

ORIGINAL ARTICLE

Negotiating Nationhood: Constitutional Warfare, International Law, and the Birth of Bangladesh

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Abstract

This paper argues the Government in Exile (GIE), the first government of independent Bangladesh, played an important role in framing the founding moment in legal terms. The GIE's constitutional warfare through its adherence to legalism, and subsequent internationalization of the conflict significantly shaped the independence movement of 1971. The GIE was composed of leaders who were lawyers, economists and other intellectuals who sought refuge in neighboring India. The agency of the founders and their allegiance to constitutional principles catalyzed the founding moment, oversaw the transition to an independent state and ultimately led to a swift adoption of a constitution that endures despite much instability. This national struggle of 1971 also played out in the international arena. In the process, lawyers from the so-called Third World articulated, reshaped, and generated new debates about international legal principles such as sovereignty, territoriality, and self-determination (and criterion for legitimacy of exiled governments)—most of which were considered to be well-settled at the time.

In 1947, Pakistan was administratively and territorially divided into two non-contiguous wings, separated by some 1000 miles of Indian territory. Before the new nation of Pakistan lay the herculean task of fortifying the state apparatus with its various constituent elements such as the military, civil service, judiciary, etc. on the one hand, and creating a nation that embraced its plurality on the other. For the next twenty-five years, the future of East Pakistan was intimately tied to struggles around national integration through constitutional settlement and federal design. East Bengal, based on its predominantly Muslim population became part of Pakistan. Originally thought to be a haven for Muslims struggling for representation in colonial India, religion was to prove the weakest tie binding the two wings of Pakistan.¹ Several constitution-making

¹ Joya Chatterji, *The Spoils of Partition: Bengal and India, 1947–1967*, vol. 15 (New York: Cambridge University Press, 2007).

processes, an election and a war later, East Pakistan became independent Bangladesh in 1971 and adopted a constitution in 1972.

There are multiple contentious narratives of Bangladesh's founding historiography. Much of the existing corpus of historical scholarship has relied on accounts of violence, war, and lawlessness of the founding moment. Some accounts variously consider the founding of Bangladesh a triumph, a glorious campaign, betrayal and shame, while others focus on decentering state narratives, highlighting themes of sexual violence, gender, and public memory.² Another set of literature, views the birth of Bangladesh through the lens of international relations, i.e., the backdrop of Cold War geopolitics and regional struggle for power between India and Pakistan.³ The central protagonist of the East Pakistan revolution by most accounts is Bangabandhu Sheikh Mujibur Rahman (also referred to as Mujib in popular parlance) who was the leader of the liberation movement party, the Awami League (AL)—and is revered as the Father of the Nation.⁴

The AL's pre-war political manifesto built on decades of mobilization by political groups, students, and intellectuals. There were competing visions of a nation within larger Pakistan, and even within East Pakistan itself. By the late sixties, some circles, particularly within the progressive student political wings of East Pakistan had already demanded independence.⁵ The AL which typically adhered to a constitutionalist vision of politics subsumed these competing nationalist strands by the late sixties. The AL's political mobilization gradually progressed on a spectrum from a constitutional framework to a call for liberation. The struggle of Bengali people within East Pakistan was framed as *Muktir Shongram* in Bengali, which loosely translates as "struggle for emancipation." The narrative of *Mukti* (emancipation) was firmly reinforced for the populace by Mujib in a crucial speech on March 7, 1971 during a non-cooperation movement just weeks prior to the outbreak of the war. The AL's sustained agitation connecting popular politics with constitutional demands earned it the mantle of legitimacy as the movement party, and Mujib as the Father of the Nation.

Sheikh Mujibur Rahman was arrested on the eve of the Liberation war in March 1971 by the West Pakistani army. He remained in captivity until the end of the war in December 1971. This period of his absence witnessed extra-ordinary efforts of a Government in Exile (GIE) constituted by Mujib's confidantes within the AL, and the *Mukti Bahini* (liberation army) comprising

² Willem Van Schendel, *A History of Bangladesh* (New York: Cambridge University Press, 2009); Richard Sisson and Leo E. Rose, *War and Secession: Pakistan, India, and the Creation of Bangladesh* (Berkeley: University of California Press, 1991); Yasmin Saikia, *Women, War, and the Making of Bangladesh* (Durham, NC: Duke University Press, 2011).

³ Willem Van Schendel, "A War Within a War: Mizo Rebels and the Bangladesh Liberation Struggle," *Modern Asian Studies* 50, no. 1 (2016): 75–117, 75–76.

⁴ Bangabandhu translates into Bengali as "Friend of Bengal," a title earned by Mujib in the course of political mobilization in the late sixties.

⁵ David Ludden, "The Politics of Independence in Bangladesh," *Economic and Political Weekly* 46, no. 35 (2011): 79–85.

defecting soldiers of the East Pakistan Regiment and civilian guerilla fighters.⁶ The Mukti Bahini's role is outside the scope of this article.⁷ There have been few systematic analyses of the founding period including the constituent assembly debates.⁸ Scholarly accounts are yet to adequately construct and articulate a role for the founders of the constitution as a collective—an endeavor that is further compounded by contemporary politics, allowing limited space for the founders other than a singular “father of the nation.”⁹

Sheikh Mujibur Rahman was integral to the founding history of Bangladesh. However, existing historical scholarship beyond the vernacular is yet to adequately capture the role of alternative actors and events that shaped the founding of Bangladesh. The role played by the GIE between April to December 1971 and the main protagonist of this history, Tajuddin Ahmad, is conspicuously absent from most scholarly accounts of the founding history outside of vernacular literature.¹⁰ The lack of systematic archival sources and other research material covering the 9-month period of the war may well be one of the reasons for this lack of scholarly engagement.

This paper attempts to address some of these omissions by bringing the founders back in. It argues that while the Bangladesh constitution is the product of revolution, the GIE played an important role in framing the founding moment in legal terms embodying constitutional and international legal principles. While the charismatic leadership of Mujib provided the cohesion and symbolism required for sustaining the revolution as the *Mukti Bahini* fought in the trenches; it was the GIE's constitutional warfare through its adherence to legalism, and subsequent internationalization of the conflict that significantly influenced the independence movement.¹¹

The GIE comprised of AL leaders who were lawyers, economists and other intellectuals who sought refuge in neighboring India. The agency of the founders and their allegiance to constitutional principles catalyzed the founding

⁶ Dilara Choudhury, *Constitutional Development in Bangladesh: Stresses and Strains* (Dhaka: University Press Limited, 1995), 37.

⁷ This aspect of history of the Liberation war has been extensively captured in Afsan Chowdhury's scholarship, including his multi-volume work on the events surrounding 1971. See Afsan Chowdhury, *Bangladesh 1971*, vols. 1–4 (Dhaka: Mowla Brothers Publishers, 2007).

⁸ Dina M. Siddiqi, “Secular Quests, National Others: Revisiting Bangladesh's Constituent Assembly Debates,” *Asian Affairs* 49, no. 2 (2018): 238–58; Ridwanul Hoque, “The Founding and Making of Bangladesh's Constitution,” in *Constitutional Foundings in South Asia*, eds. Kevin Y.L. Tan and Hoque Ridwanul (Oxford: Hart Publishing, 2021); S. M. Masum Billah, “Bangladesh's Genesis: Rereading the Proclamation of Independence At Its 50,” *Bangladesh Journal of Law* 20, no. 1 (2022): 1–20.

⁹ Arild Engelsen Ruud, “Bangabandhu as the Eternal Sovereign: On the Construction of a Civil Religion,” *Religion* 52, no. 4 (2022): 532–49.

¹⁰ Sharmin Ahmad, *Neta O Pita (Leader and Father)* (Dhaka: Oitijhya Publishers, 2014) (Bangla: তাজউদ্দীন আহমেদ: নেতা ও পিতা); Sirajul Islam Chowdhury, *Tajuddin Ahmad er Rajnoitik Jibon (The Political Life of Tajuddin Ahmad)* (Dhaka: Muktaadhara Publishers, 2019) (Bangla: তাজউদ্দীন আহমেদের রাজনৈতিক জীবন).

¹¹ This paper defines legalism as a conservative commitment to rule-abidance and recognizes its operation as a professional and political ideology with roots in history. See Judith N. Shklar, *Legalism: Law, Morals, and Political Trials* (Cambridge, MA: Harvard University Press, 1986).

moment, oversaw the transition to an independent state and ultimately led to a swift adoption of a constitution that endures despite much instability. This national struggle of 1971 also played out in the international arena. In the process, it reshaped and generated new debates in and from the periphery about international legal principles such as sovereignty, territoriality and self-determination (including criterion for legitimacy of exiled governments)—most of which were considered to be well-settled at the time.

