

"ALL CITIZENS ARE EQUAL BEFORE LAW AND ARE ENTITLED TO EQUAL PROTECTION OF LAW"-Article 27 of the Constitution of the People's Republic of Bangladesh

**DHAKA SUNDAY AUGUST 29, 2004** 

The Baily Star

### LAW opinion



# Islam's contribution to international law

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HE scope of international law covers almost every kind of activity of inter-state character. Since the end of the Second World War (1939-45), there has been a steady development of international humanitarian laws When states' own internal protective system falters or where it fails to protect human rights, international humanitarian laws come into play.

Western writers and jurists of international law have routinely overlooked contribution of Islamic law to modern international law. They either disregard or ignore the very existence of the subject. For instance, well-known authors, such as, Oppenheim or O'Connell do not discuss it at all.

#### Contribution of Islamic Law to modern international law

Although modern international law is overwhelmingly Euro-Centric and Christian-based, Islam's contribution to modern international law is significant. Many Islamic scholars maintain that the interaction between eastern and western civilisations and the relationship between Islamic law and modern international law appears to be close. Former Sri Lankan judge of the International Court of Justice, Christopher Veeramantry, in his book Islamic Jurisprudence (1988), has recognised Islam's contribution to the history of modern international law.

For centuries, laws under Islamic system have held a paramount place in the civilisation of the World. The religion of Islam has always accorded a pre-eminent position to rule of law. International law under the Islamic rule had thrived in some way or other until the collapse of the Ottoman Empire

Islamic international law falls into monist category because it holds the view that the legal and moral source on which domestic and international laws originate is one. Many centuries earlier, international law under Islamic system worked out many principles of law on various subjects and in doing so it broke new ground. Many of them are now in existence in modern international law.

Islamic scholars maintain that the Sharia (the Arabic word for 'track' or 'road') includes many excellent provisions about declarations of war, conduct of war, treatment of prisoners of war and territory, guarantee of safe conduct for noncombatants and treaty of peace. In 1984 the Dep $uty\,Rector\,of\,Chulalongkorn\,University\,in\,Bangkok$ (a non-Muslim), at a seminar on Islamic international law, made the following observation: "I have never realised how truly liberal, progressive, and broad-minded Islamic law is."

Islam considers peace as the normal state of affairs in international community. Furthermore

states have an obligation to do good work for people. There is a verse in the Holy Qu'ran ( SurahV: Verse 48) that declares: " But that He may try you by that He has given you. So vie one another with good work". Many Islamic scholars have interpreted this verse to mean that competition in good work among states is an obligation under Islamic

They argue that the very concept of good work by states found recognition in the UN Charter in the words such as "to practise tolerance and live together in peace with one another as good neighbours and... to employ international machinery for the promotion of the economic and social advancement of all peoples" (second paragraph of the preamble of the UN Charter). The promotion of international co-operation for good of the people of the world, as advocated by Islamic international law, has been codified in the UN Charter.

Islamic law underscored the scrupulous compliance of the treaty provisions. Although the non-Muslims had breached the Treaty of Hudaibiya, Muslims had strictly complied with it. The compliance of treaty provisions has now been recognised in the 1969 Vienna Law of Treaties, under the heading of 'Pacta sunt servanda", Article 26 stated: " Every treaty in force is binding upon the parties to it and must be performed by them in good faith."

Another important contribution of Islamic international law is the dichotomy between universal and regional international law. A group of law was applicable to only among Islamic states, while universal law was applied to all states, such as, Byzantine and Persian Empires. The same division is found in modern international law. The universal international law applies to each and every state; for example, crime of genocide is not prohibited for all states. Regional international law is applicable only to regional states. For instance, a law agreed under SAARC (South Asian Association For Regional Co-operation) is only applicable to seven South Asian countries and not to others.

Finally, strict diplomatic protocol in the exchange of envoys was observed when the Prophet (Pbuh) sent his envoys to Roman and Persian Emperors in the 7th century. Almost identical protocol has now been in vogue and rights (immunities) and privileges of diplomats have been laid down in the 1961 Vienna Convention on Diplomatic Relations.

