

THE 1971 INDO-PAKISTANI WAR IN RETROSPECT: THE INTERPLAY OF NATIONAL INTERESTS, CAPABILITIES, AND INTERNATIONAL LAW

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The eruption of civil conflict in East Bengal during March, 1971, reached its seemingly inevitable climax on December 3, 1971, when, for the third time in a quarter century, war broke out between India and Pakistan. Fourteen days later the bitterest fighting on the subcontinent since 1947 had formally ended. Although much scholarly attention has been focused upon Indo-Pakistani relations during those tragic ten months, the bulk of these writings is relegated to the tremendous socio-economic dislocations which occurred in East Pakistan (now Bangladesh) and the anti-humanitarian, genocidal atrocities perpetrated by West Pakistani military forces upon Bengali civilians.¹ Notwithstanding the merit and importance of these studies, there still exists a dearth of relevant information concerning the evolution, culmination, and denouement of the two-week-long December crisis from a foreign policy-international law perspective. As a consequence several major questions are raised for students of international law and politics: What factors can be empirically verified as contributors toward fomenting the situational crisis environment? What relevant impact did the primary actors' conceptions of national interest, national capabilities, geopolitical strategies, national objectives, and decision-making alternatives have upon their international legal considerations during the crisis? Were there appreciative policy inputs by exogenous (i.e., external) actors which could have influenced the participant actors' legal alternatives? Finally, was international law employed as an instrument to constrain policy or was it used as a tool to protect and enhance the respective Indian and Pakistani policy positions?

This paper will explore these questions with three fundamental purposes in mind: first, to determine whether valid links existed between the foundational components of foreign policy formulation (i.e., national goals, objectives, strategies and capabilities) and the Indo-Pakistani legal positions during the 1971 hostilities; second, to ascertain whether the relative salience

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¹ See, for example, Thomas M. Frank and Nigel S. Rodley, "After Bangladesh: The Law of Humanitarian Intervention by Military Force," *American Journal of International Law*, Vol. 67 No. 2 (April 1973), pp. 275-305; F. Ahmad, *East Bengal: Roots of Genocide* (Delhi: Vikas Pub., 1971); and Edward M. Kennedy, "International Humanitarian Assistance: Proposals for Action," *The Virginia Journal of International Law*, Vol. 12 No. 3 (April 1972), pp. 299-308.

of these foreign policy components fluctuated as the crisis progressed through its various phases (viz., protestation, disputation, confrontation, conflict, and peaceful settlement); and third, to construct a paradigm demonstrating the impact flow these components had upon the primary actors' perceptions of the crisis environment when outlined against their respective legal positions. Nevertheless, to gain greater perspicacity into the exact nature of the 1971 Indo-Pakistani war, first it will be necessary to briefly review the historical genesis of discord between these two South Asian neighbors.

The Historical Genesis of the Crisis Environment

Any systematic analysis of the 1971 subcontinental war must begin by viewing the roots of Indo-Pakistani discord from a historical perspective. The animus between India and Pakistan can be traced from the early 1500's when Moslem warriors completed their subjugation, begun centuries earlier, of the subcontinent, then mostly inhabited by Hindus.² In 1765, Britain assumed the conqueror's role and eventually extended its rule throughout India. It was not until after World War II that economic difficulties and a rising tide of indigenous nationalism compelled the British to withdraw.³ Nonetheless, even though Hindus and Moslems inherited the land, they were unable to reconcile the politico-religious differences which had alienated the two most powerful political parties, the Indian National Congress and the Muslim League. As perceived by one scholar, four crucial factors had been responsible for this estrangement: 1) The bitter history of relations between the Indian National Congress and the Muslim League; 2) The opposition to partition by the Indian National Congress until 1947; 3) The Muslim League's claim for parity between itself and the Indian National Congress, as well as for socio-political parity between Moslems and Hindus; and 4) The ideological conflicts between these two political factions.⁴ Consequently, even though the dream of an independent Pakistan eventually came to fruition on August 15, 1947,⁵ the pre-partition Congress-League rivalry became transformed into an intense Indo-Pakistani antagonism.

Hostilities first broke out between the two fledgling states in late 1947 over the disputed area of Kashmir in northwest India.⁶ The dispute flared up when the Hindu Prince of Kashmir, a feudal Princely State under British paramountcy, joined the new state of India after his predominantly Muslim subjects rose in rebellion. Responding to his appeal, the Indian army occupied two-thirds of the contested region. Hundreds of thousands of people were killed during the widespread rioting and slaughter that followed; Hindus

² For a general history of the Indian subcontinent, see Milton W. Meyer, *India-Pakistan and the Border Lands* (Totowa, N.J.: Littlefield, Adams & Co., 1968).

³ *Ibid.*, pp. 160-164.

⁴ D. C. Jha, "Roots of Indo-Pakistani Discord," *The Indian Journal of Political Science*, Vol. 32 No. 1 (January-March 1971), p. 14.

⁵ The instigation of Muslim separation is usually credited to Muhammad Ali Jinnah (1876-1948), the "true architect of Pakistan." See N. N. Gidwani, "Genesis and Growth of Pakistan," *South Asian Studies*, Vol. 7 No. 1 (January 1972), pp. 1-13.

⁶ An excellent study of the Kashmir dispute is Lynn H. Miller's "The Kashmir Dispute," in Lawrence Scheinman and David Wilkinson (eds.), *International Law and Political Crisis: An Analytic Casebook* (Boston: Little, Brown, and Co., 1968), pp. 41-89.

sought safety under Indian rule and Moslems fled India to seek sanctuary under the Pakistani flag. Sporadic fighting continued until a cease fire was effectuated by the United Nations on January 1, 1949.⁷ Nonetheless, it was an uneasy truce and tensions remained high on the subcontinent.

In April 1965, limited clashes were reported along the Assam-East Pakistan border, as well as in the Rann (swamp) of Kutch area skirting the West Pakistan-Cujarat border near the Arabian Sea.⁸ Armed conflict between Pakistan and India erupted in late August, 1965, once again over Kashmir; Indian soldiers advanced toward Lahore in West Pakistan while Pakistani troops were deployed to Jammu. On September 20, the United Nations Security Council demanded compliance to a cease-fire order.⁹ Two days later both sides agreed to the U.N. fiat although they refused to comply with the concomitant provision to withdraw their forces back to the 1949 cease-fire line.¹⁰ The situation remained stalemated until January 10, 1966, when negotiations at Tashkent, USSR, brought forth a mutual pledge to withdraw military forces from Kashmir.¹¹ Despite this apparent reconciliation, during the interim years to 1969, both India and Pakistan lodged frequent accusations and diplomatic protests over border violations and breaches of "the Spirit of Tashkent."¹² It is against this embittered twenty-five year history of suspicion, hatred, and conflict between these two communities—Indian Hindu and Pakistani Moslem—that the subsequent events in 1970 and 1971 must be viewed.

The Indo-Pakistani War of 1971 was the precipitant outgrowth of internal political turmoil in the geo-politically divided state of Pakistan. In the late 1960's popular discontent within Pakistan became manifest. Opposition groups alleged that the constitution promulgated in 1962 was discriminatory and was designed chiefly to maintain President Mohammad Ayub Khan's ruling party in power; public agitations called for reforms and demanded restitution of civil liberties which had been curtailed since the 1965 war with India. Separatist movements sprung up in East Pakistan and urged regional autonomy. Worker strikes and student demonstrations ensued, especially in the East, and in March, 1969, Ayub Khan resigned. He was succeeded by General Mohammad Yahya Khan, who forthwith declared martial law in the face of continued rioting and protests throughout the country. In August,

⁷ *Ibid.*, p. 62. See also Interim Report of the United Nations Commission for India and Pakistan, SCOR: 3rd Year, Supplement for November, 1948 (S/1100, November 9, 1948).

⁸ See B. M. Kaul, *Confrontation with Pakistan* (New York: Barnes and Noble, Inc., 1972), especially Chapter 3, "Prelude in Kutch and Kashmir," pp. 19-29.

⁹ For the text of the resolution, see SCOR: 20th Year, Supplement for July, August and September (S/6699, September 20, 1965).

¹⁰ As Miller notes: "... New Delhi's acceptance was subject to a guarantee against further Pakistani infiltration and 'aggression,' and stated that no amount of pressure would prevent the Indian government from maintaining its sovereignty over Jammu and Kashmir. Pakistan's acceptance was predicated on the condition that the cease-fire arrangement would provide for a resolution of the 'real' cause of the conflict." [i.e., the cease-fire should be followed by mutual force withdrawal from Kashmir, the induction of a U.N.-sponsored Africa-Asian peacekeeping force to keep order, and a plebiscite within three months]. Miller, "The Kashmir Dispute," *op. cit.*, pp. 77-78.

¹¹ *U.N. Monthly Chronicle*, III, No. 3 (March 1966), pp. 10-11.

¹² See David E. Lockwood, "Sheikh Abdullah and the Politics of Kashmir," *Asian Survey*, Vol. 9 No. 5 (May 1969), pp. 382-396.

Yahya called for Pakistan's first universal direct election, scheduled for late 1970, to select a National Assembly for drafting a more equitable constitution. Acknowledging East Pakistan's claim of domination by the West and also attempting to redress the East's grievances, Yahya stipulated that the election should be based on one-man, one-vote which would guarantee East Pakistan a majority constituency.¹³

Relations between East and West Pakistan became more severely strained during 1970, and reached grave proportions in November when a cyclone-driven tidal wave devastated the offshore islands and coastal districts in the East. With a death toll estimated to be as high as half a million, Eastern officials accurately charged that the West was slow to respond with needed supplies and medical provisions.¹⁴

Nevertheless, the national election was finally held in December, 1970. The Awami League, hostile to Yahya Khan and advocating autonomy for the East, won 167 of the 313 seats in the National Assembly—an absolute majority.¹⁵ Negotiations were initiated between the Awami League, led by Sheik Mujibur Rahman, and the dominant Western political faction, the Pakistani Peoples Party. The negotiations floundered, and on March 1, 1971, Yahya personally postponed convening the National Assembly.¹⁶ The immediate consequences of this act were ominously foreseeable: The Awami League called for public noncooperation and a general strike; subsequently, East Pakistan erupted in revolt, and declared its independence as a separate Bengal nation named Bangladesh.¹⁷

Less than four weeks later, on March 25, the Pakistani Army—composed mostly of Western Pakistanis—moved to crush the East's rebellion.

¹³ At that time, the population of East and West Pakistan was 75 million and 55 million, respectively.

¹⁴ Dom Moraes, *The Tempest Within: An Account of East Pakistan* (Delhi: Vikas Pub., 1971), pp. 54-98.

¹⁵ The election results are discussed in *Far Eastern Economic Review*, January 9, 1971, pp. 19-21 and *South Asian Review*, (London), Vol. 4 (April 1971), pp. 224-225. Sheik Rahman's Awami League ran on a program consisting of six fundamental points:

1. The Pakistani Constitution should be Federal as enunciated in the Lahore Resolution (March 23, 1940), with a "parliamentary form of government based on the supremacy of a directly elected legislature on the basis of universal adult franchise" and population.

2. "The federal government shall be responsible only for defense and foreign affairs."

3. There shall be two separate, mutually or freely convertible currencies in East and West Pakistan; if a single currency is preferred, a federal reserve system should be constitutionally established to "prevent the transfer of resources" and capital from East to West Pakistan.

4. All fiscal policy, including revenue collection and the power of taxation, for East Pakistan shall be vested in that federated unit alone.

5. Separate accounts for foreign exchange earnings shall be maintained for East and West Pakistan; constitutional provisions should be enacted to allow East Pakistan to negotiate its own foreign trade and aid with foreign states.

6. "The government of the federating units shall be empowered to maintain a militia or para-military force in order to contribute effectively towards national security."

Sheikh Mujibur Rahman, *Bangladesh, My Bangladesh* (New Delhi: Orient Longman, Ltd., 1972), pp. 127-128.

