State Practice of Asian Countries in International Law

Bangladesh

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CRIMINAL LAW – TRANSNATIONAL CRIME – CORRUPTION –
UNCAC – MUTUAL LEGAL ASSISTANCE

**Professor M. Samsul Alam vs. Bangladesh & Others, Writ Petition
No. 5673 of 2016, Judgment Delivered on 24 August 2017, 10 SCOB [2018]
HCD**

The backdrop against which this writ petition was filed is that Niko Resources (Bangladesh) Ltd., a subsidiary of a Canadian corporation, entered into a joint venture agreement with BAPEX in 2003 to develop gas fields in Feni and Chattack. Petrobangla became the buyer of gas from the Feni field under a gas purchase and sales agreement (GPSA) with Niko. When Niko was drilling the Chattack gas field, two blowouts occurred on 7 January and 24 June 2005 respectively, causing extensive damage to the gas wells, human lives, and the surrounding environment. The two fires destroyed billions of cubic feet of gas and forced thousands of nearby villagers to evacuate. Damage caused by Niko to Bangladesh has since been estimated to be over \$1bn. The energy ministry's inquiry committee determined that the fire was the result of Niko's operational failure and inappropriate casing design. There were allegations of corruption in the process in which Niko was awarded the work.

The first time Niko's corruption came to light was in June 2005, when the press reported that Niko had provided a luxury car to the Bangladeshi Minister for Energy. This prompted the Canadian High Commissioner in Bangladesh at the time, to alert the Canadian Department of Foreign Affairs and International Trade about the matter, which in turn informed the Royal Canadian Mounted Police (RCMP). RCMP started an investigation which lasted for several years in various jurisdictions including Canada, Barbados, the Cayman Islands, the US, Switzerland, Singapore, and the UK. The RCMP investigation was joined by the FBI and Bangladesh's Anti-Corruption Commission (ACC). Despite widespread condemnation of Niko's corruption and its role in causing the blowouts, Niko again managed to obtain a gas purchase and sales agreement

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with Petrobangla in 2006. In 2007, joint international investigations of the RCMP, FBI, and ACC revealed a web of corruption worth millions of dollars involving individuals at the highest levels of power in the government. Niko had hired businessmen to pay off corrupt officials and politically influential persons to win its natural gas contracts.

The petitioner in this instance is a reputed energy expert and one of the leading activists in the protection of natural resources of the country. Being concerned about the welfare of the people and vigilant regarding the duties of government authorities to act in public interest and protect the rights and resources of the people in discharging their statutory duties, he moved the Court seeking redress.

In an application under Article 102 of the Bangladesh Constitution, a Rule Nisi was issued on 09.05.2016 calling upon the respondents to show cause as to why the Joint Venture Agreement for The Development and Production of Petroleum from the Marginal/Abandoned Chattak and Feni Fields ("JVA") dated 16.10.2003 between respondents No. 3 and No. 4 should not be declared to be without lawful authority and of no legal effect and thus *void ab initio*; and why the Gas Purchase and Sale Agreement for the sale of gas from Feni Gas Field ("GPSA") dated 27.12.2006 between respondents No. 2, as Buyer, and a joint venture between respondents No. 3 and No. 4, as Seller, should not be declared to be without lawful authority and of no legal effect and thus *void ab initio*; and also why the assets of respondents No. 4 and No. 5, including their shareholding interest in Tullow Bangladesh Limited concerning Block-9 should not be attached and seized to provide adequate compensation for the 2005 blowouts, and/or such other or further order or orders be passed as this Court may deem fit and proper.

Respondent No. 1 is the Government of Bangladesh, represented by the Secretary, Energy Division, Ministry of Energy, Power and Mineral Resources; respondent No. 2 is the Bangladesh Oil, Gas and Mineral Corporation (Petrobangla), a statutory corporation established under the Bangladesh Oil, Gas and Mineral Corporation Ordinance, 1985; respondent No. 3 is a company incorporated under the Companies Act, a wholly owned subsidiary of the respondent No. 2, and falls within the definition of "statutory public authority" under Article 152 of the Constitution; respondent No. 4 is Niko Resources (Bangladesh) Limited, a private company incorporated under the laws of Barbados, which entered into the JVA with the respondent No. 3 and the GPSA with the respondent No. 2; respondent No. 5 is Niko Resources Limited, a publicly traded corporation with head office in Calgary, Alberta, Canada and the parent company of the respondent No. 4, and which owns 80% working interest in the Chattak and Feni gas fields and 60% working interest in Block 9 gas field in Bangladesh.

The Court maintained that government activity has a public element in it and it must therefore be guided by public interest. As such, any misuse of power by a government functionary or exercise of unfettered discretion which benefits a private party in dealing with any State property, goes against public interest and is therefore, unacceptable, unconstitutional and invalid. If the government awards a contract or leases out any of its property or grants any targets, the same is liable to be tested for its validity on grounds of reasonableness and public interest and if found deficient, is liable to be invalid.

In their reasoning the Court drew extensively on the United Nations Convention against Corruption (UNCAC) to which Bangladesh is Party and observed that on ratification, Bangladesh has incurred an obligation to conform to the principles laid down in the convention. Therefore, Bangladesh has a duty under international law, as laid out in Article 31 of the UNCAC, to confiscate the proceeds of crime in this case. Article 51 of the UNCAC makes the return of assets as proceeds of crime a fundamental principle of the convention. As such, the Court held that all proceeds of crime acquired through corruption must be returned to Bangladesh. The Court also referred to Article 53 of UNCAC which calls for the recovery of assets obtained through corruption, including laws permitting private civil causes of action, to recover damages owed to victim States and the recognition of a victim State's claim as a legitimate owner of stolen assets. The Court also flagged Article 54 of the UNCAC which requires State Parties to give effect to any confiscation order for corruption proceeds issued in another State Party, and to "consider taking such measures as may be necessary to allow confiscation ... without a criminal conviction."

