

## The hand-over in Iraq

Only the beginning of the road to sovereignty

THE hand-over of authority to the Iraqi Interim Government (IIG), hopefully, marks the beginning of a corrective process. This, we hope, would rectify the afflictions of the illegal war and the unlawful occupation of Iraq based on wrong intelligence and untenable logic, and which we, along with all the democratic and freedom-loving people of the world, had opposed. We look at it as a purely transitory arrangement towards achieving a full and complete sovereignty of the Iraqi people.

Although we were opposed to the US intervention in Iraq, its occupation and the treatment of the Iraqi people, we would like to think that the handover is the beginning of a healing process, a process that would need the help and support of the world community at large.

The IIG is an un-elected body with its legitimacy to govern under a question-mark. So, it's important for the IIG to not only come out of the tutelage of the US, but also appear to be working on its own volition, and taking its own decisions, in order to establish its credentials to the Iraqis.

Apart from the pressing issue of security, the most urgent task for the interim government is to hold a series of elections that would eventuate in the complete establishment of democracy in Iraq. The acceptability and the credibility of the IIG would depend on how the Iraqi people perceive, judge and evaluate its performance in this regard.

However, much of the Iraqi success in this regard would depend on how the US chooses to conduct itself in relation to the IIG. The supreme test for the US is to leave the Iraqis in full control of their own affairs, including the control of production and revenue of its oil.

God speed to the Iraqis in their new beginning.

## Remarks of the US envoy

Reaping the whirlwind we sowed?

US Ambassador to Bangladesh Harry K Thomas has created something of a stir. Whilst it has been a critique on governmental procrastination in two areas involving US concern, which smacked of an 'undiplomatic streak', his sense of diplomacy did not take leave of him, not quite, as it would appear from some countervailing foot-notes he added.

The envoy made two points that hogged headlines in newspapers yesterday: first, if the much-awaited law allowing trade union rights in the Export Processing Zones (EPZs) is not enacted by June 30, i.e. today, his government would be left with two options to exercise: withdraw the GSP facility or the export-import bank financing. Secondly, he referred to the annual US Trafficking in Persons Report, 2004 which lowered Bangladesh's placing from Tier 2 to 3 to suggest that 'if Bangladesh failed to make significant efforts to prosecute traffickers and address the complicity of government officials in trafficking', this could attract 'sanctions on non-humanitarian and non-trade sectors'.

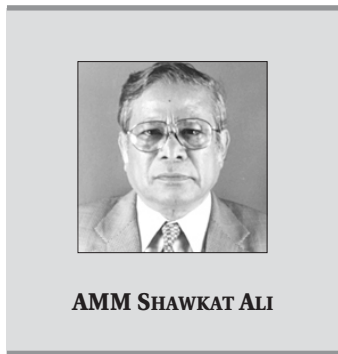
The counterbalancing remarks could perhaps be read into "There is always room to extend the time, but not for six months, six years or 14 years like we have done before". The expression of impatience is noteworthy, though. On point of trafficking, he added that Bangladesh would be moved back to Tier 2 if the government made 'further efforts to implement actions pledged to combat human trafficking'. In other words, the US government is demanding satisfaction on containment of trafficking from Bangladesh so as not to impose certain category of sanctions prescribed by the US for global application.

Yes, no sovereign country likes to be told by an envoy where it has failed, and what it should do, but the line of demarcation between what is regarded as normal diplomatic courtesy and that which may go down as indiscreet remarks can be very thin, and even get blurred in certain extra-ordinary circumstances. We have practically brought it on us.

Take for instance, the question of granting trade union rights to employees in exclusive industrial areas. First, there was difference of opinion between the government of Bangladesh and that of the US, with the former trying to make a special case for a waiver and the latter being insistent on the trade union rights. Bangladesh has enjoyed the GSP facility since 1993, based on its commitment to adhere to the ILO standards -- that sounds like an unsailable US perception. We allow the matter to roll for 14 years, and then we make a fresh commitment to Washington and donors in early May this year to adhere to ILO standards by June 30. Basically we agreed to allow trade unionism in industries that would opt for it. And, a law is on the anvil.

Let's face it, we have a pathology of making a commitment or agreeing to something in principle and then sitting on it until such time as we would be pushed, and rather humilatingly given an ultimatum, which the government basically courted, to get a move on something we had consigned to back-burner. Ultimately, we would do the thing but after a long, dreary detour. Let's get a break.

