LAW *vision*

Human rights and non-state actors

SHEIKH HAFIZUR RAHMAN KARZON

AFTER the Second World War human rights emerged as a major category in the field of human activism. It has become a principal tool in attaining individual freedom of the citizen of all countries. A dignified human life has been the main objective of human rights paradigm. The concepts of equal sovereignty of states and free trade took birth in the womb of post second world era. Both of them are tools of huge human exploitation. In course of time states have emerged as the largest and the worst violators of human rights, which they are supposed to ensure and protect. Human rights are no safer in the hands of the state incumbents. At the same time reliance and confidence are shifting from state to non-state actors globally because of the activities of multi-national forces. Role of non-state actors has come to the fore in ensuring human rights and thereby upholding overall human dignity.

"Human Rights and Non-State Actors" is the theme of the Sixth Human Rights Summer School. Empowerment through Law of the Common People (ELCOP) has organised this school, Dr Mizanur Rahman, a professor, Department of Law, University of Dhaka, being the protagonist of the whole activity. Scholars from home and abroad trained up law students for their expected transformation into human rights militants. Speakers put their emphasis on the activities of non-state actors, both national and international.

Non-state actors

The expression 'non-state actors' generally includes NGOs, multinational enterprises, armed groups, educational institutions, religious organisations, private individuals, civil society, media and multilateral financial organisations like World Bank and IMF. They have distinct "unofficial" nature as compared to state actors and they enjoy autonomy within the sphere of state. From these stem their treatment as non-state actors. The traditional international relation is based on the idea of equal sovereignty of states. But the concept that state is the sole actor espoused by the treaties of Westphalia in 1648 is no longer acceptable. The growing role of non-state actors, therefore, in international affairs in general and in the field of human rights in particular is now uncontested. The norms of international human rights and democratic governance are now shaping domestic behaviour of states. Many existing states have accepted international human rights conventions and pledged to ensure and protect human rights and individual dignity. This widespread acceptance made them more vulnerable to transnational pressures for political change from local activists linked to international NGOs, and international organisations. The role of non-state actors in protecting and promoting human rights is increasingly gaining importance. The context being the state actors failure to safeguard human rights sufficiently, the ongoing globalisation process, non-state actors as vehicle of such process, and the increased pressure to cope with the international human rights standard.

NGOs and human rights

The role of NGOs in the implementation and promotion of human rights is expanding. Their importance is recognised by states and inter-governmental organisations. The human rights NGOs has evolved in two phases: The first phase is the emergence and development of NGOs having international network and focus like Amnesty International. The second phase involves the creation and proliferation of human rights monitoring and advocacy groups within the domestic sphere in all the regions of the world.

Under all the domestic and international law state is primarily responsible for protection and promotion of human rights. Nonetheless some international documents have made non-state actors responsible for the same task as Preamble to the Universal Declaration of Human Rights reads -- "Every individual and every organ of state shall strive to secure the universal and effective recognition and observance of all human rights." This normative statement includes the role of non-state actors like NGOs, multi-national enterprises, civil society and private actors in the promotion and protection of human rights. Besides this, the Convention of the Rights to Child, the ILO Conventions, the African Charter on Human and Peoples' Rights and the African Convention on the Rights and welfare of the child impose obligations directly on non-state actors like individuals, NGOs, parents and communities. The Declaration on United Nations Human Rights Defenders, adopted in 1998 by the General Assembly of UN, gave legal basis of NGO activities as under this instrument national and international NGOs can gather information and lobby "to participate in peaceful activities against violations of human rights and fundamental freedoms."

The history of NGOs can be traced from 200 years back when associations were established at the end of eighteenth century in the United States and Europe to bring an end to the slate trade. In modern times activities of NGOs range from environment protection to women rights, indigenous peoples' rights, child's rights, development issues and human rights protection. After the Second World War a number of international, regional and national human rights instruments were adopted. With this human rights NGOs started to act and made profound contribution in the protection and promotion of human rights. By drafting many international instruments, procedures and mechanisms for the implementation of human rights NGOs set norms in the field of human rights. Provisions of human rights were incorporated into the UN Charter because of the active role of NGOs. Their role was instrumental in drafting the Universal declaration of human rights. Many human rights instruments and conventions were adopted due to their advocacy. They are playing important role in UN working groups on human rights. Because of their activities the position of the UN High Commissioner for Human Rights was created. NGOs were key actors in establishing the International Criminal Court which has the power to investigate and prosecute individuals accused of crimes against humanity, genocide, and war crimes.

