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Ambassador-at-Large, War Crimes Issues

Press Conference

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Ambassador Rapp: Thank you very much, and thank you everyone for being here today. I've been very honored by the invitation of the government and by the welcome that I've received here in Dhaka, Bangladesh over the last few days. As a young law student I remember well following the events of 1971, specifically remembering that day in January when Sheikh Mujib Rahman was released from Pakistan and flown through London and returned here to Dhaka to the tens of hundreds of thousands of people welcoming him and welcoming the beginning of a new country, Bangladesh.

I was honored to visit the Liberation War Museum to learn more than I had before about the enormous crimes committed here during nine months of 1971. It reminded me as well of the disappointment that I had in my own government and in its highest leadership during that period, but also of my pride in the leadership exercised by people like my late friend Senator

Kennedy in bringing to international and American recognition the suffering of the people of Bangladesh and the role of the Consul General of the United States here in Dhaka, Archer Blood, who provided accurate reports of the atrocities that were being committed here in his famous Blood Telegrams that he sent back to Washington.

In that regard I was pleased to be able to bring here to Dhaka and to the Office of the Prosecutor of the International Crimes Tribunal the records now declassified, hundreds of pages of records obtained by the American government of information during the period of 1971, and delivered that yesterday to the prosecutors for potential use in these cases.

I also want to underline my own commitment here, represented by the current position that I hold in the Obama administration as Ambassador at Large for War Crimes Issues, the support of the United States for accountability when grave atrocities are committed, the importance that justice be done even if it takes 40 years to accomplish that justice. It needs to be done and seen to be done.

Additionally, I want to honor the contribution of Bangladeshi citizens to the development of international justice. When I was a senior prosecutor at the International Criminal Tribunal for Rwanda in Arusha, Tanzania. I benefited from the assistance of a Bangladesh investigator who helped in developing our case against the media that was responsible for inciting the Rwanda genocide.

I had an opportunity during my visit here to see Judge T.H. Kahn who served for four years, prior to my arrival, at the International Criminal Tribunal for Rwanda. All of this reminded me that in this area we have a great deal to learn from each other. Just as Bangladesh is asking for our assistance, we ask for Bangladesh's assistance in meeting the challenge of justice around the world.

I want to emphasize that I'm here at the invitation of the government, extended by the Foreign Secretary when I visited in New York during the United Nations General Assembly in September. He asked me to come here to observe what was occurring and potentially to provide advice or suggestions based

upon the lessons that I had learned and that others have learned during the course of the prosecution of international crimes.

I do want to emphasize that what we're dealing with here in Bangladesh are international crimes. The decision made by parliament in 1973 was to pass legislation, since amended in 2009, to allow for the prosecution of certain crimes that are defined under international law. Crimes like genocide and crimes against humanity and war crimes.

It would have been possible, and it remains possible, for a national system to try people for murder, for rape, for robbery, for pillage, for arson as ordinary crimes even when those crimes are committed on a massive scale. But the decision here was to prosecute for extraordinary crimes. For crimes that have been recognized under international law and defined as such.

That's one of the reasons that the Foreign Secretary reached out to me and to others because what the language means in that statute when you talk about genocide or crimes against humanity has been defined and refined in the course of cases that have been now brought across the world regarding atrocities in

Yugoslavia or Rwanda or in Sierra Leone or in Cambodia. And that having decided to pass an international crimes statute, basically Bangladesh is saying it's going to enforce international law here. Of course that has to be done in compliance with international treaties of which Bangladesh is a member, such as the International Covenant on Civil and Political Rights. Of course it also, since it's a national court, it has to be done in compliance with national law.

I have had an opportunity to meet with the judges of the tribunal, with the prosecutor and his staff, with the investigators, with the registrar. An opportunity to meet with Her Excellency the Foreign Minister, with his Excellency the Law Minister, and of course the Foreign Secretary, with defense attorneys for all of the accused that are presently detained, with the leading members of the opposition from BNP and Jamat, with defense attorneys, and with representatives of the Bar of the Supreme Court. So I've sought the views of all in this process and I promised the Law Minister that within the course of the next several days, and I should note that I'm leaving here to continue on a trip that will take me to six other countries and won't have me back in Washington until the 30th of

January, but I promised that I will during breaks in that travel, and I hope within the next week, send a memorandum back to the Law Minister suggesting ideas that may meet some of the issues that have been raised by defense attorneys or by international organizations like the International Bar Association that may help assure that justice is done and seen to be done in the process here.

