

# Societies Emerging from Conflict



# Societies Emerging from Conflict:

## *The Aftermath of Atrocity*

Edited by

Dennis B. Klein

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Societies Emerging from Conflict: The Aftermath of Atrocity

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## INTRODUCTION

# AN ASCENDANT POST-CONFLICT FRAMEWORK

DENNIS B. KLEIN

The aftermath of atrocity is an emerging subject of concern, the latest topic competing for scholarly attention with the origins and virulence of atrocities. This volume offers one reason why: stability and parity after atrocity are exceptionally elusive and often perilous. There are many conceptions of successor societies that scholars suggest and analyze critically; some offer hope. But the impediments to negotiating the overburdened past are considerable. It is not even clear if societies emerging from conflict can be characterized as “successor.”

Does the proliferation of post-atrocity paradigms over the past quarter century, since the early 1990s—human rights remedies, myriad justice schemes, civil society memorials and counter-memorials, etc.—suggest promising alternatives to conventional criminal retribution? Or does it, in fact, mean that very little so far is working? The trajectories of post-World War II multistate liberation movements, particularly communism, along with decolonization abetted by United Nations conventions, appeared sufficient for articulating common aspirations. As it turned out, they more often than not succumbed to cold war great-power priorities. These priorities materialized in the combative rhetoric of superior Western morality and Soviet ambitions that threatened international security and cooperation. Prerogatives of national sovereignty weakened the promises constituted in the 1948 Universal Declaration of Human Rights and handicapped the UN Genocide Convention. Errant decolonization movements gave rise to proxy wars, failed states, and internecine destruction. National judicial proceedings invited political caprice and sham justice.<sup>1</sup> The cold war record, observed Samuel Moyn, confirmed that movements seeking to mitigate state power politics are quixotic. Indeed, he argued, their charm masks and deflects “real” political interests.<sup>2</sup>

With the end of the cold war came a renewed, compensatory commitment to the principle of humanity in adversarial circumstances during and after atrocity. A second phase devoted to the inviolability of individual rights and the benefits of the common good emerged against or in spite of the malfeasance or nonfeasance of the state.<sup>3</sup> Non-state actors—particularly NGOs (non-governmental organizations) and other humanitarian organizations, such as the International Organization for Migration, Fortify Rights, or better-known bodies like Médecins Sans Frontières (Doctors Without Borders), Amnesty International, Human Rights Watch, and the International Rescue Committee—came into existence or dramatically expanded their scope of activities to protect and provide for citizens. But the benevolent state remained a player. Nascent transitional justice practices, some explored in this volume, regarded state actors as the centerpiece of reconciliation after atrocity between former adversaries. These include official state apologies, education mandates, lustration, empaneled truth commissions, and exemplary criminal justice prosecution affirming the rule of law.

The present verdict after a quarter century is surely mixed. Auspicious strides in post-apartheid South Africa, post-Holocaust Germany, and post-Dirty War Argentina demand scrutiny for lessons that might be applied elsewhere. Yet large-scale violence is an inescapable fact of late twentieth and early twenty-first-century life, especially in Africa, the Middle East, the Indian subcontinent, southeast Europe, and Southeast Asia. Despite the best of intentions, transitions in Bangladesh, Bosnia-Herzegovina, and Indonesia have been seriously compromised. Successor state actors in these cases defied reconciliation, a reprise of great-power dynamics after World War I whose blinding momentum overwhelmed reasoned diplomatic proposals and treaties—the policy of constructive engagement—that sought to avoid the resumption of international conflict. Then and now, the state remains just as likely to create or exacerbate volatility after atrocity as to help achieve stability.

In search for a more reliably favorable post-atrocity succession, contemporary scholars are considering the merits of practices that circumvent the state, namely, projects emerging from civil society. This third phase, explored in the chapters that follow, includes public commemorations, citizen activism, historical dialogues, and witness accounts.<sup>4</sup> Present circumstances are propitious, though the uneven record of the previous two phases compels caution. Still, we should make note of the scaffolding propping up citizen activism as the engine of transition. Globalization, for example, has had the effect of making room for citizen activism by limiting the predatory hegemony of the state. At the same



time, however, it has given rise to state (and corporate) voracity and its dire consequences—climate change and mass migration. More persuasive is the anemic performance of discredited state actors in tackling large-scale violence and restoring confidence in social stability and security. Into the breach, citizens seize opportunities for independent intervention during periods of transition. This development energizes the mission of NGOs and is evident in the maturity of the transitional justice movement toward organic “co-remembering” practices.<sup>5</sup> The ebbing of hybrid tribunals—the International Criminal Tribunal for the former Yugoslavia (ICTY) and the Extraordinary Chambers in the Courts of Cambodia (ECCC)—signal the rise of transnational activism from below.

The articles in the present volume explore the complex and fluid relationships between the state and its citizens in mitigating unstable circumstances after atrocity. With one exception (the article by Dilshad Jaff and Lewis Margolis), they originated at the second international seminar sponsored in 2016 by Kean University’s Master of Arts in Holocaust and Genocide Studies program. Called eponymously “Societies Emerging from Conflict: The Aftermath of Atrocity,” the seminar involved participants with ancestral and family ties to and ethnic roots in Bangladesh, Bulgaria, Canada, Ghana, Indonesia, Iraq, and the United States. Their contributions to this volume are not schematic. While a rough, overall chronology exists to mark successive phases of multistate aspirations, state–citizen alliances, and citizen activism, the behavior of the state varies in all phases and in different world regions. But it helps to note the provenance of post-conflict movements in one phase or another, either in organized multistate activity (UN conventions, liberation movements); in efforts at deploying state power to achieve justice (NGOs, international tribunals); or in transnational civil society.

Before previewing the contributions to the present volume, a disclaimer: The usual standards of scholarship prescribe dispassion and analysis; these are epitomized in several impressive articles. Against this conventional grain, other articles are polemical. This is the case because they constitute their authors’ arguments for particular post-atrocity schemes. But it is also true because they exemplify the subjects of their investigations: citizen activism.