The Court was convinced that the evidence of corruption produced before them was the product of international law enforcement co-operation through the use of the Mutual Legal Assistance (MLA) arrangement between Bangladesh, Canada, and the United States under the UNCAC. They believed that the confiscation and return of the assets to Bangladesh would result in some form of restorative justice whereby the State and the people would obtain at least some financial benefit or compensation for the hardship caused by the corruption committed by respondents No. 4 and No. 5 and the suffering resulting from the 2005 blowouts. The Court observed how corrupt international companies hide behind corporate veils and rely on sovereignty issues to protect themselves and to orchestrate transnational crimes with impunity.

Perusing all facts and finding ample evidence of corruption, the Court declared that the Joint Venture Agreement for the Development and Production of Petroleum from the Marginal/Abandoned Chattak and Feni Fields (JVA) dated 16.10.2003 between respondents No. 3 and No. 4 to be without lawful authority and of no legal effect and thus void ab initio. They also maintained

that the Gas Purchase and Sale Agreement for the sale of gas from Feni Gas Field (GPSA) dated 27.12.2006 between respondents No. 2, as Buyer, and a joint venture between respondents No. 3 and No. 4, as Seller, were also without lawful authority and of no legal effect and thus void *ab initio*. The assets of respondents No. 4 and No. 5, including their shareholding interest in Tullow Bangladesh Limited concerning Block-9 PSC were attached. In view of these considerations, the Court made the Rule absolute.

CRIMINAL LAW – TRANSNATIONAL CRIME – TRAFFICKING OF PERSONS

Statement by Bangladesh on Agenda Item 107: Crime Prevention and Criminal Justice and Agenda Item 108: International Drug Control, at the Third Committee of the 72nd Session of the UN General Assembly, 4 October 2017

Bangladesh delivered a statement at the 72nd Session of the United National General Assembly (UNGA) on 4 October 2017 raising concerns over transnational crimes such as, trafficking in persons, money laundering, drug trafficking and drug abuse, terrorism and violent extremism, which are posing grave threats to countries generally and crime prevention and justice systems specifically. As Party to related UN Conventions, Bangladesh has been making sincere efforts to combat transnational organized crimes.

In the statement, Bangladesh reiterated its commitment to strengthen the work of Inter-Agency Coordination Group against Trafficking in Persons (ICAT). Besides, as a member of the Group of Friends United Against Human Trafficking, Bangladesh has been actively supporting the United Nations Global Plan of Action to Combat Trafficking in Persons by joining the high-level deliberations and other related events held at the UNGA. The statement highlighted various policy and legislative developments at the domestic level to address the problems including the Prevention and Suppression of Human Trafficking Act 2012. A National Plan of Action is being formulated focusing on 4Ps – Prevention, Protection, Promoting legal justice and Partnership development and effective monitoring. The government has set up Counter-Trafficking Committees up to the grassroots level and has established data collection and analysis cell recently. Bangladesh has been in the forefront in promoting safe, orderly and regular migration. To this end, Bangladesh hosted the 9th Global Forum on Migration and Development in 2016 and is now actively involved in the deliberations for adopting a norm-setting Global Compact for Migration.

One of the key aims is to retain the human trafficking dimension in the migration discourse.

Bangladesh practices zero tolerance against all forms of terrorism and violent extremism and has taken bold steps to stop financing and other support to curb such acts. The government has formed a Counter Terrorism and Transnational Crime Unit and Anti-Corruption Commission and strengthened law enforcement agencies, prosecutorial bodies and financial intelligence to ensure effective support in investigation and reduction of corruption and all forms of organized crime and illicit financial flows to criminal activities.

The statement concluded that in order to achieve SDGs, Bangladesh would prioritize the strengthening of the rule of law, crime prevention, and the promotion of fair, humane and accountable criminal justice systems.

**ENVIRONMENTAL LAW – BIODIVERSITY – ECO-SYSTEM
PRESERVATION – CONSERVATION – INDIGENOUS PEOPLES –
CULTURAL HERITAGE – ACCESS AND BENEFIT SHARING –
TRADITIONAL KNOWLEDGE**

The Bangladesh Biodiversity Act, 2017 (Act No. 11)

The enactment of the Bangladesh Biodiversity Act reinforces Bangladesh's commitment under the United Nations Convention on Biological Diversity to protect biodiversity and ensure sustainable use of resources. The Act in its Preamble explicitly refers to Bangladesh's obligation under the Convention on Biological Diversity 1993 in terms of conservation of bio-diversity, sustainable use of its components and fair and equitable sharing of benefits arising from the use of biological resources and related knowledge.

Drawing on the Convention on Biological Diversity, the Act defines biodiversity as the variability among living organisms which includes diversity within species, genes and ecosystems (Section 2[11]). It defines biological resources as genetic resources, such as plants, animals and micro-organisms or parts thereof, their genetic material and by-products or biotic component of an ecosystem but does not include human genetic material (Section 22[13]).

The Act provides for the establishment Biodiversity Committees at the national and subnational levels comprising of representatives of concerned ministries and departments of the government (Sections 8, 13, 16, 19, 22, 25). The role of the National Committee is most critical and includes inter alia approval of applications under the Act and advising the government on various aspects conservation of biodiversity including sustainable use of resources,

management of heritage sites, and harnessing indigenous knowledge (Section 10). The work of these Committees would be supplemented by teams, societies and sub-committees formed at the grassroots (Section 28).

The government has an obligation under the Act to formulate and update the National Biodiversity Strategy and Action Plan for the conservation, promotion and sustainable use of biological resources. This will include the identification and monitoring of biological resource rich areas and related research and educational programmes (Section 31[1][2]). The Act empowers the government to issue directives to relevant authorities or persons to take necessary measures to prevent deterioration or extinction of resources as a result of over-use, abuse or neglect (Section 31[3]). Participation of local communities (Section 31[5]) and recognition and preservation of local knowledge on biodiversity must be ensured in the impact assessment process (31[6]).

