

## 'Caretaker' system under spotlight

A.K. FAEZUL HUQ

A school friend whom I met after ages, one chilly afternoon in London's busy Oxford Street way back in 1998, during the course of our conversation that pertained to and covered all sorts of political developments at home, minced no words when he pointed out rather confidently that the 'caretaker' system which we had so fondly adopted in 1996 through its incorporation in our constitution, was in effect nothing but a sort of 'no-confidence' in our own selves. Although I fired all my guns in defence in order to convince him about the salient features and 'goodness' of our curious system, yet, frankly speaking, within my inner self when I seriously and dispassionately thought over the entire matter for sometime, I had to finally concede and agree with most of his unsavoury observations. In my humble way, I had sincerely tried to explain it to him [as I do in all such cases when we are confronted with strong arguments against the system] that in 1990, after a prolonged people's movement when General H.M. Ershad had to quit and at a time when people had lost complete faith in the country's electoral system, anything which could restore that confidence even to a lesser degree, was at once acceptable.

During those tumultuous days and nights, we saw how a universally acceptable formula was curved out after hectic consultations and frank exchange of views amongst all the pro-active opposition leaders, and how a rare unity of people and leaders was demonstrated through an unprecedented national consensus, whereby Justice Shahabuddin Ahmed, the incumbent Chief Justice of the country was installed as the temporary head of the 'caretaker' government [and the acting head of state also]. Along with a neutral and judiciously selected council of advisers, the acting President was given the enormous responsibility of conducting the general

elections in the early winter of 1991. And that was a time in our history when there was no sign of any note of dissent from any quarter. In fact everything was done in such a great haste and without of course any constitutional swathe whatsoever that the very concept of the high office of the 'Chief Adviser' was missing in that impromptu set-up at that point. But fortunately enough for the teeming millions, the formula happily clicked.

After the Magura bye-election scandal and subsequent mess up [of the whole matter] by the then ruling BNP, people were left with no choice but to strive for a queer

It however goes to the credit of Jamaat-e-Islami Bangladesh, who first mooted the idea of a 'caretaker government' (CG) way back in 1980 [when General Zia was still alive]. However, due to some unknown [and unexplained] reason/s they failed to convince other leaders and parties of its salient features at that point, although they later lent their full and unqualified support to the relentless political movement spearheaded by the Awami League, Jatiyo Party and other opposition parties combined together, which eventually compelled Begum Khaled Zia and her BNP to bow down to the people's

sus candidate shall have to be chosen to head the next 'CG' is a concept which might look quite viable on the surface, but is a difficult proposition to implement in reality no doubt. The first question that automatically crops up is: How will the political parties [which do not see even eye to eye on most of the national issues] find out a consensus candidate so easily to head the 'CG' in absence of a set formula? Secondly, when shall the search for the ideal man start and when shall it end? And third: What about the council of advisers? Who shall select them, or will the consen-

to conduct the general elections or even bye-elections [as happened in Magura in the early '90s] satisfactorily, the element of suspicion shall always persist, no matter how pious and sincere commitments are made from the dais. Seeing is believing as they say, and in almost all cases in the past the tendency to rig openly, even in front of neutral observers, was so glaring that a concentrated and strong movement for a neutral body to conduct the election automatically popped up. It however pains us when we look towards our sub-continental sisters--India, Pakistan, Nepal and even Maldives--who fully rely on their Election Commissions and have never thought of any interim, neutral body taking over for conducting the general elections. In those countries, the out-going government [in office] 'ipso-facto' turns over as the caretaker government to run the show. If the ruling party wins, the continuity factor is obviously unaffected; but if it loses the elections, it has to resign immediately.

Any deviation from the laid down convention and traditions automatically invites a big trouble, which all sensible, democracy loving politicians want to avoid. In our case, the universal demand to strengthen the Election Commission has been made many a times in the past, but it has totally fallen on deaf ears each time that it was raised. Even those who had originally mooted the 'caretaker' notion had spoken of reverting back to the original position after a few years of trial -- when the election arena would be ridden of the dishonest politicians and the public would in course of time become more vigilant. But that looks like a distant dream at the moment with none in a mood to concede even an inch. That of course means: The democratic system itself shall be under tremendous pressure in the coming days and months.

