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## *Bangladesh's genocide debate; A conscientious research*

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Collective and institutional commissions of crimes diminish the self-recognition of culpability; individual responsibility loses its meaning once it is applied to a group or a community that shares a common membership and is associated through the perpetration of a crime. Often this is applied to mass atrocities such as genocide. The perpetrators believe they are invincible since they act within a social structure that dictates their actions and make them feel part of a collective criminal project, which in return weakens any sense of personal liability.

*“Where all are guilty, no one is; confessions of collective guilt are the best possible safeguard against the discovery of culprits, and the very magnitude of the crime the best excuse for doing nothing” - Hannah Arendt*

This paper will explore this notion by implementing it to the commission of war crimes, and will examine how the concept of power and particularly imposition of control and avoidance of responsibility facilitates its realization. It will outline a definition of war crimes and analyse the legal safeguards and frameworks that have been implemented in order to prevent their happening. The paper will further theoretically unravel the notion of political power and authority, and will subsequently examine how the two phenomena are interrelated – how powerful individuals and States are able to evade the law or use it to their own advantage while disregarding human rights, in order to pursue political objectives. This paper will further set out an approach of analysing this powerful juridical-political superstructure of the State apparatus through drawing an example with the war crimes and genocide committed over the East Pakistani people (present-day Bangladesh) during the 1971 Bangladesh Liberation War. This specific historical event will furnish the reader on how the centralised Pakistani military regime imposed pervasive control and long-lasting menace on the enjoyment of human rights. It will additionally demonstrate how the Pakistani Army's power is exerted long after the commission of war crimes through the imposition of a veil of ignorance in order to maintain those deeds hidden from the public gaze; the silence surrounding those atrocities is achieved through the control imposed on media outlets and the internal decision making on what information could be disseminated to the public. As long as a collective mindset, which does not leave space for individual opinion-making exists, the impunity of influential violators will go unnoticed. In addition, the paper will examine the involvement of international actors such as the United States (US) and the United Nations (UN), and will evaluate their responsibility in the conflict. Lastly, the paper will explore the recent birth of the War Crime Tribunals in Bangladesh, and assess their efficacy and progress, while simultaneously exposing their deficiencies, and make recommendations for future improvement.

### Introduction

According to the Rome Statute of the International Criminal Court (ICC), ‘War Crimes’ constitute grave breaches of the Geneva Conventions of 12 August 1949, namely the laws or customs of international or internal armed conflicts, which include the intentional killing of civilians, their torture, rape, enforced pregnancy, inhuman treatment or wilful causing of great suffering and injury. The Statute continues to incorporate the purposeful destruction of civilian property, the

targeting of humanitarian assistance personnel and peacekeeping missions. Under the same Statute, 'Genocide' refers to the intentional mass-scale killing, with the intent to destroy, in whole or in part, of a national, ethnical, racial or religious group. Considering the intensity and duration of those serious violent incidents, the ICC was established with the purpose of ending the impunity of State actors who commit such crimes and hold them accountable in front of the court, since such atrocities concern and have repercussions for the entire international community.

Nevertheless, despite those legal mechanisms adopted for the prosecution of war criminals, many stumbling blocks appear in front of the successful detection and judicial proceeding of such cases. One of the reasons behind this, is the existence of an intrinsic hierarchical apparatus of power, which inherently facilitates such actions in the first place and further maintains an atmosphere of secrecy and intangibility, which makes it elusive for justice bodies to expose certain culpable individuals. Furthermore, often the entire criminal justice system is complicit in the perpetration of the violations, which further obscures any possibilities for a due process.

Power is a double-edged sword that is present in every society. It could be defined as the capacity of controlling, persuading, enforcing, influencing, converting, modifying, or manipulating the actions, beliefs, or values of another person or a group of people. Ultimately, it is about creating a directional change which, in essence, makes power a very abstract phenomenon, obtaining shape only through its effects and symbols. The effects include any economic, political or social changes in the long or short term, achieved with or without the adoption of violent means; whereas, the symbols comprise of the Head of State, the Military Establishment, Religious Institutions, etc. Power could lead to subordination and violence, since on one hand, it could indeed promote the security and development of a community or an ethnic group under its ambit, while it could also threaten the identity and integrity of those very same groups if the State apparatus happens to be in discord with their values or beliefs.

### Tensions between West & East Pakistan



*West and East Pakistan. Credits: Quora*

The same was particularly the situation during the 1971 Liberation War of Bangladesh. After the partition of British India, the newly established State of Pakistan was seen as a geographical abnormality, with more than 1300 miles distance between its Western and Eastern part. Although the two areas were united under the motto of religion, their differences in the religious interpretation of Islam

and very distinct cultures were what subsequently separated them. Western Pakistanis viewed the Bengali Muslims' reading of the Quran as inferior and impure and harboured an intention of turning them into 'exemplary Muslims' through alienating them from their Hindu background. Pakistan's governmental headquarters were established in the Western Wing and were dominated by elite groups in West Pakistan, mainly the Punjabis. The Bengali population, despite forming the biggest ethnic population in the country did not have significant representation in the Government. Consequently, control over State-owned organizations,

governmental mechanisms and the armed forces were in the hands of the dominant Punjabis, which as a result led to severe economic exploitation of the East Wing. Gross negligence towards the region was evident in the distribution of various national resources, such as the financial budget and military personnel, which had negative consequences for the overall wellbeing and development of the Bengali population.

### Urdu vs Bengali

The West Pakistani Government was critical about the intimacy between the Muslim and the Hindu population in East Pakistan, as it considered the Bengalis subordinate due to their social and cultural affiliation with the Hindus. The beginning of West Pakistan's strategy of forcibly eradicating the Bengali culture could be marked with the denial of acknowledging the Bengali language as a national language. Although, the number of Bengali speakers (56%) was higher than the number of Urdu speakers (7%), Urdu was considered the language of the elite. Despite the fact that the West Pakistani authorities maintained the narrative that Bengali would remain part of the everyday life of the people from the Eastern Wing, on 24 March 1948, Mohammed Ali Jinnah, the founding father of Pakistan and the first Governor General, declared Urdu as an official language. The declaration provoked a widespread outrage and gave rise to the Bengali Language Movement.