In formulating policy and legislation on human rights NGOs offer and utilise their expertise. They exert their influence on government to implement human rights standard. NGOs contribute to the promotion of human rights through various methods. Those are information gathering, advocacy research, campaigning, advocating for changes in the institutional and legal framework, lobbying and convincing policy-makers. Activities of NGOs subsume standard setting, mobilising public, publicity, peace building, network building, information gathering, and documentation, human rights education, diplomatic intervention and fact finding mission.

Multinational corporations and human rights

In last few decades large multinational corporations have become powerful, in terms of economic power and the influence they exert in the domestic spheres of different countries. Some multinational corporations make more sales than GDPS (gross domestic product) of many countries. A comparison was made on the corporate sales and GDP of different countries. The study revealed that, of the 100 largest economies of the world, 51 are corporations while 49 are countries. In negotiations with governments of most developing countries this gives to the multinational corporations stronger bargaining power over the terms of foreign investment. The causes being economic globalisation, increased mobility of capital and the resulting competition between potential host countries for lower regulating barriers to foreign direct investments. All these weakens the leverage of governments over multinational corporations.

Multinational corporations have tremendous influence on the economic and social development of those countries to which they are investing. Their activities have prejudicial impact on the human rights protection of the host countries. Their abuses include complicity in the brutality of those states' police and military, interference with internal politics of the host country, the use of forced and child labour, suppression of rights to freedom of association and speech, violations of right to cultural and religious practice, infringement of right to property (including intellectual property), and gross infringement of environmental rights.

Protection of human rights is the prime responsibility of states, not the responsibility of multinational corporations. As business organisations they go to countries to maximise their profit. Many countries have miserably failed to put sufficient human rights obligations on corporations. Though multinational companies are very powerful in global economy, but they are not subjects of international law, so it is unlikely that it will impose direct duties on the corporations. Accordingly multinational corporations have no responsibility and accountability under international law. Multina-tional corporations, at least in theory, are needed to comply with the laws of the host countries. But it is very difficult for least developed countries to make the multinational corporations to carry out their human rights obligations. The cause being power differentials. Moreover, in the wake of its breach the governments of countries of origin of each multinational corporation try to protect the interest of that particular multinational corporation. Any human rights system has yet to be established which could make the multinational corporations accountable and committed to human rights. Unless and until the developed countries, in which most of the multinational corporations originate, put forward their full cooperation, the prospect

of making the multinational corporations liable for breaches of human rights remain bleak.

Media and human rights

Mass media is inextricably related to human rights. Mass media pictures the situation of human rights in national, regional and international level while printing and broadcasting different news items. The main task of mass media is to inform the people about what is happening round the world. By the process of disseminating different news materials mass media inform the people about current situation of human rights all over the world.

State, as has been mentioned earlier, is the main actor in the protection and promotion of human rights. State does so by making laws and providing fundamental constitutional rights to the citizens, by signing, ratifying and giving effect to various human rights treaties. Thereby states take up primary responsibility of safeguarding and promoting human rights within their respective domestic jurisdiction. But state agencies very often violate human rights of citizens, which the media bring into the notice of the people. Media thereby mobilise public opinion and activate various non-state actors to protect human rights by revealing the stories of human rights violation. It's working as an effective "Fourth State" guarantee rights of various vulnerable groups.

Civil society and human rights

The concept of civil society is interlinked with the concept of social capital, which is generated by the efforts of civil society. Many theorists, like economic development, see social capital equally important for development of a country. Values and norms are implicit in the social capital, which influence the rules that regulate the behaviour of the members of the society. The establishment of an open regime where fundamental human rights can be protected is possible through the consistent pressure of civil society. Globally and nationally the role of civil society has been well recognised in protecting and promoting human rights.

