"ALL CITIZENS ARE EQUAL BEFORE LAW AND ARE ENTITLED TO EQUAL PROTECTION OF LAW"-ARTICLE 27 OF THE CONSTITUTION OF THE PEOPLE'S REPUBLIC OF BANGLADESH • dslawdesk@yahoo.co.uk

LAW VISION

Let's not be wild to the wildlife

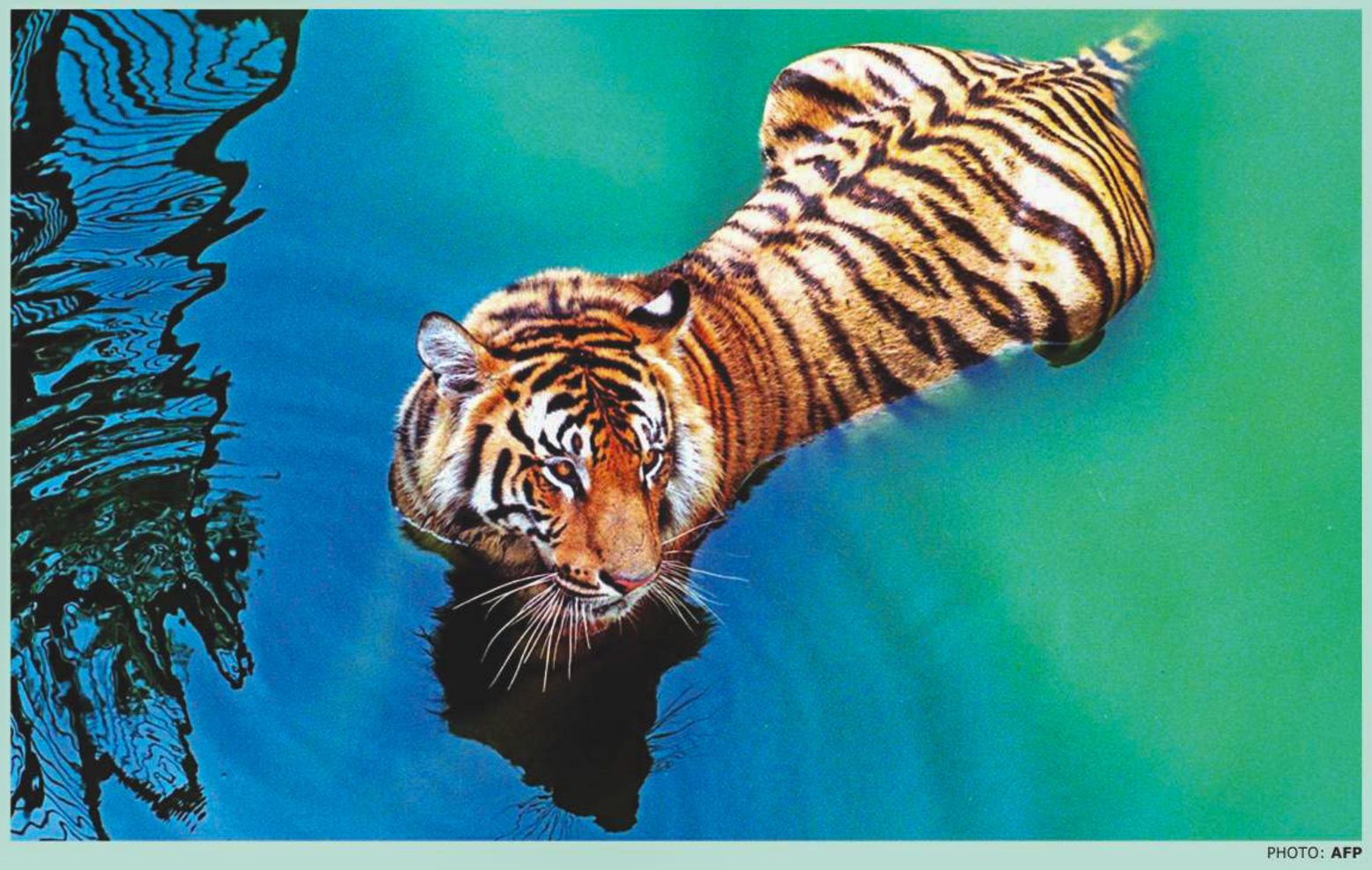


PHOTO: AFP

SHKEH MD. MUHIBBULLAH

IT'S a sad reality that wild-animal rights are grossly violated throughout the world. Aggression like hunting for skins, trophy, uncured trophy, bones, and tusks means that several animal species are vanished. For providing safety and conservation of forest, wildlife and biodiversity the government has enacted Wildlife (Conservation and Security) Act in 2012.

