I. INTRODUCTION

The member states of the United Nations issued the Millennium Declaration at the Millennium Summit in September 2000 where they committed themselves to achieve a series of targets within eight goals, most of which to be attained by 2015. Collectively the Goals have already become familiar as the Millennium Development Goals (MDGs), representing a framework for achieving human and social development around the world, although the Goals are particularly significant for developing countries. The prime responsibility for achieving the Goals, however, lies with individual countries. Success would depend preliminary on national commitment and quality and vision of national decision and secondarily, on regional and international partnerships and changes in global economy and system. More importantly, effective participation of the citizens particularly the deprived ones, who have been designated as the prime beneficiaries of these goals, if materialised, will be the critical factor in the process of MDGisation of the local, national and regional development processes. It is, nevertheless, not without significance to argue that the goals are not merely a set of targets, rather they represent a firm commitment to a broader and more inclusive process of development.

South Asia is a region of the world's one-fifth population, about half of whom live under poverty line. Notwithstanding recent impressive achievements in socio-economic development the region still bears with widespread illiteracy, gender inequality and disempowerment of women, high child and maternal mortality and ill-health, threats of HIV/AIDS, malaria and other diseases, and environmental degradation and hazards. Most of the countries of the region are still dependent on external assistance, foreign direct investment (FDI), and different forms of cooperation. Apparently, South Asian leaders have at long last realised that fighting poverty should be the number one agenda for the region. At least that is what appeared to have transpired at the recently concluded 13th SAARC Summit in Dhaka. They also felt that South Asia should ideally try set South Asian Development Goals (SDGs) with an ultimate objective of regionalise and domesticise MDGs. And for that matter they have also

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ATTAINING THE MILLENNIUM DEVELOPMENT GOALS IN SOUTH ASIA

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Abstract

The paper articulates progress of indicator-wise achievements of targets of the MDGs in South Asian countries and finds that the countries of the region will not be able to attain all the goals and targets. We find several challenges towards attaining MDGs like nexus among growth, poverty and inequality; right balance between pragmatism and ambition in formulating development strategies; curbing all-pervasive corruption; good governance; and effective public-private partnership. Finally we suggest, among others, establishing civic network for monitoring MDGs in the region and documenting people's collective and creative initiatives for wider replication.

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asked the Independent South Asian Commission on Poverty Alleviation (ISACPA) to provide a well-designed plan of action.

This is in such a broad context the present paper tries capturing the achievements and challenges of MDGs in South Asia. The following sections of the paper deal with indicator-wise progress and challenges, and provide suggestive options so as to escape hindrances towards making poverty history in the region.

II. PROGRESS TOWARDS ATTAINMENT

The countries of South Asia have made some notable progress towards achieving the MDGs. Much of this success has been due to strong positive economic growth along with sound economic management and conducive social policies. Some of the countries have taken care to invest in the education and skills of their people to enable them to take advantage of new employment opportunities. They have also made the kinds of investment in health and nutrition that have contributed to significant reductions in child and maternal mortality and helped fight communicable diseases. In addition, they have also been making greater efforts to empower women and promote environmental sustainability. The complementary role of non-governmental actors in promoting these desirable social development goals also deserves to be highlighted in this context.

GOAL 1: *Eradicate extreme poverty and hunger*

The first goal is to ensure that everyone has the basic resources they need, with sufficient income to meet their daily requirements and access to the quality and quantity of food that will enable them to lead normal, active and healthy lives. The countries of the region have already taken strides to attain the first Goal.

Despite all efforts, nevertheless, progress has been much slower, except in India and Bangladesh, where the 1990s witnessed a significant reduction in poverty. There have also been variations over time in the speed of poverty reduction. Growth has so far been fairly successful in most of the countries in the region, spreading the benefits across most of the population. There is, however, the caveat regarding the distribution of benefits of future growth, whether growth would be

pro-poor or be 'rich-captured'. Events at the regional and international levels, the speed and direction of globalisation and the effectiveness of international partnerships, including the availability of official development assistance would also strongly influence prospects for growth and poverty reduction.

Table 1.1

Progress has been much more modest in the area of hunger in the region, which can be perceived by the proportion of children with low weight for their age. In South Asia up to half of the children are underweight despite having no absolute shortage of food for the majority of households, and certainly not for the small amounts that young children consume. This has been perhaps due to lack of attention to right to food of women and children and/or intra-household mal-distribution of food. Poor sanitation also plays an important role as ill-fed children are less able to absorb essential nutrients. Nutritional status of mothers is another major factor as some of the patterns for future child growth are set even in the womb; malnourished women are more likely to produce low birth-weight babies. But more important is the quality of care that mothers are able to give their children, particularly during the first two years of life when children are at risk not just of gaining insufficient weight but also of becoming stunted, having a low height for their age. This loss can never be recovered; stunted children become stunted adults.[1]

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[1] Malnutrition leads to huge present and future costs to economic activities as well as progress. First, it reduces a child's resistance to the common childhood diseases such as acute respiratory infections, diarrhea, and measles and even death. Most children who survive early malnutrition would never reach their full potential, growing up stunted and with reduced physical and mental capacity. This adds to the cost of health services and lowers national productivity. According to the endogenous growth theory, education and training plays crucial role in accelerating economic growth. But malnourished children cannot be made good labour force through education and training due to their poor absorption capacity. Therefore growth would be decelerated. For example, for Pakistan, malnutrition is thought to cost around three per cent of its GDP.

Goal 1: Eradicate extreme poverty and hunger
Target 2: Halve, between 1990 and 2015, the proportion of people who suffer from hunger

	Indicator 4		Indicator 5	
	% of children under-five underweight		Proportion of population below minimum level of dietary energy consumption (%)	
	1990-96	1995-2003	1991	2000-01
Afghanistan	..	48	63	70 (99)
Bangladesh	67	48	35	30
Bhutan	38	19	..	..
India	53	47	25	21
Maldives	..	30	..	..
Nepal	49	48	19	17
Pakistan	38	38	25	20
Sri Lanka	38	29	29	22

Source: UNICEF, *State of the World's Children 1997*; UNDP (2005).

GOAL 2: *Achieve universal primary education*

It cannot be over-emphasised that the key to future national prosperity is to have a healthy and educated workforce and for this the most basic requirement is to have all children enrolled in primary school. Assessing progress for the region as a whole is difficult since no enrolment data are available for some of the larger countries. For most of the rest of the region, however, the enrolment data suggest that progress has been slowed down.

The situation in the early 1990s suggests that here too completion rates are only between 50 and 60 per cent. In some cases this is surprising. In Nepal, for example, data suggest that there has been only a small increase in both enrolment and completion, even though expenditure on education has increased and sufficient schools are

available. This is perhaps an extraordinary situation prevailing in rural Nepal.

The quality of education also varies according to the location since the better schools are typically in the urban areas and in the more affluent neighborhoods from which children from poor families are usually excluded. In future more efforts would be needed to boost the

Table 2.3

quality of education for children in remote rural areas. Developments in communications technology should open up more opportunities for doing this more effectively, though this will also demand significant investment in the related infrastructure.

GOAL 3: *Promote gender equality and empower women*

This Goal places high importance on women's rights and gender equality. In terms of ratio of girls to boys in different levels of education, there have been progresses at all levels. Notwithstanding significant gender disparity in primary education in Bhutan, India, Nepal and Pakistan and moderate disparity in other countries in late 1990s, Nepal is perhaps demonstrating the highest efforts with success in closing this gap, which is evident in speed of removal; the ratio was 0.56 in 1990 and 0.81 in 2002/3. Nevertheless, Afghanistan is the country with the highest disparity, and Bangladesh is the lowest.

In contrast, no gender disparity in secondary education has been observed in late 1990s and 2002/3 in Bangladesh, Maldives, and Sri Lanka, and the other countries exhibit significant gap. However, gender disparity is acute in tertiary education of all the countries in the region.

Achieving parity in education is, however, dependent on gender equality. Discrimination against women is deeply embedded in many societies in South Asia. The most direct denial of right to girls is perhaps in those areas where there is still "son-preference" and household make differential investment for boys and girls particularly regarding education and health care. But almost all countries display a number of gender discrimination, typically stereotyping girls into traditionally feminine roles. These attitudes are, however, gradually changing — increasing number of women is now visible in off-farm wage employment. The proportion of women in this type of

employment has generally been increasing. By late 1990s it reached 16 and 49 per cents in India and Sri Lanka respectively. But women's participation in national decision making, measured by proportion of seats held by women in national parliament, is quite unsatisfactory in all the countries of South Asia. However, some gains have been made in the local government bodies (*e.g.*, India, Bangladesh) where reservations have been made.

Table 3.4

Table 3.4

GOAL 4: *Reduce child mortality*

Thousands of children in the region are still dying mainly from diseases or from combined impact of malnutrition and preventable diseases (*e.g.*, acute respiratory infections, diarrhea, measles, and malaria). Of course, some of the impressive successes have taken place in Bangladesh, Nepal and Bhutan, which managed to halve their child mortality rates during 1990s. Despite all the difficult circumstances Sri Lanka succeeded in reducing the rate to 19 deaths per thousand live births. These have been due to a general socio-economic progress and a range of health interventions like immunisation and oral rehydration therapy. However, vaccination against measles is still low — for example, only 50 and 61 per cents in Afghanistan and Pakistan respectively.

Goal 4: Reduce child mortality
Target 5: Reduce by two-thirds, between 1990 and 2015, the under-five mortality rate

	Indicator 13		Indicator 14		Indicator 15	
	Under-five mortality rate (per thousand live births)		Infant mortality rate (per thousand live births)		Proportion of 1-year-old children immunised against measles (%)	
	1990	2003	1990	2003	1990	2003
Afghanistan	260	257	167	165 (01)	20	50
Bangladesh	144	69	96	46	65	77
Bhutan	166	85	107	70	93	88
India	123	87	84	63	56	67
Maldives	115	72	80	55	89	96
Nepal	145	82	100	61	57	75

Pakistan	128	98	96	74	50	61
Sri Lanka	23	15	20	13	80	99

Source: Ibid.

GOAL 5: *Improve maternal health*

One of the major symptoms of discrimination against women is a high rate of maternal mortality, which has been widespread in all the South Asian countries except Sri Lanka. Majority of maternal deaths are related to complications in pregnancy due to lack of adequate health infrastructure, but pregnant mothers can also die in other reasons like malaria, anemia, tuberculosis, heart diseases, and abortions by unskilled health personnel. However, it is seen that the countries with the highest levels of maternal mortality have the lowest use of contraception.

Goal 5: Improve maternal health
Target 6: Reduce by three-quarters, between 1990 and 2015, the maternal mortality ratio

	Indicator 16	Indicator 17	
	Maternal mortality ratio (per 100,000 live births)	Proportion of birth attended by skilled health personnel (%)	
	1995	Early 1990s	1995-2003
Afghanistan	820	..	..
Bangladesh	600	9.5 (94)	14
Bhutan	500	14.9 (94)	24
India	440	34.2 (93)	43
Maldives	390	90.0 (94)	70
Nepal	830	7.4 (91)	11
Pakistan	200	..	23
Sri Lanka	60	94.1 (93)	97

Source: United Nations (2003), op cit; World Bank (2005a); UNDP (2005).

GOAL 6: *Combat HIV/AIDS, malaria, and other diseases*

Over the last two decades or so HIV/AIDS has been spreading inexorably all over the world. South Asia is in a serious threat — apparently time bomb of HIV/AIDS has been ticking every moment in the region. In India, prevalence of 0.6 per cent or about 4 million is present among cross-section of people. This has also wide regional

implications particularly where the national borders are aperture and people move in and out for livelihoods. Moreover, level of women trafficking across the region is very high indicating yet another source of concern for spread of HIV/AIDS. If one country in South Asia is badly affected by HIV/AIDS, alarm bell should be rung throughout the region for taking necessary combating measures.

Table 6. 7

In this region, some of the highest infection rates are found among drug users, sex workers and men who have sex with men. The disease can spread rapidly into the rest of the population from these vulnerable groups. Although HIV/AIDS can attack anyone, young people are at particular risk. More than half of HIV infections in the region have been in people less than 25 years old. More than half of young people also have serious misconceptions about HIV/AIDS, one of the most common being that one can tell just by looking at someone if they are infected or not. The primary weapon against HIV/AIDS is frank and accurate public information, particularly for young people who need to be made aware of the dangers. In addition to information, the youth also need services, such as voluntary counseling and testing for identification and enhancing their determination to fight HIV/AIDS. These services need to be welcoming and accessible, as well as affordable and confidential. While the primary responsibility lies with the Government, many NGOs and religious leaders are also playing an important part.

Beside AIDS, malaria is a more familiar fever which has been one of the most life-threatening diseases all over the developing world. Countries most seriously affected include Sri Lanka, Bhutan and Afghanistan. It is a matter of great concern that malaria has become resistant to one drug after another and insecticides have become less effective at controlling mosquitoes. The WHO strategy is referred to as comprehensive direct observation treatment (DOTS) combining five elements such as political commitment, microscopy services, drug supplies, surveillance and monitoring systems and the use of highly efficacious regimes with direct observation of treatment.

Yet one more deadly infectious disease threatening the region is the severe acute respiratory syndrome (SARS), which would have a very adverse impact on the region's economic performance with

consequential effects on several of the MDGs. The same is true for avian influenza (bird flue), the impact of which is yet to be understood in the region. If spotted, this will certainly have serious implication on South Asian economy where poultry industry has been impacting positively on poverty reduction.

Strong political commitment and full and active participation of civil society and the private sector are needed so as to effectively combat HIV/AIDS and other diseases. At the same time efforts should be made to improve the level of quality education and political advocacy, along with community mobilisation for social development.

GOAL 7: *Ensure environmental sustainability*

One of the most complex and important tasks for the future of the world is to protect and sustain the natural environment. Although industrial development in this region has brought many benefits, it has also put the environment under increasing strain. Deforestation and pollution from industry, agriculture, domestic fuel wood, and human waste are creating increasingly hazardous living conditions. Many countries in the region have been losing their forest cover for decades and it is only recently that they have been trying to halt or even reverse the process. Bhutan, for example, two thirds of which is forested, has been making determined efforts to protect its natural environment. But the losses continue in Nepal, Pakistan and Sri Lanka.

Table 6. 8

Goal 7: Ensure environmental sustainability
Target 9: Integrate the principles of sustainable development into country policies and programmes and reverse the loss of environmental resources

| | Indicator 25 | | Indicator 26 | Indicator 27 | |
| | Proportion of land area covered by forest (%) | | Protected land area as % of total land area | Energy use (kg of oil equivalent) per $1,000 GDP (PPP) | |
	1990	2000	1997	1990	2000
Afghanistan	2.1	2.1	0.00	..	..
Bangladesh	9.0	10.2	0.01	117	93
Bhutan	64.2	64.2	0.21	..	..
India	21.4	21.6	0.04	319	296

Maldives	3.3	3.3	..	..	..
Nepal	32.7	27.3	0.09	380	286
Pakistan	3.6	3.1	0.05	289	241
Sri Lanka	35.4	30.0	0.13	159	123

Source: United Nations (2003) and UNDP (2005).

Goal 7: Ensure environmental sustainability

Target 9: Integrate the principles of sustainable development into country policies and programmes and reverse the loss of environmental resources

	Indicator 28			
	Carbon dioxide (CO$_2$) emissions, metric tons of CO$_2$ per capita		Ozone-depleting CFCs consumption in ODP tons	
	1990	2002	1990	2000
Afghanistan	0	0	..	..
Bangladesh	0	0	195	805
Bhutan	0	1	..	..
India	1	2	4501 (92)	5,614
Maldives	1	1	4	1 (99)
Nepal	0	0	20	25 (99)
Pakistan	1	1	751	1,422 (99)
Sri Lanka	0	1	209	220

Source: United Nations (2003); UNDP (2005); World Bank (2005a).

Although many people suffer from air pollution, the most severe problems are in the rural areas, where millions of people lack water from protected sources. For South Asia, urban water supply coverage is more than 90 per cent but rural coverage is only about 65 per cent on average. The worst situation perhaps exists in Afghanistan. There has been some progress in India, Pakistan, Nepal and Sri Lanka, but overall it seems that the countries in the region would not attain this target. The water supplies in rural Bangladesh, though not bad in quantitative terms, have recently been marred by arsenic contamination.

Effective sanitation coverage is even lower than water supplies. For South Asia as a whole, on average it was about 85 per cent in 2000 in urban and 30 per cent in rural areas. The lack of effective sanitation is particularly serious for the millions of slum dwellers crowded in

mega cities of, *e.g.*, Bangladesh and India. Despite some improvements coverage has been very low in Bhutan and Afghanistan. The situation is gradually improving in Bangladesh, thanks to an innovative approach involving civil society organisations, particularly NGOs.

Goal 7: Ensure environmental sustainability

Target 10: Halve by 2015 the proportion of people without sustainable access to safe drinking water

	Indicator 30			
	Urban water supply coverage (%)		Rural water supply coverage (%)	
	1990	2000	1990	2000
Afghanistan	..	19	..	11
Bangladesh	99	99	93	97
Bhutan	..	86	..	60
India	88	95	61	79
Maldives	..	100	..	100
Nepal	93	94	64	87
Pakistan	96	95	77	87
Sri Lanka	91	98	62	70

Source: United Nations (2003).

Goal 7: Ensure environmental sustainability

Target 11: By 2020 to have achieved a significant improvement in the lives of at least 100 million slum dwellers

	Indicator 31	
	Urban sanitation coverage (%)	
	1990	2000
Afghanistan	..	25
Bangladesh	78	82
Bhutan	..	65
India	58	73
Maldives	..	100
Nepal	68	75
Pakistan	78	94
Sri Lanka	93	91

Source: WHO and UNICEF (2000), *Global Water Supply and Sanitation Assessment 2000.*

GOAL 8: *Develop a global partnership for development*

A core principle of the UN Millennium Declaration is that human development is a shared responsibility. The Declaration resolves, therefore, to develop strong partnerships to promote a more open and equitable system of international finance and trade, to increase development assistance and to enhance international commitment to good governance, development and poverty reduction. The Declaration also gives special attention to the LDCs and developing countries. Indeed, the real value of the MDGs is that they can help to focus national attention and change national decisions in the areas of increasing opportunities and equity, engagement and energy, and human capabilities and creativity. This can only happen when a country's political leadership, institutions and stakeholders are fully committed to the MDGs. International partners can support and enhance that commitment, but they cannot substitute for it. The important partner is therefore the individual country, its Government, NGOs or other civil society organisations. The international partners may be other countries in the region, along with international organisations, development banks, regional organisations, business and trade groups and organisations, new global and regional funds (*e.g.*, SAARC development fund), bilateral development partners, private foundations and NGOs. Through a series of partnerships, all can contribute towards expansion of new knowledge and ideas along with new technologies and new resources, which again should be shared by the poor. The expansion of mobile phone services into the rural and semi-urban areas of South Asia have given a significant boost to connectivity with a huge spin offs for enhanced trade and services. The poor too have been getting a share of these newly created services. The partnership mode has been working here too (*e.g.*, Grameen Phone).

Goal 8: Develop a global partnership for development
Target 15: Deal comprehensively with the debt problem of developing countries through national and international measures in order to make debt sustainable in the long term

	Indicator 44	
	Debt service as % of exports of goods and services, and net income from the abroad	
	1990	2003
Afghanistan	..	..
Bangladesh	34.8	8.3
Bhutan	5.3	4.7
India	29.3	18.1
Maldives	4.0	3.5
Nepal	15.2	10.0
Pakistan	22.9	16.8
Sri Lanka	14.8	7.8

Source: UNDP (2005).

The countries except India accumulated high levels of debt and therefore, making substantial debt-service payment, limiting their capacity to invest in human development to attain MDGs. They, in the beginning of the new millennium endeavoured in preparing poverty reduction strategy papers (PRSPs) in order to get debt-relief. However, most of the countries of the region have now been receiving lower ODA compared to that of 1990 due mainly to reduced global flow of ODA. Countries except Pakistan have been able to substantially reduce proportion of debt service.

Youth unemployment in the region is one of the highest of the world, both for male and female, which is one of the main reasons of slow rate of poverty reduction. This is the highest in Sri Lanka, which is currently reducing the rate substantially. But the scenario is deteriorating in an accelerated pace in Pakistan.

