

Proving Modes of Criminal Liability in Prosecuting International Crimes: An Analysis of International Crimes Tribunal Bangladesh

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ABSTRACT

This study examines how the International Crimes Tribunal Bangladesh (ICTB)- a domestic criminal court, is prosecuting and punishing international criminalities perpetrated in the Bangladesh Freedom War in 1971 through the flaw laws in proving the modes of individual criminal responsibility that hinder securing criminal justice to the parties. By applying a qualitative approach, this study firstly scrutinizes the modes of criminal responsibility in the ICTB's Statue-the International Crimes Tribunal Act 1973 and whether such notion is supported by international customary law in 1971 and 2010. Secondly, this study outlines different modes of liabilities, such as Joint Criminal Enterprise and Superior Liability, that are extensively applied by the jurisprudence of the ICTB in more than 51 individual cases to date. Lastly, as the originality of this research, it advances 'Two Proposals' that need to be executed by the ICTB to secure criminal justice to the relevant bodies in improving its legitimacy to the global criminal justice system. Then, the study concludes that in any failure to uphold the customary law requirement of proving the Joint Criminal Enterprise and the Superior Liability as the particular modes of criminal liability, the tribunal will lose its legal credibility.

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Contribution/Originality: This research paper aims to contribute to the existing literature on the different approaches to proving individual criminal responsibility for the perpetrators of international crimes. The study proves that any criminal tribunal that is prosecuting international crimes needs to adhere to the customary law requirements in proving modes of criminal liability.

1. Introduction

Bangladesh currently has established the ICTB in prosecuting and penalizing persons who perpetrated international crimes in its 1971 Liberation Conflict. The ICTB was formed in 2010 to try and penalize the forces of West Pakistan and their Bangladeshi traitors who contrasted with the Bangladesh War of Independence and did commit

atrocious offenses against Bangladeshi civilians (Billah, 2020). Firstly, the Tribunal was initiated on 17th July 1973 by passing the 1973 ICT Act by the Bangladeshi Parliament afterwards the 1971 Conflict (Billah, 2020). However, due to political unevenness with Pakistan, India, and the newly emerged State of Bangladesh, instigating any legal proceeding against the Pakistani perpetrators for their wrongful acts was not possible (Billah, 2020).

Though the current Tribunal has been duly inaugurated by the binding Bangladeshi Government- the Awami League (AL) in March 2010, it has placed serious uncertainties on the Court's aptitude in upholding the defendant's internationally documented fair trial rights. One of the fair trial rights is to prove the culpability of an individual through an unambiguous pleading of the methods of criminal charge prescribed by certain laws (Jordash and Bracq, 2019) and such criminal accountability shall be individual, and adequately predictable and accessible during the commission of an act or omission (Ambos, 2013). However, it has been revealed throughout the jurisprudence of the ICTB, that the Tribunal applies different modes of criminal liabilities in unacceptable and inconsistent manners that hinder the proper application of international criminal law standards, which is labelled the Tribunal as the 'victor's justice' type of initiative (Billah et al, 2022) and is somehow prosecuting and punishing many alleged perpetrators through an imperfect system of justice where the accused are trying without properly recognized impartial trial and due process in proving the different modes of criminal charges against the individuals.

Therefore, this study examines how the ICTB, being a domestic criminal tribunal, prosecuted and punished international crimes committed in the Bangladeshi War of Freedom in 1971, through the flawed laws in proving the modes of individual criminal liability. This study first scrutinizes the importance of the modes of criminal liability in customary international law. Then, the study secondly outlines different modes of liability in the ICTB's statute, i.e. the International Crimes Tribunal Act 1973. Thirdly, the study analyzes the detailed jurisprudence of the ICTB that applies different modes of criminal liability such as Joint Criminal Enterprise (JCE), and Superior Liability (SL). Lastly, as the originality of this study, it forwards a way to be executed by the ICTB to secure criminal justice to the relevant bodies in advancing its legitimacy to the global criminal justice system. This study employs a qualitative study method by exploring and examining secondary statistics, from ICTB cases and Statute, the UN ad hoc courts of the International Criminal Tribunal for Rwanda (ICTR), the International Criminal Tribunal for the Former Yugoslavia (ICTY), the International Criminal Court (ICC), and internationalized criminal tribunals.

2. Literature Review

It is relevant to examine the previous literature on the specific topic to understand the significance of the current research. One of the primitive lawful investigations attempted by Linton in 2010, instantly afterwards the creation of the Tribunal, scrutinized several legal inconsistencies of the 1973 ICT Act, consistent with the internal and universal criminal legislation standards (Linton, 2010). She mostly examined the ICTB under the international customary law conditions of crimes in 1971, the factual times when the crimes were committed, and 2010, the time of prosecution of these offenses. She also parallels the Constitutional embargo imposed by Bangladesh authority against retroactive criminal prosecution to flinging "a spanner in the works (Linton, 2010)." Correspondingly, several other academics have done a series of legal investigations that

desperately assess some legal provisions of the ICT Act 1973 under the global war crimes legislation. They analyzed numerous defects, i.e., non-compliance with universal standards, mainly the ICTB's material jurisdiction. Among these studies, although few analyses determined that the international offenses that have been tried and penalized under the 1973 ICT Act repetitively lack customary law's standards, some theoretical examinations even steered an in-depth examination through maintaining that the local legal mechanism formed by the 1973 ICT Act is an example of "complementarity went bad (Billah, 2021)." Nevertheless, the academic studies directed by Linton and others missed out on examining how each and all accused's criminal responsibilities have been proved with the international customary law standards.

In the contemporary times, an in-depth legal analysis has been done by Islam on the Bangladesh Tribunal by describing numerous cases of the ICTB that investigates legal attributes of crimes against humanity as international criminalities. Mr. Islam measured the explanation of crimes against humanity in the 1973 ICT Act as parallel to the similar crimes recognized in the International Military Tribunal (IMT), Nuremberg Charter 1945. Additionally, his analysis investigates the latest advancement of treaty and customary laws' requirements of crimes against humanity, such as 'widespread' and 'systematic' attacks against any civilian population. However, no analysis was dedicated to figuring out how the underlying offenses of crimes against humanity are supposed to be proved based on individual criminal liability. Is there any modes of personal criminal accountability needed based on the JCE and/or SL? Lastly, another detailed examination was carried out by Billah and others in 2023 by explaining customary law requirements of murder, extermination, and torture as the fundamental offenses of crimes against humanity. This study has proven that the ICTB has failed to apply customary law requirements of murder, torture, and extermination as the original wrongdoings of crimes against humanity (Billah et al, 2023). Nevertheless, this study omitted to discuss modes of individual criminal liability to prove murder, extermination, and torture as the main offenses of crimes against humanity. Therefore, a clear research gap is obvious that needs to be overcome by the current research as it is dedicated to analyzing why modes of criminal liability are important in customary international law.