This volume is divided into four parts: Part I, “Justice,” examines the second phase and its legacies. In her article, “Bangladesh: Troubling Trends in the Politics of Justice,” Sue Gronewold opens the book with a reminder of post-atrocity societies’ vulnerability to recurrent violence and impunity. More than a dozen local leaders who collaborated with the repressive Pakistani military in 1971 are on trial, but the proceedings, she

observes, are exacerbating the rifts in this South Asian country riven by political strife and the vestiges of the 1971 War of Independence. The government has engaged in retaliatory violence against those believed to have left-leaning ideals or goals threatening the status quo. The outlook, she notes, is dispiriting, as restrictions and limits on democracy and fundamental human rights are tightening. In his article, “The Armenian Holocaust and International Law,” Torkom Movsesiyan drives home the argument that “successor” states serve more to impede than to expedite justice after atrocity. He argues that, as long as the Turkish government resists pressure to interrogate the events of 1915 in Eastern Anatolia, popularly known as the Armenian Genocide, formal justice will remain inert. He argues, instead, for an international tribunal to prosecute the perpetrators and explores the role of the International Criminal Court. International law demands not only accountability, he observes, but also the return of land and property confiscated from the Armenians then residing in the Ottoman Empire.

Part II, “Narratives,” explores the roles of victims as well as perpetrators in the aftermath of atrocity. These articles observe the emerging salience of citizens in aftermath dynamics. In her article on Cambodia’s aftermath, “Contested Narratives of Victimhood: The Tales of Two Former Khmer Rouge Soldiers,” Eve Zucker draws on her ethnographic research to show that perpetrators—specifically, two former Khmer Rouge soldiers—are more self-reflective than the scholarship (some suggesting remorselessness) suggests. Her findings imply a capacity for their reintegration into society. The act of narrating past behavior itself is, she says, a transitional process and, in the case of survivors, appears to promote the prospects for their recovery. Narration as a transitional process is a phenomenon that I have long been interested in; I return to it in this volume with an article called “The Negotiable Society: Transitions from Below.” By publishing accounts of their ordeal, especially in the 1960s when Germans anticipated statutory support for their inclination to “move on,” Holocaust survivors exhibited a desire to renegotiate relationships with their contemporaries even as they were determined to disquiet them by bearing witness to the Nazi past. What they wrote expressed these twin perspectives: Narratives informed by recrimination make clear that reworking relationships involved a disposition of unrelenting worldly suspicion. On the other hand, counter-narratives, imbued with fellow-feeling, inspired a search for tenable terms for a post-atrocity future. Bringing perpetrators and victims together into direct dialogue has been Laura McGrew’s preoccupation in her work. For her article, “Changing Narratives of Victims and Perpetrators in Cambodia: The Extraordinary Chambers in the Courts of

Cambodia (ECCC) and Community Responses to Dialogue Interventions,” she consulted a longitudinal case study of one particular community where an NGO conducted a dialogue project to promote understanding. Noteworthy is her observation of the extra-legal dimensions of the hybrid national-and-international court, which began operating in Cambodia in 2006: The presence of the ECCC, she argues, galvanized public discussion about Cambodia’s troubled past and occasionally about how the past relates to human rights violations in daily life. Even if the conversations expose competing memories—or, especially in the case of perpetrators, an inclination not to remember at all—and therefore elude reconciliation, historical dialogues, she notes, have the effect of promoting a measure of mutual understanding.

Part III, “Reconciliation and Prevention,” serves as ballast against the daunting challenges to successful transitions explored so far. The two articles constituting this part revisit the prospects for atrocity mitigation. In “In Search of Justice and Reconciliation: Rwanda,” Mark Ampofo explores the intersections between the state and its citizens. In pursuit of a policy of “unity and reconciliation,” the post-genocide Rwandan government, he writes, adopted a new constitution, created programs to empower women, and fostered economic growth and stability. Most dramatically, however, the government instituted an innovative adaptation of local justice traditions, called *gacaca*. These community courts were set up in 2001 to speed up the prosecutions of hundreds of thousands of those suspected of having participated in the 1994 genocide and who were being held in overcrowded jails. The government has argued for the courts’ transitional merits but, as Ampofo discusses, it has fallen short of its stated objectives. Kerry Whigham, in the following article titled “Constructing Prevention: An Exploration in Building Memorials that Prevent Atrocity,” writes about the potential of counter-monuments to prevent atrocity’s resumption. Counter-monuments, as they emerge around the world in response to atrocity crimes, are a classic exemplification of phase-three, civil society enterprises. Unlike conventional monuments, which place the state and its surrogates on a pedestal for hero-worship, counter-monuments draw visitors into memory spaces by making the past present and, more importantly, he asserts, by using the past to shape the future. Using a performance-studies lens to analyze these spaces of memory, Whigham argues that these memorials, by asking important questions, can promote the prevention of future atrocities.

Given the promise and the impediments, any evaluation of post-atrocity frameworks in play since the end of the cold war is preliminary and often self-correcting. The state exhibits the potential for benevolence,

but, as Ampofo argues, under different circumstances and inhabited by actors of varying qualities, it is also prone to malevolence—an inclination that Gronewold and Movsesiyan analyze. The alternative examined here, civil society, is an exciting arena of creative commitment to attenuating occurrences or recurrences of atrocities, as Zucker and Whigham notably laud. McGrew is more cautious about the prospects. On the basis of witnesses' accounts, I agree with Moyn that even promising transitions are inherently and often fatally burdened by countervailing power politics.

The final part, "Forward?", is an assessment of post-atrocity legacies in three regions of the world. Ajdin Dautović, in his article, "Sorry, Not Sorry: An Assessment of the Appropriateness of the 2004 Republika Srpska Apology for the Srebrenica Genocide," looks at one important transitional scheme—official apologies. Bosnian Serb political elites, he observes, often expressed apologies and acknowledged war crimes against Bosniaks in Bosnia-Herzegovina, but, by using a standard for evaluating the integrity of apologies, he asserts that these expressions were insufficient for reconciliation. Ever since the end of the Bosnian War in 1995, nationalistic narratives, he asserts, have immobilized Bosnia-Herzegovina in a state of ethnic segregation. He concludes, however, that those same standards offer possibilities for moving toward reconciliation. Benny Widyono, in "The Legacy of Cold War Era Massacres in Cambodia and Indonesia," also sees signs of progress. Although the United Nations recognized the Khmer Rouge as the legitimate government in post-genocide Cambodia and the international community tacitly endorsed Indonesia's official, fifty-year denial of its government's large-scale reprisals for a botched leftist coup, the two countries started a process of reconciliation with the end of the cold war. An increasingly democratic government in Indonesia is lifting the shroud of silence, and the intervention of the United Nations in supervising Cambodian elections and participating in the Khmer Rouge tribunal is helping to create an open society in that country. In the aftermath of atrocities, however, all transitional frameworks are vulnerable. That is a conclusion we draw from the volume's final article, "Violence, Armed Conflict, and the Burden of Mental Illness in the Middle East and Beyond" by Dilshad Jaff and Lewis Margolis. They contend that the state and civil society are mute in dealing with a serious legacy of violent conflicts—mental-health traumas. To begin with, most inhabitants of the Middle East and North Africa—societies experiencing ongoing violent conflict aggravated by mass migration from the region—are unaware of the acute and chronic long-term consequences of such traumas; few significant steps have been taken to alleviate them. They warn that their neglect will impair the well-being