Goal 8: Develop a global partnership for development
Target 17: In cooperation with pharmaceutical companies, provide access to affordable essential drugs in developed countries

Table. 8.16

	Indicator 46	
	Access to essential drugs % of population	
	1990	1997
Afghanistan	<50	<50
Bangladesh	50-80	50-80
Bhutan	50-80	50-80
India	50-80	50-80
Maldives	50-80	50-80
Nepal	<50	<50
Pakistan	50-80	50-80
Sri Lanka	80-95	80-95

Source: United Nations (2003), op cit.

Even then, at least one fifth of the population in most of the countries does not have access to affordable essential drugs. In Afghanistan and Nepal in situation is more acute, where less than half of the population has that access.

As already indicated, and cellular phone (also mainline phone) users has been increasing in the region day by day. At the same time personal computer and Internet users are also raising. This has particularly significant bearing for the region in the present globalised world when knowledge-based economy and digital divide has been expanding rapidly all around. However, Maldives has achieved the most notable progress in all these areas. However, Afghanistan is still

lagging behind due to all the understandable circumstances prevailing there.

Table 8.18

III. CHALLENGES AHEAD

The information on different targets and indicators suggest that many of the MDGs, particularly Goals 1, 2, 6 and 7 are not achievable for the countries of South Asia within the given timeline. However, although it is possible for some countries to achieve most of the Goals, for example, Sri Lanka, Maldives, and Bangladesh), countries like Bhutan and Afghanistan will surely miss most of the targets if the current trend of attainment continues. There is number of challenges to attain targets of MDGs.

3.1 *Growth-poverty-inequality triangle*

Notwithstanding quite satisfactory economic growth performance of countries in the region, ranging on average from 3.7 to 6.7 per cent during the last ten years, the rate of reduction in poverty has been dismal. Perhaps, non-participatory growth has become good instrument for increasing inequality and bad means of poverty reduction. It should not be denied that performance in poverty reduction is mainly an outcome of huge investment in social sector, particularly in health, education and nutrition, not merely high economic growth in most of the countries amidst bad governance, political unrest, natural disasters, etc. Even then, for example, about half of the population in Bangladesh and India are moderately and one-fourth is highly food insecure. Despite so-called "floods of development" in Bangladesh over the years, *monga* (near famine) is still a recurrent phenomenon in northern districts of Bangladesh in the middle of self-sufficiency in food production. Therefore growth is not enough for sustainable poverty reduction especially when equitable distribution of fruits of growth is a real challenge. The fruits of growth, however, have to be 'pro-poor' in contrast to 'rich-captured'. The rich too have a vested interest in poverty reduction. Not only will the overall market for the goods and services they produce expand in poverty-free South Asia, the region will also become a better place to live with lesser frequency of uprising of the extremist forces.

3.2 *Finding the right balance*

One of the major challenges for realising MDGs for countries of South Asia lies in finding the right balance between growth and welfare objectives, role of state and non-state actors in development interventions, and market and non-market measures in facing challenges of globalisation-led inequalities and asymmetries Data suggest that poverty is so pervasive in South Asia that hundreds of thousands of wish list may not exhaust the poverty reduction agenda. Therefore on the eve of the new millennium the countries of the region have to formulate their poverty reduction and development strategies comprising the right balance between pragmatism and ambition.

3.3 *Curbing corruption*

Corruption is all-pervasive in South Asian countries.[2] It is more in upstream than downstream, distorting fundamental decisions about development priorities, prices and projects often favouring those who offer the highest rent-seeking potential. The gains from corruption are, of course, smuggled out to safe heavens abroad, and corrupt people are promoted. However, despite having high demand for corruption-free society from the end of millions of ordinary people and their organisations, international agencies and donors, corruption has been steadily increasing, which demonstrate lack of strong political will of the ruling parties or governments against it.[3] Corruption has been eating up fruits of development, making anti-poverty strides harder.

3.4 *Implementing poverty reduction strategies*

Most of the countries of South Asia introduced PRSPs incorporating most of the targets of MDGs, but the real challenge lies in implementation of the strategies. It is increasingly perceived that

successful implementation of any nationally owned strategies need wide participation and continuous monitoring of ordinary people and civil society at micro, meso and macro levels. For this there should be proper and adequate institutional framework, which is currently absent in South Asian countries.

3.5 *Transparency and accountability*

Accountability and transparency of government bodies and elected functionaries have been generally weak and ineffective in South Asian countries. This is particularly true for the countries with weak democratic traditions, absence of political loyalty and illegitimate favours. The office of ombudsman does not exist in most of the countries in the region notwithstanding pressure from human right groups and donors. Internal and external audits are present in all countries but degree of their effectiveness is generally low due to absence of good governance. However, some local government institutions are demonstrating high level of transparency and accountability in budgeting and development processes in some countries (*e.g.*, Sirajganj Project in Bangladesh, gender budgeting and report card in India), but these are very few ones amid enormous worst practices, and central governments are not learning lessons from these successful innovative initiatives. Lack of transparency and accountability has been encouraging corruption and bad governance and ultimately weakening institutions and its capability of formulating and implementing development strategies and programmes towards attaining MDGs.[4]

3.6 *Public-private partnership*

Social safety nets and services to the poor and marginalised groups (*e.g.*, women, children, elderly, physically challenged, etc.) are traditionally provided in the South Asian countries. Although public sector has responsibilities in these areas, private sector (comprising both for-profit and not-for-profit organisations) too have important roles to play in partnership with the government given that they already have demonstrated effectiveness in alternative service delivery

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[2] For example, according to World Bank (2000), Bangladesh could add up to about 3 per cent to the annual GDP and reduce poverty by 25 per cent if it could reduce corruption to the countries with the highest reputation. See, for details, World Bank (ibid.), *Poverty Reduction and the World Bank Progress*. India and Pakistan too have similar evidences.

[3] For example, recently an independent anti-corruption commission has been established in Bangladesh mainly as an outcome of donor pressure, which is alleged to be ineffectively functioning.

[4] Donors, particularly World Bank and IMF have long been persistently pressing for making procurement in Bangladesh. In the recent PRSP implementation forum it came out almost as a prerequisite for getting subsequent installment of loan.

mechanism (*e.g.*, in Bangladesh IGVGD, a public-private partnership being implemented by BRAC, the largest national NGO, has been successfully contributing to sustainable poverty reduction). Although there is some successful public-NGO partnership based poverty alleviation and environment management programmes operating in South Asian countries, public-corporate partnership in these areas have not yet successfully emerged as such although giant corporate houses have been increasingly emerging in the region.

IV. CONCLUSION AND RECOMMENDATIONS

There are both challenges and opportunities in realising MDGs within the given timeline. Operationalising pro-poor growth[5] may have positive impact on poverty and inequality in the region. At the same time good governance has to be the topmost agenda of every government in the region so as to reduce substantial transaction cost of poverty alleviation programmes to the poor and marginalised groups. However, there have been substantial investments in the social sector, particularly in health, education and nutrition, in all the countries in the region, but the quality of investments and their returns has been generally low. Therefore quality-maximisation rather than investment-maximisation should be the main thrust of developmental policies of the governments.

Private for-profit sector has important role to play in disseminating HIV/AIDS related information to the age-related target groups, particularly the youth, and investing at micro level in fighting environmental threats like arsenic contamination in Bangladesh. Pharmaceutical companies of Bangladesh can endeavour investments to substantially enhance access to affordable essential drugs in countries like Nepal and Afghanistan where this problem is acute among South Asian nations.

People's monitoring of the MDGs in South Asia would be particularly instrumental in attaining MDGs in the region. Micro, meso and macro level citizens' committees should be formed in monitoring indicator-wise progress of the MDGs. But this requites

nation- and region-wide strong network of civil society organisations. However, few civil society organisations[6] has been supporting few local government institutions (LGIs) based MDG monitoring initiatives, where Union Parishad and municipality leaders and ordinary citizens together demonstrating interesting results in their localities. This type of initiative may be widely replicated all over Bangladesh and in South Asian countries. There may be may be an independent coordinating organisation in civic monitoring of MDGs in the region.

People's collective and creative initiatives, thanks to facilitation by many committed non-profit social entrepreneurs of the region, also need to be recognised. There are many best practices in the field of poverty reduction. The SAARC Summit also felt quite strongly that these be documented and adequate lessons be mainstreamed in the national and regional development policies. However, there is definitely a deficiency in information regarding these success stories. They need to be documented and a strong database should be created without delay.

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[5] Not in the World Bank's sense per se. Rather it means making developmental arrangements to arrest alarmingly increasing inequality, and direct higher proportionate positive and lower proportionate negative growths to the poor.

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[6] *e.g.*, Shamunnay in Bangladesh.

Rahman, A., Chowdhury, D.Y. and Alam, A.K.M.M. (2005), "A critique of Bangladesh's draft final PRSP", *The Journal of Social Studies*, 107:1-26.
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Liaquat A. Siddiqui
THE LEGAL STATUS OF HUMANITARIAN
INTERVENTION UNDER CURRENT INTERNATIONAL
LAW
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Abstract

Humanitarian intervention carried out with the authorisation of the Security Council is considered legal, but the status of such intervention carried out without the authorisation of the Security Council is not yet legally settled. Humanitarian intervention raises tension between the principles of state sovereignty and protection of human rights. Moral justifications *de lege ferenda* for humanitarian intervention even without the authorisation of the Security Council are persuasive. But in view of the settled principle of non-use of force, the legal basis for such intervention *de lege lata* is difficult to establish. To many scholars there is no customary rule of humanitarian intervention independent of the provisions of the UN Charter, even though they agree that there is an emerging felt need for the formulation of such rules. This article takes cognizance of the reality that if unanimous intervention is allowed under the current decentralised international legal system, even on humanitarian ground,

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it might be carried out to fulfil ulterior motives by powerful state or group of states. It, therefore, makes a case for the explicit development of an international legal framework for humanitarian intervention based on the principles of rule of law, sovereign equality and justice.

Introduction

Recent examples of humanitarian intervention have raised serious debate as to the legitimacy and necessity of such intervention as a tool of protecting human rights and humanitarian law. Intervention by a powerful state into the internal affairs of another state in order to protect the human rights of the citizens of the latter state is often criticised as an initiative taken to fulfil an ulterior motive of the former state. External policies of a state are regulated by so many factors that it is often difficult to justify intervention as purely humanitarian. Indeed, unilateral armed intervention under the current decentralized international legal system tend to undermine the notion of rule of law on the international plane, and may well lead to a situation of lawlessness, a condition inimical to the protection of human rights in the present world. Yet there are situations of mass killing or genocide within states where international community cannot just sit idle.

This article examines the relevance of humanitarian intervention in protecting human rights in the present world. As much of the debate revolves around the principles of state sovereignty and human rights, this article investigates into the conditions on which humanitarian intervention can be treated as legitimate under the current international legal system. State sovereignty provides legitimacy to a domestic authority to ensure human rights to its citizens under internal law. It protects citizens of a state from external despots such as Hitler and Mussolini. State sovereignty is, however, often used as legal protection by despots to continue their internal atrocities. In addition to examining the tension between the humanitarian intervention and state sovereignty, this article explores whether there is a customary rule of humanitarian intervention.

Under the current UN system, intervention carried out on humanitarian ground with the authorisation of the Security Council is deemed legal. But the question whether a humanitarian intervention carried out without the authorisation of the Security Council is legal remains disputed. The moral justification *de lege ferenda* for such intervention is not hard to find. But the legal basis, the rules *de lege lata*, is harder to ascertain. This article is an attempt to ascertain the legal status of the humanitarian intervention carried out without the authorisation of the Security Council. While the necessity of humanitarian intervention in extreme cases is acknowledged, the present paper puts forward the justifications for and conditions under which such intervention should be carried out by states. Since severe violations of human rights are not sporadic, it remains to be explored if reforms of the present UN system could be initiated in order to develop an international legal order for humanitarian intervention based on the principles of rule of law, sovereign equality, and justice.

Nature and Extent of Humanitarian Intervention

Although there is no commonly accepted definition of humanitarian intervention, in short, it refers to intervention by one state or group of states in the affairs of another state on humanitarian grounds. As the terms 'humanitarian' and 'intervention' are subject to various interpretations, humanitarian intervention may refer to wide range of measures. There are two views regarding the meaning of humanitarian intervention, one is restricted and the other is wider. The restricted view limits intervention to military operation and justifies it only in cases of grave and large-scale violations of fundamental human rights. The wider view includes wide range of activities as intervention, such as relief operation, peace keeping, military operation and even rehabilitation works. The wider meaning of the term tends to include not only the cases of actual violation of human rights but also the potential situations that might lead to grave violations of human rights and hence, emphasizes more on preventive measures than curative ones. This line of thinking raises issues that go to the heart of the problem. For example, where deep-rooted ethnic conflict is the cause of the grave violation of human rights, a mere military operation cannot resolve the matter for good, rehabilitation

and reconciliation measures might be necessary. It advocates military operation as a last resort arguing that in the domestic jurisdiction police forces are used to maintain law and order in normal situation while preserving military forces for emergency situations[8].

A number of authors have adopted a restricted view of humanitarian intervention. According to Robert Kolb, "It may be defined as the use of force in order to stop or oppose massive violations of the most fundamental rights in a third state".[9] A Report published by the Danish Institute of International Affairs, defines humanitarian intervention as "coercive action by states involving the use of armed force in another state without the consent of its government, with or without authorisation from the United Nations Security Council, for the purpose of preventing or putting to a halt gross and massive violations of human rights or international humanitarian law."[10] A NATO seminar held in November 1999 defined humanitarian intervention as "an armed intervention in another state, without the agreement of that state, to address (the threat of) a human disaster, in particular caused by grave and large-scale violation of fundamental human rights."[11] The key aspects of these definitions are related to sovereignty and human rights. According to these views, for an action to be humanitarian intervention, the following conditions must be met: Firstly, the sovereignty of a state being intervened must be breached; Secondly, the desire to address gross violations of human rights such as genocide, crime against humanity should be the driving force of intervention. Lauterpacht, a renowned authority on international law, states that "when a state renders itself guilty of cruelties against and persecution of its nationals in such a way as to

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[8] See, International Commission on Intervention and State Sovereignty (ICISS), Report on *The Responsibility to Protect*, published by the International Development Research Centre, Ottawa, Canada, December 2001,pp. 8-9, 22-23.

[9] Robert Kolb, "Note on Humanitarian Intervention, in Current Issues and Comments", *International Review of the Red Cross*, Vol. 85, No. 849, March 2003, pp.119-120.

[10] Danish Institute of International Affairs, *Report on Humanitarian Intervention: Legal and Political Aspects*, Copenhagen, 1999, p.11.

[11] Centre for Strategic Studies, "Humanitarian Intervention: Definitions and Criteria", *CSS Strategic Briefing Papers,* Vol. 3, Part 1, June 2000.

deny their fundamental human rights and to shock the conscience of mankind, intervention in the interest of humanity is legally permissible".[12] Thirdly, there must be a use of armed force. Therefore, according to this restrictive view, interventions of other types such as economic sanctions or political pressures are outside the scope of humanitarian intervention.[13] Lastly, the intervention must be carried out without the consent of the target state. Interventions carried out with the consent of the target state and to rescue the nationals of intervening state fall squarely within the right to self-defence.[14] However, General Assembly Resolution concerning the 'Declaration on the Inadmissibility of Intervention' takes a wider view. It defines "intervention' as 'armed intervention and all other forms of interference".[15]

Sovereignty, Human Rights and Humanitarian Intervention

Indeed, at the heart of the humanitarian intervention, there is a tension between sovereignty and human rights. Sovereignty, a well-established principle of international law, protects states from external aggression. Sovereignty, territorial integrity and political independence are the general principles of international law, recognized in the United Nations Charter, an important corollary of which is the principle of non-use of force. These principles are the founding stones of the present international legal order in which states, mighty or weak, coexist with one another in equal dignity. In the absence of these principles, we can only visualize a world of anarchy in which atrocities, genocides and large-scale violation of human rights will become order due to aggression on the weaker states by the mightiest ones. Sovereign equality is, therefore, a precondition for a state to protect its people's human rights. These principles indeed help domestic authorities to put in place necessary legal order supportive for the observance of human rights of their citizens. Sovereignty is, therefore, often referred to as an authority to make laws for the domestic jurisdiction. By making and implementing national laws and policies on human rights and providing for the punishment for their violations, states can play key role in preserving universal rules of human rights and humanitarian laws. The principle of sovereign equality can, therefore, be seen as a kind of human rights. The Charter of the UN emphasises respect for the principle of equal rights and self-determination of peoples[16]; the principle of the sovereign equality of all its Members[17] and the principle of non-interference in the domestic matters.[18]

The other important aspect of sovereignty is that states are free from external compulsion. In the legal sense, it means they are not subject to external laws. They can only be bound to what they have consented to. This consent theory, propagated by the positivist school of international law, has been reflected in the classical decision of the Permanent Court of International Justice in the famous Lotus Case. The Court observed:

> International law governs relations between independent states. The rules of law binding upon States therefore emanates from their own free will as expressed in conventions or by usages generally accepted as expressing principles of law and established in order to regulate the relations between these co-existing independent communities or with a view to the achievement of common aims. Restrictions upon the independence of States cannot therefore be presumed.'[19]

States are bound by the rules of international regimes because they have agreed to delegate some portion of their law-making power to an external authority, which is of their own creation, to make laws on

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[12] H. Lauterpacht (ed), *International Law- A Treatise,* Vol. I, Longman, London, Eighth Edition, 1955, p. 312.

[13] See, V.D. Verwey, "Humanitarian Intervention Under International Law", *Netherlands International Law Review,* Vol. 32, 1985. p. 358; P. Malanczuk, *Humanitarian Intervention and the Legitimacy of the Use of Force,* Amsterdam, Het Spinhuis, 1993, pp. 3-5; B. Parekh, "Rethinking Humanitarian Intervention", *International Political Science Review,* 1997, pp. 53-55.

[14] J. G. Starke, *Introduction to International Law*, New Delhi, Tenth Edition, 1994, p.105; Robert Kolb, *op. cit.,* p.120.

[15] See, General Assembly Resolution 2131 (XX), paragraph I.

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[16] See, Article 1 (2) of the UN Charter.

[17] See, Article 2 (1) of the UN Charter.

[18] See, Article 2(7) of the UN Charter.

[19] S.S. Lotus (France V. Turkey), 1927 The Permanent Court of International Justice, (Ser. A) No. 10, (Sept. 7), p. 18.

behalf of them, following certain commonly agreed procedural rules. As sovereign states are bound to follow what they have consented to, it is now widely held that states have a responsibility to observe human rights laws in their domestic jurisdiction due to their consent to a large number of human rights treaties.[20] Sovereignty, according to this view, is not only a right to be free from external compulsion but also an obligation or responsibility to ensure human rights in the domestic jurisdiction[21]. The Charter of the UN reminds us about this obligation as well. It says, "We the peoples of the United Nations determined …to reaffirm faith in fundamental human rights, in the dignity and worth of the human person..".[22] One of the important purposes of the Charter is "to achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion".[23]

States who do not consent expressly to human rights treaties are still bound to many fundamental principles of international human rights as these have been turned to customary rules of international law. Usages through repeated practice as legally binding (*opinio juris*) by vast majority of states over a long period of time become customary rules of international law.[24] Although the proponents of positivist school rule out such obligation in the absence of express consent, majority of states have internalised much of the contents of international human rights laws into their domestic laws. It means that states responsibility to observe human rights in domestic jurisdiction can hardly be denied.

It can be argued that the principles of sovereignty, territorial integrity, political independence and equality enshrined in the UN Charter might play an important role in protecting states from external aggressions and thus from grave violation of human rights by foreign despots. But, what can be done if domestic tyrants carry out large-scale violation of human rights or commit genocide in violation of their international responsibility to observe human rights in the domestic jurisdiction? In the context of recent grave violation of human rights and genocide carried out by domestic despots in places like Rwanda, Kosovo, and Bosnia, the UN Secretary General Kofi Annan has raised this dilemma in the following words:

> If humanitarian intervention is, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that offend every precept of our common humanity?[25]

It should be pointed out here that international politics is replete with instances in which interventions have been carried out in the pretext of humanitarian emergencies mostly to fulfil imperialist agenda. Many of these interventions resulted in the mass killings of innocent civilians especially children and women and also in the disruption of basic facilities. Thus the grave challenge is how to reconcile the two principles of sovereignty and human rights in a decentralised international legal system so that world citizens are protected from the atrocities of local and foreign tyrants.

