

FOCUS

Law and Our Rights

The United Nations In The Twenty First Century

by MS Ahmed and Shuva Mandal

The heart of the matter lies in the fact that cosmetic changes in institutions and procedures cannot be a substitute for attitudinal change, which is most needed on the part of big powers at the global level. The big powers must realize that insecurity and underdevelopment of weak and poor states will impinge on their security and prosperity, as it is beginning to happen in the shape of migration of significant members from South to North.

THE most dominant feature of global change in the last 50 years, has been the world has shrunk not in the physical sense, but in the psychological sense. In practical terms, what it means is that the problems in any part of the world are not only one's own, they impinge on the rest of the world by their political, economic, ecological, demographic or those emanating from drugs and terrorism. Solutions to such problems anywhere in the world must be found and administered by the world as a whole collectively. There is an increasing trend of domesticization of international problems and internationalization of domestic issues. The European Court of Human Rights and World Trade Organizations are bodies that threaten, sovereignty to the extent that nation states have to subject themselves to supra-national bodies.

The pertinent problem is the reduced capacity of the nation states and governments to provide satisfactory solutions to the major issues on their political agendas, partly because new issues are not wholly within their jurisdiction, partly because the old issues are also increasingly inter-twined with significant international components and partly because compliance of their citizens can no longer be taken for granted, another factor of change emanates from the weakening of state systems, resulting in the sub-systems acquiring a correspondingly greater coherence and effectiveness, thereby fostering centralization at all organizational levels. This is also in stark contrast to the centralizing tendencies like 'nation-statism' or transnationalism which marked the early decades of this century. To quote social scientist, Neil Smelser 'governments of nation states are progressively losing degrees of direct control over the global forces that affect them.' The challenge for social-scientists is 'to re-think the fundamental assumption long established in our disciplines, that the primary unit of analysis is the nation, the society or culture.'

Most problems facing humankind today demand 'trans-sovereign solutions'. That is to say, solutions that need co-operation not only among more than one sovereign entity but among sovereign entities and those beyond them namely Non-governmental organizations and individuals. Some of the major problems facing the United Nations are:

Population: The world's population has more than doubled since the UN was founded and is now increasing by some 250,000 everyday. International Relations, observer Paul Kennedy warns, 'a population explosion on one part of the globe and a technology explosion on the other is not a good recipe for a stable international order. Fast population growth is taking place in the poverty ridden South, whereas the world's richest technology and good health are bestowed on the North, in the process widening the North-South divide and creating a further imbalance.'

Poverty: Though the global economy has expanded five-fold in the last four decades, it has not rooted out abysmal poverty or even reduced it. To put it in the words of the Global Governance Commission,

'poverty and extreme disparities of income fuel both guilt and envy when made more visible by global television.'

Environmental Degradation: The environment more than any other issue has helped crystallize the notion that humanity's problems need a common and collective solution. Ecological destruction caused by ill considered human activities and ozone depletion are problems that transcend national boundaries. Considerable strides have been made in recent years in creating a system of international environmental governance. Treaties in effect or now awaiting ratification now regulate the management of atmosphere, the oceans, endangered species and trade in toxic waste. But whether it is the implementation of Agenda 21 adopted at Rio or enlargement of Global Environment Facility, which at present functions on a very small budget, it is only trans-sovereign attitudes on the part of nations which can help resolve the environmental problem.

Role Of The UN

In a world in which the frontiers of the state have been weakened, the concept of sovereignty has been diluted and problems have emerged which admit only trans-national solutions. Surely the UN has an extremely important role to play and needs to be strengthened. But in a bid to do so one must proceed with caution and consent, for the nation-state still provides the only focal point for the investment of the people. It must strengthen the UN only as an inter-governmental organization and not as a supra-national organization. We must not destroy old centres of loyalty without creating new ones and we must not demolish time-tested institutions unless the contours of the new ones are drawn.

