

Case Study: Bangladesh Genocide 1971

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The Bangladesh genocide in 1971 arguably contends with the Rwandan genocide, annihilation of Soviet POW's and the Holocaust against the Jews as 'the most concentrated act of genocide in the twentieth century.'¹ The West Pakistani military regime unleashed a systematic campaign of mass murder, aiming for the destruction of millions of Bengalis, attempting to crush those seeking East Pakistani independence. This essay will consider the pre-existing tensions and their causes between East and West Pakistan, whilst examining the atrocities committed in 1971, the aftermath and the debated death toll. The Tribunals established to try those responsible for the atrocities and the International Crimes Tribunals Act 1973 will be assessed, and finally the denial of the genocide as such by both Pakistan and other global powers will be considered in relation to their personal circumstances and motives. The essay will conclude with a brief explanation as to why the recognition for the 1971 atrocities must amount to its acknowledgement as a genocide.

CASE FACTS

East and West Pakistan were 'forged in the cauldron of independence for the Indian sub-continent', and ruled for two hundred years by the British, who along with various Indian politicians pushed for the creation of two states: a Hindu-dominated India, and Muslim-dominated Pakistan.² Sectarian violence and military clashes consequent of the 1947 partition of India resulted in thousands of deaths, with many Hindus fleeing to India and Muslims to Pakistan. Although large minorities remained in each country the geographic distance between West and East Pakistan was mirrored by their economic and political separation, as the migration of most of the ruling elite westward from India led to West Pakistan becoming the nation's political centre.³ Between 1947 and 1970, East Pakistan received only 25% of the country's industrial investments and 30% of its imports, despite producing 59% of the country's exports.⁴ Consequent of this unstable arrangement, the relationship between East and West became 'progressively more corrupt and neo-colonial in character', and opposition to West Pakistani domination grew among the Bengali population.⁵ The Pakistani regimes failure to exercise its relief duties properly after the catastrophic floods in Bangladesh 1970 gave further impetus to the Bengali autonomy movement- Awami League, led by Sheikh Mujibur Rahman- to demand regional autonomy for East Pakistan and an end to military rule.

Following the Awami League's overwhelming victory in the 1970 parliamentary elections, the military dictatorship refused to hand over power, and on February 22nd, 1971 the West Pakistani generals decided to crush the Awami League and its supporters. It was recognized that a campaign of genocide would be necessary to eradicate the threat: President Yahya Khan in the February conference demanded to 'Kill three million of them, and the rest will eat out of our hands.'⁶ On March 25, 1971 the genocide was launched and Bengali military men of the East Bengal Regiment, the East Pakistan Rifles, police and para-military Ansars and Mujahids, Hindus, Awami Leaguers, students and Bengali intellectuals including professors and teachers whenever deemed

¹ Adam Jones, 'Gendecide and Genocide: Case Study: Genocide in Bangladesh' (2000) 2 Journal of Genocide Research.

² Adam Jones, 'Gendecide and Genocide: Case Study: Genocide in Bangladesh' (2000) 2 Journal of Genocide Research.

³ Lorraine Boissoneault, 'The Genocide the U.S. Can't Remember, But Bangladesh Can't Forget' [2016] *Smithsonian*.

⁴ Lorraine Boissoneault, 'The Genocide the U.S. Can't Remember, But Bangladesh Can't Forget' [2016] *Smithsonian*.

⁵ Adam Jones, 'Gendecide and Genocide: Case Study: Genocide in Bangladesh' (2000) 2 Journal of Genocide Research.

⁶ Robert Payne, *Massacre* (1st edn, Macmillan 1973).

