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### The Impact of the Political Interference on Prosecuting International Crimes: An Experience from the International Crimes Tribunal Bangladesh

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**Abstract:**

This study examines how political interference in the operation of the International Crimes Tribunal Bangladesh (ICTB), a tribunal intended to prosecute and punish international crimes committed in the Bangladesh War of Liberation in 1971, negatively influences securing criminal justice for the parties. In the Bangladesh Liberation War, heinous crimes were perpetrated by the Pakistani army officers with Pakistani political leaders, Pakistani paramilitary forces, Bengali freedom fighters, Bengali civilians, whether pro- or anti-Pakistan, and non-Bengali civilians, i.e., *Biharis*. However, the recent ICTB has started to prosecute only the members of Jamaat-e-Islami (JEI). They were allegedly abettors and collaborators of the Pakistani army as civilians, which indicates that an issue of political biases of the ICTB in prosecuting the opposition leaders is obvious. Hence, this study is divided into four major sections while applying the qualitative approach to reach the outcome. The first part scrutinizes the importance of a political regime's neutrality in operating a tribunal intended to prosecute and punish international crimes under a political setting. The second section critically finds out that the current Bangladeshi government is controlling the recent ICTB to suppress the JEI in the political sphere of Bangladesh. The third section analyzes the consequences of political interference in a criminal tribunal, which diminishes a tribunal's legal credibility and competency. As the novelty of the study, the last section forwards a way to be implemented by the ICTB to enhance the legal credibility and competency of the Tribunal in securing criminal justice.

**Keywords:** political interference, prosecution of international crimes, the neutrality of political regime.

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## 政治干预对起诉国际犯罪的影响：孟加拉国国际犯罪法庭的经验

### 摘要：

本研究探讨了对孟加拉国国际刑事法庭(工贸局)运作的政治干预，该法庭旨在起诉和惩罚在1971年孟加拉国解放战争中犯下的国际罪行，如何对各方的刑事司法产生负面影响。在孟加拉国解放战争中，巴基斯坦军官与巴基斯坦政治领导人、巴基斯坦准军事部队、孟加拉自由战士、孟加拉平民(无论是亲巴基斯坦还是反巴基斯坦)以及非孟加拉平民(即比哈里斯)犯下了令人发指的罪行。然而，最近工贸局已开始仅起诉伊斯兰教义(杰伊)的成员。据称，他们是作为平民的巴基斯坦军队的教唆者和合作者，这表明工贸局在起诉反对派领导人时存在政治偏见问题是显而易见的。因此，本研究分为四个主要部分，同时应用定性方法来达到结果。第一部分审视了一个政治政权在运作一个旨在起诉和惩罚政治环境下的国际罪行的法庭时保持中立的重要性。第二部分批判性地发现，当前的孟加拉国政府正在控制最近的工贸局，以在孟加拉国的政治领域压制杰伊。第三部分分析了对刑事法庭进行政治干预的后果，这会削弱法庭的法律信誉和能力。作为这项研究的新颖之处，最后一节提出了一种由工贸局实施的方法，以提高法庭在确保刑事司法方面的法律信誉和能力。

**关键词：**政治干预、起诉国际罪行、政治制度的中立。

### 1. Introduction

This study examines how political interference in the operation of the ICTB - a tribunal created to prosecute and punish international crimes committed in the Bangladesh War of Liberation in 1971, negatively influences securing criminal justice to the parties. In the Bangladesh Liberation War, the Pakistani army officers were involved directly in committing heinous crimes during the War of 1971, with Pakistani political leaders, Pakistani paramilitary forces such as *Razakars*, *Al-Badr*, *Bengali* freedom fighters, *Bengali* non-combatants whether both pro or anti-Pakistan and non-*Bengali* civilians such as *Biharis* - Non-*Bengali* Muslims (Linton, 2010). However, the recent ICTB has started to prosecute only the members of JEI, who were allegedly abettors and collaborators of the Pakistani army, on an individual basis; hence an issue of political biases from the Bangladesh government in running the ICTB is apparent. Therefore, this study aims to determine political partiality of the Bangladesh government in operating the ICTB under domestic and international criminal law and how to make the ICTB free from such ultimate political control to provide a fair trial to the parties through an impartial trial. Accordingly, the first part scrutinizes the importance of a political regime's neutrality in operating a tribunal intended to prosecute and punish international crimes under a political setting. The second section investigates that the recent ICTB is being controlled totally by the current Bangladeshi regime to suppress the JEI in the political sphere of Bangladesh. The third section analyzes the consequences of the political interference in a criminal tribunal that diminishes the legal credibility and competency of a tribunal. As the novelty of this study, the last section forwards "Two Proposals" to be implemented to brand the free, fair, and impartial Tribunal: ICTB's founding instrument needs to blend