The Act entitles the government to declare, through official gazette, an area as a biodiversity heritage site (32[1]) which would be managed, developed and conserved in line with specific guidelines framed for the purpose (Section 32[4]). Declaration of such heritage sites shall be made after due consultation with local people and coordination of government ministries and departments (section 32[2]). The government shall have the onus of compensating or rehabilitating any organization or person who is economically affected by the decision to undertake a development project in the area (32[3]).

The Act prohibits activities that may adversely affect ecologically threatened/endangered species and communities (Section 36) and the environment and ecology of a wetland of international importance recognized by the Ramsar Convention (Section 33[3]). The Act criminalizes the following activities:

- The undertaking of biodiversity related activities and research and the transfer of knowledge and material in contravention of this Act (Section 39);
- Application for any intellectual property right, in or outside Bangladesh, for any invention using a biological resource from Bangladesh without approval of the National Biodiversity Committee (Section 40);
- Any activity that can potentially have an adverse impact on threatened species as discussed above (Section 41).

ENVIRONMENTAL LAW – SUSTAINABLE DEVELOPMENT

Statement by Bangladesh to the United Nations on Behalf of the Least Developed Countries on Agenda Item 20: Sustainable Development

and Sub-items (a) Implementation of Agenda 21, the Programme for the Further Implementation of Agenda 21 and the Outcomes of the World Summit on Sustainable Development and of the United Nations Conference on Sustainable Development, (c) Disaster Risk Reduction, (d) Protection of Global Climate for Present and Future Generations of Humankind, (e) Implementation of the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa and (i) Ensuring Access to Affordable, Reliable, Sustainable and Modern Energy for All, at the Second Committee, UN Headquarters, 9 October 2017.

Delivered on behalf of 47 least developed countries, Bangladesh's statement revealed that the GDP growth remains below 7 percent as set by the IPOA and emphasized the need to increase international development cooperation to address structural challenges often leading to political instability, starvation, and social breakdown in respective countries. The statement called upon the international community to deliver the resources committed to least developed countries (LDCs) in the Addis Ababa Action Agenda and the UN to further strengthen its normative and operational support to LDCs. It underlined the importance of inclusion of women, girls, children, persons with disabilities, indigenous people and local communities in access, processes, decision making and responses and resilience to climate change and disaster reduction. In this context, Bangladesh called for collaboration of all parties in all forums and processes related to disaster risk reduction and the implementation of the Sendai Framework for effective and sustainable solutions.

Bangladesh also flagged the need for concerted efforts to fully implement the Paris Agreement and urged development partners to operationalize the Green Climate Fund fully and on time, with the goals of mobilizing \$100 billion per year by 2020. It stressed that enhanced efforts are vital for promoting and facilitating clean development mechanism projects in the LDCs and to address the needs of people displaced as a result of extreme weather events. Urging development partners to ensure effective delivery on climate change commitments and access by the LDCs to all relevant climate change-related funds, Bangladesh emphasized that the allocation of adaptation and mitigation funds should be additional to official development assistance commitments and should be fair, equitable and proportionate to the impact of climate change.

Draft Remarks by Bangladesh at the High-level Meeting on Sustainable Tourism, Trade and Global Digital Assets in Support of the United

Nations Sustainable Development Goals, Co-organized by the Permanent Mission of Suriname, World Assets Digital Cryptology Committee (WADCC) and the United Nations Association of El Salvador (UNA-SV), 17 January 2017

Bangladesh observed with disappointment that although the 2013 Agenda recognizes international trade as a means for inclusive economic growth and poverty eradication, and an important tool to achieve the Sustainable Development Goals (SDG) and requires timely implementation of duty-free and quota-free market access for all LDCs, to date there has not been any tangible progress in this regard. Rather, the latest UNCTAD report on trade and development suggests that the global trade slowed down dramatically to around 1.5 per cent in 2015 and 2016, compared to 7 per cent growth before the crisis. Exports of LDCs have also fallen by more than 20 per cent in 2015.

Bangladesh called for reforming trade rules to make them fairer and more pro-development. It highlighted the need to address trade barriers and provide trade capacity through aid for trade; focus on structural transformation by sufficiently developing the manufacturing sector; add and retain high value by entering into the global value chains and adding technology and knowledge content into the manufacturing sectors.

Stressing the potentials of the tourism sector, Bangladesh sought appropriate policies and mechanisms at the national and international levels and engagement of both the public and private sectors in branding, marketing and reaching out to the potential markets. Building tourism infrastructure, ensuring stability, safety and security are key prerequisites for sustainable tourism development. Progress in the realization of GATS in all four Modes can also make important contributions to the promotion of tourism.

Bangladesh pointed out how digital assets and digital media are having a major impact on the economic, social and cultural lives by providing resources, knowledge and entertainment in an inconceivable magnitude at the shortest possible time and contributing significantly to education, research and development, in addition to making billions of dollars commercially. However, access to such assets is a continuing challenge which needs to be addressed by ensuring appropriate infrastructure and equipment, electricity, literacy and numeracy.

Bangladesh shared its activities, policy measures, institutional development and achievements in attaining key SDG targets. It highlighted the multi-sectoral approach and shadow oversight mechanisms adopted to make this journey meaningful and wanted concrete actions at the global level.

Statement by Bangladesh on Agenda Item 63: Permanent Sovereignty of the Palestinian People in the Occupied Palestinian Territory, Including East Jerusalem, and of the Arab Population in the Occupied Syrian Golan over Their Natural Resources, at the Second Committee of the 72nd Session of the UN General Assembly 23 October 2017

Bangladesh expressed a deep sense of frustration over the continued occupation of the Palestinian territories for nearly five decades, systematic human rights violations, indiscriminate attacks against civilians and expansion of illegal settlements by Israel, all of which violate the rights of the Palestinian people and adversely affect their social and economic conditions.