2.1. The Modes of Individual Criminal Liability in the ICT Act 1973 and Customary International Law

The structure of personal criminal guilt in the ICT Act differs greatly from the provisions in the Laws of international criminal trials. Contrary to the common understanding of criminal law, the ICT Act adopts several modes of liability as separate offenses because they are listed in Section 3, which defines the jurisdictional reach of the Tribunal (Carolyn, 2013). Section 4(1) of the ICT Act determines that, in proving a joint commission of an offense, each person is liable for the crime as if it was committed by them alone. According to the ICTB, Section 4(1) corresponds to the concept of JCE (Chief Prosecutor v. Chowdhury para. 155; Chief Prosecutor v. Nizami para. 108). Hitherto, the exact wording of the said provision does not seem to define a mode of liability but rather to clarify the individual nature of criminal liability (Linton, 2010).

Yet, the applicability of JCE in the context of the Liberation War in the first place is contingent on whether and to what extent the doctrine was considered segment of international customary law in 1971. The findings of the ECCC Trial Court on the emergence of the concept of JCE and the conclusion that it was already in existence during the period 1975–1979(Prosecutor v. Ieng Thirith et al., para. 57) advocate

strongly that the concept could be applied to the time of the War of Liberation of Bangladesh. The Trial Chamber held that the IMT Charter, as well as Control Council Law (CCL) already recognized the liability of persons who did not directly commit a crime but who purposely participated through the construction or performance of a joint plan or enterprise connecting the commission of offenses (Prosecutor v. Ieng Thirith et al., para. 58). It also invoked several post-World War II jurisprudences and concluded that there were no doubts that JCE emerged during the post-World War II period (Prosecutor v. Ieng Thirith et al., para. 69). Accordingly, for the trials in Bangladesh, this means that the ICTB is allowed to apply JCE in the cases concerned with the Liberation War. In the absence of any specific definition provided by the ICT Act 1973, the Tribunal could anticipate the application of Section 34 of the Bangladesh Penal Code (acts done by several persons in furtherance of common intention) if it could be settled that the provision has the same scope as JCE.

The ICTB has invoked the ICT Act's Section 4(2) to apply the principle of command's responsibility. This is, nevertheless, debatable and must be examined from two aspects. First, the time of emergence of the principle of command's responsibility under international legislation must be determined to establish whether the provision reflects the international customary law of 1971. Second, whether the provision integrates the notion of command responsibility must be examined. Concerning the first question, no conflicts arose because the rule of command's responsibility of military and civilian leaders emerged as a customary rule only a few years after World War II (Cassese and Gaeta, 2013). Hence, the Appeal Chamber of the ICTY held that "command responsibility was recognized under customary international law before the adoption of Additional Protocol I to the Geneva Conventions of 1949(Prosecutor v. Hadzihasanovic et al., para. 29)." This finding rejected the defense's contention in the ICTY that the doctrine applies merely to international war because it is mentioned in Additional Protocol I to the Geneva Conventions but not in Additional Protocol II, which refers to internal armed conflicts (Prosecutor v. Hadzihasanovic et al., para. 28). Accordingly, the Trial Chamber of the ICTY observed that command's responsibility was already recognized in the context of crimes not perpetrated in international war before the establishment of the ICTY (Prosecutor v. Hadzihasanovic et al., para. 93).

However, it is still dubious whether Section 4(2) of the 1973 Act includes the notion of superior responsibility as enshrined in international customary law. One of the justifications behind the command's responsibility is to prove the liability of commanders for crimes committed by their juniors based on their duty to punish or prevent. But the words of Section 4(2) of the 1973 Act strongly propose that it does not refer to this principle (Linton, 2010). The provision creates criminal responsibility for superior officers or commanders who order, permit, acquiesce or participate in the commission of a crime under section 3(2) or are linked with any strategies and actions relating to the commission of such crime. It further establishes the liability of commanders and superior officers who fail or omit "to discharge their duty to maintain discipline or to control or supervise the actions of the persons under their command or their subordinates; whereby such persons or subordinates or any of them commit any such crimes (Section 4(2), ICT Act 1973)." This Section launches a mode of criminal liability that is entirely unknown to international criminal law (Linton, 2010). The first part of the provision refers to direct individual responsibility for ordering or even participation, which does not fall under command responsibility, whereas the second part relies on a failing or omission in discharging the responsibility to uphold the discipline (Linton, 2010).

Although this formulation shows similarities with the Yamashita Standard, which was applied in the prosecution of the Japanese General Yamashita, who was indicted with having been unsuccessful in discharging his obligation and controlling the actions of his subordinates, the concept of the ICT Act greatly exceeds even this standard (Beringmeier, 2018). One of the reasons is the Yamashita Standard was adopted based on the roles played by the military forces in an international armed conflict, while the ICTB is trying to prosecute civilians whose criminal conduct was unparalleled in the case of the Japanese General. Therefore, the next part of the analysis outlines detailed scrutiny of the different modes of criminal responsibilities under the ICTB jurisprudence and their applicability in the relevant international jurisprudence.

2.2. The Modes of Liability in the Jurisprudence of the ICTB

The adherence of the modes of liability under the ICT Act 1973, in practice, is characterized by a rather disorganized approach (Beringmeier, 2018). The ICTB invokes mainly international jurisprudence for the description of the forms of liability. Nonetheless, the concepts applied by the Tribunal to the different forms of participation are not always similar to international practice, and, in several directions, it appears that the Tribunal rather relies on the concepts of domestic law. The ICT Act's Section 16(1) outlines the essentials that must be contained in every charge: "the name and particulars of the accused person, the crime with which the accused is charged, and such particulars of the alleged crimes." However, in *Kamaruzzaman's* case, the prosecutor argued that Section 16(1) of the 1973 Act does not require the determination of the mode of liability in the charges (Chief Prosecutor v. Kamaruzzaman, para. 496). This argument was advanced to hold the defendant liable for superior liability by Section 4(2), which was not mentioned in the charges. The Tribunal adopted this view, arguing that the method of liability can be decided merely during the proceeding based on proof (Chief Prosecutor v. Kamaruzzaman, para. 498.). This legal reasoning is not convincing because the mode of liability is a basic requirement to prove somebody liable and thus must be examined from the commencement of the case.