¹⁶ *Far Eastern Economic Review*, March 6, 1971, p. 12.

¹⁷ Official declaration did not come until April 17, 1971, when Bangladesh was proclaimed a Republic with Nazrul Islam as the Acting President, and Tajuddin Ahmed as the Prime Minister. The proclamation referred to in early March was done by the residents of East Pakistan.

Civil war resulted, bringing horrors of indiscriminate death and destruction.¹⁸ The Awami League was outlawed by the Islamabad government, and Sheik Mujibur Rahman was arrested, branded a traitor, and taken to West Pakistan to await trial. Internal order was restored for the most part by full military occupation, but occasional bloody skirmishes continued into the summer and fall of 1971. During this period, however, nearly ten million refugees from East Pakistan—the majority of them Hindus—streamed into neighboring India.¹⁹ Although India had publicly sympathized with the East Pakistani rebels, this influx of refugees imposed an insufferable burden on its already over-extended economy. Concurrently, relations between India and Pakistan rapidly deteriorated.

During October and November, Pakistan repeatedly accused India of infiltrating troops into the East and supplying the Bengalis with arms.²⁰ Awami League officials, having established an exiled government in Calcutta, had promoted formation of a rebel army, the Mukti Bahini, to wage guerrilla warfare against Yahya Khan's forces in East Pakistan. Not unexpectedly the West Pakistani government formally protested that India was training and equipping these rebel forces in addition to fomenting insurgency in its strife-torn state.²¹ Gunfire was increasingly exchanged across the Indo-Pakistani borders; armed clashes and mutual troop incursions were reported almost daily; and domestic pressures within both countries pressed for all out war. On November 25, Pakistan announced the call-up of its military reserves, noting that fighting between Indian and Pakistani troops was intensifying around Jessore, Dinajpur, Sylhet, and Comilla.²² In a political rally speech in Calcutta on November 29, Indian Defense Minister Min Ram stated that Indian troops had permission to move as deeply into Pakistan as the range of the guns firing at them.²³ Three days later, Indian tanks and infantry were reported to be battling Pakistani forces near the northeastern border town of Hilli.²⁴ On December 3, 1971, skirmishing escalated into open warfare. West Pakistan launched a fateful two-hundred plane blitzkrieg attack against Indian airfields at Avantipur, Uttarlai, Jodhpur, Amritsar, Srinagar, Pathankot, and

¹⁸ See, for example, *How Pakistan Violated Human Rights in Bangladesh: Some Testimonies* (New Delhi: The Indian Council of World Affairs, 1972). During the nine-month internal war which followed, 10,000,000 East Pakistani refugees fled into India, another 20,000,000 were displaced within Bangladesh, and as many as 3,000,000 civilians died from malnutrition or military action. *Hearings on Relief Problems in East Pakistan and India Before the Subcommittee to Investigate Problems Connected with Refugees and Escapees of the Senate Committee on the Judiciary*, 92d Cong., 1st Sess., pt 3, 427, 449 (1971).

¹⁹ *Ibid.* See also "Bangladesh—Can It Survive?," *U.S. News & World Report* (December 27, 1971), pp. 20-24 and M. S. Rajan, "Bangladesh and After," *Pacific Affairs*, Vol. 45 No. 2 (Summer 1972), 191-205.

²⁰ See *Ceylon Daily News* (Colombo), Oct. 18, 1971; *The Times* (London), Nov. 29, 1971; *The New York Times*, Nov. 25-Dec. 1, 1971. See generally, Robert LaPorte, Jr., "Pakistan in 1971: The Disintegration of a Nation," *Asian Survey*, Vol. 12 No. 2 (February 1972), pp. 97-108 and David H. Bayley, "India: War and Political Assertion," *Ibid.*, pp. 92-96.

²¹ See sources cited *supra*, note 20.

²² *New York Times*, Nov. 25, 1971, p. 1:8.

²³ *Ibid.*, Nov. 29, 1971, p. 1:8.

²⁴ *Ibid.*, Dec. 1, 1971, p. 3:1.

Amabla.²⁵ President Giri of India declared a state of National Emergency, and the Indian Parliament responded with the Defense of India Act to provide sweeping emergency powers for the government.²⁶ A blockade of Pakistan was ordered,²⁷ Indian forces were put on full alert, and counter attack thrusts were instigated into East Pakistan near Jessore.²⁸

Operational Strategies in the Crisis Environment

Militarily, events moved rapidly and decisively during the two-front war which followed. In order to offset Indian attacks in the East, West Pakistani troops made probing advances into Kashmir, but met some resistance near Sind. Pakistani forces were repulsed at Chhamb and Jammu, along the disputed Kashmir cease-fire line, on December 6. That same day, India formally recognized Bangladesh,²⁹ causing Pakistan immediately to break off diplomatic relations with the Gandhi government.^{29a}

Success of the three-pronged pincers strategy used by India in East Pakistan—designed to converge on the provincial capital Dacca—was felt as early as December 10. The towns of Jessore, Ashuganj, Chandpur, and Daudkandi had been captured, and Indian troops had crossed the Meghna River, preparing for the final assault on Dacca.³⁰ In the West, air raids had virtually isolated the Pakistani capital of Islamabad from the outside world.³¹

On December 14, India reported its forces were only six miles from Dacca and were fighting on the city's outskirts. The East Pakistani civilian governor, A. M. Malik, and his cabinet resigned, thereby disassociating themselves from actions taken by the Yahya Khan government.³² The following day, the Pakistani commanding General in East Pakistan, A. A. K. Naizi, surrendered Dacca to Indian troops, and a cease fire agreement was concluded on the Eastern front. Admitting defeat at Dacca, Yahya Khan on December 16, vowed the war's continuance until final victory over India was

²⁵ *Ibid.*, Dec. 4, 1971, p. 1:3. In her broadcast to the nation on December 3, Prime Minister Indira Gandhi declared:

I speak to you at a moment of grave peril to our country and to our people. Some hours ago, soon after 5:30 P.M. on December 3, Pakistan launched a full-scale war against us. . . . Today the war in Bangla Desh had become a war on India. . . . We have no option but to put our country on a war footing.

Indira Gandhi, *India and Bangla Desh: Selected Speeches and Statements* (New Delhi: Orient Longman, Ltd., 1972), pp. 128-129.

²⁶ *New York Times*, Dec. 5, 1971, p. 1:8.

²⁷ *Ibid.*, p. 24:1.

²⁸ *Ibid.*, p. 1:8.

²⁹ Indira Gandhi, Statement in Parliament, December 6, 1971.

^{29a} *New York Times*, Dec. 7, 1971, p. 1:7. One Pakistani commentator subsequently asserted:

Actually India recognised "Bangla Desh" to provide a legal and political basis for the presence of the Indian Army in support of the Mukti Bahini and the "Bangla Desh Government." After the recognition the "Bangla Desh" authorities could assume charge of the areas captured by the Indians, and invite the Indians to come and take over [the] whole of East Pakistan. This would circumvent the charge that India aimed at annexing East Pakistan. It would also legalise India presence in the East.

Mehrunnisa Hatim Iqbal, "India and the 1971 War With Pakistan," *Pakistan Horizon*, Vol. 25 No. 1 (First Quarter, 1972), p. 29. Cf. Sardar Swaran Singh's statement to the U.N. Security Council, *U.N. Monthly Chronicle*, Vol. 9 No. 1 (January 1972), p. 29.

³⁰ *New York Times*, Dec. 11, 1971, p. 1:8.

³¹ *Ibid.*, Dec. 9, 1971, p. 15:1.

³² *Ibid.*, Dec. 15, 1971, p. 1:1.

achieved;³³ however, this pledge was short-lived. On the seventeenth Yahya Khan announced his acceptance of a general cease-fire agreement with India whereupon fighting was halted in the West.³⁴

The striking consequences of the fourteen-day war were unmistakably clear: A decisive alteration in the political and strategic balance of power had swiftly occurred. Old Pakistan ceased to exist for it had been effectively dismembered, and the Peoples' Republic of Bangladesh had been born—although at a tremendous cost; its economy was devastated, its leadership decimated, and its people exhausted. Yahya Khan was replaced by Zulfikar Ali Bhutto on December 20, and shortly thereafter Sheikh Mujib was released. On January 12, Mujib became Prime Minister of his new state, and a week later at least seven nations had recognized Bangladesh as a viable member of the international community with more expected to shortly follow suit.³⁵

Yet, no less important than the aftermath consequences of the 1971 Indo-Pakistani War are the latent conditions and disparate perceptions which motivated its occurrence. It is with the analysis of these causal relationships that the remainder of this study is concerned.

Delineating Participant Actors

The above account is intended only to provide the reader with the operational tactics demonstrated during the military phase of the 1971 Indo-Pakistani conflict. For the explicit purposes of this analysis, however, primary, secondary, and extrinsic actors clearly should be identified to facilitate ascertaining their respective policy inputs as well as to assess the principal actors' legal positions vis-à-vis their foreign policy actions.

The following criteria must be satisfied for an actor to be considered as having "primary" policy input: a) the actor had to be distinctly identifiable and distinguishable from other participant actors; b) the actor had to have possessed definite freedom in formulating its foreign policy decisions during the crisis; c) the actor must have directly participated in the crisis environment through military involvement; and d) the actor must have exerted some significant influence on policy decisions affecting the crisis environment. A "secondary" actor is one which only satisfied criteria a, b, and d. An "extrinsic" actor, while possibly involved in the conflict failed to satisfy the requisite criteria to any appreciable degree. When viewed in the international context, the following emerge as actor-candidates in the December, 1971 subcontinent crisis environment: Pakistan, Bangladesh, India, the United States, the Soviet Union, the Peoples' Republic of China, and the United Nations, more particularly, the Security Council.

Pakistan fully meets the criteria for being a primary actor during the hostilities. It was a recognized sovereign state, possessed governmental facilities for foreign policy decision-making, and assumed a significant participa-

³³ Yahya Khan, Speech to the Nation, December 16, 1971, in *Ibid.*, Dec. 17, 1971, p. 1:3.

³⁴ *Ibid.*, Dec. 18, 1971, p. 1:8. Text of Yahya Khan's ceasefire statement reprinted in *Ibid.*, p. 12:1.

³⁵ *Ibid.*, Jan. 14, 1972, p. 2:3.

tory role militarily, as well as diplomatically. Although there may be conjecture whether West and East Pakistan should be considered separate actor entities, it is unmistakably clear that the Western government—under the direction of Yahya Khan—exercised policy decisions for the state as a whole until its capitulation.

In this connection, the eastern wing of Pakistan—the newly proclaimed state of Bangladesh—was centrally involved in the conflict. Even so, more weighty realizations supercede its being considered a distinct primary actor. For ten months prior to the declared Indo-Pakistani war, East Pakistan was characterized by internal rebellion and insurgency. At the crisis' inception, the national status of Bangladesh was uncertain, and it had not been recognized as a separate state by the international community. Moreover, there was no legitimate Bangladesh government in power capable of formulating, much less implementing, foreign policy decisions.³⁶ Although it could be argued that the Mukti Bahini (the East Bengali guerrilla insurgents) constituted a sanctioned appendage of the Bangladesh government-in-exile, there is no evidence to substantiate the necessary contention that viable communication and policy contingencies were efficaciously exchanged. Given these important indicators, Bangladesh per se must be classified as the exceptional extrinsic actor, or perhaps more appropriately as an in-process secessionist territory from West Pakistan. Because successful secession did not occur until after the crisis hostilities had ended, the eastern wing of Pakistan will be treated in this study with the Western part as a single primary actor.

India also must be designated as a primary actor during the December, 1971, war. Throughout the entire conflict, India obviously fulfilled the above enumerated criteria and executed coherent foreign policy decisions to achieve military, diplomatic, and strategic goals.