Economic and Social Sectors: One of the purposes of the UN as stated in Article 1 (3) of the Charter was 'to achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character.' Another purpose as stated in Article 1(4) was 'to be a centre for harmonizing the actions of nations in the attainment of these common ends. The determination of 'We The Peoples' to achieve these purposes was underlined in the Preamble, in the words: 'to employ international machinery for the promotion of the economic and social advancement of the peoples.' According to Erskine Childers and Brian Urquhart, observers of the UN scheme, the basic causes of this failure can be summed up as 1) the absence of a coherent macro-economic strategy and policy for the whole world 2) the inability of the UN system to provide coherent analysis, strategic options and negotiating for a macro-economic policy. 3) the fact that existing economic and social capacities in the UN system are fractured severely weakening its leadership role in these fields. 4) the array of separate developmental funds and programmes lacks logic and coherence relative to the needs they are supposed to address among the impoverished majority of humankind.

The foremost area of reform under discussion in the social and economic sectors pertains

to the setting up of an apex body to consider global economic problems, examine linkages between economic, social, environment and security issues in the widest sense and formulate macro-economic policy for the world. The Global Governance Commission (GGC) has recommended the setting up of an Economic Security Council as a part of the UN system, with about the same members as a reformed Security Council (23 according to GGC). It should be a representative body constituted on the basis of size of economy balanced regional organization representing their members. It should meet at least once a year at the level of Heads of Government and otherwise at Finance Minister level. The IMF, WB and the WTO should report regularly to it and other institutions like Commission on Sustainable Development, should report on specific matters.

The Independent Working Group has recommended the establishment of an Economic Council and Social Council as two separate principal organs of the UN system. Both the Social and Economic Council would consist of approximately 23 members each chosen on a rotating basis by the General Assembly on consideration of geographic representation, population, and balance between national economies of different size.

Both these proposals are similar in spirit, in the sense that they reject the Economic and Social Council (ECOSOC) as of no further relevance and suggest the creation of new organs to deal with economic and social issues. However the irony of the situation lies in the fact that the purposes and functions of these new bodies are precisely those that were originally supposed to be carried out by ECOSOC. What we require are not institutional changes but more of attitudinal changes. We must not resort to 'the avoidance reform' - creating a new body rather than by improving and using the existing one that was designed for the purpose. In essence, the need of the hour is not to wait for the amendment of the Charter and creation of new principal organs but to use the existing organs more effectively, for the purposes for which it came into existence.

Political and Security Issues: The UN has undoubtedly a vital role to play in the maintenance of international peace and security and the end of cold war has facilitated this role even more. Almost all the states of the world are at a stage of consolidation and reinforcement of their sovereignty rather than shedding it. It is in this context that the recommendation of the GGC that 'the Charter of the UN should be revised to allow the Security Council to authorize action in situations within countries, but only if the security of the people is so severely violated as to require an international response on humanitarian grounds', should be seen. Though the object behind this recommendation is to meet situation of severe internal repression either by state or by one group of people against another, it is evident that in a world in which economic and military power is unevenly distributed, it is natural that Security Council decisions are the products of vested political and strategic interests of permanent

members. Since the interest of these members are global in scope, there are hardly any situations involving 'security of people' within a country which they can afford to look at objectively. For the Big powers, humanitarian considerations are subservient to political and strategic considerations. Therefore, implementation of such a recommendation must await more equitable distribution of military and economic power.

Today there is a near universal consensus on the need for enlargement of membership of the Security Council in view of the increase in total membership of the UN since 1945. There are however differences of opinion on the size of the new Council, the criteria of selecting new members, the question of granting of veto powers and procedural transparency in the functioning of the Council.

