

Trial of War Criminals:

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War crime is a generic term. It includes genocide, crimes against humanity, and grave breaches of the 1949 Geneva Conventions relating to war. The first two can occur in time of peace or in war. These crimes are international crimes and come under universal jurisdiction.

These international crimes are defined as follows:

War crimes: violation of laws or customs of war and humanitarian rules that are contrary to the 1949 Geneva Convention of Armed Conflicts against the civilian population. This includes disproportionate use of power and action against civilians.

Crimes against Humanity: murder, extermination, enslavement, deportation, torture forced disappearances and other inhumane acts committed against any civilian population, before or during the war.

Genocide: **Genocide** includes any act of killing with intent to destroy in whole or in part, a national, ethnical, racial or religious group.

According to [Amnesty International](#), certain crimes pose so serious a threat to the international community as a whole, that states have a legal and moral duty to prosecute an individual responsible for it; no place should be a safe haven for those who have committed international crimes..

War Crimes & Universal Jurisdiction:

Crime, although committed against a person, is an offence against law and order of a State and that is why it constitutes a crime against a State and State prosecutors (public prosecutors) pursue a criminal case.

War crimes, genocide and crimes against are offences against humankind because it denigrates human dignity. That is why every country has an obligation under international law to try individuals who allegedly perpetrated such crimes, irrespective of the fact whether such crimes were committed in that State or not. If the state does not do it, the International Criminal Court (ICC) is competent to try them under the 1998 Rome Statute establishing the Court.

A person who allegedly commits a crime can always be charged until that person is alive. Unlike civil litigation or disputes, length of time does not affect crime. In other words, it does not have statutory limitation.

In view of the above, those who allegedly committed genocide, crimes against humanity or war crimes (grave breaches of the 1949 Geneva Conventions) during the Nazi Germany more than 60 years ago are being arrested and tried.

The UN set up on ad-hoc basis the [International Criminal Tribunal for Rwanda](#) (1994) and [International Criminal Tribunal for the Former Yugoslavia](#) (1993) for trial of individuals for allegedly committing such international crimes.

For example, Serbia's late President Milosevic was on trial and he died during the course of trial and currently Radovan Karadic, former President of the Bosnian Serbian Republic, has been put on trial for international crimes at the former Yugoslav Tribunal.

In Cambodia, Khmer Rouge leaders who alleged committed crimes against humanity and turned the country into 'killing fields' during 1975-79 are being put on trial after 30 years by a Tribunal with the backing of the UN.

Immunity of heads of state gone:

The concept of universal jurisdiction is therefore closely linked to the idea that certain international norms are owed to the entire world community, as well as- that certain international law obligations are binding on all states and cannot be modified by treaty. (*jus cogens*). That means any state has jurisdiction to the suspected accused despite his/her nationality so long that individual is found in its territorial jurisdiction.

The days of sovereign immunity for the heads of state who are accused of mass murder have gone and States have been alert to implement universal jurisdiction. States back their claim on the ground that the crime committed is considered a crime against all, which any state is authorized to punish, as it is too serious to tolerate for protection of human dignity

The concept received a great deal of prominence with the case of late Chilean dictator President [Augusto Pinochet](#) who was arrested in London in October 1998 on a request from Spain for his alleged crimes but was released in 2000 on medical grounds. This was the first time a former head of the state was arrested.

In recent months ICC issued a warrant of arrest for Sudanese President Omar Al Bashir who has been accused of committing crimes against humanity, genocide and war crimes in Darfur region of Sudan.

International Criminal Court:

The creation of the International Criminal Court was first mooted in 1872 by Gustav Moynier, a Swiss jurist and philanthropist after witnessing the bloodshed of human beings in Franco-Prussian War. The League of Nations attempted it in 1920s.

The most serious stumbling block was the sovereignty of states and states did not want to surrender its sovereignty to a Third Party. Cold War added to the delay because the Soviet Union was against it.

Bangladesh has been a victim of the heinous crimes and in 1974, Bangladesh government took the lead to convene a conference in Dhaka to discuss about the establishment of the International

Criminal Court. It was attended by eminent jurists and scholars of international law. The conference recommended the establishment of the International Criminal Court on a permanent basis.

Finally the setting up of the ICC by the UN was under the Rome Statute of 1998 in 2002 at The Hague. Bangladesh signed the 1998 Statute and ratified it last month. Bangladesh's ratification has demonstrated to the international community Bangladesh's firm resolve that war crimes must not and cannot escape punishment through a legally constituted tribunal with all safeguards for the suspected individuals.

The establishment of the Court at The Hague reduced the perceived need to create ad-hoc international criminal court, although the ICC is not entitled to judge crimes committed before 2002.