Highlighting deficits in access to water, energy and sanitation infrastructure, Bangladesh condemned the discriminatory planning policies implemented by Israel in Palestinian territories that seriously hampered investment in infrastructure and ignored public needs. Bangladesh stressed that continued occupation of Palestinian territories by Israel has resulted in high rates of unemployment, rampant poverty, widespread population displacement and homelessness, numerous health-related problems, severe food insecurity, insufficient number of schools and high dropout rates of students and rising aid-dependency for the most basic of needs. Destruction of homes and properties and exploitation, depletion of natural resources have compounded poverty and underdevelopment.

Bangladesh reiterated that the SDG principle “Leave No One Behind” applies to all including the people under foreign occupation. As such, it called upon the international community to impress upon Israel to put an end to the systematic breach of international humanitarian law and human rights principles, and restrictive measures that prevent the growth and development of economies in the occupied territories of Palestine. Bangladesh maintained that if the SDGs and Agenda 2030 are to be achieved, it is imperative that the inalienable rights of the Palestinians and people in occupied Syrian Golan over their natural resources and to self-determination are ensured.

Partners of the Sustainability Compact – Joint Conclusions, 18 May, 2017, Dhaka

The Partners of the Sustainability Compact comprising of the Government of Bangladesh (GoB), the European Union (EU), the United States of America (USA), Canada, and the International Labour Organisation (ILO) – met for the third follow-up meeting on Bangladesh Sustainability Compact May 18, 2017 in

Dhaka. The purpose of the meeting was to assess progress made since the last meeting held on January 28, 2016 and to review priorities for the coming year. The Compact and the Joint Conclusions of the Partners continue to serve as a set of commitments and priorities by its Partners aimed at securing respect for labour rights, occupational safety and health, and the promotion of responsible business conduct in the Ready-Made Garment (RMG) sector.

The Partners acknowledged the progress made in several areas of the Compact including increase in trade union registrations in Dhaka Division, work towards the development of standard operating procedures (SOP) to better process applications for trade union registration, strengthening of the Department of Inspection for Factories and Establishment (DIFE), formation of the Remediation Coordination Cell (RCC) and investments in factory safety pursuant to corrective action plans. They also noted with satisfaction the introduction of the concept of workplace cooperation and initiating a culture of occupational safety and health.

The Partners recognized the necessity to pursue these efforts and to ensure that the new SOPs are agreed to for the smooth and expeditious processing of trade unions' registration applications in conformity with the objective and based on transparent criteria. The Partners stressed the urgent need to further address discriminatory acts against trade unionists, and to investigate and prosecute unfair labour practices in an effective, timely and transparent manner. As part of this effort, the Partners underlined the importance of strengthening the Department of Labour (DoL) with adequate staff and resources.

They welcomed the establishment of the Tripartite Consultative Council (TCC) for the RMG sector, an advisory body for industrial relations between workers and the factory owners. The Partners recognized the urgent need for promoting responsible business conduct (RBC) and encouraged brands and retailers to adopt RBC practices and a uniform code of conduct for factory audits in Bangladesh.

The Partners emphasized that criminal complaints pending against concerned social partners need to be reviewed to ensure due process of law. Reaffirming the need to ensure that workers in the EPZs enjoy freedom of association and collective bargaining rights, they underpinned the urgent need to begin inclusive consultations towards the amendment of the Bangladesh Labour Act and associated regulations to address the conclusions and recommendations of the ILO's supervisory bodies. They noted that the draft EPZ labour law has been withdrawn for further review and the TCC has been tasked with proposing reforms to the BLA.

Recognizing the significant contributions of the Bangladesh Accord on Fire and Building Safety (Accord), and Alliance for Bangladesh Workers Safety (Alliance) to ensure factory safety in RMG factories and for their commitment to sustainable sourcing from Bangladesh, the Partners agreed that it was essential for the National Initiative, the Accord, and the Alliance to commence where not started and advance remediation work. They encouraged private initiatives to remain engaged with the government and to renew their commitments to working for safer RMG factories in the coming years.

Given the critical role the RMG sector plays in the development of the country, the Partners expressed their continued commitment to the people of Bangladesh including through supporting responsible business conduct.

ENVIRONMENTAL LAW – CLIMATE CHANGE

Third UN Special Thematic Session on Water and Disasters: Adaptation to Climate Change, Financing Infrastructure, and Advancing Science and Technology, UN Headquarters, 20 July 2017

Bangladesh recalled how adverse climate impacts caused human miseries, much of which is water related, particularly in the least developed and small island countries, including Bangladesh. Bangladesh is vulnerable to erratic patterns of rainfall and flood and water related disasters, which adversely affect people and livelihoods. Although Bangladesh's contribution to climate change is very insignificant, it is required to shoulder a disproportionate burden of addressing climate change induced disasters. In this connection, the statement highlighted some of the key policy measures and infrastructure development undertaken by Bangladesh to adapt to and mitigate the effects of climate change.

Bangladesh stressed that the task of combating climate change is a shared responsibility of the global community. In this context, in view of the magnitude of the climate change induced risks, Bangladesh needs support from the developed countries particularly in terms of financing, innovative solutions and technology transfer through different channels including overseas development assistance, the Green Climate Fund, bilateral agreements, and funding by multilateral development banks. The statement also urged the science community across the globe to transcend national barriers and create networks of ideas, knowledge and best practices for the benefit of all mankind.