The United States, while not involved in actual combat operations, assumed an overt pro-West Pakistani foreign policy posture during the crisis. Yet, more important than the official posture articulated were the diplomatic actions taken to influence the course of the war. As later revealed, the United States persisted in supplying Yahya Khan's West Pakistani forces with armaments and materials until their eventual surrender.³⁷ In glaring contrast, the State Department on December 1, suspended any licensing of arms shipments to India, thereby revoking \$2 million worth of previously approved ammunition and ammunition-making equipment.³⁸ Two days later, export licenses

³⁶ Lauterpacht has stated that "The only legitimate occasions for implying recognition are: (a) the conclusion of a bilateral treaty, such as a treaty of commerce and navigation, regulating comprehensively the relations between the two states; (b) the formal initiation of diplomatic relations; (c) probably, the issue of a consular exequatur; (d) in the case of recognition of belligerency, a proclamation of neutrality or some such unequivocal act." Hersch Lauterpacht, *Oppenheim's International Law*, (Vol. 1. Longman's, Green, and Co., 1955), pp. 147-148. See also Lauterpacht, *Recognition in International Law* (Cambridge: Cambridge University Press, 1947). Noticeably, Bangladesh in 1971 had failed to fulfill Lauterpacht's criteria, but compare A. K. Pavithran, *Bangla Desh: Principles and Perspectives* (Madras: The Eastern Centre of International Studies, 1971), especially pp. 95-106.

³⁷ Also important was the fact that the United States dispatched the aircraft carrier *Enterprise* and seven other vessels to the Bay of Bengal on December 7, 1971. *New York Times*, Dec. 13, 1971, p. 1:1.

³⁸ *The New York Times*, Dec. 2, 1971, p. 1:2.

were cancelled for \$11.3 million worth of military and communications equipment destined for shipment to India.³⁹ On December 6, the State Department announced a \$87.6 million cut in developmental loans for India, forthrightly declaring that the United States would not make short-term contributions to the Indian economy which could be utilized to sustain military efforts against Pakistan.⁴⁰ Thus, the United States did undertake diplomatic initiatives which affected the military status of primary actors—positively for Pakistan, negatively for India—albeit there was little impact upon the ultimate outcome of the crisis. Realizing this, the United States played the role of a secondary actor, being external to the crisis only insofar as direct military participation was involved (criteria c).

Regarding the Soviet Union and the Peoples' Republic of China, each supported its own client state politically and propagandistically, i.e., India and Pakistan, respectively. Like the United States, neither of these two Asian powers intervened militarily, although both exercised considerable influence to stymie Security Council action aimed at effecting an early cease-fire agreement. Throughout the Security Council debate China adamantly pressed for a resolution condemning India, but that effort was fruitless.⁴¹ As for the Soviet Union, within nine days its delegate vetoed three Security Council cease-fire resolutions on grounds that they failed to provide a political settlement which was amenable to the East Pakistani insurgents.⁴² It is important to understand that had the Security Council been able to institute an early cease-fire agreement, the crisis environment most likely would have been altered. Surely the temporal dimension would have been affected, consequently changing later events. However, by failing to secure agreement on a cease-fire, withdrawal-of-forces resolution, the Indo-Pakistani crisis was extended to its fateful conclusion. Conclusively then, though perhaps with not the express intent, the Soviet Union and the Peoples' Republic of China participated as secondary actors, significantly affecting the course of the conflict as they politically supported their respective client states.

The Security Council, as previously mentioned, became the victim of great power rivalries during the 1971 subcontinental war. In point of fact, this UN organ was so paralyzed that the only forthcoming United Nations resolution had to be secured by invoking the Uniting for Peace Resolution,⁴³ thereby transferring debate on the crisis from the Security Council to the General Assembly. The resultant General Assembly resolution,⁴⁴ passed on December

³⁹ *Ibid.*, Dec. 4, 1971, p. 10:1.

⁴⁰ *Ibid.*, Dec. 7, 1971, p. 1:5.

⁴¹ A Pakistani perspective of China's role during the crisis is Mehrunnisa Ali, "China's Diplomacy during the Indo-Pakistan War, 1971," *Pakistan Horizon*, Vol. 25 No. 1 (First Quarter, 1972), pp. 53-62.

⁴² For a West Pakistani reaction, see Kemal A. Faruki, "The Indo-Pakistan War, 1971, and the United Nations," *Pakistan Horizon*, Vol. 25 No. 1 (First Quarter, 1972), pp. 10-20. Also noteworthy is Virendra Narain, "Bangladesh and the Changing International Context," *South Asian Studies*, Vol. 7 No. 2 (July 1972), pp. 216-225.

⁴³ General Assembly of the United Nations, Nov. 3, 1950, G.A. Res. 377A, 5 U.N. GAOR, Supp. 20 (A/1775), p. 10. Debate was transferred to the General Assembly by S.C. Res. 303 (1971), refer S/Agenda 1606 to General Assembly as provided for in G.A. Res. 377A (V) of 3 Nov. 1950.

⁴⁴ General Assembly of the United Nations, G.A. Res. 2793 (XXV) of 7 Dec. 1971.

7, called for India and Pakistan to cease hostilities and withdraw their troops; nevertheless, the resolution went unheeded, and the fighting continued. Because of its inefficiency—admittedly attributable to counterproductive policy positions held by member states—the Security Council itself can only be designated an extrinsic actor during the two-week war. Regretfully, what little impact the Security Council had on the crisis environment was relegated to rhetorical accusations and vituperative exchange. In short, its role became frustrated and ineffectual.

From this analytical preview, India and Pakistan (West and East inclusive) have been found to be the sole participant *primary* actors in the 1971 subcontinent hostilities. The overriding question now begged is did these two actors operationalize their strategies vis-à-vis international legal considerations, and if so, did their respective conceptualizations of “national interest” and “national capabilities” interact with (or impinge upon) these considerations? To best answer these queries, we must first determine what exactly were the national interests and capabilities of the primary actors prior to and during the December war.

National Interests

Although notoriously vague and difficult to define, “national interest” may be considered as “the general, long-term, and continuing purpose which the state, the nation, and the government all see themselves as serving.”⁴⁵ Every state’s national interest is rooted in the social consciousness and cultural identity of its people; the process of its synthesis is dependent upon history and the institutional structure of that society. Conceptually speaking, the “national interest” serves two fundamental purposes: first, it circumscribes the state’s general orientations to the external environment, and second, it provides a controlling criterion of choice during immediate situations. In the case of Indo-Pakistani relations, disparate religious experiences were largely responsible for inculcating those social values (and consequently the relative perceptions of its national interests by each state) antithetical to their cooperation.

India, though predominantly Hindu, is committed to constructing a secular, multi-religious society.⁴⁶ The secular state, as graphically conceived, may be diagrammed as a triangle; the base represents the separation of state and religion, one side represents the relationship between religion and the individual, and the other side the relationship between the state and the individual.⁴⁷ According to one Indian scholar, secularism is “not atheistic in nature and does not imply any negation or rejection of religion. It is a secularism based on democratic traditions and liberal thought and is not only tolerant toward religion but grants to all full freedom of religious faith and practice.”⁴⁸

⁴⁵ Charles O. Lerche, Jr. and Abdul A. Said, *Concepts of International Politics* (Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1970), p. 25.

⁴⁶ See generally, Donald E. Smith, *India as a Secular State* (Princeton: Princeton University Press, 1963).

⁴⁷ *Ibid.*, p. 4.

⁴⁸ Ziya-Ul Hasan Faruqi, “Indian Muslims and the Ideology of the Secular State,” in Donald E. Smith (ed.) *South Asian Politics and Religion* (Princeton: Princeton University Press, 1966), p. 149.

Conversely, the secular-state religious concept is anathema to Pakistan, which is fervently committed solely to the ideals of Islam.⁴⁹ Before partition the Muslim League's cardinal ideological tenet was to protect Islamic culture on the subcontinent. For Pakistan, preservation of Islam has been the chief national concern. Stated President Ayb Khan in 1960, "[The Islamic ideology] is the foremost justification for our existence and we cannot be true to Pakistan without being true to this ideology."⁵⁰ He later added that it was on the basis of Islam "that Pakistan came into being, it is on that basis alone that it can survive and progress and become stronger."⁵¹ Moreover, Pakistan's political order makes no attempt to separate the state and religion. The First Policy Principle of the Pakistani Constitution instructs the state "to support the Islamic faith, to make compulsory the teaching of the Qur'an and Islamic studies to the Muslims of Pakistan, to promote Muslim standards, and to insure the proper organization of Muslim taxes, religious endowments, and mosques."⁵²

It is important to note that for Pakistan, Islam performed a most vital function in the post-partition search for national identity. Separated by one thousand miles of Indian territory. Pakistan felt a persistent need to cultivate a distinct sense of nationhood—one territorial unit (though not geographically) born from the same historical, cultural, and social ideals. Glorification of Islam was to serve this purpose, but by doing so, constant villification of India became a necessary adjunct.⁵³

In sum, the antagonistic religious attitudes fostered by India and Pakistan were instrumental in shaping their respective value-systems, thereby contributing to rigid perceptions of each other's foreign policy behavior. (During the 1971 crisis, the impact of religious values became dramatically apparent as Pakistani cries of "*jihad*"—holy war for the spread of Islam—echoed across the battle lines). The legacy of these antithetical value-systems was hatred and mistrust; the precipitant result was war and bloodshed. Accordingly, the chief political implications arising from Indo-Pak religious disparities are depicted in Table 1.

Foreasmuch as this religious antagonism affected India's and Pakistan's perceptions of their national interest vis-à-vis each other, what relevant repercussions were evidenced in 1971? That is, how were national interests perceived by the two disputants during the course of crisis events? In an article appearing in *International Studies Quarterly*, Thomas W. Robinson

⁴⁹ For an excellent discussion of this, see Freeland Abbott, "Pakistan and the Secular State," in Smith, *Ibid.*, pp. 352-370.

⁵⁰ Field Marshal Mohammed Ayub Khan, *Speeches and Statements* (Katochi, n.d.), Vol. 3, p. 52.

⁵¹ Jha, "Roots of Indo-Pakistani Discord," *op. cit.*, p. 21.

⁵² Abbott, "Pakistan and the Secular State," *op. cit.*, p. 353.

⁵³ Keith Callard emphasized the "villification role" for India when he posited:

In large measure Pakistani feeling toward India has been a continuation of the political struggle before partition. . . . The idea that a country has a foreign enemy is easy for the mass of the people to understand, and it also provides a powerful stimulus to unity. For Pakistan, India has filled this role.

Keith Callard, *Pakistan: A Political Study* (London: Allen and Unwin, 1957), p. 17.

Table 1

THE POLITICAL IMPLICATIONS OF HINDUISM AND ISLAM

	HINDUISM	ISLAM
1. <i>Theory of history.</i> Great concern with the course of history tends to increase a religion's involvement in politics.	History is metaphysically at a lower level of reality, and is ultimately not significant.	History is decisive. A certain pattern of life must be established on earth.
2. <i>Attitude toward other religions.</i> Attitudes of tolerance reinforce the tendency to use the political process for communal advantage.	Extremely tolerant philosophically, but pattern of group exclusiveness socially.	Theologically intolerant, and often so in practice.
3. <i>Capacity for ecclesiastical organization.</i> The more highly organized a religion, the greater its involvement in politics.	Practically no ecclesiastical organization.	<i>Ulama</i> (doctors of the law) not effectively organized, but can be mobilized.
4. <i>Political and religious functions.</i> Tradition of fusion of these two functions tends to increase a religion's involvement in politics.	Two functions performed by separate castes.	Tradition of Muhammad and caliphs—fusion of temporal and spiritual authority.
5. <i>Tendency to regulate society.</i> The stronger this tendency, the greater the area of conflict between religious authority and the state.	Caste system, Hindu law.	Islamic law—detailed regulation of society.

