



LAW reform



U.N. replaces discredited rights panel



THE discredited U.N. Human Rights Commission held its last meeting before being replaced by a new body, ending a 60-year history in which some of the world's worst offenders often used their membership to protect one another from condemnation.

Peruvian Ambassador Manuel Rodriguez Cuadros, chairman of the 53-nation commission, gavelled the final session to an end in a packed meeting hall at U.N. offices in Geneva as young campaigners took photographs and lamented the loss of a rights forum they said was unfairly disparaged. The new 47-member Human Rights Council will hold its first meeting June 19 in Geneva and the U.N. General Assembly will vote on new members May 9.

The commission, which originally was inspired by the United States, came to be discredited in recent years because it admitted countries with terrible human rights records such as Sudan, Libya, Zimbabwe and Cuba who tried to shield each other from censure. China and Russia lobbied heavily to avoid having their performances held up to scrutiny. "The commission will not be mourned by many who value human rights," U.S. Ambassador Kevin Moley told The Associated Press. "The good news is the commission is over. The bad news is that what replaces it isn't much better." U.N. High Commissioner for Human Rights Louise Arbour said member states should now seize the opportunity to improve the U.N.'s tarnished rights record.

"We are, truly, in the midst of a quiet or even maybe not so quiet human rights revolution," Arbour said. "Much will rest on the profound culture shift that must accompany this institutional reform. The protection of human rights will thrive in a rigorous, frank and cooperative environment." U.N. Secretary-General Kofi Annan said the commission had been discredited when he called last year for it to be replaced with a new, strengthened body that would review every nation's right record.

The General Assembly voted earlier this month to replace the commission with the new council, ignoring U.S. objections that not enough was done to prevent abusive countries from becoming members. The United States was one of only four countries to vote against the council, but it has said it will cooperate with the new body. It has yet to decide on whether it will seek election, Moley said. Rights groups said the requirement that members receive at least a majority 96 votes will keep out the worst offenders.

The last session was largely subdued by commission standards, with most speakers expressing their support for the council and praising certain elements of the commission they believed needed to be preserved. One exception was Saudi Arabia, speaking for the Asian group of countries, which vowed to continue the "campaign against foreign occupation and its implications in the occupied Palestinian territories, the Syrian Golan and south Lebanon."

Israel's ambassador in Geneva told The Associated Press his country would support the new council, even though it had voted with the U.S. against its creation two weeks ago. Many advocacy groups, however, were uncertain as they left a forum where they commanded great attention, sometimes for issues largely ignored in their home countries. Jean Ziegler, the commission's expert on the "right to food," said outside the meeting that the commission was the only U.N. body where peasants' leagues, women's groups, environmentalists and others gathered under one roof to debate universal rights. "There was something special with the commission, and it was wrong to call it 'discredited,'" Ziegler said.

Source: Associated Press.

LAW news



UN to explore ways to boost women's participation in peacekeeping

The United Nations Department of Peacekeeping Operations will hold policy meetings aimed at coming up with ways to increase women's participation in peacekeeping.

Although the numbers of civilian positions held by women in peacekeeping has increased recently to 27 percent, the percentage of women in the military and police units remains far too low, at 1 percent and 4 percent respectively, a UN spokesperson said Monday.

The meetings will bring together senior military and police officers from



troop contributing countries as well as countries that have hosted peacekeeping operations.

In addition, women personnel serving in current peacekeeping missions, representatives of women's organizations and high-level representatives from some UN member states are expected to attend.

Source: Xinhua.

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HUMAN RIGHTS monitor

THE FIRST TRIAL OF BRITISH SOLDIERS FOR WAR CRIME

Scope of making the trial a comprehensive one

SHARIN SHAJAHAN NAOMI AND AMIT SHANKAR SINGH RAJPOOT

WAVES of anti-war sentiment are so strongly slashing on the shore of Britain that no option has been left for the Blair government to do something which at least can minimise the flames of fire of hatred gathering in the minds of the people. The barbaric treatment of the people within the jails of Iraq and also outside by UK soldiers, are adding fuel to the fire and making the failure of war more evident. Perhaps that's why the Attorney General Lord Goldsmith let the press know that for the first time, British soldiers are going to face war crime charge under the ICC (International Court of Criminal Procedure) (The Guardian, 20 July 2005). Amnesty International's and other journalists' reports are clearly indicating what is going on in Iraq. The killing of innocent people and torture of the detainees are not matters to be overlooked. To prevent the fall of reverence towards British government of the world community, the British authority has kept International Criminal Court Act 2001 of UK stand by to deal with the crimes committed by British soldiers.