of millions of inhabitants and their children and inhibit the two regions' chances for a stable and secure recovery. Yet their recommendations for epidemiological studies and other remedies is, at the same time, a wake-up call that we hope this volume will help amplify.

I am grateful to Kean University for enabling its Master of Arts in Holocaust and Genocide Studies program to convene the international seminar on which the present volume is based. Special thanks go to Brandon Moye, a recent graduate of the program, and Jannette Belen for their help with the project's development, and to the Jewish Studies program for its assistance in preparing this manuscript for publication.

## Notes

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<sup>1</sup> Ruti G. Teitel, *Transitional Justice* (New York: Oxford University Press, 2000): 39–46.

<sup>2</sup> Samuel Moyn, *The Last Utopia: Human Rights in History* (Cambridge, MA: Harvard University Press, 2010). The centrifugal pressures threatening the European Union—a multistate convergence from the 1950s—indicate, among other influences, the potency of the autonomous nation-state.

<sup>3</sup> For a succinct discussion of the post-World War II assertions of the individual's inalienability with the revival of natural rights theories and the ascendance of distributive justice theories, see Jerome J. Shestack, "The Philosophic Foundations of Human Rights," *Human Rights Quarterly* 20 (1998): 215–24.

<sup>4</sup> For an example of citizen-inspired preventive endeavors, see Mary B. Anderson and Marshall Wallace, *Opting Out of War: Strategies to Prevent Violent Conflict* (Boulder, CO: Lynne Rienner Publishers, 2012). See also Iosif Kovras, *Grassroots Activism and the Evolution of Transitional Justice: The Families of the Disappeared* (New York: Cambridge University Press, 2017).

<sup>5</sup> See Edward Casey, *Remembering: A Phenomenological Study* (Bloomington: Indiana University Press, 2000): 235–36. See also Jeffrey Blustein, *Forgiveness and Remembrance: Remembering Wrongdoing in Personal and Public Life* (New York: Oxford University Press, 2014): 171–75.



# **I. JUSTICE**

## CHAPTER ONE

# BANGLADESH: TROUBLING TRENDS IN THE POLITICS OF JUSTICE

SUE GRONEWOLD

I write today out of concern for events over the past few years in Bangladesh. As a scholar of genocide and human rights in Asia, I traveled to Bangladesh in the fall of 2014 as a State Department Special Lecturer. At the invitation of the newly formed Centre for Genocide Studies at the University of Dhaka, I delivered lectures on comparative genocide, particularly on the European Holocaust and on instances of mass killing in Asian history. For a number of years, I have been impressed by the singular path taken by Bangladesh, particularly its creation, in an Islamic society, of a state devoted to both political and religious tolerance and to social equality and economic opportunity. It has also been committed to coming to terms with the past in a rational, legal fashion. As with the case of Cambodia, I, along with many other international observers, was hopeful that the establishment of an internationally recognized tribunal would put an end to the divisiveness that had plagued both of those countries since the mass killings and upheavals of the 1970s. But I must admit to being increasingly distressed at recent trends that have been unfolding in Bangladesh. There seem to be at least four troubling trends around the politics of justice as carried out there today.

In the first place, a culture of violence has developed in today's Bangladesh. As many have pointed out, the country has been mired in violence since its official birth in 1971; acts of both political and religious violence are, therefore, certainly not new to Bangladesh. But there does seem to have been a recent escalation of very brutal acts of violence. Furthermore, since the founding party, the Awami (People's) League (AL), returned to power in the election of 2008, hopes were high that much of the extreme violence and disruptions could be reduced and that Bangladesh could develop more solid political and social institutions that



would serve as bulwarks of democracy throughout the country. However, since the start of 2016, according to Odhikar, a Bangladeshi human rights organization, sixty-four people have disappeared, 185 have died in extrajudicial killings, and 197 have died in political violence.<sup>1</sup> In the month of April 2016 alone, there were four major killings, mostly aimed at a group of well-known, prominent “atheist bloggers,” with a “hit list” of eighty-four intended victims, most of them associated with the free-thinking website Mukto Mona (free mind), released by a group calling itself Defenders of Islam.<sup>2</sup>

- On April 7, Nazimuddin Samad, age 28, was killed on a busy street near Jagannath University in Dhaka where he was a law student and had posted his views critical of including Islam as the state religion in the Bangladeshi Constitution (it had been removed and then returned in 1988 under a military government and recently upheld in spite of a petition to maintain the secular nature of the government as was the original intention in 1971).<sup>3</sup> Ansar al-Islam, the Bangladesh branch of al-Qaeda in the Indian Subcontinent, claimed responsibility for his death, but the government insisted instead that it was the work of the local, banned Ansarulah Bangla Team (ABT), convicted in another blogger murder last year.
- On April 23, English literature professor Rezaul Karim Siddique, 58, was attacked as he walked from the bus station in the northwestern city of Rajshahi where he taught at the local public university. Much beloved and very involved with his local mosque and its madrasa, and also with music, both Bengali and Western, Siddique was the fourth professor from that university to be killed. Daesh (referred to as ISIS, IS, or ISIL in English) claimed responsibility for the killing, saying it was because he was “inclining to atheism.”<sup>4</sup>
- April 26, there was the hacking to death (a standard method notable for its brutality in Bangladesh as it was in the 1995 genocide in Rwanda) of Xulhaz Mannan, age 35, editor of *Roopban*, Bangladesh’s only LGBT magazine. He had also worked for the U.S. State Department in the USAID development agency and had organized the annual rainbow rally in Dhaka in conjunction with Independence Day on April 14, which was canceled in 2016 due to threats of violence. An associate was killed with him.<sup>5</sup>
- These murders followed the killing of a popular publisher, Faisal Arefin Dipan, on October 15, 2015, in broad daylight at the Aziz supermarket in Dhaka.<sup>6</sup>

