



LAW letter

Crusade for Human Rights

Bravo! The Law Desk of the Daily Star for teaming with Law Watch to come forward to launch a campaign for National Human Rights Institutions (CNHRI) for early establishment of human rights in accordance with international standard which has been overdue in Bangladesh.

It is a fact that the succeeding governments of Bangladesh failed to fulfill the promise of "establishing a number of national human rights institution".

We hope you will have the support of the mass to drive home the vision of human rights. At least as an ardent believer of human rights I will send authentic articles which will be the mouth piece of human rights.

This theme of your launching can only achieve success, provided the Daily Star gives equal opportunity to publish opinion of the writers regarding the oppression of the Muslims, like that of "Bangladesh-Attacks on members of the Hindu Minority" and "Persecution of Hindu Minorities in Bangladesh: A critical review" published in your daily on 06 January 2002, it should be two way traffic.

It is undoubtedly a courageous stride in the sense that your paper have to be impartial then only you can translate the Champaign into reality or else it will be a futile and cosmetic exercise.

I wish The Daily Star best of luck in this crusade for a great cause.

Billy I Ahmed

on-e-mail

LAW watch

Do we have to wait for a war to bring these Politicians to their senses?

TARIQ ALI

'On one level, it would suit both sides to have a small war. But who could guarantee a small war?'

Despite pleas of the new pro-Western regime, Afghanistan is still being bombed. Innocent people die every day. Osama bin Laden is still at large, but attention has already shifted to Pakistan. The destabilising effects of the war in Afghanistan were always likely to be felt here first. The reasons are obvious.

The Pashtun population in Pakistan's North-Western Frontier Province shares linguistic and ethnic ties with the region that formed the principal base of the Taliban in Afghanistan. The same brand of Deobandi Islam is strong on both sides of the border. It is worth stressing that there has been less actual fighting on the ground in the last three months than there has been over the last quarter century. The bearded ones chose not to fight. A sizeable section of the Taliban forces simply came back home to Pakistan. Some of them are undoubtedly demoralised and happy to be alive, but there is probably a large minority that is angered by Islamabad's betrayal and is eager to link up with the armed fundamentalist groups already in the country.

The leaders of the most virulent jihadi sects have been arrested, but who will disarm their militants? Until late last year some of the Islamist leaders were boasting that they had chosen 20 cities on which Islamic laws would be imposed. The unstated threat was clear. If any authority attempted to interfere, they would unleash a civil war. When the latest Afghan war began, Washington made no secret of its fear that a massive Western intervention in Afghanistan that overtly used Pakistan as a launching-pad might trigger major unrest or even a coup against a collaborationist regime. The US did everything to maintain decorous appearances for General Musharraf, Pakistan's ruler, while making sure of the practical compliance of Islamabad. In return for this, sanctions were lifted and money and the latest weaponry began to flow into Pakistan once again.

But now that the Taliban have been defeated, can anyone be sure that the various fig-leaves will really insulate Pakistan from the indignation of the faithful? Everything depends on the unity of the officer corps. To some degree, if one difficult to gauge, Sunni fundamentalism has also penetrated the ranks of the armed forces. Across the country, radical Islamism of one kind or another is a vocal, if minority, force. General Musharraf's military regime itself is, moreover, a very recent and none-too-strong creation, with little positive civilian support.

The abandonment of its own creation in Afghanistan will be a bitter pill for many in the army, especially at junior levels of command, where religious influence is strongest. However, even more secular-minded officers are not pleased at the outcome. The Taliban takeover in Kabul was the Pakistan army's only victory. Privately the ruling elite - officers, bureaucrats and politicians - congratulated each other for having gained a new province. It almost made up for the 1971 defection of Bangladesh. As if to rub salt into the wounds, the Northern Alliance and its Washington-selected Prime Minister, Hamid Karzai, have just declared their intention of forging close relations with India, as was the case from 1947-89. This has further weakened the position of the general ruling Pakistan.

It is true that, at more senior levels, the American crusade against the Taliban has been seen as a godsend. For at a stroke it has allowed the Pakistani generals to recover their traditional regional priority for Washington, assured them of credits they desperately need and lifted opposition to their nuclear arsenal. Unlike its Arab counterparts, the Pakistani army has never seen a coup mounted by captains, majors or colonels - when it has seized power, as so often, it has always done so without splits, at the initiative and under the control of its generals (a tradition of discipline inherited from the Raj).