Present scenario of wildlife trafficking in Bangladesh

Though wildlife trafficking is strictly prohibited under this Act as an offence, a growing number of seizure of wild animals and birds over the last five years shows that poachers and smugglers are using Bangladesh as a route for wildlife trafficking point. During this period DoF (Department of Forest) and law enforcing agencies recovered 21,506 live wild animals, including tiger, deer, bear, turtles etc. [The Daily Star, 6 October 2015, 'Wildlife trafficking sees sharp rise in Bangladesh']

The following acts are made punishable under this Act as an offence:

- Hunting wild animal without a license,
- Transferring wild animal, meat, or uncured trophy part of wild animal through gift, sale, without registration certificate,
- Entrance into sanctuary (an area where capturing, killing, shooting or trapping of wildlife is prohibited),
- Importing and exporting wild animal without cites (the convention on international trade in endangered species of wild fauna and flora) certificate or license,
- Killing tiger, elephant , cheetah, lam cheetah, hoolock, samber deer, crocodile, gharial, whale or dolphin etc,
- Killing birds or migratory birds,
- Abetting and instigating such offences,

Killing wild-animal for saving life

The right to private defense is respected under sections 36 and 37 of the Act. Though killing tiger, elephant cheetah and crocodile etc. is punishable offence under this Act, but when a person is attacked by wild-animals causing threat to life of such person, and such animals are killed for saving life, he commits no offence under this Act.

Obtaining license is mandatory

If any person desires to cultivate, extract, manufacture, rear, export or import any wild animal or part of its body, meat, trophy, uncured trophy or any plant, or hunt any wild animal; he must obtain license from the Chief Warden or any officer authorised by him. Such license shall be valid for one year subject to renewal in every year. The person rearing an wild animal must register it through warden officer provided that the provisions shall not apply to any person traditionally possessing any trophy or memorial of wild animal from the past. However, such person needs to declare his possession of any trophy or memorial of wild animal to the Chief Warden or Warden or Upazila Forest Officer.

Seizure

Any Officer, under this Act, may seize the following articles or goods:

- hunted, acquired or captured wild animals without license or animals reproduced from it during captivity;
- dead or dying wild animals on account of accident;
- such wild animals or parts thereof, trophy or uncured trophy, meat, part of body or any plant, or parts or derivatives thereof, not registered under this act or for which no license has been received; and
- weapons, articles or tools use in committing an offence.

However, the provisions of this sub-section shall not be applicable in case of trophy of wild animal or memorials used as tradition, heritage or part of daily life of indigenous community.

We want proper enforcement of this Act to combat wildlife preservation and stop wildlife trafficking. In addition, special force of officials should be appointed to protect wildlife from being trafficked, destroyed or killed.

THE WRITER IS A STUDENT OF LL.M., UNIVERSITY OF DHAKA.

STUDENT CORNER

11th National Henry Dunant Memorial Moot Court Competition

COMPETING against Eastern University Moot Court Society (EUMC), Dhaka University Moot Court Society (DUMCS) became the champion of the 11th National Henry Dunant Memorial Moot Court Competition 2015. The competition was jointly organised by Bangladesh Chapter of the Asian Society of International Law (Asian SIL-Bangladesh Chapter) and International Committee of the Red Cross (ICRC) from 8-10 October 2015 in Dhaka. In total, more than 60 law students from 19 different public and private universities participated in the competition.

This year the mooters argued on the issue of war crime and genocide, and presented their both prosecution and defense cases before a fictitious International Criminal Court. The champion team was consisted of Muhammamd Omar Faruque, Nadia Rahaman and Masrur Bin Ansari from the Department of Law, University of Dhaka. Representing DUMCS in the competition, the team was coached by Dr. Nakib Muhammad Nasrullah, Professor of Law, University of Dhaka. The runner-up team EUMCS was represented by Masuma Bil Afroze, Wardi Zaman and Suborna Das, and coached by A.B.M.Imdadul Haque Khan, Assistant Professor of Law, Eastern University. Both the teams have qualified for representing Bangladesh in the South Asian Regional Round of the competition, scheduled to be held on the first week of December in Pakistan.

The best memorial trophy was awarded to Northern University, Bangladesh. Masuma Dil Afroz from EUMCS was awarded with the best mooter trophy, while Farhana Yasmin from South-East University was awarded with the best researcher trophy.

