

# The caretaker conundrum

## BOTTOM LINE



HARUN UR RASHID

The duration of the CTG has not been set out as an exact period of time. The condition laid down is that the CTG shall stand dissolved on the date on which the "new Prime Minister enters upon his office after the constitution of [a new] Parliament." (58B.1) If the new parliament is not constituted for whatever reasons or circumstances, the CTG will continue. Many political analysts think that given the existing unsettled issues among political parties relating to holding a free and fair election, the CTG may have a longer tenure than ordinarily assumed or expected.

DOES the constitution permit for the President or the current Chief Election Commissioner to be the Chief Adviser of the non-party caretaker government under certain circumstances? This question is currently being hotly debated among some segments of the political community.

The caretaker government is expected to take over some time in October, as Article 72 (3) of the Constitution stipulates: "unless sooner dissolved by the President, Parliament shall stand dissolved on the expiration of five years from the date of its first meeting."

The current Parliament met in October 2001 and continues for a term of five years. Within 15 days after Parliament is dissolved, the Chief Adviser will be appointed.

### Why caretaker government?

The introduction of the non-party caretaker government (CTG) to hold general elections in Bangladesh is unique.

The two major parties agreed to have this system on the suspicion that the government in power would not be able to hold elections peacefully, fairly, and impartially. It is a stigma on the political system of the country where there is a perception that the ruling government is unable to conduct fair and free elections.

It does not provide credit to the uprightness of politicians or of the government. It manifests one simple fact: that the politicians have no trust in each other. It palpably implies the absence of a healthy political system in the country.

The interim CTG is a non-party government and will be collectively responsible to the President. The CTG will remain strictly neutral in relation to political parties. This means the CTG will not be perceived to have a bias directly or indirectly, towards any political party. Their decisions, actions or omissions are to be scrupulously watched during its tenure, not only by political parties but by people at large including civil society.

### Chief Adviser

During the CTG, the President is no more a titular head of the government, but exercises many key executive powers.

The deficiencies in the powers of the President (such as to act only on the advice of the Prime Minister) are removed during this time. Furthermore the defence portfolio is administered by the President, not by the Chief Adviser, in accordance with Article 61 of the Constitution.

The President appoints as the Chief Adviser he (or she) who among the Chief Justices of Bangladesh retired last. This appointment is automatic under the terms of the Constitution and does not depend on any condition. If the person is not in a position to hold the post, a series of options for appointing the Chief Adviser is provided.

It is interesting to note that under 58C (4), the current Chief Election Commissioner (a Justice of the Appellate Division of the Supreme Court) could be appointed as the Chief Adviser if he resigns, returns to the Appellate Division and retires this year, because Article 58C.4 provides that if a retired Chief Justice is available to hold the office of the Chief Adviser, the President shall appoint, as the Chief Adviser, the person who among the retired judges of the Appellate Division retired last.

Finally, when each process, as outlined in sub-clauses 4 and 5 of 58C for appointment of the Chief Adviser, is exhausted, and no one is available, the President "shall assume the functions of the Chief Adviser in addition to his own functions under this Constitution."

No wonder the office of the President has recently assumed much greater attention than in the past, because at the end of the day, the President not only exercises important executive powers during the CTG, but also could become the Chief Adviser under certain circumstances.

**Other important features**  
The formation of the CTG was inserted in the Bangladesh Constitution in 1996 under the 13th Amendment Act in the form of new Articles 58B, 58C, 58D, and 58E in Part IV of the Constitution under the title 'Executive'.

Article 58B deals with the formation of the CTG, 58C articulates who can and cannot be the Chief Adviser and Advisers of the CTG.

58D discusses what the CTG can or cannot do, and 58D spells out the inapplicability of certain provisions of the Constitution for the CTG.

Let us examine some of the provisions just enunciated above to understand and appreciate their possible meanings as to the extent and limitations of the CTG's powers and functions.

Although the primary responsibility for the CTG is to facilitate the Election Commission all possible aid and assistance that may be required for holding the general election of members of parliament, it shall discharge its functions as an interim government and shall carry out the routine functions of such government and "except in the case of necessity for the discharge of such functions, it shall not make any policy decision."