Accordingly, in most of the indictments and judgments, the mode of liability is not specified at all, where the accused are rather indicted for or found guilty of "participating, abetting, facilitating and substantially contributing" to the commission of the respective offenses.ⁱ This construction of framing charges in most of the cases of the ICTB does not even reveal whether the accused acted as an accessory or as the main perpetrator. Apart from that, the use of concepts in the judgments is erratic and does not reflect the wording of the ICT Act as many of the definitions provided overlap and are applied concurrently, which leads to contradictory results (Beringmeier, 2018). Specifically, there is frequent reference to the notions of 'complicity', 'participation,' and 'facilitating' throughout the jurisprudence of the ICTB, which have been referred to as umbrella terminologies for several forms of accessory liabilities, as well as involvement in a JCE. Some examples are indispensable in the subsequent discussion.

In *Mujahid's* case the prosecutor indicted him for "participating, abetting and facilitating the commission of [the] offense of murder as [a] crime against humanity (Chief Prosecutor v. Mujahid, p. 12)." The Tribunal defined participation as 'approval or instigation or encouragement or aiding or abetment (Chief Prosecutor v. Mujahid, para. 36). Then, for the further interpretation of 'participation', it cited international jurisprudence (Prosecutor v. Kvočka et al., para. 421) that deals with JCE (Chief

Prosecutor v. Mujahid, para. 596). The same definition was invoked in the case of *Qaiser*, but, ultimately, it was held that the act of the accused amounted to participation, abetment, and complicity (Chief Prosecutor v. Qaiser, paras. 395, 396). It shows the immediate failure of the Tribunal that does not even maintain a minimum legal standard to prove the same category of charges in different cases. From this exercise of the ICTB, it can be extracted that the term ‘participation’ as employed by the Tribunal encompasses any mode of liability. However, the definition of the term ‘participation’ by the Tribunal contravenes the wording of the ICT Act because participation is only mentioned in Section 4(2) in the context of superiors.

In addition to that, the term ‘facilitating’ is frequently used to mean the concept of aiding. For example, the accused Mujahid was “charged with participating in and facilitating the commission of murder as a crime against humanity (Chief Prosecutor v. Mujahid, p. 13).” In its findings, the Tribunal examined abetment using the criteria for it, which had been established in earlier cases (Chief Prosecutor v. Mujahid para. 572). In total, it can be specified that the inexactness of the phrases linked to the modes of accountability makes it problematic to conclude a common practice concerning the principles used by the ICTB. Hence, it is crucial to refer to the specific modes of criminal liability that are referred to by the ICTB to know whether the Tribunal sufficiently analyzes them according to the norms of international customary law.

2.3. Joint Criminal Enterprise

The notion of JCE has been applied to several cases before the ICTB. The Tribunal cited Section 4 of the ICT Act. As delineated above, even though the presence of the JCE under customary international law in 1971 is uncertain, the Tribunal found that all three forms of JCE are well-established in the ICT Act 1973. International jurisprudence has recognized three physical elements for all forms of JCE:

- a plurality of persons involved in the commission of a crime;
- the existence of a common plan, design, or purpose that involves the commission of a crime; and
- the participation of the accused in the common plan, design or purpose involving the perpetration of a crime in the form of a significant contribution (Prosecutor v. Milutinovic et al., para. 26).

The significant contribution is what distinguishes participation in a JCE from conspiracy or membership in a criminal organization (Prosecutor v. Milutinovic et al., para. 27). The mental requirements differ for the three forms of JCE. JCE-I requires that every co-perpetrator need to act according to a common design and share the same intent (Prosecutor v. Tadić, para. 196). JCE-II narrates to cases in which the crimes are committed within an institutional framework of an attentiveness or detention camp and requires individual knowledge of the structure of criminal activities and the intention to supplement this joint system of ill-treatment (Prosecutor v. Milutinovic et al., para. 202). JCE-III denotes cases in which one perpetrator commits an offense that was not within the normal design however was a usual and probable magnitude (Prosecutor v. Milutinovic et al., para. 204).

As delineated above, the ICTB invokes Section 4(1) of the ICT Act for JCE liability. The Appellate Division (AD) held that Section 4(1) of the ICT Act resembles Section 34 of the Penal Code (Kamaruzzaman v. Chief Prosecutor, p. 168). Section 34 of the Bangladesh Penal Code says,

Acts need to be done by several persons in furtherance of common intention: when a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner.

Dissimilar to Section 4(1) of the ICT Act, the provision of the Penal Code contains the element 'in furtherance of the common intention of all.' The AD contended that the justification behind the absence of this requirement in Section 4(1) is that "the objective of the Pakistani army and its auxiliary forces was already determined with a common intention (*Kamaruzzaman v. Chief Prosecutor*, p. 169)." This clarification is arguable because the amended version of Section 3(1) extended the personal jurisdiction over individuals irrespective of their membership in auxiliary forces or the Pakistani army. The Division further clarified that Section 4(1) intends to stun complications in distinguishing between the acts of individual members and in proving what part each co-perpetrator took (*Kamaruzzaman v. Chief Prosecutor*, p. 170.) because Section 4(1) necessitates only the proof that the criminal act was committed by one of the accused persons (*Kamaruzzaman v. Chief Prosecutor*, p. 171). This legal explanation of Section 4(1) is also rather controversial as the provision does not seem to be aimed at overcoming evidentiary problems but rather at affirming the equal liability of the main perpetrators and accessories.

The notion of JCE first appeared in the ICTB's jurisprudence in the case of *Mujahid*. The Tribunal determined that the following criteria must be examined:

- whether the accused took consenting part in the commission of the crime;
- whether he or she was connected with the plans or with the enterprise; and
- whether the accused belonged to the perpetrator organization or group (*Chief Prosecutor v. Mujahid*, para. 445).

The Tribunal found that, if these conditions were fulfilled, the accused was "concerned in [sic] the commission and clarified that being concerned with the commission of a crime refers to indirect participation (*Chief Prosecutor v. Mujahid*, para. 446.)." These criteria demonstrate imprecision as they merely require a 'connection with the plans or with the enterprise' instead of a common plan and participation. Nonetheless, the Tribunal then also analyzed the requirements of JCE as established in international jurisprudence such as, "(a) plurality of persons; (b) existence of a common plan, design, or purpose; and (c) participation of the accused in the common design (*Chief Prosecutor v. Qaiser*, para. 919)." The Tribunal clarified that participation in the JCE does not need to consist of physical activity and, relying on *ICTY Stakic* (*Prosecutor v. Stakić*, 64), it held that participation may take the form of assisting in or contributing to the implementation of the common intention (*Chief Prosecutor v. Mujahid*, paras. 449, 450). The Tribunal failed to establish mental requirements.