In the valedictory ceremony, amongst others were present: Mr. Justice M.A. Matin, retired Judge of the Appellate Division of the Supreme Court of Bangladesh; Mr. Justice Syed Muhammad Dastagir Husain, Judge of the High Court Division of the Supreme Court of Bangladesh; Mr. Sazzad Sharif, Chief of Judge Advocate General Core in Bangladesh Army; Professor Dr. Borhan Uddin Khan, President of Asian SIL-Bangladesh Chapter and Chairman of Department of Law, University of Dhaka; Dr. Mohammad Nazmuzzaman Bhuian, Vice-president of Asian SIL-Bangladesh Chapter, Dr. Muhammad Mahbubur Rahman, Treasurer of Asian SIL-Bangladesh Chapter and Ms. Kirsty Welch, Regional Legal Advisor of ICRC.

THE EVENT COVERD BY NADIA RAHAMAN, STUDENT OF LLM, UNIVERISTY OF DHAKA.

LAW NEWS

Implementation of Disaster Management Act

OLI MD. ABDULLAH CHOWDHURY

THE theme of this year's International Day for Disaster Reduction (October 13, 2015) is "Knowledge for Life". The focus of the day is on the traditional, indigenous and local knowledge which complement modern science and add to an individual's and societies' resilience. It is particularly important for Bangladesh as the country is prone to disaster and climatic events.

Recently, Sustainable Development Goals (SDGs) were adopted by world leaders to combat poverty, inequality and climate change. The ambitious agenda addressing issues from education to the environment was finally adopted on 25 September 2015. Bangladesh made commendable progress in achieving earlier goals, namely Millennium Development Goals (MDGs).

Unlike MDGs, there is a specific goal on climate change in the SDGs. First target of Goal 13 (Climate Action) is to strengthen resilience and adaptive capacity to climate-related hazards and natural disasters in all countries. There is a specific law in Bangladesh on disaster management, and raising awareness has been suggested in the law.

In 2012, the Disaster Management Act (DMA) became a piece of law after a long collective effort by the government and civil society actors to create a legislative tool under which disaster and emergency management will be undertaken. It has placed mandatory obligations and responsibilities on ministries and committees, and ensures transparency and accountability in the overall disaster management system.

National Disaster Management Council has been formed, and responsibility and functions of the Council has been described in Section 6 of the DMA. It includes providing necessary directives or consultation to concern authority and persons to arrange seminars and workshops in order to increase awareness about all concern issues, activities, directives, programmes, laws, rules and policies related to disaster.

Indigenous and local knowledge are crucial to decrease vulnerability and boost resilience among local communities. Full implementation of DMA would help in reducing risk of disaster in a disaster-prone country like Bangladesh.

THE WRITER IS A HUMAN RIGHTS WORKER.

