



# THE INTERNATIONAL CRIMES TRIBUNAL OBSERVER

Special Issue No. 5 ■ Legal Conclusions *Chief Prosecutor vs. Gholam Azam* ■ 7 Oct 2013

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## I. EXECUTIVE SUMMARY

### THE GHOLAM AZAM CASE

This special report provides a detailed overview of the factual and legal findings of the International Crimes Tribunal (ICT) Judgment in *Chief Prosecutor vs. Professor Gholam Azam*. Gholam Azam was found guilty on all five charges and sentenced to 90 years imprisonment. The Tribunal made a point of noting that he deserved the death penalty, but because of his age and illness, they saw fit to sentence him to life imprisonment instead. Arguments in the case were completed on 17 April 2013 and the verdict was issued on 15 July 2013. It was the second verdict to be issued by Tribunal 1, and the fifth verdict issued by the ICT. Our previous special report on the *Gholam Azam* verdict reported in detail on the documentary and testimonial evidence used to support each count within each distinct charge against the Defendant, as well as the general arguments made by both parties.<sup>1</sup> This report focuses on the legal outcomes of the case.

### Procedural History

The Prosecution submitted its Formal Charge against Gholam Azam on 12 December 2011. Upon review, the Tribunal instructed the Prosecution to restructure the charges, and the Formal Charge was resubmitted on 5 January 2012. Gholam Azam was arrested that same day, and has since been held in the prison facilities of Bangabandhu Sheikh Mujib Medical University to facilitate proper medical care for the now 91 year-old man. Hearings in support of the charges began on 15 February, and the court issued its Charge Framing Order<sup>ii</sup> on 13 May 2012. Opening Statements began on 5 June 2012. On 28 August 2012 Judge Zaheer Ahmed resigned and was replaced by Judge Jahangir. In October, responding to an application from the Prosecution, the Tribunal passed an order limiting the Defense to 12 Defense witnesses, and requested that the Defense submit its witness list by 14 October. On 12 November 2012 the Defense began its case-in-chief by calling its first witnesses. On 9 December 2012 Defense counsel was absent due to opposition hartals (strikes). The Tribunal issued an order requiring the Defense to produce its next witness by the 10<sup>th</sup> or be barred from producing further witnesses. Upon

the failure of the Defense to produce its witness the next day, the Tribunal issued an order barring further Defense witnesses.

In early December, the trial was disrupted by controversy when the former Chairman of Tribunal 1 announced that his email and Skype conversations had allegedly been hacked. The Economist and other media outlets went on to publish excerpts of alleged conversations between Chairman Nizamul Hoq and expatriate Bangladeshi legal expert Ahmed Ziauddin. The Defense alleged that these conversations showed collusion between the Judges, outside activists advocating for the conviction of the alleged war criminals, and the Prosecution. The former Chairman resigned on 11 December 2012, and was replaced by ATM Fazle Kabir, who had previously sat as a Judge in Tribunal 1 before being moved to head Tribunal 2. The Defense filed an application for retrial, based on allegations of bias, collusion, and fraud committed by the Judges and Prosecution. Under the reconstituted bench, the Tribunal rejected the Defense's application for retrial,<sup>iii</sup> stating that the contents of the alleged Skype and email conversations were inadmissible as illegally obtained evidence, and that the independence of the Tribunal had in no way been compromised.

The Tribunal allowed Defense witness 1 to complete his testimony. However, the Tribunal rejected the Defense's 14 February 2013 application for more time to produce additional witnesses. The Defense had claimed that their original list of witnesses was afraid to appear, due to the ongoing protests at Shahbagh calling for the death penalty against all war criminals. The Prosecution completed their Closing Arguments on 4 March 2013. The Defense concluded their Closing Arguments on 15 April 2013 and the Prosecution submitted its reply on the 17<sup>th</sup>. The Tribunal then closed the case and took it under consideration for final verdict. The length of time between the close of the case and issuance of the final verdict is significant insofar as it took markedly longer in this case than in other ICT cases. In other cases the Tribunal has taken, on average, about a month; In *Gholam Azam*, the Court waited three months. The Tribunal commented when it announced the final verdict that the case was more complex than prior cases, and that the Judges felt significant pressure to issue the verdict as quickly as possible.

## **II. THE CHARGES AND THE VERDICT:<sup>iv</sup>**

- **Charge 1:** Six Counts of Conspiracy to Commit Crimes under Section 3(2) of the ICT Act. This Charge was combined with Charge 2, see below.
- **Charge 2:** Three Counts of Planning to Commit Crimes under Section 3(2) of the ICT Act. Found guilty of conspiracy and planning under the doctrine of superior responsibility codified in Section 4(2). Sentenced to 20 years imprisonment.
- **Charge 3:** Twenty-eight counts of Incitement to Commit Crimes under Section 3(2) of the ICT Act. Found guilty under the doctrine of superior responsibility codified in Section 4(2). Sentenced to 20 years imprisonment.

- **Charge 4:** Twenty-three counts of Complicity in Crimes under Section 3(2) of the ICT Act. Found guilty under the doctrine of command responsibility codified in Section 4(2). Sentenced to 20 years imprisonment.
- **Charge 5:** Murder and Torture as Crimes against Humanity under Section 3(2)(a) of the ICT Act. The Charge alleges that Gholam Azam directed Peyara Miah, a member of the Peace Committee, to kill Siru Mia and his son because they were freedom fighters. Found guilty of murder as a Crime Against Humanity under Section 4(1). Sentenced to 30 years imprisonment.

Charges 1-4 alleged that Gholam Azam was liable either under Section 4(1), which provides for a form of joint criminal liability (where, when a crime is committed by several persons, each may be held liable for acts committed by the others, as if he were the sole perpetrator), or under Section 4(2), which provides for liability under the doctrine of command responsibility. Charge 5 alleged direct individual responsibility for murder and torture, and did not mention any of the forms of liability enumerated under Section 4 of the Act. The Tribunal found Gholam Azam to be liable for Charges 1 through 4 based on command responsibility, despite the fact that he was a civilian during the war. They found that the doctrine of command responsibility encompasses civilians where they have a superior position that still allows for them to exercise control over subordinates.<sup>v</sup>

### **III. CASE OVERVIEW**

#### **THE PROSECUTION CASE**

The Prosecution alleged that during the war in 1971, under Gholam Azam’s leadership, all the leaders and workers of Jamaat-e-Islami and its student wing, Islami Chatra Sangha, opposed the liberation movement, and that in 1971 Jamaat-e-Islami became an auxiliary force under the Pakistani Army. They argued that Gholam Azam, as the Ameer of Jamaat-e-Islami, controlled the organizational framework of Islami Chatra Sangha, and played the pivotal role in forming the Shanti (Peace) Committee, Razakars, Al-Badr, and Al-Shams, and is therefore liable for all of crimes committed by the members of those groups. They further alleged that Gholam Azam exercised Command Responsibility over the members of the Shanti (Peace) Committee, Razakars, Al-Badr, and Al-Shams, and that, even though he was a civilian, Gholam Azam had influence over the Pakistani Army.

#### **Prosecution Supporting Documents**<sup>vi</sup>

The Prosecution relied on 77 exhibited documents in arguing their case. The vast majority of these documents were newspaper articles published in 1971 in the *Daily Shangram*, *Daily Azad*, *Daily Pakistan*, *Daily Ittefaq*, *Daily Purbodesh* and *Daily Paygam* newspapers. Additionally, the Prosecution submitted five “Fortnightly Reports” from the Police, as well as a Police Report Abstract. At times, the Prosecution also referred to Defense exhibits and documents. For a full list of all documents exhibited by the Prosecution, please refer to Annex A of this report.

### **THE DEFENSE CASE**

The Defense contested the Prosecution's claim that under Gholam Azam's leadership all the leaders and workers of the Jamaat-e-Islami and its student wing, Islami Chatra Shangha, had opposed the liberation movement. The Defense opposed the assertion that Jamaat-e-Islami was an auxiliary force under the Pakistani Army, and that, as Ameer of Jamaat-e-Islami, Gholam Azam controlled the organizational framework of the Razakars, Al-Badr, and Al-Shams. The Defense acknowledged that Gholam Azam was the member of Central Peace (Shanti) Committee, but they claimed that he was not a member of any local Peace Committee.

The Defense asserted that the Central Peace Committee was established on 9 April 1971 as a civilian organization with the purpose of restoring normalcy to the country and upholding the sovereignty and integrity of a united Pakistan. The primary function of the Peace Committees was to make statements and speeches in favor of a united Pakistan, and to condemn Indian aggression and interference (Prosecution Exhibits-34, 37, 40, 479, 481, and Defense Exhibits BM-BQ and BS). Additionally, the Defense argued that Gholam Azam did not exercise effective control over members of local Peace Committees, and thus could not be held responsible for offenses committed by them. They argued that the local Peace Committees were set up on the orders of the Governor (Defense Exhibits-BF-BL and BT).

Citing to Exhibit-FY (a memo dated 25 May 1971 issued by the office of the SDO at Netrokona) the Defense argued that the Pakistani government was responsible for determining the recruitment, training, and functions of the Razakar forces. According to the Defense, the Razakar forces were formed in May 1971 by the then-Government of East Pakistan, and were administered via executive orders. Furthermore the Defense claimed that Exhibit H(1) shows that Jamaat-e-Islami was not in control of the Razakar forces, and that, according to Exhibit CA, the Razakars were placed under the control of the Pakistani Army on 7 September 1971.

### **Defense Supporting Documents**<sup>vii</sup>

The Defense submitted a number of documents and media excerpts with the primary purpose of showing that the local Peace Committees and auxiliary forces operated under the command of the Pakistani military, and further that the newspaper sources relied on by the Prosecution were untrustworthy because censorship was ubiquitous during the war. A full list of the Defense's evidentiary submissions is provided in Annex A of this report.

## **IV. JURISDICTION OF THE TRIBUNAL**

In the *Gholam Azam* Judgment, the Tribunal asserts that, under the International Crimes Act of 1973 (ICT Act), it has jurisdiction over both armed forces and auxiliary forces, as well as individuals or groups of individuals who committed international crimes during the war of independence. They compare the ICT Act to the statutes of other international

tribunals, such as the International Criminal Tribunal for the Former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), the Special Court for Sierra Leone (SCSL) and the International Criminal Court (ICC). In particular, the Judgment refers to the definition of Crimes Against Humanity articulated in each of these statutes. Despite identifying notable differences between the relevant statutes, the Tribunal concludes that the definitions of Crimes Against Humanity, Crimes Against Peace, Genocide and War Crimes under the ICT Act and its amendments are “fairly compatible with current international standards.”<sup>viii</sup>

## **V. THE TRIBUNAL’S METHOD OF ADJUDICATION**

The Tribunal made an effort to articulate its methodology for adjudicating disputed facts and applying them to the legal definition of Crimes Against Humanity. As the Judgment states: “in case like one in our hand [sic] involving adjudication of charge for the offences of crime against humanity we are to depend upon i) facts of common knowledge ii) documentary evidence iii) reporting of newspaper [sic], books, etc. having probative value iv) relevancy of circumstantial evidence v) evaluation of oral evidence vi) determination of political and religions [sic] status of the accused and whether he had hierarchy over all organs of Jamaat-e-Islami as civilian superior responsibility [sic], vii) the jurisprudence evolved on the issues in the foreign Tribunals dealing with international crimes and viii) whether the accused had any link with the top executives of the government of Pakistan and what was the status and role of the accused in the commission of offences charged.”<sup>ix</sup> The Judgment does not appear to specify whether the Tribunal would rely on the same elements when considering charges of Genocide.

The Tribunal added that, in order to determine Gholam Azam’s culpability for the crimes charged, they would consider: “1) whether the accused as a civilian had superior responsibility during the War of Liberation of Bangladesh, 2) whether the accused had link and complicity [sic] with the Executives of the Pakistani Government and thereby exercising superior power and position substantially contributed and facilitated the offences committed during Liberation War, and 3) whether the accused actively contributed in killing with [sic] one Siru Mia and 37 others which falls within the purview of crimes against humanity.”<sup>x</sup>

### **USE OF JUDICIAL NOTICE**

In addition to the aforementioned factors, the Tribunal also relied heavily on judicial notice of facts in various places throughout the Judgment, particularly in the section where the Judgment lays out an historical overview of the war of independence. This section appears to establish that this background is considered to be common knowledge and is therefore taken under judicial notice. The Tribunal states, for example, “It is the fact of common knowledge that thousands of incidents happened throughout the country as a part of organised and planned attack. Target was pro-liberation Bangalee civilian population, Hindu Community, pro-Liberation political groups, freedom-fighters and finally the intellectuals of the country.”<sup>xi</sup> The Tribunal additionally names the Razakars,

Al-Badr, Al Shams and Peace Committee as “auxiliary forces which provided supports [sic], assistance, and substantially contributed and also physically participated in the horrendous atrocities in the territory of Bangladesh.”<sup>xii</sup>

The Tribunal’s assertion that these incidents occurred “as a part of organised and planned attack” appears to be a nod to the internationally recognized requirement of a “widespread and systematic attack” as an element of proving the commission of a Crime Against Humanity. While the ICT has refused to define “widespread and systematic attack” as a technical element of Crimes Against Humanity, the Tribunal nevertheless stated in the *Sayedee* Judgment that the ICT Act’s requirement that crimes be carried out against the “civilian population” implies the presence of such an attack.<sup>xiii</sup> Therefore, by proving that an alleged crime was committed against the civilian population, the Prosecution would simultaneously show that there had been a widespread and systematic attack. Additionally, the Tribunal has consistently stated that the context of the Liberation War in 1971 amounted to a widespread and systematic attack.<sup>xiv</sup>

The Tribunal’s conclusory statements categorizing the Razakars, Al-Badr, Al-Shams and the Peace Committee as auxiliary forces is notable, because the Defense only contested the claim that Jamaat-e-Islami was an auxiliary force during the 1971 war; they did not deny that the other groups were auxiliary forces. The judicially noticed identification in the Judgment of the “targets” of the attacks is also important, since the Prosecution needed to show that a group was targeted due to a protected characteristic in order to prove the commission of Genocide. While the Genocide Convention does not recognize political groups as being protected, national and religious identity are protected characteristics recognized in international jurisprudence.