This Act has its genesis in Article 1 of the Rome Statute which states, the court "shall be a permanent institution and shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern, as referred to in this

Statute, and shall be complementary to national criminal jurisdictions."

The principle of complementarity signifies that the states that are party to the Rome Statute have an obligation to incorporate in domestic law those violations of international law set forth in the Statute. The Court is confined to trying in The Hague only those violations that a home State is unwilling to prosecute. Article 17 of the Rome Statute determines the admissibility of the case based on unwillingness or inability on the part of the state to prosecute and investigate the case.

Britain as a signatory to the Rome Statute has committed to the prosecution of crimes under the jurisdiction of the ICC, and allows British courts to act as an extension of the ICC by trying violations of the Rome Statute in domestic courts through ICC Act passed on 2001.

In ICC Act of 2001 the definition of War Crime has been adopted from Rome Statute. Article 8.2 of the Rome Statute specifying war crime as grave violation of Geneva Conventions against the person or property protected through some criteria namely, torture, wilful killing etc. No doubt torture of the detainees will dominate the alleged cases. Torture has been committed against the people addressed as 'Detainees' 'enemy combatant'. Detainees' status has not yet got an unanimous standard as a prisoner of war or protected person. (Articles 13 and 14 of the Third Geneva Convention relative to the treatment of prisoners of war, of 12 August 1949. Articles 27 and 32 of the Fourth Geneva Convention relative to the protection of civilian persons in time of war, of 12 August 1949).

The International Redcross statement is very clear in this regard. "Every person in enemy hands must have some status under international law: he is either a prisoner of war and, as such, covered by the Third Convention, a civilian covered by the Fourth Convention, [or] a member of the medical personnel of the armed forces who is covered by the First Convention. There is no intermediate status; nobody in enemy hands can fall outside the law." Canada is now far ahead having prisoner of war status determination regulations. This is the most appropriate time for British court to determine this factor so that



not a single soldier could take the advantage of the lacuna of the law to fulfil his vulgar thrust against the detainee's believing the nebulous notion that detainees covered with the term "enemy combatant" are not included in protected person or prisoner of war. After that another important question comes -- should the blame of this War Crime fall on the shoulders of the poor British soldiers who are doing nothing but the duty under the order of the British government? Article 27 of the Rome Statute has not even exempted the head of the state from the responsibility and the immunities are being thrown off in the way to prosecute the head of the state, officials, member of the parliament for enforcing this law. Article 27 of Rome Statute is unequivocally says-

(1) This Statute shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State, a member of a government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself constitute a ground for reduction of sentence.

(2) Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such.

It is really difficult to believe that without the backing and knowledge (or not to bother despite the knowledge that torture is going on is also backing) of British Government the torture is continuing on Iraqi detainees. Thanks to British media which have explored the british stories behind the jail and compelled the British government not to be indifferent. Well, taking only small part from the war crimes (British soldiers are being charged for manslaughter, inhuman treatment with detainees and interneers and unlawful killing), Britain has made the trial for the violations of International Humanitarian Law non-comprehensive. There are many war crimes going on like -- extensive destruction and appropriation of property, not justified by military necessity --, intentionally directing attacks on civilian objects etc. In fact there are huge examples in the hands of media, also in the report of Red Cross and Amnesty International, of these allegations. The first trial for war crime can easily include such crimes.

If the British soldiers can be prosecuted for War Crime why they should not be for Crime against Humanity? The answer is not so tough. It is very easy to prosecute some British soldiers for committing torture against some Iraqis in the jails and not paying attention to the higher level as it is almost impossible to prove that they have not given any specific order for such behaviour. But if you stretch crime against humanity, you have to point out some words systematic attack, widespread attack, attack with knowledge or some particular knowledge and then will come how 20,000 people have been killed during



this war. (The figure is not confirmed exactly -- taken from the websites -- action against war, February 2005. BBC news 29 Oct, 2004 emphasises on a study which claimed 37,000 civilian deaths caused.)

On April 1, the residential al-Hilla outskirts of Babylon were hit with an undetermined number of BLU-97 A/B cluster bombs. Each bomb releases 202 bomblets which scatter over an area the size of two football fields, with a dud rate of 5%-7%. Immediate reports stated that at least 33 civilians died and around 300 were injured in the attack. Amnesty International condemned the attack, saying that "the use of cluster bombs in an attack on a civilian area of al-Hilla constitutes an indiscriminate attack and a grave violation of international humanitarian law." Independent reporter Robert Fisk wrote from al-Hilla, saying that many dud bombs landed, and remain, inside civilian homes. (Simon Helweg Larsen, April 07, 2003.)