REVIEWING THE VIEWS

LAW COMMISSION'S PROPOSAL

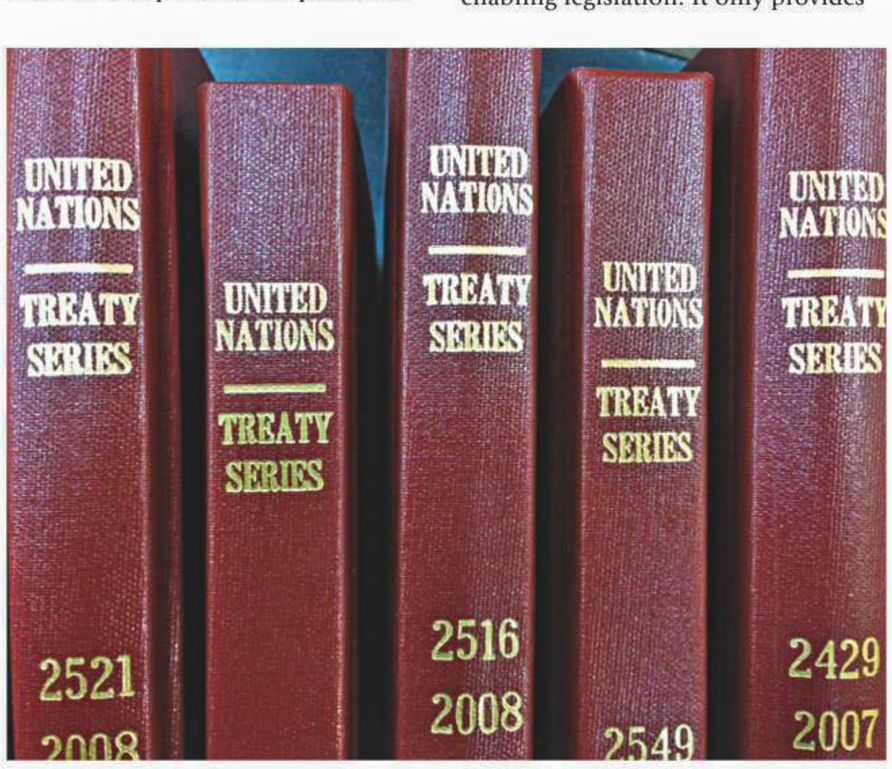
Making and applying treaties

EMRAAN AZAD

IN response to a write-up published on 8 September 2015 in 'Law & Our Rights', The Daily Star, here I want to highlight a recent development made by the Law Commission of Bangladesh with regard to the proposal for the enactment of a legislation named 'The Conclusion and Enforcement of Treaties Act'. Yesteryear, the Commission proposed this Act aiming: (a) to devise country's own statutory mechanism and procedure in relation to the conclusion and implementation of treaties; and (b) to ensure an effective involvement of the national parliament in undertaking the existing international treaty obligations.

In Chapter I, the proposed Act has defined several important terms such as 'treaty', 'ratification', 'signature', 'accession', 'reservation', 'denunciation of treaty', 'implementation of treaties', etc. The definition of 'treaty' is very relevant to understand the constitutional position of treaty in Bangladesh. According to article 145A of the Constitution of Bangladesh, "all treaties with foreign countries shall be submitted to the President, who shall cause them to be laid before the Parliament". From reading this constitutional provision, as Professor Sumaiya Khair writes in her paper titled 'Bringing International Human Rights Law Home: Trends and Practices of Bangladeshi Courts', it is not clear as to what treaties would be construed as coming within the purview of this constitutional article.

However, article 145A is very specific by categorically saying that only treaties (either bilateral or multilateral) with foreign countries, but not with any international organisations, are needed to be submitted to the President who is constitutionally head of the executive branch of the State. Since treaty making in a common law country is an authority of the executive, hence this provision of the Constitution shows the way of authorising the head of the executive for making treaty. Nevertheless, article 145A lacks to prescribe the process of taking either approval or disapproval from the Parliament for ratifying a treaty.



This sort of legal impasse has been addressed in Chapter III of the proposed Act. It provides sets of provision for ratification of the treaties though the Parliament; and it also attempts to clarify what would be the status of the treaty that is laid before the Parliament for getting approval for ratification. Further, it directs what actions the Parliament is to undertake subsequently on such a treaty.

Being compatible with the Vienna Convention on the Law of Treaties (VCLT), the definition of 'treaty' under this proposed Act means "a written bilateral or multilateral treaty, convention and agreements with other states or inter-state organisations". This definition not only clarifies the constitutional position of treaty in Bangladesh, but also extends a greater possibility of applying treaty law in case of local issues with global relevance.

According to Chapter II, the proposed Act deals with the procedure of initiation and negotiation of treaties. The Act proposes the executive branch of the State (or the related ministry) to be responsible for initiating the treaty making process, negotiation, signature and ratification of treaties.

In negotiating treaties, the Act obligates the government to be bound by the fundamental principles of state policy (FPSPs) and the fundamental rights (FRs), which have been ensured in the Constitution. In that sense, it can be said that the mandate given in article 8(2) of the Constitution, i.e. the applicability of FPSPs in the making of in section 14 on how to ratify a treaty which has been subsequently amended or modified by the parties. In 2012, the Governments of Bangladesh and Maldives amended the Agreement concerning Aviation Transport, originally adopted by the two Governments in 1985. On the other hand, the Governments of Bangladesh and India jointly in 2015 renewed for five years the Bilateral Trade Agreement, initially adopted by these Governments in 1972. This sort of renewal and/or amendment/modification raises uncertainty as to whether a subsequent renewal, amendment or modification of the treaty needs any changes in the existing treaty-enabling legislation that has been endorsed previously to enforce the original treaty. This proposed law could have guided the lawmakers on this issue of how to address or accommodate renewal, amendment or modification of a treaty through a treaty-enabling legislation. Saying this, I argue that even the wordings in section 21 relating to the enactment, amendment or repeal of any national law for the purpose of implementing a treaty within the domestic jurisdiction, are not sufficient to remove such a legal uncertainty.

Despite such disagreement and uncertainty, the proposed law is a positive initiative taken by the Commission to fill up a legal vacuum and remove ambiguities in relation to making, ratification and implementation of international treaty laws in Bangladesh.

THE WRITER IS A STUDENT OF LL.M., UNIVERSITY OF DHAKA.

Dear reader,

You may send us your daily life legal problems, queries, write ups, opinions to: Law Desk, 64-65, Kazi Nazrul Islam Avenue, Dhaka-1215; Tel: 9144330,8124944, fax 9144332; email: dslawdesk@yahoo.co.uk.