LATE S. M. ALI

DHAKA TUESDAY MAY 6, 2003

Confirmation of judges

CJ's recommendations should be treated as final

THE High Court Division's ruling on the nonconfirmation of additional judges following writs filed by them has provided food for thought on the broader issue of independence of the judiciary. The HC bench has asked the government to explain why the denial of confirmation to the judges should not be

As the legal process takes its course, let's confine ourselves to the principle of the separation of the judiciary from the executive which is enshrined in the Eighth Amendment as the fundamental pillar of the Constitution. This is a matter we have never tired of bringing up out of our concern for a system of check and balance encompassing the executive, judicial and legislative organs of the state.

The non-confirmation of the additional judges in spite of the Chief Justice's recommendations shockingly reawakens us to the degree to which even the highest judiciary is rendered dependent on the executive. On being satisfied with the performance of judges, the CJ who is in the best position to judge their competence recommend them for confirmation. But it seems even that semblance of authority vested in the CJ is being set

To say that the government is not bound to consult the Chief Justice over appointment of judges in terms of the Fourth Amendment is tantamount to placing a technicality above democratic propriety, healthy convention and the inner spirit of the Constitution. Why not basically go by the letter and spirit of the Eighth Amendment to the Constitution that upholds the fundamental principle of judiciary being separated from the executive? In 1994 there was an instance of CJ's recommendations for some judicial appointments having initially gone unheeded but then subsequently the then BNP government changed the decision at the request of some senior lawyers. So, insofar as appointments to the highest judiciary go, there is a healthy precedent and a continuing tradition to follow. Any break with it will only set a negative

But we would like the mandatory nature of the CJ's recommendations to be restored to the Constitution.

If an amendment is needed to bring about the change

As that restoration process gets underway, we urge the government to respect the convention of abiding by CJ's recommendations for appointments or confirmations as a proof of its commitment to separation of the judiciary from the executive.

New coach for our cricket team

Let him do his job

HE news of bringing a high-profile coach for the national cricket team is somewhat consoling after the heart-break suffered through the disappointing performances at the international level. Especially, against South Africa on the home ground, the inconsistency of our display was most glaring. Some flashes were noticed, but they remained just that flashes in the pan. Hopefully, the new coach would be able to infuse the much-needed confidence and winner-like tenacity into their play. Though this time around, the players performed much better than they had done in the World Cup. But in the end, like everyone else, we were also left wondering why the players simply couldn't deliver on the pitch.

The manner in which Bangladesh has been loosing matches would easily inspire the distracters to question Bangladesh's eligibility as a Test playing nation. But all is not lost as yet. The new coach, Dav Whatmore who will take over the national team before Bangladesh's next series against Australia in July can surely bring a ray of hope for us. Firstly, Mr. Whatmore was the coach for the Sri Lankan team when they won the World Cup in 1996. Secondly, we are not expecting a radical change in terms of performance, but there is no harm in hoping against hope that the players would at last show some commitment to the game. But we have to remember that to achieve the goal, we would have to allow the coach to work freely and independently. He should be provided with all the facilities needed to encourage and promote cricket in a way so that young players could also be honed and trained for the future.

We already have had a bad experience with another internationally acclaimed player and coach, Gordon Greenidge. He was also brought with lots of hope but had to leave in the most disrespectful manner. There were clear signs of differences of opinion between him and Bangladesh Cricket Board (BCB) regarding the way he wanted to do his job. We hope BCB will be more cautious this time around to avoid similar scenes with Whatmore. Otherwise the future of our cricket will remain as bleak as it is now. And that will be very very unfortunate to say the

Does America have legal rights to try Iraqi officials?



HARUN UR RASHID

HE US Central Command circulated to the US armed forces a list of 55 "most wanted men" in Iraq to capture or kill them. It is widely reported in the media that the US would put the captured Iragi senior officials on trial for war crimes and crimes against humanity. The US claims that these officials constituted the core of the oppressive regime in Iraq and they were directly or indirectly responsible for the commission of horrendous crimes including the use of deadly chemical weapons killing Kurd population in Halabja in northern

There is no doubt that the former Saddam Hussein regime had allegedly committed terrible crimes against his own people and those responsible should not certainly go unpunished. In the days of international concern with human rights, it is now acknowledged that sovereignty is not absolute and is limited by international law. Even the strongest supporters of state sovereignty appear to reconcile with the fact that the days of unrestricted exercise of sovereignty is over