Ordinarily, the CTG will not decide on policy issues. But it is argued that in the absence of any defined criteria, the CTG is empowered to make policy decisions.

To advance this line of argument, it is noted that the words, "routine," "in the case of necessity," and "policy," employed in the Article, are not defined. The constitutional provision is silent on the meaning of these terms.

What is routine, what is necessity, and what is policy are generally known and understood. But these expressions of words are related to circumstances on the ground that depend on a variety of factors and the CTG is the only organ of the state to give full meaning of the phrases used in the Constitution, besides the Supreme Court.

**What is a policy decision?**  
Policy may mean laying down certain set of principles by the governments for running the administration. Policy can never remain static, it changes according to variable factors on the ground. It is elusive in character. Some experts have compared policy with the steering of the "ship" of the state and the captain of the ship has to change its course according to weather and conditions on the sea. Thomas Dye in his book on Understanding Policy (1978) provides an expansive meaning and defines policy as "whatever governmental actions those to do or not to do."

Since these phrases are liable to various interpretations, the CTG will have to interpret these words in running the government.

### Rules of interpretation

Many Constitutional experts take the view that the words of the Constitution may be interpreted in the following manner:

(a) All the Articles relating to the CTG must be read as a whole and its meaning is not determined merely upon particular words or phrases, which, if detached from the context, may depart from the substance of its intention.

(b) The words are to be given their natural and ordinary meaning in the context they occur. However the words can be given extended meaning which, while not doing violence to the words used, are in conformity with the text and purpose of the words used.

(c) If the words in their natural and ordinary meaning are ambiguous or lead to an unreasonable meaning or result, the method of interpretation will be to ascertain what the constitution-makers really meant when they chose those words.

(d) An interpretation which would deprive CTG's functions as an interim government will be inadmissible.

Given the above rules of interpretation, it may be robustly argued that CTG is empowered to give interpretation in such manner of the provisions of the Constitution so as to be effective and strong, not weak or hesitant, in confronting the issues of the country.

### Appointment of Advisers

The number of Advisers has been specified, not more than 10, to be appointed by the President. The Advisers shall be appointed by the President on the advice of the Chief Adviser.

Prior to appointment, Advisers, although they are qualified for election as MPs, must agree in writing not to be candidates for the ensuing election. They also should not belong to any political party or of any organization associated with or affiliated to any political party.

It is noted that there is no provision in the Constitution that Advisers will be appointed in consultation with the major parties. Legally speaking, it is the prerogative of the President, with the advice of the Chief Adviser, to appoint the Advisers in accordance with the guidelines of eligibility laid down in the Constitution. The perception that exists in the minds of the general public that major political parties would submit a list of names of appointment of Advisers to the President for appointment is legally misconceived.

Only in case of non-availability of retired judge of the Appellate Division to hold the office of the Chief Adviser, the President shall appoint the Chief Adviser from among citizens of Bangladesh, "after consultation, as far as practicable, with the major political parties" (Article 58B.5). This is the only case where the President consults with the major political parties in relating to the appointment of the Chief Adviser.

Although there is no limitation beyond the minimum age of 25 for an MP, an Adviser cannot be appointed if the person is over 72 years of age. It is not understood the rationale why the age bar has been provided for appointment of Advisers, although they are eligible for election as candidates for MPs, given the longevity of many individuals over the age of 80s who act with competence and alertness as chairmen or presidents of organizations in the country.

**Tenure of CTG**  
The duration of the CTG has not been set out as an exact period of time. The condition laid down is that the CTG shall stand dissolved on the date on which the "new Prime Minister enters upon his office after the constitution of [a new] Parliament." (58B.1).

If the new parliament is not constituted for whatever reasons or circumstances, the CTG will continue. Many political analysts think that given the existing unsettled issues among political parties relating to holding a free and fair election, the CTG may have a longer tenure than ordinarily assumed or expected.

In the light of the existing confrontational political situation with regard to reforms of the CTG and the demand of the resignation of the Chief Election Commissioner and two of his commissioners by the major opposition alliance of parties, one may argue that the length of the CTG tenure is indefinite because unless a new parliament is constituted and the Prime Minister enters his/her office, the CTG will have to continue to run the country.