# A judge cries for justice



THE celebrated Chief Justice (CJ) MR Kayani once said, "A judge may laugh." Now we have a district level judge who is crying for justice. If Kayani were alive, he might well have said, "A judge may also cry."

Sheikh Jahangir Hussain, a speedy trial tribunal (STT) judge reportedly sought justice and protection in a lengthy letter to the CJ. Nothing like this has ever happened in the history of the judiciary of Bangladesh, or perhaps in the sub-continent. The STT judge complained of undue pressures on him brought by two public prosecutor (PPs). The judge cited specific cases in which the PPs allegedly requested him to do certain acts, which the judge had declined. The STT judge, for instance, alleged that Mohammedpur Thana case number 6 of May 5, 2000, was transferred to him for disposal by the Sessions Judges (SJ) Dhaka. The documents of the case were allegedly delayed by the PPs when these were on the way to his court. Thereafter, the PPs, it is alleged, requested the STT judge to send the case back to SJ. This, the STT judge declined to do, on grounds of lack of jurisdiction.

It was further reported in the press that in the sensational murder case of Haris Ahmed, the PPs allegedly concealed the confessional state-

ments of two significant witnesses for the prosecution. The other allegation against the PPs is that one of them saw the STT judge in the chamber with a request to see the documents of a hearing number 4/2000. The STT judge conceded to his request. The PP then requested the judge to grant bail to the accused persons involved in the case before Dhaka 10 by-poll. The STT judge declined, saying that the matter would be disposed of in accordance with law.

### Reactions from the bar association

Reacting to the writ petition by the judge, the president of the Supreme Court Bar Association made a number of comments. Most of the comments are couched in carefully selected words with profuse use of 'ifs'. This has to be so because of (a) the highly sensitive nature of the case and (b) the entire matter is pending consideration of the High Court. However, one of the substantive statements

than on grounds of fairness and justice. Viewed in this context, the Supreme Court perhaps has an obligation to satisfy the principle of citizens' right to know. The citizens would like the Supreme Court to respond to the wake-up call.

### Reactions from the government

The Law, Justice and Parliamentary Affairs Minister rejected the version put forward by the aggrieved judge.

## WORTH A LOOK

The working of the constitution as it relates to the three organs of the state has to be subjected to impartial and unbiased scrutiny by independent professionals. Some of the newspaper columns which appeared in the press in the recent past have drawn attention to the need for public scrutiny of the working of our constitution. Can this be done to ensure a better tomorrow for Bangladesh? No one wants to see anybody, least of all a judge, cry for justice.

### The other side of the story

The other side of the story is contained in the statements of the PPs which appeared in the press. The PPs accused the judge of leveling "false and imaginary allegations" against them. They also reportedly threatened to sue the judge for civil and criminal liabilities.

### The action taken

From what has so far appeared in the press, it is found that the judge had written to the CJ as well as to the Secretary, Ministry of Law way back in May. Nothing happened except that he was transferred to Barisal on June 13, 2004. His grievance petition having failed to get any response, the judge took the most desperate course of filing a writ petition in the High Court division against his transfer.

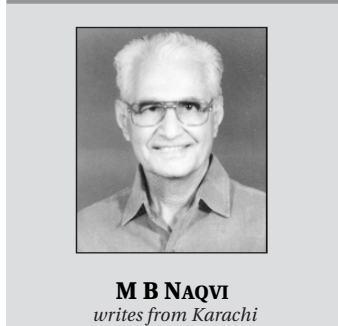
deserves to be mentioned. The Bar Association chief asserted that if the Supreme Court had started investigation under relevant provisions of the constitution consequent upon the letter of May 30, 2004, the issue would not have surfaced in public and tarnished the image of the judiciary.

The image of the higher judiciary appears to have come under public gaze. In fact, the image of subordinate judiciary, in particular that of the magistracy, has been questioned time and again in the recent past. Then came the tier immediately above at the district level. Then came the famous case of an additional judge of the High Court who was recently removed on grounds of conduct unbefitting of a judge. In addition, there were many press reports in not too distant past that accused the government of selection and promotion of judges in the Supreme Court on political rather

He termed the grievance petition filed by the judge to be politically motivated. Such a statement may well be questioned on the ground that independent investigation has not been carried out to support such a contention. It is said that the judge was transferred on "administrative grounds." Should a judge be transferred on 'administrative grounds' when the judge had brought to the notice of both the government as well as the Supreme Court about the administrative difficulties he was facing in discharge of his duties in accordance with law? In similar circumstances, perhaps two or three decades ago, the PPs would have been relieved of their duties on an official report from the judge. How fair the investigation will be may well be in doubt in view of the opinion already expressed by the Law Minister.