- These attacks targeted religious and ethnic minorities within Bangladesh; a Buddhist monk was hacked to death in mid-May in southeastern Bangladesh and a Sufi Muslim leader in the north was killed the week before. A Hindu businessman was attacked and killed in his shoe shop in May, as was a seventy-year-old Hindu priest on June 7 while riding his motorcycle.<sup>7</sup> Late October and November, 2016 saw over a 100 Hindu homes burned and seventeen temples vandalized in an eastern section of Bangladesh after reports that a Hindu youth had posted an offensive image on Facebook; four other anti-Hindu incidents were reported in other parts of the country.<sup>8</sup>
- Also troubling has been the increase in attacks on foreign visitors to Bangladesh: a European man jogging in the diplomatic quarter was gunned down, a missionary in the far north was attacked and killed, a Japanese man who had been working in Bangladesh on development projects for decades was killed.<sup>9</sup> Then, on July 2, 2016, an attack similar to the IS attack in Paris in the spring of 2016 occurred, breathtakingly brutal and unexpected, in a popular café in Dhaka's elite Gulshan diplomatic district which left twenty hostages dead, including one American, nine Italians, seven Japanese, and two police. This was the worst attack in many years.<sup>10</sup>
- Many others have been brutally attacked and left with wounds. According to the South Asian Terrorism Portal (SATP), in Bangladesh in the past eleven years, militant Muslim attacks have claimed 393 lives, 360 of them civilians, with an astounding 322 of the 393 occurring since 2013.<sup>11</sup>

Violence has not been confined to sporadic attacks on individuals, but has also included mass actions. While college campuses are (and have historically been) common sites for demonstrations and riots, the presence on college campuses of student wings of political parties is particularly marked in Bangladesh, coordinated with party leaders and joined by outsiders, including Bangladeshis in the diaspora. Mass actions on college campuses in Bangladesh have shown an uptick in recent years, many of them quite violent. This was particularly true in 2013 when outraged groups of students affiliated with the AL and its allies poured into the streets, first in Shahbag Circle in Dhaka (called Shahbag "Square" after the Egyptian gathering place), followed by tens of thousands of people from all walks of life, in Bangladesh and in Bangladeshi communities around the world. Dissatisfied with the International Crimes Tribunal's

announcement of life imprisonment for Abdul Quader Mullah for war crimes, they first demanded his execution and then the total ban of Jamaat-e-Islami from politics along with a boycott of its followers' businesses. In protests and counterprotests by Jamaat and its supporters in the month that followed, more than sixty people were killed and scores injured.<sup>12</sup> The same pattern of violent protests, beginning on campuses and then spreading throughout the country, occurred in January 2015 on the anniversary of the AL's sweep in the 2014 elections, resulting in fifty deaths and hundreds of injuries.<sup>13</sup> Odhikar's May 2016 *Human Rights Monitoring Report* argued that political violence during elections had increased since 2014, especially at the lowest level of society which had previously been relatively immune, with forty-five killed and 1,485 injured in internal conflicts in both the AL and the Bangladesh Nationalist Party (BNP) in May 2016 alone.<sup>14</sup>

It is not at all clear who the perpetrators of the violent attacks since 2013 have been, and there is much disagreement about this subject both in Bangladesh and abroad. Daesch has claimed responsibility for many attacks since 2015, including the July 1 café massacre, the murder of two foreign nationals, as well as sporadic attacks against minority religious communities and law enforcers. Groups affiliated with al-Qaeda in the Indian Subcontinent (AQIS) have claimed responsibility for many attacks on those who allegedly hold views or have lifestyles contrary to Islam such as the secular bloggers, LGBT activists, and university professors. Bangladeshi militant groups like Jamaat-ul-Mujahideen Bangladesh (JMB) and Ansar al-Islam have claimed some as well. The government has consistently denied the presence of outside Islamists in Bangladesh and put the blame solely on local elements, particularly those like Jamaat-e-Islami who are allied with the political opposition, or others who are outlawed like JMB or ABT.

Relatively little had been done to respond to the attacks which have become more frequent since 2013, but in late July 2016, police raided an apartment in the Kalyanpur neighborhood of Dhaka, and nine young men, allegedly responsible for the Gulshan café attacks, were killed in the ensuing gunfight. Contrary to all expectations and shocking to all, both inside and outside Bangladesh, not only were these young men from good families and were well educated either abroad or in international schools in Bangladesh, but many of them had ties to the government. Most were fluent in English, with every prospect of doing well in the future. But they nevertheless came under the sway, as recently as the spring of 2016, of charismatic Islamist preachers convincing them to undertake jihad against infidels. Shazad Rouf, for example, was an American citizen whose family

had returned to Bangladesh from Chicago several years before. He had studied at the American International School as well as at the North South University in Bangladesh, as had several others. His father supplied defense products to security forces in Bangladesh and his grandfather was a former chief of military intelligence. After his mother's death in 2009, he started praying five times a day and, like the others, went missing in February 2016. In statements recovered from the raided apartment, he also praised Daesch chief Abu Bakr al-Baghdadi as his "Khalifa" and was active in Bangladesh in the student wing of the Jamaat-e-Islami.<sup>15</sup> It is still not clear who perpetrated the other attacks, however, and whether they were home-grown or foreign. In June 2016, the AL government ordered a sweeping arrest of over eleven thousand people, primarily from the opposition parties, but it is not clear if its goal was to stop terrorism or to weaken their political opponents. Also unclear is the evidence on which these arrests were based.<sup>16</sup>

