

Universal Human Rights Violations from Geopolitical Perspective

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ABSTRACT

The research work examines contemporary geopolitical condition of Bangladesh with respect to India and beyond, and how rising major powers like India dictates the terms and conditions of a bilateral agreement that violates the universal human rights of the people of Bangladesh. The work also indicated that self-centred states practices by major powers like USA, China, and Russia are against the universal human rights with regard to small powers. Universal human rights including right of self-determination, right to natural wealth and resources, right to life, right to an adequate standard of living, right to health, and so forth as enumerated in international instruments are being violated by power politics relates it to geopolitics. Right to a clean environment is considered as an international human right. The facility focuses upon climate change, the destruction of biological diversity, the pollution of international waters, ozone depletion and land-degradation. According to the principles of state responsibility, polluting states are responsible under international environmental and humanitarian law to make reparation to the polluted states. This work is primarily focused on exploitation of natural wealth and resources, extrajudicial killings by India's Border Security Force, penetration of Indian culture, and how these are in violations of established universal norms of human rights.

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----- CHAPTER: ONE -----

INTRODUCTION

1.1 Literature Review

Several research works as to the universal human rights and geopolitics have been done, and are widely available. But very few concentrated on human rights of the people of Bangladesh under international instruments, and geopolitical stress as to the enforcement. Though, few papers and books regarding contemporary opinions are reviewed due to paucity of time, nonetheless contemporary discussions which are essential for the study have been reviewed.

Halford John Mackinder summarized his geopolitical theory as:

"Who rules East Europe commands the Heartland;
who rules the Heartland commands the World-Island;
who rules the World-Island commands the world."¹

Randall Collins has opined that, international rule of law is not an alternative to geopolitics, but is successful only under specific geopolitical conditions. As historical sociologists in the tradition of Weber have documented, the state's existence has depended on its military power, which varies in degree of monopolization, of legitimacy, and of extent of territory controlled. Geopolitics encompasses both war and diplomacy, the means by which coalitions among states are organized. The rule of international law depends on a dominant coalition upheld by favorable geopolitical conditions; and on the extension of bureaucracy via state penetration, but now on a world-wide scale.²

Representatives of FPRI³ has expressed that, geopolitics is an approach to studying contemporary international affairs that is anchored in the study of history, geography and culture.⁴

¹ Halford John Mackinder, *Democratic Ideals and Reality* (Henry Holt & Co. 1919) 150.

² Randall Collins, 'Geopolitical Conditions of Internationalism, Human Rights, and World Law' (2010) 1 *Journal of Globalization Studies* 196.

³ The Foreign Policy Research Institute is dedicated to producing nonpartisan policy analysis focused on crucial foreign policy and national security challenges facing the United States. It educate those who make and influence policy, as well as the public at large, through the lens of history, geography, and culture; 'Mission' (Foreign policy Research Institute) <<https://www.fpri.org/about/mission/>> accessed 24 July 2019.

⁴ Ronald J. Granieri, 'What is Geopolitics and Why Does It Matter?' [2015] *Orbis* 492.

Dr. James Kurth⁵ has defined geopolitics as the study of the “realities and mentalities of the localities.”⁶

1.2 Scopes

This research work is primarily based on universal human rights like right to clean environment, right to life and right to self determination of the people of Bangladesh as enumerated in UDHR, ICCPR and ICESCR etc, and how Indian geopolitics with respect to Bangladesh is a hindrance as to it’s realization. Self-centered state practice of major powers especially India have been taken into consideration while discussing the issue.

1.3 Objectives of the Study

- A. The objective of this study is to analyse relevant instruments as to universal human rights that can safeguard the human rights of the people of Bangladesh from Indian geopolitics.
- B. To compare power politics between neighbouring major power and it’s small counterpart.
- C. To show conflicting circumstances as to the enforcement of universal human rights of the people of Bangladesh.
- D. To give impetus on economic, military and technological advantages for better geopolitical condition of Bangladesh.
- E. Suggesting policy for Bangladesh that can avoid discrimination and exploitation by rising major power like India.

1.4 Methodology

The work is descriptive in nature which is actually based on a short research. Having regard to the nature of the work, in preparing the same, analytical method has been resorted to, which include theories behind variant state practice, and it’s effect on human rights. It is based on very few primary data and extensive range of secondary data like Text-books on International Law, Journals Articles, Newspapers, Adjudicated Cases, and Websites etc. To consult international human rights, various human rights conventions have been used for performing this research work.

⁵ James Kurth is a Senior Fellow in FPRI’s Center for the Study of America and the West and a member of the Orbis Board of Editors. His recent publications have focused upon the interrelations between the global economy, cultural conflicts, and U.S. foreign and defense politics, <https://www.fpri.org/contributor/james-kurth/> accessed 24 July 2019.

⁶ Ronald J. Granieri (n 4).

1.5 Limitations

The results of my research work must be interpreted in light of some important limitations. First, these critical assessments on the issue might have been able to get better outcome only if there is no limitation of time. Second, this research work is based on a small number of studies. Restricted and limited access to enriched websites; journals; and articles resources have come as a hindrance for this research work. I have included references to other studies throughout to illustrate or provide context for points made in the research. Despite the limited number of studies, this research work is done with extreme care using robust national and supra-national databases.

1.6 Research Question

A number of questions can be framed on this research topic. However, this research has been limited to the following question, and will be addressed to fulfill the research purpose: Whether neighbouring rising power is violating universal human rights of its small counterpart?

----- CHAPTER: TWO -----

GEOPOLITICS AND HUMAN RIGHTS

2.1 Geopolitics

Geography in short ‘Geo’ means world, and politics⁷ is defined as what government of a particular state does in order to fulfill its national and supranational objectives. Thus geopolitics in its wider sense means world politics where states are the leading actors primarily working for their self-interest. In this age of globalization, world politics is primarily based on power⁸ politics. Since politics in its wider sense is defined as peoples’ exertion of power over others to reach a win-win or zero-sum situation,⁹ thus the win-win and zero-sum situation are significantly influenced by geopolitical conditions of the parties involved in the negotiation. Seemingly, states are also subject to the same theory. It is not that states always tends to go for war against the opposition. They often sort out diplomacy theory. But the outcome of such diplomacy hardly reach to an win-win situation for smaller or poorer states. Therefore diplomacy is a part of geopolitics. Its success depends on geopolitical strength based on geopolitical theory. Two significant geopolitical theories in today’s scenario are following:

2.1.1 The Heartland Geopolitical Theory

The Heartland Geopolitical Theory was hypothesized by 20th century British geopolitical scholar, Sir Halford John Mackinder. It was titled as “The Geographical Pivot of History” in 1904 by the Royal Geographical Association, to which the paper was submitted. The theory relates geography as to the political and economic success of the world’s regions, and to exert global influence one must need to command Heartland, a region of the world situated in Eurasia,¹⁰ due to its sheer size; a wealth of resources; and a high population. It was stated that, the nation in control of the Heartland had the potential to command the world but also highlighted the great natural barriers which surrounded the Heartland. The theory had a great political impact, and arguably was the inspiration behind Germany’s invasion of Russia

⁷ The science and art of government which deals with the form, organization and administration of a state or a part of one, and with the regulation of its relations with other states; Stephen D. Tansey, *Politics The Basics* (2nd edn, Routledge 2000) 4.

⁸ The probability that one actor within a social relationship will be in a position to carry out his own will despite resistance regardless of the basis on which the probability arises; Max Weber [Gerth and Mills 1948].

⁹ Stephen (n 5) 6.

¹⁰ Eurasia is the largest continental landmass on Earth, comprising all of Europe and Asia. The term is a portmanteau of its constituent continents (Europe and Asia).

during the World War II. While the Heartland Theory was drafted in the early 20th century, before the world had witnessed World War I, II and a Cold War soon after that, some scholars have shown willingness to link present days' scenario as examples of the Heartland Theory in real. According to the theorist's map, China is a constituent of the World-Island as are other major global powers including the European Union, India, and Russia. In recent years, China's influence in countries of the World-Island has been increasing, and she is using economic support to gain patronage and loyalty from the countries thereof. In near future, China's prominence in international affairs as the global superpower is being predicted worldwide.¹¹ China is needed to first emerge as the largest economy in Asia-Europe, before it eventually surpasses the United States as the global superpower, repeating what Sir Halford John Mackinder stated:

“Who rules East Europe commands the Heartland;
who rules the Heartland commands the World-Island;
who rules the World-Island commands the world.”

2.1.2 Military-centered Geopolitical Theory¹²

A state has absolute sovereignty over its territory, and state territory is subject to accretion and cessation. It is the only actor who has monopoly over the legitimate use of force onto its territory through its military organization. State's monopoly over its military organization varies in degree, and subject to change with political outcome and military struggle. The principles which determines the degree of monopoly and subsequent changes in it are principles of military-centered geopolitical theory. According to the theory, three things must be considered before a state can be identified as geopolitically stronger as to its effective control over its sovereign territory in comparison with a state which has geopolitical strain.

2.1.2.1 Resource Advantage¹³

A State's resources includes economy and population of a state. State with strong global economy and higher population gets bigger and richer at the expense of states that have few resources. Because of that, latter states are always subject to conquest and formal annexation

¹¹ China's share of the global economy will have soared from two percent in 1980 to eighteen percent in 2016, and on its way to thirty percent in 2040; Andrea Willige, 'The world's top economy: the US vs China in five charts' (World Economic Forum, 5 December 2016) <<https://www.weforum.org/agenda/2016/12/the-world-s-top-economy-the-us-vs-china-in-five-charts/>> accessed 2 August 2019.

¹² Leonid Grinin (ed) and Andrey Korotayev (ed), *Globalistics and Globalization Studies* (Uchitel Publishing House 2012) 198.

¹³ Ibid.

by the former. States that have resource advantage absorb economic resources and exercise command over the military forces of small or poorer states by means of alliances, protectorates or empires.¹⁴

2.1.2.2 Geopositional Advantage¹⁵

States surrounded by less potential enemy states have marchland or geopositional advantage over those that are surrounded by more potential enemy states. Accordingly, centrally located states have geopositional disadvantage since they have a large number of frontiers to defend. As such, they are also subject to alliance shifting and fragmentation over time.