Language has been closely connected to power and ideology in Pakistan. According to the words of the Australian linguist Ruth Wodak, '*Language gains power only in the hands of the powerful; language is not powerful per se*'. Various ethnic communities and their mother tongues have experienced a state of repression, due to Urdu's utilization as a clear-cut symbol of the core Pakistani identity. The Bengalis, particularly, have viewed it as an approach towards internal colonialism, since the elite have used it to further pursue their political agendas and ideologies, and consolidate their influence over the lower echelons of the social strata. Within the country, the Urdu language and its simultaneous propagation has been deemed a powerful tool towards exercising control and outlining the socio-economic division; as Theodor Adorno, a German philosopher and sociologist, has claimed: '*Identity is the prototype of ideology*'. Since language in itself is an element of constructing one's identity, it was used by the Western elite as a means towards promulgating their political goals and resulted in the defragmentation and breaking down of the Bengali community's sense of self. The Bengalis realized that their mother tongue would not survive the aggression of the West Pakistani Government if this decision was not protested.

The people of East Pakistan took several initiatives to ensure the acknowledgment of Bengali as an official State language of Pakistan besides Urdu and English. The most prominent one was the demonstration on 21 February, 1952. The procession sought to express defiance against the order under section 144 of the Criminal Procedure Code, issued a day before, prohibiting any kind of demonstration or protest aimed at altering the State language. When a large group of students from Dhaka University alongside with numerous political activists brought out a procession in front of the Provincial Assembly appealing for the right of Bengali to be accepted as an official language, armed forces opened fire at the students. Five people were killed and since then, 21<sup>st</sup> of February is celebrated in Bangladesh as '*Language Martyrs Day*'. In 1999, United Nations Educational, Scientific and Cultural Organisation (UNESCO) proclaimed 21<sup>st</sup> February as '*International Mother Tongue Day*', in recognition of the sacrifices rendered by Bengalis. After two years, on 7 May 1954, Bengali was finally granted an official status.

### Bhola cyclone and General Elections

The promulgation of Martial Law by General Ayub Khan in 1958 and subsequent West Pakistani discriminatory policies accentuated the systematic reduction of East Pakistan to the status of a colony. However, two major triggers, led directly to the political crisis of 1971, which subsequently caused the genocide; First, was the failure of West Pakistan to react adequately and promptly to the devastating Bhola cyclone, which struck East Pakistan and led to the loss of up to 500,000 lives and resulted in massive floods and the extensive destruction of arable land. The 1970 natural disaster is widely acknowledged with having kick-started the sequence of events that eventually gave birth to Bangladesh. A 2018 study by Naomi Hossain, a Research Fellow at the Institute of Development Studies at the University of Sussex, displayed a chronicle of the consequences of the disaster and gave an account of one million acres of devastated crops, 780,000 lost cattle and poultry, as many as 400,000 demolished houses, 3,500 damaged schools, and 65% of the total fishing capacity – destroyed. Due to West Pakistani Government's gross negligence to the crisis, malnourishment and famine rapidly spread. The West Pakistani regime's utter indifference to the sufferings of the local population was further visible through the censorship imposed on the media and the downplaying of the significance of the event; Iran declared a day of mourning; Pakistan did not. Of more than two hundred relief planes that landed at Dhaka Airport from nearly half the countries of the world, only one was from West Pakistan. Since the Government did too little to alleviate the miseries of the East Pakistani people, the latter felt further alienated and demands for justice grew. As an officer in the US consulate in Dhaka later noted, "*The cyclone was the real reason for the final break*".

Several weeks after the cyclone, on 7 December 1970, Pakistan held its first direct elections in its 23-year history. East Pakistan supported Sheikh Mujibur Rahman, the leader of the Awami League, which consisted mainly of members from the Bengali population, while West Pakistan vouched for Zulfikar Ali Bhutto, the head of the Pakistan Peoples Party. The Awami League won a landslide victory, securing an absolute majority of more than 160 seats in the Pakistani National Assembly and de jure, was supposed to form the new Government. However, the Western elites were reluctant to give power in the hands of those they considered inferior, and President Yahya Khan was convinced by various political leaders and army officials to cancel the Parliamentary Session. The East Pakistani demand for autonomy was perceived by the West Pakistani ruling elite as a major threat; Its likely outcome was seen to be the loss of a captive market for West Pakistani manufactured goods and the curtailment of the primary source of valuable raw materials as well as the bulk of Pakistan's foreign exchange. Feeling that the fruits of their electoral victory had been stolen from them, the people of East Pakistan poured into the streets and launched a general strike.

On 7 March 1971, Sheikh Mujibur Rahman's historic speech predicted the fate of East Pakistan:

*".....The struggle now is the struggle for our emancipation; the struggle now is the struggle for our independence. Hail Bangla! Since we have given blood, we will give more blood. God willing, the people of this country will be liberated ... Turn every house into a fort. Face [the enemy] with whatever you have".*

Law and order crumbled as people broke curfews imposed by the West Pakistani Government and Bengalis occupied streets demanding freedom and self-determination for Bangladesh.

During this period, in a meeting of Awami League, the National Anthem of Bangladesh was also composed.

### Operation Searchlight

The response of the West Pakistani forces, to what they believed was a civil insurgency, was ruthless and merciless. The brutal force unleashed under the name of '*Operation Searchlight*' by the West Pakistani Army in order to inhibit what they perceived as an uprising effectively drove the last nail into the coffin of negotiations. The attack was led by General Tikka Khan, who was the architect of *Operation Searchlight* and was given the name, '*Butcher of Bengal*' by the Bengalis for his actions. On 27 March 1971, he declared: "*I will reduce this majority to a minority*". He also reportedly claimed that he would kill four million men in 48 hours and thus have a '*final solution*' to the Bengal problem. Under the instructions of President Yahya Khan, the genocide of Bengali nationalists was conceived with the aim of punishing the people of East Pakistan for their denial to follow the orders of the West Pakistani Government. Yahya Khan arranged a military crackdown to be executed during the night of 25 March 1971, which aimed at eliminating the force of Bengali Nationalism from Pakistan. The objective of *Operation Searchlight* was to eradicate all Bengali Nationalists, including political and military oppositions, and take absolute control over all major cities dominated by Nationalist rebels.

