

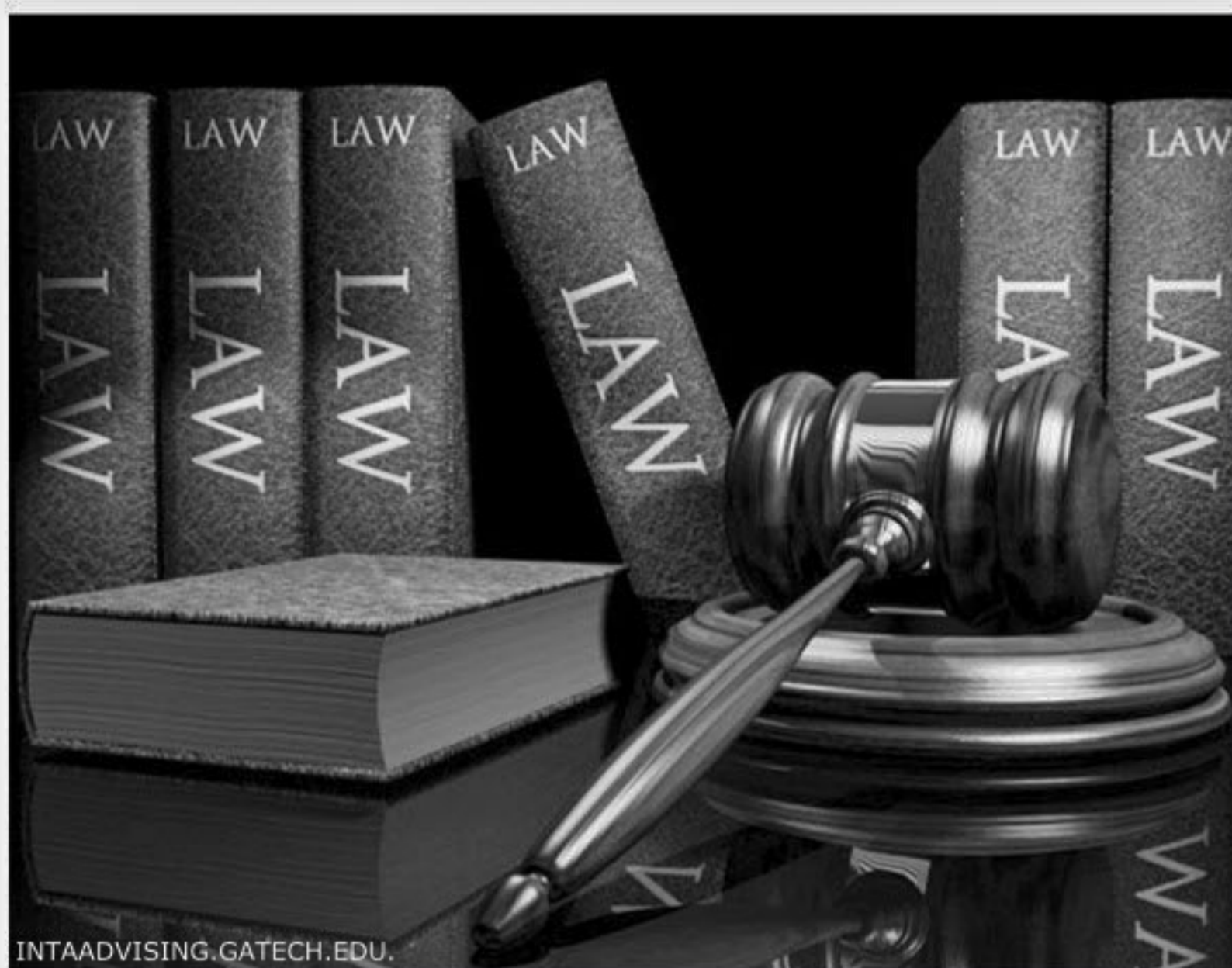


Lawness of International law

THE people of primitive age are thought to be uncivilized and we, the people of this century, firmly believe ourselves to be civilized. The factors, which make ourselves civilized and lacking which the primitive people are thought to be uncivilized, should be reviewed. If the factors are advancement in education, science and technology, I will have no hesitation to comply with this putative concept of our being civilized. But if those factors are the mentality and capacity to recognize the rights of others or to live all persons socially and friendly and above all having and complying with some laws, rules and regulations, I cannot say easily that we are now civilized.