domestic and international law, and the ICTB's organization of the court needs to be internationalized. As a result, the ICTB's legal credibility and competency will be enhanced in domestic and international law; otherwise, it would have been considered the politicized tribunal that aimed to prosecute and punish the opposition leaders in Bangladesh to suppress them in Bangladeshi politics.

### 2. Background

Bangladesh recently has introduced the ICTB to try to punish individuals who committed international offenses in the War of Liberation in 1971. Throughout the nine months of the Bangladesh Liberation War, the mass killings of several hundreds of thousands of *Bengalis* in the Eastern parts of Pakistan in 1971, together with wide-ranging torture and rapes designed in affecting the ethnic stability and the successful flight of millions of expatriates, has a special place in the history of the world's unreturned shocks and horrors (Robertson, 2015). Hence, to indict and penalize the West Pakistani forces and their local collaborators of Bangladeshi origin who opposed the Liberation War of Bangladesh and perpetrated heinous crimes against *Bengali* non-combatants, the ICTB was created in 2010 (Billah, 2020). At first, the ICTB was inaugurated in 1973 by promulgating the International Crimes Tribunal (ICT) Act 1973 through the Bangladesh Parliament after the 1971 War of Liberation (Billah, 2020). Nevertheless, because of political unsteadiness among India, Pakistan, and the newly created Bangladesh States, initiating any procedure of bringing the Pakistani offenders before justice was impossible (Billah, 2020).

Subsequently, after a prolonged departure from the civic sense, the ICT Act 1973 re-appeared in 2009, and the ICTB was inaugurated in 2010 to sue the criminals of the 1971 struggle who were guilty of international

crimes, such as against humanity, genocide, war crimes, and crimes of aggression. The global community greeted this unique initiative and marked it as one of the first courts of law in South Asia in ending up the earlier impunity for the perpetrators of heinous offenses since the International Military Tribunal, Nuremberg (1945-1945), and the International Military Tribunal for the Far East Tokyo (1946-1948) (Menon, 2017). However, the recent ICTB was duly established in March 2010 by the incumbent Bangladeshi Government – the Awami League (AL). It has put severe doubts on its ability to uphold the accused's internationally recognized fair trial rights. One of the reasons is direct interference by the government's executive, which has received widespread criticism from a host of reputable individuals and institutions in international arenas (analyzed in section three).

In most of the cases, the defense counsel contends that the new words 'individual' or 'groups of individuals' in Section 3 (1) of ICT (Amendment) Act 2009 have been incorporated purposefully after 40 years to prosecute the JEI members without any legal merits (Chief Prosecutor v Abdul Quader Molla, 2013, para. 78). The JEI, the most prominent Islamic political party in Bangladesh, has accused the current government – the AL, of taking political vengeance through the trials before the ICTB because most of the accused and convicts are high-ranking party leaders (Jamaat-e-Islami, 2012). The party denies its members' connection in offenses perpetrated in the Liberation War and argues that its leaders were not among those 195 war criminals from the Pakistani army officers, for whom the ICT Act 1973 was passed. They were also not tried under the Collaborators Order, a local initiative to punish those involved in collaborating with the Pakistani army in 1971 (Jamaat-e-Islami, 2012). This allegation of JEI further intensified during the death verdict's announcement against Sayeedi, one of the accused of the ICTB, on 28 February 2013. The announcement of his verdict was not usually taken. It triggered demonstrations by opponents of the judgment, among them many supporters of JEI and ordinary Muslims of Bangladesh (Human Rights Watch, 2013), resulting in more than 200 dead and 3,000 injured by the excessive use of force of the law enforcement agency (Human Rights Watch, 2013). Some academic works also support the above criticisms by inferring that the personal jurisdiction of the ICTB was enlarged in 2009 to prosecute the opposition of the ruling party in Bangladesh politically (Cammegh, 2011), while such political motive in a criminal prosecution is barred in securing criminal justice for the parties. Hence, the following discussion is indispensable to infer the political regime's neutrality in any criminal trial intending to adjudicate and penalize international crimes before analyzing the political interference of the Bangladesh government in the ICTB's operation.