### Who appoints the PPs

# An imperial sleight of hand



M B NAQVI writes from Karachi

IT is already June 30, a D-day of sorts. Americans had promised transfer of sovereignty to Iraqis on this day, no less. The country is however in a tumult; while the US and its allied armies can certainly fend for themselves, ordinary Iraqis are dying in large numbers everyday. Law and order is virtually non-existent. In this context the idea of sovereignty transfer makes no sense.

The world has wondered how can the Americans transfer sovereignty in the given conditions -- even if sovereignty can actually be transferred. It is true that seemingly there have been transfers of sovereignty; in some cases legislation can be said to have effected transfer of sovereignty, as happened in India and Pakistan. But this is dubious.

Sovereignty can be transferred under just one condition: when the older sovereign begins to lose credibility and is challenged by an emergent sovereign -- whether peaceably or violently. That is the only comprehensible sovereignty transfer.

The process used to be generally bloody. But in the 20<sup>th</sup> Century, it's a superficially gentlemanly agreement with a colonial sovereign made over authority and power to successor states through a legal instrument. But facts underneath stayed invariable: an imperial power agreed to withdraw only when it saw others credibly organise themselves with an intention to take over. Even the British dominions gained their status after series of struggles. It was not the large heartedness of the British Crown

that happily gave them that status; others were determined to have full self-government. Transfers of sovereignty have to be seen in this light.

Who has Iraqi sovereignty today? In terms of pre-18<sup>th</sup> Century theory of kings claiming sovereignty by divine right, it could be seized or taken if there was another king or general who was militarily stronger. In this case, effective power and authority over where Iraqi state used to prevail has been acquired by the victorious US Army; the latter, while retaining the

destruction of a whole state. That an Iraqi state, with membership in the UN, exists is a legal fiction. The US occupies the country. A foreign army has set up committees, ministries and departments for its convenient governance. Just ask the question: Would the occupation armies of today be under the control, command and direction of the new 'sovereign' on July 1? Obviously not. Indeed no Iraqi shall have control over them. Some sovereignty, that!

Americans have taken good care of how things will run after June 30.

cans would be out after even 10 years. The second is to pretend that they have transferred sovereignty over Iraq and thus they are not answerable for their actions in Iraq. They want to go on exercising power and authority without any corresponding responsibility or liability to administer justly and lawfully. This is distilled imperialism: nothing will happen in Iraq unless the Americans concur. But they will not be responsible or answerable. It is legitimate to expect that all the decisions that would be made in Iraq would first

The first is the American desire to control the supply of Iraqi oil: world's second largest reservoir. The second major consideration is seen as Israel; the destruction of the large, potentially rich and easily developable Arab state would enhance Israel's security manifold. Along the way the Palestinian issue will, one Sharon way or another, become a thing of the past. Thirdly, that would also help reshape Middle East according to American hearts' desire.

A permanent American garrison in the US-controlled Iraq would be

the control over the chief supply points of key raw material. Central Asian Republics are agog with new nationalisms. Their armies are equipped with antiquated Russian equipment. Under the growing American influence, modernisation of their armies and air forces would enrich American war industries for at least a generation.

Incidentally, the strategy includes taking South Asia along. American actions in Afghanistan have virtually yoked in both India and Pakistan. Pakistan is of course 100 per cent sold on America's War on Terror. It will remain faithful to America for as long as can be foreseen. Even the new government in India had initially indicated its intention to build on AB Vajpayee's closeness with America. Since the Congress depends upon Left support also and since Left will not abide by too close a relationship between India and America, some hasty corrections are being made in the Indian stance. But one thing remains certain: The basic military cooperation between India and America is not likely to be whittled down even if it does not grow as visualised. On the whole, the Americans have very little to worry about South Asia.

Finally, the rest of the world is aghast at the bold and far-reaching geo-political aims of America. It has treated European allies as second class friends to be utilised when needed or dropped if they do not cooperate. The UN too has been used in like manner. An initial shake down seems to have already taken place in which American superiority remains unquestioned and the Europeans and the UN are both struggling to find their own feet and regain some credibility. Insofar as Indian and Pakistani governments are concerned, they have started talking after several years. Do they have any idea of where they figure in the New Asia being remade by the US? The US aims are firm. As for election, John Kerry, Bush's rival, does not differ fundamentally from Mr. Bush on larger issues.