A second troubling trend in Bangladesh in recent years is the increasing restriction of freedom of speech and the press. Critics—newspaper editors, university professors, internal and foreign human rights organizations, and activists of all stripes—have been criticized and even silenced for calling into question acts and policies of the current AL government under the leadership of Sheikh Hasina, head of the party since 1981. Since the end of the military period and the restoration of democracy in 1990, the AL, with Hasina at the helm, has alternated in power with the current opposition party, the Begum Khaleda Zia-led BNP. Two recent instances stand out as especially troubling. In 2014, a British journalist, David Bergman (who lives in Dhaka, is married to a Bangladeshi, and is respected for his decades-long work informing the world about the atrocities committed during the Bangladesh war for independence) was convicted by the Bangladesh International Crimes Tribunal #2 for contempt due to three articles he had published on his blog about the tribunal's procedures; it particularly chastised him for calling into question three million as the number of deaths during the Bangladesh war for independence that had long been touted as irrefutable, alleging that in questioning those high numbers he had "hurt the feelings of the nation."<sup>17</sup> Since 2011, Bergman had monitored the tribunal assiduously, publicizing the most striking lapses in procedure on his blog and in other news sources both inside and outside Bangladesh.<sup>18</sup>

The latest Bergman case became more complicated when fifty prominent journalists, artists, writers, and activists became alarmed that his treatment signaled a weakening of democratic institutions and signed a petition supporting him amid concern "about the use of the contempt of

court law to curb freedom of expression.”<sup>19</sup> Twenty-three were brought to court on contempt charges—the other twenty-seven apologized for any unintended offense caused by their “crime.” Twenty-two were exonerated, but one was convicted, Dr. Zafullah Chowdhury, a prominent public health physician, respected as a freedom fighter from 1971—and in his eighties. Because of his refusal to bow to the court, and possibly as a warning that no one, not even a venerated freedom fighter, was exempt, he was sentenced to stand an hour in the dock and fined the equivalent of US\$64. These actions have been roundly criticized both at home and abroad: PEN/America issued the strongest possible condemnation as did the Bangladeshi human rights organization Odhikar in its May 2016 *Human Rights Monitoring Report* which also drew attention to new laws drafted but not yet in place, especially the “Distortion of the History of Bangladesh Liberation War Crimes Act 2016” and the “Press Council Act (amendment) 2016” which could be used to silence dissent, close down newspapers, and arrest and fine journalists.<sup>20</sup> The U.S. State Department’s *Country Reports on Human Rights Practices*, in the section on Bangladesh for 2015, found numerous examples in which freedom of the press and speech had been curtailed, and the *New York Times* printed a strong statement from its editorial board on December 23, 2014 against “Muzzling Speech in Bangladesh” regarding the treatment of Mr. Bergman, joined by Human Rights Watch and the *Economist* magazine, themselves previous targets of contempt charges.

These actions are even more troubling because the founding principles of the AL in 1949 emphasized the will of the people, first in the creation of Pakistan East and West and then increasingly in the struggle for independence against West Pakistan.<sup>21</sup> Its first constitution in 1972 stated in its Preamble and then throughout the document the powerful commitment to democracy and democratic institutions. Strongly articulated in its most recent ballot box victories in 2008 and again in 2014 were the four founding principles honed over thirty years which received the strongest popular mandate in the election of 2008: nationalism (since the struggle in 1971 was a nationalist movement for a free East Pakistan/East Bengal/Bangladesh), democracy, socialism, and secularism. Those principles have been both underscored and under siege at various points in its forty-five-year history, which is particularly distressing now, when I would argue that clarity and conviction are most needed.

A third troubling trend, related to threats to freedom of expression and of the press, is restrictions on the freedom of religion. Under the AL, religious tolerance has been articulated through the principle of secularism (it is important to remember that the founders of Bangladesh included

secular progressives for whom a socialist society was the ultimate goal). Also enshrined in the Preamble and body of the 1972 Constitution, freedom of religion has been under assault at various points in the history of Bangladesh. Although 90 percent of the population is Sunni Muslim, the territory that today comprises Bangladesh/East Bengal has long been home to other religions. Hindus comprise approximately 9.5 percent, with the remainder being Theravada Buddhist, Christian (mostly Roman Catholic), Shia Muslim, Bahia, animist, and Ahmadiyya Muslim. Religious minorities have usually been generally tolerated, and most Bangladeshis are proud of this tradition, which some scholars trace back to the historical importance of a tolerant Sufism. Within Islam, there is general acceptance between Sunnis and Shiites, with neighbors participating in each other's religious festivals. "Communalism," or the dividing of the people according to religion (as in India), is strictly outlawed in the constitution. Although the original name of the party was the All Pakistan Awami Muslim League, a conference convened in 1954 dropped the word Muslim and formally committed the party to secularism.<sup>22</sup> Since its founding, however, the AL has essentially paid lip service to both principles: toleration of all religions and a commitment to the principle of secularism, all within the context of an adherence to Islam which rises and falls with current events. While article 2A of the first constitution in 1972 identified Islam as the state religion, that article confirmed that "other religions may be practiced in peace and harmony in the Republic." Moreover, article 41 assured freedom of religion and the party stressed in the document its commitment to secularism. The military regime in power from 1981 to 1990 removed the commitment to secularism and declared once again in 1988 that Islam was the state religion. An attempt in March 2016 to remove Islam as the state religion, reinvigorating a twenty-eight-year-old case that had been on hold, was rejected by the nation's High Court which argued that the freedom of religion articles in the constitution protected those not Muslim.<sup>23</sup> In the spring of 2017, three other events underscored the fine line the current government is treading: responding especially to Hefazat-e-Islam, a network of conservative (although emphatically nonviolent) madrasa leaders, new textbooks for the nation's schools were revised with a number of non-Islamic or secular texts removed such as the Hindu *Ramayana* and Sufi songs of Lalou Shah; madrasa curricula were removed from education ministry oversight with advanced religious instruction made equivalent to a post-graduate degree; and a sari-clad statue of Lady Justice prominently displayed in front of the Old High Court Building in Dhaka was removed (yet quietly reinstalled) as un-Islamic and perhaps

even Hindu.<sup>24</sup> The AL's attempt to play both sides of the religious identity issue is increasingly difficult in the face of the rise of Islamic militants who insist on the exclusiveness of Islam and regard secularism as heretical.