At all events, short of a break in this long-established pattern, it seems unlikely that the top-brass of the Pakistani regime will suffer much from the pieces of silver with which they have been showered. However, the scale of the Pakistani defeat is such that, once the flow of money and weapons ceases, General Musharraf might well be toppled from within. Power-hungry generals have never been a rare commodity in Pakistan.

This is what makes the tension with India potentially dangerous. The irony is that Pakistan is led by a secular general and India by a fundamentalist Hindu politician: an ideal combination to make peace. Yet on one level it would suit both sides to have a small war. General Musharraf could prove that he was not a total pawn. And Atal Bihari Vajpayee, India's Prime Minister, could win an election. The Kashmiris would continue to suffer. But who could guarantee a small war?

The fact is that Pakistan's infiltration of jihadi groups, such as the Lashkar-e-Tayyiba and the Jaish-e-Mohammed, into Indian-occupied Kashmir has created an alternative military apparatus that Islamabad funds and supplies but can't fully control - just like the Taliban. It's obvious that the attack on the Indian Parliament was carried out by one of these groups to provoke a more serious conflict. Some of the jihadis don't much care for Pakistan as an entity. Their aim is to restore Muslim rule in India. Crazy? Yes, but armed and capable of wreaking havoc in both countries. If General Musharraf won't deal with the menace, Mr Vajpayee will.

If Washington can wage its "war on terrorism", why can't Delhi? Just because it can't get retrospective sanction from the UN? But as any Second World War politician will tell you, for UN read US. The threat of an Indo-Pak war has concentrated minds in Washington: how to give the Indians their pound of flesh without destabilising Pakistan? Perhaps the time is coming when General Musharraf can be sacrificed in the name of a return to democracy in Pakistan. The problem is that no civilian politician in Pakistan is strong enough to challenge the army, which has ruled the country longer than any political party.

The real solution lies in Kashmir, the cause of a dispute that could lead to nuclear conflict. Kashmiris have suffered long enough. The brutality of the Indian occupation made many of them turn to Pakistan, but the behaviour of the jihadi infiltrators has shocked most Kashmiris. The very thought of Talibanisation has led many educated professionals, male and female, to flee. They would like to be rid of both sides.

An autonomous Kashmir, which shares sovereignty with both India and Pakistan, and even China, could become a haven of peace in the region. Sooner or later the situation will require some such solution, but do we have to wait for a war to bring politicians to their senses?

Tariq Ali is a writer and broadcaster. Verso will publish the writer's 'Clash of Fundamentalisms: Crusades, Jihads and Modernity' in April

LAW vision

For a uniform regulation of global securities market

TUREEN AFROZ

IN the late 20th century, the world has experienced certain radical changes in the global securities markets. Some of the major changes can be identified as rapid technological development, increasing use of innovative hybrid financial products, adoption of new automated trading systems, growing volume of cross-border securities investment and trading and emergence of financial conglomerates. Regulators all over the world, are now posed with a choice question, "Globalism or Nationalism?" which echoes in every market they want to deal with.

However, in the securities market a possible solution has been unanimously reached by the regulators and financial architects of almost all of the leading nations and that is "progressive harmonization of securities laws and regulations across the national borders". What they propose are that there should be a uniform set of laws and a common code of conduct in the global securities market, national participants should change their respective national laws to eliminate harmful regulatory discrepancies and there should be a regulatory convergence in the long run.

Benefits of having uniform regulation

Let us find out what are some of the benefits of having a uniform regulation for global securities market:

1. Uniform standards of providing comparable necessary information will enable the investors to make the best decision of their choice and as such the investors will be protected no matter where they invest their funds.
2. As the information asymmetry will be gradually removed from the market, chances of market failure will be less.
3. Different rules produce growing confusion among the market participants. If uniform rules are implemented, any such legal uncertainty will be weeded out efficiently.
4. As the securities markets will be operating under a single set of rules, the transactions in the securities market will take place in a fair, efficient and transparent manner.
5. Distant markets will be linked together without much problem. This will increase the global market capitalization and the movement of otherwise idle investment funds. In the long run, economies will perform better and the *pareto optimal* level of global welfare will be achieved.
6. It will be easier to diversify the risk as opportunities to venture new markets will not be much of a problem.
7. As the barriers to entry into the market will be removed, competition will increase among markets and of course, in the services provided by market operatives. More competition will mean better services to the investors.
8. Because of following a uniform standard of regulatory and supervisory approach, any emerging risk will be easily detected and avoided. In other words, it will be easier to detect any emerging risk in the securities market and to take necessary preventive measures as only one set of criteria will be followed across the world.