This new international public policy imposes an obligation to treat human beings with dignity. A government official, however so high, who commits or is responsible for crimes against humanity should be held accountable under international law. That explains, at least at a legal level, the refusal to accept Chile's sovereign immunity for President Pinochet or Serbia's sovereign immunity of President Slobodan Milosevic over atrocities

Furthermore, individuals cannot escape from accountability under international law. The days of claiming defence of "superior orders" ("so-called Yamashita principle) cannot be invoked as it Military Tribunals in Nuremberg and Tokyo while German and Japanese war leaders of the Second World War faced charges of war crimes and crimes against humanity. Many of them were convicted by the International Military Tribunals and hanged. The Nuremberg Tribunal laid down clearly the accountability of individuals and stated that " Crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be

There are a variety of institu-tions and supervisory systems established to ensure that those who commit or are responsible for international crimes are accountable. The most appropriate one is

against humanity (killing people en masse). The principles of the Nuremberg Tribunal were affirmed and incorporated into international law by the UN General Assembly in a resolution in December 1946 and in the 1948 Genocide Convention.

In the light of the above background, the question is: Can the US put detained Iraqi officials on trial? The short answer is No. The arguments are canvassed below:

First, the International Criminal

International Criminal Court if the accused is a citizen of a state that ratified the Statute or if the crime is committed in a country that ratified the Statute. None is applicable to Iraqi nationals. This being the case, no Iraqi official can be put on trial before the International Criminal Court. The only exception is in the case of crimes that are so horrific that the UN Security Council decides to put suspected individuals on trial before the International Criminal Court. This means that the US will have to refer the matter

sor state, forfeits the right to put on trial any Iraqi official before any international tribunal or domestic tribunal in the US. Rather there is a under international law against US leaders and military commanders who are responsible for crimes against peace and war crimes. By waging unprovoked war on Iraq, the US has destabilised interna tional peace and security and committed crimes against peace. Furthermore, war weapons used in Iraq were not only disproportion-

ate to the threat warranted but also

did not distinguish between com-

batants and civilians resulting into

deaths of thousands of civilians

including women and children.

This indiscriminate use of weap-

ons constitutes war crimes under

the 1949 Fourth Geneva Conven-

Fifth, with regard to Halabja

massacre, the US could be accused

of indirectly responsible for such

atrocities because it continued to

sell to the former Saddam regime

the ingredients of chemical weap-

ons for another 20 months after the

Halabia occurrence. Furthermore

in February, 1989 the US Assistant

Secretary of State John Kelly flew to

Baghdad and met with former

President Saddam Hussein and

categorised him as a "moderate

leader" in the region and sought

impose any control on acts of inflicting "cultural genocide" in Iraq. The US is accused of relinquishing legal responsibility of an occupying power despite the massive presence of US forces with ethal weapons in Iraq. This inaction is a serious violation of the provisions of the 1949 Geneva onvention.

For all these grounds, no country, least of all the US, has the authority or competence to put Iraqi officials, now held under custody, on trial before any international or domestic tribunal. On the other hand there is a strong case for laying criminal charges under international law against US leaders and military commanders for waging bloodlust in Iraq.

It is reported that a Genevabased private group has already filed charges in Switzerland against the leaders of the US and Britain on behalf of Iraqi nationals whose members of family had been victims of war in Iraq. In Belgium, a case has been lodged against the Military Commander of the Anglo-American alliance Tommy Franks on the ground that 19 civilians were killed on March 20, the day of the commencement of war.

Realising the legal loopholes, in recent days US Defence Secretary Donald Řumsfeld reportedly tolď that US government lawyers had not decided whether any senior Iraqi official being held would face criminal charges. He however kept option for Iraqi courts saying that some could be tried in US, international or Iraqi courts, although a US venue was "not our first choice".

Who has the right?

Individuals who had committed, or responsible for, crimes during the former Saddam Hussein egime should not go unpunished. It is the Iraqi national courts, estab-lished under proper law, that will have jurisdiction to try them in public. The legitimacy of national laws will depend on in the make-up of the elected legislative body representing all ethnic and religious groups in Iraq and secondly on whether laws have been enacted taking account of internationally recognised norms of human rights. This implies that a broad-based democratic government in Iraq will have the right to put them on trial for alleged crimes under procedures established by law. The trial must be free, open and fair and accused persons must have adequate legal representation to defend themselves during trial.