Source: Donald Smith, *South Asian Politics and Religion*, p. 19.

has cogently synthesized a conceptual framework for analyzing various aspects of a state's "national interest."⁵⁴ When this schema is applied to the 1971 Indo-Pakistani conflict, the hierarchical order of India's and Pakistan's national interests can be determined, thereby giving the relative value each interest-issue had to its participant actor. Furthermore, such an analysis should provide a reasonable indication regarding the primacy assigned to each prevailing national interest. Briefly below is Robinson's conceptual framework which will be incorporated to analyze Indo-Pakistani national interests during the 1971 war.

All the interests expressed by any nation at any time are designated as the total interests of that nation. There are six main "national interests," grouped according to their relative degrees of primacy, permanence, and generality:

1. *Primary* interests are those essential to protecting a nation's physical, cultural, and political identity. These are hardcore interests, vital to a nation's survival, and "can never be compromised or traded."

⁵⁴ Thomas W. Robinson, "A National Interest Analysis of Sino-Soviet Relations," *International Studies Quarterly*, Vol. II (June 1967), pp. 135-175. The categorical interact breakdown which Robinson enumerates, and from which the present conceptual framework is taken, is a synthesis of Hans Morgenthau's works on the national interest. In this connection, "national interests" are distinct from "national objectives;" whereas national interest has implications of perpetuity or ultimacy, a national objective is immediate or short range in its time component. Essentially national objectives contribute to the national interest.

2. *Secondary* interests are those directly contributing to primary interests.
3. *Permanent* interests are those "relatively constant" over long periods of time.
4. *Variable* interests are those regarded as national interests at a given point in time, and are a function of "all the cross currents of personalities, public opinion, sectional interests, partisan politics, and political and moral folkways."
5. *General* interests are those applied by a nation in international dealings and affairs, including trade, preserving a balance of power, international law, and diplomatic intercourse.
6. *Specific* interests are logical outgrowths of general interests, but are usually more closely defined in time and/or space.

It is important to note that from this classification, two basic divisions of national interests emerge, viz., primary and secondary. Concurrently, permanent, variable, general, and specific interest characteristics may be subsumed under primary or secondary headings, depending, of course, upon descriptive accuracy.

Coincident with "national interests" *per se*, there are three general international interests which affect a nation's foreign policy behavior:

1. *Identical* interests are those held in common between nations.
2. *Complementary* interests, while not identical, are those interests "capable of forming the basis of agreement on specific issues."
3. *Conflicting* interests are those interests excluded from 1 and 2.

Application of this schema to Indo-Pakistan foreign policy behavior in December, 1971, reveals several intriguing interest distinctions by each primary actor.

Pakistani National Interests

Throughout the entire course of hostilities—from the March internal rebellion to India's December intervention—Pakistan's primary/permanent-specific national interest was preservation of its territorial integrity (i.e., unity). Its very survival as a sovereign political entity was gravely threatened, first by civil war in the East, and subsequently by India's invasion. Had the Bangladesh secessionist movement been permitted to run its own course without West Pakistan's coercive intervention, in all likelihood it would have succeeded. Certainly, success for Bangladesh meant failure for Yahya Khan's government, not only politically, but also economically: a large portion of Pakistan's foreign trade revenues were accrued from selling jute grown in the East.⁵⁵ The internal situation in the East was further complicated by Indian-trained guerrilla insurgents operating to gain the region's independence, in addition to the frequent Indo-Pakistani border clashes escalating in October and November. Considering the momentum of events, it now seems evident

⁵⁵ Pakistan, in 1971, had the world's greatest jute production—some 6,000,000 bales—which constituted its largest export. See *Washington Post*, Aug. 27, 1971, p. A4:1.

that West Pakistan chose to act decisively by resorting to war with India. Hence, the airstrike on December 3, was an attempt (though a tragicomic one) to mimic the Israeli strategy demonstrated in the 1967 Six Day War; that is, it was designed expressly to extinguish the possibility of an armed intervention (or invasion) before it actually occurred.

Implicit in West Pakistan's military action to ensure the East's political unity are two correlative primary/permanent-specific national interests: a desperate need to preserve cultural ties with East Pakistan, and the concomitant necessity for ensuring national security. As previously argued, the only unifying forces Pakistan enjoyed as an entity were the Islamic culture and hatred of India. To sacrifice unity would compromise both. Bangladesh secession or defeat by India would shatter the cultural identity of Pakistan, and simultaneously vitiate its military posture—strategically as well as numerically. Consequently, self-preservation of cultural identity and national security became primary interest considerations for Pakistan before and during the war with India.

No further primary national interests were evinced by Pakistan. Therefore, by definition, all other national interests it perceived were secondary. Not least of Pakistan's secondary interests was destroying the East's rebel insurgents, the Mukti Bahini. These guerrilla forces were the principal subversive group working to overthrow Yahya Khan's control over East Bengal; their annihilation would greatly facilitate the West's objective of retaining East Pakistan's ante-bellum territorial integrity. Noticeably, however, the importance of suppressing Mukti Bahini activities declined as the likelihood of Indian intervention increased. That is to say, Pakistan's military attention during October-November (i.e., the confrontation stage) increasingly shifted with the Mukti Bahini was a secondary/variable-specific national interest.

Analysis of Pakistani military tactics during the conflict indicate troop movements initially were made into Kashmir from the West, giving rise to speculation whether this disputed region was highly significant as an interest variable. It does appear significant, though not of primary status. Nearly all the fighting in the 1971 Indo-Pakistani war was concentrated in the East; further, despite the 1965 conflict, Pakistan had generally accepted the stalemated situation created in 1948. Admittedly, diplomatic protests over border incidents often had been made. During the December war, however, there is no evidence to suggest Pakistan's acquisition of Kashmir was a paramount strategic objective. Thus, because of these realizations, Pakistani concern over Kashmir in 1971 may be classified a secondary/permanent-specific national interest.

Settlement of the East Pakistani refugee problem must also be mentioned. From March to December, 1971, an estimated ten million refugees fled from East Pakistan into India. Yet, even though the loss of ten million inhabitants might seem highly detrimental to a state's survival, it was not perceived so by West Pakistan. The refugees were mostly Hindu Bengalis⁵⁶—potential

⁵⁶ It had been estimated that as many as 90% of the refugees were Hindu. The *Washington Post*, June 11, 1971.

citizens of secessionist Bangladesh—and possibly in collusion with the Mukti Bahini rebels. The refugees' flight into India did not compromise Pakistan's vital interests, albeit certainly strained India's economic structure. In this regard, resettlement could not occur until the insurgency was quieted with some viable solution, but this never materialized: anti-government guerrilla operations continued until India's entry into the conflict was a declared fact. Additionally, because of the indiscriminate genocidal atrocities perpetrated by Pakistani troops in the East, repatriation of the refugees seemed remote at best without UN observers present. From this evidence, then, the refugee problem for Pakistan may be seen as a secondary/variable-specific interest.

Another less tangible interest, but important nonetheless, was Pakistan's desire to maintain its parity as a national power with India in Southern Asia. Admittedly, such a balance of power seems superficial given the realization that Pakistan was heavily dependent upon United States and Chinese foreign aid up to the December, 1971, hostilities.⁵⁷ Yet a major transformation in the balance had taken place only three months before. In early August, an Indo-Soviet Treaty of Friendship was announced,⁵⁸ pointing up to Pakistan a most disturbing reality: an equitable power equilibrium with India, while not wholly impossible, would be dependent upon the outcome of the December war. Understanding this, Pakistan's regaining political parity with India in 1971 assumed the quality of a secondary/permanent-general interest. (Regarding balance-of-power equilibrium as an interest factor, a caveat is in order here. If through diplomacy, i.e., alliances, treaties, or aid agreements, Pakistan had attempted to offset India's power advantage, this could be designated a secondary/variable-general interest; conversely, had India's political power rapidly expanded to such an extent that it openly threatened Pakistan's survival, this would likely be perceived as a primary/permanent-specific interest by Pakistani officials. Nevertheless, neither of these situations were justifiably applicable to the December 1971 conflict.)

A final secondary national interest for Pakistan was its participation in the Security Council's debates. Had the Security Council been able to impose a cease-fire early in the conflict—thereby precluding total victory for India—East Pakistan might well have been relegated to its former status with the West. Surely, Bangladesh as a separate entity could have then been snuffed

⁵⁷ Since 1954, United States military assistance to Pakistan has been estimated in excess of \$2000 million. *U.N. Monthly Chronicle*, Vol. 9 No. 1 (January 1972), p. 34. For Pakistani impressions of United States and Chinese roles during the 1971 conflict, see Khurshid Hyder, "United States and the Indo-Pakistan War of 1971," *Pakistan Horizon*, Vol. 25 No. 1 (First Quarter, 1972), pp. 63-74, and Ali, "China's Diplomacy during the Indo-Pakistan War, 1971," *op. cit.*, pp. 53-62.

⁵⁸ Commenting on the military implications of the Indo-Soviet Treaty of Friendship, one Pakistani scholar noted:

In early November, 1971, it was reported in the foreign press [*The Times*, London, Nov. 6, 1971], that twelve Soviet transport aircraft carried military equipment, mainly advanced versions of SAMs to New Delhi and Bombay. . . . Meanwhile, a Russian consignment of 250 tanks, 40 120mm rockets and a large number of radio sets and other equipment were dispatched as negotiations were initiated for the supply of supersonic medium bombers, medium reconnaissance aircraft and MIG-23 fighters [Dawn, Karachi, Nov. 4, 1971]. This resulted in a positive shift in the military balance in the subcontinent in favour of India. . . . "The USSR and the Indo-Pakistan War, 1971," *Pakistan Horizon*, Vol. 25 No. 1 (First Quarter, 1972), p. 46.

out. Therefore, an early cease fire probably would have worked to West Pakistan's advantage—and at India's expense—in the short run. (This realization was one apparent motivation encouraging the Soviet Union to use its veto on three separate occasions during the debates, delaying any Security Council action until India had achieved victory.) To Pakistan, early resolution of the conflict through United Nations machinery took on characteristics of a secondary/variable-specific national interest.

Indian National Interest

Unlike Pakistan, India's national interests during the protestation-confrontation periods (March 25-December 2) seem more difficult to pointedly distinguish. Ostensibly, the ongoing internal upheaval in the Eastern wing precluded Pakistan's being a great threat to India's territorial security. Indeed, the civil war raging in East Pakistan could be visualized as a positive factor rather than a negative one: India's arch rival—politically, militarily, and religiously—was being torn apart by its own doing.

Nevertheless, Pakistan's "preemptive" airstrike on December 3 radically altered the situation. With this overt, unabashed act of aggression Pakistan became a serious threat to India's national security, an essential primary interest. Hence, India's retaliatory defensive action during the conflict can be classified as a primary/permanent-specific interest.

The influx of refugees, which undeniably imposed a severe onus on India's economy, did not constitute an undue threat to the nation's survival.⁵⁹ Despite India's vociferous complaints, resettling the Bengalis should be described as a secondary/variable-specific interest. Had India perceived the detrimental economic problems caused by having ten million new mouths to feed to be compromising its vital interests, in all probability war with Pakistan would have occurred earlier and would have been India-initiated. Yet, this did not happen.⁶⁰

Similar to Pakistan, the disputed Kashmir region was not a primary concern for India. Certainly, considering the swift Indian victory in the East, the Gandhi government could have easily diverted troops to the northwestern front. However, it chose not to do so. In consonance with this, India opted to attack Western cities from the air in preference to a land invasion through the Kashmir region.⁶¹ Thus, it is plausible that India viewed Kashmir as merely a secondary/permanent-specific interest.

Perhaps the most important secondary interest held by India was fostering and encouraging the creation of a new, less bellicose state on its eastern

⁵⁹ While the Bengali refugees cost India \$3 million each day, Indira Gandhi stated as late as November 15, 1971:

Taking care of the refugees means cutting a lot of our programmes, it means a certain austerity in living, cutting government spending and reorienting various schemes and programmes. It is indeed a very, very heavy burden. I don't think it will cripple our economy, we won't go under with it. But the major danger is not this burden, which is heavy enough. It is the social and political tensions which are growing out of this problem. And we feel that there is a real threat to our security.