2.1.2.3 Logistical Overextension¹⁶

Logistical overextension is defined as long distance execution of geopolitical strength. When the executor's home resource base is far away from the base of the state over which execution is commanded- transportation swallows up a large economic resource of the executor, results in military defeat; territorial loss; state fiscal strain; and state breakdown.

2.2 Human Rights

Values, standards or rules agreed by international community as a whole to regulate the conduct of states towards citizens and non-citizens are defined as human rights.¹⁷ Every human being by virtue of his or her humanity is entitled to certain rights.¹⁸ In the ancient time, states or rather the princes were absolute sovereigns who could behave with their citizens like the way they wanted.¹⁹ Times have changed now where individuals have human rights.²⁰ They are inalienable and equally applicable to all.²¹ They do not enforce by themselves. Thus, there must be some organizational base for its enforcement. If that organization does not possess coercive force, then violations are likely to be happened.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Grinin and Korotayev (n 10) 199.

¹⁷ Peter R. Baehr and Monique Castermans-Holleman, *The Role of Human Rights in Foreign Policy* (3rd edn, Palgrave Macmillan 2004) 3.

¹⁸ Something that pertains to all men at all times. Therefore, it cannot be justified in the way we justify rights that are earned or are acquired by the enactment of special roles; human rights are not bought, nor are they created by any other specific contractual undertaking... They belong to a man simply because he is man," Maurice Cranston, *What are Human Rights?* (Taplinger Pub. Co. 1973) 70.

¹⁹ Peter R. Baehr (n 15) 4.

²⁰ Ibid.

²¹ Rights attaching to human beings as such, rather than to this or that class of human beings. They are thought to be enjoyed by all human beings, to be enjoyed by human beings only and to be enjoyed by them equally; Hedley Bull, 'Human rights and world politics,' *Moral Claims in World Affairs* (Ralph Pettman ed, London: Croom Helm 1979) 79.

2.2.1 Historical Background

Many cultural and traditional documents denoted the existence of human rights since time immemorial. The Hindu Vedas, The Code of Hammurabi, The Bible, The Quran and the Analects of Confucius are the five of the oldest written sources which provided for the rights and obligations of the people. The Magna Carta (1215), the English Bill of Rights (1689), the French Declaration on the Rights of Man and Citizen (1789), and the US Constitution and Bill of Rights (1791) are the pioneers of Human Rights documents in the present day. The government of many countries decided on establishing the United Nations after World War II, with the primary goal of strengthening international peace and preventing conflict. Later on, the United Nations Charter in 1945 was formulated.²² On 10 December 1948, the Universal Declaration of Human Rights (UDHR)²³ was adopted by the 56 members of the United Nations to regulated the relation between State and it's people.²⁴

2.2.2 Categories of Rights

Human rights are included in the UDHR,²⁵ and explained in two legally binding international treaties. The most authoritative place UDHR took is section 10(2) of the Constitution of Spain²⁶ which emphasized on the supremacy of the UDHR and other instruments as to the interpretation of fundamental rights and liberties enumerated in Spanish Constitution. Arguably the UDHR is not only a part of customary international law but also has achieved a status of *Jus Cogens*.²⁷ The UDHR, and ICCPR²⁸ and ICESCR²⁹ are collectively considered as International Bill of Human Rights. These instruments identified human rights as of

²² Charter of the United Nations, (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS 16.

²³ Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR).

²⁴ Convention on the Elimination of All Forms of Discrimination against Women 1979; Convention on the Rights of the Child, 1989, The Convention on the Elimination of All Forms of Racial Discrimination, The Convention on the Prevention and Punishment of the Crime of Genocide; Convention on the Political Rights of Women; The Slavery Convention of 1926; The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment are some of the documents on Human Rights.

²⁵ A common standard of achievement for all peoples and all nations; UDHR (n 23) 1.

²⁶ Provisions relating to the fundamental rights and liberties recognized by the Constitution shall be construed in conformity with the Universal Declaration of Human Rights and international treaties and agreements thereon ratified by Spain; Section 10(2) of the Constitution passed by the Cortes Generales in Plenary Meetings of the congress of disputes and the senate held on October 31st, 1978 ratified by referendum of the Spanish people on December 7, 1978 sanctioned by his majesty the king before the Cortes Generales on December 27, 1978.

²⁷ Jus cogens are peremptory norms of international law which are recognized by the international community and from which no derogation is permissible; D. Shelton, *Normative Hierarchy in International Law* (100 AJIL, 2006) 291.

²⁸ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

²⁹ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR).

variant nature. There is a difference between classical rights like civil and political rights, and collective rights like economic, social and cultural rights.

2.2.2.1 Classical Rights

Most civil and political rights are rights that restrict the power of the state as to its citizen.³⁰ The right to life, liberty and security of person;³¹ the prohibition of slavery;³² the prohibition of torture;³³ the prohibition of arbitrary arrest, detention or exile;³⁴ the right to a fair trial;³⁵ the right to freedom of movement;³⁶ the right to property;³⁷ the right to freedom of thought, conscience and religion;³⁸ the right to freedom of opinion and expression;³⁹ the right to freedom of assembly and association;⁴⁰ the right to participate in the government of one's country⁴¹ have been declared by the UDHR as such.

2.2.2.2 Collective Rights

Regarding necessary human development, conditions are enumerated in economic, social and cultural rights. Vital social, economic and cultural rights as enumerated in the UDHR are following: the right to work;⁴² the right to an adequate standard of living, including food, clothing, housing and medical care;⁴³ the right to education;⁴⁴ the right to participate in the cultural life of one's community, to share in scientific advancements and the right to the protection of the moral and material interests resulting from one's scientific, literary or artistic production.⁴⁵ Apart from the right of self-determination, the right to seek asylum, the right to nationality and the right to property are not incorporated in the ICCPR and ICESCR.

³⁰ Peter R. Baehr (n 15) 6.

³¹ UDHR (n 23) Art. 3.

³² UDHR (n 23) Art. 4.

³³ UDHR (n 23) Art. 5.

³⁴ UDHR (n 23) Art. 9.

³⁵ UDHR (n 23) Art. 10.

³⁶ UDHR (n 23) Art. 13.

³⁷ UDHR (n 23) Art. 17.

³⁸ UDHR (n 23) Art. 18.

³⁹ UDHR (n 23) Art. 19.

⁴⁰ UDHR (n 23) Art. 20.

⁴¹ UDHR (n 23) Art. 21.

⁴² UDHR (n 23) Art. 23.

⁴³ UDHR (n 23) Art. 25.

⁴⁴ UDHR (n 23) Art. 26.

⁴⁵ UDHR (n 23) Art. 27.

2.2.2.3 Common Heritage of Mankind

The right to development, the right to peace, the right to a clean natural environment, the right to one's own natural resources and the right to one's own cultural heritage are within the ambit of collective rights. The last two rights are usually considered as part of the common heritage of mankind from which no derogation is permitted.

2.2.3 Adjudicated Cases

In *BNWLA v. Government of Bangladesh and others*,⁴⁶ supreme court of Bangladesh has affirmed that, court can look into the UDHR, ICCPR, ICESCR, and other international instruments as an aid to interpretation of provisions of Part II of the Constitution of Bangladesh, particularly to determine the extent of the right to life and the right to liberty but not enumerated in the Constitution. It is also opined that, non compliance with the provisions of the UDHR is a violation of the international obligation of member states.

⁴⁶ [2009] 14 BLC 703 (HCD).

INDIAN GEOPOLITICS AND BANGLADESH

3.1 Right to Clean Natural Environment

There is no alternative to a clean environment for the attainment of basic human rights like right to life, right to an adequate standard of living, right to health, right to food, and so forth. That is why right to clean environment now exists as an international human rights.⁴⁷ Several governmental and non-governmental organizations are involved in global environmental protection projects. Environmental issues like climate change, destruction of biological diversity, pollution of international waters, ozone depletion and land-degradation are the framework of the projects. Principle 1 of the Stockholm Declaration of the UN Conference on the Human Environment 1972,⁴⁸ stated that individual has the fundamental right to a quality environment that ensures a life of dignity and well-being. Article 24 of the African Charter of Human and Peoples' Rights 1981,⁴⁹ provided that a favourable environment as to human development is a right of all people. Article 11 of the Additional Protocol to the American Convention on Human Rights 1988,⁵⁰ declared that people have a right to live in a healthy environment and members shall promote the protection, preservation and improvement of the environment. Article 29 of the Convention on the Rights of the Child 1989,⁵¹ stipulated that child education shall be directed towards the development of respect for natural environment. According to principle 3 of the Rio Declaration on Environment and Development 1992,⁵² it is the sovereign right of a state to exploit their own resources

⁴⁷ Marc Pallemerts, 'International Environmental Law from Stockholm to Rio: Back to the Future?' (1993) 1 *Greening International Law* 254; Gudmunder Alfredsson and Alexander Ovsioyk, 'Human Rights and the Environment' (1991) 60 *Nordic Journal of International Law* 19; W. P. Gormley, *Human Rights and Environment*, (Kluwer Academic Publishers 1976); Human Rights and Environmental Protection (A. Cançado Trindade ed, 1992); D. Shelton, 'Whatever Happened in Rio to Human Rights?' (1992) 3 *Yearbook of International Environmental Law* 75; Patricia Birnie and Alan E. Boyle, *International Law and the Environment* (3rd edn, Oxford University Press 2009) 252; *Human Rights Approaches to Environmental Protection* (M. Anderson and A. E. Boyle eds., Oxford 1996); Maguelonne Dejeant-Pons and Marco Pallemerts, *Droits de l'homme et environnement* (Council of Europe Publishing, 2002).

⁴⁸ Declaration of the United Nations Conference on the Human Environment (adopted 16 June 1972, entered into force 15 December 1972) U.N. Doc. A/Conf.48/14/Rev. 1(1973); 11 ILM 1416 (1972).

⁴⁹ African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 (Banjul Charter).