A.K. Faezul Haq is a lawyer and former minister.

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electoral system [in 1996] which was not to be found anywhere else in the political scriptures of any country, great or small! Nevertheless, it was unquestionably an invention which could give us some solace that the general elections which are periodically held in our country in recent times or shall be held in future on a regular basis, would be truly free and fair. As a matter of fact the irony is, the Election Commission does not have adequate [permanently] manpower and explicit executive powers to act independently at the right moment when the question of conducting a full fledged general election comes up and secondly, the successive governments in office, due to their lack of fairness and integrity in running the show at the most crucial period(s) when elections were held, had totally failed to earn people's confidence.

wishes in March 1996 and accept the 'CG' concept in full without any reservation. However it is quite surprising that a concentrated movement for a 'caretaker government' never raised its head during the eight-year autocratic rule of General Ershad, although his farcical elections [held in 1986 and 1988] were totally rejected by the majority of the countrymen. And once again if we look back impassively over the last ten years or so, we can note with due satisfaction the fact that the first and the second 'caretaker' governments certainly lived up to people's expectations while conducting the general elections in 1991 and 1996.

The new formula advanced by the main opposition AL apparently seems to be quite difficult one to implement, if not a totally impossible idea. Their contention that a consen-

sus formula be applied in that case also? Now to be very candid, all these tricky questions whose answers may not be readily available at the moment.

The AL demand, backed by some left leaning parties and other opposition stalwarts, may eventually lead to some sort of a political imbroglio in the near future. On the other hand, from the Prime Minister's recent assertions made public, it can be assumed that this time she is not going to bend or relent. She has already declared that the future general elections [in 2006] would be held either according to the existing constitutional provisions or under the BNP government itself.

Undoubtedly for a country like Bangladesh where corruption still reigns supreme and with successive elected governments in the past having failed

## Tribute to Yasser Arafat

### CLOSEUP JAPAN

**In June 2003, the then Japanese Foreign Minister Yoriko Kawaguchi visited Israel and the Palestinian Autonomous Areas to meet with the leaders and to urge an end to the violence and a resumption of negotiations. At Ramallah, Kawaguchi had a meeting with Arafat...the government of Japan decided to send Yoriko Kawaguchi, who is now serving as an advisor to the prime minister, to the funeral of Yasser Arafat. But because of the flight schedule Kawaguchi was unable to go to Cairo, and instead attended the ceremonies held in the West Bank town of Ramallah.**

MONZURUL HUQ writes from Tokyo

FOLLOWING the line of the United States in international politics is a difficult task for countries that tend to show a tender face of their own. This is particularly true when the discussion is over the thorny Middle East issue. As the US doesn't have a track record of being fair and objective to all conflicting parties in that specific region, following blindly the line being pursued by Washington might carry the risk for others too as being branded hopelessly colour blind to understand what is in reality being reflected in the picture.

This is the paradox that Japanese leadership has to endure for being one of the closest allies of the United States. Depending heavily on the regular supply of vital oil resources from the Middle East, Japan cannot afford to be as indifferent as Washington is on certain issues that touch the very heart of the Middle East problem. Hence there always has been cautious and determined effort on part of Tokyo to find a more rational and balancing position in Japan's Middle East policy. Japan's own view about the plight of the Palestinian people too has been the result of that understanding, and hence differs significantly from what is being prescribed by the policy makers in Washington. This difference was once again sharply marked as Japan paid a silent but fitting tribute to the deceased Palestinian leader Yasser Arafat.