### 3. Significance of Political Regime's Neutrality in Operating a Criminal Tribunal

Law and politics cooperate equally at the international and national phases of criminal trials, and this collaboration looks mainly thrilling in international penal law, in which at the bottom level, a nascent lawful government objects to control the long-lasting supremacy of states, to describe and accomplish international crimes and their trial (Cullen, 2018). However, it is not correct to penalize international offenses, as international criminal law disregards such political compulsion in operating any proceeding at the national or international level. From this viewpoint, in the prosecution of international crimes, the prosecutors and judges who run the tribunal shall be free from the interference of the political authorities who formed the regime, to challenge their political power in the periods of a clash, and imposing utmost basic promises contrary to the abusing of political power (Cullen, 2018).

Furthermore, according to scholarly analysis, the term 'good political motive' could perhaps best be defined as "showing sensitivity to promoting the institutional well-being of the court or tribunal in light of the prevailing geopolitical context" (Weiner, 2013). It means prosecutions of international crimes in a domestic and international tribunal do and should proceed under a political setting by the relevant regime through developing trial policies that comprise a calculation of what shall improve the universal position, validity, and efficacy of such trial in the global scheme (Weiner, 2013). Definitely, to the way the verdict of the suit of international crimes to carry its strengths on specific individuals is estimated, it is expected that prosecutors and judges are not from a political party and take their final verdict solely based on the shreds of evidence and the laws of the court (Weiner, 2013). Hence, the former Chief Prosecutor of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) - Louise Arbour, rightly says,

"The political spirit of accommodation and compromise, which is crucial for the peaceful resolution of all conflicts, is entirely inappropriate for compliance with the law. It is an affront to those who obey it and a betrayal of those who rely on its protection. This, in my view, should be the first reminder of what has been activated in Rome last year. It is the promise that something greater than force will govern" (International Criminal Tribunal for the former Yugoslavia, 1999).

Likewise, Carla Del Ponte, in her chronicle of the time of being the ICTY Chief Prosecutor, remembers her response to a letter from the then UN Secretary-General Kofi Annan who censured her for civic commentaries calling for a more significant political burden on Serbia (Weiner, 2013). Then, she responds by saying,

"Whenever I receive a letter of this kind, whether from Kofi Annan or ministers of state governments, I

simply ask myself whether I have broken any law. The answer, inevitably, is no. Did I exceed my authority? No. Did I behave within the bounds of my competence? Yes, I did. So, I deposited the letter in my file and effectively ignored it because this was political interference” (Del & Sudetic, 2009).

Both of the above statements show that prosecutors and judges in a criminal tribunal acting by the political influence would weaken the law court’s promise towards the neutrality of the decree of law, and such impartiality is indispensable for the criminal trial’s acceptability and, in turn, its success (Weiner, 2013). Any political interference will diminish the Tribunal’s legitimacy and effectiveness in providing international criminal justice. Therefore, based on the above analysis, it is crucial to examine whether prosecutors and judges of the ICTB acted with any political pressure and the Bangladesh Government has any hidden political intention other than punishing those are responsible for the atrocious acts perpetrated in the 1971 conflict.

#### **4. The ICTB and the Political Interference from the Bangladesh Government**

From the beginning of the ICTB operation, ‘a politically motivated Tribunal’ was one of the leading criticisms against the ICTB advanced by the defense counsel domestic and international policymakers. From the perspective of the ICTB, this is not merely condemnation; instead, it has some practical consequences that contributed to the Tribunal’s failure to ensure criminal justice to the accused and victims. Some political interference of the current Bangladeshi regime in operating the ICTB is analyzed below.

First, in the aftermath of the opening of the ICTB in 2010, the moment in framing charge against the accused, the Deputy Law Minister of the AL government revealed the suspected offenders’ name who allegedly done internationally wrongful acts during the 1971 liberation war without any trial initiated against any of them (Jalil, 2010). Hence, Professor Dr. Emajuddin Ahmad, a prominent scholar and the former Vice-Chancellor of the University of Dhaka, Bangladesh, rightly said,

“To disclose the names of alleged war criminals by the AL government Minister proves that the judgment has already been prepared. It is merely a formality to establish a war tribunal, appoint prosecutors and judges, and announce the judgment later because the judgment has already been prepared” (Islam, 2010).

It is one of the indicators that the Bangladesh government has politically intervened in the ICTB from the very beginning.