Having no law, as it was in the primitive age, is I think better than to have bundles of laws, as it is today, in the hand of some powerful as a tool of oppression to suppress the weak. The frequent violation of law, specially international law, urges us to review the question "whether we are really civilized and international is really a law or not". Very often some objections are made as to the lawness of international law. International law is not law in the true sense of the term as there is no determinate superior political authority or sovereign authority to make and enforce international law. International law lacks effective legislative machinery, an executive machinery, potent judiciary and above all the sanction which is necessary for the enforcement of law. International law is lifeless from the standpoint of law proper and attempt to clothe it with legal garments is like dressing a dead woman for attending a banquet hall. The term 'law of war' is a mockery. When arms speak law must be silent. Law leans on reason but war is play with passion. How can there be reason in passion?

When these objections are made as to the lawness of the international law it is argued that to deny International law on the ground of frequent violation of war laws is like declaring a man dead when a part of his body is temporarily paralyzed into inaction, because the law of war is not the whole but a part of the international law. It is right that the law of war is frequently violated but in every case of violation, we



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see, attempts are made to justify these violations in terms of law and in most of the cases by the legal arguments of reprisals. It is further argued that to understand war as lawlessness is to misread the nature of war under international law. War is not divorced from law rather it has an ally in law. War minus law is clear murder; war with law is the regulated use of force to gain particular ends. To rebut the argument that there is no sanction in international law it is said that Articles 39 to 42, 51 and 94 of UN Charter work as sanction in international law. When the debate as to the lawness of international law is in this stage it can be said that international law is really law but compared to that of national law it is weaker for less effective enforcement mechanism.

The Articles of UN Charter under which enforcement of international law is formulated to be ensured are subject to the fulfillment of some conditions which frustrate the very purpose of these Articles. One of the fundamental objectives of UN Charter, as mentioned in Article 1(1), is to restore and maintain international peace and security. Where there is a breach of or threat to international peace and security the Security Council can take necessary measures, including calling upon the concerned states, complete or partial inter-

ruption of economic relations, severance of diplomatic relations and even demonstration, blockade and other operations by air, sea and land forces under Articles 40 to 42, to restore and maintain international peace and security. The application of these good provisions to enforce international law is subject to the subjective satisfaction of the Security Council. We know before passing any resolution it must be supported by the votes of all the permanent members of the Security Council and three additional votes of remaining temporary members of the Security Council. If any of the permanent members veto a resolution it will not come into light how much ever humanitarian proposal may be there. Practical problem is here that when the interest of the permanent members of the Security Council is involved in any resolution they feel reluctance to give effect to Articles 40 to 42 and thereby causes impasse to the international law itself. It is evident from the invasion of USA in Iraq and

Afghanistan where USA continuously disregarded the established principles of international law. But here the Security Council failed to take any attempt to stymie USA from showing thumb to the international law. It was for that one of the party involved in that war was a permanent member of Security Council i.e. USA. This state violated every established norms and principles of International Humanitarian Law (IHL) including principle of distinction, proportionality and precaution enumerated in the Geneva Conventions 1949 of which USA was a party.

So, when the permanent members of Security Council hold the unilateral power to take any decision under UN Charter it seems to some extent that international law itself is the mercy of some powerful states. They can apply it in any ways they like. To attain the objectives of UN Charter and to stop perfidy by international law with the less powerful states, world community should come forward to unfetter UN Charter from the autocratic control of the permanent members of the Security Council, specially USA.

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Racism is still igniting and fuelling violence and conflict

RACISM, racial discrimination, xenophobia and related intolerance are often among the root causes of internal and international conflicts, including armed conflicts, due to the marginalization, discrimination and sometimes dehumanization that they foster within societies and between population groups, stated two United Nations experts in the fields of racism and minority issues on the International Day for the Elimination of Racial Discrimination, which is commemorated on 21 March.

"The struggle against racism must be intensified and given higher priority by all States and at all levels as a key human rights objective and a means to prevent conflict and maintain peace," said the experts.

The United Nations experts stated that "racism continues to be a major obstacle to friendly and peaceful relations among peoples and nations. Similarly the absence of democratic structures, the weakness of the rule of law, and political institutions which are not representative of the entire population, may in the long run contribute to triggering conflicts along group lines, if not handled in an adequate and comprehensive manner."