Bangladesh's case:

On 3rd December, 1973, a resolution of the General Assembly (resolution number 3074) was adopted underscoring the obligations of member-States of the UN in the detention, arrest, extradition and punishment of war crimes and crimes against humanity. Bangladesh is a member of the UN and it is a duty of Bangladesh to hold trials for such international crimes.

On October 31, 2007 the Sector Commanders of the Liberation War reportedly said that the war criminals committed crimes of 53 varieties in the country in 1971. About 5,000 killing fields are scattered in various places in the country.

On 29th January 2009, Bangladesh Parliament adopted a resolution to try war criminals. On 25th March, the government decided to try war criminals under the 1973 International Crimes (Tribunals) Act and the investigation as claimed by the government had already begun.

These crimes perpetrated on the civilians in 1971 in Bangladesh may easily be argued falling under genocide, crimes against humanity and serious breaches of the 1949 Geneva Conventions on armed conflict (war crimes). Those who attempted, instigated, conspired to commit such crimes and connived in not preventing such crimes are also liable for trial in Bangladesh.

The International Crimes (Tribunals) Act (Act no. XIX of 1973) received the assent of the President on 19th July, 1973 and Article 47(3) of the Constitution was inserted in July 1973 to prevent any challenge from the validity of the International Crimes (Tribunals) Act.

This law was enacted to try and punish any member of armed forces, defence or auxiliary forces, accused of international crimes, not war crimes only.

International Crimes (Tribunals) Act 1973:

Section 3 of the Act has defined the crimes against humanity, anti-peace crimes, genocide, war crimes, breaches of rules of the Geneva Conventions of 1949 during armed conflicts, any crime

under international law. It also embraces crimes such as murder, torture, ousting any civilian from Bangladesh territory, considering him a slave or with any other objective, looting personal or public property and damage to towns and villages in the absence of military necessity.

Furthermore the law includes as crimes, such as an attempt to commit, instigate, and conspire to commit such crimes and conniving in not preventing such crimes.

The law contains provisions of constituting tribunals, (each tribunal consisting of a chairperson and not less two and not more than four) appointment of chief prosecutor and prosecutors, establishment of an Agency for the purpose of investigation into such crimes, punishment and giving legal aid to accused. The law also recognises the right of the accused to appeal against the verdict of the Tribunal to the Appellate Division of the Supreme Court.

The law makes it clear that the proceedings of the Tribunal trial shall be in public (Section 10 of the Act) . This is for the sake of transparency, fairness and justice. Justice must not only be done but seen to be done.

The Act was amended last year in terms of the recommendations of the Law Commission.

On 25th March, the Government of Bangladesh has announced the appointment of the investigation agency, prosecutors and the judges of the Tribunal. It is reported that several agencies and NGOs have provided relevant and valuable documents to the investigation agency and prosecutors.

The reality is that the Tribunal cannot work until prosecutors submit the charges to the Tribunal but the prosecutors can only submit a formal charge until the Investigation officers complete their investigation and a prima facie case has been made against a person.

During the Liberation War of 1971, international community was involved in reporting and monitoring the situation and there are many materials abroad such as possessing materials of evidentiary values resting in broadcast in radios, human rights organisations, university centres for the study of genocide and human rights (for example, Yale and Rutgers universities) and individuals.

In the case of current Cambodian war crime trial, some crucial evidentiary documents that once thought missing were reportedly discovered by the Yale University Genocide Research Centre. Bangladesh must explore such possibilities to gather and collate materials for prosecution from abroad.

International community vs war crime trial:

War crime trial has international dimension. It has been a sensitive issue for many authoritarian countries because some of their heads of State or governments adopt systematic and widespread state-sponsored oppressive and repressive measures against civilian population and political opponents and therefore they think they could be indicted by the Hague-based UN International Criminal Court. That is why many countries have not ratified the Rome Statute of ICC.

There are strong reservations of many countries for holding trials for such crimes.. For example, about 30 countries that abstained from voting in the UN General Assembly when the Cambodian trial was put to vote.

President Bashir of Sudan is suspected of being criminally responsible, as an indirect co-perpetrator, for intentionally directing attacks against an important part of the civilian population of Darfur, murdering, exterminating, raping, torturing and forcibly transferring large numbers of civilians, and pillaging their property,” according to a press release issued by the International Criminal Court.

All African and Arab countries objected to the issue of warrant of arrest on 4th March 2009 to the Sudanese President by the International Criminal Court on charges of crimes against humanity in the Darfur region of Sudan

Conclusion:

Crimes against humanity, war crimes and genocide are the gravest crimes in international law and are condemned by the UN as they are against human dignity. The effective punishment is an important element in the prevention and recurrence of such odious crimes and for protection of the inherent dignity of human person. If a State fails to put suspected individuals to trial, the International Criminal Court has the jurisdiction to do it.