⁵⁰ Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, (adopted 17 November 1988, entered into force 16 November 1999) A-52 ("Protocol of San Salvador").

⁵¹ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC).

⁵² Rio Declaration on Environment and Development (adopted 16 June 1972, entered into force 13 June 1992) UN Doc. A/CONF.151/26 (vol. I); 31 ILM 874 (1992).

pursuant to their own environmental and developmental policies. Since Bangladesh is surrounded by India, thus this geopolitical advantage⁵³ coupled with others has been violating Bangladeshi peoples' right to clean environment for very long time. Regarding the right to clean environment, substantive customary principles of international law are following:

3.1.1 Polluter Pays Principle

According to the principle, the polluter state shall bear the costs of pollution as to any damage suffered by the polluted state. Likewise, principle 16 of the Rio Declaration on Environment and Development 1992,⁵⁴ stipulated that polluters should bear the costs of pollution with due regard to the public interests, and without distorting international trade and investment. Civil liability regarding any damage caused from hazardous activities shall be claimed on the basis of this principle. International Convention on Oil Pollution Preparedness, Response and Co-operation 1990,⁵⁵ and the Convention on the Transboundary Effects of Industrial Accidents 1992,⁵⁶ both defined the 'polluter pays principle' as a general principle of international environmental law.

3.1.2 Intergenerational Equity Principle

The principle has been developed to protect the needs of present and future generations. It denote the idea that natural resources belong to people of all ages, and if the adults were to use all of a country's resources that would be stealing from their children and all future generations. According to principle 3 of the Rio Declaration on Environment and Development 1992,⁵⁷ the right to environmental development is not only limited to the needs of present generation but it extend to the needs of future generations also. In *Minors Oposa v. Secretary of the Department of Environmental and Natural Resources*,⁵⁸ there is a intergenerational responsibility to maintain a clean environment, and each generation has a responsibility to the next to preserve that environment.

⁵³ Leonid Grinin (ed) (n 12).

⁵⁴ Rio Declaration (n 52).

⁵⁵ International Convention on Oil Pollution Preparedness, Response and Co-operation (adopted 30 November 1990, entered into force 13 May 1995) I550E (OPRC).

⁵⁶ Convention on the Transboundary Effects of Industrial Accidents (adopted 17 March 1992, entered into force 19 April 2000) 2105 UNTS 457.

⁵⁷ n 52.

⁵⁸ [1994] 33 ILM 173, 185 (SC).

3.1.3 No-harm Rule

According to the rule, states are not allowed to conduct or permit activities in common spaces that disregard the rights of other states or the protection of the global environment.⁵⁹ The proposition is based on the maxim *sic utere tuo, ut alienum non laedas* or ‘principles of good neighbourliness’.⁶⁰ Principle 2 of the Rio Declaration on Environment and Development 1992,⁶¹ required states to refrain from activities in common spaces that cause harm to the environment of other states.⁶² Cumulative effects of these principles are expressed by two propositions that are significantly supported by state practice, judicial decisions, multilateral environmental agreements and the work of the international law commission: a) States have a duty to prevent, reduce, and control transboundary pollution and environmental harm resulting from activities within their jurisdiction or control; b) States also have a duty to cooperate in mitigating transboundary environmental risks and emergencies, through notification, consultation, negotiation, and in appropriate cases through environmental impact assessment.

3.1.4 Ganges Water Sharing Treaty

According to Article 1(2) of the ICCPR⁶³ and ICESCR,⁶⁴ natural wealth and resources shall be used on the basis of mutual benefit and international law of watercourses. By no means utilization of these resources shall deprive the means of people subsistence. Not only International law⁶⁵ but also article 9 of the 1996 Ganges Water Treaty concluded between Bangladesh and India obliged to follow principles of equitable and reasonable sharing of water resources. Because of the construction of Farakka Barrage as to increase the navigability of Calcutta port, water supply of the trans-boundary river Ganges has been

⁵⁹ Patricia Birnie and Alan Boyle, *International law and the environment* (3rd edn, Oxford University Press 2009) 137.

⁶⁰ *Ibid.*

⁶¹ n 52.

⁶² Principle 18 required notification as to any emergencies which may have deleterious environmental effects on other states, and principle 19 required them to notify and consult in good faith as to any activities under consideration that may have deleterious transboundary environmental effects.

⁶³ All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence; ICCPR (n 28).

⁶⁴ All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence; ICESCR (n 29).

⁶⁵ Watercourse States shall participate in the use, development and protection of an international watercourse in an equitable and reasonable manner. Such participation includes both the right to utilize the watercourse and the duty to cooperate in the protection and development thereof, as provided in the present Convention; Convention on the Protection and Use of Transboundary Watercourses and International Lakes (adopted 17 March 1992, entered into force 6 October 1996) 1936 UNTS 269; Art. 5(2).

minimized significantly and affected mainly south-west part of Bangladesh. It has implicated negative impact on agriculture, navigation, irrigation, fisheries, forestry, industrial activities, salinity intrusion of the coastal rivers, ground water depletion, river silting, coastal erosion, sedimentation as well as normal economic activities.⁶⁶ Therefore the right to one owns' natural resources are being violated because of Indian geopolitics.

3.1.4.1 International Instruments

According to article 2 of the Convention on the Protection and Use of Transboundary Watercourses and International Lakes 1992,⁶⁷ the parties shall take all appropriate measures to prevent, control and reduce any transboundary impact⁶⁸ on transboundary water⁶⁹ by adopting the precautionary principle; the equitable and reciprocity principle; the polluter pays principle; and intergenerational equity principle. Article 5(2) of the Convention on the Law of the Non-navigational Uses of International Watercourses 1997,⁷⁰ stated that watercourse states⁷¹ shall use, develop and protect an international watercourse in an equitable and reasonable manner, and article 7 obliged concerned members not to cause significant harm by any means. India's unilateral diversion of water from river Ganges is adversely affecting the ecosystem of the river, hence peoples' right to clean environment is being violated.

3.1.4.2 Adjudicated Cases

In *Gabčíkovo-Nagymaros Project case*,⁷² international court emphasized on the developed norms of environmental law as to the implementation of a treaty regarding international

⁶⁶ Md. Shariful Islam, 'Indo-Bangla water conflict/cooperation' *The Daily Star* (Dhaka, 28 September 2011) <<https://www.thedailystar.net/news-detail-204197>> accessed 22 June 2019.

⁶⁷ Convention on the Protection and Use of Transboundary Watercourses and International Lakes (adopted 17 March 1992, entered into force 6 October 1996) 1936 UNTS 269.

⁶⁸ Transboundary impact means any significant adverse effect on the environment resulting from a change in the conditions of transboundary waters caused by a human activity, the physical origin of which is situated wholly or in part within an area under the jurisdiction of a Party, or within an area under the jurisdiction of another Party. Such effects on the environment include effects on human health and safety, flora, fauna, soil, air, water, climate, landscape and historical monuments or other physical structures or the interaction among these factors, they also include effects on the cultural heritage or socio-economic conditions resulting from alterations to those factors; (n 67) Art. 1(2).

⁶⁹ Transboundary waters means any surface or ground waters which mark, cross or are located on boundaries between two or more States. Wherever transboundary waters flow directly into the sea, these transboundary waters end at a straight line across their respective mouths between points on the low-water line of their banks; (n 67) Art. 1(1).

⁷⁰ Convention on the Law of the Non-Navigational Uses of International Watercourses (adopted 21 May 1997, entered into force 17 August 2014) Doc. A/51/869; A/RES/51/229 of 21 May 1997.

⁷¹ "Watercourse State" means a State Party to the present Convention in whose territory part of an international watercourse is situated, or a Party that is a regional economic integration organization, in the territory of one or more of whose Member States part of an international watercourse is situated," (n 70) Art. 2.

⁷² [1997] ICJ Rep 7.

watercourse. It is also affirmed that environmental risks have to be assessed on a continuation basis when treaty implementation relates it to an environmental vulnerability. Since Ganges water sharing treaty between India and Bangladesh has deleterious effect on the environment of the latter, and so far no environmental risks assessment has been conducted by the concerned authority, hence the treaty is in violation of the right to clean environment of the people of Bangladesh. In *Lac Lanoux arbitration*,⁷³ diversion of a shared watercourse which may have deleterious effect on the environment of adjacent or opposite state is subject to negotiation between parties. India has been diverting water from the river Ganges according to its own will without any agreement and negotiation with Bangladesh, and depriving the latter from its equitable sharing during dry season. Hence the act and omission are in violation of the right to clean environment and territorial sovereignty of Bangladesh respectively.

3.1.5 Tipaimukh Dam

Article 25 of the ICESCR⁷⁴ declared that, full and free utilization of natural wealth and resources are inherent right of all peoples. Likewise article 5⁷⁵ prohibited any act or conduct which adversely affects such right. Tipaimukh dam project is a multi-purpose hydro-power plan⁷⁶ initiated by the Government of India to be located on the border of Kolashib district of Mizoram and Churachandpur district of Manipur, where the Tipai River meets Barak River.⁷⁷ The dam will choke the Surma and Kushiyara rivers in Sylhet during dry season, effecting Bangladesh the way the Farakka barrage at river Ganges is doing.⁷⁸ The withdrawal of water from the Barak at Fulertal barrage site for irrigation purpose will cause desertification in the lower riparian Bangladesh.⁷⁹ As per the preamble of the United Nations Convention to

⁷³ 24 ILR 101.

⁷⁴ Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources; n 29.

⁷⁵ Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant; n 29.

⁷⁶ The hydropower plants utilize water as fuel to produce energy. Such kind of power plants are recommended to be the least expensive but most reliable among all forms of renewable energy sources which has resulted into an approximate contribution of 19 % of the total world's electricity demand and accounted for over 63 % of electricity from renewable sources; Mrinmoy Majumder, *Minimization of Climatic Vulnerabilities on Mini-hydro Power Plants: Fuzzy AHP, Fuzzy ANP Techniques and Neuro- Genetic Model Approach* (Springer Singapore 2016) 7.