The Principle of Non-Intervention

One of the important corollaries to Sovereignty, as pointed out earlier, is the principle of non-use of force or non-intervention. In the middle ages, use of force in the form of just war was allowed in certain specified cases such as punishing wrongdoers. Since the Peace of Westphalia 1648 the international legal order has begun to be characterised by the principles of sovereignty, equality, and peaceful settlement of inter-state conflicts. Although the two World Wars shattered the Westphalian model to a great extent, both the League and

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[20] The major treaties on human rights and humanitarian law include: 1966 International Covenant on Civil and Political Rights; 1966 International Covenant on Economic, Social and Cultural Rights; 1966 International Covenant on the Elimination of all Forms of Racial Discrimination;

[21] See, International Commission on Intervention and State Sovereignty (ICISS), *ibid.*, pp. 11-12.

[22] See, Preamble to the UN Charter.

[23] See, Article 1(3) of the UN Charter.

[24] See, J.G. Starke, *op. cit.,* pp.35-39.

[25] See, United Nations, "We the Peoples: The Role of the United Nations in the 21st Century", *Millennium Report of the Secretary-General,* 2000, p. 48.

United Nations institutionalised the principles of non-use of force and the peaceful resolution of inter-state conflicts as the building blocks of the post war international legal order.[26] The League system did not prohibit war or use of force altogether, but it did set up a procedure designed to restrict it to tolerable levels. The Covenant of the League declared that members should submit disputes likely to lead to a rupture to arbitration or judicial settlement or inquiry by the Council of the League. In no circumstances were members to resort to war until three months after the arbitral award or judicial decision or report by the Council.[27] Article 2(4) of the UN Charter, however, more emphatically prohibits the use of force in the following words:

> ..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 in consistent with the purposes of the United Nations.[28]

While the Covenant of the League emphasises the 'resort to war', the UN Charter emphasises the 'use of force', the latter covers situations in which violence is employed but do not fulfil the technical requirements of the state of war. However, the prohibition on the use of force in the Charter is not absolute. There are two exceptions recognised in the Charter, one is self-defence under Article 51 and the other one is 'collective security' under Chapter VII of the Charter. Article 51 states as follows:

> Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the UN, until the Security Council has taken measures necessary to maintain international peace and security.[29]

Article 24 (1) gives the Security Council the primary responsibility for the maintenance of international peace and security.[30] Once the Security Council determines that a threat to peace, breach of the peace or act of aggression has occurred and that measures not involving the use of force would be or have proved to be inadequate to maintain or restore international peace and security, it can under article 42 'take such action by air, sea or land forces as may be necessary to maintain or restore international peace and security.[31] The relevance of these two exceptions to the principle of non-use of force or non-intervention will be examined in the course of later discussion.

The Legal Status of the Principle of Non-Intervention

The principle of non-use of force as enunciated in Article 2(4) of the Charter has been reiterated in various international legal documents including the judgments of International Court of Justice (ICJ) showing that it is a customary rule of international law and as such binding on all states irrespective of their membership in the UN. The 1965 General Assembly Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty states that:

> no state has the right to intervene, directly or indirectly, for any reason whatsoever, in the internal or external affairs of any other state. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the state or against its political, economic and cultural elements, are condemned.[32]

The 1970 General Assembly Declaration on Principles of International Laws Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations,[33] was adopted unanimously, and thus considered as an authoritative

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[26] Malcolm N. Shaw, *International Law*, Cambridge, Fourth Edition, 1997, pp. 779-780.
[27] See, Articles 10-16, The Covenant of the League of Nations, 1919 in Malcolm D. Evans, Blackstone's International Law Documents, 3rd Edition, 1991, pp.3-5.
[28] See, Article 2(4) in the Charter of the United Nations, 1945 in Malcolm D. Evans, Blackstone's International Law Documents, 3rd Edition, 1991, p.9.
[23] See, Article 51, UN Charter, *ibid*, p. 16.

[30] See, Article 24(1), UN Charter, *ibid*, p.12.
[31] See, Article 24, UN Charter, *ibid*, p.15.
[32] G.A. Resolution. 2131 (XX), December 21, 1965, General Assembly Official records, 20th Session, Supp. 14, p. 11.
[33] General .Assembly Resolution 2625 (XXV), October 24, 1970. G.A. Official Records, 25th Session, Supp., No. 28, 971, pp.121-124.

interpretation of Article 2 (4) of the UN Charter. It states that 'every state has a duty to refrain …from the threat or use of force'. It also declares that 'such a threat or use of force constitutes a violation of international law and the Charter of the United Nations'. A war of aggression, according to the Declaration, "constitutes a crime against the peace for which there is responsibility under international law".[34]

The Declaration recognises that "every state has an inalienable right to choose its political, economic, social and cultural systems, without interference in any form by another state". The Declaration has a wider implication as it declares that "No state may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind."[35]

The 1987 General Assembly Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations declares that "the Principle of refraining from the threat or use of force in international relations is universal in character and is binding regardless of each state's political, economic, social or cultural system or relation of alliance". It also declares, "No consideration of whatever nature may be invoked to warrant resorting to the threat or use of force in violation of the Charter of the U.N."[36]

A number of the Decisions of the ICJ upheld the principle of non-intervention as enumerated in Article 2(4) of the Charter. In the Corfu Channel Case the UK intervened into the strait with warships to sweep the mines, after two British ships were sunk by mines laid out by Albania in its Corfu Channel, alleging a right to intervention to secure evidence for a claim for damages.[37] The Court rejected the alleged right of intervention as the manifestation of a policy of force, such as

has, in the past, given rise to most serious abuse and such as cannot, whatever be the present defect in international organisation, find a place in international law. The Court also rejected the right of forcible self-help stating that "Between independent states respect for territorial integrity is an essential foundation of international relations".[38]

In the Nicaragua Case, the Court stated that the principle of non-use of force might be regarded as a principle of customary international law.[39] The two important implications of this decision of the Court are: firstly, that the principle of non-use of force has been declared as a customary international law and as such independent of the functioning of the collective security system under Chapter VII of the UN Charter. Secondly, while Article 2(4) of the Charter binds only member states, as a customary international law the principle of non-use of force is applicable to even non-member states of the Charter. Another significant aspect of the Decision is that the Court seems to have implicitly rejected the doctrine that intervention is justified on human grounds. Considering the claim by the US that its intervention in Nicaragua was justified to protect human rights, the Court stated that "in any event, while the United States might form its own appraisal of the situation as to respect for human rights in Nicaragua, the use of force could not be the appropriate method to monitor or ensure such respect".[40]

In its Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons,[41] the ICJ acknowledged the prohibition on the use of force in Article 2(4) but held that this prohibition should be considered in the light of other relevant provisions of the Charter such as provisions on the right of individual or collective self-defence under Article 51, and the collective security system under Article 42.[42] In the Court's view current rule of treaty law or customary international law does not ban the use of nuclear weapons as such. Thus, in the light of Article 2(4) the threat or use of nuclear weapons is prohibited against

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[34] See, *ibid*.

[35] See, *ibid*.

[36] See, Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations, A/RES/42/22, 73rd plenary meeting, 18 November 1987

[37] See, Albania V. U.K., ICJ Reports, 1949, p. 4.

[38] *Ibid*, p.35.

[39] Case concerning Military and Paramilitary Activities in and against Nicaragua, ICJ Reports 1986, para. 188.

[40] *Ibid*, paras, 267-268.

[41] Advisory Opinion, 1997, 35 *International Law Monthly*, 809, and 1343.

[42] *Ibid*, paras 39-48.

the territorial integrity or political independence or any state except for self-defence or collective security.

Humanitarian Intervention as an Exception to the Principle of Non-use of Force

Of the two exceptions to the principle of non-use of force under Article 2(4), the exception of 'collective security' enshrined in Chapter VII of the UN Charter authorises the Security Council to use force if necessary to maintain international peace and security. This is the legal basis for the Security Council to intervene on humanitarian grounds if the situations amount to 'threat to the peace', a 'breach of the peace' or 'act of aggression' under Article 39 of the Charter.

The UN Charter is based on a collective security system and confers upon the Security Council primary responsibility for the maintenance of international peace and security. In carrying out this responsibility it acts on behalf of the Member States.[43] Decisions taken by the Security Council are binding upon the Member States.[44] Decision by the Security Council requires an affirmative vote of nine of its fifteen Members including the 'concurring votes' of the permanent Members-- Untied States, the United Kingdom, France, China and Russia[45].

Under Article 39 of the Charter the Security Council shall determine the existence of a 'threat to the peace', a 'breach of the peace', or 'act of aggression' and make recommendations or decide upon the measures necessary to maintain or restore international peace and security. In order to prevent aggravation of the situations, before making such recommendations or taking such decisions, the Security Council may call upon the parties concerned to comply with necessary provisional measures without prejudice to the rights, claims, or position of the parties.[46] It may decide upon non-military measures such as economic sanctions or the severance of diplomatic relations and call upon the Members of the United Nations to apply such measures.[47] If such measures are inadequate or have proved to be inadequate may the Security Council take action involving the use of military force.[48] For this purpose, all Members of the United Nations are to make available to the Security Council, on its call and in accordance with special agreement, armed forces, assistance, and facilities, including rights of passage.[49] In the absence of such agreement states are not obliged to make troops available to the Security Council on request. To assist and advise the Security Council on such enforcement action a Military Staff Committee is established consisting of the Chiefs of Staff of the Permanent Members.[50] However, conclusion of such agreements is not a precondition for undertaking military action by the Security Council. The ICJ observed, "It cannot be said that the Charter has left the Security Council impotent in the face of an emergency situation when agreements under Article 43 have not been concluded"[51]. The calls of the Security Council may be addressed to the Members generally, or to particular member or to regional organisations and in the absence of agreements to that effect may be carried out by Members or regional organisations on voluntary basis. Article 53 provides, "The Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority. But no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council".[52] Once the Member states or regional organisations voluntarily decide to carry out the Security Council's authorisation in the absence of agreements, they have an obligation to follow the objectives and limits of actions outlined in the authorisation.

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[43] Article 24(1) of the UN Charter, 1945.
[44] Article 25, *ibid*.
[45] Article 27(3), *ibid*.
[46] Article 40, *ibid*.

[47] Article 41, *ibid*.
[48] Article 42, *ibid*.
[49] Article 43, *ibid*.
[50] Article 47, *ibid*.
[51] Certain Expenses of the UN, ICJ Reports, Advisory Opinion, 1962, p.167.
[52] Article 53, UN Charter.

Humanitarian Intervention Under the Authorisation of the Security Council

As observed earlier, under Article 39 of the Charter, the Security Council has the authority to decide on the existence of threat to the peace and measures to be taken under Articles 41 and 42, to maintain or restore international peace and security. While Article 41 provides for 'measures not involving the use of armed force', Article 42 provides for measures involving the use of armed forces.

The Security Council in exercising its power under Article 39 has gradually widened the meaning and scope of the notion of threat to the peace. Although the notion of 'threat to the peace' is inherently vague, the framers of the Charter left it to the discretion of the Security Council to determine the existence of a threat to the peace. The traditional view of the 'threat to the peace' presupposes the objective existence of a threat of aggression by one state against another or the existence of real threat of armed conflict in some other form.[53] Over the last several decades, however, the Security Council has consistently regarded humanitarian emergencies within a state as a threat to international peace. The practice of the Security Council since 1945 shows that humanitarian intervention is legally justified if carried out under its authorisation and without the violation of human rights and humanitarian laws.

In this section a number of leading cases will be examined to demonstrate how the Security Council has increasingly been occupied with internal conflicts, treated as threats to international peace.

In 1965, while the white regime in Southern Rhodesia proclaimed independence in violation of the majority black people's right to self-determination, the Security Council, for the first time, in Resolution 217 (1965) determined the continuance of such situation as a threat to international peace and called upon states to break off economic relations with the regime. In Resolution 221 (1966), the Security Council made the similar determination with a specific call upon the UK to prevent, by use of force if necessary, the arrival of vessels at the port of Beira carrying oil destined for Southern Rhodesia. In 1977 the Security Council in Resolution 418 determined South Africa's policy of apartheid and aggressions against neighbouring states as 'fraught with danger to international peace and security and decided upon an arms embargo against the country.

During the Cold War period, the Security Council in Resolution 688 (1991) determined the Iraqi repression against the Kurds as threat to international peace and security. The Council insisted that Iraq allow immediate access by international humanitarian organisations, following which a number of states undertook humanitarian relief operations in Northern Iraq backed by force. In Resolution 757 (1992) the Security Council determined the civil war and serious violation of international humanitarian law in Bosnia as a threat to international peace and security and under Chapter VII imposed economic sanctions against Serbia and Montenegro. In a subsequent Resolution 770 (1992), the Council called upon states to take nationally or through regional agencies all measures necessary to facilitate the delivery of humanitarian assistance to Bosnia-Herzegovina. By Resolution 827 (1993) the Council under Chapter VII established an International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia.

In Resolution 733 (1992), the Council determined the internal civil war and anarchy in Somalia as threat to international peace and security and imposed under Chapter VII, an arms embargo against Somalia. In a subsequent Resolution 794 (1992), the Council determined that the humanitarian disaster in Somalia, brought about by civil war and widespread violations of international humanitarian law, in itself constituted a threat to international peace. The Council, under Chapter VII authorised the member states and the Secretary-General to use all necessary means to establish as soon as possible a secure environment for humanitarian relief operations in Somalia in accordance with the US offer to carry out the operation. In Resolution 940 (1994) the Council determined the systematic violations of human rights due to refusal of the military regime to step down from the power in Haiti. The regime came to power by a military coup in September 1991 that forced the democratically elected President

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[53] Danish Institute of International Affairs, *ibid.*, p.62.

Aristide into exile. The Council under Chapter VII authorised member states to form a multinational force under unified command and control in order to replace the military leadership with the legitimately elected President. The US was to carry out the operation. However, the regime yielded to the threats and Aristide was reinstated.

Following a civil war between ethnic groups in Rwanda in the Spring of 1994, the Council, in Resolution 918 (1994), condemned the violence and massacre against civilians and expressed its alarm at the systematic, widespread and flagrant violations of international humanitarian law and human rights. It determined that the situation in Rwanda constituted a threat to international peace and security in the region and under Chapter VII, imposed an arms embargo on Rwanda. As the situation continued to deteriorate, in a subsequent Resolution 929 (1994), acting under Chapter VII, the Council authorised the member states to carry out a military operation, "aimed at contributing in an impartial way, to the security and protection of displace person, refugees and civilians at risk in Rwanda" stressing the strictly humanitarian character of the operation. French subsequently carried out the military operation. By Resolution 955 (1994) the Council established an international Criminal Tribunal for Rwanda to prosecute persons responsible for genocide, crimes against humanity and other serious violation of international humanitarian law. Thus in Rwanda case, the Security Council confirms that violation of human rights and humanitarian law in itself constitutes a threat to international peace and security.

Humanitarian Intervention without the Authorisation of

the Security Council

Indian invasion of the then East Pakistan (now Bangladesh) on 5 December 1971 is often cited as an example of intervention on humanitarian ground without the authorisation of the Security Council. The West Pakistani army (now Pakistan) carried out genocide and other atrocities on a vast scale in which large number of civilians were killed and approximately ten million people fled to India as refugees. In a Security Council debate, India initially claimed that the motive behind the invasion was to rescue the people of East Bengal from what they were suffering. To many international law scholars, India's later change of rationale for invasion 'to self-defence' made the case of humanitarian intervention weaker, showing that humanitarian intervention was an insufficient justification for the use of force. Security council was paralysed. The intervention was criticised by General Assembly and among others by the US and China.

On 25 December 1978, Vietnamese forces invaded Kampuchea and ousted Khmer Rouge regime. The regime was responsible for killing almost two million people from 1975-79. They installed a puppet government with the help of rebel United Front members. Although the Vietnamese invoked humanitarian consideration and self-defence as justifications for invasion, it is widely held that regional hegemonic motives largely influenced the invasion. A Security Council resolution, demanding Vietnamese withdrawal, was blocked by a Soviet veto. The US and most other Western states criticised the invasion as unjustified. In 1979 Tanzania invaded Uganda ousting Idi Amin from power during whose reign almost three lakhs people were killed. However, Tanzania never invoked humanitarian grounds for the invasion. Rather Tanzanian President Nyerere declared that Uganda army's aggression against Tanzania and annexation of part of Tanzania were the causes of invasion.

0n 23 August 1990 the Economic Community of West African States (ECOWAS) intervened in Liberia to put an end to mass killing and disorder in the country caused by a civil war between National Patriotic Front of Liberia (NPFL) and Samuel Doe regime. Although there was no prior authorisation for the intervention by the Security Council, it later commended ECOWAS by a Resolution 788 (1992) determining that "the situation in Liberia constitutes a threat to international peace and security". It is to be noted that Article 53 of the Charter categorically points out that "no enforcement action shall be taken under regional arrangements …without the authorisation of the Security Council". In view of the widespread oppression and killing of Kurdish people by the Iraqi regime in the aftermath of the Gulf War in February 1991, the Security Council by a Resolution 668 (1991)

demanded "that Iraq, as a contribution to removing the threat to international peace and security in the region, immediately ends this repression" and appealed "to all Member States and to all humanitarian organizations to contribute to these humanitarian relief efforts". As China or former Soviet Union were reluctant to pass a resolution permitting the use of force, the Resolution, as a compromise, did not expressly authorise any military intervention. On 16 April 1991 about eight thousand US, UK and French troops intervened to establish 'safe havens' for the Kurds in Northern Iraq. Although the G-7 endorsed the invasion, in the UN General Assembly some states criticised the action as violation to Iraq's sovereignty.

When the situation of mass-killing and other atrocities, caused against the Albanians by the Serbian police under the dictation of President Slobodan Milosevic continued to deteriorate in Kosovo, the Security Council in Resolution 1160 (1998) determined that such situation constituted a threat to international peace and imposed a weapons embargo. Although in a later Resolution 1199 (1998) the situation was regarded as falling under Chapter VII, no authorisation for military intervention was given in anticipation of veto from China and Russia. In March 1999, after negotiation with Belgrade became unsuccessful, NATO initiated a military operation which continued up to June 1999 when Belgrade agreed to sign the agreement with the G-8 on the autonomy of Kosovo. In Resolution 1244 (1999) the Security Council authorised under Chapter VII an international security presence in Kosovo.

Humanitarian Intervention without the Authorisation of the Security Council : Has it developed as a Rule of Customary International Law?

It is evident form the above discussion that the Security Council, while determining the existence of 'threat to the peace' under Article 39 of the Charter has, since the beginning of 1990's, consistently taken into account violations of human rights and humanitarian laws within the domestic jurisdiction of Member states. These instances reveal that humanitarian intervention is legally justified if carried out under the authorisation of the Security Council while acting under Chapter VII of the Charter. But a question may arise, whether intervention on humanitarian grounds, without the authorisation of the Security Council, could be justified as legal. Before addressing this issue, the rules regarding the formation of international custom will be examined in the following paragraphs.

According to Article 38 (1) of the Statue of International Court of Justice, 1945[54], there are two essential elements of custom: 'general practice' and 'accepted as law'. While the former refers to state practice, the later refers to *opinio juris* i.e., a psychological or subjective belief that such practice or behaviour is law. There is no rigid time duration for a usage or practice to turn to an international custom. It rather depends on the circumstances of each case and nature of the usage in question. For example, customs relating to sovereignty over air space and the continental shelf have emerged in a short duration of time. In *Asylum* case,[55] the International Court of Justice, declared that a customary rule must be 'in accordance with a constant and uniform usage practised by the states in question'[56]. In the *Anglo-Norwegian Fisheries* case,[57] the ICJ rejected an UK argument against the Norwegian method of measuring the breadth of the territorial sea by pointing out that the actual practice of states did not justify the creation of any such custom. In other words, there had been insufficient uniformity of behaviour. In the *North Sea Continental Shelf* cases,[58] the ICJ remarked that the state practice had to be 'both extensive and virtually uniform in the sense of the provision invoked'[59]. However, in the *Nicaragua V. United States* case,[60] the

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[54] See, Statute of the International Court of Justice, 1945 in Malcolm D. Evans, Blackstone's International Law Documents, 3rd Edition, Blackstone Press Ltd, 1996, pp. 26-36.