Given the situation, it is very difficult to imagine, or predict or forecast how long the tenure of the CTG will be. Your guess is as good as mine.

Prince Otto von Bismarck once said: "Politics is the art of possible." I hope our political leaders may heed his dictum.

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# How to beat 'cut and run'

It's only under Bush that criticizing the conduct of a war has been depicted as somehow unpatriotic. Lincoln was lambasted by opponents during the Civil War as was FDR during World War II. To take a lesser example, some of the same Sean Hannitys of the world who slam anti-war critics were blasting Bill Clinton's Bosnia policy in 1999 when US planes were in the air over Belgrade.

JONATHAN ALTER

FOR more than a quarter century, Karl Rove has employed a simple, brilliant, counterintuitive campaign tactic: instead of attacking his opponents at their weakest point, the conventional approach, he attacks their strength. He neutralizes that strength to the point that it begins to look like weakness.

When John McCain was winning in 2000 because of his character, Rove attacked his character. When John Kerry was nominated in 2004 because of his Vietnam combat experience, the Republicans Swift-Boated him. This year's midterm elections will turn on whether Rove can somehow transform the Democrats' greatest political asset -- the Iraq fiasco -- into a liability.

After escaping indictment, Rove is focused again on what he does best: giving up the slime machine. Anyone who dares criticize President Bush's Iraq policy is a "cut-and-run" Democrat. The White House's object here is not to engage in a real debate about an exit strategy from Iraq; that would require acknowledging some complications, like the fact that Gen. George Casey, commander of the multinational forces in Iraq, believes it's time to start bringing some troops home. The object is instead to either get the Democrats tangled up in Kerryesque complexities on Iraq -- or intimidate them into changing the subject to other, less-potent issues for fear of looking like unpatriotic pansies.

These are the stakes: if Rove can successfully con Democrats into ignoring Iraq and reciting their laundry list of other priorities, Republicans win. It's shameful that the minimum wage hasn't been raised in nine years and that thousands of ailing Americans will ultimately die because of Bush's position on stem-cell research. But those issues won't get the Congress back for Democrats, Iraq can.

You would think it would be the GOP running away from the war. Instead, in gamblers' parlance, Republicans "doubled down" on Iraq. After the good news about Zarqawi's death, they bet that by uniting behind Bush, they would shift the blame to the squabbling Democrats, even though the Democrats have no power at all to change -- or even affect -- policy on the ground. Rove's notion is that strong and wrong beats meek and weak.

It almost worked. It looked recently as if Democrats were so fearful of being cast as war weenies that they would change the subject. Nancy Pelosi, Harry Reid & Co. held a press conference on the Democratic issues for the fall that barely mentioned Iraq. Hillary Clinton

tried to focus on a lengthy list of worthy issues that, except for the mistreatment of veterans, had little to do with the war.

Why are Democrats having so much difficulty holding Bush accountable for his myriad failures? I think it's because they've lost touch with the basic merits of accountability, particularly on education, where they let interest-group politics trump tough judgments on performance.

But then, some Senate Democrats got smart for a change. They recognized that the party out of the White House doesn't need a detailed strategy for ending a war, just a general sense of direction. When Dwight Eisenhower ran for president in 1952, his plan wasn't any more specific than "I will go to Korea." When Richard Nixon was asked how he would end the Vietnam War in 1968, he said he had a "secret plan" -- and got away with it. So now 80 percent of Senate Democrats are united behind something called the "Levin-Reed Amendment." The details of it (begin withdrawal without a firm timetable for getting out completely; diplomacy with the Sunnis; purging the Iraqi military and police of bad guys) are less important than that they finally came up with something.

Of course parrying "cut and run" with "Levin-Reed" won't suffice. But Sen. Joe Biden's riposte to the GOP's symbolic roll-call votes -- "The Republicans are now totally united in a failed policy" -- is a start. This isn't rocket science. Unless things improve dramatically on the ground in Iraq, Democrats have a powerful argument: If you believe the Iraq war is a success, vote Republican. If you believe it is a failure, vote Democratic.