⁷⁷ Panchali Saikia, 'Bangladesh on the Tipaimukh Dam: A print media analysis' *The Daily Star* (Dhaka, 11 February 2012) <<https://www.thedailystar.net/news-detail-221907>> accessed 22 June 2019.

⁷⁸ *Ibid.*

⁷⁹ Boro paddy worth at least Tk 1,000 crore would be lost in Sylhet region only. The whole of Meghna basin would become a desert due to the withdrawal of water from the Barak river; 'Tipaimukh dam to be disastrous

Combat Desertification 1994,⁸⁰ well-being of individuals residing in affected or threatened areas shall be the primary concern to combat desertification and mitigate the effects of drought. Article 4(2)(d) of the convention stipulated that the parties shall promote cooperation in the fields of environmental protection, and the conservation of land and water resources to prevent and mitigate desertification⁸¹ and drought.⁸² The deleterious effects⁸³ of the project are multidimensional and will affect eco-hydrological,⁸⁴ morphological, geological, biodiversity and environmental,⁸⁵ climatic change and desertification, social-economical, and political areas.⁸⁶ Since the project has deleterious effects on local environment, thus it will violate article 5 and 25 of the ICESCR if implemented. Article 3 of the Convention on Biological Diversity⁸⁷ declared that states have responsibilities to ensure that activities within their control does not cause damage as to the environment of other states.

for Bangladesh' *The Daily Star* (Sylhet, 8 March 2015) <<https://www.thedailystar.net/tipaimukh-dam-to-be-disastrous-for-bangladesh-23391>> accessed 22 June 2019.

⁸⁰ United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (adopted 14 October 1994, entered into force 26 December 1996) 1954 UNTS 3 (UNCCD).

⁸¹ By definition, human induced land degradation, which is how desertification is defined, is caused by the actions of people that have a negative impact on the 'functioning' of the environment, as it is being ecologically experienced and as regards its value as a natural resource. A function is something like clean water, air and food but it can also have an aesthetic or cultural nature. Some functions can be restored and new ones created in landscapes that have become degraded with respect to their earlier state; Anton Imeson, *Desertification, Land Degradation and Sustainability* (John Wiley & Sons, Inc. 2012)

⁸² Drought is an insidious natural hazard that results from a deficiency of precipitation from expected or "normal" that, when extended over a season or longer, is insufficient to meet the demands of human activities and the environment. Drought by itself is not a disaster. Whether it becomes a disaster depends on its impact on local people and the environment; *Drought and Water Crises: Science, Technology and Management Issues* (Donald A. Wilhite ed, Taylor & Francis 2005) 4.

⁸³ The dam site and the adjoining areas are earthquakes prone zone and have been the victim of eight major earthquakes, with a magnitude of more than 8. Akbar Ali Khan, 'The Proposed Tipaimukh Dam: Search for Eternal and Perpetual Interests of India and Bangladesh' [2010] *The Journal of Asiatic Society of Bangladesh*.

⁸⁴ Eco-hydrology uses the understanding of relationships between hydro-logical and biological processes at different scales to improve water security, enhance biodiversity and further opportunities for sustainable development by lessening ecological threats and maximizing greater harmony within catchment processes; 'Ecohydrology' (UNESCO) <<https://en.unesco.org/themes/water-security/hydrology/ecohydrology>> accessed 23 June 2019.

⁸⁵ States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction; Convention on Biological Diversity (adopted 5 June 1992, entered into force 29 December 1993) 1760 UNTS 79 (CBD) Art. 3.

⁸⁶ Institute of Water Modelling, Bangladesh, 'Hydrological Impact Study of Tipaimukh Dam of India on Bangladesh' [2005].

⁸⁷ Convention on Biological Diversity (adopted 5 June 1992, entered into force 29 December 1993) 1760 UNTS 79 (CBD).

3.1.5.1 International Instruments

Several effective bilateral and regional treaties like treaty for the Mekong River Basin⁸⁸ and Lake Victoria Basin⁸⁹ have been adopted to protect and manage freshwater resources. The four lower basin states including Thailand, Vietnam, Cambodia and Laos signed an agreement as to the sustainable development of the Mekong River Basin in 1995.⁹⁰ According to articles 3, 5, 7 and 8 of the Mekong River Basin Agreement 1995,⁹¹ parties to the agreement are committed as to the protection of the environment; to the application of the principles of reasonable and equitable utilization; to the prevention and cessation of harmful effects; and to the application of state responsibility regarding any substantial damage. Likewise article 4 of the Lake Victoria Basin protocol 2004,⁹² obligated member states to manage the resources of international watercourse on the the principle of equitable and reasonable utilization of water resources. It is also focused on public participation whereby decisions about a project or policy consider the views of the stakeholders i.e. local public. India and Bangladesh should adopt the above mentioned framework as to the implementation of the Tipaimukh dam project.

3.1.5.2 Adjudicated Cases

In *Gut Dam arbitration between the US and Canada*,⁹³ Canadian government with the approval of the US government constructed a dam to facilitate navigation in the St Lawrence River, provided that US citizen had to be indemnified with regard to any damage caused as a result of such construction or operation of the dam. The dam affected the flow of water in the river basin that caused an increase in the level of water in the river and in Lake Ontario. This

⁸⁸ From its origins in the Tibetan Himalayas in China, the Mekong River flows along a 4,600-km course toward the South China Sea, passing through Myanmar, Lao People's Democratic Republic (Lao PDR), Thailand, Cambodia, and Vietnam. The Mekong River Basin (MRB) 800,000 km watershed is home to about 65 million people, with about two-thirds of them living in rural areas and relying on subsistence fisheries for their diet; Guy Ziv and others, 'Trading-off fish biodiversity, food security, and hydropower in the Mekong River Basin' (2012) 109 PNAS 5609.

⁸⁹ Lake Victoria, a lake the size of Ireland, is the African continent's single most important source of inland fishery production; John S. Balirwa and others, 'Biodiversity and Fishery Sustainability in the Lake Victoria Basin: An Unexpected Marriage?' (2003) 53 BioScience 703.

⁹⁰ This commits Thailand, Vietnam, Laos and Cambodia to co-operate 'in all fields of sustainable development, utilization, management and conservation of the water and related resources of the Mekong River Basin', including irrigation, hydro-power, navigation, flood control, fisheries, timber floating, recreation and tourism, with a view to minimizing the harmful effects that might result from natural occurrences and man-made activities; G. Bowder and L. Ortolano, 'The Evolution of an International Water Resources Management Regime in the Mekong River Basin' (2000) 40 Natural Resources Journal 499.

⁹¹ Agreement on the Cooperation for the Sustainable Development of the Mekong River Basin (entered into force 5 April 1995).

⁹² Protocol for Sustainable Development of Lake Victoria Basin (adopted 29 November 2003, entered into force 1 December 2004).

⁹³ [1969] 8 ILM 118.

and several incidence of storms resulted in heavy flooding on the shores of the river and lake. Accordingly US government was awarded a lump sum payment for the damages. The Tipaimukh dam project is prone to the same environmental outcome as the Gut Dam did to the US citizens, hence the project is liable to be forfeited or similar indemnification clause should be negotiated with India against any future catastrophe.

3.1.6 Teesta Water Sharing

According to article 11(1) of the ICESCR,⁹⁴ all states are obliged to ensure the realization of adequate food including the right to water. The right to fresh water is also recognized as basic human right by United Nations General Assembly.⁹⁵ Moreover right to life as protected by article 32 of the constitution includes right to enjoy pollution free water.⁹⁶ Teesta is an international river and sharing of it's water is subject to international laws and regulations.⁹⁷ Without any agreement India is unilaterally withdrawing water from this trans-boundary river. In consequence water flow goes down to one thousand cusec from five thousand cusec during dry season resulting into scarcity of fresh water.⁹⁸ Water is a critical resource for the survival of human beings and as like any other natural resources, it is subject to an end. The demand for water in Bangladesh during dry season is 147 billion cubic metre whereas the supply is around 90 billion cubic metre.⁹⁹ The gap between supply and demand is ever increasing all over the world, and should the unilateral water diversion is going to continue, then one day and that day may never come, the larger parts of Bangladesh will turn into a desert. Hence India's unilateral diversion and withdrawal of international water are unjust and in violation of human rights as referred in the above mentioned authorities.

3.1.6.1 Adjudicated Cases

In *International Commission on the River Oder* case,¹⁰⁰ equality of all riparian states in the use of the international watercourse and exclusion of any preferential privileges of any

⁹⁴ The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co operation based on free consent; n 29.

⁹⁵ UNGA 'The human right to water and sanitation' UN GAOR 64th Session UN Resolution 64/292 (2010).

⁹⁶ No person shall be deprived of life or personal liberty save in accordance with law; Constitution of the People's Republic of Bangladesh (adopted 4 November 1972, effected on 16 December 1972)

⁹⁷ Barrister Harun ur Rashid, *International Law* (Anupam Gyan Bhandar, Dhaka 2003) 162.

⁹⁸ Moazzem Hossain, 'Teesta River dries up, ecosystem threatened' *Dhaka Tribune* (Dhaka, 16 March 2018) <<https://www.dhakatribune.com/bangladesh/nation/2018/03/26/teesta-river-dry-ecosystem-threatened>> accessed 23 June 2019.

⁹⁹ Ibid.

¹⁰⁰ [1929] PCIJ Rep Series A No 23; 5 (AD) 83.

riparian state in relation to others were affirmed as a common legal right. In *Island of Palmas* case,¹⁰¹ territorial sovereignty principle imposes an obligation upon the state to protect the rights of other states within the territory. Hence, India is obligated to use water from the river Teesta on the basis of equality and without any preferential privileges. She is also obliged to protect the right of any riparian states like Bangladesh within its territory regarding the use of a trans-boundary river.