### **Islamic law and Human Rights**

Islam opposes imperialism because it suppresses and oppresses people's rights under the regime. The incident of Pharaoh in Egypt and his oppressive treatment of the Jews have been condemned by Islamic law. The condemnation indicates that Islamic law does not approve despots or tyrants. This implies that not only democracy (people's



human rights must be respected and no dictator should encroach upon the dignity of a human Islamic law also disapproves economic exploi-

tation (charging exorbitant rate of interest -'usury'- by a moneylender) that in turn may develop into a threat to social peace and stability. Islam insists on peaceful settlement of disputes, for example, the Prophet (Pbuh) concluded a peace treaty (Treaty of Hudaibiya) in 628 AD with non-Muslims of Mecca. All these Islamic principles have found recognition in the UN Charter. The mode of peaceful settlement of disputes (negotiation, mediation, conciliation, arbitration and judicial settlement) has been codified in Article 33 of the UN

### Concept of War under Islamic Law

Under Islamic law, war can only waged as a defence There is a clear injunction in the Holy Ou'ran (Surah II, Verse 190) as follows: "Fight in Allah's cause against those who wage war against you, but do not commit aggression, for verily Allah

clear that wars can only be defensive, not offensive. This implies that US-led Iraqi war is not permissible under Islamic international law. So is the case under the UN Charter. Furthermore, the terms "aggression" and "unjust wars" are now used in modern international law and Islamic scholars argue that these concepts were borrowed from Islamic international law.

### Conclusion

The above paragraphs provide only a glimpse of contribution of Islamic law to modern international law. They also show how close the precepts of modern international law and Islamic law. The similarity is a credit to Islamic international law that came into being some 1000 years before the emergence of Western international law. founded by the Dutch jurist Grotius (1583-1645). Regrettably, Islamic contribution has not been recognised in books authored by most Western

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### LAW campaign



**CONTROL ARMS** 

## Campaign for Arms Trade Treaty

HE lack of control of the arms trade is fuelling conflict, poverty, and human rights abuses worldwide. Every government is some how responsible

For many years, the millions of peoples have witnessed the human cost of arms abuses and campaigned for tougher arms controls. But now the situation is critical. Throughout the world, companies are making a killing literally. They profit from selling arms and security equipment (such as guns, tear gas, leg-irons, electroshock batons and tanks) to countries where they are used to commit torture and other human rights violations. The human cost of arms abuse every year, throughout the world, roughly half a million men, women, and children are killed by armed violence which means one person in

It doesn't have to be like this. Oxfam, Amnesty International, and a group of more than 500 NGOs in the International Action Network on Small Arms (IANSA) are calling for a global Arms Trade Treaty to bring the trade in weapons under control and for local action to protect civilians

By 2020, the number of deaths and injuries from war and violence will overtake the numbers of deaths caused by killer diseases such as malaria and measles.

Without strict control of arms exports and measures to protect people from their misuse, countless others will continue to suffer the catastrophic consequences of the arms trade. Readily available weapons will intensify and prolong wars. More people will be terrorised and forced from their homes. Families will be prevented from growing food to feed themselves or earning enough money to send their kids to school. Human rights abuses will continue. People will be trapped in poverty. This isn't fiction. Oxfam and Amnesty International and IANSA members work with people who experience these atrocities every day.

The only way to end this cycle of poverty and suffering is to control the trade in arms.

There are around 639 million small arms and light weapons in the world today. Eight million more are produced every year. Without strict control, such weapons will continue to fuel violent conflict, state repression, crime, and domestic abuse. Unless governments act to stop the spread of arms, more lives will be lost, more human rights violations will take place, and more people will be denied the chance to escape poverty. Urgent measures are needed immediately. Governments need to take action at every level, from communities to the international arena, to stop this suffering.

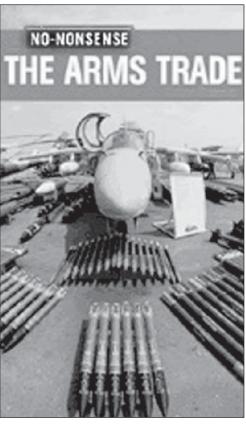
The issue is simple. The unregulated supply of weapons makes it easy for criminals to murder, for soldiers to  $kill\ in discriminately, and\ for\ police\ to\ arbitrarily\ take\ lives.$ Today's weapons are quicker and more powerful than ever before. And in the wrong hands, faster and more powerful weapons mean more abuse and more wasted lives. It's not just unlawful killings during wartime that is on the increase. Military and security equipment is being misused by soldiers, paramilitaries, and police to kill, wound, and commit terrible atrocities against civilians during peacetime too.