The British Ministry of Defence said on April 3 that RAF Harrier jets had dropped RBL755 cluster bombs on unspecified locations in Iraq. These bombs scatter 147 bomblets, and have a 10% rate of failure. Britain has also admitted that it has also fired cluster munitions on Basra. These examples are indicating one thing that no explosive weapons which killed people at random were put without the green signal of the British government and military leaders. The ingredients for crime against humanity have been met up as nothing has been left to cover up a systematic or widespread killing of civilians "the concept of systematic may be defined as thoroughly organized and following a regular pattern on the basis of a common policy involving substantive public or private resources." (Prosecutor v Akayesu, Sep 2, 1998, para 579)

Perhaps the risk of trapping within these legal boundaries, the British government has wished to stay away from this crime

against humanity to save themselves. If they really feel they are obliged by the spirit of Rome Statute, if they are determined "to put an end to impunity for the perpetrators of this crime and thus to contribute to the prevention of such crimes" they can at least begin an investigation against the perpetrators for such crime however high official rank may they have.

Though some anti-war campaigners and Islamic parties are shouting for labeling the term Genocide against the soldiers, but to apply genocide in real sense is really a hectic task. Are the British troops committing crime with the intent to destroy in whole or part a national, ethnic, racial or religious group of Iraq? If it can be proved that the British soldiers are killing or causing serious bodily and mental harm or causing physical destruction or preventing birth or forcibly transferring children particularly of Sunni group, or BATH party, then allegation for genocide can be proceeded otherwise it will be only mere claim.

On 12 February, the video tapes of the violent character of some British soldiers in resisting a protest in southern Iraq have come before the whole world through "news of the world". The aftermath reaction of this scenario will be devastating for Britain's image. But we also cannot be so biased to the British soldiers that we should forget under what type of suffocating circumstances the British soldiers have to go through in Iraq where every moment the threat of death by unsuspected bombast is lurking. The first trial of the British soldiers for violating International Humanitarian Law is appreciable and a pragmatic step but much option still has been left to make it a perfect example of allegiance to wards Humanitarian law.

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LAW week

CEC faces contempt for 'lacking confidence' in SC

The Supreme Court issued a suo moto contempt rule against Chief Election Commissioner (CEC) MA Aziz and BNP lawmaker Nurul Islam Moni apparently for lacking confidence in the apex court dealing with the much-talked about voter list case. The full bench of the Appellate Division chaired by Chief Justice Syed JR Mudassir Husain ordered the CEC and the ruling BNP lawmaker to show cause by April 9 as to why contempt proceedings should not be brought against them. The chief justice also said the CEC's leave to appeal petition against the High Court's January 4 directives on voter list will remain adjourned until disposal of the contempt issue. The next hearing on the matter will be held on April 9. Nurul Islam Moni on February 4 sent a "confidential and urgent letter" to Advocate Khandaker Mahbubuddin Ahmed, MP, chief counsel for the CEC. The letter sought to bring to the recipient's notice Awami League (AL) lawmaker Dr Alauddin Ahmed's comments at a talk show on satellite TV channel ATN Bangla. It says Alauddin Ahmed had remarked that the CEC, also a sitting judge of the Supreme Court, would have to leave the Election Commission (EC) after February 6, the date scheduled for hearing on the leave to appeal. -The Daily Star, March 28.

Kuwait-based NGO using funds despite govt ban

Despite an embargo on its fund release due to alleged terror links, the Kuwait-based NGO Revival of Islamic Heritage Society (RIHS) is using bank accounts to run official work without the government's knowledge. Sources said large amounts of money have recently been withdrawn by cheques from a joint account of a private bank's Uttara branch in Dhaka to pay off RIHS officials and carry out construction work. The account belongs to RIHS-run Kidney Dialysis Centre Director Zafar Musa Abu Moaz, an Iraqi national, and RIHS Bangladesh Office Secretary Fazlur Rahman. Though the sums were withdrawn for official purpose, the cheques did not bear any seals of the NGO, said the sources. Abu Moaz was ousted from Iraq for his alleged ties with international extremist outfit Ikhwanul Muslimin, they added. NGO bureau sources said they are knowledgeable about one RIHS account with Islami Bank Bangladesh Limited's Uttara branch that was suspended on requests from the central bank and intelligence agencies. The RIHS has received huge amounts of money through hundi since the arrest of Ahle Hadith Andolan, Bangladesh (Ahab) chief Asadullah Al Galib in February 2005 as the government stopped releasing its funds. -The Daily Star, March 28.