Barrister Harun ur Rashid is a former Bangladesh Ambassador to the UN, Geneva.

BOTTOM LINE

No country, least of all the US, has the authority or competence to put Iraqi officials, now held under custody, on trial before any international or domestic tribunal. On the other hand there is a strong case for laying criminal charges under international law against US leaders and military commanders for waging bloodlust in Iraq. ..Realising the legal loopholes, in recent days US Defence Secretary Donald Rumsfeld reportedly told that US government lawyers had not decided whether any senior Iraqi official being held would face criminal charges.

the Permanent International Criminal Court, based in The Hague (Netherlands). All the 18 udges have been appointed ncluding an independent prosecutor. The Court is now ready to hear any case that falls within its jurisdiction under the 1998 Statute

Before I discuss the main question as to the legality or otherwise of the claim of the US to put Iraqi officials on trial, let me briefly describe what constitute crimes against peace, war crimes and crimes against humanity.

Aggression against a state is a crime against peace. It is contrary to the UN Charter and international law. Aggression constitutes a serious breach of the 1970 UN Declaration of Principles of International Law Concerning Friendly Relations and Cooperation Among States and the 1982 UN Declaration on the Peaceful Settlement of International Disputes.

Although war constitutes a defeat for humanity, there are laws how to conduct wars to minimise human suffering. The Fourth 1949 Geneva Conventions and the 1977 Protocols have set rules in conducting warfare. One of the rules is that during wars the amount of force must be proportional to the threat being faced. For instance sledgehammers should not be used to crack chestnuts. Secondly, weapons deployed during wars must distinguish between combatants and non-combatants (civilians). If any state violates these rules it commits war crimes.

The International Military Tribunal at Nuremberg (1946) specified another crime, i.e. crimes

Court was set up in accordance with the 1998 Statute of Rome to which 122 states including Bangladesh have signed and more than 65 states have ratified. The US withdrew from it and by withdrawing its signature from the Statute of Rome, the US has ceased to have any legal and moral right to initiate any prosecution of any Iraqi offi-cials for crimes and humanity before the Court. The Bush admin istration withdrew from it on the ground that its citizen should not submit to the jurisdiction of the Court. If a US citizen cannot be tried in the International Criminal Court, likewise no Iraqi citizen should stand trial before the Court.

Second, under the Statute of Rome, a trial can be held before the

Third, the US waged war on Iraq without UN authority. The UN Charter made it very clear that war is outlawed except in the case of an attack or imminent attack. Iraq did not attack the US and therefore by all canons of international law, the US had no right to launch an attack The US is a foundermember of the UN and signed the Charter which is a multilateral treaty and under Article 2 (2) of the Charter the US must fulfil in good faith the obligations in accordance with the Charter. The US has been in clear material breach of the UN

to the Security Council for a suit-

able decision.

Charter and thus it became an



cooperation in resolving the Israeli-Palestine conflict. Sixth, another fact that merits attention is that the US used chemical weapons (napalm and phosphorus) in the Vietnam wars in the 60s and 70s and Vietnamese people have been suffering until this day. Has any US leader or military personnel been put on trial and convicted for such barbaric crimes? Did Henry Kissinger who had a special degree of responsibility in Vietnam war face any trial? In a book titled " The Trial of Henry Kissinger" (2001) noted US journalist Christopher Hitchens

Finally, the US as an occupying power in Iraq has been grossly negligent in restraining looters who ransacked the historic Bagh-

'war criminal'

unmasked Henry Kissinger as a

Changing times



IKRAM SEHGAL writes from Karachi

AKISTAN'S constitutional crisis will soon come to a head, in the meantime no business will be transacted in the houses of Parliament, which is about par for the democratic course anyway. An 11-member Committee comprising both Coalition and Opposition representatives (five members each) was due to assemble to sort out the LFO impasse. Very coincidentally, there were dramatic developments because Vajpavee's sudden offer on talks on all issues including Kashmir, whether the India-Pakistan de-freeze goes any distance is still a matter of conjecture that depends upon the prevailing mood of India's Parliament, they are enough mixed signals going around to confuse even the most adroit and knowledgeable of analysts. While fully engaged in domestic and external issues, what are the primary lessons we have learnt from Iraq i.e. if we have