Second, several critics advance their voices against the ICTB since it prosecutes only local traitors by not including the primary accused of 195 Pakistani army officers against whom Bangladesh collected precise evidence and confirmations of committing genocide

(Hoque, 2016). In the ICTB, most of the accused were from the JEI, which is one of the plausible arguments that the Tribunal is politically motivated to subdue the opposition of the current AL government. Furthermore, the ICT Act’s Section 10(4) adequately provides for a public proceeding for trial. Nevertheless, several apparent objections of the defense counsel remained that the accused were deprived of free contact with their lawyers, and the Tribunal also banned direct admission for overseas observers, lawyers, and media (Mollah, 2020). The defense witnesses’ number was also limited to speed up the trial process (Hoque, 2016). Hence, it is indicated that the government is somehow trying to control the overall proceeding of the Tribunal politically.

Third, the allegation against the ICTB that it is a ‘politically motivated tribunal’ becomes evident not only in the enlisting of the amendment to the 1973 Act, as outlined above, but also in the appointing of the ICTB’s prosecutors, judges, and members, who were ardent AL followers (Mollah, 2020). Hence, it is pertinent to mention that Section 6(8) of the ICT Act 1973 says, “Neither the constitution of a Tribunal nor the appointment of its Chairman or members shall be challenged by the prosecution or by the accused persons or their counsel.” It is enough to contend that the above provision of the ICT Act seriously poses questions on the appointment of judges and members of the Tribunal without political interference of the AL government (Robertson, 2015).

Fourth, apart from the domestic condemnation of the interference of the political authority in the ICTB, some criticisms were also forwarded by the international community. For example, Mr. Boozman, the United States (US) Senator, stated an inordinate apprehension to the Bangladeshi Prime Minister, Sheikh Hasina, in December 2010 via a private letter to her by alleging that the ICT Act 1973 does not encounter the universal standards of war crimes rule enshrined in the Rome Statute of the ICC, and Geneva Conventions. He allegedly said,

“I am concerned that unless the law is updated to be consistent with international law, it will be impossible to protect the human rights of the accused adequately. Besides, the law as it currently stands undermines your country’s efforts to eliminate impunity and create the impression among the international community that the process could be used as a tool for political revenge or retribution. It has been noted through media reports that several prominent members of Jamaat-e-Islami have been arrested and detained on the lesser charge of offending religious sentiment. Once these persons were in police custody, they were then questioned about war crimes. Again, the Tribunal’s procedures call into question the political impact of the Act” (Jalil, 2012).

The above letter to the Bangladeshi authority showed that the allegation of political prejudice in prosecuting opposition political party leaders through the imperfect system is somehow tricky to ignore by the

practicality of the Tribunal in question.

Fifth, the Tribunal encountered a massive amount of criticisms on the direct intrusion of the Bangladeshi Government in it as in December 2012, *The Economist* (2012) published insights on the Tribunal's work based on the content of more than 17 hours of Skype conversations and 230 e-mails exchanged between Nizamul Huq, former Chairman of ICTB-I, and Ziauddin Ahmed, a lawyer of Bangladeshi origin based in Brussels. In these conversations, Huq explained that the government pressured him to deliver the verdict against Sayeedi on 'National Victory Day - December 16' (The Economist, 2012). He further disclosed to Ziauddin that 'the Chairman of the Appellate Division held out the prospect of promotion if he would deliver a fast verdict (The Economist, 2012).' The conversations also indicate that Ziauddin's role surpassed that of an ordinary advisor to the Tribunal and suggest that he, as the lawyer, directly contributed to drafting indictments and orders and advised the prosecution team that was not revealed to the defense (The Economist, 2012). Such collaboration leads to conflicts of interest. Therefore, Journalists from the newspaper contacted Huq and Ziauddin after receiving the material, and both confirmed that they had communicated frequently (The Economist, 2012). It shows that the conversations between Huq and Ziauddin create severe doubts regarding the independence of the Tribunal from being politically biased. Finally, the Tribunal has severely suffered from massive condemnations internationally that caused the loss of credibility and impartiality as the Skype scandal straight forward proved the direct interference of the executive authority of Bangladesh.

