

Bangladesh's right of intervention in the Genocide Convention Cases



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On January 14, 2024, the Ministry of Foreign Affairs of Bangladesh issued a press statement in support of South Africa's application instituting proceedings against Israel before the International Court of Justice (ICJ), concerning alleged violations by Israel of its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide (the "Genocide Convention"), in relation to Palestinians in the Gaza Strip. In the statement, Bangladesh welcomed "the opportunity to file a declaration of intervention in the proceedings in due course." This piece enunciates the relevant international law on Bangladesh's right of intervention in cases concerning the Genocide Convention.

Interventions by States in the ongoing Genocide Convention cases before the ICJ (i.e., *South Africa v Israel*, *Ukraine v Russian Federation* and *Gambia v Myanmar*) are permitted under Article 63 of the Statute of the ICJ (the "ICJ Statute"), which states that:

1. Whenever the construction of a convention to which states other than those concerned in the case are parties is in question, the Registrar shall notify all such states forthwith.

2. Every state so notified has the right to intervene in the proceedings; but if it uses this right, the construction given by the judgement will be equally binding upon it.

The modalities of availing this right of intervention under Article 63 of the ICJ Statute are provided for in Article 82 of the Rules of the Court, which states that:

1. A State which desires to avail

itself of the right of intervention conferred upon it by Article 63 of the Statute shall file a declaration to that effect, signed in the manner provided for in Article 38, paragraph 3, of these Rules. Such a declaration shall be filed as soon as possible, and not later than the date fixed for the opening of the oral proceedings. In exceptional circumstances, a declaration submitted at a later stage may however be admitted.

2. The declaration shall state the name of an agent. It shall specify the case and the convention to which it relates and shall contain: (a) particulars of the basis on which the declarant State considers itself a party to the convention; (b) identification of the particular

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People sit inside the International Court of Justice (ICJ) on the day of the trial to hear a request for emergency measures by South Africa, in The Hague, Netherlands.

PHOTO: REUTERS

provisions of the convention the construction of which it considers to be in question; (c) a statement of the construction of those provisions for which it contends; and (d) a list of the documents in support, which documents shall be attached.

3. Such a declaration may be filed by a State that considers itself a party to the convention the construction of which is in question but has not received the notification referred to in Article 63 of the Statute.

Since the Genocide Convention cases involve the "construction" (i.e., the interpretation of one or more provisions) of the said convention, *prima facie*, any State that is a party to the Genocide Convention has the right to intervene.

The ICJ in its order on the "Admissibility of the Declarations of Intervention" of June 5, 2023, in

the case of *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v Russian Federation: 32 States intervening)* (the 5 June 2023 Order) held that a "State does not have the right to intervene under Article 63 of the ICJ Statute in respect of the construction of a provision of a convention if that State itself is not bound by that provision due to a reservation (para 96)."

Bangladesh during its accession to the Genocide Convention on October 5, 1998 made the following declaration: "Article IX: For the submission of any dispute in terms of this article to the jurisdiction of the International Court of Justice, the consent of all parties to the dispute will be required in each case."

It is evident that the above

declaration has the effect of a reservation to Article IX of the Genocide Convention. In its June 5 2023 Order, the ICJ, while assessing the United States' declaration of intervention, ruled on the effect of a similarly worded reservation entered by the United States to Article IX. The reservation stated that "with reference to Article IX of the Convention, before any dispute to which the United States is a party may be submitted to the jurisdiction of the International Court of Justice under this article, the specific consent of the United States is required in each case."

The Court, in its Provisional Measures Order of June 2, 1999 in the case of *Legality of the Use of Force (Yugoslavia v United States of America)*, found that the United States' reservation to Article IX has the effect of excluding the said

article from the provisions of the Genocide Convention in force for the United States. Therefore, the Court in its June 5, 2023 Order found that the United States cannot intervene in relation to the construction of Article IX since it is not bound by that provision. Consequently, the legal interest that the United States is presumed to have, under Article 63 of the ICJ Statute, in the construction of the Genocide Convention, as a party to it, does not exist in respect of Article IX (paras 95-96).

