The Daily Star

FOUNDER EDITOR
LATE S. M. ALI

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# Civil society for a national dialogue

## *Initiative welcome, AL and BNP should cooperate*

THE situation in the country is so desperate that it has gone far beyond the parameters of what we have so far known as political gridlocks. With innocents dying or burning out every day, law enforcers taking a toll in so-called cross-fires, economy, education, public health and livelihoods in jeopardy as BNP and AL swear by a fight-to-finish amid forebodings of a still darker future, any collective voice of sanity rings out a positive note.

There appear to be two major agenda of the civic initiative -- one to break the deadlock between AL and BNP, and second, to produce a 'National Charter' outlining some converging views on conducting our national politics.

Though the ruling AL is totally opposed to any dialogue with the BNP, we believe such a stance is against its own long term self-interest. However, for even a hint of a dialogue to begin, BNP must stop the politics of killing that is being carried out in its name.

We strongly believe that the present violence is destroying our future and must immediately be stopped. We further believe that dialogue is the only process to stop it in any sustainable way.

We welcome this civic initiative and urge AL and BNP to help the process. After all, if they do not talk to each other, they can both talk to a third party and help restore peace.

# Care for burn victims

## *The state must take proactive policy*

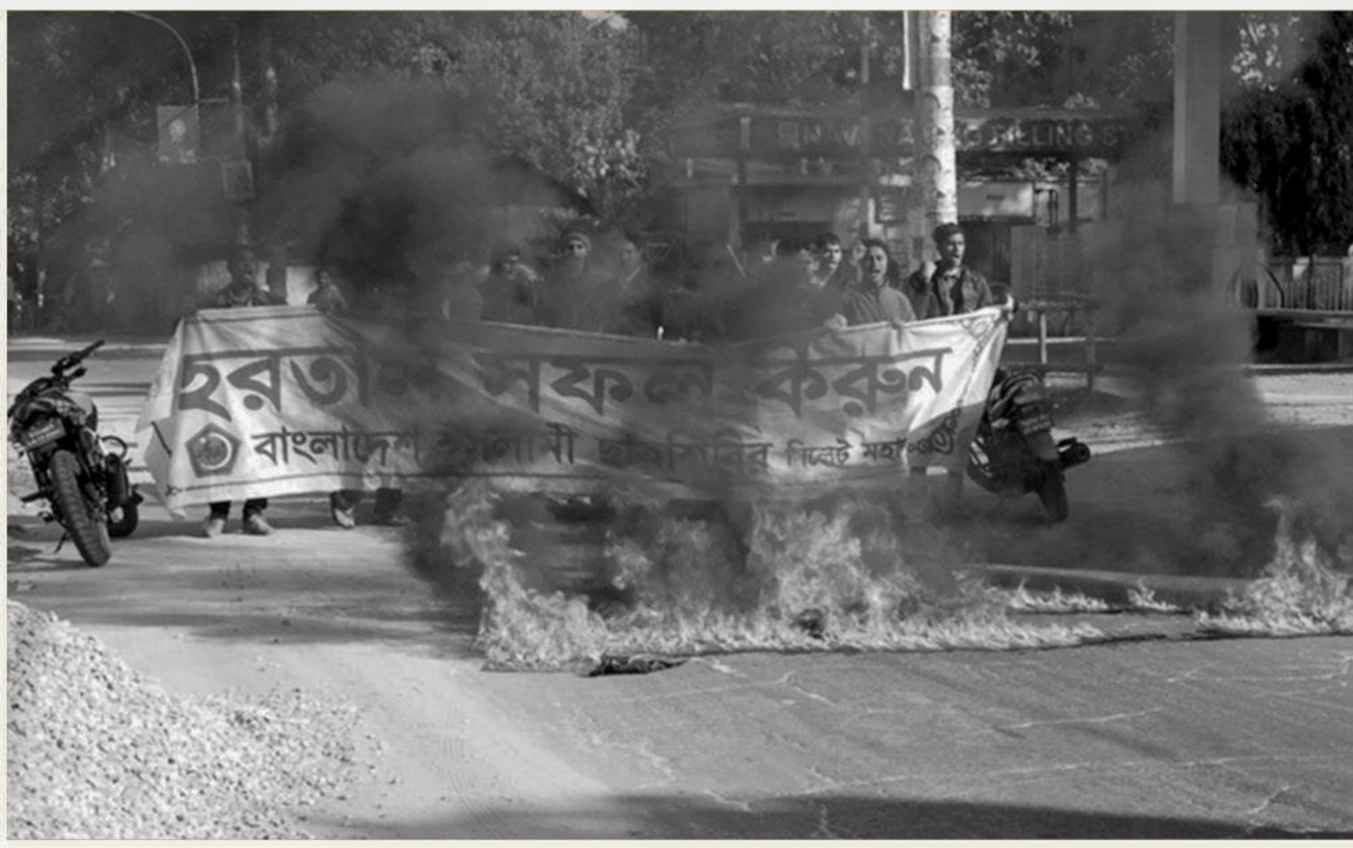
LITTLE do we realise the severe trauma that surviving burn victims go through. The suffering is so much that many of them wished that they were better dead than alive. Regrettably, due to the spate of violence we have witnessed in the last five weeks, their numbers are accreting every day. What the country has in its hands are more disabled and more infirm people who cannot get by on their own.