This paper construes the term “Constitutional Warfare” broadly. It encompasses histories of constitutional claims within anticolonial and anti-authoritarian struggles, and the agency of local actors from the so-called Third World in shaping national constitutions as well as international legal principles. Although this paper seeks to make visible the role of the founders; it is still predominantly an AL-centered account. It does not take into account other political parties and actors, the splintering factions within the AL that went on to form individual political parties with differing ideologies, or non-elite mobilization. This paper focuses on the period of March–December 1971. In reconstructing the GIE’s role, this paper also contended with scanty primary sources. News reports from the period tend to focus on specific political events as opposed to inner workings of the GIE. The witnesses to the particular history of the GIE were scattered by the chaos of war. Not all of this journey is well-documented. Many did not live to tell the tale. Perhaps, a valuable source would have been Tajuddin Ahmad’s diary covering the crucial months of the war as the prime minister of new Bangladesh. However, I am told that this diary disappeared while Tajuddin was in army custody before his brutal assassination in November 1975.¹² Nevertheless, several personal memoirs, private and published collection of information and documents generously shared by Sharmin Ahmad (daughter of Tajuddin Ahmad), news reports, government documents, and records of correspondence and interviews of several GIE officials or allies have aided in piecing together an integral part of the founding history of Bangladesh.

The Founding of Bangladesh

On March 27, 1971, Tajuddin Ahmad who was then the AL general secretary, along with his trusted associate Amirul Islam fled Dacca, the provincial capital of East Pakistan—eventually crossing the border to neighboring India.¹³ The decision to seek refuge in India was precipitated by the events of March 25 amidst a violent military crackdown. Tajuddin was not alone among the scattering groups of the AL leaders, many losing contact with each other. Mujib’s arrest by the army was imminent but he was resolute in his refusal to go into hiding despite appeals from Tajuddin and other AL leaders.¹⁴ He

¹² Confirmed by Sharmin Ahmad, Tajuddin Ahmad’s daughter and author of several books on the events of 1971 and her father’s role in early 1970s political history in Bangladesh. She has also discussed the missing diary in her book: Sharmin Ahmad, *3 November Jail Hottar Purbapor* (Dhaka: Oitijhya Publishers, 2014) (Bangla: মুক্তির কাগারী তাজউদ্দীন: কন্যার অভিবাদন).

¹³ Amirul Islam, *Muktijudhdher Smriti (Memories of the Liberation War)* (Dhaka: Kagoj Prokashon, 2020) (Bangla: মুক্তিযুদ্ধের স্মৃতি), 32–33.

¹⁴ *Ibid.*, 18–19.

urged his party members to seek refuge but left no further instructions about leadership in his absence.¹⁵ Failing to convince his leader, a disheartened Tajuddin began to make arrangements with other AL members to find safety.¹⁶

The conflict Tajuddin was fleeing from originated from decades of discontent arising out of disparities in economic development, modernization and state-building between the western Wing (consisting of four provinces) and the Eastern Wing (consisting of one province).¹⁷ The central government and the locus of institutional power remained firmly rooted in the West.¹⁸ Significant inequities in the representation of Bengalis (who made up little more than half of Pakistan's total population) within the public, and private sectors;¹⁹ coupled with the relative ascendancy of particular ethno-linguistic groups within the state apparatus;²⁰ compounded disparities and differences between East Pakistan and the rest of the country.²¹ Economically, the eastern wing remained in an exploitative relationship with its western counterpart.²² Socially too, the Bengali identity was perceived to be racially inferior within the ethnic composition of Pakistan.²³ The Language Movement of 1952 hardened cultural and linguistic differences early on when the state attempted to impose Urdu as the state language.²⁴ The language policy was eventually reversed in 1956 in response to the resistance proffered by certain political groups in East Pakistan that considered it an imposition of state hegemony and attack on Bengali culture. The movement had a profound impact on politics and society in East Pakistan. On the one hand, it produced a state narrative that "othered" Bengali culture as distinct from the Pakistani Muslim homeland, one that was perhaps closer to Indian and Hindu culture. Some state policies even began to target Bengali culture to rid it of Indian/Hindu influence. For example, televising Tagore songs or the use of the Bindi or vermilion among female television anchors in state media were banned as Hindu

¹⁵ Ibid.; Ahmad, *Neta O Pita*, 46–47.

¹⁶ Ahmad, *Neta O Pita*, 47.

¹⁷ Rounaq Jahan, *Pakistan: Failure in National Integration* (New York and London: Columbia University Press, 1972).

¹⁸ Srinath Raghavan, *1971: A Global History of the Creation of Bangladesh* (Cambridge, MA: Harvard University Press, 2013), 6.

¹⁹ G. W. Choudhury, "Bangladesh: Why It Happened," *International Affairs* 48 (1972): 242–49, at 244.

²⁰ Hamza Alavi, "Nationhood and the Nationalities in Pakistan," in *Economy and Culture in Pakistan: Migrants and Cities in a Muslim Society*, eds. Hastings Donnan and Pnina Webner (London: Palgrave Macmillan, 1991), 163–87; Hamza Alavi, "The State in Post-colonial Societies: Pakistan and Bangladesh," *New Left Review* 74 (1972): 59.

²¹ Richard Lambert, "Factors in Bengali Regionalism in Pakistan," *Far Eastern Survey* 28, no. 4 (April 1959): 49–58.

²² Rehman Sobhan, "Economic Basis of Bengali Nationalism," in *History of Bangladesh 1704–1971*, vol. 2, ed. Sirajul Islam (Dhaka: Asiatic Society of Bangladesh, 1992), 722–49.

²³ Mohammad Ayub Khan, *Friends Not Masters. A Political Autobiography* (London: Oxford University Press, 1976), 67.

²⁴ Badruddin Umar, *Purba Banglar Bhasha Andolon O Totkalin Rajneeti (Language Movement of East Bengal and the Contemporary Politics)*, vol. 3 (2nd ed.) (Dhaka: Subarna, 2017) (Bangla: পূর্ব বাংলার ভাষা আন্দোলন ও ততকালীন রাজনীতি [১ম থেকে ৩য় খন্ড]); Elora Shehabuddin, "Feminism and Nationalism in Cold War East Pakistan," *South Asia Chronicle* 4 (2014): 49–68; Kamal Hossain, *Bangladesh: Quest for Freedom and Justice* (Dhaka: University Press Limited, 2013), 9.

symbols. On the other hand, the movement catalyzed cultural revivalism that celebrated Bengali heritage, especially through music, and embraced secularism. These became expressions of political dissent against state-imposed principles of official Islam. As Bengalis became more vocal about their demands and Pakistan's own conflicts with India intensified in the mid-1960s, the official narrative further merged Bengali and Hindu identities and situated Bengali culture as contrary to Islam; factors which presaged the ethnic cleansing and sexual violence committed by the Pakistani army and its collaborators during the 1971 war. The differences that emerged between East and West Pakistan's vision for national and constitutional design may even be considered a *fait accompli* of sorts if we trace the constitutional pact for subsuming the non-contiguous territories within the framework of Pakistan. The Muslim League's Lahore Resolution of March 1940 envisaged two autonomous and sovereign independent states comprising the north-western and eastern zones of India where the Muslims were a numerical majority.²⁵ The leadership in East Bengal lent its support to a united Pakistan on this basis in 1947. Bengali politics continued to envisage national integration on these terms, which reflected in the United Front's landslide victory in the provincial legislative elections held in March 1954. The Front was a coalition of East Pakistani political parties which, among other things, demanded greater provincial autonomy for East Pakistan—consistent with the Lahore Resolution.²⁶ However, the Front-led provincial government was dismissed by the Governor General in May 1954. It signaled Pakistan's descent into authoritarian rule, which drowned out the call for autonomy; but also redirected political energy in East Pakistan towards fire-brand oppositional politics against the state.²⁷

Between 1954 and 1971, Pakistan was largely ruled by military leaders. Constitutions of 1956 and 1962 were short-lived and failed to secure democratic rule due to sustained military intervention in politics. The prevailing socio-economic and political conditions of the 1960s reinvigorated the claim for provincial autonomy articulated in new and forceful terms—at a time when the AL had become the primary advocate for East Pakistan's plights. Led by Sheikh Mujibur Rahman, the AL launched a Six Points program in 1966. The program identified among other things, federal control from the center of foreign trade, exchange and aid as some of the primary causes of exacerbating inter-wing disparities.²⁸ Deemed to be the *Magna Carta* of Bangladesh,²⁹ this program was carefully framed by technical experts, including lawyers and economists who provided statistical evidence and legal formulations for the federal design.³⁰ The AL's grassroots organizational and mobilizing efforts significantly contributed to the Six Points becoming the basis of a social

²⁵ Muhammad Zafrulla Khan, *The Agony of Pakistan* (Oxford: Alden Press, 1974).

