

Law and Our Rights

The Universal Declaration of Human Rights, 1948

A Review of its Impacts

by Dr M Ershadul Bari

This anniversary can make an important contribution to the promotion and protection of human rights by reinforcing the fundamental and unremitting efforts on the part of governments, human rights advocates and United Nations agencies and programmes worldwide. It should be kept in mind that we still have widespread discrimination on the basis of gender, ethnicity, religious belief or sexual orientation and there is still genocide twice in this decade alone. There are 48 countries with more than one fifth of the population living in what we have grown used to calling "absolute poverty." And poverty itself is a violation of numerous basic human rights.

THE standards set out in the Universal Declaration of Human Rights concerning human rights have been elaborated and codified in various multilateral and bilateral conventions. The International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights, which were unanimously adopted by the General Assembly on 16 December 1966 and came into force in 1976, are virtually based on the Universal Declaration although the rights covered are not identical. Moreover, many of the principles described in the Declaration have been detailed and clarified in multilateral conventions which, citing the Declaration as their inspiration, deal with one or more particular aspect of human rights.

For example, the right to equality and non-discrimination on the ground of race is ensured by the International Convention on the Elimination of All Forms of Racial Discrimination, which was adopted by the General Assembly in 1965 and entered into force on 4 January 1969, based on Article 2 of the Universal Declaration. Similarly, on the basis of Article 4 of the Declaration, the right to be free from slavery and servitude is ensured by the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, adopted on 4 September 1963.

Furthermore, the Universal Declaration has also had a significant impact in shaping the formulation of regional conventions to promote and protect the enjoyment of human rights and fundamental freedoms by all individuals living in particular parts of the world. For example, the European Convention for the Protection of Human Rights and Fundamental Freedoms, which was the first multilateral regional treaty on human rights concluded in the framework of the Council of Europe and signed in Rome on 4 November 1950, entered into force on 3 September 1953, refers to the Universal Declaration of Human Rights in the opening paragraph of its preamble and sets out in the fifth preambular paragraph the resolution of "the governments of European countries which are like-minded and have a

common heritage of political traditions, ideals, freedom and the rule of law, to take the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration." In fact, it contains detailed provisions concerning most of the civil and political rights enumerated in the Declaration.

Another regional instrument is the Inter-American Convention on Human Rights (the American Convention on Human Rights), signed at the Inter-American Specialized Conference on Human Rights at San Jose, Costa Rica, on 22 November 1969 and entered into force on 18 July 1978. The Convention considers the principles set forth in the Universal Declaration of Human Rights and reiterates the General Assembly's view that, in accordance with the Universal Declaration of Human Rights, the ideal of free men enjoying freedom from fear and want can be achieved only if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights.

The fourth and most recent of the regional human rights conventions is the African Charter on Human and People's Rights, which was adopted at a meeting of Heads of State and Government of the Organization of African Unity in Nairobi, Kenya, on 26 June 1981 and entered into force in 1986. The Charter reaffirms the adherence of the member states of the organization to the principles of human and people's rights and freedoms contained in the declarations, including the Universal Declaration of Human Rights, adopted by the United Nations. It also mentions that the African Commission on Human and People's Rights shall draw inspiration from international law on human and people's rights, particularly from the provisions of, *inter alia*, the Universal Declaration of Human Rights.

Moreover, instruments applying to particular countries or territories, or to a region, also stem from the Universal Declaration of Human Rights. For example, the Franco-Tunisian Convention of 1955 incorporated the whole declaration as part of their substantive law. The heads of state or government of the Non-Aligned

Movement have, at various summits (eg Havana in 1979 and New Delhi, 1983) reiterated their commitment to ensure respect for the promotion of human rights of individuals and the rights of peoples in accordance with the Universal Declaration of Human Rights. No other specific human rights instruments are referred to in the non-Aligned documents.