Concluding remark

We have not yet found any better alternative than state, which could ensure, at least in theory, full welfare of the people. State with its huge infrastructure and network is compared to none. If it is sincere it can bring about spectacular welfare of the people, particularly it can contribute tremendously in protecting and promoting human rights. The concept of non-state actors come to the scene because of the failure of the states in safeguarding individual freedom. Now non-state actors are recognised all over the world. By minimising the atrocities of the states and protecting and promoting human rights their role keeps a balance and mitigate the cause of justice.

The author is an Assistant Professor, Department of Law, University of Dhaka.

Star LAW *analysis*

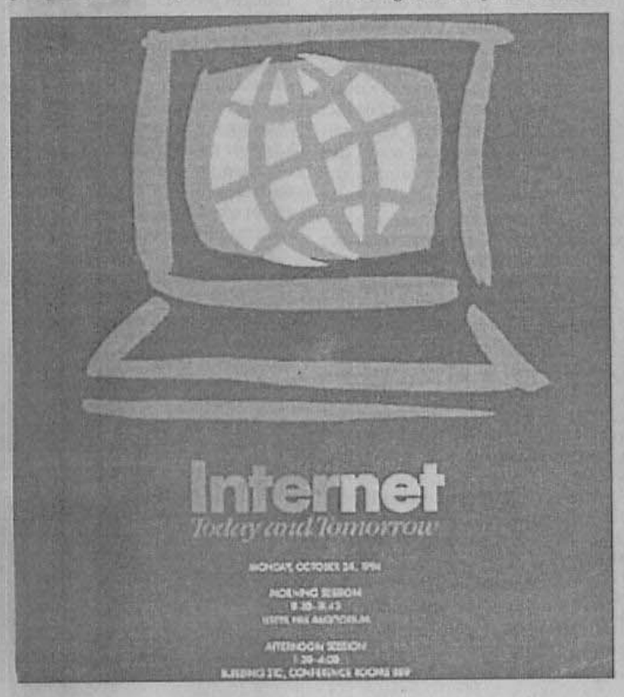
Internet exposes a new international space

