality of the new constitutional arrangement. While there is no immediate basis to be anxious about centre-provincial relations, the security of Pakistan's future remains dependent on the amicable settlement of all outstanding constitutional issues. A clear danger remains the prospect of such arrangement being thrown to question time and again with accom-

panying danger of creating centre-provincial discord.

While General Musharraf, to his credit, has time and again promised Pakistan's smaller provinces their due

rights, his ability to do so must ultimately deal with the quality of the new constitutional arrangement. While there is no immediate basis to be anxious about centre-provincial relations, the security of Pakistan's future remains dependent on the extent of an amicable settlement of all outstanding constitutional issues. A clear danger remains the prospect of such arrangements being thrown to question time and again with the accompanying danger of creating frequent discords. The political uncertainty which is bound to emerge from unsettled constitutional affairs including the LFO question must have unwelcome consequences for a

number of issues outside the parliament. The country's future as a nation-state and its prospects for reforms in a number of areas including a long overdue overhaul of its institutions tied to the economy are bound to suffer, in the midst of continuing political uncertainty.

For General Musharraf, there are clearly two competing choices. He can either remain committed to

his apparent ambition of denying space to elected politicians and dominating all vital political decisions, with the sole objective of further consolidating his already unassailable political position. Alternatively he can choose to move towards a dialogue with the mainstream political players, in carrying out a new roadmap for Pakistan. In the end, General Musharraf has to make certain that Pakistan remains clear of the prospect of a political deadlock which risks undermining the country's newly emerging politics and its emerging economic prospects. So far there has been little to suggest that Pakistan is embarking on the road to political stability by virtue of a new path laid out for its future.

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Role of Secretary General and credibility of UN

MOHAMMAD AMJAD HOSSAIN

IN San Francisco, the Charter of the United Nations was signed on 26 June 1945 to establish the world body 'to save succeeding generations from the scourge of war, which twice has brought untold sorrow to mankind'. The war against Iraq without the mandate of the world body has been waged by the United States in whose soil the charter was adopted. In this twenty-first century this uneven and unjust war is a slur on human civilisation. No sensible human being could perceive such war, which has no cause or reason whatsoever. It is equally distressing to note that no world leader came out with out right condemnation note.

Against the backdrop of this barbaric war the role being played by Secretary General of the United Nations is questionable. The role of the Secretary General has clearly been stipulated in chapter XV of the charter. Following invasion by coalition forces led by the United States the situation in Iraq poses a serious threat to international peace and security. Therefore, it would have been prudent on the part of the Secretary General to bring to the attention of the Security Council the situation in Iraq as per article 99. Secretary General did not act in the manner he is entitled to by the charter when war broke out on 20 March. Kofi Annan has been selected for second term from African continent at the blessings of the United States. That too at the cost of a candidate from Asian continent; it was Asian term at the time.

It is really a shame that Kofi Annan did not exercise his authority as Secretary General to condemn the war when it broke out without the backing of the Security Council, except only saying that it was a bad day for the United Nations. Instead of condemning it outright he is reported to have said that "legitimacy of the war will be questioned". This sort of statement does not imply the importance and weight of the world body that he represents.

Article 100 specially indicates that Secretary General should not seek or receive instructions from any government or any other authority external to the organisation. It would be pertinent to draw attention of the readers to the fact that on instructions from the United States, Secretary General began withdrawing UN officials and weapons

inspectors working in Iraq as per resolution 1411 of the Security Council. Generally the question arises under what circumstances Secretary General acted to call back UN inspectors from Iraq when majority members of the Security Council insisted on allowing more time to them to complete their assignment on the requests of the Chief Inspector Hans Blix and Director General International Atomic Energy Agency El Baradei. This remains a mystery in the minds of observers, who

are watching developments in the Security Council on the issue of Iraq. In 1991, the Security Council set up the United Nations Iraq-Kuwait Observer Mission on 9 April to monitor a 200-kilometre demilitarised zone between the two countries after 1991 Gulf War. Before the deadline of 17 March 2003 set by the President of the United States for disarming Iraqi regime was over, the Secretary General withdrew the observers without the mandate of the Security Council. This shows disregard

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to the organisation, which the Secretary General represents, and also is tantamount to the violation of article 100 of the Charter.

As of now we have seen six Secretary Generals of the United Nations since its establishment. The first Secretary General was Trygve Lie of Norway, who held the position from 1946 to 1953. He was succeeded by Dag Hammarskjold of Sweden and remained in this position till his death in 1961. U Thant of Burma served two terms till December 1971. His successor, Dr Kurt Waldheim, an Austrian, also served two terms. Javier Perez de Cuellar, a Peruvian, served two terms beginning in 1982. The incumbent Secretary General Kofi Annan of Ghana assumed this position after Boutros Boutros Ghali of Egypt, who joined in 1992 and served one

term only. He was willing to serve second term but the United States thought otherwise.

Not all but a few Secretary Generals like Trygve Lie, Dag Hammarskjold and even U Thant had made indelible marks in upholding the spirit of the charter of the United Nations with regard to maintenance of international peace and security. Personality, imagination, sagacity, dynamism are the overriding elements on which success of the Secretary General depends. For example, Secretary General Lie had problems with both the United States and Soviet Union but he cared less in carrying out his assignment and he finally resigned in 1953 holding the position high in the eyes of the world community. Dag Hammarskjold's style of operation as Secretary General

earned him respect and honour in spite of differences of opinion with the super powers.

Article 99 of the charter empowers the Secretary General to act unbiasedly and ungrudgingly in the interest of international peace and security. In other words, Secretary General is the eye and ear of the world body that should act in responsible manner as the world community elects him. None of his actions should be construed as favouring any particular country. In that case the purpose of his (Kofi Annan's) presence as Secretary General is defeated and brings disgrace to the world body. In the light of his inaction the world body has lost its credibility.

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