learnt any lessons at all? The first lesson must be that things are not what they seem to be, that perception must not obscure actual facts. The Coalition vent to war, ostensibly to (1) emasculate Iraq's capacity to wage war using its suspected cache of "Weapons of Mass Destruction" (WMDs) (2) to effect regime change

and (3) to destroy a perceived nexus between WMDs and international terrorism. Most Muslims, and primarily Arabs, felt that these objectives were simply camouflage meant to hide the Coalitions real aims i.e. (1) seize Iraq's rich resources of oil wealth and (2) establish a long-term presence in Iraq that would facilitate dominance of the oil-rich region. The Coalition felt that the "liberation of Iraq" would cause a spontaneous outpouring of gratitude in the streets, on the other hand the Arabs hoped that the Iraqis would keep

would be usable and that not even one stretch of road would be mined. The war can be labeled as one of "shock and stealth", right upto capturing Baghdad without a fight, far earlier than expected. With very few US troops available for policing, the resultant looting was been catastrophic for Iraqi society. In retrospect it is a good thing that the much promised Iraqi warfare remained a figment of imagination, the ensuing destruction would have been meaningless in relation to the end result.

the resultant low-tech war would have tied the invading forces for weeks. The Coalition Command well knew that Iraq's military was abstaining from the fight, from the evidence at hand even the Republican Guard formations were in no mood to die for Saddam Hussein.

The second major lesson is also cannot give you air parity, then armour and artillery assets must be well dispersed and constantly on the move. Because of enhanced electronic warfare capability

held surface-to-air weapons, it is the modern face of warfare to counter high-tech capabilities. After all what is the "Humvee" but a US military version of the "Techni-Someone in Pakistan's military

four/five-man crew alongwith

anti-tank mines and even hand-

ing of raising permanent units like "Long Range Desert Group" (LRDG) that the Britsh used in the Western Desert in World War II. And while one is at it why not have mate, are usually found wanting. It other on any number of issues, on

AS I SEE IT

Iraq may have lost the battle for Baghdad, but despite the doomsday scenario the constant refrain from all factions, except perhaps some elements among the Kurds, is that Iraq must remain one, Iraq for the Iraqis, all Iraqis for one Iraq. And as much as various groups are jockeying for position, almost every one has that single chant, US forces should leave Iraq as soon as possible. For a country that has seen over three decades of autocratic, sadistic dictatorship, the citizens are surprisingly quite conscious (and vocal) about their nationhood.

fighting a guerilla war long after actual combat operations were over, they did not expect the war to end so suddenly. Both assumptions were proved incorrect.

The Coalition's pronounced successful strategy was a high-tech "shock and awe" cataclysmic strike followed by a blitzkrieg cutting through the Iraqi Army like knife through butter, the blitzkrieg did happen but only against token resistance, most of the fighting was done by individual units and stray Fedayeen groupings. It is now clear that commanders up the line had been bought over by a combination of fear and the green of US Dollars, Tommy Franks may be clairvoyant but even he could not know that all highways and bridges

Having won the war in the "fastest movement in history", to quote US Defence Secretary, Donald Rumsfeld, one hopes that military analysts will not come to the wrong conclusions about how to conduc future operations. In military terms Mr Rumsfeld just got away by the skin of his teeth from a military disaster, if Iraq's regular army had shown even an iota of willingness to fight, Rumsfeld's grand hightech strategy would have been in tatters. Leaving such a long and vulnerable Lines of Communica tion (L of C) was potentially disastrous militarily, had the resistance been organised around numerous but well dispersed small sub-units that gave "soft targets" to blunt the high-tech Coalition air capability,

communications must be decentralised down from the formation to the unit/sub-unit level, commanders down the line must be trained to fight individual battles and not keep waiting for orders. In fact armoured vehicles (what known armour can deflect the present missile-penetration capability?) can be a huge disadvantage in the present military circumstances. The modern fighting vehicle should be four-wheel drives like Pick-up. The Somalis showed the way in the early 1990s by arming these with heavy machine guns and carrying antitank rocket propelled grenade (RPG) launchers, the "Technical" became a lethal and very mobile armed functionary. Carrying a at least two sniper rifles per infantry section i.e. 6 to a platoon, 18 to a infantry battalion?