## **VI. LEGAL ISSUES PREVIOUSLY RAISED BY THE DEFENSE**

When addressing broad legal arguments raised by the Defense contesting the validity of the trial as a whole, the *Gholam Azam* Judgment follows the same approach as that taken by ICT 1 in *Chief Prosecutor vs. Sayedee*, as well as the approach used in three cases previously decided by Tribunal 2: The Judgment addresses 1) the impact of the Tripartite Agreement and immunity granted to the Pakistani war criminals 2) the amendment of Section 3(1) of the ICT Act in 2009, and 3) delay in bringing prosecution.

### **IMPACT OF THE TRIPARTITE AGREEMENT**

The Judgment concludes that the tripartite agreement was an ‘executive act’ that breached customary international law. In particular, the Tribunal determines that “the obligation imposed on the state by the UDHR and the Act is indispensable and inescapable and as such the Tripartite Agreement which is an ‘executive act’ cannot liberate the state from the responsibility to bring the perpetrators of atrocities and system crimes into the process of justice.”<sup>xv</sup> The Judgment additionally states that the Act was meant to prosecute the armed forces, perpetrators belonging to auxiliary forces, and

individuals or members of a group of individuals who committed the crimes enumerated in the act. Therefore, notwithstanding Defense arguments to the contrary, the failure to prosecute the Pakistani Army does not negate the Tribunal's jurisdiction over other perpetrators.

#### **AMENDMENT OF SECTION 3(1) OF THE ICT ACT IN 2009**

The Judgment also rejects the Defense argument that the 2009 amendment of the Act, which added the words "individual or group of individuals" to Section 3(1), carried only a prospective effect, and cannot be applied to the case against Gholam Azam or other accused before the Tribunal. The Tribunal concluded that retrospective legislation for the purpose of prosecuting crimes under international customary law had been permitted in other jurisdictions. In support of this position, the Tribunal pointed to the ICTY, ICTR and SCSL, where Statutes were drafted and signed after the crimes in question had occurred. The Judgment additionally notes that Articles 47(3) and 47A(2) of the Bangladeshi Constitution protect the Act from being challenged by an accused.<sup>xvi</sup>

#### **DELAY IN BRINGING PROSECUTION**

Lastly, the Judgment addresses the Defense's argument that prosecution should be blocked where Prosecutors have not sufficiently explained the delay in the commencement of the proceedings. Noting that other tribunals and courts that have prosecuted criminals years after the commission of international crimes, the Tribunal concluded that, "From the point of morality and sound legal dogma, time-bar should not apply to the prosecution of human rights crimes."<sup>xvii</sup>

### **VII. ADJUDICATION OF THE CHARGES**

Before beginning its discussion of each of the charges, the Tribunal clarifies that "the charges against the accused person arose for the reasons of holding superior position and responsibility as to liability for crimes and also a particular event of murder constituting the crimes against humanity during the War of Liberation in 1971."<sup>xviii</sup> This statement does away with the confusion that stemmed from the Charge Framing Order, in which both Section 4(1) and 4(2) were cited as alleged modes of liability, and reflects the Prosecution's extensive arguments regarding the doctrine of command responsibility within the case.<sup>xix</sup>

#### **CHARGES 1 AND 2: CONSPIRACY AND PLANNING OF CRIMES UNDER SECTION 3(2)**

The Tribunal chose to address Charges 1 and 2 jointly, noting that both charges concerned Gholam Azam's alleged group meetings with the Chief Martial Law Administrator of Pakistan, as well as certain related press statements. The Judgment holds, "that the accused is guilty for [sic] committing crimes for conspiracy and planning which resulted [sic] massive crimes against humanity and genocide in a large scale in all over Bangladesh by his subordinate para milita forces."<sup>xx</sup>

#### **Conspiracy**

In the reasoning leading to this finding of guilt, the Judgment first lays out a definition of conspiracy found in Section 1(1) of the Criminal Law Act 1977, amended by Section 5 of the Criminal Attempts Act 1981 in England. The Tribunal does not state why they utilize this definition of conspiracy as opposed to the one found in Bangladesh’s criminal code. The cited statute defines conspiracy as follows: “if a person agrees with any other person or persons that a course of conduct shall be pursued which, if the agreement is carried out in accordance with their intentions, either; will necessarily amount to or involve the commission of any offences by one or more of the parties to the agreement; or would do so but for the existence of facts which render the commission of the offence or any of the offences impossible [sic].”<sup>xxi</sup>

The Tribunal then defines the “*actus reus*” and the “*mens rea*” of said crime. However, it appears that there was some confusion over these elements, as the given definitions in the Judgment provide for exceptions to the crime, rather than simply describing the actual act and mental state required to prove conspiracy.

“Actus reus;

1. The conspirators will not be liable when they never acted on their own plan
2. The fact that the conspirators give a second thought and withdraws does not provide any defense.

Mens rea

The Partner must intend that the crime will be carried out.”<sup>xxii</sup>

By way of explanation, the Tribunal continues, stating that only agreements to commit criminal offences can amount to conspiracy. They note that once the agreement is made the conspiracy is complete as an inchoate offence, meaning that the intended criminal act does not have to occur in order for an individual to be found guilty of the crime of conspiracy. They further clarify that the *actus reus* is the agreement itself, “though it must be manifested by acts of some kind.”<sup>xxiii</sup> The Tribunal additionally divides the *mens rea* into three parts, requiring “1) an intention to agree, ii) an intention to carry out the agreement, iii) intention or knowledge as to any circumstances forming part of the substantive offence.”<sup>xxiv</sup>

### **Conspiracy to Commit Genocide**

The Tribunal refers to the jurisprudence of the ICTR as precedent for the charge of conspiracy to commit Genocide. They refer to the ICTR’s decision in *Musema*,<sup>xxv</sup> interpreting the *travaux preparatoires* to the Genocide Convention as an indicator of the legislators’ intent to criminalize the “mere agreement to commit genocide ... even if no preparatory act has taken place.”<sup>xxvi</sup>

The Tribunal refers to the ICTR’s definition of conspiracy to commit Genocide. The *actus reus* is the agreement between one or more individuals to commit Genocide. The *mens rea* of conspiracy to commit Genocide is *dolus specialis*, meaning the conspirator must not only intend to make the agreement, but must also have the specific intent to



commit Genocide itself: the intent to destroy, in whole or in part, a national, ethnic, racial or religious group. The ICT Judgment states that the agreement does not have to be express or formal and “may be inferred from the ‘concerted or coordinated action on the part of the group of individuals,’” meaning that “‘tacit understanding of the criminal purpose is sufficient.’”<sup>xxvii</sup>

### **Conspiracy to Commit Crimes Against Humanity**

While the Tribunal found Gholam Azam guilty of “conspiracy and planning which resulted [sic] massive crimes against humanity and genocide,” the Judgment does not actually define “conspiracy to commit Crimes Against Humanity,” a concept that has not previously been recognized as an inchoate offense under international law. The language codifying conspiracy to commit Genocide in both the ICTR and ICTY Statutes was adopted directly from the Genocide Convention, and therefore is included only in their definition of Genocide. Neither the ICTY nor the ICTR’s Statutes include conspiracy as an independent mode of liability, meaning that there is no provision for charging conspiracy to commit Crimes Against Humanity.

Some support for a distinct charge of conspiracy to commit Crimes Against Humanity may be found from the Trial of the Major War Criminals, conducted by the International Military Tribunal (IMT) at Nuremberg. Count 1 of this Indictment concerned the “Common Plan or Conspiracy,” and charged that the defendants “participated as leaders, organizers, instigators, or accomplices in the formulation or execution of a common plan or conspiracy to commit, or which involved the commission of, Crimes against Peace, War Crimes, and Crimes against Humanity, as defined in the Charter of this Tribunal.”<sup>xxviii</sup> However, in the Judgment the Tribunal held that “conspiracy to commit Crimes Against Humanity” is not a separate crime under the Tribunal’s Statute. Given the absence of this crime within the Statute, the Tribunal concluded that it “will therefore disregard the charges in Count One that the defendants conspired to commit War Crimes and Crimes against Humanity, and will consider only the common plan to prepare, initiate, and wage aggressive war.”<sup>xxix</sup>

The ICT Act of 1973 defines Crimes Against Humanity under Section 3(2)(a), Genocide under Section 3(2)(c), and “attempt, abetment or conspiracy” to commit any such crimes under Section 3(2)(g). However, while Section 3(2)(g) appears to enumerate modes of liability, it falls under the section of the Act defining the crimes over which the Tribunal has jurisdiction. Section 4, titled “Liability for Crimes,” does not contain the term “conspiracy,” implying that it is viewed by the Tribunal as an inchoate offense. The structure of the ICT Act does not closely track those of the ICTR or ICTY statutes in its definition of conspiracy. Additionally, the Judgment does not engage in a discussion of either the general existence or the specific elements of conspiracy to commit Crimes Against Humanity. It therefore remains unclear on what basis the Tribunal ultimately found Gholam Azam guilty of conspiracy to commit Genocide and Crimes Against Humanity, as such.

### **Evidence of Conspiracy:<sup>xxx</sup>**

Following the discussion of the elements of conspiracy to commit Genocide and Crimes Against Humanity, the Judgment enumerates the evidence submitted in support of the three counts within Charge 1. The Charge alleged that on 1 December 1971 Gholam Azam held a conspiratorial meeting with President Yahiya Khan, discussed the situation in then Eastern Pakistan, demanded an increase in Razakar forces, and urged the Pakistani Government to supply arms to those supporting a unified Pakistan. It additionally alleged that, “sensing inevitable defeat,” the decision was made to murder the intelligentsia of Bangladesh. According to the Judgment, this massacre was carried out by members of Jamaat-e-Islami, Peace Committee, Razakars, Al-Badr and Al-Shams on 16 December 1971.

The Tribunal relied on Exhibits 33, 34, 99 and 52 to reach its findings on Count 1 of Charge 1; Exhibits 35 and 53 for Count 2; Exhibit 479 (referred to as Fortnightly Report, 1<sup>st</sup> half of April 1971) for Count 3; Exhibit 4 for Count 4; Exhibit 62 for Count 5; and Exhibit 97 for Count 6. Based on these documents the Tribunal concluded that Gholam Azam attended meetings with Lt. General Tikka Khan, during which the formation of a citizen’s committee in Dhaka was proposed in order to restore “normalcy and to remove unnecessary and less [sic] fear from the mind [sic] of the citizens.”<sup>xxxix</sup> The Tribunal referred to documents reporting on these meeting as proof that Gholam Azam planned the formation of the Peace Committee, Razakar, Al-Badr, and Al-Shams groups.<sup>xxxix</sup> They additionally note that Gholam Azam stated that power should not be transferred to the civilian population and that the separatist movement could be suppressed by the country’s patriots and that they should therefore be provided with arms. Based on these reports, the Tribunal drew conclusions about criminal intent, declaring in the Judgment, “as Ameer of Jamaat-e-Islami Ghulam Azam met Tikka Khan with an intent to make atrocities committed subsequently by his followers.”<sup>xxxix</sup>

### **Planning**

Following the discussion of conspiracy, the Judgment turns to the charge of planning, and attempts to define the crime. Citing to the *Naletilic* case of the ICTY<sup>xxxiv</sup> the Tribunal concluded that the crime of planning occurs when one or several persons contemplate designing the commission of a crime at both the preparatory and execution phases. The existence of a plan can also be proved by circumstantial evidence. The Judgment does not identify any difference between planning Genocide or planning Crimes Against Humanity. Neither does it clarify whether the Tribunal considers the act of planning to commit either Genocide or Crimes Against Humanity to be an inchoate offense. However, it appears that even if the Tribunal does require proof that the ultimate crime was committed, they ultimately took judicial notice of the fact that Crimes Against Humanity and Genocide occurred during the liberation war, and the Tribunal has repeatedly stated that a “nexus” is not required between the acts carried out by a specific accused person, and the crime.<sup>xxxv</sup>

### **Evidence of Planning<sup>xxxvi</sup>**

After establishing the definition of planning that the ICT will follow, the Judgment summarizes the evidence submitted in support of the three counts within Charge 2. The Charge alleged that, during his meetings with Lt. General Tikka Khan, Gholam Azam and other leaders planned the formation of the Nagorik Committee, aka the Shanti Committee or Peace Committee, in order to support the occupying Pakistani forces. It was alleged that the committees committed crimes all over Bangladesh during the war.

### Documentary Evidence

The Tribunal relied on Exhibits 33, 34 (in support of Count 1); Exhibits 37, 101, and 167 (in support of Count 2); and Exhibits 457 and 481 (in support of Count 3). Additionally the Court took particular note of the oral testimony provided by Prosecution witnesses 1 (Moontassir Uddin Khan Mamun, a Professor of History at Dhaka University), Prosecution witness 2 (freedom-fighter Mahabub Uddin Ahmed Bir Bikrom), and Prosecution witness 3 (freedom fighter and Executive Director of NGO Ain-o-Shalish Kenro). The newspaper articles in the aforementioned Exhibits document meetings between Gholam Azam and others which led to the formation of the Peace Committee. The specific sections quoted in the Judgment note that the Committee was formed with the purpose of “restoring normalcy” in the region. The Judgment extensively details the allegations made by the witnesses, all of whom testified about their knowledge, based on their reading of newspapers at the time, of Gholam Azam, the formation of the Peace Committees, and war time atrocities. None of the Prosecution witnesses the Tribunal relied upon had provided direct evidence against Gholam Azam, based on firsthand knowledge of events.

### Oral Evidence in Support of Charge 1 and 2

The Judgment summarizes the oral testimony supporting Charges 1 and 2, but does not explicitly evaluate its probative value. Prosecution witnesses 1, 2 and 3 testified that Jamaat-e-Islami, and to a lesser extent other religiously identified political groups, supported the government of Pakistan during the Liberation war. They claimed that Jamaat-e-Islami had primacy over the Razakar, Al-Badr, Al Shams and the Peace Committees and that “Gholam Azam, the then Ameer of Jamaat-e-Islami was the master mind of the Peace Committee who instigated and inspired Pakistani Army which is evident from the then newspapers.”<sup>xxxvii</sup> The witnesses further claimed that the Razakar forces had initially been formed with the members of Jamaat-e-Islami before being brought within a legal framework under the Pakistani government. These witnesses testified generally that the Razakars, Al-Badr, and Peace Committees participated in killing, rape, looting and arson, and indiscriminate acts of Genocide.

