



RIGHTS CORNER



Diplomatic protection of citizens in abroad: Lessons for Bangladesh

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THE term 'diplomatic protection' (henceforth abbreviated as 'DP') is often misunderstood by many as legal protection given to the diplomats as part of the diplomatic privileges and immunities. But, indeed, diplomatic protection has no connection with the privileges and immunities given to the diplomats i.e. officials for foreign affairs of a State. Diplomatic protection facilitates some sort of benefits and legal protection which may be legitimately expected by a citizen in abroad during necessity from his/her own State and which may legitimately be given by a State to its nationals in abroad under international law without prejudicing its and other countries sovereignty principle. Diplomatic protection attaches to the general people at large who can seek the facility of it only when he/she is in necessity at abroad. DP is an emerging principle playing one of the fascinating roles in international law attributing duties upon the 'sending State' (whom the person belongs to) and 'receiving State' (foreign country where the citizen of sending State is alien) and awarding benefits upon the person who can claim legal protection from his/her own State even after outside the territory of its own country; despite of its being so useful and human rights concern; claiming DP as legal right is yet to be recognized in international law. Being a product of soft law and embracing the branch of international principle the availability of DP depends both on the mutual understanding, co-operation and good faith of both the receiving and sending States who can facilitate diplomatic protection by enforcing mutual obligation between/among them. Though DP is considering very important in protecting the basic human rights to security of the citizen in abroad but the practice of DP is yet in lack behind to be frequent. DP also reminds the State having duty to

take extra care of the citizens in abroad whether they are secured in abroad or not. It ties the direct nexus between the citizen and the State. DP is based on the principle that ill treatment with the aliens i.e. citizen of other States means ill treatment with the foreign country itself whom the alien belongs to. As State is bound to protect its own sovereignty and people is the center of legal and political sovereignty of a State; hence any ill treatment with the aliens is an ill treatment with the State which is not an accepted behavior under international law; therefore in every step State is under duty to protect its own legal sovereignty that ultimately belongs to the owner of political and ultimate sovereign authority i.e. people. There are certain international measurements recognizing DP. In the *Mavrommatis Palestine Concessions case* ([1924] PCIJ Rep, Ser. A, No. 2, at 12) the Permanent Court of International Justice held that 'a State is entitled to protect its subjects, when injured by acts contrary to international law committed by another State, from whom they have been unable to obtain satisfaction through the ordinary channels'. Article 3 of the Vienna Convention on Diplomatic Relations lists '500 UNTS 95 (1961) as one of the functions of a diplomatic mission, 'protecting in the receiving State the interests of the sending State and its nationals, within the limits permitted by international law'. The Vienna Convention on Consular Relations 1963 (596 UNTS 261, Art. 5) asserts a similar role for consular officials. The consular relations treaty also sets out the responsibilities of receiving States in facilitating consular assistance of sending State nationals. Thus, Article 36 provides that consular officials are 'free to communicate with nationals of the sending State and to have access to them'. Nationals of the sending State have a reciprocal freedom to communicate with, and have access to, consular officers of the sending State.



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Moreover, upon request of that national, the receiving State must inform consular officials that a national is detained. In a provision at issue in two recent International Court of Justice cases (*Avena* and other Mexican Nationals (*Mexico v. United States of America*) [2004] ICJ Rep 128, 43 ILM (2004) 581 (31 Mar. 2004) and *LaGrand* (*Germany v. United States of America*) [2001] ICJ Rep 104, 40 ILM (2001) 1069 (27 June 2001), the receiving State must inform 'without delay' the detained alien of his or her right to contact consular officials. In *Avena*, the International Court of Justice concluded that this obligation arises immediately upon receiving State officials learning (or suspecting) that the detained individual is a foreign national. Once notified of the detention, consular officials then have a right to visit and converse with their national and arrange for his or her legal representation, unless refused by the national (*Vienna Convention on Consular*

Relations, Art.36(1)(c)).

Bangladesh is one of the signatory of the Vienna Conventions 1961/1963. In light of the Preamble, Article 25, Article 145 of the Constitution of Bangladesh read with the United Nations Charter Bangladesh as a civil state in under international obligation to show greater compatibility to the international laws and instruments. To a major extent effective implementation of international law depends upon the frequent and common practice by the States among themselves. For large recognition of DP it is necessary to be largely accepted and commonly practiced by the States among themselves. Large acceptance of DP not only ties the nexus/close bond between the State and its citizens but also enhances mutual relationship of trust, understanding and co-operation among the States themselves. For claiming DP international law sets some pre-requisites including (i) there must be an international wrong attributable to the

injuring State, (ii) discrimination made to the aliens, (iii) breach of minimum standard treatment with aliens, (iv) denial of justice (consisting of, or resulting from, denial of access to courts, or denial of procedural fairness and due process in relation to judicial proceedings, whether criminal or civil), (v) exhaustion of local remedies, (vi) genuine link/close nexus of nationality etc. Some of States like Israel, Germany, United Kingdom have already taken legal initiatives including setting up a separate body facilitating diplomatic protection to its nationals in abroad. Though Bangladesh signed the said treaties long before the present but no positive step has been taken yet for facilitating DP. Our Parliamentarians might have no knowledge or concern to pay heed on this issue. If Bangladesh would be cautious in facilitating DP to its citizens in abroad, perhaps the recent mishap (in terms of miscarriage of justice) in Saudi Arabia had not been occurred. By facilitating DP the sending State Government may call into question the accountability and minimum treatment devise of receiving State which the receiving State is bound to facilitate its aliens under international law and vice-versa. For meaningful expectation of DP one State shall facilitate DP to its alien within its territory. Despite of several deprivation, ill treatment and degrading handling with the citizens of Bangladesh in abroad our Government has no concern to protect our citizen in abroad though theoretically and constitutionally it is claimed that all powers of Bangladesh belongs to people as Republic of Bangladesh. This is not because of lack of legal framework under international law rather this is because of our Government's indifference and reluctance to protect our citizen from oppression, deprivation, ill treatment while they are abroad by providing best protection under international law.