The global misuse of arms has reached crisis point. Many governments and companies are ignoring the flow of arms to those who openly flaunt international human

rights and humanitarian laws. Guns especially have never been so easy obtained. Their increased availability threatens life and liberty in communities and cities around the

"...the excessive accumulation and illicit trade of small arms is threatening international peace and security, dashing hopes for social and economic development, and jeopardising prospects for democracy and human rights." UN Secretary-General, Kofi Annan, spoke these words in

The international community must adopt a global Arms Trade Treaty in time for the next UN arms conference in 2006. A global Arms Trade Treaty is desperately needed now. It would create legally binding arms controls and ensure that all governments control arms to the same basic international standards.



But the world's governments are taking little or no action to achieve this. Responsibility for the bloodshed and misery caused by the absence of effective arms controls stops directly at their doors.

The success of the international campaigns to ban landmines, cancel third world debt and establish an international criminal court proved that many governments do take notice of public opinion. The Control Arms campaign could be just as influential in pushing governments to adopt an Arms Trade Treaty but only if enough people and state Govt, realise this.

Sources: Amnesty International

### LAW vision



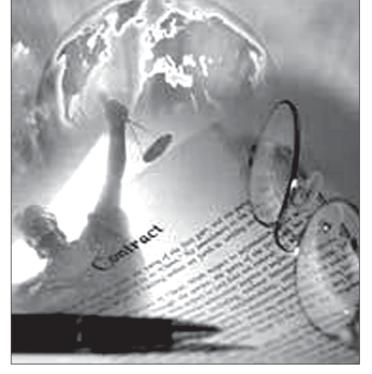
# Professional partisanship not desirable

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TITH an effort to inject further discipline and streamline accountability, the laws and regulations in the corporate sector are constantly undergoing various updates and upgradations. This is also intended to put those at par with other relevant statutes around this part of the world. In that exercise, the Bangladesh Companies Act is now at the reviewing table. A team by the name of 'Company Law Reforms Committee' has been assigned to work out the proposed amendments for upgradation and

It may be mentioned that the existing Companies Act 1994 was put in place replacing the age old statute the Companies Act 1913, which was long outdated and unfit in the present digital era. Long before our new enactment, both India and Pakistan have already got their relevant Companies Acts reframed back in 1956 and 1984 respectively. And that wasn't the end, they are reviewing their Acts almost every year and in 2003 both the Pakistani and Indian Acts have undergone massive revisions. However, though our new Act included so many novel and improved provisions over those of the Act of 1913, there were quite a few mismatches as well. The new Act also introduced some highly debatable provisions in areas like Board affairs, managing director's appointment, disclosure requirements, auditors' engagement and removal, preservation of documents etc., which came under instant criticism from concerned quarters. And then, there were contradictions and inconsistency in the Act between its sections and schedules. So, in view of its so many drawbacks, suggestions to review the Act and to amend the controversial provisions were pouring in immediately after its enactment. Finally, after a decade, the task of updating of the Companies Act is now on the government's action

Now, as stated earlier, the Company Law Reforms Committee (CLRC), which was entrusted to review and make recommendations for amendment/improvement of the Companies Act 1994, is reported to have finalised its proposal for the same. Interestingly, though the team was assigned to put forward amendments to the standing law (i.e. Companies Act-1994), it is learnt that the Committee has worked out to the length of drafting altogether a new act as a whole. This is good on the count that now readers would not require to go back and forth for cross-references to the original act. But the underlying worry is that the Committee is learnt to have craftily rewritten the law in a markedly biased form. Quite noticeably, five out of eight members of



the CLRC are professional accountants. As a result, the draft is prepared reportedly with a view only to promote the profession of accountants. Positions in a company, which are essentially functional in nature, viz. finance officials or accountants are conspicuously finding place to play roles in the new act without relevance, whilst statutory position such as the company secretary is relegated to the back bench. Whereas, it is the company secretary who, as the corporate compliance officer, is primarily responsible for implementation of the provisions of statutes in any company. Even, the draft act has

reportedly given noticeable focus to the Institute of Chartered Accountants of Bangladesh, as has been exposed latter in this article.