Isn't that irresponsible? Not in the slightest. It's only under Bush that criticizing the conduct of a war has been depicted as somehow unpatriotic. Lincoln was lambasted by opponents during the Civil War as was FDR during World War II. To take a lesser example, some of the same Sean Hannitys of the world who slam anti-war critics were blasting Bill Clinton's Bosnia policy in 1999 when US planes were in the air over Belgrade.

We'll see this summer if Democrats begin to get up in the morning, look in the mirror and say, "This isn't about us. It's about them." We'll see if, when Karl Rove wants to talk about Iraq, the Democrats respond with three familiar words: "Bring it on."

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# Countering drug trafficking in Bangladesh

There is some evidence that Bangladesh is used as a transit country for heroin to Europe. There were seven seizures of heroin hidden in fresh vegetable shipments from Dhaka to the UK in 2003. The UK customs in May 2005 accused five Bangladeshi business firms of smuggling heroin to that country.

SIDDIQUR RAHMAN

SOUTH Asia is wedged between the world's largest illicit opium producing areas, the Golden Triangle (Myanmar, Thailand, and Laos) and the Golden Crescent (Pakistan, Iran, and Afghanistan). The region cultivates illicit opium and cannabis, produces heroin and hashish, and trafficking and diversion of precursor chemicals for drug manufacture takes place. According to UN reports, drug abusers in the region are estimated at 4 million and spreading among the youth. The region is used by traffickers as transit point to destinations around the world.

The threat posed by drug trafficking has grown with HIV/AIDS and hepatitis spreading through injection needle users. With a turnover around \$500 billion, the drug trade has assumed the proportions of the third largest business in the world, next to only petroleum and arms. It presents a potent national and international security threat with the proceeds of the narcotics trade also funding terrorist activities.

The problem with drug control efforts in South Asia is that despite signing regional and bilateral agreements for cooperation, the political differences in their relationships hinders effective cooperation. The Saarc Convention on Narcotic Drugs and Psychotropic Substances signed on November 23, 1990 largely remains on paper like other bilateral agreements between these countries. Issue specific and problem based cooperation, despite other differences is vital. South Asia must work towards such cooperation, which will help not only in tackling specific concerns like drugs control but also promote an overall spirit of regional solidarity to strengthen cooperation in the region.

in these countries are involved in combating the drug menace. The primary focus of counter-narcotics efforts in the region includes surveillance, interdiction, prevention and enforcement at entry and exit routes, control measures at export points like air and sea terminals, identification and eradication of cultivation, strengthening intelligence apparatus, improving inter-agency cooperation in the region and increasing international cooperation.

While international and regional efforts are indispensable, the ultimate actors in the fight against the trafficking and abuse of illicit drugs are national governments. International and regional efforts can provide a framework of cooperation, enhance expertise, facilitate resource pooling and monitor progress, but implementation of control measures rests with national authorities.

Because of its geographic location in the midst of major drug producing and exporting countries, Bangladesh is used by trafficking organizations as a transit point. Seizures of heroin, phensidyl (a codeine-based, highly addictive cough syrup produced in India), and pethidine point to growing narcotic use in Bangladesh. Phensidyl is popular because of its low price and wide-spread availability.

While unconfirmed reports of opium cultivation in the Bandarban district along the border with Myanmar exist, there is no evidence that Bangladesh is a significant producer or exporter of narcotics. However, a limited amount of cannabis is cultivated in the hill tracts near Chittagong and in the northeastern region, reportedly for local consumption. But the country's largely porous borders make Bangladesh an attractive transfer point for drugs transiting through the region.

Narcotics Control (DNC) lacks training, equipment, continuity of leadership, and other resources to detect and interdict the flow of drugs in country. The DNC is chronically under-funded and understaffed. Moreover, there is minimal coordination among the DNC, the police, the BDR and the judiciary's local magistrates in charge of orchestrating counter-narcotics operations. Corruption at all levels of government, and in particular law enforcement, hamper the country's drug interdiction efforts.