Consequently, the people of East Pakistan witnessed one of the most cruel genocides in history. Troops from West Pakistan marched secretly towards East Pakistan and in the night of 25 March 1971, the Pakistani military started their operation in Dhaka, the present capital city of Bangladesh. The same night, Sheikh Mujibur Rahman was arrested and taken to West Pakistan. Before his arrest, Sheikh Mujibur Rahman declared that East Pakistan was to become Bangladesh - an Independent sovereign country. The declaration of independence was transmitted throughout East Pakistan via an E.P.R. transmitter. Although the declaration was made on 25 March, its transmission took place after midnight and since then, 26 March is celebrated as the Independence Day of Bangladesh. The Provisional Government of Bangladesh was formed on 17 April 1971, in Mujibnagar and moved to Calcutta as a Government in exile.

*Operation Searchlight* well implemented its schemes in avoiding international attention as all foreign journalists were deported and radio operations were shut down to prevent any sort of communication. As a result of it, villages were burned, civilians were indiscriminately killed, Hindus were sorted out and massacred, as were secular Muslims, university teachers and students, lawyers, doctors, Awami League leaders, and Bengali military and police officials. The horror of these events prompted observers to accuse the Pakistani armed forces, the local volunteer militiamen, Rajakars, who were collaborators of the Pakistani armed forces in East Bengal, of committing selective genocide, purportedly to deprive East Pakistan of Bengali leadership. The nine-month wave of terror forced approximately 10 million people to flee from East Pakistan and take refuge in India. The violence of *Operation Searchlight* resulted in the world's largest influx of refugees fleeing civil war, persecution, and genocide into neighbouring India, posing significant economic, political, and social problems. When the provisional Bangladeshi Government escaped to India, it was allowed by the host nation to continue functioning. India started to build up its forces on the borders of East Pakistan, while repeatedly calling the international community to intervene in the East Pakistan crisis. This in turn put a severe strain on India-Pakistan relations and when Pakistani Air forces pre-emptively struck eleven Indian airfields, on 3 December 1971, full-scale war erupted between the two nations.

While strikes continued on its western border, India invaded East Pakistan on its eastern border as a matter of what they called ‘*humanitarian intervention*’. Pakistan eventually surrendered to India, yet the last few days before the surrender, the most horrific mass killings during the entire war took place, with the execution of intellectuals and professionals.

The human cost of the Bangladeshi proclamation of independence was staggering. Estimates of the death toll vary considerably, but frequently cited numbers derived from Bangladeshi sources, put the number of deaths at three million, the number fleeing to India at ten million, and the number of women raped between two and four hundred thousand, leading to twenty-five thousand births, and thousands of incidents of abortion, infanticide and suicide. The sexual violence of the war indicated that Pakistani forces purposefully used rape as a weapon of war.

### Rape as a War Crime

Often, under conditions of war, selective ethnic rape is used as an official policy; a policy to defile, torture, humiliate, degrade, and debase the other side; a policy of men gaining advantage and imposing dominance over the enemy; a policy of a grotesque spectacle. It is rape under orders: not out of control, but under control. It is an instrument of forced exile and spreading havoc, of dishonouring the community and mortifying it. This episode of mass rapes was part of a campaign to populate Bangladesh with a new race of ‘*Pure Muslims*’ and to dilute, weaken and destroy Bengali nationalism. The violation of women’s bodies and wombs was justified by the Pakistani Army by the notion of *maal-e-ghanimat* (booty of war). During the war, military, political and religious leaders openly supported the rape of Bengali women by declaring that Bengali freedom fighters were ‘*Hindus*’, hence their women could be preyed upon and taken as a booty of war. The rapes in addition led to the social exclusion of the victims.

*“In the 1971 genocide by Pakistan, Bangladeshi women played a huge role,”* argued Dr. Nusrat Rabbee, a survivor of the war, whose father, Dr. Fazle Rabbee, was a martyred intellectual of the war. She continued on saying, *“Women served as soldiers but were also abducted, tortured and raped in concentration camps by the Pakistani army who set up rape camps in all towns and villages they went to. It was part of a systematic plan to disempower and destroy the vertebrae of Bengali society — similar to the targeted killings of Bengali intellectuals. Many of the hundreds of thousands of girls and women were killed or later rejected by their families; their children born out of the rape were forcibly taken and adopted by foreign nationals. Most of these women eventually died of neglect and without recognition”*.

According to the Women Under Siege Project, run by the Women’s Media Center, a US-based organization, which investigates how rape and sexualized violence are used as tools for devastating women and tearing communities apart, women and girls from as young as eight-years old to 75-year-old grandmothers were abducted and held in Pakistani military barracks where they were subjected to mass rape, often followed by mass murder. Women Under Siege cited interviews with survivors who describe how young girls were *“strapped to green banana trees and repeatedly gang-raped. A few weeks later, they were strapped to the same trees and hacked to death”*.

Despite attempts on behalf of the Bangladeshi Government following Independence, to publicly refer to those women as *“Birangonas”* (war-heroines) in order to prevent them from

being socially ostracised and help them with their rehabilitation, unfortunately, the gesture largely failed. After being assaulted, mutilated and impregnated by Pakistani soldiers, rape survivors in post-liberation Bangladesh were shunned by society, and the word *Birangona* became synonymous with dishonoured and violated women. Nevertheless in 2015, the Bangladeshi Government officially recognised *Birangonas* as Freedom Fighters, which afforded these women certain State benefits, such as monthly allowances, medical services and reserved quotas for their children and grandchildren in public recruitment and enrolment in educational institutions.

However, looking at the bigger picture, worldwide these ‘war-heroines’ alongside with all the people who have lost their lives, their families, homes and sense of worth have received very little attention. Although, the genocide hit few headlines and was debated at the time, the world still struggles to place the atrocities that took place in 1971, alongside with other horrendous historical events such as in Rwanda and Bosnia. Furthermore, Superpowers such as the US and the UN failed to intervene or act accordingly. The following section will discuss the lack of international response.