Influence on National Constitutions

The influence of the Universal Declaration of Human Rights is evident in a number of national constitutions enacted since 1948, some of which reproduce the provisions of the Declaration verbatim. For example, in their constitutions of the Peoples of Guinea (1958), Madagascar (1959), Ivory Coast, Mali and Niger (1960), Gabon and Mauritania (1961), Burundi (1962), Algeria, Republic of the Congo, Senegal and Togo (1963), Zaire (1967), Dahomey and Upper Volta (1970) and Cameroon (1972) solemnly affirmed their devotion and adherence to the principles set out in the Declaration. The Constitution of Somalia of 1960 provides that the Republic shall comply, in so far as applicable, with the Universal Declaration of Human Rights. The Constitution of Rwanda of 1962 states that fundamental freedoms, as set forth in the Universal Declaration of Human Rights, shall be guaranteed to all citizens. The Constitution of Equatorial Africa of 1968 provides that the state shall recognize and guarantee

the human rights and freedoms set forth in the Universal Declaration of Human Rights and shall proclaim that the freedoms of conscience and religion, association, assembly, speech, residence and domicile, and the right to property, education and decent working conditions are to be respected. The 1978 Constitution of Spain provides that:

"The norms relative to basic rights and liberties which are recognised by the Constitution, shall be interpreted in conformity with the UDHR and the international treaties and agreements ratified by Spain on these matters". The 1991 Constitution of Romania in Article 20 has a similar provision. The principles of the declaration are so reflected in the new constitutions of France, and the Federal Republic of Germany, India, Pakistan, Bangladesh, Libya, Syria, Uganda, Kenya, Sudan, Malaysia, Eritrea, the United States of Indonesia, El Salvador, Costa Rica, Chad, Cyprus, Malta and others. Trinidad, Tobago and Malta. Most of the civil and political rights which are enshrined in the declaration find proud place in Part III entitled "Fundamental Rights" of the 1972 Bangladesh Constitution with the High Court Division as the custodian of those rights, while most of the economic, social and cultural rights of the declaration incorporated in Part II in the form of Fundamental Principle of State Policy which are not judicially enforceable. The great impact of the Universal Declaration on the Con-

stitutions of newly emerged states has eloquently been portrayed in the words of the then Secretary-General of the United Nations U Thant, at the official International Conference on Human Rights in Teheran in 1968 convened in celebration of International Year of Human Rights: "There are no fewer than forty-three constitutions adopted in recent years which are clearly inspired by the Universal Declaration."

Influence on Municipal Legislation

The influence of the Universal Declaration of Human Rights on municipal legislation is found in all continents expressly quoting or reproducing provisions of the declaration.

A number of municipal laws and decrees promulgated in recent years for the purpose of eliminating discrimination refer to the principle of equality and non-discrimination set out in the Universal Declaration of Human Rights, among these are a series of anti-discrimination statutes enacted in various provinces of Canada, in Bolivia, a legislative decree issued in 1955 to establish a national system of education reaffirms in its preamble the principle of equality of opportunity for all Bolivians, without discrimination, and declares that national education shall be inspired by the Universal Declaration of Human Rights, in Panama, a law enacted in 1956 to prohibit discrimination pro-

vides that discrimination on account of colour or race is "a flagrant violation" of the National Constitution" and of the Universal Declaration of Human Rights.

Influence on Court Decisions

The Universal Declaration of Human Rights has influenced many decisions of national courts; it has been invoked in judicial proceedings of many national tribunals. For example, in *Sei Fujii V. California*, an intermediate Appellate Court of California observed in 1950 that restrictions contained in the California Alien Property Initiative Act of 1920 known as the Alien Land Law are in direct conflict with Article 17 of the Declaration of Human Rights. "In *Wilson v. Hacker*, the Court referred to the prohibition of the Universal Declaration against distinction based on sex as being indicative of the spirit of modern times. In *Lincoln Federal Labour Union V. North-Western Iron and Metal Co. and American Federation of Labour V. American Sash & Door Co.* (Wherein the issue was to determine the constitutionality of state laws concerning right to work).

Justice Frank further (covering both cases) mentioned that Article 20(2) of the Universal Declaration forbade anyone's being compelled to belong to an association. In 1980, the US Court of Appeals held in the case of *Filartige v. Pena-Irala*

that the prohibition of torture, as defined by the Universal Declaration of Human Rights, has become part of customary international law.

In a freedom of the press case, the Penal Chamber of the Supreme Court of the Netherlands interpreted the Constitution by reference to the Universal Declaration of Human Rights.

In 1951, the Supreme Court of the Philippines seems to have considered the Universal Declaration binding law in the two cases of *Borovsky v. Commissioner of Immigration and Director of Prisons*, and *Chinkoff v. Commissioner Etal*. For the Supreme Court ordered the release from custody of stateless persons about to be deported, and placed him under the surveillance of the immigration authorities on the basis, *inter alia*, that the Universal Declaration proclaimed the right of everyone to life and liberty to the rights and freedoms set forth in the Declaration without distinction, the right of everyone to an effective remedy and the prohibition of arbitrary arrest, detention and exile. In 1957, the Federal German Constitutional Court in interpreting Article 6 of the Basic Law which provides that marriage and the family are under the special protection of the state, traced the provision in the Basic Law to Article 16 of the UDHR and it declared unconstitutional and void joint assessment of husband and wives tax which resulted in them being in a less favourable position than unmarried persons as regards tax. The case of *Filartige v. Pena Irala*, 1980 in which the judge held including by reference to the UDHR that the prohibition on torture was a part of customary international law is another such case.