The DNC's counter-narcotics activities are seriously hampered by the ineffectiveness of the National Narcotics Control Board (NNCB), the highest governmental body to fulfill the objectives of the Narcotics Control Act (NCA). The 19-member NNCB, made up of twelve ministers, six elected members, and the DNC Director General, is charged to meet quarterly, but such meetings are not held regularly. Article 5 of the NCA directs the Board to formulate policies and monitor the production, supply, and use of illegal drugs in Bangladesh.

Bangladesh has a memorandum of understanding on narcotics cooperation with Iran, and it participates in information-sharing with the government of Myanmar. The Bangladesh government and the US government signed a Letter of Agreement (LOA) in September 2002 to provide \$140,000 in equipment to the DNC and its central chemical laboratory. The LOA also provided for \$338,922 in training to law enforcement personnel involved in counter-narcotics activities.

There is some evidence that Bangladesh is used as a transit country for heroin to Europe. There were seven seizures of heroin hidden in fresh vegetable shipments from Dhaka to the UK in 2003. The UK customs in May 2005

accused five Bangladeshi business firms of smuggling heroin to that country in the guise of food, toiletries, cosmetics and floor tiles.

Bangladesh's air, sea, and land ports are guarded by officials, who have little, if any, training on counternarcotics operations or equipment to carry out their job. Although the DNC is authorized 1,277 positions, only 932 are filled. There is no DNC presence at the country's second largest airport in Chittagong, which has direct flights to Myanmar and Thailand. Customs officers are untrained in detecting and interdicting drugs. To date, no random searches of crews, ships, boats, vehicles, or containers are being conducted at the country's largest seaport in Chittagong. Personnel responsible for land border security within a twelve-mile swath inside the country, are widely believed to abet the smuggling of goods, including narcotics, into Bangladesh.

Some drug addicts rehabilitation organizations operate some long-term residential rehabilitation centers. Bangladesh government sponsors rudimentary educational programs aimed at youth in schools and mosques, but there is little funding for these programs and no clear indication of their impact. A recent DNC study estimated the addict population at two million and growing.

Lives are being ruined by drugs. As the number of drug users is increasing every day, a humanitarian crisis looms with the growing threat of HIV/AIDS, the cases of which are linked to intravenous drug use. The ultimate effect of drugs and HIV/AIDS is death. The younger generation of our society is increasingly falling into this trap. So, it is incumbent on all of us to do our best to enhance the drug prevention programs, organize adolescents and young adults in the vulnerable areas to keep their community free from abuse and illicit drug trafficking. The DNC should be strengthened and regional and international cooperation increased.

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# The perils of confrontational politics

To conduct fair and free election, an understanding between the AL and the BNP must be reached. It would be a folly for the present government to try to outsmart the AL. It would be advisable for AL to restrict their statements only to constructive criticism. Both sides should be sincere and honest in bringing congenial atmosphere for holding fair and free election to save the country from sliding into a state of degeneracy.

ABMS ZAHUR

IT has become abundantly clear that there cannot be any understanding between the two major political parties (AL and BNP) about the need for establishing viable democratic institutions in Bangladesh.

It appears that both the parties have failed to realise the need for removing the existing impediments towards setting up true democratic order in an underdeveloped country like Bangladesh, with its high rate of illiteracy, high rate of population below absolute poverty line, increasing danger of religious extremism group affecting the image of Bangladesh as a moderate Islamic state, highly unsatisfactory law and order maintenance, corruption and so called political restlessness.

Apparently these parties are more interested in capturing power than establishing a democratic value system. They hardly feel for ameliorating the condition of the common people. Strangely enough they point to each other's faults and failures even at normal situation. They seem incapable of appreciating each other's successes or achievements. They do not spare even the founders of the parties.

But these parties through their united effort forced military dictator Ershad to abdicate. What Pakistanis or the people of Myanmar could not do Bangladeshis did. Today the people of Nepal might have drawn their inspiration from Bangladesh in fighting against their king. Both AL and BNP parties have large number of freedom fighters. Both have secular outlook.

As we see, with parliamentary multi-party system existing in Bangladesh both the parties will continue to dominate its politics for long. Thus what is needed at this stage is sacrificing each

other's egotism for the sake of establishing democratic practices in the country. By adopting confrontational politics they are not only doing harm to their own parties but also increasing sufferings of the people and creating negative image for the foreign investors and unrest in society.