Since in the case of *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v Russian Federation: 32 States intervening)*, the United States sought to intervene during the preliminary objections stage of the proceedings, which concerned the construction of Article IX of the Genocide Convention vis-a-vis the jurisdiction *ratione materiae* of the ICJ, the Court concluded that the declaration of intervention of the United States is inadmissible in so far as it concerns that stage of the proceedings (paras 97-98).

Bangladesh's declaration of October 5, 1998, owing to its wording would purportedly have the same effect as the United States' reservation to Article IX. Therefore, it is very likely that Bangladesh will not be allowed to intervene during the preliminary objections stage of the proceedings in the Genocide Convention cases (provided the proceedings do concern the construction of Article IX). However, Bangladesh does seemingly have the right to intervene during the merits phase of the proceedings in these cases. Of course, Bangladesh could at any time withdraw its declaration of October 5, 1998, thus removing the above discussed barrier to intervention in all stages of the proceedings in the Genocide Convention cases.

The views expressed herein are those of the author alone and do not reflect the views of the International Criminal Court.

How ethics can make or break a company



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Tied with obligations to make profits and responsibilities to cater to society, "ethics" plays a principal role in shaping the success and renown of organisations. The way corporations go about with their affairs and deal with their stakeholders, starting from owners to employees to customers and the surrounding community at large, has a profound impact on their long-term sustainability and growth. However, in the quest for profitability and market dominance, ethical considerations often find themselves caught in the midst of hope and despair.

One of the burning concerns in the domain of business ethics is the widening gap between promises made and possibilities actualised. Companies love to boast of their commitments to nobilities as profound as corporate social responsibility, sustainability, and equitable empowerment, but often fail to translate these lofty ideals into meaningful practices. It is essential for organisations aspiring prominence to make certain that their actions are remarkably aligned with their stated commitments, fostering a culture of uprightness and accountability.

Another pressing issue is the ethical implications of emerging technologies. In today's digital age, businesses are increasingly leveraging technologies like artificial intelligence, big data analytics, and automation to streamline operations and enhance productivity. While these advancements bring immense opportunities, they also raise ethical dilemmas. For instance, the use of AI in decision-making processes can perpetuate biases, discrimination and undue leverage if not carefully monitored and regulated. Organisations must proactively address these ethical considerations and ensure that technology is deployed responsibly and in line with societal values.

Distressingly, some corporations



VISUAL: SALMAN SAKIB SHAHRYA

go a step further and seek unethical corporate intelligence, which refers to the use of illicit or unethical means to gather information about competitors, customers, or other stakeholders in the business environment. This practice involves activities such as remote eavesdropping, hacking, bribery, or various sorts of unauthorised surveillance. Unethical corporate intelligence not only violates privacy laws and ethical boundaries but also undermines fair competition and creates unrest within the business community. Apart from the potential legal headaches, it further tarnishes the company's reputation and damages relationships with stakeholders. It creates a haunt of suspicion and hostility, complicating collaboration and disrupting the free flow of information.

Nepotism and favouritism form another kind of malice that challenges fairness, meritocracy, and the overall morale within an

organisation. The undue existence of nepotism and favouritism creates a sense of injustice among employees who feel that the prospects for growth and advancement they deserve are limited. Most of our corporations are unfortunately infected with this ailment. And people of the affected organisations as such are led to decreased motivation and job satisfaction, and increased

turnover as talented individuals seek opportunities elsewhere, where their skills and contributions are recognised and rewarded on much fairer grounds.

Moreover, this partisanship damages the credibility within an organisation. When the perception grows among employees that promotions and opportunities are not based on merit and meaningful contributions through efforts but rather on how strong the grapevine of personal connections is of an employee, it handicaps the integrity of people and culture processes. This subsequently results in a toxic workplace environment where people become disengaged and lose faith in the leadership's ability to make fair and unbiased decisions.