Essential features of uniform regulation

The uniform regulation of global security market should possess certain essential features to meet the need of the time. However, it is not always easy to combine all of the features at the same time. Nevertheless, the Global Regulators should try their level best to make a suitable blend of all of the following essential features:

1. **Social Optimality:** Global regulation should be a socially optimal one. It should be the one, which is better than all individually practiced rules and regulations at the national level.
2. **Consistency:** The global rule should be a consistent one. Consistency is not only a static concept but also a dynamic one i.e. uniform global rule should be consistent over the time as well.
3. **Flexibility:** Financial market is always prone to technological innovation and instrumental inventions. Therefore, a uniform global rule should be such that it can accommodate changing notions of the financial markets with limited period of transition and minimum level of disruption.
4. **Adaptability:** Uniform global rule should be easily adaptable by each of the markets. It should not be such that to comply with the same, the different markets will have to undergo a radical change at the cost of their internal financial market crisis.
5. **Cost effectiveness:** Global rule should be such that only a moderate amount of national budget be required to update the present national systems to adopt the same. A costly global rule has very little chances to succeed its way across the world as many countries, posed with financial hardships, will find themselves in a disadvantaged stage to comply with it.
6. **Reduced transaction cost:** Uniform global rule should be very much user-friendly. Such rule should act as an economic incentive to every participant of the securities market to the investors, securities dealers, brokers, other relevant intermediaries, regulators, self-regulatory bodies and of course, to the national economies, in general.

RIGHTS corner

Nepal: war against Maoists extends to media

HUMAN RIGHTS FEATURES

ON 23 November 2001, the insurgent Communist Party of Nepal (Maoist) unilaterally withdrew from peace talks with the Government of Nepal and formed a 37-member 'People's Council' as the transitional underground government of the so-called 'Peoples Republic of Nepal.' According to Maoist sources, the People's Liberation Army (PLA) of the Maoists attacked several targets throughout the country. More than 20 district headquarters were targeted within a few hours of the announcement of the 'People's Council.'

In response to the Maoist onslaught, the Government of Nepal declared a state of emergency on 26 November 2001. Fundamental rights under the Constitution including the right to freedom of expression and opinion (Article 12.2a), press and publication rights (Article 13), and the right to information (Article 16), were suspended. The government also promulgated the Terrorist and Disruptive Activities (Control and Punishment) Ordinance on 26 November 2001 which empowers law enforcement personnel to detain suspects without trial for six months and provides for 20 years' imprisonment for convicted terrorists. Cases instituted under the ordinance are not subject to any statute of limitations. The Home Ministry of Nepal also declared the Communist Party of Nepal (Maoist) a terrorist organisation.

In his address to the nation on 28 November 2001, Prime Minister Sher Bahadur Deuba declared that "encouraging terrorism under any pretext will be considered as a serious crime against the country, people and democracy. All persons, groups and institutions within and outside the country aiding and abetting terrorism through a supply of arms, money and information should be brought under the purview of law and punished accordingly." The Prime Minister asked the people to be ready for "some discomfort for the people".

In addition to a 'war' against the Maoists, the Government of Nepal has declared a virtual war against the media. On 26 November 2001, police raided the offices of three publications allegedly associated with the Maoist movement: the weekly *Janadesh*, the daily *Janadisha*, and the monthly *Dishabodh*. The police arrested nine staff members and also confiscated equipment and written materials. The detainees include *Janadesh* editor Govinda Acharya, executive editor Khil Bahadur Bhandary, correspondent Deepak Sapkota, computer operator Ram Bhakta Shrestha, *Janadisha* editor Om Sharma, computer operator Deepak Mainali and Dipendra Rokaya. *Dishabodh* executive editor Ishwarchandra Gyawali and another unidentified *Dishabodh* employee were also arrested that day, local sources said. A computer operator at *Dishabodh*, Nim Bahadur Budhathoki, had been arrested earlier on 25 November 2001.

Since 26 November 2001, the newspaper staffers have been held in incommunicado detention. They have reportedly been detained on police premises near the Maharajgunj police training school in Kathmandu. People detained in unofficial places of detention are often victims of torture or 'disappearance'. They should have been produced before a judicial authority within 24 hours of their arrest. However, the right to production before a judicial magistrate has been suspended under the Emergency Ordinance.