[55] *ICJ Reports*, 1950, p. 266.

[56] *Ibid*, pp. 276-277.

[57] *ICJ Reports*, 1951, pp 116, 131, 138.

[58] *ICJ Reports*, 1969, p. 3.

[59] *Ibid*, p.43.

Court emphasised that it was not necessary that the practice in question had to be 'in absolutely rigorous conformity' with the purported customary rule. The Court observes:

> In order to deduce the existence of customary rules, the Court deems it sufficient that the conduct of states should, in general, be consistent with such rules, and that instances of state conduct inconsistent with a given rule should generally have been treated as breaches of that rule, not as indications of the recognition of a new rule.[61]

The Court also shed light on how a new customary rule is formed:

> for a new customary rule to be formed, not only must the acts concerned 'amount to a settled practice', but they must be accompanied by the *opinio juris sive necessitates.* Either the States taking such action or other States in a position to react to it, must have behaved so that their conduct is evidence of a belief that this practice is rendered obligatory by the existence of a rule of law requiring it. The need for such a belief, i.e. the existence of a subjective element, is implicit in the very notion of the *opinio juris sive necessitatis.*[62]

New rule of customary law is often created by deviation from the original rule of customary law. As the Court in Nicaragua case observed: "reliance by a State on a novel right or an unprecedented exception to the principle might, if shared in principle by other States, tend towards a modification of customary international law".[63]

In determining the existence of a customary rule it is always vital to consider the nature of the alleged rule and the opposition it arouses. Although universality is not required, a concurrence of states having sufficient interest in the matter is vital. It is observed:

> A regulation regarding the breadth of the territorial sea is unlikely to be treated as law if the great maritime nations do not agree to or acquiesce in it, no matter how many land-locked states demand it. Other countries may propose ideas and institute pressure, but without the concurrence of those most interested, it cannot amount to a rule of customary law.[64].

Malcolm N. Shaw suggests that state practice covers any act, claim or statements by a state from which views about customary law may be inferred.[65] In this context, the notion of 'legality' should be distinguished from the notion of 'legitimacy'. Legality tells us whether a particular act is legal or illegal in accordance with the provisions of particular law. But legitimacy refers to, whether an act is morally or ethically commendable even though illegal.

In view of the above discussion, it follows that a new rule of customary international law in favour of humanitarian intervention carried out without the authorisation of the Security Council has not yet come into existence for the following reasons:

First, the rule of non-use of force is so well settled that some scholars regard it not only a customary rule but also *jus cogens,* a peremptory norm which is accepted and recognised by the international community of states as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character[66]. Therefore, a few instances of intervention on humanitarian grounds without the authorisation of the Security Council cannot justify derogation from the well-settled principle of non-use of force.

Second, although a few states have carried out armed intervention without the authorisation of the Security Council on humanitarian ground, vast majority of states especially from developing countries have not yet accepted it as justifiable. The number of criticisms against these instances by member states and international organisations demonstrate that the international community is not yet ready to accept it as rule of customary international law.

Third, in the few cases examined earlier the intervening states either did not officially use or showed reluctance to use humanitarian grounds as justification for the intervention mostly due to their hesitation about the legal status of the humanitarian intervention carried out with out the authorisation of the Security Council. Critics argue that political, economic or strategic considerations mostly

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[60] *ICJ Reports*, 1986, p.14.

[61] *Ibid*, p. 98.

[62] *Ibid*, para, 207.

[63] *ICJ Reports*, 1986, pp. 14, 109.

[64] Malcolm N. Shaw, *International Law*, Fourth Edition, Cambridge University Press,1997, p.63.

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[65] *Ibid*, p. 66.

[66] See, Article 53, Vienna Convention on the Law of Treaties, 1969.

motivate states to carry out interventions without the authorisation of the Security Council in the pretext of humanitarian crisis.[67]

Many scholars have argued that interventions carried out in the then Eest Pakistan (now Bangladesh), Uganda, Liberia and Kosovo were not strictly legal as there were no authorisations from the Security Council even though morally legitimate in view of the large-scale atrocities, genocide, and violation of human rights that took place in those incidents.[68] Indeed, since the beginning of 1990s, there has been a trend towards invoking a customary right to humanitarian intervention. The legal counsellor to the British Foreign Affairs noted, ''the intervention in northern Ira 'Provide Comfort' was in fact, not specifically mandated by the United Nations, but the states taking action in northern Iraq did so in exercise of the customary international law principle of humanitarian intervention".[69] However, these claims are not free from objections and criticisms by other states and organisations.

Interventions in Liberia, Bosnia, and Kosovo even though carried out without the prior authorisation of the Council, received wider support from the international community. UN Secretary General Kofi Annan, referring to the Kosovo crisis observed, "We should leave no one in doubt that for the 'mass murderers', the 'ethnic cleansers', those guilty of gross and shocking violations of human rights, impunity is not acceptable. The United Nations will never be their refuge, its Charter never the source of comfort or justification."[70] Referring to Rwanda, he notes, "If, in those dark days leading up to the genocide, a coalition of states had been prepared to act in defence of the Tutsi population, but did not receive prompt Council authorisation, should

such a coalition have stood aside and allowed the horror to unfold?"[71] Interventions carried out without the prior authorisations in Liberia, Kosovo received subsequent endorsement of the Security Council. These arguments inform us that a trend is emerging towards the recognition of customary rule of humanitarian intervention in extreme cases where the Security Council fails to perform its primary responsibility to maintain international peace and security. Kritsiotis comments, "The NATO intervention …witnessed an important and undeniable invocation of the so-called right of humanitarian intervention in state practice, and it now remains for the wider normative implications of this development to be calculated".[72] However, some scholars have made cautious comments. Hilpold observes,

> The unilateral recourse to force to end a grave humanitarian crisis can hardly be disapproved of morally, but there is no point in attributing to it legal status, revitalizing an instrument of the nineteenth century that would –in a completely different legal setting –do more harm than good and thus threaten those traits of a still imperfect system that it seem valid to maintain in the ultimate interest of the individual.[73]

Lessons Learned from the Cases of Interventions

Intervention itself does not very often bring solution to humanitarian crisis or atrocities. Following lessons can be learned from the interventions carried out on humanitarian grounds:

First: Humanitarian crisis or atrocities are not unpredictable paroxysm of ethnic rivalries. These situations do not pop up suddenly. Racial hatred, propagated by extremist leaders, over years and decades lead to civil strife or war. Genocides and massacres are often the results of long pursued policies of discrimination and exploitation by the ruling dictators against the ethnic minorities. In Rwanda, the 1994 atrocities were planned by Hutu extremists in the government and

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[67]See, F.K. Abiew, *The Evaluation of the Doctrine and Practice of Humanitarian Intervention*, Hague, Kluwer Law International, 1999, p.131; A.C. Arend and R.J. Beck, *International Law and the Use of Force,* London, Routledge, 1993, p.122.

[68] T.M Franck and N.S. Rodley, "After Bangladesh: The Law of Humanitarian Intervention by Military Force", *American Journal of International Law*, 67, 1973, p.300.

[69] See, "United Kingdom Materials on International Law", *British Yearbook of International Law* , 63, 1992, p. 827.

[70] UN Press Release SG/SM/6949 of 7 April 1999.

[71] UN Press Release SG/SM/7136, 20 September 1999.

[72] See, D. Kritsiotis, NATO's Armed Force Against Yoguslavia, *International Comparative Law Quarterly*, 2000, p.358.

[73] Peter Hilpold, "Humanitarian Intervention: Is There a Need for a Legal Reappraisal?", *European Journal of International Law*, Vol. 12, No. 3, 2001, p.467.

evidently did what Hitler and Stalin had done earlier in the century i.e., embitter the general public against the Tutsi, by blaming them for some or all of their country's woes. It is agreed that extremist actually did pave the way for the violence by (a) whipping up anti-Tutsi frenzy through inflammatory radio broadcasts and street corner agit-prop; (b) distributing hit list of Tutsi and (c) providing machetes and other small arms to their supporters.[74]

Second: While non-intervention or delayed intervention can aggravate situation, timely intervention, even if modest, could save valuable lives with minimal costs. International community did not respond as quickly as it should have to the crises in Rwanda, Somalia, Bosnia, and Kosovo. As the Liberia case shows, regional organisations can play an important role in mitigating ethnic problems that endanger international peace and security on an urgent basis. However, regional political conflicts can be a significant barrier in using regional forces. Bosnia, Iraq and Kosovo cases show that economic and arms sanctions are not often effective in resolving dispute. In some situations they might even accelerate the pace of ethnic cleansing. International community has to work out quicker measures to meet urgent situations.

Third: Although an early warning information system can be useful, studies have shown that information itself cannot attract necessary intervention from the international community. James F. Miskel and Richard J. Nortorn carried out a study on humanitarian early warning system.[75] It demonstrated that substantial and credible early warning information was available before and during Rwanda, Zaire and Burundi crises. These humanitarian crises, however, illustrate two paradoxes inherent in the concept of early warning system. States that might be benefited from early warning system do not have adequate economic or military capabilities to prevent the

crises from worsening. For example, Angola, Tanzania, the Central African Republic, and Uganda all were aware of the deteriorating condition in Rwanda but their economic and social capabilities were too fragile to lead a timely intervention in Rwanda. The second paradox is that states that have economic and military capabilities to act upon early information might not be interested to intervene if they have no important security or economic interests at stake. Bosnia (early 1990s), Rwanda (1994), Zaire (1996) and Kosovo (1998)-- all illustrate this paradox.[76]

In September 1999, the UN Secretary General Kofi Annan stated that UN tarried because of the reluctance of member states to place their forces in harm's way where no perceived vital interests are at stake, a concern over costs and doubts in the wake of Somalia that intervention could succeed. In most cases, powerful states or group of states are only interested to carry out military intervention if it matches with their political, economic and strategic interests. Military operations entail loss of solders and weapons that involve huge costs and even loss of popular support for the government of intervening state. Humanitarian interventions, even if necessary, do not always get priority in the political agenda of powerful states.

Fourth: Deep rooted causes of ethnic violence or hatred are not often addressed. Military operations can compel the rival parties to maintain status quo for a period of time but they often fail to remedy deep rooted social, political and cultural policies and practices that encourage exploitation, racial discrimination. As a result violence and conflicts continue to exist long after the intervention, such as in Rwanda, Zaire (now Congo) and Burundi. A complete or long lasting solution to the crises might require decapitation of extremist leadership in order to bring them to justice. This is a complex and time-consuming task. Although in some recent instances international tribunals have been established for war criminals, the examples of failure to bring criminals to justice are many. UN forces failed to decapitate the most troublesome Somali clan in the early 1990s. Cambodia's Pol Pot died a free man in 1998 almost twenty years after his involvement in some of this century's most heinous atrocities. In

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[74] James F. Miskel, "Some Lessons About Humanitarian Intervention", *The Journal of Humanitarian Assistance*, November 2005, pp. 1, 3. Available at www. Jha.ac/articles/

[69] See, James F. Miskel and Richard J. Norton, "Humanitarian Early Warning System", *Global Governance*, July-September 1998, Vol. 4, No. 3, pp. 317-329.

[76] James F. Miskel, 2005, *op. cit.,* pp. 2-3.

Bosnia, alleged war criminals have eluded capture for years and have continued to foment tension.[77] Rehabilitation and reconciliation measures are often overlooked.

Conclusion

Although use of force is generally prohibited in international law, the Security council in exercise of its power to maintain international peace and security can carry out military intervention under Article 42 of the UN Charter on humanitarian grounds. Humanitarian intervention carried out with the authorisation of the Security Council is legally valid. But as the present study reveals, interventions carried out on humanitarian grounds without the authorisation of the Security Council are illegal under the current international law. Security Council often fails to perform its primary responsibility to maintain international peace and security due to veto system that paralyses its decision making process. As a result the Council has repeatedly failed to take immediate action in cases in which it should have. Indeed international legal order lacks an effective central authority and a central police force to intervene as of necessity. Perhaps the framers of the UN Charter did not envisage a situation that would require intervention into internal matters of states for the safeguard of fundamental human rights, on which it reaffirms its faith.

Recent interventions in Iraq and Afghanistan remind us that intervention without the authorisation of the Security Council could jeopardise the rule of law on the international plane. Unauthorised humanitarian intervention, if legitimised, could be used to materialise imperialist agenda and left particularly small, weaker states vulnerable to the aggression of powerful states. Regional security organisations can play significant role in mitigating ethnic problems that lead to humanitarian emergencies.

Establishment of international criminal tribunals for the trial of war criminals or criminals that propagate civil wars within their jurisdictions are significant developments in international law. As the scanty of cases do not demonstrate an existence of customary international validating humanitarian intervention without the prior

authorisation of the Security Council, new treaty laws could be adopted with necessary monitoring, and information-gathering mechanisms.

The cases of Rwanda, Somalia, Kosovo demonstrate that one stroke surgical operation does not provide lasting solution to the humanitarian problems. Rehabilitation and reconciliation measures play an important role in resolving deep-rooted ethnic problems. These are complex and time-consuming efforts which require a comprehensive treatment to the humanitarian crises that erupt now and than in the international community.

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[77] *Ibid*, p. 4.

S.Y. Surendra Kumar
PEACE PROCESS IN SRI LANKA AND *JATHIKA HELA URUMAYA: A SPOILSPORT?*

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Abstract

The emergence of Janata Hela Urumaya (JHU) has vast impact on the peace process in Sri Lanka. In the given situation, the JHU has two options vis-à-vis the current peace process, either it can play the role of a spoilsport as done in the past by the Sinhala hard-liners and their outfits, or it can contribute positively towards a successful conflict-resolution. However, as of now, all the activities of the JHU and its vehement opposition to the peace process indicates that it is all set to disrupt the peace process at any cost. Unfortunately, if this happens, then Sri Lanka will be back to the square one, where the innocent people would continue to suffer as before. Till then, the peace process will continue to be a difficult and challenging task, with a political situation fluid and uncertain in times to follow.

The declared intention of JHU is to "cleanse" parliament and establish a Dharmarajya or a State based on the teachings of

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Buddha, in which minority parties of Tamils and Muslims will not dictate terms to the government.[79]

Why enlist yourself among politicians when you [JHU] can guide them from a higher level from existing position as their advisors... it was a shame that the JHU had misused Buddhist flags, the Great Bodhi tree and Buddhist terminologies in their political campaigns to achieve political power – Ven. Elle Gunawansa Thera[80]

The successive peace talks in Sri Lanka have raised hopes among the people of this nation for a peaceful resolution of the decades old ethnic strife, which has already taken around 65,000 lives – half were civilians with majority aged between 20-35 years, and left thousands permanently disabled. An estimated 130,000 families were internally displaced and about 750,000 fled the country and sought asylum abroad.[81] In this regard, the cease-fire agreement (CFA) reached between the UNP-led government by Prime Minister Ranil Wickremasinghe and the leader of Liberation Tigers of Tamil Eelam (LTTE) Velupillai Prabhakaran[82], which came into effect from February 24th, 2002 set the ball rolling for a no-war situation. However, this euphoria did not last long or lead to any meaningful conflict resolution in the face of frequent political uncertainty,

[79] Nirupama Subramanian, "The Bhikhu Effect", *The Hindu*, April 11th, 2004.

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[80] "Ven. Elle Gunawansa Thera lashes out at JHU", *Daily News*, November 8th, 2004

[81] Approximately 66,000 are living at various camps in India, 40,000 live outside camps in India and more than 200,000 live in the Western countries. National Peace Council, *The Cost of War: Challenges and Priorities for the Future* (Colombo: Marga Institute, 2003).

[82] For profile of Velupillai Prabhakaran see M.R. Narayanswamy, *Tigers of Lanka: From Boys to Guerilla* (New Delhi: Manohar, 2001) and R. Rajagopalan, "Velupillai Prabhakaran: LTTE" in *Most Wanted: Profiles of Terror*. (New Delhi: Lotus Collection and Roli books, 2002), pp.95-119

particularly due to the unilateral pullout by the LTTE on April 21st, 2003[83] from the peace talks and the political standoff between President Chandrika Kumaratunga and Prime Minister Wickremesinghe. The taking over of the three crucial ministries Defence, Interior and Mass Communication by President Kumartunga in November 2003, this has exacerbated the prevailing political uncertainty. In response to this, the Norwegian facilitator on November 7th, 2003 formally put the peace talks on hold until political clarity was reached between the two offices.

However, this uncertainty, a common feature in Sri Lankan politics, seems to have cleared to a certain extent with the parliamentary elections held in April 2004. The election led to the forming of a minority government led by the United People's Freedom Alliance (UPFA), consisting of Sri Lanka Freedom Party (SLFP), *Janatha Vimukthi Peramuna* (People's Liberation Front or the JVP) along with the support of nine Members of Parliament (MPs) from the *Jathika Hela Urumaya* (National Heritage Party or the JHU), a party consisting of Buddhist monks that won seven seats and gained two seats due to proportional representation.[84] Subsequently, the Government of Sri Lanka (GOSL) requested the Norwegian facilitator to resume the peace talks between the government and the LTTE, and since then the Norwegian Government begun the process for resuming peace talks. This came as a great relief for the displaced people, economy and for the international community as Sri Lanka has a track record of a sudden break down of peace process and resumption of civil war.

On the other hand, the rise of the Sinhala-Buddhist chauvinistic parties like the JVP and the JHU during the 2004 parliamentary elections has a vast impact on the prospects of the ongoing peace process. Since they are opposed to any kind of compromise over the nation's [Sinhala] interest regarding the peaceful resolution of the conflict. Both parties are supporting the UPFA Government led by Mahinda Rajapakse and would be deciding the fate of peace talks with rebels. In this regard one is surprised over the sudden rise of JHU just few months before the elections. Thus, before identifying the reasons for the rise of JHU, it is important to address the motivating factors for the monks to enter politics.

Monks in Politics: Guiding factors

Generally, there is no consensus among the members of Buddhist *Sangha*[85] over the role of monks in politics, as some argue for a limited participation while others for a more direct role. Ironically, amongst the various sects of monks itself there is a division of opinion, which further complicates the issue. Despite these differences, some of the guiding factors for the monks to involve themselves in politics are – they urge to re-create the lost social order, were Buddhism and *Sangha's* played a vital role in the nation-building process and which is seen to have ensured prosperity in the past. They also perceive that they have a role to play in the polity, particularly as a guiding force in governance. Monks see themselves as the true representatives of people and not the politicians, as the latter are more corrupt, opportunistic and so on. Monks claim that there authority to advice and influence the government comes from the peoples who follow their religion [Buddhism]. Also, when the political forces fail to perform their duties, monks consider it their duty to influence the

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[83] LTTE withdrew from the talks on the grounds that the resettlement of displaced persons would not be possible until the Sri Lanka Army relocated from the High Security Zones (HSZ) in Jaffna. But many suspect that the real reason was its demand to recognize the Sea Tigers as *de facto* naval unit.

[84] The proportional representation in Sri Lanka favors small parties, as any party that obtains minimum of 5 per cent of votes in a given electoral district qualify for seats at the expense of major parties.

[85] The Buddhist *Sangha* mainly consists of all 'Bhikkhus' (monks), 'Bhikkhunis' (nuns), 'Upaskas' (male lay devotees) and 'Upasikas' (female lay devotees). It also forms the third component of the triple Gems of Buddha's teaching, that is "I take refuge in the Buddha, I take refuge in the *Dhamma* (Doctrine), I take refuge in the *Sangha* ". See Lloyd Ridgeon (ed.), *Major World Religions: From Their Origin to the Present* (London: Routledge, 2003), p.66 and Urmila Phadnis, *Religion and Politics in Sri Lanka* (New Delhi: Manohar, 1976).

government decision.[86] Thus, many monks based on these arguments justify their intervention in politics to defend and promote their national interests of common people.