It is true that the media in Japan somehow ignored the death of Arafat and was busy focusing more on the vital domestic issue of the intrusion of a Chinese submarine deep inside Japanese water off the island of Okinawa. Arafat's death came at a time when the focus of Japanese attention had already been diverted and fixed to a more specific regional issue that some would consider being a potential crowd attractor for the nationalist camp. The press in Japan, particularly nationalist and conservative group within that Japanese press, wasted no time at all to initiate a heated debate over the defence capability of Japan and its failure to stop the intrusion as well as whom to blame for the failure. In the midst of that debate, the death

of Arafat instantly got relegated to the group of less important news items, though a number of newspapers and magazines carried routine editorials focusing more on what Arafat's death would mean for the Middle East and for the peace process between Palestine and Israel.

But here too a sharp demarcation within the media between liberal and conservative camps was overtly visible, liberals showing greater sympathy and understanding for the Palestinian leader who at a later stage lost control over the extremist groups of his camp, a failure that some see as the catalyst that prompted Israel to opt out of the peace negotiations. The Asahi Shimbun, well known for its liberal stance, in an editorial on Arafat's legacy assessed critically the achievements of the Palestinian leader who continued to wear military uniform even when the peacemaking process appeared to be moving forward, for shifting his policy between terror and negotiation. But at the same time it didn't forget to remind readers that the image of Arafat in a military uniform was a symbol of Palestinians who have fought to regain the land of their ancestors that was lost by the foundation of Israel.

Asahi was also cautious in predicting a smooth handling of the peace process by Arafat's successor as it equally blamed Israel for taking an unrealistic hard lined stance. According to the newspaper, even if talks were resumed, they would not bear fruit unless Israel ceased the policy of oppressing Palestinians who resist the occupation and building the walls that are reminiscent of the policy of apartheid. The tone of the conservative press, on the other hand, had been much less conciliatory towards Arafat. They mostly put the blame for the present stalemate in the peace process more on Arafat's failure to come in terms with the reality of what they prefer to call as a changing time that demanded a more pragmatic standing from a leader who had the charisma of winning unparalleled support of his people.

If the media in Japan was divided over the issue of how to pay tribute to the Palestinian leader or how to assess his achievements, the Japanese gov-

ernment didn't show any sign of hesitation in paying tribute to a leader whom Japan always considered an important figure in the whole Middle East. Prime Minister Junichiro Koizumi, in his message of condolence sent to Ahmed Qurei, Prime Minister of the Palestinian Authority, expressed deep regret on the death of Arafat and praised the role he played in laying out the foundation for the establishment of a Palestinian state. Koizumi described the deceased Palestinian leader as a pioneer who led the struggle of the people of Palestine to realise their dream of independent nationhood.

Japanese were much more sympathetic to Arafat throughout his long career of leading the Palestinian movement. He visited Japan six times since 1981 and made friendship with wide range of people including country's leadership. Viewing independence of the Palestinians as vital for peace, Japan continued to hold close discussions with both Israeli and Palestinian sides and provided the Palestinians significant amount of financial aid since 1993. In June 2003, the then Japanese Foreign Minister Yoriko Kawaguchi visited Israel and the Palestinian Autonomous Areas to meet with the leaders and to urge an end to the violence and a resumption of negotiations. At Ramallah, Kawaguchi had a meeting with Arafat, which was for the last time that the Palestinian leader had a face-to-face discussion with a high-ranking Japanese official. Japan also has been engaged in steady efforts to build confidence through exchanges between the Israelis and the Palestinians by inviting youths, young diplomats and women delegations from both sides.

As a continued gesture of goodwill towards the Palestinian leadership, the government of Japan decided to send Yoriko Kawaguchi, who is now serving as an advisor to the prime minister, to the funeral of Yasser Arafat. But because of the flight schedule Kawaguchi was unable to go to Cairo, and instead attended the ceremonies held in the West Bank town of Ramallah, where she met Arafat a year and a half ago.