The Judgment also includes a summary of Prosecution witness 16, the Investigation Officer’s, testimony. As with the discussion of the other witness’ testimony the Tribunal does not explicitly make conclusions about the credibility or probative value of the testimony. This witness testified that Gholam Azam was the mastermind of the criminal activities carried out by the Peace Committee, Razakars, Al-Badr and Al-Shams. He addressed Operation Search Light, which occurred on 25 March 1971, and asserted that

“thirty lakh people were killed, two lakh women of different ages were raped, one crore people were compelled to deport out, some people of minority community were compelled to convert their religion and thousands of houses, shops, schools, colleges, Universities, mosques, temples, bridges, etc. were destroyed.”<sup>xxxviii</sup>

When discussing the cross-examination of the witnesses, the Judgment only notes facts that the witnesses corroborated (including that Gholam Azam was a member of Jammate-Islami and attended the first meeting of the Executive Committee of the Peace Committee). Defense arguments and lines of questioning are rarely and only generally acknowledged, such as when the Judgment recounts that Prosecution witness 1 “denied the defence suggestion that accused Prof. Ghulam Azam was not involved in any killing, rape, looting committed in 1971.”<sup>xxxix</sup> The Tribunal does make note of the testimony of Defense witness 1, Abdullahil Amaan Azmi, the son of Gholam Azam and the only Defense witness in the case. However, they referenced his testimony in the Judgment only in so far as it corroborated the fact that the Martial Law Administrator, General Yahya Khan, carried out Operation Search Light on 25 March 1971, and that Gholam Azam was a member of the Central Peace Committee and the leader of the East Pakistan branch of Jamaat-e-Islami.

#### **THE TRIBUNAL’S HOLDING ON CHARGES 1 AND 2**

In its evaluation of the evidence, the Tribunal states that “the prosecution has mainly relied upon documentary evidence.”<sup>xl</sup> In its final conclusions regarding charges 1 and 2 the Tribunal relied in particular on the autobiography of Gholam Azam, as submitted by Defense witness 1, in which it is stated that the Accused left his home on 26 March 1971 and visited Dhaka University area, Nawabpur Road, and the Gulistan area. There he reportedly witnessed the aftermath of Operation Search Light and “acquired direct knowledge about the atrocities and massacres committed by the Pakistan army.”<sup>xli</sup> Nonetheless, Gholam Azam met with Tikka Khan and other leaders on 4 April 1971 and “gave assurance to provide all assistance to the CMLA for restoring normalcy within the province.”<sup>xlii</sup> The Tribunal concluded that the meetings recorded in Exhibits 37, 101, and 167, were conducted “as a part of conspiracy and planning to commit crimes against humanity and genocide as a result of which horrendous crimes as specified under Section 3(2)(a)(c)(f)(g) of the Act were committed in all over Bangladesh by Pakistan occupation army with the help of collaborators during nine months struggle in 1971.” The Judgment further states that a conspiratorial agreement may also be inferred from circumstantial evidence.

In assigning liability, the Court took particular note of Gholam Azam’s leadership position, stating that “pursuant to such conspiracy and planning the accused as head of Jamaat-e-Islami substantially contributed much in forming para-militia forces such as Peace Committees up to grass-root level, Razakar, Al-Badr, and Al-shams to resist independence of Bangladesh.”<sup>xliii</sup> They additionally concluded that Gholam Azam had requested that the President of Pakistan supply additional arms “to true patriots of Pakistan and to increase the number of Razakars to annihilate pro-liberation people of

Bangladesh.”<sup>xliv</sup> The Tribunal based its holding on the “circumstantial evidence” provided, and they found Gholam Azam guilty of conspiracy and planning, which resulted in the commission of Crimes Against Humanity and Genocide by his subordinate paramilitary forces.

Despite identifying the special intent requirement for conspiracy<sup>xlv</sup> to commit Genocide, the Judgment does not actually discuss Gholam Azam’s intent in its evaluation of the evidence or the ultimate holding. While it notes that he obtained “actual knowledge” of atrocities when he left his home to see various sites on 26 March 1971, the Judgment does not explicitly correlate this to genocidal intent. Additionally, while witnesses testified that Jamaat-e-Islami members made up a majority of the auxiliary groups, the Judgment does not explicitly express how Gholam Azam exerted authority over these groups or the Pakistani military. Finally, none of the documentary evidence referred to by the Tribunal in the Judgment explicitly states that the formation of the Central and local Peace Committees included instructions to commit either Genocide or Crimes Against Humanity.

### **CHARGE 3: INCITEMENT OF CRIMES AGAINST HUMANITY AND GENOCIDE**

Charge 3 alleges that Gholam Azam made statements and speeches inciting his followers to commit Crimes Against Humanity and Genocide. The Charge is framed under Section 3(2)(f), which provides for the Tribunal’s jurisdiction over “any other crimes under international law,” and both modes of liability codified by Section 4(1), providing for liability where several persons jointly commit a crime, and 4(2), which provides for liability under command responsibility. The Tribunal acknowledged that incitement is not specifically included in Section 3(2) of the Act. However, the Judgment states that incitement is recognised under customary international law, and is therefore included under 3(2)(f). As they did with conspiracy, the Court classified incitement as an inchoate offense, meaning that the end criminal act does not have to have been committed in order to establish guilt for the criminal offense of incitement.

### **Definition of Incitement to Commit Genocide**

The Judgment defines the elements of direct and public incitement to commit Genocide as follows:

1. “That the accused incited others to commit genocide;
2. That the incitement was direct;
3. That the incitement was public and
4. That the accused had the specific intent to commit genocide, that is destroying in whole or in part a nation [sic], ethnic, racial or religious group.”<sup>xlvi</sup>

The Judgment additionally states that the crime of incitement is complete when statements are uttered or published.

### **Evidence in Support of Charge of Incitement**<sup>xlvii</sup>

The 28 counts of incitement enumerated in the charge framing order all relate to speeches and meetings in which Gholam Azam made statements calling for the support of a single Pakistan unified by Islamic ideology, and action from the Pakistani Army and true patriots to resist Indian aggression and the separatist movement. Between paragraphs 139 and 209 of the Judgment, the Tribunal enumerated the documentary evidence upon which they relied in finding Gholam Azam guilty under Charge 3. For example, the evidence in support of Count 2 consisted of three newspaper articles reporting on a speech given by Gholam Azam on Radio Pakistan in which he warned India against interfering with the freedom of a country and stated that he believed that the Muslims of East Pakistan would not provide any assistance to them. The Court's interpretation of this speech was that, "Gholam Azam as Ameer of Jamaat-e-Islami gave a provoking speech ... by which the followers of accused Ghulam Azam were incited to commit atrocities during the liberation war and at his influence and instigation many unarmed Bangalees including a group of Hindus, supporters of Awami-league who had sided with an independent Bangladesh, were also killed."<sup>xlvi</sup>

Similarly, the evidence in support of Count 13 consisted of three newspaper articles reporting on speeches made by Gholam Azam and others at a workers conference in Kushtia. According to reports, he said that a failure to maintain the unity of Pakistan would place the existence of the state and Islam at stake. He also emphasized the importance of forming Peace Committees in all villages and stated that the Razakars and police would be able to stop the rebel activity in rural areas, allowing the Army to be withdrawn to the borders to stop Indian forces from intruding. The Tribunal concluded from these reports that, "it has come into evidence by these exhibits that accused Ghulam Azam instigated the people to treat Sheikh Mujibur Rahman and his followers as traitors of East Pakistan and demonstrated incitement on the part to commit genocide, atrocities against humanity."<sup>xli</sup>

### **Holding of the Tribunal**

After concluding that it is undisputed that Gholam Azam was the Ameer of East Pakistan Jamaat-e-Islami and that he made statements and speeches in public, the Judgment focuses on interpreting whether the statements of the Accused amounted to incitement to commit genocide "or any other crimes specified in Section 3(2) of the Act."<sup>li</sup> To this end, the Tribunal took particular note of Exhibit 9, submitted in support of count 10. The report states that Gholam Azam made a speech asserting that Hindus are always the enemies of Muslims and that there is no evidence that Hindus have ever been the friends of Muslims. From this, the Tribunal concluded that, "the above hateful speech made by the accused manifestly demonstrates that he expressed hatred and communal feeling towards Hindu Community with intent to destroy or deport this religious group from this country."<sup>li</sup> They further cite Exhibit 46, submitted in support of count 15. This report recounts a speech made by Gholam Azam "to the effect that Bangalee Muslims will not exist if Pakistan extinct." According to the Tribunal's translation of the report, it apparently goes on to quote Gholam Azam as saying "Those who do not understand this truth, they must be eradicated from the soil of East Pakistan."<sup>li</sup>

The Defense took issue with this translation at trial, arguing that the text in fact translates to say, ““East Pakistan Jamaat e Islami Amir Professor Ghulam Azam said, If Pakistan remains united, Bengali Muslims will one day be in a position to enforce their rights. If Pakistan does not exist, then Bengali Muslims too will cease to exist. Those who do not want to understand this have to be removed from the soil of Pakistan.” The Defense had also argued at trial that “those who do not understand this truth” is not a protected group under the Genocide Convention, so the alleged comments by the Accused could not amount to incitement of Genocide. Finally, the Defense had further argued that incitement and aiding or abetting are not in fact inchoate offences, so even if sufficient facts were pled to allow the Tribunal to alter the charge to include deportation, the Prosecution would have had to show that Gholam Azam’s statement substantially contributed to a specific incident of deportation in order to convict him. The Tribunal did not address any of these Defense’s arguments in the Judgment, instead simply concluding that “the above statement amounts to clear incitement to commit crimes against humanity and genocide.”<sup>lviii</sup>

The final article discussed by the Tribunal in its holding under Charge 3 was one published in the *Daily Ittefaq* on 2 December 1971. This article would appear to be the one entered into evidence as Exhibit 97, but the Tribunal did not actually specify this in the Judgment. The Court noted that the article had reported that Gholam Azam met with the then President of Pakistan, and that “terming the Mukti Bahini as enemy force ... he [Gholam Azam] urged to increase the number of Razakars. The above statement of the accused significantly inspired the Razakars to counter with the pro-liberation people.”<sup>lviv</sup> They further concluded that his meeting with the President of Pakistan “sufficiently implied the superior status of the accused.”<sup>lv</sup> Accordingly, they concluded that the reported statements of the Accused could constitute incitement to commit Crimes Against Humanity and Genocide.

It is unclear from the Tribunal’s discussion of Charge 3 if the Court meant to hold Gholam Azam guilty of incitement to commit Genocide, only, or also incitement to commit Crimes against humanity. At the conclusion of the holdings on Count 3, the Judgment states, “Since incitement to commit genocide is an inchoate offence, the accused is found guilty to [sic] the crime of incitement under international law as specified in Section 3(2)(f) of the Act.”<sup>lvii</sup> However, this appears somewhat inconsistent with prior indications in the Judgment that Gholam Azam’s statements amount to incitement of both Genocide and Crimes Against Humanity. Additionally, while Gholam Azam was charged under both types of liability specified in Section 4(1) and 4(2), the Judgment does not identify which mode of liability was applied to this charge until its conclusions.<sup>lviii</sup>

#### **CHARGE 4: COMPLICITY IN GENOCIDE AND CRIMES AGAINST HUMANITY**

Charge 4 alleges 23 counts of complicity in Genocide and Crimes Against Humanity. Specifically, the charge alleges that Gholam Azam’s meetings with Lt. General Tikka

Khan, his assurance of cooperation with the Pakistani Army, speeches criticizing the Indian intervention in the region, and proposal for the formation of the Peace Committee, etc. constituted complicity in crimes under Section 3(2) of the ICT Act.

### **Definition of Complicity in Genocide and Crimes Against Humanity**

In the Judgment, the Tribunal noted that ‘complicity’ is not defined in the ICT Act. The Judgment therefore refers to a definition of complicity found in USLEGAL, a free legal online dictionary, and also makes reference to the common law practice of classifying criminal actors as principals or accessories to a crime based on either direct commission of the crime or aiding, counselling procuring, commanding, encouraging or protecting the principal before or after the commission of the crime.<sup>lviii</sup> The Judgment acknowledges that, under common law, complicity required a positive act, so liability could not follow a failure to act or omission. Considering both of these standards, the Tribunal identified three forms of complicity in Genocide, comprised of the following elements:

- “(i) complicity by procuring means, such as weapons, instruments or any other means, used to commit genocide, with the accomplice knowing that such means would be used for such a purpose;
- (ii) complicity by knowingly aiding or abetting a perpetrator of a genocide in the planning or enabling acts thereof;
- (iii) complicity by instigation, for which a person is liable who, though not directly participating in the crime of genocide crime [sic], gave instructions to commit genocide, through gifts, promises, threats, abuse of authority or power, machinations or culpable artifice, or who directly incited to commit genocide.”<sup>lix</sup>

The Tribunal further defined the *mens rea* of complicity in Genocide to be: “that, at the moment he acted, the accomplice knew of the assistance he was providing in the commission of the principal offence. In other words, the accomplice must have acted knowingly.”<sup>lx</sup> The Tribunal acknowledged in the Judgment that it views complicity as a broad “doctrine that operates to hold persons criminally responsible for the acts of others. Complicity encompasses accessorial and conspiratorial liability.”<sup>lxi</sup>

### **Evidence In Support of Charge of Complicity**<sup>lxii</sup>

As with Charge 3, the discussion of the evidence in support of Charge 4 proceeds count-by-count through all 23 counts in the Charge. Between paragraphs 221 and 283 of the Judgment, the Tribunal enumerates the documentary evidence upon which they rely in finding Gholam Azam guilty under Charge 4. As with Count 3, the evidence again focused on Gholam Azam meeting with political and military leaders in support of a unified Pakistan. Primarily, the 23 counts refer to meetings and statements made by Gholam Azam after Operation Search Light, which occurred on 25 March 1971. Given the timing of these meetings and statements, the Tribunal concluded that the statements were sufficient to indicate Gholam Azam’s “complicity in all above-mentioned crimes [Crimes Against Humanity and Genocide] committed in Bangladesh.”<sup>lxiii</sup> In reaching this



conclusion, the Tribunal apparently drew assumptions about the implied intent of the Accused that were similar to the assumptions drawn from the evidence for Charge 3. For example, in discussing the evidence supporting Count 7, the Judgment states, “the intention of accused Prof. Ghulam Azam appears through his said speech ... where he urged upon the government to supply arms and ammunitions to those who believed in the ideal of unity of Pakistan in order to eliminate the so-called ‘dushkritikari’ (Pro-liberatoron people.) This statement also clearly implies ... intent to annihilate freedom loving people of Bangladesh in 1971.”<sup>lxiv</sup>