"All relevant actors should pay attention to early warning signs, including the marginalization and social exclusion of specific groups of individuals; discriminatory legislation and policies; the persistence of racial prejudice and negative stereotypes; hate speech by public officials and the media; and violent attacks and harassment targeting ethnic groups," said Mutuma Ruteere, the United Nations Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance. According to the United Nations experts, greater attention to prevention is essential and early action is needed in response to the first warning signs of tensions caused by racism and discrimination that may lead to violence and conflict situation with serious violations of human rights. "Ensuring equality for all in the enjoyment of civil, cultural, economic, social and political rights includ-

ing the rights of minorities, without any discrimination based on race, colour, descent, national or ethnic origin is indeed one effective way through which a State may prevent and address the rise of tension and conflict. Good governance, democracy, respect for the rule of law, and meaningful participation of minorities in political institutions are also essential to prevent and defuse tensions which may lead to situations of conflict," stated Ms. Rita Izsák, the United Nations' Independent Expert on minority issues.

Ms. Izsák and Mr. Ruteere drew attention to the important role of non-States actors including civil society, the media, national human rights institutions, and political parties. Indeed these non-State actors can serve as watchdogs for discriminatory government policies and play an important role in the promotion of tolerance, mutual understanding and respect for diversity.

In post conflict situations, the participation of and genuine dialogue among all components of society are also critical to consolidate the often fragile peace. Justice, truth and reconciliation mechanisms to deal with the legacies of the grave human rights violations committed during conflicts are also crucial. There can be no sustainable peace if justice is neglected and the suffering of the victims denied. Those responsible for serious human rights violations, including war crimes, genocide, ethnic cleansing, and crimes against humanity must be prosecuted and sanctioned.

Ms. Izsák and Mr. Ruteere emphasize the key responsibility of the international community including the United Nations, in detecting early warning signs of racism, xenophobia, intolerance and racial discrimination that may ultimately lead to conflict. "While each State has the responsibility to protect its population from gross human rights violations, in cases where a State fails or refuses to protect its population, the responsibility to protect of the international community is vital," stressed the UN experts.

Source: Hrea.org.



HC order on Ducusu election April 8

The High Court on March 22 fixed April 8 to pass order on a writ petition filed seeking its directives upon the authorities concerned for taking immediate steps to hold election to Dhaka University Central Students' Union (Ducusu). The court fixed the date after concluding hearing of the petition filed by 25 students of Dhaka University. They submitted the petition on March 21, also praying to the court to issue a rule upon the government and the DU authorities to explain why their failure to hold the Ducusu election should not be declared illegal. Advocate Manzill Murshid appeared for the petitioners while Attorney General Mahbubey Alam opposed the petition. - *The Daily Star* March 23 2012.

HC to block all anti-Islam stuff on FB

The High Court on March 21 directed the government to immediately block all pages, and links on website, especially of the Facebook, that are sharing sensitive cartoons and pictures against Islam. In response to a writ petition, the court also issued a rule upon the government to explain in four weeks why it should not be directed to punish those who are responsible for publishing such contents on the website. Secretaries to the ministries of home affairs and information, inspector general of police, director general of Rapid Action Battalion, and chairman of Bangladesh Telecommunications Regulatory Commission have been made respondents to the rule. The HC bench of Justice Mirza Hussain Haider and Justice Muhammad Khurshid Alam Sarkar came up with the rule following the petition jointly filed by Batool Sarwar, a teacher of Dhaka University, and M Nurul Islam, principal of Dhaka Centre for Law and Economics. - *The Daily Star* March 22 2012.

Contempt rule on home secy

The High Court on March 21 issued a contempt of court rule against the home secretary for not complying with its earlier order to submit documents of the presidential clemency to a convict in 1993. In April of that year, the then president Abdur Rahman Biswas pardoned Sarwar Kamal, a BNP leader from Teknaf in Cox's Bazar, who had been convicted in a murder case. Delivering its ruling, the court asked the home secretary to explain by April 8 why appropriate action should not be taken against him for disobeying its previous order. The HC bench of Justice M Enayetur Rahim and Justice Sheikh Md Zakir Hossain also fixed the day for the hearing of the rule. Earlier, A Cox's Bazar court on June 8, 1989 sentenced Sarwar to 10 years in jail in a murder case. Following an appeal, the HC on September 3, 1992, reduced his sentence to eight years and directed him to surrender before the trial court. - *The Daily Star* March 22 2012.