## Human rights: Can multinationals be held accountable?

RON CHEPESUK

In a San Francisco courtroom, a trial is underway that will determine whether a multinational corporation can be held accountable in the US for alleged human rights abuses committed in foreign countries. The test case pits the energy giant Unocal against a group of 14 poor Myanmar villagers and charges that in the 1990s the Myanmar government forced the villagers to help build the \$1.7 billion Yadana natural gas pipeline in eastern Myanmar. According to court papers filed by the plaintiffs' lawyers, the Myanmar military forced villagers living along the pipeline to build roads and army camps and carry heavy loads miles through the jungles. The military shot workers who moved too slowly and even used them as human mine sweepers. Unocal hired Myanmar troops to provide protection for the project, but it denies any knowledge of human rights abuses. "Unocal is going to have to stand before a jury of 12 people and defend the despicable conduct which literary destroyed the lives of tens of thousands," said Dan Stormer, one of the plaintiffs' lawyers.

The case illustrates a growing trend in international affairs. It's the age of globalisation, an era where multinationals flock to poor countries to take advantage of the cheap labour that can improve their bottom line. Some acquire such power in those countries that they can influence and even intimidate their governments. And as globalisation gained momentum, little effort has been made to make the multinationals accountable for what they do in interest of profit. But times are changing, thanks to a coalition consisting of plaintiffs from the developing world and aggressive human rights groups such as Oxfam and Amnesty International from the developed world. They are taking multinationals from all over the world to court on the issue of human rights. Consider these flashpoints:

- In November 2002, a lawsuit was filed in New York on behalf of victims of South Africa's former apartheid system against 20 multinationals for "knowingly aiding and abetting the apartheid enterprise." One of the multinationals, IBM, was charged with supplying computers to the South African government that helped create the infamous "pass book" system,

which required all black South Africans to carry passes. Relatives of murdered activists fighting for human rights and environmental justice in Nigeria have sued Royal Dutch Shell Petroleum Company and Shell - Transport and Trading Company, its subsidiary, for complicity in alleged human rights violations against the local Ogoni people.

- In court action in Miami, activists with Sinaltrainal, the Colombian food workers trade union, are trying to establish a direct link between Coca Cola and Colombia's powerful paramilitaries, charging

foreign companies are forced to be human rights monitors, they may decide not to establish operations in certain developing countries, thus depriving them of needed investment. "Large jury awards will send a message that if you are going to do business in a country where the government is violating human rights or labour standards, you may be sued," warns J. Daniel O'Flaherty, a vice-president at the Washington, DC-based National Foreign Trade Council, which represents US exporters. In developing a counter strategy, business groups held a closed-door strategy

committing torture and other human rights abuses against local residents.

Human rights groups are filing the suits under an obscure statute called the Alien Tort Claims Act (ATCA) of 1789. The statute is just one sentence long and reads: "(The district courts) shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States."

The statute was only invoked five times the first 100 years, but human rights groups began using it with increasing frequency in the early

1990s. The National Foreign Trade Council estimates that at least 26 cases based on the ATCA are currently in the US courts. Human rights groups believe ATCA is the most important legal tool they have to restrain multinational behavior because most states don't have laws restraining such behaviour, even though they subscribe to human rights conventions. Still, they received a small setback last September when the US Supreme Court narrowed the scope of lawsuits that can be brought in US courts under the ATCA. The Bush administration and the international business community lobbied the Supreme Court justices to interpret the statute in such a way that the suit could no longer be used as a legal tool by human rights groups. The Supreme Court ruled that law suits will be permitted for violations of international law that have "definite content and acceptance among civilised nations." It gave piracy as an example. Writing for the seven justice majority, David Souter cited lawsuits against Citibank and the Bank of America as examples of suits that did not meet the new standard.

Human rights activists remain upbeat about the decision, believ-

ing that the court's ruling will still allow case involving alleged torture and other egregious offences to proceed in the courts. Terry Collingsworth, executive director of the Washington, DC-based International Labor Rights Fund (ILRF) and lead counsel in half a dozen Alien Tort Claims Act (ATCA) cases, praised the US Supreme Court ruling as upholding the Act. "The decision erases any doubt about the validity of the ATCA for addressing egregious human rights cases, and sends a clear message to multinationals that seek to profit from forced labor and torture of workers and other human rights victims," Collingsworth said.