Sixth, it is pertinent to infer that the ICTB, as a special court run by a particular law that is different from ordinary criminal law. According to an international legal standard, the lawful basis forming the ICTB is obsolete and does not replicate the current standing of international customary law concerning the description of international offenses and procedural safeguards (Cadman, 2018). Another serious shortcoming is the infringement of basic rights safeguarded in the Constitution of Bangladesh to any citizen indicted with a criminal offense through the ICT Act 1973, under the First Amendment made to the Bangladesh Constitution. It shows that to exercise all the due procedure secured in the Constitution to a defendant in the ICTB is suspended (Cadman, 2018). Then, the ICT Act 1973 itself eliminates any prospect to contest the jurisdictional power of the ICTB in seeking the exclusion of specific judges and members of the Tribunal for bias (Cadman, 2018). Though these issues are pertinent in securing the defendants' fair trial, the Bangladeshi government has ignored the amendments to the ICT Act in implementing the global standards and rules of the free and fair trial, which are essential for the current ICTB (Hoque, 2016). As a result, it is complicated to deduce that the ICTB is free from the political interference of the current AL Government.

Last, to what extent the government controls the

criminal justice system in Bangladesh can be understood easily by one example. After the successful establishment of the ICTB I, the government decided to create the ICTB II and invited one of the justices from the Appellate Division - Surendra Kumar Sinha, who later became the Chief Justice of Bangladesh Supreme Court. During a discussion with Prime Minister Sheikh Hasina, he convinced her to open up the new Tribunal by any means. Some of his conversations summarized by him are as follows,

"In opening the second Tribunal in respect of offenses of crimes against humanity, the procedure is different. For the prosecution for that purpose, the government need not take so much pain in collecting evidence to prove a charge in the manner she [Prime Minister] had collected evidence in her father's assassination trial. I further explained to her, in brief, the process of trial of the cases, the mode of recording evidence, and the admissibility of evidence which are distinct from the earlier trial. Under the new system, affidavit evidence is admissible, newspaper reports are available, video reports and photographs are also admissible, no matter from where it was collected" (Sinha, 2018).

The above long conversation of the ex-Chief Justice of Bangladesh with the executive head is enough to infer how the ICTB is directly controlled and dominated by the Bangladesh government and judiciary.

As a result, it has been clarified from the above discussion that the ICTB is politically motivated and interfered with by the current regime of Bangladesh under the Prime Minister. The initial arrest stage of the ICTB defendants from June to December 2010 demonstrated a coincidental form (Billah, 2020). Most of the accused are affiliated with the highest position of JEI (Billah, 2020). The party actively denied the independence of Bangladesh during 1971, and their coalition with the Bangladesh Nationalist Party guaranteed the present ruling party's overthrowing at the 1991 and 2001 nationwide elections (Billah, 2020). Questions stand up whether the recent dominant party in Bangladesh, the AL-backed ICTB, may, after all, have more vital purposes other than punishing those who are liable for the events of 1971 to bring before trials (Cammegh, 2011). Hence, the ICTB is occasionally regarded as an actual political vendetta (Jalil, 2010) that has not secured criminal justice to the parties for being a politicized tribunal.

## 5. Consequences of the Political Intrusion in a Criminal Tribunal

The risk of political manipulation of international crimes tribunals in the national and global judicial mechanisms is foreseeable. These trials compromise the capability of international judges and their local counterparts in operating tribunals through impartiality and fairness, which are considered the severe disadvantage of fair trial standards (Nielsen, 2010). Hence, the Tribunal loses its judicial independence to

ensure criminal justice to the parties involved.

The ICTB is considered as 'Victor's justice' type of initiative because the trials process had been formed by the winning party of the Bangladesh Liberation War-the AL, and initiated mainly against JEI leaders (Amnesty International, 2011), who provided their support to the Pakistani military-loser of the 1971 War. So, being a Victor's justice, the ICTB has compromised its capability of international judges and their local counterparts in conducting prosecutions through impartiality and fairness, which are considered the severe disadvantage of fair trial standards under the global criminal justice system. As analyzed above, the overall meddling by the Bangladesh government seriously poses a question on the legal competency of the ICTB in its free operation because due to political pressure, the judges and prosecutors are reluctant to work impartially.