On the other hand, from time to time many monks, politicians, Buddhist scholars and media have criticized the monk's participation in politics. They considered that the decline of the essence of Buddhism is largely due to the result of monks willing sub-ordination to politicians.[87] Against this backdrop, even the JHU received mixed reactions from the members of *Sangha* on the issue of contesting elections. The Mahanayake of *Malwatta and Asgiriya* chapter declining to meet monks contesting on JHU tickets and stated that, "they were dismayed and warned that it posed the danger of a grave calamity to the Buddha *Sasana*".[88] Since then many senior monks have criticized the JHU for receiving funds from rich industrialists for contesting elections who with a vested interest are supporting the entry of JHU into electoral politics. Ironically, the Mahanayaka of *Amarapura Nikaya* gave blessings to JHU as they intended to "clean the mess in parliament". Despite these division and varied reactions to the monk's involvement in politics the JHU with its nine MPs is likely to play pivotal role once the peace talks resume.

However, the division of opinion could not prevented monks from entering into politics. Since independence the monks have been sharing platform with politicians, blessing them and participating in

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activities sponsored either by a political party or the government. In addition to this, there are instances where monks have been involved in intensifying ethnic conflict and in instigating violence against the minority ethnic Tamil community.[89] However, when it came to contesting elections, it was the *Sinhala Urumaya* that contested the 2000 elections and won just one seat and that too by a lay Buddhist. In fact for the first time a leading figure [monk] Baddegama Samita from People's Alliance (PA) party was elected as a MP during the December 2001 elections.[90] Significantly the monk's entry in to Parliament went up with the successful entry of the JHU. As a result of all this, the JHU has emerged as a major player in deciding the destiny of the island's protracted conflict.

Emergence of the JHU

The JHU is the offshoot of two Sinhala-Buddhist organisations – *Sinhala Urumaya* and *Jathika Sangha Sabhava* (JSS), which worked for the welfare of Buddhism in the Island. The founders and supporters of JHU cite socio-political, economical, cultural and social reasons for its emergence. According to them it was: (a) due to "non-representation of Sinhala-Buddhist in Sri Lanka", as the successive governments failed to safeguard the interest of majority community [Sinhala-Buddhist]. (b) the spread of Christian evangelism by foreign missionaries and the activities of their foreign funded organization leading to the conversion of poor Buddhist which the JHU considers anti-Buddhist. (c) in reaction to the emergence of radical groups and political parties representing Tamils and Muslims. They justified by stating that there is no political party representing the interest of Sinhala Buddhist population, which make up to 76 per cent of the

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[86] For further details on monk's involvement in politics, see, Emile Sahliyeh, (ed.), *Religious Resurgence and Politics in the Contemporary World* (New York: State University of New York Press, 1990), Martin E. Marty and R. Scott Appleby, (eds.), *Fundamentalism Comprehended,* Vol-5, (Chicago: the University of Chicago Press, 1995), pp.135-152 and Urmila Phadnis, *Religion and Politics in Sri Lanka* (New Delhi: Manohar, 1976).

[87] See, for details, H.L. Seneviratne, *The Works of Kings: The New Buddhism in Sri Lanka* (Chicago: The University of Chicago Press, 1999) and Stanley. J. Tambiah, *Buddhism Betrayed? Religion, Politics and Violence in Sri Lanka* (Chicago: The University of Chicago Press, 1992).

[88] *POTS*, Sri Lanka Series, Vol-X, No-16, April 15th, 2004. Also see "Ven. Elle Gunawansa Thera Lashes out at JHU", *Daily News*, November 8th ,2004

[89] For further details, see, K. M. de Silva, "Religion and the State", in *idem* (ed.), *Sri Lanka: Problem of Governance* (New Delhi: Konark, 1993). Mark Juergensmeyer, "What the Bhikkhu Said: Reflections on the Rise of Militant Religious Nationalism", *Religion*, Vol. 20, 1990, p.58.

[90] R.A.L.H. Gunawardana, "Roots of the Ethnic Conflict in Sri Lanka" *Journal of Buddhist Ethics,* Vol.10, 2003. See www.jbe.gold.ac.uk/bath-conf.html

country's population.[91] They also believe that the present Sinhala political parties are involved in corruption, misconduct and do not deserve to represent Sinhala population. (d) the UNP Government appeasing the LTTE by recognizing the latter as sole representative of the Tamils and assisting it in gaining international acceptance.[92] At the same time the UNP's disapproval of Sinhala-Buddhist interests while negotiating with the rebels was also cited as a reason for their entry in politics. But the triggering factor was the demise of a leading figure, Ven. Gangodawila Soma Thera on March 23rd, 2004. His funeral ceremony served as an inspiration to monks for future mass mobilization. As Soma Thera's had pointed out the diminution and erosion of Buddhist values, the problems of the family, alcoholism, drugs and violence against women were popular with the lay people.[93] Thus, in order to fulfill to the dreams of Soma Thera, the JHU was formed.

Against this backdrop, for the first time in the history of Island, more than 280 monks contested the parliamentary elections in April 2004, with even the members of *Sangha* participating directly in politics. Although the outcome of the elections was not as encouraging for the JHU as it was expected, but interestingly it secured 6 per cent of the total votes polled. They fared well in the western provinces, winning seven seats, mainly one from Kalutara District and Central province–one from Kandy District, two from Gampaha District and three from Colombo District.[94] The JHU also made inroads into the UNP vote base, as the people were unhappy with the performance of the UNP government, on the economic front. Hence, the overall

support base of JHU comes from the urban and sub-urban areas, however they have no hold in rural areas. Ironically, the JHU could not make inroads in the areas considered to be Sinhala-Buddhist heartland, like the Anuradhapura and Galle. It is here that the Buddhist population is higher than the national average, where the JHU secured less than 5 per cent of votes, Kalutara District remains an exception in the region.[95] Thus this undermines the JHU claim of representing the Sinhala-Buddhist interests.

JHU's position on vital issues

For	Against
➤ Unitary State ➤ Equality of Status to all Ethnic Groups ➤ Freedom of Religion ➤ Separation of northeastern provinces ➤ Mixed Economy ➤ Declare Buddhism as State religion ➤ FDI without harming national interest ➤ Reforms for good governance	➤ Traditional Tamil homeland ➤ [So-called]Unethical conversions ➤ Foreign interference ➤ Interference in local politics by unaccountable foreign funded NGOs ➤ Constitutional changes if they do not safeguard national interest ➤ LTTE's present proposal of Interim Self-Governing Authority (ISGA) for the northeast ➤ Post-Tsuanmi Operational Management Structure (P-TOMS)

JHU and the Peace Process: The Irritants

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[91] Although, according to the Department of Census and Statistics (Census 2001), Sinhalese consists of 81.89 per cent of the total population, for details see www.statistics.gov.lk. Also see Nirupama Subramanian, "Arithmetic and Alliance", *The Hindu*, March 27th 2004.

[92] Shantha K Hennayake, "Why did JHU emerge", *The Island,* 19th May 2004. Also see Shantha K Hennayake "Sri Lankan Politics, 2004 Election and JHU"**,** May 18th, 2004, http://members.tripod.com/amarasara/jhu/jhuarticles/jhua-skh-20040518.htm

[93] Kumar Rupesinghe, "Elections are over, Back to Reality" *The Island*, April 11th , 2004.

[94] *The Island*, 5th April 2004, pp.2-3

[95] Tisaranve Gunasekara, "Electoral Revelations", *The Island,*. April 11th , 2004, p-10.

History has been repeating in Sri Lanka, specifically in terms of the failure of successive peace processes due to the intense pressure from the Buddhist monks along with other chauvinistic Sinhala-Buddhist organizations. From time to time the Buddhist monks have opposed the 1956 Bandaranaike-Chelvanayagam Pact, Senanayake-Chelvanayagam Pact of 1965, the All Party Conference in 1984, Thimpu Talks in 1985, the Indo-Lanka Agreement of 1987, Premadasa and the LTTE negotiations in 1989-1990.[96] This impediment continued all through the 1995 peace process, the monks kept up pressure on the GOSL to not to reach a compromise settlement with the Tamils at the cost of Sinhala-Buddhist interest. In 1997, one of the leading monks decided to withdraw from the Supreme Advisory Council in protest against President Kumartunga's plans for devolution of powers to resolve the ethnic conflict.[97] Thus, to a certain extent most of the monks not only became stumbling blocks to successive peace processes, but also emerged as key players in future peace talks. It is noteworthy that before the launch of 2002 peace process, the top officials of the Norwegian Government had to first consult the prominent personalities of the *Sangha* and then proceeded with facilitating talks between the GOSL and the LTTE.

Thus, the emergence of JHU holds the key to the success of current peace process. Since its formation, they have been expressing dissatisfaction against the way in which the peace process has been initiated by the GOSL. Their activism has been a hindrance to the government's efforts towards building consensus for resolving the bloody war. The vital issues on which JHU has been opposing the successive peace talks are as follows:

Current Peace Process: Anti- Sinhala Buddhist

The JHU is dissatisfied over the UPFA Government pursuing the peace process in a similar fashion, so-called pro-LTTE and anti-Sinhala, as the previous UNP Government. They have been opposing the 2002 peace process on various grounds. Firstly, they considered it to be anti-patriotic which they justified by stating that even the people were against the 2002 peace process, as a result of which the UNP Government was voted out during the 2004 parliamentary elections. However this is a weak argument, as majority of people were happy with the peace process but ousted the UNP government over its failure to deliver goods on the economic front in a short span.[98] Secondly, the main concern of the JHU has been that the peace talks have always been confined only to GOSL and the LTTE, and it did not involve other parties and groups from the Sinhala and the minority communities. They believe that these close door peace talks will only lead to the division of the country and perpetuate the conflict. This argument does not hold good, as the GOSL from time to time have being consulting the various Sinhala parties and the *Sangha*. Instead, the GOSL have not been able to build consensus on issues to be discussed during the peace talks, mainly due to the maximalist position adopted by the Sinhala-Buddhist outfits. Against this background, the JHU has been opposing the peace process by frequently organizing processions, demonstrations and by carrying out signature campaigns in southern parts of the island. The Inter-University Bhikkhu Federation launched a signature campaign on a post card addressed to the President Kumaratunga, requesting her not to resume talks with the LTTE on the basis of ISGA proposal.[99] So far

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[96] For more details, see, S. D. Muni, *Pangs of Proximity: India and Sri Lankan Ethnic Crisis* (New Delhi: Sage Publication, 1993) and J. N. Dixit, *Assignment Colombo* (New Delhi: Konark Publishers, 1998).

[97] Partha S. Ghosh, *Ethnicity versus Nationalism: The Devolution Discourse in Sri Lanka* (New Delhi: Sage publications, 2003) and Kenneth D Bush, *The Intra-Group Dimensions of Ethnic Conflict in Sri Lanka* (New York: Plagrave Macmillan, 2003).

[98] Larry Marshall, "Sri Lanka: From Cease-fire to Conflict Transformation" *Global Change, Peace and Security*, Vol.16, No.1, February 2004.

[99] The LTTE's proposal ISGA was submitted to the GOSL in October 2003, which seeks complete autonomy – political and economic life of the northeast people. It also calls for separate institutions to be set up for the north-east in respect of police, judiciary, elections, taxation, local and foreign grants and loans and trade among others. If this policy implemented the LTTE will have absolute majority in the northeast. Jehan Perera, "Recent Trends in Sri Lanka's Peace Process and Regional implications", This paper was presented at Seminar on *Collective Security in Asia,* organized by the Friedrich Ebert Stiftung and held in New Delhi, December 14-17th 2004.

they have collected one million signatures to oppose the talks as against the targets of 10 million.[100] Despite the JHU opposition, the GOSL has expressed its readiness to resume talks with the rebels on the basis of ISGA but along with the 'contours of a final settlement', which the LTTE has been outrightly rejecting and sticking to their maximalist [Eelam] option.[101]

Apart from this, the JHU even boycotted the National Advisory Committee on Peace and Reconciliation (NACPR) created by the President Kumaratunga for the "openness and inclusiveness" of the peace process. The JHU justified its non-participation on the ground that "the LTTE is a terrorist outfit and a legitimate government should not talk with a terrorist group unconditionally… if the government talks, it is immoral".[102] Ironically, in this case the JHU is asking for too much and ignores the hard fact that the LTTE is a key player, without which there cannot be any peaceful resolutions of the conflict. Giving less importance to the JHU opposition the GOSL in near future will start negotiating with the rebels as they cannot brush aside the pressure from the international community and people of the island for early resumption of talks.

Norway: The White Tiger

The JHU are against any foreign interference in the affairs of the island and thereby opposes the Norwegian facilitation and calls it as *Sudi Koti* (White Tiger). However, on the other hand the JHU have been seeking India's involvement for resolving the conflict, which the latter has refused to do so. The JHU accuses Norwegian facilitation excessively sympathetic and partial towards the LTTE activities. This argument is true to a certain extent, as was evident during the cease-fire. The LTTE, on various instances, violated the norms of cease-fire and the Sri Lanka Monitoring Mission (SLMM) failed to take any action due to the fear of break down of peace process.[103] The JHU also claim that the Norwegians have now arrogated to themselves role of mediator from mere facilitators. In order to register its opposition, the JHU along with few JVP supporters have been carrying out demonstrations in front of the Norway Embassy in Colombo and launched many rallies to warn the people of what the monks see as a farce in the name of peace. At the same time, it is exposing the division of opinion among the members of alliance, by questioning the credentials of the JVP and the SLFP, who were earlier a staunch critic of the Norwegian facilitators and now appeared to be going along with them.[104] The JHU even passed a motion in the Parliament demanding the end of the Norwegian facilitation on the ground that its presence threatens the island.[105] However, the JHU fails to consider the wishes of Sinhala and Tamil people who support the role of Norwegian. Reports indicate that around 63 per cent of the people support Norwegian involvement and among them around 90.2 per cent of Tamils believe that SLMM is necessary.[106] Thus, supporters of the

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[100] *The Island*, November 26th , 2004, p.1

[101] This was reiterated by the Defence Minister Ratnasoro Wickremanayake. *The Island*, December 7th 2004, p.1

[102] The JHU's main conditions for its participation at NACPR meeting are: the LTTE should give up the idea of Eelam; should except the territorial integrity and legal framework of the island; hand over all weapons in their possession; and stop atrocities against Sinhala, Tamil and Muslim community. *The Island*, 2nd October 2004, p.1. However, Maha Nayake Theras including the Malwatta and Asigiriya and other religious dignitaries participated the NACPR meetings ignoring JHU request not to participate. Even the UNP and TNA boycotted the NACPR meeting. See *Island*, October 10th, 2004, p.11.

[103] Even from time to time most prominent monks like The Mahanayake Thera of the Malwatte Chapter expressed his dissatisfaction to GOSL and international community over the SLMM failure to halt the LTTE's continued atrocities on civilians and recruitment of Child soldiers. *The Island*, November 27th , 2004, p.1.

[104] Ironically, despite JVP being part of the government, its activist have been consistently organizing rallies and demonstration opposing the role of Norway in the peace process, but JHU wants more rigorous action from JVP to block this so-called anti-Sinhala peace talks. *The Daily Mirror*, 12 May 2004. And also see, *The Island*, November 26th , 2004, p.1.

[105] *The Island*, 23rd October 2004. See "Parliament debates JHU motion against Norwegian facilitation", October 23rd, 2004, www.tamilnet.com/art.html

[106] *Peace Confidence Index* (Colombo: Social Indicators, Center of Policy Alternative, 2003), p.26. As quoted in Larry Marshall, "Sri Lanka: From

JHU's views are marginal, but once the talks being under the facilitation of Norway, the protest by monks is likely to intensify posing a hurdle for the GOSL.

LTTE as Sole Representatives?

Successive governments have recognized the LTTE as sole representatives of the Tamil people and have held negotiation with them. The Sri Lankan Foreign Affairs Minister Lakshman Kadirgamar at various national and international forums reiterated so.[107] The GOSL has been not unoften opposed by the JHU on the ground that the legitimization of the LTTE as true representatives of the Tamil community is unfair. They contend that views and freedom of other Tamil political parties and various civil rights groups stands curtailed by the LTTE. In this regard, the JHU argument is to an extent valid but not realistic as it fails to recognize fact that the GOSL has a limitation but to recognize the LTTE as representative of the Tamils. It is to be noted that from time to time all those who challenged or questioned the LTTE's eminence have been brutally assassinated. Even the elected 22 MPs of the Tamil National Alliance (TNA) are nothing but a mouthpiece of the LTTE, the latter has always set the demand of its been recognized as representatives of Tamils as a pre-condition for resuming talks. Apart from this one cannot ignore the fact that the LTTE has been able to sustain its struggle and win the support of Tamils against the Sinhala extremist policies. However, for the first time LTTE's claim as the sole representative of Tamils was seriously challenged [politically and militarily] from within its ranks by the most efficient military commander in eastern province, V. Muralitharan (Col. Karuna), in April 2004.[108] Col. Karuna went one

step ahead and launched a new political party, *Tamileela Makkal Viduthalai Pulikal* in October 2004 and even made his maiden "Hero's Day Speech" on November 27th, 2004.[109] However, one cannot rule out the possibility of role played by the GOSL in the emergence of Col Karuna. This sudden development has strengthened the JHU argument of not recognizing the LTTE as sole representatives of the Tamils. Thus, what strategies the JHU adopts once the peace talks resumes is yet to be seen.

No to Eelam: Maximalist Position

Most of the Sinhala-Buddhist outfits and political parties are dead opposed to *Eelam* (Tamil homeland). The JHU among them considers itself to be the only force which could stop the creation of *Eelam* as it will lead to a division of island. As an alternative to *Eelam* they advocate administrative structures and powers to be decentralized within a unitary State. They also reject federalism on the ground that it is totally inappropriate here, as Sri Lanka has always been a unitary State.[110] This argument by JHU is as usual opposed by the LTTE, which is not going to compromise on anything short of *Eelam*. This was very much evident in the LTTE's ISGA proposal, which is nothing but a stepping stone for achieving *Eelam*. As its proposal makes no provision for integration with the nation prevailing structures. In this context, as expected, the GOSL has adopted a cautious and a restrained position. This stalemate is a boost for the JHU's opposition to the peace process.

No to P-TOMS: Maximalist Position

The *Tsunami* [Harbour waves] struck the island on 26th December 2004, this tragedy devastated the coastal island. As a result more than

Cease-fire to Conflict Transformation" *Global Change, Peace and Security*, Vol.16, No.1, February 2004, p.67.

[107] "Interview: Lakshman Kadirgama", *Frontline,* May 8-21, 2004, pp.36-38.

[108] Col. Karuna stated the main reason for his revolt against the LTTE hegemony was the discrimination adopted by the LTTE leadership against the Tamils of eastern province. Since the revolt breakout, the LTTE has lost 72 cadre, the highest number since it signed the cease-fire in 2002. It is estimated that around 150 cadre from both sides of the

LTTE divide have been killed. V.S.Sambandan, "The Stalemate in Sri Lanka", *Frontline,* December 31st, 2004, pp.52-54

[109] In the Hero's day speech, Col. Karuna attacked the leadership of Prabakaran as "unfit to lead the Tamils… and responsible for large scale killing Tamils. Subsequently, questioned the LTTE as sole representative of Tamils. Subsequently, describe India as a better suited to resolve the conflict and it was latter responsibility to help the Tamils. V.S.Sambandan, "Another Heroes' Day speech", *Frontline,* December 31st , 2004, p.54.

[110] Tamil Net, April 11, 2004. See www.tamilnet.com

2 Lakhs families were displaced, 30,000 deaths, 4,000 missing and 645 camps been set up.[111] In this regard, the international community emphasized for a joint administrative mechanism as a condition for releasing aid to provide humanitarian relief in the region. As a result after must heated negotiations [six months and 13 drafts] on 24th June 2005 the GOSL and the LTTE signed a Memorandum of Understanding (MOU) for establishing P-TOMS, also known as Tsunami Relief council (TRC).[112] At the same time, MOU envisages to involve LTTE for ensuring equal distribution of resources, project allocation for the reconstruction of the island. Thus, this MOU has vast impact on the peace process, as it legitimizes the LTTE's role in administrative affairs.