²⁶ G. W. Choudhury, "The East Pakistan Political Scene, 1955–1957." *Pacific Affairs* 30, no. 4 (1957): 312–320.

²⁷ Mohammad Rashiduzzaman, "The Awami League in the Political Development of Pakistan," *Asian Survey* 10, no. 7 (1970): 574–587.

²⁸ Hossain, *Bangladesh*, 13–14, 24–25.

²⁹ Jahan, *Pakistan*, 189.

³⁰ Hossain, *Bangladesh*, 18–19.

movement for constitutional democracy and autonomy. A slew of arrests of senior AL leaders including Tajuddin followed in 1966 for various offences against the state, culminating into an infamous trial known as the Agartala conspiracy case and sedition charges against Sheikh Mujib and others in 1968 for conspiring to secede from Pakistan.³¹ They were subsequently released as charges were dropped in 1969 due to popular pressure mounting against the Ayyub regime.

After the ouster of military ruler Ayyub Khan in 1969, the Yahya regime held Pakistan's first general election in 1970 for electing 300 National Assembly members (and 13 indirectly elected reserved women's seats) to a unicameral legislature tasked with framing a new Constitution. Provincial legislative assembly elections were also scheduled nearly contemporaneously. The National Assembly elections were held under the Legal Framework Order (LFO) 1970, which among other things called for proportionate distribution of constituencies. Once elected, the National Assembly members were to draft a new constitution within 120 days. On account of population, East Pakistan and the remaining West Pakistan provinces were allocated 169 and 144 seats, respectively.

A month before the election, the Bhola cyclone struck East Pakistan killing an estimated half a million people.³² The government's tepid response to the disaster fueled Bengali grievances, which showed in the polls. The AL secured an absolute majority winning 162 (and 5 reserved women's seats) seats in East Pakistan.³³ It ran candidates but did not win any National Assembly seats in any of the other provinces. The People's Party of Pakistan (PPP) led by Zulfikar Ali Bhutto also won the majority vote (81) in West Pakistan but did not field any candidates in the East. The formulation of the LFO was flawed and the final authority to validate the draft constitution lay with the army.³⁴ The LFO's authority resting with the army was likely not lost on the AL and the other parties. However, for them, the process of going through an election—the first ever direct general election in Pakistan carried with it the possibility of cultivating public support for democratic transition. Out of touch with East Pakistan's plights, the Yahya regime expected fragmented representation of political parties, ultimately safeguarding military interests.³⁵ The outcome, however, was that the majority represented elected members from only one province.

The AL's successful election campaign was based on the Six Points program, which sought to correct the power imbalance between the two wings. It demanded complete economic and fiscal autonomy of the East from a military-bureaucratic oligarchy-controlled center in the West—effectively decentralizing power.³⁶ These terms were unacceptable to the military. The PPP

³¹ This is known as the Agartala Conspiracy case. See Hossain, *Bangladesh*, 29.

³² Naomi Hossain, "The 1970 Bhola Cyclone, Nationalist Politics, and the Subsistence Crisis Contract in Bangladesh," *Disasters* 42, no. 1 (2018): 187–203.

³³ Hossain, *Bangladesh*, 65.

³⁴ Sisson and Rose, *War and Secession*, 8–16, 55–56.

³⁵ *Ibid.*

³⁶ Hossain, *Bangladesh*, 15–27.

with its Western majority also did not want to cede its stake in the center, i.e., federal power to the East.³⁷ The democratic position was clear as the AL secured absolute majority in the National Assembly. However, the prospect of the Assembly producing a Constitution without broad consensus of the other parties within the stipulated timeframe of 120 days did not appear promising.

Faced with the quandary, the government indefinitely postponed the National Assembly session set to be held in Dacca on March 1, 1971.³⁸ This delay in convening the Assembly reinforced Pakistan's *de facto* state of two economies and two polities to the Bengali populace. It also dramatized the East's place as a political minority notwithstanding its election victory and numerical majority. As the crisis deepened, the AL—flanked by students' groups and others—launched a non-cooperation movement.³⁹ In early March 1971, protests and strikes intensified, remittances were blocked from flowing West, and media and civil administration were effectively under the AL's control.⁴⁰ Even the chief justice of East Pakistan High Court refused to administer oath to the newly appointed governor.⁴¹ Government response against these political expressions and action was violent.

Meanwhile, talks were underway between Yahya, Mujib and Bhutto in March 1971 to negotiate alternate power-sharing arrangements.⁴² The constitutional workability of the Six Points could theoretically materialize as a confederacy. The AL even put forward such a proposal during the dialogues in Dacca, but the impasse had by then become insurmountable.⁴³ The negotiations failed.

On March 25, 1971, the Pakistani armed forces responded with violence to quell the discontent brewing in the East.⁴⁴ The army indiscriminately targeted civilians and more specifically the intelligentsia and anyone suspected of supporting the Bengali cause.⁴⁵ The AL, accused of harboring a secessionist agenda, was outlawed. Sheikh Mujib along with Kamal Hossain, his chief legal advisor, were arrested on charges of high treason and flown West where they would remain in custody for the duration of the war.⁴⁶ In response, Bangladesh declared itself independent on March 26, beginning a 9-month war

³⁷ Sisson and Rose, *War and Secession*.

³⁸ Afsan Choudhury, "1971: Memories, Facts and Words Overheard," *Strategic Analysis* 45, no. 6 (2021): 538–48, at 539.

³⁹ Afsan Chowdhury, 1971: *Oshohojog Andolon O Protirodh (1971: Non-Cooperation Movement and Resistance)* (Dhaka: Kothaprokash, 2021) (Bangla: ১৯৭১: অসহযোগ আন্দোলন ও প্রতিরোধ)

⁴⁰ Hossain, *Bangladesh*, 86.

⁴¹ <https://www.nytimes.com/1971/03/09/archives/military-governors-oath-blocked-in-east-pakistan-army-governors.html>.

⁴² Salil Tripathi, *The Colonel Who Would Not Repent: The Bangladesh War and Its Unquiet Legacy* (New Haven: Yale University Press, 2016), 64.

⁴³ Hossain, *Bangladesh*, 102.

⁴⁴ For background context leading up to the war, see volumes 1–2 of Mahfuzullah Kabir and Hasan Hafizur Rahman, *Bangladesh er Shadhinotar Judhho: Dolipotro (Documents of Bangladesh Liberation War)*, 15 vols. (Dhaka: Government of Bangladesh, 1978).

⁴⁵ Meghna Guhathakurta, "The Road to Victory Day 1971: An Insider's Account," *Strategic Analysis* 45, no. 6 (2021): 503–12.

⁴⁶ Hossain, *Bangladesh*, 108.

until December 1971. Meanwhile, Pakistani army carried out arbitrary arrests, detention, torture, rape, arson, and killing of Bengalis, specifically targeting AL members, students, and Hindus.⁴⁷ Even if the army could have been provided with some latitude to its professed aim of maintaining law and order against perceived “secessionist” efforts, the systematic destruction of life and property was held grossly out of proportion.⁴⁸

Formation of the GIE

When the AL forces scattered in March 1971, Tajuddin managed to covertly reach Kolkata (India) and then to Delhi with the help of Indian officials.⁴⁹ There, he met India’s Prime Minister Indira Gandhi on April 4, 1971.⁵⁰ The meeting with Gandhi, among other things, firmed up plans to organize a provisional government. It made India amenable to supporting the nascent GIE by allowing it to operate within its territory; helping establish channels of cooperation to support the *Mukti Bahini*; and opening Indian borders to Bangladeshi refugees.⁵¹ Safe harbor in India also helped facilitate communication links with the Soviet Union and the larger international community. Several AL leaders had already congregated in Kolkata while Tajuddin secured diplomatic assistance from the Indian premier. The GIE made a formal proclamation of independence on April 10, 1971.⁵² It retrospectively validated the declaration of independence made on March 26, 1971, and enabled the elected East Pakistani members of the National and Provincial Assemblies to reconstitute themselves as the First Government and Constituent Assembly of Bangladesh.

On April 10, Tajuddin Ahmad and others with the aid of air transport made available to them by the Indian government set off in search of potential cabinet members who had scattered during the earlier purge in East Pakistan.⁵³ After collecting future cabinet members such as Muhammad Mansur Ali, and Syed Nazrul Islam from various places along the way, the entourage reunited with other AL leaders such as Khondaker Mostaq Ahmed, Colonel M.A.G. Osmani and others sheltered in Agartala on April 11. The details of a provisional government being worked out in Agartala was ironic given the history of the famous conspiracy trial against Mujib. After some deliberations, plans for a cabinet were formed following which everyone returned to Kolkata.