### **Holding of the Tribunal**

Having detailed evidence supporting each count within Charge 4, the Tribunal concluded with its “Evaluation of Evidence and Findings.” The Judgment notes that the Prosecution relied primarily on documentary evidence, with general circumstantial evidence provided by the oral testimony of Prosecution witnesses 1, 2, and 3. The Judgment further acknowledged that, according to Gholam Azam’s autobiography, he had knowledge of the atrocities committed by the Pakistani Army on 25 March 1971, but deliberately met with Lt. Gen. Tikka Khan on 4 April 1971 where he pledged assistance to him. In addition to these pieces of evidence, the Tribunal appears to have relied on the “fact of common knowledge that Pakistan army with the aid of local collaborators directed attacks upon unarmed civilians and killed them in a large scale with intent to destroy Bangalee nation.”<sup>lxv</sup> Despite Gholam Azam’s knowledge of atrocities being committed, the Tribunal concluded, he nonetheless “repeatedly praised the role of Pakistan army and Razakars.”<sup>lxvi</sup> The Judgment concludes that, by calling on the Pakistani government to supply weapons to patriots, “It is evident that the accused’s complicity with the atrocities committed by Pakistan army and paramilitia Bahinies has been established.”<sup>lxvii</sup>

The Tribunal rejected the Defense’s argument that complicity is not an inchoate offense, and that the Prosecution had failed to identify a specific instant of a Crime Against Humanity or act of Genocide committed with the complicity of Gholam Azam. Instead, the Judgment states that the Prosecution submitted a great deal of evidence regarding atrocities committed by the “Pakistan army and paramilitia Bahinis, namely Peace committed [sic], Razakars, Al-Badr and Al-Shams in all over Bangladesh.”<sup>lxviii</sup> According to the Tribunal, as the Ameer of Jamaat-e-Islami, Gholam Azam exercised effective control over these auxiliary forces. The Court declined to specifically link the comments or actions of Gholam Azam to a particular Crime Against Humanity or act of Genocide, stating instead: “we hold that ‘nexus’ is not required to prove genocide and widespread killing when attack was directed against unarmed civilian population.”<sup>lxix</sup> Furthermore, the Tribunal concluded that the evidence submitted regarding atrocities committed by the Razakars and Al-Badr were sufficient to prove such a nexus if it were required.

The holding in Charge 4 is unusual because, while the Charge Framing Order alleged “complicity” in Crimes Against Humanity and Genocide, the Tribunal ultimately concluded that, “Ghulam Azam intentionally with awareness contributed to the

commission of crimes against humanity and genocide by *aiding, abetting and incitement* to the perpetrators ... as such he is found guilty for his complicity.”<sup>lxx</sup> The Judgment does not discuss the difference in legal requirements for proving aiding or abetting as compared to complicity, does not differentiate between complicity in Crimes Against Humanity or acts of Genocide, and does not acknowledge the fact that Gholam Azam was already found guilty of incitement under Charge 3 and conspiracy under Charge 1.<sup>lxxi</sup> Moreover, as with Charges 1-3, the Tribunal once again declined or neglected to identify whether the Court found Gholam Azam liable under Section 4(1) or Section 4(2). This discussion appears only later, under the section of the Judgment on conclusions and sentencing.<sup>lxxii</sup>

#### **CHARGE 5: MURDER AS A CRIME AGAINST HUMANITY**

Prior to articulating the holding of the Court, the Judgment does not discuss the legal standard for proving murder as a crime against humanity. However, in the holding, they state that, “even a single murder or killing or torturing one person constitutes an offence of crime against humanity if it is found to have been perpetrated as a part of attack targeting unarmed ‘civilian population.’”<sup>lxxiii</sup>

#### **Evidence in Support of Charge of Murder and Torture as Crimes Against Humanity**

Under Charge 5, Gholam Azam was accused of instructing Razakars to kill Siru Miah because he was a freedom fighter and supported the independence movement. According to these allegations, Siru Miah, Anwar Kamal, Nazrul Islam, Abul Kashem and others (totalling 38 persons) were killed at the instruction of Gholam Azam. The key evidence against Gholam Azam for the charge of murder was the testimony of Prosecution witness 13, Anwar Begum, the widow of Siru Miah; the testimony of Prosecution witness 11, fellow detainee Shafiuddin Ahmed; and the out-of-court statement of Mohsin Ali Khan, which was admitted under Section 19(2) of the act. The Prosecution had argued at trial that, after Anwar Begum’s husband and son were detained by the Razakars, she had requested Mohsin Ali Khan, who taught Gholam Azam’s sons in school, to ask Gholam Azam to order the release of Siru Miah and their son Anwar Kamal. In Mohsin Ali Khan’s statement he claimed that he had gone to Gholam Azam with this request, and was told that Siru Miah and the others had been captured because they were armed and were freedom fighters. Gholam Azam reportedly told him to come back two days later. When Mohsin Ali Khan returned, Gholam Azam reportedly took him to the Jamaat-e-Islami office, where PGA gave him a letter in a sealed envelope and instructed him to give it to Peyara Miah - the leader of the Brahmanbaria Peace Committee. According to the evidence presented at trial through testimony, Mohsin Ali Khan came back with the letter and gave it to Anwar Begum who then gave it to her brother, Fazlur Rahman, to take to Brahmanbaria. Fazlur Rahman gave the letter to Peyara Miah who then showed him (Fazlur Rahman) a previous letter sent by PGA instructing that the detainees should be killed. Peyara Miah told Fazlur Rahman that the new letter did not contain anything

new, and that Fazlur Rahman should go home. Ultimately the detainees were then killed. Fazlur Rahman is now deceased.

Neither of the letters allegedly written by Gholam was in evidence at trial, and none of the witnesses who testified had read either letter. The Defense argued at trial that the entire story of the letters had been fabricated, and that Gholam Azam never sent any letter, nor was he in any way involved in the detention and murder of Siru Miah or the other detainees. Nevertheless, the Court was convinced of the Prosecution's case. The Tribunal noted that the Prosecution presented 8 witnesses (numbers 7, 9, 11, 12, 13, 14, 15 and 16) in support of Charge 5. In the Judgment, they emphasized the importance of Prosecution witness 11's testimony. This witness, Shafiuddin Ahmed, had claimed that he was apprehended with Siru Miah and his son Anwar Kamal, and taken with them and the others to where they were killed. He detailed the events leading to their capture and torture at the army camp where they were held before being sent to Brahmanbaria jail. He also provided hearsay testimony stating that he found out after his release that Peyarah Miah had been a member of the Peace Committee, and that Anwar Begum had sent a letter from Gholam Azam asking for her husband and son to be spared.

The Tribunal further relied on Exhibit 523, the out-of-court statement of Mohsin Ali Khan, which was admitted into evidence under Section 19(2) of the Act, because Mr. Khan is now deceased. Addressing the probative value of such an unsworn, out-of-court statement, the Judgment concludes that, "the statement of a witness received under Section 19(2) of the Act, 1973 alone does not form the basis of conviction, but such statement may be used as corroborative evidence to prove a particular occurrence."<sup>lxxiv</sup> The Tribunal concluded that Mohsin Ali Khan's statement did in fact corroborate the evidence of another Prosecution witness—Siru Miah's widow, Anwara Begum—despite that fact that his statement did not disclose the contents of either the letter that Mr. Khan carried to Brahmanbaria, nor the one that Peyarah Miah claimed contained Gholam Azam's instructions to kill the detained freedom fighters.

The Tribunal concluded that Gholam Azam could have saved Siru Miah and the others by directing "his subordinate Peyara Miah, but he intentionally facilitated and substantially [sic] contributed in killing Siru Miah and 3 others by giving negative signal."<sup>lxxv</sup> Based on this, the Court found Gholam Azam guilty of murder as a crime against humanity, The Court appears to have assigned guilt pursuant to a mode of liability under Section 4(1), which provides for joint criminal liability where several individuals are responsible for the commission of a crime.<sup>lxxvi</sup>

#### **VIII. TRIBUNAL'S DISCUSSION OF COMMAND RESPONSIBILITY**

At trial, the Prosecution relied heavily on the doctrine of command responsibility in order to allege that Gholam Azam was responsible for atrocities committed by auxiliary forces during the war. They applied the doctrine to Charges 1 through 4. In response to this line of argument, the Judgment includes a section called "A Theoretical Discourse on

Command Responsibility and Civilian’s Superior Responsibility,” immediately after the sections pronouncing the Court’s findings on each of the charges,

In this section, the Court notes that the doctrine of Command Responsibility or Civilian Superior Responsibility are new to the ICT and to Bangladesh in general. As they summarize the doctrine, “Command responsibility is an umbrella term used in military and international law to cover a variety of ways in which individuals in positions of leadership may be held accountable.”<sup>lxxvii</sup> The Judgment asserts that International Law and International Humanitarian Law place an obligation on commanders to ensure that their subordinates respect the laws of conflict. They state that the doctrine was accepted as customary international law in 1977, when the Additional Protocol I of the Geneva Conventions was adopted. They also refer to the statutes of the ICTY, ICTR, and the ICC, which explicitly codify command responsibility.<sup>lxxviii</sup>

#### **ELEMENTS OF COMMAND RESPONSIBILITY**

Based on its reading of international law, the Judgment identifies four elements that must be proven in order to hold an individual responsible under the doctrine of command responsibility.

1. The commission of a crime under international law by someone other than the Accused;
2. The existence of a superior-subordinate relationship between the Accused and the perpetrator;<sup>lxxix</sup>
3. Proof that the superior knew or had reason to know that the subordinate was about to commit the crime, or had already done so;
4. Failure to take necessary and reasonable measures to prevent such crimes or to punish the perpetrator.<sup>lxxx</sup>

#### **CASE LAW ON COMMAND RESPONSIBILITY**

The Judgment discusses the development of the doctrine through international case law. The Court identifies the post-World War II trial of Japanese General Yamashita (by an American military tribunal) as one of the first applications of the doctrine. They conclude that cases such as these established a precedent in that, “not only military but also civilian authorities were found guilty of war crimes and crimes against humanity committed by underlings.”<sup>lxxxii</sup> The Tribunal takes particular note of the convictions of Prime Minister Tojo, and Foreign Ministers Hirota and Shigemitsu, who were convicted by the Tokyo tribunal despite being civilians. According to the Tribunal, these men were held responsible for “failure to take adequate steps to investigate the matter [reports of war crimes] ‘although he, as a member of government, bore overhead responsibility for the welfare of prisoners.’”<sup>lxxxii</sup>

Moving on from WWII jurisprudence, the Judgment also discusses contemporary international criminal courts. In addition to referencing the Statutes of the ICTY, ICTR and ICC, the Judgment discusses select case law from the ICTY and the ICTR. For

example, citing to the ICTR case of *Kayishema and Ruzindana* the Judgment asserts that “it is undisputed today that superior responsibility extends also to civilian political leaders, as Heads of State or party or Government officials or other civilians holding positions of authority.”<sup>lxxxiii</sup> In the *Gholam Azam* Judgment, the Tribunal defined the standard for finding liability under the doctrine of command responsibility as the exercise of “effective control,” meaning that the individual had “the material ability to prevent and punish the commission of offences.”<sup>lxxxiv</sup> The Court added that, while a chain of command or authority is a “necessary prerequisite,” a superior may also be held liable for the acts of those not directly subordinate to him.

Other contemporary international criminal law case relied upon by the Court in this case included the ICTY’s *Prosecutor vs. Aleksovski* (where defendants were convicted as de facto commanders of prison camps), and the ICTR’s *Prosecutor vs. Serushago* and *Prosecutor vs. Musema* (where civilian defendants were convicted under the doctrine of command responsibility for ordering attacks, rape, and murder). The Judgment also discusses the ICTR case against *Nahimana* at some length, noting the defendant’s role in establishing a radio station that was used to incite and direct atrocities. The Tribunal noted that the ICTR found *Nahimana* to have been a “superior” for the purposes of command responsibility liability. He was convicted for failing to take reasonable or necessary steps to prevent the incitement or to punish its perpetrators.<sup>lxxxv</sup>

Based on this case law, the *Gholam Azam* Judgment concludes that, “references from the ICTY and ICTR show that the doctrine of command responsibility is also applicable to the political leaders and other civilian superiors in position of authority.”<sup>lxxxvi</sup> However, the Tribunal did not address the fact that the standards of customary international law applied to the ICTR and ICTY cases were those in force in the 1990s. The Tribunal’s discussion of the jurisprudence contains no explicit analysis of the standard of customary international law as it stood in 1972. The Court acknowledged that the doctrine was not formally codified into an international legal instrument until 1977<sup>lxxxvii</sup>, but they do not present comment on the status of the doctrine prior to the adoption of the First Additional Protocol to the Geneva Convention (1977).

#### **EXISTENCE OF SUPERIOR-SUBORDINATE RELATIONSHIP**

Having embraced the standard of ICTY, ICTR, and other contemporary courts regarding the elements of the doctrine of command responsibility, this section of the Judgment delves more deeply into how one proves the existence of a superior-subordinate relationship. They focus in particular on the standard of “effective control.” The Tribunal refers to *Prosecutor vs. Delalic*, *Prosecutor vs. Oric*, *Prosecutor vs. Kordic*, *Prosecutor vs. Kayishema*, *Prosecutor vs. Aleksovski*, *Prosecutor vs. Musema*, and *Prosecutor vs. Nahimana* in support of the proposition that *de facto* control is sufficient to incur liability under command responsibility. They conclude that in the *Nahimana* case “ICTR found that *Nahimana* [sic] was ‘the brain behind the project’ and ‘the boss who gave orders.’”<sup>lxxxviii</sup> His membership in the RTLM Steering Committee (the Radio Station that broadcast calls for Genocide) gave him control over RTLM company finances and

“although RTLM was a private organization rather than a state organ, the ICTR could rely on the ‘trappings’ of de jure authority”<sup>lxxxix</sup> as grounds for finding that Nahimana had exercised “effective control” over subordinates who incited and directed Genocide.