by the army as 'militant' were all targets.⁷ The university in Dacca was attacked and students exterminated; death squads in Dacca killed around 7,000 people in a single night, and half of its population fled within a week.⁸ The war against the Bengali population proceeded in a gendercidal fashion, with Anthony Mascarenhas arguing 'there is no doubt whatsoever about the targets of the genocide.'⁹ Mascarenhas clarifies the link between gender and social class, with those targeted being 'overwhelmingly male for the most annihilatory excesses', thereby categorizing the events as a combined gendercide and elitocide.¹⁰ Rounaq Jahan notes that throughout the liberation war, 'able-bodied young men were suspected of being actual or potential freedom fighters, with thousands arrested, tortured, and killed.'¹¹ R.J. Rummel likewise writes how 'those especially likely to join the resistance i.e. young boys were sought after; sweeps were conducted of young men who were never seen again,' reminiscent of Nazi procedure towards Jewish males.¹² 'In what became province-wide acts of genocide, Hindus were sought out and killed on the spot. Soldiers would check males for the obligated circumcision among Muslims; if not, sure death.'¹³ In regions surrounding Dacca, military authorities conducted mass extermination experiments in places unlikely to be seen by journalists. At Hariharpara three elements necessary for mass killings were discovered: a prison, an execution chamber and a method of body disposal, reflecting similar elements involved in the Armenian genocide and the Nanjing Massacre of 1937.¹⁴

Many Bengali women were targeted for gender-selective atrocities and abuses such as gang sexual assault, rape and murder. Susan Brownmiller likened the events in Bangladesh to the Japanese rapes in Nanjing and German rapes in Russia during World War II: '200,000, 300,000 or possibly 400,000 women were raped.'¹⁵ Pakistani soldiers 'not only violated Bengali women on the spot; they abducted thousands and held them by force in their military barracks for nightly use.'¹⁶ Hit-and-run rape of large numbers of Bengali women occurred as Pakistani regulars swept through and occupied the land. The East Bengalis initiated a guerrilla war of self-defence, with the assistance of an Indian invasion in December 1971 under Indira Gandhi. Liberation forces were mobilized with increasing skill and effectiveness to confront the West Pakistani army, and by the end of the war, vast areas of Bangladesh had been liberated by the popular resistance. Thousands of people of the non-Bengali Urdu-speaking minority 'Biharis' did however fall victim to the resistance due to their support for Pakistani rulers.¹⁷ Demoralized by long months of guerrilla warfare, the Pakistani army quickly collapsed and on December 16 after a final genocidal outburst, the Pakistani regime agreed to an unconditional surrender. Awami leader Sheikh Rahman was released from detention and

⁷ Anthony Mascarenhas and Mazharul Islam, *The Rape of Bangladesh* (1st edn, Vikas Publications 1973).

⁸ Adam Jones, 'Gendercide and Genocide: Case Study: Genocide in Bangladesh' (2000) 2 *Journal of Genocide Research*.

⁹ Anthony Mascarenhas and Mazharul Islam, *The Rape of Bangladesh* (1st edn, Vikas Publications 1973).

¹⁰ Adam Jones, 'Gendercide and Genocide: Case Study: Genocide in Bangladesh' (2000) 2 *Journal of Genocide Research*.

¹¹ Samuel Totten and William S Parsons, *Centuries of Genocide* (1st edn, Routledge 2013).

¹² Rudolph Joseph Rummel, *Death By Government* (1st edn, Transaction Publishers 2011).

¹³ Adam Jones, 'Gendercide and Genocide: Case Study: Genocide in Bangladesh' (2000) 2 *Journal of Genocide Research*.

¹⁴ Adam Jones, 'Gendercide and Genocide: Case Study: Genocide in Bangladesh' (2000) 2 *Journal of Genocide Research*.

¹⁵ Susan Brownmiller, *Against Our Will: Men, Women and Rape* (1st edn, Open Road Media 2013).

¹⁶ Susan Brownmiller, *Against Our Will: Men, Women and Rape* (1st edn, Open Road Media 2013).

¹⁷ Christian Gerlach, *Extremely Violent Societies* (1st edn, Cambridge University Press 2010).

returned in Dacca on January 10, 1972, where he established Bangladesh's first independent parliament.¹⁸