⁴⁷ *The Events in East Pakistan, 1971: A Legal Study by the Secretariat of the International Commission of Jurists* (Geneva: International Commission of Jurists, 1972), 51. (ICJ Report [1972]).

⁴⁸ *Ibid.*

⁴⁹ Islam, *Muktijudhdher Smriti*, 32–33.

⁵⁰ Motiur Rahman (ed.) (2022). *1971: The Siliguri Conference, Government in Exile Meets the Elected Peoples Representatives, An Untold Story of the Liberation War* (Dhaka, Bangladesh: Prothoma Publishers, 2022), 19.

⁵¹ Muyeedul Hasan, *Muldhara 71 (Mainstream 71)* (Dhaka: University Press Limited, 1986) (Bangla: মূলধারা '৭১), 13.

⁵² *The Provisional Constitution of Bangladesh Order* (1972). Available at https://legislativeportal.gov.bd/sites/default/files/files/legislativeportal.gov.bd/page/74959a34_cfde_4511_91f-f_71261e73395c/84%20%281%29.pdf.

⁵³ Islam, *Muktijudhdher Smriti*, 42.

On April 17, the GIE published the independence proclamation and formed its first formal cabinet within a presidential system. The proclamation named Sheikh Mujibur Rahman and Syed Nazrul Islam as the president and vice president respectively, until a constitutional framework was in place. Tajuddin Ahmad was sworn in as the first prime minister of Bangladesh along with other cabinet members and a commander-in-chief.⁵⁴

Pakistan's rejection of the constitutional mandate followed by indiscriminate and systematic annihilation of Bengalis can only be described in Arendtian terms—it exploded the limits of the law.⁵⁵ Yet, subsequent actions of the GIE remained firmly rooted in constitutional practices. An older tradition of anticolonial politics may have been an influencing factor. Anticolonial movements responded to colonial rule with popular mobilization and civil disobedience, as well as the rule of law to counter the state. Legal historians of South Asia have argued that the professed aim of the rule-of-law agenda was to replace the personal whims and arbitrary power of “oriental despots.”⁵⁶ Institutionalized laws, codes, and rules drafted for this purpose cultivated rule of law proceduralism that seemingly treated like cases alike and offered the possibility of individual relief.⁵⁷ Formal law and recourse to constitutionalism produced legal legitimacy through legal conflicts.⁵⁸ It simultaneously reaffirmed imposed law and undermined its authority, providing the means to “inhibit power and afford some protection to the powerless.”⁵⁹ It also embedded formal law and constitutional practices within anticolonial resistance.⁶⁰ There are many historical examples descending from the colonial era in which rule of law proceduralism, bureaucratization of politics and recourse to courts strategically produced legal legitimacy for anticolonial causes. Over time, the utility of law as both power and emancipation formed constructs and conventions shared and naturalized throughout a political community.⁶¹

⁵⁴ Colonel Osmani, a retired veteran of the Pakistan army turned AL-politician, was appointed commander-in-chief of the armed forces.

⁵⁵ Hannah Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil* (New York: Penguin, 1963).

⁵⁶ Mitra Sharafi, “Indian Constitutionalism, the Rule of Law, and Parsi Legal Culture,” *Indian Law Review* (2023): 1–22; Nasser Hussain, *The Jurisprudence of Emergency: Colonialism and the Rule of Law* (Ann Arbor: University of Michigan Press, 2009), 44–55.

⁵⁷ Mitra Sharafi, “The Marital Patchwork of Colonial South Asia: Forum shopping from Britain to Baroda,” *Law and History Review* 28, no. 4 (2010): 979–1009, 980.

⁵⁸ Lauren Benton, *Law and Colonial Cultures: Legal Regimes in World History, 1400–1900* (Cambridge, UK: Cambridge University Press, 2002), 258. Not all historians agree to this role of the law. For example, the Subaltern Collective tends to view the law as an emissary of the state. For a representative sample, see Ranajit Guha, ed. *Subaltern Studies V: Writings on South Asian History and Society*, vol. 1 (New Delhi: Oxford University Press, 1987); Upendra Baxi, “‘The State’s Emissary’: The Place of Law in Subaltern Studies,” *Subaltern Studies VII: Writings on South Asian History and Society* (1992): 247–64.

⁵⁹ Edward Thompson, *Whigs and Hunters: the Origins of the Black Act* (New York: Pantheon Books, 1975), 259–79.

⁶⁰ Subaltern school of history largely assigns to law such a role. For a representative sample, see Ranajit Guha, ed. *Subaltern Studies V: Writings on South Asian History and Society*, vol. 1 (New Delhi: Oxford University Press, 1987).

⁶¹ Jean Comaroff and John Comaroff, *Of Revelation and Revolution: Christianity, Colonialism, and Consciousness in South Africa* (Chicago: University of Chicago Press, 1991).

By the early to mid-twentieth century, the lawyer-public figure model had emerged for whom the law profession provided a means for political action. Both Tilak and Gandhi's sedition trials had famously turned courtrooms into spaces of resistance—and were an indictment of colonial legality.⁶² Ambedkar's legal practice was also connected to political action.⁶³ Late nineteenth and early twentieth century political organizations such as the Indian National Congress and the Muslim League included a significant number of lawyers.⁶⁴ The utility of law as an important means of engaging in anticolonial politics was also visible in the activities of a number of political organizations across the British empire. Lawyers formed or their rights-agendas dominated political platforms such as the Ceylon National Congress, the National Congress of British West Africa, and South African Native National Congress (later renamed African National Congress) established in 1919, 1912, and 1917, respectively.⁶⁵

This legacy of the legal profession's connection to politics and movements for democracy, autonomy, and self-government appeared to have been in circulation in East Pakistan after 1947. East Pakistani legal elites retained a preoccupation with legalism in state governance and maintained a tradition of leveraging the law to challenge the state. In the run up to 1971, these elites sought frequent recourse to courts to counter the military regime and flagrant arbitrary rule.⁶⁶ Mujib's sedition trial in the Agartala conspiracy earned him nearly three years in prison. He refused to seek bail and demanded unconditional release to demonstrate the unconstitutionality of the trial—which did eventually occur under popular pressure.⁶⁷ These resistance practices echoed earlier anticolonial traditions of British India where these leaders were born and raised. Incarceration, trials and non-cooperation had a history of serving as sites for testing colonial legality and exposing the injustices of authoritarian rule. At an incredible risk—this legacy may also have been at work when Mujib refused to go underground in March 1971—a move that baffled his compatriots. Mujib's captivity served as a symbol of resistance to the injustice of the war waged against the Bengalis. The GIE grounded its actions in the constitutionality of the revolution, perhaps invoking that same time-honored tradition. Its president, Nazrul Islam even referred to Subhas Chandra Bose's efforts to

⁶² A. G. A. M. Noorani, *Indian Political Trials, 1775–1947* (No. 66) (Oxford: Oxford University Press, 2005).

⁶³ "Lawyring as Politics: The Legal Career of Dr. Ambedkar, Bar-at-Law," in *The Radical in Ambedkar*, eds Suraj Yengde and Anand Telbumbhe (London and New Delhi: Penguin, 2018).

⁶⁴ J. R. McLane, "Indian Nationalism and the Early Congress," in *Indian Nationalism and the Early Congress* (Princeton University Press), 2015; M. Rafique Afzal, *A History of the All-India Muslim League, 1906–1947* (Oxford: Oxford University Press, 2013).

⁶⁵ Michael Roberts, "Problems of Social Stratification and the Demarcation of National and Local Élites in British Ceylon," *The Journal of Asian Studies* 33, no. 4 (1974): 549–77; Gabriel I.C. Eluwa, "Background to the Emergence of the National Congress of British West Africa," *African Studies Review* 14, no. 2 (1971): 205–18; Tembeka Ngcukaitobi, *The Land Is Ours: South Africa's First Black Lawyers and the Birth of Constitutionalism* (New York: Penguin, 2018). Bongani Ngqulunga, *The Man Who Founded the ANC: A Biography of Pixley ka Isaka Seme* (New York: Penguin, 2017).

⁶⁶ See Hossain, *Bangladesh*, 44–45.