Additionally, as I visited with judges and the prosecutor and others there was a great desire for assistance, for training, for provision of materials and case histories. I well understood that and welcome those requests.

I'll return to Washington and talk with the agencies of my government about what assistance might be available. I had already had some preliminary discussions before I came. I also spoke to Members of the Congress on this question and it was clear that since funds have not been specifically appropriated, we will have to consult with the Congress about whatever kind of assistance that we provide. We'll see what results and we'll move as quickly as we can on that issue.

It's important to note, however, that our ability to get approval for assistance will be easier if it's clear that provisions are there which ensure that the individuals who are tried will be tried in compliance with international and domestic law, particularly the law set forth in Article 14 of the International Covenant on Civil and Political Rights which Bangladesh ratified more than a decade ago.

I also want to emphasize that in all of these cases, and whether in Bangladesh or elsewhere, that these trials involve individuals, individual criminal conduct, that this cannot be and cannot be seen to involve individuals who are charged because of associations past or present, but only based upon their acts, individually proven, that they ordered or committed or instigated or had effective control over forces that committed these horrendous acts.

It's important, as well, that the procedures that are developed ensure that each party has the opportunity to raise legal issues and have them resolved. Many people have hit me with a lot of legal issues that they think need to be resolved. It's not for me to decide those issues, but it's important that there be a

procedure for those issues to be heard and resolved. And that the defense in particular, as guaranteed by the International Covenant on Civil and Political Rights, has the time and facilities to prepare their defense.

Additionally, as has been pointed out to me, the people of Bangladesh very much want to see justice for these crimes. I've heard and certainly in the young people that I've spoken to, a great desire on the part of young persons that were not alive in 1971, to know the truth about what happened. What happened to their parents, to their uncles, to their aunts, to their grandparents, to this country at that time period. That's one of the reasons why I think people feel so strongly about the importance of having a fair and just process here. But I think it also emphasizes the importance of making sure that the process is open and transparent.

In the international courts in which I've participated, some have done that job well, some have not done it so well. In Sierra Leone which is a country much less developed than this one, we had an outreach program where we raised funds from private sources and from foundations, more than a million

dollars a year, to ensure that across the country people were shown videos, provided with information about the trials. There were thousands of public meetings that provided people with information. In a society like this one the opportunity to have streaming video of each of the trial sessions, to watch the witnesses -- people that are interested can do that -- is extremely important. And to the extent that some will say this is fair or unfair, it's important that people be able to have access to make a decision themselves.

So I certainly want to help in any way that this country decides to provide assistance, also ensuring that this process is open and transparent and that the information is out there so people can learn and make up their own minds.

Finally and importantly, why am I here? Why do I do this job? Before I was in this job I was a prosecutor in Africa. Why is it important to my government and to the people of the world what happens here?

One, because of commitment to justice for these crimes. To the individuals that have suffered, to the memory of people who have

been brutally murdered and raped. That we owe it to them as human beings, as members of the human family to recognize their suffering, to hold responsible those people that did it, that were responsible for those atrocities.

Secondly, because here we have an opportunity for a process to be a model. There are international courts, to be sure, but international courts are distant from the scene of the crime. They can only try a handful of cases. They're expensive and long and cumbersome, as I know well, having been in them. It's important that these cases happen in national level, close to the communities that were affected. Close to the victims. Close to the families of the people who are accused, who can visit and watch and judge for themselves.

This is an opportunity for a process to be developed that will be a model. And to the extent that processes like this happen, it creates an expectation and sends a message that crimes like this are not going to be tolerated. That perhaps not in the weeks after the crime, but even 40 years after the crime. That individuals that choose to target the innocent for their own political or whatever ends, who choose to kill and to maim

innocent men, women and children, will face consequences. And to the extent that message is sent here in Dhaka, to the extent it's sent in The Hague or Arusha or Freetown or Phnom Penh, that message resonates and can protect other people around the world from experiencing the very horrors that people experienced here in Dhaka some 40 years ago.

With that opening, let me go ahead and yield to your questions.

Media: [Protomolo]. In your opening remark you have mentioned that accused should not be treated due to their past or present association rather than focusing on the evidence, that whether they're provoke [ph] or instructed for a model or such thing. So as I know you have met with the leaders of the Jamat. Did you get any sort of indication from them that the processes, are they politically motivated?