The Pakistani version is of course very different: in defence of Pakistan's territorial integrity, after all negotiating possibilities were exhausted, the army prevented- by military force- a virtual takeover in East Pakistan by the Awami League. Both versions focus predominantly on government actions, therefore a broader contextualization is required by relating the various forms and directions of violence to their socioeconomic, political, and cultural backgrounds.¹⁹ Anthony Mascarenhas, describes the conflict as having left a 'legacy of blood characterized by corruption, poverty, criminality, dictatorships, and militarization', with struggles manifesting along party, class, religious, and ethnic lines.²⁰ This resulted in years of structural and direct physical violence, and between May 1972 and November 1973 7,700 murders were reported.²¹ The early 1970's saw massive social mobility, intensified by expulsion and flight, destruction, divided families, return, coerced sales or borrowing, and lack of government assistance. Villages marginally affected by the 1971 conflict and 1974-75 famine 'experienced a myriad of downward and upward social family trajectories', which increasingly linked the new rich to urban politics.²² People resultantly defined their own and other collectives more sharply, with growing mistrust of others; the conflict between West Pakistanis, Bengalis, and Biharis for elite positions thereby contributed to the solidifying of ethnic identities.²³

DEBATE AROUND DEATHS

Due to a lack of detailed or systematic official, judicial, and scholarly inquiries into the 1971 atrocities- including the failure to preserve or publish documents- solid statistical evidence is hard to establish. The work of the Bangladesh Inquiry Committee in 1972 is incomplete and predominantly based on oral evidence, which renders it questionable and potentially overstated.²⁴ Their total figure of 1,247,000 killed contrasted with just over 80,000 bodies or remains recovered, a considerably unrealistic ratio even given the widespread practice of dumping corpses in rivers.²⁵ Since the 1971 conflict, the unsubstantiated, sacrosanct Bangladeshi figure has been three million, representing the huge sacrifices of the war to which M. A. Hasan argues is one "no one should question."²⁶ To the Awami League government, this figure is a foundational element of the struggle for national liberation and was popularized by Sheikh Rahman, although his biographer and first foreign secretary, Sayyid A. Karim, viewed the number as 'a gross exaggeration,' reporting that the figure was taken from 'Pravda' the Soviet newspaper.²⁷ To permit any ambiguity regarding the numbers of victims in the 1971 war was to 'open the door to the apologists for Pakistan and the enemies of Bangladeshi independence.'²⁸ This was evidenced in a case filed by an Awami League activist against Khaleda Zia, the leader of the Bangladesh Nationalist Party following a speech

¹⁸ Adam Jones, 'Gendercide and Genocide: Case Study: Genocide In Bangladesh' (2000) 2 Journal of Genocide Research.

¹⁹ Christian Gerlach, *Extremely Violent Societies* (1st edn, Cambridge University Press 2010).

²⁰ Anthony Mascarenhas and Mazharul Islam, *The Rape of Bangladesh* (1st edn, Vikas Publications 1973).

²¹ Christian Gerlach, *Extremely Violent Societies* (1st edn, Cambridge University Press 2010).

²² Christian Gerlach, *Extremely Violent Societies* (1st edn, Cambridge University Press 2010).

²³ Christian Gerlach, *Extremely Violent Societies* (1st edn, Cambridge University Press 2010).

²⁴ Christian Gerlach, *Extremely Violent Societies* (1st edn, Cambridge University Press 2010).

²⁵ Christian Gerlach, *Extremely Violent Societies* (1st edn, Cambridge University Press 2010).

²⁶ David Bergman, 'The Politics of Bangladesh's Genocide Debate' *The New York Times* (2016)

²⁷ David Bergman, 'The Politics of Bangladesh's Genocide Debate' *The New York Times* (2016)

²⁸ David Bergman, 'The Politics of Bangladesh's Genocide Debate' *The New York Times* (2016)

suggesting 'there is a debate about how many hundreds of thousands were martyred in the liberation war, different books give different accounts.'²⁹ She was strongly criticized for showing 'utter disrespect to the millions who laid down their lives and perished in the black hole of genocide in 1971.'³⁰

