



Star **LAW analysis**



FOR YOU information



International law of the sea: Bangladesh perspective

KHAN FERDOUSOUR RAHMAN

VERY recently, both India and Myanmar are exploring hydrocarbon within Bangladesh's deep-sea territory. Bangladesh being a coastal state should protect its legitimate rights within economic zone and maritime boundary. There exists no demarcation of sea with neighbouring India and Myanmar. As her naval power is also not strong, so the dispute must be settled through mutual understanding, if not then through international arbitration maintaining sovereignty. To settle this type of dispute, there is an International Law of the Sea. Bangladesh can always take the advantage of this international instrument as a party of that treaty.



The international law of the sea

The UN Convention on the Law of the Sea is considered as one of the most comprehensive instruments of international law. The Convention covers all aspects of ocean space as follows:

- Navigation and overflight
- Resources exploration and exploitation
- Conservation and pollution
- Fishing and shipping

This Law consists of total 320 Articles and 9 Annexes. This landmark treaty, which was incorporated on December 10, 1982 became effective on November 16, 1994, providing the framework for all aspects of ocean sovereignty, jurisdiction, use and state rights, as well as obligations.

Main features:

- 12 nautical miles as the limit of territorial sea, over which the State will exercise sovereignty, though foreign ships on peaceful voyages will be able to pass.
- Beyond that upto 200 nautical miles is Exclusive Economic Zone (EEZ), where coastal state will have sovereign rights over fisheries and other resources and all other nations will retain freedom of navigation.
- Beneath the water of this zone and extending beyond that on the Continental Shelf, the Coastal State will have full control of resources,

but will share with international community the revenue derived from any part of the Shelf beyond 200 miles.

- Beyond national jurisdiction, all States are to enjoy freedom of navigation, overflight, scientific research and fishing.
- Land-locked States will have the right to access to the sea, under the terms to be mutually agreed upon with the State through which their goods and nationals pass.
- The ocean bottom beyond national jurisdiction is proclaimed to be the 'Common Heritage of Mankind'.

Institutions

The Convention established three specific Organs to deal with various appeals of the Law of the Sea as follows:

- International Seabed Authority, established in 1994 in Kingston, Jamaica for exploration and exploitation of resources.
- International Tribunal for the Law of the Sea in Hamburg, Germany operational since 1996 for settling any dispute.
- Commission on the limits of the Continental Shelf based at UNHQ recommends to States that claim Shelf extending beyond 200 miles from their coast.

Conclusion

Bangladesh should take all out efforts through diplomatic channel to resolve the dispute without losing any interest in maritime boundary. On failure, it must go to International Tribunal at Hamburg for settling this dispute with both India and Myanmar.

The author is a freelancer.

HUMAN RIGHTS Report-2005



World's poor and disadvantaged pay price of war on terror



2005 was a year of contradictions in which signs of hope for human rights were undermined through the deception and failed promises of powerful governments, said Amnesty International today as it published its annual report.

Speaking at the launch of Amnesty International Report 2006, the organisation's Secretary General Irene Khan said that the security agenda of the powerful and privileged had hijacked the energy and attention of the world from serious human rights crises elsewhere.

"Governments collectively and individually paralyzed international institutions and squandered public resources in pursuit of narrow security interests, sacrificed principles in the name of the 'war on terror' and turned a blind eye to massive human rights violations. As a result, the world has paid a heavy price, in terms of erosion of fundamental principles and in the enormous damage done to the lives and livelihoods of ordinary people," said Ms Khan.

"Intermittent attention and feeble action by the United Nations and the African Union fell pathetically short of what was needed in Darfur," said Ms Khan, referring to a conflict that claimed thousands of lives, displaced millions, and in which war crimes and crimes against humanity continue to be committed by all sides.

Iraq sank into a vortex of sectarian violence in 2005. Ms Khan warned: "When the powerful are too arrogant to review and reassess their strategies, the heaviest price is paid by the poor and powerless - in this case, ordinary Iraqi women, men and children."

Israel and the Occupied Territories slipped off the international agenda in 2005, deepening the distress and despair of Palestinians and the fears of the Israeli population.

The brutality and intensity of attacks by armed groups in 2005 reached new levels, taking a heavy toll on human lives.

"Terrorism by armed groups is inexcusable and unacceptable. The perpetrators must be brought to justice - but through fair trial, not torture or secret detention. Sadly, the increasing brutality of such incidents throughout the world last year is

a further bitter reminder that the 'war on terror' is failing and will continue to fail until human rights and human security are given precedence over narrow national security interests," said Ms Khan.

The UN Summit, which reviewed progress on implementation of the Millennium Development Goals, showed the dismal failure of governments to match performance to promise. For instance, governments paid lip service to women's human rights but failed to fulfill international targets for equal access to education by girls.

In 2005, the call for justice scored another hit as the International Criminal Court issued its first indictments for crimes against humanity and war crimes in Uganda. The immunity of past Heads of State was dented in Latin America as Augusto Pinochet was placed under house arrest and an international arrest warrant was enforced against Alberto Fujimori.