Gandhi, *India and Bangla Desh*, *op. cit.*, p. 101.

⁶⁰ Cf. Iqbal, "India and the 1971 War with Pakistan," *op. cit.*, pp. 21-31.

⁶¹ The *New York Times*, Dec. 9, 1971, p. 15:1.

border. By supporting the Bangladesh movement—through military aid as well as political rhetoric—India could accomplish two important objectives. First, pre-war Pakistan as an entity would be permanently destroyed, hence removing it as a future two-front military threat; and second, with Bangladesh's independence would also come India's position as the unchallenged political force on the subcontinent. The implications of this power shift were clearly revealed as an Indian newspaper editorialized:

A friendly nation has come in existence on India's highly sensitive eastern border, thus opening immense possibilities for its economic growth. The nation's security in the northeast Himalayas has been strengthened because the Chinese in control of the Chumbi valley can no longer threaten to cut off northeastern region. The stigma of the defeat in 1962 has at last been wiped out. No power will in the foreseeable future treat this country as if it is of no consequence.⁶²

While important for India that Bangladesh be established, this was not a primary interest. India did not resort to declared belligerency to free East Pakistan from the West's oppression, rather, it reacted to an attack upon national security interests. Therefore, Bengali independence must be categorized as a secondary/permanent-specific interest.

In conjunction with this, another national interest for India should be noted. Since 1947, the Indo-Pakistani border-lands have been earmarked by frequent clashes between the two states and even two mini-wars. One may argue that the intensifying skirmishes occurring in late October and November made India realize that it would be in the national interest to stabilize these areas. This could be achieved easily in the east by supporting the creation of a friendly Bangladesh. Nevertheless, stabilizing the border-lands was not a hard core interest; instead, it too should be considered a secondary/permanent-specific interest.

A final Indian national interest must be mentioned: namely, India's desire to halt the mass slaughter of Bengalis in East Pakistan. While it is difficult to precisely determine just how significant preventing further genocide was to India's decision-makers, this issue was central to their legal position supporting the legitimacy of intervention into the East. Even so, it is arguable whether genocidal cession was of primary interest; had it been so, in all likelihood war with Pakistan would have started as early as spring of 1971, especially considering the paucity of international counter measures at that time. Nevertheless, public enunciations indicate genuine concern for humanitarian rights by the Gandhi government throughout the entire crisis. Thus, as a national interest, India's desire to halt the abrogation of human rights in East Pakistan can be classified as a secondary/variable-specific interest.

Structurally summarized, the breakdown of Pakistani and Indian national interests is depicted in Table 2.

⁶² *The Times of India*, Dec. 14, 1971, p. 8:7.

Yet the tabled information fails to adequately indicate the relative order of importance for these interests. Obviously, the most crucial interests for Pakistan were those primary ones, namely preserving political unity, cultural identity, and national security. Based on its actions during the conflict, the following rank-order of secondary interests is suggested: 1) the destruction of the Mukti Bahini; 2) to secure power parity with India; 3) to maintain status quo in Kashmir; and 4) to resettle the Bengali refugees.

Table 2
INDIAN AND PAKISTAN NATIONAL INTERESTS
(March - December, 1971)

NATIONAL INTERESTS	PAKISTAN	INDIA
Primary/Permanent-Specific	Preserve territorial unity. Preserve cultural identity. Defend national security.	Defend national security ^a
Secondary/Permanent-General	Maintain power equilibrium with India.	Create friendly Bangladesh. Gain power superiority in subcontinent.
Permanent-Specific	Maintain status quo in Kashmir.	Maintain status quo in Kashmir. Stabilize northeastern borderlands.
Variable-General	Stabilize power balance through diplomacy. (hypothetical)	Support dismemberment of Pakistan.
Variable-Specific	Gradual resettlement of Bengali refugees. Utilize U.N. machinery to halt conflict. Destroy Mukti Bahini rebels.	Immediately repatriate Bengali refugees. Support Mukti Bahini rebels. Stop genocidal atrocities.

^a applicable only December 3-17, 1971.

It is important to note that India lacked any legitimate primary interest until the Pakistani attack on December 3. In this respect, the temporal dimension has crucial implications, principally because those primary interests enumerated for Pakistan were not only valid during the war itself, but during the earlier period of internal conflict as well. Regardless, from newspapers and policy statements issued in late November and throughout December,⁶³ India's hierarchy interests vis-à-vis Pakistan take this form: 1) to defend national security (primary); 2) to support creation of Bangladesh (and correlatively

⁶³ See "What We Are Fighting For," in Gandhi, *India and Bengla Desh*, *op. cit.*, pp. 136-145, and Iqbal Marain, "Bengladesh Issue and the Indian Political System," *South Asian Studies*, Vol. 7 No. 2 (July 1972), pp. 204-215.

Pakistan's dismemberment) by aiding Mukti Bahini rebels; 3) to repatriate Bengali refugees; 4) to gain subcontinental power superiority; 5) to halt genocide; 6) to stabilize northeastern borderlands; and 7) to maintain the status quo in Kashmir.

Incidentally, when contextually placed in Robinson's international grouping, Pakistani and Indian national interests can be easily recognized as "conflicting." With the single exception of maintaining the status quo in Kashmir, all other interests found were at variance and irreconcilable with one another; i.e., they were neither "identical" nor "complementary." It is not surprising, therefore, that war seemed an inevitable possibility. Realizing this, the fundamental question now asked is what capability resources were available for making either Indian or Pakistani national interests more realistically attainable during the conflict? The next section attempts to answer this very important query.

Indian and Pakistan Capabilities

Although there are many conceptual descriptions of a state's "capability," perhaps the most useful definition is "the capacity to affect changes in the international environment in its [i.e., the state's] own interest."⁶⁴ In other words, "capability" is a summary manner of referring to the "means" aspect of the ends-means continuum in a state's foreign policy.

Yet, the concept of "capabilities" is not circumscribed by quantifiable limits; to be sure, certain behavioral, less tangible relationships internal to any state must be taken into account. From this realization, capability alternatives can be best viewed from a demand-response alternative. That is, given the "capabilities" of a state, will it support (i.e., enforce) its demands (policies), or conversely, will it resist (i.e., defend) adverse demands (pressures or attacks) imposed by other states? The answer to this key question vis-à-vis the primary actors in the 1971 Indo-Pakistani war is couched in a functional analysis of their relative capabilities.

In their introspective work, *Foundations of International Politics*, Harold and Margaret Sprout suggest five primary functional determinants which must be considered to adequately ascertain a state's capabilities, viz.: 1) information-providing functions; 2) decision-making functions; 3) means-providing functions; 4) means-utilizing functions; and 5) resistance-to-demands functions.⁶⁵ By relating these functional attributes to India and Pakistan circa December, 1971, we should be able to assess their respective capability postures and concomitantly gain greater insight into those factors which promoted or debilitated the chances for achieving their aforementioned national interests.

Information-Providing Functions

Essentially, information-providing functions allow for analyzing international problems and situations. The better the government's "intelligence

⁶⁴ Lerche and Said, *Concepts of International Politics*, op. cit., p. 60.

⁶⁵ Harold and Margaret Sprout, *Foundations of International Politics* (New York: D. Van Nostrand Co., 1962). The functionally-oriented capability analysis employed in this section is central to the Sprout's conceptualization. See especially *Ibid.*, pp. 163-174.

stockpile," the better its capacity should be to evaluate and cope with the immediate situation at hand.

It is understandably difficult to adequately assess the "intelligence-gathering" function of a state, for indeed the very success of such a function hinges upon secrecy. Yet, from viewing the Indo-Pakistani war in retrospect, its outcome supports the contention that India possessed the more efficacious intelligence-providing mechanism.

One highly important factor working for India was the Mukti Bahini rebels. These independence fighters were indiginous East Bengalis, knew the terrain, and often served as "scouts" for the Indian Army. From the decisive swiftness of the military campaign in the East, it appears they did their job well.

Just as significant in the short run were India's military tactics. The overall Eastern strategy was to secure the provincial capital of Dacca by attacking the border towns at three different points and then driving inland. Indian intelligence made estimations of Pakistani forces and positions that overwhelmingly proved correct: thirteen days after the Indian intervention was launched, Dacca capitulated.

Conversely, Pakistan's intelligence operation, if it can realistically be called one, performed miserably. The initial Pakistani intelligence estimations used for the "preemptive" airstrike not only blundered, but in the long run can be held partially responsible for Pakistan's defeat. Had the strike been a true reproduction of the Israeli strategy in 1967, the war would have been over before it began. However, perhaps the greatest impact the December 3 attack had upon India was to catapult its military machine into action.

The awesome success of India's intervention mirrors the tragic failure of West Pakistan's intelligence system. To be sure, Pakistan's defensive actions were marred by poor communications, lack of information, and an inconsistent sense of timing. Without these vital elements, intelligence became worthless, and in the end, so did the Pakistani military effort.

Decision-making Functions

The success or failure of policy formulation is dependent upon the decision-maker's analytical perceptions of the environment. Accordingly, several considerations must be made to accurately ascertain the performance capabilities of various decision-making structures, e.g., policy flexibility; training and experience of decision-makers; the extent of bias distortion in the decision-making mechanism; and the possession of "error correcting" machinery.

The importance of this function in the Indo-Pakistani conflict was clearly seen in the chain-of-command structures each primary actor utilized. In India, the Supreme Command of the Armed Forces was vested in the President of the Indian Republic. Policy was decided at different levels by several committees, including the Defense Committee of the Cabinet (presided over by the Prime Minister) and the Defense Minister's Committee. Administrative and operational control rested in the respective Service Headquarters, under the aegis of the Ministry of the Defense.⁶⁶

⁶⁶ John Paxton (ed.). *The Statesman's Yearbook 1970-71* (London: Macmillan & Co., 1970), p. 339.

The Ministry of Defense was the central agency for formulating defense policy and for coordinating the activities of the three branch services. (Among the organizations directly administered by this Ministry were the National Defense College, the National Cadet Corps, the Production Organization, and the Directorate-General of Armed Forces Medical Services). Finally, each military service was organized into command units to more effectively protect different geographical sections of the country.⁶⁷

Pakistan's military decision-making apparatus, on the other hand, critically suffered from a lack of precise structure. There was a rudimentary chief-of-staffs system, and a General Headquarters located at Rawalpindi.⁶⁸ Paramount military decisions during the 1971 conflict were made principally by President Yahya Khan, a former Pakistani general. By relegating difficult decisions to a single individual, little consultative coordination resulted; as a consequence, the military information needed for making prudent decisions in the field was greatly stifled. In essence, where India's chain-of-command was flexible and well trained, Pakistan's was rigid and ill-prepared; where India's military tactics were governed by expediency, Pakistan clung to the bias of inevitable victory through Islam. Finally, where India's military planners were cognizant of available options in their tactics, Pakistan had no options at all. The decision-making function, too, was an Indian capability advantage.

Means-providing Functions

As one of the most crucial factors in assessing state capabilities, means-providing functions encompass a broad spectrum of elements—both tangible and intangible. These are the instruments which comprise national capabilities, and take two forms: First, there are the instrumentalities of military forces and weaponry; second, but by no means less important, there are the instrumentalities of statecraft and diplomacy, including public relations ability, propaganda and subversion skills, foreign aid, and technical assistance capacity. Importantly, to assess statecraft capabilities additional factors should be treated in any analysis. The availability of securing raw materials and food-stuffs should be accounted for, as well as the strength of human resources. Although more difficult to quantify, "human resources" generally can be ascertained by determining the relative levels of such factors as national labor skills, economic development, industrial capital, economic adaptability, and the potential for industrial growth and technological improvement.