Rummel recognises the incomplete statistics published in Bangladeshi newspapers and the Inquiry Committee as presenting the Pakistani army to have killed 100,000 Bengalis in Dacca, 150,000 in Khulna, 75,000 in Jessore, 95,000 in Comilla, and 100,000 in Chittagong.³¹ For 18 districts the total is 1,247,000 killed. This was an incomplete toll, and to this day no one has confirmed a final number.' According to Lawrence Lifschultz a survey by the Mujib government that was projecting a death toll of 250,000 was 'abruptly shut down,' and foreign observers estimating 200,000 to 500,000 deaths mirrors those unofficially voiced by Indian official's years later.³² Without data from the countryside where 94% of the East Pakistani population lived and most of the 1971 killings occurred, it is impossible to establish a concrete total figure for deaths. However, a long-term population survey going on in Matlab thana and confirmed by a later study, suggests that compared to the late 1960's the death rate increased from 15 to 21, which projected onto a population of 75 million would suggest an extra 450,000 deaths.³³ Despite army operations in the area after June 1971, most of these were caused by disease, and this was reiterated in a 1976 study estimating a death toll of 500,000, many of which resulted from disease and malnutrition.³⁴ A 2008 British Medical Journal article concluded that the number of violent deaths was about 269,000, allowing a possible range of 125,000 to 505,000.³⁵ Questions regarding this and other aspects of the 1971 war are significant for many others, particularly the widespread killings of members of the Biharis. Nationalist narratives of the past often serve contemporary political interests and therefore must be questioned further, warranting awareness over 'orthodoxy being used to silence dissent.'³⁶

CRIMINAL TRIALS & STATUTE

Following its independence, the Bangladesh government introduced three important bodies of law pertaining to these crimes. Under the Constitution it banned the religious party Jamaat-e-Islami, whose members had actively collaborated with Pakistani troops,³⁷ and enacted the International Crimes (Tribunals) Act 1973 which established special war crime tribunals to try those who had committed directly or indirectly, genocide, crimes against humanity and other international crimes. Finally, it promulgated the Bangladesh Collaborators (Special Tribunals) Order 1972, allowing trials for local perpetrators and collaborators for 'political' crimes such as opposing independence from Pakistan, and connected 'ordinary' crimes such as rape, attempted murder, murder and arson.³⁸ However, all three initiatives stalled as the consolidation of the People's Republic of Bangladesh led

²⁹ David Bergman, 'The Politics of Bangladesh's Genocide Debate' *The New York Times* (2016)

³⁰ David Bergman, 'The Politics of Bangladesh's Genocide Debate' *The New York Times* (2016)

³¹ Rudolph Joseph Rummel, *Death By Government* (1st edn, Transaction Publishers 2011).

³² Christian Gerlach, *Extremely Violent Societies* (1st edn, Cambridge University Press 2010).

³³ Christian Gerlach, *Extremely Violent Societies* (1st edn, Cambridge University Press 2010).

³⁴ George T. Curlin, Lincoln C. Chen and Sayed Babur Hussain, 'Demographic Crisis: The Impact of The Bangladesh Civil War (1971) On Births And Deaths In A Rural Area Of Bangladesh' (1976) 30 *Population Studies*.

³⁵ Ziad Obermeyer, Christopher J. L. Murray and Emmanuela Gakidou, 'Fifty Years of Violent War Deaths from Vietnam To Bosnia: Analysis Of Data From The World Health Survey Programme' (2008) 336 *BMJ*.

³⁶ David Bergman, 'The Politics of Bangladesh's Genocide Debate' *The New York Times* (2016)

³⁷ *Constitution of the People's Republic of Bangladesh 1972*, Article 38(2)

³⁸ Kirsten Sellars, *Trials for International Crimes in Asia* (1st edn, Cambridge University Press 2015).

to a general amnesty declaration in November 1973 for those who had opposed independence from Pakistan, expressly excluding those suspected of having committed or collaborated in the crimes.³⁹ This came to an end after the assassination of President Sheikh Rahman and the ouster of his Awami League government by a military coup in August 1975. The 1972 Order was revoked by restoring citizenships and allowing people back into government positions and the banning of Jamaat-e-Islami was reversed, enabling it to register and function as a political party.⁴⁰ A lack of legal reckoning for the 1971 crimes led to demands for the trial of those responsible as perennial feature of national life, therefore the Awami League declared its intention to prosecute members of the political opposition for war crimes. On 29th December 2008, the League made an election pledge to hold such trials, receiving an overwhelming mandate and sweeping the party into government.