Powerful governments were called to account by their courts and public institutions. The highest court in the United Kingdom rejected the government's plan to use evidence extracted under torture. The Council of Europe and the European Parliament opened investigations into European involvement in US-led 'renditions', or the unlawful transfer of prisoners to countries where they would be at risk of torture or other abuses.

Revelation after revelation exposed the extent to which European governments have been partners in crime with the United States, defying the absolute ban on torture and ill-treatment and by outsourcing torture through the transfer of prisoners to states such as Egypt, Jordan, Morocco, Saudi Arabia and Syria, which are known to practise torture.

The United Kingdom pursued "diplomatic assurances" - or paper guarantees - so as to be able to return people to countries where they could face torture. Legislation in the USA reaffirmed the ban on torture and other ill-treatment in the face of opposition from President Bush, but then went on to severely restrict the right of Guantánamo detainees to have their treatment reviewed in the federal courts.

"Double speak and double standards by

powerful governments are dangerous because they weaken the ability of the international community to address human rights problems such as those in Darfur, Chechnya, Colombia, Afghanistan, Iran, Uzbekistan and North Korea. They allow perpetrators in these and other countries to operate with impunity. "When the UK government remains muted on arbitrary detention and ill-treatment in Guantánamo, when the United States ignores the absolute prohibition on torture, when European governments are mute about their record on renditions, racism or refugees, they undermine their own moral authority to champion human rights elsewhere in the world."

"In a year in which the UN spent much time discussing reform and membership of its key institutions, it failed to give attention to the performance of two key members - China and Russia - who have consistently allowed their narrow political and economic interests to prevail over human rights concerns domestically or internationally.

"Those who bear the greatest responsibility for safeguarding global security in the UN Security Council proved in 2005 to be the most willing to paralyze the Council and prevent it from taking effective action on human rights.

The year 2005 saw the beginning of the change in public mood. "Pressure that is emerging must be used effectively to turn international irresponsibility into action," Ms Khan urged.

Key demands of Amnesty International in 2006 are:

- To the United Nations and African Union to address the conflict and end human rights abuses in Darfur;
- To the United Nations to negotiate for an Arms Trade Treaty to govern the trade of small arms so that they cannot be used to commit human rights abuses;
- To the US Administration to close Guantánamo Bay detention camp, and disclose the names and locations of all 'war on terror' prisoners elsewhere;
- To the new UN Human Rights Council, to insist on equal standards of respect of human rights from all governments, whether in Darfur or Guantánamo, Chechnya or China.

"The political and moral authority of governments will be increasingly judged on their stand on human rights at home and abroad. More than ever the world needs those countries with power and international influence - the permanent members of the UN Security Council as well as those who aspire to such membership -- to behave with responsibility and respect for human rights. Governments must stop playing games with human rights," declared Ms Khan.

Source: Amnesty International.

Public interest litigation: An outline

ZAHIDUL ISLAM

A public interest litigation, PIL, is a term very frequently uttered, heard or written nowadays when there comes the question of implementation of common people's rights. But it is still not a clear idea for many people. Hence, this write-up especially for those who have no legal background but want to have an idea about it. Admittedly, it will prove to little service the any practicing lawyer.

PIL, in simple words, means a litigation filed in a court of law for the protection of 'public interest'. It has been interpreted by judges to consider the intent of public at large. Although the main and only focus of such litigation is 'public interest' there are various areas where a PIL can be filed. For example, violation of basic human rights of the poor, content or conduct of government policy, compel municipal authorities to perform a public duty, violation of religious rights or other basic fundamental rights etc.

When a PIL can be filed

A PIL can be filed only in a case where 'public interest' at large is affected. Because merely one person affected by state inaction not a ground for a PIL. Following are some of the possible areas where a PIL can be filed.

- I. Where a factory or industrial unit is causing air pollution, and people nearby are getting affected.
- II. Where, in an area or street there are no streetlights, causing inconvenience to commuters.
- III. Where there is regular loud 'miking' in a residential area causing noise pollution.
- IV. Where some construction company is cutting down trees, causing environmental pollution.
- V. Where poor people are affected because of government's arbitrary decision to impose heavy 'tax'.
- VI. For directing the police/jail authorities to take appropriate decisions in regards to jail reforms, such as segregation of convicts, delay in trial, production of under trial persons before the court on remand dates.
- VII. For abolishing child labour, and bonded labour.
- VIII. Where rights of working women are affected by sexual harassment.
- IX. For keeping a check on corruption and crime involving holders of high political office.
- X. For maintaining roads, sewer etc in good condition.
- XI. For removal of big hoarding and signboard from the busy road to avoid traffic problem.

Who can file a PIL

Earlier it was only a person whose interest was directly affected along with others, whereby his fundamental right is affected, that used to file such litigation. Now, the trend has changed, and any public-spirited person can file a PIL on behalf of a group of persons whose rights are affected. Hence, it is not necessary that the person filing a case should have a direct interest in that PIL.

For example, a person in Dhaka can file a PIL for that a cracker factory in Rajshahi is running on child labour; or a citizen can file a PIL challenging government's arbitrary decision to impose heavy 'tax' that is affecting the poor people, though the citizen filing the PIL may not be personally so much affected by that; similarly a lawyer can file a PIL for release of some under trial in jail, who has spent more number of years in jail than the period prescribed as punishment for persons the offence they are being tried for.