So long as American Army stays in Iraq under the command and control of US President, the Allawi crowd will remain American creatures. There will be no transfer of sovereignty. Iraq will continue to be governed under American tutelage and dictation through various commissions and committees or other arrangement already in place. There is no chance of new Interim or Provisional government being able to make any decision against the 'advice' of the various commissions, committees and consultants. So what are we talking about? Which sovereignty is being transferred to whom?

bulk of this power and authority has chosen to invest certain pliable Iraqi individuals with the illusion of authority, power and sovereignty. So long as American Army stays in Iraq under the command and control of US President, the Allawi crowd will remain American creatures. There will be no transfer of sovereignty.

Moreover, there is the small matter of democratic theory. After both American and French Revolutions of 18<sup>th</sup> Century, it is hard to deny that sovereignty over Iraq belongs to the people of Iraq as an inalienable right. Ever heard of inalienable human rights? Americans may have acquired de facto control over Iraq. But that does not confer on them the right to claim sovereignty over Iraq -- to be bestowed on some American creatures at will. The real sovereigns of Iraq are struggling to throw out the American and Coalition Forces.

What has happened in Iraq is the

ensure American interests and if any Iraqi interests can also be served by a given measure or step, it would be luck.

Too many questions arise: why did the Americans invade Iraq in March last year? True, Saddam was a horrible dictator. But so are all the other dictators, hundreds of them equally tyrannical. Why choose Saddam only? George W. Bush and Tony Blair made great play of Weapons of Mass Destruction in Iraq and Bush kept on saying for a long while that Saddam was in league with al-Qaeda and thus carried some responsibility for 9/11. All these pretensions have proved to be false. The question recurs: why did the Americans go into Iraq, leaving a few of old state structures intact? Why, indeed? A little thought is sure to make one fall in line with the commonly expressed opinions virtually everywhere. Three major reasons are being assigned for American actions.

Americans have made two major decisions: the first, and substantive one, is that its armies will continue to occupy Iraq indefinitely; no one thinks that Ameri-

a redoubt, making American power in the Persian Gulf region invincible. American control over Iraq's resources can enable the US to reshape Middle East. That would also enable American geo-strategists to masterfully execute a major thrust through Central Asia right up to Korean Peninsula, linking up with their Seventh Fleet prong covering Taiwan, Japan and South East Asia. That would, in the fullness of time, contain and encircle China, on the one hand, and enable Americans to play a strong role in Russia's fastnesses, on the other.

Central Asia is important for other reasons also. It too has oil and gas. The Americans are thick on the ground in and around Azerbaijan and have more or less softened up most of the Islamic Central Asian governments. While the grand imperial design of totally dominating Asia is the geo-strategic aim, it is also economically promising. At stake would be

developed countries. What he fails to admit is that our country's violence, killings are wholenot together different from those of the developed countries in as much as our violence, killing are largely politically-linked that brings it close to state terrorism.

It is widely publicised that had Bangladesh improved its governance, law and order, corruption, it could attain a higher GDP like 7/8 per cent. That may not be untrue. But does it ensure any better life for the great multitude of people in the lower strata? In fact the gross defective distribution system in our economy will contribute to making rich people more rich and poor people more poor.

World Bank's Vice-President Pratul S Patel had rightly pointed out that what positive results Bangladesh had achieved in food production making a population of 14 crore self-sufficient in food were no credit of the political leaders or the bureaucrats. This is exclusively the achievement of the poor peasants themselves. There is a section of intellectuals who question if the

target group of the development agenda of the donors is the destitute millions? In fact, the development that does not cut the lower tier of the population may at best be bragged about as "shining development" against the core truth of "basic development". The BJP alliance govt of India boasted of this sort of development ignoring the teeming poor in rural areas.

New rhetorics, enchanting euphemisms have descended from the mouths of the rich nations upon the hapless third world bloc. The donor countries have courted to be lovingly called as 'development partners'. But old habits die hard. Our finance minister may have tasted their sweet stings that forced him to say that if the country could avoid confrontational politics and mobilise internal resources much of dependence on donors could go. But mere pronouncement is not enough. Objective approach is the key.