And that is what begs the question. A sad aspect of violence anywhere is that the worst sufferers are the poorer and marginalised sections of the society. And, as a report carried in the leading Bangla daily yesterday exposed, they are in the worst state of pecuniary privations. And there appears to be no planned approach by the government to address the plight of these unfortunate people. What to speak of the surviving petrol bomb attack victims of the ongoing violence, a large number of burn victim survivors of 2014 political violence have not received any substantial help from the government to tide over their difficulty. And it is not the question of just only the victim. Most of them were earning members of their family who have lost their only source of income.

We would like to suggest that the government take up appropriate policy immediately to address the issue. The victims should be treated at par with any other disabled person and afforded the necessary assistance that other disabled are entitled to including appropriate employment and regular source of earning.

# HARTAL AND OBORODH *Still Lawful!*

OMAR H. KHAN



WE are again creating headlines in the global media! And again for reasons that none of us cherish -- *hartal* and related deadly violence. *Hartal* in a political sense may be defined as a means of protest by the people at large or by a group of a particular class of a society. It may be called for communicating thoughts, discussing public questions, or ventilating grievances to the government regarding legitimate claims. But, has it been truly the case ever since it was introduced in the political infrastructure of Bangladesh? After experiencing the recent devastation and vandalism in the name of *hartal*, one does not have to be a social scientist to answer that. I will attempt to clarify the confusion surrounding the legality of *hartals* in the mind of the common people.

The idea of *hartal* is thought to have originated during the British regime in India when Mahatma Gandhi used *hartal* as a political weapon against the British government, which ultimately led to the intensification of the Indian independence movement. Subsequently, *hartal* became a popular means of protest by political parties throughout the Indian sub-continent.

The question as to legality of *bandh* (similar to *oborodh* in Bangladesh) in India was answered in the case of Bharat Kumar Palicha and another vs State of Kerala and others. The High Court of Kerala held that the holding of *bandh* (a Hindi word meaning 'closed' or 'locked') by a political party or organisation involves a threat, express or implied, to a citizen not to carry on his activities or practice his avocation on the day of *bandh*. Hence *bandh* violates the fundamental rights of citizens guaranteed under the Constitution of India and is illegal. The argument by the political parties that it is the fundamental right of the parties to call for *bandh* was rejected. Nevertheless, the courts of India viewed general strike -- *hartal* -- as a completely different proposition than *bandh*. *Hartal*, as per the Courts of India, is a peaceful act of non-cooperation, or passive resistance movement, and is thus constitutional as it does not demand shutting down of all activities by the citizens. The Supreme Court of India upheld the judgment on appeal.