The foregoing discussion reveals that, since its adoption on 10 December, 1948, the Universal Declaration of Human Rights has become a "living instrument of incommensurable importance in the field of human rights". Its provisions have been invoked in many resolutions of the United Nations and have inspired or been incorporated in many international and regional instruments on human rights. The influence of the Declaration on national constitution, municipal laws

and court decisions is also considerable. In fact, it laid the foundations for the entire global system of institutions for human rights protection.

Now it is like a brave banner flying from the highest tower in the world which no one can ignore" and its political authority is second only to the charter itself. The Universal Declaration has become the *Magna Carta* of humankind. "The standards of the Universal Declaration of Human Rights have become a guiding star to international jurisprudence and the high tone of its exhortation continues to influence national policies and their legal applications."

The comment made by Lord Acton, a famous British historian of the 19th Century, regarding the two pages of the 1789 French Declaration of the Rights of Man that they weighed more than whole libraries and than all of Napoleon's armies, is also applicable in the case of the Universal Declaration.

The entire history of the Universal Declaration, from its adoption on 10 December 1948 to the present, constitutes a watershed in the development of the international promotion and protection of human rights. The commemoration of the 50th anniversary of the Universal Declaration on 10 December 1998 should serve as the inspiration for determined and practical action in human rights for years to come.

This anniversary can make an important contribution to the promotion and protection of human rights by reinforcing the fundamental and unremitting efforts on the part of governments, human rights advocates and United Nations agencies and programmes worldwide. It should be kept in mind that we still have widespread discrimination on the basis of gender, ethnicity, religious belief or sexual orientation and there is still genocide twice in this decade alone. There are 48 countries with more than one fifth of the population living in what we have grown used to calling "absolute poverty." And poverty itself is a violation of numerous basic human rights.

The writer is Professor and Dean, Faculty of Law, University of Dhaka.

The Attack on Iraq

Tomahawks' Targets

IF the largest military offensive of President Bill Clinton's time in office succeeds, Iraq's chemical and biological weapons capability will be reduced but not eliminated. And the United States will have to delete tens of thousands of US troops, scores of ships, and hundreds of tanks and warplanes in the Gulf region indefinitely.

By Thursday afternoon, senior defence officials say, the first waves will have sent 200 to 300 Tomahawk cruise missiles slamming into targets suspected of concealing key elements of Iraq's biological and chemical weapons programme. The "serious and sustained" strikes described by Defence Secretary William Cohen, however, are not expected to eliminate Iraqi leader Saddam Hussein's arsenal or end the need for a massive US military presence in the Gulf.

Once the dust settles — probably sometime this weekend as the Muslim holy month of Ramadan begins — the situation will remain much as it has been since the end of the Gulf War in 1991.

"We're trying to degrade (Saddam's) capacity to threaten his neighbours with chemical, biological or nuclear weapons and the means to deliver them," Cohen said at a Pentagon news conference. "We're not seeking to eliminate it." After the strikes, Cohen said, "we will remain ready for an indefinite period of time to maintain our presence."

As dawn broke over Iraq Thursday, US spy satellites and U-2 spy planes carried out overflight missions to assess the destruction wrought by the first wave of strikes. The attack started Wednesday at 2200 GMT — midnight Iraqi time — with sea-launched cruise missiles.

Primary targets for the Tomahawks were Iraqi military communications nodes and facilities within several of Iraq's sprawling presidential palaces believed to conceal supplies and manufacturing equipment for biological and chemical weapons, according to a senior defence official who spoke on condition of anonymity. By Friday, with the arrival of the USS Carl Vinson carrier battle group, the Navy will be able to launch upwards of 500 more cruise missiles at Iraq, defence officials said.

After the first cruise missiles were launched, Navy EA-6B Prowler fighters flying off the carrier USS Enterprise in the Gulf hit Iraqi air defence radars with HARM missiles.