**HUMAN RIGHTS – RIGHT TO LIFE – ICCPR – DEATH PENALTY –
COMMUTATION OF DEATH SENTENCE**

Kamal alias Exol Kamal vs. State, [Criminal Appeal No. 27 of 2013 with Jail Petition No. 10 of 2013, from the Judgement and Order of 19th of March, 2012 Passed by the High Court Division in Death Reference No. 60 of 2006 Heard Along with Criminal Appeal No. 6688 of 2009 and Jail Appeal No. 1229 of 2007], Judgement on 10 October 2017, 10 SCOB [2018] AD

The prosecution case, in brief, is that on 2 March 2004, at about 20.00 hours, victim Giasuddin returned was called out of his home by the accused persons named in the First Information Report and the convict appellant on the pretext of discussing some urgent matter with him. When the victim emerged from his house, the convict-appellant, accompanied by other convicts in the case, indiscriminately opened fire inflicting multiple injuries on him. The victim was taken to the hospital where he was declared dead by the doctor on duty. The incident was witnessed by the informant (victim's son) and other members of the family. Although the defence plea was that of innocence and that the appellant had been falsely implicated in this case driven by previous enmity and grudge, the Court of the first instance found the appellant guilty and sentenced him to death. Subsequently, the High Court Division confirmed the death sentence.

In addressing the criminal appeal for commutation of death sentence, the Appellate Division affirmed that in considering commutation of death sentence it has become the practice of the Court to take into account certain mitigating factors, such as the age of the accused, the criminal history of the accused, the likelihood of the offence being repeated and the length of period spent on death row. The Court acknowledged that the death sentence is the most severe and irretrievable form of punishment which, once carried out, cannot be redeemed. However, the Court hastened to add that the death sentence is not unconstitutional in Bangladesh in view of the viciousness of the act. Referring to the cases of *Gregg v. Georgia*, 428 U.S. 153 (1976), where the majority view was that the death penalty was not unconstitutional and *Nalu v. The State*, 32 BLD(AD) 247 where the court held that “death penalty is not a form of punishment that may never be imposed, regardless of the circumstances of the offence, regardless of the character of the offender, and regardless of the procedure followed in reaching the decision to impose it”, the Court reasoned that from the facts and circumstances of the present case, it is clear

that the victim was repeatedly shot from close range. Ten bullet injuries were found on the victim, which is indicative of the vehemence with which the victim was murdered. The Court also found from the evidence that as the victim was actively involved in ensuring law and order in the locality, his work impeded the activities of the criminal groups and therefore he had to be eliminated.

The Court further noted that although it is usual to take into consideration the young age of the accused, such exception is made only when the young act in the heat of the moment without considering the consequence of their actions. The facts and circumstances of the case clearly indicated that the appellant deliberately, in a preplanned manner and armed with firearms, went to the house of the victim with the sole purpose of killing him. Hence, it cannot be deduced that the act of the accused was prompted by immaturity. Taking all facts, evidence and circumstances of the case into account, the Court upheld the judgement, order of conviction and sentence passed by the High Court Division and dismissed the criminal appeal and the jail petition.

HUMAN RIGHTS – WOMEN’S RIGHTS – UN GENERAL ASSEMBLY

Statement by Bangladesh on Agenda Item 28: Advancement of Women, at the Third Committee of the 72nd Session of the UN General Assembly, 5 October 2017

Recalling the progress in promoting gender equality and protecting women’s rights through policy and practice and attaining gender related MDGs, the statement referred to the 2016 Gender Gap Index, published by World Economic Forum, which ranks Bangladesh 72nd among 144 countries, a position above all South Asian countries. Bangladesh has also prioritized gender equality and rights in its Seventh Five-Year Plan and Perspective Plan. Every year, a gender budget report is presented along with the National Budget. In 2017, 43 Ministries reported on their gender responsive programmes and indicated progress in women’s advancement.

The statement flagged developments in the RMG sector which singularly employs 4 million women, constituting nearly 95% of the total workforce in this sector. Women’s participation in the job market has risen from 7% in 2000 to approximately 40% in 2017. Additionally, rural and marginalized women have been empowered through social safety net programmes, micro-credit and SME schemes, and soft bank loans. Bangladesh is proud to have its women participating in UN peacekeeping missions. The enactment of appropriate laws

and the raising of social awareness against violence against women and girls, forced labour and early marriage have contributed significantly to women's advancement. The increasing number of women leaders at the national and sub-national levels is also a testament of political empowerment of women.

The statement reinforced the need for the international community to recognize and address vulnerabilities of women and girls arising from conflicts and displacement, humanitarian emergencies and adverse effects of climate change. The statement reiterated Bangladesh's commitment and the importance of other member states to comply with international obligations in respect of women and girls.

HUMAN RIGHTS – PROMOTION AND PROTECTION – UN GENERAL ASSEMBLY

Statement by Bangladesh on Agenda Item 72: Promotion and Protection of Human Rights, at the Third Committee of the 72nd Session of the UN General Assembly, 13 October 2017

Recognizing the multi-faceted challenges to human rights in today's world, Bangladesh reaffirmed its commitment to safeguard human rights and fundamental freedoms of all people and uphold the principles and provisions of the Universal Declaration of Human Rights. In addition to its international obligations, Bangladesh has in place the Constitution and other laws to protect and promote the rights of its peoples particularly, women, children, minorities and other vulnerable groups.

As a member of the Human Rights Council, Bangladesh has been working with the other member states in promoting human rights and implementing various human rights instruments to the best of its ability. The statement pointed out that it is often difficult for member states to fully comply with the universal parameters of human rights given country contexts and demands. Notwithstanding, Bangladesh appreciates the role of the UN's review mechanisms including the UPR in advancing human rights.

Reflecting on the Rohingya crisis, the statement emphasized that Bangladesh is doing its best to extend all possible humanitarian assistance to these people who have been subjected to flagrant human rights violations. The statement reiterated that the Rohingyas deserve support of the international

community in ensuring their basic human rights including the right to safe and voluntary return to their place of abode in Myanmar.

