



## Second International Conference on Genocide, Truth and Justice

### Ratify ICC Statute

The Second International Conference on Genocide, Truth and Justice held in Dhaka, Bangladesh on 30 and 31 July, 2009 notes the historical fact that the newly liberated Bangladesh in 1974 took a significant step by organizing international seminar on the issue of the establishment of International Criminal Court and subsequently became one of the early Asian countries to sign the Statute of Rome to establish the International Criminal Court. Bangladesh, one of the worst victims of Genocide in the 20th century, has enacted in 1973 'International Crimes (Tribunal) Act' to establish truth and justice and has amended the law in 2009 to initiate the trial process of the perpetrators of genocide, crimes against humanity and war crimes. At this important juncture in the history of Bangladesh it is expected that Bangladesh will take necessary measures to complete the process of ratification of the ICC Statute and fulfill the formalities of the UN instruments of ratification of the ICC. This would manifest Bangladesh's commitment to the development of international criminal law and attract the attention of international community.

## Declaration of the second International Conference on Genocide, Truth and Justice

Dhaka, Bangladesh, July 31, 2009



The Second International Conference on Genocide, Truth and Justice was held in Dhaka, Bangladesh on July 30 and 31, 2009. The Conference was held at a time when the demand for the trials of the perpetrators of genocide and war crimes in 1971 has become alive again in the public domain, especially amongst the younger generation and demands are being raised so that that the brutalities and the trauma of the 1971 Genocide is recognized in the various international fora, so that the lessons of the Bangladesh Genocide may help to prevent other genocides. The holding of the Conference was also significant in the context that the younger generation in Bangladesh has given the demands for the trial their unequivocal endorsement through the national election of December, 2008. The government on the other hand, has given the priority which the trials deserve, to have taken it up in the first session of the new Parliament where it was unanimously accepted by all the parties. The 1973 International Crimes (Tribunal) Act was also amended by the Parliament to make it suitable for holding the trial in the changed circum-

stances of the day. It is hoped that the Tribunal will be formed soon, the prosecutors appointed and the investigative agencies constituted.

The Conference expresses its approval for the processes which have been initiated for the trial. The Conference also recommends that the nation take lessons from the experience and expertise that are available from the other Tribunals and institutions, especially when formulating the rules and procedures of the above 1973 Tribunal.

The Conference also highlights the need to take supportive and complementary actions and programmes such as the memorialisation, collection and processing of the testimonies given, addressing the issues of the victims' suffering, recognition of the victims rights and most importantly, ensure the broad involvement of the community with the trial process.

The Conference also recognizes that at this important juncture, Bangladesh needs to learn from the experiences which other countries have gained about concepts such as dealing with Transitional and Social Justice and the

ways and means to address the complexities in the post-conflict society. Important amongst them are issues of trauma suffering of women, reparation, witness protection, extradition, trials in other countries etc. which would need to be studied further.

The Conference reiterates that it will make efforts to promote research on genocides, particularly on the Bangladesh Genocide and undertakes to promote the setting up of centers of Genocide Studies both at home and abroad. It will encourage other institutions to take up programmes so the issue of the trial stays alive in the public forum.

The Conference also highlights the need to establish various networks and build alliances both nationally and internationally with other organizations having the same objectives, in order to exchange ideas with them during and after the trial.

The Conference calls upon the media and the civil society within the country and abroad to launch a campaign for the universal recognition, especially in the UN, of the Bangladesh Genocide 1971.

### International law and peacemaking

HELMUT SCHOLZ

Bangladesh has changed quite drastically in the past year. I hope that while I am here I can experience the results of many of these changes, and what they mean to you, firsthand. The elections have revived significant debates about the history, identity and the future of Bangladesh. A new window is open for social reconciliation and for the legal prosecution and conviction of the crimes of 1971. The chances have grown that the "International Crime Tribunal Act of 1973" can resume its work. The hopes of the people lie with the support of the UN and the EU as they undertake this process. With the 2nd Genocide Conference, they deliberately place their historical recovery in an international context.