Article 2 of the Genocide Convention defines genocide as any of the following acts 'committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life, calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; and forcibly transferring children of the group to another group.'⁴¹ The ICTA defines Genocide as 'acts committed with intent to destroy, in whole or in part, a national, ethnic, racial, religious, or political group, such as: killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; forcibly transferring children of the group to another group.'⁴² Bangladesh has not incorporated this Article in the 1973 Act, but has inserted genocide as a crime in its Penal Codes 'pursuant to its binding responsibility as a state party' under Article 5 of the Genocide Convention.⁴³ However, there is no provision in the Penal Code which defines crime; it is defined in a special Act to try and punish the perpetrators of 1971. The Penal Code of Bangladesh also provides for death sentences with the only alternative sentence of life imprisonment for murder.⁴⁴ Following the enactment of ICTA 1973, it took considerably long to constitute the first tribunal due to political considerations disrupting the execution and exercise of the Act. The Awami League government was initially too preoccupied with post-war reconstruction and national security to convene trials, but in January 2009, the Parliament adopted a formal resolution to mount trials which authorised the establishment of tribunals to try international crimes committed in 1971.⁴⁵ In July 2009, it amended the Act to allow the prosecution of civilians whilst establishing two International Crimes Tribunals which are both domestic in composition and orientation, and together have convicted 26 people on charges of genocide and crimes against humanity.⁴⁶ In August 2010, four leaders of Jamaat-e-Islami – Motiur Rahman Nizami, Ali Ahsan Muhammad Mujahid, Abdul Quader Molla and Muhammad Kamaruzzaman – were arrested for crimes against

³⁹ Kirsten Sellars, *Trials for International Crimes in Asia* (1st edn, Cambridge University Press 2015).

⁴⁰ Kirsten Sellars, *Trials for International Crimes in Asia* (1st edn, Cambridge University Press 2015).

⁴¹ Convention on the Prevention and Punishment of the Crime of Genocide, United Nations, Treaty Series, vol. 78, p. 277, Article 2

⁴² International Crimes Tribunal Act 1973

⁴³ Convention on the Prevention and Punishment of the Crime of Genocide, United Nations, Treaty Series, vol. 78, p. 277, Article 4

⁴⁴ Tasmiah Nuhiyah Ahmed, 'International Crimes (Tribunals) Act Of Bangladesh And Genocide' *The Independent* (2016)

⁴⁵ International Crimes Tribunal Act 1973, s3(1) s6(1)

⁴⁶ Kirsten Sellars, *Trials for International Crimes in Asia* (1st edn, Cambridge University Press 2015).

humanity and genocide. While the international community has supported the trials in principle and the trials appear popular within Bangladesh, the UN Working Group on Arbitrary Detention, the International Bar Association, Amnesty International, Human Rights Watch and the Bar Human Rights Committee of England and Wales have all criticised aspects of the legal framework and trial process.⁴⁷ While considered by some as a worthy successor to the Nuremberg Tribunal from which it drew inspiration, it has shortcomings that arguably adversely affect the quality of justice provided.⁴⁸

The legislative framework for the trials consists of four elements: the 1973 Act; the 'Constitution (First Amendment) Act, 1973'; the 'Bangladesh National Liberation Struggle (Indemnity) Order, 1973'; and the rules of procedure framed by the tribunals.

Under ICTA 1973, those involved in the acts of the 1971 war are not permitted to challenge the legality of the proceeding on the ground of breach of their fundamental rights, as enshrined under Articles 26, 27, 28, 31, 35, 44 of the Constitution of the People's Republic of Bangladesh, by resorting to Article 102 or other provisions of the Constitution. However, notice of the formal charge and accompanying documents must be given at a reasonable time before the start of the trial.⁴⁹ The right of the accused to offer an explanation relevant to the charge, conduct their own defence or rely on counsel assistance, present evidence in support of their defence, and cross-examine prosecution witnesses are also ensured.⁵⁰

The tribunals discretion to consider hearsay evidence was addressed in the Azad Judgment, which stated that the Tribunal 'is not bound by the strict rules of evidence', adding that the 'probative value of testimony of even a single witness is to be weighed', and that 'acceptance of and reliance upon uncorroborated evidence does not constitute an error in law, in finding an accused guilty under the Act'.⁵¹