Court summons 8 QUBEE officials on April 5

A Dhaka court on March 20 summoned eight officials of broadband internet service company QUBEE, asking them to appear before it on April 5, hours after two criminal cases were filed against them for allegedly providing false information to the Joint Stock Company. Nurul Absar, company secretary of Teleport Bangladesh Limited, which owns 30 percent stake in the WiMAX QUBEE, filed the cases with the Chief Metropolitan Magistrate's Court of Dhaka against the accused. Metropolitan Magistrate Mohammad Shahdat Hossain issued the order after the complainant filed the cases against the accused. In the case statements, Nurul Absar alleged that the accused in collusion with others and with malafide intention provided false information and statements in various reports and documents of the company violating provision of the law in Bangladesh. - *The Daily Star* March 21 2012.

HC asks govt to explain about compensation

The High Court on March 19 issued a rule upon the government to explain why it should not be directed to pay adequate compensation to family members of the students who were killed and injured in the Mirsarai road accident in Chittagong last year. Home and education secretaries, Chittagong Secondary and Higher Secondary Education Board chairman, deputy commissioner, superintendent of police and district education officer of Chittagong, headmasters of Abu Torab High School and Abu Torab Government Primary School, chairmen of both the schools, Mirsharai thana education officer, upazila nirbahi officer and officer-in-charge have been made respondents. They have been asked to reply to the rule in four weeks. The HC bench of Justice Farid Ahmed and Justice Sheikh Hassan Arif came up with the rule during hearing on a writ petition jointly filed by three SC lawyers. - *The Daily Star* March 20 2012.

HC fines contractor for earth filling

The High Court on March 19 fined one contractor, Abdur Rahman, Tk 50,000 for filling up a portion of Nabinagar Khal (canal) in Brahmanbaria defying a restriction from the government. The court directed Rahman to deposit the money to Nabinagar UNO office within three months. It also ordered Rahman to remove the earth from canal in two months. The HC bench of Justice AHM Shamsuddin Choudhury Manik and Justice Jahangir Hossain Selim gave the verdict after hearing a petition filed by Bela in 2010. - *The*

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You may send us your daily life legal problems including family, financial, land or any other issues. Legal experts will answer those. Please send your mails, queries, and opinions to: Law Desk, *The Daily Star* 64-65, Kazi Nazrul Islam Avenue, Dhaka-1215; Tel:



Proxy - The instrument authorizing one person to represent, act, and vote for another at a shareholders' meeting of a corporation.

Public law - That law such as traffic ordinances or zoning ordinances which applies to the public.

Public defender - Government lawyer who provides free legal defense services to a poor person accused of a crime.

Public Service Commission - Also, Public Utilities Commission. A state agency which regulates utilities.

Punitive damages - Money award given to punish the defendant or wrongdoer.

Purchase agreement or purchase offer - Also, sales agreement and earnest money contract. Agreement between buyer and seller of property which sets forth in general the price and terms of a proposed sale.

Putative - Alleged; supposed; reputed.

Quantum meruit - Expression means "as much as he deserves," and describes the extent of liability on a contract implied by law.

Quid pro quo - What for what; something for something; giving one valuable thin- for another.

Source: Jurist International.



Maximus magister erroris populus est - The people are the greatest master of error.

Melior est conditio possidentis, ubi neuter jus habet - Better is the condition of the possessor where neither of the two has the right.

Melior testatoris in testamentis spectanda est - In wills the intention of a testator is to be regarded.

Meliorem conditionem suam facere potest minor deteriorem nequaquam - A minor can make his position better, never worse.

Mens rea - Guilty state of mind.

Mentiri est contra mentem ire - To lie is to act against the mind.

Merito beneficium legis amittit, qui legem ipsam subvertere intendit - He justly loses the benefit of the law who seeks to infringe the law.

Minatur innocentibus qui parcat nocentibus - He threatens the innocent who spares the guilty.

Misera est servitus, ubi jus est vagum aut incertum - It is a miserable slavery where the law is vague or uncertain

Source: Inrebus.com.