



LAW vision



The role of international law in shaping global relationship

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URING the very brief span of my career as an academic so far, in my classes on International Law, almost invariably, I have been bombarded with repeated questions from my pupils on the utility of studying international law in an 'unjust world'. Many radical students have even gone on to question the future existence of any sort of international law. Time and again they cite instances of breaches of international law and argue that this branch of law has lost its teeth and relevance in a unipolar world.

It's always encouraging for any teacher to see his pupils interacting with him. But

orthodox bunch who do not subscribe to this view that international law is losing its relevance as a discipline in a unipolar world, dominated by the USA. Let's first try to sum up the main arguments of those who advocate this view.

Many argue that international law today is followed more in breach than in observance. For example they refer to the US-led invasion of Iraq in March 2003 as a failure of international law. People of this school of thought also claim that as there is lack of enforcement mechanism of the norms of international law, it has no efficacy. Another contention is that in the negotiation process of framing multilateral conventions creating binding norms of

people miserable. But the suspicion always remained that the invasion was motivated by the quest of oil resource, not for any ideal goals as claimed by the occupying forces.

But the idea that international law is being consistently being violated only after the demise of the cold war at the beginning of the 1990s is not supported by the pages of history. The history of human civilization shows that mighty nations never showed much concern for humanity or international law. But still international law has continued to evolve and marched forward.

In the eighteenth and nineteenth centuries, the rapid technological development in the western hemisphere created an

to leave his country. The Italian Army even used chemical weapons and flame throwers against the Abyssinians.

The League of Nations condemned Italy's invasion and imposed economic sanctions on her in November 1935, but the sanctions yielded very little result. Ultimately, the sanctions imposed by the League were lifted on 4th July 1936. Many analysts think that the unwillingness of the major powers to respond to this flagrant violation of international law was because of their perception that the fate of this poor and far-off country, inhabited by non-Europeans, did not involve their interests.

With the establishment of the United Nations at the demise of the World War II, a system of international law was set up to replace the uncontrolled use of military force in international affairs. Article 2 (3) of the United Nations Charter provides that "All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered." Article 2 (4) provides that "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations." In the light of these provisions of the UN Charter, most international lawyers would perhaps agree that the authority of the Security Council and the General Assembly of the United Nations has been challenged by the invasion of Iraq.

The contention that in the formulation of multilateral conventions the stronger nations take the leading role and therefore their interests get priority over others is of course true. But this is not something that is limited to international law but equally or may be to a greater degree applicable to the domestic legal system. In modern democracies the legislators are the representatives of the people. But not all legislations reflect the will of the majority of the people. The myth that domestic laws are equal for all is far from truth.

As already indicated, the invasion of Iraq was a defining moment for the authority of the United Nations. But a failure of the United Nations to respond to a gross illegality should not be equated with the collapse of the whole body of international law. The world without any sort of international law would not be any better. When domestic laws are consistently violated by the powerful, we don't say that there is no tomorrow for laws. So it is inexplicable that why such a claim would be tenable for international law.

If one carefully looks at today's world

one would find that international law is not on the decline, rather gaining a more pervasive nature embracing more and more fields previously unknown to be within its domain. In today's interconnected world international law has a different and greater impact; it affects a much wider variety of actors. The traditional treaty and customary laws, along with traditional inter-governmental institutions, are now operating in parallel with an ever increasing body of transgovernmental law.

International law is beginning to impact individual and corporate actors. The transformation of the Treaty of Rome from an inter-state treaty to a set of rules capable of being invoked by individuals through national courts throughout the European Community could be cited as an example of the overriding impact of international law.

Another illustration of the pre-dominance of the international law is the evolution of the GATT into the WTO, with the authority to pronounce binding decisions delivered by the Panel and Appellate body scrutinizing whether a state is violating international trading rules. Nations even had to amend their laws to make them WTO-compliant. Theoretically these decisions are mandatory for states. But individual corporate actors are very closely connected with the outcome of these decisions.