The GGC has recommended the enlargement of the Security Council in two phases. In the first phase, a new class of 5 standing members should be created which should serve until 2005 when a full review of membership of the Council should be undertaken, including the original 5 in the Council. These standing members should be selected on the basis of geographical representation. The number of non-permanent (rotating) members should be raised from 10 to 13 so that the total size of the Council is 18 members will not have the power of veto which should be phased out. The existing permanent members should agree that they would in practice forgo the use of veto power, save in circumstances which are exceptional and overriding in the context of national security.

The report of the Commission is flawed to the extent that in an international system with an existing hierarchical power structure, it would be unwise to create another hierarchical layer of standing members without a veto, moreover it violates the principle of democratisation which the Security Council instead of creating such structures within the Security Council, it is desirable to arrive at a consensus on the five new permanent members, so as to give the composition of the Security Council a democratic legitimacy and durability. The suggestion about phasing out veto power is highly moralistic in a world of realpolitik. It is linked to national interest and does away with veto, calls for a way to subjugate national interest.

The heart of the matter lies in the fact that cosmetic changes in institutions and procedures cannot be a substitute for attitudinal change, which is most needed on the part of big powers at the global level. The big powers must realize that insecurity and underdevelopment of weak and poor states will impinge on their security and prosperity, as it is beginning to happen in the shape of migration of significant members from South to North.

It is not the nation but the globe which must be taken as a unit of analysis, as there is an evergrowing need to make the UN address the human dimensions of global insecurity and instability. It is in this respect that member states need to strengthen the UN.

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Going Gets Tough for India's Legislative Gender Quota Law

Mahesh Uniyal writes from New Delhi

The Speaker's ruling would bring respite to beleaguered Prime Minister Atal Behari Vajpayee whose government, like its predecessors, finds itself up against stiff resistance to the idea of gender-based legislative quotas.

UNWILLING to let go their hold on the levers of political power, India's male politicians, some openly and others covertly, have yet again staled a proposed law to earmark a third of legislature seats for women. Political observers were not surprised by the ruling of Lok Sabha, Lower House of Parliament, Speaker G.M.C. Balayogi recently directing the Bharatiya Janata Party (BJP)-led government to put off tabling the Women's Reservation Bill. Pointing out that the government had not been able to forge a political consensus on the highly controversial proposal, the presiding officer advised Law Minister M. Thambidurai to introduce the bill only after more consultations among the parties.

Thambidurai was going to table the draft legislation a day after he was prevented from doing so by agitated opposition lawmakers who in an unprecedented display of protest had snatched papers from the hands of the Law Minister and the Speaker. The Speaker's ruling would bring respite to beleaguered Prime Minister Atal Behari Vajpayee whose government, like its predecessors, finds itself up against stiff resistance to the idea of gender-based legislative quotas.

Even key members of Vajpayee's 17-party coalition did not fully back the proposed law, although they said they would not oppose it. The Samata Party of Defence Minister George Fernandes and the influential southern regional All India Anna Dravida Munnetra

Kazhagam (AIADMK) wanted the bill modified to provide for separate quotas for women from the lower castes.

This is also the demand of former Defence Minister Mulayam Singh Yadav's Samajwadi Party and former Bihar Chief Minister Laloo Prasad Yadav's Rashtriya Janata Dal (RJD) who are spearheading the campaign against the proposed law which has been virtually limbo since after being drafted by former Prime Minister H.D. Deve Gowda's United Front (UF) government two years ago.

But the demand of the Yadavs, who also insist on slashing the reservation to 15 per cent of the seats and separate quotas for Muslim women, is seen as a clever ruse to stall the proposed law which is said to threaten the political space of India's male political leaders. If enacted, the bill would keep men out of 180 of the seats in the 545-member Lok Sabha. Male-dominant political parties would also have to yield a sizeable number of seats in state legislatures to women.

According to observers, like all political parties, barring the Left, even the BJP is divided on the issue, notwithstanding its public declaration of support for the bill. The passage of the bill would have been difficult after the main opposition Congress party did a U-turn going back on a public declaration by its chief Sonia Gandhi that it was for enactment of the law. Its enactment would have required an amendment of the Constitution which would need the backing of at least two-thirds of Lok Sabha members.