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HUMAN RIGHTS MONITOR

Environmental migration and climate change

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BANGLADESH is one of the most vulnerable countries facing the challenge of climate change. Due to geographic exposure, low incomes and greater reliance on climate sensitive sectors; Bangladesh is likely to suffer more than any other countries in the region. If sea water level rises as predicted, sheer number of displaced people would create additional burden on the economy. Rights of the displaced people are often denied and they tend to suffer from worst human rights violations.

Environmental refugee

Environmental refugees are those people who have been forced to leave their traditional habitat, temporarily or permanently, because of a marked environmental disruption (natural and/or triggered by people) that jeopardized their existence and/or seriously affected the quality of their life. There is, however no clear definition with which to designate a person as a climate refugee. Researchers have largely agreed that environmental changes will influence migration outcomes through affecting existing drivers of migration.

Vulnerabilities of cities

Commissioned by the UK government, the Migration and Global Environmental Change Foresight Report is the most detailed study carried out on the effect of flooding, drought and rising sea levels on human migration patterns over the next 50 years. The report indicates cities in low-income countries are a particular concern, and are faced with a 'double jeopardy' future. Cities are likely to grow in size, partly because of ruralurban migration trends, whilst

also being increasingly threatened by global environmental change. This report, nevertheless argues against trying to prevent ruralurban migration, as this could lead to graver outcomes for those who are trapped in vulnerable rural areas.

Shift in policy

Interestingly, Foresight Report suggests policy makers to make an ideological leap of faith in beginning to see migration as a good thing in order to tackle climate change. Migration has been though seen as a bad thing by the aid agen-



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cies as it uproots communities and can create conflict, the report provides evidence to justify a shift in thinking. At the same time, the report also suggests that three-quarters of the migration would be within national borders - predominantly from rural to urban areas.

Climate change and poverty

Climate change will deepen poverty and challenge poverty reduction strategy. Like other parts of the globe, displaced populations are migrating in urban areas of Bangladesh and studies have identified gap of service provisions.

Multiple Indicator Cluster Survey (MICS 2009) conducted by BBS and UNICEF emphasizes targeting the urban poor is equally valid, feasible and relevant, given that 27 per cent of the country's population is urban and given the fact that the slums are the most deprived areas. Climate-induced flooding and cyclone might compel more people to migrate in cities from rural areas generally prone to natural disasters.

Mangrove Forest and coastal region

Mangrove forest has not only helped reduce vulnerability in the time of disaster, but also contributed significantly in diversifying livelihood options for the disadvantaged people. However, human activities pose serious threats to mangrove forest while the district administrations leasing out the chars to landless people and shrimp cultivators. Newspaper report (*The Daily Star/ October 18, 2011*) revealed thousands of acres of mangrove forests, created to shield multitudes from natural disasters in the chars (islands) in Bhola and Patuakhali were leased out. Let alone shielding from natural disasters, arbitrary leasing might have a catastrophic effect on ecology and environment.

Conclusion

A multi-pronged approach is needed to tackle migration problems associated with climate change. While lobbying developed countries responsible for climate change, possible scope of migration for displaced people needs to be explored. At the same time, improved service delivery is needed in slum areas where there is a large concentration of people affected by internal displacement. Fast and foremost, coordination between government departments must be ensured to prevent further loss of mangrove and other forest regions.

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LAW NEWS



Asian parliamentarians to discuss ways for eliminating torture

PARLIAMENTARIANS from several Asian countries are poised to meet and discuss ways to end the widespread practice of torture and ill-treatment in their countries. The three day meeting will take place in Kowloon, Hong Kong, starting on July 21st. The meeting is a significant step towards the implementation of the United Nations' Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT). Parliamentarians from Bangladesh, India, Indonesia, Nepal, Pakistan, Philippines and Sri Lanka have already confirmed their participation. Several prominent human rights activists from South and South-East Asia will also be traveling to Hong Kong to contribute to the discussion.

The meeting is sponsored by the Asian Alliance against Torture and ill-treatment (AAATI). AAATI was initiated in July 2011, when a group of human rights activists from several Asian countries came together under the auspices of the Asian Human Rights Commission (AHRC), Hong Kong, and the Rehabilitation and Research Centre for Torture Victims (RCT), Denmark. The alliance aims to make a concerted effort to introduce legislation in all Asian countries along the lines of UNCAT, and to ensure effective implementation of such critical laws that can safeguard human beings from torture and ill-treatment.

John Clancey, Chairperson of the AHRC, will present the keynote speech, and Dr. Jan Ole Haagensen, Director of the International Department of RCT, will present the theme paper, which will seek to provide an overall approach and strategy for effective elimination of torture in Asia. Several prominent members of Hong Kong human rights community will present their unique perspectives. And, the invited parliamentarians from each country will present papers on the subject, which will be discussed by all participants.

Professor Ole Espersen, former Minister of Justice, Denmark, has sent his greetings to the participants of the conference, stating that the "right not to be exposed to torture is in fact no real and genuine right if it is not combined with an effective remedy for the victims to make use of a legal machinery to have what the victim had to suffer redressed and guilty persons punished." In addition Professor Espersen has noted that the "ultimate responsibility for the national fight against torture and all other human rights violations, rests with the parliament and the government in each country." This meeting of parliamentarians from across Asian nations, who will gather in Hong Kong for the sole purpose of considering possibilities on how to bring an end to torture, is an unprecedented event.

Source: Asian Human Rights Commission.