Once those air defences are down, some of the 246 combat planes now in the Gulf or soon to arrive will launch follow-up strikes. Four Air Force B-1s, 15 B-52s, the latter capable of launching cruise missiles, dozens of bomb-dropping Navy F-14s and Air Force F-16s, 10 radar-evading F-117 stealth fighter bombers and an array of British combat aircraft are among the air armada.

The heavy reliance on cruise missiles and radar-evading aircraft point to a key Pentagon goal — so far, key Pentagon goal — of avoiding casualties. Later

phases of the air campaign will involve conventional US warplanes flying more dangerous bombing missions over Iraqi territory.

Top-priority targets include suspected biological and chemical weapon manufacturing and storage sites, weapons delivery assets such as missile factories, and facilities to manufacture and store mobile missile launchers, defence officials said.

Army Gen Henry H. Shelton, chairman of the Joint Chiefs of Staff, said other targets will include "the things (Saddam) uses to guard his facilities" an apparent reference to the elite Republican Guard forces.

The United States is sending

1,500 Army troops to join 3,000 already in Kuwait. In addition, hundreds more will deploy with Patriot missile defence batteries along with a special nuclear, chemical and biological defence unit.

The lack of detailed battlefield information contrasted sharply from the Gulf War when the Pentagon released bomb-camera video tape and gave detailed map-and-pointer briefings. Even targets already targeted in the first wave will remain classified in case the first missiles missed and the military has to strike again.

— The Associated Press

LAW WATCH

Dr Mohiuddin Farooque : A Lawyer with a Difference



Justice Mustafa Kamal, Judge, Appellate Division of Bangladesh Supreme Court was seen traversing down the memory lane

BANGLADESH Environmental Lawyers Association (BELA) organised a discussion to observe the first death anniversary of its founder Dr Mohiuddin Farooque on 8 December 98 at BIAM Auditorium.

Mr Justice, Mustafa Kamal, Judge, Appellate Division, Supreme Court, Mr Abdul Matin Khasru MP, Minister for Law, Justice and Parliamentary Affairs and Dr Kazi Faruque Ahmed, Chairperson, ADAB attended the discussion as special discussant.

Mr Justice Mustafa Kamal said that Dr Farooque was in true sense a public interest lawyer who unlike many other lawyers acted beyond his own personal interest to protect the interest of the nation. He was as such a lawyer with a difference. As a genuine activist in the field of environmental law, Dr Farooque fought for the cause of his belief not for mere publicity but for promotion of public interest. Dr Farooque never compromised on the face of any threat or provocation rather always strive to uphold his ideology in favour of a sound environment. A versatile personality Dr Farooque was an exception and while the country needs such courageous leaders, it was unfortunate to lose a valiant fighter like him at such a early stage.

The Minister for Law said that what Dr Farooque has given to the judiciary through his wisdom would be long remembered by the nation. He emphasised on carrying forward with his vision by both the government and the non-governmental agencies.

In his speech, Dr Kazi Faruque Ahmed stated that Dr Mohiuddin Farooque made his appearance in the sector of non-governmental organisations as a devoted environmental activist through his own sincere endeavours. His far reaching vision made him a leader who would always be missed by the NGOs. His victory over the Constitutional issue of "person and grievance" liberated the concept of Public Interest Litigation (PIL) which was indeed a victory of the people of the nation.

The Chairman of the Discussion Professor KAA Quamrudin who was former Dean of the Faculty of Law commented that he has a special pride in introducing himself as the teacher of Dr Farooque as such an identity is the only expectation of a teacher.

Shafiqul Islam Chowdhury

Law Lords on Pinochet

A Consideration for Bangladesh

by Ahmed Ziauddin

Like most of the dictators, Pinochet found power to be too hot to hold on. Democratic aspirations of the people, dead-weight of international campaign, wind of change in the world, forced him to take different decision, to withdraw from seat of Presidency. His regime over long seventeen years, not only massively violated human rights, carried out systematic torture and crimes against humanity, he divided the Chilean society into two antagonistic camps.

LIKE most of the dictators, Pinochet found power to be too hot to hold on. Democratic aspirations of the people, dead-weight of international campaign, wind of change in the world, forced him to take different decision, to withdraw from seat of Presidency. His regime over long seventeen years, not only massively violated human rights, carried out systematic torture and crimes against humanity, he divided the Chilean society into two antagonistic camps. Those who received favour and developed vested interest in him, obviously back him as a messiah. On the other hand, his victims and large portion of populace consider him as a ruthless dictator.