The fourth troubling trend in today's Bangladesh concerns the declining commitment to a functioning multi-party democracy and the notion that opposing voices are both healthy and necessary in a democracy, principles always proclaimed in Bangladesh, but which have often been absent in practice as the major political parties battle each other, with intrigues, corruption, and assassinations more the order of the day since 1971. There are approximately twenty-five officially recognized political parties in Bangladesh, and the two major parties—in and out of power since the military regime from 1975 to 1990—the AL under Sheikh Hasina (daughter of the assassinated founder of the AL and founding leader of Bangladesh, Sheikh Mujibur Rahman) and the BNP under Sheikh Khaleda Zia (widow of the assassinated founder of the BNP and first military ruler, General Ziaur Rahman) are not hegemonic majoritarian parties. They usually depend for their electoral success on their alliances with other smaller political parties, which run the spectrum from strong leftist to militant Islamist. These alliances have always been problematic, and in general the AL is more center-left and in the last election allied itself more with minorities, particularly Hindu, and more secular and liberal groups, in a coalition of fourteen parties, the "Grand Alliance." The BNP is more center-right and has formed a coalition, the "18 Party Alliance" with more right-wing and Islamist parties, including the now outlawed Jamaat-e-Islami. A swing group in many elections has been the third largest party, the Jatiya Party (Ershad), representing the military, which at present is included in the AL alliance. While on the surface, the AL and BNP share similar commitments to development and democracy, the two party leaders, derisively called the "battling Begums,"<sup>25</sup> are more intent on shoring up their own power and refusing to work with the opposition. During the last election, which the BNP sat out because they believed that proper procedures had not been followed, Zia spent much of the time under house arrest. Election seasons continue to be marked by intrigue and power plays. There seems to be little genuine commitment to the principle of a multi-party system and a legitimate opposition, in spite of the great hope during the 2008 election that this time it would be different.

Unfortunately, these four trends: increasing political and religious violence; a decline in religious freedom and tolerance of religious diversity; a decline in the commitment to democracy and democratic

institutions; and a view of politics as a zero-sum game between the two major dueling parties could not have come at a worse time, for two reasons. Bangladesh is dealing, as is much of the world, with the rise of militant, fundamentalist Islam, and although this intractable problem has not so far presented itself in Bangladesh as elsewhere, the very nature of the Bangladeshi experiment which emphasizes secularism and tolerance in a devout but diverse Muslim society intent on growth with equity for its huge population is anathema to this branch of Islam; the response—domestic terrorist incidents—is, as everywhere, much harder to anticipate and counter. There is much debate about the ostensibly home-grown nature of this Islamic threat, with militant groups such as JMB seemingly behind attacks like the 2004 grenade attack that killed thirty AL leaders. Yet there is also a strong presence of foreign Islamic groups in Bangladesh, particularly in poorer urban and remote rural areas where Saudi-funded madrassas educate poor children, particularly girls, who would never be allowed to attend urban, secular schools.<sup>26</sup> And it does not touch only the disenchanting or marginalized. The nine young men responsible for the café massacre in July were as integrated into Bangladeshi society as possible, yet they were drawn not to the AL or the BNP but to militant Islamic groups focused on jihad, pledging allegiance to Abu Bakr al-Baghdadi, leader of Daesh.<sup>27</sup> The ease of traveling anywhere, physically and virtually, and of communicating across borders via social media has completely transformed older patterns of contact, exchange, conversion, and jihad. Bangladesh has until now been able to stave off the greatest threats, but its secular and tolerant traditions are increasingly anathema to newly energized jihadists. Only a forward-looking, united leadership has a chance of responding in decisive, deliberate ways that are likely to be successful.

Finally, the timing is particularly unfortunate for these troubling trends to surface in a Bangladesh which continues its search for identity, centered precisely on these vexing issues of religion, secularism, and democracy.<sup>28</sup> It is especially problematic now that the AL has chosen to leverage its wide mandate in the 2008 election to finally reestablish the long-delayed trial to bring to justice those responsible for the bloody excesses in the 1971 war for independence.<sup>29</sup> From 1973, when the legal framework was laid down for conducting a tribunal, it was clear that any tribunal would be problematic. In the first place, the Mujib government had granted amnesty to many in order to consolidate the new nation. In addition, it was impossible to try the Pakistani masterminds of the invasion. As a result, no Pakistani leaders are included, and those who have been keeping alive the desire for revenge and restitution (civil society groups such the founders



and supporters of the internationally recognized Liberation War Museum and those seeking justice for the alleged 200,000 women who suffered grievous sexual assaults<sup>30</sup>) have been denied their larger objectives. Instead, the court only charged Bangladeshis who opposed independence and sided with Pakistan, collaborating with it in the war and, most egregiously, in the last days identified the best and the brightest leaders for targeted killings in order to seriously cripple the newly independent nation. The preponderance of those charged are top leaders in religious-right groupings who oppose the AL, especially Jamaat-e-Islami, accused of working closely with violent local militias such as Al-Badr and Al-Shams, as well as participating directly in violence. Allowed back into politics in 1975 by General Zia's BNP, which revoked the ban on religious-based parties, many of those unquestionably responsible for war crimes have held high office in coalition governments and today constitute a strong opposition to the AL government. This has meant that there is a wide section of the public—including those involved in the parties' youth wings—strongly opposed to the trials, and who seek to create disruptions. However, the tribunal enjoys such wide popular support that the government set about quickly—too quickly, according to some observers<sup>31</sup>—resuscitating the original 1973 ICT Act by first amending it in 2009 and then rapidly, by 2010, formulating rules of procedure touted as being up to world standards, establishing tribunal ICT 1 in 2010 with a second, ICT 2, in 2012 to expedite the process. 1,600 individuals were identified as suspect. At the moment, the trials are entering their sixth year, have rendered verdicts on eighteen defendants, with two dying in jail and two executed. Seven have been sentenced to death but are now appealing their verdicts. Five are fugitives, and another thirty-two are under continuing investigation,<sup>32</sup> with the court working presently to amend the 1971 law in order to allow the Jamaat party to be tried as a whole. The end is nowhere in sight.

There have been many disagreements surrounding all aspects of the tribunal, from the choice between a national or an international tribunal (Cambodia's is a mixed tribunal)<sup>33</sup> to the charges that could be levied (the charge of genocide being one of the most problematic) and punishments (the death sentence in particular draws criticism, especially in the context of doubts as to the fairness of the procedures). A number of personnel have quit or been removed. Criticism is strongly discouraged, with contempt proceedings so liberally handed out that it seems that little dissension is allowed.<sup>34</sup> Although tribunals are one of the most respected methods of dealing with the aftermath of political violence, in Bangladesh the actions surrounding the trial have exacerbated tensions between the

ruling parties and between the parties and their bases, all of which has posed the question: Is this justice or revenge? Instead of closure and reconciliation, attempts at providing overdue justice in this case have only sown more hatred and discord. To truly address unfinished business from 1971, it is important to find a way to make the trial a project of the entire nation, respecting international norms in a process that claims to be universal, in order to prevent lasting damage to Bangladesh.