Statement by Bangladesh on Agenda Item 72(b): Human Rights Questions, Including Alternative Approaches for Improving the Effective Enjoyment of Human Rights and Fundamental Freedoms and 72(c) Human Rights Situations and Reports of Special Rapporteurs and Representatives at the Third Committee of the 72nd Session of the UN General Assembly, on 27 October 2017

The statement affirmed that Bangladesh is strongly committed to the promotion and protection of universal human rights and fundamental freedoms. This commitment flows from the Constitution which embodies the principles and provisions of the UN Charter and Universal Declaration of Human Rights. Bangladesh is signatory to both the principal covenants on human rights, is party to all major human rights instruments and is member of various UN bodies and agencies dealing with human rights.

The statement highlighted the importance of addressing intolerance, negative stereotyping, stigmatization, discrimination, incitement to violence and hate speech particularly based on ethnicity, religion or belief in ensuring human rights for all. Referring to the Rohingya population in Myanmar, Bangladesh flagged how they were subjected to persecution and flagrant violation of human rights for generations resulting in their mass influx into Bangladesh. Bangladesh regretted the failure of the international community to handle the Rohingya crisis in meaningful ways. In this connection, Bangladesh also raised the sorry state of human rights violation in the occupied state of Palestine.

Given the steady deterioration of human rights worldwide, Bangladesh urged the UN, its relevant institutions and tools under its disposal including the Human Rights Council, to engage and follow up on this matter and devise in a spirit of collaboration, compassion and solidarity alternative and complementary approaches to address the human rights situation in various parts of the world.

The statement reaffirmed that the goals and targets set out for a sustainable future can be achieved only if relevant human rights and humanitarian laws are adequately implemented and respect for human rights in terms of equality, non-discrimination, participation, accountability, transparency, and rule of law is promoted, with particular focus on addressing the needs of the vulnerable, marginalized and disadvantaged groups.

HUMAN RIGHTS – LABOR RIGHTS

International Campaign Led by IndustriALL Global Union and UNI Global Union Protesting Crackdown on Labour Movement, 15–16 February 2017

Union leaders and garment workers were arrested and union offices shut down in Dhaka's garment district, following demands for a higher minimum wage in December 2016. The wage movement was suppressed by the government with support from garments factory owners. In this context, the IndustriALL and UNI Global Union launched a campaign #EveryDayCounts, which received massive support from affiliates and other actors within the labour movement. Hundreds of photographs from all over the world were posted on social media, and unions in more than 20 countries sent letters to the Prime Minister of Bangladesh calling for the release of detained garment trade union leaders and worker activists, and for dropping of all charges against them. On 15 and 16 February 2017, the movement witnessed protests in over 16 cities, including Berlin, Geneva, London, Brussels, The Hague, Washington D.C., New York, Ottawa, Kathmandu, and Seoul. Labour Start's campaign to free the jailed activists amassed more than 10,000 signatures.

A tripartite agreement to release the detained trade unionists and garment workers was reached on 23 February, 2017, signed by the Ministry of Labour, IndustriALL Bangladesh Council, and the Bangladesh Garment Manufacturers and Exporters Association. The majority of the 35 Bangladeshi unionists and garment workers arrested since December 2016 were released, and arrangements to release the remaining were underway.

HUMAN RIGHTS – RIGHTS OF THE CHILD – LEGAL AGE OF MARRIAGE – BEST INTERESTS OF THE CHILD – PROTECTION OF CHILDREN AND YOUNG PERSONS – HARMFUL TRADITIONAL PRACTICE

The Child Marriage Restraint Act 2017 (Act No. VI of 2017)

Bangladesh enacted the Child Marriage Restraint Act 2017 by replacing the earlier Child Marriage Restraint Act of 1929. While the new law retains many of the provisions of the earlier Act including the legal age of marriage (21 for boys and 18 for girls), the inclusion of an exception that allows a boy or a girl to

marry before the statutory age limit in “special circumstances” in the “best interests of the child” is essentially seen as a regressive step in law making. Section 19 states that a child marriage solemnized in special circumstances in the best interests of the minor, and on the direction of the court and with the consent of the parents or guardian of the minor, shall not be deemed an offence under this Act (Section 19). The law, being silent on what would constitute a “special circumstance” and pending formulation of rules in this regard, creates scope for subjective interpretation of the clause.

The Act establishes Child Marriage Prevention Committees comprising of a cross-section of individuals from within and outside the government at the national and subnational levels for the prevention of child marriage (Section 3). Birth certificate, national identity card, educational certificate or passport shall be the legal basis for proving age of the parties contracting marriage (Section 12).

The Act empowers selected government officials and local government representatives to stop incidents of child marriage or take legal action upon receiving information, whether written or oral (Section 4).

The Act provides punitive measures in the following situations:

- The Court may, if satisfied, suo-moto or pursuant to a complaint made by a person or any information received through any other means, that a child marriage has been arranged or is about to be solemnized, issue an injunction against it (Section 5[2]). Anyone violating the injunction shall be liable for imprisonment or fine or in appropriate cases, both (Section 5[3]).
- If the complaint is found to be false, the complainant shall be punished with imprisonment or fine or, with both (Section 6).
- Any adult, male or female, who contracts a child marriage shall be punishable with imprisonment or fine or with both. In default of payment of the fine, s/he shall be punished with imprisonment which may extend up to three months (Section 7[1]).
- If any minor, male or female, contracts a marriage, s/he shall be punished with detention which may extend up to one month, or with fine which may extend up to fifty thousand Taka, or with both (Section 7 [2]).
- Where a minor contracts a marriage, any person having charge of the minor, whether as parent or guardian or in any other capacity, lawful or unlawful, promotes the marriage or permits it to be solemnized, or negligently fails to prevent it, shall be punishable with imprisonment which may extend up to two years but not less than six months, or with fine which may extend up to fifty thousand Taka, or with both; in default of payment of the fine, s/he shall be liable to imprisonment which may extend up to three months (Section 8).