The Molla Judgment further considered circumstantial and hearsay evidence; if considered 'with caution' and assessed for 'reasonable probative value', was 'not inadmissible per se'.⁵² The tribunals may take judicial notice of facts of common knowledge, which cannot reasonably be disputed without requiring any proof. For example, the Kamaruzzaman Judgment took judicial notice of the common knowledge that paramilitary groups 'e.g Razaker Bahini, Al-Badar Bahini, and Al-Shams were formed as accessory forces of the Pakistani occupation armed force for providing moral support, assistance and substantially contributing to the commission of atrocities throughout the country'.⁵³

The doctrine of superior responsibility was advanced by the prosecution, as civilian leaders rarely commit crimes via direct participation but carry responsibility by way of their authority over subordinates who have committed crimes, and their complicity in sustaining the culture of impunity.⁵⁴ The Act granted the tribunals jurisdiction over both military and civilian superiors with direct or indirect involvement in the commission of crimes,⁵⁵ therefore a superior will be held

⁴⁷ Kirsten Sellars, *Trials for International Crimes in Asia* (1st edn, Cambridge University Press 2015).

⁴⁸ Kirsten Sellars, *Trials for International Crimes in Asia* (1st edn, Cambridge University Press 2015).

⁴⁹ International Crimes Tribunal Act 1973, s16

⁵⁰ International Crimes Tribunal Act 1973, s17

⁵¹ Rule 56(2) of the Rules of Procedure, Chief Prosecutor v. Moulana Abul Kalam Azad [2012] ICT-BD, 143.

⁵² Chief Prosecutor v. Abdul Quader Molla [2012] ICT-BD

⁵³ Chief Prosecutor v. Muhammad Kamaruzzaman [2013] ICT-BD

⁵⁴ Kirsten Sellars, *Trials for International Crimes In Asia* (1st edn, Cambridge University Press 2015).

⁵⁵ International Crimes Tribunal Act 1973, s4(2) s 3(1)

responsible for their subordinates' actions regardless of whether they had any 'actual' or 'constructive' knowledge about the subordinates' crimes.⁵⁶

The prosecution argued that the Act contains liability for 'common plan of collective criminality', which corresponds to the joint criminal enterprise (JCE) doctrine.⁵⁷ In 1971 Jamaat-e-Islami and the ICS opposed Bangladeshi independence and supported continuing unity with Pakistan, however insisted their innocence during the commission, support and encouragement of the atrocities. The Mujahid case asserted that by leading the paramilitary group Al-Badr which was responsible for the massacre of the intellectuals in December 1971, the accused 'was also a party to the common plan and purpose of collective criminal enterprise in accomplishing the abduction of intellectuals for causing their death.'⁵⁸ The Judgment agreed, stating that the killings of the intellectuals were 'diabolical collective criminal acts', and that Mujahid had sufficient reason to 'know the common purpose, plan and commission' thereby confirming their involvement in the common plan to kill the intellectuals and constituting JCE within the meaning of Section 4(1).⁵⁹

The defence claimed that the definition of crimes against humanity provided by the 1973 Act was inadequate by failing to incorporate the 'widespread or systematic' component of the crime found in Article 7 of the Rome Statute.⁶⁰ The elements of crimes against humanity in the Act alludes to the 'systematic' or 'widespread' nature of attack in the phrases: 'committed against any civilian population' or 'persecutions on political, racial, ethnic or religious grounds'.⁶¹ The Azam Judgment clarified the terms 'systematic' and 'widespread' as 'a disjunctive, rather than cumulative requirement', and are therefore alternative conditions which are enough to qualify by their mere presence.⁶²

GLOBAL RESPONSE & RECOGNITION AS GENOCIDE

The response to the genocide at the official level was determined by geopolitical interests and major power alignments.⁶³ India acknowledged the genocide and supported Bangladesh, along with eastern bloc countries and particularly the Soviet Union as India's superpower ally, however Pakistan's propaganda campaign denying the commission of genocide was supported by the United States, China and the major Muslim countries.⁶⁴ Halfway through the genocide, the U.S Central Intelligence Agency provided a conservative estimate of 200,000 Bangladeshis murdered.⁶⁵ Due to alliance between the U.S. and Pakistan, the latter's soldiers wielded weapons supplied by the former to perpetrate most of the brutal attacks. \$3.8 million in military equipment was supplied by the U.S. to the dictatorship after the onset of the genocide and after a government spokesman told Congress that all shipments to Yahya Khan's regime had ceased.⁶⁶ Ongoing tensions of the Cold War were influential in strengthening this relationship whereby the U.S. under Nixon and his national security advisor Henry Kissinger, provided weapons and used Pakistan as a gateway to

⁵⁶ Kirsten Sellars, *Trials for International Crimes In Asia* (1st edn, Cambridge University Press 2015).