3.1.7 Rampal Power Plant

Article 47¹⁰² and 5¹⁰³ of the ICCPR declared that citizens have inherent right over the natural wealth and resources of their nation, and that right shall not be subjected to any victimization. Proposed Rampal power plant as considering to be country's largest power plant is a 1320 megawatt coal-based thermal power station at Rampal Upazila of Bagerhat District in Khulna, Bangladesh. India's state owned National Thermal Power Corporation (NTPC) is involved in this project.¹⁰⁴ The project violates the environmental impact assessment guidelines for coal-based thermal power plants.¹⁰⁵ The proposed plant is situated fourteen-kilometers away from the Sundarbans and violates one of the basic precondition that limits such project to be outside a twenty-five kilometer radius from the boundary of the forest as being an ecologically sensitive area.¹⁰⁶ The project will destroy the ecological balance of the forest and its adjacent area.¹⁰⁷ In addition to that the plant is likely to produce a high amount of toxic elements that will cause significant air pollution resulting into climate abnormalities.¹⁰⁸

¹⁰¹ [1928] II RIAA 829, 839.

¹⁰² Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources; n 28.

¹⁰³ Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant; n 28

¹⁰⁴ A joint venture commonly referred as Bangladesh India Friendship Power Company (BIFPC) between India's state owned National Thermal Power Corporation (NTPC) and Bangladesh Power Development Board (BPDB); 'Rampal power plant' *The Daily Star* (Dhaka) <<https://www.thedailystar.net/rampal-power-plant-bangladesh>> accessed 30 June 2019.

¹⁰⁵ On August 1, 2013, Department of Energy of Bangladesh approved construction, but then changed its stance and set 50 preconditions for the project; n 104.

¹⁰⁶ An area of over 1834 acres of land has been earmarked for this project. It is situated 14 kilometres north of the world's largest mangrove forest and UNESCO world's heritage site Sundarbans, Rampal power plant; n 104.

¹⁰⁷ According to the project plan, the hot water produced by the power plant during production will be released into the nearby Pashur and Moidara rivers, which will destroy the ecosystem of the rivers that support several aquatic species some of which are endangered. It will produce a significant amount of extremely harmful waste materials for the environment. It has also impact on the population of Irrawaddy dolphin in the Pashur River which is near the power plant site; n 104..

¹⁰⁸ A typical 500 megawatt coal-based thermal power plant produces 3.7 million tons of carbon dioxide, 10,000 tons of sulfur dioxide, 10,200 tons of nitrogen oxide, 500 tons of small airborne particles, 220 tons of hydrocarbons, 720 tons of carbon monoxide, 77kg of mercury, 102kg of arsenic, 52kg of lead, 1.8kg of cadmium, and other toxic heavy metals as by-products that are released in the air, Union of Concerned Scientists,

Principle 21 of the Stockholm Declaration of 1972, declared that state has the responsibility to ensure that activities within their control or jurisdiction does not cause damage as to the environment of other states or areas beyond the limits of it's jurisdiction. Hence if implemented the project will violate the right to clean environment of the people of Bangladesh. The forest is within the territorial sovereignty of Bangladesh thus the natural wealth of it's people, and any action detrimental to the forest is subject to the consent of it's people.¹⁰⁹ Since public participation policy whereby decisions about the project considering the views of the stakeholders i.e. local public has not been adopted, therefore the project will also violate peoples' absolute right to natural wealth and resources as recognized in article 5 and 47 of the ICCPR.

3.2 Right to Life, Protection from Arbitrary Arrest, and Freedom of Movement

Article 5¹¹⁰ and 9¹¹¹ of the UDHR prohibited brutal act or conduct, and arbitrary arrest and detention respectively. Article 10 has entitled private individual to a fair trial and hearing as to any criminal charge against him. Border Security Force (BSF) is a primary border defence organization of India and one of the seven central armed police forces of India under the effective control of Indian government. Among others, a Bangladeshi cattle trader was tortured by members of the BSF at the India-Bangladesh border.¹¹² This is in violation of article 5 the UDHR.¹¹³ According to human rights bodies, in the last three years more than two hundred Bangladeshi nationals have been killed and many tortured to death by BSF.¹¹⁴ These events are in violations of above mentioned articles. Considering Indian geopolitical

a US-based non-profit-making advocacy group; Abu Siddique, 'Bangladeshi students in Germany demand cancellation of Rampal power plant' *Dhaka Tribune* (Dhaka, 11 November 2017). <https://www.dhakatribune.com/climate-change/2017/11/11/bangladeshi-students-cancellation-rampal> accessed 1 July 2019).

¹⁰⁹ People are the owners of all assets in the state. The government cannot take any decision alone going against the people's opinion; 'Rampal power plant is illegal: Sultana Kamal' *The Daily Star* (Dhaka, 28 June 2019) <<https://www.thedailystar.net/city/news/rampal-power-plant-illegal-sultana-kamal-1763668>> accessed 1 July 2019.

¹¹⁰ No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment; n 23.

¹¹¹ No one shall be subjected to arbitrary arrest, detention or exile; n 23.

¹¹² The man was not involved in any major criminal activities. The BSF personnel were making fun while the Bangladeshi victim was appealing to them for releasing him; 'Footage of BSF Torture on Bangladeshi Cattle Trader' (BangladeshFirst, 19 January 2012) <<https://www.youtube.com/watch?v=AAUn3CXsfd8>> accessed 23 June 2019.

¹¹³ n 100.

¹¹⁴ "Human Rights Watch" organization found numerous cases of indiscriminate use of force, arbitrary detention, torture, and killings by the security force, without proper investigation or adequate punishment; 'India/Bangladesh: Indiscriminate Killings, Abuse by Border Officers' (Human Rights Watch, 9 December 2010) <<https://www.hrw.org/news/2010/12/09/india/bangladesh-indiscriminate-killings-abuse-border-officers>> accessed 23 June 2019.

condition in contrast to Bangladesh, Indian government will unlikely prosecute BSF soldiers responsible for these gross violations of human rights.

3.2.1 Extrajudicial Killing of Felani

Article 3 of the UDHR stipulated that everyone has the right to life and security of person.¹¹⁵ As per article 46 of the Hague Convention 1907,¹¹⁶ the lives of person must be respected in occupied territory and article 3¹¹⁷ stated that state party which violates the provision shall be liable to pay compensation and also be responsible for all acts committed by armed forces under it's effective control. The killing of a fifteen year old innocent girl named Felani by BSF is in violation of these provisions. In *Teodoro García and M. A. Garza (United Mexican States) v. United States of America*,¹¹⁸ the American government was obligated to pay to the Mexican government compensation for unjustified killings of Concepción Garcia by it's river guards. Seemingly, Felani was unarmed and BSF killed her without considering the absence of any delinquency on her part. Hence the Indian government is responsible and liable to pay compensation for unjustified killing of Felani by BSF under it's effective control.

3.2.2 Construction of Fence

The Indian government is constructing a fence close to the border to restrain the infiltration of economic migrants from Bangladesh. The resulting limitations on freedom of movement of those wanting to access their own land closer to the border is a violation of article 13(1) of the UDHR¹¹⁹ that ensures peoples' right to freedom of movement within the sovereign territory of a state. In *Ershad v. Bangladesh and ors*,¹²⁰ right to freedom of movement and residence within territorial sovereignty as enshrined under article 13(1) of the UDHR has been affirmed by the Supreme court of Bangladesh. Hence the conduct of India is against the right to freedom of movement of the people of Bangladesh.

¹¹⁵ Everyone has the right to life, liberty and security of person; n 23.

¹¹⁶ Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected. Private property cannot be confiscated; Convention (IV) Respecting the Laws and Customs of War on Land and its Annex: Regulation concerning the Laws and Customs of War on Land (adopted 18 October 1907, entered into force 26 January 1910) 187 CTS 227; 1 Bevens 631.

¹¹⁷ The armed forces of the belligerent parties may consist of combatants and non-combatants. In the case of capture by the enemy, both have a right to be treated as prisoners of war; Ibid.

¹¹⁸ [1926] 4 RIAA 119.

¹¹⁹ Everyone has the right to freedom of movement and residence within the borders of each State; n 28.

¹²⁰ [2001] 21 BLD 69 (AD); [2000] ILDC 476 (BD).

3.3 Right of Self-determination

Cultural geopolitics hypothesized as implied exertion of control and influence by geopolitical hegemony over the people of a particular region especially small states through the infiltration of the former's cultural elements into the latter. It is often regarded as soft power because it does not have any coercive force. In this age of globalization, Movies and TV channels are primary reflection of divergent supra-national cultures. According to Article 1(1) of the ICESCR,¹²¹ peoples are entitled to freely pursue their economic and cultural development. As per the SAFTA¹²² agreement, Bangladesh is allowed to commercially release Bangladeshi films in Indian cinema halls and in exchange Bangladesh can commercially release Indian films in its cinema halls.¹²³ The contemporary exchange scenario of films between India and Bangladesh is a clear manifestation of disparity since Bangladeshi films are hardly being publicized in India.¹²⁴ The agreement is serving in favor of India's interests and creating a profitable market for Indian Bengali films in Bangladesh. Because of the Indian films, Bangladeshi films are appearing as less profitable to the local cinema hall owners resulting into the marginalization of local films and its makers.¹²⁵ Bangladeshi TV channels are also being cut off from Indian viewers while Indian TV channels like Zee Bangla, Star Jalsha, Star Plus etc are running without any feasible restrictions. Consequently, Indian culture is heavily being infiltrated into our culture through the Indian films and TV channels, and Bangladeshi culture is being extincted along the way. Hence the people of Bangladesh are being unable to freely pursue

¹²¹ All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development; n 29.

¹²² The South Asian Free Trade Area (SAFTA) is the free trade arrangement of the South Asian Association for Regional Cooperation (SAARC). The agreement came into force in 2006, succeeding the 1993 SAARC Preferential Trading Arrangement. SAFTA signatory countries are Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka; The South Asian Free Trade Area (adopted 6 January 2004, entered into force 1 January 2006) (SAFTA).

¹²³ Abu Naser Rayen, 'Film exchange between Bangladesh and India: Are we getting shorted?' *Dhaka Tribune* (Dhaka, 5 July 2017) <<https://www.dhakatribune.com/showtime/2017/07/05/film-exchange-bangladesh-india-getting-shorted>> accessed 28 June 2019.