Where are the four trends discussed above leading? It is vitally important that the leaders of the major parties work together to address the myriad challenges facing Bangladesh today. The challenges detailed in this paper—the attacks of militant Islam and the fall-out from a tribunal perceived by a substantial portion of Bangladesh society as not delivering fair trials or unassailable verdicts—are too great, with Bangladesh standing heavily in need of good governance and leadership from the top. The tribunal is only the tip of the iceberg. The court must slow down its work, investigate deliberately and carefully the charges against the remaining defendants rather than handing down swift sentences, it must consider punishments other than execution, and make certain that procedures are fair and based on facts. In general, however, the leadership must devote itself to doing more to shore up its eroding principles: protecting religious and ethnic minorities; and strengthening and enforcing existing laws regarding freedom of speech, the press, assembly, and religion. The leadership must also work with the diverse groups that make up this most diverse nation to tackle the issues that confront their communities. The AL still has broad support. It was founded on the loftiest of principles. It needs to use that support to do what is indeed possible to “set the standard for other nations that have suffered from unspeakable abuses at the hands of their own people,” according to Brad Adams, Human Rights Watch’s Asia Director.<sup>35</sup> It must act to bring about what Rabindranath Tagore, Bengal’s leading poet and intellectual, termed “Golden Bangladesh.”<sup>36</sup> Only then will Bangladesh fulfill its promise and the live up to the hope that launched it as an independent secular republic in 1971.

## Notes

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<sup>1</sup> Odhikar, *Human Rights Monitoring Report*, June 1, 2016, <http://odhikar.org/statistics/statistics-on-political-violence>.

<sup>2</sup> Saeed Ahmed, “Yet Another Bangladeshi Blogger Hacked to Death,” *CNN*, May 13, 2015, <http://edition.cnn.com/2015/05/12/asia/bangladesh-blogger-killed/>

<sup>3</sup> David Bergman, “Bangladesh Court Upholds Islam as Religion of the State” *Al Jazeera*, March 28, 2016. In May, President Hasina stated that there is indeed freedom of religion in Bangladesh but in the same breath she spoke against speech which spread “filth” against religion, arguing that “this kind of behavior cannot be tolerated to harm us in this way.”

<sup>4</sup> Julfikar Ali Manik and Ellen Barry, “Bangladesh Police Suspect Islamist Militants in Professor’s Killing,” *New York Times*, April 23, 2016; “Islamic State claims responsibility for murder of Bangladeshi professor,” *Daily Times*.

<sup>5</sup> “Bangladesh LGBT editor hacked to death” *BBC News* Shakhawat Hossain, “Remembering the Two Unsung Heroes Who Fought for LGBT Rights in Bangladesh” *The Wire*, October 25, 2016.

<sup>6</sup> “Bangladeshi secular publisher hacked to death,” *BBC News*, October 13, 2015.

<sup>7</sup> See the section “Human Rights Abuses on Members of Minority Communities” in Odhikar, *Report*; William Milam, “The Real Source of Terror in Bangladesh,” *New York Times*, May 19, 2016.

<sup>8</sup> Julfikar Ali Manik and Ellen Barry, “Hindu Temples and Homes in Bangladesh are Attacked by Muslim Crowds,” *New York Times*, November 2, 2016.

<sup>9</sup> Alexandra Stark, “Dkaha Attack Part of a Larger Pattern of Terrorism in Bangladesh,” *The Diplomat*, July 2, 2016.

<sup>10</sup> “Dhaka Café Attack ends with 20 hostages among the Dead” *The Guardian*, July 3, 2016; Bruce Vaughn, “The Islamist Militant Threat in Bangladesh,” *CRS Insight*, July 21, 2016.

<sup>11</sup> Mohammad Jamil Khan “Militant Attacks in Bangladesh Claim 393 Lives in Last 11 Years,” *Dhaka Tribune*, July 24, 2016.

<sup>12</sup> Reporting in February, 2013 in *NYT*, *CNN*, *BBC*, *The Guardian*, plus Bangladeshi newspapers *Daily Star*, *New Age*, *The Independent*.

<sup>13</sup> Jack Detsch, “One Year after Election, Violence Persists in Bangladesh,” *The Guardian*, Feb. 2015,

<http://thediplomat.com/2015/02/one-year-after-election-violence-persists-in-bangladesh/>.

<sup>14</sup> Odhikar, *Report*, 5–6.

<sup>15</sup> “Who Are They?” *Daily Star*, July 4, 2016,

<http://www.thedailystar.net/frontpage/who-are-they-1250065>; “Dhaka Raid: Who was militant Shazad?” *Daily Star*, July 28, 2016; Zayadul Ahsan, “Glimpses into Jihadi Minds” *Daily Star*, August 2, 2016.

<sup>16</sup> “Round Up the Usual Suspects,” *The Economist*, June 18, 2016

<sup>17</sup> Seeda Shankar, “British Journalist David Bergman Convicted in Bangladesh for Questioning 1971 War Death Toll,” *International Business Times* December 2, 2014. Also see Pen America Center, “PEN Expresses Concern at Conviction in Bangladesh Contempt of Court Case,” <https://pen.org/blog/pen-expresses-concern-conviction-bangladesh-contempt-court-case>.

<sup>18</sup> See, for example, Bergman’s comments about the judgment in several cases, “Fair Comment on Judicial Proceedings,” *Bangladesh War Crimes Tribunal* weblog, February 19, 2014,

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<http://bangladeshwarcrimes.blogspot.com/2014/01/fair-comment-on-judicial-proceedings.html>.

<sup>19</sup> “Statement of Concern from Scholars, Writers and Activists Regarding Tribunal’s Contempt Judgment,” David Bergman’s website, December 19, 2014, <http://www.sacw.net/article10212.html>.

<sup>20</sup> Odhikar, *Report*, 3.