It is this aspect on which the JHU along with JVP and other Sinhala-hardliners has been staunch opponents to this mechanism which they considered would ultimately divide the nation. They also argue that the joint mechanism "as selling out a part of the land to the terrorist [LTTE]"and a stepping stone to achieve *Eelam*.[113] The mechanism would lead to formalization and expansion of the LTTE's role in those areas which it did not have any control earlier. Subsequently, it would grant the LTTE the status of sole representative of Tamils, which the Sinhala hardliners have been opposing outrightly. In process, the JHU along with the other Sinhala outfits have launched protest campaigning like fast unto death, rallies and demonstrations to ensure the joint mechanism be dropped. Ironically, the JHU fails to accept the fact that this mechanism creates an conducive atmosphere for peace talks and this will also allow the concern authorities to begin the task of repairing the extensive destruction caused by *Tsunami.* Thus, the JHU opposition to mechanism indicates its majoritarian mind-set and chauvinistic approach towards the resolution of conflict. Thus, as long as this stand

is not compromised by JHU, the   P-TOMS will face further hurdles in the near future.

The Way Ahead

One of the biggest challenge before the Mahinda Rajapakse Government is dealing with JHU's opposition, which has extended issue based support to the former from outside. There are chances of JHU withdrawing the support if the government does not take JHU demands seriously, thereby leading to further political instability. The JHU has been consistently opposing the GOSL on the issue of devolution of powers, Norwegian role, treating LTTE as sole representatives of Tamils and so on. This difference of opinion is a hindrance to the government's initiative for building consensus over peace talks. At the same time, with the amendment of JHU constitution paving the way for laymen to join the party has not only resulted in an increase in strength but has also intensified its political activities in fulfilling its chauvinistic agenda. Moreover, it has the support from the JVP in its struggle to safeguard the interest of Sinhala-Buddhist people. As a result, the JHU, along with other outfits with similar ideologies, has begun to agitate, organize large-scale rallies and demonstrations against the peace process and government's policy towards it.

For the JHU too there is a bumpy road ahead for its progress. There has been difference of opinion among the Sinhala-Buddhist lay members and monks over the proposed amendment to its constitution, which minimizes the role of lay members and provides veto powers to monks.[114] If this difference is not resolved amicably, then there are chances of lay members launching a new party or joining *Sinhala Urumaya*, which will be a big blow to JHU's political prospects.[115]

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[111] The Data is as of 6th January 2005. For details see, V. S. Sambandan, "Life on the Shores of Death", *Frontline*, 28th January 2005 p.29.

[112] The aim of P-TOMS is to ensure equitable distribution of international assistance for reconstruction of devastated coastline. Subsequently, the MOU is for one year and may be extended for an additional period by consensus.

[113] V.S. Sambandan, "The Politics of Reconstruction", *Frontline*, July 1st 2005, p.46.

[114] The three prominent persons Prof. Buddadasa Hewavitarana, Prof. Chandra Wikremage and another member were involved in preparing amendments to the JHU Constitution. *Sunday Observer*, November 14th , 2004.

[115] *Asian Tribune*, "Sri Lanka's Jathika Hela Urumaya – Storm in the Alms Bowl", November 10th, 2004. Also see P.G.G Pulihapitiya, "Sinhala Urumaya and Buddhist Monks in Politics" www.lankaweb.com/news/items04/030304-5html

Moreover, since the emergence of JHU, many prominent members of Buddhist *Sangha* have been criticizing the activities and questioning the credentials of JHU as a crusader of Sinhala-Buddhist. This difference of opinion within and outside JHU will affect its support base and political survival in times to come.

Thus, the emergence of JHU has vast impact on the peace process, which the GOSL cannot ignore. In the given situation, the JHU has two options vis-à-vis the current peace process, either it can play the role of a spoilsport as done in the past by the Sinhala hard-liners and their outfits, or it can contribute positively towards a successful conflict-resolution. However, as of now all the activities of the JHU and its vehement opposition to the peace process indicates that it is all set to disrupt the peace process at any cost. Unfortunately, if this happens, then Sri Lanka will be back to the square one, where the innocent people would continue to suffer as before. Till then, the peace process will continue to be a difficult and challenging task, with a political situation fluid and uncertain in times to follow.

M. Aynul Islam

THE POLITICAL INSTITUTIONS AND GOVERNANCE IN BANGLADESH: CHANGES AND CONTINUITY
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Abstract

Political institutions are important to explain the performance of governance. Explicating the quality and structure of political institutions helps us understanding the role of governance in modern democracies. This study attempts to explore the relationship between political institutions and governance. The core assumption of the paper is that political institutions matter for the quality of governance in a country. It suggests that there are explicit and implicit linkages among the variables of political institutions and governance mechanisms. The paper takes Bangladesh-widely known as a governance deficit country- a case to understand these linkages focusing on two historical phases - 1971-1990 and the post-1990 era. In the context of Bangladesh, political governance characteristics demonstrate three critical aspects (i) the absence of balance of power between the three formal political institutions – executive, legislature and judiciary; (ii) inability of the state institutions and agencies to deliver services to the people; and (iii) absence of democracy model in different political institutions. The general pattern of changes is conceptualized in relation to speed and reflexivity in the processes and functions of political institutions and their agentive roles. In the post-1990 period, the programmes for political liberalization are undertaken at a faster pace and the scope of the activity has been broadened to a considerable degree. But the governance attributes of Bangladesh in the political domain remain almost unchanged although new institutions are created. Political centre of gravity towards making more accountable and effective governance institutions is missing humanly in the country's political framework. The paper further argues that the post-1990 era has been marked by changes more in the context of national policies, organizations and ideological orientation than to improve the quality and structure of political institutions.

1. Introduction

Political scientists, development thinkers, and social activists in Bangladesh are increasingly turning their attention to the problems of governance. Most notably, the donors community took the leading role in popularizing this phenomenon, albeit with their poor conceptions and narrow focus. Ironically, the issue of governance remained a neglected area in the 1970s and 1980s when the paramount focus was mainly placed on planning, control and the policy environment. It was widely held that the distorted policy environment was the fundamental cause behind the economic backwardness of Bangladesh. 'Good' policies were deemed necessary to ensure effective functioning of national organizations. In reality, this has not resulted in generating desired socio-economic development in the country and consequently, it has led to the dysfunctional institutions and poor governance as the major bottlenecks for national development. The political institutions as a major component of overall institutional arrangements of a country are closely linked with governance. In fact, political

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institutions shape governance around the world by setting limits on the ability of the state to exercise its power arbitrarily. As *the World Governance Survey* recognizes, political institutions have the most critical link in the governance chain.[116] It has significant economic and non-economic consequences. In this paper, I would attempt to explain political institutional arrangements and governance mechanisms in Bangladesh in two historical phases - 1971-1990 and the post-1990 era - with a view to understand their nature and linkages in the changed context of domestic and global politics. This is also an attempt to distinguish the issues of changes and continuity in governance as well as institutional context between the two historical phases. Analysis is based on identifying two broad dimensions involving diverse issues in the national context that include (i) identifying the political institutional arrangements as governance is systematically related to the characteristics of these institutions with specific focus on the rules, norms and policies that balance cooperation and competition between and among the governing organizations and agencies, and (ii) understanding the governance mechanisms at various levels of national activities. These dimensions are interdependent in their relations with each other although there is a degree of autonomy at individual level. In fact, the institutional factors in their formal and informal manifestations have guided the directions and outcomes of the governance mechanisms in Bangladesh. The core assumption of this paper is that political institutions matter for the quality of governance in a country.

2. Conceptualizing Governance: The Context of Bangladesh

2.1 Concept of Governance

The term 'governance' originally derives from the Greek word *kybernetes,* which means navigation or helmsmanship. Like many concepts, governance is a term with multiple interpretations. Due to its multi-dimensional and multi-layered nature, the concept of governance faces the problem of clarity both in its conceptualization and operationalisation. Nevertheless, the literature on governance

continues to proliferate and the concept itself occupies a central position in the development debate particularly in the South. Broadly, governance comprises the traditions, institutions and processes that determine how power is exercised, how citizens are given voice, and how decisions are made on issues of public concern[117]; the ways or types of using power in the process of management of national economic/social resources[118]; and regimes of laws, rules, judicial decisions, and administrative practices that constrain, prescribe, and enable the provision of publicly supported goods and services.[119] The *World Bank Report of 1994* stated, "Good governance is epitomized by predictable, open, and enlightened policymaking; a bureaucracy imbued with a professional ethos; an executive arm of government accountable for its actions; and a strong civil society participating in public affairs; and all behaving under the rule of law."[120] According to the political scientist R.A.W. Rhodes, the concept of governance is currently used in contemporary social sciences with at least six different meanings: the minimal State, corporate governance, new public management, good governance, socio-cybernetic systems and self-organised networks.[121]

Governance can also be understood in different levels, modes and patterns. Peters (1996), Pierre (1999), S. J. Kim (2000), Considine and Lewis (1999) all have identified different multiple and shifting models of governance, like; market model, participatory model, flexible model, corporatist model, pro-growth model, welfare model, state-

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[116] See, for details, Goran Hyden, Julius Court and Ken Mease, "Political Society and Governance in 16 Developing Countries", *the World Governance Survey Discussion Paper 5*, London: Overseas Development Institute, (July 2003).

[117] See, for details, John Graham, Bruce Amos and Tim Plumptre, "Principles for Good Governance in the 21st Century", *Policy Brief,* No.15, The Institute on Governance (IOG), Canada, (August 2003).
<http://www.iog.ca/publications/policybrief15.pdf> (accessed on 23 May 2005)
[118] See, "Governance and Development", (Washington D.C.: The World Bank, 1992), p.1.
[119] See, Laurence E. Lynn, Carolyn J. Heinrich and Carolyn J. Hill*, Improving Governance: A New Logic for Empirical Research,* (Washington DC: Georgetown University Press, 2001) p.7.
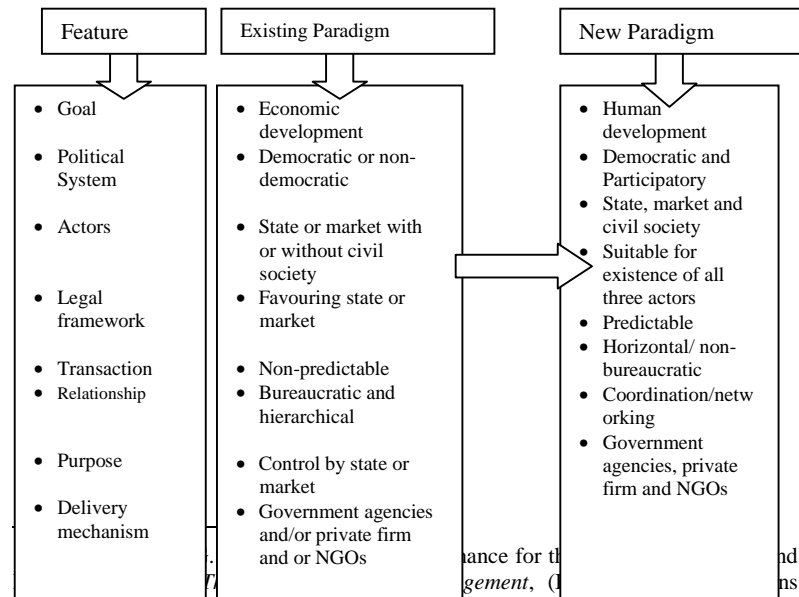[120] See, for details, "Governance: The World Bank's Experience"*,* (Washington D.C: The World Bank, 1994).
[121] See, for details, R.A.W. Rhodes, *Understanding Governance: Policy Networks, Governance, Reflexivity and Accountability,* (Maidenhead: Open University Press, 2003), pp.46-47; Roderick Rhodes, "The New Governance: Governing Without Government", *Political Studies*, Vol. 44, (1996), p. 652.

centric model, market-centric model, procedural model, network model etc.[122] With the change of perspective, the shifting trends of governance are well noticed everywhere. The objectives, frameworks, systems, actors, transaction and delivery mechanisms of governance are rapidly changing. Figure-1 illustrates that in the new paradigm of governance, market, civil society, and NGOs participation are more important than state domination. The approach and methods are much more horizontal and coordinated/networked. Thus the new characteristics demonstrate that the 'old governance' was state-centric and the 'new governance' is society-centric.[123]

Figure-1: The Shifting Paradigm of Governance[124]

See, for details, H.S. Shylendra, "The Emerging Governance Paradigm and Its Implications for Poverty Alleviation and Equity", *Working Paper*, The Institute of Rural Management, Anand (IRMA), India, No. 182, (March 2004).

[Footnotes left column:]

University Press, 1996); G. Peters, *The Future of Governing: Four Emerging Models*, (Lawrence: The University Press of Kansas, 1996); Considine, M. and J. Lewis, "Governance at Ground Level: The Frontline Bureaucrat in the Age of Markets and Networks", *The Public Administration Review*, Vol. 59, No. 6, (1999), pp. 467-80.
[123] See, Jon Pierre, ed., *Debating Governance: Authority, Steering and Democracy*, (Oxford: the Oxford University Press, 2000).
[124] See, for details, H.S. Shylendra, "The Emerging Governance Paradigm and Its Implications for Poverty Alleviation and Equity", *Working Paper*, The Institute of Rural Management, Anand (IRMA), India, No. 182, (March 2004).

The United Nations Development Programme (UNDP) also treats good governance as the existence of a network of institutions of government.[125] It explains three critical relationships among citizens and policymakers, policymakers and bureaucrats, and, bureaucrats and citizens. It is also a process involving the interactions of three key institutions: the State, society and market. In sum, governance is a fusion of diverse modes and stratums of coordination. It is an institutional framework of synchronization based on the sense of co-steering and networking whether it is political or economic or societal. In the neo-liberal discourse, governance implies the escalation of market to maximize individual choice and participation and to enhance the role of democracy and networking in decision-making and control over the sphere of political power.

2.2 The Governance Debate in Bangladesh

The governance literature in Bangladesh demonstrates a clear dominance of International Donors Community (IDC) perspective. The fundamental concern of the IDC involves restructuring the public administration in order to facilitate wider role of markets in the society. It is only recently that the World Bank (WB) has turned its focus to institutions and brought the concept into development discourse.[126] As Mahmud pointed out, "unfortunately, the proponents

[125] See, for details, *The Shrinking State: Governance and Sustainable Human Development- A UNDP Policy Document*, (New York: UNDP, 1997); *Reconceptualising Governance-A UNDP Discussion Paper 2*, (New York: UNDP, 1997).
[126] The World Bank's experience of disintegration of its economic policies in African countries led to attribute the failure of governance which includes administrative inefficiency, absence of rule of law and accountability, rampant corruption, and lack of transparency, etc. The Bank, however, did not relate these traits with any particular political regime. This link between governance and democracy is dynamically pressed into the development discourse by the international organizations. See, for details, *Managing Development: The Governance Dimension*, (Washington D.C The World Bank, 1991); *Governance and Development*, (Washington D.C: The World Bank, 1992); *Governance: The World Bank's Experience*, (Washington D.C, The World Bank, 1994); *Sub-Sahara Africa: From Crisis to Sustainable Growth*, (Oxford: Oxford University Press, 1989), The World Bank.

of the 'Washington consensus' discovered the facts only after some damage had already been done."[127] Some studies also focus on democratic governance and local governance. Zarina R. Khan pointed out, "effective democratic governance continued to be the elusive 'golden deer' that the nation doggedly sought but could not find."[128] In Bangladesh, it is more often referred to 'good governance', signifying the reality that there is a failure of governance or mis-governance. Sobhan extends the scope of governance as he argues that "the study of governance problem is, in essence, a search for ways and means of managing affairs of the state, taking into account the obstacles inherent in changes taking place in South Asian countries".[129] Khan and Ahmed conceived it as a notion of accountability from political and bureaucratic sense in Bangladesh context.[130] Whatever the focus of their studies, the central concern remains to identify the quality of governance whether it is 'good' or 'bad'. As a result, it misses two overriding issues of 'harmonization' in relation to institutional transformation in a society and scope and agency of governance. Governance cannot be conceived properly just by understanding its qualitative level. Why is governance in Bangladesh 'poor' or 'bad'? It is related to institutional framework and the absence of effective harmonization and coordination of economic, political and social activities. The problem with the scope and agency, as highlighted in the IDC perspective, is that governance in Bangladesh is generally limited to public sector management and market reforms. There are other studies which focus on political dimensions of governance like democracy or electoral system. Again, like the study of markets or the public sector, it avoids critical linkages with rules, norms and policies.

Governance, in a broader sense, refers to the rules and norms that guide the internal relationships among various "stakeholders" in a society including the state, political society, business community, and civil society.[131] It is not reflected in the wider dimensions of society covering economic, political and societal issues. For the purpose of this paper, governance is understood as a process of harmonization to manage diverse nature of human activities through establishing appropriate institutions with a view to achieve national development. It emphasizes the formal and informal rules and norms shaping the behaviour and capacity of governing actors to create an enabling environment for national activities.

3. Phase I: 1971-1990

3.1 A Brief Background

The structure and quality of political institutions can affect whether the government facilitates or inhibits economic development.[132] From institutional perspective, Bangladesh State is an amalgam of authoritarian and pseudo bureaucratic democracy and centralized systems. Before analyzing the political institutional arrangements I would like to trace briefly the political background of Bangladesh during this period. This would help us to conceptualize how the formal and informal sources of rules and norms have shaped the institutional arrangements in different times.

Bangladesh emerged as a democratic country with a parliamentary system of government in 1971 deriving its political legitimacy from the electoral victory of the Awami League (AL) in the 1970 National Assembly elections during the Pakistan era. Based on the newly

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[127] See, Wahiduddin Mahmud, "Bangladesh Economy into the 21st Century", keynote paper for the *13th Biennial Conference* of Bangladesh Economic Association, Dhaka, (10-12 August 2000), p.2.

[128] See, Zarina Rahman Khan, "Decentralized Governance: Trials and Triumphs", in *Bangladesh: Promise and Performance*, ed. Rounaq Jahan. (Dhaka: The University Press Ltd. 2002), p. 107.

[129] See, for further details, Rehman Sobhan, *Problems of Governance in Bangladesh*, (Dhaka: University Press Ltd., 1992), p. viii; *The Independent Review of Bangladesh's Development* (IRBD), Vol. 3, (Dhaka: The Center for Policy Dialogue, 1996).

[130] See, Mohammad Mohabbat Khan, and AK. Monwaruddin Ahmed, "Dimensions of Governance' in M G Quibria, ed., *The Bangladesh Economy in Transition*, (Dhaka: University Press Ltd., 1997), p. 323.

[131] Partly, this is drawn on the ideas of Pauly and Reich. See, for details, Louis Pauly and Simon Reich, "National Structures and Multinational Corporate Behavior: Enduring Differences in the Age of Globalization", *International Organization*, No. 51, (Winter 1997), pp. 1-30.

[132] See, "Economic Development and the Quality of Legal Institutions", -A Brief Note Prepared by Matthew Stephenson of Harvard University. < http://www.worldbank.org/publication/legal/institutional.htm> (accessed on 26 January 2005.; For further details, See, Bo Rothstein & Jan Teorell, "What Is Quality of Government? A Theory of Impartial Political Institutions", paper presented to the conference on *"Quality of Government: What it is, How to get it, Why it matters"*, in Göteborg, November 17–19, 2005.

framed constitution the AL went to the polls in 1973 to elect a new parliament for five-year term. Despite the criticism of election irregularities, the ruling party won almost all the general seats (291 out of 300).[133] A strong government was set in motion to build the war-torn country. But very soon, an overhauling of the political system took place in January 1975 when Mujib introduced a one-party system under the banner of Bangladesh Krishak Sramik Awami League (BAKSAL) marking a radical change in the form of government from parliamentary to presidential style.