Possibly fuelled by the internet and speedy travel opportunity, another feature of international relations and law today is the involvement of non-state actors in international life, from multinational financial institutions and corporations to non-governmental organizations of every possible description- human rights activists, environmentalists, labour associations, women's association and civic associations etc. Many of these actors are playing a pro-active role in traditional inter-governmental organizations. In many cases they are offering an alternative outlook to the global issues and revealing many details of the negotiation process which once probably limited to only a group of privileged diplomats or state representatives.

Hence one might safely say it's now more than ever that the omnipresence of international law is more clearly felt. Despite all its inadequacy, as a discipline it would continue to exist and impact global relations.

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RIGHTS corner



Stop abuse of children in confinement



Despite a comprehensive Children Act, 1974, over thousands of juvenile offenders are wrongly tried as adults and abused under the system due to mismanagement, wrong approach to the juvenile framework and ignorance of the law by a section of the lower judiciary, police and government officers. Inadequate state systems are mainly responsible for abuse of confined children. Thus a change in the legal system is necessary.

More than thousands of children are currently in jail and in different Kishore Unnayan Kendras (KUK), according to a study titled 'Children in Trouble with Law'. Although an inter-ministerial committee was formed earlier to protect the rights of the children and taskforces were constituted at national, district and upazila level. The government also empowered 64 district women's affairs officers as ex-officio jail visitors and assigned upazila social welfare officers to render the duties of probation officers. The Police Headquarters also directed all police units to exercise the power of granting bail under Section 48 of the Children Act, 1974. Also absence of birth and death registrations

makes way for greater abuse of children. Adding to the situation it is also frustrating that many Bangladeshi children are confined to Indian jails. A source of Government officials informed that Govt. would always imperative to bring back children imprisoned in foreign jails. It is also alarming that children are often being used in political chaos. Moreover, certain criminal gangs exploit children by giving them arms and explosives in a bid to derive criminal and political benefits.

There is an urgent need to take immediate steps to prevent this kind of abuse of children. Poverty is a major reason behind juvenile offence in a country where 48 percent people live under the poverty line. Lack of coordination among the Government sector, child rights organizations and law implementing agency is also responsible for this kind of situation. Steps must be taken to combat the problems by raising mass awareness as children are the future of the country.

Source: Children's Express (Shishu Prokash)



when you ask your pupil at tertiary level that why he or she is studying a particular course and get the answer that the reason for studying is simply to complete the requirements of the degree, then of course as the course teacher you would be anything but happy. It's not just the students who have skepticism regarding international law. Perhaps the attitude of many lawyers and academics of our country towards international law would not be much different.

Given the fact that we are a geographically small, poverty-trodden, internationally insignificant nation rarely making an impact at global levels, this attitude of oblivion or disinterest towards international law is not inexplicable. However, I am among that

international law only stronger nations can properly participate and therefore final texts of the conventions translate their interests or at least tend to show heavy bias towards their interests. Of course these arguments bear some degree of truth, but these are also manifestations of misconceptions or a narrow outlook towards the nature and scope of international law.

It's true that at the beginning of the twenty-first century, we have witnessed with horror the invasion of Iraq, claimed to be necessary to destroy weapons of mass destruction (an allegation which was never accompanied by any credible proof) and for getting rid of a brutal dictator (whom the attacking powers had previously helped by providing arms) who made the life of his

enormous gap in military strength between the industrialized and agricultural nations. Taking advantage of their superior weaponry, the advanced industrialized countries gradually turned a significant part of the rest of the world into their colonies, which served as sources of food, raw materials for industrial production and as markets for manufactured goods.

Even at the beginning of the twentieth century the scenario did not change much. For instance in October 1935, Benito Mussolini sent an enormous army to attack Abyssinia (now known as Ethiopia). The well equipped Italian Army easily defeated the poorly armed Abyssinians, and occupied Addis Ababa in May 1936, forcing Haile Selassie, the Emperor of Abyssinia,

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HUMAN RIGHTS advocacy



End political violence in Nigeria

Amnesty International (AI) has joined a group of Nigerian NGOs to campaign for violence-free elections this month and calls for public participation in this petition. AI delegations travelled to Nigeria in January and March and gained support from Nigerian celebrities and senior political figures. Groups in Canada, Sweden, the Netherlands and Norway have also collected around 500 signatures and sent them to President Obasanjo.