### **KNOWLEDGE REQUIREMENT**

The Judgment also discusses the knowledge requirement for proving liability under the doctrine of command responsibility. They note that the standard traditionally was that a superior must have known or had reason to know that his subordinates were committing or were about to commit crimes. The Judgment then references but rejects the standard articulated in the Rome Statute of the ICC, which applies different knowledge requirements to military commanders and civilian commanders. Under the Rome Statute the Prosecution must show that a military commander knew or should have known that those under his command were committing or about to commit crimes, whereas civilian commanders must have known or consciously disregarded information that clearly indicated that the subordinates were committing or would commit crimes.<sup>xc</sup> In the *Gholam Azam* case, the Tribunal concluded that the ICC’s standard, “can not be said to be the part of customary international law.”<sup>xc<sup>i</sup></sup> Instead, defining the standard to be applied under the ICT Act, the Tribunal states that while Section 4(2) of the ICT Act is silent regarding the knowledge requirement, “it would be highly repugnant to common sense and natural justice to hold some one responsible for the crimes committed by his subordinates which was unbeknown [sic] to him.”<sup>xc<sup>ii</sup></sup> However, the Tribunal qualified this requirement by stating that, “knowledge is an abstract thing and there can not be any concrete proof or evidence to show that a particular thing was within someone’s knowledge. Hence the Tribunal has to infer the knowledge of the accused from the facts, circumstances and from the context of the case ... The burden is more upon the Tribunal to infer than on the prosecution to produce evidence specifically.”<sup>xc<sup>iii</sup></sup>

### **APPLICABILITY OF THE DOCTRINE TO CIVILIAN SUPERIORS**

The applicability of the doctrine of command responsibility is discussed both in the Tribunal’s summary of relevant case law, and separately as an interpretation of the ICT Act itself. The Tribunal rejected the Defense’s argument that the use of the words “superior officer,” instead of “superior,” indicated that the legislators did not intend section to be applied to civilian superiors. Instead, the Judgment concludes that, “the Act was not passed to prosecute the military officials only. Section 3(1) of the Act made it clear that this Tribunal got [sic] jurisdiction to try and punish any individual or group of individuals irrespective of his/her civilian or military status.”<sup>xc<sup>iv</sup></sup> Furthermore, the Tribunal concluded that, “the adaptation of civilian superior’s responsibility in numerous international instrument [sic] and through volumes of judgments from international tribunal [sic] it has now become part of customary international law that a civilian superior can be held responsible for the crimes committed by his subordinates.”<sup>xc<sup>v</sup></sup> The Tribunal again did not specify at what point in time civilian responsibility under the doctrine became part of international customary law.

### **THE STATUS OF GHOLAM AZAM**

The Judgment concludes that it is undisputed that Gholam Azam was the Ameer of the East Pakistan Jamaat-e-Islami between 1969 and 1971, and that he was a member of the 140 member Central Peace Committee, as well as of its executive committee. The Court refers to the testimony of Prosecution witnesses 1, 2, and 3 as supporting the conclusion that the Peace Committee “played a significant role in forming Militia Bahinis such as Razakar, Al-Badr, Al-shams [sic] and peace committees in collaboration [sic] with Pakistan occupation forces.”<sup>xxcvi</sup> They also note that Defense witness 1, the son of the Accused, admitted that his father was a member of the Central Peace Committee. Based on this, the Judgment concludes that, “the accused became an indispensable person as well as defacto administrator to run the civil administration of the then East Pakistan by virtue of his civil superior status.”<sup>xxcvii</sup>

The Defense had argued at trial that, even though Gholam Azam was the Ameer of Jamaat-e-Islami, the auxiliary forces of the Razakars, Al-Badr, and Al-Shams were not subordinate organs of Jamaat, and he did not have knowledge of or control over their activities. The Tribunal rejected this line of argument, referring instead to the government publication *Dalil Patra* and an issue of the *Daily Sangram* in support of the conclusion that Gholam Azam had previously admitted that the Razakar Bahini and Peace Committees were formed by people who belonged to Jamaat-e-Islami, and further, that “though the accused did not hold any portfolio of the government of Pakistan, nevertheless, he could make his party men ministers and he also used to send payment for forming para-military Bahinis to resist independence of Bangladesh.”<sup>xxcviii</sup>

The Judgment concludes that Gholam Azam exercised superior command in forming paramilitary groups with the members of Jamaat-e-Islami and its student wing Islami Chatra Sangha. The Court points to his identity as a religious leader as further ground for the finding that he had “command and control” over the auxiliary forces. According to the Judgment, the Defense “could not produce any document to show that the accused as a head of political party ever asked his subordinates not to kill any unarmed civilian or took disciplinary [sic] measure against any member of his party or subordinates to prevent him from committing crimes against humanity [sic] or genocide.”<sup>xxcix</sup>

The Tribunal noted that other courts had taken into account an individual’s superior status during sentencing. “Case law of the international criminal tribunals seems to dictate that the status of a superior will in itself be considered an aggravating factor.”<sup>xc</sup> Though the Tribunal does not make an explicit conclusion that Gholam Azam’s superior status was considered an aggravating factor in his sentencing, it appears likely, since this would be a logical reason for the tribunal’s lengthy precursor discussion of the doctrine of command responsibility.

## **IX. ROLE OF JAMAAT-E-ISLAMI IN THE WAR OF INDEPENDENCE**

A separate section of the Judgment was devoted to an assessment of the role of Jamaat-e-Islami in the war of 1971. In it, the Court declares, “we deem it indispensable to get a

scenario on the role and stand of the Jamaat-e-Islami in 1971, particularly when it established various militia Bahinis, names Peace Committee, Razakars, Al-Badrs, Al-shams and Al- Mujahed, etc. in association with Pakistan Army.”<sup>ci</sup> This section of the Judgment looks back on the involvement of Jamaat-e-Islami in the movement for partition between India and Pakistan in 1947, and then again during the movement for Bangladeshi independence. The Tribunal concludes that “it is gathered from facts of common knowledge and evidence on record that under the leadership of accused Prof. Ghulam Azam almost all the members of Jamaat-e-Islami along with its subordinate organs actively opposed the very birth of Bangladesh in 1971 and after 42 years, it is noticed that some of the anti-libeartion [sic] people are still staying in the helm of Jamaat-e-Islami.”<sup>cii</sup>

The Judgment makes some bold assertions in this section regarding the ongoing position of Jamaat-e-Islami in the democratic system of Banglades. For example, the Court writes:

“In the interest of establishing a democratic as well as non-communal Bangladesh ... no such anti-liberation people should be allowed to sit in the helm of Executives of the Governernment [sic], social or political parties including government and non-government organizations. We are of the opinion that the Government may take necessary steps to that end for debarring those anti-liberation persons from holding the said superior posts.”<sup>ciii</sup>

The Tribunal asserts that, on the basis of the documentary evidence submitted in the course of the trial, “we are led to observe that Jamaat-e-Islami as a political party under the leadership of accused Prof. Ghulam Azam intentionally functioned as a ‘Criminal Organisation’ especially during the War of Liberation of Bangladesh in 1971.”<sup>civ</sup> This conclusion is notable, as it is the first such finding by the ICT. The ICT Act was amended in 2013 to add “organizations” to the list of potential actors over which the Tribunal has jurisdiction. Additionally, this finding came at a time when court proceedings regarding the legitimacy of Jamaat-e-Islami’s registration as a political party were pending before a domestic court in Dhaka. On 2 August 2013 the Court declared that the political party’s charter was in violation of the country’s secular constitution and declared their registration illegal. This holding effectively makes it illegal for Jammat-e-Islami to field political candidates in elections, unless their charter is amended and they apply and are granted registration. Jamaat-e-Islami has appealed to the Supreme Court against the verdict. On 18 August 2013, the Tribunal began an official investigation into the political party, pointing to the potential trial of the party as an “organization” within Section 3(1) of the ICT Act.

## **X. CONCLUSION AND SENTENCING**

The Judgment concludes that the Prosecution successfully proved each of the five charges against Gholam Azam beyond a reasonable doubt. As mentioned above, the



Tribunal did not specify the mode of liability under which they found Gholam Azam guilty in their discussion of Charges 1-4. However, in their final section, “Verdict on Conviction,” they clarify this aspect by clearly applying the doctrine of command responsibility to these charges. For Charges 1 and 2 they find Gholam Azam guilty of “conspiracy and planning for involving [sic] himself in the commission of crimes as specified in Section 3(2) read with 4(2) of ICT Act of 1973.”<sup>cv</sup> Similarly, under Charge 3 Gholam Azam is found guilty of incitement of crimes specified in Section 3(2), as read with Section 4(2) of the ICT Act. The Tribunal also convicted the Accused of Charge 4 for complicity in the commission of crimes under Section 3(2) and liability under Section 4(2). He was convicted of Charge 5 under Section 4(1), rather than Section 4(2). These conclusions make it clear that the Tribunal relied heavily on the doctrine of command responsibility to finding Gholam Azam guilty.

The Judges of the Tribunal unanimously held, “that he [Gholam Azam] deserves the highest punishment i.e. capital punishment as provided under Section 20(2) of the ICT Act of 1973.”<sup>cvii</sup> However, they took into consideration the advanced age of Gholam Azam (91 years old at the time of the verdict), and the fact that he has been undergoing medical treatment for complications of age since the beginning of his detention. “These two aforesaid factors are considered by this Tribunal as extenuating circumstances for taking lenient view in the matter of awarding punishment.”<sup>cvii</sup> Ultimately, the Tribunal sentenced Gholam Azam to 20 years imprisonment for Charges 1 and 2; 20 years imprisonment for Charge 3; 20 years imprisonment for Charge 4, and 30 years imprisonment for Charge 5. In total the Tribunal sentenced him to 90 years imprisonment, as the sentences are to be served consecutively.

Both the Prosecution and the Defense have appealed the Judgment of Tribunal 1 in this case. The Prosecution argues that the sentence is not proportional to the crimes committed by Gholam Azam, and that it is unprecedented to display such leniency on the basis of age or illness. The Defense alternately continues to argue that Gholam Azam is innocent, that the trial was based on *malafide* intent, and that the evidence submitted is insufficient to prove the alleged crimes.

## ANNEX A: DOCUMENTARY EVIDENCE

<b>Prosecution Supporting Documents</b>	<b>Defense Supporting Documents</b>
Exhibit 2: <i>Daily Shangram</i> , 18 May 1971	Exhibit 1: A video clip of a talk show ‘Shoja Kotha’ aired by Desh TV on 14 May 2012
Exhibit 3: <i>Daily Shangram</i> , 19 June 1971,	Exhibit 2: A video clip of a program ‘Ronagoner Dinguli’ aired by BTV on 20 April 2012
Exhibit 4: <i>Daily Shangram</i> , 20 June 1971	Exhibit H: ‘Gibone Ja Dekhlam’ Vol-1, written by Gholam Azam
Exhibit 5/1: <i>Daily Shangram</i> , 22. June 1971,	Exhibit H1: ‘Gibone Ja Dekhlam’ Vol-3, written by Gholam Azam
Exhibit 6: <i>Daily Shangram</i> , 23 June 1971,	Exhibit DE: Excerpts of the ‘Deliberate Debacle’ by Safdar Mahmood
Exhibit 9: <i>Daily Shangram</i> , 19 July 1971,	Exhibit CY: An interview with the Daily Shangram on 19 November 2000
Exhibit 10: <i>Daily Shangram</i> , 03 August 1971,	Exhibit AH: An interview published in the Daily Shangram on 15 December 2011
Exhibit 11: <i>Daily Shangram</i> , 08 August 1971,	Exhibit BF: A telegram from ADC General of Moymonshingho dated 15 May 1971
Exhibit 13: <i>Daily Shangram</i> , 27 August 1971,	Exhibit BG: A direction given by SDO to the Circle Officer of the Police Station of Netrokona dated 15 May 1971
Exhibit 14: <i>Daily Shangram</i> , 28 August 1971,	Exhibit BH: A telegram sent by SDO to the Circle Officer of the Police Station of Netrokona dated 15 May 1971
Exhibit 15: <i>Daily Shangram</i> , 06 September 1971	Exhibit BI: A letter sent by Circle Officer of Mohonganj to the SDO of Netrokona dated 19 May 1971
Exhibit 16: <i>Daily Shangram</i> , 08 September 1971	Exhibit BJ: A letter sent by Circle Officer of Durgapur to the SDO of Netrokona dated 21 May 1971
Exhibit 17: <i>Daily Shangram</i> , 11 September 1971	Exhibit BK: A letter sent by Circle Officer of Barhatta to the SDO of Netrokona dated 23 May 1971
Exhibit 18: <i>Daily Shangram</i> , 12 September 1971	Exhibit BT: A letter of a DC of Moymenshingho sent to the Administrator of Netrokona dated 19 August 1971
Exhibit 19: <i>Daily Shangram</i> , 18 September 1971	Exhibit BM: Daily schedule of Koilati Union Peace Committee meeting held on 05-07-1971
Exhibit 20: <i>Daily Shangram</i> , 19 September 1971	Exhibit BN: Daily schedule of Medoni Union Peace Committee meeting held on 07-07-1971
Exhibit 22: <i>Daily Shangram</i> , 26 September 1971	Exhibit BO: Daily schedule of Lakhiganj Union Peace Committee meeting held on 08-07-1971
Exhibit 23: <i>Daily Shangram</i> , 04 October 1971	Exhibit BP: Daily schedule of Chollisha Union Peace Committee meeting held on 09-07-1971
Exhibit 25: <i>Daily Shangram</i> , 17 October 1971	Exhibit BQ: Daily schedule of Rawha Union Peace Committee meeting held on 12-07-1971
Exhibit 28: <i>Daily Shangram</i> , 24 November 1971	Exhibit BS: Daily schedule of Amtola Union Peace Committee meeting held on 13-07-1971
Exhibit 29: <i>Daily Shangram</i> , 26 November 1971	Exhibit CA: Gazette of Razakar Ordinance 1971, dated 07-09-1972
Exhibit 31: <i>Daily Shangram</i> , 29 November 1971	Exhibit CB: Documents on Razakars, their training,
Exhibit 33: <i>Daily Azad</i> , 05 April 1971	
Exhibit 34: <i>Daily Azad</i> , 06 April 1971,	
Exhibit 35: <i>Daily Azad</i> , 07 April 1971	
Exhibit 36: <i>Daily Azad</i> , 08 April 1971	
Exhibit 37: <i>Daily Azad</i> , 11 April 1971	
Exhibit 38: <i>Daily Azad</i> , 11 April 1971	
Exhibit 41: <i>Daily Azad</i> , 17 April 1971	
Exhibit 42: <i>Daily Azad</i> , 19 June 1971	
Exhibit 43: <i>Daily Azad</i> , 21 June 1971	
Exhibit 44: <i>Daily Azad</i> , 22 June 1971	
Exhibit 45: <i>Daily Azad</i> , 09 August 1971	
Exhibit 47: <i>Daily Azad</i> , 27 August 1971	
Exhibit 48: <i>Daily Azad</i> , 28 August 1971	
Exhibit 49: <i>Daily Azad</i> , 17 October 1971	
Exhibit 52: <i>Daily Pakistan</i> , 06 April 1971	
Exhibit 53: <i>Daily Pakistan</i> , 07 April 1971	
Exhibit 54: <i>Daily Pakistan</i> , 11 April 1971	
Exhibit 57: <i>Daily Pakistan</i> , 16 April 1971	
Exhibit 60: <i>Daily Pakistan</i> , 18 May 1971	
Exhibit 61: <i>Daily Pakistan</i> , 19 June 1971	
Exhibit 62: <i>Daily Pakistan</i> , 21 June 1971	
Exhibit 63: <i>Daily Pakistan</i> , 22 June 1971	
Exhibit 64: <i>Daily Pakistan</i> , 08 August 1971	
Exhibit 65: <i>Daily Pakistan</i> , 16 August 1971	
Exhibit 66: <i>Daily Pakistan</i> , 18 August 1971	
Exhibit 67: <i>Daily Pakistan</i> , 24 August 1971	
Exhibit 68: <i>Daily Pakistan</i> , 29 August 1971	

