

主論文の要約

(Abstract of Dissertation)

論文題目 : A Legal Analysis of the International Crimes Tribunal Bangladesh

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論文内容の要約 : Due to the establishment of the International Criminal Court (ICC), in recent years, the state and the international community have endorsed that individuals should be prosecuted and punished for committing international crimes. According to the ICC, one of the effective mechanisms to bring international crimes' perpetrators before justice is the national prosecution of such international offenses. Therefore, as a state party to the ICC Statute, Bangladesh recently has introduced International Crimes Tribunal Bangladesh (ICTB) to try and punish individuals who committed international crimes during the War of Liberation in 1971. However, the recent ICTB duly established in March 2010 by the Government of Bangladesh has put doubts about upholding proper internationally recognized legal standards in defining prosecutable crimes such as genocide and crimes against humanity.

More precisely, the legal instrument of the ICTB, International Crimes Tribunal Act 1973, was domestically promulgated in 1973 by the Government of Bangladesh. In this legal instrument, nothing has altered during the implementation of the Act in 2010, while numerous developments took place in identifying international crimes based on their heinous nature. Therefore, the recent ICTB has encountered many problems in its judicial proceeding. The ICT Act has failed to apply treaty and customary law definitions of genocide and crimes against humanity, which is crucial to differentiate these crimes from domestic crimes.

Simultaneously, the jurisprudence of the Tribunal in question also lacks to adhere to the treaty and customary law development in 1971, when these crimes were committed, and 2010, the time of the operation of the Tribunal.

Based on the given problem in the ICTB's operation, this study endeavors to analyze whether it is one of the obligations of Bangladesh under the treaty and customary international law to apply international criminal law standards in identifying international criminal law requirements of crimes against humanity and genocide, in prosecuting them domestically, to fill up any legal gap identified in the domestic legal system of Bangladesh. This study also examines the legal basis of the personal, material (crimes against humanity, genocide), and temporal jurisdiction of the Tribunal. Criminal tribunals prosecuting and punishing international crimes, whether domestically or internationally, decide the jurisdictions' legal basis is a significant issue. The lawful sources upon which a tribunal is established are a crucial indicator of how effective the Tribunal is in providing justice to the accused by prosecuting with legally established rules under customary international law in the time of the commission of crimes or at present. Then, this study sketches that as a domestic mechanism of prosecution of international crimes, are there any legal errors identified in the jurisdictions of the ICTB according to the domestic and international criminal laws that finally resulted negatively in achieving criminal justice by the Bangladesh Government.

Since the jurisprudence of the ICTB does not explain the legal obligation of the Tribunal in invoking international criminal law standards, this research refers to the current jurisprudence of the international criminal tribunals. After an in-depth legal examination, it summarizes that genocide is the 'crime of crimes,' governing at the top

of international crime in degrees of legal severity and moral evil. So, any failure to define such crimes as per the definition of the Genocide Convention 1948 potentially misrepresent the state's capacity to understand and compare instances of genocide against other forms of mass violence, and devalue the experiences of victims of 'real' genocide, and undermine the effectiveness of efforts to prevent and deter genocide a universally understood crime. So, it is one of the obligations conferred by the international criminal law treaty on Bangladesh to prosecute genocide under the definition of the 1948 Convention. Then, crimes against humanity are considered the core international crimes and attained the status of *jus cogens* crimes in international law. It is established beyond a reasonable doubt that crimes against humanity are categorized as *jus cogens* crimes due to widespread prohibitions of such crimes. It criminalized in the International Military Tribunal Nuremberg, the International Military Tribunal for the Far East, Tokyo, the UN *ad hoc* tribunals of the International Criminal Tribunal for the Former Yugoslavia, and Rwanda, several hybrid courts in Sierra Leone, East Timor, and the ICC regime. So, crimes against humanity also deserve to be criminalized based on international criminal law requirements. It is one of the obligations prescribed on Bangladesh to prosecute and punish *jus cogens* crimes based on its customary law definition as per practices of the above-mentioned international tribunals. But, the Government of Bangladesh failed to fulfill its obligation.

Then, by referring to the jurisprudence of the ICTB, this study finds out that the personal jurisdiction of the Tribunal is amended in 2009, inserting the phrase 'individuals' and 'group of individuals' in the Act. Though the Tribunal concludes that an extension to the personal jurisdiction took place in 2009, it is proved by this study that legally, there is no extension of personal jurisdiction can be seen because the

Tribunal failed to describe criminal responsibility of ‘person’ and ‘individual’ in international law. The material jurisdiction of the Tribunal reveals that it fails to apply customary law requirements of crimes against humanity and genocide. In 1971, crimes against humanity were conditioned to be committed in an international armed conflict, and Bangladesh Liberation War was categorized as such during the last phase of the 1971 conflict. At the same time, the ICTB also fails to apply customary law definitions of crimes against humanity in recent times. Such crimes must be committed as ‘widespread’ and ‘systematic’ attacks against any civilian population. Both of these requirements adequately categorized crimes against humanity from domestic crimes. In defining genocide, the Tribunal added ‘political group’ as one of the protected groups against genocide, while it was not required under Genocide Convention 1948. The temporal jurisdiction of the ICTB has not reflected the application of customary law definitions of international crimes in prosecuting them retroactively.

Lastly, though Bangladesh’s retributive approach is considered one of the noble endeavors in punishing the offenders of heinous crimes committed in the Liberation War of Bangladesh, it is concluded that the overall performance of the ICTB is not satisfactory in securing criminal justice to the parties. The ultimate legal failures can be seen in adjudicating international crimes by the Tribunal in question without complying with a treaty and customary law requirements of crimes against humanity and genocide. At the same time, retroactive prosecution of international crimes by the ICTB, without establishing international criminal law conditions of crimes against humanity and genocide, further emphasizes the legal failure of the Tribunal in question.