Amid such abrupt political changes and a persistently declining economy, a *coup d'etat* was staged on 15 August 1975 in which Mujib and most of his family members were killed. This was immediately followed by martial law that caused the first entry of the military in Bangladesh politics. As Imtiaz Ahmed argued that this new development enormously influenced the political system in Bangladesh in two ways: forging a military-civilian alliance in ruling the country and the inception of the 'Islamic content' in political life.[134] Amid a volatile political environment, General Zia had been put at the helm of power in November 1975 following a series of coup and counter-coup attempts. However, General Zia introduced a political regime first under the garb of military rule and then restored electoral politics in 1978 followed by the presidential and general elections in 1979 in which Zia and his newly instituted political party Bangladesh Nationalist Party (BNP) won landslide victory. Ironically, Zia's tenure (1975-1981) witnessed several *coup* attempts before finally falling victim to assassination that was carried out on 30 May 1981. Later General Ershad seized power in a bloodless *coup* and sacked the then BNP regime led by Sattar in March 1982. This established a long spell of military rule for about nine years that effectively consolidated military intervention in every sphere of organizational setting of the State what some call 'the process of

militarizing the civilian authority'. Although, Ershad used all kinds of tactics including religion to cling to power, but the united movement of the opposition political parties[135] ended the authoritarian rule on 6 December 1990 when the dictator transferred power to a civilian authority.

3.2 Institutional Arrangements

Enforcement of contract, the structure of incentives and organizational performance largely depend on the institutional arrangements of a country, which are manifested in rules, norms and policies in a particular social context. Like many of the developing countries, there are three distinct but interdependent spheres of institutional arrangements in Bangladesh – political, economic and societal. Political institutions could help determining the limits on the arbitrary exercise of power by politicians and bureaucrats.[136] As noted earlier, being considered the rules of game, institutions have diverse sources of constituting elements from formal legislations, rules and norms to informal traditions and customs. Likewise, the basis of the institutional arrangements in Bangladesh lies in both formal and informal sources of rules, norms and policies.

Having hinted on the brief history of political life in Bangladesh I would identify the formal institutional arrangements in Bangladesh. The formal political institutional arrangements are composed of several key institutions, which include the executive, legislature, judiciary, administrative system, local government, military and the political party.

The first and foremost political institution is the executive, represented by the President, Prime Minister and Cabinet members, which always remains at the apex of running the affairs of the state. Unlike the multiparty political system or relatively democratic or even the benevolent dictatorship, the executive in Bangladesh enjoyed unparalleled power in the hierarchy of governing organizations

[133] See, Rounaq Jahan, "Bangladesh: Promise and Performance" in Rounaq Jahan, ed., *Bangladesh: Promise and Performance*, (Dhaka: University Press Ltd. 2002), p.11; Craig Baxter et al., *Government and Politics in South Asia*, (Boulder: Westview Press, 1993), p. 264.
[134] See, Imtiaz Ahmed, "A Short History of Bangladesh," in Jevan Thiagarajah, ed., *Governance and Electoral Process in Bangladesh*, (New Delhi: Vikash Publishing House, 1997), p. 7.

[135] This movement is popularly known as 'mass upsurge' in Bangladesh to celebrate the victory of people. At the final point of the movement, the military withdrew their support from the Ershad regime that played a catalyst role in ousting Ershad regime.
[136] See, *The World Development Report 2002*, (Washington D.C.: The World Bank), Part III, Chapter 5, p. 100.

virtually with no accountability and minimum concern for public goods. The public sector based economic system also contributed to a further expansion of the role of executive. The predominance of the executive has been exercised through frequent amendments of the national constitution and the public administration more recently known as 'development administration'. During a span of 20 years, i.e., 1971-1990, the country's constitution remained suspended for over eight years due to military takeover of state power. The constitutional amendments were mostly utilized to legitimize one-party rule, validate all actions under martial law, and to legalize highly controversial issues.[137] Besides, the President or Prime Minister as the head of the government or chief executive established a personality cult phenomenon in running the country.

Second, the legislature is another political institution known as the *Jatiya Sangshad* in Bangladesh, which is the only house with the law-making power. It is a 300-member body with directly elected representatives for five years term. There are also another 45 additional reserved seats for women making the total number 345.[138] Except for a brief period during 1972-1975, Bangladesh followed a presidential form of government under which the legislature appeared to be a grossly ineffective organization, if not a rubber stamp. Despite the limitations of its power under the presidential system, the legislature is supposed to create a dynamic environment for law making, the enforcement of accountability of the government to the legislature, and general discussion on group interests or common welfare. But in Bangladesh it has failed to generate such environment. In addition, one common feature was the frequent termination of the national parliaments. None of the four parliaments were allowed to complete their stipulated 5-year terms. The first parliament elected in 1973 could serve for two years and seven months only to facilitate one-party rule in 1975. The third and fourth parliaments groomed under the military ruler Ershad during his nine-year tenure witnessed

rather worse conditions than its predecessors.[139] The frequent dissolution of the national parliaments was precipitated by authoritarian political rule in the country. For instance, while the first and second parliaments (1973 and 1979) were dissolved because of military coups in 1975 and 1982, the Ershad regime terminated the third and fourth parliaments under severe pressures from opposition political movements.

Third, judiciary as a political institution is entrusted to establish the rule of law (i) by ensuring compliance of the executive and legislature with constitutional provisions for which it is regarded as the custodian of the Constitution and (ii) by protecting the rights of individuals to live, work and enjoy without fear. Rule of law begins with the laws framed to protect lives of citizens, their right to property, for enforcement of contracts and enjoyment of fundamental rights.[140] But in Bangladesh the executive heavily influences the judiciary as the enforcing agency of rules and law. The judiciary appears to be largely subservient to the government in relation to other political organizations such as executive, legislature and bureaucracy. Particularly the appointment processes of Justices in the higher courts were not made in line of the spirit of establishing rule of law in the society.

Under the presidential form of government during 1975-1990, the bureaucracy emerged as a powerful organ with increasing influence over the decision-making process from the top to bottom of public administration. It may be argued that the political leadership in the executive appeared to be overwhelmingly dependent on the bureaucrats for running the country. In fact, because of the colonial experiences of centuries only this organization inherited a system and practical skills in collecting revenue, maintaining law and order and pursuing external relations. The public servants recruited by the state exerted a tremendous power and influence in society. Their role has been strongly institutionalized at various tiers of public administration.

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[137] See, Khan and Ahmed, p. 304.
[138] With the 14th Amendment of Bangladesh Constitution, the number reserved seats to the Parliament for women was increased to 45 from 30 and the total number of seats was increased from 330 to 345.

[139] See, Syed Anwar Husain, "Challenges of Democratic Governance in Bangladesh." in SR Chakravarty, ed., *Society, Polity and Economy of Bangladesh*. (New Delhi: Har Anand Publications, 1994), p. 119.
[140] See, Hasnat Abdul Hye, ed., *Governance: South Asian Perspectives*. (Dhaka: University Press Ltd., 2000), p. 12.

Political chaos and unrests on many occasions, legitimacy crisis of leadership, and lack of commitment and vision of the political leaders helped the bureaucracy becoming an associate of mis-governance in the society and thereby eroded public sector capability.

Since the transfer of political power is fundamentally based on multiparty elections in Bangladesh, the electoral system has a crucial role for facilitating the democratic process. According to the Constitution of Bangladesh, the electoral system is composed with the Election Commission—an independent national statutory body that has a chief election commissioner and members at the apex. In reality, the election commission worked at the behest of the executive that eroded the image of this institution as regards to its capacity to arrange free and fair elections in Bangladesh. It is often alleged that the elections at various level in Bangladesh are marked with 'vote rigging', "vote piracy", "media coup", etc. As Khan and Ahmed argue, all the elections (local and national) held between 1973 and 1990 were manipulated and rigged with the knowledge and blessings of the governments in power. The Ershad regime that ruled for nine years did the maximum damage in destroying the credibility of electoral system in Bangladesh.[141]

The institutions for local government in Bangladesh are traditionally not very autonomous due to the strong control by the state that derives its authority from the unitary structure. Both financially and administratively they are largely dependent on the central government. However, the major institutions for local government include Divisions, Districts, *Upazila* Council[142] and Union *Parishad* (council). In addition, there are two mechanisms called City Corporation and *Pourashava* for the urban regions. Since the country is basically rural based, the district, *Upazila Parishad* and Union *Parishad* play the significant role in the local government. Among them Union *Parishad* and *Pourashava* are directly elected by the people.

Apart from the above-mentioned constitutional organs, there are other vital political institutions such as the military and the political parties, which have enormous influence on national activities. As may be understood from the historical background mentioned earlier, the military is a powerful political institution. The country was ruled by martial law on three occasions – 1975, 1977 and 1982. To quote Husain, "The military ruled Bangladesh for about eight years; and rest of the time a mix of populism-pseudo-democracy-authoritarianism dominated the polity. Democracy was thus never allowed to function."[143] The military leaders dominated the political scene in Bangladesh from 1975 to 1990 (except for a brief interlude in 1979 and 1986). Their involvement in politics is often justified as a historical necessity of the state because of extreme political chaos or massive corruption. No military ruler was able to bring political stability and to create a corruption free society.

Another institution is the political party system, which has an important role in a democratic system. The role of the party system lies in the forms of the leadership selection, the aggregation and articulation of societal interests, healthy political competition, citizens' expression of choices and political socialisation remains neglected. However, the party system in Bangladesh is exemplified by a number of negative factors: lack of democratic practice, excessive fragmentation, the promotion and perpetuation of a personality cult, the lack of organizational discipline, weak nature of leadership, and absence of clear and cohesive programs. Another feature of this party system is the emergence of family domination in politics for more than two decades, creating a dynastic rule in Bangladesh. This largely hinders the institutional development of the political parties in Bangladesh. In particular, the ruling political party exerts tremendous influence in national life.

It may be noted that the above-mentioned institutional arrangements are based on formal rules of the state embodied in the constitutional provisions, legislative acts and judicial code. But there have also been informal sources of institutional arrangements that enormously influenced the functions of different organizations and agencies in the political arena. Informal norms that dominated in this period in organizing the political and legal nature of the Bangladesh

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[141] See, Khan and Ahmed, *Op. Cit.*, p. 311
[142] The *Upazila* council system was introduced for a brief period (1985-1990).

[143] See, Husain, p. 115.

state stem from informal sources of the behaviour of the political and the bureaucratic elite, which presided over the state organizations at different times. For example, we observe different traditions and customs in the political arena of Bangladesh such as the despotic nature of the leadership, intolerance of the opponents in politics, massive politicization, upholding of narrow interests at every stage as well as democratization etc. It may be observed that many of these norms are typically negative, while norms like democratization are positive primarily upheld by the people. Quite paradoxically, although democratization has gained wider recognition in the society, non-compliance of law is widespread among the citizens. Judicial interference is the common practice of the state.

Thus, we observe that the political institutional arrangements during 1971-1990 were clearly based on both formal and informal rules and norms. It is also evident that the informal rules and norms have been very powerful to guide the relationships between or among different organizations and agencies..

3.3 Governance Mechanisms

There are several types of governance mechanisms in a country whether it is a developed or developing one. Lindberg *et al.* divide them into six specific types, which include market, obligational network, hierarchy, monitoring, promotional network and association.[144] But the problem with their typology is that these are constructed from the experiences of highly market-oriented and industrialized countries in the North America and Europe. More so, these are particularly framed in the industrial context of a developed country. So, they miss the realities in many of the developing countries where state plays a leading role and industry is not much developed.

During the phase under review, Bangladesh was not only a developing country but also possessed an agro-based and low industrialized economy with a dominant public sector. While recognizing the relevance of these mechanisms to some extent, we find that the state emerges as the most powerful mechanism of governance in Bangladesh. Avoiding such an extensive splitting up of governance mechanisms, we argue that primarily, there have been observed two broad mechanisms of governance in Bangladesh during this period – state and non-state, involving a wide range of differing organizations and agencies for the delivery of public goods to the people. By the state type of governance mechanism we understand different hierarchical ways and means employed to deliver services to the people. Non-state type of governance includes many different ways such as market, hierarchy, networks and association etc. that have not developed in this trajectory of national developments. So, the analysis is confine mainly to state type of governance in political sphere.

Political governance in Bangladesh is mostly dominated by the state. In fact, the extensive and monopolistic control of the state was embodied in the formal institutional arrangements in the country that were indicated earlier. It maintained dominance in national life through its various formal organs of the government such as executive, bureaucracy, legislature, judiciary and the party system. Since the beginning of independence in 1971 the state has exerted its overarching control in policy formulation and implementation in Bangladesh. To quote a World Bank report, "Government is seen as: preoccupied with process; too pervasive; highly centralized; overly bureaucratic; too discretionary in governance; unaccountable and unresponsive and wasteful".[145] The political and bureaucratic elite took a predominant role in setting goals and priorities for the state and society. As Hye argues, "after independence, three constituents of 'state' monopolized or nearly monopolized 'governance' because the

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[144] See, for details, L. N. Lindberg, J.C. Campbell, and R. Hollingsworth, "Economic Governance and the Analysis of Structural Change in the American Economy", in J.L. Campbell, L.N. Lindberg, and R. Hollingsworth, eds., *Governance of the US Economy*. (Cambridge: Cambridge University Press, 1991), pp. 3-34

[145] See, for details, "Bangladesh-Government that Works: Reforming the Public Sector" The World Bank Report, No. 15182 BD, (10 July 2006), p. ii; World Bank, Bangladesh: Government that Works (Dhaka: University Press Ltd., 1996), p. 67.

informal organs viz. the private sector or the community based organizations were weak or non-existent."[146]

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┌─────────────────────────────────────────────────────┐
│                      Box 1                           │
│   Rules and Norms for Governance in Bangladesh: The  │
│      Political and Legal Dimension, 1971-1990        │
│                                                       │
│     •   Personality cult                             │
│     •   Centralization of authority                  │
│     •   Corruption, rent-seeking and patronage       │
│     •   Military interference                         │
│     •   Bureaucratization                             │
│     •   Technocracy                                   │
│     •   Vote-rigging                                  │
│     •   Party dominance                               │
└─────────────────────────────────────────────────────┘
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Now the question is: in what ways the state type of governance has been maintained over the years? Although there is a formal way of exercising governance mechanisms, which is clearly incorporated in the political institutions, the state goes beyond those stated forms of governance, rather guided by informal set of rules and norms as highlighted in box 1. The extra constitutional and extra legal forms of governance were widely used in Bangladesh during this phase. Taking stock of the whole array of formal and informal rules and norms, we observe that there are seven major ways for the state type of governance.

First, although a Westminster type of multiparty political system was introduced in the early days of independence that clearly identified democracy as the central mechanism of governance, centralization of authority was common feature in running the affairs of the country. In many cases, particularly under the military rule, it was rather the personalization of authority that subordinated other means of exercising authority. Power is largely vested on the chief executive with the phenomenon of personality cult. As mentioned

earlier, the legislature and judiciary were subservient to the will of the executive.

Second, state regulations in the forms of presidential orders, ordinance and legislative acts took the upper hand in the formulation and implementation of national policies and decisions. It is true that regulations are not always undemocratic or unacceptable in political process, but the problem in Bangladesh is that the political elite overwhelmingly relied on them in running the country. The normal institutional process was often bypassed by the state. As the country was run under a presidential form of government, it provided ample opportunities to abuse the political system through frequent regulations. The government used the parliament as a rubber stamp and interfered in the judicial process whenever it was felt necessary. Some of the regulations may be mentioned here that influenced national life enormously. In 1972 a single presidential order of the Mujib regime nationalized almost all industries, financial and banking institutions, educational institutions, and health institutions in Bangladesh. Later the same regime introduced a Special Powers Act in 1974 that considerably curtailed many of the fundamental principles of human rights like freedom of movement and freedom of expression. The one party rule was also introduced in 1975 through such kind of state regulation. The regimes that came to power in the post 1975 period resorted to similar mechanisms. The Government of Zia reintroduced electoral politics in 1978 through a state regulation. The Ershad regime (1982-1990) virtually ruled the country through regulations that largely prevented the dynamic functioning of political institutions in Bangladesh.

The third powerful mechanism of governance employed by the state was military role in politics. To put it differently, the entry of military in running the country on three occasions for about nine years as part of direct military rule and about seven years as the civilianized military rule introduced a new mechanism of governance. The military role in Bangladesh politics was not an exception as it was widely seen in many Third World countries during the Cold War era. For better or worse, military intervention is closely linked with the rise of technocracy in Bangladesh. Thus military intervention combined with technocracy constituted a powerful means of political governance.

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[146] See, Hasnat Abdul Hye, "Good Governance: A Social Contract", in Hasnat Abdul Hye, ed., p. 4.

Fourth, another traditional way of governance is the political leadership, which has not been groomed in Bangladesh under the shadow of the long spell of civilian and military rule. In its place what we here observed is a tyranny of a few political leaders who misused the political system. Despite the rhetoric of national development, it is the party interests that prevailed as the central concern of the political leadership in power or opposition.

The fifth instrument of political governance was the widespread use of corruption, rent seeking and patronage in different sectors of national activities. The personalized style of rule, centralization of state power and heavy reliance on bureaucracy increases the tendency to high degree of corruption in the society. Several studies on political economy and sociology of corruption reinforce the view that accountability and transparency through the democratic political order and the rational-legal model of bureaucracy do not exist in the real life situation of Bangladesh.[147] It is alleged that there was rampant corruption of the ruling party especially in connection with the food crisis of 1974, as well as with the misappropriation of relief goods immediately after Independence. Patronage becomes "an instrument of sharing power", and corruption a tool of political survival.[148] Wood argues that it is the predominant of the development state and quasi-

state, which places Bangladesh at the "absolute rent seeking" end of the continuum.[149]

The sixth mechanism of organizing political governance is the establishment of the rule of law. The legal framework inherited from the British colonial rule was not enforced properly by enforcing agencies such as the police, judicial administration due to widespread non-compliance of laws from the top to bottom of the society. Government interference in judicial activity is a common phenomenon.

Finally, there is a unique type of governance mechanism that involves the dominance of party officials in the political life during this period. Although it is not a communist country or a one party regime, the party cadres and officials enjoy informal power to the extent that often paralyzes the administrative operations from central to local governments. The party people have access to influence and alter the decisions in legal, economic and administrative agencies. Particularly, their influence in law and order situation is prominent. The enduring factionalism and the absence of democratic practices further strengthen the trend of illegal influence by the party officials in the activity of formal organs.

Thus we observe that the state dominated governance mechanism in the political sphere has considerably failed to ensure better performance of various political and legal organizations. The consequence is the vicious cycle of poverty with continuous aid dependence and the poor performance in many critical sectors of state and society. Above all, this has enormous implications for the accountability and transparency of the organizations that drastically reduces their credibility of political organizations either as implementing agencies or rule-making bodies. This has largely created a basic tendency of authoritarian and anarchical rule in the society in which money, power and arms maintain their strong control with minimum resistance from the state and the people.

To summarize, the preceding analysis demonstrates a number of important points. First, generally, the government takes a central role

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[147] There might be several types of corruption such as political, administrative at different levels from national to village. Extensive works are done on this issue, while few of them are cited here. See, for details, Moudud Ahmed, *Bangladesh: Era of Sheikh Mujibur Rahman*, (Dhaka: University Press Ltd, 1983); Saadat Hussain, *Corruption in Public Offices: Some Conceptual Issues in the Context of Bangladesh*, (Comilla: Bangladesh Academy for Rural Development, 1990); Abul Maal Abdul Muhith, *Bangladesh Punargathon O Jatiya Oikamatta* (Bangladesh Reconstruction and National Consensus), (Dhaka: University Press Ltd, 1991); Geoffry D. Wood, *Bangladesh: Whose Ideas, Whose Interests?*, (Dhaka: University Press Ltd., 1994); Kamal Siddiqui, *Towards Good Governance in Bangladesh: Fifty Unpleasant Essays*, (Dhaka: University Press Ltd, 1996); Sirajul Islam Chowdhury, *"Bangladesher Samaj: Ashir Dashaker Nirikhe"* (Society in Bangladesh in the Eighties), *Samaj Nirikkhon*, No 15, (February 1985), pp 46 –95; Erik G. Jansen, "Interest Groups and Development Assistance: The Case of Bangladesh", *Journal of Social Studies*, No. 59 (January 1993), pp 55 – 66.

[148] See, Moudud Ahmed, *Bangladesh: Era of Sheikh Mujibur Rahman, (*Dhaka: University Press Ltd, 1983), p. 34.