The treatment of workers and labour rights is another intertwined critical aspect of corporate ethics that has been screaming for attention for decades. In our industries, exploitative labour practices, such as low wages,

long working hours, and unsafe conditions, have been persisting since forever. Although it is very late already, our capitalists must be taught the crucial lessons of prioritising the well-being of their employees, ensuring fair compensation, a safe working environment, and opportunities for professional growth. However, such transformations shall remain

impossible even in our dreams until and unless the government acknowledges these concerns, more through actions and impact. Only by championing workers' rights, businesses can foster a culture of equity and inclusivity which shall eventually benefit the economy as well. As we are moving forward, the global fight against corruption remains another big concern for corporate ethics. Irrespective of the clear fact that corruption hampers economic growth, distorts fair competition, and impairs trust in institutions, this rotten practice has existed in corporations and authorities around us. While strides have been made in combating corruption in pen and paper, there is still much left to act upon.

Then comes a more destructive ethical concern which has the full potential to make even the largest corporations bite the dust. Financial misconduct encompasses a wide range of unethical practices related to

financial reporting, accounting, and transactions within organisations. These usually include fraudulent issues, such as falsifying financial statements, misrepresenting financial information, or the most fashionable in our country currently, embezzlement. Financial misconduct not only eyewashes stakeholders, including investors and shareholders, but also diminishes the reliability of the organisation and the financial markets as a whole.

The consequences of financial misconduct can be devastating and points of eruption of such mishaps are diverse. It destroys investor confidence, leading to reduced access to capital and higher borrowing costs. Provided the authorities concerned are appropriately effective and intolerant towards monetary atrocities as they should be, it can also result in regulatory penalties, lawsuits, and damage to the company's reputation. Moreover, financial misconduct often has an internal ripple and a macroeconomic effect, impacting employees, suppliers, and the broader economy.

Strong internal controls, transparent reporting mechanisms, and very much essentially, an ethical tone at the top can only establish a firm and financially ethical foundation in an organisation. Implementing strict governance practices, including independent audits and regular internal reviews, helps detect and prevent fraudulent activities. With that, whistleblower protection programmes safeguarding informants from potential harm can also play a crucial role in encouraging employees and stakeholders to report unethical behaviour without fear of retaliation.

It is no surprise that supply chain management has also emerged as another area calling out for ethical consideration. Organisations have a responsibility to ensure that their supply chains function in an orderly and sustainable manner. This includes scrutinising that suppliers are adhering earnestly to fair labour practices, human rights standards, and environmental obligations. By conducting regular inspections, engaging in supplier capacity development and collaboration, and promoting responsible sourcing, businesses can mitigate the risk of unethical practices and contribute to positive social and environmental impact throughout the supply chain.

Business ethics also extends to the aspects of responsible marketing and consumer protection. In today's interconnected world, companies have become prominent enough to swiftly influence consumer behaviour and shape societal norms. This makes it crucial for organisations to engage in honest and transparent marketing practices, avoiding deceptive and manipulative tactics. Protecting consumer privacy and data security is equally important in an era marked by frequent data breaches and privacy concerns.

Responsible corporations should ensure that their marketing messages align with their offerings, and they should prioritise delivering value and meeting customer expectations in order to protect their wellbeing from any unsolicited risk and uncertainty. Unfortunately, where ethical marketing practices hold paramount imperative for businesses seeking to build trust and maintain long-term relationships with their customers, there still exist multiple instances around us which have had detrimental impacts to the point which cost consumers their health and even dear life.

To positively drive ethical awareness and unbiased decision-making within businesses, it is nonetheless important to provide ongoing ethics training and education to employees at all levels for awareness building. Training programmes have a very good chance in being a guidance for employees to understand ethical dilemmas, and learn in more detail about ethical operating procedures, and encourage open dialogue about relevant issues that may arise in the workplace.

Indeed, the oscillation between hope and despair in the dominion of corporate ethics demands unwavering commitment from organisations and leadership. Bridging the gaps between words and actions is the way forward for corporations to navigate the complex ethical scenario with dignity, purpose, and impact. It is through these ethical endeavours that organisations can contribute to a collective corporate culture where business thrives hand in hand with societal well-being and prosperity.

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