⁶⁷ *Ibid.*, 29.

bring forth independence for the motherland through armed struggle in one of his communiques as the inspiration for the GIE and the liberation movement—alluding to a militant strand of an older anticolonial politics.⁶⁸

A significant number of GIE officials were lawyers, had acquired formal legal education or training—and were involved in or had closely observed the highly violent and splintering politics of the last few decades of the Raj, the Partition, and the formation of new states, identities and political parties. Most of these leaders were active in politics after the Bengali Language Movement in 1952.⁶⁹ Many were subjected to the brutalities of state repression when they clashed with the ruling regime. Tajuddin Ahmad was coronated into politics through student movements in the 1940s. He was initially involved in the Pakistan movement as a member of one of the student wings of the Muslim League. He cultivated a deeper engagement with politics through parties such as the East Pakistan Jubo League and later joined the Awami Muslim League (later renamed AL). Interestingly, both these parties were formed by breakaway factions of the Muslim League in response to the League's reactionary policies and politics in independent Pakistan.⁷⁰ Tajuddin also played an active role in the Language movement of 1952. Initially, trained as an economist, Tajuddin completed his law degree in the early fifties—appearing for his legal examinations while in prison for political activities.⁷¹

Tajuddin and Sheikh Mujib became acquainted in the mid-fifties.⁷² As the general secretary of the AL in 1966, Tajuddin was instrumental in working with economists in the formulation of the Six Points program.⁷³ Trained in law and economics, he was able to connect economic planning with constitutional design. Tajuddin helped coordinate the AL's election campaign for the 1970 elections and the non-cooperation movement of March 1971. He was also a key participant in Sheikh Mujib's delegation in the Mujib-Bhutto-Yahya talks to settle the constitutional disputes.

Other key GIE actors including, for example, Syed Nazrul Islam, the acting president; Khondaker Mostaq Ahmed, foreign affairs minister, and his later successor Abdus Samad Azad; Mansur Ali, finance minister, Qamruzzaman, home minister, and Yusuf Ali, education minister were all variously trained as lawyers, some practiced law; while others became active in politics from the Pakistan movement in the forties and 1952 Language movement. Ahmed, Azad, Ali, and Qamruzzaman were also elected as United Front candidates to the East Pakistan Provincial Assembly in 1954. Outside the core cabinet, the exiled government created special posts. Envoys were sent on diplomatic missions to lobby with friendly states for the recognition

⁶⁸ Quadir Muhammad Nurul, *Independence of Bangladesh in 266 Days: History and Documentary Evidence* (Dhaka: Mukto Publishers, 2004), 291.

⁶⁹ This movement had a profound impact on politics and society in East Pakistan. Its aftermath for the next decade witnessed Bengali cultural revivalism as the state policies began to target Bengali culture to rid it of Indian/Hindu influence. Some examples include bans on songs by Tagore and the use of the Bindi or vermilion as a Hindu symbol. See Hossain, *Bangladesh*, 9.

⁷⁰ Umar, *Purba Banglar Bhasha Andolon O Totkalin Rajneeti*, vol. 3.

⁷¹ Ahmad, *Neta O Pita*, 14.

⁷² *Ibid.*

⁷³ Hossain, *Bangladesh*, 15.

of Bangladesh.⁷⁴ Justice Abu Sayeed Chowdhury, a former judge of the Dacca High Court and then-incumbent Vice Chancellor of Dacca University (who had defected from his post while on overseas tour in Geneva in protest of the war) was made GIE's special representative and later appointed high commissioner stationed in the UK.⁷⁵ He played an important role in overseas advocacy and mobilization of Bangladeshi diaspora, particularly in North America and Europe. Many GIE initiatives owe their success and sustenance to the contributions of the Bangladeshi diaspora, especially in the UK and USA.⁷⁶ Other diplomatic envoys included for instance, Mollah Jalaluddin sent to Lebanon and Syria; Faqueer Shahabuddin (later Attorney General of Bangladesh, 1972–1976) sent to Sri Lanka; and Abdul Malek Ukil sent to Nepal.⁷⁷ They were all lawyers (or trained in law) variously associated with East Bengal politics in the forties and the Six Points Movement in the mid-sixties.

Strategies of the GIE

The GIE's operation began in April 1971. On April 10, Tajuddin addressed the Bengalis and the world, declaring the formation of the GIE and its mandate in the Bangladesh liberation movement. The GIE ensured that all its formal actions were given legal effect. The Proclamation of Independence of April 10, 1971 drafted through the joint efforts of Amirul Islam, a practicing lawyer and a close Tajuddin associate, Subrata Roy Chowdhury, an Indian lawyer from the Calcutta High Court, Rehman Sobhan, an economist, and Tajuddin, was published and circulated.⁷⁸ The proclamation specifically provided the legal basis for the conflict with Pakistan by drawing its mandate from the elected National and Provincial Assembly members (of Pakistan) in the 1970 election to frame a constitution. To be sure, the GIE also administered its oath of office for its first cabinet by crossing the border within the territory of the newly formed state of Bangladesh in the Meherpur district, which was renamed *Mujibnagar* (Mujib's city) after Sheikh Mujib in whose name the government had been formed.⁷⁹ The oath-taking ceremony was preceded by both recitations of the Quran and performance of Tagore's *Amar Sonar Bangla*.⁸⁰ Moreover, Sister Catherine, a nun from a local Catholic church had also aided in designing welcome banners in preparation for the event.⁸¹ This ceremony was simultaneously an

⁷⁴ Quadir, *Independence of Bangladesh in 266 Days*, 371.

⁷⁵ Kabir and Rahman, *Documents of Bangladesh Liberation War*, vol. 4, 23 and 272.

⁷⁶ Many overseas associations had been established to aid the cause of the war. For example, the Bangladesh Association in the UK and the East Pakistan League in USA were particularly active in international advocacy and fundraising for the Bangladesh cause, efforts that sustained the GIE activities. See generally Kabir and Rahman, *Documents of Bangladesh Liberation War*, vol. 4.

⁷⁷ Quadir, *Independence of Bangladesh in 266 Days*, 371.

⁷⁸ Rehman Sobhan, *Untranquil Recollections: The Years of Fulfilment* (New Delhi: Sage Publications India, 2015), 367.

⁷⁹ Quadir, *Independence of Bangladesh in 266 Days*, 68–69.

⁸⁰ *Ibid.*

⁸¹ Sharmeen Ahmad, *Muktir Kandari Tajuddin Ahmad: Konnar Abhibadon* (Dhaka: Oitijhya Publishers, 2017) (Bangla: ৩ ভক্তের জেল হত্যার পূর্বাপর), 139.

affirmation of a syncretic tradition of Islam, and secularism in East Pakistan—and a response to the state’s attack on Bengali cultural nationalism that had been prevalent in the fifties and sixties.

The GIE’s operations were largely divided into establishing bureaucratic order, aiding in and setting up relief operations, diplomatic and international lobbying, and advocacy. As the guerilla war raged on, the GIE brought some semblance of order to the nascent state apparatus. Its administrative functions included putting together comprehensive organograms for the bureaucratic, diplomatic, economic, and military operations with contingency plans such as the printing of official government documents, etc.⁸² A Planning Commission, and various committees and boards were set up to oversee recruitment functions and training of freedom fighters, and relief and rehabilitation of the wounded and the refugees.⁸³ A radio program and a weekly publication known as the *Joy Bangla* were also established.⁸⁴

The GIE, however, was not without internal factions. Not everyone understood the need for a provisional government. Many senior leaders apparently thought of themselves better qualified to be the prime minister.⁸⁵ Mujib’s nephew, staunch loyalist and student leader Sheikh Moni, Foreign Affairs Minister Khondaker Mostaq Ahmed and others, suspicious of Tajuddin’s ambition, questioned his legitimacy to be the prime minister.⁸⁶ The necessity of forming a government to lead the war had occurred to Tajuddin while fleeing from the Pakistani military.⁸⁷ In his first meeting with Indira Gandhi, Tajuddin presented himself as the AL general secretary but he was said to have been perplexed about the official capacity in which he was to represent himself to her.⁸⁸ The futility of a leaderless government was likely not lost on Tajuddin. At that point Mujib’s whereabouts were unknown, and circumstances were not conducive to seeking party directives. The decision to assume the role of the Prime Minister appeared to be based on discussions with those constituent assembly and AL members with whom he had established contact. Since much of the blueprint for the GIE came from Tajuddin himself, it is hardly surprising that many of those members looked to him for leadership.

In addition to blocking Tajuddin’s efforts to form the GIE, several of his opponents within his party also supposedly intrigued with the Indian intelligence agency, the Research and Analysis Wing to create an alternative *Mujib Bahini* (Mujib militia) outside the GIE’s framework.⁸⁹ In August 1971, Khondaker Mostaq was suspected to have secretly approached the Nixon government (a key ally of Pakistan) through an emissary, exploring possibilities of a compromise within the framework of Pakistan to end the war. This same faction was reportedly behind the “Mujib or Freedom” doctrine, which held that

⁸² Quadir, *Independence of Bangladesh in 266 Days*, 70–94.

⁸³ *Ibid.*

⁸⁴ Rahman (ed.), 1971, 111.