An analogical study of cyberspace in light of sovereignless character

MD.MORSHED MAHMUD KHAN, MOHAMMAD OSIUR RAHMAN & MOHAMMAD MAHABUBUR RAHMAN

Cyberspace curtails the territorial monopoly of legal sovereign

One of the aspects of sovereignty is that its holder makes law for the subjects within the territory. The state itself is a territorial institution. So the legislative activities are centered towards the territorial manifestation. But the cyberspace is such a territory for traditional legislation will prove irrelevant for a fixed territory. Law is defined as a set of rules, which can be enacted or adopted more or less in modern perspective by a legislature. It is applied and developed by the courts of law. Both these institutions are organs of state. Since state is territorial in nature, the law is conceived and spoken of as territorial .The enforcement of law is undoubtedly territorial in the same way as the state is; and so the state power is in time of peace exercised only within the territory of the state or on its public ships and aircraft and on vessels and aircraft registered under its law on the basis of objective territorial principle. The territoriality of law in this meaning flows from the political division of the world. No state allows other state as a general rule to exercise powers of government within it. Therefore the enforcement of law is confined to the geographically territorial boundaries of the state enforcing it. It is easy to understand how the enforcement of law can be regarded as territorial, for force is a physical affair and is manifested in physical space. The proposition that a system of law belongs to a defined territory means that it applies to all persons, things, acts and events within that territory and does not apply to persons, things, acts and events elsewhere. Control over physical space, and the people and things located in that space, is a defining attribute of sovereignty and statehood. Universal Access Paths to Cyberspace destroyed territorial confines. Cyberspace has no territorial-based boundaries. The process and speed of information transmission on the net is almost entirely independent of physical location such as messages can be transmitted from any physical location to any other location without degradation, decay, or substantial delay, and without any physical cues or barriers that might otherwise keep certain geographically remote places and people separate from one another. The Net enables transactions between/among people who do not know, and in many cases cannot know, the physical location of the other party. There is no necessary connection between an Internet address and a physical location. The power to control activity in cyberspace has very tenuous connections to physical location. Many governments first responded to electronic communications crossing their territorial borders by trying to stop or regulate that flow of information as it crosses their borders. In particular, resistance to "Transborder Data Flow" (TDF) reflects the concerns of sovereign nations that the development and use of TDF's will undermine their "informational control," negatively influencing on the privacy of local citizens and private property interests in information. Even local governments in the United States have expressed concern about their loss of control over information and transactions flowing across their borders. But efforts to control the flow of electronic information across physical borders are likely to prove futile, at least in countries that hope to participate in global commerce. Individual electrons can easily, and without any realistic prospect of detection, "enter" any sovereign's territory. The volume of electronic communications crossing territorial boundaries is vast in relation to the resources available to government authorities to permit meaningful control. This lack includes non-existence of law and legal institution. But the law applicable to the cyberspace would be quite different form territorial -based law because of the peculiarity of cyber world bearing virtual character of visual nature. It should be considered that the events or activities ensued in cyber world causing legal consequences are not less than those are in the real world. Accordingly a distinct set of laws and legal principles has become inevitable to be adopted with same mission holding sprit of punishment or remedy. The financial damage sustained by the individual or by corporate body or by governmental organs is claiming billions of dollars, which sometimes surpass traditional territorial-based damage.



Joint sovereign or less sovereign proposition: Twofold test for cyberspace regulation

The nature and location that exposed from the above discussion shows that cyberspace can be regulated by all states interconnected by Internet or it would remain sovereignless to be governed by a distinct set of law independent of the domestic law of any particular state. The joint regulation by the more that one state posits that these states will exercise sovereign power over the cyberspace jointly. This type of authority is not rare in the international legal and political arena. As we discussed earlier in modern times, there have been revolutionary changes in respect of the theory of sovereignty of states. In present times it is not proper to say that the span of activities over which the sovereign authority is exercised is not remaining exclusively of any particular state. It is almost settled view that over one and the same there can be only one sovereign. But international political factors disgorges in practice, several exceptions, such as:-

a) The first and probably the only real exception is the condominium which exists between two or more states exercising sovereignty jointly over a territory , e.g., condominium of Austria and Prussia over Schleswig Holstein Lanenburg from 1864 till 1866, condominium of great Britain and Egypt over Sudan from 1898 to 1955 and condominium of great Britain and France over the New Hebrides (now the independent state of Vanuatu). These types of authority were exercised on the basis of bi-lateral negotiation, even though they could not avoid the conflict on some vital issues .

b) One state exercising sovereignty, which is, in law vested elsewhere, i.e., where a territory is administered by a foreign power with the consent of the owner state. For example, Great Britain exercised sovereignty over Turkish Island from 1878 to 1914. But that is not a substantial example in modern perspective because at that time many states did not exercise actual control over the parts of their own territory for administrative and financial hazards. The real conflict regarding diverse issues arising out of joint sovereign was not tested.

c) The third exception is that of giving territory on lease or pledge by the owner state to a foreign power. For example, in 1998 China leased the district of kiaochow to Germany, Wei-hai-wei and the land opposite the island of Hongkong to Great Britain, Kuang Chouwan to France and port Authur to Russia. It is noteworthy that the relation between the lessee and the lessor state is regulated exclusively by the stipulation of the bi-lateral agreement. So all the possible controversial issues are previously resolved and accordingly joint sovereign can go with their own significance.

d) Where the use, occupation and control of the territory are granted in perpetuity by the grantor state to the other state. For example, in 1903 the republic of Panama transferred to the USA a ten miles territory for construction, administration and defence of Panama Canal.

e) The last exception is that of a mandated or trust territory. The state, which is given a mandate or a trust territory, exercises sovereignty over it although the territory is not its own. In the international perspective we find the mandate system under the League of Nations and mandate system under trust territory under the supervision of the United Nations. In both cases the controlling state is responsible to the both international organizations.