SC Bar demands judicial probe into 'crossfire' killings

The Supreme Court Bar Association (SCBA) demanded judicial investigation into 204 extra-judicial killings in the name of "encounter" and "crossfire" in the last two years. SCBA President Advocate Mahbubey Alam and Secretary Advocate M Enayetur Rahim in a statement also blasted the government for giving Swadhinita Padak (independence award) to Rapid Action Battalion (Rab). They said the extra-judicial killings are clear violation of human rights. "Bangladesh has been criticised due to the incidents of extra-judicial killings. Executive investigations into the incidents are merely unreal, immoral, unjust and expression of no-confidence in the constitution, existing laws and the judiciary," the statement said. The SCBA leaders said killings in the custody of the law enforcement agencies, including the Rab, in the name of "encounter" and "crossfire" without handing over the arrested persons to courts are the same offence the militants are committing taking position against the constitution, existing laws and the judicial system. Their targets are same and identical, they said. -BD News, March 28.

Experts doubt EC's ability to hold polls

Considering the prevailing situation in the Election Commission (EC), experts doubted its ability to hold the next parliamentary election. Crises in the EC are deepening over voter list preparation, appointment of two new election commissioners and the latest contempt charge against the chief election commissioner (CEC) himself. With the next general elections only nine months away, the EC has not taken steps to strengthen its mechanism to check the influence of black money and muscle power in the upcoming elections. A deadlock prevails in the EC, observed M Hafizuddin Khan, former adviser to caretaker government. "A new election commission should be formed, comprising efficient people acceptable to all, as I think it's not possible to hold the next election by the present commission," he told The Daily Star. "Holding an election is a very tough job. The commission will have to do many tasks. I don't see this efficiency in the present set-up," he elaborated, adding, "The present election commission has fallen in an enormous controversy, to which I see no sign of ending." - The Dily Star, March 29.

BGMEA starts crash program to check factory accidents

Bangladesh Garment Manufacturers and Exporters Association (BGMEA) launched a crash programme to prevent industrial accidents, particularly fire incidents, which tarnished the image of the industry. "The ready-made garment industry is now in a vulnerable situation," BGMEA President Tipu

Munshi said while inaugurating the programme at the BGMEA office. "Successful implementation of the programme will help revive the image of the industry," he hoped, calling upon the entrepreneurs to help implement the programme. The apex trade body of the apparel industry took up the crash programme immediately after the fire at KTS Textile Industries (Pvt) Limited in Chittagong and formed a 40-member committee divided in 10 teams to monitor with cameras the RMG factories. Under the programme, the BGMEA will fine a factory Tk 10,000 if it keeps its gates closed during working hours for the first time and Tk 50,000 for the second time. The BGMEA will cut all facilities to the factory if it commits the same offence for the third time. -UNB, Dhaka, March 29.

Dhaka court takes up murder case against Babar

A Dhaka court took up the case filed against state minister for home affairs and 52 others in connection with the death of Jubo League leader Masudur Rahman Iman Ali in Rab-claimed "crossfire." Judge Mohammad Momin Ullah of the Metropolitan Sessions Judge's Court passed the order following a criminal revision filed by Nazrul Islam, elder brother of the victim, against the dismissal order of the lower court. The court fixed May 5 for hearing on the acceptability of the charges brought against the accused in the case. On March 22, Metropolitan Magistrate AJM Abdullah Baqui dismissed the case saying that the victim was murdered at Savar but the case was filed showing the place of occurrence (PO) as Kotwali in Dhaka. The accused in the case are State Minister for Home Affairs Lutfozzaman Babar, his cousins Mirza Hafizur Rahman and Mirza Nurul Islam, Home Secretary Sarfaraj Hossain, Inspector General of Police (IGP) Abdul Quayyum, Additional IG (Headquarters) Anwarul Iqbal, Additional IG (Special Branch) Fakrul Ahmed, and Additional IG (Criminal Investigation Department) Khoda Baksh. The other accused are Director General (DG) of Rab Abdul Aziz Sarker, its commanding officer, second-in-command, DIG of Dhaka Range Dr Sadikur Rahman, Superintendent of Police (SP) of Dhaka Baktiar Alam, Officer-in-Charge (OC) of Saver Police Station Mohammad Haider Ali, Sub-Inspector (SI) Mortuza, 16 unidentified members of Rab-4, six unidentified constables and 16 other people. -The Daily Star, March 29.