⁸⁵ *Ibid.*, 20.

⁸⁶ *Ibid.*, 376.

⁸⁷ Tajuddin Interview, *Dainik Purbodesh*, December 16, 1971.

⁸⁸ Sayyid A. Karim, *Sheikh Mujib: Triumph and Tragedy* (Dhaka: The University Press, 2020), 207.

⁸⁹ Karim, *Sheikh Mujib*, 293.

the GIE's continued pursuit of independence from Pakistan may expedite Mujib's trial for high treason and perhaps even result in a death sentence, the highest punishment for the offence.⁹⁰ This narrative also indirectly implicated Tajuddin as Mujib's rival vying for power. There were additional hurdles with the freedom fighters. Internal factions had developed among them due to a weak central command and control system.⁹¹ The appointed Commander in Chief, General Osmani, was said to have almost resigned on account of these squabbles had it not been for Tajuddin's effective persuasion that diffused the conflict.⁹²

Tajuddin dealt with saboteurs within his party through mediation from other AL members. He strategically removed Mostaq, then Foreign Affairs Minister, from leading a UN delegation to attend the General Assembly session of September 1971—a role that was instead assigned to Justice Abu Sayeed Chowdhury.⁹³ Mostaq's clandestine approach to the US Government was potentially damaging, occurring as it was in the midst of a proxy war between the great powers and regional tensions. The "Freedom or Mujib" doctrine also lacked credibility as the GIE executed all its policies in Mujib's name and even named itself the *Mujibnagar* Government. Tajuddin's inability to consult all senior party members during the early stages of forming the GIE and proceed on the basis of consensus during war-time contingencies fomented the internal discord. Strife within the party, lack of proper aid to continue the war and other uncertainties plagued the nascent administration. To address some of these issues, Tajuddin held a conference with the aid of Indian government officials in Siliguri in July 1971.⁹⁴ Nearly 374 East Pakistani members of the elected National and Provincial Assemblies attended the two-day conference to address doubts among party members, while also providing the anti-Tajuddin factions the opportunity to air their grievances.⁹⁵ During the conference, Tajuddin reinforced the primary objectives of the GIE—to organize government and win international support. The conference appeared to be a success for generating party support, though member-participation and factionalism continued to affect it.⁹⁶

In September, Tajuddin convened a multi-party advisory committee, consisting of leaders such as Moni Singh of the Communist party, Muzaffar Ahmed of the National Awami Party, Manoranjan Dhar of the Bangladesh Congress, Bhashani of the other National Awami Party, and others.⁹⁷ This committee was designed to allow a wider section of the political constituents of former East Pakistan beyond the AL to agree on a framework for an independent

⁹⁰ Karim, *Sheikh Mujib*, 227; Hasan, *Muldhara* 71, 81.

⁹¹ Quadir, *Independence of Bangladesh in 266 Days*, 377.

⁹² *Ibid.*

⁹³ Karim, *Sheikh Mujib*, 227.

⁹⁴ See generally, Rahman (ed.), 1971.

⁹⁵ *Ibid.*, at 20.

⁹⁶ Indian army official account at the conference observed that there were rifts between leaders and some of the delegates, many did not understand the gravity of the situation. It also stressed the need for effective organization of government. Rahman (ed.), 1971, 119.

⁹⁷ Quadir, *Independence of Bangladesh in 266 Days*, 377.

Bangladesh. It would help solidify the GIE's claim as true representatives of the people of Bangladesh recognized by all the major political parties. However, doing so continued to alienate the anti-Tajuddin faction, which attributed his actions to personal and political ambition, taking advantage of Mujib's absence.⁹⁸

Making the legal case for Bangladesh to the world

Tajuddin Ahmad likely pre-empted the importance of *de jure* attributes of statehood, particularly as the GIE was operating extra-territorially in specific regional and international contexts. The Pakistani narrative for Bangladesh's independence was one of secession. Bengalis were effectively traitors. In view of the Indo-Pak war of 1965, old anxieties of a united East and West Bengal resurfaced in some circles.⁹⁹ Certain quarters in India also worried about East Pakistan setting a precedent of Balkanization.¹⁰⁰ These regional anxieties tied in with Cold War politics. The Soviet Union was closely aligned to India on the one hand; while on the other, the Nixon administration came out in support of the (West) Pakistan government.¹⁰¹ The International community and the United Nations appeared to tolerate significant human suffering until the East Pakistan problem, which began in March 1971, escalated into a major refugee crisis and an outright war between India and Pakistan in December 1971.

In this context, the GIE had to establish itself as a legitimate government and make the legal case for a new state outside the framework of Pakistan. These two agendas required international support. The GIE presented juridical statehood not simply as a normative consideration but also a component of the international society of states.¹⁰² *De jure* recognition was important to maintain the constitutionality of the revolution and the legitimacy of the right of Bengalis to self-determination. It would also allow the GIE to avoid the insurgency or secessionist narrative pushed by Pakistan—which would have bounded the independence movement within the framework of a civil war, triggering the principle of territorial integrity.

There were precedents for seceding states and exiled governments in the post-World War II era, but the path to establishing new states was not entirely consistent. Governments in exile had not qualified as legitimate under a variety of conditions including those of autonomous regions such as the Basque country in Spain.¹⁰³ By 1971, the paramountcy of doctrines of territorial integrity and self-determination were well-settled in the Indian Subcontinent, particularly after the adjudication of these questions with regards to Hyderabad in

⁹⁸ Ibid.

⁹⁹ Quadir, *Independence of Bangladesh in 266 Days*, 34.

¹⁰⁰ See generally, Sisson and Rose, *War and Secession*.

¹⁰¹ Ibid.

¹⁰² Robert Jackson and Carl G. Rosberg, "Why Africa's Weak States Persist: The Empirical and the Juridical in Statehood," *World Politics* 35, no. 1 (1982): 1–24.

¹⁰³ Stanley Payne, "Catalan and Basque Nationalism," *Journal of Contemporary History* 6, no. 1 (1971): 15–51.

1947.¹⁰⁴ There were plenty of examples close to home as provincial nationalist sentiments or insurgencies, as was the case in Kashmir, Baluchistan, and Nagaland, had been periodically snuffed out by laying claim to the preservation of territorial integrity.¹⁰⁵

The principle of non-intervention in sovereign states also militated against the recognition of certain claims of self-determination such as the “Government of Tibet in exile”—including non-recognition by its host state India.¹⁰⁶ The Biafran experience too was almost contemporaneous to that of Bangladesh, which ultimately failed to win international legitimacy.¹⁰⁷ Like Bangladesh, claims for a free Tibet and Biafra were also made within certain legal frameworks. Tibet carried out state-like functions while exiled in India; and Biafra mimicked political organization of a state including a court of law, yet none of those movements were successful.

The GIE was de-territorialized. It proclaimed East Pakistan to be the new (sovereign and independent) state of Bangladesh, but proclamation alone was insufficient. The GIE would have to satisfy certain conditions for it to be a legitimate government that could claim self-determination on behalf of a nation. First, it had to prove effective control over the state’s people and territory. The AL had been in effective control of the territory of East Pakistan during the course of the Non-cooperation movement in March 1971.¹⁰⁸ All the organs of government in East Pakistan including the judiciary, the civil service, and the East Pakistan’s armed regiment had *de facto* accepted the AL’s authority and directions. Accordingly, the AL-led GIE had a powerful claim to be treated as a validly constituted government. After the war began, the defecting East Bengal regiment along with the Mukti Bahini (legally under the command of the GIE) successfully resisted the Pakistani army’s onslaught from March until Indian military intervention in early December 1971. Even if control over the territory was incomplete, it was nevertheless effective.

Second, the GIE needed to demonstrate that it represented the community from which it emanated. Up until 1971, there were some examples under international law in which the representative character of a provisional government was dispositive in determining its legitimacy. In 1943, USA refused to recognize the exiled government of Albania on account of such representation.¹⁰⁹ Similarly,

¹⁰⁴ Clyde Eagleton, “The Case of Hyderabad before the Security Council,” *American Journal of International Law* 44, no. 2 (1950): 277–302.

¹⁰⁵ Javid Rehman, “Reviewing the Right of Self-Determination: Lessons from the Experience of the Indian Sub-Continent,” *Anglo-American Law Review* 29 (2000): 454.

¹⁰⁶ Fiona McConnell, *Rehearsing the State: The Political Practices of the Tibetan Government-in-Exile* (Chichester, UK: John Wiley & Sons, 2016).