Furthermore, it is inferred from the above discussion that any criminal trial indicting and penalizing international offenses aims to reinforce the rule of law and emphasize ethical values (Aukerman, 2002). Nevertheless, tribunals assumed as 'Victor's justice' will not inspire society to receive the moral standards strengthened through them (Aukerman, 2002). This is precisely identical in the ICTB's case, which is run by the winning party in the Bangladesh war, as outlined above (Billah, 2021). Hence, the decisive hidden political motives of the Bangladesh Government to prosecute and punish its political opponent further contributed to the Tribunal's overall failures and also measured the performance of Victor's justice that has not contributed to the legal scholarship in the national trial of international offenses (Billah, 2021). As a result, the outcome of the ICTB is regarded as the 'dangerous precedent' in the global criminal justice system that encourages the world's authoritarian regimes to suppress their political opponents.

## 6. Proposals to Implement

The right to be tried before a free, fair, and impartial Tribunal is a foundation of fair trial exercise and a prerequisite of international customary law (Nielsen, 2010). The same right is also enshrined entirely in universal and provincial human rights documents, e.g., Universal Declaration of Human Rights 1948, Art. 10; International Covenant on Civil and Political Rights 1966, Art. 14(1); European Convention on Human Rights 1950, Art. 6(1); African Charter on Human and Peoples' Rights 1986, Art. 7(1); American Convention on Human Rights 1969, Art. 8(1); and Arab Charter of Human Rights 2004, Art. 13(1). These treaties rightly stipulate that the right to free, fair and impartial trial is one of the fundamental human rights. At the same time, political intrusion embodies an extreme threat to judicial freedom for the courts and tribunals prosecuting and punishing international crimes in domestic or international settings (Nielsen, 2010). The ICTB is one of the best examples highly politicized by the current

Bangladeshi regime, where the rule of law is compromised. As a result, it poses a severe threat to the Bangladeshi judicial freedom to ensure the parties' criminal justice. Hence, as the results of this study, the Bangladesh Tribunal requires adapting to 'Two Proposals' to free the ICTB from the political biases of the Bangladesh government and contribute to the progress of international criminal justice.

### 6.1. ICTB's Founding Instrument Needs to Blend of Domestic and International Law

The Bangladesh Tribunal is trying to indict and penalize the offenders of international crimes perpetrated in an international armed conflict (Billah, 2020). It is functioning at the national judicial level in Bangladesh. The ICT Act 1973 was codified entirely under the Legislative Assembly of Bangladesh without international institutions' involvement. Therefore, the founding instrument of the ICTB, the ICT Act 1973, needs to be a mixture of domestic and international law, which is more credible to the neutral application of the law without any political interference. The founding legal instrument is crucial for any tribunal to function smoothly in domestic and international laws. It has substantial values for the questions of which legal directive the tribunals fit in and their lawful character. For example, during the creation of the Extraordinary Chambers in the Courts of Cambodia (ECCC), a series of founding lawful apparatuses was encompassed: UN General Assembly (GA) and Human Rights Commission resolutions urging for the formation, a GA resolution allowing the draft arrangement (UN Doc. GA/RES/57/228B, 2003), an international pact through the UN and national laws of Cambodia (Nouwen, 2006). The Contract with the UN aimed to 'control the coordination' amid the UN and Cambodia, through the Pact as the "legal basis for such cooperation" (UN Doc. GA/RES/57/228B, 2003). Then, the international Treaty was sanctioned into the local law, and the previously disseminated Law on the ECCC was revised according to the Treaty (Law on the Ratification of the Agreement between the United Nations and the Royal Government of Cambodia Concerning the Prosecution under Cambodian Law of Crimes Committed during the Period of Democratic Kampuchea, 2004). It is indicated that the domestic law of Cambodia was amended according to the international legal instrument, unlike the ICTB. In the latter tribunal, the domestic law was passed without any revision.

Similarly, during the Special Court for Sierra Leone (SCSL) creation, equally national and international instruments performed an important role. Followed by a (non-Chapter VII) United Nations Security Council (UNSC) resolutions demanding the Secretary-General in accomplishing an Arrangement with Sierra Leone's regime (UN Doc. S/RES/1315, 2000), it remained a Treaty that formed the SCSL (Agreement between the UN and the Government of Sierra Leone, 2000, Art. 1.1). This Act is a vibrant portion of that