In the case of *Mujahid*, the Tribunal also failed to specify the form of JCE it found appropriate. The charges are already vague in this regard as they define that the accused used to visit a torture camp regularly with his co-leaders 'with intent to annihilate the *Bangalee* population' and that he conspired with the senior officers of the camp (*Chief Prosecutor v. Mujahid*, p. 13). The charges claim that as a consequence of the 'conspiracy and planning', the killing of intellectuals was initiated (*Chief Prosecutor v. Mujahid*, p. 13). Although the charges seem to indicate a case of JCE II, with the torture camp being the institution in which the system of ill-treatment was implemented, the adjudication of the charges suggests that the Tribunal considered JCE I as no link to a system of ill-treatment was established. It is also not clear whether the charges refer to intellectuals who could be killed at the specific torture camp during the Liberation War or, more

generally, to the intellectual killings during the last days of the Liberation War-as the so-called intellectual killing in the case of *Mujahid* referred to an event that took place on 14 December 1971. Likewise, the application of the requirements for JCE to this case is uncertain.

Continuingly, in the same case, the Tribunal observed that the common plan of the criminal organization was to kill intellectuals 'with intent to cripple the Bengali nation (Chief Prosecutor v. Mujahid, para. 434)' and held that the common plan might be inferred from the circumstances (Chief Prosecutor v. Mujahid, para. 432). It raised the superior position of the accused in Islami Chattra Sangha (ICS) to argue that he was part of the common plan of *Al-Badr* because he knew the organization's aim (Chief Prosecutor v. Uddin et al., para. 243). The Tribunal held that *Al-Badr* was created exclusively by affiliates of ICS (Chief Prosecutor v. Mujahid, para. 457). However, this finding is controversial because, even if the members of *Al-Badr* were mainly recruited from ICS, this does not mean that every ICS member was simultaneously a member of *Al-Badr* and that this can be assumed without proof (Chief Prosecutor v. Mujahid, para. 172). Since the accused was the leader of ICS, the Tribunal concluded that he must have been a member of *Al Badr* (Chief Prosecutor v. Mujahid, para. 451).

Then, the Tribunal found that the defendant subsidized to the execution of the shared purpose through advice he provided to *Al-Badr* leaders, his visits to the army camp, through speeches in which he encouraged the annihilation of the 'Indian agents' and 'miscreants' and through a published article in which he criticized pro-liberation views (Chief Prosecutor v. Mujahid, para. 451). The Tribunal failed to identify the accused's significant involvement in the common drive of killing intellectuals, for which he was ultimately held accountable but instead assumed that the contribution to the *Al-Badr* organization in general by a visit of the accused's office was sufficient for JCE liability (Chief Prosecutor v. Mujahid, para. 460). The Tribunal's findings show similarities with the crime of association in an illegal organization under Articles 9 to 11 of the IMT Charter 1945. Yet, for liability under JCE, mere membership of the criminal association is not sufficient (Cassese and Gaeta, 2013). Rather, the accused has to participate in the commission of an offense done by the JCE (Prosecutor v. Milutinovic et al., para. 25). Apart from that, as outlined above, the 1973 Act does not establish criminal obligation based on membership in a criminal organization.

In the case of *Ali*, the Tribunal established that the following elements need to be fulfilled for JCE II:

1. existence of an organized system to ill-treat the detainees and commission of various crimes alleged;
2. knowledge and awareness of the nature of such system; and
3. the accused's intention to further the system or to participate in enforcing it (Chief Prosecutor v. Ali, para. 651).

Concerning the *mens rea*, it argued that, in this specific case, the intent to contribute to the structure of ill-treatment could be assumed from the fact that the defendant was aware of the method of ill-treatment and had agreed to it (Chief Prosecutor v. Ali, para. 654.). The ICTB stated that the accused's intelligence of the nature of the system could be assumed from his rank of ability in the organization (Chief Prosecutor v. Ali, para. 656.) and found that he gave orders at a torture camp (Chief Prosecutor v. Ali, para. 508). Nevertheless, the Tribunal discussed the defendant's liability for involvement in a JCE at the end of the judgment after it had found the accused guilty of the respective charges under different types of liability, such as abetment and instigation.

Similarly, in the case of *Jabbar Engineer*, the Tribunal invoked ICTR jurisprudence, which establishes the distinction relating to aiding and abetting and JCE (Prosecutor v. Mpambara, paras. 17, 37). However, the Tribunal failed to apply the criteria to this case and held the defendant liable for aiding, abetting, and participating in JCE I concurrently and without further clarifications (Chief Prosecutor v. Jabbar Engineer, para. 155). The frequent usage of the terminologies of aiding, abetting, and participating, are considered cheap narratives that have no legal value in proving the modes of liability of the accused in the ICTB cases.

2.4. Superior Liability

One of the purposes of analyzing the issue of superior responsibility reveals that in the ICTB cases, most of the accused prosecuted and punished belonged to the senior leaders of Jamaat E Islami (JEI). The Tribunal repeatedly said that they belonged to a superior (commanding) position in their party and committed crimes in the capacity of civilian superior in collaboration with the Pakistani army. The notion of superior liability as to the specific form of criminal liability is discussed in many cases. Section 4(2) of the ICT Act refers to the liability of superiors. As sketched above, this provision does not incorporate the theory of superior responsibility as recognized in international criminal law. However, it was invoked by the Tribunal in this context. How this conforms to the wording of Section 4(2) was not discussed. The first part of the provision lists the ordering, permitting, and participating of a commanding officer or superior officer and, therefore, determines the accountability for the positive acts of the superior. Conversely, the last part of Section 4(2) establishes the criminal liability of a commander or superior officer “who fails or omits to discharge his duty to maintain discipline, or to control or supervise the actions of the persons under his command or his subordinates.”

The elements of superior responsibility as established in international jurisprudence are as follows:

- 1) there must be a superior-subordinate relationship between the accused as the superior and the perpetrator of the crime as his subordinate;
- 2) the superior knew or had reasons to know that the crime was about to be or had been committed;
- 3) the superior failed to take the necessary and reasonable measures to prevent the criminal acts or punish the perpetrators thereof (Prosecutor v. Delalic et al. para. 346; Prosecutor v. Kordic et al., paras. 827, 839.).

The key factor for the determination of the superior-subordinate relations is the criterion of ‘effective control’ of the superior over his subordinates.

The Tribunal recognized that the principle of command responsibility was accepted as international customary law in 1977 when it was promulgated in Additional Protocol I to the Geneva Conventions (Chief Prosecutor v. Azam, para. 311). Since it rejected the requirement that the application of the ICT Act should follow the customary international law of 1971 to comply with the principle of legality, it did not relate this finding to the pertinency of superior responsibility in the present case. Therefore, additionally, it did not discuss when the doctrine of superior civilian responsibility emerged but merely stated that it now forms part of customary international law (Chief Prosecutor v. Azam, para. 345).