### A R SHAMSUL ISLAM

DONOR countries' prescription for reforms to attain development target and our governments' achieving the implementation schedule are always at variance. The Bangladesh Development Forum (BDF) meeting at Dhaka was more or less a continuation of rather this sort of hackneyed, slipshod tradition though at times punctuated with heroics and seemingly feigned pledges. It focused on domestic politics of Bangladesh. Donors did not talk about development strategy or development model!

Discussion on law and order, violence, criminalisation of politics etc. took place in a manner as if it were held in the Assembly enthusiastically participated by the MPs of both the ruling and opposition parties. Our governments are accustomed to this type of discussion in the BDF meetings and it is now out of place to question if the donor partners have any right to harp on it. Better to mind our politicians if this culture of discus-

sion between the donors and governments could be used to usher in fruitful political reforms in our administration.

More holding elections constitutionally and democratically does not any way guarantee establishment of democracy in governance. The brutal fact is that our governments appear intensely dictatorial and undemocratic. Never short of being at par with the ruling parties are our major opposition political parties. Result is that both combine gleefully to give rise to occasions like April 30 deadline. In our politics such disasters are bound to occur routinely.

True, in an independent country it is the exclusive privilege of the people to decide upon how their legislature, judiciary and executive will function. Any sermon on it by outside countries tantamounts to interfering in internal affairs. But the unpleasant truth is that Bangladesh being a developing country has had to be content enjoying limited sovereignty as resulted from its continuous dependence for over three decades on foreign

aid.

In the earlier meetings of BDF also people noticed the donors and government talking about good governance, law and order, fighting corruption etc. Amusingly, when facing the mediemen the finance minister expressed his disgust at the donors' interference in the internal affairs of the country. More interesting is that our political leaders, when in power, get irked at what they allege as donors' undesirable interference in domestic affairs and on the other hand, when in the opposition, derive immense delight at the sermons the donors deliver. From the birth of Bangladesh the donors have emphasised upon the need for good governance for achieving poverty reduction, better human rights condition, higher GDP etc. The basics of development like transparency, accountability, good governance, people's participation etc have got coined in the aid literature of the donors.

It is open that a substantial chunk of donors' grants are eaten up by corrupt political leaders,

bureaucrats etc. Further the projects undertaken for development are not sometimes meant for welfare of the people in a broader perspective but taken to satisfy narrow personal, parochial ends.

Our politicians are ruled by mindset of medieval feudalism. Our bureaucracy, diplomatic corps are fouled up by nominations, extensions, contracts, OSDs etc of staggering proportions.

Constitutional guarantees for separation of powers, independent judiciary, decentralisation of powers, strong local govts, independent anti-corruption commission, independent election commission, independent public service commission, strong human rights commission, political parties registration act, ombudsman, free information flow etc are pre-requisites for good governance. Do these exist in Bangladesh? Whereas in matter of separating judiciary from executive Supreme Court's decreed timeframe is violated routinely by all govts, no matter if led by BNP or AL, on flimsy grounds seeking time.

Pressed by circumstances, the government has undertaken to frame an anti-graft commission. True, there is also an election commission. But under existing laws and feudal attitude of the politicians and public officials there is little chance that these organs would be able to operate freely. As for instance, in the recently held Pourasabha elections the Chief Election Commissioner himself wrote to the prime minister seeking help of the army in the polls. But it came to naught.

Ershad was an unelected military dictator. Many allege that in the existing rules the prime minister is no short of an elected dictator. The MPs have had practically no liberty to act independently according to dictates of conscience and fairness of things. As for example, article 70 of the constitution debars one lawmaker from voting on any issue against his party under threat of losing his parliamentary seat.

Bangladesh has been branded as the top corrupt country for consecutive three times and placed

amongst bottom countries with worse human rights record. Some raise the question what moral authorities do the US, UK have to advise us in matter of human rights as these countries themselves are grossly accused of defaming human rights. The whole world was horrified to see how brutally and sadistically the war prisoners of Iraq were treated. Still like silver lining in a cloud some redeeming features cannot possibly elude our attention. Firstly, doesn't it speak of the free media of those countries that splashed those scenes of abuse? Secondly, is there any quarter within their land to threaten the media of dire consequences? Thirdly, have the governments of those countries indulged to question the patriotism of the concerned mediemen? Fourthly, haven't the release of the news pressurised the President of the US and PM of UK to offer apology?

The finance minister, in a bid to hide the gravity of our existing violence and killing spree, has referred to the high-scale acts of violence in day to day life in the

## OPINION

# Some thoughts on donors and reforms