Test of joint sovereignty is not possible in case of cyberspace because joint authority of two or three or few states over a physical territory is not similar to the joint sovereign authority of almost all states over non-physical cyberspace consisting of much more complicated issues. Multi-dimensional conflicts regarding cyberspace are likely to arise such as jurisdictional confusion, extradition dilemma, conflict among the domestic laws of different countries, conflict between common law approach and civil law approach etc. So we can testify the theory of international space proposition in the light of sovereignless quality. **Contd..**

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Md.Morshed Mahmud Khan,Associate Professor, Dept. of Law, University Of Chittagong Mohammad Osiur Rahman,Assistant Professor, Dept. of CSE, University Of Chittagong Mohammad Mahabubur Rahma, Lecturer, Dept. of Law, Premier University, Chittagong

FACT *file*

NEPAL: HUMAN RIGHTS

Black hole after the royal coup

On the first anniversary of the infamous royal coup in Nepal, the Asian Human Rights Commission (AHRC) notes with concern that the King continues to sacrifice the rights of the people of Nepal while claiming that during the past 12 months the country had been on the right track. On the contrary, the human rights situation in the country over the last year has been disastrous. The fundamental collapse of state institutions has led to a black hole of human rights in Nepal. In a speech made on February 1st, 2006, King Gyanendra made a series of claims that show a complete disconnect from the reality on the ground. In particular he stated that the municipal elections that were set to take place on February 8, 2006 would still go ahead and that they were going to be free and fair elections. Several election candidates have already resigned and most others have taken up residence in military camps for protection. The King imposed curfews and banned all demonstrations during this period. It is impossible for the upcoming elections to be conducted in a free or fair way under such circumstances. It is clear that the King is attempting to dupe the international community into thinking that he is committed to democracy by holding these sham elections, in which pro-monarchist candidates would be elected in a fraudulent manner. On the first anniversary of the royal coup, over 200 persons have already been arrested, small gatherings of people have been forcefully dispersed and an all-day curfew has been imposed in many towns around the country. Many hundreds more protestors have been arrested since the latest round of demonstrations began in mid-January. This evidently contradicts the claims being made by the King.

" The AHRC has receive reports that on the previous day, January 31, 2006, over 20 security personnel were killed and some 200 were missing following a concerted series of attacks by the Maoists. The King launched the royal coup one year ago under the pretext of being able to more effectively tackle the Maoist insurgency. One year on, however, the insurgents have gained strength. They have also had discussions with the alliance of seven opposition political parties, and have pledged to back the democratic process in order to end the conflict in the country. The Maoist insurgents also held a unilateral ceasefire in late 2005 and offered to have their forces placed under international supervision. If the King had been interested, in reality, in solving the conflict with the insurgents, he should have reciprocated this cease-fire and entered into talks. Instead, the cease-fire was allowed to run out and when the Maoist attacks resumed, the King used this as a pretext to crack down on the pro-democracy movement.

During the course of the year since February 1, 2005, state institutions, such as the judiciary, the National Human Rights Commission and others, have been infiltrated by pro-royalist, unqualified persons in order to undermine the functioning and independence of these bodies, greatly weakening them. Furthermore, the King has also appointed pro-royalist regional and zonal administrators, sidelining those persons best suited and qualified for the jobs, further exacerbating the collapse of the rule of law and institutions within the country.

Throughout the year, the human rights of the people of Nepal have been wantonly sacrificed. Torture remains systematic, forced disappearances remain at extremely high levels, mass arbitrary arrests continue in response to legitimate peaceful demonstrations, political leaders and human rights defenders are being targeted. The multitude of recommendations made by various international bodies, notably the United Nations, need to be implemented. For example, the authorities should immediately set up a register of all persons being detained in Nepal, with the database made accessible to the public. The empty rhetoric must end and credible positive action must be taken, in order to avoid the further collapse of the state and increased violations of the human rights of the Nepali people.

Source: Asian Human Rights Commission.