In the ICTB, command responsibility was examined for the first time in the case of *Azam*. For the determination of the elements of command's responsibility, the Tribunal referred to the jurisprudence of the ICTY (Prosecutor v. Naser Oric, para. 294) and established the following elements:

- ❖ an international crime was committed by someone other than the accused;
- ❖ a superior-subordinate relationship existed between the accused and the perpetrator;
- ❖ the accused as a superior knew or had reason to know that the subordinate was about to commit the crime; and
- ❖ the accused as a superior failed to take necessary and reasonable measures to prevent the crime or punish the perpetrator (Chief Prosecutor v. Azam, para. 312).

Although these elements correspond to the internationally recognized requirements of superior responsibility, in other cases, the Tribunal departed from these criteria. In *Mujahid* and *Kamaruzzaman*, ICTB held that superior responsibility has the following requirements:

- I) a crime was perpetrated by someone other than the accused;
- II) the accused had material ability or influence or authority over the activities of the perpetrators; and
- III) the accused failed to prevent the perpetrators from committing the crime (Chief Prosecutor v. Kamaruzzaman, para. 620; Chief Prosecutor v. Mujahid, para. 178).

The superior-subordinate relationship was thus broadened, and, as will be discussed below, the knowledge requirement was renounced.

In the case of *Azam*, the Tribunal dealt with the question of whether Section 4(2) also encompasses superior civilian responsibility. Since the provision refers to superior officers and commanders, it held that the interpretation of the term 'officer' is crucial for the determination of the scope of this provision (Chief Prosecutor v. Azam, para. 347). The Tribunal held that the explanation of a legal framework has to occur in consideration of the context of the respective provider and, to this end, other provisions of the framework, the prior state of law, provisions of other statutes on the same matter, and the effect of the provision have to be considered (Chief Prosecutor v. Azam., para. 348; *World Tel Bangladesh Ltd v. Bangladesh*, para. 14.). It emphasized that an interpretation should not render any provision of the same act unnecessary (Chief Prosecutor v. Azam, para. 348).

The defense rightly argued that the legislators could have altered Section 4(2) to add noncombatant superiors in the track of the modification of the 1973 ICT Act if the prosecution of civilian superiors was expected (Chief Prosecutor v. Azam, para. 351). The Tribunal instead relied on Section 5(2) of the ICT Act for the determination of the scope of the word 'officer.' Section 5(2) clarifies that acting according to national law or an order of the government or a superior does not exclude an accused's responsibility but can be considered to mitigate the punishment. Given that Section 5(2) refers to 'superiors' but does not limit the scope of application to superior officers, the Tribunal found that the usage of the term 'officer' in Section 4(2) is merely incidental because, otherwise, it would have been used in Section 5(2) as well (Chief Prosecutor v. Azam, para. 349). This line of reasoning does not have much persuasive power. Instead, the comparison to Section 5(2) indicates that the drafters of the Act intended to restrict the

scope of Section 4(2) to superior officers because, otherwise, they would have employed the same wording as in Section 5(2).

In the case of *Azam*, the 'effective control' standard was, nevertheless, not applied, in proving the accused's guilt as the superior leader of JEI. The Tribunal observed that the accused was accountable as a noncombatant superior based on his role as Ameer (Chief) of JEI from 1969 to 1971 and based on his membership as the executive committee of the Central Peace Committee (Chief Prosecutor v. *Azam*, para. 376). It held that the accused, in his function as Ameer, exercised his superior power in forming Peace Committees, *Razakars*, *Al-Badr*, and *Al-Shams* (Chief Prosecutor v. *Azam*, para. 376). The Tribunal invoked the accused's membership of the Central Peace Committee to argue that he was an "indispensable person as well as a *de facto* administrator to run the civil administration of the then East Pakistan (Chief Prosecutor v. *Azam*, para. 356)." It also alleged that the accused, as "a religious leader, had command and control over the auxiliary forces (Chief Prosecutor v. *Azam*, para. 370.)," and as a civilian superior, he "masterminded all the atrocities committed on the soil of Bangladesh through his subordinates in 1971 (Chief Prosecutor v. *Azam*, para. 382)." Hence, it is questionable as to the civilian power of the accused to commit crimes with the Army and *Razakars* force, which were exclusively created by the Pakistani army as the para-military forces, and the Prosecution never provided any document to prove that the accused had civilian superior power to control the army of Pakistan. Likewise, the Tribunal did not deliberate whether the accused being a civilian had the power to stop and penalize the crimes committed by the army and the *Razakars* in the Liberation War (Razzaq, 2016).

Concerning the mental elements of superior responsibility, the ICTB came to very contradictory findings. In the case of *Azam*, it clarified that the different knowledge requirements for civilian and military superiors established in the ICC Legislation do not replicate international customary law and rejected their application (Chief Prosecutor v. *Azam*, paras. 334, 335). Regarding the ICT Act 1973, it held that "it would be highly repugnant to common sense and natural justice to hold someone responsible for the crimes committed by his subordinates which was [sic] unknown to him (Chief Prosecutor v. *Azam*, para. 336)." The Tribunal considered that it was authorized to add the knowledge requirement, although not expressly established in Section 4(2), because "not doing so would frustrate the ends of justice and doing so would be conforming to natural justice and customary international laws [sic] (Chief Prosecutor v. *Nizami*, para. 379)." Then, according to the Tribunal, the superior's information must be assumed from the proof, events, and circumstances of the cases, especially when examining whether the defendant had grounds to know.

An entirely different explanation of Section 4(2) of the ICT Act was adopted in the cases of *Mujahid* and *Kamarnzzaman*, in which the Tribunal, without any further reasoning, stated that superior responsibility under the ICT Act does not establish a knowledge requirement (Chief Prosecutor v. *Mujahid*, para. 454). In both cases, it was affirmed that, although knowledge is not required under the ICT Act, the superior position of the accused is a considerable indicator that he had knowledge of the commission of crimes (Chief Prosecutor v. *Kamaruzzaman*, para. 624; Chief Prosecutor v. *Mujahid*, para. 211). It appears that the Tribunal considers the knowledge requirement always fulfilled based on the superior position of the accused. Nonetheless, an obligation to prevent crimes can only exist if the superior knew about the crimes or at least had reason to know about the identifiable crimes that might have been perpetrated by his subordinates.