On 27 November 2001, the Nepalese army issued a notice to media

7. **Legal certainty:** Uniform global rule should enhance legal certainty. Not only the investors but also the securities dealers want a secured and legally certain securities market. The global rule should aim at clearly stating rights and duties of each of the market participants vis-a-vis others.

8. **Enhancing competition:** Uniform global rule should enhance quality competition for a healthy development of global securities market. Competition among service providers brings in better quality in securities trading markets. By removing barriers to entry, the global regulation should aim at achieving the best possible outcome at any particular point of time.

9. **Balance between regulation and self-regulation:** The big-stick regulation will be a complete failure if the market participants remain ignorant. Hence, policies and strategies should be devised to encourage "mass-awareness" among market participants so that they can adopt the best Codes of Conduct, come up with conscious market-watch mechanisms and can indulge themselves in "industry gossip" and "informal securities market chat-chats". Such measures along with sound regulatory provisions would ultimately result in higher standards of behavior and would achieve the long-term policy objectives of stability and growth for the global securities market.

Identified obstacles

There are certain obstacles in achieving a uniform regulation for the global securities market, such as:

1. Differences in different national disclosure requirements;
2. Different national approaches to regulate market operatives;
3. Disparity in different national accounting and auditing standards;

At the same time, we have to keep in mind that the success of harmonized uniform regulation will always depend upon the continuous cooperation among national participants to establish a "Global Government". The world will have to frame suitable harmonized global rules and continue developing the same for accommodating the constantly changing notions of the global securities market.

4. Different settlement period;
5. Differences in legal systems;
6. Supervision problem of the global financial system;
7. Cross-border law enforcement problem;
8. Diplomatic nature of cooperation;
9. Nationalism as a countervailing force;
10. Lack of experienced personnel

How to remove the obstacles?

The differences in disclosure requirements can be removed by setting a common criterion for listing requirements and requiring common prospectus for all the markets.

1. The problem of different approaches to regulate market operatives can be resolved (i) by requiring common professional exams to enter the market; (ii) by framing best-practices rule to maintain universal professional standards; (iii) by imposing universally adequate and ongoing capital and other prudential requirements as licensing criteria; and (iv) by taking necessary measures to prohibit excessive risk-taking. In addition, an effective system of global market monitoring and supervision will have to be developed.
2. Disparity in accounting and auditing standards can be done away with by adopting IASC (International Accounting Standards Committee) rules as unified global accounting standards and ISA (International Standards on Auditing) rules as global auditing practices.
3. To tackle the problem of differences in settlement period, a universally efficient and accurate clearing and settlement process will have to be developed and the same should be properly supervised. A short settlement period will decrease risk. T+3 is the standard settlement timeframe recommended by the *Group of 30* for equities market.
4. Differences in legal system are real threats to have a uniform global rule. It is really difficult to have a complete unification of all legal systems. However, there can be harmonization in relevant legal areas as long as that is essential for the uniform global securities regulation to be operative.
5. The supervision problem can be handled in three stages: (i) the geographical fragmentation aspect of global supervision should be addressed through cooperation among different international groupings of functional supervisors; (ii) the functional separation aspect of global supervision

should be dealt by cooperation among international groupings of banking, securities and insurance supervisors in a joint forum; and (iii) there should be an emergence of a totally new international body, which will look at the matter in all aspects.

6. The effective enforcement of the uniform global rule can be a serious hurdle. It is true that till date the law enforcing agencies are essentially national in character, i.e. territory specific. This has been a major impediment to enforce any international law as such. However, the practice of UN peace-keeping measures tried to make a breakthrough in the prevalent territory specific law enforcing system but it has its own limitation of being politically motivated and arbitrarily decided. Therefore, at least for enforcing global securities market regulation the responsibility will be primarily restored upon the national agencies of every nation state. What is necessary then is a cooperation among the countries to regard the notion of uniform regulation at any cost within their respective national boundaries. In other words, if every nation-state becomes respectful and committed to guard the global interest, the problem can be solved very easily.

7. The very notion of diplomacy should be construed under contemporary realization. In this global world, political diplomacy should give way to economic diplomacy. If economic models are right, then the present world should move in harmony as the markets are becoming increasingly integrated. "Cooperate or die" should be the national and global slogan for diplomacy across the world.

8. The campaign for globalisation should be strengthened more. The importance of uniform global rule for securities market should be highlighted all over the world. Debates should be initiated at the national and international level so that common people become aware of its significance. Once mass awareness is created, the demand for a uniform rule will be generated among the common people and soon after they will force their national leaders to move in the desired uniform direction.