### Washington and Islamabad

As an aftermath, the Bangladeshi genocide left 30 million people dislocated by the war, more than 1.5 million homes destroyed, three million casualties and up to 400,000 raped women. Millions of people had to rebuild their lives and homes from scratch. The war had also imposed considerable damage on vital infrastructure and institutions such as railway lines, roads, schools and hospitals. As the Swiss UN Disaster Coordinator, Toni Hagen, has stated in 1972, the destruction suffered by Bangladesh was horrendous:

*“The situation in Bangladesh is desperate. Practically no food grains are in the pipeline. Entirely insufficient measures have been taken so far to restore the transport system. Blankets won’t do. Baby food won’t do. Midwifery kits won’t do. Charity won’t do. Cash is required for employment and reconstruction. Plain cash”.*

The country was desperately in need of foreign aid and support. At the same time, even the very status of the term ‘genocide’ was contested by some of the international actors, such as the United States. Political scientists, such as Richard Sisson and Leo Rose, openly claimed that the ‘repressive actions’ on behalf of the Pakistani Army did not amount to a genocide and Indian radio reports were exaggerating the situation in order to have an immediate effect on the East Pakistanis, encourage their resistance and persuade them that victory was near. Neil McDermot, the Former English Labour Cabinet Minister, while being the Head of the International Commission of Jurists, which was determined to investigate the events in East Pakistan also dismissed the widespread belief of Bengalis that the repression as a whole constituted genocide:

*“To prevent a nation from attaining political autonomy does not constitute genocide: the intention must be to destroy in whole or in part the people as such. The Bengali people number some 75 million. It can hardly be suggested that the intention was to destroy the Bengali people. As to the destruction of part of the Bengali people, there can be no doubt that very many Bengalis were killed. We find it quite impossible to assess*

*the total numbers, and we cannot place great confidence in the various estimates which have been made from time to time”.*

According to him, only the targeting of Hindus amounted to the definition of a genocide. However, if one follows the timeline and political agendas of successive West Pakistani leaders, the explicit poisonous racism towards Bengalis could be easily established. For example, Asia Times reported the following statement by President Yahya Khan: *"Kill three million of them and the rest will eat out of our hands"*. The racist rhetoric not only dehumanised Bengalis in large, the events following their killings suggest how the West Pakistani leadership wanted to teach the Bengalis a lesson, so that they could not rise again to demand democracy and autonomy. In any War Crimes Tribunal, the overall framework of genocide could be readily determined through the material fact that the killings, rapes, and targeting civilians were pre-planned and deliberated upon. In addition, as the UN Genocide Convention stipulates, genocide responds to *"intent to destroy, in whole or in part"*; The mass graves, eyewitness testimonies, rape victims, reportages and academic work related to the war in Bangladesh clearly establish the truth that Bengali men and women were targeted for simply belonging to the *'other'* community.



*Yahya Khan and Richard Nixon. Credits: Wikipedia*

In the early 2000s, the US State Department declassified some of Richard Nixon's White House tapes and secret documents that provided for elucidating the way in which the Nixon Administration went about the Bangladeshi crisis, reflecting his personal equations, which took precedence over the ground realities during those grim events. Gary Bass, in his book *'The Blood Telegram: Nixon, Kissinger and a Forgotten Genocide'*, in detail explores those private Oval Office conversations and exposes the manner in which Nixon and Kissinger, during the Cold

War, illegally and covertly supported Pakistan's assault on East Pakistan. Once Pakistan confronted the possibility of splitting in two, US policymakers faced sharply opposing alternatives; The first was to try for a negotiated solution that would avoid bloodshed and preserve the unity of Pakistan, yet the other alternative, which was eventually chosen, was simply, inaction. The major reasons behind it were the impulse of standing behind their Cold War ally, but also the personal relationship between Nixon and Yahya Khan. During his travels and meetings as Vice President and President, as well as during his eight years out of office in between, Nixon had formed strong opinions of South Asia's politicians. He liked Yahya Khan, respected him as a leader, and saw him as an ally. Conversely, he disliked Indian Prime Minister Indira Gandhi and distrusted India for its decision to remain formally nonaligned yet relatively friendly to the Soviet Union. In the course of the war, India repeatedly pleaded with the US Administration that it could not cope with any more refugees, and appealed that Washington should use its influence over Pakistan and pacify Yahya Khan. Despite all the appeals, Nixon continued to condone the repression. To a Pakistani delegation in Washington DC, he said: *"Yahya is a good friend. I understand the anguish of the decisions which Yahya had to make"*. Yet, this opinion was not shared uniformly by those working for him in his office; The American

Consul General to Dhaka, Archer Blood was not willing to support Nixon's decisions anymore. In an act of open rebellion, he sent a telegram through the Dissent Channel, a messaging framework open to Foreign Service Officers and US State Department employees, through which they could express their criticism over governmental policies. This so-called Blood Telegram (6 April, 1971) was seen as the most strongly worded expression of dissent in the history of the US Foreign Service. It was signed by 20 members of the diplomatic staff. Condemning the US, he wrote in the telegram:

*"Our government has failed to denounce the suppression of democracy. Our government has failed to denounce atrocities. Our government has failed to take forceful measures to protect its citizens while at the same time bending over backwards to placate the West Pakistan dominated government and to lessen any deservedly negative international public relations impact against them. Our government has evidenced what many will consider moral bankruptcy,(...) But we have chosen not to intervene, even morally, on the grounds that the Awami conflict, in which unfortunately the overworked term genocide is applicable, is purely an internal matter of a sovereign state. Private Americans have expressed disgust. We, as professional civil servants, express our dissent with current policy and fervently hope that our true and lasting interests here can be defined and our policies redirected".*



POL I PAK- US  
Department of State **TELEGRAM**

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ACTION: NEA-08

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CI O N I F I D I E N T I A L Dacca 1138  
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SUBJ: DISSENT FROM U.S. POLICY TOWARD EAST PAKISTAN