<p>Exhibit 69: <i>Daily Pakistan</i>, 01 September 1971  Exhibit 70: <i>Daily Pakistan</i>, 02 September 1971  Exhibit 71: <i>Daily Pakistan</i>, 06 September 1971  Exhibit 72: <i>Daily Pakistan</i>, 21 September 1971  Exhibit 77: <i>Daily Ittefaq</i>, 19 June 1971  Exhibit 83: <i>Daily Ittefaq</i>, 22 August 1971  Exhibit 84: <i>Daily Ittefaq</i>, 27 August 1971  Exhibit 85: <i>Daily Ittefaq</i>, 01 September 1971  Exhibit 97: <i>Daily Ittefaq</i>, 02 December 1971  Exhibit 99: <i>Daily Purbodesh</i>, 06 April 1971  Exhibit 100: <i>Daily Purbodesh</i>, 07 April 1971  Exhibit 101: <i>Daily Purbodesh</i>, 11 April 1971  Exhibit 103: <i>Daily Purbodesh</i>, 14 April 1971  Exhibit 105: <i>Daily Purbodesh</i>, 23 April 1971  Exhibit 106: <i>Daily Purbodesh</i>, 19 June 1971  Exhibit 108: <i>Daily Purbodesh</i>, 16 August 1971  Exhibit 111: <i>Daily Purbodesh</i>, 27 August 1971  Exhibit 112: <i>Daily Purbodesh</i>, 29 August 1971  Exhibit 113: <i>Daily Purbodesh</i>, 11 September 1971  Exhibit 114: <i>Daily Purbodesh</i>, 17 October 1971  Exhibit 116: <i>Daily Purbodesh</i>, 27 November 1971  Exhibit 167: <i>Daily Azad</i>, 12 April 1971  Exhibit 169: <i>Daily Paygam</i>, dated 22 May 1971  Exhibit 469: Police Abstract Report  Exhibit 481: Fortnightly Report dated 1<sup>st</sup> half of May 1971  Exhibit 487: Fortnightly Report dated 1<sup>st</sup> half of August 1971  Exhibit 488: Fortnightly Report dated 2<sup>nd</sup> half of August 1971  Exhibit 489: Fortnightly Report dated 1<sup>st</sup> half of September 1971,  Exhibit 492: Fortnightly Report dated 2<sup>nd</sup> half of October 1971</p>	<p>organizations, syllabus and general directions  Exhibit CH: Direction from GSO-2 regarding verification of Razakars dated 08-09-1971  Exhibit CM- CM72: List of armed Razakars, daily and weekly reports  Exhibit FY: A memo dated 25 May 1971 issued by the office of the SDO of Netrokona</p>
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## APPENDIX B: Chart of Evidence Supporting Charge 1

\* Prosecution witnesses 1, 2, 3 and 16 gave general testimony applicable to charges 1 - 4

Count	Supporting Evidence
1	<p><b>PW-1:</b> Mr. Muntaseer Mamun stated during his examination-in-chief that leaders of some political parties met with General Tikka Khan in the first week of April and that Peace Committee was formed on the recommendations and inspiration of Nurul Amin and GA.</p> <p><b>PW- 2:</b> Mahbub Uddin Ahmed Bir Bikrom stated that he came to know through newspaper reports after the war that GA, Khwaja Khairuddin and Nurul Amin met Tikka Khan and supported Operation Searchlight and planned to form Peace Committees throughout the country.</p> <p><b>PW-3:</b> Sultana Kamal in her examination-in-chief stated that she knew about the activities of the religious political parties in 1971 from reading various newspaper reports and that she heard that Gholam Azam used to meet General Tikka Khan to discuss how to maintain a unified Pakistan.</p> <p><b>PW-16:</b> The Investigation Officer, during his examination-in-chief stated that on 4<sup>th</sup> April 1971, Gholam Azam together with 12 other political leaders met Tikka Khan at Governor's House and decided to support the Pakistani Army.</p> <p><b>Exhibit 33:</b> a news report published in the <i>Daily Azad</i>, dated 5 April 1971, based on a news broadcast in Radio Pakistan. This Exhibit reports that Gholam Azam and various other political leaders met with General Tikka Khan.</p> <p><b>Exhibit 34:</b> a news report published in the <i>Daily Azad</i>, dated 6 April 1971, based on a press release issued by the Martial Law Authority. The report states that various political leaders, including Gholam Azam, met with General Tikka Khan and proposed to form a Citizens Committee with the goal of restoring normalcy and obtaining the confidence of the masses.</p> <p><b>Exhibit 52:</b> a photo showing a meeting between Gholam Azam and General Tikka Khan, published in the <i>Daily Pakistan</i>, dated 6<sup>th</sup> April 1971.</p> <p><b>Exhibit 99:</b> a news report regarding a speech by Mr. Nurul Amin which was broadcast by Radio Pakistan; and a photo of a meeting between Gholam Azam and General Tikka Khan, published in the <i>Daily Purbodesh</i>, dated 6<sup>th</sup> April 1971.</p>
2	<p><b>PW-2:</b> Mahbub Uddin Bir Bikrom stated during his examination-in-chief that Gholam Azam met with General Tikka Khan. He did not specify the date of the meeting.</p> <p><b>Exhibit 35:</b> a news report published in the <i>Daily Azad</i>, on 7 April 1971, based on a "Government Hand-Out".</p> <p><b>Exhibits 35, 53 and 100:</b> news reports stating that Gholam Azam and other political leaders assured Pakistan of their full cooperation in the restoration of normalcy in the region. They also expressed their concerns regarding Indian aggression and assured the Pakistani Army of assistance in destroying the Indian conspiracy.</p>
3	<p><b>Exhibit 479:</b> Fortnightly Report dated 1<sup>st</sup> half of April 1971. According to paragraph 12 of Exhibit 479, a meeting of East Pakistan Peace and Welfare steering committee was held in Dhaka in which members took an oath dedicating themselves to the cause of promoting Islam and preserving the integrity and sovereignty of Pakistan. The meeting outlined policies and programs to regain confidence of the people and to restore normalcy in the region and to organize people to fight against Indian aggression.</p>
4	<p><b>Exhibit 4:</b> a news report published in the <i>Daily Sangram</i>, dated 20 June 1971, showing that Gholam Azam met with President Yahya Khan and thereafter, at a press conference, stated that power could not be transferred to the people in East Pakistan until there was a restoration of normalcy.<sup>cvi</sup> He also stated that the two wings of Pakistan must be united on the basis of the ideology underpinning the creation of Pakistan, the shared religious identity of Islam.</p>
5	<p><b>Exhibit 62:</b> a news report published in the <i>Daily Pakistan</i>, dated 21 June 1971, shows that Gholam Azam addressed a press conference and stated that due to the undemocratic regime of</p>

	Ayub Khan the people of East Pakistan had departed from the ideology of Pakistan, leading to a growing separatist attitude in East Pakistan. According to the last paragraph of the Exhibit, Gholam Azam met President Yahya Khan at Rawalpindi and Syed Abul Ala Maududi in Lahore during his visit.
6	<b>Exhibit 97:</b> a news report published in the <i>Daily Ittefaq</i> , dated 2 December 1971, which states that after the 70 minute meeting with president Yahya Khan, Gholam Azam gave a press statement that he had advised the President to eliminate all injustices and to restore the confidence of the people of East Pakistan. He also demanded an increase in the number of Razakars to combat the armed freedom fighters.

## APPENDIX C: Chart of Evidence Supporting Charge 2 – Planning

\* Prosecution witnesses 1, 2, 3 and 16 gave general testimony applicable to charges 1 - 4

Count	Supporting Evidence
1	<p><b>PW- 1:</b> Muntaseer Mamun stated that the formation of the Peace Committees, Razakars, and Al Badr forces was planned by political parties including Jamaat-e-Islami.</p> <p><b>PW- 2:</b> Mahbub Uddin Bir Bikrom stated that he read in newspaper reports published after the war that Gholam Azam and others had met General Tikka Khan and planned to form Peace Committees.</p> <p><b>Exhibit 33:</b> a report from the <i>Daily Azad</i>, 5 April 1971, stating that Gholam Azam and other political party leaders met General Tikka Khan on 4 April, 1971.</p> <p><b>Exhibit 34:</b> a report from the <i>Daily Azad</i>, 6 April 1971, based on a press release issued by the Martial Law Authority. States that Gholam Azam and other political leaders proposed the formation of Peace Committees with the goal of restoring normalcy in the region and eliminating fear and anxiety from the minds of the people.</p>
2	<p><b>Exhibit 37:</b> a report in the <i>Daily Azad</i>, 11 April 1971, stating that Peace Committees would be formed in various unions and villages with the purpose of restoring normalcy in the province.</p> <p><b>Exhibits 101 and 167:</b> news reports in the <i>Daily Purbodesh</i>, 11 April 1971, and the <i>Daily Paygam</i>, 12 April 1971, stating that a Peace Committee of 140 members had been formed with the purpose of restoring normalcy in the country.</p>
3	<p><b>Exhibit 481:</b> a Fortnightly Report on the political situation published by the government in the first half of April 1971, showing that a meeting was held at the residence of Mr. A.Q.M Shafiqul Islam during which resolutions were adopted demanding the protection of life and property for the general public against the “miscreants.”</p> <p><b>Exhibit 457:</b> East Pakistan Police Abstract of Intelligence, Dhaka, for the week ending 8 May 1971, showing that a meeting was held at the residence of A.Q.M Shafiqul Islam where the participants discussed the formation of Peace Committees in different Unions of Dhaka City for the restoration of complete normalcy and the proposed observance of Eid-i-Milad-un-Nabi</p>

## APPENDIX D: Chart of Evidence Supporting Charge 3, Incitement

\* Prosecution witnesses 1, 2, 3 and 16 gave general testimony applicable to charges 1 – 4.

Count	Supporting Evidence
1	<p><b>PW 1:</b> also stated that Gholam Azam incited Peace Committee members in the commission of atrocities, including raping and attacking members of the Hindu community and the Awami League.</p> <p><b>PW 16:</b> in his deposition stated that Gholam Azam used to make statements and speeches inciting commission of atrocities.</p> <p><b>Exhibit 36: newspaper article detailing</b> a joint statement in which Gholam Azam expressed his belief that the patriotic citizens of East Pakistan would ‘destroy’ the Indian infiltrators wherever they see them and that the people of East Pakistan would never allow Indian infiltrators to interfere with the sovereignty of Pakistan</p>
2	<p><b>Exhibit 38, 54, and 102:</b> newspaper articles reporting on a speech given by Gholam Azam on Radio Pakistan in which he stated that “we should be the architect of our own future,” and warned that India should not interfere in the freedom of the country. He stated that he believed India would not receive any assistance from the Muslims of East Pakistan.</p>
3	<p><b>Exhibit 105:</b> newspaper article reporting on a press release of the Central Peace Committee issued by Khwaja Khaeruddin dated 22 April 1971, in which they called upon the patriotic people of the then East Pakistan to protest against all subversive activities and to cooperate with the armed forces. They urged them to assist the Pakistan Army, so that the country may be freed of ‘anti-state elements’ and ‘miscreants.’ People were advised to meet the Army with national flags to identify themselves as supporters of Pakistan.</p>
4	<p><b>Exhibit 481:</b> Fortnightly Report from the 1<sup>st</sup> Half of May, 1971. shows that Gholam Azam was present at a meeting of Jamaat-e-Islami on 2 May 1971 where he addressed the party workers stressing on the need of Islamic education and social justice and also opined that the two wings of Pakistan could be kept tied only through Islamic ideology. Resolutions were also adopted demanding protection of life and property against the “miscreants.”</p>
5	<p><b>Exhibits 2 and 60:</b> news reports that Gholam Azam attended a meeting on 17 May 1971 where a resolution was adopted praising the Pakistan Army for its response to the crisis created by the anti-state activities of “duskritikaris” and the banned Awami League. At the meeting, the view was expressed that the Islamic parties should be united in assisting the Pakistan Army to take actions against the ‘traitors of Pakistan’. It was also urged that every patriotic person should trace out ‘miscreants’ and seek to restore normalcy in the province. A proposal was also made for certain individuals, including Gholam Azam, to be made members of the Provincial Peace Committee.</p>
6	<p><b>Exhibit 169:</b> newspaper article reporting that, during a gathering organized by the Central Peace Committee in Mohammadpur, Jamaat leader Maj. Gen. Rtd. Omrao Khan praised the role of the Army in responding to the crisis. It was reported that Gholam Azam and others were present there and at other similar meetings in Mirpur, Lalbagh, Chawk, Lalmatia and Thatari Bazar. It was also reported that Gholam Azam gave speeches urging the leaders of Jamaat-e-Islami and all of Pakistan to protect the nation against separatists and their Indian associates.</p>
7	<p><b>Exhibit 5:</b> a newspaper report of an interview of Gholam Azam with a journalist of <i>Daily Jasarat</i>, published from Karachi. He called on the people of West Pakistan not to be confused by the propaganda of the enemy and stated that as muslims East Pakistan would never leave Pakistan. He requested people to understand th situation in East Pakistan and provide assistance for resolving the problems. He called the Awami League a fascist group and stated that President Yahya Khan had introduced a legal structure for maintaining the security of the country as well as Islamic ideology.</p>
8	<p><b>Exhibit 6:</b> newspaper article including a statement by Gholam Azam where he called upon all to oppose the “duskritikari,” “miscreants,” and “anti-state elements.” He praised the Pakistani</p>