⁵⁷ International Crimes Tribunal Act 1973, s4(1)

⁵⁸ Chief Prosecutor v. Ali Ahsan Muhammad Mujahid [2013] ICT-BD

⁵⁹ Chief Prosecutor v. Ali Ahsan Muhammad Mujahid [2013] ICT-BD

⁶⁰ Article 7 Rome Statute

⁶¹ International Crimes Tribunal Act 1973, s3(2)(a)

⁶² Chief Prosecutor v. Moulana Abul Kalam Azad [2012] ICT-BD, 143.

⁶³ Samuel Totten and William S Parsons, *Centuries of Genocide* (1st edn, Routledge 2013).

⁶⁴ Samuel Totten and William S Parsons, *Centuries of Genocide* (1st edn, Routledge 2013).

⁶⁵ Lorraine Boissoneault, 'The Genocide the U.S. Can't Remember, But Bangladesh Can't Forget' [2016] *Smithsonian*.

⁶⁶ Robert Payne, *Massacre* (1st edn, Macmillan 1973).

open diplomatic relations with China.⁶⁷ Further complicating matters was India's relationship with the Soviet Union; in August 1971 the two signed the Treaty of Peace, Friendship and Cooperation which indicated India's relinquishing of its role as a neutral bystander in the Cold War.⁶⁸ The threat of a stronger relationship between India and the U.S.S.R resulted in a lack of concern on behalf of Nixon regarding Pakistan's military action in Bangladesh. This combined with a lack of concern for the U.S. citizens' reaction to such action demonstrates the 'primacy of international security over justice.'⁶⁹

At the unofficial level, there was an outpour of sympathy for the Bangladesh cause with the western media- the U.S. Britain, France and Australia- all kept Bangladesh on the global agenda all throughout 1971.⁷⁰ Many in the U.S. successfully lobbied congress to reduce the military aid afforded to Pakistan. Despite the Nixon administration's official support of the Pakistani government, influential senators and congressmen spoke out strongly against the genocide, and members of the UK Parliament were highly critical of the genocide.⁷¹

Many people have opposed the spirit of the Liberation War, only approving of it according to their own interpretation and struggling to recognize both the proclamation of Bangladeshi independence and the formation of the war-time government-in-exile on April 17, 1971.⁷² Many political parties have belittled the genocide and attempted to lighten the extent of the its barbarity, stopping short of its outright denial.⁷³ Stanley Cohen acknowledges three types of bystanders that engage in forms of denial, ranging from a failure to acknowledge the occurrence of violence, to dismissing its magnitude or impact on victims. He distinguishes between immediate bystanders as those bearing witness to atrocity, external bystanders as those who learn about the atrocity from a physical distance, and bystander states i.e. governing states and organizations with knowledge of the atrocity but fail to assist victims.⁷⁴ However, His analysis fails to consider the impact of postmodern and post-structuralist theories in 'bringing forth specific positionalities of many victims and survivors of atrocities.'⁷⁵ These theories combat cultural denial by challenging the limitations of universalizing language and hegemonic ideology, and are essential in giving voice to marginalized communities and revealing the contradictions inherent in prescriptive and universalizing rhetoric.⁷⁶ Pakistan's attempt to distort the facts of the genocide consequently warranted a step by Bangladesh to gather international recognition for the atrocities. While Pakistan formally recognized Bangladesh in 1974, it never issued an official apology for its actions during the war. The Hamoodur Rehman Commission Report accused the Pakistani army of 'senseless and wanton arson, killings and rape', but was hidden and found decades later following a leak to an Indian newspaper.⁷⁷ Instead of acknowledging the 1971 atrocities 'there is still an insistence upon refusal to accept historic facts', with Pakistan's military dominated by ethnic Punjabis, 'supporting a

⁶⁷ Lorraine Boissoneault, 'The Genocide the U.S. Can't Remember, But Bangladesh Can't Forget' [2016] *Smithsonian*.