Hence, it is clear that any person can file a PIL on behalf of a group of affected people. However whether a PIL should be allowed or not will depend on the facts of each.

Against whom a PIL can be filed

A PIL can be filed only against the State, in some cases against municipal authorities, but not against any private party. However a 'private party' can be included in a PIL as a 'Respondent' only after making the state authority or authorities concerned a party or parties.

For example, a tannery factory in Hazaribagh of Dhaka is causing pollution, then people living nearby, or any other person can file a PIL against (a) the government, (b) the Ministry of Forest and Environment, and also against (c) that particular factory.

However, it is to be mentioned that a PIL is filed in the same manner as a writ petition is filed. Proceedings in a PIL commence and carried on in the same manner, as in a writ petition. However, in between the proceedings if the judge feels he may appoint a commissioner to inspect allegations of anti-public interest activities etc. After filing of replies by opposite party, and rejoinder by the petitioner, final hearing takes place, and the judge gives his final decision.

A letter to Chief Justice may be treated as a PIL

There have been instances where judges have treated a post card containing facts as a PIL.

the matter, and submit its report. Such a committee or commissioner may also be given power to take cognisance of grievances and settle it right in the public interest. And finally comes final order by way of direction to comply within a stipulated time.

When a writ petition may be treated as a PIL

A writ petition filed by the aggrieved person, whether on behalf of group or together with group can be treated as a PIL. However, the writ petition should involve a question, which affects public at large or group of people, and not a single individual. And there should be a specific prayer, asking the court to direct the state authorities to take note of the complaint/allegation. Also, according to some lawyers, the 'representative suit' instituted under Code of Civil Procedure 1908 can also be treated as PIL when it represents the interest of a large faction of people.



There are also examples that a letter alleging the illegal limestone quarrying that devastated the fragile environment, or a letter complaining that the national coastline was being sullied by unplanned development that violated the government directive was treated as PIL.

However, in the past, many people have tried to misuse the privilege of PIL and thus now the court generally requires a detailed narration of facts and complaint, and then decides whether to issue notice/s and call the opposite party.

The fact is that so far there is no statute laying down rules and regulations for a PIL, still the court can treat a letter as a PIL. However the letter should bring the true and clear facts, and if the matter is really an urgent one, the court can treat it as a PIL. But still it depends upon facts and circumstances, and the court has the sole discretion.

Relief available by PIL

There are many kinds of remedies, which can be given in a PIL, to secure the public interest. First comes the interim measure. The court can afford an early interim measure to protect the public interest till the final order, for example:

- (a) Release of under trial on personal bonds ordering release of all under trial persons who have been imprisoned for longer time than the punishment period, free legal aid to the prisoners, imposing an affirmative duty on magistrates to inform under trial prisoners of their right to bail and legal aid.
- (b) Closure of Industrial plant emitting poisonous gas, setting up victim compensation scheme, ordering the plant reopening subject to extensive directions etc. Or
- (c) Prohibiting cutting of trees or making provisions for discharge of sewage, till the disposal of final petition.

In fact, relief in most of the PIL is obtained through interim orders. Moreover, the court may appoint a committee or commissioner to look into

RIGHT investigation



2,000 refugees from Myanmar flee to Thailand

Over the last three months some 2,000 refugees from Myanmar have arrived in northern Thailand saying they are fleeing renewed conflict and human rights abuses in Kayin state in Myanmar. Some 400 crossed the border last week to find refuge in government-run camps in the Mae Hong Son area, and more are expected.

"The predominantly ethnic Karen refugees say their houses and villages have been burned and civilians killed. Many are very weak and suffering from illnesses such as malaria after a long, dangerous journey to the camps through heavily land-mined areas," UNHCR spokesperson Jennifer Pagonis told reporters in Geneva on Tuesday.

"Some also report that they had difficulties crossing the Thai border due to strengthened border controls," she added.

UNHCR is expecting more refugees to seek safety in Thailand in the coming weeks. Many of the refugees passed through the "Eh

Htu Hta" camp for internally displaced people, IDPs, just on the other side of the border in Myanmar where they say that hundreds more displaced Karen villagers are living in desperate conditions.

"The IDPs are reportedly waiting to see whether conditions in their homes areas improve so that they can return home, otherwise they may try to cross the border into Thailand if the situation deteriorates," Pagonis said.

UNHCR is working with the Thai government and non-governmental organisations to ensure that the new arrivals are admitted to the camps and are provided with adequate shelter and protection.

"Shelter has been a major concern as the capacity in some refugee camps has been overwhelmed. In some camps, refugees have been forced to live in makeshift shelters made of plastic sheeting which can't cope with the heavy rains," Pagonis said.

In a breakthrough last week, the



Thai authorities agreed that proper houses will be built to accommodate the new arrivals.

There are currently 140,000 Myanmar refugees living in nine border camps in Thailand, many of them have been there for up to twenty years.

Source: UNHCR.