

## STRAIGHT LINE

## Deep seaport construction in limbo

Government indecision causes delay

WE welcome by the Chinese ambassador's comments to the Daily Star on September 26 on the proposed deep sea port construction at a cost US\$5 billion. One of the sticking points on the Bangladesh side revolves around the fact that important development partners including the United States, Japan and India too have expressed participation in the project. However, as pointed out by Ambassador Li Jun, the Chinese government is open to participation of other countries in developing this crucial port, especially in light of the fact that Chittagong port is forecasted to run out of capacity in 2015.

The benefits of having a deep sea port cannot be understated. According to the Techno-Economic feasibility study carried out by a Japanese firm on behalf of Bangladesh, the port once completed has the potential to boost GDP growth by 2 per cent thanks principally to massive employment generation and facilitating regional trade on a scale hitherto impossible. Though the study recommended first phase of the construction in 2011 which would enable partial operation status in 2016, government inertia in coming to a decision has left the project hanging.

It must be remembered that Bangladesh is not alone in its aspirations to open up a deep sea port. Sri Lanka's newly-opened port of Hambantota is seen as an important catalyst for major economic development in the country. To Bangladesh's east lies Myanmar which has concluded a multi-billion dollar deal with Thailand to build a deep-sea port and Special Economic Zone in southern Myanmar's coastal belt Dawei and the project is being financially backed by the Japanese and Thailand. Beyond India, Pakistan is getting ready with its Pakistan Deep Water Container Port scheduled to be completed in 2014.

Decision time therefore has arrived. It is fruitless to expect the major trading nations of Asia to wait forever for Bangladesh to make up its mind. We strongly urge the government to take advantage of the Chinese proposal to mete out a multilateral deal so that Bangladesh can avert a major bottleneck in trade coming in 2015 and potentially become the regional trade hub for South Asia in the 21st century.

## Demand for information

Key to RTI Act's implementation

RIGHT to Information Act is available to demand information from public service institutions by the people at large. Broadly, there are two issues involved here: the first one concerns itself with generating demands for information; and the second relates to unfettered dissemination of authentic information to individuals seeking it.

The question of generating or creating demand for information arises from a number of inherent factors, the major ones of which are: high rate of illiteracy, lack of awareness of the RTI Act's provisions even among the literate, absence of designated points to seek information from and a culture of secrecy among government officials to withhold information from the public.

If people do not come forward of their own volition to obtain information relevant to their lives then they are not helping themselves. In fact, they are denying themselves of a valuable option to change their lot. In that case, they will have to be made aware of not only the need for information but also be motivated to seek it as a matter of right.

They are in acute need for data, information and counseling relevant to their livelihoods, development projects in their areas, employment opportunities, access to facilities for the ultra-poor including social safety net and various social outreach programmes. Furthermore, asking for information is basically an exercise in demanding and ensuring transparency of the public service institutions.

Keeping the entire gamut of problems impeding implementation of RTI Act in view, RTI Forum a network of civil society organisations in a seminar held on Thursday laid emphasis on 'people's participation in realising right to information'.

One would have thought that the RTI Act obliges the government to play the lead role in advancing the basic right to information by sensitising people about the efficacy of the right to information and opening outlets to provide information. Of course, the Information Commission has been set up to spearhead implementation of the RTI Act but materially there is lot more to be done at the institutional levels within the government to prioritise their obligations for information dissemination. At this stage, the NGOs' catalytic

# The concern over withdrawal of criminal cases



MUHAMMAD NURUL HUDA

A leading English newspaper has editorially commented that the recent political withdrawal of cases

is a dent in law and morality. The editorial, interestingly, observes that "the ruling party Awami League, of course, has followed in the footsteps of the BNP-led four party alliance governments between 2001 and 2006, when cases against 73,000 individuals were lifted." It bemoans that for all our concern for rule of law being applied in the country over the years, it has been precisely the opposite that has happened with successive governments.

As the above matter involves both the executive and the judiciary with respect to a serious subject of public importance, it is perhaps proper to look into it in its entirety. There is a view that the initiative for withdrawal is that of the public prosecutor and what the court has to do is only to give its consent and not to determine any matter judicially. Still others hold the view that the withdrawal is an executive and not a judicial act.