¹²⁴ It is reported that, Dhallywood films are being distributed to a marginalized number of theatres in India while the Tollywood's films are occupying the majority of Bangladeshi theatres. Tollywood's "Haripada Bandwala" and Dhaliwood's "Swatta" were released on the same day in Bangladesh. The former was ended up on the screens of 79 theatres nationwide, while the latter managed roughly 48 theatres. Superstars like Dev, Jeet, Ankush, Om are being prioritized over the Bangladeshi superstar Shakib Khan. Jeet's infamous "Boss 2" had been able to occupy 112 theaters nationwide during Eid occasion; n 123.

¹²⁵ Bangladesh Motion Picture Exhibitor Association demanded changes to the regulations regarding the distribution of foreign films and to raise the number of productions of local films. Siam Raihan, 'Cinema halls to shut doors from April 12' *Dhaka Tribune* (Dhaka, 13 March 2019) <<https://www.dhakatribune.com/showtime/2019/03/13/cinema-halls-to-shut-doors-from-april-12-demanding-more-subcontinental-films>> accessed 28 June 2019.

their cultural development because of Indian geopolitics which is in violation of peoples' right to self-determination as enumerated in article 1(1) of the ICESCR and ICCPR.

----- CHAPTER: FOUR -----

GLOBAL GEOPOLITICS

4.1 Global Warming

China and USA are the two most super powers in geopolitics.¹²⁶ They are involved in geopolitical contest of being number one. Evidently they are also responsible for total 44.6% of CO₂ emissions which is the primary reason behind today's world of global warming.¹²⁷ Among others climate Refugee is one of the main hazardous impact of global warming. It is defined as forceful migration of locals from their locality because of environmental degradation, thus often referred as environmentally induced migration. Developing countries are the worst sufferers of this worldwide phenomena.

4.1.1 Right to Life

According to article 3 of the UDHR,¹²⁸ everyone is entitled to right to life where article 30 of the UDHR¹²⁹ obligated states to refrain from any act or conduct which is detrimental to this right. In addition, article 6 of the ICCPR¹³⁰ ensured right to life of every human beings. Geopolitical condition of Bangladesh including geographical position, population density and social-economic condition makes this country vulnerable to the impact of the climate migration. Significant number of people are being displaced because of increased river bank erosion, sea level rise and saline water intrusion in the coastal areas.¹³¹ The number of environmental migrants who comes from rural to urban area such as Dhaka is approximately three lacks to four lacks every year.¹³² They have to struggle with the resident population for scarce resources such as for land, for accommodation, for water, for employment and for

¹²⁶ 'Power' (U.S.News) <<https://www.usnews.com/news/best-countries/power-rankings>> accessed 1 July 2019.

¹²⁷ Duncan Clark, 'Which nations are most responsible for climate change?' *The Guardian* (London, 21 April 2011) <<https://www.theguardian.com/environment/2011/apr/21/countries-responsible-climate-change>> accessed 24 June 2019.

¹²⁸ Everyone has the right to life, liberty and security of person; n 23.

¹²⁹ Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein; n 23.

¹³⁰ Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life; n 28.

¹³¹ Safeworld, *Human Security in Bangladesh* [2008] 22.

¹³² Poppy McPherson, 'Dhaka: the city where climate refugees are already a reality' *The Guardian* (Dhaka, 1 Dec 2015) <<https://www.theguardian.com/cities/2015/dec/01/dhaka-city-climate-refugees-reality>> accessed 24 June 2019.

basic social services. Hence their right to life of Bangladeshi people is being violated because of the global geopolitics and their ferocious geopolitical contest.

4.1.2 International Instruments

According to article 1 of the Convention on Long-Range Trans-boundary Air Pollution 1979,¹³³ pollution involves deleterious effects on nature that endanger human health; harm living resources, ecosystems and material property; and impair with resources and other legitimate uses of the environment.¹³⁴ Article 3 of the ILA Montreal Rules 1982,¹³⁵ stipulated that states are obliged to prevent and mitigate trans-frontier pollution as to such an extent that no substantial injury is caused in the territory of another state.¹³⁶ Article 1(2) of the Vienna Convention on the Ozone Layer 1985,¹³⁷ stipulated that climate changes involves detrimental effects upon the ozone layer which have significant harmful effects on human health and material useful to mankind.¹³⁸ Also article 1(1) of the Climate Change Convention 1992,¹³⁹ defines adverse effects of climate change as to the changes in physical environment or biota¹⁴⁰ which is deleterious to the operation of socioeconomic systems, and human health and welfare. The stratospheric ozone layer that protects the surface of the earth from excessive ultraviolet radiation is depleting due to the consumption of fossil fuels¹⁴¹ and deforestation, therefore the temperature of the earth is increasing every year and expected to increase in the years to come. Since super powers like China and USA are two major contributors as to the rise in the density of industrial hubs, uncontrolled growth in urban

¹³³ Convention on Long-Range Transboundary Air Pollution (adopted 13 November 1979, entered into force 16 March 1983) 1302 UNTS 217.

¹³⁴ General Assembly Resolution 2995 (XXVII) refers to 'significant harmful results'. article 1 of the ILC's Draft Articles on pollution of trans-boundary harm from hazardous activities, Report of the ILC's on its 53rd session, 380.

¹³⁵ International Law Association Rules on the Water Pollution in an International Drainage Basin Montreal, Committee on International Water Resources, 60th Montreal Conference Report [1982] 535-546.

¹³⁶ that the interference complained of must be 'unduly injurious to the inhabitants of the neighbouring state; L. Oppenheim, *International Law* (8th edn, London 1995) 291.

¹³⁷ Vienna Convention for the Protection of the Ozone Layer (adopted 22 March 1985, entered into force 22 September 1988) 1513 UNTS 293.

¹³⁸ OECD Recommendation of Equal Right of Access in Relation to Trans-frontier Pollution, 1977 and article 1(15) of the Convention on the Regulation of Antarctic Mineral Resource Activities, 1988.

¹³⁹ United Nations Framework Convention on Climate Change (adopted 9 May 1992, entered into force 21 March 1994) 1771 UNTS 107.

¹⁴⁰ The development of biota (flora and fauna) in surface waters is governed by a variety of environmental conditions which determine the selection of species as well as the physiological performance of individual organisms; M. Meybeck and R. Helmer, *Water Quality Assessments: A Guide to Use of Biota, Sediments and Water in Environmental* (Deborah Chapman ed, 2nd edn, E&FN Spon 1996) 23.

¹⁴¹ Fossil fuels are hydrocarbons, derived from coal and petroleum (fuel oil or natural gas). They are formed from the fossilized remains of buried plants and animals that have been subjected to the heat and pressure in the Earth's crust over hundreds of millions of years. Fossil fuels also include substances like oil shale and tar sands, which contain hydrocarbons that are not derived; Julie Kerr Casper, *Fossil Fuels and Pollution: The Future of Air Quality* (Facts On File 2010) 2.

population, reduction of forest cover, conversion of landuse etc,¹⁴² hence Bangladeshi peoples' right to clean environment is being violated because of their geopolitical contest.

4.2 Syrian Civil War

Syria is surrounded by much stronger powers whether viewed from the east or the west, the north or the south.¹⁴³ Geopolitical condition of Syria has always been in a weaker position.¹⁴⁴ It has a history of diversion or absorption by its neighbouring states; history of internal fragmentation; and geographical vulnerability to hold it's own ground.¹⁴⁵ Many groups and countries each with their own agendas are involved, infiltrating the country with religious complexity and prolonging the fight. The government's key supporters have been Russia and Iran, while Turkey, West, and several Gulf Arab states have been backing the opposition.¹⁴⁶ They are stimulating hatred between Syria's religious groups by directing the Sunni Muslim majority against the president's Shia Alawite sect.¹⁴⁷ Syrian-Russian military alliance have conducted indiscriminate attacks on civilians in 2018.¹⁴⁸ From the opposition, US-led coalition have not yet provided clarity nor compensation as to the victimization of Syrian people from it's strikes.¹⁴⁹

¹⁴² Enormous amounts of greenhouse gases—in order of abundance, water vapor, carbon dioxide (CO₂), methane, nitrous oxide, and ozone—are added daily. For many years, the United States was the largest contributor, but recently China, in the midst of its industrial revolution, has become the world's largest CO₂ emitter at 6,834 million tons (6,200 million metric tons) in 2006 compared to the United States at 6,393 million tons (5,800 million metric tons); Ibid, xii.

¹⁴³ The rich, fertile lands straddling Asia Minor and Europe around the Sea of Marmara to the north, the Nile River Valley to the south and the land nestled between the Tigris and the Euphrates rivers to the east give rise to larger and more cohesive populations. Reva Goujon, 'The Geopolitics of the Syrian Civil War' (Stratfor, 4 August 2015)

<<https://worldview.stratfor.com/article/geopolitics-syrian-civil-war>> accessed 6 July 2019.

¹⁴⁴ An aspiring Syrian state not only needs a coastline to participate in sea trade and guard against sea powers, but also a cohesive hinterland to provide food and security; Ibid.

¹⁴⁵ Only twice in Syria's pre-modern history could this region claim to be a sovereign and independent state: during the Hellenistic Seleucid dynasty, based out of Antioch (the city of Antakya in modern-day Turkey) from 301 to 141 B.C., and during the Umayyad Caliphate, based out of Damascus, from A.D. 661 to 749; n 143.

¹⁴⁶ n143.

¹⁴⁷ Such divisions have led both sides to commit atrocities, torn communities apart and dimmed hopes of peace. They have also allowed the jihadist groups Islamic State (IS) and al-Qaeda to flourish; n 143.

¹⁴⁸ In February, government forces launched a military campaign to retake Eastern Ghouta, an urban suburb of Damascus. Over 1,600 civilians were reportedly killed between February 18 until March 21. The Syrian-Russian military alliance struck at least 25 medical facilities, 11 schools, and countless civilian residences. Similarly, on June 16, the alliance led an offensive in Daraa and Quneitra governorates, southwest of Syria, triggering massive displacement towards Jordan and the Israeli-occupied Golan Heights; n 143.

¹⁴⁹ From January to April 2018 more than 920,000 individuals had been newly displaced inside of Syria, according to the United Nation; n 143.