Although the Congress party initially said it would vote with the government, it changed its stand after a meeting of senior party leaders called by Sonia Gandhi. A statement issued after the meeting said that while the Congress party was for reservation for women in legislative bodies, it also wanted to protect the interests of women from the backward castes and minority communities.

According to newspaper reports, Sonia Gandhi, who was enthusiastically backing the bill, was 'outwitted' by 'crafty' party leaders into going along with the demand for quotas-within-quotas for women. She is said to have been told that the party's failure to do so would make it difficult for the Congress to win back its traditional lower caste and Muslim supporters. Senior male Congress party leaders are also said to have told Sonia Gandhi of their sense of 'dispossession' if the quotas were implemented. Some suggested that the proposal be deferred till after the next national census in 2001, which may lead to an increase in the number of Parliament seats.

No Congress MP (Member of Parliament) wants to concede reservation for women. This Parliament, which was graced by leaders like late Prime Minister Jawaharlal Nehru, will now be taken over by illiterate women. We can do nothing about it, a senior Congress party leader was quoted as saying by The Pioneer newspaper. Analysts said it would be difficult for the Vajpayee government to enact the law as it was

for the former United Front governments. When the second United Front Prime Minister I.K. Gujral tried to introduce the bill, he was opposed by his own Janata Dal party colleague Sharad Yadav and his Defence Minister Mulayam Singh Yadav.

Some media commentators cautioned the government. Describing the proposed law as a 'leap in the dark,' The Hindustan Times newspaper said 'no one knows what kind of social and political impact such a law will have.' It added, 'the choice of MPs on such (gender-) biased grounds cannot but lead to a fall in standards, not least because a large number of women who will virtually be compelled to join politics may not be interested in their profession at all.'

The bill was first introduced in the House by the Deve Gowda government two years ago, but sharp differences of opinion forced the government to send it to a joint parliamentary panel which submitted its recommendations in December 1996. Several all-party meetings have been held to hammer out a consensus. Only the Left parties have been unequivocal in their support for the proposed law and even accused the government of using the opposition by the Yadavs as an excuse to cover up differences over the bill within its own party and among its allies. Women cutting across party lines, have joined hands in support of the bill but find themselves outflanked by their male chauvinist colleagues.

— India Abroad News Service

International Tribunal Must Work in "Real World"

by Judy Aita

The intent is to set up a court that would be responsible for prosecuting those suspected of the most serious international crimes in cases where a national government is unable or unwilling to do so. Established on a permanent basis would be a court similar to those 50 years ago in Nuremberg and Tokyo — the victors' courts at the end of World War II — and the current ad hoc ones dealing with the former Yugoslav republics and Rwanda, which were set up by the Security Council.

URGING the conference working to establish an International Criminal Court to remember that such a tribunal 'will not operate in a political vacuum,' US Ambassador Bill Richardson said June 17 outlined several US priorities that, he said, would ensure an effective and workable international body.

'Experience teaches us that we must carefully distinguish between what looks good on paper and what works in the real world,' Richardson said. 'The United States wants the UN Security Council to play an important role in the work of the court, especially as the court is an issue.' He called 'unrealistic and unwise' proposals that would allow the court's prosecutor to initiate investigations and argue that an International Criminal Court or its prosecutor should not become a 'human rights ombudsman' responding to complaints from any source. Richardson said that overloading a young court will 'weaken rather than strengthen the court.... If we move too quickly, we may create a court that will appear sound on paper but collapse under the weight of its own mandate.'

The ambassador stressed that for the court to be 'truly powerful and effective' it must be created by 'the world community' and not by a single group of nations.

'The court must be built on the firm ground of international consensus and enjoy international support,' he said. 'A permanent court cannot stand alone. It must be part of the international order, and supported by the international community.'