- If any person solemnizes or conducts a child marriage, s/he shall be punished with imprisonment which may extend up to two years but not less than six months, or with fine which may extend up to fifty thousand Taka or with both; in default of payment of the fine, s/he shall be punished with imprisonment which may extend up to three months (Section 9).
- If any Marriage Registrar registers a child marriage, s/he shall be punished with imprisonment which may extend up to two years but not less than six months, or with fine which may extend to fifty thousand Taka, or with both, and in default of payment of the fine, shall be punished with imprisonment which may extend to three months, and his license or appointment shall be cancelled (Section 11).
- Where a child marriage is initiated but not solemnized, and the accused submits an affidavit or bond stating that he shall not be involved in a child marriage in future and takes initiatives to prevent child marriage in his locality, then the court, if it thinks fit, may exempt him from the charge framed against him (Section 10).

Offences under this Act shall be cognizable, bailable and non-compoundable (Section 14).

However, the court shall not take cognizance of an offence under this Act after the expiry of two years from the date on which the offence is alleged to have been committed (Section 18). Trial of an offence under this Act shall be conducted summarily (Section 15). The court may, in case of disposal of a complaint or any proceedings, undertake local inquiry of its own to ascertain the veracity of the incidence or may direct any government official or local government representative or any other person to make such inquiry. The inquiry must be completed within 30 (thirty) working days failing which an additional 15 (fifteen) working days will be allowed if the court is convinced that the grounds for delay are justified (Section 16). Money realized from fines shall be paid as compensation to the party in the marriage who is a minor (Section 13).

INTERNATIONAL ECONOMIC LAW – BILATERAL MEETING

United States and Bangladesh Hold 3rd Trade and Investment Cooperation Forum Agreement Council Meeting in Dhaka, 17 May, 2017

The United States-Bangladesh Trade and Investment Cooperation Forum (TICFA) Council held its third meeting on May 17, 2017 in Dhaka to promote bilateral trade and investment in goods and services. During the meeting, both

countries discussed issues of mutual interest and which fall within the ambit of the TICFA. This included business opportunities, market access and tariff reforms, intellectual property, digital economy, regional connectivity, energy and infrastructure development, transparency in government procurement, and labor issues. Both governments pledged to deepen their engagement to strengthen trade and economic ties between the two countries.

INTERNATIONAL ECONOMIC LAW – BILATERAL/MULTILATERAL AGREEMENTS

Promotion of Trade and Commerce

Bangladesh and Turkey signed an MoU at the Turkey-Bangladesh Business Forum – 2017 pursuant to which trade and commerce is expected to increase between the two countries by way of preferential market access. According to the Export Promotion Bureau of Bangladesh, Bangladesh exported \$631.63 million worth of goods to Turkey in the last fiscal year and imported goods and services worth \$212.30 million from Turkey. The signing of the FTA is likely to enhance the export of ready-made garments, pharmaceuticals, frozen fish, dry food, jute and jute products, leather, plastic and ceramic products, ship building and light engineering products to Turkey.

Bilateral Agreements with China

China is one of the most important partners in the economic development of Bangladesh providing financial assistance to diverse projects/sectors. The following examples are highlighted to demonstrate the range of areas covered by bilateral agreements between the two countries:

Energy

The governments of Bangladesh and China signed a Framework Agreement on 29 October 2017 based on which China will provide Bangladesh with USD 550.40 million including government concessional loan of USD 82.56 million and Preferential Buyer's Credit amounting to USD 467.84 million to implement the Installation of the Single Point Mooring with Double Pipeline Project to be steered by the Energy and Mineral Resources Division of the Bangladesh Government. The primary objective of this initiative is to ensure a fine balance

between the demand and supply of the country's energy needs and help reduce system loss during the import of refined and non-refined oil.

Economic and Technical Cooperation

China and Bangladesh signed an Agreement on Economic and Technical Cooperation on 11 May 2017 in lieu of which China will provide Bangladesh with a grant assistance of approximately USD 83.00 million for constructing the 9th Bangladesh-China Friendship Bridge and other infra-structure. The locations of these structures will be identified and negotiated later. It may be noted that seven such bridges have already been constructed with Chinese grants and the construction of the eighth one is underway over the Kocha river in Pirojpur district.

Digital Technology

China and Bangladesh signed two Framework Agreements on 10 September 2017 pursuant to which China will provide financial assistance for the implementation of the Development of ICT Infra-Network for Bangladesh (Info-Sarker-3) and the Modernization for Telecommunication Network for Digital Connectivity (MoTN) to be led by the Information and Communication Technology Division and the Posts and Telecommunication Division of the Bangladesh government respectively. These projects are expected to fulfill Bangladesh government's vision of a digital Bangladesh through reliable and affordable telecommunication facilities and broadband access.

Grant Agreement on Human Resource Development

Japan and Bangladesh signed a grant agreement on 7 August 2017 in Dhaka under which Japan will provide Bangladesh with 345 million Japanese Yen (equivalent to USD 3.12 million) and 444 million Japanese Yen (equivalent to USD 4.00 million) totaling 789 million Japanese Yen (equivalent to USD 7.12 million) as Grant Aid to the Human Resource Development Scholarship (Three Year-Cycle and Four Year-Cycle) Project of the Bangladesh government. This grant will support young Bangladeshi government officials in obtaining their Master's degree/Doctoral degree from Japanese higher education institutions. To date a total of 240 government officials obtained Master's Degree from Japan under this project. Japan is one of the largest bilateral development partners of Bangladesh and has contributed significantly to the overall development of the country.

Loan Agreement on Health Sector Development

A Loan Agreement between the Saudi Fund for Development (SFD) and Bangladesh was signed on 8 October, 2017 for setting up separate Burn Treatment and Plastic Surgery Units in 5 public medical college premises in Rajshahi, Barisal, Sylhet, Rangpur and Faridpur respectively. Under this Agreement, the Saudi Fund for Development has pledged a loan amounting to 112.50 million Saudi Riyal (equivalent to USD 30.00 million).