4.2.1 Right to Life, Political Asylum, and Freedom of Movement

As per Article 14 of the UDHR,¹⁵⁰ everyone is entitled to seek and enjoy asylum¹⁵¹ in other countries from political persecution. Syria's neighboring countries including Turkey, Jordan, and Lebanon have prevented Syrians from seeking asylum at their borders, despite serious risks of political persecutions. Russia and US have also refused to grant asylum to new Syrian nationals.¹⁵² The European Union has prevented arrivals of Syrian refugees from Turkey. The conflict has killed more than 360,000 people, and left doomed cities and refugees in other countries.¹⁵³ Hence Syrian-Russian military alliance and US-led coalition are violating right to life, right to political asylum and right to freedom of movement as enumerated in the UDHR by arbitrarily detaining and mistreating Syrian people; by refusing their right to seek asylum in the event of political persecution; by imposing stringent restrictions on their freedom of movement and so forth.

4.3 Petro-geopolitics

Oil and natural gas are the most valuable resources for economic growth of a country.¹⁵⁴ Apart from being a source of energy, these are the most diverse and multifunctional resources in the world.¹⁵⁵ The Middle-Eastern region is currently accounted for 65% of World's proven oil resources and out of total OPEC's¹⁵⁶ proven oil reserves, about 72% is located in this region.¹⁵⁷ Distribution and usage of these resources are often surrounded with conflicts and battles.¹⁵⁸ Control as to the transition and transportation of resources especially oil and

¹⁵⁰ Everyone has the right to seek and to enjoy in other countries asylum from persecution; n 23.

¹⁵¹ The conception of asylum in international law involves two elements: a) shelter, which is more than merely temporary refugee; and b) a degree of active protection on the part of the authorities in control of the territory of asylum; J.G. Starke, *Introduction to International Law* (10th edn, Aditya Books Pvt. Limited 2017) 358.

¹⁵² US has also maintained a ban on Syrian citizens entering the US.

¹⁵³ By September 2018, 5.6 million Syrians have taken refuge outside the country, the majority in neighboring countries as illegal immigrants, Ibid.

¹⁵⁴ Dr. S. Fazal D. Firdausi and Dr. Anshu, 'Conflict in Yemen: A Sectarian Strife or Petro-geopolitics?' (January 2018) 7 IJHSSI 20.

¹⁵⁵ Ibid.

¹⁵⁶ The Organization of the Petroleum Exporting Countries (OPEC) is a permanent, intergovernmental Organization, created at the Baghdad Conference on September 10–14, 1960, by Iran, Iraq, Kuwait, Saudi Arabia and Venezuela. OPEC's objective is to co-ordinate and unify petroleum policies among Member Countries, in order to secure fair and stable prices for petroleum producers; an efficient, economic and regular supply of petroleum to consuming nations; and a fair return on capital to those investing in the industry; 'Brief History' (Organization of the Petroleum Exporting Countries) <https://www.opec.org/opec_web/en/about_us/24.htm> accessed 8 July 2019.

¹⁵⁷ M. Aminuzzaman, 'Geopolitical Significance of West Asia', (July 2015) 3 IJSER 139.

¹⁵⁸ The region has been affected by inter-state wars and intermittent conflicts between states, non-state actors such as Arab-Israeli conflict; the issue of Palestine; closing of Suez Canal; Iran-Iraq conflict; Iraq-Kuwait war; insurgents in Libya and Iraq; conflict between North and South Yemen; and the rising terror of ISIS. The Islamic State or ISIS, is a militant organization that emerged as an offshoot of al Qaeda in 2014. It quickly took control of large parts of Iraq and Syria, raising its black flag in victory and declaring the creation of a

natural gas fields are the key factors that fueled these events. Such regional wars and struggles not only affect the polity and economy of Middle-Eastern states, but also affects oil consumers throughout the world.¹⁵⁹

4.3.1 Crisis in Yemen

Yemen's geopolitical condition is much more weaker as compared to its Arab counterparts like Saudi Arabia. It lies on the nerve centre of oil transit and transport to Europe, USA and Asia due to its proximity to Bab-el-Mandeb Strait¹⁶⁰ and Gulf of Aden.¹⁶¹ Conflict started between Abd-Rabbu Mansour Hadi's¹⁶² government and Houthi¹⁶³ rebels.¹⁶⁴ Because of Houthis' proximity to Iran, Saudi Arabia formed a coalition to protect the Hadi government and started airstrikes towards Houthi rebels.¹⁶⁵ Motive behind Arab allies are that, should Houthis capture Bab-el-Mandeb that will create problems for the economy and security of these nations.¹⁶⁶ This is a complex petro-geopolitics which aims to control Bab-el-Mandeb and Gulf of Aden through Yemen.¹⁶⁷ As of now, Saudi Arabia-led coalition's airstrikes are killed 6,872 civilians and wounded 10,768.¹⁶⁸ Civilians across the country are suffering from a lack of basic services; economic crisis; broken governance; health; education; and judicial systems. Hence the crisis in Yemen is in violations of basic human rights of the Yemeni people as declared under various international instruments.

caliphate and imposing strict Islamic rule; Rachel Elbaum, 'What is ISIS? What you need to know about Islamic State in Iraq and Syria' (NBC News, 18 April 2018) <<https://www.nbcnews.com/storyline/smart-facts/what-is-isis-what-you-need-know-about-islamic-state-iraq-n859996>> accessed 8 July 2019.

¹⁵⁹ n 154.

¹⁶⁰ The Bab el-Mandeb Strait is a key commercial chokepoint that links two persistently unstable and insecure locales – Yemen and the Horn of Africa – and as a consequence faces standing challenges to its security. The Bab el-Mandeb Strait and its unstable bordering regions are host to increasing strategic competition. Turkey and the Arab states of the Gulf, as well as China and the United States, are expanding their economic and military activity in the region. These developments have potentially significant implications for international security; 'Strategic rivalries around the Bab el-Mandeb Strait' (IISS, May 2018). <<https://www.iiss.org/publications/strategic-comments/2018/bab-elmandeb-strait>> accessed 8 July 2019.

¹⁶¹ The Gulf of Aden is located in the Middle East with Yemen to the north, Somalia to the south and the Arabian Sea to the east. It is connected to the Red Sea by the Bab el Mandab strait; 'FACTBOX-The dangerous Gulf of Aden' (REUTERS, 27 January 2011) <<https://www.reuters.com/article/somalia-piracy-aden-idAFLDE70Q19S20110127>> accessed 8 July 2019.

¹⁶² As a Sunni, he had strong backing of Sunni majority in Yemen and largely recognized by international community; Dr. S. Fazal D. Firdausi (n 154) 21.

¹⁶³ They call themselves: Anasar Allah" (supporters of Allah), belong to Zaydi sect of Shia Islam and represents about 20-30 % of Yemen"s population; (n 154) 21.

¹⁶⁴ Latter has ousted Hadi government from Sana'a and captured several places in Yemen for greater autonomy in the northern region of Yemen; (n 154) 21.

¹⁶⁵ In northern Yemen and in and around Sana'a; (n 154) 21.

¹⁶⁶ Dr. S. Fazal D. Firdausi (n 154) 22.

¹⁶⁷ World media depicts Yemen crisis as war between Shia and Sunnis; (n 154) 24.

¹⁶⁸ *World Report: 2019 Events of 2018* (Human Rights Watch 2019) 497.

4.4 Cyberspace

Actions by a nation-state or international organization to attack and attempt to damage another nation's computers or information networks through computer viruses or denial-of-service attacks are defined as cyber attacks.¹⁶⁹ USA, China, Russia, UK and Israel are considered to be the cyber superpowers. Two other notable players are Iran and North Korea. There is a cyber arms race going on amongst these cyber superpowers which more often violates peoples' right of self-determination. In today's scenario, Cyber Espionage¹⁷⁰ is of common occurrence and is done for state advantage as well as commercial and criminal gain.¹⁷¹ According to article 1(1) of the ICCPR, all peoples have the right to self determination. In virtue of that right, they are entitled to freely determine their political status, and freely pursue their economic, social and cultural development. Moreover, article 2.4 of the UN Charter¹⁷² also prohibited intervention in internal affairs of other states.¹⁷³ All the attacks were mounted against those nation-states that possess different perspectives towards their own political, economic, social and cultural status than that of the attackers. Therefore these geopolitically motivated cyber attacks are against peoples' right of self-determination.

¹⁶⁹ Networked computers with exposed vulnerabilities may be disrupted or taken over by an unauthorized user. Vulnerabilities resulting from poor security practices, inadequate training, or unexpected faults in computer software provide the entry points for an attack. As technology becomes more complex and sophisticated, the surface area for vulnerabilities also expands; Eugenie de Silva, *National Security and Counterintelligence in the Era of Cyber Espionage* (IGI Global 2016) 46

¹⁷⁰ Cyber espionage is enabled due to vulnerabilities that allow unauthorized intrusions into other networked systems. Information can be copied and secretly transferred through the network and onto other computer systems where it can be viewed and exploited by unauthorized users. Cyber espionage is traditionally done by nation states to protect national security by secretly observing and monitoring the computer systems of other nation states to protect against unexpected threats or surprises. However, it can also be done to secretly and actively gain economic, strategic, or military advantage; Eugenie de Silva, *National Security and Counterintelligence in the Era of Cyber Espionage* (IGI Global 2016) 46.

¹⁷¹ The attacks against Islamic State may be the first public cyber attack this world has seen. In addition to traditional weaponry, US is also using its military cyber command to mount computer network attacks against Islamic State. Russia has been accused of using cyber weapons to attack Georgia during the military incursion into the country in 2008. In early 2014, the cyber snake program that attacked the Ukraine to be of Russian origin. North Korea is also alleged to be behind a significant number of attacks on the US including the one which recently targeted Sony company; Keith Breene, 'Who are the cyberwar superpowers' (World Economic Forum, 4 May 2016) <<https://www.weforum.org/agenda/2016/05/who-are-the-cyberwar-superpowers>> accessed 23 July 2019.

¹⁷² Charter of the United Nations, (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS 16.

