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# A war crimes tribunal: Some suggestions

PROFESSOR RAFIQUIL ISLAM

**I**N January this year, Parliament adopted a formal resolution to try various war crimes committed during the Bangladesh liberation war 1971. The parliamentary act entails precise politico-legal obligations for the government to embark on this trial. One of the foremost tasks appears to be the formation of a special tribunal for the purpose pursuant to the International Crimes Tribunal Act (No. XIX) 1973. A close reading of this Act reveals that it provides a general legal basis and guidelines, among others, to be followed in the formation of such a tribunal. This brief legal note purports to raise certain pressing legal matters for consideration at the formative stage of the tribunal. Suggestions offered are not meant to be independent of, but are complementary to, the 1973 Act in a bid to render fair justice for all.

Genocide, crimes against humanity, crimes against peace, and war crimes of horrendous magnitude were perpetrated in 1971 on the Bengalees in the territory of Bangladesh. The place of the commission of crimes and the identity of the victims lead to an inevitable presumption that the perpetrators should be tried in Bangladesh under its own criminal justice system. However, there are qualitative differences in the legal definition and constituent elements of ordinary crimes, such as murder,



under national criminal law and certain extraordinary crimes, such as genocidal mass murder, in international criminal law. Not every national criminal justice system is necessarily well equipped to handle the magnitude of the heinous crimes in question. Nor is it possible to try these crimes solely through the application

of national penal law. Specially designed courts or tribunals through the application of both national and international law try these crimes, more often than not, in a mutually supportive way. International criminal law is now fairly resource-rich in offering the jurisprudential exposition of these crimes and judicial prece-

dents to rely upon. This is precisely the reason why the special court law of Cambodia has opted for the application of the Cambodian penal law, international humanitarian law, and international conventions recognised by Cambodia (Art. 1).

The war crimes designated in section 3(2) of the 1973 Act fall squarely

within the purview of the extraordinary crimes at international criminal law. Bangladesh is better off by establishing a special tribunal to try these crimes through the application of a hybrid system of law composed of its own criminal law and international criminal law. These crimes committed in 1971 warrant speedy trials. The competence and jurisdiction of national law courts is often circumscribed by the technicalities of the applicable law and procedural rules for the admissibility of evidence, the usual causes of uncertainty and procrastination in many trials. The yet to be concluded Bangabandhu murder trial in contrast with the expeditious disposal of the nationality case of Golam Azam case precisely illustrate this potential risk. Establishing a special tribunal would be a middle ground. It will certainly be free from the idea of a totally internationally dominated tribunal, as has happened in the cases of the Bosnian and Rwandan war crimes tribunals, with no connection whatsoever with the national criminal justice system. It will also be free from the dogmatic application of national criminal law independent of international criminal law. Both Sierra Leone and Cambodia set up similar special tribunals/courts but made them a special part of their respective court system. The palatability of these precedents is not without merit for Bangladesh.

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ARE THE GOODS THAT LEFT ADELAIDE THOSE THAT ARRIVED IN ALASKA? THE INSURERS WANT TO SEE THE PAPERWORK. WHO SAYS IT IS SAFE FOR HUMAN CONSUMPTION? IS THIS TOY SUITABLE FOR A 2-YEAR-OLD? IS IT 3.7 PARTS PER BILLION OR 3.8? HOW DO YOU KNOW IT WASN'T DAMAGED AT LOAD PORT? 1 000 000 OR 999 999? WAS THAT A REPRESENTATIVE SAMPLE? A MANUFACTURER'S DECLARATION OF CONFORMITY - IS IT ENOUGH? ITALIAN VIRGIN OLIVE OIL? WHO SAYS THE OLIVE OIL CAME FROM ITALY? COULD ONE INADEQUATE PUMP SLASH PRODUCTIVITY IN A \$200 MILLION PLANT? HOW DO I KNOW THAT THIS HAIR DRYER MEETS SAFETY STANDARDS? DOES THE PAPERWORK MATCH THE CARGO? MY BANK NEEDS TO SEE THE PAPERWORK. IF I DON'T GET THE RIGHT GOODS, MY PRODUCTION LINE WILL STOP. EVER BOUGHT A SHIPLoad OF BANANAS FROM EASTERN SIBERIA? I NEED A SECOND OPINION. I'M NOT SURE IT WORKS THAT WAY ON THE OTHER SIDE OF THE WORLD! IF I'VE GOT TO DECIDE, I NEED AN EXPERT TO CHECK. DOES THE POWER STATION MEET EMISSION STANDARDS? WHERE DID THIS SOYA COME FROM? 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**THE REAL QUESTION IS WHO DO YOU TRUST?**

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 Fax: 031-654652. Mobile: 01919-01851, 01919-22851, 01919-23851, 01919-24851. Dhaka Office: Hosna Center (2nd floor), Suite 205, 106 Gulshan Avenue, Dhaka 1212. Phone: 02-8835126. Fax: 02-9885092. Mobile: 01919-32851, 01919-33851, 01919-34851, 01919-35851. www.baizidsteel.com. e-mail: info@baizidsteel.com