A new chapter in the history of international law began in 1998, with the Rome Statute and the creation of the ICC. Ironically, even though the USA played a crucial role in the Nuremberg trials, it has rejected the International Criminal Court even to this day. The International Criminal Court - independent of historical events - cannot indict any crimes against humanity that happened before 2002. Yet its establishment, its statute, brought one decisive, crucial question back into play. It is - in my opinion - the question of the ICC's peacemaking role in bringing about the nonviolent organization of societies after violent conflict, even after genocide. Thus the history of the ICC is also of enormous importance for the creation of a legal environment in which we can prosecute past crimes against humanity.

I shall now describe the three key factors that would produce an environment where the peacemaking function of modern international law is realistic.

The first key factor is: the social and legal processing of war crimes and crimes against humanity will continue to be effective if and only if a high degree of transparency and accessibility to information for the general public is guaranteed. Investigative work, research and investigative journalism must be given broad entitlement to create an educational climate in public debates.

As for the second factor, the necessity of international legal punishment for crimes against humanity can be only one part of a comprehensive historical analysis and cultural debate. The peacekeeping role of international law will only be successful if the legal processes are supported by society and protected against false judgments, such as being cast aside as worthless debates or being used to justify historical amnesia as a more preferable alternative. Reconciliation is more than just necessary legal confrontation. Reconciliation must create a climate of dialogue and understanding, a climate that produces cross-generational interest, so that the complex motives and societal causes of violence and crime can be processed. This does not mean avoiding uncomfortable questions - on the contrary, in some sense a public debate would not create a legal, but instead, a cultural climate of absolution, in which the chance exists for the historical understanding of both perpetrators and victims to grow. As long as the complex social causes and consequences of conflict remain in the dark, legal actions which attempt only to cast blame on individuals is pointless. Without corresponding support and change from society itself, punishment and atonement only continue the cycle of revenge and the martyr mentality that allows concepts of justice to be ideologically abused.

No case of reconciliation can be relativized, but instead must always serve as part of the struggle to understand how to violence, war and crime happen in the first place. Only with a mentality open to learning lessons from the past can the lessons for future generations be formed and kept in remembrance.

Thus not only the legal but also the historical and social analysis of crimes against humanity must be protected from political exploitation - which is the third factor. This means that procedures must be installed which guarantee an independent exercise of international criminal processes. In this respect, the admission procedure mechanism, as stated in article 13 of the Rome Statute for the Prosecutors of the ICC, constitutes an important step for the independence of future international tribunals. The so-called trigger mechanism for the beginning of a procedure provides three independent means by which proceedings can be accepted and commenced: a referral by the Contracting States, a referral by the UN Security Council, and an authorization by the prosecutor - on the basis of "contextually prevailing evidence" and then only with oversight by a Pre-Trial Chamber ex officio. This law served in the ad hoc - criminal courts from Nuremberg, Tokyo, Yugoslavia and Rwanda as a basic defense mechanism against political exploitation by the UN Security Council or the Assembly of Charter States, meeting a new standard of independence and universality in international law jurisdiction.

To create a law of the 21st Century, an international law that would serve to secure the equitable and peaceful coexistence of all nations - I would like to briefly summarize what we have discussed so far - we must guarantee or strive for,

- extensive requirements for transparency and education,
- equal and concurrent legal and social analysis and
- protection against political exploitation.

The question now remains whether we can actually achieve a universal, independent, and neutral law in international relations, a law with a claim of securing peace, a law with respect for the teachings of the 2nd World War in the 21st Century. I think the steps taken by the Rome Statute and the ICC have been very important. They do not, however, replace a social debate, a difficult cultural confrontation, in each case, the processing of international law violations and crimes against humanity.

In my opinion, Bangladesh now has a similar task before it in handling the crimes of 1971. Each path open to reconciliation is a gift for the whole international community, for democracy and peace on our common globe. For the crimes in Bangladesh, a legal analysis similar to the Cambodian model, combined with international support, is highly recommended. What is important is the accompanying debate in society, keeping in mind the scale of their responsibilities toward future generations. Here, in addition the demand for legal reparations, the question of the origins of violence and reconciliation must also be allowed to be openly debated. Politics of history is a task for civil society. Violence must be banished by getting rid of its causes. This cannot simply be ordered by the state, but only comes through discussion and learning to organise.

Helmut Scholz, Member, EU Parliament.