intercontinental treaty (Agreement between the UN and the Government of Sierra Leone, 2000, Art. 1.2). In Cambodia, the Treaty has been combined in national legislation, whereas in Sierra Leone, the Special Court Agreement Ratification Act (SCSL Statute, 2002), known as Parliament's Sanction and Enactment Law of the 'non-self-executing' Treaty. Then, for the hybrid court in East Timor, no valid government was available to carry on negotiation within East Timor. The UN was represented by means of *de facto* administration and passed rules for forming the Special Panels for Serious Crimes (SPSC) in East Timor (Nouwen, 2006). The power in doing so was resultant as of Chapter VII of the UNSC resolutions (United Nations Transitional Administration in East Timor, 2002). Impliedly, thus, lawful international bases are considered the lawful foundation for all of these judicial institutions. However, these international tools did not straightforwardly create the courts but vested the UN administration the power to pass national laws according to international legal and human rights standards. As a result, it has been inferred from the above three criminal tribunals that their statutes were mixed up of domestic and international law in avoiding any political pressures from Cambodia, Sierra Leone, and East Timor's regimes, under whom these tribunals were operated.

## **6.2. ICTB's Organization of the Court Needs to be Internationalized**

Though the ICTB is part of the domestic judicial system, it is mostly autonomous. Apart from the absence of a separate appellate division, it comes with an entirely different infrastructure from Bangladesh's ordinary judiciary. It has a special prosecution team, with judges working solely for the ICTB. According to Section 6(1) of the ICT Act 1973, the Bangladeshi authority is entitled to form one or several tribunals comprising a Chairman and not less than two and a maximum of four associates (members). Under this provision, one Tribunal currently operates, consisting of a Chairman and three members appointed by the government. The qualifications of the Chairman and three members of the Tribunal are eligibility for being the Supreme Court judges and the former Supreme Court judges in Bangladesh (ICT Act 1973, Sec. 6.2). The government is also entitled to appoint prosecution members (ICT Act 1973, Sec. 8.1). The ICT Act 1973 provides no rules on their eligibility and allows the Bangladesh administration to determine the prosecution's terms and conditions. The Act does not impose a limit on the number of prosecutors. One member of the prosecution team is appointed as Chief Prosecutor (ICT Act 1973, Sec. 8.2). Therefore, it is clear that the Bangladesh government selects judges, prosecutors, and members of the ICTB, which strengthens the deliberate political interference of the Tribunal by the relevant government.

As a result, to depoliticize the ICTB, the Tribunal's 'organization of court' comprising its judges,

prosecutors, registrars, etc., needs to be blended of local and international personnel. Usually, a court or tribunal prosecuting international crimes employs locals and international staff to be free from a nascent political regime's interference in its successful operation (Nouwen, 2006). A blend of local and international adjudicators, prosecutors, and registrars is seen in the process of the internationalized Tribunals. Therefore, the SCSL, ECCC and, the SPSC in East Timor as the hybrid tribunals appoint a combination of local and international personnel. For example, the Law of the SCSL empowers most of the judges in the trial and appeal Courts are selected by the UN Secretary-General and the residue by the Sierra Leone authority (SCSL Statute, 2002, Art. 12). Similarly, the Secretary-General appointed the Prosecutor and Registrar (SCSL Statute, 2002, Arts. 15.3 and 16). Then, in the ECCC, the majority of the judges were local. At the same time, the international adjudicators were chosen by the UN Secretary-General that is obliged to be approved by the Supreme Magistracy Council of Cambodia (ECCC Statute, 2004, Arts. 9-11). For co-prosecutors and as co-investigating judges, a Cambodian and a global staff serve as equivalent (ECCC Statute, 2004, Arts. 16 & 23). Lastly, the United Nations Transitional Administration in East Timor (UNTAET)'s regulations formed the court for particular 'serious crimes,' adjudicated by Special Panels of two intercontinental benches and one East Timorese adjudicator (UNTAET Regulation No. 2000/15, Sec. 22). In the SPSC in East Timor, the Deputy General Prosecutor has vested the high-class prosecutorial power over serious offenses and was internationally aided by locals (UNTAET Regulation No. 2000/16, Sec. 14.6).

So, regarding the hybridity of the organization of tribunals, this is correct for these three recurrently stated cases of mixed tribunals, i.e., the SPSC, SCSL, and the ECCC, that all of them appoint a combination of national and international benches, prosecutorial teams and occasionally registrar and supporting members. As a result, this mixture of local and international members in the tribunals, as mentioned earlier, vitally indicates the freeing of these criminal tribunals from the robust regime's political control under which they are being operated. So, this combination of local and international staff can be appointed in the ICTB in providing criminal justice to the parties without any political biases from the robust regime, i.e., the Bangladesh government.

## **7. Conclusion**

The overall conclusion of this study has the following scientific consequences in the relevant discipline.