¹⁷³ All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations; Ibid.

4.4.1 Right to Privacy

According to Article 17 of the ICCPR, no one shall be subjected to arbitrary or unlawful interference with his correspondence.¹⁷⁴ Russian government interfered in the 2016 US presidential election by, inter alia, hacking into the e-mail system of the Democratic National Committee (DNC); releasing its e-mails to WikiLeaks; and deploying other cyber resources to spread fake news stories on social media. Hence Russia's cyber intrusions is a violation of the right to privacy of the victims including John Podesta¹⁷⁵ and several DNC officials.

4.4.2 Right of Self-determination

According to article 1(1) of the ICCPR and ICESCR, all peoples have the right of self-determination and in virtue of which they are entitled to freely determine their political status.¹⁷⁶ The goal of the Russian hacking in 2016 US presidential election was to help elect a candidate who was more likely to uphold the interest of the Russian government, instead of a candidate who represented the hopes and desires of the American people.¹⁷⁷ Thus the victim of the hacking was not the American State but rather the American people as their expression of political will was interfered with. Hence the intervention is against the American peoples' right of self-determination. In *Nicaragua v. United States of America*,¹⁷⁸ the right of every sovereign state to conduct its affairs without outside interference is recognized as the principle of non-intervention. Moreover, two elements must be proved to consider an intervention to be illegal- an act that crossover into *domaine réservé*¹⁷⁹ and a coercive act.¹⁸⁰

¹⁷⁴ No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation; n 28.

¹⁷⁵ John D. Podesta, perhaps more than anyone except Hillary Clinton, was a victim of the Russian cyberassault on allies of her presidential campaign, of which he was the chairman. Emails stolen from his personal Gmail account were dribbled out by WikiLeaks last fall, revealing the embarrassing rifts roiling the campaign and Washington's Democratic establishment. He has pushed hard for an aggressive investigation of Russia's role in the election; Kenneth P. Vogel, 'Russia Scandal Befalls Two Brothers: John and Tony Podesta' *The New York Times* (Washington, 10 November 2017) <<https://www.nytimes.com/2017/11/10/us/politics/john-tony-podesta-mueller-russia-investigation.html>> accessed 3 August 2019.

¹⁷⁶ n 121.

¹⁷⁷ Russian President Vladimir Putin ordered an effort to help Republican Donald Trump's electoral chances by discrediting Democrat Hillary Clinton in the 2016 presidential campaign, U.S. intelligence agencies said in an assessment. Russia's objectives were to undermine public faith in the U.S. democratic process, denigrate former Secretary of State Clinton, make it harder for her to win and harm her presidency if she did, an unclassified report released on Friday by the top U.S. intelligence agency said; Yara Bayoumy and Warren Strobel, 'U.S. intel report: Putin directed cyber campaign to help Trump' (Reuters, 6 January 2017) <<https://www.reuters.com/article/us-usa-russia-cyber-idUSKBN14Q1T8>> accessed 3 August 2019.

¹⁷⁸ [1986] ICJ Rep 14.

¹⁷⁹ A prohibited intervention must accordingly be one bearing on matters in which each State is permitted, by the principle of State sovereignty to decide freely; Steven J. Barela, 'Cross-Border Cyber Ops to Erode Legitimacy: An Act of Coercion' (Just Security, 12 January 2017) <<https://www.justsecurity.org/36212/cross-border-cyber-ops-erode-legitimacy-act-coercion/>> accessed 3 August 2019.

Since presidential election is within a *domaine réservé* (State's sovereignty) and the manipulation of elections or public opinions on the eve of elections in favor of a particular party by cyber means is a coercive act,¹⁸¹ hence the intervention is against the customary principle of non-intervention also.

¹⁸⁰ Intervention is wrongful when it uses methods of coercion in regard to such choices, which must remain free ones. The element of coercion, [...] defines, and indeed forms the very essence of, prohibited intervention; Ibid.

¹⁸¹ Cases in point are the manipulation by cyber means of elections or of public opinion on the eve of elections, as when online news services are altered in favour of a particular party, false news is spread, or the online services of one party are shut off. AB always, the decisive test remains coercion; Michael N. Schmitt, *Tallinn Manual on the International Law Applicable to Cyber Warfare* (Cambridge University Press 2013) 45.

----- CHAPTER: FIVE -----

RECOMMENDATION AND CONCLUSION

5.1 Overview

Military based major powers often single out diplomacy power to sort out a situation, and the diplomacy power largely depends on state's geopolitical power.¹⁸² Bangladesh as a small power need experts who are capable enough to influence a negotiation process through diplomatic means. Because of lack of opportunity, our experts are being subjected to human capital flight, and to avoid that we need to develop our education sector, in that way we can produce more educated and professional individuals. We need to give them enough remuneration and facilities for marginalizing their migration from our country to another. Moreover, our corporate minded educational sector is like any other business institutions, and more focused on profit maximization. They are highly interested in their stock portfolio rather than to provide quality education. For an example, law schools in Singapore have separate advocacy training rooms that helps law students to understand the court process at their academic stage, and when they enter into their professional life, they face little or no obstacles to adopt the actual court process. It also helps them to learn how to deal with divergent practical problems with regard to legal profession. Very few institutions in Bangladesh have trial and advocacy training rooms. Unfortunately, they are not interested in allocating budget for that purpose.

5.2 Ensuring Right to Clean Environment

For clean environment, there is no alternative to the protection of water resources and climate changes. Water is a social and economic good, and a finite resource. Ever increasing need of water for agriculture, sanitation, and rapid industrialization can fuel social, regional, and global conflicts if water sharing agreements are inadequately and inequitably implemented.¹⁸³ In addition to that, climate change has deleterious impact on water resource. Apparently, developing countries like Bangladesh are the worst sufferers, but sooner or later developed

¹⁸² Leonid Grinin ed (n 12) 203.

¹⁸³ According to world economic forum, water crisis is ranked as the top global risk. Approximately, 1.5 million children in South Asia die every year because of unsafe water. The number is 456,000 in India, 100,000 in Pakistan, and 68,000 in Bangladesh. Water cooperation and good water governance has also been recognized by the United Nations through dedicating 2013 as the International Year of Water Cooperation; Carl Ganter, 'Water crises are a top global risk' (World Economic Forum, 16 January 2015) <<https://www.weforum.org/agenda/2015/01/why-world-water-crises-are-a-top-global-risk/>> accessed 4 August 2019.

ones will have to face the same horrors that the former ones have been facing for last two decades. There is no legally binding agreement between India and Bangladesh as to the protection of environment. Major polluting countries including India is more willing to raise funds rather than to conclude such an agreement or to reduce pollution. The vulnerable developing countries like Bangladesh should collectively work to build up pressure on India, in concluding legally binding agreement to cut pollution.¹⁸⁴ Moreover, policy as to greater promotion and production of green technologies should also be adopted We should save the environment for ourselves and for future generations, and in pursuant of that India has to take tough actions against their self-interests.

5.2.1 Watercourse Agreement

India and Bangladesh should adopt an agreement with objectives to promote equitable and reasonable utilization of the water resources of the international shared watercourses, and efficient and sustainable development of the watercourses. On the basis of an agreement, there shall be a commission composed of three organs: 1) the Council of Ministers; 2) the Technical Committee; and 3) the Secretariat. The role of the Council would be to adopt policies and provide guidance to the parties, and the Technical Committee would be in charge of implementing the policies. The Secretariat would provide technical and administrative services to the Council under the supervision of the Technical Committee. The commission will oblige the member states to abide by the principle of sustainable development and utilization; by the 'polluter pays' principle; by the principle of prevention to cause harm to member states; by precautionary principle; by intergenerational equity principle; by assessment of transfrontier impacts and co-operation. For amicable resolution of disputes and non-compliance of procedure, Tribunal or other means as agreed by the parties should be adopted. If the dispute were to persist, it would go to a conciliation commission of South Asian union, and as a last resort to the international court of justice in Hague.

¹⁸⁴ Bangladesh ranked first in terms of vulnerability to natural disasters. Natural disasters have caused the greatest loss of life in Bangladesh over the last decade more than in any other country of the world. An average of 8,241 people died each year in 244 instances of extreme weather conditions in Bangladesh with cost of damage \$ 2,189 million in a year and loss of GDP 1.81 percent; Sven Harmeling, *Global Climate Risk Index 2010: Who is most vulnerable? Weather-Related loss events since 1990 and how Copenhagen needs to respond* [2009] Germanwatch 6.

5.2.2 Agreement on Climate Change

Efforts as to address climate change shall be carried out cooperatively by India and Bangladesh on the basis of an legally binding agreement. The Parties should protect the climate system for the benefit of present and future generations of humankind on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities. Accordingly, India should take the lead in combating climate change and the adverse effects thereof. The specific needs and special circumstances of Bangladesh, especially those areas that are particularly vulnerable to the adverse effects of climate change shall have to be considered. That Bangladesh would not have to bear a disproportionate or abnormal burden under the agreement should be subjected to prior consideration. The Parties should take precautionary measures in order to anticipate, prevent, and minimize the causes of climate changes and it's adverse effects. Lack of full scientific certainty should not be used as a reason for postponing protective measures where there are threats of serious or irreversible loss. Policies and measures to deal with climate change should be cost-effective in order to ensure mutual benefits at the lowest possible cost. Such policies and measures should take into account different socio-economic contexts, and are needed to cover all relevant sources like sinks and reservoirs of greenhouse gases and so forth.

5.3 Communication Media

World conscience or public opinion shall be used as a gun against grave human rights violations. The communication media is the means by which world conscience or public opinion is gathered. Since human rights violations are often occurred in silence, thus the communication media shall be used to distribute such information by the press, radio and television. Reports of intergovernmental organizations and NGO's regarding human rights violations that are not widely read are going to be publicly known by such distribution.

5.4 Conclusion

It seems unlikely that prosecutor can ever really challenge the most powerful countries, but nobody likes to see people getting away with terrible crimes. The court exists because that desire for justice does not stop at the border, and if we want a less violent world, really! what alternative is their to the rule of law.

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