The AD also dealt with the specific requirements of superior accountability in *Kamaruzzaman* and, contrary to the Tribunal's findings, rejected the accused's superior liability (*Kamaruzzaman v. Chief Prosecutor*, pp. 115-172). The Tribunal had found Kamaruzzaman liable as a civilian leader based on his actual control on the *Al-Badr* members who committed the crimes (*Chief Prosecutor v. Kamaruzzaman*, para. 631). In its verdicts, the AD reproduced almost an entire academic article (Ronen, 2010) on civilian superior responsibility (*Kamaruzzaman v. Chief Prosecutor*, pp. 116-153). The AD then analyzed whether the accused had *de jure* authority based on his function as an *Al-Badr* leader in larger Mymensingh, a district of Bangladesh (*Kamaruzzaman v. Chief Prosecutor*, p. 153). However, the AD adequately failed to bring any evidentiary proof of the *de facto* or *de jure* civilian superior responsibility of the accused Kamaruzzaman.

3. Two Proposals Need to be Executed

From the above-detailed legal analysis, it can be extracted that the ICT Act 1973 has not sufficiently figured out the modes of liability principles under contemporary international law. To date, the ICTB has delivered the verdicts of 51 cases.ⁱⁱ In all of these cases accused were charged and punished with the offense of genocide and crimes against humanity, while these crimes have reached the level of *jus cogens* offenses in international law (Billah, 2021). Thus, in indicting and penalizing these offenses, any trial requires the application of precise modes of liability in proving individual guilt under customary international law, which has been missed in the ICTB. Therefore, as the outcome of this study, it proposes the succeeding 'Two Proposals' that the ICTB requires to comply with because the Tribunal is still functioning under the supervision of the Bangladeshi government.

3.1. Section 4 of the ICT Act 1973 Needs to be Amended

Recently, international criminal law has entered its development phase due to the active functioning ICC in the different parts of the world. Therefore, firstly, the ICTB cautiously requires reevaluating the international tribunals and courts' statutes, in amending Section 4 of the ICT Act 1973, that legally adjust the notion of modes of criminal liability in indicting crimes against humanity and genocide. In giving the effect to the customary status of individual criminal responsibility, the ICTB can insert several modes of conducting criminal activities in proving individual criminal responsibility rather than common responsibility as enshrined in the current Statute in Section 4(2). The ICC Statute has been ratified by a large number of states recently, hence it will be the evidence of exiting costmary law for proving individual criminal responsibility.ⁱⁱⁱ For example, Article 25 (2) and (3) of the ICC Statute says,

"2. A person who commits a crime within the jurisdiction of the Court shall be individually responsible and liable for punishment in accordance with this Statute. 3. In accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person: (a) Commits such a crime, whether as an individual, jointly with another or through another person; (b) Orders, solicits or induces the commission of such a crime which in fact occurs or is attempted; (c) For the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission; (d) In any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose."

The above ICC provision already elucidated each and every aspect of individual criminal responsibility. The similar legal requirements also laid down in the UN *ad hoc* Tribunals of the ICTY, ICTR and hybrid tribunals such as the ECCC and SCSL.^{iv} As a result, ICTB can easily adhere to the above criminal law principle, as it undeniably will demonstrate that Bangladesh is honestly trying to put an end to continuing impunity by reviving the ICTB that was ceased to exist 50 years ago.

3.2. ICTB Jurisprudence Needs to Apply Customary International Law Strictly

Secondly, once the ICTB realizes it is hard to revisit the old law that was passed 48 years ago, then it is definitely required to abide by the modern customary law prerequisites in the current cases of the ICTB because the Tribunal is operating nowadays. Individual criminal responsibility and modes of criminal liability have been legally established by the ICTY, ICTR jurisprudence. There might be a question on whether the ICTY and ICTR jurisprudence has reflected the latest customary law requirements of individual criminal responsibility, since most of the cases were decided in the 1990s, while the ICTB is giving verdicts currently (after 2010). One of the possible answers justifies that Statutes of these two Tribunals were adopted based on the principle adopted in IMT Nuremberg Charter 1945. For example, Article 6(c) of the IMT Nuremberg stipulated the description of crimes against humanity, that also codified in the ICTY and ICTR Laws. Therefore, the UN Secretary-General rightly contended in 1993 that “Article 6(c) of the IMT Nuremberg Charter has ‘beyond doubt become parts of customary international law (Report of the Secretary-General, 1993).”

Another possible response suffices that the UN Secretary-general further stated that these tribunals (ICTY and ICTR) should only apply “rules of international humanitarian law that are beyond any doubt part of customary law (Report of the Secretary-General, 1993).” For example, the ICTY Appeals Chamber in *Tadić’s* case of Interlocutory Appeal on Jurisdiction established “a customary rule criminalizing serious violations of international humanitarian law were considered international crimes such as crimes against humanity, genocide, and war crimes (Prosecutor v Tadić, para. 94).” In a later case, the accused complained on the presence of customary law in verifying elements of crimes against humanity and JCE constructed on decisions of the ECCC case (Prosecutor v Prlić et al., paras. 206–207). The ICTY Trial Chamber discarded this opinion and decided that the *Tadić* Appeal Verdict recognized the customary law position of the rule in question (Prosecutor v Prlić et al., para. 210). Subsequently, in many ICTY jurisprudence, it further enhances that customary laws enumerated in the cases are sources of international criminal law.^v

4. Conclusion

To conclude, from the overall analysis it has been revealed that the core problem originates from the legal framework because the modes of liability embedded in the ICT Act are highly complicated. The Act establishes a liability system that is unknown to the local penal law of Bangladesh. At the same time, it does not integrate the system of the modes of liability as established under contemporary international criminal law. Most of the criteria are unclear, and criminal liability is extended beyond the scope of the ICT Act 1973. Similarly, the adherence to the modes of liability in the jurisprudence of the ICTB shows an unacceptable inconsistency. Furthermore, an extreme problem arises through the refusal of the Tribunal to consistently apply the jurisprudence of international

criminal law despite the obvious impossibility of applying domestic law as a clarification tool.

Therefore, it is the utmost responsibility of the ICTB to abide by the recent development of customary international law in proving the modes of individual criminal liability by amending the ICT Act 1973 or strict application of the customary laws enshrined by the ICTY and ICTR jurisprudence. Hence, it will be a good legal mechanism that might positively contribute to deterring future offenders of international crimes. In case of any failure to do so, the Tribunal in question will carry no legal value in the domestic prosecution of international crimes. As a result, it will be reiterating the claim that the ICTB is a 'victor's justice' type of mechanism that has no lawful purpose to bring the real culprit before justice, except for the judicial killing of political opponents in Bangladesh (Billah, 2023).