<sup>21</sup> The best general history of Bangladesh is William Van Schendel, *A History of Bangladesh* (Cambridge: Cambridge University Press, 2009). On the history of the creation of Bangladesh, see especially Richard Sisson and Leo Rose, *War and Secession: Pakistan, India, and the Creation of Bangladesh* (Berkeley: University of California Press, 1990) and Srinath Raghavan, *1971: a Global History of the Creation of Bangladesh* (Cambridge: Harvard University Press, 2013). On the issue of democracy, see Ayasha Jalal, *Democracy and Authoritarianism in South Asia: A Comparative and Historical Perspective* (Cambridge: Cambridge University Press, 1995).

<sup>22</sup> “A Step Toward Secularization,” in the History section of the Bangladesh Awami League’s website, [/index.php/en/party/history/81-a-step-towards-secularization](http://index.php/en/party/history/81-a-step-towards-secularization).

<sup>23</sup> David Bergman, “Bangladesh court upholds Islam as religion of the state,” *Al Jazeera*, March 28, 2016.

<sup>24</sup> K. Anis Ahmed, “Bangladesh’s Creeping Islamism,” February 3, 2017, *New York Times*; Shohel Mamun, “Government to Recognize Qawmi dawah-e-hadith,” April 12, 2017, *Dhaka Tribune*; and Ikhtisad Ahmed, “Three More Signs that Bangladesh’s Ruling Awami League has Tightened Its Embrace of Islamism,” May 29, 2017, *Scroll.in*.

<sup>25</sup> “Bangladesh Elections: the ‘Battling Begums’” *Al Jazeera*, January 4, 2014.

<sup>26</sup> Nusaybah Yusuf, “The Impact of Islamic Schools in Bangladeshi Society: The Case of Madrassa,” *Alochonaa* (Dialogue), March 27, 2015; Akhilesh Pillalamami, “The Radicalization of South Asian Islam: Saudi Money and the Spread of Wahhabism,” *Georgetown Security Studies Review*, December 20, 2014.

<sup>27</sup> “IS Sent foot soldiers to Bangladesh,” reports that an article in the *New York Times*, August 3, 2016, cites *Dabiq*, the IS online magazine, that a Bangladeshi Canadian, Tamim Ahmed Chowdhury, has been appointed IS’s leader of operations in Bangladesh and in 2016 local members carried out 11 operations in Bangladesh, according to an infographic from IS, *Daily Star*, August 4, 2016, <http://www.thedailystar.net/frontpage/sent-foot-soldiers-bangladesh-1264252>.

<sup>28</sup> Salil Tripathi, “Bangladesh and its Search for Identity” *History Today*, August, 2016.

<sup>29</sup> The war exacted a particularly heavy toll. See the special issue of *Journal of Genocide Research*, December 4, 2011, devoted to East Pakistan, 1971, and Gary Bass, *The Blood Telegram: Nixon, Kissinger, and a Forgotten Genocide* (New Delhi: Random House, 2013).

<sup>30</sup> See Bina D’Costa and Sara Hossain, “Redress for Sexual Violence Before the ICT in Bangladesh: Lessons from History and Hopes for the Future,” *Criminal Law Forum* 21 (2010): 331–338. For the Liberation War Museum, see Sakib

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Sarker, “The Liberation War Museum: Our Pride and Joy” *Dhaka Tribune*, March 27, 2016; also see the museum’s website, <http://www.liberationwarmuseumbd.org>.

<sup>31</sup> For a discussion of the inadequacies of the tribunal and its procedures, see Kristine Huskey, “The International Crimes Tribunal in Bangladesh, Will Justice Prevail?” in *Crimes of War blogspot*, <http://www.crimesofwar.org/commentary/the-international-crimes-tribunal-in-bangladesh-will-justice-prevail/>.

<sup>32</sup> See the graphics in “Five Years, 17 Verdicts” in *The Daily Star*, March 25, 2015, modified February 20, 2016.

<sup>33</sup> “Justice after Decades in Bangladesh: National Trials for International Crimes,” *Journal of Genocide Research* 13.4 (2011): 503–510.

<sup>34</sup> For a thorough and thoughtful discussion of the trial and recent issues surrounding it, see Surabhi Chopra, “The International Crimes Tribunal in Bangladesh: Silencing Fair Comment,” *Journal of Genocide Research* 17.2 (2015).

<sup>35</sup> Quoted in Morris Davis, “Bangladesh War Crimes Tribunal: A Near Justice Experience” on *Crimes of War* blog, July 2011, <http://www.crimesofwar.org/commentary/bangladesh-war-crimes-tribunal-a-near-justice-experience/>.

<sup>36</sup> The name of the song he wrote which is now used as the Bangladeshi national anthem. See Tagore, Rabindranath; F. Alam, ed.; R. Chakravarty, ed., *The Essential Tagore* (Cambridge: Harvard University Press, 2011).

# CHAPTER TWO

## THE ARMENIAN HOLOCAUST AND INTERNATIONAL LAW

### TORKOM MOVSESIYAN

The Armenian Holocaust, also known as the Armenian Genocide, which took the lives of one and a half million Armenians between 1915 and 1923 in Anatolia, has become a controversial and political issue for Turkey, a country which has been denying the genocide since it was officially established as a republic in 1923. Today, Turkey faces many obstacles, but the almost century-old denial of the Armenian Holocaust has affected not only Turkey's democracy and democratization process, but also its bid to join the European Union. However, if the Turkish government were to recognize the Armenian Holocaust, it would face the legal consequences of international law. Therefore, this article argues that one of the main reasons behind the denial of the Armenian Holocaust by the Turkish government is the fear of the repercussions which, under international law, could include compensation and restitution.

First, I will look into the historical background of the Armenian Holocaust. Second, I will introduce the denial of the Armenian Holocaust, followed by the trials of the architects of that Holocaust in Turkey. Third, special attention will be given to the history of the term genocide, and the Genocide Convention. Fourth, I will introduce the trajectory of international law and the repercussions that would follow a recognition of genocide. Then, the importance of the International Criminal Court will be examined in cases of compensation and restitution after genocide. Finally, I will examine a case study of the International Criminal Tribunals of Rwanda and the former Yugoslavia which examined events that had repercussions similar to those of the Armenian Holocaust. Implications of the future of this phenomenon will be offered as a prescription in the conclusion.