### Conference details available online

The two day Second International Conference on Genocide, Truth and Justice was available via streaming media online for participants to from various countries to watch the proceedings live right from their home or office. More than 500 viewers from across the globe attended this conference with the help of the internet. Drik and Telnat were the technology partners for this event. Shumon J. of New York noted "Broadcasting online has really helped the Bangladeshi expatriates to participate in such an important event."

Video report of the conference will be available online shortly at the Liberation War Museum's website. For papers presented and more, please visit this conference's website at <http://www.liberationwarmuseum.org/genocide/>

## Narratives of sexual violence of the war of 1971

NAYANIKA MOOKHERJEE

This article is based on my fourteen-month fieldwork in Bangladesh on the public memories of sexual violence of 1971 undertaken between 1997-1998 and 2002-2003.

What I want to show in this paper is instead of the reporter's press articles exploring Champa's 'blank-out' of the events of 1971, which might provide understanding of how memories are contained through the acts of forgetting, or what function acts of forgetting may encode, the reader is instead given a clean, gory description of sexual violation in Pakistani army camps. Champa's tears, our gripped hands, her silent gesticulation, our silence spoke louder and more poignantly than words or any detailed narrative of sexual violence of 1971. The objective thereby becomes the need to stage a vision of an authentic oppressed, violated woman. The horrifying genre adopted in the description of sexual violence precisely links Champa with 'marks' that characterise her and make her a 'case'. Champa's relentless reiteration that she wanted to go back to the village or continue working in the hospital and not go to Dhaka, and the authorities' lack of engagement with her wishes should be comprehended in the context of the hospital's lack of funds, and attempts to layoff staff and dismiss patients in order to reduce operating costs.

The double horrifying genre of sexual violence by the Pakistani

army and its consequential life spent in an 'oppressive' institution precisely provides the accountability factor necessary for identifying rape as a war crime globally for Bangladesh. It also enables the location of causality of the second horrifying genre in the first along with an emphasis on her dislocation from her family i.e. since Champa was raped by the Pakistani army; she was not taken back into her family and as a result spent an oppressive life in a Mental Hospital. I am critical of this framework of understanding wartime rape as it does not show how women who faced this violence have lived with this violence in their everyday.

The critique of the process of documenting narratives of sexual violence of 1971 needs to be distinguished from the various recent, revisionist deniers of Bangladesh's anyway unacknowledged genocidal history. This critique of the politics of memory would be easily read and appropriated by these recent deniers as 'political correctness' and have recently argued that 'nothing happened in Bangladesh.' My work starts where the testimonial forms end to explore how private pain of wartime rape is made part of the public memory and adapted to human right frameworks. This does not negate the events of historical injury which itself generated these narratives within various contexts. There is no doubt that East Pakistani women were raped by the Pakistani army and their local

collaborators as evidenced through the research I conducted with women who were violently raped during the war. Many other scholars within Bangladesh are also addressing this issue by focusing on the rape and killing of women and men (who are deemed to be part of the collaborator Bihari community) by the Liberation fighters which seek to rupture the nationalist narrative. Nonetheless none of these works can deny the encounters of rape among their informants and friends as evidenced through long term, detailed fieldwork.

The article, argues that in trying to accommodate personal narratives of sexual violence to the hybrid language of global accountability and national contingency of history-making, the complexity and consequences of sexual violence among women embodying the subjects of that history is lost. While it is important for the left-liberal community to aspire and aim for their ethical future, at the same time it is important that when they represent the narratives of sexual violence they should reflect first and foremost the desires and wishes of the women whose narratives are being highlighted instead of a macro, national objective. Otherwise a disjunction would arise between this macro narrative and the personal lives embodied by the narratives, which are then often reduced and compromised to conform to this macro narrative. The zeal to document untold histories should not make



researchers and activists lose sight of the complexity and consequences of the war-time and post war-time encounters of women who were raped during this war. What constitutes these narratives of rape should not be deductively pre-determined and should include the various nuances of experiences as expressed

by the women concerned. As a result, a dual ethical future emerges that is able to include both the micro-nuances of personal experience and the macro-level aspirations of national memory and justice.

This is the abridged version of the main article.

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