	Army for saving Pakistan from destruction and invited all to cooperate with the authorities for the restoration of normalcy.
9	<b>Exhibit- 469:</b> East Pakistan Police Abstract from 18 July 1971 reporting that a Peace Committee meeting was held in Brahmanbaria and that Gholam Azam and other leaders gave speeches urging the audience to safeguard the integrity of Pakistan.
10	<b>Exhibit 9:</b> a newspaper article reporting on a speech given by Gholam Azam before a gathering of the local Peace Committee stating that separatists were relying on the assistance of India. He claimed that there was no evidence of Hindus being friends of Muslims and claimed that muslims were killed everyday in India. He also stated that Hindus had created divisions among muslims in Bangladesh by creating the question of Bengali (Bangla speaking) and non-Bengali identity.
11	<b>Exhibits 10:</b> a newspaper article reporting that Gholam Azam made a speech stating that the war was not only one of arms but also of ideals and that victory was essential to protect Islam and preserve the unity of the country. <b>Exhibit 487:</b> (Fortnightly Reports on Political situation), Report of comments by Gholam Azam and others discussing the importance of Islamic education and the need for framing a Constitution based on Islamic ideology. Following the conference there was a procession calling for an Islamic Constitution and university, and condemning secular education and alleged Indian imperialism.
12	<b>Exhibit 487:</b> Fortnightly Report for the 1 <sup>st</sup> Half of August, 1971, reporting that the District Branch of Jamaat-e-Islami held a meeting in Khulna Municipal Hall where Gholam Azam and others made speeches criticizing Sheikh Mujibur Rahman for leading a secessionist movement. Gholam Azam exhorted the audience to unite under the banner of Jamaat-e-Islami and to rout the miscreants and secessionists and pleaded for the establishment of Islamic rule in the country on the basis of the Quran and Sunnah.
13	<b>Exhibits 11, 45 and 62:</b> newspaper articles reporting on a workers conference held by Jamaat-e-Islami in Kushtia in which Gholam Azam called upon the common people to maintain constant communications with the Peace Committees and the establishment in order to remain vigilant against ‘miscreants’ and to resist ‘anti-state elements’. Additionally he made statements warning the people to stand against India’s attempts to destroy Pakistan and to be careful of Indian design. <b>Exhibit 488:</b> Fortnightly report, stating that Gholam Azam made remarks that Sheikh Mujibur Rahman had entered into an alliance with India, betraying the common people. He stated that the Azad movement had been against Hindu domination.
14	<b>Exhibits 12, 46, 65 and 108:</b> reporting that Gholam Azam made a statement that the 25 <sup>th</sup> anniversary of Azad Day was even more significant given the turmoil of the nation. He urged the people to show their respect and love towards Islam and Pakistan’s solidarity. He stated that the unity of Pakistan was being threatened by internal and external enemies.
15	<b>Exhibit 46, 65 and 108:</b> reporting on a symposium held at Karzon Hall celebrating Azad Day during which Gholam Azam made statements about the important role played by the Peace Committee in protecting the nation from separatists. He also emphasized the importance of identifying the rebels. He said those Bengalis who fail to understand that the demands of the Bengali Muslims must be fulfilled within the framework of united Pakistan have no right to remain in the country and should leave for India.
16	<b>Exhibit 109 and 66:</b> newspaper articles containing statements by Gholam Azam that India had imposed war upon Pakistan and that they must respond by war as well. He accused India of supplying arms and ammunitions to miscreants in East Pakistan and were sending armed insurgents to divide Pakistan necessitating an armed attack by Pakistan upon India.
17	<b>Exhibit 67 (The Tribunal refers to the same article as Exhibit 51):</b> newspaper article reporting on a reception organized for the leaders of Jamaat-e-Islami during which Gholam Azam made a statement that many Jamaat members have lost their lives at the hands of the



	miscreants because they supported the unity of Pakistan. Gholam Azam stated that only Jamaat had perservered in holding meetings around the country despite the threats from the Awami League and separatists. in the face of threat and ‘gundami’ of Awami League.
18	<b>Exhibits 14, 48, 112 and 68:</b> newspaper articles reporting on a local town hall meeting in Pesowar during which Gholam Azam made statements that the damage caused by the separatists could not be undone by mere nationalist slogans. He called for sending arms through routes of East Pakistan including Akhaura, Chuadanga, and Brahminbaria. Additionally Gholam Azam made statements urgin the people of Pakistan and members of the Peace Committee to uphold the ideals of Pakistan and sacrifice their lives to oppose internal or external attacks.
19	<b>Exhibits 15 and 71:</b> showing a statement by Gholam Azam inviting the people to remain committed to the ideals of Pakistan and to sacrifice their lives against internal or external attacks on the nation. Gholam Azam refers to the Indo-Pak war in 1965 and the sacrifices made in protecting the sovereignty of Pakistan against Indian attacks.
20	<b>Exhibit 16:</b> newspaper article containing an interview with Gholam Azam in which he said that Jamaat members are bound to protect the country and should become part of the Razakar force in order to defend the place of Islam and muslims in East Pakistan.. He also stated that the country has to be freed from ultra nationalists/fascism.
21	<b>Exhibit 489 (Fortnightly report):</b> reporting statements by Gholam Azam and others, praising the sacrifice of Maulana Al Madani for the cause of Islam. Resolutions were also adopted during a meeting condemning the killing of the Maulana and branding the supporters of rebels as enemies of Islam.
22	<b>Exhibit 18:</b> including a statement in which Gholam Azam, addressing members of the Islami Chattro Shangho and applauding their organization of an exhibition commemorating the life and work of the father of Pakistan. He also stated that the activists of the organization would be able to protect the integrity of Pakistan as was done during the movement for Pakistan.
23	<b>Exhibit 19:</b> article stating that Gholam Azam visited the Razakar camp in Mohammadpur, Physical Education Center, and stated that the attack on Madrasa students and religious scholars had forced them to join Razakar, Mujahid and police forces in order to defend themselves.
24	<b>Exhibit 22:</b> newspaper article reporting that Gholam Azam made statements at a reception organized by the Dhaka City Unit of Jamaat-e-Islami that many members of Jamaat have died as a result of the destructive activities of the miscreants and that Jamaat members were putting their lives at risk to uphold the existence and unity of Pakistan and to establish peace and security across the country. He commented that Jamaat supporters know that if Pakistan does not exist they will not be able to live and that therefore they are working to establish peace and security in the country.
25	<b>Exhibit 491, 23, 86:</b> Fortnightly report for 1 <sup>st</sup> Half of October, 1971 reporting on a three day conference of the Majlish-e-Sure of East Pakistan Jamaat-e-Islami. Reported that Gholam Azam made statements urging the audience to defend Pakistan and her ideology. It was decided that Jamaat would participate in the upcoming bi-elections and formed a committee including Gholam Azam to consider the nomination of party candidates. Resolutions were adopted demanding a Constitution based on the Quaran and the Sunnah and for the removal of disparity and the spending of foreign earnings in East Pakistan until disparity was removed. It was also reported that Gholam Azam said that if they failed to defend the country, they would fail to protect their ideology. He also invited all to prepare themselves for all kinds of sacrifices to protect their homeland created on the basis of an ideology to which they subscribed.
26	<b>Exhibit 28:</b> including a statement by Gholam Azam that in order for Pakistan to survive, it would have to adopt an aggressive and offensive position and that this would be the best mode of self defense for Pakistan. He also demanded that all peace loving citizens, Peace Committee members, Razakars should be equipped with modern arms and ammunition in order to keep the peace in East Pakistan.
27	<b>Exhibit 29:</b> showing that Gholam Azam called on President Yahya to attack India in response

	to the all out attack of India on the then East Pakistan.
28	<b>Exhibit 97:</b> including a statement by Gholam Azam that the freedom fighters were enemy forces and the Razakars were sufficient to resist them and he also demanded an increase in the number of Razakar members.

## APPENDIX E: Chart of Evidence Supporting Charge 4 – Complicity

\* Prosecution witnesses 1, 2, 3 and 16 gave general testimony applicable to charges 1 – 4.

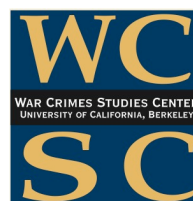
Count	Supporting Evidence
1	<p><b>PW-1:</b> stated that Gholam Azam incited/instigated Peace Committee members in the commission of atrocities, including raping and attacking members of the Hindu community and the Awami League, thereby indicating GA's complicity in the commission of offences under Section 3(2) of the Act.</p> <p><b>PW-3:</b> in her Deposition stated that Gholam Azam used to support and assist the Pakistan Army in the commission of atrocities. PW-3 then goes on to say that she has come to know of such support and assistance from news reports and radio speeches.</p> <p><b>PW-16:</b> in his deposition stated that Gholam Azam used to make statements and speeches inciting and instigating commission of atrocities, thereby indicating GA's complicity in the commission of offences under Section 3(2) of the Act.</p> <p><b>Exhibit 34:</b> reporting that Gholam Azam met with General Tika Khan as part of a twelve member delegation that proposed the constitution of a citizen's committee to restore normalcy and eliminate fear and anxiety from the minds of the people.</p>
2	<p><b>Exhibits 35, 53 and 100:</b> referring to a government press release issued by the Martial Law Administration and reporting that Gholam Azam and several other leaders met General Tikka Khan separately on 6 April 1971 where a proposal was made for cooperating with the administration to restore normalcy. In the press release, it has also been stated that the leaders expressed concern regarding Indian aggression in the internal affairs of Pakistan and the activities of armed infiltrators in the territory of Pakistan. According to the press release, the leaders also stated that the patriotic people of the Province would assist the armed forces in destroying the Indian conspiracy.</p>
3	<p><b>Exhibit 37:</b> reporting that a 140 member Citizen's Peace Committee has been constituted with Khwaja Khaeruddin as its Convener. It was also stated that Peace committees will be formed at union and mahalla levels in Greater Dhaka under the aegis of the Citizens Peace Committee. Gholam Azam's name is mentioned as one of the members of the Citizens Peace Committee.</p>
4	<p><b>Exhibits 57 and 41:</b> reporting that the Citizens Peace Committee was renamed as Central Peace Committee which was tasked with restoration of normalcy in the region so that people from all walks of life could return to their respective professions. It was also decided at the meeting that Peace Committees would be constituted at the district and mahakuma levels. A 21 member Working Committee was also formed of which Gholam Azam was a member.</p>
5	<p><b>Exhibit 169:</b> reporting that the meeting was addressed by Choudhury Rahmat Ali and Major General (Retd.) Umrao Khan.</p>
6	<p><b>Exhibit 3, 42, 106, 61 and 77:</b> reporting that Gholam Azam did not support the transfer of power to the National Assembly elected in East Pakistan as the National Assembly was not in existence any more. Gholam Azam also stated that he would make several demands to the President for the development of the then East Pakistan. Gholam Azam then stated that miscreants were still carrying out their destructive activities, that their task is to create anarchy and to attack those who were in favor of united Pakistan and that they were a threat to such pro-Pakistan citizens. He also stated that the situation can be controlled only by apprehending the true criminals.</p>
7	<p><b>Exhibit 4:</b> reporting that Gholam Azam made a demand for supplying arms and ammunition to patriotic citizens of Pakistan so as to resist the 'miscreants'. He also stated that miscreants were small in number but they were armed and were carrying out their destructive activities.</p>
8	<p><b>Exhibit 6:</b> reporting that Gholam Azam stated that the miscreants were involved in their destructive activities and that the patriotic citizens should be armed in self-defense.</p>

9	<b>Exhibit 5/1, 44 and 63:</b> reporting that Gholam Azam praised the Pakistan Army for destroying the separatist movement in East Pakistan and further stated that the disintegration of Pakistan could not have been avoided without the intervention of the Pakistan Army.
10	<b>Exhibit 6:</b> reporting that Gholam Azam called for banning of the political parties which had initiated and instigated the separatist movement. Gholam Azam also called upon all to resist the miscreants and the anti-state elements so that normalcy could be restored in the country. He also praised the Pakistan Army for saving the country from destruction and invited all to cooperate with the military authorities.
11	<b>Exhibits 488 (Fortnightly Reports) and 11:</b> reporting that Gholam Azam made a statement calling upon the ordinary people to maintain constant communications with the Peace Committees and the establishment in order to remain vigilant against ‘miscreants’ and to resist ‘anti-state elements.’
12	<b>Exhibit 83:</b> refers to a resolution of the Central Council of Jamaat-e-Islami supporting the steps taken by the Pakistan government in quelling the armed rebellion of the Awami League acting as agents of the Indians.
13	<b>Exhibits 13, 47, 111 and 84:</b> reporting that Gholam Azam at a press briefing stated that the Pakistan Army had saved Pakistan from the ‘Mir Zafar’ rebels of Pakistan and the evil motives of India. Gholam Azam also stated that the people of East Pakistan will provide full support to the armed forces to destroy the ‘miscreants’ and the ‘infiltrators’. He also referred to the leaders and members of the Awami League as ‘fascists’ stating that the Awami League members had resorted to violence to compel the people of East Pakistan to vote in their favor. Gholam Azam also stated that the people of East Pakistan had not rebelled. Rather, according to him, it was the members of Awami League who had rebelled and that they had sought to ‘break-up’ Pakistan with the help of India.
14	<b>Exhibits 48, 112 and 68:</b> reporting that Gholam Azam stated that the damage caused by the party of separatists cannot be remedied merely by chanting slogans. Gholam Azam also praised the Pakistan Army for the role played by them in preserving the unity of Pakistan. He also stated that those who had been in the leadership of the Pakistan Movement cannot ever demand separation. Gholam Azam also stated that a vested quarter in collusion with India was involved in arson, looting and violence in the country and it is they who want East Pakistan to be separated. Gholam Azam also stated that in order to assist the separatists of the banned Awami League, India was smuggling in infiltrators and arms and explosives into the country through Akhaura, Chuadanga and Brahmanbaria. He further stated that once the Pakistan Army commenced operations, the infiltrators and the miscreants had fled.
15	<b>Exhibit 85 and 69:</b> reporting that Gholam Azam demanded that the patriotic citizens of Pakistan should be strengthened as they are not only helping to control the situation in Pakistan but also assisting the Army and the administration in resisting the anti-state activities of miscreants and rebels. Gholam Azam also praised the Pakistan Army for preserving the unity of Pakistan.  In Exhibit 85, it is seen that Gholam Azam stated that the Jamiat-e-Tolaba Arabiya and Islami Jamiat-e-Talaba were playing an important role in resisting the destructive activities of the miscreants and the infiltrators. He also praised the Army for saving the country from the hands of the separatists.
16	<b>Exhibit 70:</b> reporting that Gholam Azam expressed gratitude towards the Pakistan Army for preserving the unity of Pakistan and providing security to its people. He also stated that a good Muslim cannot support the Bangladesh Movement. He also stated that in order to eliminate the separatists, dedicated and patriotic people were working together. He also praised the Razakar forces.
17	<b>Exhibit 489 (Fortnightly Reports):</b> reporting that Gholam Azam attended a meeting where participants stressed on the necessity of strict Government measures for restoration of normalcy by