Calling the court 'an important piece of unfinished business' at the end of the century, Richardson said that it is time 'to ensure that the perpetrators of the worst criminal assaults on humankind — genocide, serious war crimes, and crimes against humanity — do not escape from justice.'

The conference, officially known as the UN Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, is meeting in Rome from June 15 to July 17 to finalise the statutes and a treaty that would be open for governments' signatures later this year.

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former Yugoslav republics and Rwanda, which were set up by the Security Council.

This final meeting was preceded by a series of sessions, starting in 1995, involving legal experts from most of the 185 UN member nations.

At an earlier meeting, held March 16 to April 3 at UN headquarters, delegates, representatives of non-governmental organisations (NGOs), and UN officials deemed it apparent that the vast majority of nations were in favour of such a court.

While a wide coalition of countries including members of the Southern African Development Community, Latin America nations, and Eastern European states favour a strong, effective and independent court, a number of other members of the so-called Non-Aligned movement are divided over what the court should be.

As the conference got underway in Rome with 156 nations participating, delegates were still divided on issues including the court's degree of independence, jurisdiction, and accountability. The key issues in establishing the court are still on the Rome agenda: What the trigger mechanism will be for getting a case before the court; 'complementarity' which determines when the international court would defer to a national court; and procedures that will determine how cases are investigated and the role of the prosecutors.

Another unresolved issue is that of state consent — the requirement that a country approve before its citizens could be prosecuted.

Some issues have been decided: the court will deal with genocide, war crimes and certain crimes against humanity but will not deal with individual or state terrorism. The ICC also will be 'proscriptive,' not dealing with events which predate the establishment of the

court.

Secretary General Kofi Annan told the conference June 15 that 'we have before us an opportunity to take a monumental step in the name of human rights and the rule of law.... to create an institution that can save lives and serve as a bulwark against evil.'

The secretary general noted that 'some small states fear giving pretexts for more powerful ones to set aside their sovereignty. Others worry that the pursuit of justice may sometimes interfere with the vital work of making peace. You have to take those worries into account.'

'But the overriding interest must be that of the victims, and of the international community as a whole. I trust you will not flinch from creating a court strong and independent enough to carry out its task. It must be an instrument of justice, not expediency. It must be able to protect the weak against the strong,' Annan said.

Human rights groups have been pressing for the court, in the words of Florence Martin of Amnesty International, 'to send a moral and a historic message.'

Richardson said the United States feels that while the court should prosecute atrocities in both international and internal armed conflicts, the crime of aggression should be omitted for the time being.

'We should avoid defining crimes that are not yet clearly criminalised under international law,' the ambassador said.

The court should defer to national courts whenever possible and be financed by the parties to the treaty rather than through the UN regular budget, Richardson added.

Ambassador David Scheffer, chief US envoy for war crimes issues and chief negotiator in Rome, said that President Clinton, Secretary of State

Madeleine Albright and other top US officials support the establishment of a permanent international court.

'Our job, of course, is to get it right,' he said.

Scheffer noted that while there are major issues remaining to be negotiated in every area of the statute, enough progress was made before June 15 so that 'we don't see this as mission impossible.'

'In the history of treaty making, there have been moments when the colossal character of the document with the number of brackets (unresolved issues) involved makes the mission seem almost impossible,' the ambassador said.

Discussing the US position, Scheffer said 'We have made a very, very large effort to advance what is called... the principle of complementarity, which means deferral to national jurisdictions.'

'A state that believes it is capable of investigating and prosecuting these crimes within its own jurisdiction should be given the opportunity to step forward and say we will do this... and be given some reasonable period of time in which to demonstrate that, in fact, it is doing it,' he said.

The US central premise, Scheffer said, is that we want this court of advance the key norm that national judicial systems and governments have a responsibility to investigate and prosecute these crimes. But if they don't do so, there should be a permanent court that stands prepared to do so.'