JOINT STATE/AID/USIS MESSAGE

I AM AWARE OF THE TASK FORCE PROPOSALS ON "OPENNESS" IN THE FOREIGN SERVICE, AND WITH THE CONVICTION THAT U.S. POLICY RELATED TO RECENT DEVELOPMENTS IN EAST PAKISTAN SERVES NEITHER OUR MORAL INTERESTS, BROADLY DEFINED NOR OUR NATIONAL INTERESTS NARROWLY DEFINED. NUMEROUS OFFICERS OF AMCONSUL Dacca, USAID Dacca AND USIS Dacca CONSIDER IT THEIR DUTY TO REGISTER STRONG DISSENT WITH FUNDAMENTAL ASPECTS OF THIS POLICY. OUR GOVERNMENT HAS FAILED TO DENOUNCE THE SUPPRESSION OF DEMOCRACY. OUR GOVERNMENT HAS FAILED TO DENOUNCE ATROCITIES. OUR GOVERNMENT HAS FAILED TO TAKE FORCEFUL MEASURES TO PROTECT ITS CITIZENS WHILE AT THE SAME TIME BENDING OVER BACKWARDS TO PLACATE THE WEST PAK DOMINATED GOVERNMENT AND TO LESSEN LIKELY AND DESERVEDLY NEGATIVE INTERNATIONAL PUBLIC RELATIONS IMPACT AGAINST THEM. OUR GOVERNMENT HAS EVIDENCED WHAT MANY WILL CONSIDER MORAL BANKRUPTCY, IRONICALLY AT A TIME WHEN THE USSR SENT PRESIDENT YAHYA A MESSAGE DEFENDING DEMOCRACY, CONDEMNING ARREST OF LEADER OF DEMOCRATICALLY ELECTED MAJORITY PARTY (INCIDENTALLY PRO-WEST) AND CALLING FOR END TO REPRESSIVE MEASURES AND BLOODSHED. IN OUR MOST RECENT POLICY PAPER FOR PAKISTAN, OUR INTERESTS IN PAKISTAN WERE DEFINED AS PRIMARILY HUMANITARIAN.

CONFIDENTIAL

The Blood Telegram, Authored 6 April, 1971, by Archer K. Blood;  
Credits: Copy from George Washington University's National Security archives

Nixon's response was: *"Don't squeeze Yahya at this time"*. Archer Blood was subsequently recalled from his position, since his opinions went against Nixon's and Kissinger's hopes of using the support of West Pakistan for diplomatic openings to China and to counter the power of the Soviet Union, and they wanted to prevent any further negative internal remarks on the situation.

After the genocide started, the US Government supplied military equipment worth \$3.8 million to the Pakistani dictatorship in West Pakistan, despite that, it previously told Congress that all shipments to the regime had ceased. It urged Iran and Jordan to transfer US-supplied combat aircrafts to Pakistan, despite clear advice that such action violated US Law. It also sent its most formidable aircraft carrier, the USS Enterprise, into the Bay of Bengal to cause India, to think twice about invading Pakistan. The major trigger behind those manoeuvres was the desire to hinder India. In the UN, US labelled India as the main aggressor and pressurised the Soviets to discourage India, with the threat that the US-Soviet detente would be in jeopardy if Moscow did not comply with Washington's desires. When war broke out, Nixon promptly cut off economic aid to India and when nothing worked, it pleaded China to join the war to intimidate India.

While millions suffered in East Pakistan, the only focus, an obsessive one, of the Nixon Administration continued to be China. One of the reasons why Nixon sided with Yahya Khan, apart from his personal affiliation with him, was that the General was his conduit with China. Yahya Khan had become an effective go-between in laying the groundwork for the normalization of relations between the US and China, which had drifted away from the Soviet Union during the 1960s. Kissinger felt that Beijing would carefully watch how faithfully Washington backed its ally. However, once the war was over, US gracious and amicable policy towards Pakistan changed overnight. It quickly recognised a regional hegemon in India, and began to respect it. Although it had made it clear before the war that it would not support the establishment of independent East Pakistan, it advised Pakistan to accept India's ceasefire offer, recognized the newly created country of Bangladesh, and started building bridges with India.

Nixon and Kissinger meticulously strived to conceal their culpability in the genocide, and present, instead, an image of themselves as law-abiding Statesmen, rather than rogue leaders. As Christiana Spens, a Cambridge scholar argues, *"....the levels of manipulation and deception involved in that cover-up, not only by Nixon and Kissinger, but in their various accomplices and supporters, is overwhelming; the ambitiousness required to attempt to gloss over that guilt and hypocrisy was quite astounding"*.

### [Inaction of the United Nations](#)

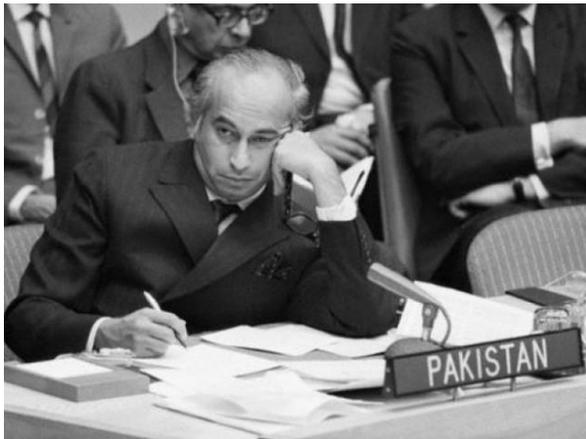
Not only Washington was complicit in inaction; the prolonged silence of the UN in the face of gross and persistent human right violations by the Pakistani military and their collaborators challenged the quality and adequacy of the available international mechanisms for preventing such atrocious crimes. The role of the UN could be evaluated, at best, as of a concerned but helpless bystander. While it took partial responsibility in aiding the millions of refugees fleeing to India, it failed to take any positive steps in order to avert the course of actions, which ultimately led to those tragic events.

On 3 June 1971, U Thant, the Secretary-General of the UN, wrote to the President of the Security Council, saying, *“The happenings in East Pakistan constitute one of the most tragic episodes in human history. Of course, it is for future historians to gather facts and make their own evaluations, but it has been a very terrible blot on a page of human history”*. Yet, it was not until India and Pakistan experienced a head-on collision and a full-scale war erupted, when the Security Council and the General Assembly realised it was high time to discuss the matter. However, even then, the Security Council's effort was directed towards ordering a ceasefire in order to restore Pakistan's status quo, which would simply let the genocide continue.