The legality of *hartal* in Bangladesh was first answered in 1999 by a division bench of the Hon'ble High Court Division of the Supreme Court in the case of Khondaker Modarresh Elahi vs. the Government of the People's Republic of Bangladesh, where the court delivered judgment declaring that call for *hartal* per se is not illegal, rather it is a recognised political and constitutional right. The court observed that hartal is an act which is only an expression of protest not violating any of the fundamental rights of the citizens. As per the High Court "the calling for *hartal*, not accompanied by any threat, will be only an expression guaranteed as a fundamental right under the Constitution." However, any attempt to enforce *hartal*, or ensure that the *hartal* is observed, or to foil the *hartal* makes it illegal as such conduct would involve illegal actions, incitement, provocation, instigation, interventions and aggression that would ultimately result in interference with the individual rights of other citizens. Hence, any political party may call *hartal* but such call will not give any right to the pro-*hartal* and or anti-*hartal* activists to carry out violence and vandalism.

The decision of the High Court Division Bench was later appealed against, and the Appellate Division of the Supreme Court in December 2007 delivered its judgment holding general strike and *hartal* as constitutional right. However, as per the Appellate Division, there is "no hesitation in holding that enforcing *hartal* by force leading to violence, death and damage to the life and property of the citizens is not only illegal but also liable to be detested and punished as per law of the land in existence. These are already cognisable offences under the Penal Code and other Penal laws of the land. … and any government worth the name will be duty bound to protect the people by bringing to book the offenders regardless of what party they belong."

The judgments of the Courts, though apparently profound, add little in reality but rather compounded the confused notion of the people about the legality of *hartal*. The court sees a call for *hartal* as an action that does not contravene or affect the rights of the citizens. If we are to argue in conformity with the decisions of the court the mere calling of a *hartal* in the strict legal sense cannot be held objectionable. So at what stage does the calling of a *hartal* cease to be a legitimate exercise of freedom of association and freedom of speech? The courts held that the moment it seeks to impinge on the rights of others, it ceases to be a *hartal* and becomes a violent demonstration, a form of *bandh*, involving intimidation and coercion. The enforcement of *hartal* by intimidation and coercion is unconstitutional.

What is disputable in this above analogy is the fact that force, intimidation and coercion have always been inherent characteristics of *hartal* in Bangladesh. The destruction of public and private property has always been present whenever a *hartal* has been staged, and the violence is only intensifying. *Hartal* has now become a violent movement, which most of the times results in acts of vandalism, destruction of properties, bomb-blasts, throwing of petrol-bombs and even killing of innocent people.

How many more lives will it cost to understand that *hartal* and *oborodh* in their present form are the most heinous and grave illegal acts that a civilised human being can think of?

*The moment hartal seeks to impinge on the rights of others, it ceases to be a hartal and becomes a violent demonstration, a form of bandh, involving intimidation and coercion. The enforcement of hartal by intimidation and coercion is unconstitutional.*

The writer is Advocate, Supreme Court of Bangladesh.
Assisted by Barrister Asif Rahmatullah.

# Limiting the Security Council veto

WORLD IN WORDS

GARETH EVANS

BACK in 2001, France floated a proposal that the five permanent members of the United Nations Security Council (P5) should voluntarily refrain from using their veto power when dealing with mass-atrocity crimes. And now, in the lead-up to the commemoration of this year's 70th anniversary of the UN, French President François Hollande's government is actively pursuing the idea again. Could such an arrangement really work?

The predictable initial response is to dismiss the possibility out of hand. As Australia's wartime prime minister, Ben Chifley, once famously remarked: "The trouble with gentleman's agreements is that there aren't enough bloody gentlemen."

It is indeed hard to believe that Russia and China, in particular, would be accommodating. Russia, for example, has exercised vetoes more than 100 times since 1946, most recently -- and unhappily -- four times since 2011 to block resolutions intended to halt the carnage in Syria.