Grant Agreement on the Conservation of Social, Cultural and Environmental Heritage

The governments of India and Bangladesh signed a grant agreement on 29th January, 2017 to implement a project for Sustainable Development of Rajshahi City through Improvement and Conservation of Social, Cultural, Environmental and Heritage Infrastructures. The beneficiary and implementing agency of the project is Rajshahi City Corporation. The total cost of the project would be BDT 219.5 million.

Agreement on Climate Resilience Infra-Structure and Capacity Building

Pursuant to 'The World 2030-Denmark's Strategy for Development Cooperation and Humanitarian Action Plan for Bangladesh', an agreement was signed on 19 December, 2017 between Denmark and Bangladesh for Climate Adaptation and Resilience Engagement (CARE) in Bangladesh. Denmark initiated this engagement project in recognition of the priorities set out in the Bangladesh Climate Change Strategy and Action Plan, 7th Five Year Plan (2016–2021) and Perspective Plan of Bangladesh (2010–2021). The total support for the programme is DKK 50 million of which Denmark will contribute DKK 30 million and Bangladesh will provide DKK 20 million. The duration of this project is three years (December 2017 to November 2020).

The Project has two components – (i) Climate Resilient and Rural Infra-Structure and (ii) Climate Resilient Water Supply and Sanitation Services through Strengthened Local Government Institutions. Climate resilient infrastructure will include the construction of cyclone shelters, social services institutions, rural markets and fish landing stations in the coastal districts of Noakhali and Lakshmipur. Under component 2, Climate Resilient Water Supply and Sanitation facilities infrastructure will be developed in climate vulnerable coastal districts of Noakhali, Lakshmipur and Patuakhali. The project will

also help build the capacity of local government institutions for handling climate change issues.

Exchange of Note and Grant Agreement for Education

On 8 February 2017, the governments of Japan and Bangladesh signed an Exchange of Note and Grant Agreement to implement the Third Primary Education Development Programme in Bangladesh. A total of 500 million Japanese Yen will be paid to Bangladesh under these agreements. Japan has been supporting Bangladesh in this sector since 2011; this is the fifth tranche of its contribution. The main objective of this programme is to improve the quality of classroom teaching of primary school teachers by providing necessary training and teaching equipment.

Agreement for Economic Development

The Governments of Korea and Bangladesh entered into an arrangement on 3 December 2017 for establishing a Representative Office of Export-Import Bank of Korea in Bangladesh through soft loan provided by the Economic Development Cooperation Fund (EDCF). This initiative is expected to expedite aid mobilization and enhance development cooperation between the two countries.

Exim bank of Korea has been a long standing partner of Bangladesh and has contributed to the development of infrastructure and ICT in the country since 1993. As of November 2017, Bangladesh received approximately USD 1.00 billion in financial assistance through the EDCF.

HUMANITARIAN LAW – ECONOMIC ASSISTANCE – HUMANITARIAN AND DISASTER RELIEF

Statement of Bangladesh on Agenda Item 73: Strengthening of the Co-ordination of Humanitarian and Disaster Relief Assistance of the United Nations, Including Special Economic Assistance, at the 72nd Session of UN General Assembly, 8 December 2017

Bangladesh updated the UNGA about the status of the Rohingya influx from Myanmar including the strain it was putting on local and national government authorities in terms of resource and capacity. Citing statistics on, amongst others, the total number of Rohingyas who have entered Bangladesh and the necessary support to maintain their basic needs and essential services,

Bangladesh urged donor countries and organisations to respond to the pressing and increasing need for resources in the spirit of responsibility and burden sharing.

Bangladesh pointed out that while it continues to engage with the Myanmar authorities in good faith to facilitate the return of the Rohingyas, it is crucial for the international community to persuade Myanmar to create an environment for the safe, dignified and voluntary return of the Rohingyas without fear of reprisal. It raised concerns over restricted access to humanitarian assistance and stated that nothing can justify the breach of international humanitarian law on the pretext counter-terrorism operations.

Bangladesh observed that the humanitarian crisis of the Rohingyas cannot be resolved without a peaceful, just and lasting political solution to the root causes of problem. It maintained that the recommendations of the Kofi Annan Advisory must be implemented by all concerned actors in Myanmar without resorting to a selective approach. In order to build trust and confidence among the Rohingyas, it is imperative that those responsible for committing horrific crimes against them are duly identified and brought to justice.

In conclusion, the statement reiterated that Bangladesh attaches great importance to the UN's humanitarian and emergency relief assistance, and remains supportive of international efforts to help build resilient societies and nations to respond to humanitarian challenges. Condemning the indiscriminate armed attacks against humanitarian personnel and convoy, medical and peacekeeping personnel and civilian infrastructures essential for humanitarian operations, Bangladesh urged all parties to conflicts to refrain from such activities and comply with International Humanitarian Law.

TERRORISM

Joint Statement against Terrorism during Prime Minister Sheikh Hasina's Visit to New Delhi, 7–10 April 2017

Prime Ministers Narendra Modi of India and Sheikh Hasina of Bangladesh issued a joint statement against terrorism during the latter's visit to New Delhi in April 2017. The joint statement said that the "fight against terrorism should not only seek to disrupt and eliminate terrorists, terror organizations and networks, but should also identify, hold accountable and take strong measures against States and entities which encourage, support and finance terrorism, provide sanctuary to terrorists and terror groups, and falsely extol their virtues."

India and Bangladesh Sign 22 Agreements, Joint Statement against Terrorism

India and Bangladesh signed twenty two agreements during the Bangladeshi Prime Minister's visit to India in areas of defence, nuclear energy, cyber security and media. Both Prime Ministers personally witnessed the signing of four agreements – on the judicial sector, a \$4.5 billion development assistance line of credit, on outer space and on passenger and cruise services. In addition, India has offered a new \$500 million line of credit specifically for defence purchases. With the new \$4.5 billion offer, India has thrice extended lines of credit during bilateral visits of the Bangladesh Prime Minister in the last six years, which constitute the largest of soft loans that New Delhi has proposed to any foreign country during this period.