In 1971, the general character of Indian vis-à-vis Pakistani armed forces was significant, and is outlined in Table 3.

With the sole exception of para-military forces, India had overwhelming superiority in military men and material during the war. Also, not to be discounted for India are the Mukti Bahini rebels, whose exact number was unknown.

The disparity was further accentuated when the specific military status of the two sides is realized just prior to the outbreak of hostilities. Pakistan had four divisions (about 75,000 men) of infantry in East Pakistan, sup-

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*, p. 393.

Table 3
INDIAN AND PAKISTAN MILITARY FORCES

	INDIA	PAKISTAN
Total armed forces	980,000 men	392,000 men
Defense budget	\$1,656 million	\$714 million
Army	860,000 men	365,000 men
Tanks	1550	800
Artillery pieces	3000	1100
Navy	40,000 men	10,000 men
Aircraft carriers	1	—
Submarines	4	4
Cruisers	2	—
Destroyers and escorts	12	5
Other vessels	39	16
Air Force	80,000 men	17,000 men
Combat aircraft	62	285
Para-military forces	100,000 men	280,000 men

Source: International Institute for Strategic Studies, *The Military Balance 1971-1972* pp. 46, 50.

ported only by antiquated tanks and a few F-86 Sabre jet aircraft. In contrast, India had deployed seven infantry divisions (122,500 men) to the Eastern borderlands, with reinforcements ready if needed. Moreover, each Indian division had assigned support of 45 tanks as well as heavy air cover, if requested.⁶⁹

Qualitatively, the disparity of military hardware was even more apparent. Nearly two-thirds of the Pakistani tanks were vintage Shermans or of the "light class."⁷⁰ India, on the other hand, possessed 200 *Centurian* MK 5/7 tanks and 300 of the Soviet *Vijayanta* (medium) variety.⁷¹

Regarding the air forces, Pakistan had 12 fighter-bomber/interceptor squadrons composed of F-86 and MIG-19 aircraft;⁷² India had available 30 fighter-bomber/interceptor squadrons, 7 of which were comprised by the more advanced MIG-21's, and 8 by *Gnats*.⁷³

Thus, qualitatively and quantitatively, with men and material, on the land, the sea, and in the air, India had superior hardware capability over Pakistan. This certainly had telling results.

The second aspect of means-providing functions (i.e., statecraft-diplomatic capabilities) is more difficult to objectively assess, but some pertinent facts should be posited. First, during the Indo-Pakistani conflict, the Soviet Union became the ardent mouthpiece of Indian interests in the Security Council debates. Whereas, the People's Republic of China failed in its attempt to secure a resolution condemning "Indian aggression," the three Soviet

⁶⁹ *The Military Balance 1971-1972* (London: International Institute for Strategic Studies, 1971), p. 50.

⁷⁰ *Ibid.*

⁷¹ *Ibid.*, p. 46.

⁷² *Ibid.*, p. 50.

⁷³ *Ibid.*, p. 46.

vetoed gave India's military forces time enough to operationalize and carry out their campaign in the East.^{73a} Second, the general success which the Mukti Bahini rebels enjoyed also testified to India's ability to implement guerrilla-type forces for subversive activities; concurrently, Pakistan's inability to wipe out these insurgents displayed its reciprocal inferiorities.

Regarding availability of raw materials and food stuffs, both India and Pakistan were under enduring hardships and deficits. Even so, geography worked in India's favor.^{73b} Pakistan, being a state separated by one thousand miles of Indian territory, encountered incredible logistics problems trying to supply its troops in the East. Also, not to be overlooked is the obvious cost which the internal war had upon East Pakistan's agricultural productivity and resource availability. In short, ineffective coordination and a lack of foodstuffs put the Pakistani troops in the East at the mercy of the Indian military machine as it rolled towards Dacca.

West Pakistan itself did not fare much better. The Indian-imposed blockade of the West's port facilities was demonstrably effective. This, coupled with the periodic air raids upon major Western Pakistani cities, precipitated food riots and civilian chaos.⁷⁴ Needless to say, the blockade and the air strikes greatly contributed to curtailing West Pakistan's re-supply efforts to its Eastern troops.

Respective to "human resources," the following data ⁷⁵ further illustrates India's advantage over Pakistan:

	INDIA	PAKISTAN
Total Population	547,949,809	139,892,000
Percent literate	33	15.9
Educational Institutions		
University level	6,038	489
Student enrollment	1,968,000	136,126
Secondary level	102,755	6,956
Student enrollment	28,667,965	2,430,580
Primary level	388,618	51,594
Student enrollment	36,240,169	6,999,706

Not unexpectedly, India far surpassed Pakistan in every educational category. Also, magazine and newspaper circulation are often used as an indicators for measuring information available to the populus: India's number of circulated periodicals and newspapers was 10,281 (1968); Pakistan had only 1,667 (1969).⁷⁶ Greater disparity in human resources was illustrated

^{73a} It must not go unnoted that the Soviet Union's military assistance, as well as its diplomatic support, could be counted as positive capability factors for India. See *supra*, note 58. Cf., Zubeida Mustafa, "USSR and Indian Action in East Pakistan," *Pakistan Horizon*, Vol. 24 No. 4 (Fourth Quarter, 1971), pp. 60-74.

^{73b} See *infra*, note 79.

⁷⁴ See *New York Times*, Dec. 9, 1971, p. 15:1.

⁷⁵ This statistical data is extrapolated from Paxton (ed.), *The Statesman's Yearbook 1970-1971*, *op. cit.*, pp. 334, 336, 392. Population figures are from *Information Please Almanac: Atlas and Yearbook 1974* (New York: Dan Goldenpaul Associates, 1973), pp. 177, 226, and 263. India's 1971 census population includes Jammu and Kashmir; Pakistan's population is the sum of Bangladesh and Pakistan estimations in 1971.

⁷⁶ Paxton, (ed.), *The Statesman's Yearbook, 1972-1973*, *op. cit.*, pp. 336, 460.

industrially: whereas India's total installed capacity for generating power was more than 37,293 million kw. (1966-67), Pakistan's total had been estimated at little more than 840,000 kw.⁷⁷

Economically speaking, the statistics below⁷⁸ are noteworthy:

	INDIA	PAKISTAN
Gross National Product	\$49 billion	\$16 billion
Per Capita Income	\$73	\$131
Imports	\$2,091,000	\$1,089,000
Exports	\$2,026,000	\$716,000

With the single exception of Pakistan's better per capita income, India on the whole possessed a stronger economy. India's GNP was more than three times that of Pakistan; both imports and exports far exceeded those of Pakistan, and importantly, India's import-export ratio more closely approximated a favorable balance of trade, whereas Pakistan suffered from importing almost twice as much as it exported. In summation, India possessed more and better men and material, statecraft-diplomatic persuasion, and "human resources" than Pakistan during the 1971 hostilities.

Means-utilizing Functions

Instruments alone are largely nugatory without the will or ability to implement them. As the Sprouts point out, "A government may possess a well-organized and efficiently administered foreign office and diplomatic service, and yet, for internal political or other reasons, it may be unable to carry out effective diplomacy." Accordingly, there are certain factors which impinge on or aid in the ability to efficaciously utilize one's resource capabilities. Among these are the geographical situation of a state; the nature of its political system; its adaptability to changes in the international system, and the degree of consonance found between civic values and attitudes vis-à-vis foreign policy decisions.

In the case of the 1971 Indo-Pakistani war, the means-utilizing functions held by both primary actors had far-reaching effects—positively for India, negatively for Pakistan.

The geographical situation was an overwhelming advantage for India—tactically, militarily, politically, and economically. West Pakistan's physical separation from the East by one thousand miles of Indian territory created insurmountable logistic problems for Pakistani troops before and during the December war. Moreover, it exacerbated communication difficulties between the Islamabad government and the Eastern military commanders, hence making effective tactical planning and coordination practically an impossibility.⁷⁹

⁷⁷ *Ibid.*, 1970-1971, pp. 345, 394.

⁷⁸ GNP figures are from *The Military Balance 1971-1972*, *op. cit.*, pp. 46, 50. Export-Import figures are in 1970, extrapolated from *The World Almanac and Book of Facts* (New York: Newspaper Enterprise Association, Inc., 1971), pp. 535, 554.

⁷⁹ The geographical area of India was 1,261,597 square miles; West Pakistan's territory encompassed 310,403 square miles and East Pakistan contained 55,126 square miles. The paucity of good roads in the East, coupled with low-lying, riverine terrain (largely formed by the many branches of the Ganges and Brahmaputra rivers) contributed to West Pakistan's transportation-communication difficulties.

Historically, this separation had tended to accentuate the political domination by the West Pakistanis, especially the Punjabis, over East Pakistan. As a direct result, East Pakistanis have complained of their treatment in Pakistan as "second class citizens." To support this contention, one commentator observed on the eve of the December war:

Their [i.e., the East Pakistanis] representation in central government services of Pakistan after twenty-one years of independence was "barely 15 percent." . . . East Pakistanis never comprised more than 10 percent of the officer corps and only one East Pakistani was appointed minister over the past 15 years, holding the finance portfolio for four days. In the Pakistani Army, East Pakistani representation was even less than 10 percent, and of 50 senior army officers who were promoted to the rank of major general and above since 1947, only one was from East Pakistan.⁸⁰

This Western discrimination over the East was carried over into the economic and industrial sectors as well. Branded by Sheik Rahman as "an intolerable structure of injustice," during the 1950's and 1960's East Pakistan earned 65-70 percent of Pakistan's total foreign exchange, but only received "just a 30 percent return for it."⁸¹ In 1947, West Pakistan regional income was lower than the East's; in 1970, it was twenty-five percent higher.⁸² Finally, it should be noted that while West Pakistan's national income rose 34.8 percent between 1965 and 1970, the East's only rose 22.1 percent.⁸³

Regarding industrial disparity, Ved Nanda has noted:

In industrial development, the disparity is even more pronounced. West Pakistan, at the time of independence in 1947, had very little manufacturing industry. By the end of a decade, almost 70 percent of Pakistan's manufacturing industry was located in the West. The annual increase of agricultural production in the West has been 5.5 percent compared with a three percent increase in the East. Almost 80 percent of Pakistan's budget and 70 percent of its development funds are spent in West Pakistan.⁸⁴

Mention is made of these blatant economic-industrial inequities for two major reasons. First, to demonstrate the indiginous antagonism between the peoples of East and West Pakistan; and second, by doing so, to illustrate that the country of Pakistan was not only separated geographically, but economically and socially as well. All this points up the obvious. The inherent inequalities between the two Pakistans undermined the entire socio-political structure and inhibited any possible adaptability to meet challenges which might arise. This lack of West-East Pakistani cooperation further frustrated coherent foreign policy formulation during the 1971 Indo-Pakistani conflict.

⁸⁰ Ved P. Nanda, "Self-Determination in International Law: The Tragic Tale of Two Cities—Islamabad (West Pakistan) and Dacca (East Pakistan)," *The American Journal of International Law*, Vol. 66 No. 2 (April 1972), p. 328. Footnotes omitted.

⁸¹ G. Gorgey, "Bangla Desh's Leader: Sheikh Mujib," *Venture* (London), Vol. 23 No. 7 (July-August 1971), p. 13.

⁸² Nanda, "Self-Determination in International Law," *op. cit.*, p. 330.

⁸³ *Ibid.* See also John E. Owen, "The Emergence of Bangladesh," *Current History*, Vol. 63 No. 375 (November 1972), pp. 206-209 ff.

⁸⁴ See also Sheikh Mujibur Rahman, "East Pakistan: The Roots of Estrangement," *South Asian Review*, Vol. 3 (1970), pp. 235-236.

In fact, it would be fair to posit that the Eastern provinces had little to say in the matter; the Western government under Yahya Kahn unilaterally enacted policies for the state as a whole.