Thousands more will land on the desks of the President, state governors and other top politicians with a simple message: respect and protect human rights during the elections.

On 14 and 21 April, Nigerians will elect their presidential, parliamentary and gubernatorial representatives. AI has already received reports of several cases of political violence in the run-up to the elections, including the assassination of a journalist, political aspirants and their aides.

On 27 July 2006, Chief Funso Williams, a candidate for Governor of Lagos State, was killed at home. The police stated that 244 suspects were arrested in connection with his murder, including several of his political associates and personal aides. By early December, 35 suspects remained in police custody. The specific charges against those who remained in detention are unclear.

On 14 August 2006, Dr Ayo



Governor in Ekiti State, was shot and stabbed by armed men who forced their way into his home. Police arrested six young men in connection with the killing in October. One of the suspects is reported to have claimed that he was commissioned to kill Daramola by an aide of the incumbent Ekiti State Governor. The other suspects claimed that the motive was robbery.

Elections in 1999 and 2003 were characterised by high levels of political violence and fraud. In 2003, human rights abuses included political assassinations, harassment of rival candidates and violent clashes causing numerous fatalities. State-endorsed armed vigilante groups were responsible for large numbers of extrajudicial executions in the south-east of the country and were suspected of involvement in a number of

unresolved killings of politicians.

Other abuses include harassment, torture and ill-treatment of human rights activists and those critical of the government. Politicians and officials, including people currently in office, have been implicated in orchestrating violence and assassination attempts using armed groups of civilians. The Nigerian government is not doing enough to address this political violence.

Nigeria has a population of over 140 million people. Seven out of 10 live on less than US\$1 per day, a figure widely accepted as the measure of absolute poverty. This is despite Nigeria's status as the largest oil producer in Africa and the fifth-largest within the Organization of Petroleum Exporting Countries (OPEC).

Source: Amnesty International.

LAW week

Illegal VoIP denies country Tk 6,000 crore a year

The government is likely to impose financial penalties and regulatory punishment on mobile phone companies for their involvement in illegal VoIP operation which has deprived the nation of huge tax and revenue for several years, telecoms ministry sources said. Beginning from January, the Rapid Action Battalion (Rab) has busted several dozen illegal VoIP operations and some of these surprisingly lead directly or indirectly to GrameenPhone (GP), Aktel and Banglalink. Further investigations are going on against other phone companies. The government has already filed cases against the GP, Aktel and Banglalink for illegal VoIP operation. These operations have deprived the national exchequer of an estimated annual overseas call revenue and tax amounting to over Tk 6,000 crore. Sources in mobile phone companies however said not that payment of all this money was evaded as they paid taxes for all the calls. Sources in the companies also blame Bangladesh Telecom Regulatory Commission (BTRC) for its deliberate delay in issuing VoIP licences and Bangladesh Telegraph and Telephone Board (BTTB) for not installing adequate International Trunk Exchange (ITX) to handle growing foreign calls over the years. *The Daily Star, April 8*

Allegation of patronising militants Complaint against Rajshahi mayor

A complaint was lodged against four people including Rajshahi City Corporation Mayor Mizanur Rahman Minu and former post and telecommunications minister barrister Aminul Huq accusing them of aiding and abetting militants of the banned Islamist outfit Jama'atul Mujahideen Bangladesh (JMB). The other two accused in the complaint are former deputy commissioner (DC) of Rajshahi Aziz Hasan and then Rajshahi superintendent of police (SP) Masud Miah (dismissed in 2006). Advocate Moazzem Hossain from Molla Para of Rajshahi city lodged the complaint with Rajpara Police Station in Rajshahi. Police officially received the complaint and sent it for home ministry's recommendation as to whether the complaint can be filed as a regular case. The complainant has many components for it to be filed as a sedition case, said a senior police official. This is the first complaint filed against mayor Minu implicating him with JMB.