⁶⁸ Lorraine Boissoneault, 'The Genocide the U.S. Can't Remember, But Bangladesh Can't Forget' [2016] *Smithsonian*.

⁶⁹ Lorraine Boissoneault, 'The Genocide the U.S. Can't Remember, But Bangladesh Can't Forget' [2016] *Smithsonian*.

⁷⁰ Samuel Totten and William S Parsons, *Centuries Of Genocide* (1st edn, Routledge 2013).

⁷¹ Samuel Totten and William S Parsons, *Centuries Of Genocide* (1st edn, Routledge 2013).

⁷² Shihab Sarkar, 'The Case for UN Recognition of Bangladesh Genocide' [2017] *The Financial Express*.

⁷³ Shihab Sarkar, 'The Case for UN Recognition of Bangladesh Genocide' [2017] *The Financial Express*.

⁷⁴ Michelle Mott, 'Language and The State: Michelle Mott on 'States of Denial' (2009) 9 *E3W Review of Books*.

⁷⁵ Michelle Mott, 'Language and The State: Michelle Mott on 'States of Denial' (2009) 9 *E3W Review of Books*.

⁷⁶ Michelle Mott, 'Language and The State: Michelle Mott on 'States of Denial' (2009) 9 *E3W Review of Books*.

⁷⁷ Aparna Pande, 'Pakistan's Insistence on Denial'.

national narrative based on denial and false pride'.⁷⁸ Despite the adopted resolution to observe March 25 as the Genocide Day, the United Nations adoption of the Genocide Convention in 1948 and its identification as a 'crime committed with the intention to destroy in whole or part of a national, ethnical, racial or religious group,' the Bangladesh genocide is yet to be included in the UN-recognised planned slaughters.⁷⁹

CONCLUSION

The mass killings in Bangladesh were 'among the most carefully and centrally planned of modern genocides', with five Pakistani generals orchestrating the events.⁸⁰ Robert Payne draws on the nature of the killings as 'organized massacres conducted by sophisticated staff officers with full awareness of their actions and consequences.'⁸¹ Soldiers executed their work mechanically and efficiently; not since Hitler invaded Russia had there been so vast a massacre."⁸² The genocide and gendercidal atrocities were fuelled by an abiding anti-Bengali racism, especially against the Hindu minority, with Bengalis 'often compared with monkeys and chickens, a low lying land of low lying people.'⁸³ The tribunals represent an attempt to combat international crimes and prosecute their perpetrators through a collective determination to ensure a dignified existence. The holding of the trials is 'imperative for the rendering of post-conflict justice,' however, no ad hoc international crimes trials have been without shortcomings, and the Bangladesh trials are no different. The global response to the genocide is heavily influenced by political considerations and personal circumstances of each individual power, which explains the consequent denial of the 1971 atrocities as a genocide particularly by the U.S. and the UN, by way of U.S. membership in the Security Council. Despite the ongoing debate surrounding the final death toll following the killings, there can be no doubt surrounding the fact that the Liberation War was fought by the Freedom Fighters against a fully equipped professional army of Pakistan, supported by U.S. funding. By its sheer extent in volume and savagery, 'the Bangladesh genocide dwarfs all other planned killings in the 20th century', with many historians likening the Bangladesh genocide to ethnic cleansing.⁸⁴ Consequent of these factors and the deaths of the Bihari group, it is important to acknowledge the full extent of the suffering involved in the 1971 killings as a genocide with gendercidal characteristics.

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⁷⁸ Aparna Pande, 'Pakistan's Insistence on Denial'.

⁷⁹ Shihab Sarkar, 'The Case for UN Recognition Of Bangladesh Genocide' [2017] The Financial Express.

⁸⁰ Adam Jones, 'Gendercide and Genocide: Case Study: Genocide In Bangladesh' (2000) 2 Journal of Genocide Research.

⁸¹ Robert Payne, *Massacre* (1st edn, Macmillan 1973).

⁸² Robert Payne, *Massacre* (1st edn, Macmillan 1973).

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