Nor has the United States, which has used its veto some 80 times (most frequently, in recent years, on Israel-related issues), shown much enthusiasm, notwithstanding its generally strong stand on genocide and related cases. Only the United Kingdom (which, like France itself, last resorted to the veto in 1989) has given any hint of support for the French initiative.

The right to veto was the price demanded by China, France, Great Britain, Russia, and the US for joining the UN. No one believes that a formal Charter amendment to abolish or limit this right is remotely likely.

But international pressure on the P5 has been mounting for the last 15 years -- and especially since the General Assembly's unanimous embrace in 2005 of the "responsibility to protect" (R2P) principle. Advocates of the French position want these countries to forswear their veto when a clear majority supports proposed action to mitigate the risk of a mass-atrocity crime. Distaste for the blocking of the Syrian resolutions has been particularly intense, and, at last count, 68 countries had given explicit support to the French proposal in various UN forums.

The moral argument that the veto should not be used in cases of mass-atrocity crimes is overwhelming. The P5 have obligations under the UN Charter, as well as international humanitarian and human rights law, not to undermine the effectiveness of the UN or that body of law. And the political argument against using the veto in these situations -- that it jeopardises the credibility and legitimacy of the Security Council, whose structure is already seen as not reflecting the geopolitical realities of the twenty-first century -- should also weigh heavily on the P5.

But is it possible to craft a veto-restraint proposal to which all of the P5 can agree? In January, at a conference I attended in Paris that brought together French policymakers and international experts, it became clear that a draft agreement could meet most, if not all, objections. But it would need to have at least three key elements.

First, the agreement would have to define the relevant cases clearly -- neither too widely nor too narrowly -- and build on well-established R2P language. The definition might be something like "situations where populations are suffering, or at imminent risk of, genocide, other crimes against humanity, or major war crimes."

Second, an agreement would need to include a mechanism to determine when such cases had actually arisen. This would need to be speedy, provide some assurance of objective assessment, and ideally generate strong concern across a wide cross-section of the international community.

One way to meet these needs would be to have a double trigger. The first requirement would be a certification, communicated to the Security Council by the UN Secretary-General and his Office of Special Advisers on the Prevention of Genocide and R2P (which has the necessary resources, expertise, and credibility) that the case meets the agreed definition. The other would be a request for veto-restraint by at least 50 member states, including at least five members from each of the recognised geographical groupings.

A third key element, unattractive ethically but probably necessary politically to win the support of the US and others, would be a provision allowing any P5 member to veto when it claimed a "vital national interest" to be at stake. The consolation is that trying to rely on such an escape clause in most atrocity cases would not pass the laugh test. Could Russia and China really have used it to veto Security Council resolutions on Myanmar and Zimbabwe in, respectively, 2007 and 2008? Even given the intensity of Russia's political and military relationship with Bashar al-Assad's regime in Syria, could it really claim that a resolution would place its own vital interests at risk?

Many kinds of pushback can be expected, not least the argument that the veto exists not to protect the P5's interests, but to ensure unanimity of the major players (conspicuously missing in the UN's ill-fated predecessor, the League of Nations) in any action undertaken, in order to maintain international peace and security. We will be told that it is unconscionable to ask a P5 member to forgo a veto when it genuinely believes that a proposed resolution will cause more harm than good.

One response is that it is almost impossible to find any such genuinely high-minded rationale for any veto ever cast in a mass-atrocity situation. Another is that any UN Security Council resolution requires at least nine affirmative votes (in a Council of 15). If there are genuine concerns on the merits, that requirement will prove a very high bar.

The point of the veto restraint is, at minimum, to raise the political cost for those who would block action designed to ensure that there are no more Cambodias, Rwandas, Srebrenicas, or Syrias. The French proposal, though still evolving, has already struck a responsive chord internationally. The other P5 members will ignore it at their peril.

The writer, a former Australian foreign minister (1988-1996) and past president of the International Crisis Group (2000-2009), is the author of *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All* and a co-chair of the International Advisory Board of the Global Center for the Responsibility to Protect.