¹⁰⁷ Godwin Onuoha, “Cultural Interfaces of Self-Determination and the Rise of the Neo-Biafran Movement in Nigeria,” *Review of African Political Economy* 40, no. 137 (2013): 428–46.; Samuel Fury Childs Daly, “A Nation on Paper: Making a State in the Republic of Biafra,” *Comparative Studies in Society and History* 62, no. 4 (2020): 868–94; and Samuel Fury Childs Daly, *A History of the Republic of Biafra: Law, Crime, and the Nigerian Civil War* (Cambridge, UK: Cambridge University Press, 2020).

¹⁰⁸ Karim, *Sheikh Mujib*, 182.

¹⁰⁹ Stefan Talmon, “Who is a Legitimate Government in Exile? Towards Normative Criteria for Governmental Legitimacy in International Law,” in *The Reality of International Law: Essays in*

both China and USA refused to recognize a provisional government of Korea on account of lack of unity within it and demonstrable support for it among Koreans at home or abroad.¹¹⁰ The GIE stood on the authority of an overwhelming victory at a fair and free election. It was constituted by elected members of the national and provincial Assemblies. Therefore, the GIE was well-positioned under international law to exercise the right to self-determination. By reason of its composition through elected members, and by forming a multi-party advisory committee, the GIE fortified its legitimacy as substantially representative of the community from which it emanated. It was, therefore, able to demonstrate both formal and factual representative character.

Tajuddin's inaugural speech (April 10, 1971) as prime minister framed the case for Bangladesh in the following manner:

"Bangladesh has struggled for too long for its self-determination to allow itself to become anyone's satellite [...] the World Community [is] beginning [...] to take notice of this major conflagration raging in the world's eighth largest country [...] Whilst there is still talk in some countries of this being an internal affair of Pakistan, it is becoming evident that the massacre of seventy-five million people and the attempt to suppress their struggle for freedom is now an international issue of major dimension which threatens the conscience as much as the peace of the region."¹¹¹

Tajuddin framed the GIE as a representative government forced from its state's territory as a consequence of an international illegality committed by the government (*in situ*). He also made the case for an independent Bangladesh by reference to the humanitarian crisis that unfolded at the time by specifically citing the USSR and India's recognition of the genocide, and Britain's recognition of the conflagration. The GIE continued to pursue *de jure* recognition and sent officials abroad to garner public support and leverage international relations.

International outreach

The GIE's outreach was efficient. Initially, it reached out to possible allies in India. Among others, the GIE assigned Nurul Quadir as its "roving ambassador" to propagate the Bangladesh cause in India, Iran, and Afghanistan.¹¹² Quadir was a lawyer by profession and an active AL campaigner. He found an unlikely ally in Wahida Rehman, then famous Bollywood actress who was incidentally the vice-chairperson of the Bangladesh Aid Committee established during the war.¹¹³ Rehman introduced Quadir to an influential network of intellectuals, industrialists, lawyers, and journalists in Bombay—especially focusing on Muslims of considerable influence. Through Rehman, Quadir met the Governor of Maharashtra, Nawab Ali Yavar. He introduced Quadir to Barrister Chagla, who had variously

Honour of Ian Brownlie, eds. Guy S. Goodwin-Gill and Stefan Talmon (Oxford: Oxford University Press, 1999), 499–537, at 510.

¹¹⁰ *Ibid.*, 511.

¹¹¹ Quadir, *Independence of Bangladesh in 266 Days*, 62.

¹¹² Quadir, *Independence of Bangladesh in 266 Days*, 232.

¹¹³ *Ibid.*, 165–77.

served as External Affairs minister of India, president of the Bombay Bar Association and chief justice of Bombay High Court.

Quadir gave public lectures on the legalities of the revolution with the Bombay Bar and the Chamber of Commerce between August 4 and 27, 1971.¹¹⁴ The Bombay Bar Association passed a resolution in favor of recognition of Bangladesh. It was endorsed by several senior barristers who had engaged with Quadir; and deliberated on the probable secret court martial of Sheikh Mujib and the role of the five permanent members of the Security Council in this conflict.¹¹⁵ The GIE had already previously engaged with lawyers from the Calcutta High Court Bar some of whom had aided in the process of drafting the Proclamation of Independence earlier in April 1971. The linkages amongst lawyers were especially useful for the articulation of both the humanitarian crisis and the right of Bengalis to self-determination. It generated key reflections of lawyers from the Third World on the larger international framework within which they operated; and served as an indictment of the silence or complicity of major powers on the East Pakistan tragedy.

Beyond India, the British lobby was especially productive. British MPs and other supporters of the movement within South Asian diaspora were mobilized to address the humanitarian crisis.¹¹⁶ Irish members of Parliament (who were visiting India) Sir Anthony Charles Smonde and Dr. WA Longhane also offered support and recognized that the vested interests of Big Powers made it difficult to find a solution that was acceptable to both sides.¹¹⁷ The GIE sent economist Rehman Sobhan for the American lobby after a stopover in the UK where diaspora presence and other social and political connections made for fruitful engagement.¹¹⁸ In American official circles however, there were few friends of Bangladesh in the Nixon Government. General Yahya was a key ally of the Nixon government as an important channel to China. In July 1971, Yahya facilitated a covert meeting between Kissinger and Chinese officials.¹¹⁹ Kissinger was not amenable to any dialogue with Bangladeshi representatives, but it did not stop the GIE and its representatives from pursuing communication channels. A former (Bengali) embassy official reportedly accosted George H.W. Bush (who was then UN Ambassador) at the steps of the UN Building.¹²⁰ Bush shared his embarrassment when confronted by the Bangladesh representative with his bosses at the Oval Office. He made a mild effort to advocate for India's right to speak for human rights violations; but was quickly shot down by both Nixon and Kissinger.

¹¹⁴ *Ibid.*, 225–26, 300.

¹¹⁵ *Ibid.*, 225.

¹¹⁶ *Ibid.*

¹¹⁷ Gary J. Bass, *The Blood Telegram* (India: Random House, 2013), 196; July 12, 1971, *The Times of India*, New Delhi.

¹¹⁸ Sobhan, *Untranquil Recollections*.

¹¹⁹ Bass, *The Blood Telegram*, 171.

¹²⁰ National Archives, Nixon Presidential Materials, NSC Files, Box 849, President's File—China Trip, China Exchanges. Top Secret; Sensitive; Exclusively Eyes Only; <https://history.state.gov/historicaldocuments/frus1969-76v17/d176>.

Sobhan's efforts in Washington targeted Robert McNamara at the World Bank, and American politicians including Senators Edward Kennedy and Frank Church (who was then ranking member of the Senate Foreign Relations Committee at the time).¹²¹ These senators were active in the oversight of US foreign relations, particularly its intersection with human rights.¹²² Sobhan's lobby fed into the Saxby-Church amendment to the U. S. Foreign Aid bill, which cut off aid to Pakistan. In the guise of aid, U.S. Government was supplying weapons and other spare parts to Pakistan. Furthermore, American constitutional experts Albert Blaustein and Gerard Nierenberg were consulted by the GIE to successfully restrain a covert weapons shipment from the New Jersey Port to West Pakistan in violation of a weapons embargo.¹²³ These American lawyers later contributed to the constitution drafting consultation process. Bangladesh also had some allies among American diplomats. Archer Blood stationed in Dacca in March 1971 not only reported about the atrocities in East Pakistan, but openly dissented with his bosses at significant costs to his career. Keating, US Ambassador to Delhi, was also accused of "going native" when he postured toward recognizing Bangladesh's government and the human rights violations in East Pakistan.¹²⁴

The international mobilization of the GIE was greatly aided by the co-optation of Bengali diplomats in Pakistani embassies abroad. Between April and October 1971, thirty diplomats ranging from Ambassadors down to juniors in the diplomatic services and ninety six other ministerial staff pledged allegiance to Bangladesh, and established Bangladesh Missions in New Delhi, Washington, and London.¹²⁵ These diplomatic coups, particularly in aid-granting countries provided further institutional structure to the GIE by creating *de facto* agency to enter into foreign relations. These developments were crucial to the unfolding of events of the last quarter of 1971.

Victory

After Indira Gandhi's visit to the United States in early November 1971, outright non-cooperation from the American Government on the Bangladesh issue was abundantly clear. The United Nations extended partial assistance in managing the refugee situation; but did not take any proactive measures to address the root cause of the problem that made an India-Pakistan war

¹²¹ Sobhan, *Untranquil Recollections*, 386–87.

¹²² Sarah B. Snyder, "'A Call for US Leadership': Congressional Activism on Human Rights," *Diplomatic History* 37, no. 2 (2013): 372–97.

¹²³ The only available account of these events comes from Nierenberg's Negotiation Institute Website at <http://www.negotiation.com/negotiating-independence-bangladesh/>. However, Gary Bass's archival work confirms the Nixon administration was warned by the State Department about the illegalities of supplying weapons to Pakistan due to congressional embargo. There was internal discord within the administration, and these were routinely over ruled in Oval Office meetings. See generally, Bass, *The Blood Telegram*.