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That is a tremendous lesson for all Pakistanis, many of whom give lipservice to "Pakistan First" but when required to give their ultiis for the Pakistani media to pick up this refrain. God knows we need the strength of unity as one, single sovereign entity now more than before. We may disagree with each the concept of nationhood there is no ambiguity and no dissent. Pakistan's economy has shown

first, everything else afterwards

definite signs of stability and improvement, a cause effect of good economic governance practiced over the past half a dozen years, but most forcefully during the last three of military rule. The emphasis on development of Gwadar and ancillary facilities, etc is brilliant, this will keep the construction industry humming. Emphasis is also rightly being put on agriculture finance, housing finance and consumer lending with special emphasis on auto and motorcycle finance. If credit disbursement (and repayment thereof) can be closely monitored, he economic cycle will forcemultiply into an economic boon What we do need is careful management selection in keeping with the industry and service requirement, we cannot afford passengers. People should not be chosen only on the basis of lovalty to the individual but on merit based on times this may not matter, in a crunch the whole edifice may come crumbling down as it has in Iraq Iraq had the sustenance of oil wealth to fall back upon, we must strength where it matters most, by successfully exploiting the merit of

Ikram Sehgal, a former Major of Pakistan Army, is a political analyst and columnist.

TO THE EDITOR TO

Letters will only be considered if they carry the writer's full name, address and telephone number (if any). The identity of the writers will be protected. Letters must be limited to 300 words. All letters will be subject to editing.

The sufferings of the children

The war in Iraq cost lives of so many civilians, and among them was the brutal killing of the many children. It hurts to see children dying for no reason at all. Moreover, there are many who have been made crippled and have become a burden of their family.

This all the more pathetic. Why do the children suffer? Mr. Bush, you have children in your country and you talk about child's rights all the time. Then why don' you treat all the children equally? Spare the children of your politics

President Bush, you might have won the war, which means you have become the sole owner or Iraqi oil but will you take charge of those children who lost their parents or can you condole those who lost their dear ones and have become crippled for life?

Sunbeams school, Dhaka.

The PM and the French Minister

It's with surprise and sorrow that

failure to meet the visiting French State Minister for Foreign Affairs. It only reflected how badly our foreign affairs are being conducted.

In fact, it has been a case of grotesque discourtesy with a country that has been our strong supporter in war and peace. How will the government make up for

FAhmed

We are surprised and shocked how and why a meeting between our PM and French Foreign Minister could not take place when the latter visited Bangladesh recently. Are we under pressure or being

influenced by the USA not to main tain a cordial relation with France? If so would our Foreign Minister kindly tell us where is our independent foreign policy and our

O.H.Kabir

There is one thing that our government or as a matter fact any government should know and bear in mind that we, the people don't depend on them, but they do. We have the right to know what is going on in the government. Any government should have transpar ency within people.

Recently our Prime Minister cancelled a meeting with French Minister on personal grounds. This s totally unacceptable. Whatever be the reason, cancellation of this meeting did serious harm to the diplomatic ties between the two countries-- France and Bangla-

We demand to know what was the real reason behind the cancellation of appointment with the French Minister. Yasmin Zaman

Sydney, Australia Free Iraq?

The war in Iraq was conducted in the name of finding and destroying weapons of mass destruction' None has been found as of yet and none will. We all knew that. What we have witnessed is the extreme that the US will go to, to subjugate a nation in order to ensure the survival of the "democratic" state of Israel and ensure oil supplies. In the smoke and light of the media blitz the Axis of Evil speech turned into "Operation Iraqi Freedom", and lost were the evidence pre-sented by Mr Blix, and Mr Scott Ritter before him, that there were

no weapons of mass destruction to be found

EDITOR TO THE EDITOR TO THE EDITOR

In this "free" Iraq, Shites who gathered at Karbala and voiced their desire to have an Islamic State are portrayed as "Baath party instigators", and unarmed protestors who were shot to death by the Americans were a "threat" to the safety of the Marines. The heritage of a nation has been destroyed with the destruction of its museums. Lost forever are priceless antiquities and Ouaranic texts, including the only surviving one copied by Hazrat Ali himself! I suppose this is a fitting way to clear the ground for the US cultural imperialism that

will soon follow in the heels of

The interim military "leader" of Iraq anointed by Mr Bush, has promised to recognise Israel and ign a peace treaty with Israel on behalf of the Iraqi people(!). Mr Chalabi, a businessman wanted in Jordan for swindling businesses out of \$70 million will now be the Karzai" in charge. This is clearly a war of subjuga-

ion, naked terrorism and shameless colonisation Shomit Chowdhury