Natacha Thys, ILRF's assistant general counsel, added that the decision "allows all of our ATCA cases to go forward: Unocal, ExxonMobil, Coca-Cola, Drummond, Occidental, Del Monte, and DaimlerChrysler." The human rights community's aggressive use of the ATCA has, no doubt, put pressure on multinationals and the way they conduct business in developing nations. Activist shareholders have launched resolutions to coincide with ATCA legislation, forcing multinational executives to answer embarrassing questions at annual meetings. This happened, for instance, at a Unocal meeting in 2002, when shareholder activists introduced a proposal that demanded the corporation follow International Labor Organization-sanctioned standards in Myanmar. The meeting adopted the proposal.

Meanwhile, corporations have fled Myanmar. When the tobacco group BAT sold its 60 percent in Rothmans of Pall Mall, Myanmar in November 2003 it became the last United Kingdom multinational to withdraw from Myanmar.

Multinational corporations are facing increasing pressures to change their modus operandi of doing business in the developing world. The bottom profit line is not the only thing they now have to consider as they search the globe for cheap markets. Thanks to the Alien Tort Claims Act, multinationals can no longer ignore calls to improve human rights conditions in host countries.

Ron Chesepuk is a Visiting Professor of Journalism at Chillingworth University and a Research Associate with the National Defense College in Dhaka.

### INSIDE AMERICA

**The human rights community's aggressive use of the Alien Tort Claims Act (ATCA) has, no doubt, put pressure on multinationals and the way they conduct business in developing nations. Multinational corporations are facing increasing pressures to change their modus operandi of doing business in the developing world. The bottom profit line is not the only thing they now have to consider as they search the globe for cheap markets. Thanks to the ATCA, multinationals can no longer ignore calls to improve human rights conditions in host countries.**

that paramilitaries, acting on behalf of the company, killed nine trade union activists in a Colombian Coca Cola bottling plant. Panamco, Coca Cola's bottler in Colombia, has counter-sued Sinaltrainal, but in March 2003, the Miami court ruled that the court case could proceed.

- The battle has even broken out in Iraq where two corporations, CACI International of Arlington, Virginia and Titan Corporation of San Diego, California, are the targets of a class action complaint filed by the New York-based Center for Constitutional Rights on behalf of torture victims in Iraq. The suit charges that the two companies sent to Iraq untrained prisoner interrogators who were involved in torture and abuse. "The interrogation techniques violated the most basic principals of international law and the US courts have been clear that plaintiffs may sue in US court," said Jennie Green, a lawyer for the Center for Constitutional Rights. "The courts must act to prevent such torture from continuing. We strongly believe that the credibility of US claims to abide by the rule of law is at stake." Understandably, the US government and business groups strongly oppose this type of litigation, arguing that if

session in Washington on November 18, 2002, to consider everything from possible legislation to filing a slew of amicus curiae briefs on behalf of defendants in cases. Meanwhile, some companies have lobbied the Justice Department to intervene. In the summer of 2003, the US State Department warned a judge that a case against ExxonMobil Corporation in Indonesia "could potentially disrupt" the fight against terrorism and should be dropped.

The suit against ExxonMobil involves human rights abuses that the Indonesian military allegedly committed against residents of province of Aceh, which has a strong separatist movement and where the energy company is extracting over 1.5 million annually in natural gas. Aceh has grown restive during the years of Indonesian rule, with many of its four million mostly poor inhabitants perceiving the Indonesia government as an occupying force plundering the province's natural resources while giving little in return. ExxonMobil has paid units of the Indonesian military to provide protection for its employees and installations, reports indicate. Human rights activists charge that ExxonMobil knew the military was

committing torture and other human rights abuses against local residents.