[149] See, Geoffrey D. Wood, *Bangladesh: Whose Ideas, Whose Interests?*, (Dhaka: University Press Ltd., 1994), p. 35.

in organizing national activities in different sectors from economy to politics. The government obtained the instruments to direct and control of national economies through autarchy and state planning while it managed the socio-political system through a centralized and personalized political regime. Second, there have been both formal and informal institutional arrangements in Bangladesh even though the formal institutions are far more established and consolidated. However, both types of institutions are dominated by the state. Third, the governance mechanisms are exceedingly dominated by state regulations and agencies. The dominant rules and norms of governance have been highly power and state-centric. It is interesting enough that the rules and norms of governance are not well connected with the underlying institutional arrangements in society. Fourth, political governance characteristics demonstrate two critical aspects (i) the absence of balance of power between the three formal institutions – executive, legislature and judiciary and (ii) the inability of the state organizations and agencies to deliver services to the people. Finally and more importantly, there is a lack of harmonization of governance mechanisms in various fields of national activities – political, economic and societal.

4. Phase II: The Post 1990 Era

4.1 Governance and Institutional Arrangements

After a long struggle against the autocratic regime, the general elections were held in February 1991 with the participation of all political parties. This election marked the significant transition from authoritarianism to a renewed beginning of democracy in Bangladesh. Although this political transformation has not caused fundamental changes in the existing institutional arrangements as we noted earlier, it marks some adjustments that deserve mentioning.

First, historically the presidential form of government in

Bangladesh is associated with excessive concentration of

power without any concern for checks and balances in the

authority of different organs of the government. Fifteen

years of presidential rule has ended with the reestablishment

of the parliamentary form of government in Bangladesh

following the 1991 general elections.

Figure 2: Structure of Central Government in Bangladesh
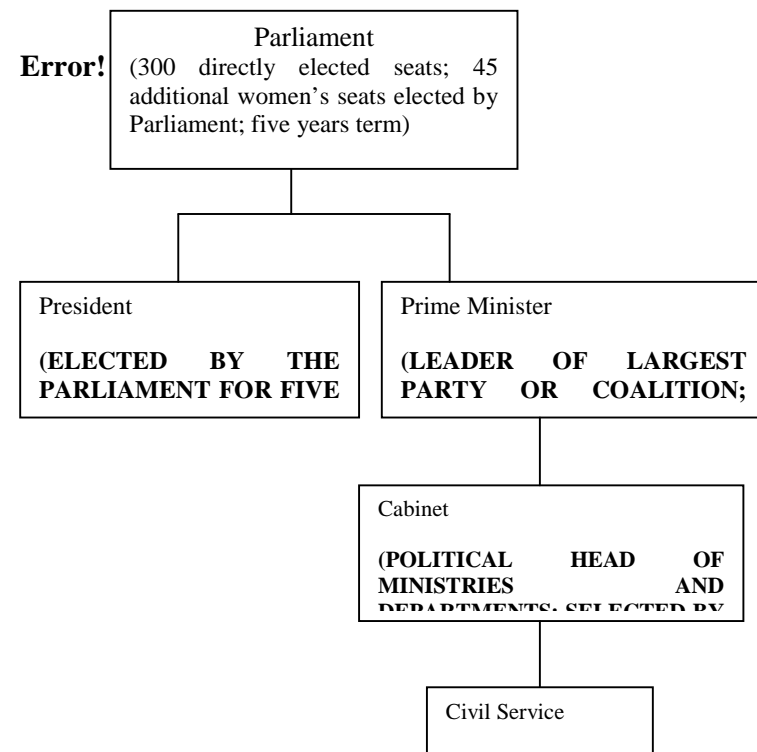
Source: Based on Craig Baxter et al. (1993), p. 234.

Figure 2 highlights the major features of the current structure of central government in parliamentary form. This change of the form of government has implications for the authority and role of political institutions – the legislature, executive, the political party and the bureaucracy. The legislature that was highly ineffective during the 1971-1990 period is now placed at the centre stage of political power.

Second, the end of military intervention into domestic politics was a major change. This resulted from the military's lost of their support from Ershad during the fag end of his regime. Later they expressed their intention to keep aloof from politics and their behaviour during the last three political regimes demonstrates that they clearly opted for civilian rule in the country. It is too early to predict whether there was an end to the institutionalization of the military in the bureaucracy. Nevertheless, certainly, the withdrawal of military from political power signals the beginning of an era of constructive role of the military in Bangladesh politics.
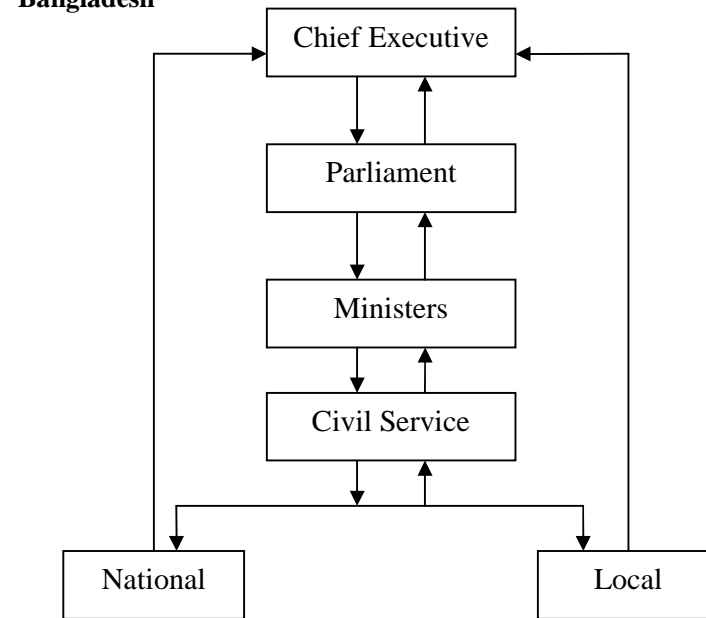
Third, electoral system is the most powerful instrument available in constitutional engineering in any democratic country.[150] This unique political device was improvised during the long anti-autocracy movement to ensure smooth and peaceful transition of power from military to civilian authority. It was known as a Non-party Caretaker Government under which the 1991 general elections took place and is regarded as the freest and fairest elections in the history of Bangladesh. Subsequently, through the 13th Amendment Act, 1996 of the Constitution, it was established as a permanent political structure of the state. In addition, electoral reorganization has taken place to ensure the effectiveness and credibility the Election Commission as a critically important political institution. As per Constitution (article 118 (4) and 126) the Election Commission (EC) is an independent constitutional body in the exercise of its functions and subject only to the constitution and any other law. With the fall of the Ershad regime and the subsequent emergence of the Caretaker government system, the EC has become an effective organization to discharge its constitutional functions. In addition, some new rules and laws were incorporated to strengthen the power of electoral system in

Bangladesh. For instance, in 1994, the 1972 RPO was amended to empower the EC to withdraw an officer from election duty if he obstructs or attempts to obstruct or prevents the conduct of free and fair election. Most importantly, the supervision of the Caretaker government during the elections is an effective deterrence to the any attempt for vote rigging. The new role of the electoral system in Bangladesh has already been tested in three successfully completed general elections in 1991, 1996 and 2001 respectively.

Fourth, an important change occurred in the role of bureaucracy. Since bureaucratic reform was a long-held desire during all the regimes in Bangladesh, a significant initiative was taken in November 1991 when a new business rule was introduced in which the minister was vested with more power and authority vis-à-vis the secretary in running the ministry.[151] This has considerable significance for relations between the executive and bureaucracy in dispensing service to the people.

Figure 3: A Two-Way Executive-Bureaucracy Relationship in Bangladesh

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[150] See, for details, Giovanni Sartori, "Political Development and Political Engineering", in J.D. Montgomery and A. O. Hirschman, eds., *Public Policy.* (Cambridge: Cambridge University Press, 1968)

[151] See, Khan and Ahmed, p. 315.

Source: Prepared by the author

Figure 3 demonstrates that the relationship between the executive and bureaucracy can be a two-way process in which the bureaucrats are directly accountable to the chief executive, on the one hand, they are accountable to the chief executive through the stages of accountability, on the other. During the 1971-1990 phase, an alliance between the chief executive (in the most cases, the President of the state), bureaucracy and the military have resulted in a one-way process of linkage. The consequence of such relationship is that the central concern of the civil servants is to satisfy the chief executive without taking the interests of the state into account. However, since 1991 the situation has been improved through ensuring the linkages among the four tiers of relationship.

Finally, some minor changes have taken place in strengthening legal institutions and the human rights regime in the country. For example, different initiatives were taken with funding from the UNDP and World Bank for ensuring the expeditious trial of cases in Bangladesh. Besides, the post-1991 political regimes have promised to undertake necessary measures to establish the independence of the judiciary and a bill called Independence of Judiciary has already been floated in the national parliament. But there is no sign for its proper implementation in the near future. Such a delay would continue to hinder the establishment of the rule of law in society. In the case of human rights protection, the previous Awami League government introduced a proposal for establishing a new institution called independent national human rights commission. In the case of combating corruption, the current government established Independent Anti-Corruption Commission (IACC) in May 2004. The creation of the Independent Anti-Corruption Commission is a positive advancement, but it would be very challenging for the IACC to combat corruption inside the government as well as political institutions as it is dependent on the government for its financial support.[152] On the other hand, the absence of a complaints mechanism

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[152] See, Monzur Hossain , "Good Enough Governance, PRSP and Reform", *The Daily Star*, 30 March 2005.

for the general public to look for rectifying of any malpractice in the administration is seriously hampering the performance of governance. As a Constitutional commitment (Article 77 of the Bangladesh Constitution), the appointment of an Ombudsman is urgently needed for ensuring public accountability which is not yet materialized.

However, the central issue of legal reforms and human rights protection in Bangladesh lies with the separation of Judiciary from the Executive, which is yet to be established. Thus we observe that there have not been far reaching developments in political and legal contexts that could significantly improve the old institutional arrangements and traditional governance mechanisms.

5. Changes and Continuity in Governance

Having provided an interpretative framework for understanding the institutional arrangements and governance mechanisms in the 1971-1990 phase and having highlighted the policy and organizational changes in post-1990 era, a comparative analysis of these two phases will follow in this section. In the first place, there has not been a complete transformation of institutional arrangements and governance mechanisms from the phase I to II, although some major changes have occurred at policy and functional levels. While comparing these two phases, some elements of change and continuity in institutional arrangements as well as governance mechanisms in Bangladesh are visible. It must be noted that the general pattern of changes can be conceptualized in relation to speed and reflexivity in the processes and functions of political institutions and their agentive roles. In the post-1990 period, the programmes for political liberalization are undertaken at a faster pace and the scope of the activity has been broadened to a considerable degree. The agency for delivering public and private goods has witnessed changes in structure, functions, and authority. Previously, whether it was the economic or political realm, the state enjoyed unchallenged monopolistic power through its various organs. Now the state had to relinquish its power from some sectors that redefined its structure, functions, and authority. The non-state actors, particularly private firms and the civil society tend to fill this newly created space. Stopford and Strange argue that, the relationship between the governing actors at domestic level assumed a trilateral

pattern to operate in both political and economic realms.[153] This is the result of a transformation from the old bipolar relations where national boundaries defined the rules of the game to trilateral terms where the national governments have been joined by members of other domestic ministries and by the executives of firms, both local and foreign. With this general observation in mind, I shall focus on the changes and continuity in institutional arrangements and governance mechanisms of Bangladesh in the following section.

Influenced by the western liberal ideology, the political institutions in Bangladesh contemplate some changes towards the diminishing role of the state. Barring any structural overhaul, the most significant aspect of these changes is that the power and functions of the political institutions have been reconstituted with the introduction of parliamentary democracy. Most importantly, the demise of authoritarianism through military oligarchy has created a favourable environment for such changes. While the judiciary and the legislature as political institutions were very ineffective and weak during 1971-1990, in the post-1990 era, they started to play a relatively stronger role in society. On the other hand, the discretionary power of the executive and bureaucracy has been reduced in the present period compared to the past. This has generated some positive changes in the overall socio-political environment in Bangladesh. The electoral system, for example, has achieved notable success in conducting free and fair polls because of its relative independence and impartiality that was established in the post-1990 period.

Political development in the country moves towards two major trends: democratization and decentralization with far reaching implications for institutional arrangements. First, after the fall of Ershad in 1990, the process of democratization took shape. The increasing salience of the 'democracy project' in Bangladesh may also be attributed to the consequence of the changing global environment. In the post Cold War era, the political and bureaucratic elite in many developing countries find it difficult to maintain their traditional dominance in society and more to the point, the military has been discouraged from capturing state power.[154] The introduction of a Caretaker Government system, the reversion to parliamentary form of government, the ongoing process of electoral and judicial independence have brightened the prospects of further democratization in Bangladesh. The holding of three successive parliamentary elections in 1991, 1996 and 2001 is remarkable in the history of Bangladesh. The country is experiencing democracy through representative governments for the longest period of its thirty four years history. Second, the devolution of power in the form of the transferring major functional responsibilities from the centre to sub-national level has taken place at the present time to a large extent. Although some changes were introduced during the later period of autocratic Ershad regime, fundamental reorganization took place in the mid 1990s, when the AL government revived the *Upazila Parishad* system. The local government in Bangladesh has three significant tiers – district, *upazila* and union *parishad*. Apart from this, there are other tiers such as City Corporation, division, *pourashava*, and *Gramsarker*. Formerly, only union *parishad* and *pourashava* used to be elected by the people directly. Now, the city corporation and *upazila parishad* are added to the electoral process. In addition, several initiatives are taken to expand representative power to village level. The introduction of the *Gram Parishad* (Village council), the Village Court and reorganization of the Union *Parishad* are significant attempts to strengthen local government organizations.[155] Another aspect of this process of decentralization is the empowerment of women through creating opportunities to represent their interests from village to national level. Under the present structure of Union *Parishad*, the provision for the election of three female members has been incorporated. Therefore, in the current phase, the level of decentralization has improved compared to the earlier phase.

Despite the recent orientation towards democratization and decentralization, the fundamental structure and functions of the formal

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[153] See, for further details, John Stopford, Susan Strange, and John S. Henley*, Rival States, Rival Firms: Competition for World Market Shares*. (Cambridge: Cambridge University Press, 1991)

[154] The cases of Pakistan and Myanmar are exceptions to this trend.

[155] See, Mohammad Anisuzzaman, "Democratic versus Bureaucratic: A Quarter Century of Experimentation in Bangladesh", *Perspectives in Social Science*, No. 5, The Centre for Advanced Studies in Social Sciences, University of Dhaka, (1998), p. 11.

political institutions remain the same. Most notably, the political party system has not changed to accommodate democratic culture in its structure and functions. It is still marked by the negative factors such as family domination, lack of democratic practice, excessive fragmentation, the promotion and perpetuation of personality cults, lack of organizational discipline, weak nature of leadership, and absence of clear and cohesive programs. The intervention of the ruling political party in the governmental process is a regular phenomenon. The Judiciary is yet to be independent to establish the rule of law without interference by the state and the powerful people in the society. The legislature remains ineffective for the long-standing boycott of opposition members and for the high-handed attitude of the ruling party. Interestingly enough, after around fourteen years of democratic rule, the bureaucracy stands as the most powerful institution in the national decision-making process. In a recent study to identify the dominant actors in the making of public policy it is observed that bureaucracy emerges as the dominant actor in the policy-making arena in Bangladesh while the Prime Minister along with the Cabinet members and the Members of Parliament (MPs) coming as the second and third respectively.[156] On the other hand, norms that dominated the political realm during the 1971-1990 remained unchanged. The authoritarian nature of leadership at the top level, intolerance of the political opponents, non-compliance of law and politicization of the government administration have not changed much. All these are illustrated in the existing confrontational politics, personality clashes among the politicians, frequent calls of *hartal*

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[156] The study was conducted by a private think-tank Centerfor Policy Dialogue (CPD); see, "Bureaucracy Dominates over Policy Making", *The Bangladesh Observer* (Dhaka), 25 February 2001. According to this study, among the seven actors the bureaucracy is the first. The Prime Minister along with her Cabinet members took the second place and the Members of Parliament (MPs) came third. Non-Government Organizations (NGOs) held the fourth most important position in policy-formulation and it was becoming more influential, the study said. The local government and the private sector leaders were in the fifth and sixth position respectively while ruling party leaders and workers took the queue at the rear. Oppositions were included in the least influential group besides the members of the civil society. The study observed that common people did not get the opportunity to participate in the national policy framing process. But donors were one of the "core actors" in this regard.

paralyzing the whole country and widespread political violence in the country.

> Paradoxically, while coming to the issue of the governance mechanism in the current phase we observe that significant changes have not taken place except the withdrawal of military from politics and creation of caretaker government. The fall of the autocratic regime in 1990 was itself an outcome of the historic decision of the military to stop interference in national politics. Later, the three successfully held multiparty elections have completed the process of military withdrawal from Bangladesh politics. A caretaker government emerged as an effective mechanism for electoral functions, but it is limited only with the general elections. It has no role in ensuring the free and fair elections at the level of local government. Therefore, it is the old pattern of governance that dominates political activities in Bangladesh. The centralization of authority and the personality cult remain as the overriding norms of the political governance. Bureaucratization continues abated while corruption, rent seeking and patronage in various forms such as administrative and political etc. are pervasive in the society. Political leadership as a powerful mechanism of governance in a democratic society survives as a hindrance for the same in Bangladesh even after a democratic change of the government. State regulation still dominates in running the country. Though apparently justified to maintain law and order situation in the country, the introduction of an Anti-Terrorist Act 1994 and the Public Safety Act 2000 by the respective regimes has considerably suppressed the opposition political activists making them instrument of mis-governance. Judicial interference continues as an informal norm of the government to influence the legal process in the country.

The immediate impact of the current state of political governance in Bangladesh is the continuation of political instability and lawlessness in society. Although as per globalization rules and norms, the value orientation of the government is supposed to shift from monopoly and discretion to accountability, transparency and representativeness, the reality is different. Coupled with high level of corruption and rent seeking there is general absence of accountability and transparency in the operations of state controlled organizations. Most of the political and legal organizations from the executive to bureaucracy to local government remain considerably unaccountable. Consequently, the political system survives, in a great deal, as stagnant, inefficient and often unresponsive to the need of the society leading to create political inertia in the country.

6. Concluding Remarks

Political institutions are potential instruments with explicit political orientation to ease the movement towards more liberal or commonly more efficient and growth friendly political and economic regime. The role of political institutions in a democratic polity, in essence, befalls a process of steering through the stream of common public good. The relationship between political institutions and governance is apparent and reciprocally reinforcing, not automatic.

The preceding analysis demonstrates that the post-1990 era has been marked by changes more in the context of national policies, organizations and ideological orientation than the institutional settings and governance mechanisms of the country. The changes in political institutional arrangements have been exceedingly slow. The under-institutionalized party system,[157] the nature of representation to the Legislature the mode of political competition, the aggregation of public preferences[158], the role of legislative functions, the pattern of accountability of elected representatives[159], the prototype of leadership etc. lack the public reliability which undermine the principle of good governance in Bangladesh. On the other hand, the new trends of governance in development discourse exclusively refer to networking, interaction and institutional perspectives. But the governance attributes of Bangladesh in the political domain remain almost unchanged in the present era although new institutions are created. Political centre of gravity towards making more accountable and effective governance institutions is missing humanly in the country's political framework. Due to the absence of dynamic institutional arrangements based on both formal and informal rules and norms in the society there has not been effective harmonization and coordination of economic, political and social activities in the country. The full-scale devolution with resources and meaningful power to democratically represented institutions, an empowered complaint and regulatory mechanism, functional and coordinated programmes can generate comparative advantage and steer the better performance of governance in Bangladesh. Nevertheless, despite the conflicting scenarios marked by the diverse elements of changes and continuity, the overall trend is towards further change.

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[157] Larry Diamond borrows the concepts of under-institutionalized party system and over-institutionalized party system from Andreas Schedler. The under-institutionalized party system is common pattern especially in transitional societies where the political parties are weak, fragmented entities and many depend on single individual for leadership and guidance. See, for details, Larry Diamond, *Developing Democracy: Toward Consolidation*. (Baltimore: Johns Hopkins University Press 1999), pp. 96-98.

[158] This indicates how effectively and fairly public preferences are aggregated into the public policy making process.

[159] This indicates how far elected officials are viewed as accountable to their constituents.