A few words on Jamaat-e-Islami, Bangladesh. The party was never a political force in Pakistani days. Due to its anti-liberation stand it lost its identity till 1975 when Ziaur Rahman needed them to form a party for himself to face Awami League. After the assassination of Zia and assumption of power by Ershad the new dictator also utilised their support to face BNP and the AL. After the return of democracy Jamaat was needed for forming majority in the parliament by BNP during the first term of Khaleda Zia (1991-96).

Because of inexperience in administration and strong pressure of AL to destabilise the government, the BNP had command did not keep a vigil on the activities of JI. This opportunity was perhaps duly utilised by JI to strengthen their financial condition through contacting various agencies in the Middle East. They also believably revived their contacts with members of JI in Pakistan.

During the AL regime of 1996-2001 the militant organisations of Jamaat or linked with Jamaat started showing their strength through explosion of bombs at different places. By underestimating the strength of these organisations and with a view to not displeasing the alliance partner perhaps the Islamic militants were almost allowed to terrorise people. Despite capture of some top leaders of JMB Bangladesh is certainly not out of danger from the extremist militants so long as the partnership continues.

The BNP seemingly became a true political party under the lead-

ership of Khaleda Zia. By joining hands with Jamaat, BNP has been able to strengthen its hold on rural people, particularly in the northern Bangladesh. This has been attained at the cost of its former image as a moderate democratic party. On the other hand, Jamaat gained a lot without losing anything. In fact, Jamaat's assessment that BNP may lose in election if Jamaat withdraws its support is substantially correct.

Thus BNP as we understand, cannot participate in any major issues of the government without Jamaat. The issue of reform of Election Commission or caretaker government are major issues. Furthermore, if the AL could tolerate JI during its regime why it is so adamant now against JI's participation? After all, nothing is bigger than the interest of the nation.

The CEC is behaving in peculiar fashion. Strange, even the Supreme Court's decision is not implemented properly by the CEC who is supposed to be a dignified justice. By trying to implement his dubious policy he will not only lose his dignity but also place the country in a dangerous situation. If a few thousand simple and peaceful people in Kansat can stand against the might of the governmental force and if Shonir Akhra can become a battleground and if the people of Chittagong can teach the government a lesson in the mayoral election, then a dissatisfaction countrywide may push the country itself to anarchy. We should also not ignore the existing unrest in the garment sector. So why these apparently revered persons should put themselves at risk by committing controversial jobs?

Even though only four months are left of the tenure of the alliance government it is still behaving strangely. Why the government is nervously at the organisation of Mahasamabesh by the AL and the 14 parties? The ability to mobilise thousands of people from across

the country will not ensure them victory in the election. Victory will depend mainly on parties' achievements and failures, candidates' character and reputation among the voters concerned.

If fair election cannot be held there is a strong possibility for drying up of foreign assistance from the developed democratic western countries. Holding a fair and free election under controversial CEC and the two election commissioners has become uncertain. At the same time people have started asking the ruling alliance to fulfill their commitments made in the last election. The present government has miserably failed in the following areas: (a) generation of electricity, (b) supply of adequate water for drinking and irrigation, (c) separation of judiciary from the executive, (d) controlling corruption, (e) appointment of ombudsmen, (f) undertaking administrative reform, (g) law and order.

A few words may be said about Jatiya Party of Ershad. Because of his background as an "armed bureaucrat" Ershad could perhaps run a better administration than both AL and the 4-party alliance. However, there cannot be any comparison between a democratic rule and autocratic rule. If Ershad is allowed full freedom to continue all of his political activities he may emerge as a strong contender in the elections.

Endless demand for resignation of the present government (whose tenure ends after four months) by AL appears of not much significance. Repetition of hartals frequently at this time also does not make much sense. Instead they hear words from the alliance government as to their proposal for reform of election commission and the caretaker government.

To conduct fair and free election, an understanding between the AL and the BNP must be reached. It would be a folly for the present government to try to outsmart the AL. It would be advisable for AL to restrict their statements only to constructive criticism. Both sides should be sincere and honest in bringing congenial atmosphere for holding fair and free election to save the country from sliding into a state of degeneracy.

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