Firstly, the ICTB was created to try to punish individuals who committed international offenses in the War of Liberation in 1971, ending up the culture of impunity for honoring the victims and providing some redress to survivors of the 1971 conflicts. The international community greeted this unique initiative

and marked it as one of the first courts of law in South Asia in ending up the earlier impunity for the perpetrators of heinous offenses since the IMT, Nuremberg (1945-1945), and the IMTFE, Tokyo (1946-1948) (Menon, 2017). However, the overall scrutiny of the above study figures out the main findings that the current Bangladeshi political regime extensively controlled the entire trial process. Hence, the defense counsel rightly argued in the ICTB cases that the new words 'individual' or 'group of individuals' in Section 3 (1) of ICT (Amendment) Act 2009 was incorporated purposefully after 40 years of the heinous event took place to prosecute JEI members and suppress them politically. Therefore, the Tribunal has no contribution in providing an excellent precedent to be followed by the future international community in prosecuting international crimes domestically.

Secondly, though a decade has been passed after creating the ICTB, only a few scientific studies have been carried out on the Tribunal. For example, in 2010, Linton examined several discrepancies of the ICT Act 1973, in line with the domestic and international criminal law standards (Linton, 2010). She mainly looked at the Tribunal's prosecutable crimes (crimes against humanity and genocide) according to the customary international law requirements in 1971 and 2010 (Linton, 2010). Her study concluded that "any trial process, especially of such a charged matter as the crimes of the [Bangladesh] liberation war, must meet international standards to have any legitimacy, honor the victims that are missing" (Linton, 2010). After Linton's theoretical legal work, another detailed study was conducted by Robertson on the ICTB, focusing on the requirement of indicting crimes against humanity as the *ex post facto* crimes by referring to some cases of the ICTB (Robertson, 2015). He outlines that customary law requirement of crimes against humanity in 1971, such as the nexus of 'international armed conflict,' was missed out in the jurisprudence of the Tribunal. However, none of the above studies analyzes the political interference of the Bangladesh government in operating the ICTB. Hence, compared to other studies, this study establishes that the ICTB repeatedly failed to apply treaty and customary law standards in prosecuting international crimes due to political interference. As a result, the current research has scientifically proved its significance in prosecuting international crimes domestically.

Thirdly, one of the implications of this study suggests that the right to be tried before a free, fair, and impartial tribunal is a foundation of fair trial exercise and a prerequisite of international customary law enshrined in all international and regional human rights treaties. However, due to political authority's deliberate invasion in a criminal trial, these universal rights of the accused are severely violated. Hence, as the novelty of this study, "Two Proposals" were forwarded to be implemented to brand the free, fair, and impartial Tribunal: ICTB's founding instrument needs to blend

domestic and international law, and the ICTB's organization of the court needs to be internationalized. As a result, the ICTB's legal credibility and competency will be enhanced in domestic and international law.

Fourthly, this study has academic strength because crimes against humanity and genocide are considered the most heinous acts in international criminal law that need to be punished by any means. The prosecution of these offenses needs to be done through an impartial tribunal. Hence, the emergence of the International Criminal Court (ICC) in 2002 signifies that any criminal proceeding must follow international standards. As a state party to the ICC, Bangladesh is expected to try to punish international crimes in its domestic court by fulfilling the conditions of international criminal law requirements of crimes against humanity and genocide as per the ICC Statute (Saul, 2009). Nevertheless, the ICTB is failed to adhere to international criminal law requirements due to political interference, which is reiterated throughout this study. This study is limited to the analysis of political control of the ICTB by the Bangladesh government, which hinders the application of fair trial rights to the accused.

Lastly, to conclude, this research paper provides several recommendations on the smooth function of the ICTB, without any political pressure imposed on the Tribunal. Since the Tribunal prosecutes the perpetrators of international offenses committed fifty years ago, it needs to move forward carefully to comply with international law. Then, this study suggests future research directions such as the freedom of Bangladesh judiciary, political corruption, and adherence to the treaty and customary international laws by Bangladesh that might be another scientific contribution to the global criminal justice system.

## Authors' Contributions

All co-authors contributed to the paper's revision, according to the reviewers' comments. Maruf Billah (the corresponding author) has edited the abstract, introduction, Section 1, and conclusion. Mr. Fuad Mahbub revised the background part and Section 2. Lastly, Sections 3 and 4 are revised by Mrs. Tan Birun Nisa.

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