Whatever means-utilizing functions West and East Pakistan had possessed as a sovereign entity began disintegrating after March 25, 1971. By the outbreak of hostilities with India, Pakistan's means-utilizing functions were solely in West Pakistan's hands. Certainly, half a state is better than no state at all; but there was never a Pakistani nation.

This latter assertion is made even more evident by Pakistan's political system. As previously noted, Pakistan's political order was extricably linked to the Islamic faith. Yet, persistent dissidence and discontent throughout the 1960's led to martial law and curtailment of civil liberties, which in turn, only served to foment further dissatisfaction with the Western regime. It was a vicious circle, and finally gave way to rebellion and the East's desire for independence. In short, the inability of Pakistan to act as a cohesive, unified socio-political entity made impossible any truly effective use of the limited resources capabilities it once possessed.

India, on the other hand, was a constitutional democratic republic. Although not altogether free from internal problems (most specifically, overpopulation and meeting sustenance requirements of its citizens), India was able to effectively operate politically. In terms of means-utilizing functions, this was crucial; tactical instructions flowed through the governmental chain of command to the military forces in the field. The consequences are only too well known: a fourteen day decisive victory over Pakistan. It is significant to note here that a reciprocal military relationship functioned during the course of the Indo-Pakistani conflict; i.e., the disorganization and frustration of the Pakistani troops served to enhance the means-utilizing capabilities of the Indian forces. This is only logical, but noteworthy nonetheless.

Thus, we can conclude that Pakistan's ability to function as a coordinated military unit during the crisis was undermined by its own internal faults and restrictions. Conversely, India took advantage of these limitations, capitalized upon them, and utilized its means-providing functions at Pakistan's expense.⁸⁵

Resistance-to-Demand Functions

Resistance-to-demand functions entail the ability of a state to withstand external pressures of all kinds. The degree of vulnerability to military attacks is significant, but so are vulnerabilities to economic boycotts, internal political subversion, and the socio-psychological strength of the citizenry to endure severe stress.

Resistance-to-demand functions are directly related to the four previous categories of capabilities; i.e., the strength of information-providing, decision-making, means-providing, and means-utilizing functions will determine an actor's overall ability to withstand external pressures. Pakistan in December,

⁸⁵ See Sisir Gupta, "Pakistan's Domestic Crisis and Foreign Policy," *South Asian Studies*, Vol. 7 No. 1 (January 1972), pp. 114-126.

1971, was a sterling example of this truism. Civil conflict in the East had weakened the internal structure of Pakistan for nine months prior to India's intervention. The people were tired and exhausted, and the government was dictatorial and desperate. In short, Pakistan's severe internal turmoil rendered it vulnerable to military attack.

Similarly, Pakistan was vulnerable economically and politically. India's superior air and sea power isolated the West economically, and its army, augmented by Mukti Bahini rebels, performed the political task in the East. Islam and anti-India sentiment were not sufficient enough for a Pakistani victory; concurrently, Pakistan's incapacities contributed to India's capabilities, making a potential Vietnam into a two-week field exercise for India's troops.

From this analysis of Indo-Pakistani capabilities, it becomes quite easy to see why India emerged the victor militarily and was able to realize those goals and objectives comprising its national interests. A final poser, however, remains to be explored: Did international legal considerations interact with either (or both) of the primary actors' foreign policy behavior during the crisis, and if so, in what manner? It is to this question that our analysis now turns.

Pakistani and Indian Appeals to International Law

During the course of the December, 1971 crisis, both Pakistan and India proffered international legal principles to defend their military actions and to substantiate their respective national interests. Chief among the legal issues were: 1) prohibiting the use of force; 2) the right of self-defense; 3) the right of self-determination; 4) the question of non-intervention; and 5) the abrogation of human rights through genocide. Nevertheless, because many of the Indo-Pakistani claims and counterclaims in the Security Council debates were earmarked by polemics and political rhetoric, the niceties of these legal issues deserve a less subjective appraisal—especially regarding their interplay with the primary actors' national interests, goals, and objectives and the strategies taken to achieve them. For this reason, the tenacity of both disputants' legal assertions will be considered below.

Prohibition of the Use of Force

The Pakistani delegate to the United Nations, Agha Shahi, emphatically argued that India had violated Article 2(4) of the UN Charter⁸⁶ by committing aggression against Pakistan's territorial integrity and political independence. In the emergency session on December 4, he resolutely declared:

If the Security Council fails to suppress India's aggression, the Charter of the United Nations would be shattered. Pakistan's eastern province had been under a massive attack, since 21 November, by India's regular troops.⁸⁷

⁸⁶ Article 2(4) states: All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

⁸⁷ *U.N. Monthly Chronicle*, Vol. 9 No. 1 (January 1972), p. 5.

To support this latter allegation, Mr. Shahi went on to posit that:

As many as 12 Indian divisions were reported on 21 November to have been deployed around East Pakistan. In addition there were 38 battalions of the Indian Border Security Force. Since then the Indian armed forces had perpetrated aggression against Pakistan, including the crossing of international borders, and hostile action on Pakistani soil. Governments which had independent means of information about developments in the Indian-Pakistan subcontinent had been aware of the unprovoked large-scale armed attacks by Indian forces against Pakistan since 21 November. It was a fact beyond denial or dispute.⁸⁸

Furthermore, to buttress Pakistan's legal contention that India had violated international law by committing aggression, the Declaration on Friendly Relations explicitly prescribed:

Every State has the duty to refrain in its international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations. Such a threat or use of force constitutes a violation of international law and the Charter of the United Nations and shall never be employed as a means of settling international issues. A war of aggression constitutes a crime against the peace, for which there is responsibility under international law.⁸⁹

Finally, Pakistan cited paragraphs 4, 5, and 6 of the Declaration on the Strengthening of International Security which, in fact, had been mentioned in General Assembly Resolution 2793 (XXVI) relating to an early India-Pakistan cease fire. In paragraph 4, the General Assembly:

Solemnly reaffirms that States must fully respect the sovereignty of other States and the right of peoples to determine their own destinies, free of external intervention, coercion or constraint, especially involving the threat or use of force, overt or covert, and refrain from any attempt aimed at the partial or total disruption of the national unity and territorial integrity of any other State or country.⁹⁰

Accordingly, paragraph 5 maintains that "the territory of a State shall not be the object of acquisition by another State resulting from the threat or use of force." Moreover, "every State has the duty to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts to another State."⁹¹ Consistent with this, paragraph 6 urges all "Member States to make use and seek improved implementation of the means and methods provided for in the Charter for the exclusively peaceful settlement of any dispute or any situation."⁹² Thus, Pakistan's mention of these paragraphs

⁸⁸ *Ibid.*, p. 6.

⁸⁹ Declaration on the Principles of International Law Concerning Friendly Relations and Co-Operation Among States, General Assembly Resolution 2625 (XXV), Oct. 24, 1970, paragraphs 1 and 2.

⁹⁰ Declaration on the Strengthening of International Security, General Assembly Resolution 2734 (XXV), 16 Dec. 1970, paragraph 4.

⁹¹ *Ibid.*, paragraph 5.

⁹² *Ibid.*, paragraph 6.

from the Declaration on the Strengthening of International Security was aimed at a different notion of Indian aggression, i.e., "indirect aggression," perpetrated by training, aiding, and abetting the Mutki Bahini insurgents.

Despite these substantial charges by Pakistan, India's countercharges held considerable validity. It was not India, but Pakistan, who had escalated aggressive acts since August, 1971. Throughout October and November, Pakistani troop incursions and trans-border artillery bombardments into India had fiercely increased, until war seemed imminent. Yet, the war was not India-initiated; the December 3 airstrike by Pakistan was in itself, a violation of Article 2(4) of the Charter as well as the Declaration on Friendly Relations. Just as important, India contended, was the point that Pakistan's claim of territorial integrity was inapplicable as a justification for its actions: The dismemberment of Pakistan was not externally created; it was the patent manifestation of an internal secessionist movement brought about by socio-economic inequities within the two Pakistans. Stated Sardar Swaran Singh, an Indian representative to the United Nations:

It was not India which sought to dismember Pakistan. It was the oppressive regime of West Pakistan which had dismembered Pakistan by its own actions. What held a nation together was a spirit of understanding and accommodation, a political process and not tanks or machine guns.⁹³

From the available evidence, there seems to be little doubt concerning this last assertion.

Self-Defense

As expected, Pakistan used Article 51 of the U.N. Charter to legitimize its military response against "India's aggression." After noting the November build-up of Indian troops along the Indo-East Pakistan border, Mr. Shahi stated:

On the afternoon of 3 December, India opened up new fronts, against the western part of Pakistan, and in the Poonch area in the disputed State of Jammu and Kashmir. In the face of such a preplanned and large-scale offensive along a 500-mile front, the armed forces of Pakistan could not but fight back.⁹⁴

Notwithstanding this, Article 51 clearly provides for "the inherent right of self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council had taken the measures necessary to maintain international peace and security."⁹⁵ Even so, those "measures taken by Members in exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security."⁹⁶

⁹³ *U.N. Monthly Chronicle*, Vol. 9 No. 1 (January 1972), p. 34.

⁹⁴ *Ibid.*, p. 6.

⁹⁵ The United Nations Charter, Chapter VII, Article 51.

⁹⁶ *Ibid.*

Likewise, India used Article 51 to legally justify its retaliatory measures. Yet, a crucial question remains regarding who initiated the aggression against whom? Were Indian troops moving into East Pakistan before the Pakistani airstrike—thereby making the airstrike a response rather than an initiation—or were the Indian troops deployed as a counter-offensive reaction to Pakistan's raid? The strongest indications suggest the latter contention as the most plausible. Pakistan's strategy called for a "preemptive" strike, designed to extinguish an impending war by crippling the Indian airforce. Given this conclusion, India's defensive action would be more appropriately subsumed under Article 51.

Interestingly enough, India also charged Pakistan with "indirect aggression," viz., by forcing "a vast and incessant flow of millions of human beings"⁹⁷ to flee into Indian territory. While not entirely pertinent to Article 51's invocation, the mass exodus of Bengali refugees was certainly an important consideration to India's decision-makers and could have easily appeared as a form of "economic aggression."

Self-Determination

The legal principle of self-determination refers to "the freedom of a people to choose their own government and institutions and to control their own resources."⁹⁸ Within recent years, this principle has gained greater currency in official documents and proclamations, and, in fact, was instrumental in two international covenants, The Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights Adopted by the General Assembly in 1966:

All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural development.⁹⁹

During the 1971 Indo-Pakistan war, self-determination became a polemical legal issue, primarily because East Pakistan was not strictly a colonial situation in the traditional sense. That is to say, pre-World War II Western colonialism had been a determinant factor in establishing the legitimate right of self-determination for emerging states during the 1950's and 1960's; as a result and in order to sooth the apparent contradictions between "the right of all peoples" and the principle of "territorial integrity," colonialist presence evolved into a requisite criterion for self-determination.

Thus, Pakistan vehemently contended that self-determination was not an applicable issue during the March-December protestation-confrontation periods. The peoples of East Pakistan, it was argued, still remained loyal to the Islambad government and the state as a whole entity. In essence, the civil strife and insurrection occurring in the East was not Pakistan's making;

⁹⁷ Nagendra Singh, quoted in V. S. Mani, "The 1971 War on the Indian Sub-Continent and International Law," *Indian Journal of International Law*, Vol. 12 No. 1 (January 1972), p. 91.

⁹⁸ John Norton Moore, "The Control of Foreign Intervention in Internal Conflict," *Virginia Journal of International Law*, Vol. 9 No. 2 (May 1969), p. 247.

⁹⁹ This is Article 1 in both Covenants, adopted by General Assembly Resolution 2200 A (XXI), Dec. 16, 1966. Cited in Nanda, "Self-Determination in International Law," *op. cit.* p. 326.

rather, it was fomented and exacerbated by Indian provocation, both through external interference and internal assistance to the rebels. From this, it seemed clear to the West Pakistanis that their territorial integrity was the signal issue, and that had been aggressively breached by India's military incursions in November and the subsequent invasion on December 3.