Among the five permanent members of the Council, the US and China supported Pakistan, and the Soviet Union supported the Bangladeshi cause, while United Kingdom and France, despite sympathy for the self-determination of the Bengali people, could not openly challenge US and hence, abstained from voting. This deep division among the permanent members had completely paralyzed the Security Council. Disunion and lack of agreement existed among the rest of the non-permanent Member States as well, especially among the developing countries of Asia, Africa and Latin America. Most of them were newly established, primarily concerned about their own territorial integrity and sovereignty and opposed any secessionist moves or foreign intervention. They were apprehensive that the Bangladeshi struggle for independence could trigger secessionist movements in their own countries. Military intervention across international boundaries was widely unacceptable among the Member States and many of them invoked concepts of territorial integrity and sovereignty, in the hope that it might somehow suspend the war. Indeed, the UN Charter inhibits the UN from intervening in the internal affairs of Member States, other than enforcement measures by the Security Council. However, this provision had been updated by the General Assembly's Resolution 2144 of 26 October 1966. Accordingly, United Nations Economic and Social Council (ECOSOC), in its Resolution 1503 of 27 May 1970, and UN Human Rights Commission, in its Resolution 8 of 16 March 1967, clearly laid down the procedure to consider violations of human rights in Member States. Unfortunately, these procedures and organs were not utilised to address the gross violation of human rights in Bangladesh. The Soviet Union and Poland were the only two Council members, which along with India, repeatedly stressed the need for tackling the root cause of the problem and importance of seeking a political solution to the crisis; To order a ceasefire without correlating it with the attainment of a political settlement in East Pakistan was considered inadequate and unrealistic.

The Council deliberated upon the crisis on 4, 5 and 6 December. After heated discussion between Indian and Pakistani representatives, US tabled a draft Resolution, which inter alia called for immediate cease-fire, withdrawal of troops to the internationally recognized borders, deployment of UN observers, and repatriation of refugees. There was no mention of the core issue, the political settlement to uphold the democratic aspirations of the Bengali people for freedom and independence. Soviet Ambassador, Yakov Alexandrovich Malik, vetoed the American draft resolution, criticized the Council members for viewing the situation as a purely India-Pakistan conflict, and insisted that the core issue of the conflict must be addressed first. Poland also voted against the resolution, France and UK abstained, while the rest of the Council members voted in favor. The Soviet Ambassador tabled a draft Resolution, which demanded a political settlement of the core issue, and for restraining the Pakistani forces from committing further atrocities. China vetoed the Soviet draft resolution. Argentina tabled a second Western draft resolution, in line with the earlier American draft, and expectedly it was vetoed by the

Soviet Ambassador, Malik. Thus, after three days of deliberations, the Security Council was in a deadlock situation, since it was unable to adopt any resolution due to discord among its permanent members. Then China and US, along with nine non-permanent members, tabled a draft Resolution referring the matter to UN General Assembly under the Uniting for Peace Resolution. Soviet Union, Poland, France and UK abstained. The whole purpose was to put global pressure on Soviet Union and India to agree to a cease-fire, and to bail out the Pakistanis. Furthermore, since the Bangladesh representative was not allowed to take part in the deliberations, the General Assembly members viewed the war as an Indo-Pak conflict and there was no reference to the core political issue of the people of Bangladesh.



*Foreign Minister Zulfikar Ali Bhutto at UNSC meeting in 1971. Credits: The Express Tribune*

Meanwhile, the situation in East Pakistan had become very critical. Pakistan had bombed Indian airfields in Amritsar, Pathankot, Srinagar, Awantipur, Uttarlai, Jodhpur, Ambala and Agra. The Army had started a selective cleansing of Bengali intellectuals, artists and scholars. The intention of killing the intellectuals, the backbone of the country, was to leave the nation without intellectual guidance, which could subsequently revive it. This led to the gathering of the Security Council again, where on 15 December 1971, Poland sponsored a draft resolution that had the Soviet Union's backing. It provided for the release of Sheikh

Mujib-ur Rehman and transfer of power to the elected representatives under his leadership in East Pakistan; cessation of military actions in all the areas; initial and then permanent ceasefire; withdrawal of the Pakistan armed forces to the preset locations in the eastern theatre; evacuation of Pakistani nationals and armed forces from there and the withdrawal of the Indian armed forces from the eastern theatre in consultation with the newly established authority. Since, Pakistan's acceptance of the Resolution would have meant that it had agreed to the secession of East Pakistan, Zulfikar Ali Bhutto, the Pakistani Foreign Minister, declined to take upon himself the responsibility of acknowledging defeat there and walked out in rage of the Security Council, while tearing in pieces the papers of the Polish draft.

### Aftermath

Next day, on 16 December 1971, Lt. General Amir Abdullah Khan Niazi, Commanding Officer of the Pakistani Army forces located in East Pakistan signed the '*Instrument of Surrender*'. On that day, East Pakistan was lost forever, and Bangladesh was born. As a result, the geopolitical landscape of South Asia was drastically changed, with the emergence of the seventh-most populous country in the world. Over 93,000 Pakistani troops surrendered to the Indian forces and Bangladesh Liberation forces, making it the largest surrender since World War II. In 1972, the Simla Agreement was signed between India and Pakistan and the treaty ensured that Pakistan recognised the independence of Bangladesh in exchange for the return of the Pakistani prisoners of war, whom India treated in accordance with the Geneva Convention, rule 1925. New Delhi released more than 93,000 Pakistani prisoners of war in five months. Further, as a gesture of goodwill, nearly 200 soldiers who were sought for war crimes by Bengalis were also pardoned by India. The accord also gave back 13,000 sq km of land that Indian troops had seized

in West Pakistan during the war. This was widely recognised as a measure of promoting lasting peace and was acknowledged by many observers as a sign of maturity by India, despite that others, in India and abroad, believed the country had been too lenient to Pakistan.