	eliminating the rebels and anti-social elements.
<b>18</b>	<b>Exhibits 17, 113 and 489:</b> reporting that Gholam Azam demanded inclusion of competent persons in the Pakistan delegation to the General Assembly of the United Nations so that they can adequately address the concerns of other countries.
<b>19</b>	<b>Exhibits 20 and 72:</b> reporting that Gholam Azam congratulated the freshly constituted Cabinet stating that the newly appointed Ministers would have to work towards bringing back a sense of normalcy to the country. He also expressed the hope that the Cabinet would play an important role in the restoration of normalcy and the re-establishment of democracy.
<b>20</b>	<b>Exhibit 22:</b> reporting that Gholam Azam stated that many members of Jamaat-e-Islami had lost their lives as a result of the destructive activities of ‘miscreants’. He also said that just as the Peace Committees were working towards restoration of normalcy, the newly inducted Ministers in the Cabinet would also work towards achieving the same goal.
<b>21</b>	<b>Exhibits 25, 49, 114 and 492:</b> reporting that Gholam Azam stated that it was essential to preserve the unity of Pakistan in order to protect the rights of Bengali Muslims. He gave an account of how the rights of Bengali Muslims have been exploited in the past and demanded the framing of a federal Constitution based on Islamic social order and maximum regional autonomy within the framework of united Pakistan. He also criticized Sheikh Mujb for his lack of foresight and control of his followers, particularly, the extremists who raised the slogan of ‘Bangladesh’.
<b>22</b>	<b>Exhibit 116:</b> reporting that Gholam Azam demanded that Razakars should be equipped with modern ammunition so that they can eliminate the miscreants.
<b>23</b>	<b>Exhibit 31:</b> reporting that Gholam Azam stated that the United Coalition Party (UCP) was dedicated towards preserving the ideology and sovereignty of Pakistan. He also demanded that the President visit the then East Pakistan so as to make more effective use of the support of the patriotic citizens of the then East Pakistan. He also stated that members of the UCP and the Razakar forces were sacrificing their lives to save the country.

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- <sup>i</sup> See *Special Report Issue #3: Chief Prosecutor vs. Gholam Azam Case Summary*, available at: <http://wp.me/p2ONme-IT>
- <sup>ii</sup> The Charge Framing Order is equivalent to an Indictment specifying the charges and the prima facie case against the accused as presented by the Prosecution.
- <sup>iii</sup> See our coverage of the rejection of the Defense Application for Retrial here: <http://bangladeshtribunalobserver.org/2013/01/04/3-january-2012-tribunal-1-daily-summary-rejects-application-for-retrial-in-sayedee-golam-azam-and-nizami-cases/>
- <sup>iv</sup> Charge Framing Order, Chief Prosecutor vs. Professor Gholam Azam, available at: <http://bangladeshtribunalobserver.org/chart/>
- <sup>v</sup> See below Section VIII for a full discussion of the Tribunal’s finding regarding command responsibility.
- <sup>vi</sup> A full list of the Prosecution and Defense Exhibits is included at the end of this report as Annex A.
- <sup>vii</sup> A full list of the Prosecution and Defense Exhibits is included at the end of this report as Annex A.
- <sup>viii</sup> *Chief Prosecutor vs. Professor Gholam Azam*, Judgment, para 32.
- <sup>ix</sup> *Chief Prosecutor vs. Professor Gholam Azam*, Judgment, para 41.
- <sup>x</sup> *Ibid.* para 45.
- <sup>xi</sup> Judgment, para 43.
- <sup>xii</sup> *Ibid.*
- <sup>xiii</sup> In the Sayedee Judgment the Tribunal additionally cited to the ICTY case of *Tadic* in support of their assertion that an attack on the civilian population implies a widespread or systematic attack. *Chief Prosecutor vs. Sayedee*, Judgment, para 30(3).
- <sup>xiv</sup> *Sayedee*, Judgment, para 30(3).
- <sup>xv</sup> *Gholam Azam*, Judgment, para 50.
- <sup>xvi</sup> For a more detailed discussion of the constitutional prohibition on challenges to the act please see *Special Issue #1: Sayedee Verdict*, available at: [special-issue-report-close-examination-of-the-sayedee-judgment](http://bangladeshtribunalobserver.org/special-issue-report-close-examination-of-the-sayedee-judgment)
- <sup>xvii</sup> *Gholam Azam*, Judgment, para 58.
- <sup>xviii</sup> *Gholam Azam*, Judgment, para 44.
- <sup>xix</sup> For detailed discussion of the Prosecution’s reliance on the doctrine of command responsibility in presenting its case, please see *Special Report Issue #3: Chief Prosecutor vs. Gholam Azam Case Summary*, available at: <http://bangladeshtribunalobserver.org/2013/07/02/special-report-issue-3-chief-prosecutor-vs-gholam-azam-case-summary/>
- <sup>xx</sup> *Ibid.* para 134.
- <sup>xxi</sup> *Ibid.*, para 93. The Tribunal does not cite this language as being that of the English law.
- <sup>xxii</sup> *Ibid.* (formatting of the quote reflects that in the judgment.)
- <sup>xxiii</sup> *Ibid.*, para 95.
- <sup>xxiv</sup> *Ibid.*
- <sup>xxv</sup> The Judgment does not provide a citation for the *Musema* case. It is unclear if they are referring to the Trial or Appellate judgment, or an interlocutory decision.
- <sup>xxvi</sup> *Chief Prosecutor vs. Gholam Azam*, Judgment, para 97.
- <sup>xxvii</sup> *Ibid.* While the Tribunal uses quotation marks it does not provide a citation for these statements.
- <sup>xxviii</sup> Nuremberg Trial Proceedings Vol. 1, Indictment: Count 1, Section III, Statement of the Offense, ; available at <http://avalon.law.yale.edu/imt/count1.asp/>
- <sup>xxix</sup> International Military Tribunal at Nurember, Judgment, The Law as to the Common Plan or Conspiracy.
- <sup>xxx</sup> A chart of the evidence cited by the Tribunal in support of Charge 1 is included as Annex B.
- <sup>xxxi</sup> *Chief Prosecutor vs. Gholam Azam*, Judgment, para 98.
- <sup>xxxii</sup> *Ibid.*, para 100.
- <sup>xxxiii</sup> *Ibid.*, para 99
- <sup>xxxiv</sup> The citation provided by the Tribunal is: Naletilic Trial Judgment (IT-98-34)
- <sup>xxxv</sup> The Tribunal’s language regarding the “nexus” is unclear in the Judgment. It appears that by “nexus” they mean both that no evidence of a widespread or systematic attack is necessary given their judicial notice of the fact that the war itself constituted such an attack. In addition, in the Judgment and in relation to arguments in court, “nexus” is also used to refer to the requirement that in an inchoate crime the Prosecution show that the act of the Accused actually led to the ultimate commission of a crime. This is the approach taken by the Tribunal with regard to Charge 4 – complicity. See paragraphs 47, 48, 65, 288, and 289.
- <sup>xxxvi</sup> A chart of the evidence submitted in support of Charge 2 is included at the end of this document as Annex C.
- <sup>xxxvii</sup> *Chief Prosecutor vs. Gholam Azam*, Judgment, para 121.
- <sup>xxxviii</sup> *Ibid.* para 127
- <sup>xxxix</sup> *Ibid.*, para 122.

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- <sup>xi</sup> *Ibid.*, para 131.
- <sup>xlii</sup> *Ibid.*, para 132.
- <sup>xliii</sup> *Ibid.*, para 133.
- <sup>xliiii</sup> *Ibid.*, para 134. The language in this sentence: “substantially contributed” coincides with the standard for aiding and abetting, which was not charged in the Charge Framing Order.
- <sup>xliv</sup> *Ibid.* The newspaper articles submitted by the Prosecution do not state that Gholam Azam claimed that the Razakars should be armed in order to “annihilate pro-liberation people,” this appears to be the Tribunal’s inference.
- <sup>xlv</sup> The Tribunal discusses this at length in para 97. The crime of conspiracy to commit Genocide requires that the perpetrator not only have the intent to form the agreement, but also the intent to commit genocide itself.
- <sup>xlvi</sup> *Chief Prosecutor vs. Gholam Azam*, Judgment, para 137.
- <sup>xlvii</sup> A chart of the evidence submitted in support of Charge 3 is included at the end of this document as Annex D.
- <sup>xlviii</sup> *Ibid.*, para 142.
- <sup>xlix</sup> *Ibid.*, para 169.
- <sup>l</sup> *Ibid.*, para 210.
- <sup>li</sup> *Ibid.*, para 211.
- <sup>lii</sup> *Ibid.*, para 212.
- <sup>liii</sup> *Ibid.*
- <sup>liv</sup> *Ibid.*, para 215.
- <sup>lv</sup> *Ibid.*
- <sup>lvi</sup> *Ibid.*
- <sup>lvii</sup> See below, Sections VIII and X, for discussion of command responsibility and the ultimate findings of liability for each charge.
- <sup>lviii</sup> *Ibid.*, para 217.
- <sup>lix</sup> *Ibid.*, para 218.
- <sup>lx</sup> *Ibid.*, para 219.
- <sup>lxi</sup> *Ibid.*, para 220.
- <sup>lxii</sup> A chart summarizing the documents presented in support of each count is included at the end of this report as Annex E.
- <sup>lxiii</sup> *Chief Prosecutor vs. Gholam Azam*, Judgment, para 225
- <sup>lxiv</sup> *Ibid.*, para 240
- <sup>lxv</sup> *Ibid.*, para 285
- <sup>lxvi</sup> *Ibid.*, referring to Exhibits 64 and 68.
- <sup>lxvii</sup> *Ibid.*, 286
- <sup>lxviii</sup> *Ibid.*, para 288.
- <sup>lxix</sup> *Ibid.*; The Tribunal appears to be confusing the requirement of a “widespread or systematic attack” when proving a crime against humanity, with the requirement of showing that the crime was ultimately committed where one is charging a non- inchoate offense such as complicity.
- <sup>lxx</sup> *Ibid.*, para 290.
- <sup>lxxi</sup> Section 3(2)(g) codifies attempt, abetment and conspiracy, while Section 3(2)(h) codifies complicity in or failure to prevent commission of crimes within the ICT Act.
- <sup>lxxii</sup> See below, Sections VIII and X, for discussion of command responsibility and the ultimate findings of liability for each charge.
- <sup>lxxiii</sup> *Chief Prosecutor vs. Gholam Azam*, Judgment, para 306.
- <sup>lxxiv</sup> *Ibid.*, para 305.
- <sup>lxxv</sup> *Ibid.*, para 307.
- <sup>lxxvi</sup> *Ibid.*
- <sup>lxxvii</sup> *Ibid.*, para 309, citing to M. Damaska, *The Shadow Side of Command Responsibility*, *The American Journal of Comparative Law*, 2001, p. 455.
- <sup>lxxviii</sup> *Ibid.*, para 311. The ICTY Statute codifies command responsibility under Article 7(3), while it appears in Article 6(3) of the ICTR. The Tribunal mistakenly refers to the ICC instead of the ICTR. However, Article 6(3) of the Rome Statute (for the ICC) codifies genocide and does not address modes of liability such as command responsibility.
- <sup>lxxix</sup> The Tribunal states that this relationship may be *de jure* or *de facto* in para 313.
- <sup>lxxx</sup> *Chief Prosecutor vs. Gholam Azam*, Judgment, para 312. The Tribunal refers to the ICTY case of *Prosecutor vs. Oric*, Case number – IT 03-68-T293.
- <sup>lxxxii</sup> *Ibid.*, para 315.
- <sup>lxxxiii</sup> *Ibid.*, para 325.
- <sup>lxxxiiii</sup> *Ibid.*, para 318.

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- lxxxiv *Ibid.*, para 319.
- lxxxv *Ibid.*, para 330, citing *Prosecutor vs. Nahimana*, ICTR, Case No. ICTR-99-52-T.
- lxxxvi *Ibid.*, para 331.
- lxxxvii *Ibid.*, para 311.
- lxxxviii *Ibid.*, para 333.
- lxxxix *Ibid.*, para 333.
- xc *Ibid.*, para 335.
- xc1 *Ibid.*
- xcii *Ibid.*, para 336.
- xciii *Ibid.*, para 339
- xciv *Ibid.*, para 352. It should be noted that the ICT Act did not originally include “individuals or group of individuals” within its jurisdiction. The act was amended in 2009 to insert these terms.
- xcv *Ibid.*, para 353.
- xcvi *Ibid.*, para 356.
- xcvii *Ibid.*
- xcviii *Ibid.*, para 364.
- xcix *Ibid.*, para 370.
- c *Ibid.*, para 340.
- ci *Ibid.*, para 368.
- cii *Ibid.*, para 373.
- ciii *Ibid.*, para 374.
- civ *Ibid.*, para 375.
- cv *Ibid.*, para 387.
- cvi *Ibid.*, para 392.
- cvii *Ibid.*, para 394.
- cviii This transfer of power refers to the demand that the results of the 1970 election, in which East Pakistan won a majority of seats in the parliament, be honored and power transferred from West Pakistan.