Pinochet's democratic gestures, holding of presidential election and finally handing over the position of Chile's army chief, were mere cosmetic. In Chile, all members of the armed force retired at a certain age, but Pinochet made sure this provision did not apply for him. He put in place several mechanism guaranteeing impunity and blocked judicial investigation. In 1978, Pinochet promulgated a decree of amnesty. The Decree 2191 effectively shielded those responsible for human rights violations committed between 11 September and 10 March 1978. This Decree has made it impossible for the relatives to find the answers on the whereabouts of those Disappeared and to obtain justice.

According to Amnesty International, those responsible for committing human rights violations played a major role in dictating the terms of transition to civilian rule to ensure immunity from prosecution for human rights violators. Those seeking truth and justice have been sidelined, often violently.

The new Constitution, prepared keeping Pinochet in mind, included a system of Senators for life who, as parliamentarians, have complete immunity under law. Once inducted, a Senator for life, do not have to receive periodic mandate from the people. Finally, Pinochet became a Senator for life. Such a Senator has ten votes, which elected Senators have one.

The 1978 amnesty decree, according to Inter-American Commission on Human Rights, amounts to a self-amnesty, which is incompatible with international human rights law.

Legal Questions Relating to Extradition

Pinochet visited United Kingdom on a number of occasions, and like this time, received VIP treatment. At the airport, he uses VIP route. Ev-

erytime he when he would in Britain, the protesters would follow demanding justice. He was, however, arrested on October 16 by the British police after Scotland Yard received international arrest warrant for his arrest and extradition to Spain through INTERPOL, from a Spanish judge. The Judge, Mr. Justice Baltazar Garzon, accused Pinochet for insolvent in killing of Spanish citizens. The Judge served a second arrest warrant alleging that Pinochet was responsible for systematic acts in Chile and other countries of murder, torture, disappearance, illegal detention and forcible transfers.

Pinochet's arrest sparked immediate controversy in Britain, Spain and Chile. British opposition Conservative party demanded that he be released because of his long-standing support for Britain, specially during Falkland war with Argentina. Conservatives also feared what might happen to Queen or other former Prime Ministers, while visiting abroad. Also questions were raised about selectivity, that Soviet leaders, despite equally despotism and brutality, had been treated differently.

Pinochet's lawyers filed a writ of *habeas corpus* in British High Court challenging his arrest and contested the warrant of arrest in Spanish High Court. The Spanish High Court (Audiencia Nacional) on October 29 1998 rejected a challenge to the jurisdiction of the Spanish judiciary to try Pinochet.

In Britain, the High Court in a ruling on October 28 1998 declared Pinochet's detention unlawful. The Judges said, he enjoyed immunity from prosecution as a former head of state, Lord Chief Justice Bingham of Cornhill stated that neither Spain nor United Kingdom had criminal jurisdiction for alleged systematic murders of Spanish citizens in Chile. He said, under English law, a former head of state of a foreign country was entitled to immunity as a former sovereign from the criminal and civil process of the English courts. The other two Judges, Justice Collins and Justice Richards agreed. Rejecting accusations of systematic murder, torture, disappearance, illegal detention and forcible transfer in foreign countries, Justice Collins maintained that such crimes could never be part of a sovereign functions of a head of state. He said, Unfortunately, history shows that it has indeed on occasions been state policy to exterminate or to oppress particular groups. One does not have to look far back in history to see examples of that sort of thing have happened. There is in my judgment no justification for reading any limitation

based on the nature of the crimes committed into the immunity which exists.

Lords Decided

Against this decision of the High Court, British government, acting for Spain, preferred an appeal to House of Lords. The appeal revolved round two important legal questions of international law: universal jurisdiction and sovereign immunity. International lawyers have wrangled with both the questions. Most of the international jurists agree that for the perpetrators of crimes against humanity, any state can exercise jurisdiction. This has been essential summary of international law following the International tribunal of Nuremberg. Many countries have incorporated this principle in their own laws. Canada and France enacted legislation authorising their courts to exercise jurisdiction over crimes against humanity. Equally, some national courts have also assumed jurisdiction.

In a recent case, the Court of Appeal in France referred this fundamental rule of international law in *National Federation of Resistance and Patriots vs. Barbie* (1993) and held, *Abey* reason of their nature, the crimes against humanity with which Barbie is indicted do not simply fall within the scope of French municipal law, but are subject to an international criminal order to which the notions of frontiers and extradition rules arising therefrom are completely foreign.