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References

- Ambos, K. (2013). *Treatise on International Criminal Law, Volume I: Foundations and General Part*. Oxford: Oxford University Press, 2013.
- 'Commentary of the Rome Statute: Part 3', Case Matrix Network, available online at: www.casematrixnetwork.org/cmn-knowledge-hub/icc-commentary-clicc/commentary-romestatute/commentary-rome-statute-part-3/.
- Beringmeier, M. (2018). *The International Crimes Tribunal in Bangladesh*. Berlin: Berliner Wissenschafts-Verlag.
- Billah, M, Saripan, H, Rahmat, N. E, A. Hassan, R, Nisa, T. B. & Mia, M. T. (2023). Murder, Extermination, and Torture as the Underlying Offenses of Crimes against Humanity: A Practical Reflection on the International Crimes Tribunal Bangladesh. *Journal of Namibian Studies* (37), 712-744.
- Billah, M. 2023. "Execution of Jamaat Leaders: National Villains or Fallen Heroes?" in Islam, S.S., & Islam, M.S. (Eds.). *The Jamaat Question in Bangladesh: Islam, Politics and Society in a Post-Democratic Nation* (1st ed.) (184-207), Routledge. <https://doi.org/10.4324/9781003310679>.
- Billah, M, Mahbub, F. & Nisa, T. B. (2022). The Impact of the Political Interference on Prosecuting International Crimes: An Experience from the International Crimes Tribunal Bangladesh. *Hong Kong Journal of Social Sciences* 58 (1), 607-617.

- Billah, M. (2021). Prosecuting Crimes against Humanity and Genocide at the International Crimes Tribunal Bangladesh: An Approach to International Criminal Law Standards. *Laws* (10), 1-34. DOI: <https://doi.org/10.3390/laws10040082>.
- Billah, M. (2020). Non-retroactivity in Prosecuting Crimes against Humanity and International Crimes Tribunal Bangladesh. *Journal of Politics and Law* 13(3), 180-195. DOI:10.5539/jpl.v13n3p180.
- Carolyn, F. (2013). "The International Crimes Tribunal Observer, Special Issue No. 4 - Legal Conclusions from *Chief Prosecutor v. Kamaruzzaman*," *Asian International Justice Initiative*. available at <https://bangladeshtrialobserver.files.wordpress.com/2013/08/special-issue-4-ka-maruzzaman-legal-conclusions-final.pdf>.
- Cassese, A. & Gaeta, P. (2013). *Cassese's International Criminal Law*. 3rd ed. Oxford: Oxford University Press.
- Chief Prosecutor v Ali Ahsan Muhammad Mujahid*, ICTB Case No. 04 of 2012, Trial Judgment 17 July, 2013.
- Chief Prosecutor v Ali Ahsan Muhammad Mujahid*, ICTB Case No. 04 of 2012, Charge Framing Order, 21 June 2012.
- Chief Prosecutor v Jabbar Engineer*, ICTB Case No. 01 of 2014, Trial Judgment, 24 February 2015.
- Chief Prosecutor v Mir Quasem Ali*, ICTB Case No. 03 of 2013, Trial Judgment, 2 November, 2014.
- Chief Prosecutor v Motiur Rahman Nizami*, ICTB Case No. 03 of 2011. Charge Framing Order, 28 May 2012.
- Chief Prosecutor v Muhammad Kamaruzzaman*, ICTB Case No. 03 of 2012, Trial Judgment, 09 May, 2013.
- Chief Prosecutor v Salauddin Quader Chowdhury*, ICTB Case No. 02 of 2011, Trial Judgment, 1 October, 2013.
- Chief Prosecutor v Syed Md. Qaiser*, ICTB Case No. 04 of 2013, Trial Judgment, 23 December 2014.
- Chief Prosecutor v. Ali*, ICTB Case No. 03 of 2013, Charge Framing Order, 5 September 2013, pp. 9-18.
- Chief Prosecutor v. Jabbar Engineer*, ICTB Case No. 01 of 2014, Charge Framing Order, 14 August 2014, p. 14;
- Chief Prosecutor v. Professor Golam Azam*, ICTB Case No. 06 of 2011, Charge Framing Order, 13 May 2011.
- Chief Prosecutor v. Qaiser*, ICTB Case No. 04 of 2014, Charge Framing Order, 2 February 2014, pp. 11-18;
- Chief Prosecutor v. Uddin et al.*, ICTB Case No. 01 of 2013, Judgment, 3 November 2013, para. 243.
- ECCC Statute 2004, Art. 29, at https://legal.un.org/avl/pdf/ha/ictr_EF.pdf.
- International Criminal Tribunal for the Rwanda Statute, 1994, Art. 6, at https://legal.un.org/avl/pdf/ha/ictr_EF.pdf;
- International Criminal Tribunal for the Former Yugoslavia Statute 1993, at https://www.icty.org/x/file/Legal%20Library/Statute/statute_sept09_en.pdf;
- International Covenant on Civil and Political Rights 1966.
- International Crimes Tribunal Act 1973.
- International Criminal Tribunal for the Former Yugoslavia (ICTY) Background & Structure*, available at <https://guides.lib.unc.edu/internationallaw/tribunals>.
- International Criminal Tribunal for the Rwanda (ICTR) Background & Structure*, available at <https://guides.lib.unc.edu/internationallaw/tribunals>.