After the Pakistani defeat, President Bhutto, who took over from General Yahya Khan, established a Judicial Commission of inquiry under the chairmanship of the then Chief Justice, Hamoodur Rahman, in order to inquire into and find out the circumstances in which the Pakistani Army surrendered. The commission was set up on 26 December 1971, and after having examined 213 witnesses, it submitted its report in July 1972. However, the report was not made public for many years; some accounts claim, that Bhutto ordered all copies to be destroyed. Years later, in 2000, parts of the report were leaked to Indian and Pakistani newspapers and since then it has been declassified and made publicly available. Constituted to prepare a full and complete account of the circumstances surrounding the atrocities and the 1971 War, the Commission was very critical of the role of Pakistan's military interference, the misconduct of politicians as well as the intelligence failures of the Inter-Services Intelligence (ISI) and the Federal Investigation Agency (FIA), which permitted the infiltration of Indian 'agents' along the borders of East Pakistan. The death toll and the estimated number of rapes and destroyed property were denied, as being highly exaggerated and '*altogether fantastic and fanciful*'. According to the commission, '*so much damage could not have been caused by the entire strength of the Pakistan Army then stationed in East Pakistan even if it had nothing else*'. It further argued that some of the incidents alleged by the Bangladeshi authorities did not take place at all, and have been deliberately placed for the purpose of maligning the Pakistan Army and gaining world sympathy.

Nevertheless, the Commission generated many useful and insightful recommendations, such as holding public trials for the culprits, including the then President General Yahya Khan and the Chief Commander. As an indirect consequence, the establishment of war crime tribunals became imperative for newly-created Bangladesh, in order to heal its nation and come to terms with its past.

### War Crime Tribunals

War crimes tribunals have three major aims: punishing war crime perpetrators, establishing the truth and achieving eventual reconciliation between the parties involved. Truth, justice, and reconciliation are fundamental elements of the healing and rebuilding of devastated societies. War crimes trials are responsible for the creation of an atmosphere of fairness, accountability for the loss of human life and retribution for the inflicted harms. For a country like Bangladesh, which had gone through extremely traumatic events, it was vital to adhere to strict standards of creating fairness and justice by generating elaborate, coherent, and principled strategies for dealing with those events.

The Bangladesh Collaborators (Special Tribunals) Order 1972 (the '1972 Collaborators Act') came into force through Presidential Order, since the Parliament was not in session, and this was later approved by the Parliament that came into being after the 1973 General Elections. It was designed to bring to court those who had collaborated with, or otherwise aided and abetted, the Pakistan Armed Forces, and who waged war or aided and abetted in waging war against Bangladesh. There are conflicting accounts about the trials that were held under the 1972 Collaborators Act; It appears that, at that time, the trials were seen as very problematic

due to the systemic flaws in the judicial system, and because of the struggle of upholding charges against the alleged collaborators. On 30 November 1973, the Government declared a General Amnesty, under which the majority of people held or convicted (around 35,000) were released. Although, in theory, the amnesty did not apply to those charged with murder, rape or arson, a large number of persons falling into this category, were also acquitted.

The judiciary faced the pressing need of amending the outdated legislation, which allowed for the evasion of the rule of law. The 1973 Act was adopted to provide for the detention, prosecution and punishment of any individual irrespective of his nationality who, being a member of any armed defence or auxiliary forces commits or has committed in the territory of Bangladesh, whether before or after the commencement of the 1973 Act, crimes against peace, crimes against humanity, war crimes, any other type of humanitarian violation under the Geneva Conventions of 1949 or under international law. When the Act was adopted, evidence was gathered and prosecutors appointed and 11,000 of the detainees originally held under the 1972 Collaborators Order, suspected of crimes to which the amnesty did not apply, were to have been tried under this law. However, with the assassination of Prime Minister Sheikh Mujibur Rahman and his family members on 15 August 1975, by forces aligned against the liberation movement, all of these efforts came to an end. Four of the leading politicians held in detention in the central prison were murdered on 3 November 1975 and the new regime suspended the Act, ended any prosecutions, released all. With the collapse of the Awami League regime, the memory of the genocide faded from the official governmental discourse and public realm; or it was purposefully put aside.

Bangladeshi State affairs between 1974 and 1991 were marked with a lot of instability, chaos, and military dictatorship, resulting in the fact that virtually none of the key perpetrators of the genocide were brought to justice. The Pakistani Army personnel, who surrendered to the Indian Army, were handed over to Pakistan through India and no trials of military commanders in either Bangladesh, Pakistan or India took place. Only a few local Bengali collaborators were tried and some were even brought to justice, but most were never tried in a court of law. Hence, the later transition to democratic rule necessitated reviving the memory of the victims of the 1971 Liberation War and holding the perpetrators responsible. In 2009, the Bangladeshi Government set up a special, *ad hoc* court to prosecute the atrocious crimes committed in 1971. Established almost four decades after the war, the International Crimes Tribunal (ICT) was a long awaited occurrence. The Government formed the tribunal after the Awami League won the General Elections in December 2008, and in 2009, the Parliament amended the 1973 Act in order to legally authorise the Tribunal to try people in absentia. The first indictments were issued in 2010, and the Tribunal was warmly welcomed by many sections of the Bangladesh society.

The War Crimes Fact Finding Committee, tasked to investigate and find evidence about the perpetrated violations, compiled a list of war criminals, who were directly involved in crimes against humanity and mass murder, which included 369 officers of the Pakistani occupation forces, 852 Rajakars, 64 members of Al-Badr, 78 members of the Bihari community who had collaborated with the Pakistani Army, 106 political collaborators and 128 members of the so-called '*peace committee*' formed by the Pakistanis during the war, totalling 1,597 war criminals. The main perpetrators of the war crimes, the Pakistani soldiers, remained out of the reach of the courts. On 30 July 2009, at the Second International Conference on Genocide, Truth and

Justice in Dhaka, the Minister for Law, Justice and Parliamentary Affairs categorically stated that there would be no Pakistanis tried under this law and it would only be applied to Bangladeshi nationals. Although such decision evidently was against the legal provision of 1973, which argued that perpetrators should be punished irrespective of nationality, achieving jurisdiction over Pakistan appeared very difficult.



*Shahbag Square Uprising Demanding Death Penalty for War Crime Criminals, 2013. Credits: Mehdi Hasan Khan.*

Focusing simply on *the 'small fish'*, foot soldiers and collaborators, while the actual masterminds, commanders and those in control remained out of reach, caused a dangerously corrupted process from the start. The inability to reach those having the greatest responsibility and guilt greatly undermined the transparency and fairness of those trials, ultimately resulting in the disappointment of the Bangladeshi people. Drawing an example with the War Crime Tribunals in Indonesia's East Timor, one could see how skilfully a State can twist a judicial process to whitewash its role and that of its

soldiers and officials, while creating a false *'truth'* about what happened, and affirm alleged criminals as national heroes in the public eye. Respectively, subsequent Pakistani Governments, till present day, have not recognised the crimes it has perpetrated as systematic mass-scale genocide, including crimes against humanity.