It may be said that to the public prosecutor is entrusted discretion to withdraw from the prosecution with consent of the court, and his withdrawal puts an end to the case. The law gives him discretion in the matter. In the eyes of the law and of the court the discretion is his alone, subject to the consent of the court. The public prosecutor holds a very honourable and responsible office.

One needs to note that as the legislature has not defined the circumstances under which a withdrawal is permissible no hard and fast rule can be laid down circumscribing the limits within which a withdrawal may be made. The relevant section of the law for withdrawal (Sec 494 of the Criminal Procedure Code) contemplated action to be taken upon circumstances extraneous to the record of the case; for example, inexpediency of prosecution for reasons of state, necessity to drop the case on grounds

of public policy, credible information reaching the government as to the falsity of the evidence, etc.

It should be noted that it is the court which takes the responsibility of deciding whether a charge should be allowed to be withdrawn or not. Similarly, the reason of public policy, however learned and however high sounding, is often an improper reason for the withdrawal of any case. In the same vein the phrases "in the interest of administration" and "public policy" are at times irrelevant insofar as the withdrawal of cases is concerned.

The function of the court in granting its consent may well be taken to be a judicial function, which must be exercised with judicial discretion. However, it does not follow that the discretion is to be exercised only with reference to materials gathered

authority to the district magistrate but must act judicially and come to his own independent conclusion as to whether withdrawal ought to be permitted or not upon consideration of all the relevant circumstances. When a court gives its consent to a withdrawal from the prosecution, the order passed is judicial order and the court should record its reasons in order that the High Court may be in a position to say whether the discretion vested in the court has been properly exercised.

Readers would surely appreciate the complexity and sensitivity of the matter in the background of our political and bureaucratic culture. This is more so in the light of claims by responsible quarters that the criminalisation of our politics is of unhealthy proportion, rendering it extremely difficult to differentiate a purely political act from a criminal

establishment. The so-called cadres of these parties created havoc in the south-western and north-western parts of the country.

Withdrawal from criminal prosecutions during the period from 1991 to present times on not very cogent grounds has taken place despite the democratic credentials of the relevant political regimes. The cases of withdrawal from criminal prosecution on political grounds are getting larger with the passage of each political regime. Whether such increase is directly co-related to the heightened criminalisation of our politics may be examined by those interested to see a cleaner polity.

It needs to be remembered that the functionary designated by the Criminal Procedure Code with the power to withdraw from the prosecution is the public prosecutor. It is for him to apply an independent mind and exercise his discretion. In doing so he acts as a limb of the judicative process and not as an extension of the executive. Although the withdrawal from prosecution is an executive function of the public prosecutor it has to be remembered that under the Criminal Procedure Code the prosecution of an offender for a serious offence is primarily the responsibility of the executive. The public prosecutor's discretion cannot be surrendered to anyone and he should ensure that the broad ends of justice, public order and peace are served.

The crux of the subject is primarily rooted in our political culture. Our politicians need to ensure their public image and social acceptability by clearly distancing themselves from patently criminal activities. The citizens should know whether political opponents should continue to be harassed by the institution of palpably false cases and whether shady elements should be allowed to masquerade as party operatives. The politicians have to take the lead in the gradual decriminalisation of the political process and ensure its sanitisation.

Muhammad Nurul Huda is a columnist for The Daily Star.

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by the judicial method. The consent, referred to above, means a consent freely given by a free and independent judge. The reasons for withdrawal must satisfy the judicial conscience of the court and that it is not enough that the government has been "pleased to sanction" withdrawal.

The court in coming to a decision as to whether it would give consent should not take into consideration any extraneous circumstance; it is entitled to ask from the public prosecutor the reasons for his withdrawal in order to enable it to give its consent after judicial consideration of the circumstances. That the district magistrate instructed the public prosecutor to apply for withdrawal is not a reason for a magistrate to give his consent to such withdrawal.

There is a considered opinion that the magistrate must not surrender his

act. If one ventures into the history of our socio-political progression since 1972 down to contemporary times one would come across many incidents of criminal nature which were at times committed with political motives by persons of supposedly political identity.