In his complaint, advocate Moazzem said on May 23, 2004, assisted by the accused four -- mayor Minu, barrister Aminul, DC Hasan and SP Masud -- JMB leaders Prof Lutfar Rahman, Mahtab Khamaru, Abdus Sattar, Jalil Amin, Natib Lutfar and others gathered around 2,000 militant

activists from Rajshahi and its adjacent areas and marched toward Rajshahi city. *The Daily Star, April 9*

Hasina sued for extortion

Former prime minister and Awami League (AL) chief Sheikh Hasina was sued in connection with an extortion of Tk 3 crore. Tajul Islam Farook, chairman of Westmont Power Company, filed the case with Tejgaon police station under the non-bailable sections of the penal code. In the case Tajul brought allegations against Hasina of extortion and abuse of power in 1998, when she was the prime minister. Hasina, who is now on a visit to the US, recently made some comments there criticising the non-party caretaker government and the Election Commission for 'delaying' the next general election on 'different pretexts'. She is supposed to return home on April 26 or 27. The case was filed at 4:15pm yesterday, but Tejgaon police officials refused to comment on it. If the prima facie case is proven to be well-founded through investigation, an arrest warrant will be issued against the former prime minister, according to the law. The case was filed under sections 385, 386, 387 and 109 of the penal code. In accordance with the sections, a person can be sentenced to five years to life in jail if the court finds him or her guilty.

According to the constitution a person is not eligible for contesting in elections, if s/he is convicted of a crime and sentenced to at least two years in prison on charges of moral turpitude, unless five years have passed since his or her release from jail. *The Daily Star, April 10*

Govt further changes emergency rules

The caretaker government has brought further amendment to the Emergency Powers Rules 2007 to provide for bail in some cases under the penal code. A gazette notification was issued to that effect. According to the revisions, persons facing trial for offences specified in the rules however will not be entitled to seek bail at any stage--from the first information report to the judgment. This is the third time changes have been made to the rules framed under the Emergency Powers

Ordinance will not be released on bail during the enquiry, investigation and trial of the case against that person." The offences under the emergency rules include corruption, smuggling, hoarding, black-marketing, money laundering, illegal possession of firearms, explosive substances, foreign currency, and narcotics, tax evasion and other crimes considered a threat to security of the state, people and the economy. The second amendment [March 21] had suspended the right to bail also for those accused of offences under the penal code. Following that, no hearing on bail petitions in cases filed under the Arms Act, Explosives Substances Act, Foreign Exchange Regulation Act and Penal Code has taken place in any court of the country. *The Daily Star, April 10*

EC to talk reforms with civil society

The Election Commission (EC) cannot proceed with its plan for holding dialogues with political parties to seek their opinion on several crucial electoral issues as the government has yet to decide about withdrawal of the embargo on indoor politics. The EC has however planned to start dialogues with the civil society groups at the end of this month for their opinion on the proposed electoral reforms and time limit for simultaneously preparing the voter list with photographs and national identity cards. "We will sit with the civil society groups in the third or fourth week of this month. We will sit with the political parties as soon as the embargo on indoor politics is withdrawn," Election Commissioner Sahul Hossain told reporters at his office. "But the government has not said anything about withdrawal of the embargo on indoor politics. We would wait for the government decision," he added. Chief Election Commissioner (CEC) ATM Shamsul Huda at a meeting with the law adviser on last Wednesday asked the caretaker government to withdraw the embargo on indoor politics so that the EC can hold dialogues with the political parties. On March 7, the government imposed the embargo in addition to the restriction on political activities following the proclamation of emergency on January 11. At the planned dialogue this month, the EC will seek opinion from the civil society groups on the time limit for the implementation of the voter list project. *The Daily Star, April 10*

Corresponding with the Law Desk

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