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### Section-0

### Tender Invitation

#### Roads & Highways Tender Invitation Notice

1)	Ministry/Division	: Ministry of Communications.
2)	Agency	: Roads & Highways Department.
3)	Name of purchasing/procuring entity	: Executive Engineer, R&H, Road Division, Narail.
4)	Code of purchasing/procuring entity	: Not applicable.
5)	District of purchasing/procuring entity	: Narail.
6)	Type of invited work	: Construction work.
7)	Tender invitation Ref. No	: Tender Notice No 28/NRD/2004-2005.
8)	Date	: 6-11-2004.
9)	Method of purchase/procurement	: Open tender invitation method.
10)	Source of allocation	: Development, GOB.
11)	Development partner (if applicable)	: Not applicable.
12)	Project/scheme code	: Not applicable.
13)	Project/scheme name (if applicable)	: Narail-Kalia District Road Development.
14)	Tender package No	: Not applicable.
15)	Tender package name	: Not applicable.
16)	Date of publishing tender in paper	: Within 18-11-2004/4-8-1411 BS.
17)	Last date of selling tender	: 19-12-2004/5-9-1411BS during office hours.
18)	Last date and time of receiving tender	: 20-12-2004/6-9-1411BS up to 12.30 PM.
19)	Date and time of opening tender	: 20-12-2004/6-9-1411BS at 3.00 PM.
20)	Names and addresses of offices of selling tender	: Executive Engineer, R&H, Road Division, Narail.
	Main office	: Offices of Divisional Commissioner, Khulna Division, Khulna/Executive Engineer, R&H, Planning Division-1 (P&D), Road Division, Ramna, Dhaka/Road Division, Khulna/Jessore/Magura/Kustia/Jhenidah/Chuadanga/Sub-Divisional Engineer, R&H, Road Sub-Division, Narail.
	Other offices	: Superintending Engineer, R&H, Road Circle, Jessore/Executive Engineer, R&H, Road Division, Narail.
	Place of opening tender	: Executive Engineer, R&H, Road Division, Narail.
21)	Place/date/time of pre-tender meeting	: Not applicable.
22)	Eligibility of tenderer	: All tenderers (domestic or nonresident contractors of Roads & Highways Department having eligibility as mentioned below can submit tender: (a) Tenderers, who have completed work worth a minimum of Tk 49,80,000/- only under 1 (one) contract in the last 5 (five) years at government/semi-government/corporation or autonomous organisation. (b) An average of minimum turnover of Tk 39,85,000/- only in the last 3 (three) years till the day before the date of submitting tender. (c) Minimum cash flow of Tk 24,90,000/- only. (d) Other terms and conditions are mentioned in the tender document.
23)	Short description of goods/work	: Earth work on 2.00 km road - 8423.50 cubic metre, Sub-base - 915.00 cubic metre, Base type-1 - 1650.00 cubic metre, Dense bituminous surfacing - 219.60 cubic metre, seal coat and primer seal coat - 3660.00 square metre etc.
24)	Short description of other services	: Not applicable.
25)	Price of tender document	: Tk 3,000/- (three thousand) only per set (non-refundable).
26)	Name of work	: Base-course strengthening, Dense bituminous surfacing and bituminous paved hard-shoulder construction.
27)	Location	: 19' and 20' km.
28)	Tender security	: Tk 2,10,000/- only (in the form of Bank Draft, Pay-Order or irrevocable bank guarantee).
29)	Time for completion of work (week/month)	: 3 (three) months.
30)	Name of the official inviting tender	: Md Zafar Ullah.
31)	Designation of the official inviting tender	: Executive Engineer, R&H, Road Division, Narail.
32)	Address of the official inviting tender	: Executive Engineer, R&H, Road Division, Hamid Mansion, Narail-7500.
33)	Medium of communication with the official inviting tender	: Telephone + Fax-0481-62508.
34)	Purchasing/procuring entity reserves the right to accept/reject all tenders.	

DFP-27116-9/11  
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**Md Zafar Ullah**  
Executive Engineer, R&H  
Road Division, Narail