¹²⁴ Bass, *The Blood Telegram*, 152.

¹²⁵ Kabir and Rahman, *Documents of Bangladesh Liberation War*, vol. 6, 512.

all but inevitable.¹²⁶ The Security Council was paralyzed due to the great divide between the major powers.¹²⁷ It referred the matter to the General Assembly, which deliberated and later adopted a resolution in December 1971 calling for immediate cease-fire and withdrawal of troops.¹²⁸ Even the Sub-Commission on Prevention of Discrimination and Protection of Minorities and the Committee on the Elimination of All Forms of Racial Discrimination failed to act despite appeals from twenty-two international nongovernmental organizations and oral submission by the International Commission of Jurists.¹²⁹ The UN member states largely treated the conflict within “domestic jurisdiction” in accordance with Article 2(7) of the United Nations Charter. Doing so effectively meant accepting Pakistan’s assertion that settling domestic political problems within its territories with violence and oppression required no accountability.

It was clear that the UN was unable to solve the conflict. The scale of influx of Bengali refugees across the Indian border rid Indian officials of any remaining compunctions about territorial integrity. The Indian troops intervened on December 3, 1971. By this time, India had also cultivated formal support in European circles as well as the Soviet Union.¹³⁰ Interestingly, India’s official justification for military intervention emphasized self-defense given the breach of its borders through (and the scale of) the refugee crisis, though its appeal to the world on humanitarian grounds had remained consistent. Whatever its reason, the intervention also lent credence to the GIE’s claims of an unconstitutional ouster from power by a military government—and strengthened its legal basis for self-determination. With the combined efforts of the Indian army, the *Mukti Bahini* and Bengali troops on the ground, Bangladesh secured its victory on December 16, 1971.

Tajuddin Ahmad returned to a free Bangladesh on December 23, 1971.¹³¹ Mujib’s return was key at this juncture for the future of Bangladesh, redrawing the map of the subcontinent and redefining diplomatic relations—particularly within European circles that were suspicious of Tajuddin as forthrightly secessionist among the AL leaders.¹³² Mujib was also crucial for restoring unity among the AL factions. He returned to Dacca on 10 January 1972. Soon thereafter, Mujib introduced a parliamentary system of government through a provisional constitutional instrument and replaced Tajuddin Ahmad as the new Prime Minister of Bangladesh.¹³³

¹²⁶ Ved P. Nanda, “A Critique of the United Nations Inaction in the Bangladesh Crisis,” *Denv. L.J.* 49 (1972): 53, 57.

¹²⁷ Resolution 303 (1971)/[adopted by the Security Council at its 1608th meeting], of December 6, 1971.

¹²⁸ <https://www.nytimes.com/1971/12/09/archives/uns-call-for-truce-is-rejected-indians-deride-un-move-pakistanis.html>.

¹²⁹ John Salzberg, “UN Prevention of Human Rights Violations: The Bangladesh Case,” *International Organization* 27, no. 1 (1973): 116–27.

¹³⁰ Raghavan, 1971, 226–31.

¹³¹ Hasan, *Muldhara* 71, 206.

¹³² *Ibid.*

¹³³ Provisional Constitutional Order 1972.

The Constituent Assembly convened on April 10, 1972 on the anniversary of the proclamation of independence with the elected members of the former Provincial and National Assemblies of East Pakistan. It concluded deliberations in November 1972. The Constitution came into effect on December 16, 1972 on the anniversary of Victory day. It established a government based on a Westminster-type parliamentary system under a unitary structure. It also recognized the principles of nationalism, socialism, secularism, and democracy in its Preamble as foundational to the social contract. The Preamble paid homage to the accretion of political values accumulated through decades of anticolonial and anti-authoritarian resistance—though the Constitution’s afterlife fell significantly short of those values.

Immediately after the Constitution came into force, the Constituent Assembly members resigned instead of continuing as the Provisional Parliament of Bangladesh. As the movement party, the AL’s electoral popularity and Mujib’s charisma was center stage in the post-war era. The first election under the new Constitution was held on 7 March 1973 and majority of these members (and AL) were re-elected. Tajuddin was appointed as Finance Minister in the new cabinet but was politically relegated to the sidelines after independence. The same factional forces that worked against Tajuddin during the war continued to portray him as a threat to Mujib.¹³⁴ Having been in captivity, Mujib knew little about the GIE and Tajuddin’s key leadership role during the war. He was likely misinformed by anti-Tajuddin forces within Mujib’s inner circle who sowed seeds of doubt.¹³⁵

In 1974, Mujib went on to form a one-party government in response to several crises of governance in Bangladesh.¹³⁶ His brutal and tragic assassination in August 1975 after a military coup was followed by the arrest and assassination of four key AL leaders including Tajuddin Ahmad in November 1975.¹³⁷ Rarely does the making of history depend on one individual—but their decisions in times of crisis may perhaps contribute to the course of history. One cannot be certain whether the diplomacy of the GIE would have succeeded without Tajuddin. His associates and others who worked with Tajuddin certainly seemed to think so on account of his sense of duty in leading the GIE. By several accounts, Tajuddin led an especially austere life during the war, focusing solely on the mission.¹³⁸ Tajuddin demonstrated his commitment to constitutionalism, country, party and leader when he handed over power to Mujib in whose name he led the revolution. He continues to be a rare example among Bangladeshi leaders to hand over power without resorting to factionalism and power struggle—transition to power being a key source of conflict in Bangladeshi politics to this day.

¹³⁴ Karim, *Sheikh Mujib*, 387–88.

¹³⁵ *Ibid.*

¹³⁶ Rounaq Jahan, “Bangabandhu and After: Conflict and Change in Bangladesh,” *The Round Table* 66, no. 261 (1976): 73–84.

¹³⁷ Syed Badrul Ahsan, “Bangladesh at 50: Coups, Assassinations and Democratic Struggle,” *Asian Affairs* 52, no. 3 (2021): 554–62.

¹³⁸ For general accounts, see Islam, *Muktijudhder Smriti*; Quadir, *Independence of Bangladesh in 266 Days*; and for specific reference see Sobhan, *Untranquil Recollections*, 402.

Conclusion

Bangladesh's founding history speaks to both the jubilation associated with the right of a people to assert their self-determination, and profound loss and tragedy that befell the key leaders of its Liberation party. The constitutional warfare launched by the GIE reveals a history of Third World agency in constructing Global South constitutionalism and internationalism.

The 1971 war suddenly thrust Tajuddin and his comrades into global geopolitics from local grassroots and provincial political movements. The place of decolonized nations within such an international framework, however, was made abundantly clear by the UN's role in 1971. It provided a sobering account of the international legal order, which can only be as effective as its constituent members.¹³⁹ The GIE was aware of these inequities. It was strategic with its diplomatic maneuvering. The internationalist outlook and solidarity efforts of the GIE coupled with India's intervention contributed to the construction of a new international from the Global South. The role of the Bengali diaspora and their allies also contributed, in no small measure, to this process of imagining and creating a new homeland for the Bengalis in the old territories of former (East) Pakistan. The Bangladesh case tested the parameters of international law, putting normativity in collision with history.¹⁴⁰ These histories from the periphery are worth examining to understand the local and global dynamics which shaped them. They also demonstrate the relevance of colonial history to understanding contemporary conflicts.

A poignant Tajuddin memory in Islam's memoir captures the connection between the colonial and postcolonial, and South Asia's new cartography within the international legal order in 1971. As they fled the March 1971 slaughter, a pensive Tajuddin apparently recounted a childhood memory to Islam.¹⁴¹ Presumably, it was a memory from a period in the late 1930s to early 1940s British India when Hindu-Muslim communal strife peaked and the Pakistan movement had intensified. Tajuddin recalled his Hindu school friends joking about then-prevailing political events, saying "Your Pakistan will not last." He remembered strongly registering his protest to them and refuting their prophecy. No one imagined at the time that freedom would carry such enormous sacrifices. This memory at once captures the melancholy of displacement, and the tribulations of nation-building in postcolonial South Asia. The unrealized hopes for freedom in 1947 became the foundations of *Muktir Shongram* in 1971. The Liberation War delivered the sovereign and independent state of Bangladesh. The vast majority of its people, however, are continuing to tread the long road to *Mukti*.

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¹³⁹ A point amply reinforced in the *ICJ Report: 1972*, 76.

¹⁴⁰ James Crawford, *The Creation of States in International Law* (Oxford: Oxford University Press, 2006), 711.

¹⁴¹ Islam, *Muktijudhder Smriti*, 32.

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