It warrants to be explained here that functional responsibilities are those, which arise apparently out of the customary functions of a company as it may call for, while statutory responsibilities are the ones that stem from the requirements of any law or statute. That is why the later is more of an obligation on the part of the company than the functional ones. A company, large or small, private or public, cannot just put aside its obligatory responsibilities towards the market, the regulators and the society at large. Whereas, it is optional for it to decide about the functional discharge. It may even combine several functions into one, depending on its standing. But a company just  $cannot \, shrug \, off \, its \, statutory \, liabilities \, from \, carrying \, out \, meticulously.$ 

### The subtle approach

It may be mentioned that the CLRC had invited suggestions from concerned quarters for inclusion in the proposed amendments. It is gathered that a few such suggestions were also submitted to them. However, it is reported that none of those were considered for inclusion. Whereas it has conspicuously strived to include the roles of the finance and accounts officials at various chores in the draft act, a venture nowhere available in the Pakistani or Indian Acts. To cite a few of the illustrative, but not exhaustive mark of partisan approach, we extract the following from the suggested draft:

(a) The term 'officer' has been defined to mean and include 'a director, chief financial officer, chief internal auditor, secretary, manager, or any other officer of a company' [sec.2(r)].

(b) About authentication of financial statements, the draft act provides -'any financial statement shall be approved by the directors and shall be signed by two directors (including the Managing Director) and the Chief Financial Officer' [sec.205(1)].

(c) About auditors' remuneration it is stipulated in the draft that 'the remuneration of the auditors of a company shall not be lower than that fixed in the Schedule of fees determined by the Institute of Chartered Accountants of Bangladesh (ICAB)' [sec.227(10)(b)].

As it can be seen at the first two instances above that functional positions have got undue inclusion in the provisions, though the Board of Directors of a company have either very little or no inter-action with them. None of the Acts of 1913 or 1994 provided like that. If we look at the Pak and Indian acts as the sub-continental bench mark, we see no such mention of functional positions

in the Companies Act there, and it is rightly so.

The most unscrupulous part about authentication of accounts at draft section 205(1) (mentioned at b above) is that this goes against all judgement and moral. Authentication of accounts should not be left for the same person who, according to section 206(2) of the same draft, is made 'primarily responsible' for preparation part of the accounts and who, as such, is manifestly interested. A person interested, when authenticates, it leave rooms for manipulation, much o the detriment of the Board. It should have been, ideally, the Company Secretary to authenticate (signature) the accounts, once those are approved by the Board. In fact, as of now, the Act of 1994 does provide so and there is no apparent need to bring in any amendment at that place. The Pakistan and Indian stipulations also match to the same. Actually, our culture is that we look upon Pakistan and India when it corresponds to our need, but immediately pull out when it  $doesn't.\ In\ Pakistan, Company\ Secretary\ is\ the\ Chief\ Compliance\ Officer\ (CCO),$ and in India, he is regarded as the Chief Governing Office or CGO, because of his central role-playing in corporate governance. The Bangladesh case should not lag behind in its insight appreciation.

At the third instance above, it is quite funny to see that ICAB is unduly given an upper hand over the act, in fixing the fee of a company's auditor. That kind of a stipulation is evidently partisan and profoundly demeans the act under review. It is also against all ethics and tantamount to imposing fine to the company concerned. Fees to be paid by one cannot be fixed by some other. Auditors' remuneration has always been a case-by-case issue and is supposed to be fixed mutually by the parties. It is not to be generalised. We should remember that there are both large and small entities existing and they should not be weighed evenly, not even on the count of their share capital. Such a stipulation is a manifest breach of, and infringement in, company's rights and deserves to be summarily withdrawn before putting ahead the draft act.

The Companies Act is a sectoral statute and is enacted by the government for general regulatory control of the corporate sector at large. It often comes under study by the foreign investors as well, before they decide anything in Bangladesh. Such a basic law cannot afford to be periled or prejudiced towards any particular profession, nor should it deviate from universal norms, practices and principles. Therefore, it would be advisable to thoroughly scrutinise the draft act by corporate experts. It should also include chartered secretaries in the process of its formulation, reforms or enhancement, so as to put in place the required check and balance.

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