The question remains, what are crimes against humanity and whether alleged accusations against Pinochet come thereunder. Under international law, crimes against humanity include the practice of systematic or widespread murder, torture, forced disappearance, deportation, forcible transfers, arbitrary detention and persecutions on political and other grounds.

Each of these crimes against humanity have been recognised in various international conventions or other international instruments, including in Article 6(c) of 1945 Charter of the International Military Tribunal at Nuremberg (murder, deportation and other inhumane acts and persecutions), Article 21(0) of the Draft Code of Offences against Peace and Security of Mankind (1954) (murder, depor-

tation and persecutions), Article 5 of the Statute of the International Criminal Tribunal for the former Yugoslavia (1993) (murder, deportation, imprisonment, persecution and other inhumane acts), Article 3 of the International Criminal Tribunal for Rwanda (1994) (murder, deportation, imprisonment, persecutions and other inhumane acts), Article 18 of the UN Draft Code of Crimes against Peace and Security of Mankind (1996) (murder, torture, persecution, arbitrary imprisonment or forcible transfer of population, forced disappearance of persons and other inhumane acts) and Article 7 of the Statute of the International Criminal Court (1998) (murder, deportation or forcible transfer of population, imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law, torture, persecution, enforced disappearance of persons or other inhumane acts).

Pinochet's seventeen year reign of terror, if judged, he could most definitely be accused of committing one in a massive scale, every crime prohibited by international law.

On sovereign immunity, international law has been clear all along. The fundamental rule of international law that there is no immunity under international law for heads of state or public officials for crimes against humanity. No one can invoke immunity or privilege to avoid criminal or civil responsibility. This rule was recognised in Treaty of Versailles of June 28 1919, Article 7 of the Nuremberg Charter provided, The official position of defendants, whether as Heads of State or responsible officials in Government Department, shall not be considered as freeing them from responsibility or mitigating punishment.

The International Military Tribunal at Nuremberg in its judgment made the position crystal clear. It declared, 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 enforced. It rejected the argument that where the act in question is an act of State, those who carry it out are not personally responsible, but are protected by the doctrine of sovereignty of the State. The Tribunal maintained, The principle of international law, which under certain circumstances, protects the representative of a state, cannot be applied to acts which are considered as criminal by international law. The authors of these acts cannot shelter themselves behind their official position in order to be freed from punish-

ment in appropriate proceedings.

The Tribunal also established that Sovereign immunity of the did not apply in international crimes, such as crimes against humanity. The Tribunal also set the precedent that individuals have international duties which transcend the national obligation of obedience imposed by the individual State.

The Tribunal, thus, confirmed that under international law, no State has power to enact laws providing immunity to individuals from criminal or civil prosecutions for crimes against humanity and other crimes under international law.

Concluding Observation

International law received shock at its arm with this pronouncement of Law Lords. For many decades now, numerous dictators, murderers, torturers, perpetrators of genocide, have, blanketed themselves with amnesty and got away being sovereign.

Pinochet's fate now lays at the hand of British Home Secretary. Under British law, he now has to decide whether the extradition proceeding against Pinochet should go ahead or not. He is now at a quasi-judicial position. The Law Lords have declared that Pinochet's arrest was lawful. He will consider their remarks on position of British and international law.

While on with his other hat as a politician, the Home Secretary also will consider Britain's commercial interest, diplomatic fall-out with Chile. He already is under pressure from Chilean government. He can let Pinochet go only on compassionate ground. He also can sent Pinochet back home on Chile's promise to a trial, while he may decide against extradition on compassionate ground.

Meanwhile, a number of other European countries have queued up to extradite Pinochet. Switzerland, France, Belgium, Luxembourg but, noticeable absentee is USA. US usual pursue very vicious policy against US citizens abroad by foreign governments, but, despite many US citizens being killed in Chile by forces under Pinochet's command, US government has no intention to seek Pinochet's extradition.

Sub-Text for Bangladesh

Pinochet episode has a sub-text for Bangladesh. In 1971, in Bangladesh, all kinds of crimes under international law were committed; genocide, war-crimes, crimes against humanity etc. Many of the planners and perpetrators are still enjoying their lives and freedom, whereas their victims and their families still had been crying for justice. As this essay contains, general amnesty to the criminals was an invalid decision under international law. General amnesty therefore has not given any immunity to the perpetrators or collaborators and thus, in law, criminal proceedings, both at home and abroad, can yet take place. Whether there will ever be any such attempt by the government to bring perpetrators of Bangladesh genocide to justice is a very difficult question.

The author is a Researcher at Brussels Catholic University.