- Islam, M. R. (2019). *National Trials of International Crimes in Bangladesh: Transitional Justice as Reflected in Judgments*. Leiden: Brill|Nijhoff.
- Jordash QC, W., & Bracq, N. (2019). Modes of Liability and Individual Criminal Responsibility. In C. Jalloh, K. Clarke, & V. Nmehielle (Eds.), *The African Court of Justice and Human and Peoples' Rights in Context: Development and Challenges* (pp. 743-792). Cambridge: Cambridge University Press. doi:10.1017/9781108525343.027.
- Linton, S. (2010). Completing the Circle: Accountability for the Crimes of the 1971 Bangladesh War of Liberation. *Criminal Law Forum* 21(1),191–311.
- Muhammad Kamaruzzaman v. Chief Prosecutor*, ICTB Criminal Appeal No. 162 of 2013, Appeal Judgment of 3 November, 2014.
- Prosecutor v Akayesu*, Case No. ICTR-96-4, International Criminal Tribunal for the Rwanda (ICTR) Trial Chamber Judgment, 2 September, 1998.
- Prosecutor v Delalic et al.*, Case No. IT-96-21-A, International Criminal Tribunal for the Former Yugoslavia (ICTY) Appeal Judgment, 20 February 2001.
- Prosecutor v Erdemović*, Case No. ICTY-96-22-A, (Judgement, 7 October 1997, para 44;
- Prosecutor v Galić*, Case No. ICTY-98-29-T, Judgement 5 December 2003, Separate and Partially Dissenting Opinion of Judge Nieto-Navia paras. 108–13;
- Prosecutor v Kordić & Erkez*, Case No. IT-95-14/2-A, ICTY Appeals Chamber Judgment, 17 December 17, 2004.
- Prosecutor v Kunarac et al.* Case No. ICTY-96-23 and ICTY-96-23/1-A, Judgement, 12 June 2002, paras. 98–101;
- Prosecutor v Milutinovic et al.* Case No. IT-05-87, ICTY Decision on Dragoljub Ojdanic's Motion Challenging Jurisdiction-Joint Criminal Enterprise, 21 May 2003.
- Prosecutor v Prlić et al.* Case No. ICTY-04-74-T, Trial Judgement, 29 May 2013.
- Prosecutor v Šainović et al.* Case No. ICTY-05-87-A, Appeal Judgement, 23 January 2014, paras. 1626–50.
- Prosecutor v Tadić*, Case No. ICTY-94-1-A, Judgement, 15 July 1999, paras. 220, 270;
- Prosecutor v. Aifred Musema*, ICTR-96-13-T, Trial Judgment of January 27, 2000.
- Prosecutor v. Delalic et al.*, Case No. IT-96-21-A, ICTY Trial Judgment, 16 November 1998.
- Prosecutor v. Hadzihasanovic et al.*, Case No. IT-01-47, ICTY Decision on Interlocutory Appeal Challenging Jurisdiction in Relation to Command Responsibility, 16 July 2003, para. 29.
- Prosecutor v. Ieng Thirith et al.*, Case No. ECCC-002, Extraordinary Chambers in the Courts of Cambodia (ECCC) Decision on the Appeals against the Co Investigative Judges Order on Joint Criminal Enterprise, 20 May 2010.
- Prosecutor v. Kvočka et al.*, Case No. IT-98-30/1-A, ICTY Appeals Chamber judgment, 28 February, 2005, para. 421.
- Prosecutor v. Mpambara*, Case No. ICTR-01-65-T, ICTR Judgment, 11 September 2006, paras. 17, 37.
- Prosecutor v. Naser Oric*, Case No. Case No. IT-03-68-T, ICTY Trial Judgment, 30 June 2006.
- Prosecutor v. Stakić*, Case No. IT-97-24, ICTY Appeal Judgment, 22 March 2006.
- Prosecutor v. Tadić*, Case No. IT-94-1-A, ICTY Appeals Chamber Judgment, 15 July 1999.
- Razzaq, A. (2016) "The Tribunals in Bangladesh: Falling Short of International Standards," in Kirsten Sellars (ed.), *Trials for International Crimes in Asia* (pp. 341–359). Cambridge: Cambridge University Press.
- Robertson, G. (2015). "Report on the International Crimes Tribunal of Bangladesh." *International Forum for Democracy and Human Rights* (2015), available at:

<http://www.barhumanrights.org.uk/wpcontent/uploads/2015/02/REPORT-ON-THE-INTERNATIONAL-CRIMES-TRIBUNAL-OF-BANGLADESH.pdf>.

Ronen, Y. (2010). Superior Responsibility of Civilians for International Crimes Committed in Civilian Settings. *Vanderbilt Journal of Transnational Law* 43(2), 313-356.

SCSL Statute, 2000, Art. 6, at <http://www.rscsl.org/Documents/scsl-statute.pdf>.

The Rome Statute of the International Criminal Court 1998.

UN SECURITY COUNCIL RESOLUTION 827 (1993), UN Doc. S/RES/827(1993), 25 May 1993, Adopted by the Security Council at its 3217th meeting, available on <http://unscr.com/en/resolutions/doc/827>.

UN SECURITY COUNCIL RESOLUTION 955, (1994), UN Doc. S/RES/955 (1994), 8 November 1994, Adopted by the Security Council at its 3453rd meeting, available on <http://unscr.com/en/resolutions/955>.

UN Security Council, Report of the Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 808 (1993), UN Doc. S/25704 (3 May 1993), 55.

Universal Declaration of Human Rights 1948.

World Tel Bangladesh Ltd v. Bangladesh, [2006] 58 DLR 14, Supreme Court, Appeal Judgment, 15 April, 2006.

ⁱ See for examples, *Chief Prosecutor v Abul Kalam Azad*, ICTB Case No. 05 of 2012, Trial Judgment, 21 January 2013, para. 186; *Chief Prosecutor v Moulana Abdus Sobhan*, ICTB Case No. 06 of 2013, Charge Framing Order, 31 December 2013, pp. 11-19; *Chief Prosecutor v. Qaiser*, ICTB Case No. 04 of 2014, Charge Framing Order, 2 February 2014, pp. 11-18; *Chief Prosecutor v. Jabbar Engineer*, ICTB Case No. 01 of 2014, Charge Framing Order, 14 August 2014, p. 14; *Chief Prosecutor v. Ali*, ICTB Case No. 03 of 2013, Charge Framing Order, 5 September 2013, pp. 9-18. All the charges refer to 'abetting and facilitating' the respective offences but the Tribunal found that the accused acted as a superior and participated in a JCE.

ⁱⁱ See at, <https://www.ict-bd.org/ict1/judgments.php>; <https://www.ict-bd.org/ict2/judgments.php>.

ⁱⁱⁱ Recently, 123 states have ratified the Rome Statute of the International Criminal Court. See, <https://asp.icc-cpi.int/states-parties>.

^{iv} See, ICTY Statute 1993, Art. 7, at https://www.icty.org/x/file/Legal%20Library/Statute/statute_sept09_en.pdf; ICTR Statute, 1994, Art. 6, at https://legal.un.org/avl/pdf/ha/ictr_EF.pdf; ECCC Statute 2004, Art. 29, at https://legal.un.org/avl/pdf/ha/ictr_EF.pdf and SCSL Statute, 2000, Art. 6, at <http://www.rscsl.org/Documents/scsl-statute.pdf>.

^v *Prosecutor v Erdemović*, Case No. ICTY-96-22-A, (Judgement, 7 October 1997, para 44; *Prosecutor v Tadić*, Case No. ICTY-94-1-A, Judgement, 15 July 1999, paras. 220, 270; *Prosecutor v Kunarac et al.* Case No. ICTY-96-23 and ICTY-96-23/1-A, Judgement, 12 June 2002, paras. 98-101; *Prosecutor v Galić*, Case No. ICTY-98-29-T, Judgement 5 December 2003, Separate and Partially Dissenting Opinion of Judge Nieto-Navia paras. 108-13; *Prosecutor v Šainović et al.* Case No. ICTY-05-87-A, Appeal Judgement, 23 January 2014, paras. 1626-50.