Nonetheless, India claimed to the contrary that self-determination was, in fact, the central issue. Certainly this principle had been legitimized by many U.N. Charter provisions, most especially Article 1(2), Article 55 and 56, and Chapter XI and XII.¹⁰⁰

More importantly, "colonial domination" was glaringly present in the form of West Pakistan's egregious politico-economic discrimination and domination over the eastern wing.¹⁰¹ Further, the Declaration on Friendly Relations and the Declaration on the Strengthening of International Security explicitly stipulated that "assistance [be given] . . . in accordance with the Charter . . . to the oppressed peoples in their legitimate struggle in order to bring about the speedy elimination of colonialism or any other form of external aggression."¹⁰² If these provisions were legally meaningful, then India's intervention with assistance to East Pakistan's national liberation movement (i.e., the Mukti Bahini) was not only justified, but also morally obligatory. In the words of the Indian External Affairs Minister addressing the United Nations:

If the majority population of any country was oppressed by a military minority, as was the case in Bengla Desh . . . , it was the inalienable right of the majority population to overthrow the tyranny of the minority rulers and decide its destiny according to the wishes of its own people. The birthright of the majority of the population of a country to revolt against the tyranny and oppression of a militant minority could not be denied under the principles of the Charter or according to international law.¹⁰³

Hence, by steadfastly maintaining that self-determination was indeed viable in East Pakistan, India's performance was able to justify its "premature" recognition of Bangladesh on December 6.

Non-Intervention

The international principle of non-intervention was also cited by Pakistan in defence of its legal position against India. To be sure, non-intervention is widely recognized in international law. Article 2(7) of the U.N. Charter provides, *inter alia*:

Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State. . . .¹⁰⁴

¹⁰⁰ Mani, "The 1971 War on the Indian Sub-Continent and International Law," *op. cit.*, p. 92.

¹⁰¹ See *supra*, pp. 38-40 and Nanda, "Self-Determination in International Law," *op. cit.*, pp. 328-331.

¹⁰² General Assembly Resolution 2734 (XXV), *supra* n. 90, paragraph 18.

¹⁰³ Swaran Singh to the Security Council (December 13, 1971), U.N. Doc. S/PV. 1613, pp. 103-105.

¹⁰⁴ The United Nations Charter, Chapter I, Article 2(7).

Similarly, the Declaration on Friendly Relations articulates the essence of this principle:

No State or group of States has the right to intervene, directly or indirectly, for any reason whatsoever, in the internal or external affairs of any other State.¹⁰⁵

Understanding this, Pakistan alleged India had intervened illegally by: 1) giving aid to the Mukti Bahini and 2) direct military invasion into the East.

That India intervened militarily is undeniable. And yet, several legal points put forth by Indian officials during the hostilities suggest that its intervention could be legitimized, especially considering the state of Pakistan's internal affairs in East Bengal.

First, and probably foremost, is the issue of genocide. There is no question that atrocities were willfully committed by West Pakistani military forces against the East Bengalis from March 25 to the December 17 capitulation. One correspondent for the *London Times*, Anthony Mascarenhas, reported:

What I saw and heard with unbelieving eyes and ears during my 10 days in East Bengal in late April made it terribly clear that the killings are not the isolated acts of military commanders in the field. . . .

"We are determined to cleanse East Pakistan of the threat of succession, even if it means killing off two million people and ruling the province as a colony for 30 years," I was repeatedly told by senior military and civil officers in Dacca and Comilla.

The West Pakistan army in East Bengal is doing exactly that with a terrifying thoroughness. . . .

I saw Hindus, hunted from village to village, and door to door, shot off-hand after a cursory "short-arm inspection" showed they were uncircumcised. . . .¹⁰⁶

In his statement to the U.N. Subcommittee on the Prevention of Discrimination of Minorities, John Salzberg listed these violations of human rights:

. . . killing and torture; mistreatment of women and children; mistreatment of civilians in armed conflict; religious discrimination; arbitrary arrest and detention; arbitrary deprivation of property; suppression of the freedom of speech, the press, and assembly; suppression of political rights; and suppression of the right of migration.¹⁰⁷

If these testimonial accounts, among many others, are true and accurate, then there is serious doubt that Pakistan had legitimate control over its Eastern population throughout the internal crisis. Perhaps more importantly, it seems ominously possible that had not India intervened when it did, even greater slaughter and more flagrant abrogations of human rights would have occurred in West Pakistan's ruthless attempt to restore "its territorial integrity." As a result, then, West Pakistan's reprehensible treatment of East Bengali civilians

¹⁰⁵ General Assembly Resolution 2625 (XXV), third principle, paragraph 1, initial sentence.

¹⁰⁶ Anthony Mascarenhas, Press Release of the International Commission of Jurists, August 16, 1971, pp. 3-4. Also quoted in *Indian and Foreign Review*, July 1, 1971, p. 23 and Nanda, "Self-Determination in International Law," *op. cit.*, p. 332. Also see Anthony Mascarenhas, *The Rape of Bangladesh* (Delhi: Vikas Publications, 1971).

¹⁰⁷ Quoted in Nanda, *Ibid.*

removed the crisis situation from the strict parameters of its own "internal affairs." Therefore, under the Declaration of Human Rights, the Genocide Convention (and the Nuremberg precedents), and the general principles of human justice, a sound case can be made for India's intervention. However, at best, it is difficult to hierarchially place humanitarian considerations in the priorities of India's decision-makers! Even so, one realization remains unmistakably clear: When mass practices of genocide are perpetrated upon a people, the function of Article 2(7) loses its purpose. This is not to say that India's unilateral action should be a precedent for future interventions taken to suppress genocide; rather, it is meant that the Law of Nations must be more fully attuned to the realities of a crisis situation—as in the case of East Pakistan—and adjust the relevant legal principles accordingly.¹⁰⁸

Conclusion: Assessing the Linkages

At the outset of this study, several questions were proffered for analytical considerations. From the evidence uncovered in the preceding analysis, a number of conclusions can be posited about the interplay of Indo-Pakistani national interests, capabilities, strategies, and objectives vis-à-vis the participant actors' legal alternatives: 1) For Pakistan, primary national interests (viz., that state's physical, cultural, and political survival) manifestly superceded any regard for international law. In fact, the perceived threat of national dismemberment was so great in early December that the Pakistani decision-makers concluded war was inevitable with India, and if any hope for victory (and national unity) existed, it lay with a "preemptive" airstrike. In short, despite a qualitative and quantitative inferiority in capabilities, Pakistan's stakes were too high to be bounded by legal considerations. Thus there was a direct linkage with international law, albeit an inverse one: the greater the threat to primary national interests, the less restraint exercised for peaceful, legal settlement. This leads to the inescapable conclusion that international law was used by Pakistan as an instrument to rationalize its actions during the conflict, rather than a constraint upon its foreign policy behavior. 2) For India, international law was also applied *ex post facto* to the crisis environment, but there appears substantially more validity to India's legal position than that of Pakistan. The gross disparities between West and East Pakistan strongly suggest a form of "colonialism" was present, hence self-determination was applicable. Secondly, Pakistan's air strike on December 3 violated Article 2(4) of the U.N. Charter. Thirdly, under Article 51, India was legally justified to retaliate, although admittedly restraint in using military force would have been preferable under international law. Finally, West Pakistan's extermina-

¹⁰⁸ The argument for humanitarian intervention has been clearly set forth by Professor Borchard when he posited:

When these human rights are habitually violated, one or more states may intervene in the name of the society of Nations and may take such measures as to substitute at least temporarily, if not permanently, its own sovereignty [sic] for that of the state thus controlled. Whatever the origin, therefore, of the rights of the individual, it seems assured that these essential rights rest upon the ultimate sanction of international law, and will be protected, in the last resort, by the most appropriate organ of the international community. Edwin M. Borchard, *Diplomatic Protection of Citizens Abroad* (1922), p. 14, cited in International Commission of Jurists, "East Pakistan Staff Study," *The Review*, No. 8. June, 1972, p. 59. See also Lauterpacht, *Oppenheim's International Law* (Vol. 1), *op. cit.*, p. 312.

tion campaign against the East Bengalis necessitated some definitive response. Most assuredly, positive action by the United Nations should have been forthcoming, but regretfully was not. This realization, while not wholly legitimizing India's intervention, does suggest that many potential victims were spared after West Pakistan's downfall.

Here again, international law can be construed as a link to national objectives and strategies. India's intervention was concentrated on Pakistan's eastern provinces, not upon the West. Moreover, it is plausible that after the East had been militarily secured, invasion of the West could have quickly followed. Yet, India was restrained from doing so. Perhaps international legal considerations were responsible for this, or perhaps it was because India realized such action could jeopardize its international prestige. The answer remains unclear. 3) In a sense, both Pakistan and India can be seen to have employed international law in concurrence with their respective national interests: India's support of the Mukti Bahini to create a new Bangladesh state (viz., self-determination); the quest for continental power superiority (viz., self-determination and prohibiting the use of force); the counter-action against Pakistan (viz., self-defense); and halting genocide (viz., intervention)—all were interacting and re-enforcing factors. Pakistan likewise demonstrated links between its interests and legal position: to sustain survival of the state (viz., territorial integrity); retaliating against the border clashes with India (viz., self-defense); and destruction of the Mukti Bahini rebels (viz., territorial integrity and non-intervention). 4) The evolution of the 1971 Indo-Pakistani War did conform to a unique crisis pattern. That is, from the inception of internal hostilities in March 1971, through the turbulent summer and fall months, and into December, 1971, five distinct stages of the conflict can be discerned. When placed on a continuum, the temporal dimensions of Indo-Pakistani relations during the 1971 conflict appear as follows:

	East-West Pakistan's Negotiations	Protes- tation	Disputa- tion	Confron- tation	Conflict	Peaceful Settlement
Historical Antagonisms: Religious Political Cultural	December 1970	March 1971	August 1971	November 1971	December 3, 1971	December 17, 1971

Each phase of the crisis was earmarked by its own particular events: between March 25 and early August, India vigorously protested the enormous influx of refugees from East Pakistan; during August, September, and October, Pakistan openly disputed the legality of India's aiding the Mukti Bahini insurgents; throughout November and early December numerous clashes occurred between Indian and Pakistani troops in the borderlands, aggravating an already deteriorating situation; open conflict erupted on December 3 and persisted until Yahya Khan's capitulation on December 17; the final stage, that of peaceful settlement, is still in process today: it will not be completed until the Bengali refugees have been fully resettled and a definitive decision is made regarding the legal status of those West Pakistani military officers accused of genocide. And 5) In the final analysis, the Indo-Pakistani War of 1971 does demonstrate more than a superficial relationship between the behavior of the primary participant actors (consonant with their national

interests and strategic goals) and international law. That international legal implications were purposefully considered is in itself significant. Moreover, the national interest-capabilities-international law paradigm does reveal a new perspective of the Law of Nations: law emerges not so much as a constraint on foreign policy behavior as a device to facilitate communication of policy intentions. For indeed, the formulation of foreign policy seeks to reconcile conflicting goals, to adjust national aspirations to capability means, and to accommodate disparate advocates of these competing goals and aspirations with one another. Similarly, international law seeks to provide normative guidelines to assist states in reconciling their differences and in ameliorating their disputes. If there is a lesson to be gleaned from the Indo-Pakistani hostilities, it is that law and policy interact in a meaningful way, rather than compete for functional supremacy.

We live in a complex, policy-oriented age—no scholar can deny this. Yet, perhaps from the tragic events on the Indian subcontinent during 1971, the sociological function of law can be more fully appreciated, and in turn, the execution of national policies—both internal and external—can be more justly attuned to the realities of our interdependent world. If this can be achieved in the years to come, the agonies of independence suffered by the Bangladesh people will have contributed to a more humane, more understanding world order.