9. To increase expertise, major human resource development programs should be undertaken at the international level in different phases. Interaction between professional groups can be organized through global seminars, symposiums, conferences, workshops and exchange visits. Also, training courses be initiated. A global fund shall be maintained to promote such human resource development programs.

Possible dangers

It may be mentioned that having a uniform regulation for global securities market might lead to certain dangers in the global power balance, at least in the short run. Some such dangers are as follows:

1. There will be massive power transfer from national regulatory bodies to undemocratically controlled international institutions, which have no answerability to the common people.
 2. One set of mandated international rules may be very inflexible to incorporate the changing notions of financial markets, in particular the securities market.
 3. If the uniform rule requires to undergo very radical changes, then it may not be possible for certain countries to adopt it at all, at least in the short run. Therefore, these countries will cause willful delay in adopting the uniform standard.
 4. Because of the problem of less adaptability of uniform global rule, there will emerge "regulation havens" at least in the short run. This will increase the tendency of regulatory forum shopping. No doubt in the long run there will be regulatory convergence, but for the transition period this will inevitably cause much global tension and risk.
- Whatever be the short run dangers, the dynamics of the global securities market should still be analyzed and appreciated only in the mosaic of long term perspective, for which harmonization of regulation is a necessary condition. We should not forget that the risky financial fantasia is the greatest ever threat to the contemporary world economy. Every single minute, financial engineers from different parts of the world are innovating new financial instruments to averse the risk in the securities market but unfortunately, they are finding themselves in more and more risky situations. Therefore, "moving together" is the only way out and for that, having a harmonized uniform set of regulation for the global securities market is the necessary pre-condition.
- At the same time, we have to keep in mind that the success of harmonized uniform regulation will always depend upon the continuous cooperation among national participants to establish a "Global Government". The world will have to frame suitable harmonized global rules and continue developing the same for accommodating the constantly changing notions of the global securities market. In other words, "harmonization" is not a substitute for "international cooperation". Rather both should go hand in hand, as the success of one will depend upon the success of the other.

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access to the arrested and the wounded. The Geneva Convention authorises ICRC delegates to go to places where there are protected persons, prisoners of war or civil internees and to talk to them without witnesses. The ICRC must be granted all the necessary facilities to carry out its humanitarian work. Following the outbreak of hostilities, the ICRC reminded the Nepal government authorities of their obligations under international humanitarian law during the implementation of counter-insurgency operations.

Jean-Jacques Bovay, head of the ICRC delegation in Kathmandu said the ICRC was capable of distributing assistance based on needs. However, he added, the team should be able to visit the facilities and monitor the distribution and use of the supplies. "We are afraid because of the situation, we still haven't had access to those who have been arrested... we are getting some information that leads us to believe the situation in the country is serious."

Earlier in March 2001, the government denied long-term visas to nearly 15 ICRC delegates. The ICRC had repeatedly approached the Home and Foreign Ministries for extension of visas for another six months, but had been turned down by the ministries. According to a Home Ministry official, the denial of long-term visas and the alleged stalling of the ICRC's application for recognition of its Kathmandu office could be "a strategic one." The government would not want the ICRC to get a foothold in the country at a time when reports of human rights violations by security forces were on the upswing.

The conflict has already claimed 2,000 lives and displaced nearly 60,000 persons. And none of the parties - the Nepal police, the army, or the self-proclaimed revolutionaries - have shown any regard for human rights and humanitarian laws. Both the insurgents and Nepalese law enforcement officials used incommunicado detention, rape, torture, inhuman and degrading treatment as well as extrajudicial executions. At least 150 people have disappeared from police custody and many more have been held in unacknowledged detention since the start of the 'People's War'. Although several *habeas corpus* petitions were filed in the courts for their release, the police denied making the arrests. All the petitions were dismissed.

The government of Nepal has consistently claimed that all the people killed by the police as part of the 'People's War' have been Maoist guerrillas killed in police-insurgent encounters. The UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions after a nine-day tour of Nepal however concluded that "extrajudicial killings have taken place" and that "the police have not been made accountable" for these crimes.

With the Government of Nepal throttling press freedom, the security forces will continue to enjoy the license to violate humanitarian principles. The international community must intervene with the Government of Nepal to ensure freedom of the press and to lift restrictions on freedom of expression. The truth, when it does emerge, might be too hard to confront.

By an arrangement with the South Asia Human Rights Documentation Centre.

The International Committee of the Red Cross (ICRC) has been denied