The socio-political situation turned for the worse with the tragic assassination of Bangabandhu and four national leaders. For many years these offences were not legally and appropriately treated by the establishment till a favourable political scene unfolded. Such realities do have substantial impact on the enforcement and adjudication temperament and culture. Between 1976 - 1979 many heinous criminal cases involving murder, abduction, grievous hurt, amongst others, were allegedly withdrawn as part of a deal struck with some political parties by the then

# Opposing views on a new world order

THANONG KHANTHONG

MAHMOUD Ahmadinejad, the Iranian president, was in New York this week to attend the UN General Assembly. As it turned out, he embarked on a PR blitz, giving interviews freely and casually to the international media. The highlight was his call for a "new world order," which would see the end of US bullying.

"God willing, a new order will come and will do away with everything that distances us," Ahmadinejad said on Tuesday. "All of the animosity, all of the lack of sincerity will come to an end. It will institute fairness and justice."

He said the world was losing patience with the current state of affairs. "Now, even elementary school kids throughout the world understand that the United States government is following an international policy of bullying," he said. "I do believe the system of empires has reached the end of the road. The world can no longer see an emperor commanding it."

It is not clear what Ahmadinejad's idea of a new world order looks like. But he predicts the end of the system of empires, now led by the United States.

The current world order is being controlled by the Anglo-Saxon alliance of the United States and the

UK via the Washington Consensus, which covers globalism, competitive exchange rates, liberalisation, deregulation, "democracy" and legal security for property rights.

The international institutions have evolved since the Second World War to guard and enforce the Washington Consensus. The current world order is guided by the United Nations, the World Bank, the International Monetary Fund, the

World Trade Organisation, the US Federal Reserve and the US Treasury Department, among others -- with the US dollar as the anchor of the global financial system.

Former US president George Bush senior envisaged a new world order while he was president, though the United States was already the undisputed global power. In 2009 Henry Kissinger, the former US secretary of state, gave a TV interview saying that the crisis in the Middle East would create an opportunity for Barack Obama to push for a new

high rates of unemployment. Greece, in particular, is being crucified as a warning to other countries that resist the advent of the "federation of nation states" or the "United States of Europe." If any euro-zone countries do not abandon their sovereignty, or let go of their control over fiscal policy and banking, to join a "United States of Europe," they will be left to decay in the cold as the euro takes flight from their banking systems.

Germany is not likely to play this game. The mathematics says it all.

*We are at a crossroads of unprecedented historic proportion, with two alliances of global powers at play to forge their versions of a new world order. This could, unfortunately, have to be determined by a war.*

Germany's annual tax collection is €1.2 trillion, but its share, or burden, in bailing out other weak euro-zone states could run up to €2 to €3 trillion. The euro-zone crisis, which will need at least €4 trillion in bailout money for the time being, can't be contained. That is why the European Central Bank will be printing unlimited euros to bail out the bankrupt sovereign states and the banking system.

The "United States of Europe" and Obama's new world order are from the same mould. Germany will have no choice but to leave the euro zone because it can't afford to bail out the whole of Europe.

This brings us back to Ahmadinejad's version of a new world order, which is likely to be shaped by China, Russia, India, Germany, Iran and other emerging states. The Middle East is in turmoil. Once it is united, it is likely to turn its back on a US-led new world order to join the China-led new world order.

We are at a crossroads of unprecedented historic proportion, with two alliances of global powers at play to forge their versions of a new world order. This could, unfortunately, have to be determined by a war.

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## THIS DAY IN HISTORY

September 29

**1923**  
The British Mandate for Palestine takes effect, creating Mandatory Palestine.

**1949**  
The Communist Party of China writes the Common Programme for the future People's Republic of China.

**1971**  
Oman joins the Arab League.

**1972**  
Sino-Japanese relations: Japan establishes diplomatic relations with the People's Republic of China after breaking official ties with the Republic of China.

**2008**  
Following the bankruptcies of Lehman Brothers and Washington Mutual, The Dow Jones Industrial Average falls 777.68 points, the largest single-day point loss in its history.