### Jamaat-e-Islami

Despite the critique, some positive outcomes have taken place since the establishment of the War Crime Tribunals in Bangladesh. The Jamaat-e-Islami (JI), a political party based on religious values, along with other religious-right groupings were also accused of having collaborated closely with violent militias, such as Al-Badr and Al-Shams, as well as participating directly in the bloodshed. The JI swore allegiance to the West Pakistani Government when the Liberation War of Bangladesh began and despite being Bengalis, the political leaders and supporters of JI collaborated with the Pakistani Army in their atrocities against Bengalis.

Originally after independence, political parties based on religion were banned in Bangladesh and the JI lost its platform to operate as a political party. However, due to the military regime of Ziaur Rahman and later because of his political party Bangladesh Nationalist Party (BNP), the JI leaders who committed war crimes were allowed to enter politics again. The party continued to enjoy political power until the Awami League started the War Crimes Tribunal in 2008, delivering on its promise made in its election campaign.

Many top leaders of JI, who were actively involved with the Pakistani Army against Bangladeshi nationalists during the Liberation War of 1971, have been convicted of war crimes after being put under war crimes trials. What played the most significant role in their capture, was the amendment to the 1973 Act, which made it applicable to *'organizations'*, besides *'individuals'* to be prosecuted. The act was put into action when a series of arrests were made from June to

December 2010, and an important JI leader, Abdul Quader Molla, was tried and executed in December 2013.

### Critique

The trials against JI leaders for war crimes have attracted worldwide attention. Initially, international organizations expressed support and offered to help Bangladesh with the war crimes trial, however, subsequently some of these organizations urged the Bangladeshi Government to ensure compliance with international standards in the trials while others such as Amnesty International and Human Rights Watch protested against the executions on account of their opposition to the death penalty. At the heart of the critique is the legal framework of accountability, since Bangladesh's International Crimes Tribunals Act (ICTA) 1973, as amended by the Amendment Act of 2009, is quite outdated and has fallen behind the practices of more recent international tribunals as parts of the act are likely to threaten the international standards of fair trial, both in the identification of the accused and the conduct of the investigation and trial process.

The wording of the legislation suggested that the tribunal will have extremely broad powers of prosecution and the framework of the trial that the legislation intends to construct seemed to be error-prone and partial. The ICTA, even after amendment, did not grant suspects the right against self-incrimination or the right to legal counsel when being questioned by the police, nor did it give them adequate time to prepare a defence. Other problematic provisions include restrictions on interlocutory appeals (appeals against significant decisions made during a trial) to the Supreme Court and restrictions on challenging the composition of the judicial bench. Overall, the laws regulating criminal proceedings in Bangladesh do not apply to the Tribunal and as a result, domestic jurisprudence on procedural fairness—which relates to provisions of ordinary criminal law—is not directly applicable to Tribunal proceedings either. Even more troubling is Article 47 of the Bangladeshi Constitution, which prohibits anyone accused under the ICTA from seeking any constitutional remedies in front of the Bangladesh Supreme Court. As a result, defendants are effectively denied constitutional protections related to arrest, investigation and trial, as well as the ability to enforce their fundamental constitutional rights in court. In addition to that, issues such as insufficient time for defence lawyers to prepare and too high a probative burden being imposed on the defence, further obscures the due process.

Pursuing accountability for grave atrocities is a difficult endeavour, and undoubtedly the Tribunal's mandate is a very challenging one. Bangladesh must better observe the experience of fellow countries and war crime tribunals that have prosecuted war criminals in the recent past and learn from their successes and failures to ensure that it does not commit any such mistakes. Indeed, some feedback on behalf of the international community has led to few positive reforms in terms of ameliorating procedural legal safeguards, yet even then, the Tribunal has remained vastly intolerant to criticism. When justice is delayed, as far as it has been in Bangladesh, achieving effective prosecution and legal settlement becomes highly troublesome. The quality of evidence erodes over time, witnesses might be difficult to locate, reluctant to testify or unable to recall long-ago events in sufficient detail. The Bangladeshi people have indeed carried the weight of their agonizing past and the impunity of the perpetrators for far too long. Yet, the response should be in a fair and just manner, otherwise it might lead to retaliatory proceedings when power changes hands. It is crucial to create safe

space for respectful debate and credible legal course of action, or else, the imperative objectives of justice, truth and reconciliation will not be accomplished entirely.

### Conclusion

Often it is argued that history is written by the winners and that political and cultural leaders use their powerful venues to shape the public discourse and achieve their objectives. Indeed, in the case of Bangladesh, it is visible how a combination of those factors have prevented the perpetrators involved in those horrific events to face justice. However, after four decades, the Bangladeshi people have manifested that it is high time to reclaim back their past and rewrite their own history, where the atrocious deeds of those who have inflicted an irreversible long-lasting harm on them are no longer left unpunished. By international law, a tragedy of such proportions confers responsibility for investigating those war crimes not only on Bangladesh and its domestic courts, but also on the entire international community, including India and Pakistan. The genocide committed in 1971, is not simply a domestic affair; It might seem so legally, but it certainly is not morally and politically. Richard Nixon's administration supported Pakistan, despite knowing that its financial aid and equipment were being used for perpetrating crimes against humanity. The UN remained numb while three million unarmed civilians were brutally annihilated.

In the dark alleys of modern history, the slaughter that took place in Bangladesh, stands out as one of the most abhorrent human rights transgressions the world has ever seen. The 1971 Liberation War has narrated thousands of personal stories; blood leaks through the lines of these events when one reads them closely. It is evident that any long-lasting closure will be deficient unless the public recognizes its collective moral responsibility in finally bringing this deplorable chapter of human history to an end and learns from the failures of the past. Not only in Bangladesh or Pakistan; This forgotten genocide and the world's silence to it in 1971, makes a very strong case that warrants international atonement.



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