'If this is a court that fills the gap, it will be a very credible court. It will be a court that attracts universal acceptance and it's a court that will truly be effective when we need it,' Scheffer said.

The writer is a correspondent to the United Nations of the USIS.

Dealing with Crimes

The final draft statute of an international criminal court (ICC), published in Rome early Friday, is aimed at 'the most serious crimes of concern to the international community as a whole,' reports AFP.

The ICC, which will sit in the

Hague, is complementary to national legal jurisdictions.

Crimes

The 160 countries meeting in Rome since June 15 decided that the court would have jurisdiction over four crimes:

- the crime of genocide
- crimes against humanity
- war crimes
- the crime of aggression.

Under the United Nations charter it was decided that it would be up to the Security Council to declare that there has been crime of aggression.

A state that adopts the statute will thus be accepting the court's jurisdiction over these four crimes.

Genocide means 'intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such.'

A crime against humanity implies 'part of a widespread or systematic attack directed against any civilian population with knowledge of the attack.'

Among these crimes are enslavement, torture, rape, forced pregnancy and forced sterilization.

War crimes are 'committed as part of a plan or policy or as part of a large scale commission of such crimes.' They result notably from serious violations of the 1949 Geneva Conventions or of laws and conventions regulating international conflicts.

Among war crimes the draft includes for the first time criminal acts committed during armed conflicts not of an international character. However, it does not apply to 'situations of

internal disturbances and tensions such as riots, isolated and sporadic acts of violence or other act of similar nature.'

A state that signs up to the ICC may within a seven-year period, declare that it does not adopt the court's jurisdiction on war crimes when an alleged crime has been committed by one of its nationals or on its territory.

Contrary to a request by India, the use of nuclear weapons is not mentioned as a war crime.

Prosecutor

The prosecutor can open an inquiry 'motu proprio' (on his own initiative) on the basis of information on crimes within the jurisdiction of the court.

No investigation or prosecution may be commenced or proceeded with for a period of 12 months after the Security Council has adopted a resolution to that effect. The Council may renew its request.

Sentences

Condemned criminals will receive either a prison sentence of not more than 30 years or a life sentence for extremely serious crimes or taking into account the individual circumstances of the prisoner the court can also impose fines and confiscate goods connected directly or indirectly with the crime.

LAW WATCH

An Instance of SAARC Spirit!

THE proposed Regional Consultation on Minority Rights in South Asia scheduled to be held in Dhaka on 17-19 July has been postponed as several participants from Pakistan, India and Nepal were refused visa by the respective Bangladesh missions. 'We do not know the reason of their non-cooperation regarding granting visa to the participants. This is really surprising specially when the Government of Bangladesh is always claiming itself as committed patron of true SAARC spirit' — reacted angrily, Mr Nur Khan, Director ODHIKAR, one of the host organisations of the consultation meeting.

The consultation, which involved human rights activists and academics from the South Asian countries was jointly sponsored by ODHIKAR, a Dhaka-based coalition for human rights and South Asia Forum for Human Rights (SAFHR), a Kathmandu-based South Asian human rights network of activists. The government had earlier given the necessary clearance to the sponsors for holding the event in Dhaka. Now the consultation has been rescheduled on August 7-8 on the Nepalese capital, Kathmandu. Meanwhile ODHIKAR's Dhaka office was visited by the National Security Intelligence (NSI) personnel on July 14 for reasons best known to them.

Lawscape

Rape (January — June '98)

Nature	Age	0-5	6-11	12-15	16-20	21-25	26-30	30+	Age Unknown	Total
Rape		26	93	96	26	10	3		42	236
Death-after Rape			1	4	5					10
Mass Rape		2	22	45	48	21	10	9	64	221
Death after Mass Rape				2	5	3	1	2		18
Rape by Police			3	3	2					9
Nature not mentioned				1	2		1			9
Total		28	119	91	88	38	15	11	117	503

Courtesy: ODHIKAR, a coalition for human rights.