# LETTERS TO THE EDITOR

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## The key is in the hand of PM

Businessmen, students, transport workers and people from all walks of life are requesting BNP chairperson Khaleda Zia to withdraw blockades and hartals to bring an end to the sufferings resulting from those.

But they are barking upon the wrong tree. The solution lies in the hand of Prime Minister Sheikh Hasina. So they should shift their attention and ask the PM to hold a dialogue for an early election which would be acceptable to all and that is the only way to get the country back on track.

**Nur Jahan**
*Chittagong*

## God's way of saying "stop it"!

On the February 2 issue of TDS, I read a news about a BNP activist who decided to leave politics because his father was killed in an arson attack while on his way home from Biswa Ijtema.

Though I feel sorry for this man, I cannot but say that it is highly unfortunate that he decided to quit after his own father got killed; he should have done so before. We have read so many news about someone else's father, son or relative getting killed or wounded in such attacks. May be this is Allah's way of saying, "Enough is enough! Now stop it!"

**Aminur Rahim**
*New DOHS, Mohakhali, Dhaka*

## Football is back

In the early 90's, football was a very popular sport. Bangabandhu National Stadium was always full whenever a football match took place. I still can remember the rivalry between Abahani-Mohammedan, the famous names-Munna, Salahuddin, Alfaz, gallery full of crazy football fans. Then came cricket and football lost its charm. But after a long time, football lovers have got something to cheer about. The Bangabandhu Gold Cup Tournament looks really promising. The recent victories of our football team against Sri Lanka and Thailand have inspired the football lovers a lot. We are proud of our team.

**Md Tariqul Islam**
*Mirpur, Dhaka*

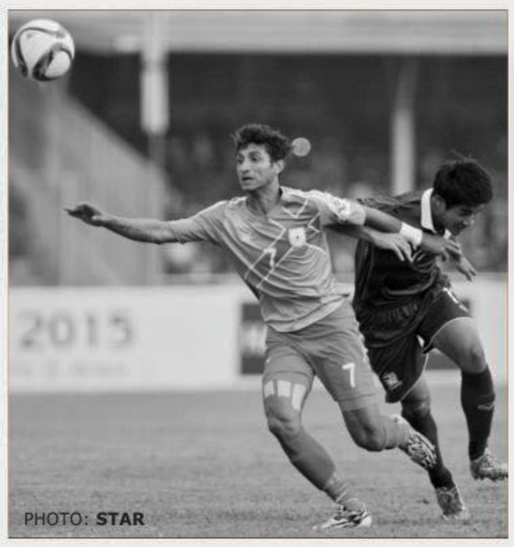

PHOTO: STAR

COMMENTS

***"Khaleda Zia did not let our country's prime minister enter [Khaleda's] office. So can anyone other than a lunatic say that Khaleda Zia will sit for dialogue?"***
--PM's son and IT affairs **adviser Sajeeb Wazed Joy**

**NOVEMBER RAIN**
MR. JOY IS RIGHT. KHALEDA ZIA DOESN'T WANT PEACE, SHE WANTS VIOLENCE.

**SHAMIM ABEDIN**
BUT IT IS KHALEDA ZIA AGAIN AND AGAIN SEEKING FOR DIALOGUE! IF AL WERE SINCERE AND HONEST IN ITS ENDEAVOR THEN THEY WOULD TAKE THE INITIATIVE OF SOLVING THE IMPASSE POLITICALLY LONG AGO.

**SALEH CHOWDURY**
AS PM ALREADY SAID THAT SHE WENT TO KHALEDA ZIA'S OFFICE TO CONSOLE A MOTHER AS A MOTHER, SO WHY NOT JUST END THE ISSUE THEN AND THERE? WHY ARE YOU POLITICISING THE INCIDENT TO GAIN POLITICAL BENEFITS?

***"THE FICTIONALITY OF THE PETROL-BOMB THROWER" (FEB. 3, 2015)***

**HASAN**
THE NEWSPAPERS SHOULD DO FOLLO.W UP IN THESE CASES