Ambassador Rapp: Obviously people who are accused will raise issues and object to charging. Will say that others have not been charged and they are, and that it's unfair, and I hear and I heard those arguments when I was a prosecutor. All I can say is that the answer to that is to make sure that the process is a

fair one, and that individuals are judged not by what association they were part of but what they did.

Now do keep in mind that there are organizations like the Interahamwe, who is a group of organized youth that were involved in the Rwanda genocide. There may have been militias here or peace committees that were involved in killings in 1971. Those weren't political parties. They were smaller groups. But even then, one's membership isn't enough to convict an individual. It has to be on what that person did. Of course many of these crimes were done in concert with other individuals, so that can be relevant evidence, but it's still individual criminal responsibility. I think the best guarantee that this is not a political process is in ensuring that each of the individuals that are charged has the rights that are guaranteed by the international covenant which has been ratified here in Bangladesh.

Media: [NTV]. Do you think that the process which has been initiated by the International Crimes Tribunal here, it can ensure fullest credibility, transparency and it can be consistent with the international standard? Or do you suggest

any changes need to be taking place in the process in the coming days?

Ambassador Rapp: As I indicated, I had promised the Law Minister, and as I discuss some of my ideas I certainly sense some receptivity to some of those ideas, which I think can be accomplished through potential changes in the rules, large incorporating in the rules language from other international tribunals in which Bangladesh has been involved like the Rwanda Tribunal or the ICC of which Bangladesh is now a ratified member. The incorporation of some specific rules would, I think, help the process and give the defense greater assurance that their rights would be protected.

As I said, it's also important that people have an opportunity to raise issues in court. I had many people who came up to me from the defense side who said this is wrong because this is retroactive legislation. How can you pass a law in '73 to criminalize something that happened in '71? How can you amend it in 2009?

I pointed out that as a matter of international law, that can be done. It is okay to do that, to pass, specifically under the International Covenant, you can have retroactive legislation, but only to recognize crimes under international humanitarian law. That's what was attempted here. But there are also provisions of the constitution of Bangladesh of 1972 that deal with retroactive laws as a matter of national legislation, and of the First Amendment that provides certain exceptions.

I heard lots of arguments on these issues. Counsel should be able to raise those issues by preliminary motion the way they do at the tribunals, to have them decided by the tribunal. To have even a right of interlocutory appeal to the Supreme Court. To have those issues resolved and to make sure that they're decided in a public decision that people can read, and that's an important part of that process.

So a lot of this involves making sure that there's a procedure for everything to be done in a way that meets international standards, according to the traditions and process of this country. I think that can be accomplished potentially by amendments to the rules.

Now I've heard people that say the statute itself, the 1973 law, needs to be revisited. There are arguments for that. But I think to a large extent if done carefully, the problems, the significant problems that have been pointed out by groups like the International Bar Association or by defense attorneys and others, can be resolved with rule changes which can be relatively simply approved by the judges of the tribunal and done in a way that's done before any real procedures occur in court.

Media: [English Daily Dinostira]. You have just said that incorporation of provisions from international law will ensure the fair [inaudible]. Will you be specific? What kind of provision we should incorporate in our law to ensure the fair and transparent trial?

Ambassador Rapp: I don't want to be exclusive in my list as I said, and understand these are matters to be considered by the Law Minister, by the Law Commission potentially, by the court itself, but as I've indicated provisions that would allow preliminary questions about jurisdiction and whether laws have

been appropriately or legally enacted, there should be an opportunity for that. There should be an opportunity as well for interlocutory appeals, not on every issue, but if certified and if leave is granted because an interlocutory appeal could facilitate the process. Rather than waiting until it's all over to change something that may have been in error, an issue could go up on appeal, the trial could continue with other witnesses or other evidence, and then a decision could come down and that could affect how the rest of the trial took place. That's allowed in all of the international courts and was allowed where Judge T.H. Kahn served in the Rwanda court. That's simply a matter of potentially taking the provisions of Rule 73 that's been enacted in every one of the tribunals in which I've been involved, and putting that on the rules.

There are other provisions, I think importantly issues of for instance the rights of accused to be questioned in the presence of counsel. There are rules in all of the tribunals that say that if an accused person is questioned he has the right to have his counsel present during that questioning, and he needs to be told that he has that right, and that if he can't afford a counsel, that a counsel will be appointed to represent him. But

that he can, if he voluntarily waives that right, go ahead and talk. That kind of rule I think is important and would assure the fundamental fairness.

Though many of the rules are already in there, I think that a clear statement that the provisions of Article 14 of the International Covenant on Civil and Political Rights, that deal with the rights of an accused person to be tried in an appropriate way, to have time and facility for preparation, et cetera. You can find the provisions of that article on the web or in some of the commentary that's been presented by the International Bar Association. It would be appropriate to simply say, because they do apply, they should apply. This country ratified that convention in 2000. Clearly all of those provisions apply.

When it comes to the definition of the crimes and what elements have to be proven to prove somebody guilty of crimes against humanity or war crimes, we have the benefit of the fact that in the last 15 years in these international courts these words about what is a war crime, what is a crime against humanity, what does that mean? How many people know what that means?

It's been clearly defined. A war crime is a crime that occurs in connection with an international or non-international armed conflict in these particular ways, and is additionally a murder or a rape or whatever.

There are elements that have been set out by the ICC which this country is now a part of. It could be provided that the Court could seek guidance in determining the specifics and the definition from say those ICC definitions. It wouldn't be mandatory, but that would give them, the parties would then know what those words mean. And it's appropriate.

As I said earlier, this country has decided not to prosecute people for ordinary crimes on a massive scale, but to prosecute people for international crimes. International crimes are not defined by individual states, they're defined by all states and by international courts. One has to seek a reference to those authorities in order to apply those laws. If you don't, you're not entitled to prosecute under a retroactive law. If you're going to use a retroactive law you have to follow international law as it's been established under international treaties that this country has adopted.

Media: [Bangladesh News Agency]. Do you think the pre-trial process, I mean the arrest of the accused, suspected accused, contradicts with international law?

My second question, we know that 195 Pakistani prisoner of war crimes were released, freed. These people in Bangladesh, they actually committed crimes at their instruction. So to make the trial complete, do you think those 195 Pakistani criminals should be brought to justice?

Ambassador Rapp: Would you repeat your first question? I just want to be clear on that.

Media: Pre-trial process. The arrest of the suspects, the accused, and before bringing judges against them, is it okay?

Ambassador Rapp: Different countries follow different processes.

I heard a shout. I was asked a question about the pre-trial process and whether that was in compliance with international law.

Do keep in mind that different countries have different procedures and different courts have had different procedures. The Cambodia court which follows a more continental law basis system has, in fact, detained the four cabinet members of the Pol Pot government for close to three years before formal charging, during the investigative process. So it is permitted. It may not occur generally here in Bangladesh in ordinary crimes. It is permitted to detain people, though the conditions of their continued detention have to be subject to judicial review.

I know I've heard the issue of whether decisions on bail should be subject to review. As I've said earlier, I think it's important to have the right of interlocutory appeal, and I think by the same token bail decisions are on an almost uniform basis always subject to an opportunity for an immediate appeal. So I think it would be useful to have a provision that allows continued detention to be reviewed by the judges of the tribunal

and to be subject to appeal. But pre-trial detention does not automatically, is not automatically, and pre-charging detention, isn't automatically a violation of international standards.

In regard to the 195 individuals that were held back at the time of the initial exchange with Pakistan but eventually sent back to Pakistan, I don't want to -- I saw one of the accused had raised a motion on this issue. I don't want to prejudge how these issues should be resolved. They need to be resolved by the judges. I will say on the other hand, that in every trial that I've ever had, I've had people that have come in and said why are you charging me and you didn't charge that person, et cetera. That's never a defense. One is responsible for their own conduct, and quite often individuals that are responsible for offenses may never be arrested. In several of the trials that I've been involved internationally some of the key accused are still at large, some have died before the trials could begin. More junior people have ended up being prosecuted. It is not a defense that others aren't before the court.

As I say, each of these trials needs to be determined individually based upon the conduct of the accused.

Media: [The Independent]. My question is very simple and specific. There are allegations from the oppositions, particularly Jamat leaders, that international standard is not maintained and international commitment is also violated by the government as they are holding the trial process of, some of the people have already been put behind bars. Would you make a specific comment on it please?

Ambassador Rapp: I'm not here to respond to political allegations, I'm here to provide suggestions on how to ensure that this process going forward will adhere to international standards. I hear a willingness on the part of the government to listen to suggestions that I may have and then we can see going forward.

As I say, we know there are political differences in this country and a very intense political competition in each election. But this is about justice and justice that people will be reading about in a hundred years when parties have different names and different leadership. It's important that this be done in a way that will stand the test of time and to

get away from the immediate political situation and look at what the proof is and make sure that the process is one that is just and not just, as I say within its processes just, but can be seen by all fair-minded individuals as a just process.

So thank you very much.

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